

**Legal Fetishism
Law, Violence, and Social Movements in Colombia**

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In the 2002 SELA, someone, I think a Chilean, accused Esteban Restrepo, and probably Colombian constitutionalists as a group, of magical legalism. Considering the persistence of social violence, internal conflict, rapid deterioration of social indicators, and a history of seriously restricted democracy, he said, our constant celebration of the 1991 Constitution was, at best, odd, and at worse, deluded. Ever since that night, I have been wondering about the appeal of our constitutional law, with all its progressive magic.

In a way, my presentation today is a response to that accusation. The basic question I'll attempt to answer is: why do so many intelligent, experienced people hold on to law reform with such passion, even in the face of all we know about its limited emancipatory powers? In attempting to answer it, I'm especially interested in progressive investment in the 1991 Colombian Constitution. The answer I've come up with is a theory of legal fetishism, of desiring and enjoying law not as a means to an end but rather, as an end in itself, a theory that both shows how this emotional investment is problematic, and also how it makes emotional and political sense as a response to violence and injustice.

One might think initially that magical legalism is a kinder way of thinking about this problem. It refers back to a way of being in the world where the real is at the same time marvelous, and a particular elite way of understanding Latin America with that characteristic double consciousness by which, on the one hand, we feel affiliated with the cosmopolitan center, and on

the other hand, feel rooted in the barbaric periphery. In this sense magical legalism, seeing the odd world we grew up in as marvelous, mediates our doubleness by celebrating the part of us that does not totally belong in the centers of the world. It is the antidote to our also typical Bovarism, the provincial middle class' longing for the sophisticated capital. It is no wonder then the great novels of the boom were written in exile, immersed in nostalgia and *saudade*.

That is not the case when it comes to Colombian Constitutionalism. We are home. We watch the news. We walk through the news. We don't need to be reminded of the many senseless ways we are still trapped in a Cold War loop. We try to live with it as best we can in this low grade war that is our lot, a war where universities still convene classes, and we pay taxes, and where the actual war seems to remain, panting, in the margins of our lives. We don't celebrate reality as wonderful, but we do celebrate judicial decisions, and Constitutional Amendments and law reforms. And did you know the Court has just declared that it is unconstitutional for the law to discriminate between same sex and different sex couples¹? So that in fact civil unions must be granted to both? And that Daniel Bonilla was the lawyer in that case? That is what we celebrate. That and the long list of progressive decisions you have of course heard us reciting. Not its impact; not its execution.

Legal fetishism

So to call us magical legalists is in a sense, off the mark. I've been thinking rather of that related accusation, of legal fetishism, wondering if that was not rather the case. As I, and probably many of you, know it, it's an old Marxist accusation that still springs up in our public universities, at

¹ Corte Constitucional Sentencia C-075 de 2007.

least where Marxist-Leninism survived the purges.² It meant either a rather general indictment of law as “super-structural” and “ideological” and as such, as necessarily favoring the ruling class, or a more precise indictment of legal forms as “individualistic” and as such, as mystifications of actual power relations.³

But it’s an older term actually, and its first appearance is linked to 19th century anti-formalism, and it is used to describe an excessive attachment to the letter of the law in contradiction with logic, convenience, and justice. As far as I’ve been able to unearth it, it’s first used by Francois Francois Gény in his *Methodes*... where he refers to the devotees of exegesis as caught up in a semi-religious trance (“dominated, fascinated by the results of codification”⁴), and most famously, as practitioners of a fetishism of the law.⁵ And the term is still used in this way, to refer to the dominance of formalism as a mode of judicial interpretation.

In fact, the Marxist the anti-formalist uses of the term “legal fetishism” and its stand-ins (devotion to the law, faith in rights, etc.) are still common in contemporary discussions on the relationship between law and politics, and the gap between formal legality and its application. They also coexist with popular uses of the terms, which don’t really belong to either tradition, but instead refer generally to the belief that “law can change reality.” In this broader sense, legal

² See for example, in Colombia, papers presented in Camilo Castellanos et al El Debate a la Constitución ILSA and Universidad Nacional Bogota 2002 (Camilo Castellanos, “Introducción” pages 8 and Rodrigo Uprimny “Constitución de 1991, Estado Social y Derechos Humanos Promesas Incumplidas, Diagnósticos y Perspectivas” pg. 61)

³ Evgeny Bronislavovich Pashukanis The General Theory of Law and Marxism (1924) Transaction Publishers London 2002.

⁴ “I must first challenge that fetishism of legal and codified law that is the first and most distinctive characteristic of the traditional method.” Geny Metodo de Interpretacion y Fuentes en Derecho Privado Positivo Editorial Colmenares Granada (1899) 2000. p20

⁵ Geny p53 Gény’s tremendous influence in the expansion of a social school of legal thought probably is to blame for the popularization of the term fetishism to describe formalism. On his reception in Colombia Diego E. Lopez Medina Teoria Impura de Derecho La transformación de la cultura juridica latinoamericana Editorial Legis Bogota 2004 .

fetishism refers to blindness to the tension between enactment of law and its application, through a focus on the rituals of the law rather than on its efficacy, and I wonder if that was what was at the heart of the accusation of magical legalism.⁶

While there are then at least two very different origins for the critique of legal fetishism, its contemporary use remains also under the sign of a rising pragmatism, the increasingly dominant understanding that law is, to use a very old description of it, simply “a means to an end.” Or, as we get closer and closer to the U.S., at least Colombia does, that law must follow the Realist insight that law exists only insofar as it has actual effects- that law must, in Holmes’ famous description, be seen from the point of view of the “bad man:” will I get caught, and what will actually happen to me if I break the law. That in fact could make most of Colombian law, faced with its frequent lack of application or selective application, technically inexistent, or rather, a mere object of devotion, the unadulterated legal fetish.

One could then, in order to defend Colombian Constitutionalists from accusations of legal fetishism, or of magical legalism, attempt to articulate the actual, beneficial effects of law reform, in spite of the present situation. This requires of course at least some type of empirical studies, and the careful analysis of contexts that allows us to establish case-by-case causality between laws and judicial decisions and transformations in the actual circumstances of injustice.⁷

⁶ It is implicit for example in Mauricio García’s well known critique of the symbolic efficacy of law, whereby in Colombia governments have consistently used to their advantage the gap between the enactment of a progressive law and its actual application, in order to gain legitimacy without taking any other action beyond the adoption of the law. The implicit reason why this would work, or at least why it would work for social movements, would be legal fetishism. Garcia first developed this thesis in his 1993 book La Eficacia Simbolica del Derecho Ediciones Uniandes Bogota 1993.

⁷ García Villegas Mauricio y Rodrigo Uprimmy. “Corte Constitucional y Emancipación Social en Colombia”.en Boaventura de Sousa Santos y Mauricio García Villegas (eds) Emancipación Social y Violencia en Colombia Editorial Norma Bogota 2004.

It requires, if you will, a cost/benefit analysis of legal strategies in order to produce the necessary rebuttal, that there is a real aspect to our legalistic excitement about our Constitutional Court, and that without it, things would be much worse.

But this type of defense, the longing for data that will deny the accusations, that will show the actual benefits, ignores what to my mind is at the heart of legal fetishism, the emotional investment in progressive law reform: the pleasure it produces, independently of their application. Or, better yet, beyond their application. It's a passion that isn't linked to concrete results but to political and cultural meanings, as in the civil union case, where one may say that even in terms of cultural change the benefits aren't as dramatic as the joy leads us to believe.⁸

In defense of Fetishism

The problem I have posed is then: how to understand this passion for law reform that exceeds the calculus of utility? The key, for me, lies in the term itself: "legal fetishism" and I'd like to explain why, even though I think that as an accusation it is reductive of an actual phenomenon, I'd like to keep the term.

The first thing I like about the term is that calling a social phenomenon "fetishism" points to its third-world location, or its location in the periphery of the industrialized world. After all, the idea of the fetish is the view Europeans had of African gods, the false gods of false religions to be replaced by knowledge of the true, existing, white European god whose images for Catholics

⁸ One could say for example that civil unions were already being done through private contracts that replicated the same patrimonial effects of marriage. That it ignores gay people who are not in a couple or gay couples who don't have property. That it excludes other issues such as affiliation to mandatory health insurance as a couple, where the Court has said it's constitutional to exclude gay couples. That it has no impact on hate crimes.

were never fetishes, but icons, symbols, objects of deserved worship.⁹ So that the term “fetishism” maintains still that slight elitist tinge that is at the heart of judging other people’s passions as somehow less deserving, because less true, and at the same time, of obscuring that it is eventually one’s power –economic, and ultimately military- that makes one’s own fetishes “real”. What I want to do is to keep the term, but make it obvious that it has that element of elitism, to insist that its use signals at all times, that bottom line, our location in a world system. It reminds us that the difference between legal fetishism and let’s say, calling American Constitutionalism a civic religion, or calling French *laicite* the foundation of society, is ultimately a matter of economic, and military power, and not a cultural problem or defect.

The second thing I like, and which I find even more fascinating about the term, is it can condense different, even contradictory meanings, at the same time. So that the accusation of fetishism as legal formalism usually maintains the innuendo that there’s complicity with power structures, and that there’s an attachment to ritualism, and that there’s a local backwardness involved, without one meaning, even if it is the preferred meaning, canceling out any of the others. This capacity of term to absorb different meanings has led me to hope that it can be used to allow for positive as well as negative evaluations, even to the possibility of celebrating fetishism without losing a critical stance that acknowledges its shortcomings.

The third attribute that makes the term legal fetishism so attractive is that it has a double life in social theory, it exists both as a Marxist and as a psychoanalytic term, and I’m hoping this second life can help us reflect on the emotional life of legal activism. This “other” is of course

⁹ Según Baudrillard aparece por primera vez en Charles De Brosses en Du culte de dieux fetiches a finales del siglo XVIII.

the life Freud gave the term, and emotional life as the description of a sexual perversion, even as the model itself of all perversions. It's however a strange perversion, one where the pervert doesn't suffer, but rather enjoys, and is very resistant to being cured, so that the only reason he might want to be cured is when his fetishism poses a social problem. This characteristic, the enjoyment of the fetishist, has also led some theorists to celebrate the possibility of fetishism, at least when it used as an analogy for other social phenomenon.¹⁰ So I was wondering if I could use that, the second life of the term, to talk about the emotions inspired by law reform, and enjoyment it produces even when one knows, like fetishists know, one has the "wrong object of desire"¹¹

The emotional life of legal fetishism

The secret to understanding a fetish, at least in a Freudian key, is identifying its basic emotional structures. The first one is the fetishist's relation to reality, which is not to completely deny it, nor is it to fully accept it. It is rather a relationship of disavowal, best described in the phrase "I know...and yet..."¹² So that when told that the fetish is not "real", that it makes no sense to hold

¹⁰ See for example the following works and their take on lesbian sexuality: Teresa De Lauretis [The Practice of Love Lesbian Sexuality and Perverse Desire](#) Indiana University Press 1994. Emily Apter [Feminizing the Fetish Psychoanalysis and Narrative obsession in Turn of the Century France](#). Cornell University Press 1992. Judith Butler [Bodies that Matter On the Discursive Limits of Sex](#) Routledge 1993.

¹¹ If for fetishists the right object is the female body, for legal fetishists the right object is social reality, not the law.

¹² The formulation of knowing...and yet... is from Octave Mannoni in an article titled "Je sais bien, mais quand même" published in his [Clefs pour L'imaginaire](#), Seuil, Paris, 1969. In Freud the whole problem of fetishism is related to the presence or absence of an actual penis, but in Lacan the penis becomes "the Phallus" a symbol rather than the real thing. The Phallus is a symbol of nothing in particular just the function of a symbol, the first sign which introduced the possibility of symbolization and therefore of language. Rather than a missing penis, what the child is aware of, and the Phallus symbolizes, is emptiness at the center of existence that is relayed by the awareness of the Mother's desire for something the child can't give her and can't be for her. That unidentified and unidentifiable thing the Mother desires becomes the Phallus- a sign for that "other" thing that is not identifiable except as a lack or emptiness. Later in life fetishism arises as ways of denying that desire, and that emptiness, but not of denying it outright, but rather through ambiguity, through knowing and not knowing at the same time. Freud on perversions see 1923 "Infantile genital organization" and 1924 "Loss of reality in neurosis and in psychosis." Freud's texts on fetishism: Freud first explains fetishism in his *Three Essays on Sexuality*, and then in his paper on Leonardo Da Vinci and on the novel *Gradiva*. However it is in his 1927 essay where he fully explains the functioning of fetishism and of the disavowal (*Verleugnung*). Sigmund Freud "On Fetishism" in [The complete psychological works of](#)

such an intense attachment to an object, the fetishist knows this is so “and yet” he still wants it, still enjoys it. This description fits in pretty well with my reaction, and the reaction of activists and scholars I’ve interviewed about our attachment to law reform. We do know all the problems in the application of progressive law. And yet...

But it is the underlying structure of desire that actually explains the fetish, and in fact all desire, at least according to Lacan. The proposal is that desire is not fully explained by the object it desires, is explained by the lack the object is purported to fulfill, and the key to this lack is the meanings the object has for the fetishist, the prototype in a sense being the religious fetish which claims the presence of the absent gods. The key to desire is the absence it negates, the lack it wants to fill. If we accept this premise, then the obvious question for understanding legal fetishism is: what kind of fetish is the law, what is the absence it reveals and in consequence, which is the force driving our desire?

Surely the law is many things to men and women clamoring for its reform or its improvement. And its meanings change with time of course, and sometimes old meanings come back in new wine-jugs. The law reform I know best, and cherish, is circumscribed to a particular set of meanings about the human that can be loosely described as secular, liberal humanism. This is the idea that is imbued in our Constitutionalism and in the aspects of it that excite and inspire social movement activists.

Sigmund Freud, ed. J. Strachey, Volume XXI, 149-57. Hogarth Press, London p 149-157 Lacan is quite cryptic, but, on Freud and desire see, as (barely) readable: Jacques Lacan, The seminar of Jacques Lacan edited by Jacques Alain Miller Seminar XX. On feminine sexuality; the limits of love and knowledge / translated with notes by Bruce Fink New York Norton 1988. His most readable work is still the Ecrits. Jacques Lacan Ecrits Editions du Seuil Paris 1966. Slavoj Zizek, The Sublime Object of Ideology, Verso Press (Phronesis), London and New York, 1989.

In this sense then law reform, or the passion for it, is all about people claiming and expanding the status of the human- its sacredness, inviolability and above all equivalence, even if only before the law. This sacredness of the individual human is the kernel of modern-day liberalism in its many variants and persistent sentimentality- a kernel that remains and grows stronger even as the human status is bestowed on women, indigenous peoples, black, colonials, gays, children and perhaps soon even on certain types of mammals. As secularization deepens, and hard-core Marxism falls a casualty of history, this creed of the human becomes a modern-day religion, and the worship of the law is only part of a greater movement, that of political liberalism.

Like the sacred canopy of religion, the web of meanings that constitutes the creed of legalism is spun around an empty center, but this empty center is not the power of law, as it sometimes seems, but rather, the same center of liberalism, the idea of the sacredness of the human. The idea that every individual has intrinsic worth as human, in other words, that the human has value *qua* human, is naturalized, and even those who reject natural law often implicitly accept the ontological sacredness of the human. It becomes the ground for the patterning of social relations, the foundation of a secular morality, and the implicit rationality of law. It is perhaps Rousseau's (and Locke's?) optimistic imprint on democracy, and the legacy of monotheistic morality, undefeated.

The problem with the premise and the reason why it is easily revealed as having an empty center is that the value of the human is not ontological; there is nothing in a human that makes him naturally inviolable in the same way we are bipeds, or mammals, or use language and tools. In fact the overwhelming weight of history shows also that the intrinsic value of the human is an

artificial product of a political will and not the natural state of affairs. Perhaps there are few groups, insulated in their privilege, where the assumption of the sacredness of the human is reflected in their day to day lives, enough to make exceptions seem like aberrations. But to most of the world population, not the least in Colombia, everyday life contradicts the claim.

Violence surely provides a shortcut to this knowledge, that the sacredness of the human is an artificial construct; that there is nothing in humans that makes them sacred to each other. Or else how to explain the contorted face of a lynched man, a severed limb by the side of the road, the horrors that can be inflicted on a child, without consequence. Other types of violence too, more subtle, only named as violence because they deny human equivalence: the life of indentured workers, their endless misery, the half-life of poor women contained in their bodies, the public branding of gays. The knowledge of one's own lack of full humanity, acquired in on either end of a gun in the many wars that roam our land, in the timeless face-off between torturer and tortured, a corpse spread eagled by the side of the road dust on the whites of its eyes. It's a knowledge also acquired as a gay child in a school yard or a public bathroom, as a woman crossing a parking lot at night, or by witnessing the degradation of body, heart and mind affected by poverty, the blank stare of hungry children, people hunting cats for food in a city cemetery.

And if there is nothing intrinsically sacred in the human, then there is no moral meaning in social life, or rather, it is woven around an empty core. This knowledge is denied by law, and that is its allure, especially for the social justice activists that populate social movements. Law, reformed by social justice activists, claims that suffering and humiliation caused by others is an aberration; that law-less-ness is also ab-normal, "the normal" being what is established in the law (the

norm). And if horror is an exception, a deviation from the right and normal path, then the center of moral life is full again of meaning. And the real effects of degradation in the constitution of a half-human subjectivity in both victims and victimizers.

Fetish as a fantasy

If desire is awareness of a lack, it is then the lack of ontological human dignity that constitutes desire for law. It is awareness of that blankness in a human stare when suffering has washed away all that we consider human. Law stands in that empty space and purports to fill it by naming people victims, rights-holders, citizens. Even the trial of a monster renders him again human- claims are made that he was tortured as a child, that he acted as a warrior, that he is ill with insanity, that evil is at the end of the day not radical but banal, everyday, commensurable, ab-normal but not inhuman. It insists once more that we know, and define, and contain in our laws what the human is. This is the reason why law often produces so much pleasure, and is desired with so much passion by social justice activists even beyond its instrumental effects.

I have found this passion in people's life stories, and in the way they talk about the law they are proud of, or the law they desire, in the way they wave legislation in their speeches as if it were a flag, in the way they walk taller, and prouder when they are shrouded in the law. I have also found it in the resistance to talk about costs and benefits, about doing evaluations, about the possible lack of effect of a wonderful Constitutional decision. I have found it in the way people find dignity in the law even when it's absent from their lives.

In this sense then, when law reform is valued beyond what we call “reality”, the fetish is a fantasy. Perhaps that is also what was implied by the accusation of magical legalism. But it is a fantasy not simply in the sense of not fully acknowledging reality, and it requires a closer look at what we meant by fantasy. One can understand fantasy not as an alternative to reality, but also as the production of an alternative reality- after all we understand the world with concepts and webs of concepts that have no reference in reality except the meanings we adopt, that is, in so many ways what we call reality is socially constructed. Think for example of the meanings of marriage, love, democracy, nation, justice.

Calling legal activism a fantasy signals then that it has an uncertain hold on the facts, in the sense that it can make a claim to influence the social construction of reality.¹³ Often, at least when it comes to violence, there is no clear social meaning to it, it is “up for grabs” symbolically, and legal activism is then an effort at definition, and part of a struggle, and as such, political. It is the center of a politics that includes also the effort of producing social meanings, and making them acceptable, rendering the fantasy collective so that it loses the sense of unreality. But it is usually not, as it is understood in some types of cultural politics, simply the effort to change a group’s negative perception, or augment its status, but rather the effort to signify events that, because they are so violent, escape our present meaning-making systems.

Think for example of an act that is common in many Latin American cities, not just in Colombia.

Adolescents living in the streets scare neighbors and small businesses with petty crime and drug

¹³ On social movement politics as cultural politics see Arturo Escobar, Sonia Alvarez y Evelina Dagnino Política Cultural y Cultural Política: Una nueva mirada sobre los movimientos sociales latinoamericanos. Arturo Escobar, Sonia Alvarez y Evelina Dagnino editores. Instituto Colombiano de Antropología e Historia, Bogotá, y Editorial Taurus, Buenos Aires, Madrid y México. 2001. Originally edited in English by Routledge in 1998.

use, and are then killed in various ways by plainclothes policemen or other types of formal or informal security forces. What is that? In Colombia they call it social cleansing, a terrible name, and call the dead kids disposables, people who are not permanent, who should be discarded, thrown away, of little value.

Instead, the Inter-American Human Rights Court calls it murders of street children, a human rights violation, of the gravest sort.¹⁴ It calls those adolescent boys with their deep voices, their swagger their open sexuality and threatening ways, children, a description that surely surprises law abiding neighbors. But calling them children and calling their murders a violation of their rights *is* a fantasy, it is a description of reality that has an uncertain hold on the facts that is still competing with other descriptions to produce a web of meaning that will allow us to symbolize – and thus understand- the facts. This fantasy doesn't only aims at defining reality but it also intends to produce reality, to produce a series of consequences that will uphold the fantasy of a human rights violation, events such as press releases, fact finding missions, news coverage, legal briefs and judicial decisions, jail for the murders and reparations for the families of the victims.

Two examples of the meaning of law for social movements

This use of law, this attempt to use law to signify violence and injustice, is probably not the usual life of law. It is the life of law, I think, mostly for activists, for people who have hopes of social justice, and above all for those who search for it not through electoral democracy and not through organizing armies but rather through the ways and roads of social movement organizing. Groups then of women, students, gays, pacifists, environmentalists, workers, peasants,

¹⁴ Villagrán Morales y otros contra Guatemala (“Caso Niños de la Calle”) Noviembre 19 de 1999 Corte Interamericana de Derechos Humanos CIDH (Ser. C) No. 63 (1999).

indigenous peoples, racial and ethnic minorities, to name a few, who want to define social events, who need to do so, and where state institutions provide at least a limited space to do so.

And I have found in their legal activism that, beyond claims of instrumentality, lies an complex and ambivalent and passionate relationship to law reform, where it stands on the one hand as posing the eventual danger of cooptation and demobilization, the threat that law always sides with power holders, and on the other it glows, a holy grail. Law is pregnant for them not only with the possibility of actual, physical benefits, but also with the possibility of re-signifying their identities, recreating their lives and giving meanings to their suffering.

I'll give two examples of the law as fetish in these circumstances: the first is the actual Constitution and the meanings it had at the time for the student movement, and the second is the indigenous rights movement.

The 1989 student movement began that year in August, with a march.¹⁵ It was the march of silence, organized to protest the murder of Luis Carlos Galan, the Charismatic Liberal and Presidential candidate. The march was a march of silence, we wore black armbands and wove white handkerchiefs like soldiers who surrender or like spectators asking for a reprieve for the

¹⁵ This section is an abstract of a chapter in my dissertation. Julieta Lemaitre Legal Fetishism Law as an End in Itself SJD Dissertation Harvard Law School Cambridge 2007. Manuscript on file with author. Generally, beside the weekly SEMANA, personal interviews with some of the participants, the daily El Tiempo, and official documents published by the Presidency in this period I used the following sources for this section: Jorge Armando Orjuela and Victor Hugo Rodriguez Semilla en Tierra Seca la Constituyente de Sueño Juvenil a Negocio Politico Ediciones Jurídicas Gustavo Ibáñez, Bogotá 1993 John Dugas "The Origin, Impact, and Demise of the 1989-1990 Colombian Student Movement: Insights from Social Movement Theory" *Journal of Latin American Studies* (Volume 33, No. 4, 2001) Carlos Lleras de la Fuente and Marcel Tangarife (former participant in *Todavía*) in their study Constitución Política de Colombia Orígenes Evolución y Vigencia Biblioteca Jurídica Diké 1a edicion 1996. Buenahora Febres-Cordero, Jaime. El Proceso Constituyente de la propuesta estudiantil a la quiebra del bipartidismo. Tercer Mundo editores, Bogota, 1993 Humberto de la Calle Contra todas las Apuestas Historia Intima de la Constituyente de 1991. Editorial Planeta segunda edicion Bogota 2004.

bull. There was an estimate of 15 to 20,000 students from all universities in Bogota, and we marched from the Plaza de Bolivar, the traditional ending spot for marches, to the cemetery, as if we were protesting not against the government in the Plaza but against death itself. There were no slogans chanted, only a song, and then the student manifesto which, among other things, demanded the reform of institutions as necessary to address the present situation. The song we sang was “*Solo le pido a Dios,*” which you all probably know, by Leon Gieco, “*que la Guerra no me deje indiferente que es un monstruo grande y pise fuerte toda la pobre inocencia de la gente...*”

Almost twenty years later I wonder, what a strange youth we were, demanding institutional reform. And I feel in a sense sorry for all of us for those were dismal times to be growing up and it made many of us, especially those of us who were interested in politics, too serious too soon. Our youth ended in a sense in 1985, before it even began, with the assault on the Palace of Justice, and every year brought an escalation of what had up to then been a low grade war that did not produce enough dead to be called one. The para-militarization of most rural areas and the influx of drug money and vendettas would soon change that and for us, the urban middle classes, the young, it was to grow up a spectator of a world that was both ruthless and incomprehensible. By the time I was in college, Pablo Escobar had started planting random bombs in the major cities and we never knew when we would leave classes to look for familiar names in the lists of the wounded and the dead.

So against that backdrop we marched and I personally did little else, but others organized a student movement that flourished for over a year, thanks in part to a series of fortuitous

favorable circumstances that ranged from the very concrete fact that the government was very interested in reforming the constitution, to the M19's guerrilla final decision to sign a peace treaty, to the fresh winds that came from Perestroika and other students tearing down the Berlin wall. The student movement effectively promoted direct voting to call for a Constituent Assembly to reform the constitution, instead of Congress, famously corrupted by business and drug interests. Their activism resulted in the 1991 Constitution, drafted by as a pluralistic elected body as we have ever seen and enshrining and astounding list of rights, including the right to peace.

The 1989 student movement wasn't typical in its concentrated desire on law reform. Generally social movements see in law more a means than an end, used instrumentally to achieve concrete results and even view it skeptically, as a last resource. But this generalized understanding that law is but a tool also coexists with desire and enjoyment of the law as an end in itself.

The indigenous people's movement for example began The contemporary indigenous rights movement began in the early seventies as part of a larger and quite strong national peasant association demanding agrarian reform.¹⁶ In its early stages the peasant movement was directly

¹⁶ This section is based on a Chapter in my dissertation, cited in footnote 13. Besides material from press and organization documents, I used the following sources on the Indian Rights movement: Virginie Laurent Comunidades indígenas, espacios políticos y movilización electoral en Colombia, 1990-1998 ICANH Bogota 2005. Juan Friede El Indio en la lucha por la tierra Tercera edicion Editorial Punta de Lanza 1977 Bogota. Joanne Rappaport The Politics of Memory Native Historical Interpretation in the Colombian Andes Duke University Press, Durham 1998 Lorenzo Muelas La Fuerza de la Gente ICANH Bogota 2005 Christian Gros Colombia Indígena Identidad Cultural y Cambio Social CEREC Bogota, 1991 Christian Gros, Políticas de la Etnicidad Identidad Estado y Modernidad, Instituto Colombiano de Antropología e Historia, Bogotá 2000 Mauricio Archila Idas y venidas vueltas y revueltas Protestas sociales en Colombia 1958-1990 ICNAH y CINEP Bogota 2005. Consejo Regional Indígena del Cauca CRIC Diez Anos de Luchas Historia y Documentos CINEP Bogota 1981. Luis Guillermo Vasco Entre Selva y Paramo Viviendo y Pensando la Lucha India ICANH Bogota 2002 Astrid Ulloa The Ecological Native Indigenous People's Movements and Eco-governmentality in Colombia Routledge New York and London 2005. Jose Bengoa La emergencia indígena en America Latina Fondo de Cultura Economica Santiago 2000. CIDH The Human Rights Situation Of The Indigenous People In The Americas OEA/Ser.L/V/II.108 Doc. 62 20 October

sponsored by the national government under Liberal President Carlos Lleras Restrepo (1966-1970), but when he was succeeded in power by Conservative Misael Pastrana Arango (1970-1974), the movement not only lost this support, but had to face an increasingly hostile government. At the same time different Marxist-leninist factions, inspired by the Communist Party's 1966 directive for the combination of all forms of struggle, attempted to hijack the movement and radicalize it into armed resistance.¹⁷ The combination of both factors led to the failure and disintegration of the national peasant movement.

Almost simultaneously, indigenous peoples' organizations in southern Colombia started formulating a more militantly ethnic discourse. They downplayed their own peasant-ness and insisted instead on ethnic identity and ancient collective land rights. And what is even more astounding and a proof of their pragmatism, resilience and sense of humor, they adopted an 189 law as a banner, a law that treated them as savages and legal minors, because the law also sustained the illegitimacy of many white land titles. In fact, the national coalition of regional indigenous movements was born out of opposition to a government attempt, in 1980, under Liberal Julio Cesar Turbay (1978-1982) to reform it with a modern Indian Rights Statute.

In the nineties the Indian Rights movement became a national political force, especially winning two seats in the seventy-member Constituent Assembly.¹⁸ It was a major victory for a small movement that represented less than 2% of the national population, and the support of many non-

2000 Rodolfo Stavenhagen The Return of the Native The Indigenous Challenge in Latin America Institute of Latin American Studies London 2002.

¹⁷ On the peasant movement see Leon Zamosc Los Usuarios Campesinos y la lucha por la tierra en los años 70 CINEP, Bogota, 1982. See also Mauricio Archila Idas y venidas vueltas y revueltas Protestas sociales en Colombia 1958-1990 ICNAH y CINEP Bogota 2005.

¹⁸ Two out of 70 elected members were indigenous: Lorenzo Muelas and Francisco Rojas.

Indians also allowed for a series of progressive constitutional articles and laws, including special representation in Congress. This also helped to consolidate and even expand the land rights won in the struggles of the previous decades. They have also benefited from a series of progressive Constitutional decisions where the Court has Developer and protected special Indian rights.¹⁹

These laws insist not only in human dignity for all regardless of ethnicity, but also in special rights and identity for Indians, the result of a handicap that is now instead a venerable and ancient culture. In the nineties and the first decade of this century, the resurgence of Indian Rights has been in Colombia as elsewhere in the region a fascinating process where communities that had been wiped out by a brutal conquest and evangelization re-discover their identity. To them law offers a dignity that the social life has denied categorically, so that in this case law delivers and promises a tremendous cultural change where the status of indigenous peoples is re-imagined from landless *mestizo* peasants, to wise, peaceful, ecological natives with ancient rights and a valued culture and in terms of individuals as righteous and cultured individuals to be respected.

But do Indians desire the law in the same way as non-Indians? The distinction, in spite of its importance, is hard to make when it comes to rights. The indigenous peoples' movement is certainly modern, and represents evolved ethnicities that demand the benefits of political liberalism: equality, recognition, respect, self-government. They turn to law not as a mere instrument, but as a result of a complex process of production of a new Indian subjectivity, one that is in many ways modern and founded on the secular ideas of human and Constitutional

¹⁹ See Daniel Bonilla La Constitución Multicultural Siglo del Hombre Editores 2005 for an excellent analysis of constitutional law on Indian rights.

rights. These rights offer an indigenous identity that is no longer that of a landless peasant, ignorant and barefoot, and instead that of member of an ancient utopia pregnant with hope, culture, peace and an ecological future. And that identity denies the lived experience of so many communities and individuals who have survived five hundred years of conquest and denies their own knowledge of being worthless.²⁰ How then not to love the law that challenges this experience that denies this knowledge?

And the power of re-signification of law goes beyond the status of indigenous peoples to redefine also their location in the civil war. In a country where hundreds of thousands of poor peasants are displaced every year by the conflict the displacement and murder of indigenous peoples gains a special character of a particular type of human rights violation that affects their collective rights to cultural survival. This description is of course a fantasy, and attempt to claim the definition of an uncertain reality and surely not the way the warring armies have seen them, with their logic of the peasant as a potential enemy collaborator.

When people like me point to indigenous people's rights, or to the Constitution, and just beam with pride, I understand that you all who see us from afar must wonder what fantasy world these people live in. But, as I have been trying to argue, it's not a fantasy world in the sense of being disconnected from reality, but rather the very committed and political effort to redefine that reality, to recreate the social description of the world and to insist that at its center lies human dignity, and that there is such a thing as human dignity, equivalence, rights. And if this claim sometimes slides into natural law, into what seems to be a claim of ontological human nature, it's

²⁰ Regionally and nationally the movement describes their experience as the survivors of relentless conquest, where the creation of national entities (Independence) had no impact.

the result I think not of political strategy but of an emotional need to make sense of horror, and to live through it by claiming it was not normality but its violation.

Ending on a warning

And if at any point you start feeling smug and complacent about how your own country avoided the tortuous Colombianization, by tradition, skill or even sheer luck, think again. The commitment to political liberalism shared by those in SELA is nothing but a fantasy. It is an attempt to recreate the social world, to forget the past and to name reality anew, and to name with such a bang that people will forget the things that happened, and forget that it is even political, that there is an alternative description of the world were Indians count the same as dogs and women must live on their knees at home. An alternative world where the State of the Nation are real beings, and their defense justifies every sacrifice. The danger is that while you might forget the things that happened, they don't forget you, and have a habit of returning. Or of hiding out where you can't see them, and wait patiently for their time to rear their heads again.

And this is I think the one good thing that comes out of our situation. We never forget there is another version of social life out there, one that is vigorous and vengeful and wants to rule us, and we never forget the urgency of defending political liberalism, even in its more minimalistic versions. And we enjoy, frankly enjoying, I have no other word for it, every time we win a case, pass a law, and win yet another amendment an enjoyment that exists in excess of the calculus of utility. Perhaps this excess, which I call legal fetishism, is what the Chilean critic identified in that SELA five years ago: the attachment to law, as an end in itself.