

PETER COLLIN
AGUSTÍN CASAGRANDE (EDS.)

Law and Diversity: European and Latin American Experiences from a Legal Historical Perspective

Vol. 1: Fundamental Questions

Gloria Patricia Lopera-Mesa

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in Colombia, 1819–2019
| 657–679



MAX PLANCK INSTITUTE
FOR LEGAL HISTORY AND LEGAL THEORY

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Colombia's geography set the stage for its vast cultural and linguistic diversity. Located in the northwest corner of South America, Colombia is at the crossroad of Mesoamerican, Incan, Caribbean, and Amazonian cultures.¹ Its rough and diverse geographies, however, hindered contact between native peoples, prevented the Spanish Empire from consolidating its authority over all of the territory, and hampered the nation-state building after Independence. Thus, despite colonial and republican efforts to Hispanicize peoples and territories, Colombia has currently around 102 indigenous peoples speaking 65 indigenous languages in addition to two Creole, and two Roma languages.² This linguistic diversity, however, is demographically unbalanced: of a total Colombian population of about 41,000,000 people, only 700,000 are speakers of indigenous languages, and fewer than 35,000 speak a Creole language. Moreover, about half of the 65 Colombian indigenous languages have fewer than 1,000 speakers, which places these minority languages on the verge of extinction.³

* This article is a result of the research project “Disputas territoriales y ambientales: miradas convergentes desde el derecho penal y el derecho internacional” supported by the research group “Derecho y Globalización” (Universidad de Bogotá Jorge Tadeo Lozano).

1 TRIANA Y ANTORVEZA (2000) 1.

2 The 2005 General Population Census (2005 GPC) registers 87 indigenous peoples in Colombia, a figure that rises to 102 peoples according to the Colombian Indigenous National Organization (ONIC). As per the 2005 GPC, out of a total of 40,607,408 individuals who answered the question on ethnic affiliation, 1,393,623 identified themselves as “indígenas”, which corresponds to 3.43 % of the total population; 4,273,722 as “afrocolombianos” (10.3 %); 7,470 as “palenqueros” (0.02 %); 30,565 as “raizales” (0.07 %); and 4,857 as “rom” people (0.01 %). The last Colombian general population census was conducted in 2018, but its results are not available yet. DANE (2007); ANDRADE CASAMA (2010).

3 The number of indigenous-languages speakers (700,000) accounts for 50.25 % of the total of the indigenous population (1,392,623). Meanwhile, speakers of the two Creole languages are the ‘palenqueros’ (descendants of the Maroon people of San Basilio del Palen-

Spanish has been the language of law in Colombia or, to be precise, the language of the state law. This qualification makes space for the myriad of indigenous normative systems that have coexisted, albeit beyond the awareness of state law, as well as of the official state legal system.⁴ Even though some of these indigenous normative systems are also conceived, produced, and communicated in Spanish (particularly those of peoples who have lost their vernacular languages), many others are embedded in very different linguistic, epistemic, and normative traditions.⁵ The language of Colombian state law has operated as a device both of discrimination and assimilation, even though indigenous people have also availed themselves of it to resist dispossession, and cultural assimilation. Being an arena in which actors with different ethnic and cultural backgrounds participate, the official state legal system has faced the fact of plurilingualism since the colonial era onward.

By examining changes and continuities in linguistic policies and legislation, as well as by studying specific cases that illustrate the challenges indigenous linguistic diversity poses, we can begin to understand how linguistic diversity has manifested itself within the legal arena, and how the language of the state law has been used for purposes of discrimination, assimilation, or intercultural communication. The time frame, 1819 to 2019, begins with the postcolonial era and runs to the present day. This broad timeline is divided into three periods – the early republican era (1819–1886), the consolidation of a unitary and monocultural nation-state (1886–1990), and the ongoing shift toward multiculturalism (1991 to the present) – which correspond with turning points in Colombian politics and indigenous policies.

Critical features of the Spanish Empire shaped colonial and postcolonial legal responses to linguistic diversity. The first one is the invention of ‘Indian’ as a category that enabled homogenization of the colonized peoples. The imagined ‘Republic of Indians’ – counterpart of the ‘Republic of Spaniards’ – served as a legal fiction to manage diversity by lumping together a wide array

que) and the ‘raizales’ (native people of San Andrés y Providencia islands). The total of Creole-language speakers (35,000) represents 92% of the people who identified themselves as ‘palenqueros’ and ‘raizales’ (38,035). There are no data available on the number of Roma-language speakers in Colombia. LANDABURU (2004–2005) 3–4.

4 TAMANAHA (2008) 397.

5 For an in-depth examination of indigenous cognitive systems and discursive practices, see VIVAS HURTADO (2013).

of ethnic and linguistic ‘others’ who were indistinctly labeled as ‘Indians’. Additionally, Catholic confessionalism and Castilian monolingualism carved out the cultural basis of the Spanish Empire. While there was no place whatsoever for religious diversity, the Spanish Crown allowed and even fostered the use of some indigenous languages as a means of Hispanicization and evangelization of the natives.⁶ Except for instances of indigenous jurisdiction at the local level, written Castilian remained the language of the law during the colonial era, which led to the mediation of Spanish-speaking scribes and interpreters in legal proceedings involving illiterate and non-Spanish speakers.⁷ Such monolingual legal tradition endured far beyond the end of the colonial period in Colombia and other former Spanish colonies, providing a point for comparative analysis with experiences beyond Latin America. Specifically, the Colombian case stands in striking contrast to the experiences of Austria-Cisleithania, Turkey, and Russia, which will be analyzed by Simon’s, Muslu’s, and Kirmse’s contributions to this volume.

6 There were, however, some variances in the ways Habsburgs and Bourbons conducted this policy. In accordance with the Council of Trent’s provisions (1563), the Habsburg monarchs promoted the use of some vernacular languages (officially regarded as “general languages”) for the purpose of Hispanicization and evangelization. *Chibcha* (also known as *muisca* o *mosca*), *quechua*, *sáliva* and *siona* were declared as the general languages in the New Kingdom of Granada. The Habsburgs endorsed the creation of chairs of general languages and required priests to certify proficiency in these vernacular languages as a condition of being appointed as *doctrineros* (parish priests in Indian villages). From the late 16th and throughout the 17th century, Franciscan, Dominican, and Jesuit friars crafted grammars, vocabularies, and catechisms in vernacular languages. The Habsburg policy of promoting vernacular languages, however, did not prevent the decline of *Chibcha* and other native languages, particularly those that had been spoken at the central areas of the New Kingdom of Granada. The Bourbon reforms contributed to such decay of the native languages. In 1767, the Spanish Crown ordered the expulsion of the Jesuits, who had made remarkable contributions to the knowledge of indigenous languages. In 1770, Charles III issued a Royal Decree banning the use of vernacular languages and making the use of Spanish mandatory, though it was unevenly enforced and met some resistance in the colonies. By the late 18th century, some New Granada viceroys still fostered evangelization in vernacular languages, while Enlightened scholars and friars engaged in the study and teaching of Amerindian languages. On linguistic policies during the colonial period, see ORTEGA RICAURTE (1978) 13–112; TRIANA Y ANTORVEZA (1987); PINEDA CAMACHO (2000) 49–86; VILLATE SANTANDER (2003).

7 YANNAKAKIS/SCHRADER-KNIFFKI (2016); CUNILL/GLAVE (eds.) (2019).

1 The early republican era (1819–1886)

After Independence, Colombian political and intellectual elites enthusiastically embraced Spanish grammar as a key element of nation building as well as a ‘civilizing’ tool that would form good citizens and rulers by instilling the rules of correct thinking, writing, and speech.⁸ Early republican legislation ordered the creation of elementary schools in all of the country’s villages, as well as the creation of colleges and universities in the major urban centers.⁹ While Spanish literacy was at the core of the elementary school’s curriculum, students at the higher levels were also to be taught classical and modern foreign languages, as well as indigenous ones. The 1826 Law on Public Schooling established that literature classes at the universities were to include the indigenous languages prevailing in the region. The same rule was reiterated by the 1842 Decree on Universities.¹⁰ There is no evidence that this provision was actually enforced, as at the time, the Colombian elites were more interested in learning English and French than local vernacular languages. This rule bears historical significance, however, since, after the 1842 Decree, Colombian legislation has not mandated the teaching of indigenous languages at the universities, thereby, further demonstrating the dominance of the Spanish language in the early republican era.¹¹

The indigenous population was a specific target of the ‘civilizing’ campaign launched by postcolonial lawmakers, and carried out in two different ways. *Indígenas* already settled in villages were to be assimilated into the nation as rural peasants via the privatization of their communal lands (*resguardos*). Meanwhile, the ‘savage Indians’, those roaming the lowlands forest, were to be settled in indigenous reservations and “inducted into civilized life” by the Catholic missions.¹² In 1824, the Colombian Congress

8 PINEDA CAMACHO (2000) 83–114; DEAS (1992).

9 See the laws of August 6th, 1821, and March 18th, 1826, in: COLOMBIA (1924) I, 25–30; II, 226–244.

10 Articles 21 and 33 of Law of March 18th, 1826; Article 123 of Decree of December 1st, 1842, in: COLOMBIA (1924) IX, 611.

11 TRIANA Y ANTORVEZA (1973) 1251–1252; PINEDA CAMACHO (2000) 94–95.

12 On division of *resguardos* and elementary schools in indigenous villages, see Laws of October 11th, 1821; March 6th, 1832; and June 2nd, 1834. On “induction of ‘savages’ into civilization” see Law of August 3rd, 1824; Decree of May 1st, 1826; Law of May 15th, 1833; and Decree of April 28th, 1842, in: COLOMBIA (1924) I, 116–118, 402–403; II, 333–334; IV, 344–345; V, 11–12, 349–352; IX, 344–345.

issued a law that reestablished the missions. One of their tasks was “to teach the Castilian language to the natives”. Still, lawmakers also seemed aware that, in order to accomplish it, knowledge of vernacular languages was needed. This law therefore also instructed the Church to collect “dictionaries, grammars, indices, and compendia of the various indigenous languages”, and to make copies of them to distribute among the missionaries.¹³

This concurrent interest in ‘civilizing’ the natives while collecting information about their diverse languages and cultures became stronger by 1850, when the rise of the agro-exporting economy increased the colonization of the country’s lowlands. At that time, Tomás Cipriano de Mosquera’s and José Hilario López’s modernizing governments sponsored the Chorographic Commission, a scientific expedition in charge of mapping the whole country and depicting its regions’ physical, socio-economic, and human geography.¹⁴ The commissioners provided an on-the-ground depiction of the country’s cultural diversity that paved the way for the surge of ethnolinguistic research that flourished by the 1870s, when the emergence of Americanist studies sparked scientific interest in indigenous languages and cultures.¹⁵

Throughout the second half of the 19th century, Colombia experienced intense political strife and civil wars between Liberal and Conservative factions, with church-state relations being one of the major points of contention. Although the Liberal Radical regime (1863–1880) took a tough stance towards the Catholic Church, liberal lawmakers passed legislation that relied on missionaries as cultural brokers. Liberals entrusted missions with the task of “studying and setting forth in alphabetic writing the languages of the various tribes” and collecting their ethnographic and demographic data. Liberal lawmakers also promoted the creation of missionary schools where candidates working toward becoming missionaries were to be instructed in native languages.¹⁶ This legislation shows that 19th-century Colombian

13 See Articles 20 and 21 of the Law of July 30th of 1824, reproduced in: TRIANA ANTORVEZA (1980) 83–87.

14 APPELBAUM (2016).

15 ORTEGA RICAURTE (1978) 116–148; PINEDA CAMACHO (2000) 101.

16 See Article 11.9 of Law 11 of April 27th, 1874, on “fomento de la colonización en los Territorios de Casanare i San Martín”, and articles 3.1, 9, and 13 of Law 66 of July 1st, 1874, on “reducción y civilización de indígenas”, in: COLOMBIA (1924) XXVII, 36–40, 134–138.

elites envisioned a Mestizo and Hispanophone nation, but approached the indigenous question in a way that differed from the military subjugation of the ‘savages’ that was carried out in Argentina, Chile, and the United States of America.¹⁷

The awareness of the country’s linguistic diversity, however, barely permeated the language of the state law during the early republican era. Colombian state law was entirely conceived, written down, communicated, and enforced in formal Spanish by lawmakers and officials, some of whom were prominent philologists. Andrés Bello’s *Gramática de la Lengua Española* (1847) and *Código Civil Chileno* (1852) set the standard for the legal language in Hispanic America, particularly in Colombia, where cultivating a fine Castilian was not only part of the jurists’ training but, more broadly, a desired marker of national identity. There was, therefore, no place for plurilingualism in the legal language of Colombia during the 19th century, except for the norms that provided for the use of public interpreters in courts and officials’ interactions with indigenous tribes and natives of the San Andrés and Providencia islands.¹⁸ Concerning the latter, difficulties in ensuring sovereignty in this Caribbean territory led to a small but significant exception to the pattern of legal monolingualism that prevailed in the 19th century. In 1869, the Colombian government provided for the translation of the 1863 Liberal Radical Constitution and other pieces of legislation into the English-Creole language of San Andrés and Providencia, being the first antecedent of the recognition of Creole languages in Colombia.¹⁹

2 The consolidation of a unitary-monocultural nation-state (1886–1990)

In the 1880s, conservatives took power, inaugurating a centralizing, pro-Hispanic, and deeply Catholic era known as ‘the Regeneration’. The link

17 PINEDA CAMACHO (2000) 101.

18 See Law of June 1st, 1847, on public interpreters; Decree of April 12th, 1869, on public interpreters in San Andrés and Providencia Islands, in: COLOMBIA (1924) XII, 116–118; XXIV, 104. See also Articles 583, 599 to 606 of the 1872 Judicial Code, in: COLOMBIA (1894) 72–75.

19 Decree of April 12th, 1869, “mandando traducir al inglés la Constitución Nacional y las disposiciones relativas a la administración de los Territorios Nacionales”, in: COLOMBIA (1924) XXIV, 105; PINEDA CAMACHO (2000) 102.

between mastery of the Spanish language, national identity, and political power became stronger during the era of Conservative hegemony (1885–1930). Five out of the twelve presidents who ruled during this period were also prominent philologists and writers, with Miguel Antonio Caro being a case in point. Caro, who drafted the 1886 Constitution, envisioned a nation built upon Hispanic heritage without any traces of the racial, cultural, and linguistic background of indigenous and black peoples.²⁰

As in the colonial period, Castilian monolingualism paralleled Catholic confessionalism during the Regeneration. The Regeneration's linguistic policy reversed any recognition of aboriginal and Creole languages made during the Liberal Radical regime.²¹ Meanwhile, the Concordat signed with the Vatican in 1887, along with Laws 89 of 1890 and 72 of 1892, turned the responsibility for education and governance of the indigenous population of Colombian peripheral areas (known as *territorios nacionales*) over to Catholic missions.²² Missionaries usually banned the natives from speaking their own languages, though some religious orders used vernacular languages as a means of introducing natives to Catholicism and Spanish literacy. Thus, in the very process of erasing native languages, missionaries paradoxically advanced ethnolinguistic research by keeping records, vocabularies, and grammars of those indigenous languages that were about to disappear.²³

Law 89 of 1890, the most important statute on indigenous affairs of this period, provided temporary protection for *resguardos* and *cabildos* (indigenous councils) for a period of fifty years. By doing so, lawmakers aimed to establish an intermediate and provisional legal status for Andean indigenous peoples who were regarded as neither 'savages' nor 'civilized' enough to be integrated into the nation as ordinary citizens. Although Law 89 did not include any provision intended to preserve native languages, by maintaining

20 DEAS (1992) 49, 64–65; ARIZA (2009) 190–200; PINEDA CAMACHO (2000) 107–114.

21 See Articles 4 and 10 of Law 17 of 1927; PINEDA CAMACHO (2000) 80.

22 Article 31 of Law 35 of 1888, approving the Concordat between Colombia and the Vatican; Article 1 of Law 89 of 1890, "por la cual se determina la manera como deben gobernarse los salvajes que vayan reduciéndose a la vida civilizada"; and Law 72 of 1892, "por la cual se dan autorizaciones al Poder Ejecutivo para establecer Misiones Católicas", in: TRIANA ANTORVEZA (1980) 121–129, 166; ARIZA (2009) 212–216.

23 ORTEGA RICAURTE (1978) 182–196; TRIANA Y ANTORVEZA (1973) 1253; TRIANA Y ANTORVEZA (2000) 15; PINEDA CAMACHO (2000) 112, 143–144.

resguardos and *cabildos*, this law provided a haven where communities who still retained their vernacular languages could use them in their internal affairs. Indigenous peoples appropriated Law 89 of 1890 as the legal support for their claims for land and autonomy. Manuel Quintín Lame, an indigenous leader from the southwestern Colombian Andes, availed himself of both Spanish and legal literacy to translate natives claims into the language of the state, and to carve out a sort of indigenous republican citizenship based on Law 89. *La Quintiada*, the 1914–1916 indigenous uprising led by Quintín Lame in the Cauca region, exemplifies how the Spanish and legal languages were not only devices of domination and acculturation but also arenas of contention, negotiation, and cultural translation that some literate Indians managed to use to resist colonization.²⁴

In 1930, Conservative hegemony came to an end, giving way to the Liberal Republic (1930–1946), a time that witnessed a shift in cultural politics. Since the 1920s, a segment of the emerging intellectual middle class has brought about a cultural and political movement that turned toward indigenous cultures as the very roots of Colombian identity. This *indigenista* agenda resonated in the Liberal Republic's educational policy, which encouraged the study of the countryside and indigenous cultures with the aim of understanding the country's diversity and modernizing it.²⁵ Such a cultural climate boosted ethnolinguistic research and the recovery of some indigenous toponymy.²⁶ The Liberal Republic's linguistic policy was in tune with the resolutions of the Primer Congreso Indigenista Interamericano held in Patzcuaro, Mexico, in 1940, which asserted the importance of the study and use of indigenous languages while prioritizing indigenous literacy in the national language.²⁷

Indigenistas not only produced a significant body of archeological and ethnolinguistic research, but some of them became actively involved in the defense of *resguardos* and took a critical stance on the power of the missions over indigenous communities, leading to conflicts between progressive intel-

24 LEMAITRE (2013); ESCOBAR (2016).

25 PINEDA CAMACHO (1984); TROYAN (2008); RUEDA ENCISO (2008). For an in-depth examination of this topic, see the articles published in the journal *Baukara*, vol. 1 (2012), vol. 2 (2012) and vol. 3 (2013), monographic issues devoted to the origins of Colombian *indigenismo* (available at: <http://www.humanas.unal.edu.co/baukara/numeros-de-la-revista/>).

26 ORTEGA RICAURTE (1978) 150–182; PINEDA CAMACHO (2000) 144–146.

27 See: El Primer Congreso Indigenista Interamericano (1940).

lectuals and the Catholic Church. The Colombian *indigenista* project was disrupted by *La Violencia* that started around 1946, as well as by the political persecution that progressive intellectuals faced during Laureano Rojas' right-wing government (1950–1953).²⁸ A new mission agreement signed in 1953 gave the Catholic Church both temporal and spiritual power in nearly two-thirds of the national territory, where missionaries not only controlled education but exerted police power over the indigenous population. This agreement also banned evangelization by non-Catholic institutions.²⁹

By the end of the 1950s, Liberals and Conservatives agreed to alternate the presidency and share power in what became known as the *Frente Nacional* (1958–1974). In 1958, Alberto Lleras' liberal government appointed anthropologist Gregorio Hernández de Alba, one of the pioneers of Colombian *indigenismo*, as director of the newly created Bureau of Indigenous Affairs.³⁰ In 1962, the Colombian government signed an agreement with the Summer Institute of Linguistics (SIL), a United States-based Christian organization devoted to the study of indigenous languages and the promotion of literacy through translating the Christian Bible into native languages.³¹ The SIL was entrusted with conducting ethnolinguistic research and literacy campaigns among Colombian indigenous peoples, as well as providing interpreters and training in native languages to state officials.³² Although the SIL and the Catholic missions' views on religion collided, both institutions considered the teaching of reading and writing in native languages as a mere step toward Spanish literacy, which remained their ultimate goal (along with evangelization among the natives).³³ Such an instrumental view of indigenous languages was in tune with the assimilationist mindset that inspired the ILO Convention 57 of 1957.³⁴

28 RUEDA ENCISO (2008) 267–272.

29 PINEDA CAMACHO (2000) 146; BONILLA (2006) 301–310; TROYAN (2008) 95–102. The 1953 Mission Agreement was reproduced in: DANE (1971) 55–58.

30 RODRÍGUEZ ROJAS (2016).

31 PINEDA CAMACHO (2000) 147. Correspondence between the SIL and the Director of the Bureau of Indigenous Affairs is available at Biblioteca Luis Ángel Arango (BLAA), Sala Libros Raros y Manuscritos, Archivo Gregorio Hernández de Alba, MSS 2296.

32 The agreement between the Colombian government and the SIL was reproduced in: DANE (1971) 59–60.

33 PINEDA CAMACHO (2000) 149.

34 The International Labor Organization (ILO) Convention 107 of 1957, on “the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independ-

The 1970s witnessed a paradigm shift from assimilation to ethno-development owing to the joint effects of the emergence of indigenous grassroots movements and responsive state policies.³⁵ The creation of the Regional Indigenous Council of Cauca (CRIC), a grassroots organization that took up the legacy of Quintín Lame, inspired indigenous mobilization nationwide. The 1971 CRIC Platform of Struggle called for the defense of indigenous history, language, and customs, as well as for training bilingual indigenous teachers and giving communities control over children's schooling.³⁶ Meanwhile, at a time when the state aimed to prevent the advance of guerrilla groups in the countryside, state agencies became more responsive to some indigenous demands.³⁷ In 1978, Alfonso López Michelsen's liberal government passed a decree that provided for bilingual and culturally relevant education for indigenous communities.³⁸ This ethno-developmental approach entailed a significant transformation of linguistic policies: instead of being considered as mere instruments for Spanish literacy, indigenous languages began to be appraised as cultural resources worthy of safeguard in and of themselves.³⁹

Notwithstanding these significant changes in linguistic policies, the language of the state law remained as monolingual as it had been during the 19th century. Individuals interacting in the legal field were supposed to speak Spanish whether independently or assisted by interpreters.⁴⁰ Moreover, since Law 89 of 1890 had left 'savage' and 'semi-savage' Indians out of the scope of the general legislation, there were no provisions for trans-

ent Countries", was adopted in Colombia by Law 31 of 1967. Article 23 provided for indigenous peoples' right to vernacular-language education. It established, however, the gradual transition from the native to the national language, though preserving the vernacular language.

35 On the concept of "ethnodevelopment", see BONFIL BATALLA (1995).

36 BOLAÑOS (2012).

37 RODRÍGUEZ ROJAS (2016) 146.

38 Decree 1142 of 1978. See also PINEDA CAMACHO (2000) 151–152.

39 This new approach led to the creation of the Committee of Aboriginal Linguistics (1983) and the Colombian Center for Aboriginal Languages at the Universidad de los Andes, which promoted research and graduate programs in ethnolinguistics. PINEDA CAMACHO (2000) 154; TRIANA Y ANTORVEZA (2000) 17.

40 On the mandatory use of interpreters in civil and criminal cases, see Article 685 Law 105 of 1931 (Judicial Code); Article 269 Law 94 of 1938 (Criminal Procedure Code); Article 192 Decree 1400 of 1970 (Civil Procedure Code).

lating laws into indigenous languages.⁴¹ Even though Article 26 of the ILO Convention 57 of 1957 affirmed that states were to communicate to indigenous populations information about their rights and duties using their languages if necessary, this provision was weakly enforced in Colombian legislation.

The case of *Wayúus* identity cards exemplifies the lack of compliance with this obligation and the discrimination against linguistic minorities that may arise in the absence of reliable interpreters. From the 1960s to the 1980s, at the request of local politicians interested in garnering votes among the indigenous population of the northern department of La Guajira, officials of the Colombian National Civil Registry issued identity cards for about 2,000 *Wayúus*. Using the excuse of not understanding the natives' language (*wayuunaiki*), the state officials arbitrarily decided to register December 31st as their date of birth and changed their real names to insulting monikers, such as "*coito*" (coitus), "*cabezón*" (big-headed), and "*maribwana*" (cannabis), in a blatant abuse of the natives' Spanish illiteracy and in violation of their basic rights.⁴²

Along with enabling discrimination, the monolingualism of the state law also worked as an efficient device for linguistic assimilation. The growing encroachment on indigenous lands by Mestizo *colonos* sparked the interest for Spanish literacy among the natives, for it was the language they would have to use to bring their land grievances before the administration and the civil courts. That was the case of the *Gunadule* people, settled in a forest region of the Colombo-Panamanian border. Milton Santacruz, a member of this people, explains:

Gunadule traditional authorities (*saglas*) had opposed the entry of missions into the territory until the mid-1960s, when a wave of *colonos* began to settle in our lands. The growing presence of *colonos* raised concern among the *saglas* because the *Gunadule* territory lacked *resguardo* land titles, so they had no legal protection

41 Based on the categories of Law 89 of 1890, contemporary criminal law doctrine defined "semi-savage" Indians as those in the process of being "civilized". DELTGEN (1981) 785; ARIZA (2009) 216.

42 This case was denounced in the documentary "We were born on December 31st" by Priscila Padilla Farfán, based on a story written by the wayúu lawyer and writer Estercilia Simanca Pushaina. SIMANCA PUSHAINA (2007); PADILLA FARFÁN (2011). The reparation of this wrongdoing only took place in 2015. See: "Rectificación de nombres burlescos en el pueblo Wayúu", available at <https://www.youtube.com/watch?v=dzeSqL1o6To>

against such encroachment. At that time, a group of female Catholic missionaries arrived in the territory offering to teach Spanish language on the basis that ‘*Guadalupe* youth must be taught, so they can defend their lands.’ It looked as though the nuns came in God’s name to help *Gunadules* to take care of the territory. Then, *sagla* Tihuitiquiña accepted the offer, saying ‘it seems good to me. What the nuns are going to do is to accompany us and protect us.’⁴³

While civil and administrative law worked as powerful devices for linguistic acculturation, criminal law gave rise to some opportunities for indigenous languages via expert opinions that anthropologists delivered in criminal trials. Law 89 of 1890 had formally left ‘savage’ and ‘semi-savage’ Indians out of the scope of the state law, so a critical issue during this era was to determine whether an indigenous individual accused of committing a crime actually fit into some of these categories or was ‘civilized’ enough to be held criminally responsible. This decision relied on psychiatric forensic opinions until the late 1960s, when anthropologists began to be asked to intervene in criminal trials as experts, reframing the debate on indigenous criminal liability in terms of cultural differences.⁴⁴ Both psychiatrists and anthropologists considered the lack of Spanish literacy among the factors for excluding *indígenas*’ criminal liability. Anthropologists, however, took a decisive step toward bringing cultural and linguistic diversity into the courts by introducing the cultural analysis of indigenous concepts as crucial elements in the adjudication of criminal cases. Through these exercises of cultural translation, a few indigenous concepts permeated the language of adjudication over criminal matters.⁴⁵

Even if not fully recognized by the state, indigenous legal customs were still practiced alongside the state law. The legal monism of the republican state prevented it from acknowledging the existence of indigenous justice. Moreover, since indigenous legal practices were embedded in the natives’ social fabric, worldviews, languages, and oral tradition, at least some of them remained invisible and unintelligible to the westernized eye of the republican authorities. The role of dreams, rites, myths, advice, conciliations, shamanic mediations, and respect for nature, among other elements typical of

43 Milton Santacruz Aguilar, *Gunadule* scholar, interviewed on March 4th, 2019.

44 ARIZA (2009) 212–238.

45 On these exercises of cultural translation, see SÁNCHEZ BOTERO (1992); VÉLEZ (1985); GÓMEZ VALENCIA (2000) 105–113; DELTGEN (1981) 788–805.

indigenous legal cultures, worked as barriers that put natives' systems of justice out of the control of the church and the state law.⁴⁶

3 The ongoing shift toward multiculturalism (1991 to 2019)

The year 1991 marked a watershed moment for Colombian politics and the indigenous movement as well. A widely participative National Constituent Assembly passed a new constitution that repealed the 1886 one. Three indigenous leaders took an active part in the constitutional reform, marking the beginning of indigenous participation in state legislative bodies. This was also the first time that an indigenous language was spoken in the process of state lawmaking, for the *guambiano* leader Lorenzo Muelas Hurtado delivered a brief part of his inaugural speech in his native language in order to make a statement on the recognition of cultural and linguistic diversity.⁴⁷

The 1991 Constitution recognizes Colombian ethnic and cultural diversity and provides for social, economic, political, and cultural rights for the country's ethnic minorities.⁴⁸ Concerning linguistic diversity, Article 10 establishes that, "Spanish is the official language of Colombia. The languages and dialects of ethnic groups are also official in their territories. The education provided in communities with their own linguistic traditions will be bilingual." This precept was further developed by Law 1381 of 2010, a comprehensive statute that provides for the conservation, promotion, and strengthening of Colombian native languages.⁴⁹ Concerning the legal field, this law grants native languages speakers the right to use their language within the justice system and the public administration, as well as the right to be assisted free of charge by interpreters and defenders who know their language and culture. Meanwhile, state authorities are required to ensure the

46 GÓMEZ VALENCIA (2000) 99.

47 MUELAS HURTADO (1991). On indigenous participation in the 1991 National Constituent Assembly, see ARIZA (2009) 246–260; LEMAITRE (2009) 134–144, 328–332.

48 The Colombian constitutional framework represents an example of the second cycle of constitutional reforms resulting from what has been called the "indigenous emergence in Latin America". See YRIGROYEN FAJARDO (2010); BENGEOA (2007).

49 Article 1 of Law 1381 of 2010 defines "native languages" as those currently spoken by Colombian ethnic groups: indigenous peoples, Afro-descendant communities, the raizal community of San Andrés and Providencia islands, and Roma communities.

translation into native languages of laws, regulations, and policies related to ethnic groups, as well as the establishment of training programs for interpreters and officials in charge of providing services to ethnic groups.⁵⁰

This legislation has impacted the language of the state law in the legal, administrative, and judicial fields. The first attempt to bring linguistic diversity into the legal language was the translation of those excerpts of the 1991 Constitution related to the bill of rights and the rights of ethnic groups into indigenous languages.⁵¹ This experience tells us about the huge challenges of intercultural translation of legal texts, and the significance of the translation process itself, more so than its result, as a space for intercultural dialogue on the different concepts that shape indigenous and non-indigenous political and social worlds.⁵² Variations in the translation of the concept of ‘Constitution’ into the *Cubeo*, *Guambiano*, and *Nasa Yuwe* languages exemplify how linguistic differences involve idiosyncratic epistemes, historical experiences, and normativity ideas. The *Cubeos*, an Amazonian people, understand this concept as “the text /speech of the food tree of life”. For the *Guambianos*, a southwestern Andean people, ‘Constitution’ means “the major word written to be fulfilled.” Meanwhile, the *Nasa* (or *Paez*) people, also located in the southwestern Andean region, translate ‘Constitution’ as “*ikahsaecne’hwe*”, meaning “the leaf [book] of the main power”.⁵³

50 Articles 7, 8, and 21 Law 1381 of 2010.

51 In total, 40 out of the 420 articles (380 plus 60 transitory articles) that comprise the 1991 Constitution were translated into 7 out of the 65 Colombian indigenous languages.

52 For a balance of this experience, see LANDABURU (1997a and 1997b) published in a monographic issue that also includes articles authored by the indigenous linguists from the seven indigenous peoples who took part in this project.

53 As linguist Jon Landaburu explains, when compared with others, the Amazonian peoples most heavily resort to their own symbolism and knowledge to understand the Western world, since their experience facing colonization is more recent than the indigenous peoples of the Andean region. Hence, the translation of “Constitution” into the *Cubeo* language draws on a widespread Amazonian myth about the origin of food and social life. Meanwhile, the *Guambiano* and *Nasa Yuwe* translations convey more explicitly the notions of “written law” and “authority”, which are closer to the Western idea of “Constitution”. That said, there is a significant nuance between both translations. While the *Guambiano*’s carries the idea of legitimacy (“the major word”), the *Nasa Yuwe* translation (“the main power”) conveys an understanding of the state authority as a *de facto* power rather than an inherently legitimate one. Such a nuance makes sense when considered the more belligerent stance that *Nasa* people have historically adopted toward the colonial institutions when compared with the *Guambianos* and other Andean peoples. LANDABURU (1997b) 167–169.

Apart from this seminal attempt to bring linguistic diversity to the constitutional language, the Colombian Constitutional Court has taken some steps toward the protection of linguistic diversity in the administrative and judicial languages. In Decision T-384 of 1994, the Court enforced the co-official status of the *Curripaco* language in the department of Guainía (the population of which is 98.7% indigenous) by striking down an administrative resolution that banned the broadcasting of radial political conferences in a language other than Castilian. In Decision T-760 of 2012, the Court protected the linguistic rights of a homeless *Embera-katio* couple who had been deprived of custody rights over their children by the Colombian Family Welfare Institute (ICBF). The parents could not take part in the administrative procedure, since all the notifications were delivered in Spanish even though the ICBF had evidence that they did not understand this language. Meanwhile, in Decision C-274 of 2013, the Constitutional Court ruled that institutions dealing with public information concerning ethnic communities must provide for translating the information into native languages.⁵⁴ Furthermore, in some cases involving indigenous peoples who do not speak Spanish, the Court ordered the translation of its decisions into their native languages.⁵⁵

The most consistent efforts to redress the discrimination arising from legal monolingualism have focused on the legislation and institutions resulting from Colombian society's attempt to end its internal armed conflict and to compensate its victims. Legislation on reparation for victims establishes that victims have the right to use their own language in all administrative and judicial procedures intended to make effective their rights to truth, justice, and reparation. The state must provide for reliable interpreters authorized by the respective indigenous community.⁵⁶ The right to use native languages and be assisted by a reliable interpreter still stands even if the member of the ethnic group has proficiency in Spanish.⁵⁷ Meanwhile,

54 Colombian Constitutional Court, Decision C-274 of 2013. Constitutional review of Article 8th of the bill on the right to access to public information (Law 1712 of 2014).

55 Colombian Constitutional Court, Decision T-129 of 2011 (on the right to prior consultation of two *Embera-katio* communities); A-173 of 2012 (on the rights of the Jiw and *Nükak* peoples).

56 See Articles 38, 115, 120, 122, and 176 of Law Decree 4633 of 2011, on integral reparation and restitution of territorial rights for indigenous victims of the armed conflict.

57 Colombian Land Restitution Courts recently enforced this provision in a case in which an Embera community claiming for land restitution presented a witness who testified in his

the implementation of the peace agreement signed by the Colombian government and the FARC-EP guerrilla group in 2016 has demonstrated the challenges of enforcing legal multilingualism in a post-conflict context. This experience also illustrates the strategic use of the legal framework on linguistic diversity in a deeply divided country still licking the wounds left by the armed conflict, as exemplified by two recent cases: the challenge to the 2016 plebiscite on the peace agreement by members of the Democratic Center (CD) party, and the right of protection filed by *Embera-dóbida* communities from Bojayá.

In August 2016, the Colombian government called a plebiscite in order for citizens to decide whether to endorse or reject the peace agreement. A group of congresspeople from the Democratic Center (CD), a right-wing party opposed to the peace agreement, filed a lawsuit challenging the constitutionality of the Presidential Decree calling for the plebiscite. The plaintiffs argued that the government had failed to comply with the constitutional standard of protection of linguistic diversity, for the agreement had not been translated into all the native languages existing in the country, nor was it available in Braille. In Decision C-309 of 2017, the Constitutional Court ruled that the obligation to translate the peace agreement into all the country's native languages was a mandate of optimization, the satisfaction of which does not require full compliance, but rather the highest level of observance according to the factual and legal possibilities. The Court concluded that the government had complied with this mandate since a summary of the agreement was translated into 62 of 65 indigenous languages, and an audio version in Spanish was available for people with visual disabilities.⁵⁸

native language. The adversary of the indigenous community argued that the indigenous witness should not be allowed to testify in his native language because of his high proficiency in Spanish, as proved by the fact that the witness even has a Facebook account. The Court ruled that the right of indigenous peoples to use their native languages in courts is granted on the basis of cultural and linguistic diversity rather than of their lack of proficiency in the dominant language. Information about this case was provided by Laura Rojas Escobar, a former official of the Unidad de Restitución de Tierras (URT). See Tribunal Superior de Antioquia, Sala Civil Especializada en Restitución de Tierras, Sala Primera, Act No. 67, December 10th, 2018, case No. 270013121001-2014-00101-01, Comunidad indígena Embera – territorio Tanela.

58 Translations of the peace agreement into indigenous languages are available at this website: <http://www.altocomisionadoparalapaz.gov.co/herramientas/Paginas/acuerdo-lenguas-nativas/El-Acuerdo-de-Paz-se-habla-en-lenguas-nativas.aspx>.

The plebiscite was held on October 2nd, 2016, and the rejection of the peace agreement was carried by a tiny margin of about 54,000 votes.⁵⁹ While most of the “no” votes were cast in urban areas, the “yes” votes came from the peripheral and most impoverished regions of the country inhabited primarily by ethnic groups. Shortly thereafter, 32 communities belonging to the *Embera-dóbida* people from Bojayá (Chocó), along with Dejusticia, an NGO that actively endorsed the peace agreement, filed a writ of protection (*acción de tutela*). They sued for the protection of their rights to political participation and non-discrimination, which had been violated by the absence of polling stations in their settlements, and to remedy the lack of measures to facilitate the right to vote for members of their communities unable to speak Spanish. Such linguistic discrimination, they argue, has affected women disproportionately, most of whom speak only *Embera-dóbida*. In 2002, Bojayá suffered one of the worst massacres the FARC guerrilla committed during the armed conflict, leaving 120 killed and 98 wounded. The obstacles that the people of Bojayá faced to vote in the 2016 plebiscite thus raise a powerful question on the legitimacy of its results.⁶⁰ Moreover, this case entails a special challenge for the protection of linguistic diversity, for the *Embera-dóbida* language lacks an alphabet, which makes the translation of electoral materials more difficult. This *acción de tutela*, which was expected to become a leading case in linguistic reparative justice, was finally decided by the Colombian Constitutional Court in Decision T-245/2022.⁶¹

4 Conclusions

As the Castilian language carved out the Spanish empire during the colonial era, it became the primary instrument for nation building after independence, as well as the language of the state law in the postcolonial era. This monolingual legal tradition, albeit familiar to other Latin-American countries, stands in striking contrast to historical experiences of legal multilin-

59 The results of the 2016 Plebiscite were: 6,431,376 people voted *No* (50.21%) and 6,377,482 people voted *Sí* (49.78%).

60 On the impact of the armed conflict on Bojayá’s indigenous and afro-Colombian communities, see BELLO ALBARRACÍN (2010).

61 Among other provisions, the Court ordered electoral authorities to provide reliable translators for those members of the indigenous communities who require them. On the concept of “linguistic reparative justice”, see TODD (2013).

gualism in European and Eurasian states. Some cases in point are Austria-Cisleithania, a non-nation multi-ethnic state lacking a unified official language, and the Ottoman state, in which multilinguistic legal tradition remained even after the establishment of Ottoman-Turkish as the official language in 1876. Even the legal monolingualism of the Russian Empire, which did not preclude linguistic diversity at the regional and local levels of legislation, administration, and courts, contrasts against the outright monolingualism of Colombian state law. Differences in colonial-imperial legacies and processes of nation-state formation account for such contrasting trajectories in the embrace of linguistic diversity in the state legal sphere.

Even within such diverse trajectories, some coincidences in temporality reveal a shift from a somewhat open stance on religious and cultural diversity that prevailed in 19th-century liberalism toward the consolidation of centralist and culturally homogeneous nation-states from the 1880s onward. This common trend can be seen in the Russian, Turkish, and Colombian cases. As regards the latter, though the 19th-century liberal legislation formally provided for the study of indigenous languages in universities and schools for missionaries, this openness toward linguistic diversity did not upset the widespread legal and social monolingualism. This close link between Spanish-language, national identity, and political power became even stronger during the Conservative hegemony (1885–1930), when a generation of philologists-rulers envisioned a white, Catholic, and Spanish monolingual Colombia, painting Indians and Afro-Colombians out of the national picture. The surviving native languages were regarded as efficient tools for evangelization and Castilianization, subjects of scholarly research and state regulation, but by no means as languages worthy of being spoken in the state legal sphere.

Throughout the 19th and most of the 20th century, the state law worked as a powerful device for linguistic assimilation at a time when growing encroachment on indigenous lands sparked a drive for native literacy. Even so, the Spanish and legal languages were both devices of acculturation as well as arenas of contention and cultural translation that some literate *indígenas*, Quintín Lame being a case in point, used to resist colonization. These hegemonic languages, however, have also served as tools for blatant discrimination, as was proved by the issuing of identity cards with fake dates of birth and denigrating names for the *Wayuu* people by officials of the Colombian National Civil Registry. Despite monolingualism, linguistic diversity has

insinuated itself into the legal field through indigenous concepts that have crept into the language of criminal courts, and because of the myriad indigenous normative systems that run parallel to the official/state law. The rise of the *Indigenismo* in the 1930s and the subsequent shift from assimilation to ethno-development in the 1970s contributed significantly to advancing the knowledge of indigenous languages and planting the seed for bilingual education among indigenous communities.

The 1991 Constitution marked a formal turn from a monocultural and monolingual nation to one that embraces its ethnic and cultural diversity, giving native languages co-official status in the territories of their respective ethnic groups. The Colombian multicultural shift stands in sharp contrast against the case of Turkey, which, in the last decades, has experienced a setback in its multilinguistic tradition to push instead for cultural and linguistic uniformity and discrimination against Kurdish voices. By contrast, Colombian legislation has gone beyond the territorial factor set by the 1991 Constitution by enabling native-language speakers to communicate in their own languages with state authorities, not only within ethnic territories but nationwide.

The current legal framework formally opens the door for indigenous languages to become fully official in the administrative, legislative, and judicial spheres. Bringing linguistic diversity into Colombian legal languages, however, is particularly challenging in a country that has more than 65 native languages, some of which are lacking an alphabetic writing system, which complicates cultural translation in a legal culture dominated by writing. This difficulty paves the way for strategic uses of the legal framework on linguistic diversity, as exemplified by the lawsuits filed by the congresspeople of the right-wing Democratic Center (CD) party and the *Embera-dóbida* communities from Bojayá. It is apparent that both actors availed themselves of the lack of full compliance with the constitutional standard on linguistic diversity to make respective cases against the 2016 peace agreement, and against the results of the plebiscite that rejected it. Even so, there is a significant difference between both claims: while the former comes from a party that represents privileged strata of white and Spanish-speaking Colombian society, the latter comes from indigenous peoples who have borne the brunt of the armed conflict and linguistic discrimination.

Although efforts have been made to redress linguistic discrimination in the legal field, the main stumbling block in doing so is that ethnolinguistic

policies have been built upon the idea that “authorities must ensure that native languages do not become an obstacle for ethnic minorities”.⁶² Why not the other way around? To live up to the commitment of linguistic diversity, Spanish-speaking Colombians must overcome the cultural barriers that keep them apart from indigenous languages. The state law might take a step in that direction by creating strong incentives for officials to learn native languages, which, so far, has not been done. Moreover, bringing linguistic diversity into the language of the law is not just a matter of translating statutes, policies, and decisions produced by Spanish-speaking lawmakers and officials into indigenous linguistic codes. It requires the participation of indigenous people, with all their epistemic and normative diversity, in the everyday operations of the state legal sphere. It is a matter of cognitive justice and real intercultural dialogue, yet, if mere translation seems overwhelming, cognitive justice and intercultural dialogue pose a challenge that requires not just legal but cultural change.

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62 A common underlying premise that the Constitutional Court made explicit in Decision T-760 of 2012.

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