Zeitschrift des Max-Planck-Instituts für europäische Rechtsgeschichte
Journal of the Max Planck Institute for European Legal History

Rechts Rg geschichte

Rechtsgeschichte
Legal History

www.rg.mpg.de

http://www.rg-rechtsgeschichte.de/rg24

Rg 24 2016 203 – 217

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What is the »Cultural Baggage« of Legal Transfers?

Methodological Reflections on the Case of La Quintiada, Tierradentro-Cauca, 1914–1917

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Abstract

This article analyzes how cultural translation was carried out in Manuel Quintín Lame's interpretation of Law 89 of 1980 during the indigenous revolt that took place in Tierradentro – Cauca (Colombia) between 1914 and 1916: riots that were popularly referred to as *La Quintiada*. The main focus here is on Lame and his contemporaries' visions of justice regarding the possession of the land as a way to account for the richness and complexity of the »cultural baggage« behind legal transfer processes. The purpose of this exercise is to detail the extrajuridical elements involved in legal transfers and the opportunities that a cultural translation of law approach can bring in order to understand this process.

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What is the »Cultural Baggage« of Legal Transfers?

Methodological Reflections on the Case of La Quintiada, Tierradentro-Cauca, 1914–1917*

The ways in which legal knowledge, rules, and practices migrate from one legal culture to another are filtered through multiple variables. As Foljanty (2015) has shown, the concept of *cultural translation* (Burke, 2000; 2007; 2009) serves not only to grasp how legal knowledge can be interpreted, but can also account for the large number of variables that mediate the process of implementing a given regulation as well as the possibilities of negotiation and resistance that the receiving society can impose. Within this perspective the need to understand culture – and law as an integral part of it – as a space for negotiation and contention (Burke, 2000; Thompson, 1995) allows us to detail the complex power relations and the strategies utilized both consciously and unconsciously by different actors in the process of building a given social order.

I use the metaphor of »cultural baggage« as a way to illustrate the different elements of culture (stereotypes, beliefs, values, etc.) that accompany our understanding of the world and, more specifically, the legal world. Even though these elements are non-juridical, they determine the manner individuals and groups experience and participate in the construction of the legal order. »Cultural baggage« is a useful image because it draws attention to that fact that we carry these elements with us at all times, and we mix many of the elements that can be reconfigured depending on different contexts and situations. What we carry with us is sometimes a matter of choice, but more often than not the baggage includes many naturalized notions, concepts, and behaviors that are permitted in our particular contexts, and are derived from it. This baggage helps us to understand the reality we live in; moreover, it helps us, above all, to construct arguments that make us to think that our interpretations of the world are suitable and correct.[1]

As a way to account for the richness and complexity of the »cultural baggage« behind processes of legal transfer, this article analyzes the interpretations of Law 89 of 1890 in Tierradentro, Cauca (Colombia), focusing on the visions of justice regarding land possession made by the indigenous leader Manuel Quintín Lame and his contemporaries during the indigenous revolts that took place in that region between 1914 and 1916, riots commonly known as *La Quintiada*. Through the use of discourse analysis, this paper seeks to illustrate the tensions, conflicts, contradictions, and power relationships inherent in the construction of any legal order as well as to show the polyphony characteristic of cultural translations of law. The struggle of indigenous people for land in Tierradentro, Cauca (Colombia) during the early 20th century, led by the indigenous leader Manuel Quintín Lame, illustrates quite well the dynamics mentioned above. Not only due to the relevance of his cause for the configuration of the contemporary indigenous movement is this case so fitting but also due to the great number of social actors that took active roles in the discussion and debate about the demands that these indigenous people were claiming in relation to collective ownership of land and legal rights. In this case, the debate about normativity and what was considered »just« by each of the respective parties allows us to see how different

* I would like to express my gratitude to some of the members of the Max Planck Institute for European Legal History who participated in the Cultural Translation discussion group, where some of the ideas expressed here were uncovered. I especially want to thank Lena Foljanty for her suggestions and comments during the writing process. I also want to extend thanks to Juanita Rodríguez, Luis Roberto Hernández, and Katharine Cottrell for lending a helping hand in the translation process and proofreading of this article.

1 The »cultural baggage« is created through an interplay between agency and background structures, and, to this extent, it has certain affinities to Bourdieu's notion of *habitus*. However, I use the metaphor of the baggage, and not the concept of *habitus*, in order to emphasize the permanent *struggle* between our naturalized ideas of the world derived from our context and our choices and interests that accompany our decision-making and, above all, our juridical decisions.

arguments competed with one another. Some of these arguments and ideas came from different times, places, and contexts, which progressively configured different possibilities to understand the legal order and open paths to implement the given normativity.

With this aim in mind, this article will be divided into six parts. In the first section, I will introduce the historical context in which Lame's actions took place. Then, I will explain how Lame used and interpreted the normativity of the time (particularly Law 89 of 1890) in order to pursue the aims of the indigenous peoples in the context of the early 20th century. Third, I will review the events of the *La Quintiada*, focusing on how different actors, such as indigenous peoples, local authorities, central government representatives, and partisan elites[2] interpreted land ownership rights and justice differently. In doing so I will establish the cultural processes where those ideas of justice were supported. In the next two sections, I will focus on the conceptions of justice held by the authorities, indigenous peoples, and partisan elites by exhibiting the points of convergence and divergence in the composition of their »cultural baggage« as well as their consequences on the enforcement of rules. Finally, I will offer a few final considerations regarding the relevance of this approach not only in order to better grasp the challenges facing contemporary Colombian indigenous land struggles and its normative context but also to draw attention to the relevance of the study of non-juridical features when it comes to understanding legal orders and their creation process.

Lame and His Struggle to Recover Resguardo Lands

Manuel Quintín Lame was an indigenous leader who started a movement in Tierradentro, Cauca at the beginning of the 20th century to recover *resguardo*[3] (indigenous communal lands from colonial times) and to stop the payment of *terraje*.[4]

Lame started this land recovery by using colonial titles and Law 89 of 1890 as a tool seeking to legitimize claims towards the Republican state. His struggle against the payment of *terraje* and for the recovery of communal lands can be traced back to 1910, when he played an active role in organizing *resguardo* members and indigenous *terrazgueros*[5] of San Isidro, Puracé-Coconuco, Caloto, Inza, and Páez and started the search for *resguardo* colonial titles in different regional historical archives (Espinoza, 2009).

The debate related to the existence and extension of the *resguardo* lands was not exclusive to Republican times, so it dates back to colonial times. The history of *resguardo* is linked to the history of *pueblos de indios* (colonial Indian villages).[6] These villages were created by the Spanish Crown to congregate the indigenous population into towns in order to control the demographic debacle characteristic of the first century of the Catholic Monarchy's dominance in America. Although the *resguardo* was closely related to *pueblos de indios*, the institution specifically referred to the lands around them. As Herrera has shown (1998), it is important to note that the configuration process of *pueblos de indios* was earlier than the *resguardo* lands assignments and that they also

2 I use the term »partisan elites« to classify the figures of political importance in the region who served as reference for the partisan debate. These figures also partly belonged to the economic elite.

3 The *resguardo* was a piece of land obtained via donation, assignment, or acquisition by indigenous communities during colonial times. Since its origins in the late 16th century, this was a collective property that indigenous communities were able to usufruct yet not have full ownership of it. For more information about *resguardos*, see Friede (1976), González (1970), Herrera (1998), (2014), Bonnett (2002).

4 The cost, in terms of labor days, peasants had to pay to a landlord for the use of a small portion of land inside the *Hacienda*. This kind of work was fairly common amongst indigenous peoples who had lost their communal land.

5 Indigenous people who had to pay *terraje* (see definition of *terraje* in footnote 4).

6 The term *resguardo* was used only in the Neogranadinan territories and never really belonged to the Iberoamerican colonial terminology; for that reason, the term is often assimilated to the *pueblo de indios.* Herrera (1998).

followed different aims. The first process started in 1559, and it was designed to allow Spanish political domination via the improvement of the evangelization process. The second one started more than 30 years later, with the intention of delimiting indigenous land in order to open a space to house poor whites and mestizos as new owners. During the second half of the 17th and, especially the 18th centuries, some of these *pueblos de indios* and *resguardo* lands where broken up by appeal to the argument that the diminution of the indigenous population resulted from the process of miscegenation that took place in New Granada during those times. This idea was reaffirmed by the assumption that the indigenous population did not need large portions of land, because its economy should essentially be subsistence in nature, and also meant that the larger tracts of land should be in the possession of the important Spanish landowners, who were responsible for resource exploitation and trade in America (Melo, 1977).

With the advent of the Republic, new arguments were applied to the question concerning the distribution of indigenous territories. After the enactment of Law 1 on October 11th, 1821, »*On the Abolition and Distribution of Indigenous Resguardos*,« laws about *resguardos* tended to dissolve them; however, it was now with the aim of individualizing the property. However, this regulation was implemented to different degrees throughout the 19th century and with different results at the regional level.

Discussions regarding indigenous land ownership tended to ebb and flow over time. Between the period of 1810 and 1832, policies about the dissolution of *resguardos* were formulated, but the authorities would only try to implement this normativity between 1832 and 1857. These policies were particularly effective in the dismantling of the indigenous collective properties in most parts of the country, as opposed to the case of the Cauca region where the process was much slower.

Once the Sovereign State of Cauca was created in 1857, including the jurisdiction to regulate the dismantling of the indigenous collectives, the process of indigenous population re-distribution was carried out in a much more moderate form, and this delayed process allowed for the establishment of some mechanisms to protect indigenous communal property, such as Law 90 of 1859, which served as a model for Law 89 of 1890 (Mayorga, 2013: 159–160).

Investigations that have addressed this issue have provided several reasons as to why *resguardo* lands tended to remain in the Cauca region.[7] The research shows that a social context in which a significant ethnic differentiation was inherited from the colonial order, not to mention that a deep social inequality was linked to the same process. Furthermore, the regional partisan elites were very much so dependent upon the indigenous sectors; a situation that allowed the indigenous sectors to negotiate with the State and actively participate in the creation of the Colombian nation-state.

It should be noted that Lames' claims were made within the context of a long-standing tradition of litigation – carried out by the communities – that could be traced from the colonial period and throughout the 19th century in the Republican context (Findji, Rojas, 1985; Findji, 1993; Rappaport 1998, Sanders 2010, Muñoz, 2015). However, what differentiates the case of Lame from others is the absence of a mestizo mediator between the indigenous community and the State (Lemaitre 2013).

7 For Appelbaum, the diversity of positions amongst the Caucanos landowners, who needed to keep the electoral and indigenous military support, as well as the patronage system in the region enabled the *resguardos* to remain, Appelbaum (2003) 61–62. For García, the reason for the permanence of the *resguardo* lay in the attachment Caucan elites maintained over traditional racial structures, in a hampered process of construction he calls an »intermediate identity construction,« that is, to a »halfway of primordial provincial identities and nationalism of State«, Garcia (2005) 13. Meanwhile, Sanders (2010) emphasizes the agency of the same indigenous leaders, who insisted on an identity that was both Republican and indigenous, and, therefore, it had a place in the modernizing project of the elites. He further remarks, just like Appelbaum, the importance of indigenous persons as political actors whose support was important for parties at the local level. This explains why indigenous communities achieved by means of negotiations with the government the legal and material preservations of their *resguardo* lands, Sanders (2010) 57–59.

The Problem of Indigenous Citizenship and Law 89 of 1890[8]

Between 1887 and 1890, three distinguishable categories of citizenship were defined with different regulatory frameworks. The first regulatory framework was given to those known as »civilized people,« and this group consisted of those falling under the Civil Code, meaning non-Indian citizens. Another regulatory framework was given to indigenous communities, with the promulgation of Law 89 of 1890, which, »Stated the way the savages should be governed as they may adapt to civilized life.«[9] This norm established two types of indigenous citizenship: the first type referred to those »reduced to civilian life« and a second type that was made up of the so-called »savages« of the time. For the first group, Law 89 regulated the organization of indigenous *cabildos* and *resguardo* lands (articles 2 to 42), and, for the second group, it established that they had to be ruled according to the ecclesiastical authority through missions charged with the responsibility of civilizing this population (article 1) (Mayorga, 2013).

Although Law 89 of 1890 protected the *resguardos* and recognized the authority of the *cabildos*, it was not necessarily useful in protecting the territories of the former indigenous communal lands. When this law was first proclaimed, it sought to frame the transition that would later grant individual titles. For this reason, Article 37 specified that, over the course of the next 50 years, these territories should be distributed among the indigenous individuals. However, the law contained favorable elements for self-government in recognizing the authority of the councils and the indigenous governors.

Lame used Law 89 as a basis for his struggle for land rights. The interpretation he developed was controversial, for it sought to recover former *resguardos* by asking for State recognition of former colonial titles and, in doing so, reverse the process of dissolution. Lame also argued that collective ownership was a type of private property, and, therefore, he argued that it deserved the same legal protections. This particular use of the law allowed indigenous communities to recover territories lost, an aim that this rule was not meant to pursue (Lematire, 2013).

This interpretation had two problems. On the one hand, the law did not necessarily name the indigenous people as owners, but rather as beneficial owners. On the other, at that time, private property was exclusively understood in terms of individualized property. However, as Lemaitre argues, the interpretation provided by Lame was not impossible. According to her findings, the existence of several possible interpretations of a given law was a characteristic of the legal system of that time: a system which harbored many contradictions, ambiguities, and gaps. So, in the context of litigation, these inconsistencies had to be resolved by judges, who usually favored the more powerful party. Nevertheless, this feature also meant that the opposite was possible: judges could be moved by the arguments given by the indigenous claimant and rule in their favor using arguments, for instance, like those provided by Lame. According to Lemaitre, this was primarily what Lame's legalism sought to achieve – namely, a pro-indigenous interest interpretation that, although based on the law, went against the ruling regulations seeking to dissolve the *resguardos* (Lematire, 2013: 239–242).

Property and Justice in Conflict: *La Quintiada* as Scenario

By 1912, Lame already had a group of secretaries who wrote briefs, letters, and statements in Spanish and had the support of important local indig-

8 An important part of this section is based on the recent research results published by Lemaitre (2013) and Mayorga (2013). The former focused on Lame's usage of Law 89 of 1890, and the latter concentrated on the history of this Law in the Altiplano and Cauca contexts. I mention their findings in my argumentation in order to contextualize the legal framework that will allow me to later explore the »cultural baggage« behind this scenario in the coming sections.

9 I would like to thank Max Deardorff for his help in translating the longer primary source texts from Spanish into English. The shorter quotations were translated by the author.

enous leaders. Given his modest knowledge of writing, the role of the secretaries was central to communicating his thoughts and ideas to authorities as well as for the discussion, understanding, and propagation of legal knowledge between indigenous peoples in an oral context.

Some of the local authorities interpreted the role played by Lame as dangerous. The meetings he and his followers organized were not seen as a space of civic debate between civilian indigenous people, but as a congregation of conspiring savages. Because of that, after various problems with the establishment, Lame was preemptively put in prison from January 1915 to September 1915 in order to prevent a possible rebellion. Apparently, Lame and his men were planning a meeting to declare independence from the »white race.«

The reasons for Lame's imprisonment were neither very clear to him nor to his followers. In a letter sent to the Second Circuit Judge Popayan, dated February 22, Lame requested his release with the following argument:

> »I have not opposed, with or without arms, the execution of any law or any judicial, legal, or constitutional article [in general], nor any legitimate service or providence of the authorities, nor have I attacked or resisted violently to them or their agents. Absent such behavior, it cannot in legal rigor be said that I am in any way responsible for the crimes of rebellion or sedition, nor mutiny or riot. Thus, in my opinion, there is no legal basis for prosecution, nor to keep me in custody, because the national Constitution and laws all fully protect me (Cited in Lopez, 1992: 57–58)«.

Likewise, indigenous peoples wrote letters requesting that Lame should be released and claiming the injustice of his capture. This correspondence is particularly interesting because it uncovers some sense of justice related to the problem of ownership by indigenous people who supported Lame. For example, on June 1, 1915, the *cabildo* of Tacueyó and Toribio, Cauca, stated:

> »[Esteemed] Minister of Government, we are obligated to appear before Your Honor in order to advocate for justice, because this sacred right – as long-ago decreed by the sacred doctrine of law proclaimed in the Recopilación Granadina [1845], and later improved / perfected by your [true] judgment in Law 89 of 1890 – has until now been denied; and unfortunately almost none of the regional governors have taken this into account, as has been the case with the lawyers, the tinterillos,[10] and several Courts (…) For this reason, we gave power of attorney to Mr. Manuel Quintin Lame, indigenous as well, so that he might legally represent us in all our actions and defending the rights of our properties, and we support any dispositions that this man may deem convenient. First among these, that he request / seek or obtain the titles of our properties, some of which had been taken from us and others contested by the rational people, with the purpose to seize de facto our property, our land and crops (…) *This gentleman has vowed to raise the indigenous race, leading us on the intellectual and moral path*, because even the teachers in the company of the rationales say that Indian children should not be taught but the fifth part [of the knowledge], because if they are taught everything, it will be a great misfortune for the white race (…) Dear Minister of Government *we protest their violation of the sacred doctrine of Law and the Constitution* and all these indignities the authorities have committed and continue to commit against indigenous cabildos; these [authorities] have become legislators and the Law, in this place, is nothing more than a dead letter; *we protest wholeheartedly*«.[11]

10 A *tinterillo* was a person who practiced law but without a title. They were very important actors in regional legal practices. The expression is also used contemptuously to characterize a shyster lawyer.

11 AGN, Bogotá, República, *Ministerio de Gobierno*, sección 4 varios, t. 107, ff. 39–41v. Author's emphasis included.

The previous document shows the different cultural translation processes that shaped the course of appropriation of Law 89 of 1890 by indigenous communities. While it is clear that the argumentation pattern of the claim was based on the legitimacy of the regulations given by the State, it also accounts for complex processes of appropriation of the rule.

First, it draws attention to the characterization of the Law as »holy« or a »sacred doctrine.« The use of this formula is not exclusive to this document; on the contrary, it appears repeatedly, even in Lame's texts. In this case, it is used to characterize the injustice, to equate it with sacrilege, and to measure the damage that is being perceived at the communitarian level. This form of association with the Sacred Law is not just simply a manner of speaking, but also a smoking gun of how people conceive of law. The association between the law and the sacred can be traced back to the beginning of the Republic in multiple court cases.

For example, during the early years of the Republic, Margarita Garrido (2010) shows how the word »constitution« went on to take the place formerly occupied by »king.« According to her study, in court cases between 1822 and 1826, one begins to find expressions such as »our sacred constitution,« »our wise and holy laws,« the »sacred constitutional law,« or the »sacred code of the nation« with increasing frequency. These types of legal formulation continued on into the 20th century in the documents related to indigenous disputes and were also directly used by Lame on multiple occasions. Garrido's findings shed light on how popular sectors had built a deep relationship between the »faith« in law and how this idea has nurtured the popular belief that the law exists to protect the unprotected, because of their connection to the sacred. This idea helps us to give importance to long-term processes that mediate the way in which the rules make sense in cultural and specific contexts.[12] In this case, for example, the argument regarding the sacredness of law, made by the indigenous peoples in their letter, is better understood by knowing the relationship between God, the king, and the constitution to the sacred in order to comprehend indigenous legal expectations.

Second, the letter sent by Lame's followers not only made reference to arguments referring to long-term processes (such as the idea of the sacred law) but also to the present issues. Both kinds of arguments were combined in order to help them express their feelings of injustice and their claims for protection by the State. The letter draws attention, for example, to the use of a term such as »the rational people« (*los racionales*) as referring to white and mestizo inhabitants. This term was used to characterize forms of social structuring relating to colonial heritage and fit into the language of social Darwinism, which was in vogue at that time.

Thus, although the indigenous statement recalls in its structure and form the colonial indigenous claims, the language and purposes are entirely different. The indigenous people did not claim the colonial past as their own, but wanted, nevertheless, to keep their territories under the protections awarded by the Crown in the past. Their purpose was to be recognized as players in the Republican project and, in this way, to defend Lame as a translator, who, by knowing the language of the law, »*promises to raise the indigenous race, leading us on the intellectual and moral path.*« In other words, his efforts enable the indigenous peoples to actively participate in the process of building the Colombian nation-state[13] and, in doing so, to be recognized as citizens.

Within this context, the idea of »lifting up the race« is mentioned in the text, which was anchored in a process of identity construction that saw no contradiction in being both a citizen and an indigenous person. This identity construction was linked to the knowledge of the legal language, despite the fact that this was also the language of the State. And it is in this context – his capability to speak the language of the State and his knowledge of the modes and procedures of law – that Lame became relevant. In other words, it was Lame's

12 Lemaitre makes an interesting analysis of the tension between faith in law and contexts of violence in the Colombian case based on the concept of legal fetishism. For more on this, see Lemaitre (2009).

13 With regard to the way in which indigenous people participated in the process of building nation-states, see: Mallon (1995), Miller (2006), García (2007), Sanders (2010), Appelbaum (2003).

capability to translate indigenous claims to the State that was seen by the indigenous population as a means to achieve progress.[14]

That letter was also immersed in another cultural translation process related to the way it had been written. Although the indigenous authorities sent the missive while Lame was in prison, it retains many of the expressions and rhetorical formulations used by Lame in their own communications. It is possible that one or more of his secretaries participated in the creation of the text, which would explain the use of Lame's typical expressions in the text. This text was also signed by several illiterate Indians, so it is quite likely that it had been part of a process of collective construction that involved reading the text aloud, which enabled the sharing of legal interpretations and promoted an exercise of popular appropriation of law.

Sacred Law vs. Legal Violence and Justice In-between

The strategies the government adopted to deal with the situation were different and sometimes contradictory. Local authorities and the central government had different perceptions of Lame. The solutions and strategies they implemented to contain a possible conflict were also different.

Once Lame was released in late 1915, he returned to the task of organizing the *parcialidades*. Their actions were cause for concern by the local authorities, who read their actions as a declaration of a »race war« or »war of extermination of the white race.« From the perspective of the authorities, Lame's actions and claims were far from just. The telegrams from that time bear witness to a deep-seated fear of rebellion by the indigenous and the inability of the authorities to come up with solutions other than repressive measures. This fear was embedded in a number of long-term processes, where the figure of the so-called »Paeces«[15] and »Pijaos,« who lived in the region, had been permanently associated with barbarism. For instance, from the very beginning of the conquest, chroniclers had described these people as both cannibals and bellicose; therefore, they were in need of urgent extermination. This archetype of the angry warrior was also tied to the image of »incivility« and played an active role in the 19th and 20th century depictions of this population.

Meanwhile, authorities in Bogota tried to mediate and called for caution, perhaps, because they were further away from this complex cultural framework. In a telegram addressed to the Governor of Popayan on February 12, 1916, the following was written:

> »The Minister said to me that he has given orders to General Velasco, Military Commander of the area, to take appropriate measures to quell Indian uprising feared there. The President and the Minister also believe that in operations, regular forces of the army and police should preferably intervene, in order to proceed with absolute discipline and prudence, as collective-defense could carry out acts of premature and unjustified hostility that might prevent any friendly understanding and would sow the seeds for potential gruesome reprisals later by Indians. Not to mention the danger of taking arms and ammunition from national parks to put them in private hands, as experience has shown that they almost never come back to them and they become a threat to public peace. It would be prudent to try, before rigorous measures, conciliatory propositions, sending reputable commissioners among the Indians to demonstrate to them the unreasonableness of their hostile attitude, the magnitude of Lame's deception, and to offer them what can legitimately be offered to remove causes of complaint. Hopefully you will speak to General Castellanos and the two of you will agree to an effective plan, above all a prudent one in order to avert conflict.«[16]

From February to June, telegrams came and went. In the telegrams, the authorities ensured that the movement led by Lame had no political intention, but it only sought to exterminate white people. On the basis of this information, the President of the Republic requested that Lame and his accomplices should be immediately appre-

14 Regarding the idea of Lame as a translator, see LEMAITRE (2009).

15 At present, they designate themselves and are known as the Nasa people.

16 Archivo General de la Nacion, Bogota, Republica, Ministerio de Gobierno, seccion 4 varios, t. 107, ff. 66–68.

hended. The group was apprehended on June 8, 1916. The justification read as follows:

»Today we speak justly alarmed. We assume there are laws to remedy these evils, but the case is that in spite of them, a revolution is being prepared, that, when it spreads, will acquire gigantic proportions. It seems that black Caucanos are beginning to agitate[,] stimulated by the indigenous attitude.«[17]

While the local authorities immediately established the inadequacy of the legal negotiation to control the ›dreaded‹ revolution, the primary reason was, nevertheless, to ensure the continuation of the power of the white landowners in the region.

Since colonial times, the possibility of a »race war« was a latent fear, and this fear was intensified during the period of wars for independence. In the period of the *La Quintiada* (1912–1925), this fear was used by some authorities for their own purposes, thus making a negotiation between the indigenous population and the landowners impossible. Here, the fear was manipulated to ensure that the white population remained the symbol of justice in the region, for it was perceived as the embodiment of civility. And given that civility was conceived as representing the greater good, it should be and needed to be defended through another legal remedy: via criminalization. As such, the response by the local authorities focused on the criminalization of the movement and the armed confrontation, not only by the army but also by the white and mestizo populations.

The State responded with a variety of disparate legal measures in order to control the situation; however, most of these were grounded in the legitimate use of violence. Violence became the legal language of choice for those who were not conceived as literate in the language of rights and justice. Even when indigenous people were speaking in the name of the law and were using its accepted modes and practices, they were still seen as »savages« and illiterate when it came to the legal language. In this case, the »cultural baggage« that accompanied local authorities' understanding of the situation made indigenous claims both incomprehensible and were seen as unjust.

What we are looking at here are two very different ways of understanding who does and does not legitimately deserved rights (particularly land rights); this also means that we see two distinct ways of understanding how these rights should be addressed in this particular context. In other words, there was a confrontation between the indigenous and local authorities' systems of reasoning, and their »cultural baggage« always accompanied this struggle. The authorities' conception of justice, at that time, was shaped by these cultural struggles. The immediate outcome of this struggle was the use of violent methods, such as the criminalization of the movement. In doing so, one set of baggage was imposed over another, thus configuring what the State would defend as just, legal, and right.

However, the communication between the State and indigenous communities was more complex. It is essential to analyze the many different voices within the State (as an entity from which right per excellence emanates), not only by taking into account the different positions reflected in the documentation between local officials and authorities in Bogota but also by understanding the different official views regarding the claims made by both Lame and his followers.[18] These different positions can be traced in the press and other documents.

Public Opinion Both in Favor of and against Lame

During the first two decades of the 20th century, there were three political trends in the region: the Conservatives, who represented the Government's position; the radical Liberal Party, with whom Lame, despite his important militancy in the Conservative Party prior to *La Quintiada*, established important connections during this period; and the Republicans, who formed an alliance between conservatives and moderate liberals. During this

17 Archivo General de la Nacion, Bogota, Republica, Ministerio de Gobierno, seccion 4 varios, t. 107, f. 87.

18 It is important to review the debates that took place in Congress for the enactment of a different normativity related to indigenous collective ownership, as they can show how different ideas of *right* and *just* were institutionalized.

time, the perceptions of Lame varied greatly, and the Payanesa elite expressed different opinions in the press regarding Lame and his ideas. For instance, the Republican newspaper *Opiniones* devoted several articles demanding justice for Lame, given the irregularities of his capture.

The support that Lame had from part of partisan elites was important in resolving the situation in his favor; a situation that would change after November 1916, when the taking of Inzá occurred.

Between the 6th and 16th of December, multiple telegrams were sent back and forth announcing the uprising. Again, local authorities were asked to provide security forces and weapons, which ended in a confrontation that left several people dead and wounded.[19] In the wake of these events, Lame lost the support he had in the press and was again put in prison. In addition, an initiative to transform Law 89 was undertaken within the State, particularly regarding the elections of *cabildos*, for they were increasingly viewed as »insurgents' foci.«[20]

In the debate that took place in the press after *La Quintiada*, some conflicting ideas emerged as to what was to be considered correct and just in relation to collective ownership, which shows part of the partisan elites. One of the articles published in *Opiniones*, which initially defended Lame, published an interesting article on April 29, 1917, entitled »The Indigenous Question.« The article was written in the midst of a debate on the amendment to Law 89 that took place in Congress in order »to remove the conflict between whites and Indians.« The newspaper article began as follows:

> »The idea embodied by Manuel Quintin Lame is the same one that has appeared in our constitutions and in the opinions of our legislators. It is the injustice with which the conquerors proceeded, snatching from the Aborigines the right to the land they inhabited. And this moral inferiority that the whites virtually bear is what lends strength to Manuel Quintin. As long as in our legislation there exists that implicit recognition of our usurpation, there will appear from time to time restorers such as Manuel Quintin, and it is logical that they should appear. The Indians therefore call for the return of their land with a title that whites have been the first to recognize. Reconsidering the validity of that title is an important task [now] imposed on our legislators.«[21]

The author argues about the need to delegitimize the argument of injustice with regard to indigenous communities, an argument that Lame frequently used in his claims. This reasoning was quite formidable because the unjustness of the Conquest was not an argument used exclusively by indigenous communities. This was one of the principles upon which the nation's history was built, and a principle that had been around since the early national history textbooks in the country. While the author further noted the need to discontinue the practice of recognizing colonial titles as proof of land ownership, this strategy was neither used by the indigenous population, nor by white landowners. Thus, it was necessary to discuss the principle of injustice on which Lame and his followers fixed their claims using other arguments. Regarding this point the article stated:

> »The aspiration of the Indians and the motto of Manuel Quintín Lame could be summed up in this: America for Indians. Now, the earth was created for man and our first deed was recorded in the Bible, the book par excellence. ›You will populate and possess the earth.‹ With this title, all we who are descendants of Adam are entitled to sustain ourselves through our sweat and labor on the land. Of course in this title there is no mention that Europe is for Europeans and America for Americans. Every man has the right to acquire and own a piece of land in any cornerof the globe. So, based on the principle of the unity of races, whites had as much right to populate the Americas, as did the indigenous or Japanese, as descendants of Adam. The right of ownership over a particular piece of the planet is given to a man to guarantee him and his descendants the permanent enjoyment of

19 The number of dead and wounded as well as the description of events varies significantly in different sources. Some considered it an attack, others did not. Some related the presence of 2000 Indians, while others say there were far fewer. Some say that the Indians were armed, and others claim that they were not. However, it is worth noting that all sources agree on and state that the dead consisted of Indians.

20 Archivo General de la Nacion, Bogota, Republica, Ministerio de Gobierno, seccion 4 varios, t. 107, f. 158.

21 Opiniones, La Cuestion indigena, April 29, 1917.

crops on a given piece of land. Under this corollary, the savage who crosses the forest, naked, without tools, with no intention to settle or to cultivate, is as unable as tigers and lions to acquire the title to the forest he traverses. Well, these were the conditions of the majority of the Aborigines of America and the conquerors had their own right to become owners of these lands since they had [both] the potential and the intention to cultivate.«[22]

In this passage, there are two aspects that draw our attention. On the one hand, the conceptualization of property rights in biblical terms and, on the other, the ways to enunciate the principle of equality before the law.

First, until the early 20th century, the language of Catholicism remained a relevant discursive framework within which arguments were constructed on a variety of different levels. As reported in the press, this kind of language was also frequently used in Lame's writings and speeches. The role of Catholicism also began to carry more weight in Colombia during the *La Regeneración* period,[23] so its use in the legal field was continual. Hispanic heritage, conceived as the value of Spanish traditions and customs, served as a base to build the nation. The purpose of this idea was to lend a kind of homogeneity to the nation-state: a foundation or common points of reference from which the State as a republic could move forward. Miscegenation, Catholicism, and the use of the Spanish language were all part of this project. In this context, the use of legal concepts, such as property, could also be read in Catholic terms, as we saw above.

Such Catholic arguments lead one to believe in the strength and extensiveness of colonial orders in the early 20th century; nevertheless, this idea needs to be further clarified. These expressions, based on Catholic moral referents, no longer possessed the same meanings. The redefinition of the Catholic discourse in terms of politics had been used since the beginning of the Republic: in the 19th century as a way of legitimizing the new order and, at the same time, eliminating the potential conflict between loyalty to God and disloyalty to the king. Examples of these include the decree issued by Santander parish priests to give pro-independence sermons and the emergence of patriotic catechisms across the territory. These were examples of strategies to legitimize the new Republican order (Garrido, 2004: 462).

Second, it draws attention to the discussion about the principle of equality before the law, or what the author calls »the principle of unity of races« by invoking the stereotype of the »Indian« as a person devoid of culture and knowledge: naked, with no tools, no past, and frozen in time. The reintroduction of this archetype was used to justify the indigenous dispossession of land during the Conquest, actions considered unjust both in Lame speech and in the officially historiography. In doing so, the writer did not deny the legitimacy of citizenship for racial reasons, but rather naturalized social inequality by building a new foundational discourse. This argument legitimized the dispossession of indigenous peoples and also became an argument to deny indigenous claims.

But his paper goes further. The author established that this characterization of the »Indian« was not generalizable to all groups in America. He mentions Aztecs, Incas, and Muiscas as legitimately possessing property rights, unlike populations living in Cauca at the time. Even though the author recognized the usurpation perpetrated on indigenous societies by Spaniards, he constructed an argumentation in order to legitimize this actions and, in doing so, to justify the dispossession of indigenous land. This argumentation was expressed as follows:

»But that usurpation has the character of a transaction concluded with a minor for the benefit of all and is only usurpation because the minor does not have sufficient intellectual capacity to appreciate the true value of what he got paid for delivering their land, opposed to celebrate the business and did so against his will. But if we assume that the indigenous race had had an enlightened curator to represent her with full powers and that the enlightened cura-

22 Opiniones, La Cuestion indigena, April 29, 1917.

23 Regeneration was a political movement that emerged in the late 19th century, which was made up of conservatives and moderate liberals who came to power in 1880 under the Rafael Nuñez government. It arose in opposition to the »radical« liberalism of the mid-19th century. During his rule, the Constitution of 1886 was enacted, and it remained, with numerous modifications until 1991.

tor had put the talks to the great Admiral Christopher Columbus, I sure would have celebrated indigenous voluntarily a business worse off than which they made by force, and have engaged in this dialogue:
Indian curator: I have immense and fertile forests full of snakes, infested with mosquitoes; but my Indians do not take of it more profitable than collecting some wild fruits and hunting birds.
Columbus: I have an ax for you takedowns your forests and hoe to cultivate them.
Curator: I have immense pampas grass filled with endless sheets that remain useless for my Indians, deserted and depopulated.
Columbus: I have the cow for you to populate them and it will give you milk and meat for you to feed and have the ox to help you plow the land and have the donkey to serve you and the horse for replace you in your outdoor work of beast and load (…)
Curator: My Indians go naked or dressed in feathers. They are very unhappy, live wandering, devour each other, are slaves of the strongest man, are the torment for women, each cacique is a tyrant, have no peace, and their lives are miserable and irremediable misery.
Columbus: I will heal, I will give my lamb's wool so that you cherish, I will show you how to build and to cultivate the land so you do not go wandering; with the culture there will be plenty; I will put order in your disorder; I will delete despots; I will give the woman equal rights to husband, I will end up your wars and cannibalism, my race will be mixed with it, and although my race prevail shall be equal before the law and your Indians will have the same rights as whites and put at the disposal of yours all the treasures of wisdom that my race has accumulated over the centuries and the celestial doctrine of Christ will reign over all of us, sending us love one another. All I have I will give you not to reserve anything. Instead you will give me land for my race and their offspring and respect the opinion and the authority of whites as more cultured and civilized than the opinion of your own. For now, intelligence will represent mine and yours the muscle in the new body we will form.
Curator: And it is right that intelligence governs the muscle; but as you offer me also teach my Indians all your wisdom, it may happen over the time that those today obey, tomorrow order and be also intelligence and this comforts me for the future of my race.
Columbus: That not opposes me; but opposes God who made the smartest white, bolder and more suitable for the Indian civilization.
Curator: That being the case, I will give my race this advice: mingle with whites, return to hang out, always mingle until you turn white.
Columbus: To that I will oppose and will try to make you live in isolated portions of land to which I will call RESGUARDO.«[24]

The imaginary dialogue between Columbus and the hypothetical Indian curator is interlaced with a mixture of ideas from different times and contexts that seek to detract Lame and his followers' defense of the *resguardo.* This argumentation also maintains that indigenous claims of the time ran contra to civilization, that is, against the greater good and, therefore, were unjust.

But the language that appears here is not just religious, it is also scientific. The strong and consistent use of social Darwinian terminology became more pronounced in both American and European intellectual circles in order to justify white superiority over other cultural groups. The argument on how the permanence of the *resguardo* prevented miscegenation (read in terms of whitening) sought to be a further argument meant to call indigenous collective ownership into question.

What we have seen so far are multiple ways of understanding property, equality, and, in particular, what is considered justice in each context. The different ways of understanding these principles were filtered through different types of ideas – most of them from Europe – that were mixed in the local context to claim or retain rights and so resignified these ideas. This battle was raging within the culture and was evident in everyday life; it was instrumental in the creation process, interpretation, and application of laws.

24 Opiniones, La cuestión indígena, April 29, 1917.

The arguments made by all of the actors analyzed here were based on different resources. Their »cultural baggage« was made up of very eclectic elements from different times and diverse contexts. Also the various positions of these actors – within the unequal power relationships – defined both their possibility of being legally recognized and the opportunity to impose their particular notions of justice regarding land property.

During the La Quintiada, Law 89 of 1890 was the central argument on which ideas that went far beyond the mere regulation of the *resguardo* were discussed. The discussion of the Law 89 was composed of a number of different positions not only on property and justice but, above all, on progress and on what the Colombian nation-state should be. These cultural battles enabled new ways of conceiving the Law 89 and unexpected results for those who initially designed it.

Final Considerations

The dissolution of the *resguardo* land process was filled with obstacles, not only because of the clashing interests of different social sectors, or because of the major inconsistencies, gaps, and contradictions between the rules and the real contexts, but also because this legal process was sustained by the conflictive interaction of distinct »cultural baggage.« As we have seen in this contribution, different religious beliefs, scientific and political notions, archetypes and preconceptions about people, fears and faiths, etc. where underlying the ideas about how legal order should be. I would like to remark here that without this »cultural baggage« the legal discourse would not be possible. This continuous clashing and transformation of cultural frameworks gives life to normativity across time.

As we have seen, the case of the cultural translation of Law 89 was a conflictive one in which a great number of variables were mediated. The different expectations of the law held by the indigenous peoples, the authorities, and the partisan elites stood in opposition to one another, especially when it came their respective notions of legitimate ownership and land rights, which configured disparate ideas of justice. Additionally, the »cultural baggage« of each group and individual shaped these diverse notions justice through confrontation. However, these dynamics are not necessarily exclusive to the Caucas' case. These cultural battles are the main characteristic of any cultural translation of law.

Thus, as with any legal transfer process, La Quintiada was a juridical cultural battle in which authorities and partisan elites imposed their ideas of justice on the indigenous peoples. The imprisonment of Lame and the attempt to change Law 89 in order to stop the indigenous mobilization represented a triumph. Yet, as time went on, the extent of this triumph was not so overwhelming, and the unpredictability of legal translation is something we have to keep in mind.

The legal translation Lame accomplished went on to have very long lasting effects. Once released from prison in 1921, he moved to the south of Tolima, where he fought for the restitution of the Ortega and Chaparral reservations and wrote countless memorials to the authorities. Although this fight was successful at the time, the effects of partisan violence since 1945 have brought new forms of dispossession. Nevertheless, Law 89 became the symbol for the indigenous land struggle in Colombia, and what Lame started continues to be defended by people today as an instrument to protect the indigenous communal lands and autonomy. In doing this, Law 89 has played a key role in the process of identity construction across time (Rappaport, 1985; 1990; 1998; 2005).

The figure of Manuel Quintín Lame as an icon and leader of the indigenous movement in Cauca has been the subject of a variety of studies,[25] which were in no small part boosted by the publication of his manuscript in 1971. However, the fascination surrounding Lame has not merely been confined to the publication of his thoughts. Within his own lifetime, Lame's words opened up a space in the mestizo society; he made his opinions and claims heard – even by the Bogota press. And many Indians were able to identify with his words and what he was trying to accomplish. Later, his ap-

25 The literature on Lame is quite extensive. Some of the main works include: Castrillón (1973), Sevilla Casas (1976), Castillo Cárdenas (1984), (1987), Rappaport (1998), López (1990), Theodosiadis (2000), Fajardo et al. (1999); Espinosa (2009), Castillo (1987), (2004), Romero (2006), Lemaitre (2013).

proaches were appropriated to structure the political agenda of the Regional Indigenous Council of Cauca (CRIC – Consejo Regional Indígena del Cauca) – which is still in force – and his figure has redefined the struggle for land at several different points in time and via different modes. Two examples of this influence are the Armed Movement Manuel Quintín Lame (*Movimiento Armado Manuel Quintín Lame*) and the No-land Movement Manuel Quintín Lame's Grandsons (*Movimiento Sin Tierra Nietos de Manuel Quintín Lame*).

The role he played as well as his interpretation of the law have become key issues today. The Colombian Constitutional Court has specifically taken Lame's interpretation into account as an argument in defense of Law 89, which nowadays, at least with regard to some of its parts, is incompatible with the multiethnic and multicultural Constitution proclaimed in 1991. For example, in Case C-463/14, on the jurisdictional autonomy of indigenous peoples, the Constitutional Court said the following:

> »It is therefore not surprising that leaving aside all discriminatory notes associated with the wording of Law 89 of 1890, its appropriation by Manuel Quintin Lame result largely in line with the way the rights of indigenous peoples have been recognized in the current Constitution and protected by the Constitutional Court.
> The historical and indigenous reading of Law 89 of 1890 (that is, the reading of their recipients) can reach the following conclusions: The provisions of this order are only contrary to the Constitution if even their evolutionary interpretation does not allow harmonize with it; if the provision in question in the light of hermeneutical analysis proposed, is a valuable tool for the defense of indigenous rights instrument, the Chamber will focus on conservation in the national law, subject to the interpretive clarifications to be made to ensure harmony with the Constitution (C-463/14).«

The process by which Lame's interpretation became the voice of indigenous peoples was quite long and contentious. Brett Troyan's work (2008; 2014) documents how the figure of Lame was essential to the ethnicization process of land claims during the 1970s in Colombia. Troyan analyzes the emergence of the Regional Indigenous Council of Cauca (CRIC), and she shows how the movement, in its initial stages, had to gradually minimize the importance of non-indigenous sectors in its configuration process. This was a response to State policies in southwestern Colombia interested in weakening the insurgency and legitimizing its institutions in the region. During this process of ethnicization, Lame and his writings were essential to the legitimization of the movement.

Up until this point, we have experienced numerous cultural translation phenomena. First, we have the transfer that took place over the course of the 19th century concerning the liberal principles about private property and its connections with notions of »civilization.« Second, Lame's interpretation of Law 89 created during this process. Finally, a translation made by contemporary authorities about Lame's interpretation as »the« voice of the »recipients« of the law.[26] A tremendous number of variables were involved in these processes: ideologies, stereotypes, ideas of justice, moral conceptions, etc. – most of them extrajuridical. All of these scenarios of legal translation were accompanied by »cultural baggage« that modeled the transformation of this long-lasting process. The common denominator in both Lame's and other indigenous claims of the 19th and early 20th centuries (and perhaps in any claim of this nature) revolved around the ideas of justice. These senses of justice were invoked from the perspective of differ-

26 Although Lame's voice became »the« indigenous voice regarding collective ownership and identity since 1970s, we are still missing other indigenous voices concerning the topic that existed in Lame's times and even prior to it. Muñoz's work (2015), for example, mentions several cases where indigenous people individually requested pieces of communal land, arguing that this was necessary in order to comply with one's duties and obligations to the government. Furthermore, within the *Quintiada*, the name of Pío Collo – liberal indigenous leader, critic of Lame's ideas, and who even participated in his capture – appears in the documentation. Yet, as of now, I have found no studies reviewing his policy action and his position regarding the *resguardo* lands. This is a historiographical gap that definitely needs to be filled. However, what we can infer from the processes documented by Muñoz, and have been mentioned in passing in some other works (Bushnell [1996]; Rappaport [1985]), is that there were different ways of conceiving property in a republican context, at least with regard to the indigenous population.

ent resources, metaphors, arguments, and ideas that can help us to delineate the »cultural baggage« carried by this translation process. Yet, this knowledge will never be complete.

As Burke (2000) notes, this is one of the challenges when studying culture, and, in this sense, it is a relevant element by means of which the cultural translation of law can be understood in its complexity. In our case, the different conceptions of how justice was conceived, and the different mechanisms of argumentation provided by different actors, were just one aspect of the culture understood as an arena of negotiation and struggle. Such imprecision, rather than constituting a methodological obstacle, allows us to understand legal systems from the perspectives of different actors. An analysis by means of the cultural translation approach gives voice to the different actors involved in the translation process of law, and it also details the varieties of cultural battles behind the construction of legal orders and its political, economic, and historical contexts. These actors had different repertoires consisting of values, ideas, and beliefs that resulted from a long-lasting framework, and they also had different possibilities for imposing these on one another. These facts heavily shaped their ways of understanding the social and legal order as well as their possibilities of interacting in it.

This exercise should also – reminiscent of Hespanha (2002) – help us to take up a critical position towards the present by means of the confrontation of otherness in the past. And in doing so, this exercise allows us to contemplate our »cultural baggage,« what it is made up of, and how it shapes our understanding and decisions about the juridical world in the present. Those are key questions that we have to ask ourselves in order to better understand any juridical order, not only from the perspective of the past but also in today's multicultural society.

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