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2017

Manuel Quintín Lame: Legal Thought as Minor Jurisprudence

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Recommended Citation

Lemaitre, Julieta, Manuel Quintín Lame: Legal Thought as Minor Jurisprudence, *Law Text Culture*, 21, 2017, 76-99.

Available at: <http://ro.uow.edu.au/ltc/vol21/iss1/5>

Manuel Quintín Lame: Legal Thought as Minor Jurisprudence

Abstract

Manuel Quintín Lame (1880-1967) was an indigenous peasant leader in southern Colombia who wrote profusely about law and justice, mostly petitions to authorities, but also open letters about land rights for his followers and sympathizers. He demanded collective land rights for the remaining indigenous peoples, based on a creative interpretation of existing statutory law, on a strategic use of neo-scholastic jurisprudence and on his own reported visions and hallucinations. Lame's lawyering de-territorialized legal expertise by claiming to be both indigenous and a lawyer, performing that authority in tandem with appeals to poetry and emotion. In his alternative vision, the social contract is not a pact among equals, but instead a fragile armistice between an invading army and a vanquished people, justified in their disobedience by the very theory he challenges. Can Lame's writings be read today as jurisprudence, in the intriguing mode of a minor jurisprudence? Perhaps: he is certainly speaking from a minor location, from a situated, historical subordinate position that uses the dominant language of law, its ideas and canon, not to represent or speak-for a group, but instead to destabilize the complacency of the majority, and suggest alternatives.

Manuel Quintín Lame: Legal Thought as Minor Jurisprudence

Julieta Lemaitre*

I ask all cabildos to come, that none remain behind, that they show great enthusiasm demonstrating truly, and clearly, that we are ready. Our readiness will be the finest chisel to escape our prisons of stone and, emerging, shout, Long live our Rights!¹

Manuel Quintín Lame, January 11, 1915

Manuel Quintín Lame, an indigenous leader in southern Colombia, lived during the first half of the 20th century (approximately 1880 to 1967). A self-taught peasant, he wrote profusely about law and justice, mostly petitions to authorities, but also letters for his followers and sympathizers. His demands focused on land rights for the remaining indigenous peoples in Colombia, based on a creative interpretation of statutory law, on a strategic use of neo-scholastic jurisprudence and on his own reported visions and hallucinations. Most of Lame's letters preserved in Colombia's national archives were written to local and national authorities: presidents, secretaries of the cabinet, courts. There are also a few letters for other indigenous leaders, the general public, his family, and his friends, as well as a small collection of declarations and newspaper articles. In 1971 a small socialist press published Lame's biography, handwritten in 1939 for his followers, a publication that gained a cult following and has since been twice reprinted, once by a university press (*Universidad del Cauca*). Famously, Lame signed

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his letters and declarations with a florid image that included a drawing or symbol of his own invention, evoking colonial signatures.² Today Lame's signature, as well as his face in a 1914 photo, is a symbol of the contemporary indigenous movement, and his writings, signature, and image have become popular icons of resistance to unjust rule.³

Lame is frequently read as the inheritor of a tradition of indigenous intellectuals who found in colonial law an arena for cultural contestation under Spanish rule.⁴ Historians have provided detailed descriptions of these indigenous legal activists, highlighting individual agency and interethnic alliances.⁵ While the literature concentrates on the colonial period, there is evidence that indigenous legal activism persisted in the post-independence period, when leaders like Lame found in republican laws and discourses of citizenship new arenas for contestation.⁶ However, this growing literature generally fails to engage law as such, emphasizing context and ignoring the substance of activists' legal strategies, as well as the theoretical underpinnings of their arguments. In other words, this literature fails to take indigenous legal activists seriously as lawyers and as legal theorists, focusing instead on their role in collective action.⁷

But, what kind of legal theory can be written by indigenous legal activists, and can the study of jurisprudence take them seriously as such? This essay suggests they can, in the genre of minor jurisprudence (Minnikinen 1994; Goodrich 1996; Tomlins 2015). Minor jurisprudence, like Deleuze's minor literature, is the jurisprudence of a minority, of the situated, historical subordinate position that uses the dominant language of law, its ideas and canon, as it were, not to represent or speak-for a group, but instead to destabilize the complacency of the majority, and suggest alternatives. It is located in a place in history – the Jewish ghetto of pre-war Prague, the *terrajero* indentured servitude of the Cauca Andes – and from this experience, minor jurisprudence writes a marginal and subversive account of the formalisms, fictions and justifications of established law.

Lame is a prime example of minor jurisprudence, and has much to teach about the genre. Reading Lame as a legal theorist requires

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an initial effort. His writings, although profuse, are also fragmented, scattered in letters and newspaper articles, and interrupted by lapses into poetry and mystic visions, as well as extended paraphrases of well-known legal authorities, changing words to suit his needs. This form of writing has a disturbing and alluring effect, de-territorializing legal expertise by both claiming the authority to speak as a lawyer, and performing that authority in tandem with appeals to poetry and emotion, and with odd forms of legal bricolage and innovative interpretations.

A focused reading finds an inquisitive mind at work challenging hegemonic discourse about law, thinking with and against liberal jurisprudence to undermine the fictions of universal citizenship. In Lame's alternative vision, the social contract is not a pact among equals, but instead a fragile armistice between an invading army and a vanquished people – the law, he writes, is the relationship between the strong and the weak, but this does not mean it is immune to justice. Injustice is known not only to white reason, but also to the trembling indigenous heart, justified in its disobedience by the very theory he challenges. Lame explains and appeals, cites statute and cajoles, inflaming generally peaceful resistance and mobilization among indigenous peasants, gaining a devoted following, and some attention from public officials and the national press.

While indigenous peoples appealed to law to make collective land claims across Latin America, Lame had an unusual success forcing elites to respond to his claims. Lame's correspondence with public officials, and the articles his contemporaries wrote about him, gives the impression that only appeals to law and rights could render indigenous presence intelligible, or at least audible, to the white and mestizo public for whom indigenous grief and dissolution and land loss seem to be inevitable as much as invisible, inaudible, meaningless. Lame seems to know this, and builds on a colonial tradition of indigenous legalism, re-links it to collective resistance, and lays the way for the contemporary indigenous movement's rebellious legalism. That innovative use of legal arguments merits his consideration as an author of minor jurisprudence.

1. De-territorializing Legal Expertise

Lame undermines the regime of caste and race that subordinates indigenous people to white rule, and does so by claiming and performing as an indigenous peasant an authority traditionally reserved for whites. Lame's authority is grounded on two claims: first, that he is 'chief of tribes', that is, the political representative of indigenous peoples in several regions (Nariño, Huila, Tolima, and Cauca). This builds on a tradition of political-military indigenous chieftains in the region (Larson 2006: 92-96); as a political leader, he addresses authorities not (only) as a supplicant, but also as the leader of a political collectivity, making references to the votes he can mobilize for local elections. While Colombian authorities claim he has no such power, Lame appeals to the State in a much more horizontal way than was usual in the colonial tradition or even in the republican regime where the submission and obedience of indigenous peoples is a frequent trope. Second, Lame claims to be a lawyer: he deliberately avoids using *mestizo* intermediaries (the *tinterillos*, who offer legal services to the poor) and acts as a lawyer on his own behalf and on behalf of others, backed by a law that did not require a formal title to practice law.⁸ Lame's assumption of authority as a lawyer bewilders local authorities, who apparently refused to accept him as either chief or lawyer. For instance, in one of his first letters to the national government dated May 1914, Lame says: '*No one answers me because they say an indian has no right to speak, much less to litigate, that this is unseen and unheard of*' (AGN, Gobierno 4: 107, ff. 0006-0007v).⁹ In his 1939 autobiography he would complain: '*An indian defending his rights is worse than a filthy thief*' (Lame 2004: 79). Local authorities described him as a scoundrel:

Some time ago an indian by the name of Manuel Quintín Lame, from San Isidro (three leagues away from Popayán) a free man, a perfectly idle scoundrel, son of a father who owns his own land and pays tribute to no man and to no community...has taken it upon himself to rescue cultivated lands from the white men's land theft, arguing these men cannot be recognized as the owners, because the time of the rescue has come (AGN. República, Gobierno, 4: 108, ff. 00310-00317).

Resistance to Lame is surely racist, but it also responds to Lame's inappropriate performances of authority, such as those enacted perhaps by a person who knows, but doesn't master, a culture. For instance, for a while in that period he would wear an outdated military uniform.¹⁰ His biographer, a descendant of the Cauca landowners, reports this odd behavior as a cause of ridicule; he also claims Lame was followed obediently by an indigenous woman who always visibly carried a copy of the Civil Code and other legal documents (Castrillón 1973: 73). Both descriptions are coherent with Lame's quest for authority through performances, such as using long hair in a time when it was an open rejection of civilized behavior. Newspapers and authorities repeatedly express frustration at this behavior, reporting his authoritative demeanor as subversive. Lame was indeed subverting a destiny of silence and political subordination, and his main instrument was his voice: an indigenous peasant, daring to speak in the language of law, usurping authority, a gesture perhaps shared by all minor jurisprudence.

2. An Indian Peasant Speaks in the Voice of the Law

Lame's failed strategies at enacting authority, such as wearing the military uniform, and being followed reverentially by women carrying documents or using long hair, underline the importance of legalism as the one effective strategy. It eventually allowed him to effectively speak with authority (as a lawyer) and forced governments to reply to his requests, keep copies of his letters, and respond. If it weren't for the law, Lame would have probably disappeared from collective memory, as did so many other leaders of the time who appealed to law through intermediaries. And it is, at least in part, thanks to the legal formalities that the prolific voice (and the iconic image) of Lame persisted through the indigenous twentieth century, and that the paragraphs that break off one by one in the archives left a mark in elite consciousness, undermining if not changing the hegemonic discourses about the legitimacy of law.

Indigenous use of law is not exclusive to Lame. The colonial regime even had special officials, proceedings, and spaces to hear

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the abundant indigenous claims against authorities and white and mestizo settlers. This practice of indigenous claim-making persisted after independence, and Lame uses many of its tropes.¹¹ Law is the language that makes Lame audible for a majoritarian culture that is usually deaf to indigenous claims, that imagines itself as a nation in which indigenous peoples were solidly located in the colonial past.¹² His success in being heard is exemplified by the newspaper coverage of his death. For instance, in 1967 *El Tiempo* – the major Colombian national newspaper – described his death as the passing away of ‘*The last voice of a race*’, and a quick review of the national press at the beginning of the century shows no indigenous voices different to Lame.

To be heard, however, Lame had to pay the price of ‘speaking in law’. Law did protect indigenous peoples, but it did so by consistently subjecting them to the superior authority of white and *mestizos*. An important example of this is the subject of the rights Lame defends: to make claims ‘in law’ Lame has to accept and legitimate the idea according to which there is a homogenous indigenous race which is the subject of special rights. By using the homogenizing terms of *indios*, Lame reproduces the cultural violence that denies the recognition of specific peoples, as well as stereotypical descriptions of *indios* as weak and ignorant. He also claims rights defined by the colonizers (private property for instance) excluding much of the indigenous experience of suffering, such as language loss or the humiliation of indigenous masculinity.

Lame manages to use this legal language, with its limitations, to mobilize the support of both indigenous followers and white and mestizo sympathizers. The language of rights invites the support of radical lawyers and journalists in the provincial capital, Popayán, where they defended Lame in the 1910s, printing and distributing some of his speeches and proclamations. *Opiniones*, a local journal, analyzed indigenous land loss in response to Lame:

This is the heart of the matter: is this conflict the result of a madman’s quest, as it so often said, of an idle scoundrel? Or are we facing an evil that affects the national organism, an ancestral illness that must be

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cured carefully but surely? Are Lame and his work the result of a cause that needs study and adequate response? (Opiniones, p.1-2 Popayán, 25 November, 1916).

Newspapers and authorities recognized Lame's legal arguments were effective among his indigenous followers. Even his more fierce detractors, the local elites who described him as the instigator of a race war, argued that his followers were deluded by his rights-claims. For example, Cauca governor Antonio Paredes' wrote to the national government on September 22th, 1916:

(Lame) has taken it upon himself to rescue for the indians lands unlawfully occupied by whites, who according to Lame, should no longer be treated as owners because the time has come to rescue the land, using whatever means, even if it is necessary to eliminate the whites that have kept and continue to dominate indians forcing them into the wildest lands, while the indians are the original owners of all these lands (AGN, Gobierno, 4:108, ff. 00310-00317).

Lame's legalism was clearly central to his effective leadership, and his constant mention of the law (and hence of the legitimacy of his claims) convened the benevolence of whites and mestizos.¹³ Even so, Lame did promote alternative interpretations of the statutory text he quoted, challenging hegemonic interpretations that curtailed indigenous rights; this challenge grounds a substantial contribution to a minor jurisprudence.

3. Counter-Hegemonic Interpretations of Statutory Text

Lame's legalism was not invariable, but rather ambivalent, turning to law while at the same breath giving up on it; denouncing its limitations, and also grounding any hope for justice in law.¹⁴ This ambivalence has a deterritorializing effect: he pays homage to the text of the law, its authority, but suggests interpretations that are contrary to the hegemonic understanding of the text, and that strategy reveals and challenges the powers behind the apparently neutral text of the law. Lame's denouncing law is explained by the abundant time in jail, in detention and under torture, and being a witness to the persistence

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of illegal forms of indentured servitude and land theft with the complicity of local authorities. But his autobiography, as well as the massive amount of documents in the archives, reveals Lame's persistent conviction that speaking through the law is better than the alternative, which is to remain unheard.

Lame consistently subverts established interpretations, appealing to neo-scholastic natural law, or to obscure and little-used rules to understand the text in ways that protect indigenous interests. Those interpretations frustrated local authorities who fiercely denied it was possible to read the law in this way, but a careful reading reveals consistency, and interpretations that would not be alien to a contemporary sense of justice. I will give an example, Lame's reading of Law 89 of 1890. Today, Law 89 is revered as protecting indigenous rights, but to read it as such in 1915 is complicated, for Law 89 was one of several laws that ordered *resguardo* dissolution.¹⁵

Resguardo were a form of indigenous land rights granted by the Spanish crown, and like other colonial land titles, technically it included only the right to exploit and enjoy the land, but not domain proper, which was defined as the Crown's prerogative. After independence, property rights originated in colonial deeds were redefined as individual private property, with full rights of domain. Regarding *resguardo* property, which was granted by the Crown to a collectivity and not to individuals, or even to a sum of individuals, the republican proposal was to dissolve them into individual titles. For all intents and purposes, this implied the end of self-government and the inclusion of indigenous lands into the market.

During the nineteenth century the Colombian governments dissolved most of existing *resguardos* in most of the country, and in Colombia as elsewhere in Latin America, the late nineteenth and early twentieth century was a period of massive land loss and forced assimilation for the remaining indigenous peoples. The exception remained the southern Andes, including Cauca, where there was a strong indigenous presence. After independence, indigenous peoples adapted to republican politics, formulating claims as citizens that would

guarantee the preservation of their collective land rights. Furthermore, indigenous leaders enlisted white and mestizo political support in exchange for votes, and many indigenous communities kept their *resguardos* as a result.¹⁶

The overt intent of the framers of Law 89 of 1890 was to continue with the task of *resguardo* dissolution, providing a transitional legal frame protective of indigenous peoples. It temporarily exempted from dissolution the *resguardos* of indigenous peoples who had not been ‘reduced to civilization’, and established a special procedure for dissolution of the *resguardos* of the ‘civilized’. The procedure required the municipal authority to apply a census known as a *padrón*, and grant individual titles following this census. The land that was not under indigenous possession would then be auctioned off to the highest bidder. However, without a census, there could be no individual titling; without an auction, settler titles were invalid.

Lame’s argument was that, pursuant Law 89, colonial titles were still valid, given that most land lost by indigenous people had not been assigned following the procedure (AHJMA, República, f.10). Lame’s first letters describe him looking for the colonial deeds to a *resguardo* in the Popayan (Cauca’s capital) archive when he is arrested. In a 1914 letter to the Supreme Court of Justice, written from jail, Lame complained local authorities arrested him just when he had finally found a copy of the deed. According to his letter:

The reason for these gentlemen’s war and persecution against me is that they stole the deeds to our land, burnt some and hid others, in order to steal the land. And I, intending to defend my rights and the rights of my associates, guided by honesty and truth, came to this capital to seek the copies of the deeds I knew were in the colonial archives. As soon as I found them I sent a telegram to the cabildos of all that region, Pueblo Nuevo, Caldosó, Quichayos, Pitayó, Yabaló, Tacueyó, Toribío, San Francisco. Now these gentlemen have had me arrested to close off the way I had already found to defend our rights, and this is the honest truth. They found out, and they raced to arrest Lame, and bring me to this penitentiary (AHJMA, República, 3:1).

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In spite of Lame's conviction that colonial titles were valid, the legal standing of colonial titles was problematic. What about land not under the possession of indigenous people but included in a colonial land title? This included large stretches of Colombia that had been populated by whites and mestizos for decades, sometimes for more than a century. If the colonial titles were still valid, it might question white and mestizo titles, not just settlers but even established haciendas. Furthermore, Lame's interpretation created an enormous burden of proof for indigenous peoples, beyond the production of the original colonial deeds for the title. Technically the protection extended by Law 89 did not apply to lands lost before 1890, even lands lost to violent land theft. Lame's argument required that indigenous people that had been materially dispossessed of their land prove first, that dispossession had happened after 1890, and second, that before dispossession they had had 'continuous and peaceful possession' of the land within the boundaries of the colonial title.

The last problem was even more daunting. In order to defend the *resguardos*, Lame also argued that collective property was private property, and should enjoy the same legal protections, such as the nullity of the title obtained through violence, as well as the obligation of the state to protect it. In a proclamation published in a local daily *El Cauca Liberal* on June 2nd, 1916, Lame outlined his argument: '*Whites know better than we do our right to the land does not expire when land is lost through the use of force*'. He extended this argument to the Conquest itself, as described in another article he wrote for a national daily, *El Espectador*, January 23, 1922:

If the law cannot force a community of civilized men to divide their common land, why then can it force us to divide our common land, against our will? Is it for public utility? The law says that public utility requires indemnization previous to expropriation...and our common property is as much private property as yours.

This private property argument has major flaws: *resguardo* rights were not property rights. Law 89 of 1890 doesn't actually say that indigenous people have property rights (dominion), but instead defines

them as having solely the right to enjoy the benefits from their use (as in colonial usufruct or right to use). Resguardo dissolution laws were based on the argument that only individualized private property allowed for modern land markets, and that the State needed to eliminate collective land claims that could not be individualized, including not only indigenous titles but also the property of the Catholic Church. In this sense, in the context of the time, the definition of private property was that of property that could be individualized.

However, Lame's interpretation wasn't impossible, and it represented a grounded challenge to the hegemonic forms of understanding the law. The existence of Law 89 could suggest that since resguardos were destined to be private property, they should be protected as such. It could further be argued through analogy that the protections granted by the existing law, the Civil Code, to private property, should be extended to the resguardos. The same Code allowed analogical interpretation,¹⁷ and Article 38 of Law 89 had rules that allowed the protection of indigenous usufruct of resguardo land *as if* they had individual private property.¹⁸

The existence of counter-hegemonic interpretations points to the fact that applicable law included many valid rules plagued by contradictions, gaps and ambiguities. Notably, there was a tension between the way of transmitting and creating rural property rights in the Civil Code (which especially valued uninterrupted and peaceful possession as evidence of property) and in Law 110 of 1912 (known as the Fiscal Code), according to which national lands couldn't be acquired through pacific possession, but only through a special request for entitlement.¹⁹ Thus, the Fiscal Code allowed individuals who didn't physically possess the land to claim property through these requests, while the Civil Code favored uninterrupted and peaceful possession. In practice, this contradictory regime favored the strong, including the 'rural entrepreneurs' (LeGrand 1988) who specialized in gaining land ownership though requests for entitlement followed by violent expulsion of the tenants.

Even so, a judges' discretionary interpretation could have followed

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Lame's lead. The judge could welcome Lame's interpretation that *resguardos* were outside the scope of the Fiscal Code and the national lands regime, and instead governed only by Law 89 of 1890 in a way analogous to a private property regime. The judge could also accept the evidence provided by witnesses, given the likely absence of a colonial title, and recognize *resguardo* land, demanding the formalities for dissolution required by Law 89 and declaring all other presence in *resguardos* to be in violation of the law, regardless of whether they were legal sales, requests for entitlement of national lands, or *de facto* possessions.²⁰

The principle guiding Lame's counter-hegemonic interpretations of statutory law was the protection of indigenous peoples' land. It was a clear principle, and one that was grounded in yet another, and more forceful, challenge to established common sense: that there was no such thing as universal citizenship, but there was a universal sense of justice. The universal sense of justice he grounded on neo-scholastic natural law theories, adapted to the indigenous experience. The challenge to universal citizenship appears in his alternative to the social contract: a pact to end a war between the strong and the weak. In Lame the republic is not grounded on an agreement among free men, but on an armistice between the victors, the white people and culture, and the vanquished, indigenous people – and the center of this armistice was the protection of indigenous land.

4. Indigenous Knowledge of Natural Law and Justice

Lame's concept of justice trusts indigenous suffering as the measure of justice. His jurisprudence was based on this knowledge, and its consequence: unjust law could be disobeyed. This disobedience was commonplace in Catholic natural law theories, by which man was not bound to obey laws that went against his knowledge of justice. However, by the early twentieth century, triumphant liberalism favored formalism as a form of interpretation, and positivism as a theory of law, a transformation resisted by Lame in his appeal to a universal knowledge of justice more important than the letter of the law. In a

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letter January 14, 1936, and addressed to the Secretary of Government he said:

Señor Secretary: How can you accept as valid the actions of an incompetent power? How can you demand obedience for that which is unjust, absurd, iniquitous? The indian heart protests, and decides to rebel against such an apotheosis of tyranny...

Lame writes from scholastic natural law theory, not just in substance but also in form. The phrases, as many others reproduced below, are almost literally the same as those of Jaime Balmes, a well-known Spanish neoscholastic jurist whose writings were mandatory reading in the study of natural law in nineteenth century law schools. Balmes, extensively quoted by Colombian legal writers (and this particular section by Concha 1929: 158), expresses very similar ideas and sentences, in identical sections.

Lame's jurisprudence is written between the lines, appropriating Balmes' text, changing some sections to include his own vision. In this particular phrase he says it is the indigenous heart that rebels against tyranny – but for Balmes, it is natural reason that protests against 'declaring mandatory that which is unjust, absurd, iniquitous' – but so do religion (Catholicism) and the heart. In Lame, instead, protest comes solely from the indigenous heart, displaying his reading of Balmes, or perhaps of Concha citing Balmes, as well as a prodigious memory.

Lame repeats tirelessly that justice is on his side, and that the power exerted by landowners and local government is against the law. He describes them as powerful usurpers, violating both law and justice – law and justice are the same, as he says in *'Indigenous light in Colombia'*, published May 1st, 1916:

The social order of law is the reign of justice in all its manifestations, justice gives each his rights, and in case of a violation, any individual or citizen can force even the highest placed officials (AGN. República, Gobierno, 4: t.107 ff.42-96).

Increasingly Lame faced laws he could hardly interpret as the 'reign of justice', particularly law 104 of 1919, promoted by Cauca

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congressmen, a law that harshly sanctioned opponents of resguardo dissolution. It was then that Lame began to invoke disobedience; the disobedience he invoked remained within the western tradition that links law, justice, and reason. In an article also published in *El Espectador* on January 17, 1922, and titled '*In defense of mi wretched race*', Lame further spoke of justice. He had already been sentenced to three years in prison and to the loss of his political rights for rebellion. Even so he was again organizing indigenous people, making demands in Bogotá. In this article, Lame described Law 104 as unjust, because it demanded indigenous peoples give up their property, sparing landowners who owned vast stretches of unused land. This injustice, he claimed, was evident:

Gentlemen! There is more. Universal consent of all peoples shows that in all nations some actions are held as good and others as bad, that in all nations justice is distinct from injustice, good actions are rewarded and evil punished. Not just among civilized peoples, but among savages as well; not just among Christians, but among pagans as well: in all latitudes, all climates, all lands and all stages of civilizations murder is held as, and punished as, a crime.

Again, in 1927, in a proclamation in Lame's distinctive style, but signed under the name of '*Fourteen thousand lamista women*', Lame again paraphrases Balmes and with more vehemence:

The people must obey the laws, but the legislators must obey justice. And when injustice is evident, when the legislator rules in contradiction with natural and divine law, he forfeits the right to be obeyed.

The turn to disobedience in Lame's jurisprudence occurs at a time in which formalism and positivism were entrenched as the implicit theories of the hegemonic law (López 2004: 245), renouncing natural law. Natural law had certainly been the common sense of colonial law, (with its recognition of a *derecho de gentes* of divine origin), as well as of the law taught in colonial law schools, and persisted during the nineteenth century through Catholic neo-scholastics. However, with the influx of codifications at the end of the nineteenth century, formalism and positivism prevailed. Lame was thus referring to a theory

that had more cultural than legal purchase. By doing so he destabilized contemporary legal thinking, another mark of a minor jurisprudence.²¹

5. Law as the Relation between the Strong and the Weak

Lame's call to disobedience of unjust laws is neo-scholastic, but his justification is *sui generis*, at least as far as I have been able to establish. Like both the Spanish *pactismo* and Enlightenment contractualism, Lame refers to the consent of the governed as the basis of the government's legitimacy, reframing it not as the consent of free men who submit to government, but as the constrained consent given by a people subjected through violence, and conditioned to the preservation of minimal guarantees of survival.

In Lame's natural law theory, laws do spring from a form of contract, but not the social contract of enlightenment liberalism, or the fiduciary pact between rulers and subjects of the Catholic tradition. Instead, the contract is based on consent, to be sure, but a consent that is not freely given. In Lame the agreement is an armistice, not a contract, at least insofar as indigenous peoples are party to this agreement. There is no universal citizenship based on a social contract. Instead, there is an armistice: indigenous peoples as a collectivity agreed to end a war, a war of conquest, and the pact was an agreement between the conquerors and the conquered, creating different obligations for each, but never placing them on equal footing. This agreement under conditions of constraint is ultimately the ground of law, and its very essence: for Lame '*law is the relationship between the strong and the weak*' (*El Cauca Liberal*, June 2nd, 1916) a relationship that constrains the strong, but not completely.²²

Hence Lame's disobedience is not rebellion against a ruler who has vowed to govern according to the common good, as in Spanish-american *pactismo*. Neither is it rebellion against a Leviathan who is violating the most basic rights to life, freedom, and private property, as in the tradition of enlightened contractualism. It is rather the breach of an armistice by the victors in a war, a breach that potentially might lead the vanquished to a tragic rebellion, after losing all hope of

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survival. The substance of the armistice was that the victors, the whites for Lame, agreed to cease the most heinous forms of violence against the conquered, and to respect the limits of the land the vanquished were exiled to, as well as their self-government in those lands. The dissolution of *resguardos* reflects a decision to completely exterminate the vanquished races, in violation of the armistice that ended the war.

Lame's jurisprudence neglects the concept of the common good, and that of individual rights, as the core of law and justice. These concepts are replaced by collective property, the *resguardo* as the core of justice. In Lame's texts, he repeatedly appeals to the national state to defend indigenous people from the settlers, landowners (*hacendados*), and local authorities, but it's a call that subverts the republican rhetoric that posits indigenous people as citizens that have consented to government for the common good. He instead argues that the State is responsible for indigenous suffering not because indigenous people are subjects of the State, but because they are enemies that have surrendered and been subjugated.

The date October 12, 1492, symbolizes in Lame's writing the violence of the original dispossession, and the beginning of the current era. The constant mention of this date, along with the frequent reference to conquering violence, defines the nature of indigenous' relationship with the nation, and undermines the legality of white ownership of land. Lame relates the suffering of his indigenous forefathers to the suffering of indigenous peoples faced with land loss:

Imagine the pain of our forefathers – an example of the pain we feel today – forced to abandon our streams and our plains, the location of our homes, to take the woeful road of exile to a land where we thought the ambition of the grandsons of the conquerors would never reach. But we were wrong, and they have reached us, stealing all we had, taking us for slaves and treating us like beasts of burden, this is the weight upon us to the day (El Cauca Liberal, "Manuel Quintín Lame," June 2, 1916).

In compensation for this violence, he asks for the recognition of *resguardo* land titles, following the agreement laid out in the original

armistice:

Gentlemen: What better medicine to cure the ancient wound of our race, dead in four fifths of its original glory in this land we call Colombia, stolen its lands and mines almost in their entirety? The small resguardos given to us by the colonial regime have been a real guarantee of property, protected and respected by the laws of Castille as well as by the law of the Liberator President on May 20 of 1840 (El Cauca Liberal, 'Manuel Quintín Lame', June 2, 1916).

This description of indigenous' suffering and of the justice of resguardo titles subverts the Colombian legal system. Between Lame's lines emerges an indigenous subject that is conscious of the fact that he hasn't freely consented to government, that there is no such thing as an indigenous citizen. On the contrary, he is a subject created by conquering violence, submitting in exchange for resguardos and autonomous government. Lame's submission to the law does not forget his submission is product of violence, and of an implicit pact in which, on the one hand, indigenous peoples accept the presence and dominion of white people, and, on the other hand, white people respect indigenous limited self-government and resguardos. It is a submission that does not preclude an appeal to justice, demanding the government honor the terms of the armistice.²³

Today the nature of indigenous land rights remains a contested issue. Indigenous peoples sometimes claim a law that precedes the State, which they describe as Older Law (*Derecho mayor*) or the Law of Origin (*Ley de origen*). Older Law and Law of Origin both lead to the same conclusion as Lame: indigenous identity and survival is literally rooted in the ancestral territory that materializes a culture of their own. For contemporary movements, this culture evokes a mystical connection to land as a living territory, and to nature as Mother Earth, the *Pachamama*. However, to identify Lame's jurisprudence with Older Law or Law of Origin one would have to find evidence of a conceptual link between collective land property and spiritual connection between a people and the land, between a people and nature. Lame does not create this link. Instead, disobedience to unjust laws in Lame's writings

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is based on the sanctity of *resguardos* as a legal institution.

Unlike the secret and mystical knowledge of justice offered by the indigenous connection with the Pachamama, Lame describes the knowledge of the injustice as felt by indigenous hearts, rooted in suffering, and only secondarily evident to reason. This would suggest that his concept of justice is not evocative of Older Law or Law of Origin, but rather it articulates an indigenous version of natural law, where knowledge of justice comes through the experience of suffering, articulating this suffering in poetic language that performs in form as well as in content the challenge to hegemonic conceptions and practices of law.

Thus a lawyer's reading of Lame's minor jurisprudence, I suggest, reveals a richness that escapes the ethno-historical lens. It shows how law, not just colonial law but republican law as well, is open for contestation through counter-hegemonic interpretations of statutory text, and through readings of justice that undermine rule through positive law. It also shows how the specific fictions of equality before the law –in Lame's time embodied in the possibility of being a lawyer without title – can and are used in their different incarnations by historical subordinates to challenge unjust rule and expand the political imagination. Lame's appeals to justice, and the intimate grounding of the appeal in the experience of loss, sorrow and suffering, are shared by other forms of minor jurisprudence, written by rebels and outsiders, disruptive of the legitimacy of established powers, claiming a privileged knowledge of justice based on experience. For all of Lame's bravado however, his is also a tragic jurisprudence, rooted in loss and sorrow, destitute and yet still appealing to law and justice, still shouting without irony: *long live our rights*.

6. Conclusions

Lame's '*Long live our rights!*' must be heard in its own terms: as a singular interpretation of existing laws, against the grain of the hegemonic interpretation, in an attempt to stop, through the law, dissolution of *resguardos*, appealing to justice. His appeals to justice

seem to create doubt, or at least anxiety, among elites forced to respond to his claims. He destabilized social contract assumptions that justify republican government as well as formalistic forms of interpretation and positivist assumptions about the nature of law. This permanent undermining of liberal assumptions produces a feeling of uneasiness in the reader that anthropologist Mónica Espinosa describes well. She says that Lame's writings '*lead to that disturbing place where civilization as violence transforms into a set of fragmented images of suffering reinscribed by the improper and inappropriate voice*' (Espinosa 2009:94).

However, it is not only about a re-inscription of the narrative of suffering in the civilizing trope, it is also about a re-inscription of the definition of law in the context of violence and colonization. It is a re-inscription of law as part of the civilizing process, demanding the law that was meant to assimilate indigenous peoples instead respond with compassion, generosity, and justice to their suffering. The belief that law can do this is grounded in the belief that law, even if it is the relationship between the strong and the weak, favoring the strong, still appeals to justice. This re-inscription failed during Lame's lifetime, and he died alone, mocked by the village children, and was buried by the side of the road by a few loyal supporters who could not afford to bury him in a cemetery. For a while his tombstone, an improvised wooden cross, read: *Here lies Manuel Quintín Lame, the man who never bowed to injustice.*

Endnotes

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1. All translations from the Spanish originals are my own.
 2. The source of Lame's knowledge of law remains a mystery. His biographer suggests he did so in the army during the 1902 Civil War, when he served under General Carlos Albán (1973:72.) There is also the possibility that he was tutored by his liberal lawyer friends some years later (1973:72). The radical newspaper *El Cauca Liberal*, directed by Laurentino Quintana, published several texts signed by Lame until the time when he was arrested.
 3. Joanne Rappaport has written extensively about Lame's importance for the contemporary indigenous movement. See (Rappaport 1994, 2004 and 1998/2000.)
 4. For recent review essays on this extensive literature see Yannakakis (2013, 2015).
 5. See for example Dueñas (2010) and Yannakakis and Ramos (2014).
 6. See Larson (2004).
 7. This lack of attention is due perhaps because indigenous peoples were legally minors and required representation during the colonial period. But they did have a very active role as legal intermediaries and intellectuals. See footnote 5.
 8. 'The real lawyer is the study of law' he says in his autobiography. (Lame 2004:155).
 9. This essay adopts an abbreviated form of archival citation: AGN is Archivo General de la Nación (National Archives); Gobierno 4:107 locates the archival fund, section and tome, and the f. refers to page numeration. AHJMA refers to Archivo Histórico José María Arboleda in Popayán.
 10. According to Diego Castrillón the uniform was a gift from a Minister of War and was taken from Lame in his 1914 detention (Castrillón 1973: 105, 113).
 11. See for example the 'cuadernos de solicitudes de indígenas' received by the Cauca Governor between 1905 and 1910. AHJMA Gobernación, Cuaderno Solicitudes de Indígenas 323, Legajo 38, Documentos 1904.

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12. This is not just a matter of deafness: ‘there is certainly the possibility that they really did not speak; that they were rendered mute by surprise, mute by terror, mute by grief’. Lemaitre (2009:285.)
13. It is hard to assess whether legalism was just a strategy or whether it was also a form of consciousness. Other contemporary indigenous leaders, such as José Gonzalo Sánchez and Eutiquio Timoté, did not emphasize law as Lame did. They were murdered, while Lame died of old age.
14. In (Lemaitre 2009) I analyze this ambivalence in contemporary social movement leaders, and call it legal fetishism.
15. On the transformations of the property regime in the nineteenth century, see Palacios (2011).
16. In 1859 indigenous leaders managed to get the then sovereign state of Cauca (Colombia was a federal republic until 1886) to adopt Law 50, which postponed resguardo dissolution; Law 89 of 1890 was modeled in part after Cauca’s Law 50. See Sanders (2010) for a description. More generally see Larson (2004) for indigenous assimilation and resistance in the new republics.
17. Authorized by article 8 of Law 153 of 1887. But as López (2004) has shown there was little use of analogy in legal interpretation.
18. The concept of private property then was the absolute right of the Civil Code without the limitations of the social reforms of the 1930s. For the implications of this regime see Palacios (2011). LeGrand (1988) also describes the practical importance of Law 57 of 1905 that allowed for the expulsion of any squatter from private property without the possibility of judicial redress.
19. Baldíos, translated here as national lands, are lands that belong to the Colombian State but can become private property if citizens claim them. Not all State-owned lands are baldíos. This was an important figure for the Colombian’s state sponsoring of colonization throughout the twentieth century, as various legal reforms fostered the expansion of the agricultural frontier by allocating baldío land titles.
20. Witnesses could provide evidence of borders both in the Civil Code and in Law 89.
21. Lame’s reference to neo-scholastic jurisprudence are abundant, and signaled both by Theodosiadis (2000) and Romero (2004).

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22. Plato's Republic has of course a reference to law as being merely the power of the strong, to which Socrates replies defending the relationship between law and justice. In this reference, Lame might have been appropriating this well known reference for his own ends- certainly he did not have a classical education, but his radical friends at El Cauca Liberal did. Lame's theory however is closer to the law as described by E.P. Thompson in *Whigs and Hunters; the Origin of the Black Act*, benefiting the strong but also constraining their power
23. This pact could be read as an answer to the *requerimientos*, by which the Crown formally demanded submission from new indigenous peoples, and in exchange for submission and taxes, allowed them a measure of self-government. Lame does not mention the *Requerimientos*, but culturally they are important for the meanings of law for indigenous peoples. See (Lemaitre 2009).

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