

# LAND AND PEACE

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# A DISCLAIMER

- The following remarks were prepared with the Colombian situation in mind. Unfortunately, my factual knowledge of this situation is limited. I shall try to supplement this deficiency by drawing on my knowledge of other civil wars and on other transitions that were not preceded by a civil war.
- I shall first attempt to sketch a conceptual map, and then ask four questions for discussion.

# HOW TO DESCRIBE THE SITUATION

- Is the situation in Colombia best described as
- A civil war?
- An armed conflict?
- A fight against terrorism?
- High levels of political violence?
- The main question is the extent to which the FARC remains a social movement grounded in claims for social justice or has degenerated into a mafia. I shall remain agnostic on this question. One may perhaps assume that if social justice is promoted, the organization will have greater difficulty in attracting supporters and soldiers, and will eventually wither. For convenience and for the sake of comparison with other cases, I shall use the expression “civil war”.

# ROOT CAUSES OF CIVIL WAR

- Economically oppressed majority: social injustice, e.g. through unequal distribution of land or huge income disparities.
- Politically oppressed majority: South Africa under apartheid.
- Economically oppressed minority: the Athenian oligarchs that initiated the civil wars of 411 B.C. and 403 B. C.
- Politically oppressed minority: Sri Lanka, the French wars of religion, many other cases. The arenas of oppression may be religion, language, ethnicity.
- Puzzle: when the majority is not politically oppressed (not excluded from the suffrage), why would it remain economically oppressed? Somehow, the channels of representation must be distorted or blocked. Yesterday I learned that in Colombia the secret ballot is undermined by the practice of voters using their cell-phones to take and send a photograph of their ballot. Even if the ultimate aim of insurgents is economic redistribution, their proximate goal may be to remove these blocks.

# ENDING CIVIL WARS

- In general, there is a need to address both the injustices that *caused the civil war* and the injustices *caused by the war*. Concerning the former, I limit myself to economic injustice, which will have to be addressed by measures of *distributive justice*. The latter will have to be addressed by measures of *transitional justice*. The relation between the two is the main topic of my remarks today.

# DISTRIBUTIVE JUSTICE

- If injustice was the root cause of the war, redistributive measures are needed to prevent a resurgence of the war. This is an *instrumental* justification. At the same time, wars create huge sufferings that call for alleviation on *intrinsic* grounds, independently of the impact of the alleviation on the stability of the peace. Finally, there are demands for intrinsic distributive justice that are unrelated to the war, such as the need to ensure decent housing or a minimal income for everybody.

# TRANSITIONAL JUSTICE

- Measures of transitional justice, notably punishment of wrongdoers and reparations to victims, are easily justified on intrinsic grounds. Instrumental arguments are more difficult to assess. I shall disregard the “sending a signal to the future” argument for punishment that is widely used in the human rights community, partly because I don’t believe in it and partly because I want to limit myself to the here and now.
- One instrumental argument is that *retribution* and *reparation* are needed to stabilize the post-transitional society. If wrongdoers are not punished and victims not compensated, the government will lose legitimacy and extremist movements may flourish. It is hard to evaluate the empirical validity of this argument. Historically, I do not know of any post-transition regimes that have failed because of insufficient retribution or reparation. Yet perhaps it is too early to tell – South Africa might prove to be a case. The bulk of the black community in that country got neither justice nor land, only (some) truth. The very high level of individual violence in South Africa might crystallize into collective violence.
- Even if valid, the instrumental argument might be limited by an instrumental counterargument. *The transition itself* may be in danger if wrongdoers know they will be harshly punished when they step down. The question is whether punishments can be found that are severe enough to satisfy the citizens and lenient enough to be acceptable to the wrongdoers. This was of course the hope of the Law on Justice and Peace.
- More uncontroversially, *purges* in the bureaucracy and the military may be needed to ensure the loyalty and efficiency of the new administration. The failure of the first French restoration (1814) was probably due to the insufficient purge of officials and officers who remained loyal to Napoleon.

# LAND REFORM AND DISTRIBUTIVE JUSTICE

- The idea of distributive justice should be taken in a broad sense that also includes efficiency, since an increase in the size of the pie makes it easier to share it more fairly.
- Here are some possible measures:
- Impose a property tax on uncultivated land so that the need to pay the tax will make the owners cultivate it. This is a pure efficiency-oriented measure.
- Expropriate large estates with “full” or “adequate” compensation paid by the new owners or by the state, to break them up into smaller units. Smaller units might be desirable on grounds both of equity and of efficiency.
- Consolidate many small plots into large estates to be used for highly mechanized production. This is sometimes recommended on grounds of efficiency.
- Transform de facto possession into formal ownership.
- Subsidize the cultivation of new land at the agricultural frontier, on grounds of equity.
- Subsidize peasants who negotiate land purchases with owners, on grounds of equity.
- As a *dual-purpose measure* of transitional justice and distributive justice, one can impose an upper limit on the size of restituted plots. This policy was followed in Hungary in 1945 and in Romania in 1991.

## DUAL-PURPOSE MEASURES IN TRANSITIONAL JUSTICE

- Land reforms are sometimes used both for retribution and for reparation.
- In Czechoslovakia after 1989, the government preferred restitution to former owners over financial compensation or a voucher scheme. The latter solutions would probably have led to a more efficient use of the land, but were rejected because it was feared that the land would have ended up as the property of former Communists.
- In Colombia, confiscation of the property of paramilitary leaders serves the purposes both of retribution and of creating a Reparation funds for victims.

## SINGLE-PURPOSE LAND REFORM IN TRANSITIONAL JUSTICE

- Return land to original owners (England 1660, Germany 1990), with or without compensation for recent owners.
- Return land to original owners only if it remained the property of the state after confiscation (France 1814, Bulgaria 1990).
- Allocate land of comparable size and location to owners of confiscated property
- Allocate land to demobilized soldiers or their families, either as payment for service or to prevent them from taking up arms again.
- Allocate vouchers to original owners that they can use to bid for land purchase (Hungary 1989).

# FOUR QUESTIONS

- Why privilege land?
- The problem of dual ownership
- The burden of proof
- Past, present or future

# WHY PRIVILEGE LAND?

- Transitional justice ought to address three issues: material suffering (including dispossession of land), personal suffering (prison, forced labor, forced displacement) and intangible suffering (deprivation of opportunities for education, travel etc.). In many transitions there has been an excessive emphasis on material suffering and property restitution, perhaps because these are more salient and easier to measure. In Eastern Europe after 1989, people were compensated for loss of real property but not for sufferings caused by the fact that they could not sell their labor-power. This seems arbitrary.

# THE PROBLEM OF DUAL OWNERSHIP

- Sometimes, property was confiscated by the state in the pre-transitional regime and distributed or sold to new owners. Athens 403 B.C., England 1648, France 1793, Jewish property in France during WW II, Communist Europe after 1945 (except for Poland).
- Sometimes, original owners have been forcibly dispossessed of their property or possession by war or civil war, and others have taken their place. This also includes the forcible sale of property at artificially low prices.
- Solutions may depend (i) on the time between the dispossession of the original owners and the regime transition and (ii) on the good or bad faith in which the subsequent owners acquired the property.

# THE BURDEN OR PROOF

- If a long time has passed since dispossession or if war and conflict have destroyed records and archives, the dispossessed may have difficulties in establishing their claims. Sometimes, the burden of proof has been replaced by a *presumption of possession*, based on membership of an ethnic group (e.g. Jews in German-occupied countries), having lived in a region where large-scale dispossessions have taken place , or having sold one's property at below-market values.

# PAST, PRESENT OR FUTURE?

- Land reform may be guided by considerations of entitlements, need, or efficiency.
- Entitlements may derive both from past holdings and from past sufferings. Transitional justice takes precedence over distributive justice.
- Need derives from present suffering, whether or not caused by the armed conflict. Distributive justice takes precedence over transitional justice.
- Efficiency ignores both transitional and distributive justice, to focus on maximizing the total to be shared rather than on the principle by which it shall be shared.