GLOBAL PERSPECTIVES
ON LEGAL HISTORY 21

PETER COLLIN
AGUSTÍN CASAGRANDE (EDS.)

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MAX PLANCK INSTITUTE
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Zülâl Muslu

# From Pragmatic Overtness to Legal Taxonomy of Equality. Ottoman-Turkish Perspectives on Colombian Linguistic Diversity and Law

"Spanish has been the language of law in Colombia or, to be precise, the language of the state law." With these words, Lopera's very interesting paper raises the main questions at the core of the relationship between linguistic diversity and law. It suggests first that the power games linked to the domination of a language over another developed, in the Colombian case, in a colonial context. Second, it triggers several questions around the concept and scope of state. What is the state? What is state law? It also raises the issue of the latitude of the state legal language: Is it the language that is spoken by all citizens of a country? Is it the language that the state uses in its official correspondence and documents? Is the language spoken among the state officials or used in their interrelations with the users of public services, or is it a language that the government imposes on a population, no matter its diversity? Thirdly and finally, in examining Lopera's paper through the diversity analytical prism beyond time and space, we shall consider to what extent diversity is a contemporary notion and concern.

For comparative purposes, this paper will attempt to discuss these questions from the Ottoman and Turkish perspectives, underlying the peculiarities of the latter's legal framework and expressions of linguistic diversity. This task can seem very challenging, as the geographies, histories, cultures, and languages of Colombia and Turkey appear to be irreconcilably different. The same applies to the evolution of law with regard to linguistic diversity, as the Colombians have apparently committed more significantly to multiculturalism.

When, however, subjected to closer scrutiny, it is fascinating to observe some striking similarities between the two countries' legal evolutions with regard to language diversity, especially in the globalization's dynamics from the 19th through the 21st century,[1] which the chronology *stricto sensu* hides

1 On the globalization of legal thought, see e. g. Kennedy (2006).

in the first place because of asymmetrical but doggedly similar features. The paper thus intends to tackle the comparison of the two areas within a bigger picture driving the domination of homogeneous standards in both cases, despite the very different types of political sovereignties, each carrying its own social structure, and legal philosophy, as well as a political project (part 1). Stating that the state language issue crystalized around the idea of the national state, the paper aims also to understand how linguistic diversity tried to circumvent this rigid framework to find its legal way, even though the struggle is far from over (part 2).

## 1 Diversity of states, diversity of policies on linguistic diversity

### 1.1 The authorities of the linguistic diversity configuration: the march toward uniformity (19th to mid-20th century)

#### *1.1.1 Linguistic diversity as horizontal legal management*

When getting acquainted with Colombian linguistic diversity through the lines of Lopera, the most striking difference with the Ottoman case one can observe is its legal framework of the early 19th century. Linguistic diversity was then a fact on the ground but not an issue. As such, it was neither pointed out as diverse nor specifically legally addressed. However, the paper being limited to a time window that starts with the Colombian Republican era, it would be unwise simply to point out possible differences on legal practices without underlining another major difference, namely imperial political sovereignty. Multi-confessional, multi-ethnic and multilingual, the vast Ottoman Empire followed the Roman-Byzantine footsteps as well as the rules and spirit of Islamic law. It thus allowed a well-known legal pluralism, called the *dhimmi* system,[2] to become the *millet* system in the 19th century. If this legal pluralism is precisely the sign of a majority and dominant population, namely able to assert their rights as the 'heterochthone' Turkish-Muslim group, the large legal and administrative autonomy

2 The *dhimmis* (literally 'protected people'), i. e. the People of the Book, are the Christian, Jewish, or Sabian subjects of the Ottoman sultan (or Islamic state) members, of whom the rights, own laws and autonomous management are protected together with restrictions and a mandatory head tax *(djizya)*.

it allowed despite the discriminations can, however, not be comparable with the colonial situation of the Colombian case. It seems, however, that this hierarchical approach in Ottoman social diversity did not concern the linguistic sphere, as the linguistic diversity could transcend the reserved normative areas before being loaded with a heavy political burden by the end of the century.

Ensuring legal and linguistic pluralism was a norm that did not come out of a so-called tolerance or openness towards minorities. This mere understanding would arguably be an anachronistic analysis. It was, rather, a statement of the various compositions of the Empire's populations. The Ottoman Empire had a very pragmatic approach to its diplomatic and internal relations. 'Diversity' was perceived neither as an issue nor as the counterpart of the equality principle. In line with Islamic political philosophy, it rather was a means of management of the wide imperial territory, which aimed to ensure a more fluid and efficient functioning of local institutions while avoiding discontent or unrest. This horizontal management is a shared feature among empires.[3] The Ottoman policy on languages developed within this framework, embracing the great variety of its population, of whom 35 to 40 per cent commonly spoke Ottoman-Turkish by the mid-19th century, especially in the palace, among the head of state and military personnel, while some regions, such as the Arab or Aegean provinces largely dissmissed it.

Along with records in Ottoman-Turkish, the Ottoman archives abound with official documents written in diverse languages of the Empire such as Greek, Armenian, Arabic, Persian, or Bulgarian. Moreover, this multilingualism reflects not only the societial, but, also the legal and official state spheres. The Ottoman legal production and official notifications adapted in order to suit the targeted region better, which explains, for example, the amount of untranslated correspondence with the officials in Arabic-speaking Ottoman provinces. Likewise, official publications, such as the yearbooks reporting government, ministry, and provincial activities on different topics *(salnâmeler)* as well the Official Journal *(Takvim-i Vekâyi)*, were published in many different languages, such as Arabic, Persian, Greek, and Armenian, or in French, the latter becoming the elite's language as well as a window on

3 Mantran (1993); Burbank (2004); Jackson (2006); Duindam et al. (eds.) (2013).

Europe in the 19th century. From the legal standpoint, we shall underline that the Ottoman Edicts, laws and regulations, such as the first Civil Code, the *Mecelle*, were all translated into the various languages of the diverse populations of the vast Empire from Bulgaria to Yemen. Diversity, however, was not only mirrored in translations. Quite unique for its time, the very normative production of the non-Muslim minorities, i. e. their state recognized the right of law making, was carried out in their own languages, such as the Regulation of the Armenian Nation *(Nizâmnâme-i Millet-i Ermeniyân)* in 1863 written by Armenians in Armenian.

Beyond official production and communication, multilingualism was also the norm in administrative and judicial functioning within the Empire. Unlike in the young Republic of Colombia, where Spanish, as a colonial residue, was the only recognized official state language despite the acknowledgment of the diversity of languages, in the 19th-century Ottoman Empire, petitions, complains or legal actions were accepted no matter the language. Consequently, translators were very common figures in official institutions. Expanding access to justice and self-expression for local populations seemed, in terms of assessing any given office's operations, to have been more highly valued than a mandatory knowledge of their specific language by local authorities.[4] That said, in reality, the local officials often spoke at least two languages. For instance, the governor of the *Eyâlet-i Budin* (Province of Budin) could speak both Hungarian and Ottoman-Turkish fluently.

Following the same pattern of autonomous and efficient functioning of local administrations, it was not rare to run an official institution, or an Ottoman court in a language other than Ottoman-Turkish – whether in the oral part of the procedure, like observed in the Balkans since the rolling judges often ignored the local languages, or entirely as demonstrated by the written Arabic-language court records in Arabic-speaking provinces. The community courts (i. e. Armenian, Greek, or Jewish own autonomous courts) were also free to use their language on top of being able to apply their own canonical laws. In mixed courts dealing with litigation between Ottomans and foreigners, French (and Arabic in the relevant provinces) was quickly approved as a second official language in the 19th century. Equally,

4 This use of multilingualism before Ottoman tribunals was eagerly reported by Alishan, a famous interpreter of the British missions: The National Archives of the UK, Kew, FO 78/1758, 27 November 1862.

documents written in French served as a valid proof even without being translated into Ottoman-Turkish. Sometimes, their rulings written in Ottoman-Turkish were even overturned on the basis that the plaintiff did not know the language.[5] Interestingly enough, the language not found in the courts was Turkish itself, namely the Turkish without Arabic and Persian borrowings spoken by local Anatolian peasants, which was an additional reason for their wariness towards the courts, as Ottoman-Turkish was difficult to understand for many of them and perceived as the language of the élite. However, the general practice of multilingualism contributed to an efficient and autonomous horizontal system of ruling until the last decades of the 19th century.

Ottomans then underwent a shift in their approach of multilingualism towards an understanding close to the Colombian one. Language slowly became linked to its political dimension with the ascension of the nation-state and claims to equality, both diametrically opposed to Ottoman imperial political sovereignty and organization.

### *1.1.2 Elites and colonial narratives, vertical law making*

In her paper, Lopera stresses that, after Independence in 1819, "Colombian political and intellectual elites enthusiastically embraced Spanish grammar as a key element of nation building as well as a 'civilizing' tool that would shape good citizens and rulers […]". Obviously, the Ottoman Empire had never known a legal form of colonialism, nor did the idea of nation-state become concrete before the very end of the 19th century. The civilizational narratives linked to European standards did, however, start to spread across the Empire – and around the world – mostly through the Ottoman elites, who followed closely the paradigmatic shifts of international relations that supported and legitimized this political concept. In other words, if the uniformization of the state language occurred much later in the Ottoman-Turkish area, the framework and paths toward it were strikingly similar.

Lopera points out that Spanish became the language of decisional spheres, following standards set for Spanish American countries by the philologist and lawyer Andres Bello in the mid-19th century. Noteworthy is the

5 Turkish Presidency State Archives of the Republic of Turkey: DAB.O, HR.TO., 41/117, 1889.

fact that Bello has also very much contributed to the spread of international law on the continent.[6] That humanist was won over by the ongoing universalist and positivist paradigmatic shifts in international law, namely in European public law, as it was then called. Its holism and legal standards intrinsically created and excluded the *other*, whose emulating assimilation was expected for entry among the civilized nations.[7] The Ottoman Empire had also been affected by these evolutions, as new international legal standards categorized it as "semi-civilized",[8] needing reforms in order to be recognized as a sovereign state.[9] With that said and contrary to the case of Colombian, whose colonial past gave an immediate priority to the language of the dominant power, civilizational narratives had an impact on the linguistic sphere much later than the institutional, industrial or literary ones. For example, before a linguistic uniformization,[10] the reforms led to a legal centralization that slowly condemned the diversity of sources of law and of conflict resolutions. In line with the legal positivist trends, customary law and mediation *(sulh)*, for example, were heavily criticized as being uncivilized – which did not, however, make them disappear overnight.[11] Because it affected mostly spoken legal traditions, especially in areas where trials were held outside the ordinary courts, the process may, however, have had an indirect impact on local languages.

Another important difference related to the civilizing missions is the role of religious authorities. Contrary to the very active role of the Church in an assimilating education and, paradoxically, in the survival of the languages of the natives, the Islamic authorities did not play a role in the normalization of the Ottoman-Turkish language as the official state language. Such a mission could not be connected to any proselytizing purposes similar to the Church's in Colombia, as the language of Islam was firstly regarded as Arabic, which was not the language of the dominant power. However, if not via the religious institutions, the narratives and assimilationist paradigms also affected education in the Ottoman Empire.

6 Keller-Kemmerer (2018).
7 See e. g. Anghie (2005); Kayaoğlu (2010); Lorca (2010).
8 Lorimer (1883).
9 Kayaoğlu (2010); Lorca (2010); Muslu (to be published).
10 The exclusivity of Turkish-Ottoman in the courts has been generalized from 1908 on. See e. g. The National Archives of the UK, Kew, FO 195/2332, no. 64 to 66, 14 July 1909.
11 See e. g. Deringil (2003); Türesay (2013).

In the 19th century, education seemed to have indeed been an assimilation tool shared with colonial republican powers such as Colombia on the basis of both the principle of equality and a *mission civilisatrice*. One of the most significant examples is the model of the free and public school of French republicanism driven by Jules Ferry, assuring the assimilation of diverse elements of society within France and in the colonies.[12] The language of the dominant power, e. g. Castilian in Colombia, was imposed as the language of culture, of the modern and civilized. This also involved the establishment of elite power spheres, such as legal education. Again, in the Ottoman Empire, this pattern was also evident by the end of the century.

Before the Tanzimat period (1839–1876),[13] legal staff was trained mostly in *ulema* schools. At the same time, the highest state offices working for the Inner Service of the Porte, often filled by select young Christian boys from the *devşirme* system, received comprehensive training in the palace school (*Enderûn mektebi*) that included Islamic sciences, law, and languages, chiefly Ottoman-Turkish, Arabic and Persian. In the meantime, however, especially from the reforms period onward, this legal linguistic diversity left room for French and positive laws, which were the core of newly formed universities and legal instruction.[14] The same applied to the Translation Office of the Sublime Porte *(Tercüme odası)* attached to the Ministry of Foreign Affairs. Created in the late 19th century in line with the model of the French *École des jeunes de langue*, which trained translators in Oriental languages, this Office has become a breeding ground for Ottoman senior officials. The spread of French as the language of diplomacy and elites did not, however, make it the state language, the way Spanish had become in Colombia. The Ottoman Empire had no official colonial bond with European Powers. Nevertheless, Ottoman-Turkish eventually stood out as the state law by the end of the 19th century, when the concept of nation became more concrete to the Ottomans.[15] This time lag does not show a fundamental difference between Colombia and the Ottoman Empire. It reveals instead a substantial

12 Luizard (2006).

13 A deep administrative and legal reform process, which is often described as the 'modernization process' of the Empire.

14 Akyildiz (1993); Davison (1999).

15 'Nation' is here understood as nation-state not nation as *gens*, which was the very core of Ottoman administrative and legal organization based on a *millet* (i. e. nation) system.

common factor of the imposition of an official state language, namely the spread of the nation-state, such that in both places, the language of the dominants took over, legitimized by civilizing narratives and, as Lopera underlines, as "a key element of nation building".

## 1.2 Monomania of the nation-state and assimilationist equality

### *1.2.1 The constitutional turn: transitional period toward uniformization*

The Imperial Reform Edict *(Islâhat Hatt-i Hümâyûnu)* of 1856 enshrining equality in education, administration of justice, and taxes for all Ottoman subjects regardless of creed is among the most significant steps in Ottoman constitutional history. The first constitution, the *Kânûn-I Esâsî*, was adopted along the same lines in 1876 as the concluding act of decades of reforms. Even though it was suspended two years later by the Sultan Abdul Hamid until 1908, the parliamentarism and idea of the nation-state as political unity – and mystified uniformity – over a territory,[16] made their way through the Empire, widening the familiarity and aspiration for principles of freedom and equality in the public spheres. But these ideas came within the framework of the Islamic philosophy, which refers to the political and religious communities rather than to individuals.[17] This often led to important misinterpretations of the 'modern' constitutional thought. More than just Islamic, this perception is also an imperial one. It considers nationality through the prism of *gens* rather than of the modern understanding of nation, each group of people being linked to a language, as provided by the 'universalized' constitutional right of equality.[18] These mixed perceptions engaged the Ottoman Empire in a transitional period leading toward the uniformization of the state language, while keeping each community's own language: A duality, or a mild homogenization process that resembles

16 It is worth underlining that, if the idea of nation state can already be read between the lines of the Fundamental Law of 1876, until the last decade of the 19th century – if not later – the very concepts of nation or nationalism remained very abstract to most Ottoman officials, who believed in and worked for the survival of the Empire, as a political form.

17 Picaudou (2005).

18 This also seems to coincide with the 'December Constitution' of 1867, which gave "all nationalities of the state" of Cisleithania the right to preserve their "nationality and language".

the early Republican era in Colombia, where a strong idea of nation-state was not yet predominant.

As mentioned above, the penetration of the nation-state concept came within a global framework of universal paradigm, which contributed heavily to the shift of the Ottoman understanding of equality. From the right of each political community to be recognized and protected by the sultan, the prevailing universality slowly urged homogenizing equality, where diverse beliefs and histories were erased for the sake of a uniform national identity. This understanding of equality as 'equity-equality', which is rather arithmetical in an Aristotelian interpretation, is not compatible with an imperial political structure and its legal pluralism, which would rather refer to an 'equity-*aequitas*', the way it is understood nowadays under the trend of 'diversity'. It is also not attuned with the very concept of identity that is constantly in movement *per se*, as equality in a strict sense implies assimilation processes in order to meet the standard criteria of national – civilized – identity, set by the dominant decisional spheres.

Both in Colombia and in the Ottoman Empire, the legal expression and acknowledgment of the need for a homogenization under the equality paradigm was embodied by the constitution, which expresses the general will of which the State – along with its official language – is considered to be the sole vehicle. It enshrines a single language for the state becoming a nation that accordingly denied all others as a threat for unity or as unworthy of a civilized country. The turning point of the linguistic diversity in the Empire was probably initiated by article 18 of the first Ottoman Fundamental Law (1876), which established Ottoman-Turkish as the official language of the Ottoman state *(devletin lisan-ı resmîsi)*, thus introducing an official monolingualism incompatible with a multi-cultural empire, as Castilian monolingualism did in Colombia.

"Official language" at that time, however, was not understood as it commonly is today. It did not target the population of the Empire yet, but it intended to establish a harmonization of the language of state officials without forbidding any other language of the Empire. Even so, it was very much understood by many of its contemporaries as a factor of polarization rather than the targeted so-called unity,[19] because it felt as stigmatizing. It urged

19 Among the most virulent opponents, we can mention Eğinli Said Pasha, an Ottoman politician and grand vizier *(vazîr-i a'zam)*: Altın (2018).

every state official to learn Ottoman-Turkish, as the president of the Assembly Ahmed Vefik Pasha expressly advised the Arabic-speaking members. The uniformization of the official language did not, however, find an immediate implementation and certainly not in the legal production and communication. The first Ottoman civil code, the *Mecelle* (1869–1876), for instance, had been published in the different languages where it was adopted, from Bulgaria to Palestine or to Yemen, but, the uniformization momentum had been created and was growing in its wake. It is of note that this is around the same period when Colombia consolidated its monocultural nation-state, especially *via* its constitution of 1886, which gave no room for diversity.

The constitution, as a normative source, does not, of course, carry the idea of uniformity, but it can jeopardize diversity when it enshrines the idea of republicanism in a Jacobin understanding, rejecting or denying 'minorities' – who may, admittedly, be considered as the equivalent of indigenous peoples in the Ottoman context.[20] This is even more so, when it is supported by universal exclusive principles within a territory legitimized by the uniform identity of its population. If the Turkish Republic was born in 1923, from 1908 on, the path toward a rigorous homogenization of the population of the Empire – and so the language – was already firmly underway.

The Young Turks, a heterogeneous group of liberal intellectuals and revolutionaries opposed to the sultan's authoritarianism, obtained the reestablishment of the suspended Fundamental Law in 1908. They reinterpreted article 18 along their own trends, such as positivism, republicanism and militarism, contrary to the Colombian case. The official language was henceforth addressed as the sole and mandatory language that came with a ban of using other languages for official correspondence, reports or any documents, including even a stamp with a language other than Ottoman-Turkish. This interpretation led to important debates in the parliament, calling for the continuation of linguistic diversity in debates, and publication of laws, as the duty of the state is to explain the laws to its entire population.

20 The author acknowledges that 'minorities' are a posterior legal category, that stems from the post WWI context. The choice of this generic terminology is in no way motivated by an the Intension of confusion but by mere convenience.

### *1.2.2 The consolidation of a single state language as rigorous policy*

The understanding of what the official language of the Turkish Republic is, as confirmed in the Turkish constitution of 1924 (and now of 1982), is a direct legacy of the Young Turks' interpretation. Nationalism that started at the very end of the Empire definitely anchored with the Kemalist doctrine, of which it is one of the six ruling principles, to become an unfailing component of the Turkish political landscape in the 20th century. Mustafa Kemal used nationalism as early as in the 1920s to consolidate and merge the territory and Anatolian populations left from the dislocation of the Empire around an indivisible country, mythic history and an *a posteriori* reconstructed Turkish language, of which the alphabet had been Latinized. These radical reforms took place within a shared authoritarian global context, which may explain the concordance with the strength of the Colombian monolingual policies.

Nationalism in the new Turkish Republic, which propagated a symbiosis between Turkish ethnicity and Sunni Islam,[21] was strictly unifying, going even beyond the nation-state borders to reach Turan in Central Asia. As a consequence, the many ethnic and religious groups outside this Turkish-Sunni symbiosis in Turkey, such as Armenians, Assyrians, Alevi, Arabs, Circassians, Greeks, Kurds, Laz, or Zaza, had to be homogenized by different means: Mere ignorance (e. g. Alevi were long ignored in the official historiography[22]), cleansings (extermination, exile, exchange of populations, etc., during the First World War and the beginning of the Turkish Republic) or assimilation policies, that mostly targeted Alevi and Kurds,[23] the latter being named in line with the colonial narratives of "the Turks of the mountains".

21 Sunni Islam, sometimes referred to as "orthodox Islam", and Shia Islam are the two components of the main schism in Islam since the battle of Siffin in 657, the first being the largest denomination of Islam.

22 The Alevi are a heterogeneous, heterodox, and syncretic religious community of Shiite inspiration who have been subjected to persecution for heresy since the 15th century, before being lastingly stigmatized as internal enemies. They are generally estimated to be around 15 to 20 million people in the Turkey of today. Though embracing several ethnic groups, the Alevi are a religious community and as such, they are not the first target of this paper, which focuses on linguistic diversity.

23 With 12 to 15 million Kurds, Turkey has the most important Kurdish community in the entire Western Asia.

From patriotism in the context of an independence war in the beginning of the 1920s, Turkish nationalism shifted toward a narrow chauvinism, radical and militarized, which was supported in the following years by normative behaviours and discourses, the flag, education, and the myth of pure blood. A legislation, the Act of Unification of Education *(Tevhîd-i Tedrîsât Kanunu)*, banned in 1924 the teaching of any other language than Turkish in the formal education system. The Turkification process did not only result in state supervision. Galvanized by the new independent secular Republic, a self-proclaimed missionary elite, mostly composed of intellectuals, doctors, or students, assumed a role of national homogenization by guiding their ignorant and uncivilized fellow citizens, condemning the use of non-Turkish languages and ostracizing their speakers.[24] In line with this, "Citizen, speak Turkish!" campaigns, for example, were run by local and national newspapers.[25]

Official monolingualism is a defining characteristic of the 20th-century nation-states, which, in the case of Colombia, slowly became milder with measures in favour of more diversity only in the last decades of the century, and more significantly from the 1990s onward, when Turkey engaged in a process of authoritarianism. The Turkish shift toward institutionalized discrimination was also reflected in laws, which went through a racialization process and created a legal framework for the criminalization of diversity for the sake of Turkish identity. Turkish identity is sacralized, with any offence to it criminalized, so that diversity – including linguistic[26]– is actually denigrated or forbidden. Thus, article 301 of the Penal code, which condemns "injury to Turkishness" allowed the indictment of many intellectuals, such as the Nobel Laureate Orhan Pamuk and the journalist Hrant Dink.[27] In 2008, this article was amended: The vague "Turkishness" was replaced by the not much clearer "Turkish nation". The Turkish language is still very central in the collective imagination, still haunted by the trauma of treason and loss

24 "Vatandaş Gözün aydın", *Hizmet,* 30 January 1928.

25 "Vatandaş Türkçe konuş!", *Cumhuriyet,* 20 February 1928; "Yalnız Türkçe konuşmalı", *Cumhuriyet,* 14 January 1928; "La propagande pour la langue turque", *La République,* 31 January 1928.

26 Sign language is not included in these policies.

27 Billion / Muslu (2007).

through the Treaty of Sèvres of 1920, which dislocated the Ottoman territory after the First World War.[28] The Turkish language continues to be a major identity parameter and a geopolitical strategy in the 21st century, as shows the *soft power* foreign policy discourse, developed by former Foreign affairs minister Davutoglu and inspired by the 'Turkophonie' of the Gülenist movement.[29]

The violent assimilation process that the official monolingualism implied reached a very important peak in the 1990s, at the most intense point of the war with the Kurdish Workers Party (PKK). These policies also led to the arrest in 1991 of the first female Kurdish Grand National Assembly member Leyla Zana, after she lost her parliamentary immunity. She was condemned to ten years in prison for treason, because she made her parliamentary oath in Kurdish, pleading for the fraternity between Turkish and Kurdish peoples. Kurdish was then still spoken in private but forbidden in both official and public spheres. Despite her arrest, her activism shows that individual militants played an important role to push back boundaries and extend the horizons of strictly homogenizing policies like in Colombia.

## 2 Claims on linguistic diversity: old and new power relations

While Colombia offers a rather linear evolution regarding how the noose is more or less tightening around linguistic diversity, Turkey engaged in a rollercoaster equality management. Despite the violent authoritarian measures, Turkey also had to yield ground to its opponents. In the bigger picture, the periodization of those evolutions is comparable to the one of Colombian key inflections. Also notably similar are the actors making these changes happen. Crystallized around the unicity of state language, the excluding uniformization pronounced by the state has flown outside the state scheme. These alternative voices advocate for equality in its *aequitas* understanding, namely legal equality that takes into consideration all *de facto* diversities and inequalities.[30] It has, however, been a hard and long-fought battle, and after decades of colonial domination and blindly covering uniformization, the old power reflexes can easily be reproduced.

28 Billion / Muslu (2007); Schmid (2014).
29 Benhaïm / Öktem (2015).
30 Comte-Sponville (2013).

## 2.1 An equity claims' tool transcending the state apparatus

### *2.1.1 The first wave of social liberalism in the 1960/70s: power to the people*

As noted, although diversity is an ever-existing social reality, its acceptance as a social necessity and political right is very recent, and probably a counter-effect of the suffocating homogenization established in the 20th century. Diversity is now understood as *aequitas,* i. e. in the spirit of justice and should as such, legally acknowledge differences and idiosyncrasies. It is thus little wonder that the first significant claims and victories for legal recognition of diversity have been achieved at a time, when the world had been shaken by a strong commitment to the right of self-determination, which was illustrated by the wide decolonization movement. Born at the end of the 19th century, this fundamental principle of international law was swept aside by the League of Nations, which counted among its first missions the legitimization of the territorial boundaries of the nation-states, recently created out of the territories of the former Ottoman Empire.[31] Reintegrated by the UN in 1945, the principle was reinforced with new resolutions in 1960, which firstly targeted the colonies before extending the right to all peoples in 1970.[32]

A liberal wave swept the world, most countries experiencing their own 1968-movement or Prague Spring, Moscow increasingly spoke about "*détente*" while more and more political groups, and guerrilleros of Marxist inspiration influenced by Cuba emerged across the world, which instilled fears of popular uprisings or revolutions among state powers. The spirit of these years was captured in the expression "Theology of Liberation", coined by the Peruvian priest Gustavo Gutiérrez in the Latin-American Episcopal Council held in Medellín in 1968.[33] Widespread in the political praxis of Latin-American theologians, the expression gives a glimpse of a shift of the universality of equality embraced by the Church to equality reconnected to the people and to a principle of solidarity.[34] This is precisely in the context of both worldwide liberal inspiration and intimidated states that Lopera

31 See e. g. Shields (2011).
32 UN General Assembly Resolution 2625 (XXV), adopted on 24th October 1970.
33 Gutiérrez (1973).
34 Julien (1984).

observes "paradigm shift from assimilation to the ethno-development", especially with the creation of the Regional Indigenous Council of Cauca (CRIC), advocating for the defence of indigenous history and culture, including the language.

Similar dynamics could be observed in Turkey in the 1970s with unprecedented social mobilizations. Unions and associations, but smaller militant groups as well were also formed. While Alevis for example, have attached their claims to a global cause carried by Marxist movements, which were supposed to work for the liberation of peoples of the world, a segment of Kurdish activists created their own movement for the independence of Kurdish people in 1978, also of Marxist influence, the PKK.[35] However, the Kurdish claims supported by pro-Kurdish political parties or many other non-governmental organizations kept pushing an agenda firstly set on the cultural level – starting from the use of their language, which contradicted the Turkish constitution as well as its interpretation. If the effervescence of social-political claims did not lead the Turkish Republic to give way on diversity or linguistic policies – but led to a coup in 1980 –, the different minorities kept challenging the state. Besides, perceived positively or not by the population, they could not be simply hidden behind a homogenized discourse anymore.[36]

On the way toward legal linguistic diversity, significant steps have been made with the efforts of the civil society, or the claims and actions of non-state actors. This is a common and interesting feature between Colombia and Turkey. In parallel, the supra-state bodies have offered both legal tools and interface to support or to give visibility and voice to those whom Mumia Abu-Jamal would call the voiceless. Lopera mentions, for instance, that, even though weakly enforced in Colombia, the International Labour Organization's (ILO) Convention of 1957 (n° 107) acted in favour of a governmental communication in the language of indigenous and tribal populations about their rights when necessary. On the other side of the Atlantic, one of the most important structures for any person, group of individuals or non-governmental organization to contest a violation of their rights, including linguistic, under the European Convention on Human Rights is the famous

35 The PKK has been designated a terrorist organization by Turkey and, since 2002, the EU.
36 Minority Rights Group International Report (2007).

Court of Strasbourg, the European Court of Human Rights (ECHR). Turkey has been condemned several times, for instance on the basis of not providing proper legal assistance to non-native Turkish speakers,[37] or for prosecuting a politician who had permitted participants at a congress of his political party to speak in Kurdish.[38] The impact on Turkish policies of the Court's decision is relative, but it remains symbolically important for its foreign policies and vital for Turkish civil society.

### *2.1.2 The second wave of liberalism: the acknowledgment of idiosyncrasies*

These movements across the world have been lessened by different state strategies to preserve a status quo of power. While some governments responded with crackdowns, as in many places across Latin America and Turkey in the 1970s, others opted for more flexible measures. In the 1980s, a shift in the political terminology occurred, preferring 'integration' over 'assimilation' to name the rather similar processes of homogenization, yet the first might supposedly be chosen and is usually considered as not being about losing identity.[39] 'Integration' would thus tend to acknowledge diverse cultural expressions – not to say folklore. It thus appears that, at the turn of the 20th century, the left-liberal wave from the mid-1960s ended up transforming into a rather right-liberal one. Based on humanism or acknowledging the epoch's evolutions, the latter glosses over political dimensions of diversity and admits a social diversity, which can no longer decently be denied. This 'normalization' of the diverse components of society did not yet give up on power, namely in our case, on the unicity of language in the legal spheres.

The rule of the Islamic-conservative AKP government, which has been in power since 2002, provided the occasion of a surprising watershed, comparable with the Colombian shift toward multiculturalism at the beginning of the 1990s, which was partially enabled by the general lassitude of the armed conflict with the FARC-EP guerrilla group. The first decade of its rule has

37 Case of Sultan Şaman v. Turkey, ECHR, 5 April 2011. The Turkish court deprived an illiterate Kurdish woman with a limited knowledge of the Turkish language, who was imprisoned for membership of an illegal organization, the PKK/KONGRA-GEL, of the assistance of a lawyer and an interpreter.

38 Case Semir Güzel v. Turkey, ECHR, 13 September 2016.

39 Gaspard (1992); Berry (1997).

been marked by important liberal reforms in line with EU standards. Most importantly, the war with the PKK had stopped with the arrest of its leader, Abdullah Öcalan in 1999. The liberal trend in both countries, together with the pressure of the international community for the acknowledgment of diversity, seems thus more like a contingency to soothe the mind, than a real concession on what was intended by 'diversity'. The lassitude of decades of war and heavy human losses led to a general demand by both Turkish and Kurdish populations for peaceful cohabitation, as clearly expressed by the civil society. The latter had now become a new factor that the AKP took into consideration in its electoral calculations without fearing the Turkish nationalist ballot's sanction.

### 2.2 Linguistic diversity embedded in arcane powers

If both Colombia and Turkey seem to have taken significant measures for more visibility and room for linguistic diversity in the legal arena, this diversity seems first to be stuck at a cultural level without reaching the decisional spheres or the normative production, as well as to be burdened with old features that slow them down. The implementation also appears to be unexpectedly challenging on the ground.

#### *2.2.1 Implementation of linguistic diversity: new strides and old ruling actors*

Lopera's analysis is also very interesting in terms of showing how the liberal developments concerning the recognition and rights of linguistic diversity – and thus the indigenous populations – can be instrumentalized by political classes or operating forces, especially in the post-conflict context. In Turkey, the integration processes have always followed a strategy of violent incorporation that provoked intense counter-reactions and insurrections, of which the most significant ones took place in 1938, 1960, 1978, and 2013. In Turkey as well, the legal framework on linguistic diversity has been linked to foreign policies, as the current party in power, the AKP, has had the ambition to reassert itself as a major regional actor and leader of the Muslim world.[40] But the linguistic diversity as well as democratic steps forward also

40 See e. g. Ersen / Köstem (eds.) (2019).

largely depended on calculations with regard to the local or national elections.

As mentioned earlier, the AKP targeted the important Islamic-conservative voting potential in the predominantly Kurdish provinces, where the choice of integration was more attractive than the ongoing violence. The AKP has opened an era of dialogue with the Kurds of Turkey with the negotiation of the terms of a possible peace from 2013 on. The Kurdish language has been authorized to be freely spoken in public spheres, and Kurdish-language TV channels have also been endorsed. Since 2012, Kurdish can be taught as an optional language in the Turkish education system within the initiative of the "learning of living languages and dialects" in line with a previous Regulation in 2002, on education in diverse languages and dialects, which was the first step towards the recognition of the more than forty minority languages in Turkey. Most significantly, even though the courts apply it parsimoniously, the right to issue one's plea in "a language other [than Turkish] in which one declares one can express oneself better" has also been granted by the law of 24 January 2013,[41] within a larger electoral calculation. However this seemingly progressive step turned against linguistic diversity as soon as these regions overwhelmingly showed interest in a promising pro-minority party, the HDP (People's Democratic Party).

Indeed, since the Gezi protest movement in 2013 and especially since the important rise of the HDP and the coup attempt in July 2016, the government has returned to the tradition of unbending discrimination toward diverse voices – not only linguistic – by broadening the definition of terrorist to include any kind of opposition or critical forces. Prisons and courts were overwhelmed with this kind of trials, which have been the jurispathic theatre

41 "*kendisini daha iyi ifade edebileceğini beyan ettiği başka bir dilde yapabilir*" Article 202, paragraph 4b of the Turkish Criminal Procedure Code. It is worth underlining that the legislator took care to avoid making express references to "Kurdish" or to "mother tongue". With that said, it is important to stress that this law actually formalized an ongoing practice, as some courts in the Kurdih provinces did allow – though in a limited fashion – the defendant to express himself in Kurdish, e. g. in the case of Mehdi Tanrıkulu in September 2007, who was allowed to plead with the help of a translator after claiming not to know Turkish well. This could, however, also be observed in the case of defendants who could speak Turkish very well, such as in the cases of politicians, such as Hadip Dicle before the Criminal Court of Peace in Diyarbakir on 22 October 2010, or Başkani Ruken Yetişkin, before the Criminal Court of Peace in Yüksekova on 27 July 2011.

narrowing down diversity. However, minority languages are still legally spoken in Turkey. The well-known pedestrianized Istiklâl avenue in Istanbul is a lively mix of entertainers singing in Turkish, Kurdish, Hebrew, or English, along with window shoppers speaking in Arabic, Armenian, French and many other languages. No one feels outraged by this multilingualism within the local populations anymore. Even so, just as in the Colombian case, yet more violently, minority languages are excluded from the authoritative arenas of law and decision-making.

### *2.2.2 The longevity of the colonial semantics*

This commenting paper should also single out a terminological issue that caused the author, who is unfamiliar with the Latin-American world, some discomfort while reading Lopera's interesting analysis on law and linguistic diversity in Colombia: namely the "indigenous". For a researcher working on the Ottoman Empire, 'indigenous'[42] does not echo the diversity. It rather targets a heterogeneous group of *others*, namely the natives, who carry the civilizational overtone of the 19th-century colonial context. This European designation is therefore not relevant for the Ottoman and Turkish cases, where the demographic diversity is addressed as a relationship between the dominant Muslim Ottoman-Turkish and the 'minorities'. However, the above-mentioned unease about the use of this terminology does not stem from the different areas of expertise. It results from the heavy political significance colonial semantics continues to cover.

This terminology is very common and often positively – if not romantically – used in Anglo-Saxon and Latin American literature, from scholars to social and human-rights activists to laymen. However, through the author's French and Ottoman-Turkish lenses, the term 'indigenous' carries the colonial stigma, as it belongs to its racial semantics. This contradiction between the racial political connotation of the word and its common use in Latin America is therefore very bewildering. Does this suggest that the very ones who actively and legitimately claim rights for the natives, aboriginal or autochthons under the generic wording of 'indigenous', use a colonial term as a flagship for their claims? If this is the case, one would wonder whether

42 The word is generally found in the archives in French as *indigènes*.

such use is the result of an internalization of colonial vocabulary or whether it is a clearly assumed reappropriation, like some ongoing uses of the racist name "Indio", e. g. as in the declarations of the Zapatista Army in Mexico.[43] But if the aim is a genuine provocation by keeping a piece of history, still this appropriation is so linear that it loses its possible function of creating discomfort. Because even so, "*indio*", which Lopera identifies as the first invention of the Spanish Empire of a "category that enabled homogenization of the colonized peoples", is still very pejorative. It is therefore usually avoided in favor of the seemingly more reasonable option of "*indígena*".[44] Not considered synonymous with "*indio*" by linguistic authorities,[45] "*indígena*" is claimed for themselves by American aboriginal peoples, who sometimes add a more specific origin (*indígena maya*, *indígena quechua*, etc.). That said, the Colombian political-evangelical instrumentalization of *indigenismo*, supported by the Bureau of Indigenous Affairs created in 1958, calls into question the continuity of colonial domination forces through such phraseology.

Of course, the author's point here is not to hide away in a new terminology, which would ultimately have the same pitfalls of domination. But being aware of these terminological nuances, it is worth asking whether, through the longevity of this colonial semantics, the structural hierarchies it essentially involves also continue out of the colonial space-time, and serve as a vehicle for the continuation of white domination of European origin on a wider scale: social-economic, political, normative, epistemic and subjective, i. e. the control over the production and legitimization of knowledge and subjectivity. While supporting claims for equal rights, how does this terminology – and its common admission – contribute to keeping the activists and the natives out of the political and normative arenas, thus perpetuating the colonial dynamics? The legitimate and timely claim for equal rights and dignity through this appellation thus seems quite counterintuitive. Even more so, in times of a major theoretical turn through the decolonial movement that emerged among Latin American academics.[46]

43 Further examples such as *Agencia Internacional de Prensa India*, or also *Parlamento Indio Americano* are quoted in *El País,* 22 January 2006.

44 The article, however, underlines how this debate seems artificial: *El País,* 22 January 2006.

45 *Fundación del Español Urgente* and *Real Academia de la Lengua Española*.

46 One of the pioneering works is e. g. Restrepo / Rojas (2010).

Maintaining the common use of the expression '*indígena*' might also be counterproductive, as this generic terminology is often globally used to address the recognition of diversity rights in Latin America. Although the phraseology is intended to tackle the heterogeneous reality, it rather produces a reification of the diversity. The expression seems to reduce the diversity issue to a binary approach, with the group of aboriginals made of "102 indigenous peoples", and the heirs of the Spanish colonists, which is problematic for two reasons. First, it seems to perpetuate in a more acceptable manner the colonial dichotomy between the "Republic of Indians" and the "Republic of Spaniards" that Lopera mentions. Second, it can lead to a counterproductive polarization within contemporary struggles for diversity, as this terminology carries the risk of shifting the legitimacy of the claim for equal rights from the recognition of a historical identity to a mere anteriority of territorial presence. However, Colombia, as with the rest of Latin America, is an integral part of our globalized world in which migratory flows are always active. Accordingly, addressing the diversity issue through the single lens of the 'indigenous' might lead to excluding other components of the society, such as the Afro-Colombians or the citizens of Syrian-Lebanese or Jewish extraction, even though Colombia itself did not attract as many immigrants as Argentina or Mexico.[47]

The Republic of Turkey is not a satisfactory example of an encompassing legal framework for linguistic diversity. The Ottoman Empire seems more compelling to some extent, even though its famous *millet* system consisted of a legal and social hierarchy. By granting a relative autonomy to the communities, the ethnic and religious diversity of the Empire was still recognized and empowered for the sake of pragmatism rather than 'diversity'. The latter would be anachronistic vocabulary and analytical lens, as the diversity issue is a contemporary outgrowth of the Western notion of the modern right of equality. But fundamentally and as Homi Bhabha pointed out, does not talking about 'diversity' actually lead to keep thinking within the framework of a hierarchical system with static and essentialized components? A more heterogeneous approach, which embraces the 'heterochthone' rather than the indigenous, could inspire us with regard to differences in the legal framework because it admits a vitality of diverse world visions, which coexist and influence each other in a non-dialectical way. For scholars from all

47 See e. g. Burgos Cantor (2010); Klish / Lesser (eds.) (1998).

horizons, this vision could allow for a projection onto our contemporary world the notion of heterogeneity as an epistemic engagement of great analytical value, as it shows a way to free us from colonial semantics while keeping our feet firmly grounded in the reality of constant migration flows and evolutions of legal necessities, including diversity and equality.

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