HISTÓRIA DO DIREITO

Traditions, translations, betrayals

Dialogues among legal cultures[1]

Tradições, Traduções, Traições
Diálogos entre culturas jurídicas

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RESUMO

A partir do balanço feito pelos juristas a respeito das "tradições jurídicas", seus usos e suas premissas, seja fazendo uso de conceitos como "recepção" ou "transplante jurídico", este texto busca enfrentar este debate com a noção de "tradução", num movimento de aproximação entre as tarefas do tradutor e do historiador, enquanto um intérprete das diferentes linguagens do passado. Tomando o fato de que, de acordo com teóricos da tradução, ela sempre implica em um processo de "perda" (Steiner), de "negociação" (Eco) ou até mesmo de "manipulacão" (Aslanov), a relação entre as "tradições jurídicas" no tempo e no espaço deve ser sempre lida a partir das contingências históricas complexas específicas, envolvendo os interesses presentes na cena histórica que presidem a "tradução" de uma dada "tradição" jurídica para um outro contexto geográfico ou temporal. Exemplo deste procedimento foi o modo como o jurista brasileiro do século XIX, Teixeira de Freitas, fez sua peculiar adaptação do legado jurídico do direito civil estrangeiro para a cena brasileira, em sua 'Consolidação das Leis Civis'.

Palavras chave: cultura jurídica, tradição jurídica, transplante jurídico, tradução, Brasil imperio, Teixeira de Freitas.

ABSTRACT

Based on insights from jurists regarding "legal traditions" – their uses and premises, whether drawing on concepts such as "reception" or "legal transplantation" – this text seeks to address this debate through the notion of "translation," that is, the movement of approximation between the tasks of the translator and the historian, as an interpreter of the different languages of the past. Observing the notion that, according to theorists, translation always involves a process of "loss" (Steiner), "negotiation" (Eco) or even "manipulation" (Aslanov), the relationship between "legal traditions" in time and space must always be read from the perspective of specific complex historical contingencies, involving the interests present in the historical context that preside over the "translation" of a given legal" tradition "into another geographical or temporal context." The way in which the 19th century Brazilian jurist, Teixeira de Freitas, made his peculiar adaptation of the legal legacy of foreign civil law to the Brazilian context, in his "Consolidation of Civil Laws" is provided as an example of this translation process.

Keywords: legal culture, legal tradition, legal transplantation, Translation, Empire Brazil, Teixeira de Freitas.

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1. Traditions.

1.1. “Legal traditions” as a problem

Jurists, whether from across the Americas or Europeans, widely appreciate referring to the existence of legal “traditions.” It seems convenient to want to fit matters into a cultural framework or family, preferably one that is endowed with a certain symbolic “pedigree”. This produces effects of power in the academic field, and also in courts. Moreover, this surely causes that sense of comfort of being properly framed in a definite place, already belonging to an earlier lineage, with a set of known and recognized cultural references. For law school professors, this is even more comfortable: linearity, consistency, and simplicity fit very well into their didactic procedures. The use of sorts of so-called “comparative law” - which often functions precisely to confront and compare various legal “traditions” - fits like a glove for the “clarity of exposition” to many masters. In addition, it is a pretext to display some erudition, a common trait in our field, whose effective utility, however, is sometimes difficult to demonstrate beyond the performative gestures. A typical (and very influential) example of this mental “standard” is the success of René David’s book, “Major legal systems in the world today” (David, 1986), which defines with the greatest clarity possible what are the “legal families” of our time and how genealogies work among them.

This way of observing juridical theories - or as I prefer to call them, diverse legal cultures - ends up involving the use of a series of conceptual dualities that serve to “fit” explanatory molds into defined frames. Some examples are the definitions of “center” and “periphery” (or central and local/regional), or as Diego Lopez Medina (2016, pp. 6 ; 25) says, between “places of production” and “places of reception” of legal theories. These dualities lead us, in our legal cultures, to other complementary tools that function as their natural consequences: hose dividing European/North American and Latin American theories, respectively, into poles as “origin” and “destination”, “original theory” and “adapted theory”, “invention” and “mimesis”, “production of legal theories” and “assimilation of legal theories”, and so on. This way of checking juridical theories - with their rigid families, origins and genealogies - also makes the understanding of legal cultures articulate and operate from notions such as “influence” (Lopez Medina, 2016, p. 26), reception, transplantation, etc.

Needless to say, of course, in all these conceptual games lies an understanding that idealizes the so-called “producers” of legal theories (the North Atlantic) and undermines the so-called “receivers” of legal theories (Latin America). The former produce, the latter copy or transplant – though inevitably imperfectly. Ethnocentrism and cultural colonialism (which paradoxically contaminate even many Latin American teachers) is evident here.

1.2. How do “legal traditions” relate? Some answers.

Nevertheless, it is necessary to countenance the problem calmly and cautiously. Many respond to this question by going to the opposite extreme of the debate, thinking that the answer is to reject every European (or American) cultural aspect, viewed as a synonym to oppression and cultural domination. These oppose the thesis of the supposed cultural “mimesis” of Latin

Americans with the thesis of the absolute originality (and not rarely, genius) of what we do in the South of the world. As I have already had the opportunity to assert, it is as if we were an authentic *jabuticaba* (Fonseca, 2013, p. 415-424), a Brazilian fruit which only flourishes and fructifies in our lands, and which tastes sweet and is unknown to the North of the world dominators. And I do not believe that we must combat these dangerous cultural schemes that the "tradition" idea brings with it, by putting on a public bonfire of the works of Savigny, Pothier, Pound or Mello Freire (as Goethe, Cervantes or Proust). Nor is anything accomplishedby refuting the fact that a historian of Latin American law cannot deny that the categories and theoretical frameworks that came from Europe or the United States shaped our institutions, our teaching and our circulation of ideas. Whether we like it or not, we all immerse ourselves in the world of codes, constitutions, parliaments, courts and the division of powers that came from the Old World. The question, therefore, seems to be mainly focused on the particular way, a very specific and localized one, that these categories and these theoretical frameworks were re-read and adapted in our region. Hence, given the circumstances that are inevitably particular, specific and, local to these processes, I believe that this is a task befitting of legal historians.

It is necessary to start by making the ideas of legal "traditions" less straightforward and schematic, along with the ways of thinking from families, affiliations, "transplants" and "influences." On the one hand, it is worth noting that even Europe itself does not have legal "traditions" as a definite, clear and linear construct as some comparatists might suppose. Clearly, there are some approximations to the French and Germanic traditions of the nineteenth century, such as the reduction of the legal pluralism of the old regime, the centrality of the state as a pole of legal production, separation of powers, and so on. And there is some distancing as well, as in the French legalist tradition, and the Germanic conceptual tradition that are not so clear in the way Italian, Spanish and Portuguese jurists worked their doctrine in the 1700s and 1800s. On the other hand, it is also necessary to realize that there is no unity in an alleged "tradition" of Latin American legal culture. We could see, first of all, the sensitive differences that exist among them in the many legal "traditions" of Spanish America (Mexico, Argentina, Peru, Colombia, Cuba, Chile, etc.) and, secondly, the differences between the latter and the legal "tradition" of Portuguese America, full of specificities stemming from a type of colonization (and culture) that took place in Brazil.

Following a "cautious" line in this debate around the relationship between different legal "traditions," it may be worth starting from some responses, which as we shall see, seem insufficient to address the problem of how "legal traditions" relate over time. To put it another way, we need to perceive how each era relates to the legal culture of its past. The jurists know some of these formulas very well. The best-known one is the notion of "reception," used above all to analyze the way the legacy of Roman law acted in historical times after its advent. This is a subject dear to all Romanists and to historians of law: the investigation of how the rich past of the law of Ancient Rome was "received." It can refer to many times in History, whether in the Middle Ages (by glossers, later commentators, etc.); in the first modernity (as in the so-called Legal Humanism, in the case of the *Usus Modernus Pandectarum*); or in the second modernity (as in the emblematic case of Savigny´s historicism, or the nineteenth-century German pandectistic). Roman law, with a few honorable exceptions, is presented as a historical preciousness that posterity appropriates and takes advantage of, "applying" it in its conceptual purity to different historical contexts. Roman law is "received," resisting the wear and tear of temporality by its intrinsic genius, which survives the centuries and shows itself as a "non-historical" instance. It is thus needless to mention the elements of anachronism that contaminate a theoretical belief of this kind. The theoretical naivety and the absence of methodological mediations that underlie this idea are of enormous obviousness in the eyes of historians of law.

In 1974, the Scottish author Alan Watson (1993) sought to forward a new conceptual contribution to this debate in the first edition of his book "Legal Transplants: An Approach to Comparative Law" which had a new edition in 1993 and brought the idea of "legal transplantation." In his words, "legal transplantation is the moving of a rule or a system of law from one country to another or from one people to another." In other words, for him, "legal transplantation" is a natural form of development of legal systems. Legal cultures can be transplanted from one system to another, from the spatial point of view (e.g., one country applying systems from another contemporaneously) and from a temporal point of view (e.g.; a country transplanting a legal system of the past). This idea produced an intense debate. Pierre Legrand, a French professor of the University of Paris 1 Pantheon-Sorbonne, wrote a text in 1997 that had a deliberately controversial intention. His text was entitled "The impossibility of legal transplants" (Legrand, 2014, p. 11-39) and directly attacked Watson's ideas, saying that they implied anachronism and did not consider the complex historical circumstances surrounding the application of a legal culture, which, in his opinion, cannot be considered as a mere set of ideas that has no relation to the context it is embedded. For Legrand, Watson sees law as "a propositional system of empty rules". The relationship between the various legal systems (whether in space or in time) is too complex for them to be conceived as transplants.

To be sure, if these answers that are heavily invested in the idea of "reception" or "transplantation" are outdated or insufficient when considering the relations between legal "traditions," what other path could be taken? I have a hypothesis. The concept of "translation" can be valuable in taking a step forward in this debate, able to provide the historian with the right tools to interpret this complicated problem of the relationship among legal traditions.

2. Translation

2.1. Translation as a theme for the historian

Pietro Costa (2009, p. 23) once said that the historian is, by excellence, a hermeneut. One can create a variation here and say thusly: the historian is, above all, a translator. Their task, in the end, is to confront themselves with old institutions, old concepts, old theories, and assign them a meaning for their contemporaries. It is to be able to explain in a current lexicon that which had another set of semantics in its time. It is to take ownership of what has happened in the past in order to, in a complex procedure, seek to render meaning in a different time. As Peter Burke puts it, "if the past is a foreign country, it means that even the most monoglot historian is a translator" (Burke e Hsia, 2009, p. 14).

In a collection devoted precisely to the subject of cultural translation, this English historian draws a parallel between the task of understanding the historian's past and the task of translation. Burke (2009, p. 46) posits that:

> Whether translators follow the strategy of domestication or foreignization, and understand well or badly the text they are imparting to another language, the translation activity necessarily involves both a decontextualization and a recontextualization. Something is always "lost in translation. However, the examination of what has been lost is one of the most effective ways of identifying intercultural differences. For this reason, the study of translation is or should be central to the practice of cultural history.

From this central intuition (the parallel between the historian and the translator), Burke sees the context of cultural history – his own conceptual lens – as central to the task of decoding the way each culture tries to interpret another. As he asserts, the research problem is to examine the "regimes" of translation that exist in each period in which one culture confronts another, seeking in this procedure to answer six great questions: Who translates? With what purpose is it translated? What is translated? For whom? In what way? With what consequences? (Burke e Hsia, 2009, p. 17). This premise seems to be fertile, in fact. Assessing the always peculiar and contextualized manner in which a past time appropriates some other cultural tradition, trying to understand the mechanisms and interests involved in it, is something that holds great potential to reveal something about our past (Duve, 2014).

In addition, considering our problem addressed here – how "legal traditions" are confronted with other traditions – the idea of translation seems to be a useful tool to avoid the shortcomings alluded to previously, those that the notions of "reception" or "transplant" hold. This has not gone unnoticed for the historiography of law. For example, in *Frankfurt's Max-Planck-Institut für Europäische Rechtsgechichte*, there have been numerous initiatives, publications and seminars precisely on this issue. One of the most eloquent of them was a 2014 publication dealing with the question of cultural "Entanglements" in the legal field (Duve, 2014).

If it is valid to follow this line of reasoning that takes *translation* as key to the interpretation of the cultural dialogues in the context of "legal traditions," I believe it is likewise valid to pay some attention to what some of the translation theoreticians say in the scope of linguistics, and to evaluate some of their intuitions about how to build bridges between two languages, or between two cultural worlds.

2.2. Contributions of translation theory.

It is perhaps worth beginning with one of the most important reflections on translation, one made by George Steiner (2005), in his work published originally in 1975: "After Babel". For our interests here, what is especially relevant is that he, just like the historian Peter Burke, draws a parallel between the activities of the translator and the historian. Citing John Hexter he writes regarding Burke:

> When reading a historical document, when referring to the process of a narrative in the history previously written, to interpret the acts of language performed in the past, near or remote, 'he perceives himself as becoming more and more a translator in the technical sense (Steiner, 2005, p. 160).

Even further: problematizing the recollection game (so dear to the curator of the past), stripping down its complexity and making reference to the ever-classic text "Pierre Menard, the author of Quixote" (1939, by Borges), Steiner says: "any genuine act of translation is, at least from one point of view, a crystalline nonsense, an effort to reverse up the escalator of time and voluntarily reconstitute what was a contingent movement of the spirit" (Steiner, 2005, p. 98). After all (and here we would seem to find echoes of Benedetto Croce's celebrated quote, "all history is contemporary history"), Georges Steiner, when speaking on translation, posits that "every moment engenders the previous instant. Whatever verbal tense is used, every statement is a present act. The reference always takes place now" (Steiner, 2005, pp. 159-160). This problematization goes beyond the past-present relationship and is a nod towards the complexity

inherent to communication itself: "between languages or within a language, human communication is equal to translation. A translation study is a study of the language", because "Babel's event confirmed and externalized the translator's endless task – it did not initiate it" (Steiner, 2005, p. 72). To Steiner, then, to communicate is, to a certain extent, to translate.

Likewise, Umberto Eco, in a volume dedicated to translation ("Dire quasi la stessa cosa", 2003), he follows a similar line of reasoning: one must not trivialize the complexity of transpositon between languages. Indeed, in his words, "si già *è* detto, ed *è* idea ormai accettata, che uma traduzione non riguarda solo um passaggio tra due lingue, ma tra due culture, o due enciclopedie" (Eco, 2016, p. 162). It is precisely for that reason that the aim of the book is to

> (...) cercare di capire come, pur sapendo che non si dice mai la stessa cosa, si possa dire quasi la stessa cosa. (...) Stabilire la flessibilità, l'estensione del quasi dipende di alcuni criteri che vanno negoziati preliminarmente. Dire quase la stessa cosa è un procedimento che si pone, como vedremo, all'insegna dela negoziazione (Eco, 2016, p. 10).

And it is indeed this word – "negotiation" – that I wish to highlight here. There is no translation without negotiation; dialogue between languages assumes negotiation:

> Tutte le pagine che precedono si sono poste all'insegna della negoziazione. Il tradutore deve negoziare con il fantasma di un autore sovente scomparso, con la presenza invadente del testo fonte, con l'imaggine ancora indeterminata del lettore per cui sta traducendo (e che il tradutore deve produrre ...) (Eco, 2016, p. 345).

Another useful contribution for the present discussion comes from Cyril Aslanov, professor from the Hebrew University of Jerusalem, from a short book entitled "Translation as Manipulation," from 2015. Not unlike the other authors heretofore cited, Aslanov (2015, p.14) points out that:

> (…) between the imperative of absolute fidelity that characterizes the translation of religious or legal texts, and the search for rhetorical and poetic effects, so frequent in the translations for commercial purposes or advertising, the translator oscillates in interlingua which is the no-man's land between the two languages.

And Aslanov continues:

> In this complicated space between languages, the translator manipulates not only the reader but also the text itself. There we have another meaning of the term "manipulation" in addition to the sense of 'deception.' It is the use of this word, if not in a positive sense, then at least in a not necessarily negative one, which is found, for example, in the terms 'medication manipulation' or, closer to our modern categories, 'genetic manipulation' (Aslanov, 2016, p. 14).

It is precisely on the basis of these contributions that I believe an interesting line of inquiry could be opened to the ends that are of relevance here: to study precisely the "regimes of translation" in the various legal cultures over time, as a key to a more fruitful reading than that of merely "reception," with legal "transplantation" or "transference." Upon bearing in mind how cultural dialogues (or translation between legal cultures) are inevitably marked by "loss," by decontextualization/recontextualization, by "negotiation" or even by "manipulation," I return to the historical conditions of these cultural translations to address some important questions:

Who translates? Why? How? For whom? With what consequences? It is an endeavor that I dare say is worth pursuing further here.

I have referred to "loss", "negotiation" and "manipulation." However, I could also speak, perhaps, of "betrayal," since it seems consensual that the translation process is always marked, almost inevitably, by "betrayal," as the well-known Italian adage (*traduttore/traditore*) always reminds us. Therefore, to study the translation systems that take place in the various legal traditions means to also speak of betrayals.

3. Betrayals

There are different kinds of betrayal, all of which are always intertwined with historical contingencies and interests at stake at a certain time. Unraveling these betrayals may mean revealing relevant historical meanings, as well as getting rid of reluctant schematics in the lapses of those who look back to the past with too much simplicity. To precisely study the forms of "cultural betrayal" seems to be a rich and fertile ground for the historian of law.

As in life, there are many different forms of betrayal in translation within a cultural context (there are different kinds of betrayal in the context of cultural translations). To demonstrate this, I now use an empirical case, that has to do with the Brazilian legal science of the 19th century, taking as a paradigm the one who is considered the most important Brazilian jurist of this period, the true "jurist of the 19th century", as defined by his biographer, the civilist Silvio Meira: I am referring to Augusto Teixeira de Freitas

As is known, Teixeira de Freitas was the first jurist charged by the Emperor himself, Dom Pedro II, to carry out that legal task seen as most important of the 19th century: the civil code. However, before carrying out the project (known as a "Draft," which, as we now know, was an ill-fated project), Teixeira de Freitas tasked himself with yet another work of great importance and that deeply impacted the Brazilian legal culture through to the beginning of the 20th century: to develop a "Consolidation of Civil Laws", that is, a survey of all that which was in force in Brazil in terms of civil codes, as the received heritage (which came from the "Ordenações Filipinas" or "Philippine Codes" of 1603, from the later Portuguese regal orders, from the post-independence Brazilian laws and even foreign ones incorporated into our legal books by the "Law of Good Reason" ("Lei da Boa Razão") of 1769), seemed confusing and even random. It would be necessary, in his view, before systematizing what was already in force to then later proceed with an enterprise involving further legal coding.

And so it went: the "Consolidation of civil laws," which was first published in 1857, ended up having the effect of substituting a civil code, while the latter only eventually came about in 1916: yet it was this important document that served as a framework for forensic life and for the Courts regarding what would effectively be in force in Brazil from that period on. Each article of the "Consolidation" (whose format closely resembled a code) was followed by a series of footnotes in which the "origin" and provenance of that normative disposition was attested, among a hodge-podge of norms that were then in force. That is to say: the "Consolidation of Civil Laws" proposed to simply be a systematization of what already existed, a joining together of laws in force, in one rational, objective and singular document: it thus proposed to be a "translation" of the legal culture in force (and pre-codified) for contemporaries from the second half of the 19th century.

However, as in all translations, this document worked with transpositions, negotiations (and, let it be said, betrayals), beyond that which could be supposed upon first glance.

First, consider *language*. To be sure, the "Consolidation" was intended to be a mere compilation of the legislation already in place at the time, paving the way for further codification work. Yet in terms of language, there is a great discontinuity (a real hiatus, a great strangeness) between the way in which pre-modern legal documents (the "raw material" of the consoling work of Teixeira de Freitas) were written and the way in which modern legal documents are written. What is meant here is that the very operation of transposing the language of the legal documents that Teixeira de Freitas was facing (coming from the pre-liberal era) into the consolidation text already showed evidence of a translation/creation work. In fact, the "Legislative" Texts of the old regime held very different characteristics from the post-revolutionary legislative pattern: they were long, argumentative and impregnated with a very peculiar style. All this will be "translated" into "Consolidation" as numbered clauses with direct and clear wording. It is, in fact, the stated objective of the consolidator himself: "the consolidation will be made by clauses and titles, in which the provisions in force will be reduced to clear and succinct propositions" (Teixeira de Freitas, 1859, p.vi). I believe that this lexical and stylish "transposition" should not be underestimated. The difference in the format in which the precepts are presented also brings a difference in the way of seeing law itself: in a complex, labyrinthine way, full of mediations and reconciliations, to a direct, concise form and that has the clear function of command.

Secondly, and most importantly, the way in which Teixeira de Freitas, by apparently simply "consolidating" pre-existing legislation, did not in fact only change language and style (as seen above), but apparently also attributed a different meaning – subverted even – to the texts themselves that he should have only brought together. In other words: on the occasion of the "consolidation" of the texts in force, not only was the language transformed, but the manner in which he selected, wrote, and expressed the subjects had a strong character of *reinterpretation* and *re-creation*, exactly in the format the jurists of the "ius commune" acted in their activity of "interpretation" (Calasso*, 1995*, p. 162).

I offer an example related to domain. At the beginning of the "title I" ("of the domain") of Book II ("of the real rights") of his consolidation, Teixeira de Freitas defines the domain as follows: "art.884. It is the domain of the free faculty to use and dispose of things, and to demand them by royal actions" The jurist says that this device is inspired by various provisions of 3rd and 4th books of Ordinances (which he mentions in the footnote). However, looking closely at the clauses of the Ordinances one does not perceive this direct relationship. For example, title XXXI of the 3rd Book of Ordinances (the provision which he places as a source for his article 884), comes from the hypothesis of demand that involves a movable property, and the defendant has no immovable property (it seems much more a disposition of processual character than of substantive law); title X of 4th Book of Ordinances gives rise to the hypotheses of sales and disposals of property which holds legal proceedings; the title 11 of the 4th Book of Ordinances addresses the prohibition of the constraint to sell the property to others (especially their own family); and, finally, title XXXVI of the 4th Book of Ordinances addresses the hypothesis of someone dying without naming someone to the property forum.

As can be seen, the assumptions and provisions present in the Philippine Ordinances that are invoked by Teixeira de Freitas as "sources" of the consolidated article (number 884), despite belonging to the relationships of men with things (real relationships), are far, however, from the things that Paolo Grossi called paradigm "napoleonic pandectistic" (Grossi, 2006, p. 10) of

the property, which resulted, in terms of property rights, in a formidable break (modern) with respect to the previous period (pre-modern). The provisions of the aforementioned Philippine Ordinances fit perfectly into a pre-liberal, re-centric and non-individualistic period. However, in the text of "Consolidation," Teixeira de Freitas imbues those provisions with a complete proprietary individualism, typical of the later period (where the property "is the projection of the sovereign shadow of the subject", again using the words of Grossi (1980, p. 23). Teixeira de Freitas does not say (as it is in art. 554 of the French civil code) that property is the right to the enjoyment of the thing "in the most absolute manner" and not tell you (as the art. 17 of the Declaration of the Rights of Man and of the Citizen of 1789) that the property is a right which is "sacred," but will have that the domain is the free faculty to use and dispose of things. When he speaks of freedom and faculty, he shifts the focus originally present in ordinances to a perspective clearly centered on the figure of the proprietor. It approximates the definitions that most 19th century codes will follow with respect to property in the sense of defining it by the powers (in this case, to use and dispose) that the subject has with respect to the thing. In short, the text of the Ordinances (published in 1603 and which is typical of the "ius commune", that is, of an originally medieval appreciation of the legal experience) is transfigured into an individualistic, modern device, to the appearance of the 19th century codes. The operation of "consolidation," as we see here, went far beyond the mere "compilation" of extant texts." Without a doubt, the generative and conforming nature of law was at play (made possible by the discourse of the "scientific" for which Teixeira de Freitas desired to be the spokesperson) – law still not formalized, not enacted, but which would go on to enjoy prestige and even legality[3].

It cannot be forgotten that after the promulgation and dissemination of the Consolidation (and in view of the failure of the attempts of encoding until 1916), this text served as a guide in the jurisprudence and in the Brazilian doctrine for decades.

4. To conclude.

As can be seen, to begin to understand the dialogue between different cultural traditions and discuss the way in which they relate means, first of all, to face the complexity of the cultural translations domain.

That means being attentive to the various forms of betrayal that happen in this process, which are relevant precisely because they can be relevant indexes (and that insert elements of complexity) in a more appropriate understanding of the past historical process. Certainly the Brazilian legal doctrine of the 19th century acquires more complex colors (although perhaps less beautiful) when all the vicissitudes of the cultural translation procedures are unveiled.

It is, perhaps, to begin letting go of, in the analyses that we conduct around the clashes between the many cultural traditions (and here I refer to the culture of European law and the legal

3 In doctoral research on the law of property in the 19th-century Brazil, it was found that a total of 56 judged cases on the theme of domain and property, the Consolidation of the Civil Laws' appears as a text cited 44 times, which means that it was stated in 22 judged cases (therefore, almost 40% of the decisions found there). It can be seen, thus, the effect that this activity of Teixeira de Freitas (of translation or of betrayal – as it were – of the texts he took as basis) was crucial in institutional terms within the Brazilian legal culture of the 19th century. Staut Jr, S. S. (2009). *Possession in Brazilian law of the second half of the 19th century to the civil code of 1916*. (doctoral thesis-UFPR). (now published: Staut Jr, S. (2015). *Posse e dimensão jurídica no Brasil: recepção e reelaboração de um conceito a partir da segunda metade do século XIX ao código de 1916.* Juruá.

culture of Latin America), a search for the understanding of the forms of mimesis, of copying, of transplantation or reception; but, conversely, it is also to place the themes of contextualization, manipulation, negotiation and betrayal in a more central position in the program of Law History, in the scope of these cultural studies.

Finally, all this leads to yet another strong conclusion – which is put here in more of a provocative way: the more the dualities "original" and "copy" or "places of production" and "places of reception" of legal culture begin to be relativized, the more we may have to rethink the very strong duality Europe x Latin America. Perhaps there are far fewer rigid identities between these poles and there are many more mists and fogs between one and the other than the old cultural traditions had previously imagined. Our task must be to add complexity and more shades to the understanding of these processes, even if we exhaust the understanding nexus that we have known so far. And let Latin American legal historiography do so.

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