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A Land of Lawyers, Experts and “Men without Land”:
the Politics of Land Restitution and the Techno-Legal Production of “Dispossessed People”
in Colombia

A dissertation presented by

Juana Dávila Sáenz

To

The Department of Anthropology

in partial fulfillment of the requirements

for the degree of

Doctor of Philosophy

in the subject of

Anthropology

Harvard University

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Abstract

A Land of Lawyers, Experts and “Men without Land”: the Politics of Land Restitution and the Techno-Legal Production of “Dispossessed People” in Colombia

In this dissertation I examine the contested process of the configuration of a new subject of rights in Colombia: people violently dispossessed of land (*los despojados*). Based on twenty one months of observant participation in the Land Restitution Unit of Colombia and the ethnographic reassessment of my professional and family history, I examine three instances of the articulation of this subject of rights: (1) the process by which land dispossession became a real and urgent problem for a variety of publics and especially for a set of techno-political and legal elites; (2) the production of a special legislation, the Victims and Land Restitution Law (Law No. 1448 of 2011) establishing land dispossession as a new legal category and creating an entire new administrative and judiciary apparatus for land restitution; and (3) the everyday practices of the Land Restitution Unit, the new governmental institution entrusted with the task of identifying dispossessed peoples (and lands), and promoting the vindication of their rights to land restitution in court and beyond.

As a point of entry into the politico-legal life of this new subject of rights, I follow the trajectories of a group of lawyers and other experts who, in the midst of the recent armed conflict, articulated the occurrence of a massive land dispossession in the countryside to urban and politically powerful publics. I trace how land became an object of desire in Colombia and how, after the failure of several generations in conquering land and enjoying its promises, by the early 21st century land

dispossession had become a familiar and ubiquitous story for Colombian families, my own included. I trace how at that time, these experts helped to posit land as a nation-wide problem with a long history and increasingly immoral effects. Also, I show how these experts navigated the shifting political topography to gain access to the halls of Congress, and after a series of attempts between 2003 and 2011, to influence the production of legislation vindicating the rights of *despojados* and become *normative elites*. The most significant articulation of this new subject of rights came with the Victims and Land Restitution Law, approved in 2011 by ordering the restitution of land to people dispossessed after 1990 and ordering the creation of a specialized administrative and judiciary apparatus and introducing an alternative regime of proof to be followed during the procedures. Some of these experts were appointed to operate this new apparatus and set of legal rules. I focus my attention on those who joined the Land Restitution Unit and on their daily practices, through which they seek not only to reverse land dispossession but to incarnate a virtuous state, a state different from the one that allowed and even contributed to the victimization and invisibilization of the dispossessed. I show that as the official truths about land dispossession are assembled during the administrative and judiciary procedures and are then set in circulation, the complicated relationships between the dispossessed, the armed organizations and the larger communities in which they are embedded tend to be simplified by means of the juridification of the past (Comaroff and Comaroff 2012), and also by additional structural mentions and silences (Trouillot 2015) that have as their main effect the preservation of the dichotomy of victim-perpetrator and the resolution of both legal and moral ambivalences. As a result, such reconstructions tend to result in narratives of dispossession that share what I have called the *standard plot of dispossession*; and not only legitimize but demand the use of force on behalf of the final subject of rights and the effacement of the war and dispossession stories of others.

Throughout the dissertation I interrogate from an ethnographic perspective the cultural politics of land in Colombia, the making of techno-legal elites, the conversion of claims for justice in written law and the politics of legal change, the production of administrative truths and the daily practices of state-making. More generally, this dissertation reflects on what anthropologist William Roseberry (1994) has referred to as the “field of force,” in which the struggles around the definition of the populations and landscapes that ought to be protected through official truth-making and the symbolic (Bourdieu 1987) and physical violence of the law are waged.

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Glossary

- ACCU. In Spanish, *Autodefensas Campesinas de Córdoba y Urabá* (Peasant Self-Defense of Córdoba and Urabá) was one of the denominations by which the highly brutal paramilitary group of the Castaño brothers operating in Córdoba and Urabá in the late 1980s and early 1990s came to be known. Pre
- ANUC. In Spanish, *Asociación Nacional de Usuarios Campesinos*. It was a government-sponsored organization created under Lleras Restrepo's administration (1966-1970) which reunited peasants, settlers, share-croppers and agrarian landless laborers. The ANUC was the first nation wide peasant organization of Colombian history.
- AUC. In Spanish, *Autodefensas Unidad de Colombia*, the largest confederation of paramilitary organizations of Colombia's history. Created by the Castaño brothers in 1997.
- *Baldío*. The literal meaning in Spanish is vacant land, but in the context of agrarian law and how it is mostly used in Colombian nowadays a *baldío* is a publicly owned land, regardless of whether it is inhabited.
- Cega. A Colombian think-tank devoted to agricultural and cattle-ranching studies.
- CGN. In Spanish, *Contraloría General de la Nación*; in English, National Accounting Office.
- Cinep. *Centro de Investigación y Educación Popular*. A think-tank and NGO devoted, among other things, to monitoring human rights violations in Colombia.
- CNMH. National Center for Historic Memory. The VLR Law transformed Historical Memory Group (GMH), a subdivision of the National Reparation and Reconciliation Commission (CNRR) into the CNMH, a much larger institution.
- CNRR. National Reparation and Reconciliation Commission. In Spanish *Comisión Nacional de Reparación y Reconciliación*.
- Codhes. *Consultoría para los Derechos Humanos y el Desplazamiento*. This NGO founded in the early 1990s in Colombia has been highly influential in visibilizing and vindicating the victims of forced displacement in the country.
- *Despojo de tierras*. In the context of agrarian conflicts, *despojo de tierras* means land dispossession, and it often implies the use of violence. However, in the context of the VLR Law and the Unit, *despojo* can also mean land dispossession by means of deceit or by means of legal mechanisms but in any case without the full consent of the allegedly dispossessed person.

- *Dolo*. Colombian legal category meaning “intention to cause damage”; it may also work as synonymous of bad faith.
- ELN guerrillas. Or *Ejército de Liberación Nacional*; in English National Liberation Army. Inspired by the Cuban Revolution, the ELN emerged in the early 60s and its explicit purpose was to replicate the Cuban revolutionary model in Colombia.
- EPL guerrillas. The *Ejército Popular de Liberation* or People’s Liberation Army was created in the late 1960s by the the Marxist Leninist Communist Party of Colombia.
- FARC guerrillas. *Fuerzas Revolucionarias Armadas de Colombia*. The FARC were officially created in 1965.
- Fedegán. In Spanish, *Federación Nacional de Ganaderos*, in English, the National Cattle-Ranching Federation.
- GMH. *Grupo de Memoria Histórica* in Spanish, was a subdivision of the National Reparation and Reconciliation Commission, CNRR.
- IDR. The Integral Rural Development: an agrarian development strategy launched by the World Bank in the 1970s.
- IGAC. The Agustín Codazzi Geographic Institute it’s the state agency in charge of producing and keeping the cadaster, the inventory with the physical description and location of all the real estate properties of Colombia
- Incoder. The Institute for Agrarian Development.
- Incora. The Agrarian Reform Institute, in Spanish *Instituto de la Reforma Agraria* or *para la Reforma Agraria*. The Incora was created in 1961 through Law No. 135. Article 2 named it *Instituto de la Reforma Agraria* but in subsequent legislations it has been also called *Instituto para la Reforma Agraria*. The Incora was dissolved in the early 2000’s and replaced by the Incoder, the Institute for Agrarian Development.
- JnP Law. Justice and Peace Law, also known as Law 975, approved in 2005 by Uribe’s government legislative majorities.
- LRU: Land Restitution Unit. New government agency created by the Land Restitution and Victims Law in mid-2011 and put into operation in early 2012.
- MOVICE. Movement of Victims of State Crimes. MOVICE emerged in 2005, as response to the approval of the JnP Law. MOVICE operates as a network connecting hundreds of grassroots organizations constituted by victims of serious crimes against humanity, allegedly committed by way action or omission by state agents.
- Monitoring Board. An ad-hoc NGO evoted to follow up the state response to the ruling T-025 issued by the Constitutional Court in 2004 in which it declared existence of an “unconstitutional state of affairs”. The state purpose of the Monitoring Board is to contribute

to the efforts directed to the resolution of this state of affairs. Since its creation in mid-2000s, Codhes has been in charge of its management.

- *Ocupación*. It is the same as *posesión* but in this case the land involved must be a *baldío*, a publicly owned land.
- *Ocupante*. Someone who is deemed to have the *ocupación* of a *baldío*. See *ocupación* and *baldío*.
- PNR. In Spanish *Plan Nacional de Rehabilitación*. Launched under the Betancur's administration (1982-1986), the logic was to prioritize the development of the most violent regions of the country.
- *Poseedor*. Some who is deemed to have the *posesión* of a property. See *posesión*.
- *Posesión*. The same as adverse possession in Anglo-Saxon Law. This legal category pertains to people who possesses a real estate but lack property titles. In the case of the Colombian Civil Code, the person who exerts the possession must also believe to be the legitimate owner and must have behaved as such, for example, by paying property taxes and utilities.
- The Project. Known as the Project for the Protection of the Land and Patrimony of Displaced Populations, it was designed by former Social Solidarity Network officials and other public servants, and was put into action in 2002 with a grant from the World Bank.
- The Social Solidarity Network, a.k.a. the Network, a governmental agency created under the Samper administration (1994-1998) to address poverty, but eventually it was also entrusted the task of providing assistance to *desplazados*. Uribe's first administration renamed it as Acción Social, changed its mission, reduced the participation of public spending in its budget and put it under the supervision of the Vice-Presidency.
- *Tenencia*. Land tenure without property titles and without expectations of acquiring one.
- UN. The United Nations (Organization).
- USAID. The United States Agency for International Development, it's an agency of the United States federal government that is primarily responsible, among other things, for administering civilian foreign aid and development assistance.
- VLR Law. The Victims and Land Restitution Law, also known as Law 1448 of 2011.

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Para la Madre, Pe, Antonio

Para Pa y Kathy

Para Socio y Felipe

porque me dieron la fuerza

The universe of right and wrong is territorialized by a grid of laws, and each law has a number. The infamous and much-abused law against illicit enrichment (...), was always spoken of as "Law 30," no less natural than the law of nature. But the numbers never fit reality -neither the reality of the human condition nor the reality of the sublet distinctions necessary to law. The grid slips. And so a new law is made and the judge is kept pretty busy just keeping up. When I tell someone I'm working in a project I call "Law in a Lawless Land," they laugh and exclaim "lawless?"

Michael Taussig (2005).
Law in a Lawless Land. Diary of a Limpieza in Colombia, Chicago Press, p.16

Introduction: The Strange Political Life of the Dispossessed as a New Subject of Rights

In June 2010 President-elect of Colombia, J.M. Santos, surprised his constituents and detractors alike. Previous to the elections, Santos had been the Minister of Defense for his ultra-conservative predecessor, Alvaro Uribe. During the eight years (2002-2010) of his administration, Uribe had enjoyed unprecedented approval rates, mainly due to his success in counteracting the leftist guerrillas; partially demobilizing the largest paramilitary confederation of the time – the United Self-Defense Organizations of Colombia (or AUC in Spanish); and stimulating economic growth.

At the same time, Uribe's government was severely criticized by the human rights community, international organizations, and the leftist and liberal political opposition for his authoritarian style of government; the implementation of security policies that transgressed human rights provisions; corruption scandals involving his closest allies and friends; and his trickle-down economic and agrarian policies. An important source of dissent was the legislation regulating the demobilization agreement with the AUC. Critics felt that the procedures established for the prosecution of the highest commanders were too lenient and were inadequate to address the claims of justice, truth and reparation of their many victims.

But none of these critiques actually affected Uribe's popularity. His coalition in Congress sanctioned an amendment to the Constitution allowing his reelection, and then a second amendment was attempted so he could run for a third time. The Constitutional Court, however, blocked this latter initiative and, at the end of his second administration, Uribe was forced to choose a successor from among his political allies. Because of a series of political contingencies, he ended up choosing Santos. Although Santos was the heir of one of Colombia's most powerful liberal political families and was the only high official in Uribe's government who had been a minister in every government since the 1990s, he was relatively unknown to most of the electorate and had never run in an

election. During the campaign, Santos presented himself to the public as an upholder of Uribe's program and won with the highest number of votes in the history of the country. In the first days after taking office, however, Santos announced a series of policies that, in practice, reverted many of Uribe's.

One of the announcements that caused major perplexity among the public was that of giving the "forcibly displaced peasants" back the lands they had left behind, and reviving what in previous years had come to be known as the Victims Law and would then be re-baptized as the Victims' and Land Restitution Law – VLR Law. The VLR Law had been the most important initiative of Uribe's opposition in Congress during his second administration. Its approval had been first attempted in 2007, but Uribe's majoritarian coalition had finally tabled it in 2009, with the argument that the intended reparation of victims was too expensive, to the point of compromising the financial sustainability of the Colombian state, and that some of its provisions were morally unacceptable. Its proponents had publicized it as a counter-legislation that "was generous with victims, instead of perpetrators" and that would correct the deficiencies of the legislation derived from the agreement with the AUC. Also, the international community had asserted that if approved, it would constitute the most advanced and complete transitional justice statute in the world.

Most importantly for the purposes of this dissertation, the bill had been hailed as what would make possible the reversal of the massive land dispossession –*despojo de tierras*- that certain political publics believed to have been caused by the violence and greed of narcos, paramilitaries –and also guerrillas-, and allow the restitution to the millions of forcibly displaced peasants of the lands they had been forced to abandon or to hand over to their aggressors. Thus, in a rather incomprehensible switch of political positions for most observers, Santos had incorporated into his governmental agenda one of the primary aspirations of Uribe's political rivals and more significantly, he had

embraced a perspective of Colombia's recent history and current order that Uribe and his allies had vocally rejected for eight years.

In this version of history, Colombia's recent violent past had been one of political armed conflict, humanitarian crisis, the massive forced displacement of the population, and an equally considerable land accumulation through dispossession.¹ According to this experience of the immediate political past, starting in the early 1980s and up to the mid 2010s, Colombia was immersed in a mostly rural armed conflict between state forces, leftist guerrillas and narco and paramilitary organizations which clashed against each other or constructed alliances as they competed for the government of populations, territories and (il)legal economies (mainly but not only that of cocaine). Along the way, violence and investments of legal and illegal capital dramatically reconfigured Colombia's agrarian (and urban) landscapes, leading to the rapid impoverishment of rural and urban populations and the reinforcement of historical forms of inequality.

By the time Santos was elected President, and after several partial demobilizations and peace processes, violence had begun to recede -- but not before killing, injuring or causing the disappearance of at least half a million people and the forced displacement of another 4 to 5.5 million (between 10-12% of the population) from the countryside into towns, according to the most conservative estimates (CNMH 2015, 2013). Along the way, escaping rural communities left behind farms, residences, and belongings, many of which were subsequently or concomitantly occupied and appropriated by neighbors and newcomers, most of them with the authorization of the dominant armed group of the area, or directly by the very same armed actors through front-men.

Also, as the "people forced to move," relabeled as *desplazados* in the early 1990s, most of them had resettled in more urbanized spaces where their peasant skills had lost value, usually casting them

¹ I refer to this version of history as progressive because of the self-perception of most of its main narrators that their perspective recognizes the struggles of the most vulnerable populations and also defies the aspirations of certain economic and political elites to legitimize the status quo.

into a process of rapid pauperization and turning them into “the poorest among the urban poor” (Ibáñez 2008). Estimates regarding the number of hectares abandoned or directly dispossessed conducted up to that time varied widely: from 1.2 to 10 million hectares, depending on the source, on who counted as *desplazado/a* and what was considered to count as “abandonment” and “dispossession.” The most authoritative estimate of the time pointed to the figure of 5.1 to 5.6 million hectares (Monitoring Board 2008). Additionally, governmental, human rights and journalistic investigations found that in many places controlled by guerrillas, and particularly paramilitaries, property rights had been transferred through forced sales, the forgery of documents, the cooptation of administrative and judicial institutions and the investment of cocaine capital. In other places where state forces had recently secured military control but violence was massive in the past, these same research initiatives found that investors had acquired massive extensions of land at low prices from the surviving communities of desplazados now struggling in the cities. As a result, recent analyses have asserted that this new cycle of violence and dispossession worsened the most negative features of both rural agrarian and urban landscapes already in place by the 1960s: in the countryside, land concentration increased rapidly, along with a severe decline of peasant economies and also food production in some areas, while in the cities, demographic density, impoverishment, housing shortages and unemployment rose, making urban and rural worlds increasingly unequal and more precarious spaces. Overall, this recent history has been often thought of in intellectual and activist circles as an “an agrarian counter-reform” -- a form of primitive accumulation in the Marxist sense (Reyes 2016, 2009, Mondragón 2010, 2008) and as an example of accumulation by dispossession (Harvey 2013). In its lay, less intellectualized version, it is often regarded as a story of greed (CMH 2012: 20).

Moreover, this recent cycle of violence and its multiple effects has also come to be understood as the result of a series of cumulative failed attempts from previous generations of ruling classes to

correctly allocate land through an effective agrarian reform. Hence, the notion of a “counter-reform.” The agrarian structure, and the issue of land in particular, has become one of the preferred explanatory frameworks of the country’s historical arc, with its different cycles of violence. In 2012, in its final report about the last sixty years of war, the Center for Historic Memory reiterated that the issue of land was one of the two main structural elements of this convoluted past, going back to the 1940s or earlier.

Under Uribe this causality of land as cause and consequence of Colombia’s complex past of violence was often hailed by the opposition as the main reason why his government’s militaristic approach to a peasant-based insurgency and his regressive agrarian policies were flawed and anti-historical. Most high-level officials within Uribe’s government rejected this version of the past and the present, deeming it exaggerated, misleading and sometimes even suggesting that it had been constructed by the insurgency to gain terrain in the political field. From the perspective of Uribe’s closest advisors, whatever was happening out there was not a “political armed conflict” –since such a term would have the undesirable legal implication of granting the guerrillas a political status. Rather, the turmoil had been caused by a series of narco-terrorist organizations pursuing profit. Victims, although existent, were not as numerous as had been claimed. Reparation policies on their behalf were too burdensome for state finances, and some of those claiming to be victims were opportunists or in fact active members of armed organizations –which made them casualties, instead. Even more, some human rights NGOs were “undercover terrorists” seeking to undermine the authority and the financial stability of the state. As for forced displacement and land dispossession, often the reaction was that of minimization, with no real effects on economic development. The Minister of Agriculture insisted that the war “had nothing to do with rural development.” There was no causal link. As for the claims to land restitution, the response was that existing administrative and judiciary procedures were sufficiently well-structured and effective to

protect property rights regardless of the socio-economic condition of the claimant.

These two different ways of engaging in the government of the territories and populations immersed in violence coexisted during Uribe's administration but then, under Santos, the first was operationalized through a series of state practices. In less than ten months, his coalition in Congress passed a new version of the VLR Law and also in record time, a whole new judiciary and bureaucratic apparatus was set in place to vindicate the rights of the subjects deemed to have been at the origin of war: the "dispossessed peoples or population" (*los despojados*).

The Land Restitution Unit (Unit), created to this effect, was given the task of receiving the land restitution claims, verifying their accuracy, identifying and mapping the properties and the individuals (or communities) involved, and incorporating them into an "inventory of dispossessed lands" and peoples. To do so, the new statute instructed the Unit to apply a new regime of proof when evaluating the claims and determining *the facts* of the alleged events of dispossession. This new regime predicates the good faith of the claimants. It also dispenses them from the burden of collecting and providing the evidence that supports their claims. Instead, the burden of proof is transferred to the Unit and its officials, who have to generate the evidence that confirms –or not– the veracity of the claimants' stories. The claims that are confirmed to fulfill certain conditions in terms of the time and mode of the alleged dispossession are admitted into the inventory. This admission is a requirement for the claim to proceed to the special courts, also created by the VLR Law. Once in court, the Unit often acts as the claimants' attorney, free of charge. In such cases, the teams of lawyers, social scientists and cadastral engineers of the Unit are put to the service of the claimants' case. In this setting the burden of proof is transferred to the current tenants and owners of the lands being claimed, who, in order to defend their entitlements, have to produce their own evidence and arguments to counter the Unit's. Thus, although the Unit does not fully determine the veracity of the claims, it does generate the facts of the case, certifies the eligibility of the claimants to

proceed to the court, grants the lands in question the status of “allegedly dispossessed or abandoned” and then defends the case in court. Moreover, as I write, the Unit has won more than 90% of the cases. In this sense the Unit is a crucial site of production of “dispossessed peoples” as subjects of the right to land restitution.

As I shall discuss throughout the text, the people who drafted the VLR Law –mostly lawyers- had come to the conclusion that in addition to the violence exerted over peasant communities from the many armed organizations in dispute during the 1980s up to the late 2000s, one of the constitutive elements of land dispossession and protracted landlessness had been the inability of the dispossessed to demonstrate before judges and administrative authorities the veracity of their stories. Though not phrased as such, the underlying assumption has been that the means for the production of legal truths is as badly distributed as land.

However, the VLR Law restricted the notion of dispossession and the subject of rights to a period of time and to a form of “purified victimhood” (Orozco 2012), but not to a socio-condition. Thus although indeed the subject of rights was initially imagined by its proponents as tending to be embodied by a poor former peasant harmed by the armed conflict but not an active part of it, only the politico-military aspect of this ideology of victimhood was inscribed in the law. And yet, during the process of approval, and in the early stages of application, the VLR Law was framed as resolving the agrarian counter-reform, and giving back to peasants the lands that once belonged to them and now were in the hands of criminals. The underlying narrative was that of greedy people pursuing land accumulation through illegal means. In this sense, although land restitution was a predominantly retributive measure, in this context it was nonetheless expected to have redistributive effects. As such, this story garnered the support of a variety of distinct political publics with different concerns. Some of them resented that violence had dissolved property rights, regardless of the class position of the victim, while others also resented that it had fostered accumulation –or on

the contrary, that it had been a form of forced redistribution. Moreover, because the archetypical “dispossessed person” was a poor peasant, land restitution was even hailed as an agrarian reform of the same kind attempted in the past.

On the other hand, because the definition of land dispossession therein included did not establish any socio-economic boundaries or limits to the amount of land that could be recovered by means of restitution, this encouraged long-time antagonists of any agrarian reform, the landowning classes, to also quietly adhere to the bill since, as one their main spokespeople put it later on, they also had “lost lands during the war.” But as the implementation phase continues to advance, the VLR Law has been faulted for not fulfilling these incommensurable expectations. The Land Restitution Unit has been accused by publics on both sides of the political spectrum of operating to bring about an agrarian order that goes against their perceptions of the past and their hopes for the future. Moreover, it has been accused of enabling and reinforcing the same forces that, they argue, caused land dispossession in the first place.²

The techno-legal production of land dispossession (*el despojo de tierras*):

This dissertation is about the politics surrounding and making possible the recent techno-legal and political articulation of a new but old subject (and object) of rights in Colombia: “dispossessed lands and peoples.” I examine both the processes and conditions of production of this subject of rights and the shifting political alignments that allowed its emergence and that have resulted from it. To do this, I use as a point of entry to the shifting political field a group of techno-legal elites who actively participated in the invention of the agrarian counter-reform, and follow their trajectories and that of

² See, for example, Lafaurie, José Félix. (Lafaurie 2016). “La cuota inicial”, Contexto Ganadero: <http://www.contextoganadero.com/columna/la-cuota-inicial>; and Valencia, León (Valencia 2014). “Presidente Santos ¡Salve la restitución de tierras!”, Semana Magazine: <https://www.semana.com/opinion/articulo/leon-valencia-presidente-santos-salve-la-restitucion-de-tierras/381914-3>

their inventions –statistics and diagnostics, human rights reports, policy documents, legislative proposals and social analyses. My purpose is to examine if and how their performance of expertise shaped political decisions and, eventually, a broader political common sense.

Drawing on twenty one months of fieldwork in the offices of the Land Restitution Unit, interviews with key participants in the formulation of the VLR Law, and previous professional and personal experiences, I examine how land dispossession came to be perceived as a real and urgent national problem, and dispossessed peoples as subjects deserving a set of special rights. As I will show, the political positioning of the problem was fraught with resistances, hesitations and paradoxes. I then inquire into how a series of strategically positioned officials, experts, politicians and activists negotiated the entitlements of this subject of rights and formulated them in the form of a series of legal provisions -- of which the most important is the VLR Law. Finally, I also examine the everyday practices through which the Land Restitution Unit (and the special courts created for that effect) transforms –or fails to transform- land restitution claimants, and the lands being claimed, into “allegedly dispossessed” lands and peoples. Overall, this dissertation is an ethnographic inquiry about how dispossessed lands and peoples have been objectivized and morally reevaluated in three overlapping moments and settings: the problematization of land dispossession; the formulation of the VLR and the administration of land restitution.

Rather than taking the VLR Law as a point of departure, I conduct a critical genealogy of its conditions of possibility and inquire into the politico-economic and epistemic processes that led to the formation of the problems it is expected to solve -mainly, that of land dispossession (*despojo*) and that of the specific solution offered in the bill: land restitution. Following what anthropologist Susan Greenhalgh (Greenhalgh 2008), inspired by Bruno Latour’s (2005) work and also Foucault’s notion of governmentality (Foucault 2011) has referred to as the “policy assemblage,” I explore the multiple and simultaneous “associations between people, ideas and material objects” from which the problem

the VLR Law is expected to solve, and the solution it prescribes, emerged. In this sense, I approach this legislation as a politico-legal cultural object that, through a sort of reverse engineering, can be disassembled into some of its constitutive parts and steps as a way to understand the process of its articulation. I contend that this methodology can be productively transposed to the study of law-making and legal change, and explore from an ethnographic perspective the intersection between law and politics in settings such as Congress.

In addition to reconstructing the competition in Congress for votes to approve or dismiss the VLR, in my analysis I examine what Shore, Wright, and Però (2011) refer to as the land restitution policy world, constituted by politicians, experts, government officials and activists who, in the name of the dispossessed, disputed among themselves the contents and the institutional setup of the right to restitution; and the strategies to inscribe them in law. At the risk of overstating their agency, I examine how they authorized in both senses of the term –as authors and as authorities- the chapter of the bill devoted to land restitution. Finally, as part of this exercise I also capture the origin stories and justification narratives (Tate 2015) and also the symbolic framings (Stone 2012) that have accompanied the VLR's formulation.

However, I will also show that to some extent their own condition as techno-legal elites and their ability to dictate the law was obtained precisely because of their active participation in the invention of the “dispossessed.” As the problem of land dispossession gained political currency, so did their expertise and their political influence. In this sense, this dissertation also explores how they became elites, or at least how they were granted the authority to decide the rights of the dispossessed and determine the institutional structure to be put into effect for such purposes.

Next, I follow some of them as they were appointed to leadership roles in the Land Restitution Unit, or joined it through calls for applications. I examine their everyday practices as officials in the Land Restitution Unit and their participation in the production of “allegedly dispossessed lands and

peoples.” I also study how they sought to enact not only a particular of rural landscape, but a particular of kind of state.

Throughout this I approach these techno-legal and administrative elites as full-fledged ethnographic subjects, both immersed and actively constituting politico-affective formations, regimes of truth, hierarchies of prestige, and notions about history and morality. With a few notable exceptions (Vera 2017; Aparicio 2012, 2009; Villaveces-Izquierdo 1998), these elites in Colombia have seldom been explored ethnographically, despite their influence on the field of politics and on the definition of state forms and the creation of the law. Concretely, I examine their participation in the creation of authorized representations of land dispossession, in the sense of urgency around it, and eventually the introduction into the legal system of the VLR Law.

The field of force: the site and language of politics

The production of dispossessed lands and subjects in these different points of articulation emerges from, but has also transformed by, what E.P. Thompson and Roseberry (Roseberry 1994) refer to as the *field of force*. In his reinterpretation of Thompson’s original formulation, Roseberry proposes that we understand politics as the alignments and tensions between subaltern groups and ruling classes – and within each other- as occurring in a delimited field of force. This field structures both consent and struggle, and provides a common set of understandings to the continuously shifting segments of disputing parties about what is to be disputed or agreed upon and the means to do so. Roseberry assimilates the field of force to Gramsci’s notion of hegemony, but clarifies that the similarity holds as long as the latter is understood not only as what organizes consent—which in his opinion is the dominant interpretation in anthropology- but also conflict. Throughout the dissertation, I will sketch some of the main transformations of the field of force across time, and illustrate how the means and ends of politics in Colombia have shifted, hindering or prompting the techno-legal articulations of

“the dispossessed.” By following the techno-legal elites I unveil the shifting topography of the field of force and the expected but also surprising realignments that it enabled.

As a more general argument, I show that the production of both “dispossessed lands and peoples” as objects and subjects of the right to restitution in the terms of the VLR Law is just one of the most recent developments of a longer dispute in Colombia about who decides -and who is granted- the allocation of three constitutive elements of the field of force itself: land, law as legitimized violence and rightful demand, and truth. As I have come to understand it, the political struggle to (de)authorize the VLR Law, and then to defend or question the administration of dispossessed peoples and territories, has been ultimately a dispute about the right allocation of land, and its many promises and potentials –which I shall address below. Land, I will argue, is an object of desire of sorts in Colombian political culture: it is attributed the potential to bring about a variety of personal and collective utopias; and its correct distribution, and the adjudication of agrarian justice more widely, is thought of as leading to the advent of series of anticipated futures, ranging from a socialist utopia to liberal modernity.

Second, the techno-political configuration of the “dispossessed lands and peoples” was and still is a dispute surrounding the power to decide what is allowed and demanded by the law. This dispute is about the definition and also the correct interpretation of the law, and what it permits, given its internal logical structure, but also about what the correct application of state violence should be, when it comes to land tenure and property rights. Against or in favor of whom should this violence be directed? Which human-land relations must be protected, which ones must be dissolved?

Finally, and intimately related with the latter, the production of the dispossessed as a subject of rights has also been a dispute about the right allocation of the means for truth. The process of configuration of the problem of land dispossession and its positioning in the public sphere was to a great extent a competition between experts embedded in government agencies, NGOs, and

academia about how to accurately assess and represent the wide-scale geo-demographic reorganization of peoples and territories brought about by the violence and social changes of the 1980s and 1990s. This included constructing accounts of the latest developments of the war, generating statistics about forcibly displaced peoples, and abandoned or dispossessed hectares, providing maps and causal explanations. Equally important for purposes of the dissertation, the (de)stabilization of property rights is a matter of effectively engaging with the means of production of legal truths in the form of facts supported by acceptable evidence. Depending on facts, the Land Restitution Unit and the other state institutions that intervene in the production of the subject of rights may deploy or deny the symbolic and physical violence that objectivizes it on the ground.

Thus, the emergence of this new subject of rights, and its everyday production, involves a continuous set of disputes for land, law and technical truths which co-occur across the field of force and determine each other's development, as shall be clearer in the following chapters.

But first I will use a family story to illustrate the extent that these interrelated disputes are a *familiar story* for contemporary Colombians of different backgrounds and generations; and why the VLR Law elicits reactions even from people distant in time and space from the cycle of land dispossession that it purports to reverse. The conversation that started with my eighty nine-year-old grandfather Papo, as everyone in the family called him, one afternoon in August 2011, first revealed to me how ubiquitous the nostalgia for the promised land and the experience of its loss was among Colombian families. For six years, in multiple spaces of both my professional and personal life, I had been encountering stories of land dispossession and fantasies of landownership. However, I had treated those that involved poor and recently displaced rural inhabitants as valuable data to understand what had happened with the Colombian countryside in the past decades, whereas the stories of my urbanite relatives, friends, or passing acquaintances, despite how abundant and recurrent they were, seemed to me superfluous rather than somehow substantially ethnographic.

From different research positions, I had the chance to talk to dozens, if not hundreds, of desplazados and activists in towns and cities around the country who had witnessed, experienced or “denounced” recent and violent forms of land dispossession. At the same time, I had been immersed in a community of urban technocrats, lawyers and scholars who had been calling for the vindication of those losses and working intensively to promote legal changes.

In my private life, on the other hand, I had spent hours listening to coworkers, friends from school and college, and relatives complaining nostalgically about the farms they, their parents or grandparents had lost sometime in the past to gambling, in a conflict with a neighbor and also, often, to the guerrillas, the paramilitaries, or the narcos. And many also located the loss further back in time, to the peasant takeovers of the 1960s and 1970s, to the many cycles of violence between conservatives or liberals in the first half of the 20th century, or to the evictions orchestrated by landowners and local governmental authorities going back to the 19th century. Conversely, conversations admiring somebody’s farm or hacienda, or talking about how rich and successful somebody was given the amounts, location and quality of the land he owned, or the kind of *finca* (farm or country house) he possessed, were frequent and part of everyday gossip. Finally, it seemed that owning a small farm somewhere and growing old taking care of crops seemed to have become a fairly common fantasy about the future among urban professionals of my generation. Friends and friends of friends were quitting their jobs to buy plots of land and establish agro-ecological and sustainable farms, proudly calling themselves neo-peasants.³ Also, when I started graduate school and whenever I gave my elevator talk to anyone who would ask me about my research, my interlocutors would consistently nod, or bite their lips, take a deep breath or smile, before confiding their own stories of land dispossession to me. From taxi drivers and the strangers standing with me

³ In 2013, when the first national scale peasant protest erupted after almost thirty years of no mobilization, people in the streets of Bogota joined and there were a series of news articles about “the new peasants or neo-peasants”, referring to young professionals who had moved to the countryside to become agriculturalists.

in line at a bank, to the clerks in my car's insurance company, to the uncles and grandparents of a friend the day of his wedding, to the girlfriend of a cousin as we headed to a bar, or the Colombian philosophy scholar I met at a conference: they all had their stories ready for me to record. If not, I discovered that it was just a matter of inquiring more deeply, or far enough back in family memories, to find a story of dispossession, loss, or of frustrated fantasies about land ownership.

The most unexpected encounters happened over a series of doctors' appointments. When asked about my occupation and the topic of my dissertation, one of the doctors started sobbing, and spent an hour telling me about her father who had died back in the early 2000s after having lost his farm to the guerrillas. "It broke his heart, and that's what killed him." Then, turning to me, "Don't we all want a little piece of this land (*un pedacito de esta tierra*)?" As she dried her tears, she added that she liked Uribe because he was hurt and angry like her.

How dramatic or painful or immediate the loss is and how this experience of fracture or unrequited desire is lived, accounted for and incorporated into the present certainly varies in intensity and importance in shaping actual practices and experiences. But even someone like Papo, with a positionality supposedly distant in time and space from conflicts over land in the countryside, was brimming with feelings of loss, and desires for rural ownership that I had not know about. As I discovered that summer, he had also tried to have land and enjoy some of its many potentials, to no avail. Throughout his life, the agrarian question had not only been one of the key points of political contentions at different points in time; but had been one of the subjects that urban men with political or intellectual aspirations had to openly discuss to show that they could govern or that they could unravel one of the "hardest of questions" (Lleras Restrepo et al. 1961). The issue had returned, although in a renewed form. Just a few weeks earlier, the Land Restitution and Victims Law had been passed in Congress and the celebrations in the media around this "historical" legislation abounded. Headlines applauded that political forces had joined to "finally address the

pressing concern of the agrarian question,” to solve “the historical debt with the peasantry,” “to provide justice for the largest group of victims of the armed conflict.”

Papo often talked about his times of splendor and prosperity back in the 1950s and 1960s, before he went bankrupt and the banks took away his engineering company and the greater part of a farm he still owned that I will call *La Primera*, but of which he had managed to retain only the house and a small extension now covered with forest. Once he had turned *La Primera* into an actual hacienda, hundreds of hectares wide, with many employees, cattle, forests, crops, and horses under the supervision of an *administrador*. It also had had its own “logo,” which was branded onto the hides of the cattle that he had once owned, sewn into the bed linens, and engraved on the wall by the entrance. That day, however, I found out that Papo had been caught up not only in the promises of prestige and further wealth of land, but that other properties I did not know about, and that he had owned and then eventually lost, had been directly entangled in the dramatic reconfigurations of the agrarian –and the political landscape- of the last fifty years that I had been eagerly studying. I later found out, as I dug deeply into this until-then unknown family story, that these properties ended up entangled in the failed agrarian reforms of the 1960s and early 1970s, the expansion of the insurgency in the 1970s, the narcotization of the 1980s, and the emergence of modern paramilitarism shortly after.

In that sense, the story that Papo shared with me that afternoon for the first time was no different from others I had caught glimpses of outside of my formal fieldwork. This time, however, the sentimental and very personal intersected in such direct ways with these historical developments that I finally recognized that I had been missing the point of how ubiquitous the longing for a lost land was and to what extent the distinction between home and field had been limiting my analysis (Gupta and Ferguson 1997). It was the first time I would recount a social scene involving family members or friends in my fieldwork notebook:

That day Papo was not feeling well, but since I was about to return to the US for another year to continue with my doctoral studies, we wanted to spend some time together. We sat in Papo's small "*oficina*" (office), as he called the small studio in the apartment he and my grandmother had moved to after selling the house where they had resided for more than fifty years. Since Papo did not have a retirement allowance or any additional income, they depended on the money they had received for the house. The walls were covered with bookshelves holding old leather volumes and also some "newer" ones, mostly from the 1960s and 1970s, about engineering, history, geography, law and economics; large piles of personal and professional documents he had been accumulating for decades; his diploma in Civil Engineering from the public Universidad Nacional; and pictures of him in the company of famous people he had met— Pope Juan Pablo II, President Jimmy Carter, Queen Sophia and King Carlos from Spain- in his time as a public official. A small cabinet held some tokens and awards he had earned for his services. A large carbon portrait of himself hung over his little desk, behind the brand new PC my father and his siblings had bought for him. He had been learning to use Word with youTube tutorials and the assistance of a computer technician so he could write his memoirs and we, his descendants, could understand and learn from "his deeds and failures," first as a businessman and then as a *terratiente* –landowner- and agriculturalist.

As he did every day of his adult life, he must have been wearing a perfectly ironed English cloth suit, tailor-made for him in Bogotá but copying the ones he had once bought in London in the good old days, when he could afford that kind of luxury. He was convinced that he had had the same set of suits since the 1960s, but the truth was that my grandmother would spread the word among old friends and extended family that Papo was in need of a new suit and someone would buy him new cloth and find a tailor who would recreate his favorite English one. Whether a Sunday or a weekday, whether he expected visitors, or was going to work all day long on his

computer, he would wear his suit with the matching vest, a stitched tie, handkerchief, silver cuff-links, polished black leather shoes with laces, and his pocket-watch. He was what in Bogotá is often referred to as a classic *cachaco* (a native of old Bogotá).

The conversation began with me updating Papo about my academic progress and my last trip looking for potential field sites. I had just arrived from a road trip along the highway that connects Bogotá, in the Andean highlands, with the Caribbean. The road descends from Bogotá's cold plateau to the hot plains of the Magdalena river valley and then runs parallel to the river for almost 1,000 miles northward towards the sea. Currently, at both sides of the road, the landscape is a succession of small towns, separated by vast extensions of pastures for cattle, and now and then interspersed with large agro-industrial farms devoted to palm-oil trees, banana plantations, or mining projects. For the last three years I had been doing the same exercise: looking for stories about land dispossession and accumulation on the outskirts of Bogotá, in the Magdalena valley and also in the Caribbean region. During two previous trips, I had encountered many stories involving drug traffickers of the 1980s, among them, the infamous Pablo Escobar and the also equally notorious Gonzalo Rodríguez Gacha. It seemed that they both had been dead long enough for people to talk in the first interview or encounter with me about the properties these two narcos had acquired sometime back in the late 1970s or early 1980s, and the way they had transformed local life and the agrarian landscapes around them.

I had also collected stories involving paramilitaries and guerrillas, but people had been less willing to discuss the details, afraid that speaking out could put them at risk. So to avoid asking uncomfortable questions, during this last trip I had been interviewing members of grassroots organizations about their expectations and reservations vis-à-vis the VLR Law. Papo listened attentively and then, signaling that he had heard enough, he turned to me with some bitterness: "Ah you see, the difficulty with this law is that in Colombia land property does not really exist." I

asked him to elaborate and then, for the first time, he told me about the other rural properties he once owned: that he had owned them on paper, he clarified. I wrote in my fieldnotes:

August 2011: [Papo's office]

It turns out that in the late 1950s Papo spent a fortune on the original colonial title (Cédula Real) of a huge property near the city of Valledupar “It covered 20,000 hectares” and “now is under the control of a coal extraction company (...) I didn't get a dime back for it. [I just turned on the recorder].

He bought a second property in the Magdalena Valley (which I had just traversed). He fell in love with the farm because it had a guadua (a Bamboo like tree) forest, 4 hectares wide. The farm did not have a very good vocación (farming potential), but he wanted to try planting lemon trees, anyway. But one day in the mid-1970s, he got a call on the phone. The voice at the other side of the line said: “This is the Voice of the People” – the local communist radio station. “It's the invader of your farm speaking.” Two weeks before this, the worker my grandfather had left in charge of the property had warned him that one night, a man had set up a camp inside the property and had planted some plantain and yucca.

Papo called someone for help, probably a state official, and asked him what to do. The guy, Torres was his last name, advised him to do nothing at all because “six months from now he (the invader) will have gone somewhere else to do the same.” The invader wanted a fortune for the “mejoras.”⁴ Nonetheless, one of the lawyers from la Gobernación, a man whose last name was Benavides Melo, told him he should worry. “First, you have to do an inspection, see how much land he's invaded, make an inventory, present it to the mayor, etc. you must certify that it was a violent invasion.” “So I did that, with an inspection and all.”

“Four months later, they invaded again; this time it was Las Iniestas, a very good one, also in the Magdalena valley. I had realized it was perfect for growing cacao. It was only a matter of clearing the lower branches of the forest and leaving the rest so they would provide shadow for the crops. One day, I was visiting the farm with a group of experts from

⁴ Literally, the improvements. The term has been used customarily in lay and also policy idioms to refer to the variety of material manipulations or additions to the land that are deemed to add value to the property. These range from material additives, such as seeds, crops, fertilizers and new infrastructure like irrigation systems, buildings and roads of any kind to other labor intensive activities like clearing the forest entirely or getting rid of weeds. In Papo's time, a property that had forest in it was less valuable than on that had been cleared. This has changed radically with the advent of Co2 markets and other green markets.

the National Federation of Cacao Growers when a very strange blue-eyed man I had employed, called Jaime, approached us to tell me that forty five families had just invaded it and had even gotten hold of the rifles he and other workers kept to defend themselves. I called the police. But we were in the middle of the National Front, after a very long and complicated bipartisan dispute. There were rumors that the governor of Boyacá at that time, Susana de Villareal, had been a promoter of the Chulavitas –conservative death squads.”⁵

[interruption, Papo’s medicines just arrived from the drugstore].

The properties in the story were located along the Magdalena river valley I had just traversed. The one he still owned, *La Primera* (The First), was located in La Dorada, a town bordering the river. The other two were sixty miles north, in an area known as the Vásquez Territory, and the big one was several hundred miles further up, currently a few hours away from the Caribbean Sea.

Back in the 1950s and early 1960s, when Papo bought the last three properties, those areas were mostly covered with tropical forests, were scarcely populated and were often catalogued as vacant and state-owned (Fals-Borda 1955). The paved road from Bogotá ended in Puerto Salgar near La

⁵ The conservative vigilantes or gangs who gathered at night to hunt down liberals in the 1940s and 1950s received many names, including Chulavitas and Pájaros (birds). Chulavita is the name of a small rural area in the state of Santander, where one of the most radical Conservative leaders and President for two years (1950-1952), Laureano Gómez, was from. Liberals like Papo called him “the Monster.” In chapter One I will explain that the first large-scale cycle of violence of Colombia’s contemporary conflict, referred to retrospectively as La Violencia (circa 1948-1953), mostly involved clashes between partisans of the Liberal and the Conservative parties. These frictions had been frequent across the country since the mid 19th century. However, violence reached a new level of intensity in 1948, under the government of a Conservative president, when the head of the Liberal party and presidential candidate, J.E. Gaitan, was shot down at noon in front of his office in Bogotá. The shooter was apprehended and lynched in just minutes by the angry mob. His body was dragged to the presidential palace just a few blocks away and exhibited as symbol of the Liberal outrage. Army staff responded with shotgun fire. As news of the assassination and the government’s response spread through the radio there was a chain reaction across the country. Liberals took to the streets and attacked their conservative neighbors, mixing old grudges with the anger of the moment. Conservatives did the same. And everywhere people, from all social classes and political affiliations, sought refuge in the fields or locked themselves inside their homes. What happened the following months and years is still difficult to appraise for historians, political scientists and sociologists who have tried to classify La Violencia into preexisting typologies: civil war, low-intensity conflict, intra-class conflict, revolution. La Violencia initially resisted Marxist and other structuralist explanations that were the order of the day in academia at that time. In response, anthropologists attempted facile “cultural” explanations to the point of claiming that it could all be attributed to a culture of violence inherited from colonial and pre-Columbian times. The conceptualization of La Violencia exhibits some of the main tensions in local and international academia and is often cited in Euro-American comparative political science, sociology and history concerning violence, rebellions or revolutions as illustrative of the analytical failure of one or the other school of thought.

Primera. In order to reach Las Iniestas, it was necessary to take a 4x4 or Jeep (which was the generic way in which Papo's generation and even that of my father still refer to any four-wheel drive car), then a boat along the river, and then to walk or take a mule. According to Papo, in good weather and traveling by daylight, from La Primera to the next two properties would take about two days.

Papo belonged to one of the first generations of locally trained engineering professionals. One of his frustrations, as he later wrote in his personal memoirs, was to have been unable to study engineering abroad as his other male siblings and peers from the private school he graduated from had done. He had been the last of twelve brothers and sisters and by the time he was ready to go to college in the early 1940s, his share of the inheritance had lost value and was not enough to pay his tuition and expenses abroad. So instead, he joined the public university in Bogotá and used the money to start a small construction firm and began to build family houses in the city's new neighborhoods. Some years later, he had accumulated sufficient capital to tackle larger projects. So he switched to the construction of public infrastructure and participated as a contractor in the modernization plan for Colombia devised by the conservative and liberal coalition, known as the National Front, that emerged in 1958.

Sometime in the mid 1960s, he bought the properties. In our conversation he could not remember if in the case of the Second and Las Iniestas he had bought an actual property title – which would have been rare since these were public lands- or if he had paid someone in exchange for land tenure. But as he suggested, and I certainly knew from my previous research, in Colombia property titles had, and still have, to be produced and transferred according certain procedures before a variety of state authorities spread across different institutions and locations. In his time and today still, only a fraction of the social transactions concerning land are reported to state authorities or processed through them, especially in the countryside. It still is a common practice to pay for land tenure without seeking to produce a formal title. The reasons for this informality –as it is often

called- vary widely. Some people do not know that their private agreement does not constitute a property title from the “state’s point of view,” while other people may consciously elude any interaction with state agents to avoid tax burdens or other forms of scrutiny or inconveniences. According to my father, in his case the problem was that the properties were in Boyacá, in the region known as the Territory Vásquez, but the state capital was at least two or three weeks away from the farms. In addition, as a fervent liberal he did not trust the governor, who, as he had told me in that conversation, had a reputation of being a “dangerous conservative.” Finally, as he also explained, the lands were still publicly owned and this meant that, under the legislation of the time, the first step to acquiring a formal private property title was to first put a productive agricultural operation in motion.

Now, these and other obstacles to produce an adequate property title did not prevent transactions and negotiations around land to occur in distant regions –they would just not be registered or reported to the state. However, the lack of a title or the ability to acquire one would certainly be part of the calculations regarding the value, risk and potential profit that parties with knowledge about the legal intricacies and eventual consequences of certain agreements engaged in. This way, lands with adequate property titles have customarily tended to be considered more expensive and more valuable from an economic and symbolic perspective than those without, at least within the same region. Not possessing property titles entails a greater risk in the case of a hypothetical conflict with a third party or the state. Without a title, tenants do not have evidence to prove their rights to the land in case a third party presents a competing claim or decides to simply take possession of the land.

yet, in the case of Papo and his generation of urban entrepreneurs, despite these uncertainties, buying land in the fringes of the agrarian frontier was the next obvious step in the career towards social success and respectability. More than a title, what mattered above all was a material relation

with the land and the ensemble of social relations that would stem out of it. At that time, when agriculture was the country's fundamental economic activity, land was not only the most secure means of capitalist accumulation in terms of its inelasticity and capacity to maintain or multiply its value but also the most prestigious and promising in terms of personal satisfaction and investment returns. Through land, new owners like him could incarnate an *hacendado*, the owner of an hacienda, one of the most prestigious and powerful identities of his time, and at the same time an modern entrepreneur, and businessman.⁶

Many Colombian and other Latin American historians and social analysts have emphasized the legacy of the traditional hacienda in the construction, as Villaveces (1998) puts it, “of hegemonic power cultures and practices” in the present. In the experience of urban professionals like Papo or the peasant communities, haciendas and hacendados were desired forms of ownership and identity. In the case of my grandfather, and other people from his generation, he aimed towards entrepreneurship and productivity, as had been the case of previous generations of urban entrepreneurs who had invested in the countryside as Colombia's export economy grew (Legrand 2016, 1986).

⁶ Local academics have written extensively about the economic and cultural role of *encomiendas*, and later on haciendas, in shaping Latin American (Florescano, Comisión de Historia Económica simposios, and Congreso 1979; Wolf and Mintz 1957) and Colombian political cultures from colonial times to the present (Guillén 1979). Encomiendas were camps of forced labor established under the colonial rule. The Spanish Crown would “commend” the head of the encomienda with a group of indigenous families and a portion of territory, in exchange of tributes. Encomenderos would have disposition over the lands, the bodies, and the produce. Then, with the demise of the native population in the 17th century, the hacienda system substituted that of encomiendas. The Spanish Crown distributed property titles to current encomenderos –and a selected group of bureaucrats, military officers and migrants-. However, except for the territories that were declared to be indigenous reservations, subjected populations were not granted rights over the land they inhabited. This allowed the relation of subjection between encomenderos, now turned into property owners, and destitute populations to continue, although with new characteristics. For many historians, the so-called hacienda system was the basis for the Wars of Independence throughout Latin America in the early 18th century, often waged by the emerging landowning classes. Critical historiographies of Latin America have sought to destabilize this grand narrative of haciendas and its cultural imprint by focusing in the life occurring outside, in the “ungoverned” territories and communities of escaped slaves, freed indigenous communities, and pioneers and the alternative and co-existing social orders that emerged in this other spaces.

So momentarily, Papo tried to have his share of the promised land and the promises of land, derived from the ideal of the hacienda, imbricated with the pursuit of personal and national progress. However, he entered into an agrarian landscape of excesses and lacks, as I shall discuss in the following sections. He had negotiated and exchanged money for a large extension of land he could not control by himself: 20,000 or so hectares distributed in plots separated from each other by days or weeks of travel. But on the other hand, he lacked the actual connections with state agents and locals to activate the state's coercive force to protect his patrimony, and apparently he did not have the means or was not willing to use private violence to vindicate it. Meanwhile, as I will discuss in Chapter One by the late 1960s and early 1970s, the government of the time had passed an agrarian law which gave settlers, rural laborers and tenants the chance to acquire property titles over the lands they worked on or in nearby areas. Grassroots movements organized land takeovers around the country in order to establish or reaffirm their economic relation with the requested land, and also have means to demonstrate within the administrative procedures that such a relation really existed. Later on, I found out that this is what happened with the Iniestas and the other two properties.

Papo wrapped up the conversation by pointing out briefly that at the end he had lost the properties to the invaders because he was “not a violent person, he neither had the means nor the will to use coercion.” The corollary from that experience, as we then discussed it, was that to retain control over land in Colombia, to be an owner in the social and the legal sense, you had to be either rich, well-connected, clearly violent, or a combination of the three.

Papo's story, like that of the “archetypical” displaced and dispossessed peasant, and despite his supposedly privileged class position, shows to what extent violence, or its imminence, is indeed one of the primordial means of production (Comaroff and Comaroff 2006). In terms of Scheper-Hughes and Bourgois (2014), the exercise of violence is destructive, but also productive and reproductive of

social relations –including land tenure. Property, as a form of state-regulated tenure, is a triangular relation between land, pretended owner and state agents. In the liberal traditions and in most Western legal regimes nowadays, private property is often conceptualized as the prerogative to activate the state’s coercive apparatus to exclude others from establishing any material or juridical relation with a particular thing. However, Papo’s story shows the extent that private property depends directly on the power to establish relations with concrete people who incarnate the state (in his case, the governor) and force them to act. This force –like land- has been very unequally distributed across time and space in Colombia; and it is a complex combination, as Papo suggested, of political connections or recognition, economic means (and also the means of violence) and, as I shall argue, the force of law (Bourdieu 1987) or legal reasons.

Papo was speaking from the perspective of a frustrated property owner who lived in the city, had entrepreneurial plans and was far from lacking in economic means. But it was precisely because even someone like him had failed to secure his tenure that his general observation about the lived inexistence of property rights and insecure tenure revealed the forms of exclusion and domination that peasant communities in a much more disadvantaged position within the field of force have experienced for generations.

Conditions of possibility: two vivid and overlapping pasts

The first part of the dissertation inquires about some of the larger political formations that in the long run allowed the VLR Law to come into existence. Chapter One provides an abbreviated genealogy of the problematization of “the agrarian question” –or the right allocation of land-; and the multi-generational perception that it holds the key to some of the most important social problems with effects at a variety of scales –from the nation, to regions, to urban and rural

communities, to families.⁷ This chapter covers the more distant past up to the 1970s that nonetheless has been permanently evoked as constitutive of the present.

As suggested in the first pages of this introduction, the Santos administration embraced a version of Colombian contemporary history according to which, in the last thirty years, and by virtue of the confrontations between a variety of armed organizations and their practices of domination, the agrarian landscape became an even more unequal, anti-economic and utterly illegal order that what existed before. Moreover, in most iterations of this history, this recent past, and concretely the expansion of guerrillas, paramilitaries and drug-cartels, has been increasingly posited as the result of failed attempts and missed opportunities to properly allocate land, and of bringing about a “correct order of (rural) things,” in terms of Foucault, via an agrarian reform in the past. On the other hand, the opponents “on the right” and “the left” attacking the VLR Law have also used these same distant and recent pasts to accuse the VLR Law of being insufficient to bring about this right allocation of land or, on the contrary, as unfairly threatening and dissolving, acquired property rights. Throughout my fieldwork, I have found that by means of memory or lived experience, these two pasts have a vibrant and complex present.

Throughout chapter One, then, I review some of the main political formations that emerged between the 1850s to the late 1970s around the agrarian question and that persist in the present as vivid memory or lived social experience. Within these formations I include peasant organizations, legislative initiatives, techno-political plans laid out by governments, statistical representations and armed organizations. My genealogy is far from exhaustive and I can be faulted for overlooking

⁷ In sum, the two chapters examine how the dispossessed lands and populations were problematized. Chapter One examines the process of configuration of the *desplazados*, the forcibly displaced population, as a new subject of rights and in need of special assistance and protection. The category emerged in the mid-1980s but I inquire about the way in which in previous decades, people seeking refuge from the scenarios of bipartisan violence in the 1940s and 1950s, and the insurgent and counter-insurgent violence up the late 1970s, were perceived by state authorities and other political actors. These were either fugitives fleeing the law or bodies on the move with no specific legal implications in terms of rights or correlative duties.

initiatives that were highly significant in the past but are not part of the agrarian histories being actively used in the present for political purposes. Such is the case of what Karl (2017) has referred to as the “Forgotten Peace” of the late 1950s precisely for this reason.

Chapter Two is about the most recent past of the agrarian question and its violent reconfiguration under the “contemporary armed conflict.” The chapter covers the period between 1978 and the late 1990s, and offers a quick overview of the expansion of guerrillas, paramilitaries and drug-cartels; the dynamics of violence in their points of encounter and some of the attempts by governments –or the armed organizations themselves- to negotiate peace. Like the previous one, this chapter is also intended as a sketch of some of the major shifts occurring within the field of force and stands as point of entry to this recent past and the transformations brought about over land tenure arrangements that the VLR Law is meant to reverse.

However, this second chapter is above all an attempt to lay out three interrelated genealogies. Each genealogy explores the politics surrounding the configuration and positioning of a particular problem of public interest, which preceded and also contributed to the configuration of the “dispossessed population.” The first one examines the narcotization of the insurgent and counterinsurgent struggles that until the early 1980s had unfolded in Colombia following the same Cold War logic as in the rest of Latin America, and then turns to the alarm among techno-legal and political elites concerning an emergent narco class and the suspicion of an agrarian counter-reform under its lead. As a narrative device I continue with Papo’s story because it involves a series of farms located in a region where the encounter between guerrillas, paramilitaries, state forces and drug dealers was intensively lived and is often taken not only as emblematic of spiral of violence but as the place “where all started,” especially contemporary paramilitarism. For a series of analytical and methodological reasons that I will explain in a following section, I insist on this family story as means to unveil larger historical transformations.

The second genealogy traces the emergence in Colombia of a “displaced population” and its process of resignification of a special kind of “suffering stranger” (Aparicio 2009, 2012). Starting in the mid 1980s, a host of human rights organizations undertook a political campaign to turn the displaced –los desplazados- into a new population, different from other kinds of migrants and other kinds of victims, to be taken care of. Eventually, as the conflict intensified in the countryside, these organizations managed to turn the displaced into a special subject of rights and establish a series of new legal instruments and institutional arrangements especially devoted to assisting this new population. By the late 1990s, the displaced had entered the political common sense and had become a key player within the field of force, in whose name many gestures and actions were then undertaken.

Finally, in the last sections, I examine the first attempts to shift the attention from the displaced and their needs in their points of arrival to the lands and belongings they left behind. Among these initiatives I have included sociological articulations of the problem of land dispossession; attempts to quantify and spatialize the problem and also, the first semi-governmental program directed to provide legal protection.

In both chapters I examine the cultural politics of land. I’ve already suggested that by the early 2000s, land –or the agrarian question- had become an object of desire, full of redemptive promises, for a wide variety of subjects -from landless peasants and landowners, guerrillas and paramilitaries, to the techno-legal elites and even urban entrepreneurs like Papo. The reordering of land has been attributed by actors across the political spectrum, and encompassing various generations, the potential to bring about a great variety of personal and collective utopias and dystopias.

The correct allocation of land has been posited as the mediator between a troublesome present and set of desired futures (or nostalgic pasts) --such as protracted violence-peace, underdevelopment-development, feudal-modern political system, (in)equality, production and

stagnation, subjection and citizenship. For the most part, this emancipatory potential resembles the liberal ethos of property over land as having the unique power of turning people into citizens, productive subjects, and fully realized individuals with the capacity to transform the world; an ideal that has reappeared in Colombia and Latin America since the Enlightenment era in the form of a variety of regional liberalism (Gargarella 2013a, 2013b) (Delpar 1994). This structuring power at a variety of scales attributed to land distribution can even be illustrated by the polyvalence that word *tierra* itself has in Colombian Spanish, and the many meanings it can encompass. Just to name a few: land, soil, ground, dirt, homeland, landscape, planet earth, farm, property and hometown, depending of the context. Tierra is a means of production, an organic material, one's place in the world, a mechanism to save capital, a symbol of status and prestige. When lost, all these potentials are lost.

In this sense land is imagined and engaged with as a fetish, in both the Marxist and the Freudian conceptualization. In this context, land property or tenure shares with the Marxist fetish (Marx 1867) a concealment of the complex set of social relations that gives it value and make its enjoyment possible. Land tenure or property is partly desired because of the social relations that constitute it. As Verdery (2003) has noted, private property “indicates particular sets of social relations (...) It sets inclusions and exclusions” of certain kinds (see also Verdery 1994). And so does tenure *tout court*. The enjoyment of the potentials of land is made possible through social relations, whether it is through private property or other regimes. So the desire for land is in part because what is sought after is that particular social order, although this aspect of the object of desire often remains unarticulated.

Throughout the dissertation I show that the dispute over land has been one of the key, if not the most important, organizing elements of political culture in the country, and that the VLR Law is just one of the latest developments of this collective search for the right allocation of land. For generations the issue of land has been constitutive of economic and cultural relations, but also of

political identities, sensibilities and forms of historical memory, and has been at the core of a series of expressions of the “political” in contemporary Colombia, but again not as a singular thing or univocal sign but as a multidimensional object, with often contradictory meanings. As such, land escapes from everyone’s control. Like the Freudian fetish (Freud 1972, 1962) land necessarily stands “as something else,” in this case, the chain of many meanings attached to it, but once acquired, the driving desire cannot be thoroughly satisfied precisely because in its social configuration land tenure cannot be all those things at once. Thus, although the loss (or lack) of land means the loss (or lack) of all those interlocking meanings and values, restitution or allocation necessarily dissatisfies. Moreover, any attempt to relocate land, including to reconstitute land, is in any case experienced by someone, somewhere, as a loss, as a move in the opposite direction from the desired order. In this sense, even if this slippage of meaning has nevertheless allowed unlikely political alignments between divergent political identities to occur, revitalizing and transforming the topography of power, it has only reconfigured the conflict concerning its right allocation, without solving it.

An ethnography about the “law-in-the-books”: the fabrication and the symbolic lives of legislations and counter-legislations

The second part of the dissertation is an ethnography about the politics surrounding the act of inscription (Monteiro and Hanseth 1996; Callon 1991) of the “dispossessed” as subject of rights in the “law-in-the-books.” Both Chapters Three and Four examine in detail the process of configuration and authorization –by which I mean the artisanal craft and also the sanction- of the VLR Law.

Though the VLR Law was finally approved in 2011, I begin my account in 2002 when the recently elected government of A. Uribe initiated negotiations with AUC combatants. Following Gómez, among others, I argue that under the global shift towards a transitional justice paradigm,

and as a reaction to the concessions that Uribe's administration eventually granted paramilitary commanders to assure their demobilization, the victims of the internal armed conflict emerged as increasingly visible legal, moral and political subjects. Victimhood as a new identity would reorganize and dissolve –with few notable exceptions- many of the previous political divides separating the survivors of Colombia's sixty years' war. The mosaic of aggravated and sometimes discordant populations such as victims of forced displacement and victims of kidnapping –with the socio-economic underpinnings separating them- or victims of a particular armed actor –state forces, guerrillas or paramilitaries- who for that reason would initially be aligned in opposition to each other, would coalesce around this post-political and morally enhanced form of victimhood. Then this new archetype of the victim would present new challenges and opportunities to harness political capital to competing political actors from both pro- and anti-Uribe factions.

Politicians, activists and experts would eventually coalesce to accurately represent - in both senses of the term- what they regarded as the archetypical victim: a displaced and dispossessed poor (female) peasant; and formulate a counter-legislation, the VLR Law, in the name of that figure. In the case of the victims who in addition to atrocities had undergone forced displacement and the loss of their belongings and properties, the moral and political potency of their claims for redress would be enhanced by the land (*tierra*) factor because of its polyvalent qualities in Colombian political culture, as discussed above. So with the problematization of land dispossession and reception of transitional justice, land would gain another layer of meaning. With the loss of land –and its restitution- victims would first lose and then recover the multiple qualities and promises of the right allocation of land. Restitution would stand as the imperfect but due transfer from perpetrators to victims of this over-determined element and its many potentials, and through that transfer, the partial reestablishment of a desirable agrarian landscape and its ability to bring about a set of positive individual and collective futures.

In Chapter Three I outline the intricate political context in which, after fifteen years of intensive violence, Uribe's government negotiated peace with the AUC and passed a demobilization framework in Congress that outlines the rights of former combatants and duties vis-à-vis victims. While political elites disputed the contents and actual meanings of this new inventory of rights, concerns about the so-called "agrarian counter-reform" and its reversal as part of the agreement began to gain political currency among distinct and often disagreeing techno-political elites –human rights experts, agrarian question scholars and economists of forced displacement- leading to unexpected alignments and convergences. I insist that there was an emergence of a shared perception between such elites that the land dispossession –el despojo de tierras- of the 1980s and 1990s had been of major proportions and had serious implications for the nation's future because of the influence that this diagnostic, and Uribe's indifference towards it, had over the politics of contention under his term. Although the demands made by and in the name of victims –including restitution - were mostly ignored by Uribe's coalition in Congress and his administration, in the midst of this resistance there were still some minor legislative concessions to the rights of victims that took a social and political life of their own. In this section I draw from my own experience as a legal advisor for a leftist Congressman to discuss the back-door politics of legislation and also the political cracks in Uribe's majoritarian coalition in the Senate and in his own government caused by the issue of land.

Chapter Four is about the formulation of the Victims and Land Restitution Law. In the first section I discuss the agitation spurred by the ensemble of truths that were revealed and also left undisclosed by the paramilitary commanders in their post-demobilization trials. The second section is about the first attempt to pass the VLR Law in Congress, "a law (that is) generous with victims, not perpetrators," that would correct the flaws of the JnP Law. I end Chapter Four with Santos' detour and the revival and final approval of the VLR Law. Indeed, as I discussed earlier, in 2010

Uribe chose his Minister of Defense, J.M. Santos, as his successor in the upcoming presidential elections. But just days after taking office Santos shocked his constituents and detractors alike when, in an unexpected political detour, he announced that one of the first and most important items in his political agenda was to resuscitate the VLR Law and pass it on Congress. Throughout the chapter I trace the creation process of some of Law's most characteristic provisions, especially those related to the alternative regime of proof established to (re)construct and demonstrate the occurrence of events of dispossessions; and interactions and frictions between the experts and politicians that contributed to the invention and authorization of those pieces of legislation.

In this second part I explore the micro-politics of law-making more generally, and also the specific political alignments that allowed the articulation of a set of legislations including the right to restitution of dispossessed populations. As stated above, the purpose is to examine both the craft and the authorization of a set of texts and how they are turned into law. Legal texts are the object of intense rewriting and passionate hermeneutics at their points of production. They are also the material expression and the main locus of what Comaroff and Comaroff (2005) refer to as the "fetishization of law."

To develop an ethnography of law-making in this very material sense, I build upon two bodies of literature: the anthropology of policy, government and the state, on one hand, and socio-legal studies and the anthropology of law on the other. I also take this as an opportunity to formulate a constructive critique of how these two fields have tended to exclude the production of law in non-judiciary settings from their objects of study, while at the same using some of their insights to solve this limitation.

A practice that these literatures seldom explore is that of incorporating policies, or what Scott refers to as the "great utopian social engineering schemes" of the modern state, into the law. In other words, they have remained uninterested in the practice of turning plans into legal mandates,

even though this happens in such a wide variety of settings within the state, such as parliaments, national planning departments, and Presidential offices, that social life, policy-making, and law-making are often undistinguishable. This practice of turning plans into law is mostly facilitated by lawyers operating as advisors, consultants or assistants who are equipped with the language of the law and can translate political decisions into legal mandates in ways that appear to be consistent and authorized by the rest of existing legal provisions. This practice can be thought of as producing the “law-in-the-books.”

Ever since American legal theorist Karl Llewellyn (1930) formulated the distinction between law-in-books and law-in-action and proposed, as part of his realist critique of legal thought, to direct attention to the latter, most sociological studies of the law have focused in the “gap” between these two realms of existence of the law. This literature has tended to take the law in the books as the point of departure of their analyses (Macaulay, Friedman, and Mertz 2007). Thus “gap studies” have come to reinforce two different but related fictions about legal practices that emerge from this distinction. On one hand, they often seem to operate with the idea that the social life of law begins with the expedition of legislations, decrees or resolutions, and that their making is “just politics,” and therefore beyond the scope of legal studies. The exception is judiciary decision-making, which has been extensively theorized in legal theory and sociology and has led to the formulation of a wide variety of theories of the philosophical, political and social basis of legal decisions. The other fiction is that the law-in-the-books has a pre-social and fixed meaning that is then ignored or reinterpreted in social life. Hence the gap. This second fiction does not recognize that in fact, writing, erasing and re-writing the law-in-the-books is an important part of law in action.

For different reasons but similar results, the anthropology of law has based most of its analysis on the politics of law in the study of judiciary or judiciary-like conflict resolution mechanisms (Nader 2005; Moore 2011, 2001), and left both so-called bureaucracies and legislatures outside of its

explorations of law-making and legal ideologies. Latour's ethnography (Latour 2015) of the French Conseil d'Etat is a case in point. Throughout the work he suggests –aligning with the legal ideologies of the judges he observes- that making of the law occurs in the the top courts, and what happens in legislatures and state agencies is the domain of the anthropology of policy, government, the state and politics. Thus, these literatures rarely approach those settings where people, especially lawyers, also seek to constitute law by means of differentiating it from “politics” through a series of rationalization exercises, the deployment of legal ideologies and a set of concrete mundane practices like agonizing around the forms and contents of the law with the purpose of performing the principle of legality (for an exception see Buchely 2015).

Despite these shortcomings, these literatures, especially the anthropology of policy and politics, offer suggestions of what an ethnography of legislation, regulation and the production of law in similar politicized settings would look like. As noted early on, following Greenhalgh (2008) and the other anthropologists of policy, in Chapters Three and Four I examine some of the concrete interactions and contingencies between people, things and ideas that allowed the provisions dealing with land restitution to be formulated and inscribed with law. More specifically I trace the trajectories of the pieces of legislations that introduced the special regime of proof mentioned early on. Along the way I capture many of the stories of origin and justification narratives (Tate 2015) surrounding the VLR Law's formulation. Finally, I also examine the micro-politics within the “policy-world” in which these concrete pieces of legislation were manufactured.

Moreover, I examine the ideas about what the law allows or demands, which came to shape the right to land restitution and its correlative subject of rights. Thus, in this second part, I address more general questions about the intersection between law, politics and expertise and the social and cultural organization of lawmaking. Among the questions guiding this second part are the following: Who writes the law? Besides elected politicians, who are the delegates who, at a given moment

conjunction, are entrusted with the task, the privilege and the responsibility to write legislative drafts, regulations and presidential orders? Who actually inscribes political demands into law? How do they enter into such restricted spaces of power? How do they validate their views and present them as authorized by the law? And finally, what are the mundane practices of this craft? Ultimately as I see it, this set of questions is related to what I refer to as normative elites. How are they made? What do they make? How do they acquire or lose the ability to persuasively change the text of the law? These elites have the power to transform claims of a particular population for past wrongs into pieces of legislation, rulings and administrative policies. Through them such claims cease to be demands circumscribed to the experience of a group –in the case of most victims, a very marginalized, impoverished and neglected one- to become mandates with the force of law. They are, ultimately at the crux of whether law changes on the behalf of disempowered populations.

More generally, in these chapters I discuss the structuring force of law over political agendas; and how this is fundamentally enacted by lawyers. I argue that as a form of grammar the law does not easily allow certain political demands to be uttered, even by those who are both fluent in it and committed to those agendas. There are rights and subjects of rights that cannot become inscribed into law, not only because political alignments and Congressional majorities may get in the way but because they are deemed to be incompatible with the integrity of the existing legal system and its internal structure –*until they can*. But both the possibility and impossibility of translation is performed by legal professionals, as part of their subjectivity as good lawyers. As I hope to show, they operate as the authorized translators -or censors- of political demands into legal mandates, sometimes even against their own political impulses. This translation, at least in the case of private property law and evidence, found a diffuse resistance during the process of discussion and approval of the VLR Law. Even lawyers committed to the cause of the dispossessed would have to struggle against their own professional selves to consider these changes as being formulated within the boundaries of what was

legally possible. The opposite also happened. The political adversaries of the first Victims and Land Restitution Law also were confronted with legal arguments demonstrating the legal necessity –that is, what is legally mandated- of such legislations and in some cases had to submit to it even if this conflicted with their own agendas. Thus, I suggest that just as policy arguments are often part of predominantly legal decisions –mainly, judiciary decisions-, legal arguments are constitutive of political decisions in very decisive ways. That law matters in political decisions is obvious and yet, political science, the anthropology of policy and legal studies seldom take into account legal ideologies and legal reasoning as constitutive of policy and legislation-making practices.⁸

It goes without saying that legislation are certainly more than laws, and their politics and meanings exceed the legal ideologies of normative elites in multiple ways. Legislations are complex symbols, fraught with ambiguity and with the potential to stir processes of significations beyond anyone’s control. Proponents and publics of a variety of sorts assign them meanings, explanations and imagined effects (Stone 2011). Policies can even operate like “total symbol,” as Wright and Shore (2005) once noted, when in the process of assemblage and then in their deployment as governmental artifact, complex webs of social signification come to be revealed. Enthusiasts offer justification narratives (Tate 2015), while opponents construct counter-narratives pointing at the inadequacy, the danger or the immorality of the policy in question. In the case of justification narratives, these usually take the form of stories about the past. Shore and Wright argue in this

⁸ Because of the configuration of these different fields, the force of law in political decision-making seems to have been elided. The anthropology of policy has yet to become more involved with legislation –the main arena for the production of law- and with law as constitutive of policies in other realms. Legal theory has acted in a rather paradoxical way in relation with legislation: although it is a common understanding that legislation is one of the main sources of law, there seems to be an idea that the process of its formulation occurs outside the law, in a purely “political” realm, and that this sense is not part of law. Most literature has focused on the judiciary decision. Socio-legal studies do deal with legislation but are more interested in how legislation is applied or not applied (gap studies), or how “the social” in its many variations (culture, class, etc.) structures the legislative process. As for political science, law is instrumental to the interests of stakeholders rather than something that structures their capacity to pursue them in the political arena. The exception, in my opinion (although I am greatly interested in suggestions of other investigations) are the studies that, like Gómez (2014), use Bourdieu’s notion of legal capital to study political contentions.

regard that a “crucial dimension of policy is therefore the way it is imagined, and such imaginaries can be thought of as moving through time and space. In this sense, policies can be studied as contested narratives which define the problems of the present in such a way as to either condemn or condone the past, and project only one viable pathway to its resolution.” Stone (2011), for example, notes that stories of decline, control, and horror are some of the most common narrative schemes. These stories assemble and divide, reshaping the field of force through their iterations.

The symbolic life of legislations –and in this case, of the VLR Law- was spelled out for me in an eloquent manner by Santos’ Minister of Justice. In August 2011, a few weeks after the Victims and Land Restitution was ratified by President Santos, I was lucky enough to interview him in his Ministerial Bureau located in downtown Bogotá. Back in law school, I had completed a short internship in his law firm and then I had helped him with small research assignment for a book he wrote about the intellectual history of 1991 Constitution. Fortunately, when I told him I was starting my research about the VLR, he agreed to see me. The Minister was a senior partner in a distinguished law firm, a reputed attorney, a tenured law professor, a public intellectual, a member of the Constitutional assembly of 1991, a former Minister of Defense in the late 1990s and a legal theorist. Many legal scholars considered him the father or author of the *tutela*, the legal instrument that was included in the 1991 Constitution. Except for the title of Supreme Court or Constitution Court Justice, the Minister enjoyed the most prestigious titles and credentials any lawyer in Colombia could ever accumulate.

As is customary in meetings with high-level officials, after a quick greeting he offered me *un tinto* -a small cup of sweet coffee- and minutes later a diligent employee brought it. Then we discussed our news since we had last met. “Was I still into law? A PHD? Anthropology, huh?” And then we moved to what I had come to discuss with him. I remember thinking that given his very tight agenda, we would not have time to have an extensive conversation. So I asked him, “What is the

intention with the Victims and Land Restitution Law? What was it about? How had it been possible?" I had been away from the country and wanted to know how it had been accepted by the same legislative majorities who had rejected it two years before. What kind of felicitous misunderstanding –or hidden compromises- had allowed it to be passed? I was expecting either a *realpolitik* explanation or a lecture about the importance of property rights or transitional justice. But instead, with his answer he tapped into the most difficult question of the VLR Law's potential meanings. The first part of his answer was unwittingly Geertzian. "It is a *gesture*. (The law) will have some effects that we like, and some that we don't like. But it is above all a *gesture*." Then, turning to what he meant, "It is an act of constriction (...) it recognizes the historical debt that we have with the peasantry for having neglected its needs of land and reparation for so long."

Geertz (2000) famously noted that the socially enacted distinction between a twitch and wink (first proposed by philosopher Gilbert Ryle) involves the same interpretative work done by ethnographers. Paraphrasing Ryle, he wrote:

Consider, (...) two boys rapidly contracting the eyelids of their right eyes. In one, this is an involuntary twitch; in the other, a conspiratorial signal to a friend. The two movements are, as movements, identical; (...) yet the difference, however unphotographable, between a twitch and a wink is vast; as anyone unfortunate enough to have had the first taken for the second knows. The winker is communicating (...) in a quite precise and special way: (1) deliberately, (2) to someone in particular, (3) to impart a particular message, (4) according to a socially established code, and (5) without cognizance of the rest of the company (...). As Ryle points out, the winker has not done two things, contracted his eyelids and winked, while the twitcher has done only one, contracted his eyelids. Contracting your eyelids on purpose when there exists a public code in which so doing counts as a conspiratorial signal is winking. That's all there is to it: a speck of behavior, a fleck of culture, and-- *voilà!*-- a gesture (Geertz 2000: 6).⁹

So the VLR was a gesture, and according to the Minister, it was meant to signal an acknowledgment of guilt. But who exactly was doing the winking? At whom? Who did the Minister mean when he defined the VLR Law as a means for "us" to pay a historical debt? Who was "us," and why were "we" supposedly in debt? Indebted to what peasantry? What was due? Since when? If restitution was the

⁹ Underline is mine.

means of payment, did it mean that it would only apply to the peasantry that had lost something? What about those landless rural laborers who had nothing before losing it all?

Without suspecting it, the Minister provided me a way to think about the VLR and also with a road map to understand the political alignments that such speech acts by representatives of the Santos government like him enacted. He also confirmed, once again, the operative force of the distant but vivid past of the agrarian question, already discussed in the previous section.

In this case, the Minister of Justice was retelling the story of an unpaid debt with the peasantry that Santos and his other high level officials turned to in several public settings while promoting the approval of the VLR between 2010 and 2011. As was widely commented at that time, such public gesture was interpreted by third-party observers as a wink to human rights organizations rallying around the cause of victims, to the broader political urban and rural audience that was still awaiting the realization of the liberal fantasy of turning Colombia into a country of property owners, first articulated in the late 19th century by governmental elites, and also to the FARC guerrillas which emerged in the 1960s with the explicit purpose of bringing about a revolutionary agrarian society.¹⁰

By means of this story, they recruited and distanced themselves from a variety of audiences, including hardcore pro-Uribe constituents, reconfiguring political affiliations. Other interpretations of

¹⁰ In the particular case of the FARC, this recognition of a historical debt with the peasantry was interpreted by observers as a form of communicating not only the the government's willingness to attempt peace once again but that in this particular point there was a shared understanding of the past, the future and the significance of the agrarian question in shaping the armed confrontations. Some months later, when a new round of peace negotiations was indeed initiated, the first topic to be discussed was precisely "the agrarian point". A high-level governmental official who participated in the peace negotiations between the FARC and the government beginning in the that began some months after my conversation with the Ministry, explained: "our attitude towards FARC is simple (in relation with the agrarian question). We are going to do a rural reform, with them or without them. They need to decide if they want to be part of the problem or part of the solution". Ironically, as is often the case in social life, in particular among subjects whose relation is based in protracted forms of misrecognition, intended meanings differ from received meanings. The FARC not necessarily read the VLR law, and land restitution, as a gesture of restriction. Someone who was part the negotiations confided to me that some of the commanders were convinced that land restitution was a just another mechanism to facilitate land-grabbing for landowning elites and multinational corporations.

the VLR Law have had analogous results later on. This was the case in 2016, when opponents of the peace agreement being negotiated with the FARC in Habana, Cuba, framed the VLR Law, and the work of the Land Restitution Unit more concretely, as guided by the surreptitious interest in satisfying the FARC's historical demands of dissolving private property rights and attempting a covert agrarian reform.

Administrative legal facts and truths: the administrative conditions and process of production of dispossessed subjects and lands

The final two chapters explore the production of dispossessed lands and subjects by the Land Restitution Unit (the Unit), the new governmental agency established to process restitution claims. In these two chapters I offer preliminary answers to the following set of questions: How are they constituted? Who counts as allegedly dispossessed? Who decides and under which conditions? How are the facts about the presumed event of dispossession determined? With what effects?

Chapter Five focuses on the people who decide—more concretely, the Unit's staff-. In the chapter I discuss their moral subjectivity, their social and political trajectories, and a wide set of cultural formations around truth, trust, the state and their expertise that structure their daily practice. I also examine the material infrastructure mediating their work, including files and documents of different sorts; and the host of relations with other state officials, their families, mentors and finally the political or public figures who interpellate the Unit's "intentions" and "actions," in which they are immersed. This set of relations constituting the Unit gives it the external quality of a unified entity that is either functional or dysfunctional; dangerous, superfluous, or virtuous. More generally, this chapter is about the *conditions of production* of administrative truths about land dispossession.

Chapter Six, on the other hand, deals with *the process of production* itself and the questions about who counts as dispossessed, how are the facts of dispossession (re)constructed and how certainty about

the facts is experienced, performed and disputed. This chapter is about a land restitution case, and the different interactions between claimants, the Unit's staff and other state authorities through which the subject of rights was delimited. I also examine how scholars, journalists, and their writings as autonomous narrative objects intervened in the validation, dismissal and transmutation of the claimants' stories. Drawing from the notion of the "juridification of the past" developed by Comaroff and Comaroff (2012), and Trouillot's (2015) conceptualization of historical narratives, I argue that, as Weld (2014) puts it, land restitution is as much about the adjudication of properties rights as it is about the past. This juridified past, however, has a series of internal structures and cultural trajectories that have implications for how the new post-restitution agrarian landscape is imagined. As I will argue, in this particular case the production of the subject of rights reduced the past not only to recognizable legal categories but also to stories of dispossession; principally the story of greed and violent subjection mentioned earlier.

For confidentiality reasons and also because of my positionality in the field, which was distant from the cases, with reduced face-to-face interactions with claimants, claimants themselves are in the background rather than at the forefront of my account. But this is also because cases of dispossession are not what the claimants say they are. Their control over the stories they tell and are told about them, and the final contents of the administrative file, the ruling and the iterations in the media about these, is limited. Even if they are the Unit's clients, the narratives that are constructed for and about them supersede them. The Unit's mediation consists precisely in constructing a story of dispossession out of the stories provided by the claimants but which is validated by means of the expertise of the lawyers, cadastral engineers and social scientists who constitute the Unit's staff and who embody the state. This work of retelling in the name of the state is what makes the difference for claimants between becoming the subjects of rights or not.

Both chapters offer an ethnographic immersion to the Unit's everyday truth and certainty production practices from an "insider's" perspective. For most of my fieldwork I worked as a contractor for the Unit. The first fifteen months I was part of a sub-division that came to be known as the national "Context Analysis Group" and then, for six additional months, I was allowed to continue as an external ethnographer with privileged access to one of the offices located in the Caribbean region. From those positions I was able to share the anxieties, dilemmas, constraints and satisfactions of Unit officials that condition the production of administrative truths about land dispossession. I was also able to experience and observe what "incarnating the state" entailed in each of these settings and the ways that my co-workers integrated this new way of being in the world into their moral and political selves.

I must clarify at this point that although I was embedded in the Unit, I was above all embedded in a particular niche within it—first as a context analyst at the "national level," then as the head of the national Context Analysis Group, and then as a colleague-subordinate-boss turned ethnographer—which gave me access to a variety of spaces while excluding me from others. In each stage, there were spaces -meetings, events, sites, conversations between specific people- in which I would have been out of place, violating roles, labor division arrangements, hierarchies and forms of trust and loyalty. At the time of my fieldwork, the Unit was an institutional world constituted by several hundred people, at first distributed in eight, then seventeen, and as I write, now more than twenty five different localities.

What I offer in these two chapters is an account from the particular positionalities I was given the chance to occupy. Unsurprisingly, the Unit aspires to run like an ideal institution, but does not always operate like one. As Mary Douglas' ironic title "How Do Institutions Think?" suggests, the Unit, like any other organization, is not a thoroughly coherent and self-contained entity that can be interrogated or treated as a static and fully predictable apparatus (Douglas 1986). As Fassin (2015)

asserts, Douglas certainly knew that institutions do not do the thinking. Her point was to show that it is concrete people immersed in different types of direct interaction with each other and with a variety of imagined publics that do it, and it is instead by means of a series of authorizing practices that they turn their thinking into that of the institution. This is what Bourdieu (1987) refers to, in the case of state institutions and authorities, as the “depersonalization effect”: the strange alchemy by which the opinions, preferences and actions of a person or a group of people becomes that of the State, with upper case. The Unit is a complex space of partially-ordered social interaction, where officials are constantly trying to align their personal interests with what they believe are the legal mandates contained in the VLR Law and laws of higher hierarchy and with what they think is morally right.

In his most recent book, Reyes (2016) reports, in defense of the Unit, that up to June 2016 it had received claims relating to 91,537 plots of land or other forms of real estate. Of that grand total, security agencies had authorized interventions in the areas pertaining to 48,729 of them (51%). The Unit had studied 34,333, granted eligibility to 18,510 and rejected 15,823. 12,007 cases had reached the courts, of which 3,764 had already received a final decision. One director estimated that 98% of the time, the Unit won the cases they took. Reyes notes that behind each of these figures “there is an enormous amount of administrative work (involving) the revision, interpretation, classification of the accounts provided by the claimants (...) and of all the (additional) information available about the people, the properties and the events involved” (Reyes 2016: 386-390).

More than administrative, I argue that the Unit’s work is epistemic, moral and also political in the sense that for the staff, producing dispossessed lands and subjects –and along the way non-dispossessed lands and subjects- is about exercising and being subjected to multiple forms of power: the power of legal rules, of moral commands, of regimes of truth; and of the expectations of transparency, accountability, efficiency and in general the correct administration of land restitution.

Moreover, it is also about exercising and being held accountable for a new rural order, one that emerges from the rule of law and universal justice, rather than lawless power relations.

On the other hand, I also examine how distrust operates in this particular setting. I want to note that distrust is a frequent way of relating in –and representing- urban Colombian contexts. In the 1980s, Colombianist intellectuals and public figures began to characterize Colombia as a culture of violence, and then as a “culture of illegality,” involving a divorce between “culture, law and morality” (Mockus 1994) and “a rule-breaking culture” (García Villegas 2008). At the risk of overstatement, the idea of Colombians as prone to lying, cheating, and taking advantage of any mistake or carelessness on the part of others is reenacted in a wide variety of daily practices, especially among city dwellers. Many Colombians would agree that distrusting strangers and being distrusted by them is a daily experience. Institutional arrangements –public or private- reflect this same general defensiveness, something I call “the institutionalization of distrust.” This regime, however, is in full contrast with the alternative regime of proof that Unit officials are expected to follow in their interactions with claimants. One of the striking aspects of the VLR Law is precisely that it requires suspension of this “commonsensical” way of relating when it comes to armed conflict victims.

Now, the Unit is certainly not the only state institution that partakes in the production of dispossessed –and restituted- lands and populations. At the beginning of the process, delegates of the Ministry of Defense and security forces decide where it is safe to undertake land restitution interventions, whereas the final decision regarding the allocation of property rights and state support in the form of subsidies, technical assistance for developing agricultural projects, and provision of infrastructure is made by a special land restitution judge. However, it is the Unit’s staff who grants or denies claimants –and the lands they claim- the status of being “allegedly dispossessed” (despojados/despojadas), and decides whether they may take their case to a judge. Also, in most

instances, the Unit staff designs and undertakes the legal defense of the claimants who are considered to have been dispossessed in the terms of the VLR Law. This entails, among other things, identifying the members of each allegedly dispossessed household, locating and delimiting the lands and other real properties being claimed, reconstructing the events and dynamics of the armed conflict that could have dislocated their relation with the lands and properties in question and organizing it all into a convincing narrative of armed dispossession.

This work also occurs under multiple forms of scrutiny and demands for transparency, diligence and adequate pace –fast or slow- from peers, superiors, monitoring agencies, national and international academic and diplomatic observers, and political players from across the spectrum who operate not only within the conflicting horizons of the many histories of dispossession discussed in the previous chapters, but a shared and enhanced sense of mutual distrust. The performance statistics that Reyes cites and briefly unpacks in his book have been released in other settings and have been interpreted as indicators of both the failure and the success of the Unit and the land restitution policy overall. They stand as markers of the dangerous, unsubstantial or substantive effect the policy has had over the legal order and the agrarian landscape.

In these two chapters I build upon the anthropology of bureaucracy, but also take some distance from it. My goal is to approach Unit officials as complex historical subjects, simultaneously embedded in multiple socio-political worlds, and both structured and structuring the power of the state and the political significance of land restitution, instead of imposing on them reductive and often value-laden categories such as that of bureaucrats. I build upon my previous work (Dávila 2009) about forced displacement and bureaucracy and follow Mertz and Bernstein's (2012) invitation to think of "bureaucratic administration as just another arena for social life and political action" and "stop thinking of bureaucrats as a kind of person and think of them as persons who sometimes engage in a kind of activity". Once we do this:

“(..) it becomes obvious that administration does not have to act as the conceptual counterweight to political action: it is simply not the case that some parts of the state decide while others merely carry out those decisions in a humdrum, mechanical fashion. Actual bureaucrats, just like people in all other kinds of settings, constantly make decisions, interact with others, exceed their own control. As a lived social world, the administrative setting is not as drab and lifeless as it appears from the outside (Bernstein and Mertz 2012: 7)

Other works such as that of McHeyman’s “power-wielding bureaucracies” (2004) and Buchely’s “bureaucratic activism” (2015), point precisely to the conundrums and opportunities that this political positionality of public official or administrator entails. Some of these approaches, however, still tend to isolate bureaucracies from larger cultural configurations and take them as unidimensional strategic actors, as is the case of Buchely, or as complex but still self-contained. Here my goal is to examine the trajectories of the people who incarnate the Unit and unravel what their own biographies before, during and after “being the Unit” reveal about larger social and political processes.

Additionally, I use the label “bureaucrat” and bureaucracy not as an analytic category, but as “native” one. In the Unit the term “bureaucrat” was rarely used, and when employed it was consistently intended as a pejorative term to talk about the attitude or work of another official not present in the moment. The alternative terms *técnico* or *técnica* –which can be roughly translated as technocrat- was, on the contrary, a form of praise and respect that was often applied to an interlocutor who could be addressed in person in the moment, or to the group the speaker identified with: be it the team, the subdivision or the Unit as a whole. Being a *técnico/a* in this particular setting had a specific meaning. It involved, as I discuss in more detail in Chapter Five, mastering certain techniques but also embodying the state according to an ideal of rationality, legality and objectivity and, in the case of the VLR Law, a moral commitment with the vindication of victims and the application of the transitional justice. So while the bureaucrat was “he,” “she,” or “they,” the *técnico* or *técnica* was “us” or “you.”

The point is to treat the Unit's staff as ethnographic subjects in their own right, and provide an account of the Land Restitution Unit and the policy that escapes the reductionist instrumentalism of Neo-Weberian and Neo-Marxist approaches to state formations and actions (Steinmetz 1999) that have predominated in most analyses of contemporary states. In the Global South, and in Colombia in this specific case, the state is often characterized as fulfilling the Marxist critique in which it operates as a means for class domination, and consequently, as a deviation from, or an underdeveloped form of the Weberian rational state.¹¹ Although divergent, Steinbeck notes that indeed both reductionisms treat the state as a monolithic entity that univocally operates as a "means" to an end. The same can be said of the archetype of the bureaucrat. As noted in a previous section, "the bureaucracy" is no longer descriptive, but rather carries with it either a presumption of legal-rationality, or of Kafkean self-absorption and absurdity

As Abrams notices in his path-breaking essay "On the Difficulties of Studying the State," the main methodological challenges for the researcher is to separate the ideals –and lamentations– about the state circulating in her own social world from what it is being studied. Recent Colombian scholarship has recognized that most studies of the national state have not overcome this difficulty (Ciro 2014, Carrillo 2016) and most ongoing analyses continue to construct their object of study by means of contrast with liberal theodicies and teleologies of state formation. This literature, which Buchely refers to as the "pathological state" literature, has represented the Colombian state by means of its lacks compared to this ideal model and deployed concepts such as "failed state," "the absent state" or "the captured state." Also, it must be noted that using an evolutionist approach, this literature has described the Colombian state as pre-modern, backward and feudal. Such anachronism and underdevelopment are contrasted with more advanced, virtuous and coherent ones located

¹¹ A path-breaking exception in relation with regard to Latin America was Joseph and Nugent's (1994) edited volume on state formation and popular culture in post-revolutionary Mexico, which is often cited in Colombia as an example of what is missing from the analyses of the Colombian state.

further north. As a general trend this literature has sought to establish a causal effect between these state pathologies with the larger social problems that are often attributed to the agrarian question, such as under-development, protracted violence and “the rule-breaking culture” mentioned above (Gutiérrez Sanin and Stoller 2001) (García Villegas 2008). Finally, as it is implied in the previous observations, the state is treated as monolithic, despite the lamentations about its lack of coherence implied in the tendencies just outlined. Only regional expressions of the state tend to be historicized and treated as specific historical configurations in their own right (see Ciro 2016), while the purportedly “national state” lacking a localized reality and represented in Ministries and other governmental agencies, the Congress, and the judiciary, is still assigned unitary coherence, whether functional or dysfunctional, even it is territorially and socially located.¹²

In contrast with this scholarship, in Chapters Five and Six I adhere to Gupta’s (2012) argument that any theory of the state is in itself a form of misrecognition. Unitary and coherent theories of the state are by definition misleading precisely because no state is monolithic, animated by a set of previously identifiable governmental rationalities, or operated by a homogeneous set of agents. On the contrary, throughout the dissertation I show the extent that inside the state, the state is itself a mosaic of competing entities immersed in complex processes of segmentation and alignments crisscrossing their formal organizational structures.

Now, this is not to say that reductive theories of the state do not have a social life. On the contrary, people on the ground do take the state to be coherent, monolithic, and functional or dysfunctional; and operated as the pathological or ideal state outlined in the referred literatures. Even more, rather than a field of political dispute, in everyday talk in Colombia it is often the case

¹² The conceptual reverse of the pathological state literature is the literature that treat prescriptions and descriptions of the state practices interchangeably. Such is the case of the texts meant for administrative law students and practitioners in which the prescribed structure, guiding principles and rules of operation of the state are attributed a default descriptive capacity. For a thorough discussion of this approach to the state see Buchely 2015.

that the state is often assigned a single intentionality and agenda, and is also identified as representing a particular group of people. Such is the case for Unit officials, who would often offer monolithic views of the Colombian state and how it operates in order to proceed to outline how they thought it should operate and why they, and the Unit, was or had to be different. As I argue below, the Unit's staff tended to think of its work in the Unit as a moral practice meant to improve the lives of *despojados* as well as their own by means of this moral work, but also as a way to enact a virtuous state, one that they imagined would meet acceptable legal and moral standards and be *better than then state*. Such aspirations, however, also entailed a series of frustrations, including that of realizing that being a different kind of state was often beyond their control.

Notes about methodology: the techno-legal urban imagination, the ethnography at home and entering the field (of force)

Absences

Although this dissertation is about the “techno-legal production of dispossessed lands and peoples,” the ethnographic encounters I write involve people like Papo, who do not resemble the archetypical dispossessed subject that the VLR Law was imagined to vindicate: the “destitute (often female) peasant,” displaced from distant rural areas, and victim of a variety of atrocious crimes. The “dispossessed” subject in this essentialized form is only present in my written account as a representation or as embodied by somebody else, present in the encounter by means of absence. Instead, as shall become evident, most of the ethnographic encounters I discuss occurred in offices, cafés and other urban settings, with experts, professionals, politicians, human rights activists and state officials often situated in spaces of power, and only indirectly refers to encounters with “the dispossessed.”

This was not the necessarily case throughout my fieldwork, but I have reinforced this absence in my writing for three reasons. One is conceptual. My purpose in this research has been to explore how certain elites have deployed techno-political imagination around the rural agrarian landscape, and the violent disruption of human ties, and with what effects on legal practices and political alignments. A large and rich ethnographic literature examines the hardships, strategies of reinvention and forms of politics of dispossessed communities and peoples (Salcedo 2015, 2006; Cohen 2010; Castillejo Cuéllar 2016).

The second reason is ethnographic. The group of experts, politicians and government officials that actively contributed to the techno-legal production of “dispossessed people” are (or have become) urbanites geographically and socially removed from the “dispossessed” communities they study, manage or advocate for. As social scientists and lawyers, they have certainly interacted at a variety of settings and through a variety of means with these communities which they seek to represent, in both senses of the term. They have sought to produce accurate representations of these communities, often in the form of estimates or other rationalizations that reduce complexity, and also speak on their behalf in policy and law-making spaces like Congress, the Unit or the land restitution courts. As Tate (2007) and Nelson (2015) would put it, they have devoted their efforts to both “counting” the dispossessed and also to “making them count.” Moreover, like anthropologists, they highly value their relation with “their informants” or “subjects” and in their own recollections of how they became committed to the cause of the dispossessed they often go back to a particular encounter, an ethnographic encounter, that they deem to be deeply transformative of the way they understood their purpose in life. However, these recollections were often shared with me in the urban spaces -Bogotá for the most part- in which they operate and where the politics, policies and laws of the nation are supposedly decided.

A nuance that will recur throughout the dissertation concerning the social proximity between these elites and the social processes their expertise revolves around must be made. Some of these

elites, like most Colombians, have witnessed or directly experienced different forms of political violence, and have had relatives and close friends killed or injured. And some of them have certainly have been the targets of violence and could count as victims, even if most of them do not identify as such, or perform victimhood. Politicians, as I shall show, have operated differently and by the mid- to late 2000s, many were turning to this aspect of their personal or family past to claim authority and speak in the name of victims. But none of them openly, or explicitly ascribed himself within the category of “the dispossessed” –and just like Papo or the Minister of Defense- claim to know, understand, and have experienced the same, but still demarcate a distance between “us” and “them.”

I also must note that this elite is constituted mostly by male professionals from a middle or upper class background who built their reputations around their skills as lawyers, sociologists or economists; and their ability to generate abstract and organized representations of urgent large scale issues such as the agrarian question, human rights violations and the armed conflict. Some of these men are exceptions in that they have peasant origins. But higher education provided them with the opportunity of upward mobility, not only in terms of income but professional authority and expertise regarding the agrarian question. Even more, these men came from rural areas where in the past, political mobilization around the peasant cause was a significant part of social life, even though they did not necessarily consider this localized past to have had any particular influence over their career choices.

Except for my immersion in the Unit, my encounter with women was less frequent, and I found that their contributions to the production of representations of the land dispossession problem was also often elided. Some of the big names within this micro-world of techno-legal elites often work with female research assistants, but the participation of these women often disappears or is downplayed. There are certainly exceptions to this generalization. A key figure in the economic analysis of forced displacement is a female economist who has been able to maintain her authorship

and keep her findings attached to her name. Her works were enormously influential in convincing people in the higher echelons of power, such as Santos, of the magnitude of the issue. The director for many years of the Land and Patrimony Protection Project (the Project), the first governmental initiative to counter land dispossession, was a female sociologist. Also, most of the officials I worked closely with when I joined the Unit were women, although none of them would be credited for having been involved in the techno-legal production of the problem of land dispossession or the VLR Law. Overall, however, most of the subjects in this ethnography are men, with the power and prestige to articulate an “urban rural imagination” and have it have effect over the conduction of government and lawmaking.

The third and final reason why “the dispossessed” are absent from the ethnographic scenes is legal. Before and during my affiliation to the Unit I did meet dozens if not hundreds of people who had gone through the losses and the hardships that the category of “the dispossessed” was meant to capture. However, when I joined the Unit I was explicitly asked to sign a confidentiality agreement preventing me from revealing any details about their cases and claims until they were solved and made public by the land restitution courts. I took this instruction literally to mean to not only to protect their anonymity, but to abstain from writing about them at all unless a verdict had been reached and the media has taken up the case. This is why the only land restitution case I discuss in detail involves the Santa Paula hacienda. When the case was decided in early 2013, the names of the claimants, the location of the property, and facts of its dispossession were made public. In addition, once the ruling was issued, the reserve over the case file was lifted and made available for public scrutiny. Since then, aspects of the land dispossession and restitution of this hacienda have been widely discussed in the press.¹³ I hereby clarify that I have duly followed this obligation, given the

¹³ Originally I had planned to write about two other cases that revealed additional aspects about the politics of land dispossession and restitution. However, to this date the courts have not decided them.

“institutionalization of distrust” that I talk about in Chapter Five, and also because I am aware of the expectations that my friends and former colleagues in the Unit have that I too shall enact in my writing choices the “virtuous state” they aspire to.

Statistics, reports and other human-made actants in the field of force

In addition to people, I have also followed some of their creations, mainly reports, diagnostics, statistics and legal provisions. Even more, I must say that in some cases it is because of the trajectories and effects that these creations have had over the field of force that I have inquired about their creators. Once released, many of these representations acquired an agency of their own, beyond the range of action of their inventors. This is particularly true of estimates and some full-fledged quantitative reports counting hectares of land and counting displaced and then dispossessed people. Some of these estimates are consistently remembered by people in this group as having decisively reinforced their perception of a land dispossession problem and instigating in them a sense of urgency. Conversely, they also remember the times when they released these estimates as milestones in their careers. In this particular techno-legal context, numbers, more than narratives, have been constantly believed to “better capture the ‘real’” (Nelson 2015: 12), and operate as less of a mediated representation of phenomena than any qualitative version. Despite the interpretation and many contingencies that determine the generation of any such statistics, they tend to be granted a scientific status. Hoovey explains, “That so many of us still imagine that numbers... guarantee value free description... speaks to the success of the long campaign to sever the connection between description and interpretation” (Hoovey 1998 quoted in Nelson 2015: *ibid*). Now, on the other hand, it is also true that the status of the alleged authors of such estimations (and this also true for non-quantitative

representations) significantly determined the authority of the statistics. Depending on the author, estimates in this policy world have been attributed or denied more or less descriptive power. Even more, in certain conjunctures, authorship made the difference between an estimate being received as an ideological construct or as a scientific approximation to reality. Building upon Tate's work (2007), I will show that although the human rights community was the first to engage in the systematic exercise of counting the dead, and then counting the displaced, their estimates were sometimes dismissed as inaccurate or biased. The opposite case was that of the econometric technocracy, whose data and analysis would not be so easily deauthorized and would be used by different publics and spokespeople to question governmental authorities and their indifference or inadequate response to the phenomena (in this case forced displacement and land dispossession) being represented.

In addition to estimates, I also track down the material trajectories of full-fledged documents. In 2008, Riles regretted that documents "had not been treated as ethnographic subjects of their own." In the context of this ethnography, a wide variety of documents have been thoroughly constitutive of "dispossessed subjects and lands." This includes diagnostic reports, but the most important are documents of a legal nature. In a previous section I have argued that to a great extent this dissertation is an ethnography of lawmaking which engages with the often unexplored exercise of legislative and administrative legal production. Legislations, resolutions and legal provisions in general are the documents with agency *par excellence* by virtue of their fetishization. Their effects in the world are far-reaching, opening up the possibility of the thorough transformation of social and political relations. At a different scale, the same is true for the documents and other graphic representations such as maps that constitute the administrative and judiciary case file, as Hull has so persuasively argued. In Chapters Five and Six in particular, I trace the trajectories of the some of these documents and how they shape the facts and the legal implications.

Retro-, auto- and “embedded” ethnography

To finish this methodological section, a quick word is needed about my own trajectory as a Colombian lawyer-turned-anthropologist within this field of force I seek to disentangle. Like most bourgeois urban inhabitants of the 1980s and 1990s in Colombia, I first encountered “the displaced,” los desplazados, on the corners of the neighborhoods around my school and my home and in the news. This increasingly frequent and numerous Other, and their “out of place” presence, suggested that profuse violence was occurring in distant areas. But in the other hand, I also knew adults who were themselves in the run, escaping from narcos, paras, or guerrillas. At some point we also had to hide, although my parents lied about it and I did not feel particularly scared when we moved to a hotel for some weeks. At home I also frequently heard about someone my family knew being killed, kidnapped, extorted, or injured as part of car bomb or murder attempt, or forced into exile. This was a relatively common experience among the families of public servants in a city like Bogotá in the 1980s and the first half of the 1990s.

After graduating from college, I decided to work in a series of job positions from I could contribute to exert my will to improve (Li 2007) the situation of desplazados. My interest in the issue of land emerged as part of these job experiences, where one of the animating causes was certainly that of stopping and reversing land dispossession. It was in these settings that I first met some of the elites I write about. For a while, given my education as a lawyer and the professional relations I then established with some of these influential men, I came to be part of this policy world (Shore, Wright and Pero 2011) and was immersed in the hierarchies of prestige I describe. Reports I wrote were received with ambivalence and to some extent determined whether I was regarded as colleague or a less able professional. But then, when I returned as a lawyer-turned-anthropologist and sought to resume some of these relations, I was regarded with disapproval and also some pity, I gather, for having abandoned law for anthropology. Law, and the approval of some of these people, was what

gave me access. So it took three summers devoted to research to finally convince old acquaintances and new ones to admit me as interlocutor and eventually as an embedded ethnographer. Again however, it depended largely on how I was perceived by male, often senior, experts.

A note on translations:

The retro-, auto- and embedded ethnography that I present here was invariably conducted in Spanish, and with very few exceptions all the translations of the ethnographic material that I have included in the text are mine. The same goes for translations of texts originally written in Spanish or French. Unless noted, all translations are of my authorship and any inaccuracies or mistakes are my responsibility alone.

Part I. The Cultural Politics of Land in Colombia: Violence, (I)legality and the “People Forced to Move”, 1930-2002

Chapter One. Oscillations of the “Agrarian Question”: Disputes around the Correct Allocation of Land, 1930 - 1982

In 1850, the Italian explorer and scientist Agustín Codazzi observed that 75% of the Colombian territory “was unclaimed” (Londoño 2009: 2). At that time, Colombian society was predominantly rural and most of its scarce population was concentrated in the Andean regions of the country. A large majority were poor mixed-race peasants who coexisted with a small class of *hacienda* (large estate) owners and often lived and worked on the well-located lands of the latter as share-croppers, tenants or laborers. The rest were settled in the unclaimed and often less accessible lands around the haciendas, or in the territories located beyond the agrarian frontier. Whether in direct relation with hacienda owners or as independent settlers, most peasants and many landlords lacked property titles. Only a fraction of the population lived in towns and cities and derived its livelihood from non-agricultural activities such as trade and manufacture. The hacienda was often the epicenter of economic and political life, and the male owner –the *hacendado*- was usually regarded as the political

godfather of the peasants with whom he had labor and tenure agreements (Guillén 1979; Fals-Borda 1976).

At the same time, as in most of Latin America, this mostly rural, poor and Andean population was harshly divided between followers of the Liberal and the Conservative parties. Since independence from the Spanish Crown in 1820 and up to the late 1950s, political life in Colombia revolved around the electoral and armed disputes between these two cross-class collectivities. Throughout the 19th century, partisan rivalries provoked a long series of internecine wars, followed by peace agreements, political reforms and the promulgation of a set of successive constitutions, all of this in combination with almost uninterrupted political elections confronting both parties and suffocating most third-party initiatives.

And yet liberals and conservatives were neither homogenous nor cohesive communities and their loyalty and affiliation, though expressed in partisan terms, revolved around the individual leadership of a strong local man, often the hacendado. Each party was a confederation of such local power figures. Thus, rather than two clear cut political identities, there was a plethora of liberalisms and conservatisms, with significant variations within, sometimes to the point of blurring programmatic distinctions. Indeed, regardless of explicit partisan agendas and political programs, what certainly united co-partisans more than demarcated ideologies was an inherited distrust -sometimes turned into hatred- towards the political Other (Palacios 2012; M. V. Uribe 2004), which was often mediated by memories of past offenses or fantasies about future ones. Political identities passed from parents to children, and then were actualized through a variety of daily practices that ranged from wearing clothes or painting doors and windows with the parties' colors -red for liberals, blue for conservatives- to cultivating social relations with co-partisans while avoiding interactions with the political Other and blaming them for problems and accidents.

There were only few relatively consistent ideological differences between the leadership of both parties. Although an overwhelming majority of the Colombian population was Catholic, the most significant divergence had to do with role of the Church in public life and its relation with state institutions (González 2014). While several liberal leaders defended at some point a federal, parliamentary and decentralized model, and a clear separation between state and Church; their conservative counterparts tended to insist on a strong executive branch, a highly centralized state and the enforcement of an ecclesiastical order.

With few notable exceptions, throughout most of the early Republican period both parties tended to agree on how to handle the administration of public land, the adjudication of private property rights over it and, more generally, in the government -in Foucaultian terms- of agrarian matters. This hegemonic “right disposition of (rural) things”(Foucault 2011) or rural governmentality included, according to Londoño (2009), “expanding the agrarian frontier, avoiding *latifundia* and create a society of small-range property owners.” This shared understanding of agrarian matters revolved around the defense, and multiplication, of private property and a market-based economy.

Thus, starting in the 1830s, both parties decided on the dissolution of *resguardos* –the collective territories granted to indigenous groups during the colonial regime- and ordered the commercialization of those lands, arguing that this would foster the emergence of private properties and therefore, of a market-based economy in the country (Berry 2002). This decision, however, resulted in the accumulation of land by already-rich landlords or traders, most of them with family ties to the leaders of both parties. As for the adjudication of public lands, known as *baldíos* in Spanish, throughout most of the century governments by both parties distributed them discretionally, according to short-term needs such as paying off public debts, rewarding war veterans, attracting foreign immigrants, and solving budget shortages, among others. A common practice would be to issue low-priced public bonds convertible to land or directly concede large

extensions of land to private investors in exchange for them engaging in works of infrastructure, in particular roads (CNMH 2016; Berry 2002). The major confrontation on the issue of land between both parties occurred in 1861 when the liberal government of General Tomás Cipriano de Mosquera decreed the confiscation of a significant portion of the properties belonging to the Catholic Church. This initiative deepened the frictions between both parties and triggered a series of violent uprisings (Díaz Callejas 2002).

The coffee bonanza, the reevaluation of land and the first labor-based adjudications

In the 1870s and 1880s, under a series of liberal governments, Congressional majorities passed two legislations tying the adjudication of public lands to their effective exploitation. Both provisions were reminiscent of John Locke's justification of private property based on labor.¹⁴ Both granted settlers the right to acquire property titles over the public lands they inhabited and exploited directly with their own work. Law No. 61 of 1874 gave priority in the concession of public lands to Colombians and foreigners who showed disposition to devote themselves to agricultural production. Law No. 48 of 1882, on the other hand, conditioned the concession of private property over public lands to cultivation, regardless of the amount of land involved and granted settlers protection from evictions promoted by alleged owners, until confirmation by private law courts of the letters' claims. Each of these provisions listed the requirements that potential claimants had to fulfill for the lands being claimed to be considered "adequately exploited" and also limited the amount of land that could be adjudicated to individual claimants (CMH 2016: 37-38).

As historian Catherine Legrand (LeGrand 2016, 1988) has shown in great detail, the two legislations emerged in a context of growing conflicts between peasants and landowners over the

¹⁴ Locke, John. 1689. *The Second Treatise of Government*. Chapter V: "Of Property,." See also Chapter IV ("Of Adam's Title to Sovereignty by Donation") in *First Treatise*.

tenure and the ownership of lands, particularly in certain Andean localities. Until then, such conflicts had been relatively rare. Large extensions of public land were available for use; and the general perception was that, as opposed to labor, land was itself not particularly valuable.¹⁵

This changed, however, with the “coffee boom” that took off in the 1870s. As international demand grew, the price of potentially coffee-producing lands began to increase, and so did labor. Also, Berry notes, with the bonanza state finances also improved and as new developments of infrastructure to better connect producers with international markets were undertaken, the prices of adjacent lands rose even more. In such circumstances, both peasants and agricultural entrepreneurs, particularly in already established coffee-producing districts, hurried to occupy the most promising public lands within their reach (Berry 2002).

Despite the progressive discourse of the liberal governments of the time, in the long run well-established landowners and agrarian entrepreneurs took advantage of the new provisions for creating property titles over large extensions, including over areas exploited by settlers. This way, “the privatization of public lands,” originally meant to promote the distribution of property rights and the emergence of a rural middle class, “reinforced the preponderance of the hacienda in the Colombian rural landscape” (Londoño 2009: 3. Also Legrand 1988: 78-79).

In her work, based on the revision of the official registry of these land adjudications, Legrand (2016) found that the procedures established to obtain a property title entailed a series of “hidden costs” (Ibid: 57) that peasants and settlers could not afford. As Papo’s story suggests, and what I

¹⁵ In her magnificent history of the expansion of the agrarian frontier in Colombia between 1850 and 1950, Legrand provides an overview of the many different conflicts over land and property rights that emerged between settlers and landowning entrepreneurs looking to increase the size of their estates as new territories were incorporated into the national and global economies. One of her main conclusions is that the colonization of the Antioquia region, which gave rise to one of the few areas where a rural middle class has managed to thrive in the Colombian countryside, is “really an exception.” On the contrary the expansion of the agrarian frontier typically resulted not in the establishment of a class of mid-sized property owners but in the reproduction of latifundia. Until 1950, nonetheless, the actors in these struggles remained relatively isolated from others in similar situations and local conflicts did not give way to a nation-wide peasant movement or to larger-scale state actions.

found consistently throughout many stories of loss of land, is that in addition to the means for violence to protect tenure, when it comes to property rights it is also necessary to have the means to produce “paper truths” (Tarlo 2003) and the graphic artifacts (Hull 2012, 2008, 2003) required by law to generate a legible representation of the object of such rights. In the case of most peasants and settlers of the late 1880s to the 1930s, these hidden costs were prohibitive. First, land adjudication petitions had to be presented to state officials located in distant urban centers and although most of the population was illiterate, petitions nonetheless had to be submitted in a written form, preventing many of them from doing so autonomously and making them dependent on a series of intermediaries. Thus, there were costs derived from the material production of the petition document itself, which entailed “hiring a lawyer for drafting it, buying the paper, (...) and stamps, for the registration.” Second, petitioners were required to attach to their request a topographic plan of the piece of land in question, which meant they had to hire an *agrimensor* --an expert whose fees could easily exceed the market value of the land. Third, petitioners also had to pay for the transportation costs of witnesses so they could provide their statements in state offices and the state officials who, according to the legal provisions, had to visit the land in question. Fourth, the petitions and the resolutions, which were both inscribed in documents, had to travel long distances across municipalities and to the cities in a time of highly precarious roads (Legrand 2016: 57). And finally, there were additional costs associated to “the bureaucratic machinery” (p. 57-58). Sometimes the lawyers submitted incomplete petitions which resulted in their rejection or burdensome delays.¹⁶ But there were also the additional payments that officials expected petitioners to give them in order

¹⁶ In a talk in 2016 in Bogotá, Legrand -who remains to this day the most influential agrarian historian focused in Colombia, discussed the role of attorneys and lawyers in the success or failure of petitions and invited new scholars interested in agrarian question to explore this historical subject.

to promptly process their case.¹⁷ As a result, state authorities ended deciding most petitions in favor of landlords and decreeing the eviction of the settlers from the lands they inhabited and worked on. Many were forced further into the agrarian frontier or into onerous labor contracts with landlords. Those who retained the tenure were enclosed and then forced to subdivide their land into even smaller units to accommodate their growing families leading to the establishment of increasingly fragmented minifundia. Finally, in some of the most tense areas, settlers and peasants opted for armed resistance and political mobilization.

1920-1936: Agrarian “liberal reformism” and communism; peasant resistance and the Land Law of 1936

In the first decades of the 20th century, conflicts around public lands intensified in frequency and scale up to the 1920s, when there was an eruption of large-scale clashes confronting rural workers, tenants and neighboring settlers with hacienda owners in coffee producing areas near Bogotá and Medellín. In the Sumapaz region, in southern Bogotá, an important peasant organization emerged, instigated by the short-lived Socialist Revolutionary Party of the 1920s, and later on, by the Colombian Communist Party, created during the Socialist International Conference of 1930 (Londoño 2014, 2009; Palacios 2011; Pizarro 1991). It was in these areas that this two incipient leftist initiatives founded their first and most important strongholds and where peasants most successfully organized to demand the transformation of productive relations and leap towards full-fledged legal ownership (Palacios 2011). Throughout the 1920s, peasants turned to the courts and administrative authorities to question the legality of the property rights of some of the largest haciendas of the region. They had suspicions that many of the lands over which hacienda owners

¹⁷ She quotes a lawyer from Tolima who regretted: “Experience has taught me that in order to obtain a title, -no matter how small the piece of land is- it is necessary to have major connections within those ministries, which are very expensive,

had established exploitative share-cropping and rental contracts with peasants of the area were in fact public lands they had illegally enclosed and over which they lacked proper property titles. In addition, these organized peasant communities constructed channels of communication with political elites to demand changes of national laws to change the procedures to turn labor into property rights (Londoño 2009). In other parts of the country, especially in the coffee belt region near Medellín, conflicts between hacienda owners and their peasant counterpart revolved around the distribution of profit derived from coffee exports (León Zamosc 1982).

These instances of peasant resistance and the advent of the “public sphere” –via the establishment of the radio and periodicals- gave way to the emergence of what at that time came to be known as the “agrarian question,” which following Foucault (2011) can be understood as a field of knowledge and also of political action revolving around the government or “the right disposition of (rural) things.” Zamosc (1986) asserts that for the first time the agrarian question became “a relevant and contested political issue” (p.12), interpellating not only the people directly immersed in specific local conflicts, but conservative and liberal partisans across classes and the rural-urban divide. Thus, the agrarian question would increasingly influence political sensibilities and identities, and become also a constitutive element of the field of force at a national level.

The conservative governments of the 1920s attempted a series of solutions to the ongoing conflicts. First administrative authorities decided to revise one by one the titles of the properties in disputes in order to verify their authenticity and then, in case of doubt, taking the case to court. The main challenge during this verification process was to reconstruct each of the legal transactions involving that particular property all the way back to the originary state adjudication. Until 1926, the applicable rule was that unless definitive proof of lack of authenticity was provided, private properties could not revert back to the originary state. But then, the Supreme Court issued a ruling reversing the presumption and establishing that unless definitive proof of an originary adjudication

was provided, the land in question would then automatically be considered public. Landowning elites reacted with indignation to the ruling, arguing that it imposed upon owners the burden of producing what among lawyers is still known as a “diabolic proof,” an impossible proof. The ruling was not confirmed by Congress, adding to the legal confusion about the applicable rules on the disputes around property titles (Legrand 2016: 211-212, 219).¹⁸

In the late of 1920s, a section of the Liberal Party publicly began to advocate for a legal reform, in part in response to the increasing tensions between peasants and landowners in these different localities, and the success of the socialist and communist initiatives expanding their political basis. At that point, in addition, these liberals became convinced that the existing agrarian landscape was incompatible with progress: they “believed that the traditional *hacienda* system was an obstacle to the development of a dynamic agriculture, hindered the free movement of labor power, and prevented the internal market from growing” (Zamosc 1986: 12).¹⁹

Moreover, it became evident that most of these land tenure arrangements lacked originary property titles. The situation in the late 1920s, as Legrand (2016, 1988) points out, was one of legal precariousness and highly unequal tenure. Following the comments of governmental officials of the time, she observes that the government faced two options: either denying the validity of property titles and claiming the public ownership of all lands in order to distribute them again according to the labor theory of property or “accepting (social) reality,” and legalizing the status quo by granting titles to alleged and *de facto* owners.

¹⁸ According to Legrand the governments of the time also tried to buy the land from the alleged owners the lands in order to distribute them among laborers, tenants and sharecroppers and thus put an end to the conflict. Initially this program of acquisitions was received with enthusiasm but became extremely expensive and also provoked the outrage of peasant organizations who believed that because the lands in question were public, there was no justification for paying landlords.

¹⁹ Italics in original.

In 1930, after more than four decades of conservative rule, the Liberal Party won the presidential elections. The first liberal president of this period E. Olaya, sought to solve the legal confusion discussed above via a legislative reform that conditioned the adjudication and continuity in time of property rights to the adequate exploitation of lands. This initiative was explicitly meant to dissolve unproductive latifundia and address the claims of peasant organizations but Congressional majorities rejected the draft (Legrand 2016: 220-221). Then in 1934 the second liberal president, Alfonso López Pumarejo, convinced the different factions in Congress to pass Law 200 of 1936, also known as the Land Law, and a constitutional amendment introducing the notion of the “social function of private property.” With this reconceptualization, private property in principle would cease to be absolute and required to be compatible with public interest.

Alfonso López’s government framed both initiatives as part of a plan to conduct a liberal revolution in Colombia (which he referred to as “*La Revolución en marcha*”), founded on “controversy rather than in revolt,” and “on persuasion and democratic rule” rather than on violence (Tirado Mejía 1981: 11). The Land Law proposed a rather conservative solution which granted peasant organizations some prerogatives but mostly protected the interests of landowners. The haciendas in dispute were presumed public and the peasants involved promised titles, but the rest of alleged private properties were allowed to subsist as long as owners initiated their adequate exploitation in the following ten years.²⁰ Similarly, in the case of undisputed public lands, the Land Law added proof of exploitation to the requirements to acquiring a property title. But unlike Olaya’s proposal, the Land Law refrained from establishing limits to the amount of land that could be bought in the market, inherited or acquired through an administrative resolution.²¹

²⁰ Eventually this condition was extended to 15 years and rephrased in following counter-legislations.

²¹ In a famous speech López stated: “the existence of big properties with under-utilized lands that could be put to use must be reduced. With this purpose, and in addition to the establishment of deadlines for the expiration of unproductive property rights, a progressive and differential tribute taxing unexploited land must be enforced” (López 1935: 60).

Legrand (2016) insists that although currently the Land Law is remembered as a “a socially progressive measure directed to distribute land to peasants (...) this interpretation is fundamentally wrong” and quotes an intervention in Congress by President López in which he explained how his administration had decided to resolve the dilemma outlined above:

“In most cases private properties lack a perfect title, (a title) that examined under the light of abstract jurisprudence would not have as a consequence the reversion on behalf of the State. Technically, then, we face the legal alternative of stirring the Nation towards a socialist orientation, or revalidate the property titles, purifying their imperfections. The government’ (...) follows this latter route (...). The government, which has been accused of violating property, presents to you, members of Congress, the basis to defend it” (Legrand 2016: 230-231).

Elites promoted the Land Law as a deeply transformative instrument even though it “revalidated property titles,” and convinced peasant organizations across the country that through their labor they could acquire property rights despite the fact that the law did not really offer that option.

Historian M. Palacios concurs: “the Land Law, it’s abracadabra, (...) it leaves the landlords’ position in the coalition for power intact” (2011: 25).

As for the impact of the Land Law, Legrand observes that it is still “an enigma” (2016: 239). The Land Law of 1936 created a series of land courts with the power to solve any controversy around property titles, but the archives have not been located yet, and the only information available refers to specific properties. Petitioners could initiate a series of legal actions, including the *usucapio*, established in the Civil Code and other provisions, which allowed them to claim property rights after having possessed and occupy a private property for a period of time. Since the Land Law had presumed that unless proof on the contrary lands privately occupied had to be treated as private properties, apparently judges admitted the *usucapio* claims and granted titles over landlords. Some exceptions have been found in the areas of major peasant agitation south of Bogotá, and other coffee areas, where peasants managed to get titles (Palacio 2011, Londoño 2009a, 2009b). These

legal victories, however, prompted the disbanding of some of the most active grassroots groups.²² Overall, the scholarship agrees that the Land Law mitigated some of the concrete frictions of the time but also recognized the claims of property of latifundia owners, thus allowing the bimodal agrarian structure to continue relatively unchanged.

1946-1958: *La Violencia*; massive bipartisan violence and reconfiguration of the agrarian and urban landscapes

Violent clashes between conservative and liberal peasants and landlords were common during the 1930s, but circumscribed to specific localities. This began to change in 1946 when, after fourteen years of rule, liberals lost the presidential elections against conservative candidate Mariano Ospina. During the campaign, the liberal leadership was unable to prevent two of its candidates from running against each other and though the majority of votes were liberal the division allowed Ospina to win the election. One of the liberal candidates was Gabriel Turbay, a moderate liberal of Lebanese descent, who enjoyed the support of the liberal economic elites, the party's leadership and the Communist Party and who had showed a conciliatory attitude towards the Conservative party and its agenda of social conservatism.

The other candidate was Jorge Eliécer Gaitán, a lawyer from Bogotá from a working class background, whose political style and discourse was a rather unconventional combination of radical liberalism, socialism and Italian authoritarianism.²³ He was a liberal militant but he sympathized with the Colombian Communist Party and early in his political career he founded the socialist movement called The Leftist Revolutionary National Union. Actually, Gaitán had contributed to the resistance

²² In addition, Legrand found that the government acquired 200 properties from landlords (even if their rights over them were not clear) around the country and distributed them among peasants located in sensitive areas.

²³ He studied law in the public university and then won a scholarship to go to Italy. At the same time that he studied Marxism, and became closer to the Communist Party, developed an admiration for Mussolini.

of the peasant communities of Southern Bogotá mentioned above. Gaitán served their attorney and became widely known and admired among the liberal and also the more leftist peasantry of the area. In his speeches and writings, he often ranted against the Colombian “oligarchy” – which he defined as a class-based coalition of liberal and conservative rich families- and accused it of staging partisan rivalries, while covertly cooperating, in order to prevent “the people” from uniting to subvert the socio-economic order (Bushnell 2007; Braun 1986; Henderson 1985). Thanks to his oratorical talent and the radio, by the early 1940s Gaitán had also grown extremely popular among the urban and rural subaltern classes of the country. On the other hand, he often consorted with representatives of this oligarchy, including former president A. López and also liberal president Eduardo Santos (1938-1942), uncle of J.M. Santos, elected in 2010.²⁴

However, when the elections of 1946 came, and although until then the relation between the Communist and the Liberal parties had been one of confrontation and distrust the communist leaders refused to support Gaitán and sided with Turbay. Apparently they considered him more of a populist than a real revolutionary and feared that he would lead the masses into a bourgeois revolution rather than a real transformation (Pizarro 1991).²⁵

During the campaign there were isolated surges of violence in different towns and then, when Ospina’s victory was announced winners felt entitled to avenge past grievances supposedly caused by liberal neighbors during the previous (...) years of liberal rule (Bushnell 2007). In order to ease the tensions and facilitate the transition, Ospina invited liberals to join him in the government but Gaitán refused, consistent with his anti-oligarchy stance.²⁶ To the discomfort of the three parties,

²⁴ During his administration, E. Santos appointed Gaitán as Minister of Education in 1940. In 1943 he served as Minister of Labor.

²⁵ Ignacio Torres Giraldo, Secretary General of the Communist Party between 1934 and 1938, described Gaitán as an opportunist.

²⁶ As for Turbay, he withdrew from the political scene and left to France where he died shortly after. In the following months, violence receded, though not for long.

Gaitán became the most popular spokesman of liberalism and, in the minds of most analysts, the indisputable winner of the following elections of 1950. After successfully mobilizing thousands in the Silence Parade in early 1948 in protest against the outbursts of violence of the previous months, his presidency seemed inevitable.

But on April 9th, 1948, Gaitán was killed in broad daylight in downtown Bogotá, igniting the most massive and brutal cycle of bipartisan violence recorded, currently referred to as *La Violencia*.²⁷ A man called Juan Roa Sierra shot him in broad daylight right in front of his office in the presence of dozens of pedestrians and some of his closest friends. The day before, Gaitán had won a very controversial criminal law case and he was on his way to lunch to celebrate his victory when he was struck by gunshots. What happened immediately after is still the issue of ongoing disagreements between historians, surviving witnesses and conspiracy theorists. In minutes the angry mob chased and killed the alleged murderer before he could be interrogated, and dragged what remained of his body to the front of the presidential palace, located a few blocks away. Presidential guards began shooting the crowd, while the angered and increasingly large mob set on fire the surrounding buildings and the cars. In hours most of Bogotá's downtown was destroyed. For this reason, the 9th of April is still often commemorated as the "Bogotazo" –the day Bogotá exploded.²⁸

In the following days, as radio stations throughout the country spread the news of Gaitán's assassination, infuriated liberals in the Andean regions and areas of the Caribbean and Amazonic plains, took to the streets and fields looking for revenge. Extended peasant families organized liberal guerrillas to repel the attacks launched by the police and the army, most of them loyal to Ospina's

²⁷ Scholars deployed the label *La Violencia* in order to capture the variegated violences of those years. As Karl (2017) suggests, however, the label imposes an artificial homogeneity despite the wide variation across space and time. Father Gúzman Campos (1968), one of the first researchers on the issue, found that often survivors referred to this period as a succession of wars. The first war starting with Gaitán and progressing towards a second and third war in the following 10 years.

²⁸ Writer Gabriel García Márquez was blocks away. He was a student at a nearby university. In his memoir, *Living to Tell the Tale* (García Márquez 2003) he recreates the events from his perspective.

conservative government, and from death squads of armed conservative civilians.²⁹ Initially known as *Pájaros* (birds) these squads roamed towns and rural areas exterminating liberals and communists.³⁰ Thus, in the following months, rural communities were suddenly immersed in a confusing spiral of violence between guerrilla groups constituted by self-identified liberal peasant families who hid in the rural areas, struck police stations and state offices, and defended co-partisans and killed conservatives; and conservative death squads that operated in tandem with the conservative police and army to protect their own co-partisans and kill liberals. The balance of power changed from one town to the next. Depending of the correlation of forces liberals or conservatives had to flee their homes, towards the major cities, hoping to avoid encounters with enemies along the road.

Previous to the events of April 9, some of the liberal families that formed the guerrillas had already experienced persecution from conservative state authorities, because of conflicts with local landowning elites and state authorities over property rights, land tenure arrangements, and labor relations (Zamocs 1986, 1982; Pizarro 1991). Some historians insist that after the events of April 1948 a common trend among state forces and conservative private armies was to first target liberal peasant communities in long-lasting social conflicts over land or labor with conservative (and liberal) landed elites. For Gilhodes (1972), for example, in certain localities the violence of this time is better understood as “the revenge of landowners” than as a purely bipartisan conflict (see also Archila 2009).

The Communist strongholds were also targets of the state-led repression that ensued. After the defeat of Gaitán in the 1946 elections, the Communist Party lost most of its political participation in Congress and other legislative forums, in great part because of its decision to deny him support

²⁹ Only in some exceptional cases, officers rose in arms against the national government but were soon neutralized.

³⁰ These conservative private groups known as *Pájaros* (birds) or *Chulavitas* were publicly condemned by Ospina's national government but tolerated on the ground and later on actively sponsored by his successor ultra-conservative President Laureano Gómez (1950-1953).

(Pizarro 1991).³¹ But its strongholds in Cundinamarca, Tolima and other places were still in place by the time Gaitán was killed. Local cadres fortified their their self-defense strategies, and also managed to build coexistence agreements with local landowners who intermediated with police forces to keep state repression at bay (Pizarro 1991).

As violence intensified in the countryside in 1949, Ospina closed the Congress and the Liberal Party refused to participate in the presidential elections of 1950 while denying any relation with the emergence and operations of liberal guerrillas (Bushnell 2007; Henderson 1985). Conservative leader Laureano Gómez, an admirer of General Franco's regime in Spain and of European fascism more generally, won the presidency by default. His government turned to be more repressive than that of Ospina's. He openly sponsored the persecution of liberal leaders and instructed the army to support or at least to not intervene in anti-liberal purges conducted by the conservative death squads.³²

1953-1958: The Rojas regime and second phase of La Violencia; bipartisan pacification and anti-communism

Gómez's repressive means and the increasing violence of state forces and conservative gangs against communist and liberal communities prompted a reconfiguration of political allegiances and confrontations. Gradually, the Colombian political field transitioned from one defined by bipartisan antagonisms to an increasingly classical Cold War scenario, where alignments began to gravitate around pro and anti-communist agendas.

On one hand, Gómez's ways encouraged the unification of the liberal leadership, once divided by rivalries and distrust, while at the same creating a "divorce between the leadership and the liberal

³¹ According to the historian, public intellectual and brother of the charismatic guerrilla commander of the 1970s' M-19, Eduardo Pizarro, this decision turned out to be extremely onerous for the Communist Party. In 1947 communists lost all their Congressmen and eight of their nine representatives in "departmental" or provincial assemblies. Moreover, some public opinion makers of the time accused the PCC of planning the assassination of Gaitán. See Pizarro (1991: 42).

³² Soon these groups became known as Chulavitas, the name that Papo used in his story. Apparently the Gomez family was original from a small settlement called Chulavita. Gómez also banned the Communist Party and its urban cadres.

peasant bases” (Bushnell 2007).³³ Second, Gómez authoritarian style of government alienated some of his own co-partisans, causing a dissidence within his own party and stimulating a series of negotiations with the Liberal party, members of the Church and the army. This alliance eventually led to his dismissal and the establishment in 1953 of a transitory military government under the lead of General Rojas Pinilla. The transfer of rule was relatively peaceful, since Gómez did not resist and was allowed to go into exile.

The new coalition around General Rojas decided that the new regime’s main priority was to achieve the pacification of the country through the reinsertion of the liberal guerrillas willing to surrender, or through their military subjection. But the Rojas regime was only partially successful in both fronts. Liberal guerrillas throughout the country were offered amnesties and in some cases some resources to fund minor community or individual projects. But only exceptionally the government delivered what was promised and even in some cases the negotiations were used as a plot to ambush and kill guerrilla combatants. Thus some of the main guerrilla organizations that had emerged in the late 1940s continued in arms despite the new regime’s efforts to dismantle them.

Third, under the increasingly strong influence of the American government, the Rojas regime launched an even more virulent anti-communist campaign than that of Gómez. Communist guerrillas were not offered amnesty and instead, in 1954, the Communist party was declared illegal and many of its militants were accused of treason and persecuted. Many of them had already taken refuge in the same distant valleys and highlands where liberal guerrillas had settled in the previous years. During Rojas many more did so. Coexistence, a common history of struggle for rights over

³³ After the events of April 1948, the liberal leadership in Bogotá invited co-partisans all over the country to turn to “civil resistance,” as opposed to the armed struggle, while at the same time attempting close-door negotiations and agreements with Ospina and then Gómez in order put a halt to conservative governmental violence. But as liberal guerrillas multiplied their numbers and operations, and exerted their growing autonomy in relation with the party, liberal directives publicly condemned guerrilla leaders and accused them of insubordination (Pizarro, 1991).

land and the produce of labor, and distrust towards the bipartisan political elites eventually led to the conversion of some these liberal into communist cadres.

Between 1954 and 1956, the Rojas government launched a series of air strikes and land attacks against these established communist strongholds and also liberal-turned-communist communities, sometimes with the help of non-converted liberal guerrillas. For the first time Napalm bombs were used in Colombian territory. Survivors took to the territories beyond the agrarian frontier in the South west Region of the country, near San Vicente del Caguán and established new settlements far away from governmental reach. As I shall explain next, this amalgamation of liberal and communist militants is the origin of of the FARC guerrillas and their agrarian revolution.

Thus, starting in 1946 under the Ospina and Gómez administrations and then under the Rojas regime, communist self-defense groups, liberal guerillas, conservative squads, state forces and lay liberals and conservatives became entangled in a complicated geography of mutual destruction. As a result, the agrarian landscape, especially in the Andean regions, changed abruptly. Entire towns were abandoned or destroyed, while large masses of people were set in the move towards major cities or towns they hoped were controlled by co-partisans major. Retrospectively, this violent reconfiguration of the demographic distribution is now often considered the first massive forced displacement of population of the country (see Karl 2017). As I shall argue in the next chapter, however, by then forced displacement was a sociological rather than a legal category and when deployed in policy documents, journalistic accounts or social interactions its meaning differed substantially from contemporary uses in terms of its current prescriptive power and the political claims that it encompasses.

1958 – 1970: The bipartisan National Front; (counter)insurgency, rehabilitation and agrarian reformism in the Cold War era

According to the bipartisan agreement that allowed Rojas to rule, he was expected to restore partisan elections once peace had been achieved. In 1957, both Parties demanded that Rojas honor this part of the pact. A military *junta* took over temporarily while the details of the reestablishment of the electoral system were decided. The leadership of both parties met in Spain and signed a new agreement establishing a new regime of shared power or co-government, called the National Front, that would last four presidential periods (sixteen years) starting in 1958. The first and third presidential elections would be held among liberal candidates, and the second and the last one among conservatives. Each administration would be required to distribute bureaucratic positions equally among both parties. The Communist Party was allowed to resume activities but forbid from participating in elections.

Just months after the inauguration of the National Front, Fidel Castro triumphantly marched into Habana. The Cuban revolution had a profound impact (Archila and Cote 2009, Palacios 2012) on the political imagination of the new generation. Inspired by Fidel Castro and Che Guevara's "focal" revolutionary model, a wide variety of radical leftist organizations emerged.³⁴ Others came together around a whole new host of revolutionary initiatives that sought to emulate the Cuban

³⁴ As Archila and Cote (2009) show, with the expansion of leftist organizations also came their fragmentation. A variety of circumstances facilitated this atomization of the left and especially of the Communist Party. On one hand, younger leftists viewed with suspicion the former agreements of the Communist leadership with the patriarchs of the Liberal party. Palacio (2012) and Pizarro (1991) argue that their association with the most traditionalist and bourgeois wing of liberalism in order to defeat Gaitán back in 1945s was an important precedent. Most importantly, however, was the success of the Cuban revolution in 1959. The fact that Cuba's Communist Party - the People's Socialist Party- had not played any significant role in bringing down the old regime (Palacios, 2012) allowed for a series of revisionist thesis that were highly influential instigating the emergence of what Archila and Cote (2009) have referred to as a New Left. Castro and Guevara insisted in their writings and discourses that the Cuban experience proved that the revolutionary process could be accelerated if an armed vanguard of visionary combatants undertook a series of focalized military actions against the economic and political establishment. This would then provoke the awakening of the masses and lead to the final downfall of the regime. This was closer to Mao's idea of a "prolonged popular war" than to the Soviet revolutionary model in which the professional cadres of the central Party, their political work with the oppressed classes and their tactical alliances with the bourgeoisie were requirements of the revolution. The Cuban model, in contrast, had done away with the partisan structure entirely. These statements of Cuba's heroes enraged the Soviet Communist Party, which responded with virulence and accused the theorization of the Cuban leadership of being "revisionist" and "bourgeois" (Palacios 2012: 76). Communists across Latin-America, Colombia included: "could not understand how a handful of rebels, debarked from Mexico, had defeated an army and overturned a regime without the support of the People's Socialist Party (Cuba's Communist Party) and, even more puzzling, how they had managed to do so in just two years and under Uncle Sam's nose" (Palacios 2012: 71).

experience. Among these young radicals, “the old Bolshevik” was rapidly replaced by a new revolutionary subject, personified by Guevara or Castro: “an urban cadre (...) who in the countryside would become a guerrilla (and), a living example of moral integrity, intellectual lucidity and military audacity” (Palacios 2012: 76). “Bringing the Sierra Maestra to the Andes,” as Palacio puts it, became the motto of the new Colombian left even despite its complicated heterogeneity (see also Archila and Cote 2009). This new left comprised heterodox Maoists, who refused to engage in guerrilla warfare; a collection of politico-military organizations that sought to combine violence with electoral politics or revolutionary armies focused exclusively in the military defeat of the state without the support and complementary work of a political party.³⁵ In the following years an entire generation of urban leftists took to the mountains to make revolution.

The American government reacted to the success of the Cuban revolution and the revolutionary effervescence that spread across Latin America with the creation of an inter-American development program -“the Alliance for Progress”- and the implementation of continental security strategy, known as the LASO (Latin American Security Operation) Plan. The Alliance for Progress prescribed a series of social reforms on the sensitive issues of land, education and labor regime meant to appease peasant, student mobilizations and unions and prevent incendiary collaboration between them, especially the first two. Such a convergence was considered particularly favorable for the spread of communist ideas and initiatives (González 2014). As a complement the LASO Plan prescribed a series of new counterinsurgent strategies and institutional arrangements such as the implementation of intelligence activities and the professionalization and technification of the military, among others. National Front directives easily aligned their governmental agendas with this American foreign policy. As I shall discuss in what follows, they agreed to a series of limited social

³⁵ Such was the case of the National Liberation Army (ELN), a Cuban-inspired guerrilla initially composed by urban radicals. For an expanded history of the ELN see Palacio (2012) and (Villarraga and Plazas 1995)

reforms in the critical areas of agrarian and education policies while at the same time, responded to social protest and leftist political activism through repressive means.³⁶

Diagnostics, statistics and rural governmentality: “seeing” the agrarian landscape in the aftermath of La Violencia

With the Cuban revolution and the devastation caused by La Violencia, a portion of the National Front leadership and its allies in the US government rapidly grew anxious about the unsolved agrarian question in Colombia and the threat of a peasant-led revolution. They feared that an even worst social and political crisis than La Violencia was in the making (Zamosc 1986: 23).

Despite the limitations of the available data and the diagnoses about the transformations of the agrarian landscape, especially during la Violencia, there was a growing consensus among most Colombian political leaders –except conservative hardliners and some liberals-, and their foreign advisors, that from a variety of techno-political perspectives, the existing agrarian structure was, as a government appointed commission put it, “aberrant” (Comisión Nacional Agraria 1960). Other qualifications such as “defective,” “outrageous,” “irrational,” “feudal,” “anti-modern,” “inefficient,” “unfair,” among others, were increasingly used by most liberals and supportives conservative in the printed press, essays and public speeches when referring to the agrarian question.³⁷ Many were resolved to do away with the past. This was certainly true for the new left(s) that were emerging. But

³⁶ For decades Colombian presidents of both parties had extensively used the figure of the state of siege allowed by the existing Constitutional Chart as a means to circumvent Congress in the approval of bills and policies and to reduce civil and political rights of the opposition in times of political turmoil. National Front presidents operated similarly, though this time the main target of state repression were liberal-turned-communist guerrillas, members of student and peasant organizations, labor unions and New Left political groups.

³⁷ See for example Lleras Restrepo, Carlos, et.al. 1961. “10 Ensayos sobre Reforma Agraria en Colombia”

even for a portion of the political establishment the agrarian structure increasingly epitomized what was wrong with traditional political institutions, and a serious obstacle towards a palette of highly regarded or desirable public goals –spanning from social justice and democracy, to efficiency, development, productivity, political stability through counterinsurgency, and, ultimately, modernization.

With this sense of urgency, in 1960 the first president of the National Front, Liberal Alberto Lleras Camargo, ordered the conduction of two parallel exercises of data collection meant to provide clarity about the agrarian landscape that had emerged from La Violencia; and design a set of legal responses in the form of national legislations and programs.³⁸ First, by means of a Decree he appointed an Investigation Commission of “penologists and experts on social questions to investigate the true causes of violence (...) and establish possible remedies,” including “recommendations dedicated to methodically solving the situations analyzed, giving preference to those involving injustice created by intimidation or force, as well as those related to the dispossession of property and the displacement of people” (Karl 2017: 44).³⁹

Karl notes (2017) that this government initiative was part of a larger effort from the “technocratic class” to understand the “*pais rural*” (rural country) where La Violencia had mostly occurred. From that point on “truth-telling would encompass a range of national problems, of which violence was only the most prominent” (Ibid: 40). In order to reckon with the bipartisan violence, local intellectuals and international observers attempted a “preliminary arithmetic” and came up with, as one of them put it, the first “macabre statistic” (Ibid: 41) of approximately 200,000 violent deaths resulting from the bipartisan and anti-communist violence of previous years.⁴⁰

³⁸ Liberal Presidents Alberto Lleras Camargo (1958-1962) and Carlos Lleras Restrepo (1964-1970) were relatives and political allies. In order to avoid confusion, in the pages that follow I will refer to each them by their two last names.

³⁹ Translation by Robert Karl.

⁴⁰ For a comprehensive review of these initial calculations see Karl 2017 40-46; Guzmán et al, 1962.

Some of these exercises examined the issue of migration, exile or exodus –as the phenomenon was referred then- and also of land dispossession. In 1959, the governor’s office of Tolima carried out a study published shortly after, known as the Pascually Report, with the purpose of estimating the “social and economic effects” of the Violencia. Based on a survey conducted with 400 survivors, the study found that only in the Tolima region 16,219 violent deaths had been recorded. This number did not include the dead resulting “from actions of state forces (nor the latter’s casualties), nor from collective massacres, since their bodies were generally abandoned (...) or thrown into rivers and abysses (...)” The report also found that no less than “42% (321,621) of Tolima’s inhabitants” had been forced into “a permanent or transitory exile.”⁴¹ Regarding land, the report asserted that at least “40,176 properties, this is 42.82%, belonging to 32,400 owners (...) have been abandoned” (Gobernación del Tolima 1959: 10-15).⁴² The report concluded that regardless of the purpose of violence (economic or political) the outcomes were the same:

Acts of terror against people and their belongings resulting inexorably in a collective exodus. Having achieved this goal, the next step is keeping terror latent, in order to make victims desist from their real or alleged plans of reoccupying the abandoned property [...]. The persistent effort, apparently illogical, of destroying buildings and infrastructures cannot be explained in any other manner (Gobernación del Tolima 1959: 7-10).

One of the members of the Investigation Commission also wrote about the opaque but undeniable magnitude of the “migration movements” (his word choice), triggered by the bipartisan confrontation, in the following terms:

There is almost no source that researchers may use to calculate the migrations caused by the violence. They exist as a fact. Many cities grew enormously because of the volume of immigrants from rural areas. Quantifying that volume has thus far proven impossible.

⁴¹ As the CMH 2013 (p. 113) report clarifies, the term “exile” was often used to denote what nowadays is referred to as forced displacement.

⁴² See also Londoño (2014: 617-618); CMH (2013: 113).

However, he then reviews a series of partial statistics released by the commission itself, the press, and other researchers, which in his opinion indicate that “there is no doubt that violence was the cause of the massive displacements of population that mainly affected the largest cities, where it lingers as cheap labor or like human debris.” For example, he asserted that the Commission had found that 9,965 out of 17,611 inhabitants of town in Tolima had fled, while other sources had found that two additional towns in the same region had been completely vacated and in the case of fourth one, 88% of the rural population had taken refuge in its downtown. He also paraphrased press releases that had asserted that, according to official records, by 1953 Bogotá had received at least 60,000 refugees, Venezuela 20,000, and Panamá 5,000 (Guzmán 1968: 347-348).

With the pacification agreement between liberals and conservatives in 1958, *desterrados* (literally “those expelled from the land”) were returning in significant numbers to their homes in Tolima and other regions stroke by La Violencia, but found that their properties had been destroyed or were occupied by strangers (Karl 2017). Others also tried to reverse deleterious transactions they had made in the midst of violence with neighbors or family members around land. And many lacked the means to rebuild their houses and reestablish their crops. Moreover, the cities had grown rapidly and without adequate planning during la Violencia and National Front rulers were also worried about this chaotic urbanization (see Lleras Restrepo in Lleras Restrepo et al. 1961).

Given the circumstances, Lleras Camargo government undertook a series of policies directed to the “rehabilitation” of violence-ridden areas which included measures directed to “prevent the economic exploitation of violence” (see Karl 2017: 107). Law 201 of 1959, written by a renowned jurist, established a rather unusual suspension of the Civil Code and ordered the invalidation of land contracts constituted during the height of violence in areas such as Tolima, under the presumption

that parties had agreed to them out fear, and not out of free will which, according to the Code should be the basis of contractual obligations.⁴³

Parallel to the rehabilitation efforts and the implementation of Law 201, the Lleras Camargo administration also ordered the conduction of the first Agrarian Census, hoping to refine the existing diagnostics of the agrarian question. Previous governments had operated with the impressionist accounts of the “agrarian problem” provided by local intellectuals in the 1920s and 1940s and, then, by a set of foreign technocrats embedded in the recently created Pan-American and global governance system.⁴⁴ One of the analysis that more decisively contributed to the revitalization of the agrarian question was a report issued by the 1948-1950 Mission of the International Bank for the Reconstruction and Development led by the renowned Canadian-born economist Lauchlin Currie. The Mission visited Colombia as part of the Bank’s plan to design and fund a series of development projects to further the economic growth of the Latin-American region.

In his final report about Colombia, Currie outlined a dystopian agrarian landscape that was composed by two large spatial configurations, one inside and the other outside the agrarian frontier. The report focused in the first one, the inside, which in turn was regarded as divided in two: scarcely populated but extensive latifundia formations in the valleys; and clusters of minifundia in the surrounding slopes. The report described this internal space in the following “caustic” and somewhat exaggerated terms, that nonetheless for the most critical observers of the agrarian question of the time captured essence of the problem (Hirschman 1963): “(...) the use of land follows an unusual pattern. In general, the plains of the fertile valleys are used for pastures, while the

⁴³ There were additional measures meant to solve the conflicts around land that emerged in the aftermath of the bipartisan conflict. For a detailed review see Karl, 2017: 106-114.

⁴⁴ Until then, nationwide statistics of agricultural production had not been attempted in the country, except for a series of isolated figures regarding specific export goods. As for the distribution of land tenure, property rights, and the oscillation of the land market, in the early 1930s the state agencies in charge had generated the first statistical series and maps making some areas of the country legible. However, the data disappeared shortly after and has not been found to this day (IGAC 2012).

steep mountainous slopes are used for farming. (...) Cattle feeds in the plains while people struggle for a bare existence in the hills” (IBRD 1950: 63).

The territories outside the agrarian frontier, on the other hand, were located for the most part in the Amazon basin, the shores of the Pacific and the Western Caribbean, and some pockets in the Andean region. The mostly urban public opinion at that time considered these spaces to be vacant from the demographic and legal point of view because there had been no formation of property rights there. Probably for the same reason, they were also believed to be uncultivated and uninhabited, portrayed as simply empty of “agricultural activity,” even though many were actually inhabited by radical cultural Others such as runaway black communities and indigenous groups who had established alternative and yet governmentally invisible agrarian economies.

The report’s general conclusion regarding the agrarian question, then, was that besides covering most of the productive land within the agrarian frontier, latifundia were not only scarcely inhabited but also mostly unexploited, whereas most of the population seemed to be cramped in the sharp hills and destined to three poverty scenarios: to reside in the pockets of minifundia and work in latifundia for a minimal remuneration or as tenants and sharecroppers; to be confined into the minifundia and work there while exhausting and subdividing the land into increasingly small and unproductive units; or settle beyond the agrarian frontier, in regions deprived of infrastructure and isolated from the market.

Like the 1930s liberal reformists, but almost twenty years later, Currie also suggested that this irrational use of land and labor was one, if not the main obstacle, to economic development in Colombia and to transform the agrarian structure he recommended, among other measures, the introduction of a tax over land that would dissuade unproductive land tenure. But when Currie’s IBRD report was released, landowners voiced their disagreement immediately with both the diagnostic and the suggested corrective measures, while local economists and technocrats deemed

the tax reform impractical precisely because cadastral records had not been properly kept and the existing ones were far from reflecting the real distribution of property rights (Hirschman 1963).

Then in 1951 under Gómez administration, a team of techno-politicians agreed to reconsider Currie's proposal of using financial incentives as a means to force land redistribution, or if not at, least boost its productivity. According to Hirschman (1963), Currie partially reformulated his initial recommendation in order to make it more practicable: given the lack of accurate cadastral data, landowners would be offered the choice to determine the value of their properties and pay the land tax accordingly. However, in exchange, state authorities would be given the prerogative to expropriate the land and pay a compensation for a 140% of the established value. This way, the idea went, owners would have an incentive to determine a price that would not be drastically below the actual marketable value. At the end, however, the team of experts was not convinced and focused their recommendations on solving the lack of reliable cadastral data.

That same year Gómez's Ministry of Agriculture conducted the first of a series of partial agricultural surveys (Machado 2009a). When General Rojas took power, one of his first decisions was to create the National Statistics Department and order the conduction of three Agrarian Samples -in 1954, 1956 and 1958 respectively. Both series of data -Gómez surveys and Rojas Samples-, focused primarily on agricultural production rather than land tenure, even if some information about land tenure arrangements could still be deducted. But both had been constructed in the midst of the *Violencia*, which necessarily meant that some of the most critical areas in terms of violence had been excluded. To solve this lacunae, the Lleras Camargo administration applied the first nation-wide Agrarian Census explicitly inquiring about distribution of property rights and land tenure.

However, when the results came in, officials and analysts realized that the two previous datasets had been constructed using divergent methodologies, unit of analysis and sampling strategies so

when they tried to compare the three series and extract conclusions about changes came, they found them to be incommensurable (IGAC 2012). While the first two series had focused on “agricultural exploits or operations,” defined as the ensemble of economic activities conducted by one “administrative unit” (person, family, enterprise) on the agrarian surface, the latter sought to account for “legal units” -plots of land, properties and estates according to a legal rather than an economic demarcation. As a result, when some National Front officials and analysts examined them, they encountered a serious conversion problem: that several “exploits” could sit on one particular plot of land and one exploit could cover portions of many legal properties, whether private or public. Thus, with the datasets there was no way of knowing exactly who controlled the land or how concentrated it was. Surveys focusing in exploits did not inquire about property right holders and legal surveys did not inquire about actual productive operations. Besides, each survey examined a different set of states (*departamentos*) and municipalities, so at the end it turned out to be impossible to trace the evolution of the agrarian structure between 1951 up to 1958 and beyond for significant portions of the national territory (IGAC 2012, Machado 2009a).

In addition to this problem with the units of analysis, the long-established problem of informality of the transactions over land and tenure made the agrarian landscape even more opaque. As discussed in the Introduction regarding Papo’s story, for generations Colombians made transactions around land tenure privately, without the involvement or participation of notaries, registrar offices or judiciary authorities.

Still, and despite these problems, the three datasets revealed that the bimodal structure so schematically described by Currie in the quotation above still existed and that if anything it had become more acute with La Violencia.

According with the 1951 survey, 56% of “agricultural exploits” ranged between 1 and 5 hectares but covered only 4% of the agricultural area while the larger exploits (starting in 100 hectares)

accounted for only 3.5% over the total but covered 64% of the the surveyed territory. Intermediate-sized farms represented the remaining portions. The other two sets reached similar results.

According to the one collected under Rojas, 1% of the largest farms covered 40.2% of the land within the agrarian frontier while small farms, which accounted for 82.5%, covered less than 12%. The latter showed that only 0,58% of “exploits” were 500 hectares in size or larger and covered 40.4% of the farmed area. Small exploits accounted for 86% over the total, but had only 14.5% of the area (Machado 2009a: 322-325).

So despite the formal incompatibilities of the data, analysts under Lleras agreed that there was a tendency towards the expansion of latifundia, the fragmentation of minifundia, the increase of the landless population, the acceleration of rural-urban migration and a growing gap between rural and urban poverty. In addition, the three studies also confirmed that, as had been argued since the 1930s, that at least half of latifundia were underutilized or not utilized at all for agrarian activities.

Law No. 135 of 1961: negotiating Alberto Lleras Camargo’ agrarian reform

While awaiting for the results of the Agrarian Census, President Lleras Camargo appointed an “Agrarian Committee,” composed by representatives of different liberal and conservative groups, the Catholic church, two of the largest unions and the Association of Colombian Agriculturalists. The Committee was presided by his relative and close political ally, Congressman Carlos Lleras Restrepo. The task at hand was “advising the government in the study of the legislative and executive measures related with the reform of the agrarian social structure, the development of agricultural productivity, the organization of the rural population and the promotion of its quality of life” (Lleras Restrepo et.al 1961). For nine months the committee worked in a policy proposal that would reconcile the expectations and interests of its various members. Initially some of them, including Congressman Lleras Restrepo, aimed for a redistributive or “structural agrarian reform”

that would reorganize private property rights and dismantle the bimodal latifundio-minifundio system at work within the agrarian frontier (Zamosc 1986). But the text that resulted from the negotiations, issued in December 1961 as Law 135, introduced what later on was defined by sociologist Antonio García (1973) as a “marginal agrarian reform” since it protected existing private property rights from state intervention and instead used public lands to solve the peasantry’s shortage of land (see Villamil 2011: 25-26).

The new legislation created a specialized agency, the Land Reform Institute or Incora in Spanish, and restricted its mandate to distributing public land among landless peasants and only exceptionally, and with the consent of owners, to expropriating privately owned lands. Incora officials were instructed to identify public lands located in their assigned districts and to generate property titles on behalf of settlers over a determined amount of land called Agrarian Family Unit –AFU-. For each agricultural sub-region the Incora had to determine how much land was enough for an average peasant household to have a profitable exploitation and thus calculate the AFU for that particular area.

Private lands also had to be classified in one of four categories: uncultivated, inadequately exploited, exploited indirectly by tenants under a rental or sharecropping contract and adequately exploited. Once public lands were exhausted, the legislation commanded the Incora to turn to private properties in search of additional land, starting with the expropriation with compensation of uncultivated plots and continuing with the other categories in the order above. In those cases, landowners had the right to exclude from expropriation 100 hectares, independently of their location. Under certain conditions, private owners could voluntarily offer their lands to the Incora and negotiate the conditions of the transaction (Machado 2009a, 2009b).

In his final remarks to Congress before Law 135 was approved, Carlos Lleras Restrepo, head of the Committee and relative of the President, summarized the problem of opacity regarding the

agrarian structure and the available data and, also what was wrong with the countryside according to the liberal party's majoritarian view:

“In Colombia there are no figures about the distribution of rural property or a census of agrarian exploits worthy of (our) complete trust. In different periods of time partial studies about certain products have been conducted (...). Similarly, calculations using the 1951 census have been attempted –even though its imperfections are universally known. Often, there has been recourse to cadastral statistics but these account for the number of properties without revealing the number of owners, and whoever has compared them to reality has almost always found that in relation with big properties, the sizes registered in the files (...) are smaller than the actual ones. There's a tendency to the dissimulation of *latifundios*, often animated by the desire to evade taxes, but also for other reasons. There are also estates that have not even been registered. So it's not unsafe to argue, then, that concentration of rural land is higher than what our imperfect statistics show (...).

Notwithstanding, the main characteristics of the problem of land tenure in Colombia are easily identifiable: the structure of property is notoriously defective and the use of land also (Lleras Restrepo et al: 29-30).

Then, using Currie's report other policy papers produced by foreign experts, and also data from “developed” countries, he explained why both latifundia and minifundia were by nature inefficient and inconvenient forms of economic exploitation from both a micro and a macro-economic perspective. Too big or too small farms were unlikely to reach their maximum productivity potential for a variety of reasons.⁴⁵ But besides the problem of efficiency and productivity Carlos Lleras also discussed the social inconvenience of the current agrarian landscape and the potential emancipatory effects that the agrarian reform could have, in the following terms:

“(...) not only the productivity side of the problem must be taken into account. The social aspect is also there. We believe that from this (social) point of view it is not satisfactory to have a regime characterized by the subjection of rural labor. More than a country of *peones* (serfs), Colombia must be a country of property owners. To have a stable home you can call your own; the security and the freedom of the owner who works his own land, are elements that cannot be forgotten. In a country where large agricultural enterprises depend on the labor of paid workers, the opposition of interests between employer and landowner tends to become more acute. We already have many examples in Colombia and besides, at some point of the productive cycle great agricultural operations demand very little labor and afterwards they demand much more. This creates periods of

⁴⁵ In the case of minifundia, on the other hand, the main problems were over-farming, the depletion of soil nutrients and the impossibility of generating economies of scale, among others. The cumulated effects over the general economy of the system, in conclusion, were adverse.

temporary unemployment, inconvenient migration, instability and low levels of quality of life for laborers (Lleras et al 1961: 41)

1961-1968: The first Incora; setting up a marginal agrarian reform

However, as some unsatisfied politicians and analysts had predicted (such as like Alfonso López Jr. son of President López), the actions of the Incora in its first years of operation had a marginal effect on land distribution (López in Lleras Restrepo et.al 1961). Policy evaluations of the time point to a series of problems of implementation but also to the overall design of Law 135. Negotiations between officials and owners about the category to be applied to a given property, the price to be paid and the mode of payment, among other issues, turned out to be exceedingly long (Machado 2009a, Machado 2009b) and intricate. So in the first seven years, most of Incora's actions ended up involving public lands in relatively isolated and not too productive areas of the country, rather than private lands in centers of agricultural production. According to the assessment of a USAID's expert on Colombia, in its first eight years of existence the Incora had acted as "nothing more than a titling agency" (Felstehausen 1970: 18, quoted in Villamil 2011: 46). It had delivered 88,200 property titles but 95.9% were on public lands and only 1.4% came from private farms bought from landowners at relatively convenient prices for them. Because existing public lands "difficult to access" or "badly equipped" for agrarian production, the conclusion of his report was that: "the situation of peasants and the modes of production have not experienced any change and, if so, the evidence suggests that the unequal distribution of land has extended to new territories" (Felstenhausen 1970: 19-20, quoted in Villamil 2011: 46).⁴⁶

⁴⁶ According to Villamil, Felstenhausen directed the USAID's program on agrarian policy. For other negative evaluations of the implementation of Law 135 of 1961, see Delgado, Oscar. "La Reforma Agraria: inefectiva y regresiva" in Flash Magazine, Sept. 16 of 1968. A longer version of this first text was published two years later under the title "Por qué el Incora no ha reformado la estructura agraria?" in Revista Javeriana, Bogotá, -- Vol. 74, no. 368, Sep. 1970, p. 255-284.

Agrarian (anti)communisms: the Marquetalia bombings, the agrarian program of the guerrilla fighter and the inception of the FARC guerrillas

Indeed, the successor of Alberto Lleras, conservative President G.L. Valencia (1962-1966) showed no interest in furthering the agrarian reform. Since the beginning, he and his constituents had opposed Law 135 and when he took office he turned his back to its implementation. Incora's director at that time complained that under Valencia, he had only been able to talk to president once (Villamil 2011). Rather, Valencia focused in intensifying the government's counterinsurgent military operations and the implementation of the LASO Plan. Somewhat paradoxically, however, under his government and as direct result of some of his decisions, leftist organization and communist peasant communities radicalized.

Under his administration, the Colombian army, with the support of American military bombed some of the communist communities. Some of these communities were constituted by former liberal guerrilla fighters who had survived the bipartisan conflict of the late 1940s and 1950s; and had then converted to communism during the anti-communist purges of Gómez and Rojas. Even more, some of them had already been bombed in similar circumstances, and had been forced to resettle in these new locations.⁴⁷ In a session in Congress, ultra-conservative Senator A. Gómez, son of former President Laureano Gómez, described the string of loosely connected communities of poor peasants who practiced forms of agrarian communism and self-defense, as “independent republics” suggesting that they were soviet experiments, and demanded their elimination, with the argument that they represented “a serious threat to national security” (Carrillo 2016; CMH 2013;

⁴⁷ For details about the trajectories of these communities see Karl (2017), Apriles Gniset (1991) and Pizarro (1991). This was the case of the communist peasant community of El Pato valley in San Vicente del Caguán in Caquetá. Many of its inhabitants had survived to the bombing of Villarica in Tolima back in the mid-1950s and had walked for months with their belongings to this new location. Since then and until Valencia they devoted themselves to working the land following a communist scheme. After the bombings of 1965, the survivors attended the first meeting summoned by representatives of other communist communities and founded the FARC.

Pizarro 1991).

The operation against these communities started with the bombing of the communist settlements of Marquetalia in Tolima in March 1964, and continued with attacks against similar ones located in Riochiquito (Cauca state), El Pato (Caquetá state) and Guayabero (Meta state) in the following months (see Map 2). Survivors convened in a series of meetings in which they resolved to unite forces not only to defend themselves but to initiate a “prolonged armed struggle” to take over power and conduct “a revolutionary agrarian reform.” In the first of these meetings they wrote a document called *El Programa Agrario de los Guerrilleros* (the Guerrillas’ Agrarian Program) outlining the main features of the “agrarian policy that transfers latifundio to peasants” they were after (FARC 1964). This plan would be directed to the confiscation of latifundia properties and the distribution among peasants and to the reorganization of the agrarian landscape according to additional directives such as: imperialist American properties would undergo a similar fate “regardless of their use,” well-off peasants who worked their lands with their own hands would be spared from confiscation, industrialized agriculture would be nationalized and indigenous groups would receive their ancestral lands back. Peasants and urban workers would come together in a united front to force the change of regime. The organization initially took the name of “South Block” (*Bloque Sur*) but then, in the second meeting, they changed it to that of Revolutionary Armed Forces of Colombia, FARC in Spanish. With few exceptions in this first stage of revolutionary struggle, the FARC’s initial two to four hundred fighters were peasants from the Central Andes (for details see Guaraca 2015). Many belonged to a small number of extended liberal families like the Loaizas and the Marins, among others, who had engaged in guerrilla warfare since the beginning of the Violencia, and had taken up communism in recent years.

1966-1970: “The reform of the agrarian reform”; the rise of a nationwide peasant

movement

In 1966 Carlos Lleras Restrepo, the head of the Committee that drafted Law 135 of 1961, became the second liberal President of the National Front (1966-1970). In the face of the multiplication of insurgent initiatives and other signs of social discontent, he sought to undertake substantial social and political reforms that previous techno-political analysis of the country such as the Currie Report and the USA's Alliance for Progress had deemed critical for the development of the country.

As part of his "modernizing impetus" (González 2014: 356) President Lleras Restrepo instigated the emergence of an incipient technocracy, composed mainly by young urban professionals from a middle-class or "aristocratic" urban background and entrusted them the task of planning the national budget and designing key policies such as those related to the improvement of national infrastructure and the intensification of the agrarian reform. This way, Lleras promoted what Bejarano and Segura (Bejarano and Segura 1996; González 2014) have called a "selective modernization" of the country, in the sense that he combined techno-political decision making for certain issues with a traditional clientelistic style of rule, specially when appointing staff to local governmental institutions.

Nonetheless, according to González, traditional political elites still resented this transfer of power to the technocrats, whom they perceived as their bourgeois rivals in the management of national issues. But more than the budget, the issue the political elites most fiercely opposed was the new agrarian reform that Lleras Restrepo launched in 1967 (González 2014: 361-362). That year, the new government presented to Congress a new draft introducing a series of significant modifications to the agrarian legislation approved with his help under the administration of his ally and predecessor Lleras Camargo back in 1961. First and most importantly, the new draft overturned the special clauses that shielded private properties from Incora's expropriations and ordered the conversion of tenants and sharecroppers residing or working on private lands into owners. To do so, the draft

instructed the Incora to expropriate without the consent of current owners any private land that up to December 1961 or later, had been exploited through rental or sharecropping contracts. Second, the draft mandated that following the expropriation, tenants and sharecroppers were granted an Agrarian Familiar Unit or AFU. Moreover, in order to secure sufficient land for potential beneficiaries, the Incora was allowed to intervene adjacent private lands. Third, the “right of exclusion” –this is, the landowners’ right to exclude from expropriations a portion of the property - was reduced from 100 hectares to one AFU (Villamil 2011).

Unlike Law 135, which had resulted from a series of compromises between the bipartisan National Front leadership, the new draft deepened pre-existing divisions among them and at least temporarily led to the formation of two relatively demarcated factions. On one hand, it prompted a collusion of urban, bourgeois liberals and some conservatives, who agreed that the modernization of the country and, the imminence of a peasant-led revolution like the one in Cuba, inescapably entailed a truly redistributive agrarian reform.

On the other hand, the reform prompted a coalition within and beyond Congress of enraged landowning elites of both parties. As Villamil (2011) notes, the new clause establishing the conversion of tenants into owners directly affected the most productive and valuable lands of the country. In this sense, the draft was a direct threat to those elites whose fortunes and authority depended directly of their imposition of sharecropping and rental contracts to the landless workers of the area.

In addition, unlike Law 135, which had been negotiated in Congress by political elites without the participation of peasant organizations, Lleras Restrepo’ government turned to the peasantry for help in the promotion and implementation of the new draft. Up to that point, and somewhat paradoxically, even the most progressive wing of the National Front leadership had treated the peasantry either as a passive subject policy in need of “improvement” and at the same, as a

dangerous political actor, who could mobilize at a larger scale but not for constructive purposes. According to Machado (2009a, 2009b) peasant organizations had emerged from or survived to La Violencia, but throughout the 1950s and 1960s, the different governments had mainly approached them as potentially criminal or subversive elements. Moreover, the realm of operation of most of these organizations had been often limited to a single locality or region. This had reinforced the perception of National Front political elites that they were not suitable allies to influence national politics.

This time, however, Lleras Restrepo and his advisors were convinced that without the participation of the peasantry the draft did not stand a chance, either in Congress or on the ground. In order to overcome the historical blockage (M. Uribe 2009) that landowning elites had managed to impose on the previous attempts to redistribute land, the government launched a national campaign of peasant mobilization.

As Zamosc (1986) notes, with this decision President Lleras Restrepo self-consciously abandoned the reformist strategy of 1961 of avoiding class conflict through a marginal agrarian reform and chose to overtly instigate it. So in May 1967, at the same time that the initial debates around the new reform unfolded in Congress, the Minister of Agriculture created a new Peasant Organization Division and with the help of seventy five promoters scattered around the country began working on the creation and coordination of a national network of peasant associations then known as the ANUC for its acronym in Spanish.⁴⁸

The main goal of the association was to connect the peasant population with state institutions in charge of agrarian policies and to collaborate “on the mass promotion of the agrarian reform” (Villamil 2011: 35). The ANUC grew rapidly. In the first two months 500,000 agrarian workers and peasants from across the country joined as individual members (Pérez 2010). Then, in the third

⁴⁸ In Spanish, Asociación Nacional de Usuarios Campesinos - ANUC.

month, the Ministry's staff and the promoters worked with them in the formal constitution of thousands of local associations. An important part of the work was directed to the political education of the affiliates and training in leadership skills. Specialists hired by the government traveled around the country delivering workshops on the new agrarian policies, on political economy, legal procedures, new agro-industrial technologies, development and organizational formulas. Many of the speakers were urban intellectual radicals, who sympathized or militated in leftist political organizations and shared a Marxist class conflict approach to poverty and inequality (Zamosc 1986).

Incora's director of the time, Carlos Villamil (2011), points out in his insider's history of the institution, that the creation of ANUC changed the configuration of forces –both in Congress and beyond- regarding the redistribution of land. After all, the peasantry was the political base of both traditional parties. Thus, despite the fervent opposition of some liberal Congressmen and many conservatives, in January 1968 Lleras Restrepo managed to pass the draft in Congress without substantial changes to the original version. For Zamosc, the ANUC was a “class organization as well as the instrument of a prospective class alliance” between the bourgeoisie and the peasantry to overcome the landowning coalition that was on the move, once again, to block agrarian reform (1986: 54). But it was initially designed in such way so that the latter retained control over the peasant organization while at the same time hoping to deter insurgent initiatives. Pérez (2010), one of the first peasant leaders to join the ANUC and to work with the promoters, agrees that Lleras Restrepo was ultimately attempting a class alliance between the urban bourgeoisie he stood for and the until-then scattered “peasant mass” in order to guarantee an ordered and “democratic revolution.” Similarly, González (2014) explains that Lleras Restrepo's goal of summoning the peasantry was ultimately aimed at leading a “liberal revolution” before a communist one irrupted, fueled by the structural tensions of the agrarian landscape.

To put the new reform in practice, and specially the “sharecroppers and tenants’ conversion program,” the Lleras Restrepo administration approved a budget that tripled Incora’s funding and staff. Expropriations increased accordingly in the two years that were left. In this short period, Incora’s interventions “doubled in terms of area and the number of plots involved multiplied by five” (Zamosc 1986).

Under the supervision of Villamil, the conversion program started to operate in October 1968, ten months after the passing of the new reform. He hired twenty young lawyers and a staff of 120 non-professionals, and distributed them into four teams, each in charge of a particular area of the country. Their job was to contact the owners and the sharecroppers of the properties that were going to be intervened. He recalls that by the end of that month he signed authorizations to start inspecting 3,000 properties and in the following two years many more, of which at least 1,200 concluded in the expropriation and adjudication of rights to tenants and sharecroppers (Villamil 2011: 38). Consistently Felstenhausen (1970) noted in his report, that between 1969 and 1970, the Incora intervened more private lands than it had done in the previous eight years. It was probably at that time that in the public lexicon began to circulate the new verb “*incorar*”-, or “to incora,” to describe the interventions of the agency over privately owned lands.

Meanwhile, the ANUC kept growing, specially among peasant communities that lacked either land tenure or property titles.⁴⁹ And by 1971 it had almost one million affiliates – or *usuarios* (users)-grouped in thousands of local associations, with delegates actively participating in boards at the municipal, state and national level and representatives appointed to act on their behalf before the

⁴⁹ Most users (53%) were located in regions where minifundios predominated, 17.3% regions where forms of extensive agrarian capitalism (basically coffee, banana and sugar cane plantations) predominated, and 21.6% in regions of traditional latifundio. The rest came from areas of recent settlement beyond the agrarian frontier. But while in minifundios they represented a minority of the economically active population, in the other three spaces they represented, respectively, 42%, 48% and 61% (Ministry of Agriculture 1971). So it was actually in the regions where peasants lacked tenure or titles – plantations, off-frontier settlements and latifundio regions- where the ANUC had been most successful in recruiting its members (Zamosc 1986).

different agrarian institutions that depended of the Ministry of Agriculture, such as the agrarian credit agency and the Incora itself (Zamosc 1982: 32; see also Pérez 2010).

The ANUC's first national meeting took place in the first semester of 1970, right before Lleras Restrepo's time in office came to an end. Most of the meeting revolved around the incoming elections and the plan for the next four years (Zamosc 1986). At the end, the leadership agreed to support the conservative candidate, Misael Pastrana, who had promised to continue with Lleras Restrepo's agrarian reform and promote the peasant movement (see also Villamil, 2011: 58). Apparently this decision was not devoid of conflict. Despite the incipient emergence of a shared class-identity among its members, the ANUC was still a mosaic of political identities and rural subjectivities: it had reunited for the first time under a single organization, sharecroppers, wage laborers, settlers and many other types of "peasants" from across the country, with different problems and needs.⁵⁰ In addition, most peasants had been brought up as liberals and conservatives and had been immersed for most of their adult life in the bipartisan frictions of the recent past. Many also sympathized or were active militants of the wide collection of leftist political organizations that had emerged in the 1960s (Zamosc 1986: 111-121). According to a former affiliate:

Among the peasants there were liberals, there were conservatives, there was a bit of everything, but there was also people (like me) who had never militated, whose mind was a white page, open to influences, allowing a new group of leaders to emerge, a group that began to think in clearly defined ideas of democracy, of progress and independence (...). It was a permanent learning process, there were all those debates because inside the ANUC there were Trotskyists, socialists, MLs (Marxist-Leninists), grass-roots, everybody; there was a hell of a lot of politization (GMH-CNRR 2010: 202).

This diversity of political affiliations and social situations provided the movement enough flexibility to assure its expansion and integrate a wide variety of peasant communities, who despite their many differences, shared a common aspiration for land (Zamosc 1986). On the other hand, the cross-class

⁵⁰ The term *usuario campesino* (user of the countryside) has this connotation of encompassing any kind of rural worker.

ties between *usuarios*, traditional parties, and radical leftist organizations also contributed to the internal divisions and conflicts that would eventually divide the movement in two main branches.⁵¹

And yet, up to the first national meeting in 1970, the official position of ANUC was that of cooperation with government, independence from political parties and indifference, if not of explicit rejection toward guerrillas. The leadership had been emphatic until then, that the peasant movement had to be above all a nonviolent and “autonomous” initiative in relation with political organizations other than the state (Pérez 2010).

The Incora’s solitude

Still, in Villamil’s words, despite the momentary celerity of procedures and the steady grow of the ANUC “the outcome of the (conversion) program was not what we had hoped for” (2011: 38). The process of characterizing each property and the set of economic relations involving sharecroppers, tenants and owners and the land itself in order to classify the latter as (un)exploited or as susceptible of conversion “took too long.” And in many places landowners preemptively evicted tenants and sharecroppers with the hope of erasing the evidence of such indirect forms of exploitation. These delays and the unintended effects of the actions of Incora were strongly criticized by redistribution enthusiasts in the academia, the political left and the Liberal Party. Oscar Delgado, a socialist and rural sociologist deplored the ineffectiveness of Incora in a series of essays:

The annual average of beneficiaries (of private land redistribution) with or without title is of 600 persons. If agrarian reform operations were to continue at this pace, thirty centuries would go by before the 1,800,000 peasants in need of help would receive any assistance, and this if the agrarian population remains the same.

Last year, (July 1969 to July 1970), Incora redistributed as much private land as it had done in the eight previous years... At a pace of 70,000 hectares per year, something extremely difficult to achieve and to maintain in the current circumstances, it would take a century to

⁵¹ Communists, Maoists, Trotskyists, among others, reacted to the creation of the ANUC with a mixture of apprehension, enthusiasm and opportunism which reflected –and extended to the peasant movement- the divisions within the the political left (Zamosc 1982: 94-102).

intervene seven million hectares (Delgado 1968).⁵²

Nonetheless, and despite Incora's overall low performance if compared with the intended goals, there was an increasingly vocal rejection of both Law 135 and Law 1 from the opposite side of the political spectrum. Even before Law 1 was put into action, agrarian reform and its promoters endured continuous public attacks from enraged landowners and politicians. Villamil (2011) recalls the series of accusations that a landowner and Congressman from the Northern Magdalena valley voiced on the radio against President Lleras Restrepo. For fifteen days he broadcasted his rant against Lleras accusing him of rising to power "riding in the back of the political class, only to reject and substitute it by a group of unexperienced technicians" and to instigate the theft of legitimately acquired properties (Aponte 2010). Then, when the conversion program was initiated, political opposition became even stronger. According to Villamil (2011), a turning point for landowning and agro-capitalist discontent was the intervention of Incora in Jamundí, a municipality in the Cauca Valley, with large sugar plantations in the flat lands and peasant minifundia in the surrounding hills. The plan was to merge an area of minifundia with a neighboring latifundia and transform it into a grid of mid-sized properties to be distributed among with 900 minifundia tenants. It was the first time since the approval of Law 135 in 1961 that the Incora invoked Article 58 to intervene a privately owned estate that had been previously defined as "adequately exploited." Although since the beginning Incora was allowed the expropriation of allegedly productive private properties in very exceptional cases, it had never been attempted.⁵³

As the head of Incora at that time, Villamil was directly implicated in this decision. In his account of this very controversial -and in his perspective- a historically decisive intervention, the Jamundí

⁵² Quoted in Villamil (2011: 48-49)

⁵³ The legal figure used was that of "concentración parcelaria." Cauca Valley was among, if not the most productive of the country. Most of the valley was covered by large scale sugarcane plantations, belonging to a handful of influential families from the city of Popayán, that depended of the intensive labor of a large mass of underpaid black and mestizo workers. This productivity, as discussed by Taussig (1986), largely depended on the appropriation of labor. For more details about the Jamundí experiment see Villamil, 2011.

plan was “without doubt an act of desperation” (2011: 59) from him and the other officials of the Lleras Restrepo administration, who wanted to change the agrarian structure. The financial and political efforts of the previous four years had led to a notorious improvement of Incora’s performance and yet, Villamil admits:

“The change in the agrarian structure had not occurred! The achievements of the (Incora), product of an enormous effort of the government and (its) officials, had just begun to grasp the problem, which had nonetheless gotten worst with demographic growth. It was necessary to do much more and this had to be done in the legal and political fields. We, the directors and the many Incora officials who were exhausted of trying with great tenacity and getting very little results, structured the (Jamundí) project (...) and we personally presented it to the President who was probably as frustrated as we were, and approved it immediately. (...) Its political significance could be very important for the future, since the minifundia, which was very common in the most inhabited and developed area of the country, coexisted in a causal manner with the latifundia and an opportunity of solving this problem, and contribute the effective transformation of the land tenure structure, was being created” (2011: 58).

For Villamil, it was either this or continue using “the other tools” in Laws 135 of 1951 and 1 of 1966 which had proved to be not as effective in making a difference. Plus, Lleras Restrepo’s term was coming to an end and it was his last chance to make substantive decisions. But despite and because of initiatives like the Jamundí plan, the President left office in the midst of harsh criticisms of the agrarian reform from both sides of the political spectrum. The then Minister of Agriculture, Armando Samper Gnecco, published a series of essays discussing the vicissitudes of the agrarian reform. He quotes the work of a sociologist who “compiled eighty seven different critiques against the Colombian agrarian reform” coming both the left and the right (Samper 1971: 8). While progressive non-conformists like Delgado lamented the poor performance of the Incora, and others accused Lleras and his staff of self-consciously sabotaging the reform and even of favoring the interests of landowners; large-scale agriculturalists and agro-business owners –specially those in the agro-capitalist enclave of Cauca’s Valley- vocally rejected the Incora’s latest initiatives and called for the reversal of both Law’s No. 135 and No.1.

1970-1974: Struggles in and for land; the radicalization of the ANUC and the agrarian counter-reform under the Pastrana administration

This short period of legalistic, top-down and intensive agrarian reformism came definitely to a halt with the electoral victory of conservative Misael Pastrana in April 19, 1970.⁵⁴ From the start, the new government clashed with a portion of the ANUC's leadership. Despite his campaign promises of assuring the continuity of the agrarian reform, Pastrana introduced a series of adjustments to the Incora's operations that were immediately perceived as a reversal of the agrarian reform. He announced a budgetary reduction for agrarian policies including the operations of Incora, the conversion program and the ANUC. He also replaced many of the Incora Ministry of Agriculture officials (Zamosc 1986, 1982; Reyes 1978).⁵⁵

Soon, strong disagreements among the ANUC's leadership regarding the strategy to follow in the face of the new government provoked a gradual division of the organization in two main factions. One group insisted in the ANUC's autonomy vis-à-vis the government and proposed a set of alternative principles and forms of action which departed from those established in the protocols of the Ministry of Agriculture. Most importantly, they defended "land recoveries" or *recuperaciones de tierras* in Spanish: de facto takeovers of properties over which the ANUC affiliates considered they had legitimate claims, such as haciendas where they had worked before being evicted because of Law 1 (Zamosc, 1986), or lands they considered had belonged to them or their sometime in the past. As Orlando Fals Borda, a prominent sociologist who studied and actively joined the peasant movement,

⁵⁴ Pastrana defeated former military dictator General Rojas Pinilla who, after his years in power, had become a popular political figure. His victory was highly controversial and suspicions of electoral fraud remain to this day. In the first hours after the ballots closed Rojas was winning the election. Results were being transmitted by radio and TV when a blackout struck half of the country. When power was restored Pastrana had surpassed Rojas by a small difference.

⁵⁵ The new director of the Division, for example, changed the regional promoters and stated to the press that the ANUC was a ghost organization with only 200,000 affiliates instead of one million (Reyes 1978).

observed in his many works on the subject ANUC associations of the Caribbean region tended to consider their native Colombian, and enslaved African ancestors to have been the original owners of many of the lands currently owned by their current landlords and employers. Oral stories about the dispossession of those lands circulated among many active affiliates and many of the texts then published by ANUC and its sympathizers at the time evoked this past of dispossession (Fals-Borda 1982, 1976).

For other members of the ANUC, however, the claim over land was not historical, but philosophical, and it was a reiteration of the liberal clamor of the 1930s and early 1960s that “the land belongs to who labors it” also reminiscent of Locke’s theory of labor as the essence, and the justification, of property. The press and state authorities, on the other hand, referred to these takeovers as *invasiones* (invasions), a term that stripped takeovers from the philosophical and historical justifications that the peasants attributed to them and that rather framed them basically as violations of existing property rights (see Zamosc 1986, 1982).

The faction that insisted in the takeovers came to be known as the Sincelejo branch in honor of the capital city located in Caribbean province of Sucre, where most of its leaders were originally from. Their proposal was to create a series of local committees that would plan, approve and execute recuperaciones and would be in charge of preparing the paperwork needed to initiate the expropriation procedures before the Incora. Many Sincelejo activists were also affiliates of the Communist Party or Trotskyists. Others did not militate but became increasingly convinced that recoveries were the only means to force the Incora to continue with the implementation of Law No. 1. The other faction, the Armenia branch –in reference to a city in the coffee belt region- also referred to the “officialist” branch, disagreed with recoveries, preferred to negotiate with the government without such displays of force and considered that sticking to its directives was the best strategy in order to politically shield the agrarian reform.

The fracture between the two branches, and between the Sincelejo one and the government, was made official in ANUC's Second National Meeting in August 1972, two years after Pastrana took office (Pérez 2010). But it was presided by a spiral of events that instigated a rapid polarization of the major political players around and against the peasant cause. This involved two mutually constitutive processes: the radicalization of the ANUC in the face of government's increasingly regressive actions, and a reactionary response from conservative and most liberal elites into a closed anti-ANUC front. One of the first major clashes between the administration and the organization occurred in early 1971 when the majority of ANUC's National Board voted in favor of launching a massive campaign of land recuperaciones across the country starting on late February that year.⁵⁶ In the chosen date about 15,000 families of affiliates took over 315 properties, most of them located in areas of cattle-ranching latifundio in provinces such as Sucre, Córdoba and Magdalena in the Caribbean region and in the Andean plains of Huila and Tolima. According to the Board's press release, the desperation of landless peasants and the non-compliance of Pastrana's campaign promise to further land redistribution justified their resolution to turn to such direct forms of action (León Zamosc 1982).

At that moment, a comparable fracture to that dividing the ANUC became visible within the government (Zamosc 1982: 48-49). While the Minister of Agriculture publicly insisted on approaching the takeovers as the manifestation of a social problem to be addressed with socio-economic measures, the Minister of Government accused the ANUC of engaging in subversive activities. While Incora officials agreed to intervene "recovered" lands and pushed forward expropriations on behalf of peasants, police and military personnel received orders to evict invaders from those same properties. Thus, for a moment it seemed that Pastrana's government was hesitant

⁵⁶ Jesús Pérez, who was present in the meeting, claims that the minoritarian faction leaked the decision to officials from the Ministry of Agriculture who, alarmed, inquired the directives about the issue. The board denied that such decision had been made but carried out with the plan (Pérez 2010).

to contain the peasant mobilization. But soon there were signs that he stood with the landowners and agro-businessmen, who, in several press releases, radio interventions and public letters had urged the government to punish ANUC's actions and "save the fatherland." In March Villamil was dismissed from his position as Incora's director.⁵⁷ In April the funding for ANUC's periodic publication was finalized and a few weeks later, the Minister of Agriculture presented his resignation arguing that he was unable to further the agrarian reform as part of the government (Zamosc 1982: 49).

When this happened, the Sincelejo branch commissioned a group of delegates to draft a series of programmatic documents outlining the organizations' plan to achieve land redistribution. The most significant and controversial was *The Peasant Mandate* (ANUC 1971). Written following the form and style of legislative statutes, the Mandate was comprised of seventeen articles decreeing a series of actions to be undertaken by ANUC and state authorities in order to bring about a structural transformation in the countryside. Article 1 declared that the expression "land without masters" adequately summarized the goal of the Mandate and the peasant movement more generally and then established that, in order to "create the conditions to modify the agrarian structure," the actions of the movement had to be directed towards:

"The elimination of the monopoly over land and the definitive abolition of latifundio ownership," "The prohibition and abolition of the aberrant systems of rent and tenure, sharecropping, (...) and alike," "The swift and gratuitous land distribution to those who work on it or are willing to" and "The substitution of the current property regime for one based on cooperative units of peasant self-management."⁵⁸

Article 9 added that, among other things, efforts would be directed to modifying the existing laws

⁵⁷ Until then his permanence in the position had been perceived as a sign of Pastrana's will to continue with his agrarian program (Zamosc 1987: 49). Villamil had publicly complained that Incora's current procedures for land expropriation were excessively long and often resulted in compensations that were too generous with landowners (González 2014).

⁵⁸ Articles 2 to 8 mandated the creation of agrarian reform councils at the local level and defined their prerogatives and duties. These included the definition of the maximum amount of land that each person or family was to be allowed to own in that particular locality. According to article 6 this limit would have to be calculated by taking into account the "average vital income that households in the area require in order to satisfy their needs."

and policies so that expropriation without compensation of private properties would become “the only legal means to acquire land for agrarian reform purposes”; anonymous corporations or societies would be “forbidden to own rural properties”; and persons would be “permitted to own a maximum amount of land” (ANUC 1971).

The drafters presented the Mandate to the national board in August 1971, but it was not officially approved as the ANUC’s guiding text until a year later. Nonetheless, the new Minister of Agriculture, a conservative hardliner called H. Jaramillo, condemned the Mandate and based on its contents, the ANUC for conspiring to overthrow the political regime and foster a communist revolution in September of that year (Pérez 2010).

In October and November, the ANUC launched a second campaign of land recoveries in seven different states. One of the haciendas targeted belonged to Minister Jaramillo (Zamosc 1986). About 300 additional properties were taken over in those weeks. In total, in 1971 the peasant organization entered at least 645 properties, half of them in the Caribbean region (Zamosc1982: 53).⁵⁹ Many of these recoveries targeted haciendas and farms that peasants regarded as highly emblematic or representatives of local histories of oppression and exclusion (GMH-CNRR 2010).

The press and the academia covered some of these events and produced generic descriptions of *recuperaciones/invasiones*. In his book about political power and latifundio in Sucre, Reyes (1978) reproduces an interview with a leader from ANUC who describes a typical takeover in the following terms:

First landless peasants start to talk with family, friends and neighbors so they can decide together how to solve the situation (...) then some peasant who has heard of the *Usuarios* comes to us so we can help in the organization.

A committee and a fund among registered families to buy tools, seeds, etc. are created.

Then they look for an adequate piece of land, some farm with more hectares than what the owner needs to subsist.

⁵⁹ The data comes from a database compiled by Cinep – Centro de Investigación y Educación Popular. According to the database the number of properties in the Caribbean Coast were distributed as follows: sixty in Sucre, eighty in Córdoba, fifty-four in Bolívar and ninety in Magdalena.

An investigation about who the property owners are, what business or additional farms they own, where do they reside, when do they visit the farm, follows. After a period of waiting enough so that the Incora can initiate action, the farm is affected by entering it.

Next, comes the repression from the police and sometimes the army, at the request of the landlord. They imprison peasants and destroy crops. Once out of jail, (the farm) is affected again and the cycle repeats itself.

(...) Generally chosen landlords have a history of repression, exploitation of peasants or mistreatment.

Recuperaciones are completely peaceful. Nonetheless they are a clear and open confrontation with the owner (Reyes 1978: 155-156).

Zamosc complements this description by mentioning that in most cases the preparation for the *invasión*, involved farming intensively in the backyards of the families in order to have enough plants of corn, plantain, and yucca to be transplanted to the farm during the takeover. Some segments of the shacks and the other constructions to be installed were also prefabricated previously and left outdoors so that they would acquire an “appearance” of previous use. As for the act of entering the land itself he explains: “Finally, the land was secretly occupied during the night, the terrain was cleaned and fast and intensive work was directed to transplanting the crops and building the shacks. If the plot was covered with pasture, farming trucks were rented and used during the invasion” (Zamosc 1982: 71).

The purpose of most of these activities was to create a factual fiction with legal implications: “the image that the tenure of the land went a while back in time, so that the improvements (*mejoras*) would be registered in the official records of the conflict and would then serve as basis for the negotiation with the owner” (Ibid). The tactic, ultimately, relied on the production of the administrative truth needed for the Incora to adjudicate rights. However, the outcome depended on the ability of peasants to repeat the entire process as many times as necessary despite eviction, incarceration and the physical and financial effort required to reattempt the takeover. Both Zamosc (1982) and Reyes (1978) describe the procedure as a matter of endurance since the *recuperaciones* that were successful in terms of acquisition of rights happened because the owner became financially and emotionally exhausted.

By the end of 1971 there were unmistakable signs that the bipartisan political coalition that in previous years had allowed Lleras to organize the ANUC and pass Law No. 1 had been dissolved, instigated by an autonomous and increasingly radical peasant organization. In its place an anti-peasant alliance between landowners, military, police and judiciary authorities from both parties was becoming increasingly cohesive. These different actors undertook a series of parallel counter-actions that would eventually result in the overruling of the legal framework backing the redistributive agrarian reform and the dissolution of the ANUC's ability to mobilize and transform takeovers into property rights. In December 1971, the Conservative senator Hugo Sierra summoned another hearing in Congress with the support of most congressmen from both parties in which he presented a detailed report of the invasions of that year and framed them as the "first manifestations of an alleged Soviet conspiracy to overthrow the government" (Zamosc 1986). Then, in January 1972, the government convened with a large number of landowners and representatives of the main agribusinesses –cattle-ranching, sugarcane, banana and rice plantations- and the association of coffee growers in the town of Chicoral, in the central region of Tolima, to discuss a counter-reform to the agrarian land reform. ANUC and the associations of small property owners and agriculturalists were neither invited nor informed of the meeting.

The resulting Chicoral agreement announced that a new agrarian legislation was going to replace Laws No. 135 and No. 1. According to González (2014), Pastrana and his advisors had initially prepared a proposal modeled after Lauchlin Currie's proposal, which replaced expropriations and acquisitions with a series of taxation measures that would allegedly generate enough incentives for absent or unproductive landowners to optimize the use of land or offer it in the market. Again, as with Currie, the assumption was that this system of incentives would eventually lead to an efficient distribution of land, but avoiding the class conflict and instability caused by direct agrarian reform interventions.

But the Chicoral meeting was a great political victory for latifundia owners (González 2014). As originally planned, the final agreement included a land tax, but it did not foresee the modification of property registration procedures leading in practice to the state's authorities inability to properly identify taxpayers. In addition, the agreement lowered the criteria that Incora was to use when characterizing lands, assessing their (un)productivity and establishing whether there was merit to expropriate. Landlords also convinced the government to limit expropriations of productive lands without compensation to very exceptional circumstances and to modify the procedures to compensate in the remaining cases so that owners would have more leverage when establishing the value of the land and calculating the amount that the Incora had to reimburse them (Hirschman 2013; M. Uribe 2009; Berry 2002; Zamosc 1986; Zamosc 1982).

After the Chicoral meeting, the ANUC underwent a gradual process of disintegration, prompted by pressures from state authorities and also the armed radical left and disagreement between the two factions. In August 1972 the so-called Armenia branch finally left the organization while trying to negotiate alternatives to the redistributive agrarian reform with the government. The two main factions could not bridge their disagreements regarding the recoveries, the Peasant Mandate and the Chicoral agreement, among other issues. At the end, the majorities supported the Sincelejo branch and its plan of continuing with the takeovers and declaring the Mandate, with minor modifications, as the movement's navigation chart despite the open opposition of political elites. The slogan "land without masters" stated in Article 1 was replaced by the expression "land for the one who labors it" (*tierra para el que la trabaja*), a motto that would become a marker of agrarian leftist sensibility in following years. Meanwhile, rivalries between the different leftist organizations with representatives in the ANUC contributed to further its internal factionalism. Finally, the government and judiciary authorities replaced their previous practices of disciplining and sanctioning peasants with more severe criminalization of peasant activism. Although in the final two years of Pastrana's government

(1972-1974) the ANUC's majoritarian faction organized massive meetings and more recoveries around the country, this would often result in uprisings and clashes with police forces, followed by the imprisonment and prosecution of leaders for political crimes. Pérez (2010), for example, was arrested several times and spent forty five days in prison. Most of the leadership faced a similar fate. And as the criminalization of the peasant organization intensified, Pastrana presented a series of drafts to Congress that formalized the Chicoral agreement and overturned Laws 135 and 1. Eventually, this combination of elements led to atomization of the Sincelejo branch into small groups. Moreover, starting in the late 1970s, many former leaders would disappear or turned out dead in mysterious circumstances, as I was eventually told by former ANUC affiliates who presented land restitution claims in 2012.

1974-1978. After land: the Integral Rural Development model

Despite all the political agitation around and against the implementation of Law No. 1, and the institutional set-up of the ANUC, the actual impact of both over the agrarian structure turned out to be extremely low, if not counter-productive. A study of the time found that by 1972 Incora had only adjudicated expropriation lands to 13,367 families with an average of 18.8 hectares per family, whereas at least half a million families in need had not been assisted (Perry 1985). Moreover, as Berry (2002) and other analysts have noted, in order to avoid ANUC takeovers and expropriation, major landowners ended up expelling tenants and sharecroppers and using their lands for non-labor-intensive agrarian projects. As for the adjudication of public land, recent studies estimate that by 1974, Incora had allocated land beyond the agrarian frontier to a significant portion of families. However, because of the inability to earn a sufficient income many recipients of public lands ended up selling their plots to big landowners in order to get some cash, and thus initiating again the cycle of clearing the forest further within the frontier only to finalize, once again, with a land transaction.

Thus, ironically, beneficiaries of agrarian reform ended working for the expansion of latifundia (see CMH 2016 for details).

And yet the governments after Pastrana perfected the Chicoral agreement, finalizing the political elites' project of terminating the redistributive agrarian reform (Zamosc 1982). His successors followed suit. With some minor differences, the agrarian policies of both the López (1974-1978) and the Turbay (1978-1982) administrations revolved around the implementation of post-Chicoral legislation, intended to generate incentives for current landowners to use land productively or offer it to the market and a series of programs- modeled after the World Bank's new formula for fostering productivity in "third world" agrarian economies: the so-called "Integral Rural Development" (IRD) model. The IRD focused in delivering technology, agricultural inputs like pesticides and fertilizers, and credit to small farmers as a means to further their productive abilities without altering the existing distribution of property rights (Machado 2009a, 1994; Perry 1985). To solve the shortage of land, the new policy encouraged landowners and peasants to subscribe to sharecropping contracts, exactly the opposite to what the agrarian reforms aimed for (Fajardo 2010). With this formula, governmental elites sought to transform economic and political relations in the countryside without destabilizing property rights or stimulating class conflict.

Retrospectively, the termination of the redistributive reform and the turn-away from the issue of land, and other social claims from urban populations has been faulted for having stimulated the dissemination of guerrillas (Reyes 2016), which indeed gained some terrain throughout the 1970s. The most successful in gaining popular support, destabilizing the government and agitating frustrations of subaltern groups was the M-19, an urban guerrilla constituted for the most part by middle class intellectuals, but with an increasing peasant basis.

In addition, throughout the 1970s and first half of the 1980s there was no production of new statistical data (IGAC 2012: 48) and therefore, no certainty about the overall effects of the agrarian

reform and ANUC's activism over the agrarian structure. It wasn't until the mid-1980s that experts on agrarian policies -some of them former employers of the Incora- and officials from the Ministry of Agriculture published a series of works addressing this lack. The only data available to do such an exercise were in the records and databases of the IGAC, the state's Geographic Institution, in charge of mapping land titles and periodically updating the information. However, up to that point, the IGAC lacked any data regarding the Amazonic region and a portion of the Eastern Plains, and most of the existing information was out of date –. The last comprehensive update had happened in the late 1960s.

According to recognized “agrarian question” analysts, the most complete and ambitious study of land distribution was published in 1985 by researchers from the Cega, a think-tank on agricultural and cattle-ranching studies (Machado 2009b: 118, IGAC 2012: 51). The study tracked the evolution from 1960 to 1984 of properties and exploitations of 500 hectares or more as a means to determine the trajectory of latifundia throughout this turbulent period. The authors came up with a formula to solve the conversion problem between the available datasets that other experts had encountered two decades earlier.⁶⁰ Shortly after, another evaluation by a “mission for the study of the agricultural sector” sponsored by the World Bank and the national government, known as the the Misa paper, attempted a similar exercise (IGAC 2012: 52; Misa 1988).

These two studies led to similar conclusions regarding the evolution of land concentration. According to the Cega paper, between 1960 and 1970, plots ranging between twenty and 500 hectares increased in number and size while those smaller than ten hectares diminished. This meant,

⁶⁰ Peers in the agrarian academia and technocracy did not agree with the methodology used in the Cega paper, partly because the geographical range of the various cadastral datasets used for the analysis fluctuated significantly across the twenty four years under analysis (for a critique see IGAC 2012: 59; Berry 2002: 52). The oldest datasets considered, covered only 15 million hectares spread across sixteen departments (states). The Misa paper, on the other hand, showed that between 1960 and the late 1980s, the amount of land registered in cadastral databases in the departments initially considered had increased in 12 million hectares and in those departments initially excluded another 5 million hectares.

in principle, a slight reduction of minifundia, an equally small increase of latifundia and therefore an expansion, even if minimal, of hyper-big estates. However, this occurred mostly in regions recently colonized through the settlement-sale cycle mentioned above. For the period 1970-1984, the trend was reversed, showing a reduction of large properties and proliferation of mid-sized ones (Machado 2009b). Thus, the Cega paper concluded that a “relatively fast disintegration of grand properties in old colonization regions (*regiones de antiguo poblamiento*), along with the configuration of new large properties in the borders of the agrarian frontier” had taken place (Machado 2009b: 118, Cega 1985).⁶¹

The Misa paper, on the other hand, showed on average a gradual diminution of the largest properties both in size and number, though with important variations across regions (IGAC 2012: 60).⁶² Still, commentators of the Misa paper observed that there was evidence that this reduction was cosmetic and that landlords had divided their properties into smaller ones and transferred titles to third parties in order to avoid taxes (Berry 2002; Fajardo 2002).

In sum, seemed that nonetheless variations in terms of composition, the land concentration index had virtually remained unchanged despite the reform attempts of the 1960s, the peasant mobilization of the 1970s and the rearrangements that this might have caused. However, paradoxically enough, most evaluations and analysis –with few important exceptions from die-hard redistribution enthusiasts - attributed the failure of the reform to its underlying economic theory,

⁶¹ IGAC 2012.

⁶² Another important point of the Cega paper, according to Machado (2009), was that by 1984 large properties (500 has or more) added up to 11.3 million hectares but less than 10% had agricultural potential. This meant that “by 1984 the conclusion was clear: with those big estates there wasn’t much that could be done in terms of property redistribution” for the peasantry. Finally, in the late 1987s there were also new studies that once again confirmed that from the agro-technical point of view, there was an inadequate or irrational utilization of land: either lands with agricultural capabilities were unexploited or used for other purposes, or agricultural exploitations were pursued in lands without agricultural potential. According to some of the figures of the time, in the country there were only 9 million hectares that could be adequately destined to agricultural purposes but only 5 were actually in use. Meanwhile, there were 19 million hectares propitious for cattle-ranching but at least 35 million were being used for that purposes. Because many ranches located in lands that did not have enough nutrients per unit, landowners had an incentive to enlarge their properties in order to raise cattle successfully.

rather than to the complicated politics around its implementation, arguing that ultimately the problem had been expecting redistribution of property rights to foster development when, the supposedly successful experiences around world suggested that access to capital in the form of credit or subsidies and technological change was what really made the difference, not a reorganization of land tenure (Berry 2014, 2002, Machado 2009b, 1998). Redistribution of tenure and property rights was retrospectively regarded as having unnecessarily exacerbated social conflicts.

Overall then, between the 1870s and up to the 1970s, the right allocation of land was the object of a wide variety of political configurations, which engaged with law, violence and the production of truth (legal and scientific) in order to advance towards the desired order. Intermittently, bourgeois elites affiliated with the Liberal Party raised the “agrarian question” and called for legal changes in order to address the claims of peasant communities, but consistently ended supporting legal schemes that legitimized the status quo and gave existing or potential large landowners legal tools to legalize the land they already had under control and acquire more. The exception was Carlos Lleras Restrepo’s attempt in 1968 towards a redistributive land reform supported by the national peasant movement of ANUC. But his “modernizing impetus” (González 2014; Zamosc 1982) and an empowered ANUC instigated an equally impetuous reaction among landowning elites and the cosmopolitan technocracy more generally that led to the dismantlement of redistributive policies and eventually to their disappearance from development plans in Colombia. The issue of land would only reappear in the late 1980s as a complement of the priorities of the time: peace with the insurgencies and containing the narcotization of politics and the economy. The renewed interest by political elites in the “agrarian question” and in particular in land distribution patterns would coincide with a panic induced by the emergence of narco-latifundia. And it would take ten more years until the late 1990s and early 2000s for redistribution, and the events, plans and ideas here discussed to reemerge in the form of memories or, as in the case of the FARC, as a

manifestation of a vividly present and unresolved past.

Addenda: Back to the family story of (un)controlled land

It turned out that my father remembered many more details about Papo's lost properties than Papo did. The invasions happened in 1974, maybe as part of the wave of takeovers coordinate by the ANUC. According to Cinep's inventory of recuperaciones (Zamosc 1982) in the 1970s there was at least one takeover in the municipality of Puerto Boyacá, but the one recorded happened in 1975, not 1974. My father, who was abroad in the final months of 1974, received long letters from Papo telling him in detail about the latest events. Then, when he was back in Bogotá, Papo entrusted him with the task of dealing with his company's bankruptcy and also with the many written notifications that kept coming from the Incora notifying the family of the "incorization" of those lands.

My father recalled that when Papo first acquired the two properties in the late 1960 he asked the environmental agency of the time for permission to clear part of the forest and also requested the remaining area to be formalized for conservation. "To do things correctly, according to the law" my father clarified to me recently in the phone. But many years went by before the agency gave him a response. When the notice finally arrived, sometimes in the late 1970s, he and Papo had already decided to give up both properties. Moreover, according to my father, it was precisely the unwillingness of Papo to cut down the trees without authorization and to keep part of the forest that made the property attractive for the *invasión*, because settlers had a better chance getting titles and resisting police raids when lands were unexploited.

He also recalled that Papo tried to contact the *colonos* (settlers or colonizers) of Las Iniestas hoping he could eventually reach an agreement with them. To do so, to my surprise, he hired an anthropologist and asked for his help gaining a better understanding of their plans and expectations. Fortunately, my father had kept a copy of the ethnographer's report. He had not seen it in decades,

but he was sure it was somewhere in his personal archive. After several days of intensive search, he found it in the attic. The copy he handed me was fifteen pages long, typed on very thin wax paper, and was signed by anthropologist M. Becerra the 27th of February, 1975. The last page was shredded but the rest was legible. Excited, we read some sections aloud in his living room. We burst in laughter with the author's peculiar word choices, spelling errors and almost total absence of punctuation, but we were also enthralled by the micro-world that his depiction revealed, and also how Papo or our family for that matter was perceived. The document allows a glimpse into the struggle for land and survival of a particular community, at a time when many others around the country were going through something similar and also into my own family's past and its involvement in this larger class conflict over the enjoyment of land and its promises.

In the opening page, the anthropologist warns the reader that, "the report it's long in content but somewhat incomplete because the invaders are hostile people and fervent enemies of dialogues," and this, he states, "makes the mission one was entrusted almost impossible." But then he adds to his merit, "this was not an inconvenient for the visit to be fruitful and informative (since) the invaders as you well know are somewhat distrustful people (...) but also conforming and hardworking men given the inhumane situation in which they live."⁶³

In the rest of the document he characterizes fourteen plots of land or households, but clarifies that he visited thirteen of them because the remaining one was composed by "guajiros" (indigenous peoples) and the others had warned him that he could be attacked or "cursed."⁶⁴ He subdivides the information for each plot of land or household in six categories.⁶⁵ The document is filled with

⁶³ Then he also explains why, in his opinion, the settlers were operating under the direction of a leftist organization of some kind, though he does not specify which one or of if it is an armed one or not. However, through the remainder of the document, he lists the number of pistols and rifles he spots in every household.

⁶⁴ The last one was apparently inhabited by "guajiros," as the indigenous peoples from La Guajira, in the farthest northern tip of the country, are referred to. However, in certain instances, guajiros may simply be a synonym for "indigenous", regardless of the specific ethnicity.

⁶⁵ The categories are: family and health, number of hectares, property owner, work and crops, means of subsistence and type of arrangement sought after.

observations about the malnutrition of women and children and the “palludic fevers,” “tuberculosis” and “miserable” situation they were enduring. He also assessed their levels of “hospitality,” their ability to speak a “cultured Spanish,” their manners, and provided a sketch of kinship ties, divisions of labor, and conflicts and alliances between households.⁶⁶ In the “means of subsistence” section, he details the kinds of economic exchanges that household members often engaged in with other settlers or neighboring landowners in order to get food or money. This section reveals a complicated system of debts paid in time and labor. Finally, in the section devoted to the “type of agreement,” the anthropologist inquires about the expectations and disposition of settlers to negotiate with the family. Consistently, the settlers rejected any possible arrangement and ratified their determination to acquire property titles over the land or fight for it:

Plot 1: there’s no agreement since this is ours and they had the means and the time to put it on shape. We’ve already been promised titles but without the intervention of private parties. I am not selling, what I want is to have a place and the means to work.”

Plot 2:” when I raised this subject he turned to me with a rant, using the most scornful insults against the legitimate owners (Davila); there is no agreement whatsoever, if they want me out they will have to kill me or give me property titles, and neither Davila nor his employees have no business in here, they did not take advantage of what they had in their hands (...) We have orders of not selling, we want to exploit what is unexploited and nobody can leave nor back off.

Plot 3: the person told me he will not do business with anyone, for he thinks the only thing that he would be selling was his labor and given all the sufferings that they have endured only God knows what is the value of his efforts, it is best if they let us be, we will find a way to get property titles, respectfully and without insults

Plot 4:,(---) this is mine, more than mine and I am not selling my dream is to have

⁶⁶ He also provides a profile of each “property owner” (*propietario* in Spanish) and discusses his impressions about the social and cultural background, the character and role in the community of the man or men in charge of the household. He took for granted, as was often the case in most peasant communities and also in the government’s bureaucracy, that ownership or appropriation was a male prerogative. It is interesting to note that to distinguish between his subjects of observation and *Papo*, his temporal employer, he referred to him with the expression *legítimo propietario* (legitimate owner) as opposed to *propietario tout court*. Technically, in legal discourse, a *propietario* by definition has property rights. Therefore a legitimate owner is tautological and an owner without property titles is an oxymoron. But the common use of the word *propietario* is exactly as the ethnographer employs it: as a socially recognized or even a self appointed owner. The technical and arcane distinction between owner, tenant, occupant and possessor that legal texts and professionals do and has consistently foreign to everyday linguistic and social practices in many instances in the Colombian countryside.

something of my own and I already have it, no one should mess with our lives here if they want something they need to find it somewhere else (...) we know how to protect what belongs to us.

Plot 5: I do not need to agree on anything since what I only need is land where to work in peace and no one is going to fool me with money (...) we are well prepared for a possible adjudication (...) or for a possible dispossession, but this will happen with violence I'll end up dead and the land titles in my pocket better dead than in our knees that I can assure you

Plot 6: no one will ever be able to get me out of here, I'll throw out anyone who may try to offer me a monkey business, I don't need money for the sake of money, I am working, if anyone wants to do business with me it's only when I have the ownership of this in my pocket (...) the oligarchs Dávila (...) will need to think it twice because I am prepared to tell what they really are in their face (he said this with vulgarities and insults).

Plot 9: (...) he is so filled with hatred that generates distrust, he is extremely vulgar, he said: I believe no oligarch will ever dare to come here to settle with invaders.

Plot 10: she expressed that (sic) I do not believe my husband is going to back off, or that he is going to sell to his comrades of struggle, I have insisted we leave this land behind because all the illnesses and he has even threatened to kill me if I go, this is why I believe that is impossible to settle with him, moreover, they want to give us the titles and when this happens he might agree to retire in peace and look for a way to sell something, because they say that if we leave something can happen to us.

Apparently, Papo let the lands go after he received the ethnographer's report. However, for years him and my father kept getting notifications from the Incora. They never visited nor heard from Las Iniestas again until the late 1980s when, as I will discuss in the next chapter, they saw it in a list of narco-properties belonging to G. Rodríguez Gacha, a ruthless anti-communist drug lord from the Medellín Cartel with a passion for land accumulation.

Chapter Two. Prequels to the Techno-Political Production of Land Dispossession: Narco-Accumulation, Massive Forced Displacement and the Land Protection Project

The war without name

Between the late 1970s and the late 2000s, Colombia was immersed in an increasingly intensive, highly complex, nation-wide armed confrontation between guerrillas, paramilitaries, narcos and state forces as they constituted alliances or clashed with each other for control over populations and territories and attempted to refashion the local or national social order according to memories of past grievances and lived aspirations for the future. Among Colombians this relatively recent past is remembered under many labels and thought of in a variety of time-scales: the contemporary armed conflict or war, the era of narco-terrorism, or as just another manifestation of a trans-historical arc of violence connecting this recent past with the different cycles of bipartisan violence starting in the early 19th century. How to name this past, whether to treat it as a short term or a *long-durée* process, and especially how to respond to it and its sequels has been at the heart of some of the major political disputes and events of recent years, as I shall discuss in Chapters Three to Six.

This chapter outlines some of the constitutive elements of this “war without name” (Gutiérrez et al 2006) with the specific purpose of inquiring about the emergence of the increasingly public, politically visible and urgent “problem of land dispossession” (*el despojo de tierras*). In my explanation of this crucial period, I focus my attention on two parallel and interrelated processes, which by no means exhaust the complications of the time, but were decisive for the “problematization” (Rabinow 2009; Dean 2009; Greenhalgh 2008) of land dispossession. First, I shall discuss the narcotization of the agrarian (and urban) landscapes and its effects over the insurgent and

counterinsurgent forms of violence already active at the time. With the rise of the drug economy in the late 1970s, the Colombian context changed from a relatively “typical” Cold War into this other kind of war, with the old forms and fronts of counterinsurgent and insurgent violence transformed by the new *narco* element.

As I shall argue, the drug trade brought about the emergence of an increasingly powerful class of cocaine dealers who began purchasing lands and properties in the most expensive areas of latifundia –a large property- even to the point of thoroughly replacing the old landowners class in places like Córdoba –and also reorganizing the real estate market in the cities. In addition, this emerging elite also sought to rule. In the early 1980s, drug lord Pablo Escobar, by then a relatively mysterious millionaire unknown to most Colombians except for residents of the city of Medellín, ran for Congress with the Liberal Party but was removed when politicians like Carlos Galán exposed the source of his fortune and publicly called for his public moral rejection and the prosecution for drug trafficking. In a famous intervention, Galán urged the newly elected President Barco (1986-1990) to capture and extradite Escobar and his partners. One of Galán’s closest political allies and friends was appointed to the Ministry of Justice shortly after, and his first decision, along with the rest of the cabinet, was to authorize their extradition. The “extraditables,” as narcos began to refer to themselves, responded with a declaration of war against the “State and Society.” From that point on, and until 1993, Escobar and the other leaders of the Medellín cartel launched an extermination campaign against the promoters of their prosecution and extradition and also their main critics in the public sphere. One of the first to be killed was the Minister of Justice. Eventually Galán was murdered in 1989 while he was running for President (and ahead in the polls). They also bombed malls, planes and state offices in order to press for an amendment of the Constitution in order to eliminate the practice of extradition. On a regular basis deadly explosions went off around the cities of Bogotá, Medellín and Cali, killing at random.

On the other hand, and as the extradition war unfolded mainly in the major cities, the narcotization contributed to the expansion of both guerrillas and paramilitary organizations, and instigated their violent encounter in many rural areas. Coca crops on the fringes of the agrarian frontier provided guerrillas with a new source of funding that allowed them to expand their operations to the more connected and densely populated latifundio-minifundia and agrarian agro-industrial production areas. Narcos, the new owners of the land in some of these places, became a new kind of class enemy and military target for the guerrillas. Conversely, the guerrillas became a threat to the narcos' properties and more largely to their aspirations to act as sovereign rulers over the populations and territories around them –which in the views of some of them, like Escobar, included the national territory.

Paramilitary squads, many sponsored by narcos, emerged in response to the growing insurgent violence. Even more, some of these narcos took upon the crusade of saving the nation from the communist threat, as would be the case of the Castaño brothers whose politico-military trajectory I discuss in detail in Chapter Six. Rather paradoxically, the cocaine trade provided narcos and guerrillas the economic and military power to expand their control over their rural space, to the point of causing them to clash.

Attempts to conceptualize this narcotization, and especially the land accumulation side of it, occurred later on, in the late 1980s and early 1990s. Urban academics, technocrats and intellectuals who had been closely watching the unequal and underdeveloped agrarian landscape that had emerged from the 1960s and 1970s, and who had not stopped worrying about its many problems, especially after the dismantling of the redistributive agrarian reform, began to take note the expansion of this new narco rurality at the end of 1980s. They tried to map this “agrarian counter-reform,” as it would sometimes be referred to, count hectares and warn the public about its implications. The same as in the 1960s and 1970s, the conclusion would be that this new rurality was

delayed even more the advent of the highly cherished futures of development, democracy and ultimately, the sought-after modernity. They also began to attribute another layer of meaning to land concentration: they articulated it as the cause and consequence of the new armed conflict, as well as the key to its solution. In what follows, I approach the narcotization of the countryside as both a process on the ground and a process of conceptualization with implications over the actions of government and the organization of expertise, scholarship and policy work, and certainly also politics.

Similarly, the second process I will discuss in this chapter is the emergence of forced displacement and of the “violently displaced person” as a new subject of rights. Although the experience of being compelled to move in order to escape violence was certainly not new in Colombia, or anywhere for that matter, the legal category distinguishing the “displaced” from other “suffering strangers” (Aparicio 2012, 2009), like the already established “refugee,” was a new configuration which eventually led to the gradual and interrelated transformation of international law and the articulation of policies, legislations and new state formations (programs and agencies) in Colombia. Borrowing from Tate’s (2007) work, I trace the efforts of a group of people from the local human rights community who devoted themselves to counting *los desplazados* (the displaced) - and making them count.

Both accounting for the agrarian counter-reform and forced displacement involved the triple exercise of generating statistics and maps with an aspiration to scientific objectivity and rational government, formulating moral evaluations about the state of affairs, and justifying governmental (in)actions. As it had been the case with the “macabre statistics” (Canal Ramírez 1966 quoted in Karl 2017: 40) of the late 1950s concerning La Violencia, the estimates of the narcotization of land, forced displacement and land dispossession had the double-effect of producing an objective reality (Comaroff and Comaroff 2017; Nelson 2015), for a variety of publics –including political and

techno-legal elites- while also creating such elites as they strived to generate such estimations. Moreover, such calculations would serve as the backdrop against which governmental responses and political decisions would be evaluated as rational and sufficient or the opposite. As Comaroff and Comaroff (2017) have recently asserted, “the deployment of numbers is foundational to relations of power” in contemporary politics. In the disputes around narco lands, and in particular forced displacement and land dispossession, total numeric figures have themselves operated as political actants that may decisively empower or deauthorize human agents.

Equally important would be the accompanying discourses about causality that explore the origins and effects of such realities; and also the production of prescriptions pointing to a host of desirable futures. Consistently, remedies would be formulated in the form of legislations, executive orders and governmental policies. These “efforts of enumeration” (Comaroff and Comaroff 2017), analysis of causality and governing the ungovernable through law, were the entry point for many of the producers of this knowledge into the small circle of experts with influence on the conduct of the state and the production of law.

Finally, at the end of the chapter, I discuss the first incipient techno-legal initiative to not account for, but also to protect “dispossessed lands and persons.” In the late 1990s, guerrilla and paramilitary groups had expanded their operations to most of country, had grown in size and destructive power and were exterminating alleged enemies in many different points across the national territory. Fearing aggression, many Colombians fled from their places of residence –again. To those doing the “observation” of violence in real time, displacement and death rates were clearly on the rise. The scarce governmental response to the intensifying crisis, on the other hand, was directed to giving shelter, food and medical aid to the people escaping from guerrilla and paramilitary violence. As this happened, a small group of officials decided that they could contribute by generating and then implementing a set of legal provisions meant to protect the lands and belongings left behind by

desplazados. The panic around the narco-accumulation, on one hand, and the massive-scale disruption of human-land ties and the production of a dispossessed population arriving in great numbers to the cities were well established as problems and lived realities for a wide variety of publics.

There was no certainty to what extent the lands lost by the displaced-dispossessed overlapped with those appropriated by the narcos. But there was a growing suspicion among activists and observers that those properties were up for grabs either by the narcos or their paramilitary allies. Even more, some people were becoming increasingly convinced that this war was ultimately “about land” and its accumulation rather than about the elimination of “dangerous people.” The problem of “land dispossession” tout court began to appear as the ultimate explanation for the spiral of violence.

Battles on, for and by virtue of the land: the interface of narcos, guerrillas and paras

By the late 1970s, a long list of left-wing guerrillas inspired by the Cuban, Chinese revolutions and Russian revolutions were active in Colombia. Except for the M-19 guerrillas, the rest were still confined to their specific localities of origin, far removed from the major urban centers and in many cases operating in regions of recent settlement.⁶⁷ At the same time, a group of Colombian cocaine dealers, some of them active since early in the decade, were already making a fortune. They had vertically integrated and moved the cocaine chain of production from Bolivia and Perú to the fringes of the Colombian (Gootenberg 2009; Thoumi 1997) agrarian frontier, lowering the costs. Very poor peasants in these regions of recent settlement began cultivating coca at a large scale and selling it to

⁶⁷ The People’s Liberation Army (EPL in Spanish) had reduced its operations to the areas of Córdoba and Urabá, but its’ control over towns and cities had grown stronger. The FARC was mostly confined to the region of the Caguán river and only had a few commandos in the north of Colombia. The ELN (the National Liberation Army) had undergone a major defeat in Antioquia early in the 1970s and its remaining troops were struggling to survive internal purges and clashes with the army.

dealers. And as dealers established cocaine laboratories, airfields and other infrastructures required for the cocaine trade in these same marginal regions, many more peasants turned coca into their main crop. Eventually guerrillas, established since the 1960s in these regions and composed mostly by this same peasant-settler population, also began to profit from the business by charging a fee for each coca transaction happening in their immediate territory of influence. This new source of funding allowed them to increase their military capacity and begin the expansion to new territories they had coveted for so long.

Such was the case of the FARC guerrillas, circumscribed until then to eastern Andean regions of Caquetá, Meta and Huila. Until approximately 1976, most of its scarcely armed fighters had been unable to expand their operations out of their historical strongholds. The exception was the Mid-Magdalena valley, the only other area outside their site of origin in the Eastern Andes, where the FARC had managed to organize a functioning commando force. Their operations were circumscribed to attacking local authorities and the emergent class of mid-size landowners and had no national repercussions. But things began to change when a series of commandos were sent south, towards the jungle plains of the Amazon basin, where the first settlements of Andean peasants had just been established and the coca trade was just beginning to take off among them (see Jaramillo et al 1986). Once there, the FARC established a “fee” called *gramaje* for each transaction.

In addition, in the early 1980s the FARC and other guerrillas like the National Liberation Army (ELN) and People’s Liberation Army (EPL) began to resort to the extortion and kidnapping (or from their perspective, the detention and imposition of a revolutionary contribution) of traders, landowners of different economic capacities and local politicians in their respective areas of influence, to secure funds and exert political pressure. By then the organized practice of kidnapping was certainly not new in Colombia (Rubio 2005), but at this time it became increasingly systematic.

This is not to say that the expansion of the guerrillas was only an economic issue. On the

contrary, the successive governments of López (1974-1978) and Turbay (1978-1982) at the end of the 1970s did not conduct the social reforms that unions, peasants, and students had been vocally requesting for years, and instead often responded with the criminalization of organizers –as in the case of the ANUC- and also with extra-judiciary forms of violence. At the same time, new communities that were rapidly forming slums in the outskirts of the cities or in settlements in areas beyond the agrarian frontier were left unattended by state institutions. This power vacuum and the unattended claims for social justice gave guerrillas the opportunity to gain political terrain among these populations, as well as urban radicals.

The new sources of financial support and a growing acceptance of their revolutionary agenda among urban dwellers ostensibly improved the capacity of the guerrillas. Between 1978 and 1982, the FARC, the ELN –and in a different way, the M-19- undertook a rapid and relatively effective process of expansion to areas closer to main urban centers as well as latifundia. Then, in this final year, the commanders-in-chief of both the FARC and the ELN traced plans to encompass the entire national territory (Medina 2011, 1996).⁶⁸

The increasingly rich narcos, on the other hand, had already purchased large extensions of land across the country, but especially in the flat lands of the main inter-Andean valleys: in the northern area of the Cauca river valley, in the Sinú river valley, located in the state of Córdoba by the Atlantic; and in the Mid-Magdalena river valley, in the same stretch of territory where Papo's farms used to be.⁶⁹ Despite important differences in the agrarian history of these regions, such lands had in common that they were well irrigated, adequate for livestock, significant portions belonged to some

⁶⁸ In the early 1980s, the ELN also decided to expand its fronts of operation to the totality of the national territory and, among other regions, established the first subversive divisions of the northern plains and mountain ranges of Atlantic coast, including the Sierra Nevada, the Banana Zone and Montes de Maria.

⁶⁹ Not all members of the Medellín Cartel were from the state of Antioquia or its capital city, Medellín. Two of the most prominent drug lords, Gonzalo Rodríguez Gacha and Carlos Lehder, were from Pacho, a small town near Bogotá, and from Pereira, one of the main cities in the coffee belt, respectively. Both acquired multiple properties in their hometowns and surrounding areas.

of Colombia's most powerful families, and their prices were among the highest in the country. In places like the Sinú river, pre-existing landowners had not been able to effectively demand that local state authorities protect them against the aggressions of the EPL guerrillas who regularly extorted them and had kidnapped and sometimes killed their family members, despite their economic and political power. Many of these landowners then decided to sell but precisely because of the threat of guerrillas, they could not find almost any buyers except the narcos. Sánchez, for example, discusses the case of Hernán Echavarría's extended family, one of the country's richest industrialist, who allegedly sold one of their haciendas to members of the Medellín cartel. In other cases, like in the area surrounding the town of Pacho, in Cundinamarca, the traditional landowners were forced out by the local narco by making them "an offer that could not refuse" –as one of their daughters put it in a casual conversation we had in an academic workshop.

Throughout these territories then emerged narco-haciendas -or mafioso-haciendas- since emerald traders also participated in this reconfiguration of the agrarian landscape (Dávila 2010). This appetite for land and the uses given to it responded to historically specific rationalities and desires. Many properties were used to launder money and to install laboratories and landing platforms, to store money, drugs, and weapons, and for other uses directly related to the production and commercialization of cocaine. They were part of the complicated infrastructure required for the business. Land, in addition, was also the most reliable form of saving, and cattle the most expedited way of storing and acquiring cash without depending on the financial system. In this sense, accumulation obeyed easily identifiable utilitarian purposes related to the business and its illegality. But simultaneously, land accumulation was also a form of conspicuous consumption, with the productive effects of displaying power. Most haciendas were highly luxurious, well-equipped for entertainment, and would be used to engage in other vernacular forms of leisure and pleasure like collecting *paso* horses, soccer matches with professional teams and concerts with recognized local

and international music artists. But most importantly, the fantasy of becoming an *hacendado*, or “hacienda owner” discussed in the previous chapter, with the kind of prestige and power that this position entailed –and still does- in Colombian rural and urban society was also at work. Following the inherited socio-political model of the traditional hacienda, the narco-haciendas allowed drug lords to fulfill the social fantasy of exerting sovereignty over the surrounding territory and population in their own terms. Narcos sought to transform not only the space within their properties, but the social body, according to certain models of social structures and conduct. To do so, just like the archetypical hacendado, many narcos combined authoritarianism with generosity to generate loyalty and terror, and through both to produce subjects and destroy disobedient elements. Many narco-haciendas were simultaneously training camps, detention and torture facilities and graveyards, as well as places to host parties, accommodate guests and serve as safe houses for business partners and political allies. In this sense many of these haciendas were operated as the loci for the exercise of absolute power and also as the spaces demarcating the limits of the counter-power of competing sovereigns, including the local and national state. Finally, these haciendas certainly functioned as decision-making centers where grand plans for the body politic were devised. In certain cases, the narcos who accumulated lands regarded themselves as agents of an anti-American revolution –as in the case of both Escobar and especially Carlos Lehder. Escobar admired Pancho Villa and Emiliano Zapata, the heroes of Mexican revolution, and would often personify them in costume parties. There are journalistic and now popular culture accounts depicting him as someone who considered himself a capitalist with leftist-populist aspirations, a would-be Robin Hood. Lehder considered drug trafficking a tool to promote a revolution and to “bomb the Americans.” He called cocaine the Latin American “atomic bomb.” In other cases, narcos promoted Catholic models of social décor and decency and anti-communist political imaginaries, as in the case of Jose Gonzalo Rodríguez Gacha –a recalcitrant religious conservative-, and the paramilitary

organizations of the Castaño brothers. Either way, in the case of this generation of narcos, private property and sovereignty merged into an extreme form of mimesis and each one practiced as an extension of the other.

Counterinsurgency had long preceded narcos. Their incorporation into the Cold-War dynamics was a rather late development. Anti-communism in Colombia had been practiced on and off since the 1930s, and was actively pursued as a state policy in the 1950s and in the 1960s. In 1965, at the same time of the bombing of the communist peasant communists who then joined in arms under the label of the FARC (and two years after, the ELN), President Valencia had passed a decree establishing that “any citizen could be used by the government for activities and tasks meant to the reestablishment of normality,” and also granting the government permission “to authorize the use of weapons otherwise exclusive of the armed forces to private parties.” Then, throughout the 1970s, the governments of the time implemented increasingly severe forms of state repression against leftist political organizations and grassroots such as the ANUC, the labor unions and the student movement as they intensified their activities of protest. In 1978, Turbay’s administration issued the “Security Statute,” a legislation that in the name of national security reduced civil and political rights. Like in the Southern Cone, the statute was used for detaining people suspected of insurgent activities for an undefined period of time, without the right to an attorney, or clarity about the prosecution procedures. Under this legislation a still-debated number of people were also tortured and disappeared.

With the expansion of the guerrillas in the late 1970s and the establishment of strongholds in the vicinity of latifundio regions, where they sought to recruit disenfranchised peasants and extort landowners and traders, some locals engaged in forms of counterinsurgency. They worked as guides and informants for army patrols (Ronderos 2015); and in certain places, they had also acquired guns and ammunition, often in invocation of the decree of 1965, and had formed their own self-defense

squads. With their new place in this rural order as landowners and the new class enemies of the guerrillas, narcos joined these preliminary counterinsurgent efforts or started their own. Either way this tripartite alliance between narcos, army officials and local property owners was the origin of contemporary Colombian paramilitarism.

1978-1982: Encounters in the Mid-Magdalena Valley

This very schematic account of the much more complicated encounter between narcos, paramilitaries, guerrillas, old landowners, traders and military officials, would certainly displease any Colombia expert. Narcotization was one among the many factors contributing to the intensification of the insurgent-counterinsurgent conflict. Local and foreign academics have written highly detailed histories of this encounter as it unfolded in different localities of the country, and have detailed specificities and nuances that I cannot account for in this dissertation.⁷⁰

However, many specialists would agree that the kind of violence that would then engulf the Colombian rural areas in the late 1980s all the way to the mid 2000s “started” in the lands of the mid-Magdalena valley, not far from Papo’s lost and remaining farm (Ronderos 2015; Barón 2011; GMH - CNRR 2010; Romero 2003; Medina 1990).⁷¹ There, in the town of Puerto Boyacá, a group of narcos and landowners agreed with army officials on the establishment of the first narco-paramilitary counterinsurgent squad: “The Mid-Magdalena River Peasant Self-Defense Group.” Middle-class agriculturalists had already organized their own “self-defense” group against the FARC,

⁷⁰ For an expanded history of this confrontation, see Romero (2007, 2003); Civico (2016); Ronderos (2015); even Araguren (2001). Other studies have examined in the detail the configuration of particular encounters. For the case of the Mid-Magdalena river see Medina (1990) and Barón (2011).

⁷¹ This is inexact. Narco counterinsurgent initiatives had already occurred, as in the case of the “Death to Kidnappers,” launched in the city of Medellín, when the M-19 guerrillas kidnapped the youngest sister of Ochoa brothers, members of the Medellín Cartel. But on the other hand, the tripartite experiment of the Mid-Magdalena valley –with the explicit or tacit support of state forces, landowners and traders- was indeed the first one of its kind; and also the place were the promoters of similar groups would go there to receive the basic training and establish the necessary connections.

when some of the most prominent narcos of the Medellín Cartel, including Pablo Escobar, Gonzalo Rodríguez Gacha, (and also barons of the emerald trade), established their first properties in the area, and with the funding of the newcomers, and the active participation of military agents, they turned their rather precarious groups into a much more lethal organization. Allies of the Medellín Cartel sent delegates to be trained in counterinsurgent techniques. This “model” (Ronderos 2015, Romero 2007) of armed organization was then replicated around the country. The most significant initiative because of its military impact was that of the Castaño brothers. Following this model, they established the so-called Peasant Self-Defense of Córdoba and Urabá further north near Panamá, and starting in early 1990s, they expanded their influence to a large portion of the country.

Papo and my parents watched the rapid transformation of the agrarian and socio-political landscapes that came with the arrival to the valley of guerrillas, narcos and paras from a mid-range distance: close enough to see it, far enough to be spared having to actively take a side. In the Mid-Magdalena, narcos established a succession of luxurious haciendas, equipped to conduct the operations of the business in private, engage in often extravagant forms of conspicuous consumption and also to generate relations of patronage with neighbors and local authorities.

The most famous and irreverent was Pablo Escobar’s Nápoles (Naples) hacienda, just 30 miles away from what was left of Papo’s First farm and half-way to the Iniestas. In the early 1980s, Escobar turned part of the property into a safari-style zoo and kept it open to visitors who came in great numbers, even throughout the extradition war. On top of the entrance he installed a mono-motor plane. The guards and staff inside explained to visitors that this was an exact replica of the plane Escobar had first used to smuggle cocaine to the US. Once inside, visitors were advised to not get out of their cars, but they were told that they could freely drive around the circuit of roads that traversed the property while admiring the large mammals of the African savanna as they coexisted with local caimans and birds. In addition, here and there, there were life-size statues of dinosaurs.

Throughout the 1980s, and even during the extradition war, my family took me many times to Escobar's zoo, as did most of their friends from Bogotá and Medellín with their own kids. Our weekend trips to the First Farm almost always included an early morning visit to Nápoles. I have pictures of myself from three to eight years in different spots in the hacienda. To this day my father assures –and I find it very hard to believe–, that the last time we went to the zoo he and the other adults in the car caught a glimpse of Escobar through the rearview mirror, while riding in a car behind us and then passing us by. The extradition war had already begun, Escobar was in hiding and there was a ransom for him but no one in our family even considered talking about it with each other. It was just too dangerous.

Another infamous drug lord and land accumulator was Gonzalo Rodríguez Gacha, a poor peasant turned millionaire, who also acquired a series of haciendas and properties in the valley, some of them located in the main and only highway, as in the case of the Santa Helena hacienda. Gacha was one of the most strategic land accumulators of the group. A family member who worked for Barco's administration (1986-1990) remembers attending a meeting sometime in 1987 in which military personnel presented the latest findings of their investigation on Gacha's empire. The map of Colombia they used in the presentation showed that Gacha had acquired, literally, a string of rural properties that traversed the country almost in a straight-line, from the southern jungles near the Amazon, where he grew coca crops to plains and beaches of the northern Caribbean coast, where his ports, yachts and landing facilities allowed him to ship the cocaine to Central America and the United States.

Indeed, Gacha owned one of the largest cocaine facilities in the country. It was located in proximity to the FARC's area of inception in Caquetá and Meta in the Southeastern Andes. Journalistic investigations have found that in the early 1980s the FARC took over the facility, stole important goods, and kidnapped Gacha's people. They have argued that this in part explains his

unyielding anti-guerrilla stance (Ronderos 2014: 39-40; Reyes 2016, 2008). In the Caribbean coast, he owned many different properties in the state of Córdoba, near the city of Montería and in the adjacent savannas of the Sinú River (Sánchez 2003; F. Castillo 1988). In 1989 he was killed along with his son in the beach of one of his haciendas called *La Lucha* (the Struggle).

With time, state authorities and journalists have uncovered hundreds of Gacha's properties. To my family's surprise, among them was Las Iniestas. Apparently, like other properties in Colombia, Las Iniestas was taken over by peasants with plans of building their livelihoods there, only to be eventually annexed to the patrimony of a big owner such as Gacha.⁷² In his profile of Gacha, a journalist asserts that back in the day people who knew him well often joked that he had more land than the Incora and that, if he had wanted to, he could have conducted the long-awaited agrarian reform all by himself; and that Gacha used to brag about the extensiveness of his properties with his friends and visitors in Pacho. He would supposedly take them to top of a mountain around the Chihuahua hacienda, his favorite, and tell them, "everything you can see is mine" (Cortés 1993). A government official and friend who in the 2000s conducted a series of interviews in the Magdalena in relation with a massacre remembered as La Rochela found many references to "Gacha's dream": he wanted to own all the land that connected Pacho to the sea in order to build a road across what he considered "the most beautiful landscape on earth" (Rincón 1990a, 1990b).

There were many other infamous land accumulators with lands in the Magdalena valley who were not directly involved with the drug trade, but with the emerald trade. Two of them, Víctor Carranza

⁷² Just on the outskirts of his hometown in Pacho, fifty miles from Bogotá and a town where I spent most my vacations as a child, he had dozens of luxurious haciendas, all named after regions and cities of México: Sonora, Chihuahua, among others. Just by chance, throughout my life I have encountered Gacha's properties in different personal and professional scenarios. My family bought a small plot of land in the rural area of Pacho in the early 1980s, where his presence up to his death in 1989 could be perceived at first sight in the booming commerce, the cars and motorbikes that cramped Pacho's narrow streets, and the increasingly ostentatious built environment of the town. According to my parents, for a couple of years we would camp in our plot rather than building our house because of fear of Gacha. In an unpublished piece, I examine Gacha's post-mortem persona, and the traces of his romance with land accumulation not only in the Pacho area but from north to south across the country (Dávila 2011)

and Gerardo Molina, had been Gacha's initial godfathers. Apparently he started his fortune with them, before turning to cocaine. Later on, this initial friendship turned into a bloody war –the green war- when Gacha tried to take them out of business. Of all of them, the only one who had a natural death was Carranza, but not before acquiring “his millionth hectare.”

After giving up on Las Iniesta, the lands that the peasants had taken over in 1974, Papo concentrated his entrepreneurial energies in what was left of the First farm, where he tried a host of different agricultural projects. Papo insisted on growing Persian lime as a complement to and eventually a replacement for livestock. My mom and my father moved to the farm with me, when I was just a few months old, to take care of the new enterprise. Without much success they had been trying to import luxury goods like wine, computers and other foreign products, hoping to elicit a new market in Bogotá.

It must have been 1980 or 1981 when they heard the first rumors. Some of the most well-known and traditional haciendas of the area had new owners, very rich men who nonetheless were not using the lands for business. Then, their old friends and acquaintances from the nearby river towns of Puerto Salgar and La Dorada also began to notice the presence of wealthy strangers, some of them with a strong *paisa* accent, typical of Medellín, and others who seemed to come from the Andean regions of Boyacá and Cundinamarca. They all moved around in four-wheel drive cars, with personal drivers and many body guards.

Soon some of the newcomers presented themselves as *esmeralderos* (emerald barons) whereas others just as businessmen and cattle ranchers. Emerald traders are the “original Colombian mafia” (Uribe 1992) some of whom then moved to the cocaine business, Gacha among them. Apparently he started as the bodyguard and errand boy of a man called Gilberto Molina, a important drug baron and the business partner of the main don of the emerald trade, Victor Carranza. Both of them partook in the land accumulation frenzy of the time in the valley side by side with their friends from

the Medellín Cartel.

My family had its first encounters with some of these characters before both the green and the extradition wars started. The first and only time my parents met the emerald baron Victor Carranza was at the local cattle-ranching association fair. They had a stand with some friends where they sold machinery, cattle from the farm and also their wines and computers. All of these goods were expensive and did not fit the locals' preferences. People preferred local alcoholic drinks and computers were just too alien. But they decided to try their luck anyways, hoping they could show the cattle-ranchers of the region that this new technology could facilitate the management of their livestock.

The fair was in the Puerto Salgar town, a few blocks from a Colombian air force base. Papo explained to me that he had bought that particular farm precisely because the army was nearby. Nothing unusual had happened in the cattle fair when suddenly, my father recalls, a yellow helicopter appeared out of nowhere and landed in the middle of stands. "We were all astonished, since it was a restricted flight area." Everyone knew that neither commercial nor private aircraft were allowed. A man in his forties, a teenage girl, and a woman stepped out of the helicopter and walked around the fair without paying any attention to the looks from the perplexed fair-attendants. They were clearly new rich and both my parents assumed that they were a couple with their daughter. Eventually, they came up to my parents stand and Carranza introduced himself and his companions. It turned out the teenager was his girlfriend and the woman was her mother. He was interested in the wine and especially in one of the computers. My mother did a demonstration of what a computer could do, particularly how to keep track of double entries. He ended up spending all afternoon in the stand while my mother taught him how to use it. He also bought some wine. He then insisted that my parents and the other friends join them for dinner in the only restaurant in town. It was a short dinner, though. Everyone ordered, but Carranza and the women left before the

food came. My father was puzzled. The man did not fit in his social map. He was obviously wealthy and influential, to the point of being able to violate the “flying restriction,” but he also clearly had little or no schooling. This made no sense to my father. He was a polite and well-mannered man, but was reserved and had a constant grave expression on his face. He would only find out about that Carranza’s main business was the emerald trade when the “green war” started.

Shortly after, my father also met Gilberto Molina, “another guy who everyone knew was extremely wealthy but nobody could tell where the fortune had come from. I met him because of my uncle Jaime, or more exactly because of his car.” Uncle Jaime used to go visit him and my mother on the farm. He drove from Bogotá in his shiny red American car, maybe a Cadillac, one of the few in the city. At that time, cars, and especially American ones, were exceedingly expensive because of transportation costs and trade barriers. They had to be shipped from the US one by one and then buyers had to deal with long and burdensome paperwork to get them across the border. According to my father, the car was so rare that provoked admiration anywhere Uncle Jaime went. The kids in the family and then their neighbors in Bogotá called it “the flying tomato” for fun. But Uncle Jaime was no longer rich. He had lung cancer and was in desperate need of money for his treatment.

My father had spent most of his childhood holidays on the farm and had become friends with locals his age. One of them, J.C., happened to swing by for lunch. Uncle Jaime complained about his economic and health issues, so J.C suggested they offer the car to the one of the “new rich guys in town.” Him and my father drove the “flying tomato” to a house downtown. Later when his face appeared in the newspaper, my father realized that Gerardo Molina, the emerald lord himself, opened the door in his pajamas and greeted both of them. J.C. already knew him, so he did most of the talking. My father remembers that at some point Molina turned to him, and in a humorous

manner told him: “a man like you should not drive around in such car, you are *un señor*.”⁷³ But as for me, it does suit me.” My father was surprised by Molina’s act of social demarcation and apparently self-deprecating humor. The comment stuck in his head, for what it revealed and the comical way it did. At the end, Molina offered Uncle Jaime half of the price and there was no agreement. My father did not see or hear from Molina ever again until the day of his assassination, when his picture appeared in the newspaper: in a town in the fringes of the valley, a group of hit men (apparently on Gacha’s orders) killed him on his birthday party, along with many of his guests and his staff. “Not even the orchestra survived!”⁷⁴

The encounter with Escobar, on the other hand, was less direct. My father remembers clearly when he heard about him for the first time. “I was in the farm with you and your mother. J.C. came to visit with a friend of his whose name I cannot remember. It caught my attention that though it was the first time we met, he was already calling me by my nickname. We were drinking *aguardiente* (an anise-based liquor popular in Colombia) and the man got drunk very quickly. We had been working with an agronomist in the Persian lime plantation all day long so we began to talk about it. The newcomer asked us how many trees we had. I must have answered that it was about 4,000 because that was the space we had available. “Well, he bragged, the person I am working for has 100,000 lime trees and other fruit trees, but only for ornamentation purposes. He’s a *paisa* millionaire who is going to have at least twenty more times the limes than you. He is also going to open a zoo. He even has an airport to land his private jet.”

“I thought to myself,” my father recalls, “he is going to take us out of business! Even if he does

⁷³ A gentleman, someone from a “decent family.”

⁷⁴ El Tiempo newspaper. July 3, 2010. “Cansados de la muerte, esmeralderos de Boyacá hicieron pacto de paz,” <http://www.eltiempo.com/archivo/documento/CMS-7787542>: “(Gacha) made an alliance with the group of Coscuez (an emerald lord) with the only purpose of establishing a corridor from his fort in Pacho, Cundinamarca, to Puerto Boyaca in the Middle Magdalena Valley, the starting point of the Medellín’s cartel area of influence. ‘El Mexicano’, was initially a partner of Gilberto Molina and other entrepreneurs of the emerald business. But later, given his greed for power, he declared war on them (...). In February 1989, Gilberto Molina was murdered in Sasaima, Cundinamarca. He died along with 20 people, including the musicians. That same year, the police killed ‘El Mexicano’.

not sell the fruit himself, people are going to be able to gather it and sell it at a price we cannot possibly beat. And how was it possible that he can have an airport if that is a restricted flight area?” My father was disconcerted. “I would like to see those trees,” he finally said out loud, but the guy told him it was impossible. Authorization was unlikely, and besides the only way to the hacienda was in a boat, down the Magdalena river.

From that moment on, Escobar, his partners from the Medellín Cartel and also the emerald barons would become part of everyday life in La Dorada and Puerto Salgar, and the other towns of the area. My mother recalls that in La Dorada’s main plaza there was a restaurant-bar or cantina called *El Automático* where cattle owners, politicians, traders and the men of the local elite would meet daily to do business. Anyone trading livestock, land, agricultural products and also votes and government positions would meet in that place. My parents, young bourgeois hippies from Bogotá, would also go because of the ambiance and to attempt to sell the wine, the computers, the limes and their few cattle. My mother remembers coming in one day to have some drinks with friends and finding that the seats had been rearranged into one large single table. Among the guests were Escobar, the mayor, Carranza, a congressman –Victor Renán Barco, the owners of the largest haciendas and other well-known male figures of the region. She and her friends were offered a place at the bar but after one drink they were asked to leave because a private party was about to begin.

Shortly after, Papo, who was a die-hard Liberal, attended the Party’s national convention in Bogotá. There was a big dinner, presided by President Turbay, and then a cocktail, probably in a hotel. Papo remembers that he was sitting in a couch with a drink in his hand, when Turbay sat across him with one of higher commanders of the air force. Then, at a given moment, the other guests left the room by mere chance and Papo found himself alone with the two men. They knew each other from their early years in the *Partido* and since then Papo had become Turbay’s loyal follower but he had not seen him in person in years. Then at some point, Papo joked: “you seem to

have lost weight, Mr. President,” to which Turbay answered humorously, “I’m on a diet but it is also the M-19 (guerrillas),” who had forced their way into the Dominican Republic’s embassy and taken a dozen diplomats from different nationalities hostage.

Then, probably to turn the joke around, Turbay asked Papo somewhat sardonically, “So how are the limes coming? I’ve heard about that.” Apparently Papo had been offered a position in the government’s bureaucracy but he had rejected it because of his limes, and word had gotten to the President, who thought it was “a stupid waste of time –and he was right,” Papo told me later. “But at that time I told him: ‘well, we are hanging in there. There is this man who might take us out of business. Apparently he’s a big business man, the same guy who is funding ‘Medellín without shanty towns’ (*tuquorios*). He is also doing an airport near the airforce base.” At that moment, Papo remembers, Turbay turned to the air force general with a severe tone and asked him if he knew who this guy was or if he had heard about this private airport, but the commander seemed surprised.

Meanwhile, back in the valley and after the two encounters with Molina, Carranza, and the news about Escobar’s lime plantation, my parents received a notice from the air force base summoning landowners and traders to a meeting to discuss “the issue of security.” According to my father, in the vicinity of the farm there had not been incidents with the FARC, probably because the base was relatively close by, but there had been news of kidnappings and extortions in the larger perimeter of the Puerto Salgar and Dorada.

The military officer in charge of meeting explained that the situation with the FARC was getting out of hand and then in my father’s words, “he turned to us and admitted: ‘the truth is that the Colombian state does not have the means to protect you.’” And then, to “our astonishment” he offered “us a solution”: “we are going to give you authorization to buy assault weapons from us for your protection.” Then he handed to my father, who at point was considering moving back to Bogotá, and to the other assistants a list of available guns: “there were Uzis and Madsen automatic

machine guns, rifles, and many others that until then had been of exclusive use of the armed forces. I was in total shock,” he remembers. “The only weapon a peasant, agriculturalist or landowner could legally own was a carbine or a small hunting pistol. Any other kind of gun was strictly forbidden and that’s why I was so shocked.”⁷⁵

Then, the final and one of the most revealing encounters of what was happening, for my parents at least, occurred. A high school friend of my father named Ricardo, who my father had not seen or heard from in years, visited them with his wife in the farm. He arrived late one night without prior notice. They had been good friends in their senior year at school and Ricardo had come to the farm with my father several times. My father was thrilled with the surprise visit. They spent all night talking about family, college, marriage, the kids, politics, their high school mates, the problems with the farm, the not so-successful businesses of my parents and so forth. And then, just after sunrise, Ricardo left and my father did not hear from him again until several years later at a high-school reunion, when he found that Ricardo had not only joined the FARC, but was one of its commanders-in-chief. He also found out that since joining, Ricardo had been in charge of a series of kidnappings, including that of members of his own extended family and friends from his childhood. He had paid visits to other high school friends and inquired about their current lives in detail. To this day my father still wonders if Ricardo’s visit was part of a plan to eventually kidnap any of us, or just an act of friendship. Every time he tells the story he jokes: “Either way, we were broke!”

1986-2002: Narco accumulation panic, punitive expropriation, and the land reform

In this period of time, four successive governments generated laws, issued orders and established

⁷⁵ This meeting was most likely conducted under the prerogatives of the 1965 presidential order which allowed military authorities to recruit the help of civilians for counterinsurgent purposes and as part of heightened privatization of force occurring at the time.

administrative and policing apparatus meant to identify and take over narco-lands. Compared to the estimates produced along the way, the performance of the state authorities appointed to the task were scarce. At the same, this continuous enumeration of narco-lands and frustrated persecution reinforced the idea among certain techno-political elites and urban publics that narco-accumulation aggravated the already deplorable agrarian landscape.

By the end of 1980s, in the midst of the extradition war (and the dirty war), narco land accumulation and the more general issues of narco-economics, on one hand, and “the agrarian question” on the other, had become (once again) major concerns for techno-political elites. Land had not been a priority in the agenda of presidents Turbay and Betancur (1982-1986). While Turbay had concentrated on waging the counterinsurgent war, the Betancur administration had spent most of its efforts seeking a peace agreement with the guerrillas and implementing a series of developmental policies aimed at counterinsurgency such as the National Rehabilitation Plan.⁷⁶ In

⁷⁶ This plan divided the national territory into spatial categories depending on the recorded levels of violence. Those exhibiting the highest rates were targeted for the implementation of special social policies. Adjudication of land titles, however, was not part of the plan. Under Barco this would change. In any case, under Betancur, the government technocracy designed the National Rehabilitation Plan –PNR in Spanish-, as complementary strategy to the peace agreements aimed to further economic development and forms of participatory democracy in the regions where guerrillas were influential (Castillo and Sotomayor 1992: 49). Unlike Turbay and his staff, who viewed social mobilization as a form of insurgency and a threat to national security that had to be contained with repression, officials in the Betancur administration were convinced that by addressing social discontent or what were referred then as “the objective causes” of the armed conflict, they would be able to generate the conditions for its resolution. The government embraced the diagnostics of some analysts and intellectuals according to whom the conflict had two main causes: uneven economic development across regions and the urban-rural divide; and the persistence of a restrictive democracy inherited from the National Front. In this sense, guerrillas were ultimately regarded as the direct manifestation of social inequality and political exclusion. Following this logic, the Betancur government wanted to focus on a series of public policies that could at least partially solve both problems. Thus, in 1984 the government signed peace agreements with the FARC, the M-19, the PCML and the EPL. Each accord was custom-made. In the case of the EPL and the FARC, the agreement included the creation and promotion of their own legal political party, in preparation for their transition from the armed struggle to electoral politics. Delegates of the FARC and the Communist Party joined efforts with members from labor unions, grassroots organizations, and student and peasant movements to create a new political party, the Political Union or UP in Spanish, with offices and constituents across the country. In accordance with his promise of inclusion, named UP militants as mayors in certain zones of the country. For its part, the new party was successful in the election of sub-municipal and municipal councils in many different regions, including areas of latifundio. The EPL’s new party, the Social Front, was equally successful in its main regions of influence, Urabá and Córdoba. At the same time, the government technocracy launched the National Rehabilitation Plan mentioned earlier. According to Castillo and Sotomayor (1992: 51-52) the plan was announced initially as an integral social reform. In practice, however, the common denominator between all the zones that were delimited for its implementation was the recurrence of insurgent activities and perturbations of public order, rather than the satisfaction of basic needs. They received the name of “conflictive zones.” As a result, some of poorest regions were left out. Policy documents of the time approached instability of public order as both an expression of

exchange for a cease-fire, he had offered guerrillas full amnesty and rights to political participation. But the dialogues ultimately failed. He lacked authority among the military and certainly among anti-communists in both liberal and conservative parties who regarded his peace efforts as a submission to the insurgency and who preferred to achieve pacification through the intensification of the “dirty war.” The guerrillas, on the other hand, did not trust Betancur and in some cases took advantage of the circumstances to revamp their operations. As for land, even though Betancur and his advisors were convinced that a series of “objective causes” of a structural nature had instigated the continuous reproduction of armed organizations, land distribution remained outside their equation of peace.⁷⁷

Barco’s liberal administration (1986-1990), on the other hand, revived the issue of agrarian reform and proposed an amendment that was presented as the reversal of the conservative Chicoral agreement and the partial reestablishment of the redistributive agrarian reform of President Carlos

underdevelopment and an obstacle for development and justified the plan as the means to unlock the door for progress. In addition, the inventory of problems and needs of each selected region was defined by the Ministry of Defense in collaboration with National Cattle-Ranching Association. Initially, most rehabilitation efforts in such areas were directed to the construction of roads meant to connect those “distant” regions to the economic and political core. There were also attempts to use the PNR funding to further agrarian development in those particular regions. However, following the doctrine of the Integral Rural Development of the 1970s, interventions revolved around access to credit, technology and specialized infrastructure. In fact, right at the beginning of the new government, Congress approved a “marked-based” agrarian reform law that limited the role of the Incora to that of bystander of land negotiations and transactions between landowners and peasants. The new legislation offered potential buyers financial aid to purchase land but did not regulate prices or the conditions of the transaction. Peasants would have the possibility to apply for a part-credit, part-subsidy managed by the Incora in order to complete the purchase. To do so, they were required to design a productive project, prepare a budget, a business model and other materials showing they had a clear entrepreneurial vision. Despite its initial achievements on the peace talks, the Betancur government failed to align conservative and liberal socio-political elites, specially those that depended on land ownership, with its policies of reconciliation and rehabilitation (Ramírez and Restrepo 1988). Their distrust and resentment towards guerrillas ran deep. Many politicians from both traditional parties explicitly opposed their participation in politics. This same distrust was often extended to community-based organizations which were regarded as aligned with guerrillas or, in any case, as a potential threat to pre-established political arrangements.⁷⁷ Indeed, by 1985 most guerrillas had cancelled the peace negotiations and had openly resumed military confrontations with state forces. As for the PNR, its agents initiated projects in 177 municipalities, most of them related with infrastructure. On the ground, they “stumbled into paramilitaries and hit-men” (H. Castillo and Sotomayor 1992), guerrilla commanders, and local politicians who found ways to sabotage the projects. So by the end of Betancur’s administration, the armed conflict he had sought to solve by addressing social discontent had intensified and gained in complexity and its key social policy had been hijacked by the very same social conflict and political order it was meant to alleviate. Both paramilitary organizations and guerrilla fronts had multiplied their numbers and the points of friction between them. The constituents and spokesmen of the emerging legal left that had sprung from the peace agreements, especially the Unión Patriótica party, would soon be exterminated by paramilitaries in a dirty war.

Lleras Restrepo in the 1960s (a.k.a. Law No. 1 of 1968). Many of his advisors were young men in their early forties who had graduated from Los Andes, Bogotá's most elite private university and came from a bourgeois background, but who had militated in the moderate left or in the reformist liberalism in the time of the ANUC, and had then made a turn towards expertise.⁷⁸ Unlike other generations of officials, they were regarded, and also considered themselves, as the first generation of "world-class level" technocrats because of their training in American and British universities (Dargent 2014). The new President, in addition, had reopened the debate around land during the campaign and, like many of his liberal antecessors all the way back to the 1930s, he had insisted that solving the agrarian question was a precondition for the solution of other urgent national problems like poverty and underdevelopment.

A propos the amendment, a press clip of the time commented: "In addition to the flag, the national emblem and the anthem, the issue of the agrarian reform has become one of Colombia's patriotic symbols," and then it added, with some exaggeration but as a critical commentary on the field of force:

"Not one candidate has failed (in decades) to include the agrarian reform in his campaign program; not a single legislature has failed to attempt another bill on the matter, and there isn't even one progressive diagnostic on the situation of the countryside that does not declare that only way to begin solving the problems of the country is through the execution of a genuine agrarian reform."⁷⁹

The amendment was highly polarizing, to the point that for the first time in decades congressmen from different parties ended up in a fistfight, and some of them even waved pistols in the air in the middle of the Senate floor. All the fuss revolved around one provision –Article 21 of the bill- that

⁷⁸ Semana Magazine. March 9, 1987. "La izquierda al poder": <http://www.semana.com/especiales/articulo/la-izquierda-al-poder/8681-3>

⁷⁹ Semana Magazine. September 14, 1987. "Reforma godita": <http://www.semana.com/especiales/articulo/reforma-godita/9329-3>. See also Semana Magazine. January 11, 1988. "Tierra, tierra": <http://www.semana.com/economia/articulo/tierra-tierra/9791-3>

regulated the expropriation of private properties.⁸⁰ The new reform provided the Incora with a new set of “indicative criteria,” to decide whether to “incorate” (expropriate) lands -whether privately owned or public but exploited by private parties. At the same time, the bill imposed on the Incora the obligation to pay the commercial value of the land. Ironically, this formula stirred the opposition of representatives of landowners but also of social democrats because they believed that expropriation procedures could be used by landowners to get rid of lands that were not good for production, or immersed in unresolvable dynamics of violence. In this sense the media noted that it would not take long before the reform got the support from many landowners, who despite being long-term enemies of the agrarian reform, faced a security situation so desperate that many were not only willing to let the Incora buy their lands, but were ready to beg it to do so. Although they once approved of the new bill, most progressive politicians voiced their discontent. In their opinion it imposed upon peasants “unfair burdens” while on the other hand it was “benevolent with landowners.”⁸¹

In addition to the amendment, the new government introduced a series of modifications to the National Rehabilitation Plan so that in the regions with greater needs could be prioritized for the implementation of the new land reform legislation. In front of the failure of Betancur, the Barco administration reconceptualized the Rehabilitation Plan as primordially being anti-poverty, rather than an anti-insurgent strategy.⁸² The “conflictive zones” were transformed into “rehabilitation zones,” incorporating often the poorest areas within each state. The Barco administration also

⁸⁰ *Semana Magazine* January 18, 1988. “Pistola al aire”: <http://www.semana.com/nacion/articulo/pistola-al-aire/9811-3>

⁸¹ *Semana Magazine*. January 11, 1988. “Tierra, tierra”: <http://www.semana.com/economia/articulo/tierra-tierra/9791-3>

⁸² In 1987 in a meeting with PNR agents and delegates, Carlos Ossa, a presidential advisor at the time, explained the reconfiguration of the PNR under the new government in the following terms: “(The plan) is not against violence but against poverty... the state has the obligation to fight poverty, regardless of whether it promotes violence or not (Castillo and Sotomayor 1992: 66).”

reformulated the Plan's initial planning methodology –partly controlled by the Minister of Defense and the National Cattle-Ranching Association- with a bottom-up one, in which local communities and the experts in the central government would collaboratively define the projects and strategies to be undertaken in the area. These projects were expected in principle to allow communities to generate their own income and reduce their dependency on the central government and political patronages. Between 1987 and 1990, the PNR administered social projects in 304 municipalities (Castillo and Sotomayor 1992: 77). In this second phase of the PNR, staff were instructed to work side by side with the Incora to distribute vacant lands among landless peasants in some of the rehabilitation regions where communities had brought up the issue. Also, if they met the requirements, the Incora was also encouraged to buy land directly from landowners to distribute among the poorest population.

Simultaneously, narcoscapes, and in particular narco haciendas, were also the topic of a series of investigations, public statements and ordinary talk among techno-political elites, who viewed this new conjuncture as exponentially exacerbating the already miserable state of the agrarian landscape.⁸³ In 1988, a journalistic report devoted to the “narco countryside” opened with a rapid depiction of what the narco-haciendas looked like:

Anyone who has traveled recently across Córdoba, Sucre, Antioquia, Meta or the Mid-Magdalena valley has seen them. These huge farms have neatly painted and arranged fences, if not by expensive brick and stone walls, luxurious entrances which allow the newest 4WDs to come and go, and occasionally exotic animals (and) airfields (...). The phrase “narcos are purchasing this country” has become a cliché.⁸⁴

⁸³ Semana Magazine. July 20, 1987. “Los narco-minifundios”: <http://www.semana.com/nacion/articulo/los-narco-minifundios/9126-3>

⁸⁴ Semana Magazine. December 26, 1988. “El narco-agro”: <http://www.semana.com/especiales/articulo/el-narco-agro/11156-3>. There was also much speculation about the Colombian narcoscapes in the US. See Semana Magazine, Semana Magazine. January 4, 1988. “Narco-mansiones”: <http://www.semana.com/nacion/articulo/narco-mansiones/9744-3>

According to the report's authors, their own calculations suggested that in "the last five years, millionaire amounts of dirty money have been used to buy a little more than one million hectares around the country, mainly in nine regions of the country." They then warned, in a return to the discourse of land reform as counterinsurgent strategy, that: "although the explanations about violence are multiple, all experts agree on one point. A decisive factor of rural violence is land concentration in few hands and the existence of large mass of destitute peasants, without the resources to satisfy their basic needs." Precisely at that time, the Barco administration redesigned one of Betancur's signature policies, the National Rehabilitation Plan, and included the goal of solving the demands for land in the targeted regions.

Shortly after, early in 1989, the manager of the Incora announced to the media that "drug trafficking investments had generated an agrarian counter-reform". Soon after Sarmiento and Moreno (1990; Steiner and Corchuelo 1999) estimated that between 8 and 23% of the drug money coming into the country was used to buy land. As for specific narco-haciendas, myths and legends about their riches and their often black-magic spatiality multiplied.⁸⁵ Journalists, sociologists and psychologists also generated profiles of narcos and their allegedly distinctive subjectivity. Many of these portraits examined the narco's accumulationist ethos.⁸⁶

In this context of a national obsession with the narco threat, the renewed interest in the agrarian question, and the moral panic because of their contribution to land accumulation, Barco's

⁸⁵Semana Magazine. March 21, 1988. "La mafia negra": <http://www.semana.com/nacion/articulo/la-mafia-negra/10014-3>. See also the journalistic account *La Bruja* by Germán Castro Caycedo.

⁸⁶Semana Magazine. October 17, 1987. "Los Capos": <http://www.semana.com/nacion/articulo/los-capos/10828-3>. One telling paragraph from this attempt to make sense of narcos, the new public enemy, observed: "Marked tendency to greed: sumptuous displays of power in presence of easy women, traditional bourgeois and politicians propelled their rapid social success. But behind that apparently open and generous personality, lies a complex individual with a clear inclination to greed (...) who can only be ostentatious in public but is a miser in private. Contrary to the general opinion, money was not easy to acquire for drug dealers. Like the miser and his pre-capitalist mentality, the narco has a marked tendency towards hoarding, to the accumulation of assets and objects, obsessively guarded, but unproductive. He manifests more attachment for things than for people. In his daily life, and given his possessive sense of self, he enjoys the company of people who celebrate his jokes and comments, and who are the recipients of a calculated generosity from his part. It is not uncommon for them to give away apartments, houses and vehicles. But when the relation is over, he demands keys, the symbol of property, to be returned."

government introduced a series of laws punishing indicted criminals with the expropriation of their properties. Expropriation was hailed as a complementary weapon to that of extradition in the war against the narcos, and simultaneously, as a promising tool in the implementation of the new agrarian reform bill.

In 1993 the new head of the Incora, F. Corrales, stated that their latest study showed that narco properties had risen to 3 million hectares and though many of those were being used to install cocaine laboratories, airfields or storage, most were located “in highly productive cattle-ranching regions” in Antioquia, the Atlantic Coast, the Eastern plains and the fringes of the Amazonic Basin.⁸⁷ In one interview he explained that narcos had combined capital, violence and mediation to assure control over a growing number of hectares despite, and sometimes in alliance, with the guerrillas:

Through land acquisition, narcos have achieved a territorial and political domination that allows them to continue with their activity. If there are guerrillas in those regions, they make a pact of non-aggression which generates an apparently peaceful situation and allows them to increase their power. Land prices then rise to levels that are impossible for the government to meet: the hectare fluctuates between 5 and 8 million (pesos). [When] guerrillas try to extort narco-landlords, the latter use their private armies to assure their security. It is well known that most private justice groups operating in 144 towns in recent years are under the command of narcos, owners of the land. But they also harass nearby peasants, forcing them to abandon their land and migrate to the city. This is what the investigation conducted by the Incora has been able to establish (...).⁸⁸

Concurring, a former Incora official added that, in his opinion, guerrillas were also actively contributing to the agrarian counter-reform and “directly or indirectly sabotaging the government’s efforts to buy land and redistribute it among peasants”:

The guerrillas’ extortion and kidnapping practices (end up) with peasants of the area (...) abandoning their lands. Narcos take over those properties, but so do guerrillas. For the Incora, it becomes very difficult to buy land that is under the control of subversives. Currently, it is forbidden for public officials to talk to the guerrilla. (...) Incora local

⁸⁷ El Tiempo newspaper. February 7th, 1994. “Campesinos sin tierra en manos del Congreso”: <http://www.eltiempo.com/archivo/documento/MAM-34263>

⁸⁸ El Tiempo newspaper, “Narcos and Guerrillas: the agrarian counter-reform,” January 31, 1993. Available in: <http://www.eltiempo.com/archivo/documento/MAM-28770>

managers can only enter areas under the control of guerrillas with the previous authorization of the commander in charge, and it is he who decides who ought to get the land. If the official disobeys he may well flee the area for good or die there.⁸⁹

Finally, according again to Corrales, the Incora had reached an accumulated deficit of six billion pesos because guerrilla commanders were preventing families who benefited from land reform programs from making their monthly payments for the credits they had been granted: “It’s money that is not being used to buy more land to be redistributed among, and in the benefit of, more peasants.”⁹⁰

In 1994 the media brought up the issue of the narco agrarian-reform again as there was great expectation regarding a new agrarian reform bill.⁹¹ On that occasion the new Incora director admitted that “in this moment its difficult to quantify the number of hectares in the hand of drug lords because of the intricate network of front men,” who appeared to be the official owners, but were covering up the real ones.⁹² Two years later the Ministry of Agriculture summoned international and top national experts and analysts of the agricultural sector to a summit, directed to do a balance of the results of the last five decades of agrarian policies. The premise of the encounter was that two Colombias existed: an urban one, better prepared to face the challenges of free trade, and a rural one, that although highly heterogeneous was “much more backward” and –again- in desperate need of an urgent techno-political refashioning:

For a long time now the country has abandoned the habit of thinking about the countryside, because when swept by the unstoppable advance of modernity, institutions, leaders and

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Gaviria’s government abruptly cancelled protectionist measures and opened the borders to manufactured and agricultural products. The average income of rural producers took a steep fall. In order to address the concerns regarding the crisis in the countryside, and also narco-accumulation, in 1993-1994 a multi-party coalition presented to Congress a draft modifying once again and for fifth time in 30 years the regime for expropriation and adjudication of private lands and the administration of public ones. This new draft substituted the previous DRI scheme with the World Bank’s new market-based model and introduced a revised expropriation procedure. In this new version, peasants were asked to pay for a percentage of the value of the lands received and were granted credits for that purpose.

⁹² El Tiempo Newspaper. February 7th, 1994. “Campesinos sin tierra en manos del Congreso”: <http://www.eltiempo.com/archivo/documento/MAM-34263>

intellectuals devoted themselves to the urban nation, directing to it not only all their resources but also all their hopes. It is imperative, then, to resume the exercise of reflecting on the rural world by analyzing what has happened with the model of agrarian development throughout the century (Ministerio de Agricultura 1996)

Experts agreed that the opening of the trade barriers in recent years, combined with the increasing levels of violence, the termination of social agrarian policies in the 1970s, had thrown the agrarian economy into a downward spiral. According to their statistics, between 1992 and 1993, at least 230,000 jobs had disappeared from the countryside and income per capita had fallen behind the urban centers by 3.6%, the worst in 50 years, whereas in 1977 the variation had been of 1.7% (Sarmiento in Ministerio de Agricultura 1996: 51).

Narco and cocascapes had become an integral element of this rurality in “semi-permanent crisis” (Fajardo 2002). But uncertainty about its statistical magnitude remained. In 1996 lawyer and sociologist Alejandro Reyes, whose works on the relation between the agrarian structure, violence and domination had been influential in the early 1970s and mid-1980s, was invited to talk about the narco agrarian counter-reform to a conference about the agrarian question organized by the Ministry of Agriculture under Samper’s administration. Reyes showed a tentative map that he had been working on, locating the municipalities where he thought drug dealers or mafiosos more generally had purchased lands. He summarized what techno-legal elites knew about the issue in the following terms: “Nobody knows how much narcos have acquired. Speculations point to the figure of three, four, five and six million, but nobody knows. But we do know that they have bought the best lands. Second, they devote those lands to extensive, as opposed to intensive, cattle ranching. And rarely to agriculture (...)” (Reyes in Ministry of Agriculture 1996: 183).

That same year, *Semana Magazine* issued a special report entitled “The Other Owners of the Country: Drug Dealers Acquire a Third of Colombia and Become a New Ruling Class.”⁹³ The report

⁹³ “Los otros dueños del país. Los narcotraficantes se apropian de la tercera parte de Colombia y se consolidan como una nueva clase dirigente.”

argued that the Society of Agriculturalists of Colombia, had estimated that narcos had acquired around four million hectares of some of the best lands in the country. This number was deeply disturbing since, according to the SAC, the country had 4,222,000 million cultivated hectares. The SAC president, Juan Manuel Ospina, affirmed that narcotraffickers had purchased “the civilized lands” and that their incursion into the countryside “not only markedly raised land prices, but has intensified old problems in Colombian agriculture such as unproductivity, property conflicts and violence.” The magazine also interviewed Reyes who asserted that their economic power permitted the narcos to “concentrate the patterns of rural investment” and the provision of food products.

In the following year, Reyes published the results of a now famous study on the issue of the narco agrarian counter-reform (Reyes 1997, 1996) He interviewed people in the real estate business, the Incora, the agricultural sector and the local government and also conducted a survey in the regions he could not visit. He did not aspire to an actual figure, because “the knowledge of local experts does not have that degree of precision,” as he clarified in his methodological considerations (Reyes 1997: 282).

Along the way, however, he found evidence that whereas in 1992 the Incora had reported that narcos had purchased lands in 242 municipalities by 1997 there was evidence that they had done so in at least 409 (Reyes 1997: 339). Additionally, he also explained that although he had no concrete figure he also found that narcos had tended to purchase some of the most expensive lands in the country: the flats lands in the inter-Andean valleys and the Eastern plains, most which were covered by then with high-quality pastures and were devoted to cattle-ranching. This type of landscape covered 5.2 million hectares, according to his calculations. This meant, in his opinion, that this was the maximum total narcos would be interested in acquiring. The exception were lands located in the drug dealers’ hometowns, purchased not because of their economic potential but their sentimental value. He did not aspire to find out names, although many years later he told me that even with this

precaution he had been targeted by narcos.

Strangely, although Reyes did not attempt an approximate number of the hectares appropriated by narcos in this his most famous study, in different scenarios he has been credited for coming up with a series of figures. In the one of the bills that preceded the forced displacement law that I will discuss in the next section, he was attributed the estimation of “seven million hectares” (CNMH 2015: 85) and in many interviews that I conducted with experts they consistently referred to Reyes as the responsible for the number of “three million hectares” which somehow remained within this circle as a relatively fixed truism, despite the fact that there was no paper or document authored by Reyes that explained its processes of production. Finally, in the early 2010s, Reyes himself told me he had come up with that figure, but sometime after his initial study and in any case not in a written fashion but in conferences and private conversations with colleagues.

In any case, when released in Reyes’ research was lauded by his peers as “the first systematic study” (Thoumi 1997) on the matter and since then, would be permanently referenced as the best representation of this macro rural change. His work came in tandem with increasingly specialized explanations about the causes and effects of the narco agrarian reform. His study and that of economist and political scientists Francisco Thoumi became authorized iterations of this explanation. Land, Thoumi wrote also in 1997 is “a status symbol in Colombia (...), the most propitious mechanism to launder illegally acquired capital (and) in a country with a growing population and meagerly developed financial market, (...) has been an effective way of preserving patrimonies” (Thoumi 1997: 23-24).

His explanation was that although land was the least productive of investments it was also the safest way of storing capital and protecting it from devaluation. In addition, land “represents one of the fundamental pillars of political domination” in the country (Ibid). And this, in his opinion, was particularly true in the case of the traditional latifundia areas, located in flat lands in national

economic centers, and to a lesser degree, flat lands beyond or on the fringes of the agrarian frontier. These were not as expensive and yet quite promising in terms of their potential value.

In his economic analysis of the drug economy, Rocha (2000) used Reyes' work and applied to his results a series of assumptions to calculate an approximate figure in hectares and also in millions dollars. He concluded that if narcos had purchased or grabbed between 10% to 20% of the municipalities identified by Reyes, "A rough estimate would be that of (maximum) 4.4 million hectares," worth around USD \$2.4 billion (Rocha 2000: 121). In his opinion, unlike trade and other businesses, real estate provided narcos the opportunity to launder money at a large scale without too many legal or social barriers.⁹⁴ This estimate did not have much circulation in the media, however, and the interest on the narco agrarian counter-reform was would be soon overcome by the concern for the forced displacement caused by the violence of paramilitaries, guerrillas and armed forces.

1985-2002: The social and legal assemblage of the "displaced"; representations and vindications of forced displacement in Colombia

The notion of "forced displacement" began to circulate in Colombia in the mid 1980s among leftist militants and human rights activists escaping from narco and paramilitary violence, the providers of humanitarian assistance like the Catholic Church, lending them support; and the social scientists documenting their persecution.⁹⁵ By then the local use of the notion, and that of its derived term of

⁹⁴ Despite the rising estimates, Rocha (2000: 121) found that from a random sample of 500 real estate assets confiscated from narcos, state authorities had not applied at all the so-called "extinción de dominio" (which literally means "extinction of domain" or property rights), the legal instrument devised to annul their property rights. In 2003, *Semana Magazine* stated that between 1993 and 2002 judges had only issued two rulings against narcos and many had to returned them for procedural problems, despite having "38,000 assets on the waiting list." *Semana Magazine*, September 6, 2003. "Adiós a los bienes": <http://www.semana.com/nacion/articulo/adios-bienes/58665-3>

⁹⁵ In previous decades, the people forced to move because of the violence of the time had received other names, and only sporadically that of *desplazado*. At the beginning of the National Front back in 1958, the national government of C. Lleras undertook a series of initiatives to study and mitigate the social devastation of *La Violencia* of the previous decade, including the forced migration of significant portions of the peasant population. But the language employed at the time by newspapers, policy documents and academic writing to refer to this same experience of "being forced to move" was

desplazado/a, was predominantly sociological, rather than legal. Then, starting in early 1990s, the local human rights community, and its peers in centers of production of international law such as New York, Geneva and Washington, would transform it into an operational legal category of international law. At the same time, through the active mobilization of human rights NGOs, forced displacement would also become a multi-layered legal category of internal law, turning desplazados into a distinct kind of subject of rights in need of special protection and support from state institutions and the international community. Desplazados would be conceived as a distinct type of migrant –different from non-forced ones and also different from refugees. Similarly, they would be constructed also as a special kind of victim, different from survivors of other types of violence. Finally, forced displacement would be defined as serious public problem, a new criminal type and, by the late 1990s, it would added to the list of severe human rights violations.

This gradual resignification of forced displacement in legal and political terms came with the emergence of a whole new set state institutions, regulations and practices: a complex *dispositif* for their management (Aparicio 2012, 2009). Gradually also, the public representations of desplazados would shift from one that elicited suspicion and either blamed them for their own fate or attributed responsibility to nature or human action but without specifying any further, to one in which the state was conceived as responsible for their hardships by means of its actions or omissions.

Anthropological research conducted in the 1990s and early 2000s in Colombia, showed that desplazados were initially regarded as people who had taken sides in war, who were victims of their own choices, who were dangerous or who even deserved some kind of punishment (Salcedo 2015) But then, with the legal resignification aforementioned the label became an identity, one that people

different: *desterrados* (uprooted), *damnificados* (affected), *víctimas* (victims). More importantly than the difference in the terms, however, was the difference in meaning and the social organization of their use. Back then, the government tried to put together a “rehabilitation” program to help people go back to their lands.

on the ground sought to acquire in order to obtain aid from the state, the international community, and the communities in their places of resettlement that was denied to other marginal populations. People would engage in complicated and exhausting procedures, often requiring repetitive and frustrating interactions with street-level bureaucrats, to be certified as a desplazado/a (Aparicio 2012, 2009; Dávila 2009) and thus get aid packages consisting of food, household goods and sometimes cash; or improve the chances of getting healthcare, housing and schooling for their children. Forced displacement, became, in sum, a point of entry to precarious but still sought after form of citizenship.

In this section of the chapter I draw from the detailed cartography of the apparatus set in motion for desplazados offered by Aparicio , and also the socio-legal analysis by Roberto Vidal (Vidal 2005), Rodríguez and Rodríguez (Rodríguez and Rodríguez 2010) and my own (Dávila 2009). The purpose is to provide an abbreviated history of the invention of the legal category of forced displacement and the transformations of political common sense and the state that came along with it. In the pages below, I focus in the parallel processes of the conversion of forced displacement into a public and urgent problem and its inscription into the law.

(Non)refugees in international law: a matter of national sovereignty

Until the late 1980s, most international law provisions approved after WWII on the issue of forced migration, and the operations of the new United Nations organizations on the matter, revolved around the legal category of “refugee.” As initially defined in the Refugee Convention approved in 1951, the status of refugee was reserved for political activists or for persons of any origin belonging to a group systematically persecuted by state authorities because of religion, nationality or ethnicity, but as long as they had crossed a national border and were escaping events which had occurred before the 1st of January of 1951. The Convention gave signing countries the option of interpreting

this last clause as “events occurred in Europe” before that date. Thus, in practice, the mission of the UN High Commissioner for Refugees, created one year earlier to provide aid on the ground to this population, was at the beginning mostly circumscribed to helping European refugees escaping from the events of WWII and its aftermath in the continent (Vidal 2005; Tuitt 1996; Zolberg, Suhrke, and Aguayo 1989).⁹⁶ According to Loescher (2006, quoted in Aparicio 2012, 2009), in the decades following, UN delegations from “third world” countries tried to no avail to replace the restrictive notion of refugee established in UN conventions with a more comprehensive that would include other segments of forced migrants.⁹⁷ It was only until 1967 that the pro-European bias limiting the operations of the High Commissioner for Refugees was removed and its mission was finally extended to the protection of refugees fleeing from circumstances and places beyond Europe and

⁹⁶ According to Zolberg et al, in Europe the category had been used to organize the response to arriving populations at least since the 16th century. However, as Lippert (1999, quoted in Aparicio 2012) argues it wasn't till the early 20th and following the emergence of new European-led international order, and the reconfiguration of Euroasian territories during WWI that a transnational institutional apparatus was set in place with the explicit purpose of categorizing and managing such populations. European powers agreed that those nation-states recognized as such by the international community would enjoy from that moment absolute sovereignty over citizens and territories and any intervention by a foreign power in their affairs would be regarded as illegal unless they previous engaged in an aggression that had violated the principle of sovereignty of another nation-state. In this newly prescribed order, states would freely dictate the rights and duties of their citizens. Foreigners would have a different treatment but would enjoy the basic rights thus decided by the League of Nations. In the following decade, member states agreed on a series of bilateral or multilateral treaties establishing mutual obligations with regard to foreigners when in transit or permanently established in their soil. During WWII, the allies agreed on the creation of a series of ad hoc multilateral initiatives especially meant to support the masses of people fleeing across Europe or from Europe to the US at that time (Loescher 2006). Then, once the United Nations Organization was established, the general assembly began to discuss the possibility of creating an international agency specialized in offering aid to refugees coming from any part of the world. UN delegations presented evidence that there was a growing number of refugees coming from non-European countries like China, Korea and Palestine. Thus, in July 1950 the assembly approved the statutes regulating the creation and operations of the United Nations High Commissioner for Refugees (UNHCR) and one year later, the Refugee Convention (Aparicio 2012: 65-66). But despite concerns with the movement of non-European populations, the mandate of the High Commissioner and the definition of refugee established in the Convention was circumscribed to European refugees (Loescher 2006), and modeled around the particular experience of those fleeing from the communist and fascist regimes of the region during and after WWII. As defined in the Convention, the status of refugee was reserved for political activists confronting the state authorities of their own countries; or for persons belonging to a group persecuted by state authorities because of religion, nationality or ethnicity. In addition, the statute explicitly limited the mission of the new High Commissioner to promoting the international protection of refugees who had fled their places of origin in Europe between 1926 and 1950; and to facilitate their voluntary repatriation or their resettlement in foreign countries. This initial legal definition of 1951 would exclude non-Europeans all together and also Europeans migrating for economic reasons or escaping from a generalized situation of violence, rather than systematic persecution (Vidal, 2005: 44). From the start it would exclude anyone who, despite persecution by state authorities, would remain within national borders.

⁹⁷ For example, in 1957 Latin American representatives proposed a definition that covered would-be refugees who had not crossed an international border yet and also a complementary amendment of the High Commissioner's mandate so that it could eventually use its staff and resources to deliver assistance to “internal refugees” (Aparicio 2009).

the events of WWII.

Although the formal definition of refugees kept excluding internal forced migrants, in the 1970's the Higher Commissioner was given authorization to provide support to such populations within their own countries, as long as the national state authorities requested its services. Some UN documents of the time used the term "internally displaced" to refer to some of missions the Higher Commissioner's got involved in, but there was not an official definition of forced displacement. Precisely because confusion about the definitive difference between this population and that of conventional refugees remained after the amendment was passed, in 1977 the High Commissioner filled a request of clarification to one of the UN's commissions. The memo that came back in response lacked a substantive characterization of forced displacement in terms of causes, actors or legal implications but it did make clear that the distinctive element between refugees and displaced populations was that the latter had not crossed an international border (Goodwin-Gill 1998: 14; Vidal 2005: 58-61).

But these modifications did not have major effects on the ground and only a minimum number of migrants would turn out to be eligible to request the status of refugee and only a fraction of them would manage to acquire it (Hathaway 2013; Tuitt 1996). As Vidal (2005) explains, at the same time that the UN system offered legal protection to refugees once they had crossed an international border, it did not prevent member states from implementing highly restrictive visa and deportation systems which prevented people from leaving their own country or staying outside for enough time to petition for the refugee status. Thus, dissatisfied with existing international regulations, in the following decades, delegations from a group of African and Latin American countries organized a series of meetings meant to discuss the creation of their own regional regimes of refugee protection and respond to the refugee crises derived from the decolonization and Cold War-related wars

ongoing at the time in both regions.⁹⁸

In the Latin American case a group of delegations region met in Cartagena, Colombia, in 1984 and constructed an aspirational document known as the Cartagena Declaration in which they proposed a similar redefinition of refugee to the one adopted by the African Organization of Unity in 1969 which expanded the notion of refugee to anyone exposed to general situations of violence without the need to demonstrate systematic persecution by state agents. The signing parties also expressed their concern for the “internally displaced” and, for the first time, formally demanded their protection and assistance to be established in both national and international laws. Vidal notes that similar developments were then adopted during the CIREFCA, the International Conference on Central American Refugees (Vidal 2005: 62). Although the expanded notion of refugee meant greater burdens for recipient states, Zolberg et al (quoted in Vidal) observe that this explicit interest in the displaced pleased Northern UN members, as they read related statements as a sign of the commitment of Latin American and African states to contain the flux of forced migrants towards the North Atlantic.

“Being displaced” in Colombia: accounting for, counting as and becoming *desplazados*

With the spiral of insurgent and in particular counterinsurgent violence of the late 1970s and early 1980s in Colombia, inhabitants from the regions of the highest friction began to leave their places of residence in increasing numbers. However, the first uses of the notion of forced displacement, and that of *desplazado*, in a systematic and consistent manner, and with the same meaning that in the

⁹⁸ In 1969, the Organization of African Unity signed a regional treaty that expanded the notion of refugee to anyone: “who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.” Unlike the UN regime, the new African one offered the status of refugee to anyone exposed to general situations of violence-induced danger without the need to demonstrate systematic persecution by state agents.

international circles, was circumscribed to a group of people in the intersection between the human rights community, the political left and the Catholic Church (Osorio 1993).

As Tate (2007) shows in her work, a vivid human rights community had emerged in the early 1970s in the country. Throughout that decade, the number of political prisoners had increased under the counterinsurgent schemes of the Colombian governments in alliance with the US. The profile of political prisoners had diversified gradually, as distinct forms of leftist political activism spread across urban middle-classes, the Colombian intelligentsia, and even among members of political or economic elites. This change in the sociological profile of political prisoners and dissidents preceded and allowed the engagement with human rights international law. Family members, colleagues and comrades of political prisoners, and disappeared activists began to invoke human rights treaties and principles as a means to redefine certain state actions as illegal. Soon, Tate (2007) notes, these isolated and uncoordinated efforts were replaced by organized forms of collective action. Thus, in the early 1970s, a set of NGOs emerged as a direct response to what was considered the criminalization of social protest and the violation of the right to political dissent. Gradually, human rights “became tools for the confrontation and reaction against the State” in the hands of people in the left side of the political spectrum being accused of such as rebellion and treason (Tate 2007). Participation in leftist politics and human rights work became aspects of a singular although loosely defined leftist political identity, or mode of “being political” associated with the left. This would change eventually with the appropriation of human discourse by state agents and right-wing political organizations, but initially, as Tate explains:

(The) formative experience of the first generation of Colombia’s NGOs human rights activists was *militancia*, participation in the semi-clandestine leftist parties of the 1960s and 1970s (...). (B)eing a part of the militant left meant participation in a single spectrum of the political struggle that ranged from community organizing to armed revolution. Deeply divided by ideological differences, hierarchical and largely clandestine, this organizational experience also infused a generation with hope for a radical change and the belief that a relatively small group of dedicated individuals could achieve social transformation (Tate 2007: p 75).

Partly, human rights work would consist in invoking the international law treaties so far ratified by the Colombian state, to rename certain actions conducted by state agents as illegal in the light of these provisions and as unacceptable within an increasingly global morality. Also, this kind of activism entailed actively participating in exchanges with peers in other countries, whether in the Global South or in the centers of production of international law, and partaking of the latest developments and controversies around human rights provisions; and getting funding. In the following twenty years, the human rights community would grow in diversity, resources and capacity to act. In addition to the mobilization of legal instruments to counteract state repression, and later on demanding justice and reparation by violence committed by non-state actors, they would also engage in the exercise of accounting for human rights violations. In short, as Tate (2007) puts it, they directed their efforts to “counting the dead” and “making them count.”

In the mid-1980s a subgroup of these organizations (and a host of new ones) shifted their attention from the dead to the displaced and in the long run, also to the dispossessed. They engaged in the first of a series of activities to take desplazados into account and transform them into the embodiment of a new kind “suffering stranger” (Aparicio 2012, 2009) in need of special assistance. First these NGOs mobilized to offer shelter, food and medical help to the people escaping from violence. Second, they organized around a series of efforts to produce “objective knowledge” –in opposition to ideological representations- showing the magnitude of the problem at the national and also individual level, hoping to mobilize moral sentiments of solidarity, indignation and urgency among various publics but most importantly, amongst techno-political elites in Colombia and in the UN and other international law institutions. Strategies to accurately depict the drama of desplazados would combine the making of statistical and cartographic data with the elaboration of life stories. Finally, another key part of the effort would consist in pressuring for the production of new human

rights instruments and national legal provisions, whether in the form of policies, congressional legislation, or judiciary decisions.

Among the first and most important creators of forced displacement as a legible and serious phenomenon in Colombia was the Bishop's Conference of the Catholic Church. Like in other Latin-American conflicts of the early 1980s, families escaping from the incursions of armed groups would often first turn to the local priest or Catholic congregation for shelter and counseling about what to do next (Weiss and Korn 2006; Rojas 1993). In that time, the Catholic Church was the largest non-governmental organization in the country, with parishes and representatives across the national territory, including areas where state agents were not present. Thus, Catholic priests and nuns became first hand observers and reporters -and sometimes also targets- of the spiral of guerrilla, paramilitary and narco violence ravaging many areas of the country throughout the 1980s. This way, rather spontaneously, Church representatives constituted the first support network for the people on the move and were also the primary producers of knowledge about their situation and the conflict in general.

By 1985, reports from clerical staff from all over the country detailing attacks and threats to individuals, families or entire communities had been arriving to the Bishops Conference's main quarters in Bogotá in unusual quantity. Thus, eventually the Conference's Main Council entrusted to its office of Human Mobility, until then mainly concerned with examining economic migration from the countryside to the city and providing support to the arriving population during resettlement, the mission of undertaking a nation-wide study to quantify, qualify and map this new kind of violence-induced mobility (Conferencia Episcopal 1995).

That year the Bishops' Conference hired a small group of social scientists for the task. Some of them had been conducting research on peasant livelihoods and the larger issue of the "agrarian question," among other topics, for a think tank associated with the Jesuit branch of the Church

called Cinep. By that time, the Church was had been encouraging young clerics to get PhDs in the social sciences and thus combine the rigor of scholarship with their ethical commitment to Catholic values and practices. Some of these new PhDs were appointed to this research.

For a decade, this initial group and then a dozen of additional researchers, worked on the Bishops' Conference study, and when the report finally came out in 1995 it had a significant impact on the "optics" of the state (Scott 1998).⁹⁹ But in the meantime, in this lapse of ten years, grassroots organizations articulating displaced people with each other in main cities and towns and providing in situ assistance multiplied. Also, in other Church-sponsored spaces, scholars produced the first of a series of papers, reports and books about the forced displacement of populations affecting specific regions or communities.¹⁰⁰

Another set of key actors in this resignification of forced displacement was leftist militants. As Osorio (Osorio 1993) shows, some of this people would be both caught in the "dirty war" discussed in the previous section and forced to move, and also, on the other hand, increasingly engaged with the human rights activism. In these circumstances they began to refer to themselves and others in similar circumstances as *desplazados*. In her ethnography Osorio explores the activism of an organization of *desplazados* created by militants and sympathizers of the Communist Party and the Patriotic Union Party, who in the early 1980s abandoned the eastern planes of Meta and took refuge in Bogotá after the assassination of some of their associates. In accordance with Tate's observation about human rights and leftist politics, Osorio explains that this case and the other few incipient organizations that had emerged around "the problem (of forced displacement)" at the time of her

⁹⁹ One of the academic advisors was Alejandro Reyes, whose involvement in the production of highly influential diagnostics on the issue of forced displacement and then in the approval of the VLR Law I discuss in detail in Chapter Four.

¹⁰⁰ Cinep released a collection of five papers discussing the movement of population away from five areas of conflict. Fundicep, another organization, issued a special study about Putumayo and Caquetá. See Rojas (1993: 30); and Cinep (F. González 1998).

study had derived “directly or indirectly from the leftist political *militancia*” (Osorio 1993: 20). On one hand, she argues, many leftist militants been forced to move precisely because of their political affiliation and activities, but in addition, their previous militancy had afforded them a structure and also the capacity to organize around this new common condition:

(...) given their corporate tradition, militants have sought to construct some kind of association (around the issue of forced displacement), which has allowed me to get in contact with them and access their life stories. Those without social ties are isolated and it is much more difficult to get to know their experiences. On the other hand, there is no doubt that in this conflict, the persecution is done by accusing members of leftist political parties of sympathizing with guerrillas or actively participating in insurgent activities; as well as against members of leftist political parties (Osorio 1993: 20).

She notes that initially the first organizations did not use the label forced displacement or desplazado but rather relied on that of “refugee” –even if in its legal version this label did not apply to them- or the more general one of “victim.” Then, in 1989 a group of such organizations held the First Congress of Dirty War Victims and Refugees in Bogotá as a means to issue a collective *denuncia* (denunciation), share their experiences and find solutions to their current difficulties. Among the organizers of this event were the founders of Revivir (“Revival”) who had flown from the Córdoba region where the paramilitary organization led by the Castaño brothers was immersed in a brutal campaign of extermination of sympathizers and collaborators of the EPL guerrillas at that time (see also Chapter Six). There were also representatives of Ascodas (Colombian Association of Social Assistance). They had opened a shelter for people on the move in the Mid-Magdalena region and in the past years had been helping displaced people from the eastern region of Colombia to set up their own organizations. Osorio (1993) notes that participants in the event agreed that leaving their homes behind was one of “their most relevant problems” but, as she put it, “they did not refer to the problem in terms of forced displacement, at least not yet” and it would be “just recently” – meaning by 1992, the time of her writing- that the people forced to leave their homes because of violence “found a word, that of ‘desplazado,’ which could describe their situation with certain

specificity, which is different from that of other migrants.” The label, she argued, was first coined by Peruvian and Salvadorian activists and then taken on by their Colombian peers (1993: 30-32).

In her opinion, however, the label was problematic to the extent that although displacement “destroys social referents” it also “blurs differences,” providing the false impression of an homogeneous experience and population despite the great diversity of social, economic and political conditions and contexts in which the people are forced to flee ” The other problem she noted is that label also carried with it a diminishing connotation, a stigma, since most of the first people to flee, and who were increasingly referring to themselves as *desplazados*, had escaped precisely because they had been framed by state forces or paramilitary organizations as being part of the “internal enemy,” and thus, in their search of assistance from the government and NGOs, they were regarded with suspicion and spite (Osorio 1993: 20-22).

Osorio’s own work was itself a contribution to the legibility of forced displacement. The prologue to her 1993 piece, written by the dean of the history department of a private university in Bogotá, shows to what extent the issue of forced displacement was, on one hand, invisible to intellectuals and policy-makers in Bogotá at the time, and nonetheless, to what extent it nonetheless caused alarm. In his opening remarks he refers to the book as “probably (...) the first to discuss the phenomenon of the *desplazados of violence* in the last decade” and congratulates Osorio for engaging in “the difficult task of keeping track of the experiences of its protagonists, who carry with them unspoken truths (...) and painful memories of something that, now with this text, is being brought to public light” and for revealing “an intensity and scale of violence exerted over poor communities that is often unknown.” Finally, he notes: “presentation of this experience to the public ought to be received as a wakeup call. Their story is a lesson of what should be no more.”¹⁰¹

¹⁰¹ Here I quote the foreword fully, because it reveals the novelty of the issue at the time, in sharp contrast with the literature in the 2000s which would eventually use victims and displaced almost as synonyms: “The growing field of studies about the forms of violence in Colombia has received the unfortunate label of “violontology” (...). Osorio’s

Precisely because of both the urgency and the invisibility of the issue of forced displacement, in 1992 Osorio and a small group of researchers and activists created the Consultancy on Human Rights and Forced Displacement (Codhes in Spanish), an NGO specialized in the monitoring of forced displacement and the legal and political vindication of its victims. Eventually Codhes would become the most influential and authorized knowledge producer of forced displacement outside the state, at least until the early 2000s.

Codhes' first and longest director got involved in the problem of forced displacement when he was himself forced into exile in the late 1980s and experience the hardships of escaping from violence and taking refuge far from home with his family. During my fieldwork I sought an interview with him in vain. Precisely because of his reputation as a committed human rights activist and an opinion-maker he had been asked to join Bogotá's leftist government of the time and was impossible to reach. Instead, in 2014 I talked to his son in Codhes's main headquarters in Bogotá, where he worked side by side with his father and two dozen lawyers and social scientists in a wide range of descriptive and normative projects in relation with the displaced. As we talked, the son explained that the creation of Codhes was inextricably intertwined with the story of refuge and loss of his family. His father was born in the coffee region but moved to Bogotá for college where he

book can be inscribed within this line of thought but probably as the first to discuss the phenomenon of the desplazados of violence in the last decade. To confront this problem implies the difficult task of keeping track of the experiences of its protagonists, who carry with them unspoken truths (...) and painful memories of something that, with this text, is now being brought to public light. This text reveals an intensity and scale of violence exerted over poor communities that is often unknown. (...) This text is marked by Osorio's personal style and is profoundly analytical, but at the same time it incorporates many voices (...) whose pain, fear, fragility in face of the monsters of violence, prevents them from speaking more directly. But what is universal in their experiences strikes us with all its intensity. No one should experience what these persons have gone through. Their story is a lesson of what should be no more. (T)he presentation of this experience to the public ought to be received as a wakeup call. This book demonstrates the ability of the methodology of oral history, popularized by sociologist A. Molano, to transmit to us the experiences of the victims of violence. Nonetheless, an academic text rarely employs these techniques so freely and efficiently —which often produce narrative texts that lack any reference to analytical frameworks. Sometimes individual narratives speak by themselves but in Osorio's work, these are beautifully combined with theoretical and academic insights. This suggests that it is possible to overcome the disheartening dichotomy between formal academia and popular knowledge, so pervasive in intellectual production." Flórez, Alberto. "Prologue" in Osorio, Flor E. 1993. "La Violencia del Silencio. Desplazados del campo a la ciudad," Codhes-Universidad Javeriana.

joined a leftist political organization. When he graduated the organization sent him to Montería, the capital city of the Córdoba state in the Caribbean region, so he could “enhance his political education” and contribute to political organizing. Once there, he met his mother, a communist psychologist who worked as a teacher. “They made a life in Montería,” the son told me, but by the end of 1980s, at the exact same time that the paramilitary of the Castaño brothers conducted several massacres in the neighboring towns of the city, the father began working in a radio station in the news section. The first massacre occurred in early 1988 in a place called La Mejor Esquina, and then others came in the following months. The father began investigating and found evidence indicating that army officials had helped the Castaños reach their target. So one night, the father made the accusation on the radio and a few days later, the family was on the run.

The García Márquez Foundation, created to support political activists in danger to go into exile, flew them out to a neighboring country, where they stayed for three years. While we talked, the son remembered the many deprivations and difficulties of those years: “When we could afford chicken for supper, us kids would eat the flesh and our parents the bones.” In 1991 the family returned to Bogotá. The father got funding from the Bishop’s conference to produce a report about the “people forced to move” as his son put it for me, to hint that the term *desplazado* had not been stabilized yet. With other fellow researchers, his father traveled around the country interviewing people and finding additional data, which he then published in a series of documents. Then he got additional funding from international sponsors to create Codhes, an NGO “fully devoted in a permanent and specific manner to (...) make visible the dramatic situation of displaced population and sensitize the state, civil society and the international community” (Codhes 1999: 6). Slowly, the staff began to develop a system of data collection on forced displacement, and since 1995 it has been feeding it with data extracted from press clips, reports by public institutions, social and religious organizations

and victims themselves and publishing a regular bulletin with the findings to produce aggregate statistics.

Soon his father and his collaborators began to travel around the world with the sponsorship of international human rights organizations and funding from European governments: in their travels they would present their monitoring work, their results and their observations about the magnitude, causes, effects and specific demographics and geographies of forced displacement in Colombia. They also started to work on a new bill that would enumerate and develop the rights of desplazados and establish a new institutional apparatus especially focused on their management.

1990-1998: The juridification of forced displacement: local reluctances, international developments and vice-versa.

In addition to these efforts directed to counting the displaced and providing accounts of their hardships, Codhes and the many new NGOs that emerged at that time around the issue of forced displacement sought to transform both local and international law. After the Cartagena Declaration, Colombian activists collaborated on a series of initiatives meant to simultaneously pressure the national government and the UN to incorporate forced displacement into their agenda, often in a coordinated manner with peers in neighboring countries.

In 1990, for example, human rights NGOs affiliated with the “International League for the Rights and the Liberation of Peoples and Nations” of Latin America urged the board of the International Council of Voluntary Agencies (ICVA), based in Geneva, to visit Colombia and release a report about human rights violations and forced displacement in the country. The resulting text regretted in its concluding remarks that while “international instruments to address the flow of refugees are sufficiently developed, the problem of internally displaced persons is not” (Osorio 1993: 31-32). In addition, the ICVA called for the need to undertake a large scale study about forced

displacement in the Andean region (Rojas 1993). Simultaneously, a network of regional activists issued calls to establish a permanent monitoring system for the Americas (Vidal 2005: 207).

Similar reports prepared in other regions of the world submitted to the “small family” (Aparicio 2012) of American and European NGOs with headquarters in the Northern Atlantic and to UN agencies were showing a steady increase of internally displaced people around the globe (Weiss and Korn 2006). These new statistics reinforced the idea that it was necessary to change the legal treatment given to forced displacement. Aparicio puts it:

“By the late 1980s, a whole series of actors colluded in order to (...) stabilize the “internally displaced person” category. As recalled by central protagonists of this story in Geneva, New York and Washington still working in some of these key NGOs (...) their offices were receiving reports of a new phenomenon that did not quite fit within the established frameworks of humanitarian and human rights crisis: displacement of thousands of inhabitants by the armed conflict who did not abandon their country of origin. These reports from the “grassroots level,” as it was referred to, coming mainly from Sudan, Sri Lanka and Guatemala, described the forced displacement of thousands of inhabitants by armed conflict who did not abandon their country of origin (2009: 104).

The Internal Displacement Monitoring Center, an NGO specifically constituted in response to this perceived increase, claims:

“The need for international standards for the protection of internally displaced persons (IDPs) became apparent in the 1990s when the number of people uprooted within their own countries by armed conflict, ethnic strife and human rights abuses began to soar. When IDP statistics began in 1982, only 1.2 million people were internally displaced in 11 countries. By 1995, there were an estimated 20-25 million IDPs (displaced) in more than 40 countries, almost twice the number of refugees.”¹⁰²

This brought about “a shift of perception” among producers and administrators of international law and from that point on, according to Weiss and Korn (2006), the exclusion of the displaced from international law provisions on forced migration and from the core commission of the High

¹⁰² Internal Displacement Monitoring Center, Main Website. Available at: <http://www.internal-displacement.org>. In this circuit of international human rights law organizations desplazados are referred to as IDPs, standing for “internally displaced persons.”

Commissioner for Refugees, was no longer “a modest blemish on the international humanitarian system” but “an ugly structural scar.”

Between 1990 and 1992, officials within the UN intensively discussed the issue of forced displacement and tried to agree on avenues to address it, even if it was circumscribed within the national domain and therefore an issue until then considered the exclusive province of national state authorities. But given the humanitarian crises in the global south and the incipient turmoil in Eastern Europe following the fall of the Berlin wall, they began to agree that the principle of national sovereignty, until then the basis of the UN system, could no longer be considered absolute. The alternative had to be a relativized notion of sovereignty, which had to be presented and embraced as a necessary adaptation honoring –rather than backing off from- the liberal political theory of the “social contract.” Eventually, intellectuals embedded in the international law system came out with a redefinition of sovereignty based on the idea of what they began to call “the obligation to protect” (Weiss and Korn 2006).

According to the major promoters of this revised concept of sovereignty, state sovereignty was conditioned on the obligation to protect its citizens from its own abuses or, in more expansive versions, from serious disruptions of public order and generalized violence. Under this new paradigm, then, and concretely in the issue of the displaced, states were no longer predicated to have an absolute sovereignty over the national population but rather an obligation to prevent its forced displacement and provide assistance after the fact. (Fassin 2012). Also, as a consequence of this new relative sovereignty, diplomatic circles began to argue that the international community not only could, but should intervene in case of gross human rights violations whether through the provision of humanitarian aid in the ground, exerting pressure over state agents or through military interventions. In this sense the conceptualization of forced displacement was a constitutive part of the larger shift towards a new international order based on a “humanitarian reason,” a new

humanitarianism in which, “in the name of humanity” (Edelman and Ticktin 2010), interventions in the affairs of nation-state, including military ones, are justified or even mandated.

Following suit, in 1992 the UN General Secretary Boutros Boutros-Ghali asked UN members to file reports about the phenomenon of forced displacement in their countries, and compiled them in yet another report on the issue to be submitted to the Commission on Human Rights in Geneva for its consideration. In response, the Commission of Human Rights recognized “that internally displaced persons are in need of relief assistance and of protection” and one year later authorized him to appoint a special representative exclusively devoted to the issue of forced displacement (Weiss and Korn 2006, Vidal 2005, Aparicio 2012, 2009).

Boutros Boutros Gali offered the post to the Sudanese law professor Francis Deng. He was a former diplomat and senior associate of the Foreign Policy Program at the Brookings Institute of Washington D.C. Both belonged to the African intelligentsia, were well-reputed members of the cosmopolitan humanitarian elite and knew each other well (Aparicio, 2012: 76). But in addition to this, Deng was a member of the Dinka tribe, one of the communities forcibly displaced within its borders whose predicaments had been widely documented and called to resolution.¹⁰³

The first task of the Representative would be to visit countries singled out as having this problem and present a comprehensive report about “existing laws and mechanisms, possible additional measures to strengthen the application of such laws, and new ways to address the protection needs that are not covered by existing instruments.” Many countries, according to Weiss and Korn (2006), were uneasy about “this potential intrusion into domestic jurisdiction” while many humanitarian agencies were “leery about the likely bureaucratic fallout” (2). In addition, there was also disappointment because the mission of the representative was predominantly one of knowledge

¹⁰³ According to Aparicio there were rumors that Boutros Boutros Gali chose Deng in part because of his familiarity with the issue of force displacement and even commented: “He (Deng) would know what the problem is about.”

production (Aparicio 2009), rather than actual diplomatic work to pressure governments to make legal changes, or providing aid on the ground.

A new legal and political place for “the displaced” in Colombia: legal production without enforcement

Meanwhile back in Colombia, the new elected government of President Gaviria (1990-1994) signed a series of peace treaties with many of the guerrillas, including the M-19, the EPL and a portion of the ELN, granting them full amnesty and the right to participate in politics. Also, the government and the new political organizations that emerged from the negotiations joined the popular call for the renewal of the Constitution and the introduction of a series of fundamental changes into the structure of the political regime and the chart of basic rights. At the same time, the administration undertook a radical neoliberal economic reform to put an end to the economic protectionism of the previous decades, allowing the freer movement of commodities and capital.

On the issue of forced displacement, Gaviria’s government was reluctant to treat the displaced as distinct from other victims of violence or from other forms of rural-urban migration. A policy document issued at the time stated:

A special policy for the *desplazados* of violence would redirect the actions of the government to the reduction of the effects of the phenomenon over the population that, as a consequence of the confrontation between social forces or individual threats, decides to migrate. Nevertheless, this is just a portion of the people who suffer the impact of violence. There are also those who decide to stay where they are, despite threats against their lives as way of what could be called “civil resistance.” The subjects of governmental intervention, therefore, should be defined using violence as criteria, not migration” (Departamento Nacional de Planeación 1994, p. 2, quoted in Vidal 2005: 210).

At the end of Gaviria’s administration, Francis Deng paid its first official visit to Colombia. During his stay, he had appointments with governmental officials but also representatives of NGOs such as Codhes and the Bishops’ Conference. In his country report, published one year later, he concluded that, “until a few years ago, the (Colombian) government [referring to Gaviria’s administration] did not acknowledge that there was a forced displacement problem in the country (Aparicio 2012: 128).”

But this had already begun to change in 1994. Starting that year, forced displacement as a problem thrived in two parallel ways. On one hand, more people became caught in, and sought to escape from, the intensifying violence in the northern areas carried out by paramilitary organizations and the guerrillas that had not demobilized back in 1990. One of the most critical areas of friction at the time was Urabá, near Panamá, where the Castaño brothers, and their so-called Peasant Self-Defense of Córdoba and Urabá (ACCU in Spanish) were resolved to exterminate the FARC guerrillas. Large groups of locals were leaving to avoid the impending danger of being taken as an “enemy” by either side. This same depopulation effect would then multiply throughout the country as this locally-bounded paramilitary group began to expand in 1996 towards other states of the Caribbean region and the southern half of Colombia and to incorporate other paramilitary organizations into its ranks, through agreement or by force.

Castaño’s squads did not follow a single script of violence, but observers agree that in general paramilitaries were more likely than guerrillas to engage in massacres and practices of extreme cruelty, building “a reputation based on terror” (CNMH 2013). In a series of interviews published in 2001 (Aranguren 2001) Carlos Castaño, the main spokesperson of the AUC at that time, explained the purported steps that his fighters were expected to follow when “breaking in a new zone.” First they had to do “intelligence work” in order to identify the enemies, and then proceed with their “*limpieza*,” literally, “cleansing”. Cleansings involved both surreptitious abductions and the disappearance of the bodies, or public executions in front of the community. Undesirable others such as petty criminals, drug addicts and prostitutes were also often “cleaned out” as part of the ritual of claiming authority over a new territory. Michael Taussig’s (2005) ethnography “Law in a Lawless Land” is precisely the diary of a *limpieza* carried out by paramilitaries in a town near Cali during this period.

Guerrillas, on the other hand, depending on their capacity to react to the paramilitary offensive, would counterattack or flee and were more likely than paramilitaries to use kidnappings, destruction of buildings and other infrastructure and indiscriminate bombings. They also used assassination selectively against informers and politicians (CNMH 2013). Overall, up to 2002 approximately, the operations of the FARC and the ELN seemed to be directed on tightening the grip around major towns and cities. They continuously staged roadblocks to freeze traffic and kidnap travelers.

Codhes and the Bishops' Conference attempts to statistically abstract the movement of people began to reflect this new stage of intersecting violence. The rise in numbers was the result of an escalation of guerrilla and paramilitary violence, and to a lesser extent the proliferation of a series of monitoring technologies and initiatives to count the dead and the displaced.

On the other hand, the problem of forced displacement gained in both legal force and political significance. The issue moved up in the scale of public urgency as the points of friction between paramilitaries and guerrillas multiplied. The flux of displaced from the rural areas to towns, major cities and also within neighborhoods, became more intensive. Even urban teenagers like me, situated in a highly homogenous and enclosed social and geographical urban space at that time, could see how adults and children "out of place" stood in sidewalks and corners in Bogotá, dressed in clothing clearly not appropriate for the city's cold and rainy weather, sometimes holding tightly a suit case or a box with their belongings while carrying in the other hand boards with the word DESPLAZADOS in big letters. These "others" brought along with them the confirmation for city dwellers that the bodies dismembered with machete or chainsaws, the destroyed police stations and bridges, and the deserted towns they –we- had seen in the images published in newspapers and TV news since the late 1980s were real and more frequent than imagined. Communities in Bogotá, Medellín, Cali and other cities were just recovering from the extradition war, but except for those oldest inhabitants who had lived through La Violencia back in the 1950s, urban dwellers had not

experienced the game of “unmasking the enemy” that had structured rural violence during both periods.

Thus, as they impacted the immediate experience of the urban public, desplazados gained visibility and also legal ground. A rapid review of press notes suggests that gradually they received more attention from the mainstream media. And then, in 1998, after some of their representatives conducted a series of takeovers of governmental and UN offices, one of the leading media outlets devoted to political analysis declared forced displacement “the character of the year” (Osorio 2006). At the same time, there was an intensive legal production turning them into full-fledged subjects of rights and giving existing state institutions corresponding obligations.

However, enforcement of this new set of legal provisions was scarce, often circumscribed to isolated efforts from officials or to the orders issued by judges as a result of individual legal actions. Both legal production and inaction would continue hand in hand at least up to the mid 2000s until it eventually encouraged the Constitutional Court to issue a ground-breaking ruling in 2005 in which it concluded that there was “an unconstitutional state of affairs” on the issue of forced displacement. It demanded that state authorities, under the threat of imprisonment, fulfill the duties outlined in the growing body of legal provisions detailing the rights of desplazados.

In the pages that follow, I briefly discuss some of the landmarks of this gradual juridification without implementation until 2002. Then I will turn to the production of the legal provisions and techno-legal practices directed in particular to legal protection of the lands abandoned by or taken from desplazados.

The techno-legal shift under the Samper administration

Contrary to Gaviria’s government, the administration of President Ernesto Samper (1994-1998) was more receptive to the pleas of the human rights community and was also more concerned with the

provision of public goods and state-sponsored welfare programs. Indeed, according to Vidal (2005: 214-216), Samper was the first high-level governmental official -and President- to address the issue of forced displacement in public and to include an “assistance program for the internally displaced population” in his general budget plan.¹⁰⁴ Also, as Vidal also remarks, he was also the first President to consider the admission of forced displacement to qualify victims for additional support and resources from the international community:

“There was an important change in the government’s perception about the political value of forced displacement which was no longer regarded as a threat to the state’s sovereignty but as a mechanism for the consolidation of the government’s authority in the midst of the armed conflict” (p. 213-214). [Eventually], “the government would discover the political advantages of becoming agent and beneficiary of the international system of migration control through the incorporation of a legally restricted concept of internal displacement” (Ibid).

Shortly after the approval of Samper’s budget, in early 1995, the Bishop’s Conference released the results of its ten-year long research on forced displacement in the country. The report was received by Samper’s government, the academia and the human rights community as the foundational empirical evidence of the increasingly undisputable forced displacement problem. Only a few copies of the report were distributed among research centers, NGOs and state officials, but its findings were highly publicized at that time by the media and to this date, most subsequent reports or research on forced displacement refer back to it as the first “reliable” assessment of the problem.

The report sought to unveil the temporal, spatial and demographic dimensions of the problem and present it through statistical and cartographical means to an urban and technocratic public with the power to decide policies within the government. The first section, devoted to the results, asserted that at the time of publication somewhere between “544,801 and 627,720 people (had) been displaced in the last ten years for reasons of violence” in Colombia. On average, this was an

¹⁰⁴ The first public reference to forced displacement occurred during Samper’s speech on Human Rights Day, September 9, 1994, less than a month after he take office.

equivalent to 108,000 families and 2% of the total population at the time (Conferencia Episcopal 1995: 43). A special characteristic of these families was that they were predominantly constituted by young women and children, and that at least in the case of 33% of them the men or one of the sons had been killed before or during the act of displacement. Also, at least 68% of families had fled because of violence exerted by one particular armed actor, 21% from two armed actors and 7% from three. As for the specific identity of the actor, 31% reported having left because of guerrillas, 21% because of paramilitaries and 19% because of the army. The rest fled because of drug cartels, emerald traffickers and intelligence agencies or unknown organizations (Conferencia Episcopal 1995: 46 – 59).

Regarding the geographic span of displacement, the report stated that, “the map of forced displacement basically covers the majority of the national territory. Desplazados run away from rural areas to municipal centers, and from there to big and intermediate cities” (Conferencia Episcopal 1995: 46), but noted the most violent regions were Antioquia and Santander, followed by Boyacá, Meta and Córdoba. As part of its rhetorical tools, the report then devoted a long section to discussing the methodological decisions, the shortcomings encountered during their application and to explain the mathematical formulas used to construct the main figures (Conferencia Episcopal 1995). Ultimately, the point was to establish its scientific authority and dispel suspicions of ideological bias.¹⁰⁵

¹⁰⁵ Researchers combined surveys and interviews with review of secondary sources to construct these figures. They asked pastors in the 2,800 churches affiliated with the Bishops’ Conference to fill out a survey reporting the number of parishioners in their district and number of displaced persons, including those who had left or those who had arrived. Only 948 filled out the survey but the results indicated that at least 70,642 families had been forced to leave from those areas while almost the same amount, 70,562, had arrived to new locations. The report notes the “clear coherence” between these two figures. In addition, researchers asked 119 state and civil institutions to fulfill a similar questionnaire, of which only forty two (“twenty seven NGOs, five governmental institutions, eight social organizations and two political parties”) provided information about critical regions of expulsion and reception. Finally, the team conducted 150 interviews in total with key observers –clerics, but also community leaders and officials- and a thorough literature review in order to complement the numbers and gain a better understanding of the regional variations, population flows and other issues. In the second stage of the study, researchers designed another survey, this time meant to gather basic demographic information from displaced families and also about the causes, details and consequences of their displacement. They selected a sample from the pool of 108,000 family units

The government embraced the report and used it as the empirical basis for the Conpes Document No. 2804 of 1995, the first governmental techno-political paper detailing the “assistance program” established in the general governmental plan and budget (Departamento Nacional de Planeación 1995).¹⁰⁶ For Vidal (2005), this document was a “foundational discursive event” (215) because it was the first time that the Colombian government explicitly recognized the existence of the problem of forced displacement and established a series of mandated responses.¹⁰⁷ On the other hand, and despite adhering to the empirical findings of the Bishops’ Conference, the Conpes Document rejected the notion that forced displacement was a consequence of the state’s failure to protect its own citizens, outlined in the Bishops’ Conference report, the writings of Codhes and also of the UNs new international instruments. Rather, the Conpes Document defined forced displacement as similar in nature and in legal implications to natural disasters and actually established that the agency in charge of providing assistance to desplazados from that point on was going to be the Office of Prevention and Assistance of Disasters. The implicit analogy between forced displacement and displacement caused by nature was not well received by the human rights community because it “depoliticized the issue” (Vidal 2005) and defined state assistance as one of “social contingency” and “charity” (Codhes 1999: 148) rather than one emanating from “the obligation to protect citizens” from the violation of their basic rights. Nevertheless, the program was not put into practice, with the exception of some isolated humanitarian assistance actions. In 1995 a

¹⁰⁶ The Diagnosis Section, in particular, paraphrases the Bishops’ Conference report copiously. The opening paragraph, for example, restates the total number of desplazados calculated by the latter: “The prolonged, difficult and complex situation of violence and the crisis of human rights in the country has brought about serious human, political, social and economic consequences that the state and society have the obligation to address. One of them is the forced displacement of the population, which is estimated to have affected (...) approximately 600,000 people (...) in the last eleven years” (CONPES 2804, 1995: 1).” A few paragraphs below, subsection “Characteristics of Forced Displacement in Colombia” reproduces at length the collection of demographic and geographic statistics of the report. A footnote closing the first page, states that, “All the statistical-descriptive references that follow have been extracted from the Bishops’ Conference work.”

¹⁰⁷ As described in the Document, the program had several goals. The first was to prevent forced displacement through social programs for rural inhabitants and a system of alerts. Second, it had the goal of provisionally protecting internally displaced persons from subsequent violent actions, because their “life and physical integrity are still in danger even after displacement.” The third goal was to satisfy displaced persons’ basic needs in the meantime

Codhes bulletin (1999) regretted that the Conpes Document of 1995 had been merely an “academic exercise” and in May 1997, the government released a second Conpes Document -No. 2924 of that year- recognizing that the program had been a failure largely because of financial and organizational restrictions (Dávila 2009; Departamento Nacional de Planeación 1997).¹⁰⁸

To address these limitations, the growing number of grassroots organizations and NGOs devoted to supporting and giving visibility to desplazados began to work in the formulation and approval of a comprehensive legislative bill meant to force state authorities on the national and the local level to respond adequately to forced displacement. At the beginning three members of the House of Representatives presented drafts but these were then unified into one single version (Codhes 1999: 82). According to a human rights lawyer, activist and later land restitution official who was part of this effort, the preparation of this draft was entirely bottom-up with the leading participation of Codhes, the Bishops’ Conference and other initiatives like the GAD (Support Group for the Displaced in Spanish), but when the time came they received support from “people above” so it could move forward in Congress. He recalled that the first lady, Jacquín Strouss, was an important ally during the entire process. She enthusiastically supported the initiative and made sure it got the votes needed. The assemblage and approval of the final version, however, took two years and was finally sanctioned by the President in April 1997.

In the meantime, in a parallel bill (Law 333 of 1996) the government’s coalition introduced a provision establishing that as a priority, the properties and assets taken from drug dealers had to be used for programs devoted to the assistance of the displaced population. Also, as this happened in Congress, the Samper administration agreed with the UN to open a division of the Higher

¹⁰⁸ In this second document, the government explained that the Ministry of Internal Affairs had undergone a restructuring process in 1995 that had paralyzed the institution for a year. The document also explained that in 1996 the Human Rights Division had not been allocated a budget. Then, in 1997, the Division only received 1.6 trillion pesos for all its activities (approximately US \$1.6 million). With these resources, some humanitarian aid actions had been properly delivered to a group of victims, but the lack of cooperation by regional agencies had made any other efforts impossible.

Commissioner for Refugees in Bogotá, which was also eventually inaugurated in 1997, just in time to work with the government and the NGOs in final version of the Displacement Law or Law 387 of that year.

This new law defined the “internally displaced person” as someone escaping from generalized forms of violence, human rights violations or any significant alteration of public order within the national territory; and prescribed the establishment of “a prevention, protection and assistance system” to be operated on behalf of this new subject of rights by existing national and local state authorities, and granting them three types of aid: humanitarian relief, support for economic stabilization, and support for resettlement or return. Initially, the Displacement Law was praised by the international community and local NGOs as one of the most sophisticated and progressive laws on the issue of forced displacement (Wong 2008). But despite its *elegantia juris*, the law soon encountered a series of institutional problems that seriously hindered its application (Dávila 2009, Rodríguez and Rodríguez 2009). The system lacked a coordinating agency in charge of promoting and verifying that the many state institutions up to the task fulfilled their obligations on the matter. Each of them was expected to create and execute a program for the displaced, but without any technical assistance, supervision or additional budget. As a result, in the years that followed, the municipalities, the departments and even the national government were reluctant to take on the financial and political burden of implementing the bill (Dávila 2009: 33-34). Moreover, all this happened at the same time that the administration was engulfed in a scandal linking President Samper and his closest advisors with the Cartel of Cali. For most of his term, Samper faced a series of impeachment initiatives against him, which had an overall paralyzing effect affecting his governmental agenda on most policy fronts.

But the bill also came right at the same time that both the paramilitary and the insurgent counter-offensive reached a new level of intensity and geographic span. In 1997, Carlos Castaño, the

commander of Córdoba's paramilitaries, announced the consolidation of a nation-wide confederation of paramilitary groups –“The United Self-Defense Organizations of Colombia,” or AUC in Spanish- under his leadership, and in July, at the same time that bill was approved, the AUC conducted the Mapiripán massacre, the first one carried out not only outside of its immediate area of influence in Northern Colombia, but near the FARC's original strongholds. With this operation, the AUC inaugurated its new era of expansion. Meanwhile, the guerrillas still in arms –especially the FARC- launched a series of deadly attacks against military bases and police stations, significantly weakening the ability of state forces to react against them.

This concomitant logic of high legal production and low implementation, on one hand, and the expansion and acceleration of violence on the other, continued under Pastrana's administration, the successor and main political enemy of Samper (Dávila 2009, Rodríguez and Rodríguez 2009). The new government concentrated its efforts in relation with desplazados on the production of even more formal rules, supposedly meant to strengthen Law 387 and resolve some of its flaws, while at the same time allowing the institutional blockage that had prevented its implementation to remain unattended. So between 1998 and 2000 the government issued a long list of decrees and new Conpes documents.¹⁰⁹ Similarly, Congressional majorities turned forced displacement into a new criminal type and inscribed it as such *Código Penal*, the Criminal Code.

¹⁰⁹ For instance, soon after the approval of the Law, Decree 173 of 1998 introduced the Plan of Action mandated by the Act. In that document the government defined a timeline for spending and other administrative actions. Other decrees and documents, including CONPES Document 357 of 1999, addressed the financial problems. In this document the government estimated that the implementation of the policy between 2000 and 2002 would cost US\$360 million, not including housing and land distribution, and established a budget.

Initial appraisals and responses to the derived problem of land dispossession: land as cause, consequence and solution of the armed conflict

With the irruption of forced displacement as a massively lived phenomenon and public problem, the pre-existing concerns with land concentration and tenure took new directions and layers of meaning. The oldest concern, in terms of its historical trajectory, was the problem of accumulation *per se* discussed in the previous chapter. By the mid 1990s, this was still a preoccupation among peasant organizations and many agrarian questions scholars, for whom the issue of the proper allocation of land was the main cause and consequence of many of the major problems in the country.

The second, and a most recent layer of meaning, had to do with the narco agrarian counter-reform, discussed in the first section of this chapter. This new form of rural ownership added a new complication to the old problem of accumulation since both common sense and research on the matter suggested that land accumulation rates had gotten worse with dirty money and the coercive practices of drug lords, and also that narco-accumulation was even more anti-economic than other kinds of land accumulation. Techno-political elites had devised a series of plans to effectively retrieve narco-lands, as discussed previously. This was a matter of retributive justice but in the early 1990s, it was interpreted as also having potentially important distributive effects and uses, to the point that some experts and politicians claimed that the so desired agrarian reform could be conducted with the lands of drug-dealers. This solved two problems at once and had the additional advantage that it was politically attractive because did not threaten landowning elites while at the same allowing them to subdue the dangerous narcos. In this anti-narco version of the agrarian reform the underlying logic would be one of legality, the rule of law and decency rather than forceful redistribution of legally acquired tenure and property.

But then, a third complication and layer of meaning, directly derived from forced displacement, and the insurgent and counterinsurgent spiral of the 1990s, began to circulate. Clearly most

desplazados came from the countryside. However, it was only until the mid 1990s that Codhes and other observers began to inquire about the effects of displacement over land tenure arrangements. Indeed, for example, in 1996 a survey conducted by Codhes and other NGO's among desplazados who had resettled in the city of Cali revealed that 54% of the families used to have land and work as peasants; and that 83% of them considered themselves the land's rightful owners. For Codhes this "confirmed once more that hidden behind the phenomenon of violence lay economic interests derived from the agrarian counter-reform which effects small and medium landowners" (Codhes 1999: 56). Then, after conducting a series of similar exercises in other regions in 1998, Codhes concluded, "It is obvious that most displaced from the countryside (...) are small and mid-size landowners who in a vast majority of cases had to leave behind their properties (94%) whereas only only a small percentage have managed to sell, rent or find another solution" (1999: 147).

These findings led activists and scholars like Reyes to assert that displacement was, ultimately, a large scale form of land dispossession, a "perpetual primitive accumulation" (Reyes 2009). This armed agrarian counter-reform *tout court* was not just a narco counter-reform anymore, but a multi-causal, general and violent one, involving a host of additional actors and interests and resulting in land concentration. Moreover, as the quote from Codhes above suggests, some of these analyses convinced a variety of publics that the loss and appropriation of land was not a side effect of the armed conflict but rather its hidden logic and sometimes its final purpose. The suspicion of this reversal of the causality of violence emerged from the attempt to map land dispossession. In their survey of qualitative data, Reyes and Bejarano (1998) asserted that "that land is one of the causes of forced displacement." Further reports by Codhes argued that critical points of expulsion of population coincided with different forms of large scale extractivism such as agro-businesses, mining operations and infrastructure projects. Most of these points were initially located in the northwest of Colombia in regions such as Córdoba, Urabá and the adjacent region of Chocó, in the

Castaños' original center of operations.¹¹⁰ Similar processes of land accumulation were also documented in adjacent areas and in regions further East such as the hills of Montes de María surrounding Sincelejo and El Carmen de Bolívar; the lowlands of the Magdalena river and the plains around the city of Valledupar. These were all located along what retrospectively has been called “the paramilitary route” towards expansion. Eventually, this rapid and highly violent transformation of many rural areas in the north and then the south, reinforced the idea among leftist and liberal publics that war was about land and its economic potential.

Machado, one of the most widely read agrarian scholars, further emphasized this idea of land as motive by claiming, “It is not that there are desplazados because there is war, but that there is war so that there can be desplazados” (Machado 1999). This became a common explanation among other observers of the turmoil in the countryside (for an example see Mondragón 2002, Codhes 2003).¹¹¹ Moreover, the publics who remembered La Violencia of the 1940s and 1950s as mostly an issue of land read this new cycle as a re-instantiation of that past.

Meanwhile, in the south of Colombia and around major cities like Bogotá, Medellín and Cali, the FARC gained military terrain. In the late 1990s as well, FARC forces located in the eastern plains and the Amazon basin conducted a succession of attacks that significantly weakened the army. During these episodes, the FARC took several dozens of soldiers hostage and acquired control over

¹¹⁰ Activists had identified a set of localities where immediately after the military operation Génesis led by the state forces, apparently with the backup of AUC commandos, a group of companies and individual entrepreneurs somehow obtained private property titles over thousands of hectares that originally belonging to the black, indigenous and peasant communities of the region. The new owners cleared the tropical forest and the previous crops and replaced them with large palm oil and banana plantations or with pastures for cattle. A case that has been highly publicized since then as the “largest dispossession” recorded is that of the black communities and “reservations” of the Jiguamiandó and Curvaradó rivers. According to different reports, documents and judiciary rulings, about 4,000 people fled the area surrounding the rivers. Originally the lands in the area collectively belonged to the black communities, and ten years later significant portions had been annexed to private palm oil and cattle-ranching farms.

¹¹¹ A Codhes report of 2003 claimed: Displacement does not necessarily respond to logics of war, it is also associated to economic interests that are less visible (...) There are connections between forced displacement and the development of megaprojects, almost consistently connected to the intensive use of natural resources. Indeed, most displaced come from areas (with these characteristics) and not the most depressed areas from the economic perspective. In this sense, it is not only that there is forced displacement because there is war, but that there is more war because there are economic interests, beyond simple land tenure (...).

vast areas of land. Adding to the geopolitical complexity, in January 1999 the Pastrana administration agreed with the FARC to clear an area for them that surrounded some of their historical strongholds near the Caguán and Guayabero rivers, also located in southern Colombia, in order to initiate peace dialogues. This cleared area, as it came to be known, was the size of Holland. The negotiations continued until January 2002 in the middle of sustained confrontations, and an increase in guerrilla kidnappings and bombings, and ended with a reestablishment of hostilities in those areas. During those three years, delegates of civil society organizations, academia, the international community and the government met continuously with the FARC to discuss the terms of the eventual peace. The FARC insisted on the issue of land –and in particular in the disarticulation of latifundio- as one of the key issues that had to be resolved if they were to agree to a ceasefire. My father remembers turning on the TV and seeing Ricardo. He had become one of the leading commanders of the FARC, and the main spokesperson on political-economic matters. Dressed in military uniform, with a microphone in his hand, he stated to the cameras something like (my father's words) "Until the rich of this country yield the land, we will persist in our revolutionary struggle," reaffirming the idea that land was a motive for war from the perspective of the FARC as well (as they had announced back in 1964 when they issued the Agrarian Program of the Guerrillas). Desperately looking for a way to persuade the FARC to sign a peace agreement, the Association of Cattle Ranchers even offered to give up a portion of their affiliates' land in exchange for peace.

While the peace negotiations unfolded, the academia examined the relation between land and mass conflict. Machado and Salgado (2006: 68) found that this issue occupied the great majority of publications related to the "agrarian question" during the period between 1998 and 2003: "the dialogues with the FARC and the deficient outcomes of the market-based land distribution policies seem to explain this interest in the subject." Moreover, they also noted that by then, there was "a generalized idea in the country that the resolution to the armed conflict is irremediably conditioned

upon the resolution of the agrarian problem.” This is an overstatement, given the wide variety of explanations about why the war occurred, coming from the right side of the political spectrum -but certainly at that time for most publics it was clear that the land issue did motivate the FARC. On the other hand, it is also true that explanations provided by the academia did demonstrate that land inequality structured war, not only as motive, but because it reproduced a poor, dispossessed peasantry, willing to join armed organizations. Thus, by the end of the 1990s and early 2000s, human rights activists, scholars and many civil society actors shared the perception that land was indeed a cause of war. However, their analyses of the rationalities behind this process differed: combatants were either motivated by land (land accumulation for paramilitaries, land distribution for the guerrillas) or the desire to cleanse populations and restructure social relations.

The first calculations of dispossessed hectares also came during three-year period of “the cleared area.” In 1999 the Bishop’s Conference surveyed 1,333 families and found that they had abandoned around 32,000 hectares, for an approximate average of twenty four hectares per family (Bishops’ Conference 1999; Ibáñez and Querubín 2004). Then, in 2000, the head of Codhes released another calculation. He declared that:

Between 1995 and 1999, 1,738,858 hectares belonging to small and mid-sized landowners, settlers, black communities and indigenous populations were abandoned. This estimate coincides with the reports that assert that throughout the 1990s about 1,700,000 hectares have gone out of agricultural production, many of them because of violence and forced displacement” (Rojas 2000).

Simultaneously in the early 2000s, a group of economists embedded in the circuit of the local economic technocracy constituted by the private university Los Andes, an economics think-tank called Fedesarrollo, the National Planning Department and the World Bank began to apply micro-economic and econometric tools to understand the causes and consequences of forced displacement.

Their interest in this subject, as I shall also argue in Chapter Three, elevated the status of the

conversation and gave it not only a moral but also a scientifically supported sense of urgency. It was not Codhes or the human rights community, regarded at that time as ideological and methodologically suspicious but it was the technocracy, with its mathematical and anti-political (Ferguson 1990) means of inquiry. For example, Kirchoff and Ibáñez (2001) conducted a survey among 200 displaced and non-displaced families in Antioquia (Urabá) and Córdoba in order to understand some of the factors that could have influenced their decision to flee or to stay. Although the data was not a representative sample, as they noted, they found that among this group, small plot owners were more likely to end up displaced than large landowners or non-landowners. According to Ibáñez and Querubín (2004) this coincided with the conclusion reached by Reyes and Bejarano (1998) that “land was a source of forced displacement.” A year earlier, apparently using this same survey, members of the Economics Department of Los Andes prepared a similar study for the Planning Department and the World Bank about the causes and consequences of forced displacement (Erazo, J.A. et al. 2000). Like the Bishops’ Conference’s first statistics of 1995, this new survey found that this group of families had left behind an average of twenty hectares of land (see also Ibáñez and Querubín 2004).

Then, in 2001 the World Food Program issued “a more dramatic estimate”: “More than 4 million hectares of land have been expropriated from the desplazados, equalling a third of the country’s arable land” (World Food Program 2001; Ibáñez and Querubín 2004). This estimate would reappear in later reports issued by the World Bank (2003) and international human rights organizations such as the International Crisis Group (2003) and the Global IDP Project (2003), managed by the Norwegian Center for Refugees.

Thus, between the mid 1990s and the early 2000s, for a variety of techno-political publics the agrarian landscape had become one in which different forms of exclusion, dispossession and oppression had sedimented on top of one another in a variety of horizontal combinations. To the

historically backward “outside” and more modern “inside” of the agrarian structure and the bimodal and anti-economic arrangement of latifundio and minifundio within the latter, new layers of complexity had been added: the narcotization of agricultural production and landownership, the bankruptcy of peasant economies under neoliberal structural adjustments, and more recently, the systematic displacement and land dispossession of rural communities and the incorporation of lands into big properties or into extractive projects of diverse kinds. With few exceptions, the perception from across the political spectrum was that the countryside was a patchwork of dystopian ruralities, immersed in a “semi-permanent crisis” (Fajardo 2002) that could be traced back several generations.

It was in this context of compulsive legal production, institutional blockage and escalating violence that the first attempt from a small group of urban professionals to prevent violence from resulting in the reconfiguration of property rights took place. The people involved in this initiative were Social Solidarity Network, Incora and other governmental officials who had personal connections with the human rights community and also with the World Bank. They first created a set of legal provisions meant to protect the lands left behind by desplazados from appropriation without their due consent. Then, they found funding to start the Project for the Protection of the Land and Patrimony of Displaced Populations, which I shall refer to simply as the Project from now on.

The Project was the first state formation fully devoted to the production of “dispossessed lands and subjects” as objects and subjects of rights. The Project generated a series of methodologies for the detection and production of truths about land dispossession cases. As part of this exercise the Project put together the first official inventory of individually identified, allegedly dispossessed people and lands, as well as related cartographic and statistical representations. The Project also produced a group of highly specialized professionals on the issue of dispossession and its identification, who unlike the human rights community were embedded in the state and had the full

support of the World Bank. Their perceived expertise and authority eventually allowed them to actively participate in the formulation of the Victims and Land Restitution Law, and later on to be appointed to manage the Land Restitution Unit, using the “know-how” they had acquired with the Project.

Counting, mapping and securing dispossessed hectares: the Land Protection Project

This first state-led attempt to respond to land dispossession emerged from the encounters of a group of state officials with forced displacement, and their engagement with two provisions established in Law 387 that addressed the issue of abandoned and dispossessed lands. Article 19 mandated the Incora to identify such lands and properties and “notify the relevant state authorities” so that they could proceed to “prevent any modification of property rights or transfer of titles” from happening “against the will of the holders of such rights.” This same article also ordered the Incora to give priority to forcibly displaced persons when distributing public lands or lands confiscated from convicted criminals. Article 27 ordered judges and officials, when solving titling petitions from people who had been forcibly displaced from lands or real estate properties over which they only enjoyed certain two types of physical tenure called “*posesión*” and “*ocupación*” and as opposed to legal ownership, to count the time elapsed between the displacement and the presentation of the petition towards the time required for them to be eligible for such purposes. The proponents included this precept to help displaced persons transform these two forms of tenure into one of ownership.

Legal professionals generally agree that the bulk of private and agrarian law valid in the country up to the present classifies human-land relationships in four main categories, each of them with different characteristics and legal implications. This classification is not to be found in a single statute but rather it has been deducted by the legal community from the ensemble of existing legal precepts and passed from one generation to the next through textbooks and professional

apprenticeship. In my property law course in college, I was spared the legal archeology that would have been needed to find out about the existence of these four legal categories and rather I was given an already clearly demarcated classification, highlighting the main differences between categories and some of its operative qualities.

Three of these figures or concepts can be found in the Civil Code, issued in the late 1800s, and have undergone minor changes since then. The first one is full-fledged property or ownership. The second is that of *posesión* –which is similar to adverse possession in Common Law- and applies to privately owned property. The third one is *tenencia*, this is, simple tenure. The fourth category, *ocupación*, is the same a *posesión* except that it involves a publicly owned land (a *balldío*) and is defined by the agrarian law legislation instead of the Civil Code.

By 1999, ownership or property was defined by the Civil Code (Article 669) as the right to “enjoy and make free use of a thing, (while) not contradicting the law or the rights of a third party.”¹¹² Property titles over lands and real estates are in principle issued only by state authorities and, as we were constantly reminded by our property law professor, in order for the transfer of property to have effect it must be registered in the local Registrar’s Office. So generating the title is not sufficient. If its not registered it lacks validity for state authorities, and holders of the title may be

¹¹² Before 1999 the Civil Code defined property as as the right to “arbitrarily enjoy and make free use of a thing, (while) not contradicting the law or the rights of a third party. But that year a ruling by Justice C. Gaviria of the Constitutional Court abolished the word “arbitrarily,” arguing that this would fully harmonize the Code’s definition with the constitutional amendment introduced in 1936 under president A. López (see Chapter One). This amendment had redefined private property as a “social function” rather than just an individual right. But the Civil Code had not been consistently amended and in its current phrasing it was unconstitutional. Justice Gaviria explained that by eliminating the word, ownership ceased to be an inviolable and absolute right, as in the times of Roman law, and became a prerogative granted to the individual by the political community, with its protection conditioned on the fulfillment of a series of legal mandates and principles. The exercise of property was then limited by public interest and could be subjected to expropriation if the general welfare thus required it. At the same time, the amendment explicitly limited expropriation to cases predefined by the law –as opposed to the discretion of the government- and as long as the public utility or interest was sufficiently proven. In addition, the amendment banned expropriation without compensation. As for the extinction of property rights, the new Constitution limited it to properties acquired through or as the result of criminal activities or “to the detriment of social morality.”

considered to have a type of posesión or ocupación with the property or even one of simple tenure (*tenencia*) if other requirements are missing.¹¹³

Thus, according to the Code, the holder of a posesión is a person who lacks an adequate property title but has directly or through a representative possessed a piece of land or any other private property without interruption for a certain period of time, and unlike a simple tenant he or she is legitimately believed to be the rightful master and owner. In order for the posesión to be predicated, the Code mandates that the person must have both a material and a psychological relation with the property: she has to have the *corpus* of the thing, meaning she has to have material control of it, and in addition she also has to have what lawyers refer to as *animus*, the conviction that she is the rightful master and owner of the thing. Since this is a state of mind, difficult to grasp, most property law books agree that the animus must be expressed through a series of actions of ownership. The Code establishes, based on this scheme, two main categories of holders of posesión: those acting in good faith and those acting in bad faith. The former is supposedly a person who acquired the corpus through a legal transaction, while the latter is a person who did it through deceit, manipulation or violence; or simply someone who knows that the rightful owner is somebody else.

The Code grants the holder of a possession a series of prerogatives or rights –among others, to recover possession when lost, even from the legitimate owner; to ask for compensation when the thing has been destroyed, among others. Most importantly, after completing a certain amount of time in possession of the land or the property, the holder has the right to file a petition in court in order to acquire a property title. By 1997, a holder in good faith could file a petition after ten years of uninterrupted possession and a bad faith one after twenty years.

¹¹³According to the Civil Code, there are a variety of ways to produce a property title over a privately owned property in Colombia. One is by means of a judiciary ruling issued by a private law judge. In the case of vacant lands, on the other hand, the only way to acquire property is through an administrative decision. But independently of the process of production of the title, the Civil Code mandates that ownership is only fully acquired before the law when the title has been properly registered in the local registrar's office.

The category of *ocupación* can be found in agrarian legislation and is somewhat similar to that of *posesión*. The main difference is that the holder is someone who occupies a public land, not a private one. But like in the case of a *posesión*, she can petition a property title over a portion of the occupied land after certain period of time. In this case, however, the petition should be presented to the administrative authority that has been entrusted the task of managing public lands. Between 1961 and the early 2000s this prerogative was exclusive to the Incora. Article 27, then, was intended to allow *desplazados* to file either a judiciary or administrative petition even after having lost the *corpus*, the material control over the petitioned property.

The social history behind the inscription of articles 19 and 27 in the Displacement Law is yet to be explored. However, the drafters were clearly imagining a hypothetical world where *desplazados* who used to enjoy *posesión* or *ocupación* would turn en masse to judges or the Incora after the displacement in order to secure their rights over the lands. In this world, in addition, the Incora would put together a list of abandoned or dispossessed lands and could then ask the registry offices to exclude the lands in it from any future transaction. Certainly, in this imagined world there is no opacity regarding the dislocations of the agrarian landscape in the midst of violence, no political alignments between Incora and armed organizations or other third parties interested in taking over those lands; and no budget shortages. Moreover, in this imagined world *desplazados* would have the time, the money and the knowledge to use the judiciary system, and produce the evidence required to demonstrate their previous tenure over the land in question and the violent events that led to their displacement dispossession.

Law 387 ordered almost every state institution existing at the time to undertake a series of measures to prevent forced displacement or assist already forcibly displaced populations. The Social Solidarity Network (SSN or the Network, as known at that time), an institution under the Samper administration to administer anti-poverty programs, was entrusted the task of coordinating the

responses on behalf of the displaced. Former Network officials, some of whom I met before going to graduate school and have kept in touch since then or during fieldwork, agreed that despite this additional mandate, the agency was not given supplementary funding or staff. I visited Ana, a social worker who for several years had high level position in the Network, in her office in an international organization. Like her, some of her colleagues had moved to similar positions. Over a coffee she complained that “their hands were already full with work” when they received the news that now they had to address the growing problem of forced displacement.¹¹⁴ On the other hand, a group of mid-level officials from the Network told me over a series of conversations that regardless of what the new Displacement Law had established, in any case they began to experience first-hand the effects of forced displacement over the poor populations they had been targeting in their anti-poverty programs. This was especially obvious for those officials who worked in the areas of the country where aggressions from guerrilla or paramilitary groups were more acute. Gradually they began to notice that some of communities they had been working with were moving out of their places of residence because of the increasing violence around and against them. Eventually they too had to interrupt their governmental activities and stop their visits and interventions.

Meanwhile, the officials managing the same programs and teams in capital cities and main towns were faced with the opposite effect: they found themselves overwhelmed by the massive arrival of displaced families coming from rural areas camping outside of the Network’s headquarters and demanding food and shelter, access to education and health services, and employment opportunities.

Amalia, a sociologist who joined the Network in 1998 and was in charge of supervising a series of communal agricultural projects in the Caribbean region soon found herself embodying the increasing inadequacy of the Social Solidarity programs. She had a series of moments of revelation that convinced her that more than fighting poverty, the most urgent matter was forced displacement

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and –in addition to solving the immediate needs of desplazados arriving to the cities- the lands that displaced rural communities were leaving behind. I met Amalia in the mid-2000s, when the Project had been established and was quietly operating, as I discuss in the following chapter.

Eventually, Amalia would lead the initiative to design and fund the Project and become its first manager. The first moment she told me about came in 1999, when she was suddenly unable to locate the members of a collective sesame plantation in the rural area of El Carmen, a municipality in the hills nearby Sincelejo in Sucre, who had worked enthusiastically with her on the formulation of the project. Suddenly they no longer lived in their farms and were nowhere to be found. Something similar began to happen with similar communities she or her colleagues worked with. At that time very few Colombians had cell phones or access to internet, so reaching or tracking escaping communities was almost impossible.

The second moment occurred shortly after:

Once I was sent to a town so I could meet with beneficiaries of an income generation project and talk about the challenges ahead. But when I arrived, the (Social Solidarity Network's) office was packed with families who had abandoned the rural areas and had been without a place to sleep or a decent meal for days. I tried to talk to my colleague about the specific purpose of my visit –income generation- but soon I realized that (instead) I had to shut my mouth up and help setting up the meals.

That year, Amalia and some friends and colleagues of hers from the Network, the Incora and the World Bank who resided in Bogotá met on a number of occasions to share their sense of impotence and given the violence sweeping across the countryside and to reconsider the development projects they had been undertaking. Under such conditions, “anti-poverty or development programs did not make any sense,” in her words; and their planning and supervision skills, their charts and balances, were also useless. Eventually Amalia and her group received some funding from the Higher Commissioner of Refugees, so that with a small team they could document a series of case studies of communities who had left their lands behind or were in the process of doing so, in order to

understand what sort of intervention could prevent them from losing their properties in the legal sense (Estrada and Rodríguez 2014).

A third moment, to which she went back several times in our conversations, was the Salado massacre of February 2000 (GMH - CNRR 2009). One of her colleagues and closest friends from the Network, Carlos, had been assigned to El Carmen de Bolívar, near Sincelejo. He was alone when he faced the arrival of hundreds of terrorized persons from the nearby settlement of El Salado who entered the town by foot, desperately looking for water and for a place to hide after a group of AUC paramilitaries tortured and killed sixty of their family members, friends and neighbors in front of them. For several days a group of paramilitaries had surrounded the settlement, forced the residents out of their homes and fields and took them into the open air basketball court in the heart of the village.

Once there, paramilitaries randomly selected a group of about forty people and then mutilated, stabbed, choked, or beat them to death in front of the rest. Not a single gunshot was fired. Meanwhile, another group of combatants searched houses and killed and raped women and girls in their homes. Survivors wandered in the fields and woods separating El Salado from the El Carmen for several days without water or food. Some children and older adults perished along the way because of dehydration. When the media and state authorities arrived, the basketball court was covered in a pool of blood. Footage of the red and black spot several meters wide was recorded from a helicopter (Lozano and Morris 2012).

I met Carlos almost a decade later, when he was a Land Restitution delegate in that same region. He told me that back then he did not even have a budget to provide minimal assistance to even a small fraction of the hundreds of adults and children who flooded El Carmen de Bolívar. “I only had an old phone, a chair and a desk,” so he had to rush from door to door asking neighbors for help and enlisting the local priest and other volunteers to collect mattresses, water, food and clothes.

Of the 7,000 people who resided in El Salado, fewer than 800 had returned by 2009 (GMH - CNRR 2009).

In the meantime, in Bogotá Amalia and colleagues of hers from Incora decided to put Articles 19 and 27 “in action.” They knew each other from previous employment and from college. In their minds the first step was to regulate the application of both articles and generate a set of procedures and protocols instructing the Incora and other state authorities how to create an inventory of dispossessed lands so they could formally take them off the market. It had been already almost three years since Law 387 had been passed but no one in the government had carried it out.

In Colombian governmental practice is common to delegate the task of discretionally regulating (*reglamentar*, in Spanish) in detail the general provisions approved in Congress through the production of manuals, protocols, decrees or instructions to the government. The government, in turn, selectively chooses which of these legal mandates are actually developed. Thus, high-level governmental officials can maneuver to explicitly define how, when and by whom is certain action mandated by law is to be undertaken, or on the contrary, to indefinitely delay the regulation or implementation of a legislative mandate at convenience. In some cases, governmental officials can even develop a regulation that is contrary to the legislative mandate and yet issue it by decree, resolution or any other legally binding means until it is struck down by the Constitutional Court or a future administration. In either case the exercise of *reglamentar*, issuing an explicit regulation, is often done in closed-door meetings. It is highly discretionary and records of the decision-making process are rarely kept, or are kept under restricted access. And yet regulation, as policy-making more generally, is also structured by what is considered to be politically, morally and legally acceptable and binding according to a certain community of influential interlocutors located in a variety of positions of power -the international community, the academia, the technocratic elites, lobbyists from the private sector, the political leadership of traditional and new political parties,

human rights NGOs, and other groups. Moreover, regulation and policy-making in Colombian is itself “technical” to the extent that in addition to political or moral considerations the production of regulations is inscribed at the same time in various fields of expert knowledge –including that of legal professionals- that operate and shift according to political logics of their own. In sum, even high-level discretion and unchecked and personalistic decision-making is structured by a complex combination of historically situated social configurations.

In the case of Articles 19 and 27, the World Bank apparently provided the funding to pay for the drafting of these regulations. Incora officials and consultants hired for the purpose, mostly lawyers, sat together for a couple of weeks and came with a draft. Meanwhile, Amalia her colleagues lobbied at the highest level so that the President of the time, Andrés Pastrana, and his closest advisors would agree to turn the draft into a legal statute by decree. Finally, in September 2001, the Presidential office turned the text into Decree No. 2007 of that year.

The decree ordered the municipal and federal committees for the assistance of displaced populations whose creation and periodical meeting was mandated by Law 387 to decide on the protection of a particular area under its jurisdiction either after an event of forced displacement had occurred, or beforehand, in case of imminent risk. To do so, mayors, notaries, registrars, Incora officials, controllers and members of other state agencies were instructed to produce a “plot report” (*informe de predios*) identifying the property owners, the tenants and the people with adverse possessions and *ocupaciones* who had abandoned the area in question or were at risk of doing so, the interval of time elapsed since they acquired such conditions and the basic physical information of the plots of land or properties involved. They were then expected to notify their decision to the local registrar, who in turn would insert a prohibition of transaction into the file of each property or plot of land in question and reject any request on the matter, even from the legitimate owner. The decree

also mandated that the “plot report” was to be considered sufficient evidence for the past existence of the lost tenure, posesión and ocupación, in case of a judiciary procedure.

In theory, the drafters of the decree improved the situation of the displaced beyond the original meaning of articles 19 and 27. First, they distributed the responsibility of identifying the properties, persons and legal relations that had been severed or were at risk, among other agencies besides the Incora, making them all accountable for not undertaking the required actions. Second, from a normative point of view, they improved the legal situation of non-owners. While the original article 19 did not specify whether tenants, poseedores and ocupantes who had left behind land had to be included in the inventory -and could be eventually read as excluding them, the Decree explicitly extended them the same protection than owners by requiring these land to be also taken out of the market as a preventive measure against dispossession. Furthermore, the drafters also provided non-owners with means of proof that the Displacement Law did not mention. Without it, potential petitions of ownership by desplazados were like to be rejected by judiciary or administrative authority for lack of proof.

Lawyers were, once again, responding to a series of established legal practices. Among practitioners of law it is said that in ordinary Colombian judiciary procedures –especially private law cases- claimants are expected to provide the evidence that supports their claim. A professional saying summarizes this general principle: *quien alega debe probar* (the one who claims must prove). In the case of holders of possession, it is up to them to provide documents, testimonies and other means of proof that are able to show without doubt they have enjoyed these conditions in the terms required by law.

With this new decree, initially unknown to anyone outside this small circle of governmental officials, the drafters unilaterally gave non-owners a tool to solve the evidentiary difficulties that, they imagined, the latter would necessarily face after having been expelled from the land or the

property, and losing touch with their communities and their territories, if they decided to make a claim on the abandoned lands.

On the other hand, the decree was still aspirational in that in order for it to be properly enacted there had to be a transformation of institutional practices. By 2001, with very few exceptions, the so-called assistance committees did not operate at all. Local authorities had other priorities and problems and anyone in the central government who was involved in the application of Law 387 knew this. The Network still lacked the staff and the funding to respond; the central state was losing control over larger areas of the country and over local authorities, who were immersed in the logics of paramilitary or guerrilla domination, siding with one or the other or abandoning their posts. All officials in Bogotá knew the Network was facing a flood of *tutela* lawsuits from displaced population demanding that it apply Law 387, especially the mandates related to the desperately needed “humanitarian assistance.” Unlike ordinary lawsuits, *tutelas* are expected to be solved in a matter of weeks by any judge and can be filed by anyone without the help of a lawyer as long as it is meant to protect a fundamental right. As Rodríguez and Rodríguez (2010) and I (Dávila 2009) have noted, among many others, by the early 2000s there was an overall institutional blockage regarding the application of Law 387, and the *tutela* had become the default mechanism by which individuals or families could acquire a response from the Network.

In addition, for any legal practitioner it was obvious that in order to use the judiciary system it was necessary to have enough money, time and energy to spend years waiting for a decision. So it was improbable for forcibly displaced persons to have the means required to file the administrative and judiciary claims that article 27 referred to, even despite the evidentiary changes discussed above. So in this sense, like Law 387, the Decree was politically progressive and technically creative, but it was wishful thinking to the extent that it imagined legal operators and users as somehow outside of the very power dynamics that had caused forced displacement or that had prevented non-owners

from becoming full-fledged property owners before the violence came. Indeed, many years later I asked the staff of the Project if they had ever heard of a *desplazada* or *desplazado* going to court and demanding property rights over lost lands through the invocation of Article 27. After ten years of waiting, they had not.

Article 19, the one regarding the production of an inventory of dispossessed lands and the formal inscription of a prohibition against transactions, required more than a decree. It was necessary to get funding, hire more staff to work with the Incora and the other governmental agencies that had been given the task of putting together the inventory, and help produce the necessary documentation, starting with the “plot reports.”

Amalia and her colleagues were satisfied with Decree 2007 because it gave them authority to act, but they knew the money was not going to come from the central state. So, once again, they began meeting in order to put together a much more ambitious grant proposal than the previous one to present to international cooperation agents for them to fund the application of the Decree.

According to her, it all happened in one chance meeting sometime in late 2001:

One night I stayed up late in the (Network’s) office. I thought I was alone. I remember it very well because suddenly I felt this fear, this panic. So I was rushing to the exit with my heart pounding when I noticed that a light was on in one of the offices. It was that of (...), the person in charge of raising funds for the Network with international donors. She was sitting under a dim light with two people from the World Bank. When they saw me, they asked me to come in and sit down. As I did they asked me if I had any ideas for a plan or project they could fund (apparently they urgently needed to allocate some funds). I said, ‘yes! I have one!’ So I told them what we had been doing with the Decree and so on, and right there we began writing the Project.

After submitting the proposal, however, Amalia didn’t hear from them in months. And when Alvaro Uribe, a seasoned right wing politician from Antioquia was elected president in May 2002, she and most of her colleagues presented their resignations from the Network because they didn’t agree with his politics. By mere coincidence, after Uribe took office, the World Bank approved a very generous grant for the Project to begin operating in several regions of the country; and constructing

“dispossessed lands and subjects” in those particular areas, often in direct contradiction with the administration’s rural development policies and perception of the ongoing cycle of violence.

Part II. Perpetrators, Victims, Legislators and the Renewed Issue of Land: Crafting the Victims and Land Restitution Law

Chapter Three. Demobilizing Paramilitaries, Mobilizing Transitional Justice: Land Dispossession and the “Agrarian Question” Under Uribe’s Administration

The setting: the politics of contestation under Uribe

Alvaro Uribe became president of Colombia in August 2002 and governed for eight years with the highest approval ratings ever recorded for a public servant in national history. Around him emerged a quasi-personality cult and a new political identity intimately tied to his persona: *Uribismo* (Uribism).

Uribe was a seasoned politician from the state of Antioquia, but also one of Colombia’s major landowners, with large extensions of land in his home state and in the neighboring Caribbean plains of the state of Córdoba.¹¹⁵ He was regarded by his political enemies on the “left” as the personification of the particular kind of rural elite that they thought had emerged in the fringes of Antioquia and Córdoba in the late 1970s: a white Catholic and anti-communist *hacienda* owner, distrustful of the peasantry, and with family and social ties ambiguously connecting him with the rising drug cartel of Medellín and with the AUC, the largest paramilitary organization (Cepeda and

¹¹⁵ In previous chapters I have discussed in some detail the historical importance of the Córdoba region in Colombia’s contemporary armed conflict. Córdoba is located in the Northwest of Colombia. It has coastal shores over the Caribbean Sea, extensive and fertile plains irrigated by multiple rivers that descend from the Western range of the Andes and lush mountains covered by tropical forests and coca crops. Córdoba is reputed to have some of the best lands –soils- of the country- and it is a region where latifundia dominates. But partly because of this, Córdoba is also, as some of its inhabitants have described it to me, the “lab,” or testing place of different kinds of armed organizations. Several different guerrilla groups have operated in Córdoba, partly because of the highly unequal agrarian structure which, in terms of some of their founders, made the peasantry more prone to embrace the revolution. On the other hand, because of its coveted landscape, its convenient location near Central America and the sea, drug lords from the Medellín Cartel bought large extensions of lands back in the 1980s. One of them, Fidel Castaño, was the founder of the most ferocious paramilitary organization, the AUC, allegedly as a means to protect his properties, his kin and “the fatherland” from the insurgency. Fidel Castaño’s nickname was Rambo and in the only interview he ever provided before disappearing in 1994 he described himself as a pure-blood anti-communist.

Rojas 2009).¹¹⁶ Friends, family members and people I met during fieldwork who know him personally always have the same impression of Uribe in the private sphere: his only pleasure is land – his haciendas, his horses, and the landscapes of Antioquia and Córdoba.¹¹⁷

He was mayor of the city of Medellín in the early 1980s, at the same time that the multimillion dollar cocaine business of Pablo Escobar and other local dealers was exposed. He then moved to Congress for two terms and then, parallel to the expansion of the AUC, he served as governor of his home state while also managing his haciendas in Córdoba. His father, cattle-rancher and owner of large extensions of land in Córdoba, was kidnapped and then killed in 1983. Uribe and his family have blamed the FARC guerrillas since. Some of his adversaries have argued that his father was a front man for the Medellín Cartel, lending his name to hide their newly acquired lands, and have even suggested that he died in a mafia vendetta.¹¹⁸ In any case, Uribe inherited his father's lands, his cattle, and his love for the life in the hacienda. His most famous one is called El Ubérrimo and is located on the outskirts of Montería, Córdoba's capital, not far from the farms where the AUC's first commandos were trained and conducted their first massacres.¹¹⁹

¹¹⁶ The hacienda was the main socio-economic unit of rural post-colonial Colombia. Its formation and effects over the social order and the political system has been studied in detail, among others, by Fals Borda (Fals-Borda 1982, 1976, 1957, 1964 among others) and Guillén (1979). Both argue that the hacienda was the basis of electoral and state power up to the 1970s, before the urbanization of the country. In Chapter Two I argue that the figure of the hacienda owner –el hacendado– was the model of masculine success followed by both the urban bourgeois who sought to invest in land and the emerging narco-elites. In this regard I want to clarify that like the Uribes, many upper and middle-class families ended up having at least one brother, sister, uncle or cousin involved in the drug-trade. I am profoundly distrustful of the social science accounts of Colombian politics that locate the drug-trade in a limited social niche and single out individual families rather than providing a sociological account of the narcotization of social relations within and across social classes and political institutions of all sorts.

¹¹⁷ Though a millionaire, the rumors are that he only spends his personal money in land, cattle and horses. He wears the same cheap clothes wherever he goes. He does not buy art, he does not care to travel abroad, or learn another language, or taste foods from different parts of the world. He does not attend concerts, art-exhibits, or the movies. In sum, the Bogotá and Medellín urban elites considered him an outsider in terms of his tastes and world-views.

¹¹⁸ In Chapter Six I will discuss in detail these rumors and the story of one particular hacienda that during my fieldwork in the Land Restitution Unit was identified as having belonged to Uribe and his brothers before it was acquired by the AUC's founder, Fidel Castaño.

¹¹⁹ In Chapter Two I discuss the genesis of the AUC. The founder, Fidel Castaño, was also a landowner with several haciendas in the plains of Córdoba. The first commandos were apparently trained in Las Tangas, his favorite property, by former army officials and Israeli and British mercenaries. From there they would launch the first of a long series of massacres against nearby unarmed peasant communities. Sometimes they would use firearms but more often they would

Part of Uribe's popularity derived from his vindictive attitude towards the insurgency, his micro-managerial style of government and, in particular, from the success of his administration in security. The financial revitalization of the military and the effectiveness of the offensive launched against the weakest links of the guerrillas, and the operations against some of its highest chiefs, created a sense of security among upper and middle class urban populations and rural elites. Although this counterinsurgent security was achieved at the expense of rural communities in guerrilla-controlled areas that endured the crossfire and the abuse of both sides in conflict, the insecurity of their situation would largely remain hidden from the public urban eye during his government. Also, the criminalization of social protest, human rights advocacy, unionization and other forms of critical political action reinforced the perception of security among certain upper and middle class publics.

Equally important in Uribe's initial success was the peace negotiation process that led to the demobilization of the AUC, the largest paramilitary organization, officially announced in mid-2003 but secretly carried out since he had taken over office. The potential disarmament of the AUC created some sense of relief among the public and the communities under its grip. And indeed, after the demobilizations began at the end of 2003, the profile of the violence in many of such regions changed significantly, even in areas where paramilitary combatants would resume armed activities. Rather than indiscriminate terror and excesses, the post-paramilitary violence would operate selectively, often against members of competing gangs, public authorities or people directly immersed in human rights organizations engaged in campaigns to make visible, prosecute and obtain redress for atrocities. Despite or maybe because of this selective violence, the AUC's demobilization was perceived by many urban and rural communities as an improvement in security.

Finally, his openly pro-private investment agenda and trickle-down approach to economic policy

first torture and then behead their victims. They became known as the Tangueros, the A-1 Team –borrowing from the 1980s US series- or the “head-choppers.”

in general assured him the support of the financial, business and agrarian elites. Not only would the government outsource mining, infrastructure and agrarian development to corporations and private entrepreneurs, giving them new and very profitable business opportunities, but it would offer capital investors generous incentive packages with tax exemptions, custom-made military and legal security for their investment, and sometimes even subsidies. Agrarian policy under Uribe was particularly generous with landowning elites and agro-businesses. He devised a series of programs that transferred public lands and large amounts of capital to them at no cost with the argument that it increased their efficiency and competitiveness in international markets. In contrast, to the dismay of many liberals, some conservatives and all the left, Uribe's plans for the poorest peasantry was to encourage their conversion into cheap labor rather than self-sufficient producers and property owners.¹²⁰

This combination of the selective redistribution of violence and the alternative means of production initially generated high economic growth rates, well above those of the past decade, while at the same time deepening the gap between the richest and the poorest. The forcibly displaced and the survivors of rural violence, who were the poorest among the poor, were left outside of most income-generation schemes sponsored by his two administrations.

At the same time, Uribe's government was constantly confronted with accusations from human rights organizations and the progressive academia for its authoritarian tendencies and the president's proximity -both social and ideological- to the AUC's highest commanders. His closest collaborators would continuously exhibit a disregard for existing law and defy the system of checks and balances established in the constitution. Scandals about governmental officials and allies in Congress acting outside the law to push forward Uribe's military, political and economic agenda would be frequent.

¹²⁰ The hacienda Carimagua affair and the program called Agro-Ingreso Seguro are emblematic of the government's approach to the peasantry as economic subject.

Indeed, they would promote bills openly violating the Constitution, ignore legislative procedures to introduce constitutional amendments –including Uribe’s own reelection-, threaten and spy on the judiciary authorities that sought to hold them accountable, and use intelligence agencies to intimidate political opponents and critics. Uribe’s rivals often accused him of managing the country as if it were his *hacienda*, meaning by this that he would operate as an *hacendado* –as a charismatic but authoritarian and paternalistic strong man, using his authority to maintain a vertical and stratified social order.¹²¹ Moreover, at some point during his eight years in office, one of Uribe’s main political advisors argued that the rules limiting presidential power were undemocratic in substance since they limited “the people’s will” to be commanded and ruled by Uribe: he advocated for a shift of paradigm from the rule of law to what he referred to as the “rule of opinion.”¹²²

The scandal infamously known as that of the “false positives” was emblematic of the Uribe administration’s willingness to fabricate a sense of security, political stability, and legitimacy by waging a war against and with the poor, and violating the very same legal and political order that he claimed to protect. In 2007, word came out that army officials had been claiming the corpses of young men from poor neighborhoods in Bogotá and other cities who had been reported missing by their families as guerrilla casualties to raise their body counts. This scandal was also the most extreme example of Uribe’s administration resignification campaign to change the dominant political imaginary and dismantle the political common sense that the previous governments –mostly urban, bourgeois, with cosmopolitan and liberal aspirations- had set in place. Following Fassin (2012), it

¹²¹ The *hacendado* is a social identity and an ideal-type that has emerged from the extensive study of the region’s schemes of agrarian production and vernacular forms of capitalism. The *hacendado* is the provider for, but also the sovereign of a community in a particular Latin American territory. Many of the region’s literary masterpieces revolve around the figure of the *hacendado*. The most famous is probably Mexican novelist Juan Rulfo’s character and novel *Pedro Páramo*.

¹²² Finally, over those eight years there would also be a long list of additional scandals linking Uribe’s administration with the Medellín Cartel and the AUC. Each scandal would provide human rights organizations and political opponents with additional reasons to believe that Uribe had not only been complacent in regards to the formation of paramilitary organizations in the early stages of his political career but had been personally involved in planning, financing and promoting their expansion.

can be said that Uribe and his advisors undertook a “semantic (re)configuration” of all things political. A semantic configuration, in Fassin’s terms is “a set of notions that are constructed together and complement one another to account for a social reality.” In the case of *Uribismo*, this “reality” was structured around a Manichean enemy-friend discourse, which combined Washington’s language of the war on terror with Cold War anti-insurgent lexicon.

The Uribist account of social and political reality departed radically from that of the liberal techno-political elites of the late 1990s, described in previous chapters, in which the causes and effects of the insurgent and paramilitary violence that spiraled at that time had been increasingly interpreted as emerging partly from structural problems such as land concentration and institutional failure and which, therefore, demanded structural solutions to be undertaken in parallel to attempts to negotiate peace. Under the Samper (1994-1998) and Pastrana (1998-2002) administrations, the governmental discourse had treated guerrillas as criminals and enemies but also as political actors who could be incorporated into the political system. Peace negotiations were attempted on this basis. Similarly, the persistence of the insurgency was often conceived as a manifestation of the weakness of the state, the historical inequalities between the countryside and the cities or between the rural elites and the peasants.

On the effects of war, the official discourse under both had been that of admitting the existence of an increasingly complex humanitarian crisis demanding special institutional responses and anti-poverty programs. Despite variations from one government to the other, high-level officials had treated human rights organizations and think-tanks that made use of human rights optics, such as Codhes (discussed in Chapter One), as morally and intellectually adequate interlocutors in the definition of problems and governmental solutions. They were also admitted as verifiers of the legality and adequacy of state actions and more generally, they were conceived of as contributing to democracy, peace and development. Even though under both governments, human rights activists

and scholars studying violence -especially those focusing on the alliance between the military and the AUC- had been ferociously targeted, among them there was still a perception that in both governments they could find allies who were also committed to stopping the violence and holding perpetrators accountable.

In contrast, Uribe's government would explicitly deny the existence of an internal armed conflict and redefine guerrilla violence as terrorism or profit-driven criminality. Also, from the beginning, its relation with human rights NGOs and think tanks historically linked with leftist political activism would start off as mutual distrust and soon evolve into mutual incrimination. During my fieldwork, staff from Codhes and other organizations would emphasize that there was certainly a qualitative shift in their relation with governmental authorities with the election of Uribe.¹²³ In response to the criticisms against Uribe's administration, the president himself and some of his closest advisors would soon refer to human rights organizations "as terrorists in disguise" and reframe their judiciary and informative activism as a veiled form of subversion, revitalizing the old Cold War thesis that the denunciations and litigation directed at holding state agents accountable for the violation of human rights precepts was in fact a continuation of the insurgent war through legal means.

From the perspective of Uribe's government, this lawfare undermined the state's capacity to defeat their internal enemy. Also, as some military officials I met during fieldwork suggested, the fact that some of this activism advocated for people prosecuted under charges of rebellion and treason and that most activists were leftists meant that, as far as they were concerned, some among them were supporters of guerrillas, if not active members. Thus, many activists and journalists were directly accused by Uribe's officials of insurgent activities, subjected to criminal investigations,

¹²³ Codhes, or the Consultancy for Human Rights and Forced Displacement, is Colombia's leading NGO on the issue of "counting the displaced and making them count." Established in 1992, Codhes was founded by people who themselves had been forced to flee because of their political affiliation to leftist political organizations, or their work as human rights activists. In Chapter One I discuss in some detail Codhes' protagonism in introducing the category of desplazados, the forcibly displaced, into legal and political common sense in the 1990s.

discredited and sometimes killed. Later on, judiciary authorities found evidence that intelligence agencies had indeed provided the AUC lists of people who were suspected of collaborating with the insurgency, some of whom were later gunned down. NGO staffers I interviewed told me about different episodes disrupting their routine in the office or fieldwork that happened to them during Uribe's administration which they interpreted as government persecution: people breaking into their offices, unidentified cars or individuals following them, someone hacking their personal emails and digital archives and receiving anonymous calls in which the voice at the other end of the line threatened to kill them.

In relation with forced displacement and the humanitarian crisis, Uribe's administration would initially continue with the same low implementation levels of Samper and Pastrana and then issue decrees and policies reinforcing the overall blockage effect discussed in the previous chapters. As lawsuits against the administration multiplied for lack of compliance with existing legislation regarding the rights of desplazados, the Constitutional Court issued a ground-breaking ruling in 2004 known as the T-025. In this ruling, the Court declared the existence of an "unconstitutional state of affairs" because of the massive, systematic violation of the rights of the displaced and the failure of the state to protect them. This ruling ordered the government to redesign policies, provide a sufficient budget and achieve observable results.

At the same time, both in the public sphere and privately, high level officials, including Uribe, would dispute the existence and gravity of the problem of forced displacement and would dismiss the estimations and observations of Codhes concerning the geographical and social scope of the phenomenon. One presidential advisor, the same who defended the "rule of opinion," insisted in newspaper articles and interviews that forced displacement was simply rural-urban migration, and warned of the many "false victims" who were demanding support and draining the resources of state agencies.

Consistently with the latter, the high- and middle-rank governmental officials of previous administrations who had been in charge of the assistance programs for desplazados were replaced. One crucial exception was the staff of the Forcibly Displaced Population Land and Patrimony Protection Project (the Project), an initiative funded by the World Bank and discussed in the previous chapter.

I would first experience the polarization around Uribe's figure and agenda as a college student embedded in a liberal private law school located in downtown Bogotá –a social space removed from the rural world that had given rise to Uribe, the FARC, and the AUC. There, I would be protected from guerrilla and paramilitary violence and engage with it not as a personal reality but as one exerted and endured by others, perpetrators and victims, with whom it would be easy to side with or against, through the lens of the rule of law, democracy, equality and other liberal aspirations.

The occurrence of paramilitary violence was particularly distant, and would only become palpable for me when reported in the radio or the main newspapers or the trips that we organized with other college friends to travel and see “the real Colombia.” Retrospectively, I realize now that we ended up choosing AUC controlled areas as our destination, where we felt –and were indeed- safe, given our unmistakable urban upper-middle class ways and appearances. For the same reason, in the early 2000s, we were in constant “danger” of being the targets of guerrilla violence. To get to class I would drive my car for an hour, a regular Subaru that my mother had gotten armored for me so I would not be kidnapped. We were not rich, but my step-father worked for the World Bank and we had been told that apparently the World Bank would hand the kidnappers a handsome ransom in case they got hold of any member of our family. Still, in class we continuously used the theories of law of Hans Kelsen, Carl Schmitt and H.L.A. Hart to discuss whether guerrillas were political actors and to what extent, because of their *de facto* control over territories and people, and the obedience they commanded, they could be considered as a parallel state and their regulation as a sort of law –“a

guerrilla law.” I was obsessed with empirically studying the guerrilla’s rules governing both behavior among combatants and civilians, but that object of inquiry was beyond my reach, unless I crossed the social and geographical lines separating me from the guerrillas’ sovereign spaces and put myself in serious risk of entering into their own semiotic matrix of friends, enemies and war assets.

Invocations of the transitional justice paradigm: truth, justice and reparation in dispute

Weeks after taking office in August 2002, Uribe announced his plans to start an eventual peace process with the AUC and by the end of the year, the AUC declared a unilateral cease-fire. Then, in the first months of 2003, in a town located in Córdoba a dozen miles away from where the Castaño family –the founders of the AUC- had trained their first commandos back in the late 1980s, a governmental delegation carried out a series of secret dialogues with paramilitary commanders. A peace agreement was signed soon after and Uribe’s delegates explained that the process of demobilizing personnel and weapons would start before the end of the year and conclude in 2006 at the latest.

According to the government’s own estimates, approximately 30,000 combatants would be reincorporated into civilian life during that period. But the contents of the agreement were not released to the public. Instead, the government presented the first draft with the legal framework to be eventually applied to demobilized combatants in relation with their responsibility for their crimes and the damages caused to victims. The draft, called the “Alternative Criminal Regime,” offered combatants low and suspended punishments even in the case of so-called crimes against humanity and violations to humanitarian international law.¹²⁴ If defendants exhibited “good behavior” and conducted a series of redemptive deeds aimed towards “the reparation of victims, the resolution of

¹²⁴ Congress of Colombia. Legislative Draft No. 085 of 2003, also known as the Alternative Criminal Regime, Official Journal No. 436 of 2003.

the armed conflict and the achievement of peace,” the ruling could be postponed indefinitely. In addition, combatants were also exempted from revealing the totality of their crimes or disclosing sensitive information about their operations and their allies while at the same time they were promised full political rights and the cancellation of pending extradition requests for drug trafficking charges against them.

The Peace Commissioner denied having decided on the draft with the paramilitary chiefs. Nonetheless, the draft seemed to reflect adequately what some of the commanders had stated in the media as the conditions or requests in exchange for peace. A man by the alias of Don Berna—a drug trafficker who inherited part of Pablo Escobar’s organization, and had joined the AUC- and Salvatore Mancuso, one of its historical commanders, had declared to the press “they were not willing to spend a single day in prison.” (Fundación Social 2006).

As had occurred with many other governmental initiatives since the beginning of Uribe’s administration, the international community, human rights NGOs and international organizations, as well as the political left, found the draft unacceptable. Critiques varied in tone and argument and emphasized some flaws over others but mostly agreed, as Uprimny (2011: 5) points out, that the draft was “ethically unfair” and also “legally unviable.” The main reason, repeated in the many statements released on the subject by different organizations, was that the draft violated the legal standards established in recent rulings by the Colombian Constitutional Court and the new international standards on *transitional justice*.¹²⁵

By then the paradigm of transitional justice had increasingly become the dominant measure by which the international community assessed morally and politically sound state actions in relation

¹²⁵ There were other reasons as well, but less definitive, when setting the terms of the public debate. Thus, for example, the US government objected to the draft because of its departure from transitional justice but also because the initial proposal could be used by combatants with drug-trafficking charges to avoid their extradition to the US. In two press releases in late 2003, Ambassador William Wood expressed his worry that drug lords could easily buy their way into the paramilitary ranks so to be exempted from extradition processes.

with transitions from dictatorship to democracy or from war to peace. According to Arthur (2009), this transformation had started in the late 1980s in places like the Latin American Southern Cone. In her words: “the field of transitional justice, so defined, came directly out of a set of interactions among human rights activists, lawyers and legal scholars, policymakers, journalists, donors, and comparative politics experts concerned with human rights and the dynamics of “transitions to democracy” beginning in the late 1980s” (Arthur 2009: 324).

In those settings, the leadership of the new governments had faced a shared set of dilemmas and concerns regarding the crimes of their predecessors and had openly discussed to what extent both harsh punishments and amnesties could foster the transition or, on the contrary, put it at risk (Teitel 2014, 2003). In those settings, it had been argued that prosecution of perpetrators under ordinary law could push them to resist or sabotage the transition and, in any case, that their criminalization and exclusion was at odds with their project to create a more democratic and inclusive new political and social order. On the other hand, it was also said that no prosecution at all or insufficient reparation of victims could also excite revenge and undermine the moral ground and legitimacy of the transition . The field, then, “began to emerge as a response to these new practical dilemmas and as an attempt to systematize knowledge deemed useful to resolving them.” Initially, then, it would involve a comparative analysis of national experiences and the creation of a “knowledge base” (Arthur: 324).

Throughout the 1990s this work of comparing and contrasting national transitional experiences underwent a global expansion from the Southern Cone to other localities and, according to Teitel (2014, 2003), brought along with it the establishment of a new set of organizations, programs, publications and fundraising initiatives, as well as the creation of new types of careers and forms of prestige and expertise. Soon, a second stage in the configuration of this transnational field of

transitional justice would take off with the creation of the UN's special tribunals for Yugoslavia and Rwanda, the International Criminal Court and the formulation of rulings based on transitional justice literature by other human rights courts such as the Inter-American Court. By the end of the decade, all these international authorities, as well as the UN, would be producing a body of normative dispositions regarding transitions and dealing with the tensions between peace and justice in principle inherent to them.

In Colombia, however, the “vernacularization” (as Levitt and Merry (2009) would call it) of the transitional justice paradigm by the local human rights community occurred simultaneously if not as a consequence to the initial approaches between Uribe's government and the AUC. Up to Uribe's election in mid-2002, peace politics in Colombia had only tangentially overlapped with the field of transitional justice in the double sense of both an ensemble of normative precepts and as field of social and political practice in the terms of Bourdieu. Right after Uribe's election, the human rights community, international organizations and respected legal academics began to argue that although no “hard law” instrument –either treaty or ruling- listed in any organized manner the transitional justice standards that were scattered in many international legal dispositions, the new Uribe government had to follow them if it wanted the demobilization to comply with international law (Gómez 2014).

These rules had been compiled by experts in the field. In the case of the Colombian appropriation of transitional justice, the compilation conducted by the UN's special “relator” in matters of impunity, Louis Joinet (1997), was received as the best and most authoritative articulation of the new orthodoxy on the issue of “transitions.” Though such text was technically “soft law” –as lawyers like to refer to international legal dispositions that are not automatically binding-, it was still attributed legal and moral authority since it was an attempt to organize in a semi-codified manner

the rulings and other dispositions issued by international law authorities.¹²⁶

The main conclusion of Joinet's report on the new corpus of treaties and rulings governing transitions from war to peace was that nation-states have the sovereign prerogative to suspend ordinary criminal regimes and issue alternative ones to prosecute individuals or armed organizations willing to give up the armed struggle as a means to facilitate peace. However, Joinet concluded that this corpus also contains a set of dispositions that implicitly and sometime explicitly imposed upon states the correlating obligation to vindicate the rights of victims to truth, justice and reparation. So, the report argued, any agreement and derived institutional design meant to facilitate a transition could introduce an alternative justice regime for the sake of peace, but only as long as it offered victims a minimum satisfaction of these three basic rights. In the case of the right to truth, the Joinet report asserted that at its core was the state's obligation to grant victims the chance to know the specific circumstances of "time, modality and place" in which the facts affecting them or their loved ones occurred. As for the right to reparation, the state had the obligation to provide certain kind of remedy for the damages endured. The report did not predefine the actual mechanisms or institutional designs to be employed to fulfill these minimum requirements, leaving it to the discretion of state authorities. As for the right to justice, the report established that however they may manage the transitions, states could not offer amnesties nor pardon perpetrators of crimes against humanity as defined by international public law (Botero and Restrepo 2006).

Thus, Uribe's administration Alternative Regime draft was accused from the outset of departing from these international standards by being too generous with perpetrators and denying victims their

¹²⁶ Tracing the translocal trajectory and articulation of this orthodoxy is well beyond the reach of this dissertation. Still it must be noted that the Inter-American Court for Human Rights is one of the main sources of the Joinet Report. And similarly to what happened with the legal category of forced displacement, Latin American legal activism on human rights has played a major role in the formation and globalization of transitional justice orthodoxy. In the specific case of Colombia, in addition, by then the Constitutional Court had treated similar soft law instruments, including the Deng Principles on Forced Displacement, as binding within the national territory. So even if the Joinet report was not automatically binding, a portion of the legal community did consider it as having such potential.

rights to truth, justice and reparation. Most critics noted that the draft explicitly violated the non-impunity mandate in relation to serious crimes and did not offer enough incentives for combatants to contribute to the clarification of truth or satisfactorily conduct the reparation of victims. As Gómez (2014) and Uprimny and Saffón (2007) have suggested, Uribe's government initially formulated and defended the Alternative Regime draft in different terms to that of the transitional justice –i.e. as what was “politically viable”- but this changed after the first round of critiques. From that point on, the government's delegates and the president himself would begin to present the draft in local and international scenarios in an increasingly “transitional language” (Gómez 2014), strategically appropriating the authority of the new paradigm to show that the draft correctly balanced peace and justice.¹²⁷ Soon all speeches, press-releases and technical documents from Uribe's government would decisively present the Alternative Regime as consistent with those standards.

On the other hand, as this happened, the AUC and other observers insisted on evaluating the draft in terms of the incentives for “peace” it offered and whether it reflected adequately existing power relations since in most of the country, the argument went, the paramilitaries had defeated the guerrillas. In many of their interventions, AUC commanders emphasized the tensions between peace and justice or peace and law more generally, and referred to human rights rules and activists as obstacles in the way of peace. Alias Don Berna accused the critics of the draft of engaging in a

¹²⁷ For example, the Peace Commissioner and main delegate of the government in the negotiation table with the AUC published a series of articles and delivered dozens of conferences and talks around the country, the US and Europe in which he presented the legal advantages or virtues of the Alternative Regime in terms of transitional justice. In various occasions between 2003 and 2004, he compared it with the peace agreements signed with the EPL, the M-19 and other guerrillas of the early 1990s, in which former combatants had been granted full amnesties without consideration of needs of victims. In any event, in the Woodrow Wilson Institute he assured that unlike what had happened in the past, when victims were ignored. “We have presented a draft that has been conceived from the three axes of Truth, Justice and Reparation. It is not a “forgiving and forgetting” draft but one that establishes judiciary investigation, reparation of victims and offers an alternative criminal regime (...). The benefit [for combatants] is the suspension of punishment, but only after [they] fulfill a series of obligations: cessation of hostilities; submission of military equipment and arms; (...), and (...) reparation actions on behalf of victims” (Idepaz 2004).5/11/18 10:02 PM

certain kind of “humanitarian fundamentalism” that was getting in the way of substantive peace. Similarly, the paramilitary commander Ramón Isaza referred to transitional justice and its principles of truth, justice and reparation as a fancy way of talking about and undertaking a veiled form of revenge “against those of us who could not be defeated in battle” (Fundación Social 2006: 124).

According to Gómez (2014: 91), the insistence of Uribe’s government on the Alternative Regime draft led human rights organizations and the international community to work more intensively and in a coordinated manner to change the draft. They organized multiple closed-door workshops, conferences and publications with world-class legal experts aimed at government officials and Congress representatives with the hope of influencing their admission and understanding of transitional standards. Finally, after a series of such events, the administration agreed to introduce a set of modifications to the Alternative Regime draft that gestured towards the orthodoxy of transitional justice, especially in relation with the right to justice. This new version was renamed as “Justice and Reparation” and included incarceration for perpetrators of serious crimes with the possibility of probation after spending a fifth of the sentence in a federal prison or in a special reclusion center. The new draft also kept open the possibility of extradition under charges of drug trafficking (Fundación Social 2006). On the other hand, the new version kept some of the most lenient precepts such as exempting combatants from revealing certain truths and bearing the burden of reparation.

When this version was made public, AUC commanders threatened to leave the peace process. Between April and July 2004, the negotiation was in the verge of rupture. One of the original AUC commanders, Salvatore Mancuso, stated that the demobilization would only be achieved as long he and his people could “return to a civilian life without the specter of extradition or that of the International Criminal Court” (Fundación Social 2006).

When the modified draft was submitted to Congress, the AUC leadership rejected it, referring to

it as a “capitulation policy”: “(...) prison for five to ten years, individual judgment, crime by crime judgment, extinction of political and patrimonial rights, among others? What kind of political negotiation is this?”¹²⁸ The crisis got worst when days later, Carlos Castaño, the political chief of the AUC, vanished. Still, somehow the government was able to keep the negotiation from falling apart and in July, when the Congress inaugurated the new legislative year, Uribe’s coalition invited three AUC commanders to address the Senate (Fundación Social 2006).

For Gómez (2014), the fact that the contention around the demobilization of paramilitaries had come to be formulated *within* and in the terms of the field of transitional justice was a political victory for the human rights community. However, as Uprimny and Saffon (2007) show, this also had some paradoxical outcomes, as the government and other political actors –including the AUC commanders- appropriated the transitional lexicon to keep precepts in the draft that in substance could be considered contrary to the minimum standards of transitional justice. And yet, Gómez (2014) remarks, the political dispute had indeed been successfully redirected towards the content and meaning of the transitional triumvirate -truth, justice and reparation- and questions about victimhood: which truths need to be searched for? What damages have to be repaired? By which means? Who must bear the burden of reparation? What crimes and whose actions should be punished in order to fulfill the international standards? Who shall count as victim?

In the years that followed, and up to the end of Uribe’s second term in 2010, the human rights community, the Constitutional Court, international organizations and the political opposition, on one hand, and Uribe’s administration and coalition on the other, engaged in a long political and legal battle to stabilize the contents of these three rights and answer such questions. As a general trend, as Gómez (2014) puts it, the government would propose bills, decrees and policies with “thinner”

¹²⁸ Semana Magazine. April 11, 2004. “Comunicado de prensa de las autodefensas sobre el Proyecto de Alternatividad Penal.” Available at: <http://www.semana.com/noticias/articulo/comunicado-autodefensas-sobre-proyecto-alternatividad-penal/64777-3>

content, whereas its counterparts would try counteract with “thicker” content.

The question of land dispossession (*despojo*): unexpected alignments and the patrimonial amnesty of paramilitaries

In this context of the dispute around the rights of victims and the obligations of perpetrators of paramilitary violence, the “agrarian question” –that is, the right allocation of lands- and especially, the concern about the agrarian counter-reform of the 1990s, acquired a renewed political urgency.¹²⁹

The sedimented history of the agrarian question gained another layer of complexity -that of transitional justice- adding to the previous concerns and debates about land as a means towards a variety of utopias – development, equality and ultimately modernity- that of land as key for the transition to peace.

As discussed in a previous chapter, between the mid-1990s and the year 2002, a set of specific actors from the human rights community (Codhes 1999; BCC 1999; WFP 2001), the academia (Reyes and Bejarano 1998) and the technocracy (Erazo et al 2000) alerted about the expansion of an “agrarian counter-reform,” instigated first by the narcos in the 1980s, and then armed organizations and extractive complexes. Each of these techno-political actors sought to count the number of hectares either abandoned by desplazados or accumulated by illegal actors and to produce an analysis exploring the apparent causality linking forced displacement with land dispossession and accumulation from their own particular perspectives –human rights, the political economy and geography of the armed conflict or micro-economic and econometric analyses.

¹²⁹ In previous chapters I have explained in detail that since the 1930s the “agrarian question” –or the dispute around the correct allocation of lands - has been a constant concern and matter of dispute among Colombian political elites and has been at the crux of political identities and alignments. In Chapter Two I offer a genealogy of the agrarian question between then and the early 2000s and discuss in detail the shifts in the agrarian and the political landscape and some of the concomitant shifts in the terms of debate. I also argue that among certain audiences it was an indisputable truth that not only a massive phenomenon of forced displacement but also an agrarian counter-reform had been conducted by the paramilitaries and the narcos during the 1980s and 1990s.

By the time Uribe took office, two figures had already been in circulation for a couple of years within this techno-political circuit. The first one was the three million narco hectares that Reyes had suggested back in 1997. The second, less known or commented, was the figure of four million released in the name of World Food Program but attributed by some sources to Codhes. There was no certainty if and to what extent these two ensembles of hectares overlapped. Finally, some of the different attempts to reckon with dispossession agreed that on average, each newly displaced family had left behind about twenty hectares (Conferencia Episcopal 1995; Erazo et.al. 2000)

As for forced displacement, on the other hand, Codhes' monitoring system had showed a steep increase of annual rates between 1996 and 2002. In mid-2002, at the time of Uribe's election, Codhes alerted that the data showed "a dramatic average" of 1000 new desplazados per day (Codhes 2002a: 1). Then, a bulletin claimed that according to their calculations in 2002 412,553 people had fled their places of residence, for an overall historical total of a least 2,906,389 desplazados (Codhes 2002).

After the election of Uribe and as the peace negotiations with the AUC progressed, this same group of distinct but coincident analysts entered into the conversation about the paramilitary demobilization and its implications in terms of land dispossession. Whether from the standpoint of inefficiency, inequality or a mixture of both, they agreed that the expansion of the paramilitary and the intensification of violence had made things worst and what had resulted was an undesirable agrarian landscape in which a host of the problems they had studied –atrocity, illegality, inequality, inefficiency, loss of sovereignty- seemed to have merged into a complex and multilayered dystopia.

The technocracy and some of the agrarian question scholars were not only outside of the field of transitional justice but some were distrustful of others' methodological choices and political affinities. Still, they would align to vindicate either the rights of victims in relation with the lands they had left behind because of violence or, if not, at least would work actively beginning in 2002 to

better understand the agrarian counter-reform problem and provide reasons and recommendations to revert it. Thus, they would actively participate in the formulation of the many critiques that the government and its coalition in Congress would receive by these and other actors concerning the Alternative Regime's relation with land.

The main one was that the draft granted AUC combatants a "patrimonial amnesty" since they were not asked about their current properties and were not explicitly asked to surrender them. Indeed, the first version exempted combatants from punishment if they conducted a series of redemptive deeds, but it did not clarify which ones (Uprimny 2011). Article 6 loosely defined eight actions without specifying if this was an exhaustive list of what combatants had to do to be granted a reduced punishment, or if they would get to choose at their convenience. And yet, although two of those involved "submitting properties and possessions" to state institutions or NGOs so they would use them for the reparation of victims, it was not clear if these were mandatory. From the beginning, then, Article 6 was read as providing combatants a way to evade their patrimonial obligations with victims and keep the spoils of war for themselves. As for victims, though the original draft promised them compensation, some experts also read Article 6 as implicitly denying them the restitution of the specific real properties they could have lost as a consequence of violence since the recipients of the "properties and possessions" were the state and NGOs, not the original owners or tenants.

Starting in 2003 an unexpected groups of critics from across the political spectrum would reiterate the patrimonial amnesty critique in a great variety of discursive spaces and settings –ranging from press releases to closed-door meetings with high level officials and Congressmen- and align around it. The cases of land dispossession in Chocó, Urabá and Córdoba during the Castaño's offensive against the FARC would serve as concrete illustrations of what a variety of publics beyond the human rights community increasingly believed to have been a nationwide problem, and thus served as warnings about the implications of such amnesty.

As expected, human rights NGOs, international organizations, victims' grassroots, the leftist opposition and the scholars of the agrarian question were among the first to openly accuse the government of protecting the violently acquired (Ronderos 2015) patrimonies of AUC commanders and their civilian allies. Then, some of the economists embedded in neoliberal academia and the local and transnational technocracy, as well as bourgeois politicians from the liberal and conservative parties –some of them even within the government coalition in Congress- followed. And last but not least, the commander of an AUC dissident group that had initiated a war against the majority faction joined the echo of criticisms from his hiding place.

From their position of authority and in different tones and styles, each of these actors would assert the occurrence of an agrarian counter reform and approach it as either a consequence or, in many instances, as the cause of the AUC's counteroffensive and expansion plan. Together they would create and put in circulation representations of the magnitude and gravity of land dispossession and of the idea of land as the motive for war, reinforcing each other's opinions and authority. Moreover, some of them would argue that the internal armed conflict was, ultimately, a *story of greed*. Statements, reports, numbers, maps, charts, narrative bits in the form of academic writing, journalistic accounts, movies and novels that had the issue of land dispossession in common were released.¹³⁰ Adding to this, the pro-establishment media -especially the newspaper *El Tiempo* and *Semana Magazine*, belonging to two of the most powerful political families of the 20th century – the Santos and López families-, would actively replicate these claims adding to the effect of a certain consensus among technical national and international elites.¹³¹

¹³⁰ See for example: reports about Jiguamiandó and Curvaradó by the the Human Rights Commission; journalistic accounts like Molano, Alfredo (2001). *The Dispossessed. Chronicles of the Desterrados of Colombia*; and the novel *A Tale of the Dispossessed (La Multitud Errante)*, published in 2001 by Laura Restrepo.

¹³¹ *El Tiempo* newspaper belonged to the Santos family. President Eduardo Santos was one of the founders and two of his heirs held office under Uribe. Francisco Santos was his vice-president and J.M. Santos was appointed Minister of Defense and then chosen to be Uribe's successor. *Semana Magazine* is an influential political publication owned by the son of President López (1974-1978).

In September 2003 there was a chain of reactions to the original draft specifically related to this issue of the patrimonial amnesty. A spokesperson for the European Union commented: “We are against impunity and we hope that the agreement (with the AUC) does not harm the rights of victims to truth, justice and reparation in relation with the properties and lands lost and the desplazados’ ability to return to their former homes.”¹³² Similarly, the American ambassador declared that: “the US wants a stronger regime to get hold of the properties of illegal armed groups and, this way, undertake a more efficient compensation of victims” (Fundación Social 2006: 32).¹³³

At the same time, *Semana Magazine* published a list of the main doubts and concerns regarding the Alternative Regime draft and emphasized the issue of land.¹³⁴ And then the General Accounting Office –the state agency in charge of supervising public spending- followed with a report arguing that more than 40% of the country’s fertile lands, about 4 million hectares, had been acquired by drug traffickers in the previous decades.¹³⁵

El Tiempo issued an article entitled “Land, Weak Point in the Negotiation with the ‘Paras’.”¹³⁶ Days before, anthropologist and Rutgers University professor Aldo Civico had interviewed a paramilitary commander and AUC dissident known by the alias “Doblezero.”¹³⁷ This and other articles reproduced excerpts in which Doblezero voiced his concerns about the current negotiation process with the AUC, the predominance of drug-traffickers in the leadership rather than “authentic paramilitaries” and the narco agrarian reform they had conducted in the last decades in defiance of

¹³² *Semana Magazine*. 2003, July 13. Impunidad, principal preocupación. [Last accessed July 12, 2016]. Available from: <http://www.semana.com/noticias/articulo/impunidad-principal-preocupacion/59366-3>

¹³³ See also *El Tiempo*, 2003, October 10. ?

¹³⁴ *Semana Magazine*. 2003, July 21. Un buen comienzo. [Last accessed July 12, 2016]. Available from: <http://www.semana.com/nacion/articulo/un-buen-comienzo/59458-3>

¹³⁵ General Accounting Office, 2003. I have been unable to locate this and the other reports issued by the GAO. However, I have incorporated the reference because many documents and statements of the time refer back to it as the source. Also, I must note that the head of the GAO at that time was Carlos Ossa, who had served as the head of the Incora in the late 1980s and had been among the first to trigger the alarm around the narco-appropriation of land.

¹³⁶ *El Tiempo* newspaper. 2003, September 2. Tierra, el punto débil en la negociación con los paras [Online. Last accessed: June 26, 2016]. Available in: <http://www.eltiempo.com/archivo/documento/MAM-1020984>

¹³⁷ In 2009 Civico published the book *Las Guerras de Doblezero*. No public

the original plans of the AUC founders.

In the late 1980s Fidel Castaño, the creator of the first AUC commando, recruited Doblecerro, a former army official, who became his personal assistant and trusted friend until his disappearance in 1994 (Ronderos 2015; Civico 2009). He actively participated in the training of Castaño's first death squads and in the initial round of massacres and assassinations they perpetrated in Córdoba and neighboring Urabá. A former paramilitary whom I met during fieldwork assured me that Doblecerro was one of the original "head-choppers" (*mochacabezas*) and an "evil and ruthless killer." Then, in 1990 Doblecerro also participated in the "private agrarian reform" that his boss launched in Córdoba and Urabá in 1990, aimed at distributing some of his properties among the victims of the violence perpetrated by his group and guerrillas, among them former combatants of both sides and poor families of Montería. As Castaño explained in the one of the few interview he granted, this was part of his plan to promote peace in Córdoba (see Reyes 2016, 2009, 1991).¹³⁸ After his boss vanished, Doblecerro continued in the AUC even when, in his words, the younger Castaño brothers "sold the organization to drug traffickers who were not committed to the counterinsurgent cause" out of convenience (Civico 2009). In the interview with anthropologist Aldo Civico Doblecerro claimed that this "association between paramilitaries and drug dealers set off an agrarian counter-reform," to which he added:

"If Fidel Castaño came back from his grave, he would drop dead again when realizing that Don Berna, the successor of Pablo Escobar, is the owner of the lands he distributed among peasants... (...) We coached peasants to not sell the land, [told them] that violence would pass. Unfortunately, (...) because of the Castaño's alliance with the [drug-dealers], the AUC's leadership changed its stance (...)." "We wonder where are the peasants that used to live in the 250,000 hectares owned by (AUC commander) Ramiro Vanoy (...). Or those who used to live in Mancuso's lands, who by year 2000 owned 1,500 hectares and now has 60,000. Or the people who lived in (alias) Macaco's lands (...) who now owns 30,000 hectares in the Bajo Cauca area alone(...). Just a few months ago, the Ochoa clan (heads of the Medellín

¹³⁸ In chapter Six, I reconstruct in detail the controversies around of one of the haciendas Castaño distributed at that time as part of this initiative and the disputes around the eligibility of his beneficiaries to be granted full ownership under the Victims and Land Restitution Law.

Cartel since the time of Escobar) celebrated the acquisition of their millionth hectare.”¹³⁹

As for what happened in Urabá, vocally denounced by human rights organizations, Doblecerero also asserted that palm oil projects: “spill blood, misery and corruption (...). The ways those lands were acquired by investors and the money provided for agro-industrial promotion by state agencies is immersed in a chain of money-laundering, deception, forced displacement, death and violence.”¹⁴⁰

When inquired about the reasons for his dissidence and the current war against the AUC, Doblecerero explained that it was “ideological,” as a means to oppose “the narcotization” of paramilitarism and its detrimental effects over the agrarian structure:

We vindicate the peasants’ right to have plots of land. Drug-traffickers generate an agrarian counter-reform process, this is, they invest the money they get from the drug business in purchasing the lands of the peasants and this leads to their displacement. We don’t allow this in our areas (...). (...) Ill-intentioned people (...) want to makes us look like enemies of the (demobilization) process and this is not the case. We have our objections and we think that it is necessary to clarify certain issues like the cease fire –which is not being enforced-, (...) the agrarian counter-reform problem –that the AUC has caused-, among others. (...) There is a paradigm that has been overturned, according to which to wage war you need enormous amounts of money. That is false. To wage war you need some money, but above all you need determination and a clear set of political goals. The AUC invests less than 5% of its income in war. The rest goes to the purchase of lands.¹⁴¹

In one of the articles El Tiempo newspaper also quoted staff from Codhes and academics insisting, like Doblecerero, on a causal link between land accumulation for business purposes and the paramilitary project and estimating that between “1997 and March this year [2003], 556,928 hectares have been abandoned.”¹⁴² To conclude, the article noted, however, that that a veil of opacity and fear surrounded the issue: “the issue of land and forced displacement is so obscure that no institution, public or private, has produced an exact census reflecting what has happened with

¹³⁹ El Tiempo newspaper. Ibid.

¹⁴⁰ Ibid.

¹⁴¹ El Tiempo newspaper. August 04, 2003. “El Bloque Metro pide pista.” Available in: <http://www.eltiempo.com/archivo/documento/MAM-1038963>.

¹⁴² Ibid.

abandoned plots of land. Almost all sources that speak about this issue have asked to not be quoted and a state official who is willing to talk admits that the state has not addressed the issue.”¹⁴³

In addition, both *Semana* and *El Tiempo* also released multiple stories of land dispossession as experienced by specific peasant families or focused on paramilitary commandos who had used force to acquire haciendas and other properties. One article by *Semana* with the headline *It is Also Happening to Landlords* narrated the drama of wealthy families who were also experiencing “it.”¹⁴⁴ Back then –it went without saying- “it” referred to land dispossession, despojo, and its ubiquity.

That same month, as the government presented a draft in one of many venues, the government’s Peace Commissioner was directly questioned about the problem of land dispossession by a United Nations advisor. The advisor argued that many studies showed a “convergence between political violence and the violence related to land concentration” in Colombia. To support his statement he quoted a paper by Alejandro Reyes, the same lawyer and sociologist who had been studying the agrarian counter-reform since the mid 1990s and had produced the first relatively systematic study on the issue as discussed in Chapter Two.¹⁴⁵ From this perspective, the advisor concluded, “the recovery of the lands abandoned or lost by the displaced, or the due compensation by whoever dispossessed them or by the State, constitutes one of the most critical points in the effective reparation of their rights” (Forero 2004: 45). In his reply, the Peace Commissioner asserted that “the

¹⁴³ Also in September *El Tiempo* newspaper published two additional editorial notes lamenting the negligence of state institutions towards narco and paramilitary land accumulation and alerting about the silence regarding those lands in the ongoing negotiations with the AUC. One of the notes replicated the Controllers report, quoted Dobleceero once again and called for a solution to the problem of violently dispossessed lands.

¹⁴⁴ *Semana Magazine*. May 30, 2004. “Los señores de las tierras.” Available in: <http://www.semana.com/portada/articulo/los-senores-tierras/65846-3>

¹⁴⁵ He also referred to a report from the Inter-American Human Rights Court based on Codhes data, and then asserted: “Behind violent phenomena and armed confrontations are hidden economic interests related to the so called agrarian counter-reform that affects small and mid sized property owners [and] a process of rapid concentration of rural properties and drastic changes in the use and tenure of land, in detriment to displaced populations” (Forero 2004). As for the number of effectively dispossessed lands or people, he invoked two estimates, Codhes’ 2001 survey and another one, based on the Social Solidarity Network’s database. According to the first, “53% of surveyed families claimed to be property owners and 32% to having held possession, for a total of 85%” and to the latter “at least a third of IDPs owned or possessed lands before displacement.”

answer [to questions regarding] lands and properties illegally acquired by the armed groups (...) is that an excellent extinction legislation already exists, one which allows to expropriate any of such properties. For this reason, it is unnecessary to address this issue in the draft” (L. C. Restrepo 2004: xxiii).

Two techno-political reports

In the following months, two prestigious and somewhat rival institutions within the techno-political community released a series of documents reiterating the existence of historical rates of unequal land distribution, their rapid increase in recent years by virtue of a violent agrarian counter-reform waged by armed organizations and drug cartels and a two-way causal link between the continuation of the armed conflict and the historical trend regarding land tenure. Two of those documents received significant publicity and from that point on were recurrently referenced as reliable diagnostics of the land dispossession problem.

One was prepared for the United Nations Development Program (UNDP) by a group of social scientists embedded in different public and private universities, associated with the intellectual left, human rights activism and the opposition to the Uribe government (United Nations Development Programme 2003). Their previous work as academics, researchers in critical think tanks or as public intellectuals and opinion-makers had been influential in outlining “the agrarian question,” the social logics of the armed conflict and the predicaments of the peasantry, among others.¹⁴⁶

The report opened with the statement: “The armed conflict has become the main obstacle for Colombians in improving [their lives]. But the reverse is also true: increasing opportunity is the best

¹⁴⁶ Some of them, like Darío Fajardo and Alfredo Molano, had been crucial in providing evidence that linked the trajectories of the different actors involved in the confrontation with the agrarian question and also in arguing that the neo-liberal policies of the early 1990s had reinforced rather than alleviated the structures of oppression. However, the report was issued in the name of the UN’s Development Program.

way to solve the armed conflict (United Nations Development Programme: 13).¹⁴⁷ To support this statement, the report then detailed a series of critical forms of social injustice relating to land, labor and income distribution that according to the authors were at the foundation of Colombia's violence-underdevelopment trap and its solution. In the issue of land the report summarized the situation as follows: "In 1996, 11,570 property owners (0.4% of the total)" controlled 45% of exploited lands in the country, whereas 2.2 millions of property owners (69% of the total) controlled 4.3% of lands-with a average of one hectare per family (United Nations Development Programme 2003: 349-350). If compared with estimates from 1984, it turned out that by 1996, large properties had doubled the space they used to occupy while small properties had lost at least 1 million hectares "because of the displacement of the owners" and had been reducing their numbers since. When *Semana Magazine* publicized the report and these estimates, the anonymous author added, "It is known that this situation, in itself shocking, is getting worse."¹⁴⁸

As for the causal link, the report's explanation was that the pre-existing "bimodal" agrarian structure and the social relations that it had engendered (Chapter One) were the inception of the contemporary guerrilla and paramilitary organizations. They in turn had spread these structures to the recently colonized territories and had made them more acute in areas of older settlements. Ultimately, the report suggested, the armed conflict had to be understood partly as a sustained dispute for the land resource in its multiple manifestations: as factor of profit or rent extraction in legal and illegal agro-businesses, as the scenario where politico-military power was exercised and

¹⁴⁷ Then the report added: "Indeed, human development can be defined as the increase of a country's inhabitants' opportunities to improve their lives and, unfortunately, the armed conflict has become the main obstacle for Colombians to improve theirs. But the reverse is also true: increasing the opportunities is the best way to solve the armed conflict. Based on an adequate understanding of its roots and diverse manifestations, public policies must deter the option of violence and offer alternative options to communities, victims and combatants. This report is an effort to clarify what those options are and how may these options become available Colombia and its different regions (UNDP, 2003: 13)."

¹⁴⁸ *Semana Magazine*. July 9, 2003. "Desminar el campo." Available in: <http://www.semana.com/especiales/articulo/desminar-campo/60487-3>

disputed and as the surface covering fossil fuels and precious metals, among others.¹⁴⁹ Conversely, it added, the continuous extraction of wealth from lands and territories had to be understood as what sustained the conflict.

Then, the report concluded that what had happened with the agrarian structure during the previous years of violence could be characterized as involving three inter-related processes –“the expansion of larger estates, the decline of mid-size properties and the continuous fragmentation of small ones,” and also the appropriation of different sources of income by armed actors. Overall, this was a mode of “continued primitive accumulation” (United Nations Development Programme 2003: 346-348). Still, the report refrained from referencing any estimates about violently appropriated hectares or sums of capital.

Interestingly, although the report was written by members of the leftist intelligentsia, they chose to use data about forced displacement produced by governmental institutions for the analysis rather than Codhes’, and also inserted in the argument fragments of speeches, writings and statements by right-wing intellectuals and public figures such as President Uribe himself and his Minister of Justice.

In the recommendation section on the issue of land, the report turned to the thesis of public intellectual and businessman Hernán Echavarría Olózaga concerning taxation over landed property as a means to correct the problem of inefficient use and unequal distribution of land, which was a reformulation of what Lauchlin Currie had recommended in his IBDR report back in the late 1940s (See Chapter One). Echavarría had been a student of economist John Bernard Keynes, and would often publish essays about Colombia’s economic challenges. When he died, just one or two years

¹⁴⁹ In turn, agrarian development and the land market in particular had to be understood as prominently dictated by the dynamics of war: “As of today, the armed conflict, and not the market or the State, determines property arrangements, the prices of land and the profitability of rural investment,” concluded the report. The main policy recommendations of the UNDP were higher taxes on landed property, expedited expropriation procedures for illicitly acquired estates, putting legal limits to the agrarian frontier and creating a new institution, the National Land Institute, with the task of updating the cadastral inventory. These recommendations had been repeated in different context since the 1950s. See Chapter One.

later, Echavarría was highly admired by Uribe and his closest advisors, who would often consult him. On the other hand, Echavarría despised the political and the intellectual left and any form of populism, as he told me the only time I interviewed him.¹⁵⁰ Some of his family members had been kidnapped and killed by the guerrillas; and in the 1950s one of his brothers had been tortured by agents of the Rojas regime.

From a different perspective –namely the efficient use of resources and economic growth- but reaching a similar conclusion regarding causality between land and the conflict, a joint team of economists in the World Bank and officials from Uribe’s government released a policy paper entitled “Land Policy in Transition.” The Economics Department of Los Andes University -the epicenter of neo-liberal economics in the country and alma mater of the ruling technocracy- translated it and released it in Spanish as part of the collection of papers published by its prestigious research center (CEDE 2004).

The main argument was that the agrarian policies undertaken in the previous fifty years had failed to reverse the trend towards the concentration and irrational use of land, that forced displacement caused by armed organizations in recent times had contributed to deepen both problems and that ownership seemed to be causally linked to displacement. The report used data about forcibly displaced populations and the agrarian structure from various sources –from Codhes to state agencies and different academic works- and proposed a series of models and calculations to establish correlations –and in some cases causalities- between different variables in an attempt to generate policy recommendations for land policies to further development.

When inquiring about the possible predictors of forced displacement, the paper argued that despite a shortage of data there was a correlation between certain manifestations of violence,

¹⁵⁰ When I was able to interview him, I told him about my ideological and professional proximity to Congressman –C. Gaviria-, and he did not hide his aversion, referring to him as “the devil himself.”

ownership of land and forced displacement. The interpretation of the authors was that this convergence between variables seemed to confirm what Reyes and Bejarano (1998) and previous technocratic documents had been saying about about land as “an element that increases the risk of forced displacement” (Erazo et. alt. 2000: 31). Then, the paper reaffirmed the thesis of the agrarian counter-reform and reiterated the 4 million hectares estimate. However, in one of its paragraphs it attributed the estimate to Codhes but used the Global IDP Project, a transnational NGO as a source: “Codhes estimates that the land abandoned by desplazados amounts to 4 million hectares, almost three times the area that the government has been able to redistribute through agrarian reform programs since 1961 (Global IDP Project 2003)” (CEDE 2004: 7).

Still, the paper then added that it was unlikely that the lands left behind had been put to productive use by current holders or armed actors and concluded, later on, that forced displacement was a “tactic” used both by guerrillas and paramilitaries to remove populations entrenched in land, create “empty territories” and establish control over these areas.

With few exceptions, the people behind both documents had been raised in Bogotá, came from a similar middle class background and had attended the same or similar schools and universities there or in Medellín. Their ideological allegiances and political trajectories, however, departed considerably. Among the United Nations Development Programme consultants there were intellectuals who had enthusiastically supported the peasant movement of the 1970s, militated in leftist and even guerrilla organizations, had openly opposed Turbay’s repression in the late 1970s and because of their role as public intellectuals and their involvement with the left grassroots, many had had to flee the country after the rise of the AUC. They were sociologists, anthropologists, lawyers and neo-Marxist economists who would often engage in fieldwork, grassroots mobilization and political activism. Still, the report was not issued under their name but that of the UN Programme, considered in itself an authority on development while holding a human rights

perspective at the same time.

The team working in the World Bank report, on the other hand, were economists –or policy experts- embedded in the “technocratic circuit” connecting multilateral organizations with Los Andes University and with the set of governmental agencies that at the time were still perceived by certain political elites as doing “technical” work –like the Ministry of Finance and the National Planning Department- and demanding from its staff certain econometric and policy skills. Despite their traditional affiliation with the Liberal and Conservative parties, the members of this circuit would often construct their opinions –and be perceived by peers and traditional political elites- as more technical than ideological. Thus, even under Uribe’s administration (Dargent 2014), this technocracy was still given authority to identify “public problems” and provide solutions.

These documents by these two discrete “technical elites,” and their reproduction in *Semana*, *El Tiempo*, and the Los Andes University Center for Economic Research contributed to the political currency of the problem of land dispossession among the small but powerful audiences to whom they catered. The estimates weaved into these reports about dispossessed lands or hectares allegedly transferred from small to big estates received particular attention partly because of the authoritative stance of the sources. The United Nations’ Development Programme report had opted for data from the government. The World Bank paper, on the other hand, had used Codhes data and the analysis of other human rights organizations profusely and yet, when referring to this paper, the press and certain commentators elided their authorship and instead attributed its estimates, premises or conclusions to the World Bank and Los Andes, enhancing their descriptive and prescriptive power.

Moreover, the “four million hectares estimate” in that paper, which was articulated by the World Food Program and was rumored to be a Codhes creation, was picked up by a prominent technocrat turned politician, Juan Camilo Restrepo, who in a 2004 opinion article questioned the attitude of the

government towards the paramilitaries' land accumulation. Six years later, President-elect Santos would entrust the Ministry of Agriculture to Restrepo, and would ask him to make land restitution his top priority. In his opinion article Restrepo vocally stated:

What is the governmental stance vis-à-vis the concentration of fertile lands that paramilitaries have accumulated illegally in recent years? Does the peace process with them imply their obligation to return those lands to their legitimate owners? Have we forgotten that the main cause of displacement in Colombia has been the ruthless dispossession that these men of violence –who now preach from the National Congress- have forced upon so many poor Colombians? Could it be that a certain “forgive and forget” land deal is being set in place to validate the most horrifying agrarian counter-reform the country has ever known? (J. C. Restrepo 2004)

To support his warning, Restrepo stated that in a “study that the World Bank entrusted to Los Andes University (...) one can read the following” and he then quoted the excerpt with the “recent estimates” of four million hectares.

Deliberate or not, the effacing of Codhes and other human rights organizations as the primary source of the four million hectares was significant at a time at which those organizations were not only regarded as methodologically weak and ideologically biased but also politically dangerous. Thus, this apparent expert consensus, authorized by economic analysis and international neutrality, transformed the concern about the agrarian counter-reform initially warned by the human rights community into a problem of liberal good governance, development and –once again- modernity.

In 2005, prominent lawyer and sociologist who was an interlocutor of both groups, Mauricio García Villegas, described this alignment between scholars of different disciplinary backgrounds and ideological bents around the critique of the patrimonial amnesty and the underlying claims about the potentials of the right allocation of land as one of those “rare consensuses in the social sciences.” His writings of the time epitomize this expert agreement, and also stand as actualizations of old but persistent ideologies concerning the agrarian question:

In Colombia, surprisingly, we have a counter-reform which in itself is a reaction against nothing, it does not respond to a change, but rather seems like an augmentation of the past. I'm

talking about the agrarian counter-reform. If the prefix “counter” makes any sense here is in relation with an ideal that never came to be.

Just some weeks ago, the vice-controller put hit the nail on the head: “Through the purchase or the undue appropriation of land –around a million hectares- by drug dealers and illegal armed organizations in the last 20 years, the most abhorrent concentration of land in the country has taken place. An authentic agrarian counter-reform.”

From works on political and rural sociology of the 1950s (Barrington Moore, for example) to the latest reports by the World Bank (one recently by Guillermo Perry), researchers insist in that the more land is unequally distributed, the harder it is to achieve democracy and development. This is one of those rare consensuses among social science researchers and even ideologues of democracy. One does not need a socialist inspiration to see an enormous injustice in the existence of *latifundio*. Isn't Hernán Echavarría Olózaga one the major proponents of an agrarian reform for Colombia?

Echavarría, the Keynesian intellectual and businessman I mentioned earlier, had thoroughly opposed an agrarian reform, but like Currie, he had indeed insisted on a tax reform that would punish unproductive lands. Still, given that Uribe's admiration for Echavarría, the rhetorical device could do the trick of further reinforcing the idea that such a consensus among intellectual elites meant that the redistribution of land by one means or the other was not only reasonable but urgent.

Nonetheless, as I show in the following sections, this consensus among intellectuals embedded in different disciplines and political currents did not influence Uribe's administration's land policies in any decisive manner –except for a quick and rather mysterious set of legal formulas than then appeared in the legal framework regulating the AUC's demobilization, and which would go on to take a life of their own.

2004-2005: Encounters in the halls of Congress: backdoor alignments and realignments concerning the lands of the dispossessed

The congressional sessions of year 2004-2005 began in July with a highly controversial event: a faction within the Uribe coalition invited three AUC commanders to address Congress. Their visit and speeches had significant effects and ramifications in the political arena. In their address in the main floor, they remarked on the tragic heroism of the AUC. Their movement, according to Mancuso, emerged out of the legitimate right to defend themselves from the attack of the guerrillas: “Our existence and our legitimately acquired properties, which represent the basis of (...) our family’s survival.” Later he added: “an unavoidable ethical imperative forced us to the battlefield against the guerrillas” where “violence was exerted heroically, in circumstances of extreme necessity.” He ended by saying that because of this, they should be pardoned, as had happened with the guerrilla movements of 1980s and 1990s and, he added, they should also receive reparation, since ultimately they were also victims.¹⁵¹ About sixty Congressmen attended the event and applauded the guests. While they spoke, a group of survivors and representatives of victim organizations gathered in the Congress entrance demanding to be allowed into the Senate. When refused, they moved to the nearby Bolívar Plaza, where they shouted for hours-end “killers, killers!”

The political opposition condemned the initiative, refused to attend and intensified its anti-Uribe stance. Because of this excess of courtesy with the AUC commanders, Uribe also lost the support of a few Congressmen but still maintained a cohesive and majoritarian coalition in Congress. Thus the legislative year started in the midst of an ever-deepening polarization around Uribe’s style of government and security agenda. Two drafts topped the list of that year deliberations in Congress. The first was the Justice and Reparation legislation, which changed names one last time to that of the Justice and Peace (JnP from now on). The second was an amendment to the Constitution which changed presidential term limits so that Uribe could continue in office for another term.

¹⁵¹ Salvatore Mancuso’s address to the Senate, July 28, 2004. Available in: http://lasillavacia.com/sites/default/files/media/docs/17789/discurso_salvatore_mancuso.pdf

Just by chance I was there to witness first-hand how these and other initiatives were converted into law and also the address to Congress of the AUC commanders. In early July 2004 I had joined the staff of leftist Congressman and former Constitutional Court justice, Carlos Gaviria. Fresh out of college with a law degree, I was looking for my first real job and there was an opening on Gaviria's legislative team. They were looking for someone who could do a variety of chores, from making coffee, answering letters and phone calls, to writing his speeches and drafts, researching the logic of the congressional agenda, staying up late taking notes on debates and attending political meetings with his constituents. It was my dream job. Gaviria was one of the intellectual heroes of lawyers of my generation who, like me, had extensively studied his rulings. He was also an admired political figure among almost anyone with an egalitarian social-democratic bent. He had served for eight years as a Justice in the Constitutional Court and his decisions on individual liberty, cultural pluralism and the right to substantive equality had deeply resonated with certain publics. Among progressive lawyers he was also venerated for the sophistication of his arguments on legal interpretation and reasoning. In 2002 he ran for congress with the Social and Political Front, a coalition of leftist and grassroots organizations closely connected to the human rights community and also to the post-demobilization political movement formed by the EPL guerrilla. The EPL, I should note, was the main enemy of the AUC in its first stage.

Gaviria was also one of Uribe's most longstanding political antagonists. They were both *paisas*, meaning they came from the country's coffee region (the state of Antioquia in their case) and had clashed continuously since the 1970s. Uribe had been his law student in the Universidad de Antioquia back in 1971 in a highly politicized context. In the 1980s both were active in the political agitation spurred by the peace negotiations between the Betancur administration (1982-1986) and the guerrillas, but on opposing sides. Gaviria was part of a short-lived leftist coalition called Firmes created by a group of intellectuals –including President J.M. Santos' (2010-2018) brother. Uribe, on

the other hand, split with the the Liberal Party. During the “dirty war” of the 1980s targeting human rights advocates and leftist activists, many of Gaviria’s closest friends were killed and he had to find exile in Argentina, while Uribe went on to hold his first public positions, first as mayor of Medellín – from which Gaviria had to flee- and then congressman. In the 1990s, while Uribe served as a congressman and governor of Antioquia, Gaviria was appointed to the Constitutional Court. Uribe decorated Gaviria for his achievements as a jurist.

A month after joining Gaviria’s staff, I was overwhelmed with work but also enthralled by the craft of legislation and the “politics of politics” in such a polarized public environment. On one hand, for some months the different representatives of the left had been considering coming together as a single political party, overcoming some of the historical ruptures and deep resentments that divided them, partly as a means to more effectively oppose Uribe, their common political rival. This would eventually lead to the creation of a new leftist party, *El Polo Democrático Alternativo* (El Polo). Gaviria was a key figure in the process of building the coalition and bridging the differences between factions to the point that months later he would be elected as the new party’s first presidential candidate and run against Uribe in 2006. Suddenly, with my new multi-task job I would be immersed in leftist politics and would be able to see up close the rivalries and highly diverse ways of embodying the political left.

On the other hand, I would also be a direct witness of the functioning of Uribe’s congressional majorities. We called it “Uribe’s steamroller” (*la aplanadora Uribista*) because of his coalition’s highly coordinated efforts to block the initiatives of the opposition, pass the legislations that Uribe needed to deliver his governmental plans and pay back the loyalty of his allies in a timely manner. Gaviria and the other members of the political opposition could only sit back and watch how the “steamroller” passed one draft after other and the Constitution was being rewritten to accommodate Uribe’s Presidential reelection despite the implications this had for the overall institutional

architecture of the Colombian state. In contrast, I would also have the chance to understand that along with the careful planning of statutes, the calculated phrasing and word-choice, there were also last minute contingencies, impulsive reactions, non-sanctum alliances and a lot of improvising, difficult to grasp from outside, that intervened decisively in the production of legislation and its contents. Bismarck's saying was a common joke in the halls of the Colombian Congress: "Laws are like sausages. It's better not to see them being made."

Gaviria had a seat in the Senate Board of Constitutional Affairs, the most prestigious and coveted of Congressional boards. With nineteen seats, the board provided a unique opportunity to prompt or hinder far-reaching legal reforms. Any constitutional amendment, regardless of the subject matter, and any bill regulating basic civil rights had to be approved in that Board in order to be discussed in the Senate. Often the congressmen with the highest electoral turn out and political influence would be granted a seat there. During that legislative year of 2004-2005, the Board was constituted by a group of political characters whose trajectories and short-term political future would be closely tied to the fate of national politics, including the failure and approval of the Victims and Land Restitution Law few years later. Three of them were in the floor listening and shaking hands with Mancuso and, a few years later, would end up being removed from office when he and other AUC combatants confessed to have rigged on their behalf the elections that let them into Congress.¹⁵² Among them was Mario Uribe, the President's cousin and closest ally in Congress. He was also accused of paying the AUC to help him acquire a set of haciendas in the Caribbean region by force. Two of the board members, on the other hand, would end up as the champions of the Victims and

¹⁵² The parapolitics scandal that erupted in 2007 revealed ties between the paramilitary commanders and elected Congressmen, governors, majors, and intelligence officers. Of the members of the Constitutional Board the following were implicated: Mario Uribe, Ciro Ramírez, and Mauricio Pimiento.

Land Restitution Law – VLR Law.¹⁵³

The day the paramilitary commanders visited, Gaviria was away. He instructed me to watch their address in the internal TV circuit of Congress and take notes. I could see many of the members of the Constitutional Board giving Mancuso and the other two commanders a standing ovation. Days later, although the Justice and Peace draft was one of the government's priorities, the formal deliberations were postponed. Uribe's coalition focused its efforts in passing the reelection while the opposition, with the support of the human rights community and legal scholarship, took advantage of the opportunity to write multiple variations of the draft with "thicker rights" (Gómez 2014) for victims.

Momentary cracks in the coalition: the property titling bill and the intervention of the Land Protection Project

As the media focused on the reelection and the ongoing disagreements around the JnP bill, a third bill went undetected. Despite its polarization, Congress at this time turned out to be also a space in which the increasingly significant problem of land dispossession would be constitutive, even if only temporarily, of a set of political alignments between seemingly unlike allies. This involved the relatively unseen convergence of the opposition –Gaviria included- and members of Uribe's coalition who happened to share the same concern regarding land dispossession and accumulation.

This third bill -then known as the property titling bill- dealt with the procedures to turn adverse possessions and other forms of precarious tenure into property rights. The purpose of the bill was to transfer the power to hear adverse possessors and tenants and grant them formal titles from

¹⁵³ One of them, was Senator Juan Fernando Cristo, who would become the main proponent of the VLR Law. The other, Rafael Pardo, would end up leaving Uribe's coalition because of disagreements around the treatment granted to the paramilitaries.

ordinary private law courts to an administrative authority, the local registration office.¹⁵⁴ Indeed, as I have argued along the dissertation, informality of land tenure is a predominant habit in Colombia. Estates with titles are often more valuable, the judiciary production of property titles is intricate, extremely long and sometimes more expensive than the property itself, and not many people are aware that, according to the Civil Code and complementary legislation, acquiring a formal property title requires much more than an agreement between two parties. As a consequence, many people in the country lack adequate titles and only discover this when they apply for credit or when their descendants start the inheritance procedures.

The promoter of this bill, a Conservative Congressman, submitted it, arguing that it was time for Colombia to become a “country of property owners” –a recurrent motto and political aspiration since the 1930s as discussed in the Chapters One and Two. The solution, in his opinion, was to avoid the courts and let the officials at the registration offices grant property titles. On average, a judiciary procedure of this nature could take a decade because of the accumulation of cases in ordinary courts. His initiative established a highly informal, expedited procedure: a titling petition to the local registration office, followed by an announcement on the registrar’s notice board and the local radio in order to notify possible “interested third parties” that such petition had been filed, collecting the testimony of a witness confirming the adverse possession or tenure and a quick visit to the property would suffice to grant the petitioner a property title.

When the bill came to Gaviria’s office, our first reaction was of concern. Although informality was certainly widespread and some measure had to be taken to correct it, the new procedure could be easily used by anyone to acquire property rights over the lands left behind by desplazados without them having the chance of finding out and intervening in the procedures to protect their rights. The

¹⁵⁴ Bill No. 230 of 2004, of the House of Representatives. In Spanish, Proyecto de ley de titulación y saneamiento de la propiedad.

property titling bill had just been announced in the Senate's journal and deliberations were scheduled for the next week. No one in the political opposition had rung the alarm about it despite the shared suspicion that the JnP legislation sought to legalize land dispossession. I was pessimistic. The promoter was from Uribe's coalition, the bill had been approved in the House of Representatives quietly and it seemed clear that "the steamroller" was going to operate as usual to approve it quickly and without modifications. Still, also as usual, Gaviria asked to be heard in the Board and voiced our concerns in front of the other members, knowing that this was not going to have any effect on anyone else's predefined stance. But it was the least we could do. We did not have clear figures about dispossessed lands except the ones that had been mentioned in the PNUD's report and the World Bank paper but we shared with human rights NGOs and the intellectual elites their perception that a highly violent agrarian counter-reform had occurred.

The session in the Board, however, turned out to be different than expected. When the time to vote came, one of Uribe's allies asked for more time to study the bill. The author and the proponents were perplexed. In the next break this same congressman approached Gaviria and in a low voice assured him and me that he was appalled with the bill and wanted to double-check with the government whether it actually wanted the bill to become law. He told us to stay put, because he had to make some calls.

This is how I met the people of the Land Protection Project, whose trajectory I began tracing in Chapter Two. The congressman who was part of Uribe's coalition but also distrusted the bill contacted them. A lawyer a few years older than me and who was the right hand of Amalia, the sociologist who had formulated the Project, showed up to a hearing about the property titling bill and was introduced to the public as representative of the government. But then he set up a Power Point presentation showing multiple maps, charts, and Excel tables with statistics about forced displacement and land dispossession, and as he went along, he insisted that these were indeed

phenomena of large proportions. I was seating behind Gaviria and next to the staffers of another leftist Congressman. We exchanged looks: how could this man be speaking in the name of the government but diverging so explicitly from the statements issued by his superiors?

Later on I found out that when Alvaro Uribe had been elected, many governmental officials working on the Social Solidarity Network -the agency that until his administration assisted desplazados- quit their jobs because as some of them explained, they disliked him for his connections with paramilitaries. In Amalia's case, however, the new head of the Network, appointed by Uribe, rejected her resignation: "I had filed my resignation letter some days before when I got a call from (...) the new head of the Network saying in an humorous but also concerned tone: 'you got us in this mess and we need you to take care of it'. It turns out that the World Bank had just approved a large grant to fund us."

Thus Amalia was appointed general manager of the Project sometime in late 2002 and early 2003. With an initial staff of no more than five or six people, including the official in Carmen de Bolívar who witnessed the exodus triggered by the El Salado massacre, the Project began to work on three and then five "pilot projects" in areas where they would put in practice Decree 2007 of 2001 on land protection.¹⁵⁵ The rest of the team were cadastral engineers, all of them from the only public university in Bogotá that offers such a B.A.

Their work consisted mostly in meeting with local governmental authorities, displaced communities and communities at risk to create maps and other types of what anthropologist Matthew Hull (2011) refers to as "graphic artifacts" such as inventories of properties meant to accurately represent the physical, legal and social characteristics of the land tenure arrangements that were in place before violence and forced displacement ensued. Then with that evidence, the Project

¹⁵⁵ Montes de María, Catatumbo in Norte de Santander, Mid-Magdalena Valley near the city of Barrancabermeja, San Carlos in Antioquia and Valle.

would guide the different actors involved in the step-by-step implementation of “routes towards land protection” as they called them. The final goal was to obtain from the so-called “forced displacement assistance committees” established in the Displacement Law (Law 387) or the Incora an order excluding the lands allegedly abandoned by desplazados, or those at risk of being abandoned, from commerce.¹⁵⁶

The Project grew gradually in staff and resources with each disbursement from the World Bank. Between 2004 and 2005 a small group of lawyers in their late twenties and early thirties, as well as older social workers, sociologists and anthropologists, joined the team. Most of them had studied in the National University of Colombia, the largest public college in the country, and had met there in the classroom or in meetings of political and student leftist organizations.

The new staff was from an urban low- and middle-class background from Bogotá and other major cities like Medellín and Cartagena, or from small towns in the Boyacá-Cundinamarca states, not far from Bogotá. Those in their thirties and forties, in addition, had actively militated in their youth in leftist political organizations and had engaged in different forms of human rights activism.

Since then they had been working quietly in their five pilot projects. I later found out that when I met them they were gathering a great deal of crucial information about the means and the perpetrators of forced displacement and land dispossession, but at that time they kept a “low profile” (Estrada and Rodríguez 2014) and had limited their work to representing human-land ties, organizing evidence and mobilizing Decree 2007 of 2001, and then trying to persuade registration offices and other local authorities to legally protect the properties they had identified as abandoned. Rather than revealing their findings they had avoided the press and had also been cautious of not working with leftist political organizations, NGOs or politicians.

¹⁵⁶ The Incora used to be the Agrarian Reform Institute. When first created in the early 1960s there were high expectations around its mission to change the agrarian structure for good. With time it was neutralized and even became the stronghold of serious corruption scandals and in some cases of AUC collaborators.

Some of them told me years later, “we were an annoyance” for Uribe and some of his advisors because, as it would become apparent to the larger public in 2009, their work was an obstacle to the government plan for “trickle down” agrarian development based on subsidies and incentives for private investment, since their job was to prevent transactions involving abandoned or allegedly dispossessed lands. But, in words of one of them, “the President had to “save face” with international donors. He would not mess with them.” So the Project had been left alone, and for better or worst, they had remained in relative isolation.

With the property titling project came the first time they were asked to represent the government in Congress, and also the first time they directly interacted with someone so embedded in the opposition to Uribe. For weeks, their lawyers worked with me and the staffers of the other congressman involved, in a series of modifications so that displaced families or someone on their behalf could oppose the procedure. In one particular meeting, in the office of Senator Holguín, he lost patience, along with the author of the bill. One of the Project’s young lawyers put up another Power Point presentation showing that in 99% of the country’s principal municipalities, major events of forced displacement had occurred. He projected a map of the country painted in red, with a few small white pockets –which located the places without notices of displacement. Then he proceeded to recite the statistics of forced displacement in Holguín’s own hometown and neighboring municipalities, which enraged Holguín even more. I remember him interrupting the lawyer and asking, “Are you suggesting this happened under my nose and I didn’t notice? Who do you take me for?”

But despite this, Holguín and the author of the draft finally accepted the changes. We came up with a new version that imposed upon the registration office the obligation to gather information about forced displacement and obtain authorization from a series of state agencies to grant property rights to petitioners. At the end, when the new version was going to be put to the consideration of

the Board, I was surprised that the same congressman who had brought the Project in asked the Board to vote against the bill regardless of the new modifications. Later he told Gaviria that he had heard some “rumors” involving some of the congressmen in the room who were apparently trying to get hold of large extensions of land in southern Colombia. From that point on, I stayed in touch with the people in the Project, curious about their work but also their awkward place in Uribe’s government. At time, given my own Manichean view of the political world, divided also into pro and anti-Uribe, they simply seemed out of place.

The approval of the Justice and Peace Law

The discussion around the JnP Law was resumed soon after the property titling bill was tabled. In December 2004 there was a hearing in the House of Representatives devoted to the issue of land and the resolution of the armed conflict with thirteen speakers from academia, NGOs, international organizations, and grassroots organizations. According to a report by a legislative observatory, most participants agreed that the issue of land was one of the main causes of war and it could only be definitely solved through large-scale agrarian land reform. In this sense they all agreed that the draft should become a tool to reverse forced displacement and demand “full disclosure of lands and estates” from paramilitary troops, thus allowing every displaced person to have a dignified return to the “land he or she had to flee from”: “If violence caused the displacement, peace should reverse the phenomenon and promote the peaceful and honorable return of displaced families.” But many feared that the draft would lead to a “a gigantic money-laundering and legalization of illicit properties that would leave desplazados without the chance of going back and the country in the hands of even fewer owners” (Fundación Social 2006: 119).

By February 2005 virtually every party in the opposition had constructed its own version of the JnP draft. There were eight of them to be considered, each balancing the need of peace with that of

justice in a different manner (see Fundación Social 2006). Conceptions about the armed conflict, the AUC's violence, the rights of victims, and the problem of land dispossession, varied greatly. One of these versions had been prepared by Rafael Pardo and Gina Parody, two congresspeople who until then were part of Uribe's coalition. This version was constructed in alliance with people from the opposition and offered victims relatively ample rights to truth, justice and reparation. Momentarily this version divided the governmental coalition, but then the government realigned its "steamroller" and in May 2005, its version was approved with the majoritarian support of both chambers. Only some elements of the Pardo-Parody text were kept.

At the very last minute, before the final vote, a congressman who had belonged to Uribe's coalition until then asked for our help drafting a series of amendments on the issue of victims, in an attempt to introduce what Gómez (2014) refers to as "thicker rights." His plan was to put them to consideration in the Senate's floor in the name of Uribe's coalition in the next few hours before they closed the deliberations. As I rushed from his office to ours and back, I ran into one of the Project's lawyers in the hall. We waved hands from a distance. It was only several years later that I realized that he did not want to be seen talking to me. He was heading to the office of one Uribe's closest allies. He too had been asked to revise the draft and reformulate some of the precepts, especially those relating to the properties of former combatants.

At the end, some of the changes the people from my office proposed made it into the final text although our contribution was kept hidden to not compromise their approval. Somebody else – someone from Uribe's coalition- made it in his name. On the other hand, although the Project's lawyer did work on a series of modifications, he later confided that none of them were included – even though he was acting in the name of a governmental agency. When I brought up this with former Project staffers during fieldwork one of them complained that "a woman from the Ministry

of Justice continuously asked us to go to meetings (with other government officials to discuss the JnP), but only to reject everything we said (...) she was awful, technically very weak.”

That evening in Congress I remember sitting in one of the balconies overlooking the Senate main floor for more than eight hours, watching the JnP Law being passed and taking notes for Gaviria. One member of the political opposition after the other would ask to be heard and try to persuade the majorities to introduce more reparation, more justice, more truth for victims., with no avail. A long list of Uribe’s coalition speakers also addressed the floor. Of the many interventions that night, I can only recall two clearly: that of Gaviria, who after hours of waiting for his turn, in two or three sentences pled for the majorities to take into consideration and honor the rights of victims. His brief statement was “for the record”: *para dejar constancia*. I remember thinking when listening to the tone of his voice that he was tired and sad. years later I found out that many of his closest friends had been killed by the paramilitaries.

The second intervention I remember clearly was that of Congresswoman Rocío Arias. She began by thanking the government in the plural form of the first person, but without referencing which collective she was speaking on behalf of. But then as she progressed it became obvious to everyone that she was talking in the name of the AUC. I was shaken out of my sleepiness by this open admission of belonging.¹⁵⁷

At the end, the final text was passed by an overwhelming majority. This version generated both praise and rejection from an increasingly divided international community and public opinion. Observers applauded or critiqued it for striking a balance between justice and peace or for favoring the latter. In broad terms, the final version established that higher paramilitary ranks who allegedly had ordered or personally conducted atrocious crimes would be prosecuted individually in a set of

¹⁵⁷ Her intervention was probably made off record. As a member of the House, rather than the Senate where the session was taking place, she probably asked to be heard in an informal manner.

special trials and granted a prison sentence for a maximum of eight years regardless of the gravity of the offenses. Low-ranking combatants, on the other hand, would receive a conditional pardon.

To be eligible for the special trials, higher commanders were expected to fulfill a series of requirements first. Once their eligibility was verified, they would be asked to provide an oral statement accounting for the totality of their criminal activities. Then, in a short period of time -less than three months- the prosecutor would have to verify the veracity and comprehensiveness of the statement and formulate charges (Uprimny 2011).

In relation with land restitution, the JnP was openly confusing. According to the initial articles of the new statute, one of the requirements to be eligible for a special trial was to conduct actions aimed to satisfying the victims' right to reparation. Five different types of action were listed as conducive to this goal, among them, "restitution actions," defined as acts directed to return victims to the situation previous to the occurrence of the crime –to the *status quo ante*.

As for land in particular, a series of articles established that in order to be eligible to be granted probation and a reduced sentence, defendants had to surrender some of their properties to the state. Nonetheless, the articles dealing with this requirement (i.e. 10.5, 11.5, 17, 44, and 46, among others) limited this condition to the "the properties illegally acquired" and to the extent that "these were still available" to the former combatants. These precepts also mandated that the totality of such illegal assets were to be transferred to a special Reparation Fund, not to the previous owners or tenants, and then used to compensate the ensemble of victims for the damages suffered. Finally, another article also established that in the final stage of the trial victims could ask for a special "reparation hearing" in which they could claim damages as long as they attached accompanying evidence. Still the article also established that the judge had to resolve the hearing by asking perpetrators and victims to reconcile and reach a settlement agreement.

Besides these new trials, the law also established the creation of a new set of administrative

institutions entrusted with the management of the reparation of victims. Among them was the National Reparation and Reconciliation Commission and also something called the “Asset Restitution Boards.” The Reparation Commission was given a long series of far-reaching tasks, including that of being the “guarantor of victims’ rights” during the trials; presenting a report about the causes of the emergence and evolution of illegal armed groups in the country; and coordinating the activities of the Asset Restitution Boards. The latter, in their turn, were described as Boards with representation of delegates from different state institutions, in charge of promoting the land restitution procedures “as defined in this statute.” However the government was given the prerogative to decide the functioning and geographical distribution of the Boards.

This particular kind of formulation, with these many different actors, instances, and overlapping rules regulating reparation, made it unclear who, how, at what point in the trials and according to which criteria the reparation of damages caused to victims, including the dispossession of land, would be claimed and addressed. Was land restitution expected to occur before the trials started as part of the eligibility requirements or in the special reparation hearings in the last stage of the procedure? Would it be resolved at all in the trials or in the Asset Restitution Boards?

What seemed clear for many critics, however, was that the statute established land restitution as a requirement to access the legal benefits, but at the same time, offered defendants several avenues to circumvent it by limiting it to “illegally” acquired and “available” assets. In addition, this formulation also denied previous owners or tenants of these properties the right to request their restitution, since it ordered that any such assets had to go to the Reparation Fund. As for the Boards, briefly mentioned in two articles, it was just not possible to know what was their relation with the trials.

The Boards were apparently a last minute modification to the bill. In my inquiries about their origins, I have encountered a dead-end. Land restitution experts I have talked to ignore who wrote or insert the two phrases mentioning them in the final draft. Some have claimed that the Boards

were put in at the very end of the deliberation and they speculate that it was most likely someone in the Ministry of Justice who plugged them into the final draft as a way to perform political correctness given the increasing predominance of the transitional justice orthodoxy. Whatever the back story or the intentions of the drafter, the presence of the Boards in the statute and the way they were formulated resound with a saying among experienced Colombian policy-makers and politicians that I have heard in a recurrent manner over my years of fieldwork: “If you want something *not* to be taken care of, create a new board.”¹⁵⁸

t for the Project to begin operating in several regions of the country; and constructing “dispossessed lands and subjects” in those particular areas, often in direct contradiction with the administration’s rural development policies and perception of the ongoing cycle of violence.

¹⁵⁸ Four years later, just months before Uribe finished his second term, the Asset Restitution Boards were said to have begun operations. In the summer of 2010 I visited some of their “offices” and found that the staff amounted to two to five officials who had been hired with funding from international donors and worked in the same space of other state agencies. They had not received clear instructions about their tasks, had no additional funding and very precarious infrastructure.

Chapter Four. Politicians, Experts and Victims: (Un)making and (De)authorizing the Victims and Land Restitution Law

In the previous chapter I traced the process of appropriation of the transitional justice orthodoxy and how this operated as a mechanism to both limit and legitimize the Uribe' government's power to allocate rights and duties to perpetrators and victims of atrocities. I also showed that the problem of land dispossession and vocally denounced by the human rights community was restated by the technocratic elites operating under the epistemic framework of economics which in the Uribe era appeared to be far less suspicious and more authoritative than those offered by sociological academia and the human rights community. Along the way I also showed that the risk of openly legalizing land dispossession through an expedited property titling procedure was one of the rare instances in which Uribe's legislative majoritarian "steamroller" did not work. Although at the end, the JnP Law barely established a right to land restitution, it was nonetheless inscribed in the final text and thus given the chance to have a legal life.

This chapter is about the subsequent dispute to stabilize and enact the contents of this right, first within the framework of the JnP Law and then as part of a counter-legislation deemed by certain political publics to be truly aligned with transitional justice standards and the honorable moral project of vindicating victims rather than only pacifying perpetrators: the Victims and Land Restitution Law (VLR Law). Along the chapter I inquire about the "policy-world," in words of Shore, Wright, and Però (2011) that emerged at that time around the issue of land dispossession and restitution and the political alignments between the people, ideas and things within this techno-political world that allowed the VLR Law to be formulated and tabled the first time around; and then attempted for a second time and passed. Ultimately, this chapter is about the political intricacies of converting the aspiration to land restitution into a legal mandate, the population dispossessed of

its land into a distinct subject of rights and generating a set of procedures and institutional setups deemed to be instrumentally adequate for that purpose. The frictions between the people participating in this policy-world, would revolve around the categories of population entitled to this right, its contents and institutional structure for its operation, and the regime of proof to be applied. This chapter continues my previous discussion about normative elites; the creation of legislations, decrees and other non-judiciary sources of law, and the micro-politics surrounding their co-production. Although control over the definition of the contents of such legal instruments is at the crux of the exercise of political power in Colombia, their actual craft has not been explored ethnographically and has often been approached as an exercise of mere instrumental rationality – whether altruistic or egotistic-, rather than a complex inter-subjective practice.¹⁵⁹

In the first part of the chapter I explain that, somewhat paradoxically, with the beginning of the JnP trials in 2007 and the disclosure of some of the truths about paramilitary violence, the indignation around the legal architecture of the JnP Law grew among grassroots victims' movements and other concerned audiences. This also brought about a positive resignification of victimhood as a condition that commanded solidarity and respect, rather than indifference or suspicion. Moreover, as I shall argue, this newly found victims' dignity also allowed for the convergence of the victims of paramilitaries, guerrillas and state agents into a united front of action, in which their distinctive political trajectories were partially effaced. This post-political victimhood, as I call it, increased the effectiveness of their efforts to show the dimensions of their suffering, demand reparation and transform the legal response of the state. However, in Chapter Six I will argue that this depoliticization of the present struggle for rights eventually also helped eliminate from forensic

¹⁵⁹ On the contrary, much has been written about the judiciary production of law as social practice since the new Constitution was issued in 1991. For an introduction see García, Mauricio and Santos, Boaventura, 2004. *El Caleidoscopio de las Justicias* Siglo del Hombre, Bogotá. López, Diego. 2001. *El derecho de los jueces*, Legis, Bogotá. However, an in-depth ethnography of judiciary decision-making in Colombia is still pending.

reconstructions of the past the complicated moral choices that many victims made before, during and after the worst periods of violence assuring them empathy from a larger public but denying them agency (Weld 2014) and a complex humanity.

At the same time, the disputes around the rights of victims and the obligations of perpetrators moved temporarily from Congress to the judiciary and the administrative arenas. During the following two years, the human rights community –which had lost influence over governmental decision-making under Uribe- would use national and international courts profusely to transform the JnP Law (Gómez 2014). Parallel to this, far more removed from the public eye, pro and anti-Uribe officials *within* the government, state institutions like the General Controller’s Office and the teams of external consultants hired by one or the other, competed and negotiated in closed door meetings in downtown Bogotá to define the contents of the presidential decrees, resolutions and other dispositions regulating the implementation of the JnP Law. The broader contours of the Act had been established in Congress, but the actual procedures that the new JnP courts and institutions had to follow and the scope of the rights they would adjudicate were yet to be decided. And given the confusing and highly ambiguous writing of the law and the undetermined nature of the transitional justice international standards themselves, the disputes around thinner or thicker rights for victims (Gómez 2014), the increased or reduced punishments for perpetrators and the distribution of evidentiary, financial and operative burdens between state institutions, ex-combatants and victims would continue in this enclosed space.

I draw from my own experience as one of the many people involved in these negotiations to reflect about how expertise and authority was performed and granted in these policy-making spaces. As I shall explain, in relation with land restitution, these struggles would mostly involve lawyers embedded in governmental programs such as the Land Protection Project and the National Reparation and Reconciliation Commission both funded by international agencies whose agendas

included the issue of land –whether they focused in humanitarian aid, development or counterinsurgency- or the Ministries of Agriculture and Justice, which were thoroughly controlled by Uribe’s closest and more dogmatic advisors. Once inside Uribe’s government, its external apparent homogeneity and unity gave way to a much more complicated topography. This group lawyers, of which I was part of for a short while, came to constitute a vivid and complicated policy world in which we competed to impose upon each other our understanding of the past and the present of dispossessed lands and peoples, of the legal system both as abstract construct and as social organization and also of what could seemed to be the *best* restitution policy. Although precariously enunciated, land restitution had become a legal mandate through the JnP Law, and it was harder to argue against it openly. But there were many divergences regarding who deserved to be restituted, what the “reality” of land dispossession on the ground was and in particular about legal solutions that should to be deployed to reestablish lost land entitlements. Among these lawyers, the confidence in the power of existing laws to revert land dispossession differed significantly. The most pro-Uribe experts trusted the JnP trials and existing private law courts could provide justice while others, with close-links to the political opposition, were convinced that land restitution for most peasants “was impossible” in those settings, given existing regimes of proof and the dominant modes of legal reasoning among prosecutors and judges. Moreover, the problem seemed to be one of legal culture: not only of the existing rules, but of the legal imagination and how it was enacted by the “other” lawyers.

Then, in the second part of the chapter I discuss the actual craft of the Victims and Land Restitution Law –with an emphasis on the section on land restitution- and the politics surrounding the first and the second attempts to pass it in Congress. The same year the JnP trials began, a group of human rights NGOs and politicians from the Liberal Party submitted a counter-legislation –“a law for victims”- meant to correct the flaws of the JnP Law, considered by many “a law for

perpetrators”. I examine some of the interactions and practices that led to the formulation and political (de)authorization of the piece dealing with land restitution, and which involved people in the “policy-world” mentioned above. Though the bill was eventually tabled, this failure was partial to the extent that during the legislative procedure many “legal and political things” were concomitantly assembled and authorized: an enhanced understanding of the agrarian counter-reform; an emerging field of legal expertise that the lawyers involved began to refer to as “transitional private law”; a set of professional reputations, careers and political affinities tied precisely to this emergent field of expertise and, finally, a set of innovative legal dispositions that were emblematic of this “new law”.

This set of new formations forecasted the political interest of J.M. Santos, Uribe’s successor, in approaching the “agrarian question” and conducting land restitution. The third and final part of the chapter, is about his detour, already outlined in the Introduction. Once elected, Santos engaged in a series of governmental acts –from speeches to executive decisions- that were opposite in meaning and political effects to that of Uribe, his predecessor and political sponsor. The revival and approval of the VLR Law was the first significant rupture with Uribe. Santos restated, again, the perennial promise of land under the form of land restitution for dispossessed populations, land distribution for historically landless populations and the expropriation of the lands of criminal owners and tenants. These promises resonated with the promises of a better agrarian landscapes of the 1930s, 1960s and 1990s. Many realization was still awaited by many publics. This promised allocation of land was presented and received by such audiences as prompting a variety of desired, but to some extent contradictory, futures: peace and justice; development and equality; democracy and legal stability. His administration reopened the congressional debate of the VLR Law and in a matter of months managed to pass the bill. Although the draft received criticisms, no one openly disputed land restitution and the need to return land “to their legitimate owners or tenants”. This in part

occurred because it resonated with the histories of dispossession of the distinct political publics who, regardless, or because of class divides, regarded themselves as having been dispossessed by the other publics or by their armed proxies. Among these publics were landless and displaced peasants fleeing one or all parties in combat but also landlords expropriated by the Incora, invaded during the peasant takeovers of the 1970s or expelled by guerrillas between that time and the early 2000s. In sum, then, initially these different publics regarded land restitution as potentially beneficial for vindicating their own losses or lacks –even landowning elites- at the hands of the dangerous political Others of the past and the present. However, as I argue in a following chapter, this would rapidly change and representatives of cattle-ranchers and agro-industrialists, Catholic moralists and other far right groups would blame the land restitution policy and its agents of the opposite: as yet another in a long history of violation of property rights promoted by the political left; as a Stalin, Castro or Chávez-type of measure used to expropriate without justification, and even as means to wage war by other means in favor of the FARC.¹⁶⁰

The approval of the VLR Law and other acts of government, such as the recognition of the armed conflict and then the reopening of peace negotiations with the FARCFARC, triggered a profound refashioning of political publics and relations and final rupture between Uribe and Santos. Under Santos government the pro and anti-Uribe publics of the past were dissolved and redone anew in terms of their stance and responses towards the main characters in the theater of politics. Passionate anti-Uribe audiences found themselves applauding some of Santos initiativesFARC while part of Santos constituency moved from discomfort with his administration to accusations of betrayal and capitulation to the political left. This repositioning of characters, suspicions and

¹⁶⁰ Indeed at some point during the peace negotiations between Santos government and the FARC, which started in 2012 and finished in late 2016, right wing opponents like José Félix Lafaurie, head of Fedegán –the national cattle-ranching association- suggested that land restitution was a policy intended to covertly satisfy the FARC’s demands of a land reform; and the families that had received land as a result were covert guerrillas or their allies.

accusations is clearly illustrated by the reactions to the efforts of land restitution conducted in the first 4 years of operation of the new bureaucracy created for that purpose. In this chapter, I begin to sketch how this reordering of the political topography occurred and the place of land –and land restitution- in the emergence of a new political landscape in which the Santos, surprisingly, presented himself “as a President for peasants,” and as an interlocutor of the FARCFARC and its historical concern for the agrarian question. One, in particular, to the allocation of lands to peasants.

Administrative and judiciary struggles to (de)stabilize the JnP Law:

Uncomfortable truths in the JnP trials; paramilitary horrors and the resignification of victimhood

In 2006 Uribe ran for office for the second time, this time against Gaviria, and won by a large margin. Though it was certainly a defeat for the left, the enthusiasm around Uribe’s right-wing agenda had invigorated it and had allowed its different ramifications, dispersed until then into small coalitions or as factions within the Liberal Party, to unite around a common political project –something that they had failed to do repeatedly in the previous decades.

That same year the “Justice and Peace” (JnP) trials of the paramilitary higher commanders of AUC (United Self-Defense Organizations of Colombia) began. Paradoxically, the way the hearings were conducted and what the truths therein revealed about the horror of paramilitary violence increased, rather than appeased, the criticisms against the JnP institutional set up the trials were a part of. In the light of those revelations, NGOs, international organizations and also Uribe’s political opposition became convinced that, as they had alerted, the institutional design of the JnP

was clearly insufficient to respond to the victims' needs of reparation, protection against further violence and legal and psychological assistance during the procedures.¹⁶¹

As trials progressed many of the truths about paramilitary violence that average middle-class city dwellers knew little about were spelled out in detail in the admissions of guilt. Some of the most macabre paramilitary practices made it to the mainstream media, such as the establishment of training camps where killers were taught to torture and dismember victims while alive or to bury or incinerate the bodies to prevent identification of both victim and perpetrator (Gómez 2015).¹⁶²

During this time as well, massacres that had been reported back then but soon forgotten by urban public were rediscovered by the press, and detailed accounts of such episodes were published in written and visual forms to remind the larger public of this past.¹⁶³ Newspaper articles of the time reflect the consternation of this public when faced with the magnitude, in both gravity and numbers, of the violence admitted by the paramilitaries. The anonymous writers would often refer to the accounts of violence as “unimaginable,” even though for decades the human rights community and survivors had re-told those stories in many formats and settings. Press notes of the time reflect the consternation with the judiciary truths that emerged from the procedures of the prosecution of the paramilitary commanders:

“The magnitude of what happened in Colombia [in these last two decades] exceeds the imagination of the ordinary citizen. In particular that of the city dweller who, immersed in the comfortable chimera of progress and consumption, did not see the horror that paramilitaries and guerrillas planted in the countryside. It also exceeds the estimates of experts. This is the horror the ruling class turned its back to, that the administration of justice was incapable of stopping and that the press barely covered. Such is the horror that public order, judiciary and political institutions were unable to contain, out of complacency or fear.¹⁶⁴

¹⁶¹ A thorough analysis of the economies of truth, blame and suffering in the JnP trials can be found in CMH. 2012. “Justicia y Paz ¿Verdad judicial o verdad histórica?”, Bogotá.

¹⁶² The use of ovens to get rid of the bodies seemed to have caused special shock.

¹⁶³ See for example: *Semana Magazine*, December 08 of 2007. “El oficio de matar” concerning alias El Iguano and alias Steven, who in the first year of the trials confessed they had conducted 2000 and 250 killings, respectively. Available in: <http://www.semana.com/especiales/articulo/el-oficio-matar/89971-3>

¹⁶⁴ *Semana Magazine*, December 8 of 2012. “Los espejos de la guerra.” Available in: <http://www.semana.com/especiales/articulo/los-espejos-guerra/89970-3>

Paramilitary commanders are revealing their crimes “in bulk.” Will the Prosecution Office have the capacity to process them? The bodies of 1,033 persons were recovered from the depths of the earth (...) after the prosecutor’s office located 858 mass graves (...) [R]ecent admissions of guilt by some of the commanders suggest that this number could be increased by several hundreds if not by the thousands. (...) Not even the most pessimistic among us had imagined the brutality and the number of the crimes.¹⁶⁵

In addition, one of the top AUC chiefs, Mancuso, and some paramilitary middle-men made a series of revelations disclosing the alliance between them and politicians across the country. For the people in those localities, it was no secret that the paramilitaries of the AUC had used their power of coercion to promote the careers of politicians of their choosing and get rid of those that opposed them. This scandal, referred to as “para-politics,” triggered a vigorous response from the national judiciary. Eventually, the General Prosecutor’s Office and the Supreme Court removed from office and tried more than sixty elected officials –including congressmen, governors and mayors- under charges of criminal collusion with the paramilitaries. Another paradox: most of the Congressmen tried were part of Uribe’s coalition in Congress and had actively promoted the passing of the JnP Law. Three members of the Senate Board of Constitutional Affairs where Gaviria had a seat ended up in prison, including Senator Mario Uribe, the main proponent of the JnP Law and President Uribe’s cousin.

Thus, despite the serious deficiencies of their legal design and set up, in the long run the JnP trials also shed light upon the AUC’s organizational history and its relation with political elites, state agents, drug cartels and local business and international corporations. And, most importantly, some of the most pressing truths for survivors –such as the fate of disappeared persons- were also disclosed and have indeed led to the recovery and identification of several thousands of bodies.

¹⁶⁵ Semana Magazine. October 11, 2007. “Confesiones de verdugos.” Available in: <http://www.semana.com/nacion/articulo/confesiones-verdugos/89438-3>

On the other hand, the JnP trials failed to vindicate the right of victims to a satisfactory reparation and alleviate the psychological and economic hardships they had endured since the events of violence occurred. Moreover, many human rights organizations found that the trials themselves created additional instances of revictimization. For many victims, finding and paying for legal assistance to be represented in the trials or personally attending the hearings in a distant city was beyond their means. Also, listening for months to the narratives of paramilitary commanders, with almost no opportunity to contest their versions of the facts, but in the hope they would at some point mention them or their loved ones and provide details about the violence against them, turned out to be psychologically excruciating. The so-called reparation hearings –the instance in which damages would in principle be listed and formulated as formal charges- kept being postponed first for months and then for years, in the case of most defendants, and finally they were eliminated from the procedures. As I write, in early 2017, a study by the General Accounting Office (CGN 2017) found that after more than ten years of the JnP trials, forty seven rulings convicting 8% of the selected combatants -195 out of 2378- had been issued (and found also that more 90% of these rulings were issued after 2012).¹⁶⁶

Equally difficult was the access to the Reparation Fund created by the JnP Law as a subsidiary source in case defendants defected from their obligation to compensate victims. And all this was in parallel to the many threats against JnP plaintiffs and the dozens of mortal attacks against some of them that started soon after the hearings began.¹⁶⁷

¹⁶⁶ According to the official statistics released by the Uribe administration, about 30,000 AUC combatants were demobilized. Of this total, the Accounting Office (CGN 2017: 6-7) found that around 3,915 were initially selected for the trials (while the others received a rapid pardon). With time, some half of this initial group defected from the trials or were sent back to the ordinary judiciary system and the number was reduced to 2,378. For a summary see El Nuevo Siglo. April 22, 2017. “Justicia y paz solo ha condenado 195 postulados”: <http://elnuevosiglo.com.co/articulos/04-2017-justicia-y-paz-solo-ha-condenado-195-postulados>

¹⁶⁷ Holman Morris’ film *Impunity* (2012) is an outraged denunciation of the JnP trials and institutional setup that illustrates well the reaction of most of the human rights community and the political left to the procedures. Although Morris fails to convey the multi-layered effects of the trials over other audiences and publics, and over the very diverse network of victims of paramilitarism, and presents the trials almost intentionally designed to humiliate victims and

Overall, the JnP trials had the paradoxical effect of revealing to the larger public the brutality of paramilitary violence and the alliances with the political elites that approved the JnP Law, but along the way it also revealed the limitations of the trials themselves in terms of the scarce opportunities they offered victims to receive compensation and other forms of redress for the harm caused to them. This in turn led to an enhanced visibility of the hardships that many victims had undergone not only because of violence but also because of the unresponsive and sometimes violent system of justice established by the JnP Law.

The visibility and moral reevaluation of post-political victims

Aware that lost lives and suffering matter when they are visible (Butler 2008. Also Tate 2015: 8), NGOs and sympathetic media made sure that the stories of suffering and tenacity of survivors of paramilitary violence gained visibility in the public sphere. Also, as Gómez (2014) notes, in its attempts to influence the approval of the JnP Law and then the process of the trials, the human rights community improved its coordination and cohesion and began to articulate a common agenda beyond pre-existing divides.¹⁶⁸ Thus, instead of working separately for rights of the victims of specific crimes, NGOs began to operate under the banner of an increasingly generic victimhood. Even more, at some point, as I discuss in the following section, victims of guerrillas, paramilitaries and state agents began to work out some of their differences and joined efforts to force JnP prosecutors, judges and governmental officials to shape their decisions according to the expanded catalogue of rights that the transitional justice orthodoxy offered to victims.

restage the violence of the past, his film is still captures the hardships of victims in the encounter with both perpetrators and state agents. The film is above all an object of political culture that reflects the political sensibility of leftist organizations.

¹⁶⁸ Previously to the JnP Act, victim grassroots were relatively dispersed and were divided into victims of either a particular crime or a particular armed actor. But afterwards, a series of collective platforms such as La Mesa Nacional de Víctimas, El Grupo de Trabajo and El Movimiento Nacional de Víctimas de Crímenes de Estado

This would later on develop into a form of victimhood that would increasingly appear as a post-political experience, not defined by the perpetrator or the socio-economic profile or political affiliation of the victim, but by the brutality suffered. Also at this time, and possibly because of the emergence of this sanitized form of victimhood in legal and political discourse, in addition to the greater visibility of atrocities, there was a considerably positive resignification of the figure of the victim. Stripped of political identity, class, and redefined as an agent to whom the conflict occurred –rather than as a participant in it-, the abstract victim became a superior moral subject that commanded the sympathy or at least the respect of the larger public.

Two crucial and revealing exceptions to this moral logic were the Movement of the Victims of State Agents (Movice for its acronym in Spanish) created in 2007 and later, at the opposite corner of the political spectrums, the group of state agents that presented themselves as victims. The Movice emerged in reaction to the JnP Law and the decision of Congress to explicitly exclude people who had suffered from the actions of state agents from the definition of victimhood. Some of the most visible members of the Movice were survivors of the extermination of the Patriotic Union party –the party formed by the FARC in the 1980s in the midst of an attempt to negotiate peace-, relatives of people who were allegedly forcibly disappeared by police or army officials, and survivors of torture, among others. The aspirations of both groups to partake of this reevaluation of victimhood was received with great resistance by each other and by a variety of publics, including even victims of paramilitaries and guerrillas, who were not willing to allow them to refashion themselves as victims rather than as full-fledged instigators of war.

The emergence or revamping of a set of political leaders was another instance of the moral reevaluation of victimhood. For famous victims operating in the public sphere, their condition became an increasingly significant source of political capital. Promises of revenge (*vindicta*) had led Uribe to the presidency (Rojas 2015; Orozco 2005). However, it was this other part of victimhood –

that of suffering- that endowed political figures across the political spectrum –not only Uribe- with an enhanced moral and political authority. It was precisely during those years that both pro and anti-Uribe politicians ended up either appropriating or rediscovering the cause and identity of victims as part of their political performance.¹⁶⁹ At that point it became also evident that many of the most vocal and publicized politicians across the political spectrum, or their family members, were indeed victims of violence -and it was in the light of this reevaluation of victimhood that this aspect of their persona became more salient for both their opponents and supporters.

The first and most powerful among them was Uribe himself, followed by some of his closest advisors or their families, who because of their high socio-economic or political profile had been kidnapped or harmed by guerrillas or narcos in the past. A case in point was Vice-President, F. Santos. A member of the powerful Santos family, journalist and owner of El Tiempo newspaper, he had been kidnapped by Pablo Escobar in the early 1990s, and at that time constructed his public persona around the anti-kidnapping cause. After his liberation he created the first national NGO devoted to provide support to the families of *los secuestrados* (the kidnapped), raising awareness about the drama of kidnapping and promoting legislation helping out families and survivors to mitigate the financial and psychological effects during and after the episode.

But on the political opposition, there were politicians like the Liberal Congressmen J.C. Cristo, the oldest of the Galán brothers, and leftist and Movice founder I. Cepeda. All of their fathers –well known politicians of the 1980s and 1990s- had been killed by different organizations and they had inherited their political capital. The victim aspect of their political persona until then was not in the forefront, although it was clearly part of their trajectories. Rather than being received as victims and embraced as vindicating a series of rights to justice or reparation, they had been received until then

¹⁶⁹ Victimhood as a means to citizenship has become a pervasive phenomenon. It started with the JnP Law but it went massive with the approval of the VLR Law.

as embodying the political personae of their own fathers and as the heirs of what they had represented, whether a political movement or dynasty, a political project for the future or a set of past achievements. In the new context, then, their political authority was further reinforced not only as heirs of a political mandate but as having themselves experienced victimhood. In this context, then, the political arena became a site in which politicians competed amongst each other to speak on behalf of victims and their needs, and drew from their own personal stories to position themselves as legitimate representatives of their cause.

This moral and political resignification spurred a rather dramatic transformation of the political landscape. Ironically, the post-political victim became a new political subject, with more legitimacy to act than its previous politicized versions. While the political leadership competed to incarnate the victim and speak on its behalf and different groups of survivors and active participants of violence strived to be admitted as victims, victimhood gradually became a means to an enhanced but still precarious form of citizenship. This avenue for the enjoyment of basic rights had already started with the legal vindication of desplazados, had been ratified and also amplified with the transitional justice orthodoxy and would widen with the approval of the VLR Law. One drawback, as I shall discuss in Chapter Six, however, was that the dignity of victimhood also demanded an effacing of the complications of war, the morally ambiguous choices of witnesses and survivors, and the elimination of their political agency (Weld 2013, Orozco 2012 and 2005). For the moment, let me turn to the increasing outrage around the revelation and occultation of the truths of land dispossession that accompanied this resignification of victimhood and that created a sense of urgency in relation to land restitution.

Land dispossession on trial: in search of land restitution and the “known unknown” of dispossessed lands

Soon after the JnP Law was approved in 2005, a group of human rights NGOs specialized in litigation contested the bill before the Constitutional Court under charges of unconstitutionality. The argument of the plaintiffs was that “transitional justice standards” were an integral part of the national Constitution by virtue of what in Colombian constitutional law is known as the “constitutionality block.” This turned the standards into hard law, and since the bill was inconsistent with those standards, the argument went, it was necessarily unconstitutional.

The court (2006) partially agreed with the plaintiffs and struck down and reformulated some of the questioned precepts.¹⁷⁰ The ruling, issued in mid 2006, substantially modified the law approved by the majorities in Congress. In this revised version, additional requirements were imposed upon paramilitary commanders if they were to get a reduced sentence and the rights of victims gained in content. Total confession of atrocities became mandatory, rather than optional, and failure to disclose any serious crime was redefined as sufficient to cause the loss of legal benefits. It also became an obligation to fully disclose the location of disappeared persons. On the other hand, victims were given more and clearer procedural opportunities to participate in the hearings and the inquiries of the prosecution.

The Court also reviewed the precepts related to the obligation to restitute properties and assets.¹⁷¹ The lawsuit had argued that by limiting the obligation to restitute the properties and assets “available” to the defendant at the time of the trial and to those having resulted uniquely from “illicit activities,” the JnP Law violated the “constitutional and international duty to guarantee the fair reparation of victims.” The expressions ‘if available,’ ‘when at hand’ or ‘whenever possible,’ which

¹⁷⁰ Constitutional Court of Colombia. Ruling C-370 of 2006. According to the court, the issue to be resolved was the “tension between values equally protected by the Constitution: on one hand, the search for peaceful coexistence and on the other, the rights to truth, justice and reparation” (Gómez 2014: 119). For this reason, it concluded, a constitutionally admissible legislation had to strike a balance between both, without sacrificing one on behalf of the other. Thus, even if Congress was free to define the specific set of rules and mechanisms by which to do so, its discretion was limited by the constitutional obligation to achieve this balance (Constitutional Court, 2007).

¹⁷¹ Articles 10.2, 11.5, 13.4, 17, 18 and 46

appeared in some of law's provisions could ultimately be invoked by defendants to evade their obligation to surrender assets. The plaintiffs also argued that in practice, distinguishing between legally and illegally acquired assets was "impossible," since defendants could easily hide illicit assets and make them unavailable by transferring the property title to a third party. In defense of the JnP Law, delegates of Uribe's Ministry of Justice admitted before the Court that paramilitary organizations had accumulated "immense fortunes" and "economic means" but rejected the objections of the plaintiffs. In their view, existing laws offered mechanisms to track down and get hold of the illicit assets not duly disclosed, and in this sense, it was not true that the JnP Law granted cover for defendants to get away with violent dispossession. And they added that, in any case, the reparation of victims was "fully guaranteed," to the extent that resources coming from the national budget and donations from international donors would be added to the Reparation Fund. But at the end, the Court ruled in favor of the plaintiffs and established that all assets acquired during the period of armed conflict had to be submitted, regardless of their legal status or their immediate "availability." In its considerations, the Court argued that allowing those properties to be in the hands of defendants and transferring the burden of reparation to tax payers went against the core of transitional justice standards (Constitutional Court 2006).

Still, as JnP critics had predicted, once the trials started only few defendants surrendered properties or disclosed substantial details about land dispossession and more generally, about the finances of the AUC. Mancuso, one of paramilitary chiefs, spurred a flare of optimism when at the beginning of the trials he disclosed a list of properties his commandos had seized violently in the North of Santander region or when in 2007, his comrade in arms, "Jorge 40," announced that he was "going to give back to the peasants the lands [he took] away from" them in the Magdalena region (CNMH 2012). However, as trials unfolded, most defendants have denied having lands or other real properties to surrender or have surrendered assets of scant value, and prosecutors have

been unable to prove them wrong. In 2010, García (2010) argued that between 2007 and 2009 only 41 defendants out of 365 surrendered lands and other real properties; and that even then, many were either registered under somebody else's name, were not properly identified, or their location and legal status was unknown, which made these properties useless for purposes of reparation.

Similarly, during the first two years of trials, only a handful of ex-combatants admitted to having instigated events of forced displacement and land dispossession. A report released in 2012 by the Center of Historic Memory contended that revelations in this regard had been disappointingly scarce and that even in those cases, defendants had rarely provided details about the location of the properties they had mentioned or about the identity of the people who had benefited. The report regretted that after six years of JnP trials:

“The contributions [of defendants] to the truth in relation to the identity of the intellectual authors of land dispossession (...) and the beneficiaries of the criminal plan to accumulate land (...) have not been significant. This is because in most cases defendants deny or deride the claims of victims and the accusations against them in relation with forced displacement and (...) the dispossession of abandoned lands (CNMH 2012).

Still, the report compiled some of instances in which some defendants did admit a link between paramilitary counteroffensive and the accumulation of valuable lands on behalf of the AUC commanders or of supportive and yet unidentified agriculturalists, industrialists and politicians, and with the consolidation of banana, palm oil and cattle-ranching operations in different regions across the country. Thus, for example, in addition to Mancuso and Jorge 40, who promised to return properties, three commanders from the Urabá region were among the first to openly discuss land dispossession. In some of their statements they agreed that part of the AUC's plan in the region had been to secure land and property rights to undertake agro-industrial projects.¹⁷²

¹⁷² Thus for example early in the trials, alias “Pedro Bonito, one of the AUC commanders in Urabá, explained that: “having entered into a region and knowing that ‘x’ person is a guerrilla and has a farm, properties (sic), and any other assets I can identify, these would then be claimed by the paramilitary commando or the commander in charge (...)” Since the trials began he has provided details about some of the specific farms or haciendas belonging to people killed or forced out. Later on, Hasbún would assert that he joined the AUC to recover the lands of his family. The report argues

Mancuso, on the other hand, challenged these accusations and in 2007 argued that the AUC had not appropriated land but rather that it had “recovered it.” From his perspective, when securing territories AUC actually offered landowners the chance to “come back and reclaim the properties they had been previously forced to abandon because of the violence of guerrillas and the actions of the Incora.” After he was extradited to the US in May 2008 he argued from his cell that in contemporary Colombia there had been two major cycles of land dispossession. The first had been La Violencia of the 1940s and 1950s (Chapter One) and the second, which he referred to as “the second great dispossession of modern times,” had been in the 1970s and had been conducted, in his words, by the peasant organizations of ANUC and the Incora, both “permeated” and “managed” by the guerrillas. Adding to this, Mancuso also suggested that because of this, part of the strategy of the AUC had been to infiltrate those state agencies, such as the Incora, which had been historically “used by the guerrillas.” At about the same time that Mancuso gave these statements, a mid-rank paramilitary who went under the alias of “Pitirri” publicly accused Mario Uribe, the cousin of President Uribe, of having concerted with the AUC aggressions against the owners of a series of haciendas he wanted to acquire.¹⁷³

These scarce but suggestive statements formulated during the first two years of the trials

also that Heber Veloza, another commander in that same region, has “admitted the intentionality” of a faction of the AUC in relation with land accumulation. Veloza asserted in one of his initial hearing: “Indeed, there was pressure to buy those lands and there was pressure on peasants so they would abandon those lands (...), so yes there was pressure through guns so that many people could buy those lands at a low price (...) We had them displaced, because we didn’t allow them to go back, if someone happened to return I would say I will pay you 50,000 or 100,000 pesos (25-50 USD) for the land, because that’s the value if you want, if you don’t want to lose it completely. People signed the papers (p. 91-92). According to the report, Veloza also indicated that the late Vicente Castaño –the younger brother- was the “great land accumulator of Urabá” and that his “obsession” was to acquire great extensions of land in the Eastern plains, in the other side of the country, to consolidate his palm oil industry. Also, Veloza talked about processes of massive land accumulation in other regions like Guaviare and the Cauca where “one or two people” are the owners of entire municipalities. In his words, only with the cooperation of other AUC commanders “it will be possible to determine who has the land.” Also, a middle-rank who operated in Cesar and in the fringes of Magdalena confessed that the real goal behind the killing of a group of peasants in the Cesar region was not to “eliminate the insurgent threat” (...) but to take over “lands abounding in coal.” The report also found that in that area, where the AUC infiltrated Incoder, combatants called that agency Fincoder, which is a fusion of the word Incoder and farm (finca).

¹⁷³ El Espectador newspaper. April 22, 2008. “y quién es alias Pitirri?” Available in: <https://www.elespectador.com/noticias/politica/articulo-y-quien-alias-pitirri>

coincided with the growing number of stories of forced displacement and land dispossession that victim grassroots, human rights NGOs, journalists and researchers in academia were uncovering. However, the selective vagueness of the AUC commanders and, on the other hand, the parapolitics scandal and accusations like the one against Mario Uribe reinforced the perception among certain concerned publics, including the technical elites of the previous chapter –the Project’s staff in particular- that land dispossession had not only occurred at a massive scale along with the expansion of paramilitaries but that the unidentified individuals who had become the owners were still politically and economically influential and were hiding under respectable and honorable names.

2005-2007: whereabouts in the policy-world of land restitution

Because both understanding land dispossession and contributing to its reversal motivated me politically, I left Congress in mid-2005 right after the approval of the JnP Law and found positions in two of the many initiatives devoted to such purposes emerging at that time within and outside state institutions. I first worked as a junior legal advisor for the General Controller’s Office and joined the team of lawyers and social scientists who had been hired to provide a diagnostic about the opportunities and limitations that existing laws and institutional practices offered for the protection of the patrimonial rights of victims under the JnP Law (PGN 2006).¹⁷⁴ Then, in 2007 I became a research assistant for the National Reparation and Reconciliation Commission –the Reparation Commission, from now on- created by the JnP Law.

As discussed in the previous chapter, the Reparation Commission was entrusted with a list of far-reaching tasks, which included producing a report about “the emergence and evolution of armed

¹⁷⁴ The JnP Law relied heavily on the databases and institutional capabilities existing in the Cadastral Agency, the Incora, the registration offices, among others, for JnP prosecutors to assess the eligibility of AUC combatants and also to accept the claims of victims. The PGN concluded that given the state of affairs, land restitution would fail even if actively sought after by prosecutors. See PGN, 2006.

groups in Colombia to be presented to Congress,” dictating and implementing a “reparation plan for victims,” and designing the so-called Asset Restitution Boards and coordinating its implementation. The Law had dictated some of the main features of the boards: that there would one per state, that a host of state institutions would have a seat in the board, among others. But the contents, procedures and the rules of the reparation plan had been left open-ended. Who was eligible for restitution? What kinds of acts would count as dispossession? Who would bear the burden of proof? And which proof would suffice? Who would decide? What would happen if the asset requested in restitution was in the hands of a third party who was not a former AUC combatant? These questions, which had no concrete answers, in principle were going to be decided in the closed-door meetings of the Reparation Commission.

The Commission became the arena where the dispute around whether victims would get “thinner” or “thicker” (Gómez 2014) reparation rights (of which restitution was just an element) would be waged. However, a year and a half went by before President Uribe issued the decree creating the Commission, defining its structure, and appointing its members; and took even longer to give it some funding to fulfill its many formidable tasks. Finally, sometime in early 2007, the scholar Eduardo Pizarro was appointed to head the Commission. He was a prestigious researcher who wrote extensively about political violence, the origins of the FARC, and the institutional history of the Colombian army, among others. But Pizarro was also the brother of M-19 guerrilla chief commander Carlos Pizarro, killed in 1989 soon after demobilizing and announcing his candidacy for the Presidency. C. Castaño, one of the founders of the AUC, claimed authorship of the killing, and justified it as an act of patriotism, thus saving the country from being ruled by a criminal (Aranguren 2001). In addition, Pizarro was also a direct victim. In the late 1990s, apparently Castaño also ordered his assassination and that of Alejandro Reyes, the author of the famous 1997 study on the narco-agrarian counter-reform and other influential works on the agrarian question. Two hit men

shot Pizarro as he was heading to the National University campus where he taught. Apparently they had waited for Reyes outside the classroom where he was teaching an early morning class, but had been unable to get a clean shot because when he left the classroom he was surrounded by students.

Pizarro, therefore, who enjoyed great academic prestige, was an active member of the circuit of experts on violence that had shaped the understanding of certain political elites about the armed conflict, an intellectual who was seen as having a humanist sensibility but also a critical stance towards armed organizations and was also perceived, in addition, as a victim of paramilitaries –a condition that was salient and completed his moral authority to head the Commission and lead the process of the reparation of victims in the midst of the ongoing political polarization. But for the same reasons -his triple condition of experts on the armed conflict, victim of paramilitaries and brother of a guerrilla commander- he also received severe criticisms from pro- and especially anti-Uribe publics.¹⁷⁵ The human rights community was particularly critical of his willingness to collaborate with an institutional setup that was seen as too lenient with paramilitaries and indifferent towards victims.

I joined the team of scholars and researchers who Pizarro appointed to formulate the report on “the origin and evolution of the armed conflict.” This group – which came to be known as the Historic Memory Group- was constituted by distinguished scholars, most of them on the progressive side of the political spectrum. Like Pizarro, many of the members were well-known contributors to the literature on violence and had affiliations with public and private universities. My position was in the newly formed Land and Conflict team, directed by A. Machado, who had written extensively about “the agrarian question” –and whose works I refer to extensively in Chapters One

¹⁷⁵ The other members of the Reparation Commission commissioners were representatives of state institutions such as the Controller’s Office and also of “civil society” –as the JnP defined it. The latter were directly appointed by the President who chose two representatives of human rights NGOs working on issues of peace, a priest from the BCC, and a conservative intellectual from Antioquia, among others.

and Two. Later I came to realize that I had been appointed to this group because of my legal background and the need for a lawyer to translate the empirical findings into a legal language. One of the first tasks I was assigned was to construct a legal taxonomy of the means that armed organizations and their allies deployed to produce land dispossession, based on cases being discussed in the public sphere and denounced by NGOs. This typology, as was also called in our meetings, was expected to serve as a guide to design the Asset Restitution Board program (see GMH - CNRR 2009). The Group intended to contribute to the dispute around thin-thick rights with empirical data that was properly presented in legal terms. I was also given the task to collect as much information I could about land dispossession under the paramilitary counteroffensive in three states of the Caribbean coast in preparation of a report on the issue (GMH-CNRR 2010).

During my time in the Controllers Office and then in the Reparation Commission I would continuously run into people at workshops, conferences and meetings who were in initiatives that were intended to influence the formulation of the reparation plan and the restitution program. Most of my peers were lawyers - and to a lesser degree sociologists and economists- motivated by indignation and “a will to improve,” in Li’s terms, the legal system so that dispossessed communities could get back their lands and belongings (Li 2007). Others were there to advocate for existing legal mechanisms and prevented changes to the law they deemed unnecessary or dangerous. Together, we would constitute what Shore, Wright, and Però (2011) refer to as a “policy world” in which forms of expertise regarding a variety of objects and fields of knowledge intersected: human rights, private and administrative law, agrarian history and rural sociology, the armed conflict, state institutions and their (mal)functioning, policy-making, public administration and also, the means, locations, time-line, contexts and agents of the agrarian counter-reform.

Of the many sub-groups within these governmental micro-cosmos, I will first mention three that were then highly proactive in the techno-legal formulation -and interruption- of a policy framework

for the restitution of dispossessed people and lands. The first was embedded in the Reparation Commission itself. When Pizarro got finally some funding, he selected a “technical team” of a few lawyers to work exclusively on the design of the Reparation Plan and the Asset Restitution Board program. I was not part of it, but I was invited regularly to the meetings where this team presented its advances and was also asked to give them feedback. I left in 2008, but as one of the lawyers, Ariadna, told me years later over a coffee, between 2007 and 2010 they worked “tirelessly” on both the Plan and the program.¹⁷⁶ In order to put together both policies they invested large amounts of funding and time, hiring consultants, meeting regularly with representatives from international organizations and donors, putting together seminars and conferences with international experts flown from South Africa and Eastern Europe, and organizing work sessions with delegates from different offices within the government –including the Project- and with representatives of victims’ NGOs. At then end however, she confided that people in the “upper echelons” of government kept delaying the approval of both documents, until at the end the Restitution Program they wrote “ended up in a drawer.”

A second set of participants were spread across Uribe’s Ministries of Agriculture and Justice; the National Planning Department and others instances that constituted the “upper echelons” that this lawyer told me about. They were in charge of proofreading the many decrees and regulations that the government had to issue in order to further stabilize the contents of the JnP Law. Among this group was also a series of initiatives then referred to as “Conret” and “Proret.” Both were task forces constituted by small teams of lawyers hired to help particular claimants in JnP trials to achieve the restitution of their lands. At that time these programs were exhibited as proof that the government was committed to restitution, even though their interventions were at the end limited to a short list of cases and they would often advocate for “thinner” rights.

¹⁷⁶ Fictitious name.

The final and most important initiative was the Land Projection Project. After I met them back in 2004 and we collaborated to halt the “property titling” draft of the conservative Congressman (see Chapter Three), they devoted most of their attention to a series of land protection “pilot projects” they had been conducting in different regions of the country with funding from the World Bank and other international donors. Their work consisted in orienting local authorities on how to safeguard lands allegedly at risk of being abandoned or unduly appropriated, in accordance with Decree 2007 of 2001 which some the Project’s original founders had helped to write and formulate back then. The implementation of this decree demanded completing a variety of tasks such as putting together an inventory of the lands and the people who had been displaced from these “pilot” regions, and then getting local authorities to exclude those properties from commerce.

But then, right after the JnP law was passed, the Project opened a new line of work and advocacy specifically devoted to land restitution. One of the lawyers and three professionals on political science and government were given the task of studying land restitution regimes in other parts of the world and also helping a group of dispossessed peasants they had met in their “pilots” to prepare their claims for the JnP trials. This also entailed, as one of them explained me later on, interacting intensively with JnP prosecutors, helping them to collect evidence of the facts of dispossession and to formulate the charges against defendants.

The Project continued with the same relatively low profile (Estrada and Rodríguez 2012) it had exhibited in previous years, and refrained from publishing what they had found out about the who, when, where and how of land dispossession that anti-Uribe publics were so eager to know. However, they did take note of the “ways people had been robbed of their lands,” as one of them put it. Thus, they identified some of the legal tricks that paramilitaries had used, in combination with violence, to effectively deprive people of their formal rights over land. They had also been studying in depth the Civil Code and agrarian law statutes, especially the ensemble of rules regulating property

acquisition, adverse possession (*posesión*), occupation (*ocupación*) and tenure, and thinking about the litigation strategies that could be used to revert these fraudulent or forced acquisitions.

There were many other initiatives outside the government with differentiated access to this policy-world, such as the Controller's Office or, as I will discuss in the following section, a think-tank called Midas that operated with funding of USAID and to which Uribe's government regularly outsourced the design of policies related to the rural development during those years. Fully outside the government and in the political opposition but actively engaged with the cause of land dispossession was the Movement of State Victims (Movice) mentioned above. One of their first initiatives was to undertake what they called an "Alternative Cadastre of Land Dispossession" (*Catastro Alternativo del Despojo*). The plan was to gather information directly from victims about dates, places and circumstances in order to map out dispossession and create legally adequate evidence.¹⁷⁷ In protest against the JnP Law, the Movice officially refused to agree to the trials, cut interactions with the government –which were extremely tense as I discussed in the previous chapter- and announced that they would use international courts instead to hold the state liable for both state and paramilitary violence. However, informally Movice and people in the policy world with ties to the government did meet to exchange information and collaborate by proxy on each other's projects.¹⁷⁸

¹⁷⁷ With the help of ILSA, the Latin American Institute of Alternative Legal Services, the Movice organized a series of meetings with grassroots actors throughout the years 2007, 2008 and 2009 and prepared a methodological guide for displaced communities and NGOs to collect and organize information about land dispossession (ILSA, n.d.). The group also issued publications about forced displacement and land dispossession in two regions of the country, San Onofre in Sucre (Oyaga and Becerra 2010) and San Carlos in Antioquia (Caicedo et al., n.d.).

¹⁷⁸ My colleague in the Reparation Commission, for example, met informally with the Movice in a couple of occasions. As she told me in an email back then: "They have been conducting a series of efforts aimed at the compilation of information about land dispossession with the following goals: building some historic memory on the matter and second, gathering from the desplazados technical proofs that may support judiciary claims for redress for the loss of material and immaterial assets, but all of this outside the JnP trials. Some organizations have already done some work: Justice and Peace [an NGO] conducted 3000 surveys (...) in Meta; 200 surveys [in Sucre] (...) covering years 2000 - 2003, these have already been processed and included in an Access (sic) database (...), seems that (...) other organizations (...) have done similar exercises in other regions. They are currently conducting a "pilot project" in San Onofre, [on the coast of] Sucre. They held a public hearing at the end of last year, a video exists, and they have also filed a formal complaint before the General Attorney. Additionally, they say Congressman's L. assistant (...) has in her hands the information that the San Onofre communities have used to support their complain about the displacement, it would be good to locate this information."

I mention the Land Dispossession Alternative Cadastre because, eventually, activists directly immersed in its formulation and execution built a reputation as experts on land dispossession and were invited to join the Land Restitution Unit once it was established.

Later on, a final key set of participants would join the dispute and contribute actively to the production of the land restitution draft, among them the Constitutional Court and its Monitoring Board, both discussed briefly in the previous chapter, and what came to be known within this policy world as the Land Table (*Mesa de Tierras*), constituted by officials from multiple niches within the Uribe government—including the Project. However, in the following sections, and for reasons of space, I will deal with the first two and only mention the latter in passing.¹⁷⁹

Land restitution (im)possible: the rigid flexibility of law

During my time as part of this policy-world and my interactions with its many participants in closed door meetings or informal coffee breaks mostly in downtown Bogotá, I kept a notebook for the purpose of completing the reports I had been asked to write. Now that I turn back to my notes with an ethnographic eye, I see that within this small but frantic policy world, collisions and collusions revolved around whether we shared a common imaginary of land dispossession as having been massive, mostly violent, often calculated and also instigated by people with economic, political and military capital. Ultimately it depended on whether we agreed that the “agrarian counter-reform,” as outlined by experts many of whom were highly active within this policy world like Alejandro Reyes,

¹⁷⁹ The Land Table emerged in response to an order issued by the Constitutional Court in early 2009, requiring the government to “thoroughly reformulate” its approach to land dispossession and produce a satisfactory land restitution policy that fulfilled constitutional standards. The delegates to the Table worked for several months on a proposal. Some of the precepts and designs they produced were then recuperated under Santos and introduced into the final version of the Victims and Land Restitution Law.

had indeed occurred. For those of us who did adhere this notion of the past, there was also a lamentation about the forced urbanization desplazados had been subjected to and to some extent also a romanticization of the rural world they had left behind or of one that had not arrived yet.¹⁸⁰ There were different levels of idealization of what dispossessed people had lost and could win back. While there were certainly very sophisticated understandings of the agrarian landscape, there were also highly naïve ones. The most extreme instance of this I stumbled upon was in a conference in late 2005 where a former Constitution Court Justice opened a power-point presentation about the recent T-025 ruling about forced displacement with a statement in capital letters, “DESPLAZADOS USED TO LIVE IN PARADISE.”

On the other hand, there was a permanent competition to update and also position one’s understanding of the “known unknown of land dispossession,” which was constantly changing as the JnP trials unfolded; and journalists, experts and NGOs released new estimates, maps, theorizations and stories of dispossession. We would ask each other about the latest news, publications and rumors emerging from the JnP hearings and investigations. But keeping up was just one part of the game.¹⁸¹ There was also the urgency to organize the many narratives about land dispossession being put in circulation in a time-space framework. Who seized land from whom, when, where and how? And also, who has the land now?

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¹⁸⁰ Popular culture representations of forced displacement, such as the films *Portraits in a Sea of Lies*, *The First Night* and *The Colors of Mountains* have been more nuanced. Still a certain idealization of the rural world lost to violence remains. There are clear-cut transitions between before and after violence and contrasts between city and countryside.

¹⁸¹ During this time there were new attempts to estimate the number of dispossessed hectares. In the six months following the approval of the JnP Law the General Accounting Office released yet another estimates.

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Moreover, there was a parallel epistemic need, relatively different, of translating land dispossession stories into recognizable legal terms, whether as a series of criminal types or as defective private law transaction: was it a homicide of a specially protected person, followed by forced displacement, constraint and then the falsification of a public document? Was it a sale with improper consent? A transaction with an unfair price? A simulation of a contract? There were several efforts to generate a set of classifications or typologies of land dispossession based on legal categories. The purpose of providing a legal definition, as I now reflect, was to determine what legal route to use and what policy design to offer in order to vindicate derived claims.¹⁸³

But the main point of friction in the first months after the JnP was issued concerned the actual contents of the Asset Restitution Program that the Reparation Commission had to design and put in effect. Contentions between the many lawyers in those instances had to do with the issue of eligibility and proof: what categories of legal subjects could ask for restitution, and how would they prove it? These disputes certainly revolved around what was desirable but also around what was “possible” given the way legal institutions worked and, on the other hand, what was “mandatory” according to the written law. In this issue lawyers overrode non-lawyers, who often stepped aside in the discussion to let “the specialists” determine how the legal system operated in these two distinct

¹⁸² During this time there were new attempts to estimate the number of dispossessed hectares. In the six months following the approval of the JnP Law the General Accounting Office released yet another estimates.

¹⁸³ The text published by the Reparation Commission (GMH - CNRR 2009) that I contributed to was but one attempt among many of this sort at that time. When me and the other members of the team were given the order to put together a typology, our supervisors clarified that it was for purposes of “policy making.” But there were also many other attempts. I was handed a brochure in one of the many conferences on the issue of land dispossession, prepared by an NGO called *yira Castro*, which enlisted different types of dispossession. The Movement of the Victims of State Agents –created in the midst of the trials- also undertook a nation-wide effort to not only classify dispossession.

but related realms of its existence. One was about how law worked in the ground, and the discussions revolved around predictions of what was possible and impossible given how judges behaved. The second was normative, and was about what the law's internal structure and what were the logic implications of its constitutive rules.

Everyone in this policy-world agreed that in general, Colombian law classified subjects of rights in relation with land in four categories: property owners, adverse possessors, "occupants" and tenants. In the case of owners deprived of their property, the equation of restitution was easy to apply and accept for most lawyers: if they lost a property, they should be the ones to recover it – since by definition nobody had a better claim to the land than them. But the problem was in relation to the other three and their rights, as had been the case every time normative elites had sought to reopen the debate around the agrarian reform. Should adverse possessors and occupants be restituted?

The Civil Code established a series of procedures for these other categories of subjects to protect their rights –even from owners. However, for progressive lawyers the problem resided precisely in using ordinary law: a normal court would take almost a decade in deciding any such case; litigation would require large sums of money to pay for an attorney and in addition, it would require meeting high standards of evidence to demonstrate that the claimants used to possess, occupy or enjoy the tenure of a particular piece land. Experience had shown, over and over again, that under the ordinary regime of proof such a demonstration was often unachievable for any regular claimant. And if the archetypical desplazado was the "poorest among the poor" (Ibáñez 2008) according to the most accepted statistics and the ever-growing research literature on the matter and if state institutions had also failed to keep an updated registry of land tenure arrangements and did not know about most of the violence endured by the communities caught in war, how would a poor peasant forced out of her previous home in the midst of violence –with people around her being

killed, expelled in many directions and subjected to silence- prove to a JnP prosecutor, private law judge or an administrative official that (a) she effectively used to live there; (b) that she “had” that land and (c) that a set of violent events had occurred and that her leaving the place was in fact a forced displacement? If additionally, she had been compelled to sign a document selling her property, or her signature had been forged or she if she had decided to sell at a reduced price, how could she effectively prove lack of consent?

So, from the perspective of progressive lawyers, it was impossible for this population to recover their land in an ordinary court. The solution was to introduce a regime of exception through the Asset Restitution Program so that the archetypical displaced person would stand a chance in court. But on the other hand, given the legal and political context, it seemed also impossible to successfully argue in favor of an inclusive Program since it differed from the Code -which was higher in the legal hierarchy and would have required passing a reform in Congress- and also from the agenda of the government and its legislative majorities.

In this sense this experience of (im)possibility operated at two levels as well. On one hand, for any progressive lawyer within this policy-circuit it seemed impossible to convince Uribe or his advisors to accept such a plan. This was a matter of “pure politics.” But the second experience of impossibility had to do with the structure of the law itself. For most progressive lawyers, avoiding ordinary law was desirable but there was no way to do it without violating it. Even if by some miracle the government agreed to introduce an inclusive Asset Restitution Program by means of a decree, it would directly disobey rules of higher hierarchy, in particular, the Civil Code. So there was still an inelasticity that expressed itself in the hesitations that even lawyers committed to the cause of “the dispossessed” experienced when trying to construct and justify an inclusive land restitution policy. And not only because of lack of political support from counterparts in the government’s most pro-Uribe echelons, but because of the contours of the legal profession’s imagination.

Also for everyone in this policy-world it went without saying that despite its flexibility, the legal system was experienced as a hierarchical structure and any decree and reparation plan had to be in harmony with laws that had a higher status. But this was even more undisputable in the case of the Civil Code, which was the piece of law that we, the lawyers concerned with land dispossession, had been using to conceptualize the problem at hand. The Code, a 120-year-old statute fashioned following the model of the Napoleonic Code, regulates personhood, civil contracts, family relations, patrimonial rights and also defined three of the four ways to relate with privately owned land: as property owner, adverse possessor and tenant.

A professor of mine had once told me that law was like “Play-Doh” but then, on a second thought, he had clarified that was not true of the Code, which, as he put it, was “the Bible of Latin American lawyers.” The Code had rarely been amended and commanded reverence from most practicing lawyers. For generations it had been taught in law schools and used in the legal profession to regulate the fundamentals of social life between non-state actors. The Constitution was the dominant legal precept and had been used to adapt some of the contents of the Civil Code, but in relation with property and other forms of tenure there had been no substantial revisions or reinterpretations. Something that deviated from the Civil Code and the established hierarchies and categories could not be easily imagined or at least properly defended, not at the level of a decree or a policy, especially when a significant part of the *habitus* of lawyers –one of the sources of their legal competence- was to create coherence between the existing legal regime and any policy or political decision turned law.

This rigid flexibility of law and the process of this specific policy world at this particular time coincides with, but is not utterly exhausted by Bourdieu’s (1987) conceptualization of the “juridical field.” In his terms, the “juridical field” is “the site of a competition for monopoly of the right to determine the law” where “there occurs a confrontation among actors possessing a technical

competence which is inevitably social and which consists essentially in the socially recognized capacity to *interpret* a corpus of texts sanctifying a correct or legitimized vision of the social world” (817). Moreover, this “conflict for [juridical] competence” entails the exercise of persuading peers that a particular legal interpretation is the most consistent with the rules of a higher hierarchy, rather than with moral arguments, coercive force, economic capital, or any other source of authority. The competition, then, is ultimately based on the principle of internal coherence. This what which according Dezalay and Madsen (2012), refer to as “legal reason”: the *habitus* and what a good lawyer embodies. Also, as Bourdieu noted, it is through this conflict for juridical competence that the “juridical field” changes but also how it resists change and how the changes it admits become limited. In his words: “the internal logic of juridical functioning (...) constantly constrains the range of possible actions and, thereby, limits the realm of specifically juridical solutions” (Bourdieu 1987: 816).

Although Bourdieu is discussing the “juridical field,” which he conceptually distinguishes from the larger political field of Congressional politics, I want to argue that this rigid flexibility of law, expressed in the form of legal reason and the experience of (im)possibility for legal change, is constitutive of politics even in the most political of settings like Congress or policy-making. Even in those scenarios, some of the political aspirations and policy plans that emerge cannot be easily translated into legal mandates, even by their own proponents. And it is lawyers who either hinder or allow that translation to happen by providing a good enough “legal reason.” This is not to say that legal reason is what dictates legislation but rather that although not sufficient, it is still necessary to justify political decisions and give them the appearance of the law. Bourdieu (1987) refers to this need as the de-personalization effect. Legal operators, he argues, face the challenge of presenting their personal or subjective appraisals as legal mandates, this is, as something that is not mandated by them, but by law or the state.

Now, on the other hand, the flexibility contained within this rigid structure comes from the ability to formulate many kinds of legal reasons, this is, many different and creative arguments that invoke coherence. On the legislative, policy and litigation level, this even takes on a poetic quality. The law admits new additions as long as these are recognizable as law, and admitted by normative elites as such. Similarly, as Bourdieu would also admit, legal reason is not the only kind of capital that “good lawyers” have. In this sense the field coincides with but does not exhaust what lawyers do and how they exercise authority. Good lawyers have accumulated legal and other forms of capital and exert competence in other fields: for example, understanding not only the internal structure of the law, but how operators behave. So performing as a legal expert, and being granted this status, depends on larger and more complicated political and social configurations, as does anyone’s ability to impose a particular kind of policy or law. However, what Bourdieu’s “juridical field” does capture is what the core of the politics of law is about and also, I argue, the power of legalism in politics. Just as policy arguments have force in judiciary decisions, legal arguments have force in advancing but also discarding political claims, by making it difficult for those committed to them to articulate them in a language that is recognizable as legal.

The tensions between these two facets of legalism - the constraint and the force that law as form provides to political agendas- would recur in daily encounters and conversations within this policy world. But one particular scene with the progressive lawyers of the Project clearly illustrates it. I remember finding about many colleagues engaging in exhausting efforts on “legal archeology,” with the hope of finding an obscure local or international piece of law that could be invoked to give non-owners the unequivocal right to restitution. This was the case for the Project lawyers who spent several months scavenging international law online in search of a rule that could give them a way out of the constrictive legalism of the time. Finally, in mid-2005, one of the Project lawyers who would eventually join the directives of the Land Restitution Unit found a new UN document called the

Pinheiros Report that had just been released and published on the internet. He had set a Google alert for the terms “land dispossession” (*despojo*) and “land restitution.” Just by chance we had a meeting that day at his office, but before starting he bid me to his desk and in great excitement opened the browser and showed me the document. He was laughing out loud, celebrating the finding. Though the Pinheiros Principles -as these came to be known eventually- were “soft law,” the fact that the UN had promulgated such a document meant that it could potentially be argued that it was part of the Constitution by means of the “the constitutionality block” discussed in a previous section, and then used to argue in favor of an inclusive and restitution plan. This was indeed a happy finding because the Pinheiros Principles established that land restitution was to be the preferred measure of reparation for forcibly displaced persons, and it also included adverse possessors. I was equally excited to the point that I devoted an entire page of my journal to that day and sent a series of emails sharing with other lawyers and activists and journalists that new piece of law which seemed to further reinforce the claim to equal access via restitution for owners and non-owners. It was at this point that some of my colleagues, specially the lawyers of the Project, began to think of their work as that of developing a new but kind of law, but one with a mandate, a *transitional private law*, which would increasingly become the signature expertise of some those lawyers.

“A law for victims”: the emergence and failure of the first Victims and Land Restitution Law

The craft and authorship of legislation: a note on sources

As this happened in the closed-door meetings of this governmental policy world, one NGO called Víctimas Visibles (Visible Victims) that until then had worked mainly with victims of guerrillas, joined efforts with the Liberal Party to introduce a new legislation in Congress that from their perspective, “was generous with victims, not perpetrators” (Cristo 2012). This draft, which would

eventually evolve into the Victims and Land Restitution Law, was presented by its proponents as a legislation not only for victims but also by victims, (Gómez 2014, Saffon 2010). Nevertheless, when inquiring about the process of production of the actual pieces of text that constituted the section devoted to restitution, I was referred back to the work of a small group of mostly male lawyers, already active in some of the enclosed spaces of the policy world discussed in the previous section, where much was done in the name of “dispossessed peasants” from an expert stance removed from grassroots organizing.

Amongst these lawyers whom I met at that time and then interviewed extensively, in turn, I have found competing claims about authorship and a diversity of opinions about the legal reasons behind the new precepts they or their peers formulated. This multiplicity of appraisals reveals the dissents and sudden alignments at that time between those who contributed to the draft, but also reflects retroactive anxieties for the recognition of their contributions, for the “paternity” –a word that often came up in the conversations- over some of the legal innovations they fought for and that, several years, still make them “proud,” as one of my interlocutors put it.

Conversely, I also encountered fear of being credited with a legal precept they did not agree with –especially if it has turned out to have unintended consequences. Policies elide personal contributions, but within policy-worlds, it is precisely by means of the attribution of authorship in relation with policies that succeeded or failed that the careers and reputations of experts are built or destroyed. Indeed, it was because of their sustained performance of expertise and sufficiency at the right time and in the right place that some of these lawyers were then entrusted with the task of leading the Land Restitution Unit or becoming high-level governmental advisors under Santos, while others lost credibility and were increasingly questioned for what one of them referred to as “their technical weaknesses.”

During my inquiries about the political part of the negotiations in Congress, and how the political majorities aligned with or against the draft in general, I was constantly asked whether I had read the book of liberal Senator J.F. Cristo, one of the draft's main proponents. For the people involved this was the most accurate –and intimate- account available. In 2012, Cristo published it under the title *The War for Victims: The Untold Story of the (Victims') Law*. The book is indeed an insider's account of the deliberation process in Congress, and also about the closed-door negotiations between Congressmen, experts and high-level governmental officials of the Uribe and the Santos administration around some of the main features of the VLR – not the specific formulas for land restitution, though. But the book is also a depiction of the heroes and villains of this “war for victims.” On one hand, Cristo claims for himself and the Liberal Party the credit of having sided from the beginning with the victims and opposed Uribe at a time when doing so was, in his words, “political suicide” (32). He exalts the courage of his co-partisans and the individual victims he met and the skillful way in which they overcame the different obstacles that emerged along the way. The book is a performance of authorship for this piece of legislation, which has been granted a great political significance, and a claim on behalf of the Liberal Party of the moral and political capital surrounding victimhood. And indeed, it can be argued, that the draft revitalized the Liberal Party, making it again a visible and politically relevant agent. Cristo also adds to the account autobiographical segments in which he reflects on the assassination of his father by the ELN guerrillas and describes how he would increasingly identify with the other survivors he met during the discussion of the draft, until embracing his newly-found condition of victimhood. On the other hand, the book is a moral and political condemnation of Uribe's resistance to the bill and an exposé of the different ways in which his government and its coalition in Congress sought to obstruct the draft and deny victims their rights.

Finally, I want to note that when tracking the transformations of the draft, I was hoping I could track down the process of inscription (Latour 2005; Latour and Woolgar 1979/1986) and erasure of the many pieces of text that were incorporated, or deleted, from the land restitution chapter in the VLR Law's many versions. Inscriptions, Monteiro and Hanseth (1996) propose (following the work of Michel Callon (1991: 143)), can be taken to be "the result of the translation of one's interest into material form." In this sense, statutes can be thought of as highly complex compounds of inscriptions and also erasures, reflecting strategic actions but, also as I hope to show, contingencies. My aspiration was to identify when, by whom, and as part of what kind of political entanglements certain aspirations were articulated into a textual form, and then either transformed, kept unchanged or just erased. The VLR Law's many official drafts were published in the congressional gazette; and some modifications were made during the public debates and recorded. But between one public version and the other, there were multiple non-public modifications. I had only been able to track down a few of the trajectories of these other modifications. Pieces were written on different computers by multiple people, then shared via email or CD with many others, then downloaded, printed and modified endlessly by hand or in digital form, and then returned back to the proponents, sometimes in pieces, sometimes in larger texts without any of them necessarily knowing who had added what where. The Actor-Network methodology (Latour 1995) of following an object and its multiple transformations in a comprehensive manner became a mirage that I could pursue productively to identify some points of self-evident rupture and also do a parkour of the political topography of these normative elites but I could not completely fulfill. At the end I had to conform with following the few leads I could find and going along with them towards dead-ends and abrupt disruptions, while at the same time knowing beforehand that I had missed steps and intersections and that many ramifications would remain unknown to me and unaccounted for in my reconstruction. Moreover, I have had to accept that precisely because of the quarrels about paternity

and authorship, my own version is necessarily going to displease someone, somewhere, whose participation in the production of the VLR Law escaped me.

On the other hand, the ramifications I was able to track revealed a somewhat unexpected fluidity and porosity across the political polarization of the time between pro and anti-Uribe political communities. As I have already shown, there were anti-Uribe people within the Uribe government. But then I found that technical objects such as statistics and legal formulas that were produced on one side of the divide were then mobilized by somebody or other to authorize opposite points of view.

Having said this, in what follows I offer one possible micro-history of the legislative process of the VLR in its first attempt. To do so I combine Cristo's narrative with that of Saffon (2010) and Gómez (2014), and also with what the people involved who I could talk to have shared with me. During my account I will focus on pieces of legislation related to restitution and the political alignments that allowed their inscription but prevented them from becoming a law –for a while. Although I discuss several of the political vicissitudes around the VLR Law, I have chosen to follow in more detail three particular fragments, which since then have had a significant political life and effect: (1) the new legal concept of land dispossession; (2) the new regime of proof to be applied in restitution cases and its most salient innovations (the qualified “good faith,” the presumptions, the reversal of the burden of proof, among others); (3) and the discussion around whether to reconstitute “possessors,” tenants, and “occupants,” in addition to property owners. As I shall explain, Uribe's congressional majorities allowed the draft to undergo the four rounds of deliberation required to approve that kind of legislation despite –and also in part because- of the government's hesitations. It was only at the very last stage of the Congressional procedures that it was tabled.¹⁸⁴

¹⁸⁴ Ordinarily, in order to become statutes, bills must go through four rounds of deliberations, two in the House and then two in the Senate, in whatever order. Proponents choose where to start. Once admitted for deliberation, each chamber assigns a group of presenters. The first debate within either chamber occurs in the commission that deals with

The first draft: crafting the bits

In May 2007 representatives from the *Fundación Víctimas Visibles* (Visible Victims Foundation) asked Liberal Senator Cristo for help giving victims more political visibility.¹⁸⁵ According to Cristo, the head of the foundation met personally with him and to recruit his support, she reminded him that he was a victim and therefore he could understand why “honoring the victims” (33) was important for the future of the country. They agreed to organize a Solidarity with Victims Day and celebrate it with a ceremony in Congress where victims of both guerrillas and paramilitaries would be able to share their stories with Congressmen while being broadcasted live through one of the public TV channels. Cristo welcomed the initiative, because it would counterbalance “the shameful” (32) address to the Senate that had been granted to paramilitary commanders three years before that had caused “so much indignation” among victims and certain audiences.¹⁸⁶ Survivors of paramilitary and guerrilla attacks were flown to Bogotá from different parts of the country for the event, but as then many observers noted, though in the first few hours a significant group of Congressmen listened to the guests, most of them had left before the last group of victims had been able to speak. Outraged

the subject matter at hand. Thus, First Commissions take care of any bill related with basic rights, and so forth. The second debate within each chamber takes place on the main floor. In order to be approved, half of the total seats plus one must vote favorably. Law 5 of 1992 regulates legislative procedures and as, any statute, it is open to interpretation. In order to introduce modifications during a debate certain rules must be followed. The President of the Chamber or the Commission is given a wide range of action deciding the agenda of the day, the order of interventions, among other things, and also interpreting Law 5 of 1992.

¹⁸⁵ This NGO was created in 2006 by victims of guerrilla kidnappings and was sponsored by the Media Department of the Sergio Arboleda University, a hub of political conservatism. It is likely that they were invested in a new legislation not only because of the shortcomings of the JnP Law but because most of its implementation was directed to prosecute paramilitaries and deal with their victims. For a great part of the JnP trials victims of guerrillas were left out. This only began to change later on, when the government passed the reparation plan discussed in previous sections and admitted FARC commanders for trials.

¹⁸⁶ Cristo and the rest of Liberal Party presented the proposal of the Solidarity Day to the Senate’s floor, with the expectation that it would be approved unanimously and without discussion “as was customary with that kind of initiatives.” But for his surprise, Uribe’s coalition objected to it, arguing that it could be taken as a critique of the government so they had to change the wording and phrasing of the proposal to appease the majorities. Cristo explains that the expectation is that would be approved via “pupitrazo” (desk-blow), that is, a collective “yes” that is not uttered verbally but through a noisy blow to the desk.

journalists compared the applauding audience that had greeted the paramilitary commanders with the fading one this time around:

“Last Tuesday, Congress (...) showed once again it can be deaf and insensitive to the pain of Colombians. (A)bout thirty victims of the armed conflict met for the first time on in the floor to share their dramatic stories. At the end only thirty Congressmen stayed (...) something starkly different to what happened three years before, when the majority of the “forefathers” of the land treated AUC leaders as celebrities (...). This is a demonstration that in politics perpetrators seem to be more important than victims.¹⁸⁷

That same night, and after the reactions condemning the behavior of the Congress, Cristo and the organizers of the ceremony decided that “it was time to put together a legislation that was generous with victims, not perpetrators” and for two months worked with the NGO and a lawyer in a draft modeled after Spain’s legislation on the rights of the Civil War victims, in particular with regard to reparations (Cristo 2012: 71). In October 2007, various representatives of the Liberal Party signed and submitted for consideration to the Senate an initial text and in December it was discussed for the first time in the Senate’s Board of Constitutional affairs, the same one Gaviria had sat in 3 years before.¹⁸⁸

Policies are defended through what Tate refers to as “narratives of justification” (Tate 2015) and Stone calls “origin stories” (Stone 2012). One of the justificatory narratives or stories behind the initiative was, as Saffon (2010) puts it, that the JnP law and derived policies “being implemented in the country had almost entirely focused on providing benefits to perpetrators of atrocities, while leaving the interests and needs of victims unheard and unattended.” Indeed, the draft presented to Congress opened with the following remarks:

¹⁸⁷ *Semana Magazine*, July 28 of 2007. “De víctimas y victimarios.” Available in: <http://www.semana.com/enfoque/articulo/de-victimas-victimarios/87345-3>

¹⁸⁸ The draft was debated in 8 different congressional sessions in the course of 21 months. The first draft was submitted in October 2, 2007 and published in October 5. The first debate and approval of the draft took place in the Board of Constitutional Affairs of the Senate in December 11, 2007. The second debate, in the Senate’s floor, occurred in June 18, 2008. Then it was transferred to the House of Representatives. As I discuss in the remainder of the chapter, the government presented an alternative draft that was approved instead of the one designed by Cristo and his supporters. This governmental draft was first approved in the House’s Board of Constitutional Affairs on December 11, 2008, and then in the main floor on June, 16, 2009.

In the last few years we have seen perpetrators being granted a much more important role than victims. (...) Congress has heard them, with an abundant audience; they participated in the drafting of the JnP Law with their proposals; the media has given wide coverage and importance to their activities, to what they have to say, and now citizens even know details about their lives, their names, their cruel and barbaric acts (sic). Whereas victims, on the contrary, have been neglected, set aside by the nation and the society, making them victims (...) of indolence, of indifference (...).¹⁸⁹

This first draft subdivided the rights to justice, truth and reparation into a series of derived rights, established some of the principles that ought to govern the interaction between officials and victims, and distributed among a group of existing agencies and institutions a set of duties and prerogatives with the goal of “satisfying the right (of victims) to reparation.”

This initial text addressed the issue of restitution in the same broad terms as the JnP legislation. It was listed as one of the reparation measures due to victims and defined in Article 23 as “the execution of the actions needed to return victims to the situation previous to the offense, (...) this includes the reestablishment of their freedom, the return to their previous residence and giving them back their properties, among others.” Then it briefly stated that the “government shall implement a comprehensive program for the restitution of assets, especially lands.” No other article referred to it.

In Cristo’s account, when the session began, Uribe’s Minister of Justice had not showed up. C. Holguín, the same Senator who in 2004 had reacted in anger to the Project’s presentation in a meeting (Chapter Three), had been recently given the position. Cristo, in a demonstration of legislative sagacity that was witnessed by people in the restitution policy world, prompted the directives to start the session in order to “take advantage” of Holguín’s absence. “Five minutes” later, the Board unanimously approved the draft, right before Holguín arrived. “Enraged by the decision” Holguín announced that, “the government had serious objections to the approved text”

¹⁸⁹ Journal of the Congress of Colombia No. 502 of 2007. Proposal for First Debate: Draft No. 044 of 2007 of the House Representatives, No. 157 of 2007 of the Senate

(2012: 72). Cristo, who was the chief proponent, invited Holguín to work on a joint draft with his delegates before the next round of deliberations, this time on the Senate floor.

Both Cristo (2012) and Saffon (2010) argue that from that point on, the government made clear that its problem with the draft revolved around four substantive issues. These were consistent with *Uribismo's* semantic configuration (Fassin 2012) of political reality, as discussed in Chapter Three. The first had to do with the government's insistence that there was no armed conflict in the country and that past and current forms of organized violence were something else, i.e. ordinary criminality or terrorism. The government demanded the draft be renamed as the Victims of Terrorism Bill instead of the Armed Conflict Victims Bill because, as it had been adamant about for the last five years, guerrillas and paramilitaries were fundamentally criminal and terrorist organizations rather than politically motivated. At the end, the proponents agreed to change the original title for the more ambiguous one of Victims of Violence, to please the government (Cristo 2012: 74).¹⁹⁰

The second was related to the legal justification underlying the State's current and would-be efforts towards reparations. The first version of the draft restated the principle of the "obligation to protect" structuring recent human rights treaties and instruments. According to this principle, state authorities must protect their citizens from serious human rights violations and when failing to do so -regardless of the direct involvement or responsibility of its agents – they have a derived obligation to repair the resulting victims.¹⁹¹ The government, on the other hand, had been insistent that reparation actions should be framed as being fundamentally based on the principle of solidarity

¹⁹⁰ The original title was "Legislative Draft No. 044 of 2008 of the House of Representatives, No. 157 of 2007 of the Senate, by virtue of which measures for the protection of victims of violations of criminal, human rights and humanitarian law by illegal armed groups are dictated." But in this first round, the one Holguín missed, the majority approved this other title "Legislative Draft (...) by which the statute for the victims of crimes and violent acts perpetrated during the Colombian armed conflict is created."

¹⁹¹ In Chapter Two, I argued, following Weiss and Korn (2006), Vidal (2005) and Aparicio (2012, 2009) that the "obligation to protect" was the leading justificatory narrative that in the early 1990s allowed global south activists and UN officials to argue successfully that forced displacement was a violation of international law and the forcibly displaced had to be treated by the UN and member states as a population in need of special protection, at least officially.

and not on a failure to fulfill this obligation. Cristo argues that the UN provided an intermediary formula invoking an article of the Colombian Constitution, which establishes that the State has the obligation to protect the life, honor and properties of citizens. According to Cristo this was the hardest to reconcile, since what was at stake was whether “reparations were a form of charity or a right,” (2012: 74-75) and depending on that that decision, the implications for state operations would far-reaching.

The third was related to the scope of the category of victim. The JnP had explicitly excluded victims of state forces, whereas for the proponents of the new draft, the system of reparation necessarily had to give them an equal treatment. According to Cristo, the government initially agreed on this point but then “abruptly and without explanation,” its “stance changed and it began to advocate vigorously” to exclude victims of state agents from the reparation system with the argument that only a judge could decide whether a state agent had deviated from the law. Ultimately, the point of the government was that when state forces acted legitimately, the dead, the wounded or those arrested were casualties or criminals, not victims, unless a competent court decided otherwise. In addition, Uribe’s advisors argued that the inclusion of victims of state agents was a way of downgrading state forces to the same category as that of paramilitaries and guerrillas, which they found morally unacceptable. Cristo, on the other hand, tried to argue that this was not about equalizing the perpetrators, in his mind it was “an entirely different matter” (Cristo 2012: 75-76)

The fourth objection was related to the bill’s potential financial costs. The government protested that such legislation could jeopardize the state’s financial stability since this initial draft promised the reparation and restitution of a wide variety of damages, including the loss of preexisting assets (*daño emergente*) and perceived future incomes (*lucro cesante*) (Cristo 76).

The second version: towards the reconstitution of patrimonies of dispossessed populations

Cristo asserts in his book that although in the joint working sessions him and his team tried to come up with intermediate formulas solving the four major sources of disagreement with government, the government kept refusing to accept them and therefore postponing the second round of deliberations. Cristo argues that at this point that he was becoming increasingly convinced that the government did not intend to compromise, but that its ulterior plan was to “let the draft expire” (Cristo 2012: 76). So he and the other proponents decided to put their version (without the government’s support) up for the second round of deliberations, this time on the Senate’s main floor.

The draft included 40 new articles that developed a very “thick” right to restitution –following Gómez’s (2014) notions of thick and thin rights.¹⁹² These precepts established that restitution not only included lands, but patrimonies more generally considered and was applicable for all victims, whether owners, possessors, occupants or tenants, and whenever the armed conflict had led to their “dispossession,” “destruction,” “devaluation” or “depatrimonialization.” In addition, it stated that restitution also entailed pardoning debts for unpaid taxes or mortgages; removing victims from debtors’ databases; providing housing, education, health and access to credit, among others.

Finally, the new draft instructed the judge in charge of solving claims to apply a set of innovative rules about proof and evidence whenever deciding on the occurrence of such damages. Three of them, closely interrelated, caught the attention of observers like Saffon (2010): *the presumption of illegality, the presumption of spurious zones, and the reversal of the burden of proof.*

¹⁹² Journal of the Congress of Colombia No. 256, May 15 of 2008. Proposal for Second Debate: Draft No. 044 of 2007 of the House Representatives and No. 157 of 2007 of the Senate

The first one, “the presumption of illegality” in favor of victims, invalidated de jure any transaction that occurred between a victim and the person(s) found to have disturbed their physical or legal connection with the lands and the other real properties and belongings left behind. In other words, any such transaction was presumed to be illegal. In order to prove the condition of victim, and also the pre-existence of a right (ownership, possession, tenure) the draft stated that any means of proof would suffice.

The second, the presumption of “spurious transactions” or “spurious zones,” established that transactions involving lands and other real properties located in zones where the threat of violence or armed actions of a perpetrator had notoriously altered the value, use, accumulation patterns or the legal relation between right-holders and land more generally, would also be considered invalid de jure. This meant that in an eventual trial, in principle it would suffice to prove that one such circumstance had occurred for the judge to treat the zone, and the transactions in question, as “spurious.”

Third, with the reversal of the burden of proof, the claimant was relieved from the obligation of providing the evidence supporting the claim of loss of patrimony. This went against the general principle governing ordinary trials in Colombian ordinary law, according to which claimants must prove their claims. In this version, the burden of proof was transferred to the judge, who was instructed to look for the evidence and in case of not finding any disproving the claim, his or her obligation was to decree the restitution of the damages being claimed.

When asking around about the origin of these fragments of legislation, I was constantly redirected back to Caio and Celso, two of the lawyers in the Project I had met back in 2004.¹⁹³ In one of our many conversations about his involvement in the draft, Caio, who was the youngest of the two, explained me that Cristo, after agreeing with Holguín to work on a second version,

¹⁹³ Fictitious names.

contacted “the supervisor of his supervisor” and told him that “he had heard about us (the Project) and wanted our help.”¹⁹⁴ He wrote most of those fifty articles with one of his colleagues and closest friends, an older lawyer also from the Project –Celso- who had actively militated back in the 1980s in a leftist organization: “in order to write we locked ourselves up in my brother’s apartment (in Bogotá). That’s when we came up with some of the ideas in there, like the so-called “spurious zones” and maybe also the reversal of the burden of proof and the other legal presumptions (...) I do not remember which one was mine or his.”

Celso told me about his involvement in this first draft during a visit I paid him in his apartment in downtown Bogotá. As we spoke, we sat in front of his old desktop and went through his files and his sent and received emails in search of the pieces of writing that ended up in this draft. As I looked at his screen, he recalled that for the preparation of this draft he had desperately searched the existing legislation for a definition of dispossession: *despojo*. With colleagues in the aforementioned policy-world, they searched the Criminal and Civil codes, the agrarian legislation, and existing international standards but: “No one found a definition (because he then realized) it did not exist (...)! I could not sleep thinking about it until one night finally I told myself: ‘fuck it, it’s a new law, it has to be made from scratch.’ So I jumped out of bed and spent all night working on it.” The paragraph he came up with—and that we found in a Microsoft Word File from 2008 as we spoke—made it to the draft in this form:

Dispossession: Action or activity that removes an asset from the patrimony of a person with purpose of appropriating it illegally. (...) As for land dispossession, this shall be understood as the action by which someone is arbitrarily deprived of their ownership, *posesión, ocupación*, tenure or any other right in relation with a real property regardless of whether this is achieved through a legal transaction, an administrative decision, a judiciary decision, or one of the crimes defined as such by criminal law or by taking advantage of the armed conflict. Dispossession can be co-terminal with the act of abandoning (*abandono*) the property, but in dispossession there is an explicit intention of appropriation.¹⁹⁵

¹⁹⁴ Indeed, Cristo was on the Constitutional Board when the Property Titling and Correction Act was discussed.

¹⁹⁵ Dispossession, in this version, involved an element of intentionality that was later on removed, someone told me, precisely because of the difficulty to prove it.

Initially, then, Celso took intention to be constitutive of the legal definition of dispossession, and implicitly distinguished it from *abandono* (abandonment). But this would eventually be a matter of contention with Caio and other lawyers, and in the following years they would end up defining both dispossession and abandonment as objective or external, rather than a subjective or psychological fact. The difference between the two would turn eventually to be that in the former, someone else besides the claimant would exert material or legal control over the land or estate in question, whereas in latter the claimed property would be abandoned.

Celso also recalled having come up with the idea of the spurious zones when revisiting Law 201 of 1959 that the Lleras Camargo government (1958-1962) had passed in Congress in an attempt to address the dissolution and reconstitution of land tenure arrangements during the times of La Violencia (Chapter One). His private law professor had taught them about this old legislation back in school and he remembered it as a one of those unforgettable “historical jewels.”

Checking my journal, I found that before this second draft was submitted, I attended a meeting in the Reparation Commission’s main headquarters, in an emblematic building in downtown Bogotá, sometime in early 2008. In front of governmental officials and also delegates of a think-tank called Midas, Celso presented his ideas of the “spurious zones” which he defined as regions where violence had been so intensive and massive that it could be presumed by law that in that particular time and space inhabitants had lacked *autonomía de la voluntad* (free will) to constitute valid contracts. To the extent that the Civil Code considered free will a requirement for any contract to be legal, the transactions under such contexts could be invalidated, he explained enthusiastically. The “spurious zones,” as I noted in my journal, stirred a wave of reaction among the people in the room. Some were so infuriated that they had to take a deep breath before speaking. The representative of Midas, a man in his fifties, was the first to respond, although in a calm manner: “I hope you realize this is dangerous, (...) this could provoke an economic panic of major proportions.”

“He was probably right,” Caio told me in laughter years later, when I asked if he remembered this meeting -which he didn’t. Back then, however, the two friends pled the participants to seriously consider the spurious zones because, “they are convinced that it is the only way to solve the ‘peasants’ lack of proof.”¹⁹⁶

As for the presumptions, Caio recalled that they came out “of us studying the Pinheiros Principles,” and also from what the desplazados they had worked with in the Project “had told us.” The older lawyer, who over our chat our conversations, kept apologizing about his failing memory, could not remember the story behind the presumptions and preferred not to speculate about it, but insisted that in any case it had been his friend’s idea. “Those are his,” he stated, making it clear that he did not want take credit for what he considered to be a valuable contribution from his friend.

They had picked up the reversal of the burden of proof when looking at the restitution legislations of Eastern Europe, “I think it was something we found in the laws implemented in Kosovo and Herzegovina.” Indeed, I remember attending a conference at the end of 2007, organized by Ariadna, the lawyer from the Reparation Commission’s technical team, in which lawyers from the former yugoslav Republic were invited to Bogotá to talk about their own experiences with land restitution. For what I can recall the Project people and also Midas consultants were there.

When I asked Celso and Caio about why the presumptions or the reversal of the burden of proof were deemed necessary both responded that it was because of what they had had learned from their work in the ground with dispossessed communities through the Project’s pilot cases. For Caio, in particular, what they had encountered in the central area of the Magdalena state had been especially instructive. There, they found that AUC commander “Jorge 40” and men from the local elite had turned to the Civil Code and agrarian laws to acquire property rights over hundreds of hectares.

¹⁹⁶ Interview, November 05, 2008.

“These locals were seen in public hanging out with “40” (...) And then they would offer the peasants deals that, given the context, they simply could not refuse to accept. It wasn’t necessary for them (the AUC’s friends) to use a gun,” the younger lawyer explained me, and added: “that’s when I began to realize how things had happened, how private law had been misused and I realized that it could not solve the problems, so I began to see clearly that it was necessary “to touch the law”” (*tocar la norma*).

His verb choice, –“to touch” instead of “to modify”– was not gratuitous. The Civil Code, and in particular the set of rules regulating the acquisition of property rights, had been handled with great care by legislators, judges and legal commentators. Those rules, dating from the late 19th century, had been *untouchable* and Caio, who himself had been a devote interpreter of the Civil Code, knew that they were “messing” with what was in his opinion the conceptual pillar of private law: the autonomy of will, or free will (*la autonomía de la voluntad*).

To illustrate the point about why the norm had to be “touched” he gave me the example of Tuto Castro, one of the locals who used to hang out with paramilitary commander Jorge 40 and who later on, was found guilty of collaborating with the AUC in the commission of serious crimes leading to the accumulation of land:

“I always summarize the issue as follows: that idea of the freedom of will, if you hear about it (...) here in Bogotá it is marvelous, you are convinced. But if you are in an area where the one who decides (...) is (Jorge 40) and he tells you who do you have to make a contract with then there is no free will. (We) cannot legitimate a contract (...) with Tuto Castro, a man who is part of the paramilitary structure, not a businessman or a cattle rancher. In that case the seller has no free will.

To finish with the example, Caio recalled a meeting in the small town of Plato in the Magdalena state. He and delegates of other state institutions had reunited to talk about the violence in the area under the AUC and the implementation of land protection program of the Project:

“We were discussing some of challenges we had encountered to protect the rights of (...) desplazados when a woman, the delegate of the Registration Office of the region, raised her

hand. She, very serious and professional, warned us: “well, it turns out that Mrs. X does not want ratify the contract she made with Mister Tuto!?”

He paused, containing the excitement and waiting for a reaction from my part. I was expected to know who don Tuto was and why the woman’s intervention on his behalf was absurd in this setting devoted to the rights of desplazados. Then he resumed: “I remember very clearly the face of *la defensora* (the ombudswoman of the region) who turned to her, visibly enraged, and said: “do you have any idea *who* don Tuto is around here? Everybody knows who don Tuto is, so why the hell are you suggesting that those contracts should be valid?”

He erupted in a loud laughter. For him it was both unacceptable and hilarious at the same time that someone who had just been listening about the dozens of killings perpetrated in the area by don Tuto’s comrades in arms could come up with such a legal response –and still pose as a “good lawyer.” And yet, his point was that this was a common legal response from those “good lawyers” who were mainly concerned with the correct application of the Civil Code rather than with “reality.”¹⁹⁷ Then, having caught his breath, he continued: “you see? So it’s in those instances that you clearly see that one cannot address abnormality with something that was designed for normality; in those contexts the (Code) does not work; it was not made for (what) we had to solve.”

In addition, Caio and his colleagues from the Project also found that in that area, Incoder officials had reversed adjudications of public lands made on behalf of poor peasants who had been displaced by the AUC. The officials had justified these administrative decisions by invoking the agrarian legislation according to which beneficiaries of adjudication ought to lose their rights if they abandoned did not duly exploit the lands given to them. Then, it turned out, they had reassigned

¹⁹⁷ Every time I have talked to Caio since my fieldwork began he tells a new story about a “good lawyers” in this ironic sense and how in the new land restitution courts these lawyers are currently handling cases.

these lands to other peasants. Suspicion was that they had been instructed to do so by the AUC, while in the meantime they presented themselves as dutiful public servants.

The legislative trap

The second round of deliberations started, as discussed above, without a consensus with the government. In the hearings, representatives of civil society, academia and international organizations expressed their support for the initiative, including the forty articles about restitution, and made suggestions to improve it. The government, on the other hand, sent various officials to plead the majorities to reject the draft, mainly because of its “financial inviability” (Cristo 2012: 77-78). One of them told the press that one of reasons the draft was financially unsustainable was that it aspired to reconstitute the victims’ patrimony which would include lost lands, crops and animals.¹⁹⁸

This intervention from the government’s delegates almost “led to (the draft’s) dismissal” according to Saffon (2010). yet, as she and Cristo observed with surprise, the government’s reluctance to honor the initial agreement of finding common agreement drove some members of its own coalition to switch their positions at the very last minute. This way, at the end, the draft was passed. Rumors had it that Holguín was removed from office shortly after because of this “political defeat” (Cristo 2012: 78).

Ahead there were two more rounds of deliberations, both in the House of Representatives. Both sides “smoothed out” their differences momentarily (Saffon 2010: 140) and in a final attempt to work out a concerted draft their delegates attended several work sessions but then, without further notice, the government submitted its own alternative version, which departed considerably from the

¹⁹⁸ Semana Magazine. June 17, 2008. “Los puntos del desacuerdo.” Available in: <http://www.semana.com/nacion/articulo/corazon-contra-chequera/104346-3>

version approved in the Senate and also from the one they had been working on with the Liberals.¹⁹⁹ Thus, the third round started with two significantly different drafts, one by the Liberals and another by the government. This second was openly incompatible with the stance of victims' organizations (Cristo 2012: 81).²⁰⁰

According to Saffon (2010: 141) the governmental version not only “modified the aspects of the bill that (the government) had criticized during the debate in the Senate, but also introduced other dispositions that significantly weakened (its) potential for effectively protecting victims' rights.” As expected, the victims of state crimes were excluded, reparations were reformulated as acts of solidarity, the existence of an armed conflict was denied and the capacity and prerogatives of the institutional apparatus were toned down. The changes were so substantial from the original one that Cristo even stated to the press that the government “had dismembered the bill” –an expression that in that context resonated with the horror stories coming out of the JnP trials about the many massacres conducted by paramilitaries. Fearing that this version could become law, a group of human rights NGOs petitioned Cristo and his co-partisans to withdraw the initiative.²⁰¹

Somewhat exceptional in this regard was the land restitution section. As Saffon (2010) noted with perplexity at that time, the section was relatively similar in both drafts. Cristo's version retained many of the ideas the lawyers of the Project had first articulated for the deliberations in the Senate and added modifications to the regime of proof and the institutional design that, from her perspective, significantly enhanced the possibility for victims to satisfy their right to land

¹⁹⁹ *Semana Magazine*. October 7, 2008. “Ley de víctimas: para las víctimas o para el gobierno?” Available in: <http://www.semana.com/politica/articulo/ley-victimas-para-victimas-para-gobierno/95975-3>

²⁰⁰ The version of Liberal Party and the other proponents was entitled, following the rules of legislative deliberations, Proposal for Third Debate: Draft No. 044 of 2007 of the House Representatives, No. 157 of 2007 of the Senate, Journal of the Congress of Colombia No. 670 September 30 of 2008. The governmental proposal was published shortly after, in the Journal of the Congress of Colombia No. 699, October 3 of 2008 under the heading Modification Proposal: Draft No. 044 of 2007 of the House Representatives, No. 157 of 2007 of the Senate.

²⁰¹ Saffon (2010: 141) reports: “Very recently, a wide group of victims sent a letter to the members of the House of Representatives explicitly requesting them to reject the bill, arguing that it goes against their interests and needs.”

restitution.²⁰² Instead of relying on existing courts, the Liberal draft established the creation of a new governmental agency, called “Pro-Tierra” (literally, Pro-Land) and invested with exception judiciary powers to decide once and for all not only dispossession cases but almost any other pending judiciary or administrative claim disputing rights over the properties and plots of land being claimed. This scheme had the advantage of circumventing the judiciary system, which was overloaded, extremely slow in deciding cases and was controlled by the private court judges who, in general, tended to be “good lawyers” –like the woman in Caio’s anecdote about Tuto Castro. The draft also mandated the creation of a Land Truth Commission in charge of studying land restitution claims and generating a definitive and comprehensive report on the issue of land dispossession. And as for the regime of proof of Pro-Tierra, the draft built upon the proposal by the Project lawyers and kept some of their key ideas regarding the presumptions and the burden of proof.²⁰³

The government’s proposal did not include Pro-Tierra or the Land Truth Commission and instead insisted on entrusting restitution to existing courts. However, this version also kept many of the elements of the special regime of proof.²⁰⁴ Even more, in some specific points it improved upon that of the Liberals, for example, by explicitly mandating a relaxation of evidence standards when

²⁰² Saffon’s piece is a detailed analysis of why the institutional design included therein seemed so promising from the perspective of human rights organizations and specialized academia and also why, then, it could cause such perplexity among them that the government’s allies would then retain many of those ideas in their own draft.

²⁰³ Instead of “spurious zones,” the Liberal draft renamed them as “Priority Attention Zones,” and defined them as those where “intimidation or an armed action from a perpetrator transformed land tenure arrangements..” Protierra and its directive Council were given the power to delimit these zones in a coordinated manner. The draft also included a general presumption of “absence of legitimate title” according to which Pro-Tierra would presume the illegitimacy of property titles acquired through private contracts and administrative decisions produced at a time when in the areas surrounding the lands and properties being claimed, there was presence of illegal armed groups or there were terrorist attacks, combats, massacres or episodes of forced displacement..” As for the burden of proof, this was transferred to current owners who would have to gather the evidence showing that there was no presence of illegal armed groups –nor the sort of violence enlisted above. When failing to dispel the presumption, current owners would be declared to lack “a legitimate title” and also would be declared as having acted “on bad faith..” But in the case of Priority Zones the draft established that the presumption would be “de jure,” meaning that it would not admit contestation. However, the draft did not explicitly decide how the previous property owners, occupants, tenants and possessors would show they had enjoyed that quality.

²⁰⁴ Including the “absence of legitimate title presumption,,” the reversal of the burden of proof, and the inclusion of poseedores, ocupantes and tenants.

demonstrating the previous existence of the forms of tenure dissolved through violence.

Surprisingly, when justifying these new legal rules it admitted that the JnP trials had not exhibited the “efficacy and speed” required to deal with “a generalized situation of land dispossession.”

While I was researching the trajectories of Pro-Tierra and the Truth Commission most of the people in this policy-world assured me that they were produced in the headquarters of Midas –the think-tank funded with USAID resources that I mentioned above, by request of the government and then taken to the meetings with the Liberals who had happily incorporated them to their own draft. So apparently and rather ironically, the think-tank that worked for the government had ended up providing the opposition with its “best draft” yet. Indeed, Midas had hired a group of experts – including three former high-court justices and two well-known scholars on the issue of the agrarian question - to work on this piece of legislation.²⁰⁵

However, I have also found traces of these and other precepts in the reports issued at exactly that same time by the Monitoring Board of ruling T-025 of 2004 –the Monitoring Board- that I mentioned in the previous chapter, and whose irruption in this already complicated political conundrum, as I shall show next, was decisive in shaping the fate of the VRL Law in its first and second attempts. To this day, however the people involved do not remember who borrowed from whom.

As for the Project’s lawyers, for my surprise, they told me that at that point of the deliberations they were set aside. “They left us out,” said Caio. They were not invited to the meetings between the government delegates and the Liberals before they definitely parted ways and were not included in Midas’ working group. They found out about Midas’ involvement when the new drafts for the House of Representatives were made public. Still, they proudly declared that they continued giving

²⁰⁵ That is probably why delegates of Midas and two of its consultants were in that meeting in which the Project’s lawyers presented their ideas about the spurious zones. It seemed that the idea of zones of exception had not been entirely rejected since after all Midas had partially reiterated in the form of Special Attention Zones.

advice to Cristo and the Liberal Party in their free time “*por debajo de cuerda*” – this is, under the table.

At that point in the deliberations, Saffon (2010) has pointed out that there seemed to be at work an “odd consensus” (145) around the contents and the means of the right to restitution, between the government and its coalition on one hand, and the political opposition and human rights organizations on the other. Her interpretation, formulated from a rational choice perspective, was that each side was strategically misrepresenting its interests as a mean to advance its most important ones. The government, in her opinion, wanted to appear to be committed to transitional justice standards while ultimately hoping for the bill to be dismissed. The opposition, on the other hand, presented itself as fighting the majority draft but with the hope that at least the land restitution part could be turned into legislation.

Cristo offers a different perspective. He does not mention the partial similarities of the restitution sections and argues, rather, that by deforming the original draft the government was winning the upper-hand vis-à-vis the public perception. In his perspective, he and the opposition, the victims’ movement and the human rights NGOs, were cornered. Their options were bad either way. They could oppose the bill but be left without a pro-victim legislation and even appear as its enemies or they could watch how the majorities in the House of Representatives turned their initiative into a “text carefully aimed at offending and mistreating victims,” a text that “revictimized them” (Cristo: 86).

As I inquire more about this political conjuncture, the actual intentions and rationalities of the many actors involved dissolve into the multiple ex-post-facto explanations, of which Saffon’s, Cristo’s and mine here are only three. As I continue to dwell upon the micro-politics of it all, it seemed that people in Uribe’s coalition also wanted their constituents, which included both peasants and mid-level agriculturalists as well as former landowners, to have the chance of being restituted. For one of Project lawyers, on the contrary, the persistence of restitution in both drafts probably

had to do with the fact that the Congressmen or their staffers “really didn’t understand what they were approving.” It was too arcane, “too technical,” for them to decidedly oppose it or support it. However, when I asked him for more details about what had actually happened from his perspective, he shrugged and suggested I look at Cristo’s book –which I already had- which in his opinion was the most accurate account and the only one that could shed some light onto the mysterious consensus.

Either way, while the Liberal Party and human rights organizations requested that the draft be tabled and issued a series of press releases describing it as “an affront and a mockery,” the House majority supported the government’s version.²⁰⁶ Government representatives reiterated continuously that their version was better than the Liberal Party’s for two main reasons. One was that it protected the financial stability of the state and even claimed that unlike the contending draft it did not jeopardize its ability “to support programs directed to the poor” (Cristo 2012). The second was that it did not equate soldiers and police officers with terrorists. And this way, and despite the protests of the opposition, the draft was approved, first in the House’s Board of Constitutional Affairs in December 2008 and then in the floor in June 2009, respectively.²⁰⁷ Thus, one week before the end of that legislative year of 2009, the governmental draft was just one two steps away from being ratified as law by Uribe’s majorities. However, before discussing how the draft ended up not becoming law, let me now turn to the Monitoring Board and its production of a series of technocratic truths about land dispossession.

²⁰⁶ Semana Magazine. 2008. “El proyecto de ley de víctimas descuartizado..” Available in <http://www.semana.com/nacion/justicia/articulo/el-proyecto-ley-victimas-descuartizado/97315->

²⁰⁷ Semana Magazine. 2008. “El riesgo de aprobar una mala ley de víctimas..” Available in: <http://www.semana.com/nacion/conflicto-armado/articulo/el-riesgo-aprobar-mala-ley-victimas/97288-3>

Performing technocratic and judiciary authority: the Monitoring Board, the Constitutional Court's Order No. 008 and the Land Table

In mid-2008 the Constitutional Court and its Monitoring Board, mentioned in the previous chapter, irrupted with force in the power struggle over the contents of the Victims' draft. Their interventions completed the alignment that led to the bill's dismissal during Uribe's government, but made it compelling under Santos administration. Both actors mobilized their authority to (de)authorize the various versions of the draft, first under Uribe and then under Santos.

In the previous chapter I mentioned that in 2005 the Constitutional Court issued a ruling declaring the existence of an "unconstitutional state of affairs" because of the systematic and massive violation of the rights of desplazados. As a result, the Court claimed the power to demand from state institutions –including the government- the formulation and execution of adequate plans and policies until it believed that the crisis had been overcome. After the first few years, the Court delegated the task of supervising the performance of the institutions under inspection to an ad hoc Monitoring Board, constituted by representatives of civil society, including progressive academics and human rights activists, including the director of Codhes.²⁰⁸ The Monitoring Board, in turn, entrusted the "technical" assessment of the government's performance to a well-known economist, L.J. Garay, and his team of advisors, who would be in charge of spelling out their findings in a series of reports in which they would consistently show that the government's response was still

²⁰⁸ Members of the Monitoring Board: 1. Constitutional law lawyer Eduardo Cifuentes: former Constitutional Court Justice and Chair of Los Andes University Department of Law. 2. Journalist Patricia Lara: author of various journalistic books about the Colombian insurgency, granddaughter of Oliverio Lara –the owner of the largest hacienda of Latin America called Larandia-. Because of her journalistic research she was prosecuted and tortured under Turbay's administration under charges of insurgency. She was also the running partner of Gaviria, my former boss, during the presidential campaign of 2006. 4. Father Héctor Fabio Henao, head Director of the Church-sponsored NGO Pastoral Social. 5. Economist Luis Jorge Garay: 6. José Fernando Isaza. Scholar and dean of Universidad Jorge Tadeo Lozano. 7. Rodrigo Uprimny yepes, head of think-tank Dejusticia, a prestigious new center of legal studies; 8. Luis Evelis Andrade, head of the National Indigenous Organization – ONIC; 9. Rosalba Castillo, head of the AfroAmérica XXI organization; 10. Orlando Fals Borda, (RIP), professor at the Universidad Nacional, celebrated sociologist, and author of some of the main works on "peasant studies" and on research-action theory; 11. The head of human rights NGO Corporación Viva la Ciudadanía and 13. Marco Romero, professor at Universidad Nacional and head of Codhes.

insufficient, whereas the counter-reports by the government technocracy would show the opposite. Since the ruling T-025 came out, the crucial point of contention had indeed been the definition of what would count as a satisfactory performance and ultimately about how to produce “performance indicators.” With time, both sides had learned to minutely construct their assessment in this regard. It all depended on how desplazados were defined and estimated, how their pending needs were defined and how the satisfaction of such needs was measured. (Dis)obedience to the Court’s orders thoroughly depended on these technocratic exercises.²⁰⁹

The Monitoring Board’s 2008 reports dealt with land dispossession and restitution and were released at the same time that government and opposition dispute the draft in Congress. Once released, the reports acquired a life of their own and transformed the dispute around the right to land restitution in particular. The reports provided a number of dispossessed hectares that almost everyone in the policy-world could not disagree with, given the mathematical sophistication behind its technical production. On the other hand, paradoxically, the reports also offered other estimates that not only the Constitutional Court and the opposition but also the government and its majorities in Congress would invoke strategically in the following months to reinforce their positions around the bill. Each side, whether the people advocating thicker or thinner rights for victims in general and land dispossessed communities in particular, granted to each of these reports the status of scientific truth and incorporated them into their pool of sources and authorities.

In June 2008, right after the draft was approved in the Senate and was waiting to be discussed in the House for the first time, the Monitoring Board issued its Sixth Report (Monitoring Board 2008c) devoted entirely to the “known unknown” of the land dispossession problem. In this report the Monitoring Board presented its own version of the problem, followed by an elaborate multi-

²⁰⁹ In addition to face-to-face interactions with desplazados and helping them ask for the protection of their lands, part of my work in the Controller’s Office was disentangling the performance indicators presented by the government.

disciplinary defense of the right to land restitution as a solution to the “unconstitutional state of affairs” and then by an analysis of the “factual,” “legal” and “institutional” obstacles to land restitution. In the conclusions it provided a series of recommendations to overcome these problems and put this right into action.²¹⁰ The report opened by stating that “the problem of land is at the heart of the phenomenon of forced displacement,” a way of framing the problem that the Liberals had also incorporated into their own draft. Then, it showed in detail the geographic and chronological overlap between forced displacement and land concentration rates to demonstrate a two-way causality between the armed conflict, land accumulation, poverty and under-development.

Also, in this report the Monitoring Board dismissed previous estimates of lost hectares, arguing that “their wide variability” suggested a “lack of rigorous research” and could not be trusted as a basis for designing a land restitution policy and calculate its costs (Monitoring Board 2008: 12). The Board was referring to the same estimates ranging between 1.2 to 4.0 million hectares that were constructed and put in circulation between 2001 and 2005, which I discussed in the previous chapter, and also to the most recent ones: an estimate of 6.8 million attributed to the Project (PGN 2006) and the ten million estimate released by the Movement of the Victims of State Crimes (Movice) in 2007.²¹¹ The first one came out of a consultancy that the Project contracted with an expert. The Project’s staff “did not agree with” the methodology the consultant had used and, according to a spokesperson I talked to, even though they did not approve the study, the estimate was leaked and put in circulation within the policy world and eventually it made to the media.

²¹⁰ The Unconstitutional State of Affairs Monitoring Board. June 2008. Sixth Report, Bogotá, Colombia.

²¹¹ In the previous chapter I showed that between 1998 and 2005 people embedded in different institutional spaces within and outside state and governmental institutions sought to calculate the number of dispossessed hectares with a wide variety of results and distinct persuasive effects. Except for the 2.1 and 6.8 figures, no one has claimed authorship or expressed second-hand knowledge about how the other ones were constructed, even though many of the interviewees and actors whose trajectories I have tracked did mobilize them –or argued against them– in the past. These numbers remain apocryphal and unclaimed and yet, as I write they still have agency, invoked indistinctively by enthusiasts and opponents of land restitution to accuse the VLR Law of being insufficient or unnecessary.

“Everyone then thought we had come up with such absurd figure! But we had not.” The Movic also has its own estimate, but its representatives failed to disclose how it came with it, and experts have dismissed it as mere ideological construct rather than a scientific one.

The Monitoring Board argued that the variability of these figures was most likely the result of inadequate samples that were then expanded to the totality of the forcibly displaced population leading to distorted results (2008: 19). In order to avoid this problem, the Board announced a new survey specifically inquiring about the issue of lost lands and assets with a broader sample, to be completed in July 2008 and its results to be released at the end of the year.

As for land restitution as a solution, the overall argument was that it was only not legally mandatory for the Colombian state by virtue of the Pinheiros Principles and other international law precepts, but in itself land restitution was “an instrument capable of generating long-lasting solutions for this particular population (desplazados) on matters of relocation, housing, access to public utilities, political participation, etc.” (Monitoring Board 2008). To demonstrate this, the report listed a detailed inventory of the different potential forms of gratification in the form of rights that land restitution could bring about to the displaced population. In this sense, as other policy documents, the report proposed that the return to the land was the best way to manage the needs of desplazados.

Finally, the Monitoring Board also recommended that since there was no clarity about land dispossession the draft to be discussed in the House should incorporate a Land Truth Commission, and also insisted that rules concerning evidence should be “special and different” from those in ordinary law.²¹² So despite the rumors that Midas –the government’s outsourced policy-making hub– was largely responsible for many of the innovations in the draft, many of those also appeared in this report by the Monitoring Board.

²¹² The Unconstitutional State of Affairs Monitoring Board. June 2008. Sixth report, Bogota, Colombia, p. 67-69.

Then, as the discussion around the draft moved to the House of Representatives, the Monitoring Board released its Seventh Report (2008a) discussing, among other things, the aforementioned survey and the results obtained. The report skipped the long argumentation around the significance of the problem of land dispossession and boiled it down to one statement: “There exists a clear recognition that the problem of land dispossession and abandonment is the *causal nucleus* of the armed conflict the country has endured for long time” (165).²¹³ It then turned to the contested issue of the estimates: 8,400 displaced households in 61 municipalities had been successfully surveyed and reported to have lost an average of 29.2 hectares, which multiplied by the number of allegedly displaced households registered in the different databases of desplazados, the real amount of dispossessed hectares of land was not 1.2 nor 10, but approximately 5.3 million.²¹⁴ This estimate, the report clarified, had a “reliability rate” of 95% given the size of the sample and the methodology employed which was consistent with state of the art statistical analysis (Monitoring Board 2008a: 174-175).²¹⁵ If that was the “universe” of land to be restituted, the report concluded, governmental actions had been indeed regretfully meager. In order to demonstrate this failure, it compared the results of the Land Protection Project with this grand total.

To finish the year, the Eleventh Report by the Monitoring Board (2008a) calculated the monetary value of the losses endured by the *desplazados* based on the previous calculations. This report argued that this population had undergone three simultaneous processes of loss: of territory, assets, and of

²¹³ The Unconstitutional State of Affairs Monitoring Board. June 2008. Seventh Report, Bogota, Colombia, p. 165. Emphasis is mine.

²¹⁴ Of the surveyed households, 94.6 % of households reported having abandoned land, estates or other assets because of forced displacement: 52.2% left behind rural real properties, 72.9% cattle and other animals, 17.1% other kinds of real properties and 66.6% means of transport or machinery. In relation with real properties, the survey had found that 67.2 % of households considered themselves to be the legally constituted owners but only 20% among them had adequate property titles. As for the total amount of land, the actual estimate was a range between 5.1 and 5.6. The issue with this as any other estimate at that time, was that the number of desplazados itself was controversial. In Chapter Two I explain the different methods and estimates used by human rights NGOs, on one hand, and state institutions on the other, to count the displaced.

²¹⁵ In a footnote it rapidly explained that “a estimate is often considered statistically robust if the coefficient of the variation is below 5 %, acceptable if it falls between the 5 % and 10% interval, and having a low precision quality but still usable if between 10 % and 15%.

the ability to generate income. Forced displacement, it stated, had resulted in the “massive pauperization” of this group of Colombians, taking them “from a scenario in which 51% of families were poor and 30.5% were destitute, to a new one in which 96.6% of these families are poor and 80.7% destitute.” Using the results of the survey, and researching current trends in land market and agrarian economies, the Board calculated the average value of the hectares, assets and future profit lost the average displaced family and found that, when multiplied by the number of potential families, the losses amounted to 10.9 billion pesos for lands and assets and 49.7 for future profit, for a total of around 60 billion pesos –around 3 billion dollars. This was, it suggested, the basic cost of reparation and restitution without taking into account the operational costs in making the payments.

In early 2009 the Constitutional Court issued a new, game-changing order, *Order No. 008* –as people in this policy-world still refer to it. Using the aforementioned reports as empirical basis for its decision, the Court concluded that governmental performance on the issue of housing, income generation and land was one of the lowest and that these three policy components had to be “totally reconsidered not only because of the great lag in compliance but also because the current policies threaten to perpetuate the unconstitutional state of affairs” in relation to forced displacement.²¹⁶

“Order No. 008 really had an impact,” Petra, a lawyer who worked at that time in the Uribe’s ministry of finance, told me.²¹⁷ The first orders the Court issued as part of its big ruling on forced displacement had not been taken too seriously. “But when Order No. 008 came the Court had already begun putting under temporary arrest the governmental officials who had not been complying with its orders.” Petra’s boss and other high-level officials became worried and put in place the “Land Table,” a working group with delegates from across the executive branch, so they

²¹⁶ Constitutional Court of Colombia. Order 008 of 2009 (January). Available in: <http://www.corteconstitucional.gov.co/RELATORIA/Autos/2009/A008-09.htm>

²¹⁷ Fictitious name.

would develop a land restitution policy –parallel to one being disputed in Congress- and report progress to the Court. She was transferred to the National Planning Department and instructed to be part of the Table along with people from the Project, the Ministries of Justice and Agriculture and the Reparation Commission.

“We all met once a week and presented proposals (...). The hardest part was agreeing on the scope of the whole thing. In those debates blood was spilled. There was plenty of passionate yelling.” In Petra’s account and those of other members of the Table, the most progressive were the Project lawyers and the Reparation Commission people. “They basically wanted to turn the restitution policy in a redistribution one.” In their proposal tenants who had been displaced had a right to land. “They were the most prepared and taught us about the Pinheiros Principles, which none of us knew about.” Then came the Planning Department team: “we fought them hard to prevent redistribution (...) our question was should the country be one of property owners or not? Was it desirable for everyone to have land or not? And if acquiring property over land was a right, how would the enjoyment of that right be put in action in the ground? The Project insisted that everyone should be given a piece of land because it was a right.”

The representatives of the Ministry of Agriculture were even more resistant than those of the Planning Department. “Some of them did not even understand what on earth rural development had to do with the displaced!” Additionally, for some of “the economists in the room trying to sort out the mess -who had lost what to whom, etc.- was not worth the effort and proposed as an alternative to provide people with a subsidy to start over somewhere else. They had run the numbers. It was far less expensive buying property owners, occupants and possessors a piece of land.”

As she put it, “we (the Planning Department) battled the Project and the Reparation Commission, but then we aligned together to fight the Ministry people and the others.” At the end,

they solved the issue by going back to the Pinheiros Principles, which mandated that “things should be returned back to the status quo ante” in the case of property owners. As for holders of a previous posesión, the Principles established they should turned into property owners whereas tenants should be excluded. They also concluded that there should not be a socio-economic limit to restitution.

“That was a long debate too. But reparation policies do not discriminate when it comes to victims. If 1,000 hectares were lost, then 1,000 hectares must be returned.” As we talked on the phone and to summarize the deliberation process in this particular setting of the Land Table, she concluded: “you know, the only reason the State preferred a land restitution policy was because, ultimately, it’s a policy about (retributive) justice. The state wanted to send a symbolic message: don’t steal the land” (*la tierra no se roba*). Despite the agreements reached, however, the policy was not approved.

Meanwhile, in Congress the government’s version was approved in the third and fourth rounds of deliberations without delays. In June 2009, days before the end of the legislative year, that version of bill was only two steps away from becoming law. The first step was to constitute what is called a “Conciliation Commission” with representatives from the Senate and the House to agree on a unified version since the ones approved in each chamber were substantially different. Cristo had given up on the draft but then Uribe’s allies in Congress made a serious strategic mistake and when the time came to decide which Congressmen were going to be in this Conciliation Commission, they did not align their majorities. Cristo took advantage of the situation and managed to insert people who backed the Liberal Party’s draft. So at the end and by mere chance, the final approved version had most of the forty articles written by Celso and Caio, the Project’s lawyers, aiming at the reconstitution of the patrimonies of dispossessed victims, and some of the dispositions in relation with land restitution that the government’s draft had introduced. The final step was the President’s final review and sanction. But given what had happened in the Conciliation Commission, Uribe had

no other option but reject the bill. In his press release announcing the decision he referred to the Monitoring Board's estimate of 60 million hectares as the reason to table the initiative (Cristo: 91).

This estimate "scared Uribe," according to one of Midas' experts. In his view and that of the people in the Land Table, it was ironic that in its attempt to show the gravity of the situation of desplazados, and quantify the losses, the Monitoring Board had produced the piece of data that Uribe needed to dismiss the Liberal version of the bill. Meanwhile, the first Asset Restitution Board, established in the JnP Law, was inaugurated and others followed in the next months. However, as I was then told in a series of informal conversations with Reparation Commission officials, some of them former colleagues of mine, the Boards lacked funding, the staff was scarce and the policy documents regulating their task were vague.²¹⁸

As for the Land Table, their policy document which was supposedly meant to fill this gap and respond to the Constitutional Court's demands, was not given budget approval. The delegate who was entrusted the task to present the proposal in the name of the Table confided: "I went to the Financial Committee several times. We were on the list of policies pending approval for months but each time our turn came the meeting was suspended. Once Uribe came in person. It was our turn to present, but when Uribe was told that it was the land restitution policy he got up from the table, visibly upset, while reprimanding one of his advisors: "I don't have time for this!"

2010-2011. The Victims and Land Restitution Law reloaded

Micro-politics and the techno-legal production of the land restitution policy in times of Santos detour

²¹⁸ Caracol radio. July 10, 2009. Gobierno crea Comisión Regional de Restitución de Bienes:

http://caracol.com.co/radio/2009/07/10/nacional/1247233320_843256.html

I landed in Bogotá in June 2011, the same week that the Victims and Land Restitution Law was approved the second time around. A lot had happened in the previous two years. President Uribe had tabled the Victims' draft. Soon after, the campaign for the May 2010 Presidential elections took off. His coalition attempted a new constitutional amendment to let him run for a third time in a row -something unprecedented in Colombian republican history- but the Constitutional Court struck the initiative down on charges of unconstitutionality. After a further series of events, Santos, who was his Minister of Defense, ended up becoming Uribe's preferred candidate. Unfortunately for the anti-Uribe block that I strongly identified with, Santos won the elections by a significant margin. So it seemed that although Uribe had not been allowed to continue in office, he was going to continue in power by proxy anyways. But then Santos' detour came and in an expected turn of events, once elected he advanced a governmental agenda that in many ways was a rupture with that of Uribe, his predecessor and political sponsor. The revival and then the approval of the VLR Law was just the first of a series of definitive overturns. Probably the most significant one would be the initiation of a new round of peace dialogues with the FARC –but I'm getting of myself because this would be announced in mid-2012.

When I arrived in Bogotá, Santos had been in office less than a year, and in record time and with the support of an overwhelming Congressional majority had passed a VLR Law that looked very much like Cristo's draft -although with some key exceptions. I had interestedly followed the comings and goings of this new draft in Congress from afar and could not understand how had it been possible, since the composition of the Congress had remained virtually unchanged. What kind of felicitous misunderstanding had led the same legislators to switch positions in such a radical manner? Could it be that, after all, reparation and land restitution for victims fit in the contradictory, even agonistic, worldviews of these highly heterogeneous normative elites? And the greatest mystery of

all: what could explain Santos' detour? What did this individual decision reveal about the micro-politics around the production of the dispossessed as a new subject of rights?

So I started upon the plan of unveiling, if I could, how normative elites, and the text itself, had been realigned; and I also wanted to get a sense of the great and low expectations around this new legislation. What potentials were attributed from the different corners of the political field to the new VLR Law? What did the different participants want to inscribe, and what did the many publics engaged with the VLR Law read into it? The methodological problem was one of access to high-profile politicians and experts, but also of dispersion of meaning. If the VLR Law was a public and complex speech act within the much more complicated spectacle of mass politics, how could I even begin to grasp its many and continuously changing meanings and appraisals?

I started by reaching out to my old acquaintances from the Project with whom I had lost touch after leaving for graduate school. The Project, I was told, had not only been allowed to continue under Santos but it was in the process of becoming the Land Restitution Unit, one of the new agencies created for the implementation of the VLR Law. I first met with one of the non-lawyers, a perspicacious and passionate political scientist, who read the papers and listened to the radio every day so he wouldn't miss the latest developments in the theater of politics. Martín was as blunt, ironic and generous as usual. Outrage was what drove him. Over lunch at his place in Bogotá, I asked him if he had been involved in the crafting of the final text. Somewhat frustrated, he told me he had not, but that the Project lawyers had, and very much so. Though he was a good friend of theirs, he could not speak their technical language. And for this reason, they continued to entrust him with the task of coordinating the operations of the Project in different regions -which he enjoyed- but also excluded him from normative discussions. For his new boss, one of the lawyers, legal knowledge was the only one that really "mattered." So he had recently begun a master's program in legal studies so he could be part of the conversation.

Then, going back to the draft, he told me that nonetheless Alejandro Reyes was apparently “the brain behind the law” in its final version. Like me and many others in that policy-world of land dispossession and restitution, Martín had read Reyes’ famous 1997 research on the narco counter agrarian reform of the 1980s and mid-1990s which, as discussed in Chapter Two, had been highly influential in generating a diagnostic on the matter; and his most recent, *Warriors and Peasants. Land Dispossession in Colombia*, released in 2009 (Reyes 2009) had also become a must-read. But then Martín explained that Reyes, who was a “celebrity” in this small world of land restitution and the agrarian question, and the single most quoted expert on the matter of dispossession, had now become one of Santos’ main governmental advisors. Right after taking office, Santos appointed J.C. Restrepo as Minister of Agriculture. Restrepo was the Conservative technocrat who, against the instructions of his party, had publicly criticized Uribe’s rural policies and had also accused his coalition in Congress of granting paramilitary commanders a patrimonial amnesty (see Chapter Three). Restrepo, in turn, had brought Reyes in as his personal advisor.

Martín confided that he did not know what to make of Reyes. He admired his works, but then in the last few months he had been present in several meetings between delegates of different government agencies, including Reyes, and his interventions’ had puzzled him. Was Reyes a leftist, a liberal, or what? “Sometimes he seems to be a leftist, interested in equality and shit, but then, in this meetings with military personnel, he sits there and explains to them that land restitution is not distributive, that that is not point, and rather that it is a way to secure the territory and recover the spoils of war from armed organizations. What is he trying to do?”

For Martín there was no doubt that the land restitution policy was going to have distributive effects once put into action, but he reasoned that maybe Reyes was trying to persuade the military leaders to see it as part of their counterinsurgent plans. After all, they had been consistently reluctant to provide support to the Project and its land protection operations. In meetings they had always

refused to provide personnel, because as Martín put it, they “had other security priorities.” But on the other hand, Martín could not understand why if Reyes was the brain behind the law, he had incorporated an article into the final version which established that the products of the agro-businesses operating in the lands claimed could be granted to current tenants and owners as long as they demonstrated they had not been involved in the dispossession. “Why let them continue profiting from the lands?”

Another friend from the Project, whom I met in those days as well, confided that there were also rumors that Reyes had worked for an agro-business corporation that had acquired large extensions of land in the Caribbean and had then been accused of taking advantage of the survivors of the massacres perpetrated by the AUC in the area such as that of El Salado, buying very good land from them at very low prices. In her words, Reyes seemed to wear many masks at the same time. Both she and Martín suggested that if I wanted to know what had happened in the past year and how had the VLR Law come to be, I had to find a way to talk to him.

Later that week, Martín invited me to an accountability hearing in which the governmental agencies devoted to rural development were going to present their annual reports and discuss the VLR Law. The hearing took place in a large conference center in west Bogotá. As we came through one of the side entrances Martín spotted Reyes sitting in one of the first rows. The layout of the stage resembled that of TV trivia shows. In fact, the host was a well-known anchor and model and the whole event was being recorded in order to be broadcasted live on a public TV channel. The Minister of Agriculture, J.C. Restrepo, and the heads of agencies like the Incora (renamed Incoder under Uribe) were seating in the middle of the stage, behind a white table, and would answer questions previously collected from “interested citizens.” Instead of reading the questions the anchor played the voices of the people asking them. While the person spoke, we could hear sounds of a typical farm in the background: a rooster, the sounds of crickets at sunset, a dog barking. Before

starting, the host clarified that though the Minister was ultimately responsible for the due implementation of every rural policy, in this case he was going to answer the questions related to the VLR Law and leave the other subject matters to his subordinates. For the next two hours Restrepo, explained the procedures and the purpose of the law. Over and over he repeated that there was nothing to be afraid of, that it was a measure meant only to take hold of “ill-acquired lands” and return them to their legitimate owners. He also presented a series of statistics. One was that the Monitoring Board’s estimated dispossessed hectares. The others were about the performance of the Project: number of hectares and peoples “protected.” As Restrepo read, Martín, who was sitting by my side, explained in a low voice that putting together those numbers had taken him an entire week of work and here was Restrepo, reading them out loud them in seconds.

In one of the breaks, I decided to approach Reyes, who was smoking a cigarette at the entrance of the building in a grave and pensive manner. Soberly dressed with a classic gray suit, suede shoes and a flat cap, he reminded me of Papo, my grandfather. His manners, attire and the Spanish he used signaled to me he was not only born and raised in Bogotá —*a cachaco*— but he was a native of the neighborhoods of Teusaquillo or Chapinero. As I learned later, he was in his late sixties, smoked up to twenty cigarettes a day and he was a widower raising a teenage girl on his own. Initially he was polite but distant, as we *cachacos* often are with strangers —or so the stereotype goes— but as I began to explain my doctoral research to him, he agreed to schedule an appointment for the following week.

That interview was the first of a long series of conversations we have had since then. He asked me to come for coffee to his apartment in Bogotá’s eastern mountains in Upper Chapinero. His building is the last at the end of a steep road, where the city stops and Bogotá’s mountain woods begin. His living room was decorated with the minimum of furniture. A sofa, a coffee table, two reading chairs and a small leather stool by the fire place. There was not a single object whose

function was solely decorative. But on the other hand, the living room had an outstanding panoramic view of the city. I could see the grid of streets from above. Later on he confided that his home helped him think geographically. I thought that it certainly evoked the bird's eye view of most local academia.

He greeted me at the door and asked me to come in. Seconds later he received a phone call. "Oh, I have to take this, if you please excuse me," and to my surprise he sat, or rather squatted, on the stool in front of fire place he while offered me the sofa. He did not mind me overhearing the conversation. When he hanged up he told me that at the other side of the line was one of the long-time leaders of the National Peasant Association or ANUC, which I discuss in detail in Chapter One, and a dear friend of his. They went a long way back to the early 1970s, when Reyes (Reyes 1978) had conducted a study about conflicts between peasants and landowners in Sucre at that time. He had documented some of the ways in which latifundio owners had used legal figures and judiciary procedures to fabricate property rights over lands that peasants claimed as their own. His friend was calling to congratulate him about "his award" and also hear his thoughts about the meeting they had had in Sincelejo, Sucre's capital city, a few days before.

It turned out that the previous night, *Semana Magazine* had awarded Reyes and nine more people its prestigious Leadership Award. According to the award's website -I checked later-, of almost 300 nominees they had chosen ten finalists. Reyes had been awarded for "his leadership in the research around land tenure and its concentration in the hands of criminal structures, contributing to the formulation of the Land Restitution Law." Carmen Palencia, a desplazada from Urabá who had been at the forefront of the legal and political battle to make visible and revert the "Urabá model" of paramilitary land appropriation and accumulation, also received the award.

As for the event in Sincelejo, Reyes explained that he had traveled with Santos and Restrepo to a meeting with the ANUC and other peasant organizations from the Caribbean region. For the first

time in decades, he suggested, a President and the ANUC “were on the same side” of the political field. What had happened in that meeting, he told me, was very “*impresionante*” to witness.

Impresionante, as he used it, was meant as a mixture of extraordinary, moving and historical. When Santos stepped into the stage, “the men and women of the peasant organizations gave him a standing ovation: “there were no *vitorios*. Not a single *consigna*,” meaning that there were no anti-establishment chants or slogans. “Everything was very respectful and all the leaders enthusiastically listened to what Santos had to say (about land restitution and agrarian policies).”

And then it was his friend’s turn to address the audience. “It was a memorable speech” for several reasons. His friend used, in his words: “a fresh language, without the old slogans about class struggle or the agrarian reform.” Rather, his friend presented peasants as men and women “endowed with productive and competitive capacities, as agents of change and progress, who were aligned with the rule of law and the state.” This, he then added, departed from what he referred as *campesinismo* – “peasantism”- which in his opinion was a discourse that had tended to regard the peasants as the bearers of traditions, archaic forms of knowledge and practices that ought to be conserved, even against their own interest or will. He was referring in particular to the writings and activist practices of some agrarian question scholars, colleagues of his, who often opted for a paternalistic view that in his opinion infantilized the peasantry, denied them agency and was ultimately disrespectful. He finished the story saying that more than the Leadership Award, what he felt deeply proud of was his friendship and collaborative connection his ANUC friend and the many battles they had fought together since the 1970s.

In that first conversation we did not talk about what had happened in Congress, but about the future of land restitution, and the beginning of its implementation scheduled to January of 2012. For him, the Law was one way of putting the State, in capital letters, in the service of the peasantry and the resolution of one of its many grievances. Until then, peasants had been seen as both dangerous

and unproductive, and had been left unprotected from the violence of armed organizations and from economic changes. So the plan with Restrepo was to pass other legislation that completed this realignment. Once in practice, however, land restitution was not going to be peaceful. Current owners and tenants were going to resist and even resort to violence to protect their acquisitions. And in the farther future, to my surprise, he agreed with Marx that eventually the properties of land restitution claimants most likely were going to end up under the control of big capital. This was inevitable, but he believed that land restitution assured that they got their piece of the pie.

When I got to know Reyes better, I asked him about Santos' detour. We were sitting in a rustic coffee shop in west Chapinero. He had just come back from Havana, Cuba, where he had joined the government delegation that was negotiating peace with the FARC guerrillas. His concrete task had been to provide advice during the discussion of the "agrarian point," the first point in the negotiation agenda. As discussed in Chapter One, the agrarian question, and in particular the unequal distribution of land and property rights, had been FARC's historical concern since its official conformation back in 1965. So fifty-two years later, the Santos government and the FARC delegates had decided to start the conversation by agreeing on a series of common measures to be undertaken as part of a thorough "rural reform."

As he gave me some insubstantial clues about how the process was going –he had a confidentiality agreement that, despite my insistence, he did not breach- I ended asking him about the origin of Santos' commitment to the agrarian question and land restitution in particular. I had checked and Santos had not mention it in any of the presidential debates or in his statements to the press during his campaign.

Reyes smiled. He seemed pleased I had brought up the subject. "To answer your question would be too immodest because," he hesitated for a second, "I could say I persuaded him to do so." And he began to tell me about one of his first encounters with Uribe, and then Santos, back in 2006.

Everything started with an opinion article he published in *El Tiempo* analyzing Uribe's security strategy and its effects on the agrarian question. His piece had received praise from public figures and other intellectuals. A journalist, also from *El Tiempo*, congratulated him over the phone and then told him: "a friend of mine wants to say hello to you" and then suddenly Uribe was on the other side of the line and congratulated him too. That was the first time that his work caught the attention of a high-profile politician.

After that he devoted about a year to advancing and updating his research on land dispossession. His ambition was to do an inventory of land dispossession practices around the country, attending to regional differences, which he then published in the form of his 2008 book, which Martín and I had discussed. Then he joined Midas and worked in the VLR Law's first version until Uribe finally tabled it. A few weeks later, Santos called him. He was Minister of Defense but was already preparing his presidential campaign. He wanted Alejandro to join him and other well-known scholars in a series of gatherings –*tertulias* was the word he used- at his residence to talk about the country's major problems. In one of those gatherings sometime in mid 2009, he "monopolized the conversation": "I did not let anyone else speak for about an hour." It was rude and bewildering for the rest of the guests, he admitted, but he wanted take the opportunity to explain to Santos that he was convinced that the "president willing to restitute land to peasants and redesign agrarian policies to distribute and formalize land" had a chance negotiating peace with the FARC. He knew, from what leftist intellectuals had told him, that the FARC's leadership was willing to give peace a try if those were the terms.

Santos "bought the idea of land restitution" and "the other set of agrarian policies," he believed, because it opened the door to peace and because, as he had tried to explain, an inclusive agrarian policy would help the government reestablish its relationship with the peasantry and reduce the political appeal the FARC still had in some rural areas. So I asked him if Santos' detour was

ultimately security through peace, and he said that in his opinion it was. “Not about equality in any sense?” I asked. He gave it a thought: “only secondarily.” Retrospectively, as I look back at my notes, I believe that for Reyes, land restitution would have redistributive effects because the evidence that existed, his and that of the many other analysts, especially the Monitoring Board, showed that dispossession had led to accumulation, rather than fragmentation. He didn’t hear from Santos in months until in early 2010, someone from Santos’ campaign contacted him and asked him if he was willing to work in the formulation of a policy plan. Specifically, Santos wanted him to write portions of his agrarian program, including one relating to land restitution. So he worked seven or eight months, he could not remember exactly, for free. “My personal finances collapsed.”

So I asked him again. If Santos had “bought” into land restitution, why didn’t he mention it –or the reparation of victims for that matter- in any of the presidential campaign debates? And I pointed out that in fact the leftist and the Liberal candidates had been the only ones who had raised these two issues during the campaign. Reyes agreed. Indeed, as far as he could remember, Santos had not talked about land restitution in public, although it did appear in the campaign’s program and brochures: “The people who voted for him did not bother to look at his proposals but there it was.” “At that I time thought he had to be explicit about his interest in this,” said Reyes, and then he added: “In my mind it was good for his image to distance him from Uribe and show they were different. But of course, I was wrong. So much for my political savvy!”

He recalled that Santos was losing the polls until he hired a controversial publicist and image manager: “a total political fox, who advised him to do exactly the opposite, to be like Uribe, to emulate him, to appear as his political heir. And that is why Uribe hates him so much; he considers him a traitor. And in a way he is a traitor. Thank goodness he is a traitor.”

Making things with words: evocations of the agrarian reform, and the making of new political alignments

Once elected, Santos continued to present himself as continuing Uribe's governmental agenda and style of government, but at the same time he began to act in public and private in ways that departed from the discourse and political agenda of Uribism. As the press reported it, in the first days as President-Elect, Santos met with his campaign rivals and asked them to join form a coalition of "National Unity" with the government to work on a series of pressing and important issues they had raised during the campaign. Legislation for victims was one of them. Another concrete shift away from the previous government was to appoint J.C. Restrepo, who had been very critical of Uribe, as his Minister of Agriculture.

And then came the inauguration speech on August 7th 2010, in which Santos celebrated Uribe's achievements and utilized many of the descriptors of Uribism to define his government's aspirations, but also included a series of cultural and historical references that announced, and performed, a clear distancing. On one hand he emphasized Uribe's legacy and what he intended to continue in terms of security in its many forms: security in the countryside, security to travel, security to invest (*confianza inversionista*), legal security (*seguridad jurídica*). Rather than talking about Uribe's advances countering the armed conflict, Santos employed the terms terrorism, violence, drug-trafficking and criminality. Then, by the end of the speech he referred to Uribe "as a genius and one of a kind Colombian" who "established the foundations for [a] prosperous and peaceful country" for future generations to enjoy; and thanked him for his contributions: "Thank you, (...) a thousand times thank you, President Uribe (...) for (...) a country where it is possible to talk about progress, prosperity, where it is possible to talk about the future (...) Today I receive your legacy

with humility and respect, and proclaim that I will do my best to augment your immense governmental opus.”²¹⁹

On the other hand, Santos started his speech by revisiting places, ideas and peoples that were not only absent from Uribe’s discursive imagery, but that he often reviled, and which he had treated as dangerous to his Democratic Security plan in his speech and governmental actions. To someone like me and the many other viewers who had grown accustomed to the semantic configuration of Uribism, Santos’ word choices and rhetorical moves came as a perplexing surprise. He began thanking God and the Motherland -which resounded heavily with Uribe’s conservative aesthetics- but then he reported that early that morning he had visited “the great ceremonial temple of Seiyua” in the Sierra Nevada, where he had received a series of sacred objects and messages from the *mamas* (shamans) of the Arhuaco, Kogui, Wiwa and Kankuamo indigenous peoples. He referred to them as “the big brothers,” which is how they refer to themselves, in contrast to “young or small brothers” (the whites, the mestizos, the Others).²²⁰ Though this was certainly a strategic use of multiculturalism for the sake of his political refashioning and presentation of self as a ruler who upheld cultural diversity and the promise of a pluri-ethnic nation established in the Political Constitution, this set of discursive concessions contrasted sharply with Uribe’s highly conflictive relation with the indigenous movement during his eight years in office. I could not read more into this first piece of speech, but my uncles and my father who were die-hard liberals explained me that to them, this was an “unmistakable reference” to the former Liberal President, Alfonso López, who had also sworn an oath to the peoples of the Sierra Nevada the day of his inauguration in 1974.

Next, when describing his political agenda, Santos placed himself further within the tradition of Colombian liberalism when recalling the words and actions of previous Liberal statesmen A. Lleras

²¹⁹ President J.M. Santos. August 07, 2010. Inauguration speech: “Le llegó la hora a Colombia.” Available in: http://wsp.presidencia.gov.co/Prensa/2010/Agosto/Paginas/20100807_15.aspx

²²⁰ Ibid.

Camargo (1958-1962) -whose governmental policies I discussed at length in Chapter One, and that of his own ancestor, Eduardo Santos, and adding a mild egalitarian bent that was also dissonant with his previous public persona. He did not use the word equality or any other that could be taken as “lefty,” but introduced the notion of Democratic Prosperity, reminiscent of but also different from Uribe’s Democratic Security in the sense that it had a socio-economic content and, as he explained, it entailed an explicit anti-poverty promise: “It’s time that the natural resources we’ve been granted in such much abundance and that we have multiplied with genius and wisdom, are not the privilege of a few, but within the reach of many.”²²¹

And right there, rather unpredictably for most spectators, he not only recognized the existence of a problem of land dispossession in which most productive lands were “in the hands of the agents of violence” but announced a “Land Law” to “revert” that situation; and also vindicated, and pledged to promote, the productive capacity of the peasantry. In his words:

I want to be heard by the people in the fields – the mountains, the plains, the forests, the coasts of our land-: the peasants of Colombia. We are going to defend the Colombian peasant, we are going to turn him into an entrepreneur, to support him with technology and credit, to turn him into a prosperous Juan Valdez. (...) Because that peasant can feed Colombia and help a world in need of food. (...) We are also going to work so peasants can become the owners of the most productive lands of Colombia and profit from them. The phenomena of drug trafficking, terrorism, violence [endured] by our country, have led the best lands to the hands of the agents of violence. We are going to revert that! We will present to Congress a Land Law and we will speed up the extinction of property rights [of criminals], so that the lands the State has seized [from them], and the ones we shall seize next, go back to the hands of peasants, to the ones that work [land] with devotion and sweat. With safer fields, we shall promote (...) the return of desplazados and victims of violence to their *parcelas* (plots of land). And above all we are going to train them and support them so they can resume their productive life.²²²

This section of the speech gestured to the old Liberal promise of agrarian reform first announced in the 1930s and attempted again in the 1960s and 1970s, but without naming it as such. Though Santos avoided the overtly charged term “agrarian reform” in this inaugural speech, the slogan that

²²¹ Ibid.

²²² Ibid. Emphasis is mine.

had historically stood as an marker of such a plan in Colombia –“land for those who work on it” (*tierra para el que la trabaja*)- was explicitly weaved into his phrasing (land in the (...) hands of peasants, (...) the ones that work it with devotion and sweat). In addition, this section also gestured to the 1990s techno-political fantasy of conducting an agrarian reform with the lands of *narcos* and thus enjoying the sought-after positive effects of land redistribution without threatening the status quo of legitimately acquired property rights. But in addition to this limited but politically appealing form of land distribution, the promise for both peasants, and urban publics, was the creation of an entrepreneurial, enriched and dignified peasantry, a rural middle-class, embodied by Juan Valdez – the iconic traditional coffee producer that stands as part of Café de Colombia’s brand. Through Juan Valdez, Colombian coffee has been branded simultaneously as the product of a long and cherished “local coffee tradition,” while at the same time, a product that allows both producers and consumers to partake in sophisticated forms of cosmopolitanism. Thus sketched, Santos’ plan of ameliorating the conditions of the peasantry by seizing the lands of criminals and turning the peasantry into modern but traditional and respectable entrepreneurs like Valdez –the opposite of both *narcos* and backward peasants- resounded with the divergent expectations of retribution, distribution and stability of diverse publics.

Less than a month later, in a city in the Mid-Magdalena region, Santos announced the imminent release of a new Land Law draft, as it was initially referred to in public. In his speech he reinforced his peasant ownership promise by drawing, nonetheless, from a book that was widely read among the urban bourgeois, the emblematic novel *Siervo sin Tierra* (“Serf without Land”) written by Eduardo Caballero. The main character, *Siervo* (Serf), is a landless peasant who spends his life bound to a contract with a landowner. Serf has to pay with work, produce or money for the right to be allowed to live and work on the same inaccessible piece of land in which he had been born and raised by his mother. Driven by the desire to own that particular piece of land, Serf works

himself to exhaustion in order to fulfill his contractual obligations and save for the purchase. At the same time, he gets caught in the bipartisan violence of the 1940s and 1950s. At the end of the novel, Serf comes out alive from a violent spiral of events and manages to sign a contract with the landowner but dies on his way back to the promised land. Santos contrasted Serf with Juan Valdez and claimed:

How many serfs, ‘serfs without land,’ we still have in Colombia! His drama moves us all as Colombians, it’s a story that we want to put behind us, so that it may only live in Caballero’s fine writing, (...), and nowhere else. (...). During the campaign we said we would fight to return to peasants the lands they work with devotion, enthusiasm and plenty of effort.

And here we are today, to present to you our Integral Land Policy and honor our word! So that in our country we can have more Juan Valdezes and fewer serfs without land!²²³

Then, he explained that the first component of this “Integral Land Policy” was the Victims and Land Restitution Law and the second, a series of proposals to expedite land formalization, credit and technology transfers to peasants and to reconvert hectares currently devoted to cattle-ranching into crops and forests. Simultaneously, and just like the Minister of Justice in my interview with him, in multiple public statements Restrepo and Santos framed the announced “land law” and accompanying agrarian policies as a way to solve a pending “historical” and “moral debt” (*denda*) with victims and peasants.²²⁴

Political commentators in the liberal tradition began to refer to the “land law” that Santos had already mentioned in several settings as an “agrarian reform,” and attributed to it the transformative potential associated with such schemes, despite the outlined limitations. The most telling commentary came from Antonio Caballero, son of the author of *Siervo Sin Tierra* and himself a renowned essayist and leftist intellectual who was known for his acerbic criticisms of

²²³ President J. M. Santos. September 3, 2010. “Palabras del Presidente Juan Manuel Santos Calderón en el lanzamiento de la Política Integral de Tierras.” Available at:

http://wsp.presidencia.gov.co/Prensa/2010/Septiembre/Paginas/20100903_15.aspx

²²⁴ Newspaper El Espectador. August 15, 2010. “Saldando las deudas del despojo.” Available in: <http://www.elespectador.com/noticias/judicial/articulo-219348-saldando-deudas-del-despojo>

political elites. In an opinion article entitled “*An agrarian reform?*” he observed: “The Minister of Agriculture has announced an unexpected turn: almost a revolution. Nothing less than an agrarian reform -or at least its basis. The reestablishment of the properties lost by those displaced by violence (...).²²⁵ In his opinion, “these (were) just statements: words.” And yet, he noted, they were significant to the extent that they depicted “an agrarian policy radically contrary to that of Uribe (...) which was about supporting rich big landowners, extensive cattle-ranchers, latifundia owners with palm oil or sugar plantations for ethanol; and going after the poor: the milkmen, the minifundia people who own eight chickens and two pigs.” In the same vein, an editorial in *Semana Magazine* remarked:

When Juan Manuel Santos said that lands are going to return to the hands of the people who “work it with their devotion and their sweat,” many people interpreted this phrase as a rhetorical device to adorn his first presidential speech. Today, one month after that rainy inauguration day (...), there are many indications that he is serious about this. But the big question is whether it is possible to solve such a problem as that of land in Colombia. Given its historical, political and legal complexity it has become a challenge impossible to tackle. (...) Of the many structural reforms in the government’s agenda, all very important and urgent, the land law is maybe the only one that can divide history in two.²²⁶

Meanwhile, the first to publicly articulate its disbelief was the FARC. In a “counter” press release that came the same day that Santos gave his speech in the Mid-Magdalena region and invoked the character from the *Serf without Land* novel, the FARC ranted against the pretended revolutionary character of the announced legislation: “there is not one owner or landlord who is not suspected of illegality. (...) It is clear to the revolutionary and insurgent movement in Colombia that only with a revolutionary agrarian reform we shall have the promised future.”²²⁷

²²⁵ *Semana Magazine*. October 7, 2010. “¿Una Reforma Agraria?”: <http://www.semana.com/opinion/articulo/una-reforma-agraria/119097-3>

²²⁶ *Semana Magazine*. September 4, 2010. “La Tierra Prometida”: <http://www.semana.com/nacion/articulo/la-tierra-prometida/1214423>

²²⁷ Anncol, Agencia de Noticias Nueva Colombia. September 17th, 2010. “Se impone la revolución agrarian.” Available in: <http://www.anncol.eu/noticias-del-mundo/4/se-impone-la-revolucion-agraria926>: Some excerpts: “Uribe’s third government (by proxy) has made a great fuss of its Bill for the Recovery of Dispossessed lands. A moving statement of purpose has led the government’s pencil pushers to assert that the approval of this law would be revolutionary, (...) others to express the opinion that giving back 2 million hectares would not transform the agrarian structure nor drive

The head of the leftist party, El Polo, also expressed her public reservations against Santos' promised "agrarian reform." She welcomed the initiative on land restitution but argued that any such law was insufficient "to solve the agrarian question" and called for an "integral" agrarian reform. She referred to Reyes' 2008 book as the "statement of purpose" of Santos' new law that, in her opinion, "offered a statistical radiography of the concentration of unproductive latifundia, resulting from violent dispossession and the political decision of the governments after (President) C. Lleras Restrepo (1966-1970) to not apply the agrarian reform of Law 135 of 1961." However, she clarified, though land restitution was necessary, it was "not enough" because in the best-case scenario "it would leave us with the same land concentration of the 1990s, when the most recent wave of land dispossession began."²²⁸ As for the most conservative side of the political spectrum, initially there were no public objections –and not for a while.

Having caused such expectations, both high and low, in his first days in office, Santos personally asked Minister Restrepo and Reyes to make the "land law" their top priority. In turn, Restrepo asked Reyes to work side-by-side with a personal friend of his, a senior partner at an exclusive law firm, on a new land restitution draft. This lawyer, whom I will call E. Valverde, was a veteran litigator in a

landowners to bankruptcy and (...) and others to juggle estimates, (but) the ineluctable reality is that not one landowner was affected by the land dispossession undertaken the well-known blood, fire and chainsaw (paramilitary) agrarian reform that the oligarchy and the Empire have imposed upon the people of Colombia. Given the circumstances it is convenient to enounce the truly revolutionary agrarian reform that the New Colombia requires (...) Gruesome, horrendous, the behavior of notaries, registrars, cadastral officials, mayors, when helping out with the paperwork to appropriate lands (...) The narco-oligarchic power gave land-predators freedom to act; (...) Senators, Representatives allowed the imposition of the bloodiest right-wing agrarian reform in the history of the people (...) The government of the predators admits to 3 million hectares; NGOs and the Church (...) 5 million. The way out is not the law, but the constitutional reform. All the barbarity and the orgy of blood herein referred brought about with it the brutal transformation of the land tenure; (thus) land tenure in Colombia is not only illegal but unconstitutional. There is not one owner or landlord who is not suspected of illegality. (...) It is clear to the revolutionary and insurgent movement in Colombia that only with a revolutionary agrarian reform we shall have the promised future "Available at: <http://www.anncol.eu/noticias-del-mundo/4/se-impone-la-revolución-agraria926>.

²²⁸ Clara López Obregón. October 21, 2007. "Land restitution with agrarian reform," newspaper El Tiempo. Available in: <http://www.eltiempo.com/archivo/documento/MAM-4209255>

wide variety of legal fields. With Reyes, he brought on board some of the lawyers who had made a name for themselves within the small policy world of land restitution during the first round of deliberations back in the period of 2007-2009.²²⁹

A group of five to eight lawyers came to work with them. Some joined Valverde's office, others the Ministry of Agriculture, and some of them came as volunteers – apparently including a somewhat legendary lawyer from the times of the early Incora who had also worked on the formulation of Decree 2007. Together they constructed the specific articles and paragraphs that came to constitute the new land restitution draft. In closed door meetings they distributed writing tasks, discussed ideas and presented their proposed pieces of legislation. But Valverde was the coordinator, and according to most of the people who were part of this new formulation attempt he also did the work of putting them all together into what they all perceived as a coherent and technically sophisticated legal text. They drew their ideas from the different drafts that had circulated when the VLR Law was first attempted and generated a new text they entitled –following the trend that emerged in that time within this policy world: “Legislative Draft for the Establishment of Transitional Private Rules for Land Restitution”.

Its most significant difference with the Liberal Party's version under Uribe was that this new draft limited restitution to land –and real estate more generally- and excluded other lost assets. Also, unlike the Liberal one, the draft also established a mixed administrative and judiciary procedure which involved the creation of a new governmental agency, which in some of the previous versions was called Pro-Tierra, and in this version was baptized with the rather baroque name of *Unidad Administrativa Especial de Gestión de Restitución de Tierras Despojadas* -the Special Administrative Unit for the Management of the Restitution of Dispossessed Lands. The main tasks of the Land Restitution Unit, as it came to be known, would be to collect the evidence supporting –or discarding- the claims,

²²⁹ Among them were lawyers who had been part of the Land Table briefly mentioned in the previous section.

confirm that the cases fulfilled certain minimal requirements, certifying the eligibility of claimants to proceed to court and, if necessary, also undertaking the legal representation of the claimant. On the other hand, the draft kept the reversal of the burden of proof, established a set of presumptions of dispossession and also gave the government authorization to decide by decree a series of “zones” where transactions over property rights could be invalidated –which was a reformulation of Celso’s controversial “spurious zones.”

Eventually, during the deliberations, this initial formulation would be further modified to create an additional new set of specialized courts exclusively devoted to land restitution and invested with a different set of prerogatives than other judges. There was also a new addition to the alternative regime of proof: a legal figure referred to as *buena fe exenta de culpa*, literally “good faith exempted from guilt,” to be applied to current owners and tenants. Under this new figure it would not suffice for them to prove during the procedures they had acted within the boundaries of the law to acquire the property or the tenure of the land being claimed in order to receive compensation if the restitution was decided in favor of the claimant. They also had to prove that they had acted with “extra care or diligence,” and had done everything within their reach to make sure that the property in question was not available to them as a result of the armed conflict. This would make even harder for current owners and tenants to justify their claims.

In many different venues –in a room with representatives of the human rights NGOs or with higher commanders of the military or in a taxi with colleagues- I heard Reyes explain the reasons behind this final design. The intention, he would consistently expound, was to set in place a “contentious” administrative and judiciary procedure which instead of setting displaced and dispossessed peasants against mostly powerful owners and tenants who, in addition, could have connections with drug-cartels, paramilitary organizations or the guerrillas, staged a litigious

confrontation between the latter and a new state agency, the Unit. The point was to level the power asymmetries that existed on the ground.

Once, in a discussion about this asymmetrical scheme explicitly outlined in the VLR Law with a group of lawyers from the Unit and other state institutions, an argument unfolded regarding who ultimately had come up with the overall design of the land restitution chapter. Some of them claimed that it had been the two lawyers of the Project. Others claimed that it was Reyes, who presented himself as a sociologist but was also a lawyer. Present in the discussion was a woman in her thirties who had been part of the team working with Valverde. She blatantly corrected everyone in the table: “Reyes or the Project lawyers can claim to be ‘the ideologues’ or ‘brains’ (which were the terms the people in this and other conversations had been using) of the VLR Law” but “render unto Caesar that which is Caesar’s.” The master architect was Valverde, in her opinion. “His legal technique was impeccable” and it was he, based on his knowledge as a seasoned practitioner in many areas of law, who had constructed the actual written rules and introduced the procedural subtleties. Moreover, she suggested, it was precisely because he had a minute understanding of how courts thought that he had insisted that instead in creating a new kind of judge.

Reyes had told me that the “general ideas” guiding the text were his own. This in part was the reason he had received the award, he clarified. But that, indeed, the specific technical design and the legal phrasing were Valverde’s. And he encouraged me to talk to him, although he cautioned me that he was an extremely busy man and it wasn’t going to be easy to get an appointment. Still, he speculated, he was most certain that Valverde would be most interested in talking to me about “the clash of legal cultures” between traditional lawyers and a new way of looking at private law, which their text reflected and sought to overcome.

In the email introducing me to Valverde, Reyes joked: “Dear E. (...) Juana is doing her dissertation in anthropology (...) about the land restitution law and I’ve told her that you are the

father of the baby.” This humorous way of putting it hinted at the “paternity” of Valverde but also at his somewhat reserved identity. When Valverde answered back, agreeing to see me, he returned the joke, “If I’m the father, you are the grandfather.” A few days later, I went to his office in Bogotá’s financial center on 72 Street. Unlike the often precariously furnished and overcrowded headquarters of human rights NGOs, grassroots and state institutions or the noisy coffee shops where I usually conducted interviews, this was a fully-equipped, spacious and comfortably furnished high-end office, with panoramic views over the city, individual offices for each employee, expensive ergonomic chairs and state of art desktops. Drivers, mail clerks, cleaning ladies and administrative assistants moved back and forth across the marble floors, knocking on the offices of the younger partners.

After going through the usual security check in such buildings and taking the elevator, an administrative assistant asked me to wait for Valverde in a meeting room overlooking Bogotá’s mountains. When he finally came in, he greeted me with cordiality, curious as to why an anthropologist wanted to talk to him, but I could also tell that he was delighted to talk about the craft of the law. As he sat in the head of the table, he asked a woman in uniform to fix for us two *tintos* (the Colombian way of serving a coffee) that she diligently brought minutes later in a tray. He was probably in his early sixties, was dressed in a classic, perfectly ironed suit, and wore some kind of fancy wristwatch. For decades he had been a legal practitioner in many different fields, and now along with some partners he ran the firm. For what he said I gathered that this was his first direct involvement in the formulation of a legislative statute and its additional regulations –because he had also participated actively in the formulation of the presidential decrees concretizing some of the more general contents of the law.

For two hours Valverde shared stories with me about the legal formulas that ended up in the VLR Law final text. Like Restrepo, Santos, and other officials and collaborators of the government

at that time, he also conceived the VLR Law as a move to repay the debt with the countryside: *la deuda con el campo*. He started explaining that “legal informality” –the habit of not registering transactions around land in the local registrar office- had been allowed to spread “like a virus (...) and nobody (meaning the authorities) had cared; and adding to that, land dispossession (*despojo*) and the State’s neglect toward those territories (...) That is why revolutionary initiatives flourish.”

On a side note, he commented that when his closest friends heard him speak about VLR Law and the role of land in the armed conflict in those term they would often tease him: “so you are a leftist now?” I pictured Valverde in a table in a fancy restaurant having a whiskey at the end of the day, with other wealthy men who like him move around the city in expensive cars with private drivers, live in houses with multiple servants and own yachts, country houses or play golf in private country clubs. His answer to them, he said with a laugh, while studying my reaction, was “the left is only good for [wearing] the wristwatch.”

In his account he kept returning to examples of the way attorneys, judges and state officials practicing ordinary private and administrative law had perpetuated such injustices. The problem that he knew best was not the armed conflict or the agrarian question. He told me that the closest he had been to the war in the countryside had been in a road trip with his family, when they passed by a series of abandoned peasant houses that had gun-shots in the walls. His expertise and what he had sought to solve for this particular procedure were the injustices of the administration of justice. What he depicted was a system of asymmetric legalism, in which as discussed in Chapter Two, the means to produce formal rights were irregularly distributed. “Our vision” –probably referring to Reyes, Restrepo and the team of lawyers, he explained, “was to protect people that were in [what in law is known as] *condiciones de inferioridad* –conditions of weakness. We figured that victims were too unprotected in the face of the law when it came to (the production of) evidence: peasant, illiterate, fleeing from guerrillas or paramilitaries, without land. Can you imagine?”

So this is why they introduced to the law the notion of *buena fe exenta de culpa* –the qualified good faith exempted from guilt- mentioned above. His explanation –which I had also heard from Reyes and Unit officials multiple times- was that it leveled asymmetry. In some of those accounts, the good faith exempted of guilt appeared as a figure fashioned sometime back in 1990s to facilitate the expropriation of narco properties. According to this story of origin (Tate 2016) many of these laws were ineffective mostly because criminal courts almost always failed to prove that the formal owners of properties believed to belong to narcos were involved in drug-trafficking, money laundering or any other associated crime. The presumption of good faith was a basic constitutional right, ratified by all human rights conventions, and often strictly applied in criminal cases. When unable to collect conclusive evidence demonstrating criminal responsibility prosecutors and judges would have no alternative but to go along with presumption of innocence and close the case. With the “*buena fe exenta de culpa*” this changed. It was not necessary anymore to show that current owners of suspicious assets had committed a crime but rather they had not been diligent enough finding about its previous owners and users before purchasing it.

But Valverde told me a relatively different story. They had used as a model the figure of the “good businessman” established in the Code of Commerce and related statutes. When he said this, he did not elaborate any further, taking for granted that as a local lawyer, I understood what he meant. I recalled that in commercial law, parties in certain contracts, or certain people independently of the contract –i.e. CEOs and other company directors- are expected to act as any “good businessman,” which means conforming to a variety of standards of conduct considered to be constitutive of this model of behavior. One of the consequences of the “good businessman” figure in commercial law is that anyone to whom this may be applicable is expected to act with “good faith exempted from guilt” and in case of breach of contract, that person has to prove to have conformed to that model in order to be exempted from, or have a reduced responsibility, in relation with the

damages that may arise for the counterpart. Law practitioners know that private law classifies behaviors in two large categories: good faith and bad faith, this latter also known as *dolo*. This word, *dolo*, belongs to the Spanish language but only lawyers use it. Acting with *dolo* means to act with the intention to cause harm. Good faith is the opposite: to act without *dolo*. However, there is a set of intermediate categories. The most well-known is guilt (*culpa*) which is often defined as acting without the intention to do harm but without diligence, unwillingly creating the conditions for harm. There are behaviors that legislation requires that one acts with ordinary good faith in order to be excused from responsibility and there are others that, in addition, require that one acts *without guilt*. Such is the case of the “good businessman” as established in the Code of Commerce.

So the point of introducing the figure of “good faith without guilt” to the land restitution law, Valverde suggested, was to require from current owners or tenants a special kind of diligence when acquiring property or tenure. Now, as I shall discuss in a following chapter, what would count as diligence in these circumstances -the actions and attitudes being diligent entailed- would eventually become a source of serious political contention once the Land Restitution Unit began to present cases before the new courts.

Valverde clarified that he and the other lawyers were aware that not all potential claimants and their adversaries in the procedures were going to fall easily into the categories of “the vulnerable victim” vs. “the powerful owner, or tenant”: “we knew land dispossession was a Dalmatian dog, not completely black, not completely white” (...) “but we were planning a law that would work adequately for the majority of cases.” So, he went on, “we decided to start from scratch: what can we do with our legal system?” And then he went on to explain that the features of the final draft came from his observation and that of the other lawyers in his team, of how legal operators –from judges to paid attorneys- tended to deal with a variety of written rules in practice. By system, then,

he seemed to mean the ensemble of interpretative and performative practices in relation with written rules.

Thus, for example, they had carefully considered whether a court or an administrative agency was going to decide the land restitution claims. This had been major a source of disagreement with other interlocutors, he explained. “The Left wanted a purely administrative procedure, (...) their proposals were very well put together; I found them to be very thoughtful and committed; the issue, however, is that they sometimes fail when it comes to execution of things.” People from the Incora (renamed Incoder) also lobbied so they would be the ones deciding land restitution cases involving public lands. He thought that a purely administrative procedure was a terrible idea because in his words, “in Colombia any administrative decision is subject to great legal insecurity.” By this he meant that, indeed, any decision by a state authority can be appealed and sent for revision to the “Council d’État” –the highest court for administrative issues, where it could linger for one or even two decades. At the end, he explained, the congressional majorities rejected the purely administrative solution but exactly because of the opposite idea: that administrative decisions were supposedly irreversible, whereas judiciary decisions offered more safeguards against arbitrariness and could be appealed. As he put it, this was just one of the many ironies behind the VLR Law.

At then end, the agreement was to establish a mixed procedure conducted by a new agency –the Land Restitution Unit- and a set of special courts. This new agency, according to Valverde, would put together “the pieces of the puzzle” of the case: collect the evidence, create the file, and formulate the claim. To illustrate what he meant, he told me about a very young lawyer, freshly graduated from law school, who had worked on the drafting of the law and then, when he was done, had joined the Unit as a street-level bureaucrat. His job was to receive the statements and “once in a while he would come to see me. Just a few months after he started, he told me he wanted to quit. The stories he heard all the day were so horrible that he could not sleep.” His point was that

somebody had to get the facts right, even to the most gruesome detail, and this was not easy to do. I had finished my affiliation with the Unit and I certainly sympathized.

The judges, on the other hand, would be new hires who would be trained to apply this new law. He had worried at the time about the potential drawbacks of having traditional lawyers, or even experienced judges, applying for the job. He knew that traditional legal thinking, which is known as formalism among lawyers -the habit of concern for the logical reasoning and the strict application of old rules and procedures- could be a problem and that is why they had done as much as they could to warn the administrators of the judiciary system about the dangers of not choosing the judges wisely.

Our time was up and Valverde had another meeting to attend to. But he generously offered me access to his personal files where he had kept track of the changes introduced to the law. He showed me the way to the office of one of the junior lawyers and asked her to give me access to his digital files. In what she showed, there were at least two dozens of versions of the restitution chapter, with big and small variations in content and form. Some of them contained dates, highlighting and comments showing modifications but many did not. I was welcome to make copies of anything I wanted.

Later on, after I had spent several days looking at the many copies and subtle variations in wording and the structure of sentences and paragraphs, I again asked my friends in the Project how the working sessions with Valverde had been. They told that they had not been invited to be part of crafting the legislation but, like the previous time, they had indirectly participated in the deliberation process and presented their own modifications by proxy, this time through a leftist congressman, the same congressman that Valverde had described “as very thoughtful and committed.”

Deciding victimhood:

This second time around, the VLR Law was discussed and approved in less than nine months. Although the partisan composition of the Congress had varied little since Uribe's time, with the President on the side of the bill the correlation of forces in favor or against the initiative and some of its contents changed dramatically (Gómez 2014; Cristo 2012). With the exception of some conservatives, most members of Uribe's coalition switched their position, and along with the Liberal Party, the newly formed Green Party, El Polo (the leftist party) and some independent Congressmen, the coalition around a new Victims Law initially constituted a favorable majority.²³⁰ Still, many of the main disagreements that had emerged the first time in relation with the costs of the reparation system and the inclusion of victims of state agents resurfaced at the beginning of the legislative term. The most conservative faction within the promoters of the bill insisted that the victims of state agents could not be repaired without a judiciary ruling since this could be eventually used to argue legally that the state had to acknowledge responsibility. They also insisted that restitution had to be limited to lands. Their opposition, constituted mainly by the Liberal Party and El Polo, insisted on equal treatment for all victims and the integral restitution of patrimonies (Cristo 2012).²³¹

As the debates unfolded, however, a series of additional discrepancies emerged in relation with the institutional design of the reparation system, the definition of victim and the requirements for potential claimants to be granted remedies. This eroded the initial majorities although not to the point of hindering the bill's approval. In relation with the overall institutional design, the

²³⁰ In the previous attempt, the Liberal Party, El Polo and some congressmen with other political affiliations had supported the VLRL. On the opposing side was the Conservative Party, the newly formed Partido de la U (U Party), officially called National Unity Party, but often associated with the U from Uribe's name, and other right wing political movements. It must be noted that Santos was the founder of the U Party and also its first official president. Under the new government, the Conservative Party and some U Party Congressmen changed sides; and the number of representatives from the Green Party grew. This tilted the balance significantly.

²³¹ Starting the deliberations there were two bills under consideration, one mandating the establishment of a system for the reparation for victims. The second was the one prepared by Reyes, Valverde and their team, which was specifically devoted to the introduction of "transitional private rules" for land restitution. But in the first weeks of deliberations the proponents of both agreed to unify them into one single text.

government and the majorities decided that the monetary compensation of atrocities had to be a special administrative procedure. However, they hesitated as to whether to operate with a predefined amount for each kind of crime endured by an individual victim or follow the “Turkish model” (Cristo 2012), which allowed damages for each one of the victims to be calculated separately according to personal circumstances. Eventually, the majority decision was to go with the first option because it was more expedited and financially less strenuous; and also to offer victims an economic bonus if they signed a “compromise clause” relinquishing future claims against the state for further remedies.²³²

The second point of friction, and probably the one that got more attention, was in relation with the temporality of the harms to be claimed: how far back in time should both reparation of atrocities and the restitution of land go? According to one of the lawyers of the Project in a meeting in Congress with the supporters of the draft, the majorities decided to follow the example of countries like Bosnia, where a cut-off date had been established. “Everyone agreed this was the only way to make it manageable.” But the issue was, since when?

Intense disputes around the history of violence and the political effects of choosing a particular date took over Congress and the media. Congressmen, commentators and constituents around the country quarreled about the historical arc of contemporary violence, its different periods, underlying logics and its many turning points. However, in Congress there was still somewhat of a consensus that despite the relevance of years such as 1948 (the assassination of Gaitán), 1959 (the beginning of the National Front), 1964 (the attacks against peasant communities that led to the emergence of the

²³² Although the original plan was to let the institution that Uribe had created to replace the Social Solidarity Network – the so-called Acción Social Agency-, to do the job, after several discussions the final agreement was to do the same as with land restitution and create a new agency for this purpose alone. According to Cristo, among some of the reasons that the promoters of this idea provided at the time, was that Acción Social was not specialized in one single area of policy intervention but was in charge of a mixture of anti-poverty programs, and was also the socio-military component of the Uribe government’s counterinsurgency plans which had a bad reputation among victims.

FARC) the most remote past had to be left aside, at least in relation with monetary reparations and land restitution because it could compromise the financial sustainability of the bill. Rather, the main disagreement seemed to revolve around when was the last time violence had gotten *worst* and which of the recent cycles or types of violence were worth the financial effort.

The problem centered on the 1980s. At some point El Polo insisted on September 1978 as the starting date, so as to cover the state terror under the administration of Turbay and then, along with most of the Liberal Party, it agreed on January of 1980 so that the first paramilitary extermination campaigns, the national expansion of FARC and the other guerrillas, and the transformation of kidnapping into an instrument of war, among others, were included. Conservatives proposed 1984, and Santos' party and the vice-president –a former union leader - preferred the year 1991, when the new political Constitution was released. Finally, initially the government adhered to the 1993 date proposed by former Liberal presidential candidate, Rafael Pardo.²³³

As debates progressed, the dates in the different drafts that were put together in the House and the Senate kept changing.²³⁴ Participants turned to statistics, academic and legal narratives of the violence and discussed the scientific and moral value of professional historical accounts. Interestingly, the admission that there was not a singular history of violence, and of the impossibility of agreeing on one, was recurrent during the discussions in the floor of Congress. Finally, once in the Senate, Cristo and the other proponents convinced the government and the majority coalition that January of 1985 was an intermediate solution, that satisfied the needs of historical vindication

²³³ And then, at some point when the draft was still in the House, the head of the Liberal Party, convinced Santos that legally speaking, the armed conflict had been officially acknowledged in 1993 and consequently, that should be the starting year. A draft I found among Valverde's documents defended this date arguing that that year the government had issued a series of presidential orders which explicitly admitted a political armed conflict. In his book Cristo refers to Pardo's move as a "major screw up" (2012: 140) because "it gave ammunition to the enemies of the law." He then asserts that he had to talk Pardo and the President out of this third date, and alert them about the political and ethical implications of leaving the 1980s and the early 1990s outside the reparation system.

²³⁴ Initially, in the version first presented to the Chamber there was no date. In the second round and third rounds, years 1991 and 1986 appeared in the definition of victim respectively. Finally, in the definitive version, the year was 1985.

and financial sustainability of most parties involved.²³⁵ El Polo, on the other hand, protested the date. Although it was better than 1993, Congressman Iván Cepeda, one of the most visible leaders of the leftist party and whose father was murdered in 1994, stated that it was “clearly insufficient” given the long list of episodes of violence between 1980 and 1985.

Once the draft was in the Senate, in early 2011, however, Minister Restrepo addressed the floor and insisted it to keep 1991 as the starting date for the purposes of land restitution. One of his arguments was that according to the Colombian Civil Code, holders of a *posesión* and an *ocupación* for more than 20 years or more had in principle the right to keep those lands. So being 2011, this meant that arrangements pre-1991, had become legitimate and in this sense the new bill could not contradict the existent legal order. His argument was well taken by the majorities and for this reason, the 1st of January 1991 was decided as the starting date for land restitution claims.

As the temporality issue was being discussed, Santos himself reopened the issue of whether to admit the existence of the “armed conflict.” According to Cristo, Santos personally called him and asked him to officially recognize the ongoing “armed conflict” in the bill. This move from Santos, which seemed merely nominal, had important political repercussions. On one hand, by officially acknowledging the existence of an armed conflict, Santos openly transgressed one of the semantic pillars of Uribism and distanced himself in a resolute manner from Uribe. Back in 2008 Uribe’s supporters in Congress had forced the Liberal Party to erase the term “armed conflict” from the first VLRL draft and replace it with the vague notion of “violence.” Now Santos was insisting on the opposite. Early that year, Uribe had already expressed in public his discontent with the VLR draft.

²³⁵ The intervention by the Conservative representative, Realpe, reflects the majority stance: “Rafael Pardo (a liberal) suggested year 1993 to commemorate the first public order law, and we’ve been staying awake at night thinking about the date. And of course our goal as Congress is to cover the largest number of victims possible. This is why today, and just today, we are coming to an agreement (...) around the 1st of January of 1985 as the starting date of this law. Certainly, the question is why not 1940 or 1950, or the Thousand Day War (1899-1902), but this is so because we need to be financially reasonable, (...) and although there is no magic date that the Holy Lord has given us, it’s a date that comes out of a consensus, a date the Conservative Party agrees upon.”

But when the notion of the armed conflict was reintroduced, he wrote in his very popular Twitter account: “To acknowledge the armed conflict empowers FARC’s terrorists vis-à-vis Europe, serious retrogression” and “So dangerous to acknowledge armed conflict (...)!” From his perspective, this decision created the discursive conditions for the FARC to felicitously demand from the international community and authorities the treatment of a political rather than a criminal organization. From that point on, argues Cristo, the Santos-Uribe relationship reached “a point of no return” (Cristo 2012: 179).

On the other hand, from the side of the government’s coalition, acknowledging the armed conflict provided the armed forces a greater margin of action since it freed them from the restrictions of international human rights law and allowed them to operate under a different framework, the international humanitarian law (Cristo 2012). Also, as one of Santos’ advisors on this issue explained to me later on, at that moment in time this also had important implications for the government’s plan to attempt a new peace negotiation with the FARC. She explained me that international humanitarian law is the framework that regulates hostilities and establishes what kind of violence can be inflicted and against whom. She gave me the example of aerial bombs: in circumstances of stability or normality, human rights law forbids their use. But in circumstances of armed conflict, these are also allowed. And also, she remarked, in these circumstances, also peace negotiations are allowed.²³⁶ Thus, by admitting the armed conflict the government was establishing the correct discursive conditions to wage full-fledged war and “open the door for peace.”

Finally, the government majorities also excluded active or former combatants of armed groups, as well as their families, from the definition of victim. The leftist party, El Polo, objected that this provision clearly violated the fundamental rights of relatives, unfairly criminalized them and was also

²³⁶ According to Cristo, victims of narco violence (especially survivors of Pablo Escobar’s terror campaign of the 1980s) also reacted. They were concerned that once in practice their cases could be excluded since the characterization of narcos as armed conflict actors was a highly contested one.

inconsistent with human rights and humanitarian law provisions since even in war time combatants had rights and could be victims of different kinds of violations –i.e. torture or extrajudicial killings. However, in relation with this point, Cristo confides that although he and other members of the government’s coalition agreed with El Polo that this “was correct from an academic and legalistic point of view,” at the end they did not insist because they knew that it was too sensitive. One of Santos’ ministers warned them that picking up that fight was a political suicide: “go ahead, explain to the people in your academic and legal tone that the law is going to compensate the relatives of killed FARC commanders,” (...) you will be dead meat. (Cristo 2012: 144). Once in the Senate, the majorities included relatives but explicitly excluded combatants. Recruited minors were exceptionally included but as long as they had demobilized immediately after their 18th birthday.

By May 2011, just two weeks for the end of the legislative year, Congress was divided in three distinct factions. The largest was Santos coalition –the so-called National Unity-, constituted by Liberals, most Conservatives, his party (the U-Party) and other smaller groups. This coalition and the government’s higher officials had decided on most of the contents of the bill and took the political opportunity to show that they were the ones in “the center” of the political spectrum. The other two were El Polo and a group of pro-Uribe congressmen who disapproved of the bill but for radically opposite reasons. Some of the most serious discrepancies had to do with the temporality, the conceptual delimitation and the institutional processing of victimhood as discussed above. El Polo believed that the final draft unjustly denied reparation to victims from the pre-1985 era and was not sufficiently protective of those who had been included. On opposite end were some Conservatives who considered the draft financially, and more importantly, legally dangerous. They saw it as an instrument that could be used by members of armed organizations or opportunists to pass as victims.

On the specific issue of land restitution, at the end of the procedures in Congress, there were also three main factions. A small group of conservatives and U-Party members openly opposed any attempt of subverting property rights outside of existing laws and courts and worried about the new law's implications for public order. Among them was M. Gómez, grandson of ultra-conservative President L. Gómez and nephew of politician A. Gómez. The two of them had been among the most radical and belligerent anti-communists of the 1940s-1980s period. In Cristo's words: *el proyecto les daba urticaria* ("the draft gave them the hives"). Instead of pacifying the countryside, they believed that the law was going to spur a new cycle of violence.

The government and its coalition of Liberals, most Conservatives and other parties, on the other hand, had agreed among themselves to limit restitution to real properties, using the alternative regime of proof designed by Reyes, Valverde and their team; and also to establish a mixed – administrative and judiciary- procedure with right to appeal. Spokespersons of the different parties in Santos's coalition would actively promote the new bill by restating some of the "progressive" framings in circulation: as a means to solve a debt with the peasantry, as a first step towards a long-lasting peace, as an agrarian reform and also as a vindication of private property, instead of a threat to it.

Politicians and economic conglomerates who were more aligned with Uribe than with Santos initially went along with the draft's majoritarian version. They were discreet supporters, rather than vocal enthusiasts or critics. Among them was head of the National Federation of Cattle Ranchers (Fedegán), José Félix Lafaurie, who once the implementation started would become one of land restitution's most vocal objectors. At the time of its approval in Congress, he had agreed with it because, as he explained later on, "most of the despojados were small, mid and large cattle ranchers whose rights we had to protect" and because of "the principle of justice of returning to the owner

what belongs to him” (Lafaurie 2016).²³⁷ Then, in the early faces of implementation he voiced his first disagreements. Indirectly refereeing to the Land Restitution Unit he pointed out, “I’ve said I like the law as long as it allows us to leave the past behind. But as things are this seems unlikely. I feel there is a stigma, and form of hatred, against cattle ranchers, and this worries me.”²³⁸

With time Lafaurie and other pro-Urbe figures would harshly resent the implementation of the Law and would question the Land Restitution Unit in particular, because of the way it constructed its administrative truths, which I shall discuss in chapters Five and Six. Eventually this group would accuse the Unit of using the law as a mechanism to expropriate land from owners who acted in good faith, in the same way that, from their perspective, Incora had done in the past. Moreover, Lafaurie himself would go to extreme of asserting that ultimately the purpose was to give land to the constituents of the FARC.

Finally, El Polo and most victim and ethnic grassroots organizations insisted that the draft was positive but deficient, and were in favor of a full patrimonial restitution not limited to land; a more pro-peasant regime of proof –they insisted the “dispossession zones” should be kept- and that a “real” agrarian reform was the route towards the needed transformations of the rural landscape. Leftist “agrarian question” intellectuals were even more critical and instead of considering the law positive but insufficient in terms of transitional justice standards and innocuous for social change, they regarded it as instrument ultimately designed to facilitate land-grabbing by foreign and national corporations. In this sense, for them as well, the law was dangerous and the Unit had a covert agenda.

²³⁷ Lafaurie, José Félix. Nuevo Siglo newspaper. April 18, 2016. “La ley de restitución merecía mejor suerte.” Available in: <http://www.elnuevosiglo.com.co/articulos/4-2016-jos%C3%A9-f%C3%A9lix-lafaurie-rivera.html-1>

²³⁸ He added: There are people who think that we are rich paramilitaries and that’s completely false. The real cattle rancher depends on his cattle. People may have cattle but devote themselves to illegal activities, and those are not ranchers and I don’t represent them.” In Semana Magazine. April 14, 2012. “Los ganaderos se sienten mal en este gobierno.” Available in: <http://www.semana.com/nacion/articulo/los-ganaderos-sienten-mal-este-gobierno/256400-3>

But despite this ongoing discontent with the VLR Law, once passed it was lauded by most of academia, all of the international community and the majority of political figures as “historical,” and the most advanced and compassionate transitional justice legislation in the world. For the first time, the UN General Secretary flew to Bogotá to be present in the presidential sanction ceremony for a national legislation. In his address he congratulated Congress for its achievement. Meanwhile, Santos took the opportunity to present his government as the real “center” within the national political spectrum, and refer to the critics in the right and the left as “extremists” for this reason.

Overall, the VRL Law received support from often opposing factions, because they all felt that their constituents had been “dispossessed,” whether rich or poor, peasant, agriculturalist or owners of medium or large agro-industrial operations; and also because it resounded with the liberal fantasy, shared by many of these normative elites, of a country of property owners. Eventually, however, the great expectations of the law would give way to some satisfactions and many frustrations. Most of them would be intimately tied to the process of production of truths about dispossession and the application of the regime of proof collectively constructed by the Project lawyers, Valverde and his team, and the Monitoring Board.

Part III. The Everyday Production of Officially Dispossessed Land and Peoples

Chapter Five. The Virtuous State: (Dis)trust, Political and Moral Selves and Professional Identities in the Land Restitution Unit

Becoming the Land Restitution Unit in the Colombian “pre-post-conflict conflict”

At some point before the final approval of the VLR Law, it was decided that the Project was going to become The Land Restitution Unit. Soon after the approval, a presidential decree gave the Project the authority to start receiving land restitution petitions. By that time the Project had teams in

various localities around the country and a staff of approximately eighty people who could begin meeting face to face with claimants and taking their statements. Once I confirmed the news, I interviewed a Project lawyer about the implementation of the Law, who explained that the first task was to formulate the internal structure and dictate the regulations for this new institution. He was in the process of hiring newly minted lawyers for this task, which he described as “carpentry,” meaning that it did not require conceptual depth but rather a specific technical skill: knowing how to write presidential decrees. I found out later that Valverde had also been in charge of directing the production of these dispositions, which would be the legal framework guiding the operations of the Unit.

Four months later, the Presidential Office issued another decree, probably drafted by these new lawyers under Valverde’s supervision: transforming the Project into the Land Restitution Unit and locating it in the Ministry of Agriculture.²³⁹ The decree established the general organizational scheme of the Unit and detailed the goals and tasks of each division. Beginning in 2012, most of the Project’s staff was re-hired and given a position within this new structure, either in Bogotá or a regional office. Initially staffers experienced no significant change with respect to workspace and colleagues. But the tasks ahead, the new rules governing everyday decision-making and the legal and political implications of those decisions did change substantially. Overall, as Estrada and Rodríguez (2014) note drawing from Foucault’s work, this was a transition from operators of a low-profile, internationally funded governmental program to a new state agency in charge of the President’s main policy, one regulated by administrative law provisions and under the close inspection of political opponents and allies. Along the way a series of new governmental rationalities emerged.

On one hand, the Unit staffers became public servants, meaning that from that point on their activities would be regulated by the legislation on public service and exclusively funded with public

²³⁹ Decree 4801 of 2011.

money. They were now under a completely different accountability regime. As state officials using public money instead of international funds they would need to undergo a long series of complicated procedures in order to spend them. They would be expected to use the funds within a certain amount of time, for certain specific purposes, and to justify any changes in schedule or destination. Mistakes or insufficiently supported decisions might easily be considered suspicious and could lead to disciplinary investigations and punishments. In sum, in their new role as state officials staff members' actions could readily be interpreted as serious violations of the law, whether in the form of corruption or negligence.

In addition, the potential effects of Unit staffers' daily work also changed, in particular their power to (de)stabilize property rights. Before, the Project would advise local authorities such as mayors, notaries, and registrars, about how to exclude allegedly dispossessed or abandoned lands in the midst of the armed conflict from commerce. Under the VLR Law, in contrast, the Unit had been invested with the double task of deciding on the suitability of the incoming land restitution claims and then, after verifying that these met certain requirements, acting as the claimants' advocate in court. Although a judge would make the final decision, the Unit acquired the power and the responsibility to operate not only as a gatekeeper, but also in most cases as legal representative. Ultimately, the new task at hand for the Unit's staff was that of defining whether the story of the claimants was one of dispossession within the terms of the VLR Law and if so, turning it into a persuasive story and legal argument so as to convince the judge to grant them property rights over the lands in question. They had a new kind of prerogative: actively deciding in the (de)stabilization of property rights.

Although the Unit had gained both this power and responsibility, it was not fully autonomous. The VLR Law and the subsequent decrees regulating it had established that the armed forces would ultimately decide where to conduct the procedures based on security evaluations. Thus, beginning in

2012, Unit delegates, the Ministry of Defense and the military agreed on what they called a “macro-zone” covering about half of the country where the Unit would in principle be authorized to act.

When asking about the closed-door negotiations to delimit this area a few Unit officials told me, some with conviction and others with sarcasm, that it enclosed zones where “we are supposedly in a post-conflict stage.” With time, I came to conclude that that big chunk of national territory mixed places where guerrillas had been “officially removed” (whatever that meant) and where there had been processes of paramilitary demobilization. The sarcasm came, then, from the fact that in such areas there were still displays of violence, but these were deemed to be “post-conflict,” meaning post-paramilitary and only occasionally, post-insurgent forms of violence. First Uribe’s government and then Santos’s had since then called these supposedly new organizations BACRIMs, the acronym indicating criminal bands. The justification to change the label despite the fact that there were reasons to believe that former paramilitary organizations and new gangs shared members and weapons, seemed to be a change in their modus operandi and organizational goal, which had shifted from predominantly political goals to mainly profit-driven ones, like the classical mafia (except that the latter are often also interested in shaping the social and political order).

Finally, another substantive change was the new position of the Unit in an increasingly polarized political field between the followers of Uribe who felt betrayed by Santos and the multiple audiences who were pleased with some of initial acts of government, including reviving the VLR Law. Early in 2012, the government secretly approached the FARC to discuss the initiation of a new round of peace dialogues. In August that year, both parties announced the official establishment of a negotiation table in Havana, Cuba. Uribe and his followers rejected the initiative. In this new context of potential peace, the Unit became Santos’ main character in the theater of politics. Constantly he and his advisors referred to the creation of the Unit as proof of their commitment to promoting the countryside’s development and addressing the needs of the peasantry. Santos would present himself

in his speeches as the “peasants’ president” and insist that his rural policies were geared towards an “agrarian revolution.” Although the VLR Law had a relatively conservative formula in relation with land, all these performances –and the actions of the Unit- were increasingly regarded from Uribe’s side as a concession to the terrorists. Meanwhile, from the perspective of the political left, land restitution was just another empty promise, strategically deployed to win the reelection and lure in the FARC.

This new protagonism in the political realm made the Unit and its staff the recipients of all kinds of pressures and forms of scrutiny from the President and his advisors, and as well as from his political opponents in both sides of the political spectrum. In addition, several universities and think tanks established “land restitution observatories,” with sociologists, lawyers and economists devoted to evaluating the performance of the Unit and courts.²⁴⁰

The Unit formally began its operation in January 2012, opening 15 offices, most of them located in cities in the Caribbean region.²⁴¹ This happened at the same time that post-AUC gangs active in those same areas conducted a series of acts of violence. For many human rights NGOs and analysts this sequence of episodes was for the most part directly connected to the approval and implementation of the VLR Law, and more specifically with the beginning of the land restitution procedures (HRW 2013).²⁴² This was not the only explanation circulating the public sphere, but some governmental officials, including those in the Unit, took these events to be indications that those armed organizations that had indeed participated in land dispossession feared they were going

²⁴⁰ The biggest and most prestigious of them was constituted by five universities and had funding from the National Science Council.

²⁴¹ The cities where the first offices were opened were Apartadó, Montería, Cartagena, Carmen de Bolívar, Santa Marta, Valledupar, Sincelajo, Medellín, Cúcuta, and Barrancabermeja. The rest were located in the central and southern Andean region and in the cities of Bogotá, Ibagué, Villavicencio, Cali, Pasto and Mocoa.

²⁴² This was not the only explanation that seemed feasible, but it was restated by Minister of Government, Germán Vargas. The alternative explanation was that in early January the police had killed one of the bosses of the Urabeños and the strike was meant as revenge. Later on, my colleagues and I would hear rumors that Urabeños were actually encouraging people to file land restitution claims as a way to reinforce their claims to authority and control.

to lose their “bounty of war.” For most of them this also meant that VLR Law was on the right track. For the human rights community, on the contrary, it meant that the VLR Law put victims in even greater risk of undergoing additional violence.

The first and most widely commented upon display of force occurred on January 9, 2012, when the post-paramilitary gang “Los Urabeños” announced an “armed strike,” demanding a halt to transportation services and commercial activities in several towns in the Caribbean region, also threatening to retaliate against anyone who disobeyed. A few days after the armed strike, President Santos presided over the inauguration of the Unit’s office in the city of Montería, in the northern state of Córdoba. Montería had been the epicenter of the AUC paramilitary organization and that moment it was also one of the Urabeños’ main localities. It was no coincidence that the President had chosen this site. In his speech Santos stated that the land restitution process “has enemies, on the left and the right,” and that he “was considering offering rewards to anyone willing to provide information about the people intimidating the peasants who are in the process of organizing to reclaim their lands.”²⁴³

Then, in February, four additional offices opened, graced by the presence of the Minister of Agriculture. Two were in the region of Montes de María, in the towns of Sincelejo, in Sucre, and Carmen de Bolívar, where the paramilitary counteroffensive had been the most violent in terms of the proportion of victims and forcibly displaced persons to the total population.²⁴⁴ In this area the AUC had perpetrated some of the most shocking massacres of the early 2000s; including the one in El Salado. More recently the region had received a lot of attention from the press as a result of

²⁴³ El Tiempo Newspaper. January 13, 2012. “Habría recompensa por denunciar intimidadores.” Available in: <http://www.eltiempo.com/archivo/documento/MAM-5084460>

²⁴⁴ El Tiempo Newspaper. January 29, 2012. “Abren oficina de restitución de tierras” Available in: <http://www.eltiempo.com/archivo/documento/MAM-5223866>

government-sponsored efforts to recover the local memory about those events and the publication of graphic details about the perpetrators' cruelty .

In addition to the armed strike, in the months following the official opening of the Unit, several representatives of victims' organizations and community organizers were murdered in different towns and cities. Simultaneously, also in various regions around the country, pamphlets began to circulate announcing the emergence of an "anti-restitution army" and threatening by name people who had been denouncing cases of land dispossession. There were also rumors that groups of heavily armed men had been spotted patrolling around some of the big haciendas, which were the focus of some of the first land restitution claims presented in the new offices.²⁴⁵

Human rights NGOs, leftist politicians, high level officials and the media asserted that the killings, the pamphlets and the armed men were clearly connected: either victims had been highly vocal about different cases of land dispossession or had already presented a claim before the Land Restitution Unit. Although in most cases the killings remained unsolved, and other state authorities concluded that such armies did not exist on the ground but rather were fictions meant to scare the public, land dispossession –and from that moment, land restitution— became an increasingly recurrent interpretative framework to explain violence directed towards survivors of atrocities or their advocates. Back in 2010, in a town by the sea in Córdoba I met a group of Movice (the Movement of State Victims) activists I talked to for hours about Santos' new announcement of the revival of the VLR Law. One year later a friend of theirs who was not politically active, was killed under mysterious circumstances. They called me to tell me about his murder. They were sure it had had to do with the fact that he was hoping to file restitution claims. In my following visit to this

²⁴⁵ El Espectador Newspaper. July 5, 2012. "¿ Un ejército anti-restitución?" Available in: <http://www.elespectador.com/noticias/politica/un-ejercito-anti-restitucion-articulo-357427>
El Tiempo Newspaper. June 9, 2012. "Así opera el 'ejército' contra la restitución de tierras" Available in: <http://www.eltiempo.com/archivo/documento/CMS-11933320>

town I talked to more of the victim's friends . They did not know anything about the land restitution claim that he was planning to file, but they did confirm that he owned a very nice farm. He had been killed just around the corner. Others confided that they believed he had been killed because he had grown friendlier with the police, and the Urabeños, the gang that dominated the area, did not like that. Either way, the fact that he had a nice farm, or had said that he was interested in land restitution, operated as the dominant explanations.

Meanwhile, land restitution claims kept coming at a steady pace. By April 2012, claims for 11,090 properties and 868,611 hectares had been received. Then, by June, September and then January 2013, the Unit reported that the numbers had risen to 16,207, 23,299 and 31,820 properties to 1,237,170, 1,754,275 and 2,297,704 hectares respectively (LRU 2013, 2012a, 2012b, 2012c). At that time it seemed that the original estimates of around 330,000 to 360,000 claims, amounting to 5 to 6 million hectares to be filed and solved in the ten years of application of the VLR Law, were going to be met even in the midst of what seemed to be a coordinated anti-restitution counterplan.

Entering “the field” (of force)

“Welcome to the country where everything is difficult!” Such was my uncle’s humorous greeting when I landed in Bogotá on June 2012 to begin fieldwork. My primary field site was going to be the Land Restitution Unit itself, at that time constituted by at least 300 people scattered among fifteen regional offices across the country.

During the previous year I had been conducting interviews with Reyes and other key contributors to the formulation of the VLR Law and had also resumed communication with the people working in the Project’s main office in Bogotá. Once the VLR Law had been approved and word had gotten out that the Project was going to become the new Unit I asked my interlocutors if they were willing

to authorize my observing their everyday practices as they incarnated this new institution. I did not hear back from them for months.

But then, by the time of the first news about the anti-restitution army, a high-level official I will call Pereira, whom I had interviewed several times during the previous years, offered me a job in the Unit instead. The position was on a new team that would come to be known as the “Context Analysis Group.” Reyes and the senior staffers of the Project had decided the Unit needed a group of researchers to study “the historical context” of land dispossession. In the opinion of Pereira, I had the right profile: lawyer, graduate student in anthropology in a US university, years researching land dispossession and thinking about land restitution and, as he told me in an email, “If (I) was going to be studying land restitution, why not join and give them a hand?” He had already talked to the directives, and they were willing to let me in. From what I had gathered, this could be my only chance to really “be there” in the social and physical space of the Unit. Despite having built a relation of trust with some of the staff, I could tell there was a lot of defensiveness, which meant that asserting my role/status as ethnographer and pledging to respect their rules of confidentiality and anonymity would not be enough.

The Land Restitution Unit had emerged from the aspiration of reversing land dispossession and its explicit mission was to dismantle illegitimately constituted property rights and transfer them to the original owners, possessors and occupants. The field of force as defined by Roseberry (1994) in which property rights, the truth about land tenure and the material control over lands were being disputed had already been shifting by means of the sole debate around the VLR Law. But now that the LRU was starting its operations, had been given a generous budget and ample powers to intervene in violence-ridden territories, and had been declared President Santos’ most important political action since his election, the change of correlation of forces within the field had made the Unit’s new staff distrustful of most forms of scrutiny, including that of an uninvited ethnographer.

So I eventually accepted the offer to participate, even knowing, as I discuss in the introduction, that becoming an official myself would imply limiting my exploration of the social life of land restitution to the spaces of the Unit and giving up my hopes of freely moving in other spaces where dispossessed people as subject of rights was also being produced, such as the land restitution courtrooms. Moreover, I knew that becoming someone who would embody the Unit would put me in a new position within the field of force, one that would require an extra effort in terms of reflexivity and critical distance and also increase the risk of failing to find a properly ethnographic stance in this regard.

Several days later Pereira contacted me for further details about the job. Over a series of Skype and a meeting in a café near Columbia University in NYC, where he had been invited to give a presentation about the Unit, he explained to me that the goal of the new group, as he put it in those first conversations, was to reconstruct “the truth about the land dispossessions (*despojos*) under consideration using the research methods of the social sciences.”

The key concept in his outline of the work of this special group was “truth” and his main concern was to find the people and the methodology that could disclose it. He had envisioned the group as a special task force, as “the brain,” that would distinguish between authentic land dispossession cases and false or inadequate claims, and would provide the Unit and the judges with the “facts” of dispossession to decide correctly. He was convinced that the cases were ultimately going to depend on the work this group did in reconstructing the historical context of the dispossession. To give me an idea of how significant this work would be he used an analogy: “we would be dealing with an extremely powerful and sensitive substance,” which he then compared to TNT. With time I came to understand this explosive substance as the VLR Law, but more specifically the special regime of proof it established, which could literally blow away property rights. Unlike the Center for Historic Memory or other institutions devoted to the production of truths

about the armed conflict, he noted, “We have teeth and this makes us a real threat for the people who were responsible for the dispossession or the people who nowadays own or possess the land.” Such a prerogative, in turn, was going to generate forms of retaliation against the claimants and the Unit officials themselves. The dispossessors “are going to use legal subterfuge to shield their rights and most likely they are also going to use the ‘direct way.’” By this he simply meant violence. On top of that, he remarked, “claimants are not necessarily passive and some may also turn to this direct way to recover what they believe belongs to them.” So for him the land restitution process was itself volatile and could be the source of new forms of violence, some which were already under way. However, he also saw it as an opportunity to solve land conflicts once and for all.

His presentation in New York City was the first of many public and private meetings I had the chance to attend in which he outlined not only the panorama above but additional plans and the progress being made by the Unit in reverting land dispossession. His task was to represent, in the double sense of speaking on behalf of, and also portraying, the Unit. A group of professors at Columbia University had organized the conference and had invited many of the experts who had contributed to the political authorization of the VLR Law, including A. Reyes, A. M. Ibáñez, R. Uprimny, Chamber Representative G. Rivera –Cristo’s closest political ally during the two legislative rounds of the VLR Law- and anthropologist Aldo Cívico (all mentioned in Chapters Three and Four). Like the rest of the speakers, Pereira sketched what he thought were some of challenges and advantages ahead. First, the land restitution procedure was mixed: the first half was administrative, the second judiciary. The Unit would participate in both. In the first stage the Unit would examine the claims and generate “an inventory of allegedly dispossessed lands” and people.²⁴⁶ Administering this inventory and deciding whether a land claimed in restitution could be entered would be the

²⁴⁶ The official name of the catalogue administered by the Unit is the Registro de Tierras Presuntamente Abandonadas o Despojadas

Unit's explicit mission. Here, the key questions Unit officials would have to answer were, "Which properties? Who lost them? Under what circumstances?" In the second phase the Unit would undertake the legal representation of the claimants whose claims had been incorporated to the inventory –unless they preferred to have a different advocate. If not, the Unit would provide this service free of charge. The VLR Law had defined the inclusion in the inventory as a requirement for any claim to go to court.²⁴⁷

The risks were several. In addition to the ones he had already explained to me privately, another was that "claimants may use the procedure to undo deals that were not the result of violence." He added, "people get mad at me but I like to put it this way: the major problem is that Colombia is full of Colombians." There was some laughter in the audience, made up mostly of Colombians residing in the area. What he meant was clear to this public, for whom this representation of Colombians as prone to cheating was familiar. In further conversations in the following months he reiterated this same risk to a variety of Colombian interlocutors, producing a similar reaction. No one doubted that there were certainly going to be opportunists who were going to try to take advantage of the procedure to acquire land for free. But he and other Unit officials trusted that while processing the claims, such opportunists would be identified in time.

Another risk he mentioned was that judges might very well not use the regime of proof established in the law, or the evidence gathered by the Unit in its application. Here, he pointed out, "They also would be causing an injustice, by delaying the procedures." Previous speakers had warned that the formalistic mindset of the potential judges would be one of the main obstacles.²⁴⁸

²⁴⁷ Later on, the Unit would eventually insist in most of its judiciary interventions that the inclusion in the inventory was to be taken as proof of the occurrence of the alleged dispossession events.

²⁴⁸ This was the same concern of the Project lawyers in relation with those they ironically called "good lawyers." When the Unit initiated its operations this concern was reiterated in many other settings, especially by lawyers who had been long time litigators or former members of the judiciary. In a meeting organized by the Unit and the land restitution judges a few months later, a retired Justice encouraged his colleagues to abandon "their ritualistic legal DNA" and change "their internal chip" when confronting land restitution cases.

Another risk was the security of claimants. The whole point of the legal architecture of the VLR Law was, in his opinion, to solve land conflicts with legal procedures instead of violence. But also the purpose was also to move from a confrontation between unequal parties to one where this asymmetry was leveled out by means of state intervention:

“We cannot make the same mistake and reproduce the previous scheme [in the JnP Law] in which victims’ organizations disputed their rights with armed organizations in the courts. This antagonism has to be reconfigured: it must be between the state –the techno-bureaucracy, those of us who work in the state (the Unit more concretely)- and “the people in arms.”

Then he turned to the advantages of the procedure. He insisted that the first was that the “human platform of the Unit” came from the Project whose staff “had been working on the issue of dispossession for seven years.” This was in stark contrast with the old Incora – Incoder- which had been captured by paramilitaries and had been involved in many cases of dispossession, especially in the Caribbean coast. Another was that the army was on board and “they have come around.” Reyes and the Minister of Agriculture, he claimed, had convinced the higher commanders to change their “operational hypothesis” according to which peasants could be guerrilla infiltrators, whereas landowners -including narcos and paras- were their “natural allies” in the anti-insurgent war. Now the army was increasingly willing to admit that “the only way for peasants to forgive them is by providing them (and their lands) protection: the historical pardon or redemption would come with land restitution; it is the time to make amends.”

In further conversations with him, he schematized the geo-political challenges facing land restitution even further. As he understood it, the scenario ahead involved claimants who had been brutalized and dispossessed, some of whom might resort to violence if frustrated in their claims; non-victims who were going to make up stories of dispossession; current owners and tenants, some of whom could also resort to violence to protect their properties; and finally, “perpetrators of violence” (post-paramilitary gangs and guerrillas) who with or without interests in land could have reasons to

sabotage land restitution efforts. The final and key players were the judges who, though new in their posts, could be the carriers of the formalistic legal thought that dominated legal practice and who could be resistant to using the new regime of proof and the other special rules established in the VLR Law. Implicit in this “map” of agents was also the Unit, equipped with the support of political majorities, budget and the backup of the army: “us,” “the technocrats who work for the state” and, as he would put it in later meetings and presentations, “We, who are the state.”

Paperwork and the institutionalization of distrust

I arrived in Bogotá during the height of the controversy around the existence of an anti-land-restitution army. As I unpacked my bags I could hear on the radio that violence against current and potential land claimants, and promoters of land restitution, was on the rise. Friends, former colleagues and experts on the subject of the agrarian issue with whom I had the chance to talk those first days were increasingly pessimistic about the ability of the Santos government to put the land restitution policy into action effectively without provoking further violence or tensions among rural communities. Still, my interlocutors were all convinced that land restitution was a moral imperative. A former boss, who at that time was the head of the UN Development Program and was preparing an extensive report about the challenges for agrarian development in Colombia, captured this sense of moral duty constrained by impotence when, over a coffee in his new office, he argued that land restitution “is impossible” but “must be done.” “Impossible” was the word used by the lawyers in the policy world of land restitution discussed in Chapter Four, although in a substantially different context. The VLR Law had been approved by the Congressional majorities and now the challenge was implementation. “Why impossible?” “Well, because it does not have the support of the agrarian elites.” We remained silent and then he added, “but anyway, it still must be done, trying is the right thing to do.” Later that same week friends from college, also lawyers, asked me at a party about my

dissertation subject. After listening attentively, one of them concluded, also with a sigh, “land restitution is one of those fantasies that we all know must be done, but just can’t be.”

As the days went by, and I tried to resume my life as an independent adult in Bogotá, I found that settling down was more difficult than I had expected. Bogotá was my hometown and where most of my personal and professional life had occurred, so I was supposedly familiar with how things worked. But then I found that the tasks of opening a bank account, re-entering the social security system, renting a place to live on my own, purchasing a wireless line, paying the first quota of a student loan or completing the hiring process with the Unit—in sum, resuming or engaging for the first time in a variety of relations of exchange with state institutions or private parties—were filled with unexpected bureaucratic traps and loopholes. At each step of the way I confronted a different form of institutionalized distrust. To activate and validate any kind of relationship involving money required the presentation of a long list of certifications ratifying facts about my identity, my credentials, my income and my family, facts that other people to whom I had limited access had to produce on my behalf. And in some instances certification was required that demonstrated the existence of one of the relations of exchange that I had not yet been able to secure.

Thus, for example, I could not begin working for the Unit until I demonstrated that I had fulfilled a list of academic and professional requirements, that I had a bank account, and that I was up to date with my social security payments. But for that I had to be working and to have some income. Moreover the Unit’s list of requirements kept changing. Via email and on the phone, the person in charge of processing my hire kept adding items to the list every second day. Apparently every time she submitted the paperwork to the group of lawyers in charge of producing the work contracts and verifying that I and any other would-be contractor were eligible for the job, she was asked to provide an additional document, signature or stamp. She complained that the person in

charge of drafting and signing all employment and service contracts in the Unit was constantly changing her mind about what the actual legal requirements were, and what kind of documents would suffice as proof, to hire that person in the name of the state. Frustrated, I talked to both of them a couple of times. From what I could gather, their anxiety was concerned with doing things right and with avoiding future problems—that is, accusations of corruption or negligence—from the Controller’s Office, other institutions, or their own supervisors.

So I spent several weeks going over old emails, sending new ones, making phone calls and asking for appointments here and there in an effort to locate the exact person who would be in such a position as to certify in the name of a variety of institutions (some of which did not exist anymore) that I had worked or studied where I said I had. Also, I was told that I needed a certificate from the Ministry of Education verifying that the university in the United States where I did my master’s degree did exist and that I had actually graduated when I said I had. When I finally located the office where I had to present my documents and spent a half a day waiting, the person who assisted me explained that I needed proof of the authenticity of the diploma. This meant I had to send the original back to the US, to the capital city of the state where I had studied, and once there I had to find someone who would get a signature from someone else in the governor’s office and in a notary. Once the diploma returned to Colombia, I would need an official translation into Spanish and pay a \$400 USD fee for the Ministry’s staff to process my request. At the end, when the woman over the counter said that a final decision -inscribed in an official document called *resolución*- was going to take around three more months starting the moment I submitted the authenticated copy of the diploma, I had to control my anger and breathe deeply. This meant I would need to wait that time before joining the Unit. The alternative, as my supervisor-to-be suggested, was to be hired but without that *resolución* and be officially considered someone without a master’s degree and be paid almost half of what the other analysts were earning. I agreed to do it this way, just to expedite things.

The bureaucratic labyrinth as a countermeasure for, and an effect of, distrust was not unique to my case, to the Unit, or to the Ministry of Education. I complained every day about these difficulties and in response friends, family and my new colleagues would share similar anecdotes of their own. All these stories had in common our inability to control the production, transformation or circulation of documents certifying facts about us. We needed these “paper truths,” as Tarlo (2003) calls them, in order to be acknowledged as subjects eligible to receive or even purchase certain services –such as having my education validated for work purposes. In those conversations, adjectives such as “bureaucratic,” “absurd,” “ridiculous,” “unfair” and even “Kafkaesque” abounded. Ultimately, such qualifications pointed to the self-defeating rationality of the institutionalization of distrust. These stories of frustration, indeed, came in tandem with stories of people successfully counterfeiting and falsifying paper-truths and subsequently, gaining access to resources. Even more, in some cases they acquired the ability to certify certain truths themselves. One scandal, involving an official at the Forensic Services Office who had apparently lied about his academic credentials, is illustrative. Ironically, for years the man had posed as a psychiatrist and had been issuing certificates about mental health for purposes of criminal investigations and official decisions of various kinds, with long-lasting consequences for the people involved.

Riles (2006) observes that documents, and “the practices of documentation” that precede them, had been long recognized by anthropologists and historians as “artifacts of modern knowledge,” and also as appearing “at every turn in the constitution of modern bodies (...), institutions (...), states and cultures.” But she notes that despite their ubiquity, documents had been mostly “despised (...) as ethnographic subjects.” (Riles 2006: 5). Recently, prompted precisely by this concern, quite a bit of ethnographic work about the social life of documents has appeared, in particular, about how state documents create, destroy and transform social and political relations in contemporary contexts (Hull 2012, 2008 and 2003, Hetherington 2011, Das 2004). As Graeber (2016) puts it:

“As anthropologists...we are particularly concerned with ritual gestures that are socially efficacious: where the mere act of saying or doing something makes it socially true. For humans, being the social creatures that they are, birth and death are never mere biological events. It normally takes a great deal of work to turn a newborn baby into a person...In most existing societies at this point in history, those rituals may or may not be carried out, but it is precisely *paperwork*, rather than any form of ritual, that is socially efficacious in this way, that actually effects the change.” (Graeber 2016, chapter 1).²⁴⁹

Moreover, state documents have proved to be unique political artifacts that both allow and oppose forms of domination. Of particular relevance to this and the next chapter is Hull’s work (Hull 2012. See also Hull 2008, 2003) and his exploration of this double-way and often paradoxical effect of what he calls “graphic artifacts” such as reports, official certifications, files, maps, and inventories, among others. Hull argues that while Foucauldian studies of modern governmental institutions investigate the way bureaucracies produce such representations of reality and mobilize them to control the population and justify interventions with exclusion-inclusion effects (for example Rose 1999; Barry, Osborne, and Rose 1996), Foucault’s own work shows that precisely because such artifacts are attributed accuracy and also authority, they may also limit and direct the actions of state agents or their proxies. Rather than univocal governmental technologies operated by rulers to rule their subjects, documents are means for acquiring power that subjects can also manipulate to subvert that political relation. Hull’s ethnography suggests that it all depends on who secures control over the material means of elaboration, preservation and circulation of documents, especially official ones, which carry what Das (2004) refers to as “the signature of the state.” Paradoxically, as Das asserts, this insistence on verification occurs in contexts where falsification and counterfeit are so effective and have power effects on behalf of the people whose identity or abilities they certify as truth. Therefore it is not despite the authority of graphic artifacts, but because of them that their production with “false,” “illegitimate,” “inaccurate” representations of the real will have indeed significant consequences.

²⁴⁹ E-book, without page number.

The irony, then, following Hull and Das, is that the fetishization of documents does not prevent corruption but rather provides opportunities for it, since the more powerful paper truths are, the more urgent and decisive mastering their production becomes. With respect to state documents, Das asserts, “Once the state institutes forms of governance through technologies of writing, it simultaneously institutes the possibility of forgery, imitation, and the mimetic performances of its power” (Das 2004: 227).

The Unit presented an additional aspect to this irony. As I was learning the hard way, the Unit depended on correctly implementing the institutionalization of distrust in order to be able to hire people and establish the infrastructure needed to undertake the implementation of the alternative regime of proof established in the VLR Law that demanded trusting the word of claimants without the mediation of documents. Unit staff had to mobilize the ordinary regime of distrust that often animates the production of state documents in order to put into action the VLR’s regime of trust. Indeed, my soon-to-be-supervisor, a social worker who had been part of the Project for several years, kept getting frustrated every time her colleagues on the administrative side of things asked for more evidence, documents, signatures and forms to enable her to hire me and the rest of the team. At the same time she was being pressured by her superiors to speed up case processing and fulfill the goals set for 2012, precisely what she needed to do to comply with the annual plan and goals—hiring people—kept being delayed.

This minute attention to the bureaucratic form would become especially ironic later on, when staff had to deal with cases in which it had been precisely through property deeds, notarial memos, judiciary rulings, and written administrative decisions containing the “state’s signature”—whether authentic or not—that dispossession of rights over land had occurred. These official documents were used to declare, in the name of the state, the non-existence, dissolution or transfer of property or tenure rights from displaced communities or persons to third parties.

In any case, the point is that in order to function, Unit staff had to engage in a regime of distrust and formality similar to the one that had sealed land dispossession with the state's signature in order to be able to operate and allocate trust differently. As I argued in Chapter Two, the means of production of property titles – such as trust, truth and knowledge of law- has been historically poorly distributed, and it has been the people with these and other resources that have obtained the signature of the state. At the end of an exhausting day, after several weeks trying to complete the paperwork required in order to be considered “adequate” to be hired, to no avail, I could only wonder whether if everything was so difficult—proving my identity, my credentials, even my good faith--how is land restitution supposed to happen? How is a claimant supposed to be taken by her word? How does she become a victim, how does her story come to be believable?

Conditions of production: spaces, idioms, (in)formalities

The hiring process took two more months. Over the course of those weeks I would stop by the Unit's main headquarters every few days to find out about the paperwork and begin to immerse myself in “the field.” The headquarters were located in exactly the same space where the Project had operated in the mid-2000s, - a seventh floor in an iconic 1960s building in downtown Bogotá. Back then, when I would attend meetings as part of my job in Congress, I remember seeing it as a relatively spacious, comfortable and well-equipped office—because I was comparing it to offices of other state institutions I knew, though also like most, completely deprived of any charm. But now, instead of thirty people, there were at least eighty seated elbow to elbow. Two or even three staff members managed to fit into workstations meant for only one person. The space that once had been a meeting room with a large table now seated eight people and piles of documents, and each corner of the room one or two people sat at improvised mini-desks. Computers, chairs, paper and ink were scarce and precious resources. Computers had been assigned by the administration to specific

people, who allowed others to use them under special circumstances, but the chairs had no known owner, so people had begun to mark them with white corrector as a way to claim exclusive or at least preferential use. People sometimes had to stand in line for an hour to use the single printer, and they often had to buy ink and paper with their own money. Even on cold and gray afternoons the air was heavy and hot inside. The noise level was quite loud, due to the lack of doors separating one space from the next. The people in charge of communications kept the radio on from morning to late afternoon, waiting for of any news involving the Unit or land restitution more generally, intensifying the sensation of spatial and auditory saturation. Separated from the rest by a glass wall and door, the only office less crowded and less loud was that of the head director, Ricardo Sabogal. Beside his desk was a small round table with a couple of unoccupied chairs. However, any meeting involving more than five people usually happened in his office, even if he was not there, and sometimes while he was seated in his desk but not participating, as it was the only relatively spacious spot available. Any other spare space was used to store an increasingly large number of boxes containing, I was told, either hand-written land restitution claims waiting to be digitalized, or various administrative records documenting the decisions of the day.

This situation would change some months later, when the Unit was finally able to rent an entire six story building in Bogotá's financial district and move part of the staff there. But the spaciousness and comfort of the new building was temporary as well, since in just three years the national team would grow from eighty to 300 people and soon the shortage of space and work tools such as computers and chairs would again become a problem.

In those first days, while waiting to talk to my soon-to-be supervisor or the person in charge of the paperwork, I would lean against a wall and watch people anxiously move from one workplace to the other, answer one call after the other or rapidly type something in a computer. With few exceptions, most staffers were in their late twenties and early thirties. They seemed to be constantly

busy, both motivated and overwhelmed--especially the people in charge of the administrative part of the operation who were under lots of pressure, trying to complete in time the dozens of new hires they had in their hands, mine included.

Any moments for taking it easy seemed to happen only outside the building, while smoking a cigarette or having a coffee. Unlike many state offices in Bogotá, where dress code is often rigid and homogenous, even without an explicit rule demanding it, Unit staff wore very casual clothes - tennis shoes, T-shirts, even sweatpants. Women mostly avoided the conventional formal but sexy workplace dress code so ubiquitous in urban Colombia, choosing instead, colorful and creative clothes, some displaying “punk” or “rocker” style ornaments such as piercings and purple or pink strands of hair. The only one in a suit and a tie was Ricardo. One of his main advisors would often lead meetings in a gothic skirt, platform shoes and a tank top with the name of an American metal band that revealed the tattoos in her arms. Although less common, some men had long hair, earrings and cultivated beards, which in Bogotá are associated with rebellious, lefty aesthetics (and in many “professional” workspaces are seen as denoting a lack of professionalism). A sociologist and peer of mine showed up to his job interview in pink pants, a flowery shirt, and seventies style jacket, in a clear statement of a certain lefty but cosmopolitan politics and an alternative masculinity. After he became part of our team, once when we were at lunch we put our wallets on the table and noticed that his was a lady’s wallet, and mine a man’s. We laughed, and later on commented about the reactions that this minor gender-bending discovery elicited inside and outside the Unit. Inside people often seemed pleased –taking our wallet choices as a way to defy gender roles- whereas outside, in banks, family gatherings, or other state offices, our wallets caused some perplexity and even criticism.

Similarly, conventional formality also characterized our personal interactions, revealing the long-established proximity and friendliness among most of the staff. People called each other by their

first names with some kind of friendly twist, either a diminutive, a shorter version, a nickname. Also, everyone called Ricardo and the other directors and supervisors by their first name, without the commonly used title of “doctor” given to (and sometimes demanded by) men or women in positions of power. We newcomers were immediately inserted into this kind of interaction, called from the beginning by a version of our first names (Juanita, Juanis). Both types of informality struck me as the first signs that conventional hierarchies were not at play, and a predominantly progressive political sensibility informing everyday practices prevailed.²⁵⁰

Hierarchies, power struggles and frictions ran along other criteria. In my first interactions with my supervisor and the two collaborators she shared her cubicle with, I began to learn the Unit’s emerging institutional idiom and also about its lived organizational structure. For the first time I heard terms such as “micro” and “macro,” short for “micro/macro-focalization” or its accompanying verb “micro/macro-focalize”; and a series of initially unintelligible acronyms: SNARIV, CI2RT, COLR among others.²⁵¹ “Context analysis” would be added soon to this idiom and would stand both as an exercise, a document, and a particular group within the Unit. I also learned that “social cartography,” “timeline” and “genogram” –all of them recognizable terms- had a particular meaning in the context of land restitution. A particularly surprising one for me was the apparently explicit agreement of avoiding the term “lawsuit” (*demanda* in Spanish). Instead of “lawsuit,” lawyers used the expression “*solicitud de restitución*” –meaning “restitution petition,” request

²⁵⁰ As a woman born and raised in upper middle-class Bogotá, I have come to understand self-presentation, appearance and modes of address –especially involving women- in any similar space as profoundly political.

²⁵¹ Eventually I learned that a special sub-Unit within the armed forces had been created, el Centro Integrado de Inteligencia para la Restitución de Tierras (which can be roughly translated as the Unified Intelligence Center for Land Restitution) and that CI2RT was the acronym used to refer to it and to the special reports it issued. The COLRs, on the other hand, were the name given to the committees composed by delegates of local governmental institutions that had to meet periodically to discuss the implementation of the land restitution policy in a particular municipality or state. As for SNARIV, it stood for the Victims’ National Reparation and Assistance System, the name given to the ensemble of institutions which, besides the Unit, had to implement the VLR Law. In the Unit there was a group of people who were said to be in charge of the SNARIV, meaning they were the links with the rest of “the system.”

or plea. One lawyer explained in a meeting that this latter term prevented the judges, and also the lawyers being hired, from lapsing back into the conventional ways of practicing law. Her point was that ordinary lawsuits have a particular structure and set of arguments, and must be submitted and decided according to certain general procedures and evidentiary standards that legal practitioners are trained to recognize and replicate, whereas land restitution petitions were new and different and required a change of legal mindset, or “*microchip*” –a frequently-used Anglicism. Thus the need for a new name.

As in any other organization, people in the Unit enacted its structure by means of their own practices, while also trying to shape their practices according to the purported structure. The official organizational chart which my supervisor drew for me on a piece of paper, and which I would see displayed in a Power-Point presentation months later, represented an ideal that operated sometimes as a descriptor, and sometimes as a corrective, of everyday interactions.

The first division I was informed of was that between the national office –which I was about to join - and, at that time, the twelve regional offices located across what was referred to as the “macro-zone” for land restitution. A lawyer showed me a map representing the entire country with a colored area that covered, with a few exceptions, most of the Caribbean plains and the Andean region with most of its internal valleys. But spots here and there were not colored. The eastern plains were partially colored but most of the Amazon basin was not. Few people in the Unit had participated in the meetings during which the colored areas had been delimited; only these people could account for the notions of security that officially justified the decisions to color in an area in one way and not the other. Still, everyone speculated that Caquetá, Huila, and most of Cauca had been initially excluded because these were areas where the FARC guerrillas were still active.

Each office’s director and staff were given the task of studying and processing the many cases that were coming in by the thousands every month. I was told repeatedly that in order to “open a

micro-zone”—that is, to delimit and initiate procedures in an area of intervention—the director had to choose a particular piece of territory within his or her jurisdiction that fulfilled a series of requirements: be inside the macro-zone, have additional security clearance, have a high “land dispossession density rate” (meaning a significant amount of land restitution claims), and have “adequate conditions” to allow claimants to eventually return. Then, once the micro was officially opened, the director had to prioritize “subjects with special constitutional protection,” which included children, teen-agers, women and senior citizens.²⁵² The criteria for preferential treatment were age, gender and household responsibilities.

Both the subordination and autonomy of regional offices vis-à-vis the national one were continuously negotiated. Regional directors and their staff were asked to contribute to the formulation of general guidelines, and to generate their own deadlines and goals (*metas*), but they were also expected to submit to what was decided in Bogotá and would be constantly pressured to fulfill the plans and to report their progress. This did not work the other way around.

Still, more than anyone, it was the directors and their teams who would personify the state and, more concretely, the Unit. This was particularly true for the people in charge of the initial face-to-face interactions, whether in the front desks of offices and waiting rooms or in “the field” (this phrase borrowed from social science), that is, when visiting properties or claimants and opponents in their homes. The offices would be open to the public during the week, and in principle anyone could step in at any time of the day during business hours and ask to talk to a representative. Thus, from the perspective of claimants and opponents respectively, it was the local staff that appeared to be invested with the power to acquire, or take away, their property and tenure rights. When first inaugurated, many of the offices had no door or wall clearly dividing the waiting area from the

²⁵² See articles 13, 85, 114, 115 y 118 of the VLR Law.

workstations. Staffers were both accessible and exposed to the hopeful petitions of claimants and the angry objections of opponents. In one particular office the staff told me that just weeks after opening, a furious landowner stormed into a lawyer's desk and yelled at her: "I've been told you are the one who wants to take my farm away from me!" After this episode a glass door dividing the waiting area from the workspaces was installed in this particular office.

Directors were known by their names and faces and would be constantly on call to go to meetings with NGOs, local government officials, and claimant families, whether living in claimed properties or not. Security measures put directors in armored cars, gave them a set of two or three bodyguards and required them to wear bullet-proof vests. In the smaller towns and cities the offices were easy to find, intentionally so. They would often be located downtown on one of the main roads, displaying the Unit logo in bright colors: three tree-like people (or anthropomorphized trees) raising their arms towards the sky and bearing fruit in their arm-like branches. Once inside, visitors would see the logo repeatedly, on the T-shirts and vests of the staff, the mugs and the notebooks in the desks and counters, the banners and the TVs hanging on the walls, as well as stickers placed here and there on chairs and doors. The logo also circulated continuously in prime time national TV when announcements of the new "micro-zones" were made. Even though the Unit's name was easily confused with that of the many other Units also created by the VLR Law –the Victims Unit, the Protection Unit, etc.- around the country I would often find that the logo stood as a distinctive marker.

Directors would sign dozens of resolutions drafted by their team every day. Each step in the procedure had to be initiated and closed with one of these documents. Each decision, as well, had implications with respect to the definition of who would count as dispossessed subject, to which property they would have a right, and what was true about the case according to the Unit –an issue that I discuss in more detail in the next chapter. Directors also had to sign administrative documents

such as employment contracts, leases, money orders and the like. The ultimate future effects of any of these documents was uncertain. In addition to confirming or reconfiguring property rights, any of these documents could end up triggering a disciplinary or criminal investigation against the director and destroy his or her career and reputation, should someone consider it to deviate from the law.

One of my closest friends was a director who was initially asked to deal with one the most complicated “post-paramilitary” regions. He was then transferred temporarily to the national team in Bogotá and subsequently sent to an area with a heavy FARC presence. Our conversations would typically occur in his office in whatever town this might be, and unfold in a fragmented way, due to the frequent phone calls he received from his staff, supervisors, or claimants and opponents—or while responding to emails and voicemails, or skimming and signing resolutions or memos that his subordinates, usually rushing through the door, would hand him. I saw him working at this pace for several years. Counting the number of times he had to sign something in the span of an hour developed into a routine: in a good day it ranged from three to five. The only moments we could talk without interruption would be when riding in the armored car to one of his many meetings, surrounded by his bodyguards. When asked if he worried about the consequences of his many signatures, he replied, “not anymore,” having already become indifferent to the regular anonymous threats against him, as well as the many complaints he received daily, mostly from rejected claimants. Still he barely slept: “Sleeping? What is that?” he would often joke.

The subordinates, on the other hand, did not provide their name or their ID but, as mentioned above, they were nonetheless the immediate incarnation of the Unit in most interactions with the public. Still, there was no special security for them even though if it would soon become rather common in most offices to hear that someone besides the director had been anonymously threatened: a strange call, a note by the door, a blacklist. See below a picture of one such list circulated in the Caribbean region signed by the “Urban Commandos of the Anti-Restitution

Army,” declaring a group of NGOs and individuals to be “permanent military targets and enemies.” On the list is the name of a Unit official:

The national team was located in Bogotá, far away from the properties being claimed. And yet it operated with the idea that the team’s area of intervention was the nation itself, its work aimed at the standardization of institutional practices across regional offices. Their work would only occasionally entail interactions with claimants or current landowners or tenants, but mostly with peers from the national office or with officials from other state institutions also based in Bogotá –Ministries, the judiciary branch, the Attorney General’s Office, the Victims’ Unit, among others. Officials would become familiar with land restitution cases through the files themselves, phone calls or internet conferences with peers in the regional offices and, as I explain further below, through the digital database of claims holding thousands of stories of dispossession. The work in Bogotá would often be one of “government from afar,” afar not only in terms of physical distance but also heavily mediated by colleagues in the local offices, and by reports, maps, charts and Excel spreadsheets representing peers’ performance, and also by the database itself which replaced the face-to-face to interactions with claimants.

In the first months of operation, officials at both levels would agonize around the “how” of things: what set of practices would be entailed for processing the cases and deciding about the inclusion of the lands claimed into the Inventory of Dispossessed Lands in a correct, satisfactory manner on the ground? The decrees regulating the procedures to had been issued but there were no clear instructions as to how to work out innumerable details. As Vera (Vera 2017) has noticed in his ethnography of the Victims’ Unit, also created by the VLR Law, officials in the regional offices would often complain that the national office took too long to formulate the guidelines and convert the general decrees into a set of identifiable and sequential practices. Other times they would complain that such guidelines did not take the actual conditions they worked under into account.

Later on, as I began to interact more frequently with the regional teams, they would constantly tell me, “Bogotá does not understand how things are around here.” Or they would insist that they were already doing the things they had to do to process claims, and that the new guidelines disregarded this already acquired “know-how.”

In those initial months officials at the national level would often notice that the guidelines they had designed were being ignored or misinterpreted, and that people in the local offices resisted efforts to standardize. The Bogotá-based team would prepare documents, Power-Point presentations, organize workshops and talks, pay visits to the regional offices and spend hours in the phone trying to explain, and hopefully control, the “how” of things. During the initial months I would sometimes hear them complain that in their supervisory visits they not only found problems in regional offices’ performance but sometimes they would have to do the work themselves.

The second division was disciplinary. It rapidly emerged in my first visits to the headquarters when I was told that this or that person was a “legal,” “social” or “cadastral” staffer, adjectives that referred to their affiliation with one of the three main “technical subdivisions.” Each one was headed by a “technical supervisor” and further divided into a set of thematic or sometimes “procedural” teams.²⁵³ This tripartite division was replicated at the local level where each office had one of each team.

The social team was constituted by people coming from a wide set of professional backgrounds: psychology, social work, political science, sociology, law, and anthropology, among others. By mid-2012, the members of the national level social team, about fifteen people in all, were subdivided into sub-teams such as Registration in the Inventory of Dispossessed Lands (and peoples), Psychosocial Assistance, and the Context Analysis Group. The regional offices initially had around two to three

²⁵³ In some offices the technical teams were subdivided among the people in charge of the administrative phase, the judiciary phase and the post-ruling phase. In others the subdivision was geographic, either by municipality or by smaller areas.

sociales –women for the most part. At the beginning they performed a wide range of tasks, from “customer service,” to collecting the “social” or “communitarian proofs” and also doing the “context analysis,” as I shall discuss in the next chapter.²⁵⁴ Eventually the profiles became more specialized and instead of *sociales* as a generic category, an additional division of functions appeared. By the end of my fieldwork people within the social team identified not as simply *sociales* but usually as “context analysts” or *comunitarios* –a resignification of the adjective “communitarian” that referred to the people in charge of community relations, whether they were claimants or current tenants and owners.

The cadastral team was constituted by specialized engineers and topographers; in the beginning a male-dominated team. Most members had graduated from one of the few specialized undergraduate programs available in the country, offered by a public university located in Bogotá. There was a constant shortage of *catastrales* (as they were referred to within the Unit). One of the reasons, I was told, was that mining and construction companies almost immediately recruited the few graduates in the field. The Unit was trying to offer attractive salaries but I was told that it could barely compete. It was suggested to me that if these engineers had been lured into the Unit as officials or individual contractors it was more because of a political affinity with the project of land restitution, than employment conditions.

²⁵⁴ Social or communitarian proofs is the generic label that Unit officials have assigned to the methodologies employed by the *sociales* to collect from the claimants, their families or neighbors or any first hand witness, the primary information about the spatio-temporal dimensions of the events of dispossession. These methodologies are classical qualitative research tools directly extracted from the social sciences. The most widely used ones in the land restitution procedures are “social cartographies,” “timelines,” and semi-structured interviews. The additional and innovative feature was the set of formalities that have been added to the process of production of the resulting maps, timelines and transcriptions –or other representations of facts that result from such exercises- and which are expected to turn these devices into legal evidence. This new kind of “legal proof” has been received by legal experts observing or participating in the procedures as either an advancement of legal thought and practice or an aberration, to the extent that they are deemed to lack some of the constitutive elements of legal proofs such as the existence of concrete individual who can be credited and held responsible, if needed, for the statements or representations therein recorded.

The legal team, composed exclusively of lawyers, was usually the largest in every office. Although every technical team had to intervene in the processing of cases, and had to generate certainties about the properties, the claimants, and the tenants and their place –physical and social- in the armed conflict, lawyers were ultimately the ones who had to write the decisions that included or excluded claims from the inventory and ask for the director’s signature. Further along in the procedure they were also the ones who operated as the legal counselors for claimants during the judiciary phase, and would be asked to sign and add their legal practitioner IDs to the lawsuit-like petitions to be given to the judges. Lawyers, a director explained to me, were expected to control the contents of each file and what was enunciated in the memos (and other official documents in the files), describing and deciding the cases. In his view they were the ones who understood the legal implications of each file’s constitutive pieces. In the same vein, national directives tried to appoint lawyers (and only occasionally, cadastral engineers), as local directors.

A final and fourth category, the “ethnic division,” intersected with, but stood apart from, the three main teams. It was composed of people from the three disciplinary teams, but their role in this division was distinct: to implement the special procedures established by the government for those officially distinct populations known as “ethnic groups.”²⁵⁵ In Colombia the “ethnic” label has been deployed consistently since 1991 to refer to four types of peoples: indigenous communities (*indígenas*) as certified by governmental authorities, *negritudes* -certified black communities who exhibit a set of social and cultural characteristics considered to be signs of a clear African ancestry -, ROM (Gypsy) communities and what are referred to as *raizales*, a word derived from “root,” who live in the Caribbean islands of San Andrés and Providencia.²⁵⁶ The ethnic team was mostly composed by

²⁵⁵ These special procedures were approved by means of a set of Decrees issued by the Presidential Office. The main ones are Decrees 4633 and 4635 of 2011.

²⁵⁶ However, in the case of the land restitution policy, the “ethnic route” to restitution –as it was often referred to–, excluded the ROM

anthropologists, the experts on “ethnic difference” and its task, as often described in the Unit’s internal documents, was to identify the damages caused by forced displacement and other forms of dispossession to the special relation between these ethnic groups and the territories over which they claimed restitution rights. The underlying assumption was that in the case of ethnic groups, the loss of land had put at risk the survival of their cultural identity because of the role land played in its reproduction in time and space. In contrast, the other teams dealt with claimants who, within this system of official classification, would in principle lack a defined ethnicity and would fall into the more general category of peasants, desplazados, despojados or urban dwellers. whose relation to land was to devoid of collective signification.

This technocratic division had been thoroughly appropriated by the staff, and produced a wide range of daily interactions and institutional practices. In both the national headquarters and the regional offices, people identified themselves and others as belonging to one of the teams: “I am” a social/legal/cadastral or “ethnic.” The staff also thought of each other as having (or being expected to have), a set of skills or techniques and offer “technical” solutions to problems and contingencies based on this disciplinary division. The reverse was also true: they were expected to not pretend to know –and not trespass upon- the fields of technical expertise of others. This disciplining of disciplines occurred in meetings, where people either performed their expertise or yielded to the expertise of others based on their affiliation to one or other technocratic team.

There was, nonetheless, a certain technical hierarchy at work, with lawyers and cadastral engineers being granted, and claiming, a certain epistemological superiority because of the specialized, non “self-evident” nature of their expertise, while the sociales –whose professional identity was dissolved into this more general and blurry category- were treated as dealing with something messier but in also in principle more mundane: people. Instead of a tripartite and horizontal relation between three technical teams, the deference to the cadastral engineers and the lawyers was often performed across

the three teams. The cadastral engineers were in principle the ones immersed in the most scientific, complex and also adventurous endeavor –and people outside their team would rarely comment, criticize or provide suggestions about how they should conduct their work which was thought as that of representing with precision the spatial features of territories and properties –location, size, topography, shape, perimeter, often for the first time. So it was not a matter of opinion. Moreover, because it entailed going to each of the specific plots of land being claimed, and navigating the complicated topography, as well as the insecurity and precariousness of the Colombian countryside –and that of the cadastral information databases- their work was thought of as almost heroic (see (LRU 2014).

Lawyers were the experts on the law: its contours, meanings and, most importantly, its implications. The law, like the spatial precision, was conceived by experts and non-experts as inaccessible to those without the proper knowledge and tools, and something to be taken seriously because of its consequences. Everyone was expected to be familiar with the VLR Law and its derived decrees. But when it came to questions about the meaning of a particular paragraph or title the authority of lawyers was rarely disputed. They were the ones who would often dictate what could or could not be done within the framework of the law. Similarly, although every team was asked to contribute to the formulation of further decrees, and also protocols and other second-level legal provisions, lawyers were the ones who had to check for coherence and that the writing and language was “technically” sound.

The sociales were supposedly the ones whose main task was dealing with “ordinary,” “non-ethnic,” people. Although everyone recognized that people were complicated –and that the work of knowing them, their intentions, their past experiences and their needs was not that simple, it also appeared to be “common sense,” since there seemed to be a widespread assumption that ultimately everyone with some minimum experience and skills could deal with these issues. The sociales –who

tended to be women- had more difficulties than the other teams having their work –inscribed in reports, verbal presentations and spontaneous interventions in meetings- taken seriously and with respect. Rather than being treated as experts, their points of view were seen to be more informed and engaged than that of the non-experts, at the beginning they were often taken to be mere opinions and perceptions and therefore as good or bad as anyone else's. The sociales were also more likely to be criticized for supposedly letting their politics or their emotions shape their vision of the cases.

During the months I was part of the Unit, the sociales complained continuously that the lawyers ignored their assessments of the cases; that the reports they prepared were rarely read or discussed and in the case they were indeed engaged with, lawyers tended to edit, shorten, modify or take them out of the file single-handedly. In sum, the lawyers did not take the sociales' analyses into account. By the end of 2012, at the annual meeting of the sociales, a woman in her early thirties who was known for her outspoken style confronted the delegate of the legal team and told her that lawyers were nothing more than translators, whereas the sociales were the ones who collected and organized what had to be translated: the actual stories, or even the entire history of the case. As she finished this last sentence –“you are only translators”- the entire auditorium of sociales applauded.

The final organizational division –the one I had first noticed while trying to sort out the bureaucratic labyrinth- was between the people in charge of what was called “the mission side” of the Unit –those who had to fulfill the institutional mission of conducting land restitution-, and the people on the administrative and logistical side of the operation. The mission side included the three technical teams at the national and the local levels, among others. The other side was that of the people planning the budget, hiring the staff, paying the bills, producing spending reports, cleaning the buildings, repairing the technical equipment, taking care of the mail, the front desk, and so on. This division was traversed by the tensions noted early between moving forward in the mission and good governance practices. The entire operation, the so-called “mission” of doing land restitution in

an expedited manner, depended on the non-mission side of things. It was regulated by the legislation dealing with public management and service. The expectations and perceptions of “a job well done” varied sometimes dramatically from one side to the other. For my supervisor, the non-mission side was interfering in her ability to do her job, whereas for the people in the “contracts” team, minute revision of paperwork was the difference between a professional, law-abiding management and a negligent or even unlawful one.

These four divisions were continually reinforced through different forms of differentiation and mutual attribution of duties and prerogatives, faults and expert capacities. In many of the meetings involving representatives of the different divisions, it would often be the case that each representative would try to delimit the authority, and assert the responsibility, of each division in relation with tasks discussed, especially those not completed or that had yielded unwanted results. Each division also sought to defend a certain terrain of action as their own and their work as the most expert, or accurate, within that realm.

Although Unit staff had certainly appropriated the disciplinary, geo-spatial and mission-operative divides, as well as the already solidified distinction between ethnic and non-ethnic populations, social life within the Unit was obviously much more rich and complicated. With time I would identify clusters of friends and sources of rivalry and conflict that blurred such divides and revealed others. Also, as I immersed myself in tasks we were assigned ahead of time, the people behind the professional identities and organizational roles of the first few weeks would begin to reveal their unique politico-affective subjectivities, sensibilities and trajectories. But despite the individualities, there were shared experiences. In what follows I discuss two common ones: first, the experience of becoming the state despite most of the staff having come from an anti-establishment, leftist background; and second, the aspiration to enact along the way a multi-virtuous state, one that would not only reverse land dispossession but also stand as an example of good governance and public

management.

Incorporation of, and into, the state: politico-affective trajectories and moral aspirations in the Unit's national headquarters

In late August I was finally asked to sign my contract. I would be incorporated into the body and intimacies of the Unit as well as begin to incarnate it. As Pereira emphasized to me and the other analysts in one of our first meetings, “*Ahora somos estado* (we are now the state).” For him this meant, “Not advocating for the poor just because they are poor, but to handle with great care our prerogative and responsibility of reestablishing property rights.” But this was Pereira. Each of my colleagues understood and articulated the task at hand in different terms. Still, despite the variations, a shared set of ways of incorporating the experience of “being the state” – and of being the Unit more concretely- into their personal socio-political and affective biographies became apparent. First, across the board, all my colleagues, myself included, felt we had embarked on a joint moral effort to help the *despojados*. The preferred way in which most of us talked about the expectations and motivations for being (in) the Unit, at least at the beginning, was that of “contributing” to what we deemed was “a just cause” (land restitution) and to Colombia’s essential problem (that of land), a word choice that I was surprised to find among people with quite different trajectories and organizational positions, and I eventually internalized this discourse as well. The most satisfying part of the job for many was meeting claimants, listening to their stories of victimization and dispossession, and generating the paperwork necessary for them to be officially considered *despojados*: turning suffering strangers (Aparicio 2009, 2012) into subjects of rights. This came in tandem sometimes with the correlative exercise of exposing the people behind land dispossession schemes. Most colleagues, myself included, thought of our daily work in the Unit as ethical, that is, as a way of improving the lives of the people at the other receiving end of the land restitution policy

-victims, despojados, desplazados or peasants more generally- and also as a way for these colleagues to live a good life, one with purpose and meaning. In this way, it was common for the staff to refer to the Unit's work in public presentations, documents and even their Facebook walls as "historical": "one year making history."

In addition to this common moral aspiration, the staff in Bogotá and the local offices I was in touch with turned out to have similar social backgrounds and a set of shared "politico-affective" trajectories. Most were between twenty six and forty years old at the time and came from low and mid-income neighborhoods in major cities like Bogotá, Barranquilla, Cali, Medellín and Cartagena or nearby towns. Despite diverse geographic origins, they all shared stories of upward social mobility via public higher education and their technocratic skills as lawyers and social science researchers in the emerging field of transitional justice and land dispossession, or their knowledge in IT, topography and engineering. Many of them were the first in their families to go to college, and although most had been raised in or had moved when young to the city, many identified as "coming from a family of peasants," often by way of their grand or great-grand parents, even if they themselves or their parents were long-time urbanites.

For many the spiral of violence that had swept many cities and most rural areas between 1982-2005 had been in the foreground –and sometimes at the forefront- of their childhood and adolescence. Indeed, many had vivid memories of paramilitaries, guerrillas, narco or state violence intervening in their social and personal lives in very direct ways, as I shall discuss below, and feeling compelled in their early adulthood to make previous career choices based on the moral and emotional satisfaction of seeking justice, either by helping victims to cope with and overcome the suffering derived from the armed conflict, or by looking for ways to hold the people deemed to be responsible accountable. That is how they saw their previous jobs in NGOs, in the Project or in

other state agencies, and they had joined the Unit convinced that from that position they could continue to be agents of some kind of justice.

Only a few of these colleagues had joined the Unit mainly motivated by the prospect of a respectable or just a stable job for its own sake. But even in those cases, they had found this moral component along the way. A couple of lawyers who had been drawn to the Unit with the idea of securing a post in a state institution, and had not previously thought of themselves as being on a moral mission to vindicate the rights of victims had eventually embraced the “pro-victim culture,” as some of them put it, which they believed was prevalent in the Unit. The change of heart, according to them, had come after meeting the claimants or reading their stories of victimization and dispossession. For some of them, it was the first time they came “face to face” with the armed conflict; as a young woman from Barranquilla put it.

Although consumers of a certain bourgeois lifestyle, they were what could be considered as anti-establishment – *contestatarios*. A scholar who happened to be a professor and mentor of some of the Unit officials I worked with on the social team, and who had been writing for several years about the history of political elites at the regional level, insisted that I distinguish between the generic category of “social climbers,” which he described as “people who adapt and adopt hegemonic social habits,” from this kind of self-made middle class person on the move, who contested the establishment, but within the boundaries of morally respectable action through means such as human rights work, academic research and critical journalism. In their particular context, these professional trajectories had allowed them to move up socially and economically, while making a statement of dissent, and unconformity, and express their will to govern in order to transform. The majority had graduated from a public university, meaning that in principle that their access to education had to do with their academic skills and not their economic means. Conversely, they tended to regard the few of us who

had gone to private universities –especially the expensive ones, as was my case- to be *gomelos*: rich kids endowed with privilege, in principle lacking in merit.

But in addition to sharing a similar social background and moral project, a significant portion of the staff was marked by a leftist political legacy, if not necessarily as family members of militants of a formal political organization, then in a more general sense of subscribing to what they considered to be leftist political sensibilities, values and desires. They also shared the experience of having engaged in a specific repertoire of means for political action.

The majority had participated since college or even high school in different forms of political and legal activism with the human rights community and the network of organizations discussed in Chapter One. Still, it was nonetheless true that some of them happened to be sons, daughters, nephews, partners of members of formal self-declared leftist political parties and movements like El Polo, the Unión Patriótica (UP), and the Communist Party– and sometimes affiliates themselves.²⁵⁷ And a few had direct emotional ties with demobilized ex-combatants from insurgent organizations such as the M-19 and the CRS. Also in some cases family stories were not only ones expressing sympathy or solidarity for a leftist organization but also of direct involvement in insurgent organizations and in persecution by paramilitary forces. A couple of my colleagues had even had close relatives who were tortured, killed or disappeared.

²⁵⁷ During the peace negotiations of 1984-1985 between the Betancur government and the FARC it was agreed that while achieving a final agreement the FARC would begin its participation in electoral politics through a new political party. This new party, the UP (Unión Patriótica), was a coalition of delegates from the FARC, the Communist Party and a series of small political and grassroots organizations who had started off independently and who saw it as an opportunity to advance an anti-establishment political agenda without having to join the Liberal Party –which until then had been the only route to political participation for such alternatives. In 1988 a political reform established that mayoral and gubernatorial elections would be by a majority vote. In the first elections that year, the UP took a number of offices from traditional parties. By that time, however, its members –some of them elected officials- began to be killed systematically all around the country. Congressman Cepeda, whom I mentioned earlier, stated in 2005 that the total death toll was near the 5,000 mark.

Others came from families loyal to the Liberal Party and its most social-democrat side, the former MLR. There were also emotional ties with former ANUC activists, labor union organizers and former Incora officials (see Chapter Two). Finally, there were also others who did not have a family story of leftist political activism but who had sought and found in their years of college or in their first jobs engagement with what they regarded to be “leftist concerns” such as equality and expanded democracy and also furthering peace dialogues with existing guerrillas.

This set of common social and political trajectories suggested the incorporation into/of the state of people who had been outside, or on its margins, of state power under Uribe’s administrations – with the exception of the people in the Project- and who now were on the move to become –once again- a micro-ruling class among the many that converge, dispute and negotiate, the formation of the state in Colombia. Gramsci sees the history of any state to necessarily be a sedimented one: “The historical unity of the ruling classes is realized in the state, and their history is essentially the history of States and groups of States.” Unity in this context means collusion, but also collision. The state remains a terrain of continual dispute and negotiation between ruling and subaltern classes, and a means for the conversion of the one into the other. Following Roseberry’s reading of Gramsci’s work, hegemony is better understood as a process rather than a static order, and as part of what conditions the way struggles for power are waged, won and lost, and the way both domination and subjection are exerted and subverted. As the main means, and manifestation, of any modern political hegemony, the same can be argued for any contemporary state. The state is also a work in process, meaning that it is in continual transformation, although at a pace often mistaken for stagnation. It certainly is also part of what defines the terms of power struggles, and what is disputed along the way.

In the case of Unit staff, they penetrated the realm of state operations by means of their expertise in human rights and social work with desplazados, their moral commitment to the vindication of the

peasant-victim population, and the financial and political support of the international community, rather than by means of economic power or relations of patronage with politicians in Santos' coalition.

The story of Juan Antonio, a lawyer in his early thirties, was analogous to that of many of the other lawyers working for the Unit during the 2012-2014 period. Like him, many of the *jurídicos* (the legal staff) who had joined the Project in previous years and now had administrative roles in the Unit, had been involved in human rights activism since their student years at public universities around the country. Actually José Antonio had met some of his colleagues at the Unit when doing volunteer work in a student organization that worked to prevent and prosecute cases of police violence against demonstrators. Also like José Antonio, some of them had started off their careers as lawyers in human rights NGOs that specialized either in litigation or *denuncia* (denunciation). José Antonio had worked in one of the NGOs that in the mid-2000s had been most proactive in taking military and police agents to court for connections with paramilitary organizations and the commission of serious crimes. He had been in charge of high-profile cases of paramilitary violence and at some point under Uribe's second administration, he and his colleagues had received threats and their computer files had been hacked. Out of exhaustion and stress he decided to quit and leave the country for a while. It was then that a friend and former volunteer at the student organization had recruited him for the Project.

A significant portion of the lawyers working in offices in the Caribbean region had followed virtually the same path: they had enrolled in a public university, had been actively involved in a variety of student organizations, and subsequently had volunteered in an NGO that provided legal support to detainees accused of political crimes. With this training they had become full-fledged human rights attorneys in those and other NGOs. Because of their activism, many of them had been threatened, forced into hiding or exile, and some of them had been even accused of a political crime

themselves, only for the charges to be dropped soon afterwards.

After graduating from college, Leticia, a psychologist who was part of the national social team, had devoted herself to social projects and peace-building from below in “*zonas rojas*” -war-prone areas. Her parents had survived the extermination campaign led against the UP. Since then, they had retreated from politics. They were still heartbroken for what had happened to their fellow activists. Though she was not involved with any political party, Leticia was a devoted Christian and —as she put it- had been raised to serve victims of the war. Other sociales shared this need and like her, had chosen a career in social work, often joining either as volunteers or paid employees in Church-led initiatives like CINEP, the BCC and other human rights NGOs that were devoted not to litigation but to reconciliation, income generation and research in areas with high levels of political violence.

Penelope’s father demobilized from the M-19. Inspired by him, by the time of the 1991 Constitution she studied law. While a student in Medellín she began to collaborate on cases of forced disappearance that involved students and labor union organizers. She eventually became a specialist in this particular type of crime. In our first conversation, however, she said with a sad smile that her specialty was “loss” (*la pérdida*). In the meantime her father had become an environmentalist and was working with peasants in the mountains of Antioquia on the protection of native forests. After a meeting in rural area, a group of men forced him into a vehicle and he was never heard from again. She took on her father’s case with the support of other lawyers. She also joined an organization of sons and daughters of forcibly disappeared victims that sought to fight impunity and invisibility. After years of work collecting evidence and developing the legal arguments, a judge sentenced the paramilitary commander of the region as responsible for her father’s disappearance. Up to 2014, when I lost track of the case, it was the only ruling against him despite the many homicides admitted by his group in the JnP trials. With tears in her eyes Penelope explained to me later on that people often thought she had become a forced disappearance attorney because of what

had happened to her father, when it had actually happened the other way around. She had never thought she was going to experience the feeling of loss, desperation and lack of closure she had seen her clients go through. Eventually she left the organization because of the internal conflicts between “the relatives of somebody (meaning public figures) and the relatives of the nobodies.” When the Unit opened its doors she joined, thinking it was the first time in her adult life that a state policy seemed to have the potential to solve historical injustices.

Oscar, Carmiña and other colleagues were social scientists who had family or mentorship ties with long-time organizers at labor unions and the peasant, indigenous and the Afro-Colombian movements, or with Incora officials who had been part of the “good old times” when it still was intended to conduct an agrarian reform. Oscar’s father was a cattle rancher and agronomist who in his youth had worked in the Incora. Carmina’s father used to be a lawyer who had also supported ANUC. Both Carmina and Oscar had been good students and had become research assistants of professors who studied the armed conflict. Their stories were about moral commitment to dispossessed populations, but not active political militancy.

Most of the staff felt conflicted about being part of Santos’ government. The President represented exactly what they stood against: a “gomelo,” an oligarch, a representative of and heir to the long-established system of economic and political privilege; a poker-faced politician who, despite his “u-turn,” had been Uribe’s Minister of Defense. In short, Santos incarnated the establishment, with its built-in inequalities, excesses and omissions in the use of power.

For this reason, the decision to join the Unit had caused serious conflicts between some of my colleagues and their former fellow activists. José Antonio admitted with a certain sadness and perplexity that he had been accused by his fellow activists of being a “sell-out.” Still, in those first two years, when talking with me about their decisions, none of them regretted it. The chance to be

part of the reversal of land dispossession, along with the satisfactions they derived from the work, was worth the disagreements.²⁵⁸

Certainly these were not the only socio-political and affective trajectories and legacies that could be found among the staff of such increasingly large and diverse state institution at the beginning of its operations. In his early twenties, the general director Ricardo Sabogal, for example, had been mayor of his hometown in the Sumapaz region, with the support of the Liberal Party. Like many mayors back in the 2000s he had been threatened by the FARC and forced to move to Bogotá. He had no relation with the organized left and since he took the position, leftist politicians had accused him of seeking to promote a classical liberal agenda. And that is how he identified: as a liberal in the broader sense of the word, a believer in the rule of liberal law, the power of private and human rights law –and good interpreters of the law- to reestablish private property and foster development. Finally, although truly a minority, there were some members of the staff whose political and moral education was not only conservative but whose loyalties and attachments were with the armed forces and the Conservative party. This was the case of the people in charge of the security operations around land restitution. A couple of them, including Alirio, had been part of Uribe’s government as members of the intelligence department when it had been involved in the surveillance of human rights NGOs. They were regarded with suspicion by some of their colleagues, especially those who had worked to hold state agencies and agents accountable for such abuses of power. When the rumors that he had been part of Uribe’s campaign to discredit the human rights community were reported by the press, I was seated with Leticia and six other friends

²⁵⁸ Note that the invocation of such politico-affective legacies was not constitutive of daily practices or salient in any explicit way in everyday interactions. Quite the contrary. People in the Unit rarely discussed the political biographies of their parents, favorite teachers, best friends or themselves in the workplace. If these aspects of their story surfaced it was in most cases due to my insistent inquiries during lunch or over a beer after working hours. I wanted to know about their upbringing, their education, and how they had become interested in land dispossession and restitution, what and who inspired them. Over the course of these conversations I pushed my way into the personal and family worlds of my colleagues and it was then that I asked about political affiliations and sensibilities and established connections between their own lives and larger forms of political action in contemporary Colombia.

in a café around the corner of the Unit. She described the issue as disheartening and the others agreed. “For many of us, land restitution is a matter of the heart, this is what moves us. Having someone like him here harms our sense of team and our motivation.” For Alirio, on the other hand, security was one of the things the state had often failed to deliver. In his view, it had been precisely the lack of effective policing and defense of public order that had led to land dispossession.

The flaws and virtues of the virtuous state: re(dis)tribution, hyper-correctness, verisdiction and performance indicators

The stories of Juan Antonio, Leticia, Penélope, Ricardo, María and Alirio revealed to me the convergence, not exempted of frictions, of relatively similar politico-moral worlds around a shared sense of historical opportunity and responsibility, and the aspiration to do justice for the despojados (the dispossessed) however and whoever they were imagined to be. This was not too different from the odd coalition between different and yet coincidental political projects that coalesced around the VLR Law’s approval. However, unlike what had happened in Congress, at the beginning the Unit had primarily summoned people who were convinced that land dispossession had been predominantly regressive in terms of land distribution, and considered land restitution to also be an instrument of redistributive justice despite its formulation as one of retributive justice (Uprimny and Sánchez 2010).

The VLR Law and the decrees ordered that within the universe of available claims the Unit had to give priority to “subjects with special constitutional protection.” The criteria for a preferential treatment were age, gender and household responsibilities – which have been established across Colombian public policies as markers of differentially disadvantaged populations- but not classical socio-economic variables such as income, educational levels, access to public services or pre-existing property rights. For Pereira and most others, this meant that anyone regardless of class could

present a land restitution claim, be prioritized and eventually given back land –even wealthy landowners. And yet in practice, for them land restitution was not only a matter of legality, reestablishment of property rights or reconstitution of the rule of law, but of redistribution, since from their perspective, and that of most politicians and experts promoting the VLR Law, land dispossession had resulted in the eviction of poor rural populations and the concentration of land in the hands of few rich owners. Thus, the expectation was that claimants would be in the majority of cases landless peasants or poor city dwellers whereas current owners and tenants –the potential opponents- were imagined to be for the most part landlords connected to powerful politicians, corporations or armed organizations. In this sense, staffers considered land restitution and their work in the Unit as having the double virtue of redistributing land and punishing criminality. A subgroup of officials in addition were also convinced that even if multinational corporations and companies had bought lands from desplazados in the aftermath of violence without using force this was a form of dispossession through opportunism that also had to be corrected. However, this was an issue that harshly divided the Unit staff.

Moreover, for many staffers, land restitution entailed the chance and the duty of providing claimants “a future better than the past.” This transformation was imagined as much more encompassing than simply providing property titles. Thus, in their lawsuit-like petitions, staffers demanded the (re)construction of infrastructure facilities, the deployment of security measures such as new police stations, the implementation of the housing subsidies and social programs established in existing policy provision, all this in pursuit of this transformative restitution.

A second and complementary type of aspiration, one that I had encountered from the first moment I was asked to submit additional and hard-to-get certificates, but would only begin to comprehend several months after joining the Unit, was that of enacting a *virtuous state*. At the end of the first month of work my colleagues and I spent two days filling forms and gathering the long list

of documents we had to submit in order to request our first payment: copy of the last health insurance, a certificate confirming the existence and the number of our bank account, a CD with digital copies of the so-called context analysis documents we had written, the notes we had taken in meetings and any other “products” of our work. We had been told that if failing to submit those documents in two days’ time we would be paid with a month’s delay. Then, half a week was spent meeting with representatives of other state institutions to find ways to exchange information in a rapid and efficient way without breaching reserve and confidentiality rules. After that, another week was spent planning the following year’s first trimester, which entailed filling a very detailed Excel spreadsheet designed by the Planning team. Finally, four more days went by in meetings in which we were asked to explain to colleagues in other subdivisions and offices what we were doing.

By then I began to realize that the formalities, the long planning and coordination sessions and the paper trail recording it all were manifestations of the Unit’s staff aspiration to enact the hyper-correct (and technocratic and meritocratic) state, which they had found to be lacking when interacting with state agents in their previous work as human rights activists, professionals in the Project, experts in public administration or academics. Thus, a common motivation among the Unit’s staff, in addition to improving the lives of victims or the agrarian structure, was also to *be a better state or better than the state*. Although they understood the state in practice to be multilayered, composed by institutions with highly different historical origins and inertias, and constituted by large numbers of people with different projects and attitudes, it was still common for officials to think of the state as a singular, monolithic, and in this case pathological entity (see Buchely 2015) that continuously failed: by either abusing its force, not delivering basic services such as justice, security and, in this case, protection of properties and patrimonies; or by incorporating corrupt or unprepared officials. More generally, this failed state violated the law and its forms; was structured around clientelistic relations; could not plan adequately and was managed to reinforce existing power

relations. So the many bureaucratic demands that I encountered at the beginning and would deal with from that point on, were regarded by many officials as ways to enact an organizational and political utopia (Graeber 2016), a virtuous state that resembled the prescribed models of public management and good governance that are supposedly characteristic of North Atlantic “modern democracies” (Hetherington 2011) in contrast to those to be often found in “Colombia’s culture of illegality” (García Villegas 2009) and failed state.

Now, as part of this hyper-correct and meritocratic state, there was also the aspiration among the staff to a state that could know with precision the past and the present of its territories and populations; a state that could see (Scott 1998) the objects and subject of government with clarity and accuracy. Land restitution, many found, entailed in practice solving the structural opacity of cadastral information systems; the “known unknown” of land dispossession as criminal act, and the invisibility of micro-local histories of war and marginalization. As part of the work of locating and characterizing the properties claimed, it was often argued within and around the Unit that its cadastral engineers were finally doing what the Colombian state had been unable to do since it had gained independence from the Spanish Empire: updating, correcting, and completing inventory and map of the country’s real estate. Also, as I shall discuss in the next chapter, it was considered part of the Unit’s work to deploy state of the art social analysis to determine the facts of land dispossession and generate a set of administrative and judiciary truths and certainties about the means, the promoters, the beneficiaries and the *long-durée* causes and effects of land dispossession. These knowledge production efforts would be constitutive of the facts of the cases, and of an official history of land dispossession.

For everyone in the Unit, such aspirations and the possibility of conquering them were a source of daily satisfaction. The social team derived satisfaction from a shared feeling of contributing to righting wrongs from both a redistributive and retributive perspective. In my case, and that of many

of my co-workers, we felt lucky we could help people who had gone through truly horrible circumstances to start anew with a piece of land and the complementary aids that land restitution rulings often included. Most of my colleagues thought they were making an irreversible difference, and some would often write in their Facebook account “walls” comments like: “one (two, three) years making history.” In response friends of theirs would continuously thank them for contributing to justice in Colombia. Others were more skeptical. My most Marxist colleagues were even terrified that in the long run they could be contributing to land grabbing by formalizing property rights and clearing any uncertainties about title holders.

Indeed, the same sources of gratification were also certainly sources of frustration and sheer anguish. In these final pages I will discuss four aspects of the moral and intellectual work we did in the Unit and which were a continuous source of profoundly ambiguous sentiments with little or no relief. Partly those of us immersed in the “documentation of cases,” as was called, derived our satisfaction from the hope that we could contribute to the clarification and enunciation of the truth, or at least an acceptable truth, about a particular dispossession episode or process. However, we understood clearly that “facts were made” (Chapter Six) in the sense of being human-made, manufactured by means of a set of conscious and unconscious choices, and their reconstruction as conditioned by a wide variety of structures and contingencies. So although we did certainly retain an aspiration to engage in a genre of what Foucault refers as “*le discours vra?*” (the true discourse) (Foucault 2001), we also felt tragically compelled to do so even against our own uncertainties. Indeed, in one of his 1976 lectures in Paris, Foucault explains as that the true discourse is constitutive of power and is also power’s primordial effect. In the case of law as a species of power, he insists this is critically the case. In his words:

Let’s simply say -in order to hint not to the mechanism that links power, law and truth, but to the intensity of this relation- that we are compelled to produce truth by the same power that demands such truth and needs it to function; we must say the truth, we are condemned to acknowledge or find the truth. Power doesn’t stop questioning, (...) doesn’t stop

questioning us; it doesn't stop inquiring, searching; it (power) institutes the quest for truth, it professionalizes it, it compensates it; we must produce the truth, as we have to produce wealth; we must produce truth if we are to produce wealth. And, on the other hand, we are equally subjected to truth to the extent that truth makes the law (*la vérité fait loi*): it's the true discourse the one that, at least in part, decides; it channels (*vehicules*) the effects of power. After all, we are judged, condemned, classified, constrained to do certain things, doomed to a certain way of living or (...) dying in function of the veracious discourse, which brings along with it specific power effects (Foucault 2001: 176).

Following Foucault's lead, I refer to the specific genre of le discours vrai that everyone in the Unit and certainly also the judiciary apparatus were forced into as "verisdiction." Notwithstanding, the noun "verdict" in English or *veredicto* in Spanish is a latinism meaning "dictated truth." However, this aspiration and demand to speak the truth that structures law in general, and the production of dispossessed lands and peoples in the concrete, is double-edged. At the same time that we operated convinced that, if doing things right, "dictating the truth" could be within our each, many speech acts were fraught with doubt and a great deal of anxiety precisely because of their verisdiction effects. This was the case because despite time limitations, material conditions and narrative logics that we rarely controlled, and the sense that the truth of dispossession escaped, we were still made to speak the truth to the best of our abilities in order to make justice. And we would dictate our humble verdict that we would coincide with the objective truth and not cause serious injustices. Thus, just as we sometimes found the experience of dictating the truth gratifying, in other instances we felt irremediably destined to engage in a mode of truth-telling with effects we could not control and not agree with, but that we would be held accountable for. In the next chapter I discuss in detail a concrete experience of "verisdiction" from my part and a host of other "truth-tellers" and the implications of set of acts of verisdiction for a group of claimants and opponents involved in a particular land restitution case.

Another source of continuous conflicts and bursts of desperation was the increasing bureaucratization of daily practices that had emerged as the Unit's staff strive to fulfill the aspiration of incarnating a hyper-correct, ordered and transparent state. Although people in the "mission" of

the Unit understood the moral and legal imperatives behind the many demands to produce a paper trail and follow strenuous protocols, they still experience such demands as increasingly insurmountable obstacles to fulfilling that very same mission. On the other hand, although for the administrative, non-mission side, this attention to forms and procedures meant more work but also was the only way of making sure the entire operation was done accordingly to the law.

A very passionate lawyer, who was in charge of some of the most truculent cases, put it eloquently: “I thought that the hardest part of the job in the Unit was to going to be dealing with thugs willing to kill to protect the lands under their control. you know, hit men, death threats or violence against claimants, things like that. But no, it’s the damn paperwork.” A public manager who worked in the administrative division offered exactly the opposite perspective about paperwork. I once witnessed an argument between her and a “mission” supervisor. The latter was adamantly arguing that because the VLR Law “was transitional justice” and “we were dealing with victims,” their rights and their security on the ground forced the Unit to be quicker in generating the administrative resolutions needed to respond to their requests. For this reason, it was necessary for the administrative team to find shortcuts to the long paperwork customarily needed to spend public money. The manager, who had confided to me that stress was resulting in a host of health issues, responded that as much as she clearly understood what the mission was, there was no such thing as an “administrative transitional law,” and in this sense she had to follow the ordinary legal regime for the administration of any state institution if she or the others did not want to be accused of a felony and the Unit be accused of negligence, or even worst, corruption. “Nothing would please the enemies of land restitution more,” she added.

A third source of frustration that I encountered continually was related to the so-called “the issue of goals” (*el asunto de las metas*): the performance indicators of the Unit. From the beginning, the political left had declared the land restitution policy to be just another scam, devised by the

economic elites to deceive the peasantry. Months after starting operations, one congressman had devoted a session of the Senate to contradict Restrepo's affirmations about the first results of the land restitution policy. These external criticisms and the ambition of being better than the old state in both the quantity and the quality of the response translated into a stressful work environment in which uneasiness about deadlines, the overall pace of restitution procedures and quantitative outcomes were an important part of institutional life. As part of the global trend of modernization and rationalization of public management (Hetherington 2011) performance in the Unit –and any other state agency by now- was measured by numbers, in this case numbers of restituted hectares, properties and people.

Following the reports by the M-Board the Unit had been planned to receive and solve 360,000 claims in a period of ten years, 36,000 per year on average. This number operated as the backdrop by which the overall performance was evaluated and the single most important index by which the virtuous state and the effective reversal of the agrarian counter-reform to which almost everyone in the Unit aspired became real. Without good performance indicators the Unit failed to realize both aspirations in the eyes of the public and of its own staff. So supervisors constantly reminded their teams that the pre-established goals were slipping away as time went by. Teams would feel constantly pressured to meet quotas that they often considered unrealistic and privately complained that the different contingency plans launched to breach the gap between goals and outcomes implied doing things carelessly, in a hurry, at risk of being mediocre and worst of all, unfair. Everyone agreed that identifying dispossessed individuals and determining their rights and dictating truths that could be defended as such took time. Each claim involved a household with an average of four to five people and the Unit had to make sure that anyone else with rights over the property in question (former partners, extra-marital children, etc.) were duly included in the case since, according to the VLR Law, each of them had the right to land restitution. This meant finding about their existence,

their names and location, making contact and interviewing them and finally capturing their own versions of the past through a set of methodologies. In addition, lands had to be accurately located in space and demarcated and identified according to a set of technical requirements that were still in being crafted; current rights holders had to be notified in situ, which meant visiting the piece of land by any means of transportation available; and each single step in the administrative procedure had to be adequately justified through a long and well-structured legal argumentation based on large piles of evidence and expressed via written memos, that contain facts and decisions. But then, the response from supervisors and directives was: yes, do it well but do it faster.

In December 2012 the Unit celebrated its first year of existence. The national team in Bogotá organized a toast, not in the headquarters for lack of space, but in the city's local office, just a block away. One of the main supervisors addressed the group to congratulate them for the hard work and also to remind them of what lay ahead.

“This has been one of the greatest years I have ever lived (...) because we were asked to put together an institution in order undertake a task that is crucial for this country: giving peasants their lands back. This job is a value, not an obligation. The value of it is that we work for vulnerable people, people who would have never had the money to hire professionals of your level. This year (...) what you've done is huge: opening the offices around the country, receiving the claims, selecting, appointing and training judges. This was the year of the take off, they year of the turbulences that you feel when an airplane takes off. But next 2013 is the year when we'll reach cruising airspeed.”

Then he informed us that the first solicitudes of restitution that the Unit had presented to the judges recently had all been decided favorably. Everyone applauded, clearly excited. “Gratifying, satisfying” were qualifiers that came repeatedly in his ten-minute summary of the development of the cases.

And then he announced that we needed to scale up, to do the same good work, but multiplied.

That afternoon, indeed, we were called to a meeting to discuss “the action plan for 2013.” The general goal of the Unit was 36,000 claims. Before entering the meeting, however, a supervisor took some of us aside and told us with some with relief, that in previous days they had been able to convince the directives to moderate the annual goals for 2013 to 12,500, at least while the process of

setting up the Unit was fully finalized. After that, they hoped there would be a steep learning curve that would allow the Unit to catch up. In the meeting, the delegates of each sub-team were asked to make a list of the adjustments they deemed necessary for each division to do in order to speed up the operations. Everyone needed more people. They were asked to calculate how many and justify the number by showing the manpower-to-result ratio. So with calculators in hand, we all sat there for two hours, trying to establish how much would be enough.

A critical issue was notifications. According to the decrees, notifications of each substantive decision had to be done in person or by phone for claimants and current owners or tenants and also must be conducted on the properties, so as to allow everyone with a physical relation with the property to be properly informed. But many of the lands were hours away from any main road and in areas that continued to be dangerous because of mine fields or active armed organizations. Without an efficient notification team, procedures could be invalidated for failing to inform the interested parties. On the other hand, the Unit had no budget for helicopters, 4WDs or any such transportation device. The ideal “messenger” (*notificador*) would be an ingenious young man, with his own motorbike, good hiking boots and a sense of adventure. As the administration discussed how to find efficient messengers with the means available, a young woman raised her hand. She was aware that the goals were important but she wanted to know, however, if as we implemented this plan to multiply results we would have chairs to work in. She was not kidding. If the rhythm at the Unit was already hectic and the materials were still insufficient she was worried about the mundane conditions in which we were going to be facing the increasing pressure.

A few days later, each delegate was notified of the budget that had been approved and assigned for their own operations based in some of the adjustments enlisted. One of my supervisors panicked. “Almost all the nation’s budget is my responsibility (...) Any mistake and I will lose my home.” And just days after this conversation, in early 2013, “the issue of goals” hit the news again.

The headlines reproduced the title of a report just released by one of the land restitution observatories: “land Restitution: a Phenomenal Traffic Jam.” I first heard about the report in the Unit headquarters and then I read about in the newspaper. My co-workers were concerned, some were utterly angry and a few were also secretly pleased. The point of the report, as the title suggested, was that the general goal of processing land restitution claims in ten years, “is not only far from happening but it cannot be done (...) At this pace, land restitution could take thousands of years, or after introducing extraordinarily optimistic assumptions (into the calculation), hundreds. It is time to seriously and quickly reconsider redesigning the policy.”

The metaphor of the traffic jam resounded deeply with middle class urban readers living in Bogotá and other major cities, for whom urban mobility had become a profound source of desperation. For my uncle, the one who had greeted me humorously when I started the field, and many people around, one of the new difficulties of living in Colombia –and Bogotá more concretely- was traffic jams and in general the difficulties to move around including in public transportation. Another metaphor used in the report was that of standing in a “line” at a bank or state office, which was also quite familiar for any city dweller. The report argued that the “line” that claimants had to stand in to resolve their claim was phenomenally long. Unlike other institutions, land restitution claimants did not have to make a physical line nor did they have to collect their own evidence. This, it stated, was an “improvement” if compared with other programs for victims. But there was a line in the sense that there were only so many cases officials who could pay attention to at the same time and that so far the rate of response had been far lower than the number of people joining the line. This line, according to the report, was divided in three sections or phases. The first was the line awaiting micro-focalization. A claim depended on whether the piece of territory around it was chosen for intervention. This first line, according to the report, “had not moved” for a year and it kept getting longer. The second phase of the line was composed by the claims within each

micro-focalized territory. Claimants had to wait for the Unit to choose, study and decide their case. Finally, the third line pertained to the judges and the wait for them to make a final decision—in case the claim had been admitted to go to court. This diagnostic and the persistence of the lower pace eventually led some NGOs to echo the idea that the Unit was indeed a sophisticated *mise-en-scene*, a performance, meant to produce the illusion of restitution. Even at some point, leftist spokespersons accused the Unit of deliberately delaying the procedures, so as to protect the interest of corporations, companies and economic elites. My friend Martín, a die-hard pro-restitution agent, spent months writing press releases, public letters and speeches defending the Unit. Once at lunchtime, he joined my table visibly upset: “These bastards, they’re saying that I’m an Uribeist, a guardian of capital, a sellout,” and gave me his cell phone so I could read a newspaper article he wanted to show me. I was alarmed: “Who is accusing you?” I asked while trying to open the link to the article. “Oh not me, Martín,” he clarified, but the Unit, they are saying it about us.” For Martín, like many others, the difference between their individual personae and the Unit was merely one of degree when it came to their political identity. And in the case of Martín, there was no worse offense than being labeled a *Uribeista* just because he, and the Unit, wanted to do things correctly.

A fourth and final source of frustration emerged directly from the aspiration to redistribute land. As cases began to progress, the staff found that not infrequently, current land owners, possessors and occupants were as poor and damaged by the war as the claimants. And they also found that some claimants were in fact former large landowners who had lost their latifundia during times of conflict. And yet, according to the formal rules established in the VLR Law, they had to process the claims and proceed to admit them if they met the temporal, spatial and modal requirements therein established, which meant that most likely in the near future a restitution judge would evict the current land holders despite their socio-economic vulnerability and their condition as victims. By mid-2013, this moral dissonance—caused by the divergence between intention and

results- in relation to the fate of these particular groups of families became a serious concern for most of the staff and the directors began discussing formulas to reconcile the rights of claimants with the rights of holders with such characteristics. Eventually, the Unit would label them as “segundos ocupantes,” secondary occupants, and would introduce to the procedures a series of adjustments meant to give them land or money in compensation. But in the meantime, people of a variety of socio-economic backgrounds who were about to be forced to give up the land they had been residing in because of a restitution ruling did a series of sit-ins and marches in the name of the “victims of land restitution.”

Soon, the political right would begin accusing the Unit and the judges of being covertly devoted to expropriating legitimately established property rights as part of larger plan of turning Colombia into a communist regime. By 2016, the Santos government was close to completing the peace negotiations with the FARC and signing a final agreement, and half of the country’s public opinion opposed the terms of the accord. That same year, a group of high-profile right wing politicians and public intellectuals accused the Unit of working to satisfy the FARC’s historical dream of conducting a violent land reform and even suggested that the claimants were somehow at the service of the guerrilla group.²⁵⁹ For everyone in the Unit, this was as offensive as being accused of partaking with Uribismo, but far more dangerous in their opinion since they knew from experience that in Colombia, accusations of insurgency could precede acts of violence against the accused.

In this scenario the moral discomfort would be multifold for many officials who were surprised by this moral dissonance: in addition to operating an institutional and legal apparatus that could issue decisions compatible with two cherished aspirations –that of redistributing land, and doing it in an efficient and quick manner-, the Unit was being attributed political loyalties with guerrillas and

²⁵⁹ José Félix Lafaurie, the head of the cattle ranching association, issued the public statement that most explicitly accused land restitution claimants and officials of having links with the FARC.

paramilitaries, the main agents of land dispossession. For the most optimistic ones, however, the fact that in their opinion both the extreme left and right were critical was a sign that “we are doing things right.”

Chapter Six. The Many Disposessions of the Santa Paula Hacienda: the Production of Administrative, Judiciary and Public Truths about “Dispossessed Lands and Subjects”

On my first week of fieldwork, I stayed up late in the headquarters of the Land Restitution Unit (the Unit) so I could use one of the computers to go through the documents of a land restitution case I had just been assigned. As part of my doctoral research on the politics of land restitution, I had decided to formally join the Unit and conduct my ethnographic exploration of the production of administrative truths about the past of alleged “dispossessed land and peoples” from within. I wanted to observe closely how officials stabilized this past and turned claimants –and the lands

being claimed- into the subjects and objects of the right to land restitution. But soon I realized that more than participant observation, I was engaging in a form of intensive “observant participation,” and that I too would actively contribute to the definition of the many pasts of dispossession being (re)constructed.

During regular hours, computers had to be shared because there were not enough for the almost 100 people who constituted the Land Restitution Unit’s “national” team in its first few months of operation. Therefore, their use was restricted to a short period of time. The case involved a hacienda called Santa Paula located in rural area of Montería, the capital city of the state of Córdoba, in the Colombian Caribbean region. The hacienda of 1,200 hectares was only thirty minutes away from Montería’s downtown in the Sinú River valley, famous among agriculturalists because of the fertility of its soils and its convenient location near the coast and other major urban centers such as Medellín and Cartagena.

On Friday night at around 8 pm, the Unit’s director, Ricardo Sabogal, entered the main door with some of his advisors. I went out into the hall entrance to greet them. One of them, probably the only lawyer in the Unit who would always wear a suit, tie and a clean-cut look, came walking straight to me energetically and in good humor. “Juana, Santa Paula is THE case,” he said while shaking my hand and showing me into an empty seat by the main entrance.

What he meant by “THE case,” as I understood it then, was that Santa Paula was going to be the first case against the *Casa Castaño*, the “Castaño household,” one of the most powerful and visible narco-paramilitary organizations of the last thirty years. As I was just beginning to find out from the eighty-something claims received so far by the Unit and press clips available in internet, Fidel Castaño, the oldest brother, and also the founder and leader of the first counter-insurgent death squad associated with this last name, had owned Santa Paula and many other haciendas in the surrounding area starting in the mid 1980s. Indeed, I already knew from academic and journalistic

accounts that he made a fortune in the 1970s. Speculations about the origins of his money vary, but the list includes drug-trafficking, illegal mining, bank and trade robbery, art dealing, and gold smuggling, among others. Then, in 1979, the FARC guerrillas kidnapped his father, a middle-class agriculturalist and cattle-rancher in the Castaño's hometown in the state of Antioquia. Apparently the Castaños did pay the ransom, but the guerrillas killed their captive father and hid the body from them. Some sources have conjectured that the kidnapping was aimed at getting hold of his eldest son's growing fortune. In any case, the Castaño brothers would then assert in their few public appearances that this episode was what led them to create their first counterinsurgent squad (apparently they hunted down their father's captors) and then to devote themselves to the "anti-communist cause." Apparently they actively participated in the Mid-Magdalena valley paramilitary training camps (Chapter Two). The youngest of the brothers, Carlos, admitted on several occasions that he received training there, along with delegates from mafias from across the country (Aranguren 2001, Romero 2003, Ronderos 2015).

By the mid 1980s Fidel Castaño, along with a group of drug lords from the Medellín Cartel such as Gacha and Escobar, had used their fortunes and also their means of coercion to accumulate large extensions of land in Córdoba and Urabá (Reyes, 2009, 2016; CMH 2010a; Romero 2003; Aranguren 2001) to the point of almost replacing the traditional landowning classes in certain municipalities. Sánchez (2003), a journalist from Montería, offers what he calls a series of "chronicles that are scary to tell," showing that those newcomers had sometimes intimidated previous owners, and in other cases they had doubled the original price and paid with bags of money. Until then, the area had been under the grip of the EPL guerrillas, an armed Communist Party splinter group, which had been periodically extorting money from landowners, traders and businessmen and conducting selective kidnappings in exchange for ransom since the late 1970s. Many of Castaño's new haciendas, including Santa Paula, were located in the coveted Sinú River

valley in Córdoba. The value, however, had dropped to unprecedented levels because of the permanent aggressions of the EPL and the apparently desperate attempts of many of the traditional landowners to sell their land to buyers with enough cash and manpower to actually acquire them and remain safe from the guerrillas.²⁶⁰

It was in these circumstances that in the late 1980s the Castaño's death squads carried out the first of a long series of assassinations and massacres in Córdoba and Urabá, targeting people accused of belonging to or somehow supporting the EPL or any other guerrilla organization.²⁶¹ The group of killers received many names back then: the *mochacabezas* ("the headcutters") because they would often dismember their victims; *los Magníficos* –which was the name in Spanish for the popular American TV series "The A-team"- and also *los Tangueros*, meaning those coming from the infamous hacienda Las Tangas. This hacienda, located a dozen miles from Santa Paula, it is said to have been the group's training camp, Fidel Castaño's center of operations and favorite retreat, and also a mass graveyard.

But then, in circumstances that I was just starting to unravel, Castaño agreed to a cease-fire with the EPL guerrillas, and announced the donation of Las Tangas, Santa Paula and other of his haciendas to several hundred of combatants and victims from both sides, as well as neighboring peasants, and urban poor families, including the claimants, who by then lived in the marginal neighborhoods of Córdoba's capital. Delegates of his, among them his sister-in-law and one well-known lawyer of the region, created an NGO in his name called Funpazcor –Foundation for the Peace of Córdoba-. With the help of notaries and registrars, they wrote down and validated the

²⁶⁰ In the region there is even the rumor that they tried to lure rich Venezuelans to buy the lands by downplaying the coercive power of the EPL.

²⁶¹ For an overview and analysis of the Castaños' first round of massacres and selective individual killings in the region, see Romero, 2003. The specific events of each of the massacres perpetrated in 1988-1990 period have been documented in detail by human rights NGOs, journalists such as Sánchez (2003, 2010) and more recently reports by the National Reparation Commission and the National Center for Historical Memory, now the Center for Historical Memory of the Colombian government.

deeds transferring property rights over the hacienda to the families selected for the donation.

Different histories of the event estimate that Castaño formally distributed at least 8,000 hectares in Urabá and Córdoba.

For a short period of time, the Castaños ceased their operations but resumed shortly after and launched an extermination campaign to extirpate the FARC, which was growing stronger in the area. From that point on, they renamed their group as the Peasant Self-Defense of Córdoba and Urabá (Romero 2003) –ACCU in Spanish . In 1994 the older Castaño was killed. Some sources say he was killed by FARC guerillas, others claim that it was at the hands of his own brothers and collaborators. His youngest brother, Carlos Castaño, took the lead and began to multiply the number of combatants in the force and expand its presence from Córdoba and Urabá to new territories.²⁶² In 1996, this second Castaño announced the creation of the AUC, a nation-wide counterinsurgent initiative modeled around the family's original death squads. Soon the AUC began incorporating paramilitary groups operating in other regions of the country to its ranks, whether by agreement or by force. It was at about the same time of the expansion of the AUC that, according to the land restitution claimants, delegates from Funpazcor and people who were known to collaborate closely with the sister-in-law (the lawyer had apparently died in a car accident), ordered them to give back the land.

Thus, for the Unit's advisor, Santa Paula was "THE case" in great part because of the prominent role attributed to the Castaño brothers in the emergence of the AUC, the most significant paramilitary organization of recent times, and the spiral of violence that came along with it. In addition, the Castaños were also deemed to be among the main promoters of the so-called "agrarian counter-reform," discussed in previous chapters, which was believed to have turned both the

²⁶² For a detailed reconstruction of the paramilitary "route" towards geographical expansion and military solidification, see Romero (2003, 2007).

agrarian and urban landscapes of the country into even more unequal and violent spaces than those emerging from the 1970s. Moreover, he also informed me that this was the hacienda Yolanda Izquierdo, a name I had heard somewhere before, had been killed for. Then he refreshed my memory: Ms. Izquierdo's name hit the national news when, after becoming the spokesperson for 800 other alleged victims in the trials of the Castaño commanders, she was killed on her doorstep in Montería, Córdoba's capital. She had interacted with the Castaños and their delegates consistently in the previous decades. She was a community organizer from one of the city's poorest neighborhoods and had intermediated between Funpazcor and poor families from different slums, so the latter would be selected for donations from the Castaños. She had also received a small plot of land in Santa Paula. But according to a report by the Historic Memory Group (GMH-CNRR 2011b) I had once worked for (see Chapter Four), Ms. Izquierdo stopped being someone who worked as a "bridge" (Ibid: 82) between Montería's poor communities and the local (armed or otherwise) elites, including the Castaños, and became a judiciary adversary.²⁶³ Hers was a death foretold. At the end of that year she made public the threats against her and begged state authorities for protection, and yet few weeks later she was shot.²⁶⁴ The episode received lots of coverage, and was presented by independent media and human rights organizations as symptomatic of the deep flaws of the demobilization process with the AUC and the JnP institutions created for their prosecution.

So the case had historical significance in that it constituted the first land restitution action against the legal and spatial order established by the Casa Castaño through violence, and also the ongoing impunity the organization had enjoyed so far. As I would find out later on, Santa Paula was a

²⁶³ According to this report, Yolanda Izquierdo provided a list with more than 600 crimes allegedly perpetrated by the Castaño's organization to the JnP prosecutors.

²⁶⁴ El Tiempo Newspaper. February 3, 2007. "Dos días antes de su asesinato, Yolanda Izquierdo solicitó protección a la Fiscalía": <http://www.eltiempo.com/archivo/documento/CMS-3425323>

physical space and a legal object where, and over which the Castaño family had repeatedly displayed its politico-military power, and had fabricated, distributed and reordered legal rights at will.

Processing the case, then, meant for the Unit officials showing that they were serious about dismantling property rights belonging to criminals like the Castaños. It would be the first act of subjection against them, as well as the first act of material satisfaction of the rights of their victims. Moreover, taking on the case was an act of government in Foucault's sense of bringing about the "the correct disposition of things." The case had the virtue of simultaneously realizing retributive and redistributive justice, reestablishing the rule of law and taking over the physical and symbolic territory of the AUC.

Moreover, Santa Paula was also "THE case," as he kept putting it, because it was an "easy one" from the legal point of view. I had already encountered this category in law school, and also later on in many settings of legal professional practice. The distinction of an "easy" and a "hard" case was a pedagogical device by which many of us in Colombian law schools had been taught "to think like a lawyer" (Mertz 2010). In general, easy cases were those in which facts, the evidence supporting them, and the interpretation of the rules invoked were regarded as hardly disputable if put under the consideration of any adjudicator. Precisely that same week I had heard a lawyer in one of our first meetings saying that the Unit was going to start with what he referred to as "the lowest-hanging mangos" (*los mangos bajitos*), which in this context seemed to coincide with the notion of an "easy case." Up to that point the Land Restitution Unit had received more than 30,000 claims in the form of oral narratives and had transcribed most of them into texts of various lengths and structure. And though the VLR Law and the derived provisions regulating the following procedures had enlisted a series of criteria for the Unit to identify the claimants that had to be given priority, officials could and had to exercise discretion to decide which among them to choose first. The "lowest mangos" then meant those within the Unit's immediate reach in argumentative and evidentiary terms and

ultimately, those that seemed to have a higher chance of success in court. More concretely, in this particular context, Unit officials, and especially its lawyers, used this expression to make reference to cases with facts that clearly fit into the new legal category of dispossession (*despojo*) with little or no room for objections or doubt from potential opponents or the judges, and regarding which there was plenty of evidence.

For the advisor, there was no doubt this was a case of unequivocal dispossession –and a highly documented and meaningful one. On one hand it involved the Castaños. So, in principle, it was dispossession, not only because this is what they often did, but also because the VLR Law (article 77) mandated that any deal involving land between an indicted criminal and a claimant must be taken as having been agreed to without consent from the former, and therefore, as an act of dispossession. From the perspective of the Unit when acting as the attorney of the claimants, this rule has the advantage that it does not admit counter-evidence. As he then told us, the sister-in-law, the manager of Funpazcor, had been indicted in 2011 for the murder of Yolanda Izquierdo. This was one of those rare instances in which an ordinary criminal court had established the individual responsibility of a former AUC member in a case of murder. So it was also an easy case from the legal perspective because of it was only a matter of quoting the indictment for the dispossession to be fully proven.

However, as I shall discuss in the remainder of the chapter, the case turned out to be far from an “easy one.” As procedures ensued, “the facts” of the case multiplied in detail, substance, complexity and historical depth and became harder to fit into the mandated legal categories of victim and perpetrator, and consent and force; and also into the narratives of paramilitary violence, victimization and land dispossession popularized among state officials, journalists and many politicians; in previous years. These narratives had been constitutive of the justificatory discourse in support of the VLR Law.

The case, I argue, ended up revealing some of the concrete practices by which legal operators intervening in land restitution procedures engage in what Comaroff and Comaroff (2012; J. L. Comaroff 2009) have referred to as the “the juridification of the past,” and the power effects of the specific reductions and augmentations which often structure the juridified past of “dispossessed lands and peoples” in post-conflict Colombia. The deployment of legal categories has become the preferred way of stabilizing history and attributing its effects.

But in addition to this strictly legal reduction, the case also revealed a set of additional social practices by which Santa Paula’s past was retold in a variety of settings until fitting into what I refer to as the *standard story of dispossession* – and whose narrative structure I will later discuss. Thus, narrative elements foreign to this standard plot gradually disappeared from the account. The implications of this standardization are multifold, as I shall argue, but let me anticipate two of the main ones. First, claimants would be freed from the complicated power relations they had entered with the Castaño organization, relations that could be received as morally unacceptable for a mostly distant and urban public opinion. Particularly, they were freed from the suspicion of favoring or having adapted to paramilitarism and were allowed to become easily acceptable victims. Conversely, the Castaños were turned into the full-fledged perpetrators of atrocities they had been in other circumstances, stripped from the complex power they exerted over the people and territory of that region of Córdoba and the admiration they might have enjoyed, and left only with the brutal violence that they certainly exerted, but which did not exhaust their role in the local history and in the history of the Santa Paula hacienda more concretely.

In what follows, I examine how the past of Santa Paula hacienda was juridified for purposes of reaching a verdict, but also how, quoting anthropologist Rolph-Michel Trouillot (2015), “the successive events within (the case) were systematically recast by many participants and observers to

fit a world of possibilities. That is, they were made to enter into narratives that made sense to (...) observers and readers (95-96)” -in this case, urban and politically influential ones.

Additionally, as announced, I examine the power effects, the implications, of these two simultaneous, mutually constitutive and “competing appropriations” (Trouillot 2015: 28). Following Trouillot, the Comaroffs and also the work of Iván Orozco (2012, 2005), I dwell upon the power effects of the resulting narratives and how, through the erasure of events (Trouillot 2015), the demonization and purification of characters (Orozco 2012), and the configuration of recognizable causalities, these pasts justified the production of a group of dispossessed peoples and on their behalf, the deployment of a range of symbolic and physical forms of violence.²⁶⁵

Silences, mentions and the juridification of the past

In his conceptualization of the process and conditions of production of history, Trouillot (2015) eloquently shows that historical accounts produced by both professionals and artisans of history are constituted by a mixture of contingent, and strategic, “silences and mentions,” which are necessarily structured by power relations, and in their turn, are constitutive of the latter. Similarly, the Comaroffs (2012) assert that even though there is an increasing faith in law as a means not only to adjudicate rights and correct wrongs but also, as Weld (2014) puts it, to stabilize and “adjudicate the past,” legal renditions of history are inextricably reductive and more often than not, doomed to flatten the social complexities and frictions they seek to resolve.

²⁶⁵ In 2012 I attended a talk by Colombian scholar Iván Orozco at Universidad de los Andes where he outlined his notion of the purified victim and the demonized perpetrator. In 2017 I contacted him to find out if he remembered the title he had given to the talk and whether he had written a piece discussing these two concepts but he did not. He kindly allowed me to reference to his work despite the lack of precise title and the unedited nature of the ideas that he presented and that I discuss here.

Indeed, and despite efforts from land restitution operators to generate nuanced histories, legal adjudication demands (re)constructed pasts of dispossession, notwithstanding their level of detail and complexity, to undergo a double exercise of appropriation, one discussed by Trouillot and the other by the Comaroff. The first is structural to the production of a chronological narrative organizing events that are either constitutive or disruptive of human-land ties. This narration is necessarily incomplete and although it depends on the goals and choices of the narrator, it is conditioned by a series of contingencies and narrative structures that limit his or her ability to know and account for a certain past. During the process of juridification, in addition, legal narrators idly match this sequence into a series of legal categories that are often mutually exclusive –such as the victim-perpetrator binary- and that do not allow narratives transgressing the integrity of such categories to keep their own narrative integrity. This juridification also demands the resolution of ontological uncertainties, moral ambiguities and epistemological oscillations. In sum, it requires a definite verdict. The narrator must engage in an act of “veridiction” and experience what is being told as such.

Observing transitional justice practices in Colombia, Orozco (2012) once referred to this exercise of appropriation “as the total purification of victims and the total demonization of perpetrators,” and suggested that in different settings in the country, narrators and adjudicators were looking for and also enacting a total moral and ontological separation between one subject and other. But as he then noticed, the trajectories of most of the people involved in the stories of war defy this binary. However, the many legal provisions and apparatuses that participate in the production of both victims and perpetrators and the allocation of rights and guilt, demand victims to be pure, free from any participation in the political and military processes that are being judged. This either invalidates their “genealogies of injury” or forces them and their supporters to reduce their trajectories to the injuries suffered, and hide or simplify their moral choices. In practice this means they need to deny

their decided engagement with one of the parties in conflict. So, ironically, in order to be a victim of conflict, victims need to have been on the margin of conflict and only participate in it as passive recipients of violence.

Weld (2014) and more recently also Nelson (2015), have noted a similar trend in the many efforts directed to frame Guatemala's history of state-sponsored violence and insurgent politics as a history of Mayan genocide. Such narrative endeavors, have had the paradoxical effect of leading to the "end of agency" – as Weld phrases it- of the very same Maya communities this juridified past seeks to vindicate. Claimants have been strategically and contingently represented as politically passive, without a political agenda, and without ties with the left. She also notes that as the history of violence became increasingly ethnicized, the stories of non-Mayan victims became increasingly illegible. This end of the agency of victims or demands to underplay their capacity for political (and military) action is pervasive in most of the histories of victimization –and land dispossession- that are constructed and ratified through legal means in Colombia.

Finally, as I shall also argue, the juridification of the past occurs within a narrative environment that is influenced by law and its structures but also by the professional and popular histories that circulate in, and dominate, the political common sense. In the case of land restitution in Colombia, and of Santa Paula in particular, the operators constructing the many accounts of dispossession being crafted in the administrative and judiciary settings turned to non-legal sources for reference to the past to be validated by legal means. In this sense, in land restitution procedures and other judiciary practices in Colombia meant to recover the past, there has also been a turn to the methods and concepts of the social sciences as a new way of enhancing the "forensic reconstruction of the past" (Comaroff and Comaroff 2012), and towards the authority of professional and also lay historians to establish that past. As a consequence, those narratives that have been elevated to history in non-legal but still authoritative settings are being increasingly used to outline and confirm

the legal facts of cases and thus, indirectly decide the subjects and the objects of land restitution. Thus, the dependence between law and history for mutual validation is often a two-way dynamic, even if at the end the history with effects in the ground is one ratified by legal operators. But again, they do not operate in a narrative vacuum. This has a lot to do with a longer history in Colombia of overlap and mutual co-constitution between academia and governmental plans to understand and tame “violence” going back to the late 1950s (Jaramillo 2014). Now, this is not say that the relation between the socio-scientific accounts of history and the legal ones is horizontal, for it is often the case that the latter are the main sources of the former. Rather what I want to note the recent trend of using what academia and journalism have produced (often based in legal decisions) to decide the law in addition to using legal renditions of the past to do academia or journalism.

The case of Santa Paula brings into light some of the regimes of (historical) truth production in which those of us crafting the facts of that particular dispossession -and I include myself because of my very active participation in this exercise- are embedded, and which define Trouillot’s “silences” and “mentions,” the complexities and the reductions available to us as we sought to gain certainty about the past and provide a verdict. My experience as a “context analyst” within the Unit was one of being confronted with the urgency and inevitability of affixing the past despite time and resource constraints, irresolvable disagreements between rival interpretations and interpreters, and the wide but still limited horizon of available legal categories and possible histories. So overall this chapter is about the interplay between legal reasoning and the writing of history in the practices of production of dispossessed subjects and lands, and the agency but also the inertias that as narrators of past we are often caught in, especially in relation to a highly violent and painful one.

A corollary of such analysis then, is that both the production of law and of history –and of “truth” more generally- needs to be simultaneously addressed when seeking to understand the configuration of subjects of rights who, as in the transitional justice paradigm, derive these rights

from the past. Asserting the semi-autonomy of the law; or artificially isolating the production of the law to that of pure rules as prescribed by some of the dominant liberal legal ideologies, or on the other hand to the exercise of agency, or a certain kind of activism in a cultural vacuum, is anti-ethnographic at best. If the legal field is one constituted by subjects who manage to accumulate legal capital and impose upon others their interpretation of the law by showing that it is the most consistent with the internal coherence of the legal system, then one could add that adjudication also depends on the rendition of facts, and in this context on a “good historical narrative” and the employment of means of validation, in terms of coherence or convincing rupture with previously known narratives. The porosity of the legal field is thus infiltrated decisively by this “overlapping” but “distinct” field, that of historical truth-making, and it is by means of their interplay as it is practiced by agents who utter both law and history that justice by means of the formal law is made and denied.

Trouillot (2015) has productively called attention to the “irreducible distinction” but also “the irreducible overlap” between two notions of history: history understood as “what happened” or “the socio-historical process itself,” and history understood as “that which is said to have happened,” this is, history as “our knowledge” of what happened and the stories people tell “about that process” (2-4).

As Trouillot shows, understanding the tension between these two histories is key for the study of the process and the conditions of production of the past, and the practices by which its fragments are contingently and sometimes strategically silenced or made audible and weaved together into a valid account of history-as-process. One of his main points is that some of the theories that deny this simultaneous distinction and overlap tend to treat history in the sense of narrative as just another kind of fiction. The problem with these theories, he argues, is that they fail to recognize that the practice of narrating history has a series of distinctive sociological features that make it clearly

different from fiction, in particular “its pretense of truth” (Trouillot 2015: 6), the specific practices of validation that accompany it, and also its truth-effects or implications. Indeed, history is nowadays often used in politics or law to assign historical and legal responsibilities, establish causalities and direct the pretended “legitimate” violence of the state against the people deemed to have caused destructive historical changes. Most crucially, and paraphrasing Arjun Appadurai, Trouillot notes that when the two meanings merge, history-as-narrative is extricated from the “rules about the debatability of the past” (Trouillot 2015: 8, taken from Appadurai 1981) that operate in the particular social context from which it emerged in any of its versions. Indeed, he reminds us, anyone is both a subject and narrator of history and as such, his or her actions, including the act of narrating the past, are both historically situated and constituted. Thus, the kinds of histories that anyone can tell are themselves the effect of history. This is also true of fiction, or any other non-historical narrative. But the production or practice of history as a distinctive genre of world-making implies the notion of “pastness” and demands a specific type of “credibility” (Trouillot 2015) that differs from that of fiction.

As I see it, in their work, Jean and John Comaroff (2012. See also J.L. Comaroff 2009) show that one of the most significant shift in the “rules of decidability” and the validation of the past in the last twenty five years is what they refer to as the “juridification of the past.” This shift, they suggest, can be observed in places like South Africa, Colombia or Spain, and many other localities around the world where the production of history has not only been progressively entrusted to the law and its operators, but where, as part of the practice of politics, history has also been put to trial. In their words:

“Whether or not history as we know it is dying, it appears increasingly to be caught in a juridification of the past; the process, that is, in which the rights and wrongs of historical acts and facts, and the claims arising out of them, are subjected to the determination either by legal procedures or by their simulacra” (J. Comaroff and Comaroff 2012; see also J. L. Comaroff 2009)

Their argument suggests that there are at least four interrelated sides, or aspects, to this mounting juridification of the past. The first is the augmented trust in the law's forensic procedures and devices to establish the historical past. One of the assumptions at work in these different settings they discuss is that legal methods of inquiry, evidence collection and fact-finding, do offer a privileged access to history in the sense of history-as-process, and to "truth" more generally. This observation certainly resounds with Foucault's commentary about the truth-effects of law. As discussed in the previous chapter Foucault (2001, 1976) notes that law is a species of the "*discours vrai*," to the extent that rulings and also legislations declare the existence of things and people and the occurrence of "facts and acts." This existence and occurrence is then performed by the extensive and engrained law enforcement apparatus of the state. However, this observation complements Foucault to the extent that he does not unravel how law acquires its ability to dictate the truth.

The second augmentation, closely related to the previous one, is the increasing trust in the law's ability to not only accurately reveal history but also to adequately substitute violence and "compel transformation," but without the devastation of the former. This second assumption, which is the basis of what the Comaroffs have referred as "the fetishization of the law" (Comaroff and Comaroff 2008) is double: that law is not violent or that it is violent but somehow it is able to channel violence in such a way that it is magically exempted of the socially destructive effects of non-legal violence such as the desire for revenge. The second is that law can also adequately channel social claims, prompt change and, in so-called transitional contexts, provide closure.

The third augmentation involved is both geographical and historical. The juridification of the past is certainly not new, even to the point that it could be argued that the modern or "scientific" construction of the past has always relied on the paper trail of the law. Both lawyers and historians have been deciding the past since history as a profession was established as a distinct field within the social sciences in the 19th century. It is still true, however, that in the last decades, with the

globalization of good governance dogmas, the human rights discourse and in particular the adoption and adaptation of the transitional justice orthodoxy by many governments around the world, in a growing number of localities law has increasingly become one of the preferred means by which history is revealed, stabilized and used to act upon the present and dictate the future. Increasingly, it is by means of law or its “simulacra” (Comaroff and Comaroff 2012) that many stories are being turned into history.

The final augmentation the Comaroffs’ argument points at is the increasing significance of the past in the configuration and resolution of political disputes. In the last decades, there has been a growing preoccupation in different polities with the vivid present of recent but also long-gone pasts, and the need to configure, and address, “unresolved” debts. This “guilt of nations,” as Barkan (2001) puts it, has come in tandem with transitional justice mechanisms and litigation aimed at compensating damages caused to past generations, but is somehow also constitutive of the hardships endured by present and living ones. In Colombia, as I have discussed in previous chapters, a relatively “new but old in its aspiration” discourse of debt with a “peasant-victim” population has been at the crux of the changing political topography of the past ten years, and the establishment of a whole new bureaucratic and judiciary apparatus directed to revert land dispossession and more recently, to build peace with the peasant guerrillas of the FARC.

Now, as the work of Comaroff and Comaroff suggest, there is still a somewhat irresolvable paradox in the “juridification of the past.” Even though law and history might have become interdependent in their mutual validation, they still constitute two entirely antithetical narrative genres. Histories can accommodate a plethora of details, account for nuanced twists and dwell around morally ambiguous behaviors and relations without demanding judgment or resolution. “Complexity, contingency and nuance,” it is often said, its the motto of most professional historians nowadays.

But the practice of law, on the contrary, demands reduction to achieve justice. As Geertz (2000: 173) once famously noted, law “is a way of imagining the real.” More than a system of rules that are then matched with facts by means of what often lawyers are taught to refer to as a “syllogism,” it is a system of representation of what can pass as “real.” And as a system it is a structured and often rigid, in the same way that language operates as “langue” in Saussurian theory. Geertz puts it eloquently:

The realization that legal facts are made not born, are socially constructed as an anthropologist would put it, by everything from evidence rules, courtroom etiquette, law reporting traditions, to advocacy techniques (...) raises serious questions for a theory of the administration of justice that views it as consisting (...) of “a series of matching of fact-configurations and norms” in which either “a fact situation can be matched with one of several norms.” If the fact-configurations are not merely things found lying about in the world and carried bodily into court, show-and-tell style, but close-edited diagrams of reality the matching process itself produces, the whole thing looks at bit like sleight-off-hand (Geertz 2000: 173).

Legal facts, however, are different from historical, mythical or fictitious facts not only in their allegedly proximity to truth but in their “skeletonization” (Geertz 2000; Good 2007; Rosen 2006). In social practice, legal categories are used, and often created, to reduce complexity –exactly the opposite of historical accounts. Such was the case, as I have argued elsewhere, of the legal category of dispossession in Colombian legislation. So going back to Geertz (2000: 173): “What the law is after, is not the whole story”. Or history. Thus, juridified pasts flatten and simplify the fleeting and continuously reimagined historical process. Parallel and intrinsic to the four augmentations then, there is this inevitable reduction. They argue that in the case of South Africa, “There is a significant move afoot to redefine colonialism itself as a culpable offense –thereby to reduce history to the language of torts, of plaintiffs and perpetrators, injuries and liabilities” (2016: 138).

The concomitant production of micro-histories of dispossession and subjects of rights in Colombia

As I write, the juridification of the past is a techno-political project in full operation in Colombia. With the approval of the Justice and Peace legislation in 2007 (Chapter Three), the Victims and Land Restitution Law in 2011 (Chapter Four), and the introduction of a new set of techniques of incrimination to prosecute crimes, an increasingly complicate, voluminous and powerful institutional complex, devoted to the juridification of our intricate past and its translation into a similar list of perpetrators, victims, criminal acts and injuries has been set in place. “Our war without name” (Gutiérrez et al. 2006), and the many aggressions between strangers but also intimate enemies, is being translated by an abundance of state-sponsored narrators, operating in at least one of these different truth-telling regimes, into a conceptual grid of legal categories extracted from criminal and private law, and into a language of rights and obligations. Moreover, as I write, an additional regime of veridiction that emerged from the recent peace agreement with the FARC is being installed and is expected to start operating before the end of 2017.²⁶⁶ Each of these sub-complexes has its own political and social history of formation, and points of friction and overlap with the others. In each one the production of subjects of rights, and bearers of criminal, private or historical responsibility is structured around its own forms of reduction and regimes of silences and mentions.

Along the way, the production of history and of legal decisions have become increasingly entangled and have also come to be the preferred way of authorizing each other, with some of the effects that the Comaroffs point at in their work. The history of paramilitarism, in particular, has been rewritten and reassessed with the implementation of the so-called Justice and Peace Law (JnP),

²⁶⁶ These three or four different jurisdictions have operationalized entirely different regimes of truth-production and administration. In addition to the bureaucratic and judiciary apparatus created by the Victims and Land Restitution Unit directed to process and decide cases of land dispossession, there is the Attorney General’s Office (the Office), with its many sub-units of prosecutors. The Office is in charge of the application of the Criminal Code and the prosecution of “ordinary” crimes and criminals, and also of the implementation of the “extraordinary” transitional justice legislation known as Peace and Justice (JnP). One of its JnP Units, the so-called Asset Persecution team, has been charge of pressing charges against AUC and FARC commanders for forced displacement and to seeking the restitution of the assets involved. The parallel criminal-military jurisdiction investigates and punishes members of the armed forces. And just recently, as I write, the Santos administration is preparing the implementation of the “Special Jurisdiction for Peace,” that will offer defendants in all the previous jurisdictions the possibility of mitigating the punishment in exchange of the “entire truth.”

discussed in detail in Chapter Three. The confessions –and parallel informal interviews- of AUC commanders prosecuted under the derived trials and the additional evidence gathered from their alleged victims have become the basis for a new series of histories of paramilitarism and its expressions. The Center for Historic Memory (known before as the Historic Memory Group), for example, has used the accounts of survivors, and also the confessions, to generate dozens of historical reports. This has also been the case for a series of new journalistic and academic initiatives to re-narrate history that use legal decisions and evidence as their main sources of historical truth. One of the most notable in terms of its systematic analysis of findings and decisions of the JnP trials is the news portal *Verdad Abierta*, Open Truth. But conversely, the histories of the Center, and of these non-legal “narrators,” have also been profusely quoted by legal operators, whether during the process of imputation or in the final ruling, to construct their legal facts, identify crimes and produce victims, perpetrators and injuries. Thus, although separate in terms of the setting, processes of production, and authors, these different pasts have contributed to the formation of each other through a process of intensive inter-textualization.

This is critical in the case of land restitution procedures. Those aspects of social life that do not fit the legal categories that legal operators must mobilize to confirm or discard an act of dispossession are either excluded from the rendition of legal facts or made irrelevant at the moment of translation. Even if legal operators are attentive to historical complexity and detail, as I would argue is the case among the Land Restitution officials of the “Context Analysis” team or in other alike institutions, their lawyer colleagues are still compelled to enclose intricate histories into univocal categories -a homicide, a breach of contract, an expression of consent, the violation of a set of rights- in order to make a legal argument that is intelligible as such in court. And each of these categories has its own reductive effects. Criminal types tend to extricate individual behaviors from context and apply upon them rigid binaries: guilty/not guilty, victim/perpetrator. Private law

concepts such as property transfer or the more general notion of the “legal act” also demand simplifications in relation with intention, consent and power relations.

As discussed in previous chapters, the Land Restitution Unit was entrusted with the task of admitting or discarding land restitution claims by establishing “the factual circumstances” of “time, mode and space” of the occurrence of dispossession, and determining whether there was a causal nexus between the land tenure disruptions being claimed and the more general phenomenon of the armed conflict. What I experienced as one of the persons in charge of doing the analysis of both circumstances and causality, was that this nexus or connection and therefore the application of the concept of dispossession depends on the historical narratives available or those that potentially exist concerning the violent actors and the rural communities involved. If the causality is not “there,” the disruption of land tenure or of its formal legal representation “becomes” something else, different from dispossession: a bad deal, an eviction in terms of the Civil Code, an ordinary crime of usurpation, or a loss that, although socially serious, is not legally relevant. To establish the so-called “factual circumstances” and connect them causally with the armed conflict, some Land Restitution officials were entrusted with the task of digging and crafting micro-histories of local violence and transformations in land use. The need to generate reliable histories, as part of the larger efforts to produce administrative and judiciary truths about the past of dispossessed lands and peoples, was in great part the logic behind the creation of the Context Analysis Group which I was a part of during my fieldwork.

Thus, going back to Weld (2014), land restitution can be said to be about the adjudication of the past as much as it is about the adjudication of property rights. Although the Land Restitution Unit was not expected to produce an official history of land dispossession, it is nonetheless actively stabilizing many agro-political and military histories, and defining the contours of the so-called “agrarian counter-reform” of the 1980s and 1990s. This stabilization, occurring along the

administrative and judiciary stages of the procedures, is real in its consequences for claimants, current owners and tenants, as well as any third party with interest in the case, in the sense that rights and duties are allocated according to the facts and truths about the past of land dispossession produced along the way.

By this I do not mean to deny that as a collectively perpetuated system of representation, law does not allow for flexibility. Creative participants can enact the invention and stabilization of new categories, or the redefinition of old ones, as long as they manage to justify these new elements as expansions and adaptations of the same system and thus honor at the same time the aspiration to internal coherence and to some extent also to justice. This is certainly the case of the legal concept of “dispossession,” introduced by a group of lawyers into the VLR Law back in 2008, and also the field, baptized by them as well, of “transitional private law.” But dispossession does require, in any case, a certain reduction, as is the case with Article 77, which treats any interaction between people indicted and people claiming land as an act of dispossession. In general, this is true of any other legal concept regulating social interactions. Although a particular transaction, for example, could be typified according to a variety of legal categories at once, some of its social elements will always be left outside. Whether a crime or a breach of contract, none of the labels fully encompass what happened. The point, however, as the work of the Comaroffs suggests, is that for the juridification to happen, even despite efforts to grasp the complexity of historical process, a reduction is still necessary for rules to be applied since these can only operate with regard to a chronologically organized sequence of so-called “facts.” This is true both for the Land Restitution Unit as it is for the other apparatuses and regimes of veridiction.

Now, to complement and also introduce nuance to the argument of the juridification of the past, as it has unfolded in this particular setting, I want to argue that it is also true that just as history has become increasingly dependent upon law to validate itself, law is also thoroughly dependent upon

those narratives and those narrators who have come to be attributed with historical accuracy. The Land Restitution Unit is an instance in which not only official reports but also certain academic histories, journalistic accounts and human rights reports are themselves taken to be representations and even “evidence” of “facts.” In other words, these reconstructions, and their authors, have been granted authority to establish the past. This has happened with land restitution claimants who, in addition to being treated as subjects with the right to know the truth, are also given the prerogative, the right, to speak it. As I have argued throughout the dissertation, one of the political effects of the VLR Law has been the redistribution of the means for truth-production among claimants, non-judiciary narrators of history and non-official producers of statistics, maps and accounts of the armed conflict.

Also, as discussed in the previous chapter, it is certainly the case that many Unit officials come from the academia, human rights NGOs, alternative journalism and the political left, and as such many validate the representations of the past produced in these different sites. This is partly why right-wing politicians have accused the Land Restitution Unit of not being neutral, and even being infiltrated by the insurgency when processing the cases. In the political cosmivision of these critics, many human rights organizations and activists are ideologically aligned, if not organizationally subordinated, to the insurgency, and their mission is to use law to wage war through other means. Armed forces officials refer to this as “lawfare,” the same term that the Comaroffs have used to describe the judicialization of politics (2012, 2008). From this right-wing perspective, both litigation and human rights reports are “weapons” used within this war through judiciary means. The regime of truth at work, which admits histories and statistics crafted by human rights organizations, delegates them the judiciary representation of some of the claimants and gives the latter the right to not only know the truth, but to also contribute to its stabilization, is viewed as a subtle but dangerous form of subversion of the political order.

Moreover, at the same time that the production of historical truths is increasingly entrusted to legal operators or their simulacra in that they imitate “the structure of the trial” and use the means of forensic truth-making typical of legal procedures, the Land Restitution Unit has sought to fashion some of its actions around academic models of knowledge production. This has come from both the anxiety caused by the reductive effect of available legal categories and the need to better understand power relations so as to match behaviors and events disrupting human-land relations with the category of dispossession developed by the VLR Law. Unit officials quickly realized that dispossession is not a thing lying out there in the world but rather a construction emerging from an analysis of power relations, causality and less evident elements, which requires a historical understanding of the past.

This chapter, then, explores the mundane practices and the micro-politics behind the production of histories –along with its many reductions, and augmentations- in relation to the claimants, and the lands, of the Santa Paula hacienda. It also explores some of the questions that emerge from the Comaroff’s work: what kind of past is a juridified one? In addition to the skeletonization of facts, what else is different and distinct? Why is it powerful and how does this power express itself? What distinguishes a past that is journalistic or properly “historical,” from a juridified past in terms both of its narrative structure and force? How does one kind of past intersect and constitute the others? More importantly, what kinds of historical subjects emerge from a juridified account of the past and with what consequences for them and for others who are denied this configuration? How does the force of law, and the violence intrinsic to it, shape their past and their present?

Truth-making in the Land Restitution Unit: in search of Santa Paula’s dispossession

“Facts are made”: *los hechos son hechos*

Earlier that day, before my encounter with the director’s advisor, I attended the first meeting of the

new “Context Analysis Group,” as we would then refer to ourselves. For lack of space we met in a conference room in Bogotá’s local land restitution office, rather than in the national headquarters. Initially, the Group was only six people in total. Pereira, a lawyer and sociologist in his sixties, was the supervisor. There were four analysts (five by the end of 2012), me included, and a cadastral engineer who could quickly construct maps and produce statistics about violence based on official databases.

In our individual encounters with Pereira, he had already explained to us analysts that the purpose of the “context analysis group” was to find out the truth about the context of the different events of dispossession under the Unit’s consideration. And in this first collective meeting he wanted to give us some general guidelines about what he imagined a “good context analysis” would be. There was no predefined manual or protocol indicating what “good” meant. The only thing clear was that “context analysis” was both an exercise and a text, the latter the final product of the former. Later on I would find out the hard way that within the Unit, and against Pereira’s criteria, there would be many different opinions of the meanings of what a context analysis, and a “good” one, was: something fast to write and read, or long and rich in details, short and to the point, cheap in terms of labor and time, convincing –whatever that meant–, complete in terms of sources used, accurate in terms of absolute truth, sophisticated from an anthropological perspective, “scientific,” with references to individual claimants, or without them, and so forth.

But in this first meeting, Pereira compared the analysis of the context of a particular dispossession with the work of the surgeon: “we have to isolate *el despojo* (the act of the dispossession) as with a scalpel” and “extract it from the rest of social phenomena the claims will reveal to us.” Later on, the metaphor would change for many us, and we would come to understand *despojo* as a process rather than a single event.

As for the research method and our sources, he recommended we go through the statements of

the people claiming a particular piece of land and discard “the anomalous ones” –those that did not fit certain patterns- while relying on the ones that coincided to construct our facts. Claimants were the main narrators; they knew, better than anyone, what had happened. Pereira’s position on the matter was legally mandated: the VLR Law ordered the presumption of good faith to be thoroughly applied to claimants and the burden of proof to be transferred to current possessors and owners. But his position also derived from his conviction that people’s stories were the raw material of truth. He was not naïve, though. He had already told us that the great challenge was that Colombia “was full of Colombians,” meaning that among the claimants we were going to find opportunists, liars and even infiltrators from armed organizations.

I disagreed that we should discard those with divergent facts, though I am not sure if I said it out loud. Given my anthropological stand on matters of memory and narrative practices, I left a note to myself in my notebook: “What about conflicting memories and perceptions of the past?” But I left it aside as he turned to the urgency of initiating our first analyses.

He informed us that up to that point, August 2012, the officials of the Unit had received claims for approximately 25,000 properties with an average of 1,200 arriving every week since February. Most of these claims had been rendered in the form of an oral statement in the local offices that had opened early that year in a dozen cities around the country. Claimants would meet individually with officials who would ask them to tell their story, following a series of pre-defined questions asking about their personal circumstances before, during and after the events of dispossession. Meanwhile they would record the answers directly on their computers, although many of the first ones were inscribed by hand.²⁶⁷ In some cases, when having access to internet and a cadastral engineer, the claimant would also be asked to locate the property being claimed using Google Earth. The claims and the claimants’ contact information were then uploaded onto an internal database very few

²⁶⁷ Later on, in addition to the written inscription, officials would also be required to capture the story in audio.

people within the Unit had access to at that time. The person who managed it was extremely strict and openly reluctant to allow any of the new hires to use the database because of fear of leakages and breaches of confidentiality. As word got out that this database existed, however, many producers of history –official, academic and non-governmental ones- approached the Unit with the hope of checking out this “gold mine” –a metaphor often used by them- and in exchange offered, from their perspective, equally valuable tools for truth. One of them outlined a plan of data-mining that complemented individual interpretation with the introduction of algorithms.

In addition to the digitized stories, the Unit had already begun putting together what was referred then as “social” or “community-based proofs,” a new kind of proof that Unit officials were resolved to convince judges to admit despite their rather heterodox nature. Since my first interactions with my new colleagues, I was informed that the social teams in offices around the country devoted much of their time to crafting these proofs. The construction of these “proofs” required meeting with groups of claimants for several hours and collectively formulating with them two kinds of representations of facts: a so-called “social cartography” or map (*cartografía social*), showing how land was divided before the event or process of dispossession, and the approximate locations of specific events of violence –whether crimes, human rights violations or acts of war (such roadblocks); and a timeline that organized chronologically those same violent events and others directly related with the despojo in question. Both “cartographies” and “timelines” had to be inscribed in a medium that would allow its incorporation into to the case file. However, in those early stages of the Unit, each office conducted the exercises its own way, despite efforts from the national team to implement standardization. Maps were often hand-drawn on large pieces of paper, or on blackboards and then photographed. The same went for timelines, although some offices, for example, had turned them into written reports in which they narrated year-by-year the most relevant events consigned in the physical representation. In the production of such representations, no single person was responsible

for stating the occurrence of the facts therein inscribed. Rather it was a collective construction in which “the mentions and silences” about the past finally included were detached from the specific persons uttering or validating them. In some cases, the final “narrator” was the team of Unit officials leading the exercise.²⁶⁸

Then we turned to the question, as someone phrased it that day, “What are our facts?” If we had to dissect them as surgeons do, we needed to know what to look for.” Pereira proposed we look for the following “key” facts, which I wrote in my notebook. First, the facts of violence at the time of the despojo in that particular region. By facts of violence he meant criminal types: episodes of forced displacement, kidnappings, other extortion practices and of course homicides, forced disappearances, massacres and other such juridified and quantifiable violent events. For the non-lawyers in the room this required checking out the Criminal Code and human rights legislation. Second, we had to identify, if we could, the armed actors presumably responsible for those acts. He encouraged us to find the names and histories of specific persons such as paramilitary or guerrilla commanders and mid-ranking operatives- rather than simply focusing on pinpointing a “front” or “block” on the organizational chart of those armed organizations. Third, we had to try to document what he referred that day as “transfugism,” which he defined as the “convertibility from victim to perpetrator (and vice-versa).” The two of us had already discussed the need to complicate and, if we could, to overcome this simplified and problematic binary in our accounts of dispossession since, as many researchers of the armed conflict knew, people’s life stories transgressed the binary and were much more complicated than any of its constitutive categories could account for. We knew that at

²⁶⁸ Eventually, land restitution judges reacted in a wide variety of ways to the social proofs. Each of them granted to these representations diverse truth-values. The most radical rejection I witnessed was by a justice who questioned the validity of social proofs because no specific individual could be held accountable for it, and even suggested that this apocryphal narration was no different from fiction or rumors. Others, on the contrary, applauded these proofs as a useful tool to solve the inscrutability of the country’s violent past, since violence itself had prevented state institutions or the media from recording events in a reliable manner, while on the other hand silencing survivors and witnesses.

least two sorts of risky reductions were in operation. On one hand, they were often used as mutually exclusive, thus leading people to present themselves or others as one or the other, not as both. A second kind of exclusion was internal to the category of victim itself. Victims were expected to have acted in unmistakably ethical –and certainly legal- ways despite their trajectories and regardless of whether they had been outside of the grammar of the state, and most importantly the state as idea outside of them (Abrams 1988). Conversely, perpetrators were demonized, so that their entire life trajectory was expected to fit within narratives of illegality and evildoing. Finally, victims and perpetrators were often expected to be socially separated, with no strong social ties or shared experiences and to have come face to face only in the moment of the particular crime or human rights violation.

And thus we were enthusiastically discussing the problems of each category when one of the analysts reminded us that, although important, the attempts to complicate the binary were of no use since the VLR Law excluded active and former members of armed organizations from the category of victim. Indeed, this rule would soon become a source of frustration and in some cases of relief. While some officials would face the dilemma of whether emphasizing one of the two sides of the binary, for other Unit officials, this would help them avoid the burden of the ambiguity.

But back then, in the meeting, we figured that the first practical problem would then be: how could we decide in a definitive manner that someone was part, or not, of an armed organization? Where or how should the line be drawn between the “inside” and “outside” of a guerrilla or paramilitary group, especially in a place that had been controlled –even governed- by them and where, in addition to the use of violence, they also engaged in the provision of basic social services, the organization of collective projects and so forth? What to do with people subjected to these organizations and who, conversely, had come embody and enact them at a variety of registers? After a short silence Pereira resumed. “We will sort that out later. For the moment our facts are

those enlisted in Decree 4829 of 2011.” He pulled out a copy of the said provision and began reading. Our facts involved, as I noted in my notebook:

- The piece of land: location, size, legal ID, and current physical and legal status.
- The legal relationship between claimant and piece of land: is the claimant an owner, an adverse possessor, an occupant? Or a tenant? This later would disqualify the claim for purposes of restitution.
- The temporal, spatial and modal circumstances previous to, concomitant with and following the facts of dispossession.

In terms of temporality, the facts of dispossession had to have occurred after January the 1st, 1991.

As for the spatial aspect, the estate in question had to be located within the macro-zone in order to be processed. The macro-zone was an area covering about a third of the national territory which had been agreed upon between delegates of the Minister of Defense, Agriculture and other high-level officials. The distinctive feature of the area was the existence of sufficient security levels to protect both claimants and officials from aggressions by armed organizations. Finally, in relation with the so-called modal circumstances, “we,” the Unit, had to determine the facts of dispossession: what had happened? Or, as human rights manuals often put it, we had to be able to answer the question: “who did what to whom?” But in addition, Pereira noted, “we” had to determine if the event or process of dispossession was causally connected to the armed conflict. Family violence, ordinary non-conflict related crimes and others kinds of violence were not part of “our facts.”

Finally, he closed the meeting with a series of advice about the drafting process: avoid strong qualifiers or adjectives; take extreme care with quotations and references; and so forth. Then, the other supervisor, who had joined us while Pereira talked, distributed responsibilities among the new analysts. Each of us was given the task of helping out two or three local offices, distributed according to our expertise. In my case I was given Córdoba and two other states. It was then that I was told that the office was going to initiate operations with the Santa Paula case and that I had to contact the director immediately, as well as the sociales and lawyers he had assigned to the case, in

order to coordinate efforts.

Castaño's peace, the donation of Santa Paula and the claimant's experience of force

I was given their email addresses and mobile phone numbers so that I could introduce myself. The two sociales, women in their late twenties, had spent the previous months conducting in-depth individual interviews with each of the hacienda's claimants and now they were in the process of transcribing the audios. Meanwhile, we agreed over the phone that I would browse the Unit's database in search of the initial statements the claimants had provided. At the beginning they sent me an Excel file with a list with the number assigned to each claimants, instead of their names. They explained with some nervousness that they had concerns about the safety of the claimants. Apparently, some of them had been approached in the previous weeks by men who inquired about their dealings with Unit and offered them money to desist from the procedure.

As for the past, and the specific story of Santa Paula's dispossession, both of them would give me very detailed accounts of what had happened according to the claimants, but they had not written any of it down. I realized that was my job. Because getting permission to access the database was going to take a while, my supervisor decided to give me her username and password so that I could begin studying the claims right away. So that day I stayed in the office until past 10 pm and began reading the eighty claims that were linked to Santa Paula. The claims had been incorporated into a form divided in three main sections - "before," "during" and "after" the despojo- and organized around a series of questions inquiring about the situation of the family and the estate in question during these discrete moments. The transcriptions had been done in every conceivable narrative modality: verbatim, first person narrator, third person narrator, or a mixture. Each fragment ranged from one paragraphs to several pages long. I came across one that simply read: "they said I had to leave, so I did" and in some cases they had been left blank. Most of them were completely devoid of punctuation and were written from beginning to end in capital letters. They were tiresome to read

and at the same time, extremely exciting.

Slowly, the stories stirred images of the people talking or being talked about, and a foggy but increasingly richer picture of their interactions and what “had happened” among them began to emerge in my head. The claimants offered recurring dates, places, names and events; and also peculiar details to their individual stories. And then, when my colleagues sent me the transcribed interviews I got even more substantial details. I was also given a copy of Santa Paula’s record of legal transactions and the deeds prepared by Funpazcor at the time of the donation. In addition, at home and on my laptop I had copies of the many journalistic, academic and judiciary “histories” about the Castaño’s in circulation at that time among “experts” and “legal authorities” including Reyes’ work (2009), that of the National Reconciliation Commission (GMH-CNRR 2011a, 2011b), Romero’s (2007, 2003) and Medina’s (1990).

One of the most recurrent histories was Carlos Castaño’s My Confession (Aranguren 2001), a controversial book released in the peak of the AUC’s counteroffensive and based on a series of extended interviews he granted to a journalist. I had read it with dread and rage when it first came out; then I had turned to it as a source of historical knowledge to be handled with great caution; and then, in this third re-reading as an ethnographic object with agency, which I needed to track down. In the text, and in a series of TV interviews granted at around the same time of its release, the youngest of the Castaños presented himself and his family as tragic heroes forced into war, denied the direct involvement of the AUC in drug trafficking and referred to many of the people killed by his organization as “undercover guerrillas,” military targets and casualties. Still, in the book he confessed to compromising truths such as the assassination of Carlos Pizarro, the head of the M-19 guerrillas, right after signing peace, and also mentioned his brother’s land program.

I had also begun scouting the digital and physical archives of national newspapers located in Bogotá in search of news clips about the cease-fire agreements between the Castaños and EPL.

Pereira wanted me to find the two interviews that Fidel Castaño had granted in his lifetime, one to a major newspaper back in 1994 and the other to a group of researchers, including Alejandro Reyes - one of the VLR Law promoters and the advisor of the Unit's director and the Minister of Agriculture. He helped me get in contact with Reyes, once again, who kindly offered me the transcription of the interview, and through him I made appointments with the authors of some of the authorized histories who lived in Bogotá so that I could contrast and enrich what I had come to be convinced had been "real" with their accounts.

Three weeks later, and barely in time to meet the deadline, I had a twenty seven-page single-spaced document showing that the claimants had acquired property rights over Santa Paula in the midst, and as part, of a series of peace-building initiatives involving the EPL, the local and national state authorities and the Castaño organization. Unlike ordinary academic research, in this case I was aware that whatever I wrote was going to be used, along with the rest of documents in the case-file, for the (de)stabilization of property rights and the definition of the legal status of the claimants and current owners. If writing had been difficult in the past, because of the ordinary challenges posed by the many imaginary audiences I could picture reacting in disbelief to my writing, in this particular circumstance my anxiety was amplified by the short deadlines and the fear of contributing to potential injustices. Soon, as I took care of other cases that had involved gruesome acts of violence that I had to write about in great detail I developed a serious case of insomnia along with many of my colleagues.

But in my long waking hours, I found that while the government and the EPL discussed the latter's demobilization, between September and October of 1990 Castaño had made two public announcements that were broadcast on the radio and published in the national newspapers. One of the experts on the issue that I talked to assured me that they were aimed at convincing the EPL that if they agreed to demobilize, the Castaño's would also cease fire and not hunt them down. In one of

them, Castaño offered to conduct a four-step plan to foster peace in the region that a press clip of the day summarized as follows:

- “1. Surrender his weapons to the national government (...), donate the lands in Antioquia, Córdoba y Chocó, known with the names of Las Tangas, Jaraguay, Cedro y Los Campanos, among others, belonging to his family so they can be distributed among peasants.”
2. With the purpose of providing additional support to the peasantry, he will create a fund that shall be used to build 1,000 housing units, and health and educational facilities.
3. In order to achieve this and with the due approval and monitoring of the State, he will create a “non-profit organization” (...), aimed at the legal adjudication herein announced.
4. For the distribution of plots among the 7,000 families, their political affiliation will not be a consideration.”

Shortly after this announcement, the 14th of November 1990, Funpazcor was formally created.²⁶⁹

Then, by early December, the call for applications to select the beneficiaries of the land distribution was already under way.²⁷⁰ According to the claimants, they heard about Castaño’s initiative through the radio and neighbors but in some cases also through Yolanda Izquierdo. At that time Yolanda was already a well-known community organizer who, according to the report of the National Reconciliation Commission (GMH-CNRR 2011b), had managed to create interlocution channels with members of Córdoba’s political establishment and generate agreements on behalf of the urban communities she represented. The claimants remembered being given a form inquiring about the demographics of their households, their income and their current properties. Then, sometime in mid-1991, they were informed they had been selected to be the recipients of a piece of land in Santa Paula and asked to attend a “ceremony” in the hacienda’s main house. Many other haciendas were allegedly distributed in this same manner. Some of the ceremonies were attended by public figures

²⁶⁹ Taken from Funpazcor’s creation certificate, a public document appearing in the case file.

²⁷⁰ El Tiempo Newspaper. December 5th, 1990. “Reparto de tierras, crédito, y asesoría. Desafío de la reforma agraria a lo Castaño.” Available in: <http://www.eltiempo.com/archivo/documento/MAM-30260>

such as the Bishop of Urabá, and received media coverage.²⁷¹ Thus, for example, the ceremony distributing Las Tangas, the infamous hacienda, included addresses from the two of Castaño's former archenemies - the EPL's top commander, who had just completed his demobilization procedure, and a former M-19 guerrilla combatant who had joined the ongoing Constitutional Assembly discussing a new Constitution- and also by Córdoba's governor of the time. Press clips from that day estimated that the Castaño family had distributed around 18,000 hectares in Córdoba and Urabá.²⁷²

It was around that time that Alejandro Reyes and two social scientists visited Castaño in his hacienda Las Tangas. He hosted them for one or two nights and showed them around, surrounded by bodyguards. They spoke extensively about the "agrarian question" (Chapters One and Two). Like many other actors with sovereign aspirations, he aspired "to improve" it and also claimed to have a political project on behalf of peasants financed with the fortune he made after retiring from drug trafficking. "My struggle is against the guerrillas and the oligarchy": to contain the first, and force the second to pay taxes –something that he believed he was achieving through his "diplomatic efforts" in the aftermath of "his war." As he put it, Funpazcor and his "private agrarian reform" was a better alternative than the Incora's policies, and a successful formula for peace in the region:

My main project now is the Funpazcor. I have donated all my farms, except one with 450 hectares. In total I have distributed 5,700 hectares to peasants. The criteria of selection is that they must be absolutely landless, deprived of land. At a reduced price, the NGO provides them with machinery and funding for seeds, cultivation and trade (...) The project wants to prove to the oligarchs that wealth can be shared and to guerrillas that the people are better off without communism. (...) Peace between the rich and the people, who have been exploited and despised by the oligarchy and its government, can be reached this way.²⁷³

²⁷¹ El Tiempo Newspaper. July 22, 1991. "Otro paso hacia la Paz en Urabá.

²⁷² <http://www.eltiempo.com/archivo/documento/MAM-135371>

²⁷³ Reyes, Alejandro. 1991. "Entrevista a Fidel Castaño. Mayo 13, 14 y 15 de 1991," unpublished. Some fragments appear in Reyes. 2008 and 2016.

In the interview he also suggested that Funpazcor was also a means to generate trust and build new relations with the peasantry. Self-defense groups like his, he said, “enter a zone enmeshed in violence and cannot distinguish guerrillas from peasants. First they do a general cleansing and only then they begin to talk to people. We cannot continue this way because the human cost is going to be too high.” As for active narcos, he thought of most of them as mere businessmen without ideology who were going on the road of self-destruction just for money. The worst, in his mind, was Rodríguez Gacha, “*un oligarca hijueputa* (a son-of-a-bitch oligarch).” “They’ve thrown away their money and for that reason they been forced to continue working on their business. They tried to buy industries, but were rejected by the owners, so they bought lands, built mansions and pools, but cannot even enjoy them. They know how to do business but that is all.”

In any case, by the end of 1991 one of Montería’s few notaries issued the actual deeds transferring property rights to hundreds of beneficiaries. Many of them were actually signed the 31st of December of 1991. Both the timing and the speed seemed unusual for any public office in Colombia. On the other hand, all of them included clauses formally delimiting the rights of the beneficiaries to freely dispose of the land. One of them established that “recipients have the obligation to personally exploit the land accordingly to the programs, rules and disciplinary provisions” decided by Funpazcor. Another clause forbade them to “sell, mortgage, or share ownership, without written authorization.”

But in addition to the provisions, many claimants asserted that in practice their access to the land and their ability to decide how to use it had been actively restricted by Funpazcor’s delegates. Several were prohibited from residing on the property. Others were forced to give up the crops they had harvested, or to rent a portion of the property at a price that had been imposed upon them. Finally, in some cases Funpazcor solicited loans from banking entities and took mortgages and other liens on the properties in the name of the plot-holders without consulting them.

Despite the plea to cease-fire in 1991, the Castaños resumed their armed operations soon after and directed them towards the FARC's stronghold in Urabá. In their later justificatory accounts, they argued that they had been forced out of peace after the FARC refused to demobilize along with the other guerrillas. The Castaños launched at that time what Romero (2003) and other historians have referred to as the "takeover of Urabá," an extermination campaign that led to the massive displacement of population and the reconfiguration by means of force and the use of legal formalities of land tenure arrangements. This eventually came to be known among specialists as the "Urabá model" of dispossession discussed in Chapter Three. Fidel Castaño died in 1994, as mentioned earlier, and his brother replaced him as the commander in chief of their group. By then it had taken the name of "Peasant Self-Defense of Córdoba and Urabá".

Meanwhile, Funpazcor continued operating as a non-profit and, according to most claimants, micro-managing most of the donated lands. The main offices were located in downtown Montería. Among judiciary authorities, there was increasing suspicion that Funpazcor did more than administer F. Castaño's donations, and ordered a series of searches in the late 1990s that nonetheless ended in the killing of many of the prosecutors who took up the investigations. The FARC, on the other hand, set a car bomb right across the street that killed several pedestrians. According to the claimants, it was sometime between 1996 and 2001 that Funpazcor employees began paying them visits or sending them messages demanding them to return their properties and sign a series of legal documents reverting the donation. The claimants did so.

Scouting the past: force without violence

Over the phone I discussed this version of the story with my colleagues in Córdoba. Given that I had met only a few claimants, I needed them to validate my interpretation. For both of the sociales there was no doubt that what the claimants were saying was true: that they had been dispossessed of

their lands. Period. As for the more contextual aspects of the narrative they trusted in my criteria and decided to go along with it.

But the lawyer we were working with was not fully convinced. The problem for her was not the “facts” of Castaño’s peace, but rather the legal framing of it all. She trusted that the claimants were telling the truth but because there had not been a single confirmed death and it was not clear whether there had been explicit threats, she was not sure if theirs was a story of dispossession. For her, the donation, the transfer of property rights, was a fact even despite the formal limitations established in the contract and the interferences in the actual use of the land. Her concern was with the dispossession part of it all. I remember her telling me on the phone with a worried voice: “Juana, the thing is that I cannot find the violence.” And indeed, neither I nor the *sociales* had encountered it. In the original statements, the follow-up interviews, the focus groups and the informal conversations my colleagues had with them, there was no sign of the kind of spectacular violence that the Castaño group had become so infamous for, nor the threatening “sayings” they were also well known for, specially after Urabá’s takeover.²⁷⁴

Rather, what we had found was a story of obedience *without* concrete violence. Several claimants asserted that the delegates who had met with them, had been explicit that this was an “order from above” but did not exhibit any explicit force or specify who was “above.” At most, one claimant reported having heard rumors of one neighbor getting killed, and another that the people who had delivered “the order” had burned her home to the ground. But the rest did not mention any of these events. And yet, from the statements it was clear that none of the claimants had even considered resisting this “order from above” because, as one put it, they knew who had ultimately issued it. In

²⁷⁴ These sayings recur in the many stories of dispossession involving AUC combatants and can be found in its many reiterations in the media, land restitution claims or human rights reports. The most emblematic is “Sino vende usted (la tierra), vende la viuda, (if you don’t sell (the land), your widow will),” but there are others such as “If you don’t leave the land, you will end up underneath it.”

their minds it came from the Castaño brothers, Mancuso or any of the other AUC commanders and in that context this meant that disobedience would be most likely punished with the same violence that for the moment had not been wielded.

In the 200 pages or so of statements and interview transcripts, I kept encountering paragraphs similar to these in content and form:

“The lawyer said that those lands had to be returned and there wasn’t much I could do. He was right, nothing could be done, we all knew what those guys would do if we resisted so I did not dare to say no. He did not threaten me, nobody did really, but I did feel pressured because, well, it was the Funpazcor people and we all knew who were their bosses.”

“We knew who they were, the Castaños (...) I would not dare say no, everyone was willing to sell out of fear; and you know the saying: “if you do not sell, your widow will.”

“They asked me to leave in the next forty eight hours, the order came from above, I said: “you know what? I don’t need forty eight hours, four hours will do.”

And the briefest but most telling of statements asserted: “threatened no, but pressured yes.” At that point I became convinced that the effectiveness of the order, with minimum or no violence, was a manifestation of the level of control that the Castaño organization had achieved over communities such as the Santa Paula beneficiaries by the late 1990s and early 2000s. It seemed that the Castaño name was feared to the point that anyone issuing a command in the name of the brothers’ organization did not need to exert or explicitly announce violence in order to assure compliance. And I put it in those terms in the document I had to submit.

On the other hand, I could understand why the lawyer was so concerned. Most available journalistic and academic accounts any of us had come across about paramilitary domination represented it as accomplished, and expressed throughout time, by the occurrence of highly gruesome acts of violence and the rise of statistical violence, rather than in its decrease and the absence of any of such shocking episodes. Also, from the point of view of legal reasoning, the lack of violence not only did not fit the classical notion of *force* necessary to transform a transaction into a

dispossession but in principle denied its occurrence. So even after a long conversation after which the lawyer agreed that in this context the absence of violence could most likely be taken as a manifestation of the power of Castaño's organization, she still worried about the effectiveness of the argument once under consideration by the judge, as well as the evidentiary aspect of it. yes, she could imagine an order sustained by the memory of profuse past violence and also minimum violence in the present, but how exactly were we going to proof that the claimants had been *forced*? Was it enough that they had felt compelled, even if there was no explicit manifestation of violence - except a burnt house only one person had quickly mentioned and rumors of a murder that no one confirmed?"

So one of my first tasks, to my surprise, was to examine how or why was I so convinced, and then convince her that we did have a case. The answer, after all, was in the historical "context," whatever that meant, the complex relation with Funpazcor and between the NGO and established civilian and political authorities, and in our ability take seriously the difference between "threatened" and "pressured" that one of the claimants made. So in a series of Skype discussions, we imagined what it was like to be both the beneficiary of a land program sponsored by F. Castaño in 1991 in that particular region. In addition to the thrill of getting hold of a piece of the highly coveted and legendary Sinú river plains, Castaño's initiative had been welcomed by the Church, local authorities, the national government and the international community. Press clips from the time suggested this had been the case. Moreover, Funpazcor was acting in tandem with notaries, a former secretary of the governor, and its plans were announced daily by the local press. Moreover, people like Yolanda Izquierdo, who built a reputation for helping out impoverished communities, were also working actively with the NGO. Still anxious, the lawyer finally agreed to go along with this interpretation and emphasize the complex relationship of generosity and submission instigated by fear between Funpazcor and its beneficiaries in particular, hoping this would allow the judge to understand the

meaning that such an order had had in this context. And we had the sister in law's indictment. So in principle, if we could show the connection between her and "the order," we could use the presumption established in Article 77 and turned it into a relatively *easy* case after all.²⁷⁵

The public life of Santa Paula's dispossession(s) and restitution:

The lawsuit-like petition (*solicitud*) for Santa Paula was ready by the end of September. It had been decided that, being the first case against the Castaño organization, the Minister of Agriculture, J.C. Restrepo, was going to submit it in person to the land restitution judge based in Montería, Córdoba's capital, just a dozen miles away from the Santa Paula hacienda. He was going to fly out from Bogotá in a military plane with guests from the press, representatives of Santos' political coalition in Congress and a delegation of Unit officials. At the last minute I was asked to be part of the latter.

The next day I arrived to the military airport in the western limits of Bogotá just after dawn as I had been instructed. I was one of the first people to arrive, but the Minister of Agriculture, J.C. Restrepo, and two governmental advisors were already there, in a small waiting area overlooking the runway. One of them had militated in the left and had been mayor of Bogotá, and the other one was

²⁷⁵ What was still unclear in order to provide a "verdict," was why had Funpazcor taken back the donations. Why the change of plans? The experts speculated that most likely it all had to do with the change in leadership that apparently occurred in the late 1990s. Fidel Castaño had disappeared in 1994. His brother Carlos became the political spokesperson of the AUC but the real military commanders was the youngest brother, Vicente Castaño, and their partner in arms, Salvatore Mancuso. The two of them negotiated with narcos the multiplication of AUC commandos in their main localities. Narcos would pay for these commandos and pass as "pure-blooded" paramilitaries and the commandos would both wage the counter-insurgent war and protect their businesses. Many of them, like "Don Berna," who had served in his youth as Pablo Escobar's hit man; "Macaco"; and the Úsuga twins, were willing to finance the AUC and its expansion in exchange for protection, as well as the possibility of acquiring more land. The experts agreed that Carlos had not agreed to this alliance, but was ignored –and eventually killed, in part because of the tensions with the new narco partners. It seems plausible then that with the narcotization of the AUC and the rising influence of characters like Don Berna within the organization, the plans changed in regards to Funpazcor and the beneficiaries of the land program.

When the Unit began studying the statements of the claimants of Las Tangas a few months later, the team found that Don Berna ended up moving into the property. This seemed to confirm the initial hypothesis of the change of leadership directly leading to a new mode of operating for Funpazcor in relation to the beneficiaries and the so-called "private agrarian reform." Las Tangas claimants asserted that in the same period of time and under similar circumstances to that of Santa Paula, Funpazcor delegates had communicated the "order from above" to the beneficiaries with a similar result.

the son of a former Liberal President. I also recognized Senator Cristo, one of the main proponents of the VLR Law in Congress. I opened the door abruptly, not expecting to find anyone inside, when I was suddenly face to face with public figures that I had only seen on television. I had no choice but to introduce myself by name and affiliation and shake hands with each of them. Restrepo greeted me in a cordial but grave manner and surprised me with the question, “So, how many lawsuits can we submit from now till the end of the year?” The look on his face, his sustained frown, expressed a deep worry about the issue of goals, discussed in the previous chapter. Only a few weeks before, there had been rumors that he was going to be replaced because of the scarce results achieved in land restitution, even though the Unit had been fully operational for less than six months. There was a moment of near-panic among the officials I worked with, thinking that they would be removed along with Restrepo, but at the end Santos ratified his appointment.

The plane we were on, which apparently had once been the “Air Force One” of the Colombian government, was equipped in the front with a living room-like section, with a set of leather couches where Restrepo and the other high-level governmental officials took a seat. The rest of us sat in the back.

Next to me was a young reporter from a news portal called Open Truth (*Verdad Abierta*), which at that time focused its attention on covering the truths about paramilitarism being revealed as the JnP trials progressed. In the other seat besides me was a *Semana Magazine* reporter. They both interrogated me about the details of the case. I realized in time that whatever I said could be taken as the Unit’s “official” stance, even if I was just a contractor with no other power than making micro-decisions when writing the context analysis documents.

Once in the air, someone from the Ministry of Agriculture handed to the passengers the one-page long press release they had prepared about the lawsuit of Santa Paula. Some sentences had been extracted literally from the text we had prepared. However, it asserted that both Fidel and

Carlos Castaño had ordered the despojo of Santa Paula. This diverged from our text since the first was presumably dead by the time it the “dispossession” had started and the second, according to the experts we had consulted, had most likely disagreed to dismantle his older brother’s private agrarian reform, although we could only speculate. So the press release was diverged in historical details that we deemed important. But seemed that someone had simply not read the text and assumed the dispossession had followed the standard land dispossession story of the Castaños, or had decided to modify and simplify the rendering of the facts for purposes of political impact. After all, the names of Fidel and Carlos Castaño were far more recognizable, and meaningful, than that of the Castaños’ sister-in-law or any of the Funpazcor’s intermediaries, who had participated in the dispossession, according to the claimants. Maybe it was more effective to simplify the link between the events of the case and these two figures who were easily associated with paramilitary terror by a wider public.

The flight took about an hour. As we approached Montería, I could see from above the great flatlands that extend out from both sides of the Sinú river, and which are mostly covered in grazing pasture. Among the green expanse, one could make out a few dwellings and tiny villages, usually located on crossroads. The cows, miniscule white and brown points of varying tones, were also dotted throughout the landscape. Among those of us in the back of the plane, there were several who tried to find El Ubérrimo farm, owned by ex-president Uribe. The rumor was that it was adjacent to the airport and that the house could be seen from the air.

Once on land, I took a cab to the Land Restitution office, located steps away from where Funpazcor had once operated. The ambiance was of excitement. The lawyers, the sociales and one of the delegates of the Santa Paula claimants were on the second floor, talking and laughing out loud. There were hugs, congratulations, wide grins. The local director and Ricardo (the national head of the Unit) were in a meeting with Restrepo and the government’s delegation somewhere else. At noon, some of us walked to the judge’s office, a few blocks away, to attend the official submission

of the *solicitud*. The street had been closed for the event and tarps had been installed on the sidewalk, in front of the simple and rather small one-floor house where the land restitution tribunal operated, so that guests could take shelter from the unforgiving midday sun. I found a spot behind the Senators, and among the reporters. I recognized some of the claimants, who had come to watch in person the submission.

First came Restrepo's address. His speech was a reiteration of what he had insistently repeated in many other settings about the government's commitment to the vindication of the peasant-victim and presented the land restitution policy as an instrument meant to solve the unfulfilled historical debt with this population and as a first step to revert the effects of decades of war and neglect over the countryside. Then he turned to the issue of goals, and the pace of the land restitution procedures, which had also been repeatedly a matter of public debate. "This is not a Stalinist procedure," but rather a procedure "designed to respect the rule of law, due process and the rights of the parties involved." He also emphasized the individual nature of the rights being allocated. He was clearly responding to the criticisms coming from interlocutors in the political left and the human rights community about the slowness of the decisions and their insistence that to speed up the procedures, rights should be allocated collectively and without going through each individual case. Simultaneously, he also seemed to be responding to the criticisms coming from the opposite corner, for transferring the burden of proof to owners and possessors, and putting them at odds with a governmental agency like the Unit. After he finished someone handed down the *solicitud*, a thick document inches wide and asked to pause for a second for the cameras with his always grave demeanor. Then he turned his back to the audience and stepped into the small door leading from the street to the judge's bureau. The senators, the two governmental advisors, Ricardo Sabogal and other officials followed Restrepo while the rest of us waited outside.

The solicitud was a 176-page document, single-spaced. I had read it the previous night. It opened with a brief summary of the issue at hand, and some important numbers: thirty-two claimants, each requesting the restitution of four to eight hectares, all located in 415-acre property known as Santa Paula. Then it turned to the “context analysis document” we had submitted, which had been included unedited, and then continued with the conventional structure of any ordinary lawsuit: first the “foundations of fact,” followed by “the foundations of law,” the inventory of proofs, and finally by what lawyers call “pretensions,” listing the claimants’ petitions. The “context analysis” that we had prepared was a twenty-seven page document that mixed different sources and tried to depict in some detail the context in which I thought the claimants had acquired and then lost the lands, especially the power relations allowing both the constitution and dissolution of rights to occur. I emphasized “the veil of legitimacy” –an expression the lawyer had come up with- that had surrounded the cease-fire, Castaño’s plans and Funpazcor’s creation and land program. Then I turned to the expansion of the Castaños’ military power around the country and the power they came to hold over the people and territories in the area of Montería. And then I tried to argue that as they established their military and political hegemony over the area, the use of violence gradually became unnecessary to assure obedience or at least that in the case of claimants, force had operated without violence. My rendition of facts was at the same purposively historical in style, in terms of the details, the attempt to look at the concrete practices and power relations linking the Castaño House with this group of claimants instead of providing a generic description of paramilitary violence. The “foundations of fact” section, however, selected from this narrative “seventeen key facts” and in one and a half pages presented them as the basis of the claim, among them, that the claimants had reported some expressions of violence; that they feared for their lives; that they had been forced to leave and that currently the many plots appeared in the state registrar’s office as belonging to one woman. The efforts to provide a narrative that dwelled upon the issue of force

without violence and the other humble twists and nuances in our rather tiresome attempt to describe the historical context, were edited out of the “foundations of facts.” Whereas our document was indeed a strategic and also contingent reduction of a particular past –filled with silences and mentions for which I in particular could be held accountable for- of the kind Trouillot theorizes about, the foundation of facts was a much more drastic one, that sought to indeed cut with a “scalpel” and exhibit the relevant facts to the legal reader. Later on I would discover that my document being included without any editions was a rather exceptional prerogative granted by any lawyer to a context analyst in the first months of operation of the Unit.

In the weeks that followed, the Unit director instructed me and my colleagues to give more details about the case to the press. The lawsuit itself could not be shared because it contained the real names and contact details of the claimants. But the general facts could, so we were asked to do verbal renditions of them. The plan, I was told, was to let the public know more about Funpazcor, the claimants’ story of dispossession and also the production of justice in this such an important case. The Unit’s directors thought it was important to show that wrongs were being righted. So I met with a journalist from a prestigious news agency in a restaurant nearby the Unit’s headquarters in Bogotá and told him about my own take on the case and the “context” of both the donation and the dissolution of property rights. The journalist, a man my age eager for information about the specifics of the dispossession, listened attentively and took notes, but to my surprise by the time I was done with my explanation, he had made up his mind to not give the case any further coverage. He told me that “the public is not going to understand” why the claimants had accepted the donation in the first place. It was too much of a complicated story, as he put it, and in his opinion revealing to the public the willingness of the claimants to be part of a land program sponsored by someone so abominable as Fidel Castaño could actually harm them. They were going to be taken as “*paracos*” –paramilitaries or enthusiasts of paramilitarism- or, in any case, their claim could be

received as morally or worst legally dubious. Moreover, it could harm the credibility of the land restitution procedures and backfire on the director's plan of publicizing the Unit's justice-making work.

I was perplexed at first. His reaction seemed to come from his discomfort with the case and how, given the way I had told the story, it diverged from the "standard plot" of land dispossession vigorously denounced in the previous years by his media, and lacked some its key constitutive elements: a victim with no pre-existing relation with the perpetrator; a clear, unambiguous and fully "sovereign" tenure of the land in question; a graphic and unmistakable violent action causing the dissolution of the tenure and the displacement of the victim. I insisted that in a context such as Córdoba in 1990 in the aftermath of Castaño's offensive against the EPL and the peace process with this guerrilla army, Funpazcor and its plans had been welcomed and even applauded; and then, I emphasized that the dispossession had not required explicit violence precisely because of the power the organization had by then over that particular territory and people. This did not mean that the claimants had not been subjected, or that something had not been taken away from them. But he would not yield and asked me if I wasn't being too naïve to understand what was at stake. At the end, we parted ways in a cordial manner but I was left wondering: was the journalist's reluctance to publish the story in full detail a way of protecting the victims, the public, the newscast company or the narrative integrity of the standard history of dispossession? Who or what would be lost with a partially nuanced history like the one we had proposed for the case of Santa Paula? In any case, in the following weeks, the media kept repeating that the Santa Paula dispossession had been achieved through "fire and blood," rather than the combination of submission, gratitude and obedience we thought was at work.

The violence of, and against, land restitution: the many dispossessions of Santa Paula

Five months after the solicitud was submitted, the land restitution court located in Medellín issued a ruling. By mere chance I was sitting in the Unit's weekly board meeting that day. For a couple of hours, a group of us had been discussing the issues that needed to be taken care of in order to accelerate the Unit's operations, when Ricardo, the general director, got a phone call from someone confiding that "we" had won the Santa Paula case. He interrupted the discussion and announced the good news and then went around the room in great excitement, shaking hands and hugging the board members and the other participants who, like me, happened to be there for that particular session. Everyone took to their phones –Blackberries in most cases at that time- and sent messages to their friends and families. I did so too. One of the directors left the room with a big smile on her face with the intention of calling Córdoba's director and giving him the good news. Two minutes later, the meeting and the discussion about how to speed up and multiply the work resumed, but I could not pay much attention as I read the many emails and messages congratulating me and my colleagues for "the historical ruling," as it would then be referred to in the media and in the press releases of Human Rights Watch, the Unit and other institutions.

The ruling, which was eventually circulated among the Unit officials, however, scarcely mentioned the "context analysis" part of the lawsuit that we had worked on and reduced the seventeen "key facts" listed in the following section even further. According to the tribunal, the Castaños' military domination of Córdoba was a "notorious fact" –a legal concept established in different provisions- and as such, it did not require such elaborate explanation. And this sole "fact" - and the indictment of the sister-in-law- meant that anyone dealing with the Castaños lacked the ability to freely consent, making any agreement with them or their delegates an act of dispossession: "Free will is deeply warped in any such context of (generalized violence) (...) relations are so asymmetric and brutality prevails to such extent that the weaker becomes the victim of those who wield armed, economic and social power."

Just a few days later, prosecutors from the General Attorney's Office in charge of the Justice and Peace trials contacted the Unit's directors. It turned out they also had been investigating the donations and alleged dispossessions of Funpazcor, but both their facts and their framing of the case were substantially different from what we had argued. They wanted to meet as soon as possible. I was informed by the Unit's lawyers that until then the interaction with the Attorney's Office had not been smooth. The Unit had encountered a lot of red tape to meet with the prosecutors and gain access to the evidence and the leads they had obtained from the AUC fighters currently being prosecuted. Since the Justice and Peace trials started, prosecutors had spent literally hundreds of hours in hearings with commanders and mid-ranking officers, and along the way they had gathered from them statements regarding many of the properties donated by Funpazcor that now happened to be claimed for restitution, as well as details about the alleged dispossession.

An energetic woman in her forties, an attorney with the last name of Ugalde, was one of the prosecutors assigned to the task, as they put it, of *la persecución de los bienes de las AUC*: chasing the real properties of the AUC. The properties did not move of course, but the entitlements certainly did, and the Office had spent years tracking down front-men and disentangling the many simulated transactions forged so to allocate property rights to people who could not be easily connected with the organization. She had been in charge of accusing a man who went by the alias Canseco and who had been one of Fidel Castaño's closest collaborators.²⁷⁶ She had gotten in audio and video many references from him regarding Funpazcor and the donated properties, including Santa Paula. Her boss, an attorney named Brama, another woman in her forties, had been prosecuting Don Berna, the narco who was often believed to have filled the power vacuum in Medellín after Pablo Escobar was hunted down. Apparently Don Berna joined the AUC in the late 1990s and had been one of the

²⁷⁶ Fictitious names.

main promoters of the so-called narcotization of the organization. She also had gotten key information from him about Funpazcor.

In a set of initially tense meetings, attorneys Ugalde and Brama met with me and other officials from the Unit to compare evidence and interpretations regarding the Santa Paula case. Delegates of both sides sought to convince the counterpart of their own sequence of “legal facts,” and also their substantially divergent legal implications. What I witnessed, and to great extent was also part of in these setting, were the mundane interactions by which the past is adjudicated. In those meetings, competing versions of the story of Santa Paula were presented, contrasted and made sense of, by a portion of the small and select group of people who had the privilege and the responsibility of deciding the past and therefore, also the subjects of rights. None of us was the land restitution judge and unfortunately for my research, I could not really approach any of them because of my affiliation with the Unit, but we certainly participated in the validation of this fragment of both Santa Paula’s and the claimants’ history.

The first encounter was in the Attorney’s Office in Montería. Ugalde arrived late. Her flight from Bogotá had been delayed and she had come straight to the airport to meet us. She was agitated for being late and by Montería’s unforgiving heat, but I could see that above all she was worried about what we had to discuss. As she took a seat, she thanked us for meeting on such short notice, and before we could begin to introduce ourselves she apologized for what she was about say, but also clarified that she was “not married” to Canseco’s version of the story. No one had had the chance to speak, but she seemed to be preemptively responding to some of the criticisms that the JnP prosecutors had received from human rights organizations and presumably within their own institution, of trusting too much in the “perpetrators” version of things. Then she went on to explain that because the division of labor inside the Attorney’s Office revolved around individual criminal responsibility, or if not, around criminal structures, many different prosecutors at some

point had come across Funpazcor, but no one had really specialized in it: “Funpazcor is transversal to the AUC,” she explained, and yet she confirmed that, as we had found, the many investigations tried against it had been abandoned after some of the prosecutors before her had been killed or forced into exile. Ugalde took a breath, which gave us the chance to introduce ourselves, before she turned the issue at hand.

Fundamentally, what Ugalde explained in the following hour and half, was that in a series of hearings with Canseco, the man she was prosecuting, he had argued that Funpazcor’s so-called “donations” were part of a scheme to prevent state authorities from expropriating Fidel Castaño’s best lands. In his terms, it was a very clever “façade,” designed to hide property rights. She opened her laptop and played for us a series of videos of Canseco discussing the issue of Funpazcor.

In his version of the story, the creation of the NGO was the idea of one Castaño’s most loyal farm administrators. He was in charge of 5,000 hectares in the Sinú valley and the Urabá region alone. At the same time that the EPL’s demobilization was taking place, judiciary authorities had been inquiring about the origins of Fidel Castaño’s fortune. The administrator came up with the solution: by putting the properties under the names of other people not related or only tangentially related to Castaño’s organization, or even by transferring it to his former archenemies, EPL combatants, they could protect the lands from expropriation. For this reason, las Tangas and neighboring haciendas were distributed among Castaño’s gardeners, ranch boys, guards, former guerrilla fighters and poor urban dwellers. Second, according to Canseco, most beneficiaries of Funpazcor’s land program were not given deeds over the land or allowed to take possession of it. The exception was Santa Paula. The beneficiaries were given permission to build houses and start agricultural projects, although under some conditions. In Las Tangas and other farms, on the contrary, the deal with the beneficiaries was that for the next ten years they were going to be paid a monthly rent and until then they were not going to get the deeds. Finally, according to his account,

once the 10-year period came to an end and they received the documents they began to sell their plots of land at will. The Funpazcor directors were worried that they were giving away the land to strangers for too little money, so they decided to buy it from them. Once again, the exception was Santa Paula. In that case he admitted the beneficiaries had not wanted to sell the land, but Funpazcor directors had pressured them.

While we were looking at the videos, Attorney Brama, Ugalde's boss, entered the room. She had just landed from Bogotá as well. Unlike Ugalde, who had been rather apologetic, Brama seemed irritated with our questions. At the end of the last video, Ugalde took another breath. "*Compañeras*, the point I want to make is that this version of the story suggests that Santa Paula's claimants were either accomplices of the Castaño's fraudulent scheme, or if it turns out that they simply were manipulated, they are not victims since in principle they did not really own or possess the restituted lands." Her point was that even in the case of Santa Paula, the beneficiaries had not really fully received nor exercised ownership. The deeds established serious restrictions and in practice the beneficiaries had not enjoyed any real prerogative over the property. Then she added: "you can only lose, and be restituted, what you properly owned or possessed, don't you think?" Brama, who seemed to be losing patience, was more blunt: "The problem is this: your victims seem to be our *testaferros*," (our front-men).

One of the sociales of the Unit shook her head in disbelief. Canseco's version departed considerably from the stories of the many dozens of claimants she had personally interviewed and talked to over and over again in the last year. In her perspective, not only those claiming Santa Paula but also Las Tangas, Jaraguay and other former Funpazcor haciendas considered themselves lucky to have been selected to be the recipients of rights over such invaluable lands and to be part of Castaño and the EPL's plan to bring peace to Córdoba, but not to prevent judiciary authorities from getting hold of Castaño's properties. Couldn't it be that the claimants were unaware of Castaño's "real

intentions,” if this was in fact what he wanted?” And how could we decide what where these? Did it matter? Also, as others of us asked, how did they know that the claimants had consented to participate in a criminal scheme? Wasn’t it part of the brilliant plan of the administrator to keep them in the dark about what was happening? It didn’t seem very much like Castaño to brief the eighty or so families of Santa Paula about the dangers of expropriation. Wasn’t the whole point to gain their loyalty?

A long discussion ensued but then Brama interrupted us. There was something else, which was actually the reason they had contacted the Unit on such short notice. They were willing to accept that there was no clear evidence that the claimants knew what the entire plan was about, or that any of us could really decide without any doubt. What was the point? But it turned out that just a week before, right after the ruling was announced in the media, they had found that a man, Mr. C, had just recently approached one of the Office’s headquarters and had provided a long statement claiming to be the sole survivor of the family Fidel Castaño had violently deprived of the Santa Paula hacienda. As she talked, Ugalde passed a set of documents around the table, including a copy of Mr. C’s statement and also of his ex-wife’s death certificate. I held it in my hands. It read: “Cause of death: severe destruction of brain tissue.” She had been shot in the head.

We all exchanged looks. Everyone was sitting in the edge of their seats. Then Ugalde continued: “Mr. C’s story is terrifying and really worries us. He is not only a victim of dispossession, he is a victim of everything. That’s why I called you – I’m in shock. We should have known about this before.” She skimmed some of the pages she had in her hand and began reading the statement out loud. According to Mr. C., his ex-wife and her brothers had bought Santa Paula in the late 1970s. She left her job as a university professor to devote herself to the hacienda’s livestock business. It all started some time in the late 1980s when Fidel Castaño ordered the assassination of the first of her brothers under accusations of drug trafficking and working for the EPL guerrillas. She paused: “I

checked Carlos Castaño's book, "My Confession". He talks about the murder of this man," and then she gave us the exact page. Later on she told me that the book was a mandatory reference in her work. She checked now and then to contrast it with the versions of the defendants. Later that week I checked my copy. I also had it in my desk. Castaño talked about Mr. C's in-laws as "narcotraficantes" and as the worst incarnation of the hidden sponsors of the guerrillas:

"They (...) live within the law (...) but they help guerrillas plan the kidnappings and at the same time they loan money to the families of the victims so they can pay the ransom. The worst part is that they get a share of the profit. We have copied the guerrilla on this, but the difference is that we extort nicely and its almost consented. (...) As we exert military pressure over a region, they (the sponsor) change sides. No deeper reason drives them, their only ideology is money. Let me tell you about some really perverse cases such as that of Mr. X (C's brother in law) who (...) worked for Pablo Escobar, and was, in addition, the EPL's most important ally. His brother was his front-man."

According to Mr. C, this second brother was killed in Medellín soon after. His ex-wife, fearing for her life, made plans to leave the country with their children. Or so she told him. But she sent the kids away and traveled on her own to a city in the Colombian coffee region where she was soon killed in the street. It was 1989. When this happened, he got a call from someone ordering him to meet with the Castaños. They met in one of Medellín's fanciest neighborhoods. They demanded he surrender the Santa Paula hacienda and he verbally did so. It was their "spoils of war" or "reward" for having eradicated his ex-wife's family. He pleaded for his children's life and the Castaños agreed to spare them. "But they did not fulfill their promise."

Ugalde stopped reading and looked at us: "Now comes a horrifying account of how his kids and his nephews and nieces, who were also in their teens, were also killed in the following years, along with friends from school. His son in Medellín; his nephew in Bello; then his daughter also in Medellín, and the list goes on. Then at the end of the statement it, it reads: "Mr. C provided this account in the midst of uncontrollable crying." At that point attorney Brama, admonished us: they were considering striking down the Santa Paula ruling based on the argument that the property

rights granted, taken from, and now restituted again to the claimants had originated in a set of horrific crimes, and therefore had no legal basis. And they had begun finding evidence, in the thousands of hours of hearings and also in the many statements received from victims, that this had happened also with Las Tangas and other haciendas distributed through Funpazcor: many of the former owners had been killed.

At this point several alternative legal pasts seemed to be in dispute. It all depended on what counted as “real” and what legal categories were agreed upon to tell Santa Paula’s story: were Mr. C’s in-laws narcos, guerrilla sponsors and victims? Only the latter? Castaño’s account was certainly not to be trusted at face value, but why the extent of the vendetta? What was the Castaño’s plan ultimately about? Deception, a private agrarian land reform for counterinsurgent purposes, and demonstration of good will? All at once? Did it matter? And what about the claimants: did they consent to the “clever plan,” or were they manipulated? Or could we think of them in more nuanced terms, as having taken advantage of the opportunity given to them to improve their situation?

A second meeting took place in Bogotá. The news of the Office’s intention to revert the ruling stirred mixed feelings and opinions among Unit officials. Some were surprised or like me, just sad that there didn’t seem to be a good way out of it. A part of me felt guilty also, but on the other hand, there was no way we could have known Mr C.’s story beforehand. In the document I wrote, I had mentioned that the narcotization of the Sinú Valley landowning class had been achieved through mixture of violence and economic power. Others were upset because of the prosecutors’ sudden decision to act upon crimes they “should have investigated and solved long ago.”

A high-level official from the Unit was asked to lead this second encounter. On our way to the Attorney’s Office in downtown Bogotá, he kept repeating that what happened to Mr. C and his family was atrocious and unfair from any perspective, but precisely because the history of land in Colombia was that of a spiral of subsequent dispossessions, the VLR had set a cutting date. This

provision excluded him from restitution procedures. Once in the meeting, the official greeted Ugalde and Brama with a hug. It turned out they knew each other well from previous collaborations between the Office and the Project back in 2007. I felt better when both prosecutors announced they had read the “context analysis document” and were willing to admit that indeed it was plausible that the claimants were not aware that they were part of a scheme to hide Castaño’s assets from state-intervention. And yes, they also agreed that despite the rather peculiar circumstances of the donation, the claimants had been indeed given rights over the land. So, in sum, they could agree with the Unit that there had been a constitution and then a dispossession of rights. But the issue with Mr. C. was another matter. At that point the Unit’s official repeated what he said in the taxi: if the history of Colombia was one of a series of appropriations-dispossessions by violent or in any case illegal means, why were they surprised? Looking around the table, I noticed that everyone nodded. “This was expected,” he said and then asked them if they were willing to put in question the VLR Law only because, as everyone knew, people had lost land, the very land being claimed, under equally violent circumstances? And then he turned to techno-legal considerations. Land restitution judges had been appointed to give closure and in principle neither the Attorney’s Office nor any other court could repeal their decisions based on evidence from despojos before 1991. He finished, “As terrible as it sounds, and even if there is no doubt whatsoever that Mr. C is a victim, in the face of the current legal system, there can be no justice for him,” at least in relation to the property rights over that particular piece of land. He ought to be compensated for the murder of his family but not for losing Santa Paula. At the end both delegations agreed they were going to work together to present Mr. C’s case to the Victims Unit and help him get the reparations to which he was entitled.

As I stood there, I kept thinking that this is what the making of (in)justice looked and felt like from the perspective of legal operators. And that it was negotiated and also subjected to a variety of contingencies that no one in that room had control over. This was the closest I had been to the

intimate workings of adjudication and the exclusionary effect of legal provisions concerning dates, legal categories and the overall design of a right's allocation process. Then, to make sure that such divergences would not happen again, prosecutors asked to meet regularly with delegates from the Unit to discuss the cases and agree on facts and interpretations. So right there I was instructed to stay after the meeting and set a work agenda with them. The rest of the officials left. Both prosecutors seemed tired, and I felt the same, so we went for a coffee. I could clearly see that though all us were somehow invested in the idea of contributing to justice by doing a thorough and fair rendition of the past, this simply overwhelmed us. In their case they aspired to an objective, scientific and forensic rendition. As for those of us governed by the VLR Law, our goal was to do justice to the experiences of the people who sought vindication. But it was very easy to be wrong. Over coffee, and after we had decided on a work plan, Brama turned to me: "Don't get me wrong, but it is better when you have a massacre." And then she explained: it was "better" in that it was much less ambiguous. Facts were less unstable, more manageable, easier to render without major questionings. It was clear who the victims were, and regardless of the previous interactions or relations between them and the killers, or the micro-politics around it, or the technicalities around the evidence, you would still had a clear-cut crime and an indisputable subject of rights. Later on they informed me that after many attempts, they had been unable to locate Mr. C again.

April 9, 2013

A disposition of the VLR Law had declared the historically charged 9th of April as the "Memory and Solidarity with Victims Day" (see Chapter One). Back in 1948, on that specific day, the highly popular liberal politician and presidential candidate J.E. Gaitán had been killed in broad daylight in a crowded street in downtown Bogotá. As news of his death spread across the country, the habitual tensions between partisans of the Liberal and the Conservative Parties reached a new level of

hostility triggering the so-called La Violencia, a period of intensive interpartisan brutality. For some political publics who were aligned with Santos in the approval of the VLR Law, the 9th of April could have been very well the starting date of Colombia's armed conflict. Gaitán daughter claimed at that time, for example, that her father and family were the first victims in the sense of the transitional justice orthodoxy.

Unit officials, or maybe someone higher up in the government, decided that the ceremony handing claimants the actual property titles over Santa Paula had to be held if possibly that very same day in Santa Paula grounds, regardless of the many difficulties in actually pulling off such event. Although there were no facilities and no infrastructure whatsoever, one of my supervisors was entrusted with the logistics, which entailed setting up a stage and a big tarp for a hundred people in the middle of nowhere; installing bathrooms; video screens and sound-system; and finding transportation, food, drinks for claimants and the many guests who the government wanted to witness the act.

The ceremony was finally scheduled for the 10th. On Victims' Day I flew to Montería from the US. The trip took about twelve hours with layovers, so it was about 6 pm when I finally landed and was able to turn on my cell phone. I found an email from a colleague with a link to a piece of news: "Did you see this? This is serious." It turned out that a well-known victims' organizer from Córdoba who was invited to the ceremony, Ever Cordero, had been shot dead twenty-five miles away from Santa Paula early that day, as he prepared to join the commemoration events for Victims Day. Victims' organizations had been demanding better security and protection schemes for months, but the killings had continued (Chapter Five). And I didn't know it then, but just twenty days earlier, another organizer and friend of Cordero's had also been murdered.

When I arrived to the local office I found that many Unit officials from the national team had come from Bogotá to help out with the preparations for next day. Almost all of them were clinging

to their cell phones with expressions of concern. Many land restitution claimants and activists from the area were cancelling their attendance out of both fear and outrage over the government's inability to provide security. So my supervisor and half a dozen officials had been on the phone for hours trying to calm people down, trying to convince them to attend the ceremony and agreeing on details about meals and transportation. When she hung up she seemed clearly exhausted. She took me aside and confided she wasn't sure what was the right thing to do: insist they come, or on the contrary, tell them to stay in their homes? She had been instructed to do the former, but she had her doubts. How could she ask them to come if their safety was not in her hands? Even more, she wondered whether "if we had not made all these fuss about Victims' Day and Santa Paula's restitution ceremony" – "we" meaning not only the Unit, but the government, the media, the NGOs, in sum, the community of land restitution advocates- "maybe Mr. Cordero would still be alive."

I found out later, that like her, many radio and TV broadcasters discussing Mr. Cordero's murder had framed it as a display of force from the "anti-restitution" armies that had been advertising their existence through pamphlets in previous months, in retaliation for Santa Paula's restitution and, more generally, as act of defiance to the government's aspiration to take property rights away from the front-men of armed organizations. I stayed up late with her and the other sociales –mostly women- watching how half of them anxiously dealt with the worried and angry calls from guests, directors and news reporters, while another group prepared the leather sleeves with the Unit's logo that were going to be handed to the Santa Paula claimants next day with the actual property titles and a land restitution certificate. Others moved around with boxes filled with T-shirts and caps also with the Unit's logo, which were going to be distributed among the guests, if they agreed to come. At around 10 pm, we called it quits for the night. Early the next day over breakfast, in the guest house where I usually stayed, I was approached by the owner. I had been staying there for years and

by chance I had learned that he had retired after working several decades as a “property evaluator” for a local bank. During the course of his many decades in that job, he had got to know, in his words, “all the farms in Córdoba” –and presumably also the owners. In our few conversations he also suggested he had been a direct witness of the EPL’s and the Castaño violence and previous to that the overall transformation of land tenure that had come with the arrival of the narcos. More importantly he also knew who had or still owned what, but he refused to talk about it. From his wariness I deduced that knowing who really owned the land was indeed far too serious and delicate. But that morning he approached me. His half-surprised, half-worried expression, suggested that indeed Santa Paula’s ceremony was unprecedented and was causing serious commotion in the town. “Did you know that Santos is coming today? All the hotels are full. And this Santa Paula thing, no doubt those are the most valuable lands in all of Córdoba.”

The next day, transportation to Santa Paula was scarce. For security reasons, buses and private cars were not allowed in the road leading to the hacienda and further north, to the town of Valencia, where Mr. Cordero had been killed. I was lucky to find a spot in an international organization’s car. After turning to left and right into the narrow streets of some of Montería’s shanty towns for ten minutes, we reached the outskirts of the city and finally entered the road to Valencia. It was my first time appreciating at broad daylight the celebrated landscape of this nonetheless infamous area of the Sinú River valley. I had encountered multiple references in historical documents and books about its fertility, the beauty of the grasslands stretching at both sides of this road into the horizon, and also about the often high-prices of the land –except in the times of the EPL. Every now and then I could also see a bonga tree; a few cows in the distance and no constructions along the road, except for one or two houses in the distance, behind trees. It was the classical cattle-ranching latifundia landscape that progressive agrarian reformists had so much condemned since the 1950s: no people, no crops, a few cows, high prices. At the same time, it was also a highly feared space in Colombia’s geography

of horror. It was no doubt the cradle of the Castaño organization: the most effective and aggressive kind of paramilitarism. Although it was my first time there, I had learned a lot about the layouts of this spatiality of violence: that the EPL's extortion and kidnapping operation had covered all the properties at each side of the road; that massacres had been perpetrated in different adjacent towns, that bodies had been buried and dug out from some of the hacienda; that Don Berna had set a series of checkpoints with heavily armed men along this very same road; that Carlos Castano's body had been retrieved from a neighboring area; that Santa Fe de Ralito, a small settlement north along the road, had been used for the demobilization negotiations between the AUC and Uribe's government.

I was absorbed in the landscape when one of my companions asked me about my job in the Unit and why I was invited to the ceremony. To my surprise, he was one of the land restitution judges who had contributed to Santa Paula's ruling. After I told him about my involvement in the "context analysis" part he told me, half joking, half serious, to refrain from telling him such a long and detailed history about the Castaños, the AUC and the area's changing agrarian landscape. That paramilitarism had ruled in the area was, as he had put it, was a "notorious fact" that did not need any further explanation.

The entrance to Santa Paula was in the right side. A space without much grassland had been reserved as a parking lot. Several buses had already arrived. Then, in an adjacent grassland, I could see from the distance the stage, the big tarp, several rows with plastic seats. To access this space, it was necessary to go through two police searches. A crowd of people wearing the T-shirts and caps that were in the boxes the previous night had already took a seat in some of the front rows, except the very firsts which had been reserved for diplomats and high-level state officials. Most of them were land restitution claimants and were in their late fifties or older. Indeed, most of Cordoba's claims up to that point had been filed by people who back in the days of Fidel Castaño had been in their thirties and forties. The thirty-two Santa Paula claimants that were going to receive their titles a

few moments had been given a seat in the stage. I could also see also two dozen delegates from the UN, OAS and other international and human rights organizations. I could tell from the insignias on their clothes and their often Caucasian looks. The rest were news reporters and Unit officials, who were also wearing their Unit's distinctive brown vest and an accompanying logoed cap.

President Santos arrived in an army's helicopter along with a group of ambassadors and high-level governmental officials at around noon, when the temperature was about 100 degrees Fahrenheit. One by one he shook hands with the people in the front seats and then sat in the stage among the claimants. Everything was being transmitted live for the state's TV channel. An anchor by the side of the stage conducted the broadcast. The ceremony was inaugurated with the national anthem, addresses from Montería's mayor and Córdoba's governor and was going to close with the President's speech. Both the governor and the mayor celebrated the richness of Santa Paula's land: "Most likely one of the best lands in all Latin America." Also, as they both reiterated their commitment to the implementation of the land restitution policy, Unit officials sitting in my row joked that the mayor and governor were sweating not because of the weather but because they had been forced to pretend to be pro-restitution in front of the cameras and thus betray their anti-restitution friends. The rumors among officials, claimants and NGOs was that local political elites were not only silently resisting the policy but providing protection to Castaño's sister-in-law, who apparently moved freely from one farm to the other without interference from the local police.

When they were done, a group of claimants was invited up to the stage. One of them sang a love song he had composed for the hacienda, and then another group read a rendition of the facts they had prepared, which dwelled on the enthusiasm they had felt when the Castaños had given them the land and the disappointment, sadness and humiliation that had come when they were sent away and asked to sign a counter-donation. I looked around trying to read the reactions from the high-government officials, or international delegates, but could not figure out if this was a surprising or

uncomfortable story for them –as in the case of the journalist. Finally, as a preamble to Santos’ closing address, a video also recounting the facts of the case was projected on the two screens at either side of the stage. While presenting a succession of images of war, of the Castaños and their armies, the voice of a narrator, accompanied by an ominous music in the background, explained that humble peasants had been working peacefully in Santa Paula for years when paramilitary violence forced them out of their lands, but that now, and thanks to the VLR Law and the efforts of the Santos administration, their rights had been reestablished. Neither Castaño’s peace with the EPL, the creation of Funpazcor, nor the donations were mentioned.

When his time to talk came, Santos started with the “historical significance” of the VLR Law. This time, however, instead of focusing on the agrarian question and the debt with the peasantry as he had done in previous events, he referred to the VLR Law as an expression of “the determination of the Colombian people to leave behind decades of blood and tears” and embrace “a long lasting peace”:

The only way to honor our victims is putting an end to this conflict (referring to the peace talks ongoing in Cuba). Another way, and this is what we are doing here in Santa Paula, this emblematic place, is looking for a better future and so we say: “where the assassins used to rule, the peasants are coming back” (in Spanish, “*donde mandaban los asesinos hoy vuelven los campesinos.*”

Then he repeated this sentence, emphasizing its verse-like qualities, derived from the resonance between the words *asesinos* (assassins) and *campesinos* (peasants) and trying to give make it sound like a litany. And then he added: “Nobody thought this was possible. And it wasn’t easy.” To close this part of the part of the speech he listed the obstacles encountered during the procedures: the Castanos had taken over the lands through “fire and blood”; claimants, governmental and judiciary staff had been threatened; the process had been moved to Medellín for security reasons –a piece of information I did not know about- and also Mr. Cordero’s assassination.

From the speech it wasn't clear whether Santos had been briefed about Mr. C's family. Was he referring to the many dispossessions of Santa Paula? Or only to the one involving the claimants? Also it wasn't clear if in the version of facts he had received there was violence against the claimants. Still, as he went on summarizing the obstacles and the facts, Santos reiterated the standard plot of land dispossession and despite the "facts" established in the process he made explicit violence one of its constitutive elements.

As he spoke I noticed a woman and a group of people sitting in the front row, right in front of Santos, who had been wiping tears out of her face since the ceremony started. I was told they were Mr. Cordero's companions. Beside them were the children and the partner of Yolanda Izquierdo. Then before Santos finished, he announced that next he would be heading to Valencia, where Mr. Cordero had been killed, and hold a security committee with his top army and police commanders. He also announced that as had happened with FARC top commanders and with well-known mafiosos, he had decided that "the enemies of land restitution" would also be considered "high value targets" and that there would be special bounties for these "enemies of land restitution." For many of us in the audience the former was a rather obscure term, but it prompted a burst of applause. I wrote a message to a friend in the Ministry of Defense asking what the expression meant. She got back to me explaining that people given such label were considered military targets and this meant that the priority was to terminate them, rather than attempting arrest.

With this declaration of war, he concluded his address and left, and most of the guests followed suit while reporters tried to get quotes from them about the restitution of Santa Paula, the legendary hacienda of the Castaño –as one of them put it, again. Only the claimants, their family members and the Unit officials stayed for the official "entrega" of the property deeds. It was rather informal. Córdoba's director stepped into a chair and was rapidly surrounded by the claimants who held hands with their friends and relatives and waited with a wide grin in their face for their turn. As they

approached the director, some of them cried of happiness, while others danced or waved their hands in the air in great excitement. The other officials and I could not hide our joy either. As they received their deeds many came to us and thanked us for our help. Their leader, with whom I had spoken extensively in the past weeks, came to me and shook my hand enthusiastically.

Other truths

A few weeks later, Open Truth published an article with the clever title: “The Castaños donated the dispossessed land and dispossessed the donated land,” detailing Mr. C’s story and reiterating aspects of Canseco’s version of facts.²⁷⁷ The article claimed that the Santa Paula ruling could “literally bury past situations of land dispossession” and asserted that there was “proof indicating that the Castaños had forced peasants to lend their names so they would pass as the owners of lands in area, and thus avoid the expropriation of lands acquired with illegal money, or even worst, forcibly dispossessed from previous owners.” The article quoted Carlos Castaño’s My Confession to show that it all had been a plan to secure property rights and security. As for Mr. C’s story, the article explained that one of the killers had confessed in 1992 that the in-laws had been killed for supporting the guerrillas,” however, it then asserted “that the real reason” behind the extermination of the family was land. For this reason, it concluded, Mr. C’s family “could only watch in disbelief” at the news of Santa Paula’s restitution.

Closing remarks: purifying the juridified past

What do Santa Paula’s many dispossessions reveal about the multitude of silences and mentions that constitute admissible or recognizable versions of the past? For one, the legal and extra-legal

²⁷⁷ News portal Verdad Abierta. April 19, 2013. “Los Castaños donaron la tierra usurpada y usurparon la tierra donada.” Available in <http://www.verdadabierta.com/investigaciones/4548-los-castano-donaron-tierra-usurpada-y-luego-usurparon-la-tierra-donada>

iterations of this story reveal the narrative force of what I have termed here the standard plot of dispossession with some its main constitutive narrative elements: undisputable “pure victims,” “demonized perpetrators,” and explicit forms of violence, and also the greed for land as main cause or motive for war. Such is clearly the case of the lawsuit itself, the press release that was distributed on the plane, the refusal of the journalist, the ruling, the video presented in the restitution ceremony, and Open Truth’s take on the matter.

Narrators selected the elements that would allow them to represent claimants as “pure” victims in terms of Orozco (2012) -passive, inert and subjected to the Castaño’s plans. Most versions went along with the standard plot of dispossession by force, while reducing or totally silencing Castaño’s peace, the legitimacy with which he operated, the collaborations between people like Yolanda Izquierdo and Funpazcor, and the fact of the donations and that nobody protested or invalidated them. Open Truth, on the other hand, gave space to some of these elements, but could not help depicting claimants as being forced to lend their names. Why not as being willing to be part of Castaño’s peace? Would that make them less deserving? Even in the account we prepared in the Unit, and despite a self-conscious attempt to be empathetic and represent claimants in their own terms, their relation with Funpazcor was represented as one unyieldingly vertical –to the point of violence being unnecessary-, and one structured around fear and only secondarily, gratitude. Rather than actively silencing their story, now I see that we actively silenced a much more nuanced story. Could it be that this act of erasure, in Trouillot’s terms, occurred because we did not deem it possible for this relation to have been much more complicated? Or could it be that we wanted to free claimants from the forms of incrimination operating both in war and ordinary criminal law procedures? Could it be that we were operating within a narrative regime structured to take away the capacity to exert authority, gain acceptance, even instill admiration from characters like the Castaños? In its many variations, in sum, in this purified past claimants had reduced or no agency

(Weld 2013), did not engage actively and willingly in politico-military and governmental projects such as that of the Castaños, and their relation with the claimants was presented as one of pure and simple domination.

More importantly, in this past claimants were devoid of positions that could be morally and politically unacceptable for narrators and publics who could oppose or revert their reconfiguration as subjects of rights. All these forms of strategic or contingent essentialism freed them from responsibility for having taken a side in the conflict, for acting as friend or enemy of perpetrators, or for having inhabited morally ambiguous positionalities. In a way it is also meant to free them from the forms of incrimination that were deployed during the war and that resulted in aggressions against them. Simultaneously, this essentialism also liberates narrators from moral and narrative discomforts, and allows them to confirm rather than question their understanding of the past and what is correct.

The account of the prosecutors reproduced the same standard structure with a variation. The only difference was that initially they located claimants on the opposite side of the victim-perpetrator binary and attributed the limited kind of agency that criminal law grants the latter: that of executing a criminal act. In this case, claimants were given agency to deceive. Either claimants had made up their stories and were not beneficiaries of Funpazor or, if they were, they could only be accomplices of the Castaño, rather than victims or something else. It took various meetings defending the overall narrative structure, but reordering the use of the binary, to persuade the prosecutors to agree to treat claimants as victims.

Another erasure effect, and a dramatic one, was the silencing of Mr. C. His story lay silent, hidden underneath the many narrative layers of the story of Santa Paula, until he provided his account and the prosecutors found about his existence. Canseco had not mentioned him, nor had the claimants nor the other stories about Santa Paula available at time. And the, after its first

mention, the story was actively forced back into silence and erased from most of the acts of veridiction examined along the chapters. The VLR Law purposively decreed the active invisibilization, the silencing in Trouillot's terms, of the cycles of violence that came before 1991 - the year that was finally agreed upon in Congress as the starting date of grievances-, even if along the way different legal operators and narrators have tried to account for the cycles of dispossession spanning throughout a longer time frame. As a result, the government's various accounts during the ceremony omitted Mr. C and his highly brutal case of dispossession.

Exceptionally, when not erased and in order to give it narrative force, Mr. C's story necessarily underwent a process of purification or demonization. Unsurprisingly, in Carlos Castaño's account, Mr. C's family –and all the people that he admits having killed- were depicted as dangerous, evil and deserving of their fate. In Open Truth's account, on the contrary, Mr. C was purified and his history made to fit, again, the standard plot of dispossession by turning him and his family, into passive victims. Open Truth could not help but issue a counter-verdict: that Mr. C's family had been wrongly accused of drug trafficking and supporting the guerrillas. Moreover, in this account, Open Truth added to the narrative another element also constitutive of the standard story of dispossession: land as main motive and main causal element in the exercise of violence. Open Truth readily attributed to the persecution of Mr. C's family the motive of land. This in itself is certainly a fairly legalistic move: in many legal systems motive is often a constitutive element of murder (although not the Colombian one). But it is also more widely commonsensical in Colombian political culture where for certain publics, “our war without name” is a story of greed and land accumulation rather than, or also, about people and the need to shape the body politic. Was it necessary to clarify that it had been established back in 1992 that Mr. C's family was not connected to drug trafficking –as many Colombian families were- or that it was not connected with the EPL, as

were many inhabitants in Córdoba and Urabá? Would that make Mr C's story less horrific, his suffering less real, his right to be heard, and recognized, less compelling?

The Castaños, on the other hand, had to be fully demonized (Orozco 2012). The initiative to distribute land was erased in most accounts and if not, was given a place in the narrative as a façade to keep the properties out of the reach of state authorities, rather than also being an initiative to govern in Foucauldian terms. Weren't the Castaños also attempting to organize territories, people and property rights into "a correct order"? Couldn't this be part of the Castaños' "will to improve," capable of expressing itself through other means than violence? Is it too outrageous to recognize the approval that apparently accompanied Castaño's plans for peace in Córdoba?

So although law is certainly not after the whole story, as Geertz argues, neither is, by means of its reliance on juridified pasts, fact-making in the media and governmental settings, such as the ceremony catering to certain urban, literate and morally self-righteous Colombian publics. Moreover, as I have sought to show here, following Trouillot, that even in those settings history is structured around modes of silencing and mentioning, which simplify uncomfortable and painful pasts, but also allow narratives about the present political elites. In the case of the Santa Paula hacienda, the pretended order, symbolically fulfilled through the enunciations of its story, was one in which the Castaños were stripped of most of their sovereign and often hegemonic power except their ability to inflict physical violence, while other people, like the claimants or Mr C., were liberated from participating in power relations except as passive victims, and property rights were only administered by state institutions according to the law, so that dispossessions and donations of the kind in the story could happen.

Conclusions: Land dispossession, Restitution and the Politics of Aspiration in Pre-Post-Conflict Colombia

Recapitulation

Early in 2012 a whole new judiciary apparatus and a new governmental agency, the Land Restitution Unit, began its operations with the exclusive purpose of vindicating the rights of the subjects deemed by a series of publics to have been one of the main causes and consequences of the Colombian armed conflict: the “dispossessed people or population” (*los despojados*).

This dissertation interrogates from an ethnographic perspective the configuration of this new subject of rights. How was it constituted? How was this population represented –in both senses of the term? By this I mean who did the representation, and in the name of whom? What kind of subject, with what kind of past, what kind of losses (or burdens on its back), would count as dispossessed? Most importantly, how was this subject of rights authorized? Who were the authors? How did they obtain authorization to articulate the subject of rights in the way they did? How were the claims made on behalf of this subject admitted by political elites and inscribed in the law?

Rather than taking this new Law as a point of departure, I have inquired about the intricate assemblage of people, things and ideas that allowed this subject of rights to come into existence and

be enounced in the particular way it did. As part of this analysis I have examined the political alignments it emerged from and those it has instigated since. A variety of politico-affective communities found themselves not only willing but eager to work for the Santos administration despite their very profound distrust and I would say even the repulsion for the government, but all in the name of the dispossessed. Conversely, people who had actively supported Santos administration starting with Uribe himself, felt increasingly betrayed.

As a point of entry to the tumultuous political life of this subject of rights, I have examined three moments and instances of its configuration. **First**, I have sought to trace the process of problematization of *el despojo de tierras*, land dispossession. How did land dispossession become a real and pressing nation-wide problem? How was this objectivization achieved? Equally important, how was this objective reality turned into a problem? How was the will to improve of political elites harnessed towards the reversal of land dispossession? How was it endowed with overarching historical causes and consequences? How was it endowed with a sense of moral urgency?

To answer these questions, in Chapter One I have offered a historical analysis of the agrarian question and reflected about the politics of land policies and land policies in the politics of 20th century Colombia: *la política de tierras y las tierras en la política de Colombia*. To do so I explore the political history of what in techno-legal circles in Colombia is referred as the “agrarian question” which, following Foucault’s notion of government, I have come to understand as the question about the government or the correct disposition of “agrarian things” –and in particular, the correct allocation of land. Gradually, starting in the late 1800s and up to the present, the adjudication of rights over land became an object of contestation, around which would coalesce and clash a wide variety of political configurations –partisan subdivisions, new governmental agencies, the ANUC, armed organizations- so to reach a desired agrarian order. In the midst of armed confrontations, agrarian reform and counter-reform policies, and market fluctuations, large portions of the rural

inhabitants would lose their lands –or the hope of ever acquiring a piece of it- and move to the cities. Thus, despite the struggle of segments of the peasantry and the urban bourgeoisie aimed at redistribution by law or force, land concentration rates would keep rising, and also the inequality between cities and the countryside overall considered.

Thus I also argue that by 2011, when the Law was passed, land dispossession was a familiar story for most Colombians, regardless of their socio-economic background, political sensibility or age, and was constitutive of their personal and collective memories, their understanding of their present, and in a way also of their hopes for the future. Here familiar works in two senses: as being familiar or easily recognizable, but also as being part of the family story. As I delivered my “elevator talk” about my doctoral research to friends and strangers in Colombia, and without me inquiring, almost everyone would respond with their own family story of land dispossession –including Papo, my grandfather whose story I have weaved into this more general reflection about the place of land in the experience of being Colombian. This memory of loss could very well refer to the recent war, but more often than not it would go further back in time to the peasant takeovers of 1970s, or the liberal-conservative wars of the 1940s and 1950s, the clashes between hacienda owners and rural laborers in the late 1800s or even to the colonial encounter. It would also appear as a sense of protracted landlessness devoid of a defined place in time and space, trans-generational experience of having tried and failed owning a land. As the doctor who by chance I saw for an appointment during fieldwork put it: “don’t we all want to have a little piece of this land?” (*un pedacito de esta tierra?*)

Because of this immediate and also long-experienced loss, “correct” land allocation has persisted in Colombian politics at least since the late 19th century as an object of desire, thought of as having the potential to bring about a host of collective and individual utopias. Through the right allocation of land, the nation, the family, the individual, can finally overcome a present that is itself the continuation of a undesirable past and make its way into a new a variety of desired orders: progress,

development, modernity (more recently peace). Land has been predicated to have the same emancipatory potential that is attributed to private property in most liberal theodicies: that of turning people into full-fledged citizens, productive agents of the economy and transcendent individuals who can control and leave a mark in the world –instead of the other way around. This structuring power at a variety of scales attributed to the correct allocation of land can even be illustrated by the polyvalence the word *tierra* (land) has in Colombian Spanish and the many meanings it can encompass. Just to name a few *tierra* is simultaneously: land, soil, ground, dirt, homeland, fatherland, landscape, planet earth, farm, property and hometown depending of the context.

Thus, like the Freudian fetish land always stands as something else; and when acquired it tends to dissatisfy precisely because it cannot be all those things at the same time. But, tragically, when lost, all these potentials are also thought to be lost. Moreover, like the Marxist fetish, land is attributed all these values, while at the same time obscuring what actually gives it such all-encompassing potential: a whole complex of social relations through which the subject who desires can derive from land the pursued satisfaction. At the end, unknowingly, the object of desire is not only land itself, but the establishment of a sought-after social order which certainly comprises more than the one on one relation with the land, but which this latter, nonetheless, comes to represent.

In Chapter Two I turn to two genealogies that are constitutive of land dispossession in most recent times. Continuing with Papo's story and that of my own parents I trace the emergence of what was known in the late 1980s as the narco "agrarian counter-reform," and the moral panic that came with the rise of a narco class and their acquisition of large extensions of the best lands in the country.

In the same chapter I review the process of configuration of direct cultural predecessor of the dispossessed as subject of rights: the *desplazado*. This "suffering stranger" –as Colombian anthropologist Ricardo Aparicio has called it- to be taken care of and vindicated, emerged as social identity and a legal category also in the late 1980s and spread throughout the urban landscape and the

political field throughout the 1990s the conflict between guerrillas, paramilitaries, state forces and narcos intensified. As this happened, activists devoted to counting the displaced –and making them count, as Tate would put it- managed to convince governmental elites –until Uribe- to create a whole new body of law detailing its rights. Along the chapter I reconstruct the efforts to measure and geolocate narco-properties and the displaced, the political uses of statistics and maps; and also the politics behind some of the governmental responses to both increasingly worrisome and widespread problems. I show that by the late 1990s, the narco counter-reform and forced displacement were considered uncontested realities that resisted the efforts to contain and reverse them in the ground and added to an already dystopic agrarian landscape another layer additional layers of complexity.

To close the chapter, I explore the shift in attention in the late 1990s from counting and conjuring forced displacement and the narco agrarian counter-reform to land dispossession (*despojo*) as co-occurring to both and as one of the main causes and consequences of the armed conflict. As point of entry into the gradual configuration of land dispossession as public problem and land restitution as its agreed solution, I offer a social history of the Project for the Protection of the Land and Patrimony of Forcibly Displaced Populations, an initiative lead by a group of government officials and representatives of international organizations like the World Bank. Eventually the Project would have a decisive role positioning land dispossession as real and urgent problem among political elites throughout the next decade, converting it into a new legal category and also designing the legal provisions and the institutional set up that was finally approved by means of the VLR Law in 2011.

One of the main conclusions of this first part of the dissertation is that by the late 1990s, land had operated as an organizing principle in Colombian politics since the late 1800s and since then it had instigated a wide variety of convergences and cleavages within the political field. Another conclusion is that , for a group of techno-political elites who had made the study of the agrarian question, violence and development their field of expertise, an agrarian landscape carved out of a variety of cycles of land

dispossession was the one of the main causes and consequences of a multi-layered dystopic present: inequality, under-development, rampant illegality (materialized in the form of coca fields and narco-haciendas) and more crucially at that point in time, an increasingly violent and expansive armed conflict. Consequently, for these elites the redistributive agrarian reform that had been attempted but halted in the 1930s and then in the 1960s, became once again the most urgent of measures since in addition to solving old problems it was purported to address the material conditions that allowed for the reproduction and persistence of guerrillas and paramilitaries.

The **second** instance of articulation of the subject of rights that I have considered, is legislation. Chapters Three and Four explore the socio-political organization that allowed the formulation of a variety of statutes that purported to delimit the contours and rights of the dispossessed: the Justice and Peace Law (Chapter Three) and more importantly the Victims and Land Restitution Law itself, also known as Law 1448 (Chapter Four). By revisiting my own professional past, interviews, archive work and secondary bibliography produced by other observers, I have examined how the particular excerpts regulating the right to land restitution that made it into this piece of legislation were inscribed into the the text of the law. To do this, I have attempted an ethnography of the making of the law-in-the-books. Bismarck once claimed that there are two things that you don't want to know how they are made: sausages and legislations. In the dissertation I dig deep into the resistances, negotiations and perplexing paradoxes that led to the dismissal of the Law the first time around and then to its approval under Santos. I reconstruct the shifting micro-political topography through which the group of lawyers and others experts turned their claims of justice for the dispossessed into a set of legal mandates. However, I don't reduce the making of this or any other legislation to a series of negotiations occurring in a cultural vacuum. On contrary, even if legislation is deemed to be the realm of pure instrumental rationality, manipulation and deceit, this or any other act of inscription of a political aspiration into the law, is embedded in a set of larger cultural configurations which shape the political imagination,

and determine what we can aspire to, and also what are the means we deem to be effective, or available, for our purposes.

Thus, in relation with this second setting of articulation I have addressed more general questions about the intersection between law, politics and expertise; and the social and cultural organization of law-making: who writes the law and in the name of whom? Who is entrusted with the privilege and the responsibility to do the actual inscription of political demands into law? How do they enter into such restricted spaces of power? How do they validate their views and present them as compatible, even mandated, by the law? Ultimately, as I seek it, this set of questions as much about the production of the law than it is about the production of what I have referred to as normative elites. How are they made? How do they acquire or lose the ability to persuasively change the the law? Through them such claims cease to be demands circumscribed to the experience of a group –in the case of most victims a very marginalized, impoverished and neglected one- to become mandates with the force of law.

In relation with this point, I have discussed the structuring force of law over political agendas; and how this force is enacted primarily by lawyers, not only in the specific policy-world of land dispossession. As a form of grammar the law does not easily allow certain political demands to be uttered, even by those who are both fluent in it and committed to those agendas. There are rights and subjects that cannot be, not only because political interests may get in the way but because they are deemed to be incompatible with the integrity of the existing legal system—*until they can*. But both the possibility and impossibility of translation is performed by legal professionals, as part of their subjectivity as good lawyers. They operate as the authorized translators -or censors- of political demands, some time even against their own political impulses. The alternative regime of proof, for example, found a diffuse resistance during the process of approval of the Law. Even lawyers committed with the cause had to struggle against their own professional self to consider these changes as formulated within the boundaries of what was legally possible. And the opposite also happened.

Political adversaries were also confronted with legal arguments demonstrating the legal necessity –this is, what is legally mandated- of such provisions and had to submit even if this conflicted with their own agenda. Just as policy arguments are often part of predominantly legal decisions –mainly, judiciary decisions-, legal arguments are constitutive of political decisions also in very decisive ways.

As for the delimitation of the dispossessed in this particular setting, I examined the disputes that emerged to turn the category into a legal one, and the negotiations and contingencies that led to the the temporal, spatial and social dimensions of the category. Despite dispossession being a familiar story, the VLR Law excluded from the formal definition people dispossessed before 1991, tenants (as opposed to property owners, adverse possessors and *ocupantes*) and also forms of dispossession not causally related with the most recent armed conflict.

Finally, **the third and last** instance of the articulation of the dispossessed as subjects of rights that I investigate is the Land Restitution Unit itself and the everyday practices of its staff. In chapters Five and Six I examine the conditions and the process of production by which Unit officials create dispossessed lands and people on a daily basis. As I write, the Unit has received a little more than 110,000 claims, of which approximately 58,000 have been resolved: 36,500 have been admitted to go to court and 21,500 have been rejected. Of those admitted to go to court, the judges have decided 6,822, covering 234,258 hectares of land (LRU 2017). 98% of the cases have been decided in favor of claimants. To solve each claim, the Unit has engaged in the production of facts about the past and compilation of the supporting evidence, and has constructed a narrative about the occurrence (or absence) of land dispossession. As Reyes (2016) recently pointed out, behind each of these figures is an enormous amount of work. However, I have argued, following Fassin, that this work is both intellectual and moral, and involves not only the reversal of land dispossession, but its redistribution and the establishment of a kind of state that *is better than the state*. Such co-occurrent aspirations, however, not infrequently turn out to be incompatible.

In Chapter Five I have sought to understand how administrative truths about dispossessed lands and people are constituted by examining the social organization of the Unit, the subjectivities and trajectories of the officials who constitute it, and by closely observing the practices for detecting the dispossessed that they engage in. On a daily basis, officials must answer complicated questions, which although simple in appearance -who, did, what to whom, when and where?-, cannot be easily answered through the traditional means of official truth production, and often lead to morally ambiguous answers. Also, they need to decide what are the moral and legal rules that regulate this process of inquiry, navigate the micro-politics of professional, class-based and gendered rivalries, and learn how balance distrust with efficiency and fairness.

The Unit began operations in early 2012 in the midst of great expectations, and also of a series of displays of violence perpetrated against grassroots victims' movements, which the media read as "anti-restitution" acts. For fifteen months I worked for the Unit and then for six additional months I was given privileged access as an ethnographer. Starting with a staff of eighty, the Unit is now composed of more than 1,000 officials distributed in twenty-five offices across the country. Most of the people whose trajectories I have traced in the previous two chapters joined the Unit convinced that it was a unique opportunity to reverse the agrarian counter-reform brought about by the armed conflict, create a more just agrarian order and also, along the way, to incarnate a virtuous state. Precisely because the general perception among most of the Unit's original staff was that in the aggregate land dispossession had mostly affected poor peasants and had led to an increase of land accumulation rates and the expansion of criminal or unacceptable fortunes, restitution was imagined to have predominantly redistributive effects, as well a retributive ones. Moreover, because the perception was that dispossessed peoples had been deprived of land, through violence but also in part because of the negligence of state authorities, and in part because of property law and ordinary rules regarding evidence, the unarticulated aspiration was to fairly redistribute not only land, but also truth-

making and the protection of the law. Overall, what inspired some of the drafters of the VLR and administrators of the Unit was that the means of production of truth –and the redemptive violence of law- were as badly allocated as land.

This would be achieved through a virtuous state imagined to be meritocratic and technocratic; agile in responding to claims but also well-informed and exhaustive, with complete and up-to-date information about the peoples and territories it purported to govern; and with an ethical stance on the side of the weak and subaltern. In short, a state capable of dictating the truth about the violent past and the resulting present in a reliable, quasi-scientific and yet humanistic manner –“letting the dispossessed speak”-, while solving with little margin of error the simple questions about time, place and modality for each case.

Along the way, however, and because its ultimate purpose was to produce a subject of rights, the Unit was forced to engage in what Jean and John Comaroff refer to as the juridification of the past (2012). A juridified past, they suggest, is constituted by a set of reductions. As I have argued in Chapter Six, indeed, the stories provided by claimants need to be matched with legal categories that capture some of their narrative elements while excluding others. Thus, as the Comaroffs claim, the juridification of the past requires ends up reducing complicated histories such as land dispossession in Colombia to a “the language of torts, of plaintiffs and perpetrators, injuries and liabilities.”

In addition, this administrative reconstruction of the history of dispossession is not only subjected to this reduction intrinsic to legal categories but, as Trouillot reminds us, as any other narrative it is also conditioned by *an additional* set of silences and mentions, some of which are strategically deployed by claimants, Unit officials and judges, while others determine what set of facts, narrative structures, and types of past can be strategically pursued. In this sense, law is just one of the structuring elements of the narratives about the past that is put in circulation.

In the case of land restitution procedures, I argue, often the claimants' stories have been made to fit narratives of loss that match operative legal categories, not at random, but rather fitting what I call the standard plot of land dispossession. The "many dispossessions" of the Santa Paula hacienda in Córdoba is a case in point. This standard plot is constituted by a series of recurrent narrative elements, among others: a spectacular act of violence destroying the human-land relation involved, land as driver or motif of violence, and what Iván Orozco (2012) refers to as a purified victim and a demonized perpetrator.

The key question here is about implications. Which power dynamics are expressed and have effect through the standard plot? Throughout the chapter I discuss some of the most prominent: the erasure of pre-1991 events, the removal of the agency of the subject of rights— and therefore the removal of blame; and the denial of the armed organizations' productive power. By virtue of this process, narrative claimants are turned into what Orozco (2012) refers to as "purified victims," and represented as people to whom the conflict occurred —instead of people who may have taken a side, or were politically engaged, or made morally ambiguous choices. Conversely, armed organizations are demonized. They are deprived of aspirations to "improve," denied any moral horizon, and stripped of their power to produce subjects and territories —and certainly rights. Their power is reduced to raw physical violence. Often this demonization is even extended to current owners or tenants. Finally, with this narrative scheme, the mobilization of state resources —from money to coercion to symbolic power— on behalf of the subject of rights, is not only morally and legally justified but becomes mandatory.

The reorganization of the field of force around the dispossessed

Overall, then, this dissertation is about the techno-political disputes around the definition of the dispossessed as a population that ought to be protected, and the disputes around the right allocation

of land, but also about the effects of the vindication of this subject of rights over the distribution and uses of the means for the production of truth and also the force of the law –the latter both as system of representation and as mechanism to channel the state’s legitimate violence. Although, as I write, the, the effect of land restitution rulings over the agrarian structure and its constitutive inequality have been insignificant, the vindication of the subject of rights has nevertheless transformed of the field of force of Colombian politics in dramatic ways.

First, land dispossession in its pre-legal form, as family and familiar story, allows for identification across class-divides and political rivalries with the “dispossessed” and a general acceptance and enthusiasm with measures of retributive nature such as land restitution. However, and this is the second conclusion, as I showed in Chapters Three and Four, the configuration of the dispossessed as a subject of rights in the way it was inscribed in the text of the law emerged but also prompted a series of political realignments and fractures that contributed to the reorganization of the political field, including the convergence of techno-legal elites and the widening gulf between the constituents of Uribismo and the Santos government they had elected. More importantly for purposes of this ethnography, during the elaboration and approval of the VLR Law a very small but decisive normative elite emerged, and then as the Land Restitution Unit was put into operation, a group of professionals immersed in politico-affective communities connected through family ties or ideological identification with the political left entered the state –at the same that they internalized the state. By doing so, both changed: while officials refashioned themselves, they also engaged in a specific kind of state-making, one animated by aspirations to a virtuous, retributive but distributive and modern state.

Third, with the operations of the Unit, some of the means of truth production about the violent past have been transferred to land restitution claimants and officials, giving them –especially the second- the power to shape the silences and mentions of the emerging historical narratives. This power, however, is partial to the extent that narrative structures of a larger scale, such as law, condition

individual accounts about land dispossession and the iterations that unfold as they are put in circulation and used to adjudicate property rights.

This way a whole new ensemble of official truths about land dispossession has been assembled and its incipient circulation is shaping the understanding of the past of a variety of publics. In their final form, the majority of these accounts replicate what I have called the standard plot of dispossession, with effects over the people who appeared to be dispossessed, the people who are deemed responsible for the dispossession, the people who inhabit the lands that served as object and scenario of dispossession, and also the people who endured land dispossessed but were excluded from the current official definition established in the VLR Law. The purification and despolitization of victims, the thorough immoralization of perpetrators, the simplification of the process of loss of land and the effacement of pre-1991 forms of dispossession that characterize this plot contribute to the establishment of decontextualized but juridically and morally manageable grand history of the war. Thus, it is by virtue of a relatively elided victim and perpetrator that justice as is currently practiced, can be more easily administered. The restitution process of the Santa Paula hacienda is a case in point.

On the other hand, in their incipient form, some of these accounts are, on the contrary, highly contextualized and sophisticated and although they are silenced and their circulation is limited to the files of land restitution cases, they remain latent and in the near future can be freed and used to allocate criminal responsibilities and (de)stabilize, once again, property rights and criminal responsibilities. This could be their use once the Special Jurisdiction for Peace established in the Peace Agreements between the FARC and Santos begins to operate.

Fourth, with land restitution, and parallel to the reorganization of official truth-making and dominant narratives about the past, has come the reorganization of property rights and a reorganization of how state violence is administered. Towards whom it is directed, and in whose favor? The announcement made by President Santos in the restitution ceremony in the grounds of the Santa

Paula hacienda is a manifestation of this emergent order of violence. Not long after, state forces arrested a group of “dangerous dispossessors.” Moreover, although I barely mention it in this dissertation, the deployment of police and army forces also changed with restitution interventions, and between 2011 and 2018 many security decisions have been planned around land restitution operations.

But more importantly, as I suggest in Chapter Six, land restitution has certainly transformed the topography of local social and political worlds in deeply radical ways. There is no doubt that with the irruption of the Land Restitution Unit and a new set of specialized courts into local orders and the (de)stabilization and reorganization of property rights that may come with the procedures, power relations are being radically transformed. Although this reshaping of local orders is beyond the scope of this dissertation, it is undeniable that the configuration of the dispossessed as a special subject of rights and the everyday state practices to vindicate and protect its rights and integrity is making and unmaking both agrarian and political landscapes whose persistence in time and *long durée* effects are yet to be seen. However, for the time being it is creating few but potentially drastic opportunities to provide whoever can be labeled as “dispossessed” with a series of means which in the pre-restitution order of things most likely would had been unattainable: the promise of land, the power to dictate the truth and to be protected by the legitimate violence of the state.

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