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Forced Migration, Land and Sovereignty¹

A RECENT SURGE IN INTEREST IN LAND ISSUES IN THE CONTEXT OF armed conflict, forced migration and post-conflict transitions provides a relevant framing of this article. Rules and conditions of access to land are liable to change during and after armed conflict, or may even be at the centre of underlying political conflict. Displacement and return of refugees and internally displaced persons (IDPs) play into these changes with the risk of generating new tensions and outbreaks of violence if responsible institutions do not take sufficient account of the land problems. This seems to be the general claim of several recent publications, which also hold that international and in particular humanitarian agencies have a very limited understanding of issues of land ownership, let alone analytical capacities and policy frameworks for dealing with land issues when becoming involved in forced migration emergencies.²

Looking into this complex of problems from the perspective of state-building and practices of sovereignty, this article explores a Guatemalan land conflict in the context of refugee return and peace negotiations in 1994–95. The land conflict culminated in a showdown between a group of returning refugees and their former neighbours who had stayed or returned to Guatemala soon after. The land conflict took place a year before the signing of a peace accord on

¹ I am grateful to my colleagues at the Program in Agrarian Studies at Yale University, and in particular to Richard Khernaghan and Liza Grandia, for their encouraging and insightful comments during the conception and writing of this article. Also thanks to Eva-Lotta Hedman and an anonymous referee for their comments and questions.

² See, for example, Land and Equity Movement, *Land Matters in Displacement*, Kampala, CSOPNU, 2004; John Bruce, *Drawing a Line Under the Crisis: Reconciling Returnee Land Access and Security in Post-Conflict Rwanda*, HPG Working Paper, London, Overseas Development Institute June 2007; odi/hpg research project, land tenure in conflict and post-conflict situations, available at <http://odi.org.uk/hpg/land.html>. On forced migration emergencies, see Susan F. Martin et al., *The Uprooted: Improving Humanitarian Responses to Forced Migration*, Oxford, Lexington Books, 2005.

'socio-economic issues' dealing with the thorny land issue without mentioning distributive land reform, a crucial, underlying issue of the 36-year armed conflict. Among the suggestions of the accord was a plan to establish a complete cadastral register and other mechanisms and institutions that promised to put an end to the endemic land conflicts in Guatemala, once and for all, and to provide the government with a central database for the purpose of taxation.

I have previously argued that one of the main effects of the refugee return to Guatemala was an increased presence of civilian institutions that, explicitly or implicitly, reworked the relationship between state and citizens. This presence – and the discourse of 'peace and development' – heightened expectations to state and state-like institutions to provide services and guarantee rights.³ In particular, the refugees asserted their status as proper citizens with rights to land and property (unlike their conditions in exile in Mexico), insisted on their access to the administrative and political apparatus, and demanded a fair share of social and infrastructural services. Thus, there was a certain demand for the formation of a modern state.

Whereas my previous analysis focused on 'everyday forms of state formation' and was inspired by Foucault's notion of (bio)power, this article will broaden the analytical perspective by looking at the role of force and violence as constitutive events that take place prior to 'the everyday'. In this perspective, land conflict is an occasion for the assertion and performance of sovereignty, not only of the state, but also of the involved communities of 'returnees' and 'stayees'. This involves an approach that frees the concept of sovereignty from the assumed association with state and territory and instead focuses on sovereignty as a set of discernible practices of exclusion, exceptional measures and use of force in the name of a particular political or moral community. For the present analysis, I will consider Carl Schmitt's idea of land appropriation as an archetypical constitutive event in the establishment of law and sovereignty,⁴ a sort of primitive juridical accumulation, which is a precondition for the kind of power considered in Foucault's analysis.

³ See in particular Finn Stepputat, 'Repatriation and Everyday Forms of State Formation in Guatemala', in Richard Black and Khaled Koser (eds), *The End of the Refugee Cycle?*, Oxford, Berghahn Books, 1999, pp. 210–26.

⁴ Carl Schmitt, *The Nomos of the Earth in the International Law of Jus Publicum Europaeum*, New York, Telos Press Publishing, 2006, first published 1950.

I will briefly discuss Schmitt's perspective on land appropriation in a Guatemalan context before telling the story of the land conflict in question. On the way I will convey a historical perspective on the practices of land appropriation, distribution and measurement since the current practices bear a surprising resemblance to the practices and problems associated with the liberal land reforms and land surveys of the nineteenth century. These reforms were an important step in the welding together of land ownership, identity, citizenship and territorial sovereignty in the Guatemalan state project.

LAND APPROPRIATION, ORDER AND SOVEREIGNTY

Schmitt's analyses can be disturbing as well as intriguing, but as Rasch puts it, you don't always have to 'sympathize with his sympathies to profit from his insights'.⁵ The insight to be gained from Schmitt's *The Nomos of the World* from 1950 regards the ways in which political ordering and spatial organization are related in the Euro-centric and the more recent US-centric modes of globalization. *Nomos*, the process of settling, ordering and giving orientation to political communities, has three dimensions: (1) the act of appropriation, which involves the use of some form of violence; (2) division and distribution, which involve the production of knowledge, techniques of measurement, institutions, norms and rules; and finally (3) the production and consumption related to the colonized domains. Land appropriation is a paradigmatic case since it is central to the political history of the territorial nation-state, but the appropriation of sea, air-space, cyber-space and genetics are equally relevant material for his considerations.

In looking at how political, legal and technical development work together with spatial organization, Schmitt shares some of his preoccupations with early twentieth-century European geopolitical theory (which later became popular with the military regimes in Latin America), and post-Marxist geography and social analysts like Lefebvre and de Certeau.⁶ Schmitt is particularly interested in how force,

⁵ William Rasch, 'Introduction: Carl Schmitt and the New World Order', *South Atlantic Quarterly*, 104: 2 (2005), p. 180.

⁶ Henri Lefebvre, *The Production of Space*, Oxford, Blackwell, 1991; and Michel de Certeau, *The Practice of Everyday Life*, Berkeley, University of California Press, 1984.

law and space are related in the formative period of the nation-state and international law, and he develops the thesis that the 300 years of orderly war- and peace-making in Europe that ended in the early twentieth century was premised on the exclusion of the colonized part of the world from the realm of public, international law.⁷ The sixteenth–nineteenth-century colonization is one form of land appropriation, but as Schmitt observes,

In some form, the constitutive process of a land-appropriation is found at the beginning of the history of every settled people, every commonwealth, every empire. This is true as well for the beginning of every historical epoch. Not only logically, but also historically, land appropriation precedes the order that follows from it. It constitutes the original spatial order, the source of all further concrete order and all further law. It is the reproductive root in the normative order of history. All further property relations – communal or individual, public or private property, and all forms of possession and use in society and in international law – are derived from this radical title. All subsequent law and everything promulgated and enacted thereafter as decrees and commands are nourished, to use Heraclitus' word, by this source.⁸

Schmitt's merits as a political philosopher notwithstanding, he was no historical sociologist and tells us little in terms of how 'beginnings of historical epochs' come about, or how, in practice, bounded political communities are constituted and given orientation through the appropriation and division of land.⁹ While his analytical framework points in the direction of a performative approach to sovereignty, he does not go all the way. To contribute to filling this gap, I will pursue an ethnographic exploration of how violence and measurement are performed within and against the law in the case of the land conflict. But in order to understand the political and cultural importance of land in the region, I will first outline how we may understand the role of land appropriation and measurement in the historical formation of the post-colonial nation-state in Guatemala.

⁷ On the basis of *nomos* it would be interesting to explore how the foundation of the international refugee and human rights regime after the two World Wars was influenced by an international system which, in Schmitt's interpretation, was characterized by the ascending American dominion and the disintegration of the international law of *jus publicus Europaeum* that had kept some kind of order in Europe for three centuries. But this is beyond the aim of this article

⁸ Schmitt, *The Nomos*, p. 48.

⁹ Kenneth Surin, 'World Ordering', *South Atlantic Journal*, 104: 2 (2005), pp. 185–97.

Leaving aside for now the colonial land appropriation and its impact, we may focus on the liberal land reforms of the nineteenth century as a foundational process that marked the 'order and orientation' of modern Latin American states. The second half of the nineteenth century was permeated by an ideological obsession with boundaries, division and privatization of land that was seen as the precondition for a modern state, an enlightened citizenry and a governable (national) economy. As Craib puts it, the 'division of communal lands can be understood as both a metaphorical and literal "state fixation": an obsession with land privatization based upon classical liberal economic assumptions and a recognition of the concomitant need to codify the landscape as a permanent, mapped, and fixed entity'.¹⁰

During most of the colonial regime in Latin America, land was not measured as areas but registered in terms of distances from known points, such as hacienda buildings or churches. Taxation of Indian communities depended on households of *naturales* rather than the surfaces used for production. There were rarely any exact boundaries. Possessions were delimited by recognizable points in the terrain, which could be observed by the king's representatives during a '*vista de ojo*', a 'tour of inspection'.¹¹ It was important to maintain prudent distances between, for example Indian and Spanish land possessions in order to keep cattle from corn or to avoid the pollution of Indian souls by Spanish or *mestizo* populations. Compared to the liberal state project, the colonial administration of land differed in the sense that there was no market of land (the king did sell land but it could not be resold). Furthermore, land did not anchor individual rights and rather than land 'property' we may talk about 'possession'.

The fixation of the boundaries of properties as well as national territories was part and parcel of the obsession with land privatization, and so was the idea of setting up a national cadastral register of landed property. In Guatemala the law creating the national property register came in 1877 as part of a larger package of legislation on land and labour that was to form the foundation of the liberal

¹⁰ Raymond Craib, *Cartographic Mexico. A History of State Fixations and Fugitive Landscapes*, Durham, NC, and London, Duke University Press, 2004, p. 56.

¹¹ Henrik Rønsbo, 'State Formation and Property. Reflections on the Political Technologies of Space in Central America', *Journal of Historical Sociology*, 10: 1 (1997), pp. 56–74.

coffee-export based state project in Guatemala.¹² But the fact that the cadastral register still, at the start of the twenty-first century, is on the agenda for the reorganization of the post-conflict state in Guatemala speaks of the practical and political problems associated with this otherwise technical exercise.¹³

Over time, the liberal land reforms had a huge impact on political discourse, social identities and distribution of resources in Latin America. They have mainly been associated with the extensive appropriation, privatization and redistribution of communal land, church possessions and seemingly idle unregistered land (*baldíos*). In Guatemala, the purpose was to secure land for coffee and other forms of cash crop production as well as forcing Mayan labour to work on private estates by delimiting their access to land.¹⁴ In particular, in appropriate areas for coffee plantations, the government invited foreigners to seize or buy huge extensions of land cheaply in order to introduce modern methods of production and to control Mayan labour.

At the Mexican frontier where the land conflict under discussion took place, the municipality of Nentón was formed in 1876. This deprived the indigenous highland municipalities¹⁵ of their control over 'temperate' and 'hot' land (i.e. below 1,500 metres above sea-level). Before the turn of the century, this land was registered as idle land and sold, and the Mayans who lived and worked temporarily or permanently in this 'wilderness' were forced to work on the new estates in exchange for their access to a piece of land for subsistence. They became *mozos colonos*, a hybrid of indebted day-labourers (*mozos*) and tenants (*colonos*). In Nentón, more than 10,000 hectares – includ-

¹² See in particular J. C. Cambranes (ed.), *500 Años de Lucha por la Tierra*, Guatemala, FLACSO, 1985; and David McCreery, *Rural Guatemala 1760–1940*, Stanford, Stanford University Press, 1994.

¹³ Rosalinda Hernández Alarcón, *¿A quién serviría el catastro? Las dificultades para convertir el censo territorial en un recurso para atender la añeja demanda de tierra en Guatemala*, Guatemala, Infopress, 1998.

¹⁴ The concept of *fincas de mozos* refers to private estates in the highland that were not productive in terms other than providing workforce for coffee plantations at the lower altitudes. See McCreery, *Rural Guatemala*.

¹⁵ San Mateo, San Sebastián, San Rafael and Jacaltenango. It may be argued that the effect of reform was often more radical in terms of depriving highland communities of their access to a diverse range of ecological niches of production than in terms of taking land away from them.

ing Yoltún, which is discussed below – were sold to a German from Mexico, Gustavo Kanter: ‘There was no end to his land,’ as the old *mozos colonos* said.

At a different level of analysis, and applying a Foucaultian interpretation, the liberal land reforms defined the order and orientation of the modern state by creating a grid of private properties with each individual owner linked directly into the governmental nexuses of the state through land surveyors, registers, taxation and, later, extension services, credit institutions, etc. Even more importantly, however, the private property became a governmental space defining the owner as a rights-holding citizen while excluding non-property owners – such as the *mozos colonos* – as disenfranchised subjects with access to the state through the property owner only, who was also responsible for keeping records of their workers’ ‘workbooks’ (*libretas*) and mobilizing them for compulsory work in public road and bridge construction.¹⁶

In this sense the *patrón* became a sovereign of sorts, controlling matters of life and death within the confines of his property (with the assistance of his/her private police force) and deciding when to apply national legislation and when not to. In the collective memory this was the ‘time of the slavery’ or ‘the time of working-for-free’, which lasted until the abolition of debt peonage in 1944. In the accounts of the *mozos colonos*, the whole family was subject to arduous work obligations, and, as a petition for land credits from 1995 recalls, ‘All this for nothing, only for the taste of a humble tortilla; . . . our profit was nothing but a good scolding and as always, the bad treatment.’¹⁷ As an extreme example of this bad treatment, the petition mentions an incident from the time of the *patrona*, Maria Cheveres, when ‘Everything was slavery to the extreme of putting her “*Mozos*” to wash her underwear during the travels they made’ (to the market that was six to eight days away).

The liberal reforms gave structure to a society in which the access to private property (and/or education) became the strategy for overcoming discrimination and marginalization and becoming a proper citizen. ‘Working for others’ was a sign of low status, while freehold represented an ideal for many people in rural Guatemala. Thus, the

¹⁶ Rønsbo, ‘State Formation and Property’.

¹⁷ From a petition for land credit to FONAPAZ from the communities of Guaxacaná and Trinidad, March 1995. UNHCR archive, Nentón.

structure informed two different strategies: the conformist strategy of purchasing land, which became relatively widespread in the 1960s and 1970s, and the politically confrontational strategy of struggling for a distributive land reform.

In the period leading up to the armed conflict in the early 1980s these two strategies clashed as guerrilla groups executed community leaders who negotiated land purchase, claiming that the land was free for everybody and therefore should not be the object of sale and purchase. Rather than reforming the property structure, guerrillas encouraged *mozos colonos* to re-appropriate the land as well as its fruits and thereby attack the market and undo the structure of bounded properties as well as the class and ethnic hierarchies embedded in the property structure. Reluctantly some of them took, distributed and ate the cattle of the estates.

REFUGEE RETURN

In order to explore relations of force/violence, law and spatial organization in the context of armed conflict, I will analyse decisive confrontations and mediations in a conflict over land that took place at the Guatemala–Mexico border in 1994–95. The data stems from my participation as an observer and a somewhat unwilling ally of one of the parties to the conflict, a group of 300–400 households in three villages that identified themselves as *mozos colonos*, the former worker tenants of the estates.

The three villages were located on one of the Kanter family's estates, *Finca La Gloria*. The *mozos colonos* had been bound to the estate through debt relations until 1944 when debt peonage was banned. They continued living on the estate as resident workers and tenants until the 1960s when their *patrón* gave up direct exploitation of the poor, rocky land, moved to Guatemala City, and left the land to the *mozos colonos* to work and protect 'as if it were your own'. They continued to pay rent to the administrator until 1980, when the guerrillas made their presence felt in the area. By then a new owner had acquired the Kanter estate, but because of the war he could not visit the land. In 1982 the guerrillas executed the administrator, and the *mozos colonos* left for Mexico during the punitive army offensive in 1982 when a nearby village and its 300 inhabitants were eradicated. In the following years many of the *mozos colonos* gave up exile, trickled

back across the border into their villages, and formed civil defence patrols under the pressure and patronage of the Guatemalan army. As far as the security conditions permitted them, they resumed cultivation of the land for free.

The other party to the land conflict was a group of 10 households of former *mozos colonos* who stayed on in Mexico for 12 years after flight. In the wake of the accord on refugee return in 1992 that gave refugees access to credits for group purchases of estates,¹⁸ they constituted themselves as a group, identified and located the new owner of the Kanter estate, and started negotiating an uninhabited property of 350 hectares, Yoltún, which formed part of the estate. They used their former status as *mozos colonos* to convince the owner to sell to them rather than to one of the other groups of refugees who competed to buy land at the frontier. But otherwise, they never identified themselves as *mozos colonos*. They were 'refugees', and they were to enter Guatemala as property owners.

When the *mozos colonos* back on the estate in Guatemala learned about the sale and the pending return of the refugees, they protested and claimed that they too had tried to buy the land, but had been unsuccessful because they had no access to credits. Some of them cultivated pieces of the property in question, while others used this property for firewood and building materials. This 'right' they had acquired from the former owner, but they also argued against the sale of the land by recalling how they had defended the land of the *patrón* and the country by serving in the civil patrols, and how their 'blood had soaked the soil' when 11 members of their civil patrol were killed in a very unfortunate guerrilla ambush in 1983. Patriotic sacrifice and presence on the land 'since time immemorial' have a long history of legitimizing claims for land in Latin America and are stable tropes in the repertoire of communication with state institutions.¹⁹ But the basis for this claim for legitimacy is capacity for violence and physical presence on the land – in other words, a kind of law-making land appropriation.

¹⁸ As such, the return programme became a pilot project for the later implementation of a market-based land reform in other areas of Guatemala, in particular the Petén. See Liza Grandia, 'Unsettling: Recurring Dispossessions of the Q'eqchi' Maya and New Frontiers of Enclosure', manuscript under review. 2007.

¹⁹ See for example Craib, *Cartographic Mexico*; and Florencia Mallon, *Peasant and Nation: The Making of Postcolonial Mexico and Peru*, Berkeley, University of California Press, 1995.

The *mozos colonos* also tried to ward off the threat to their control of the land by inviting the refugees to settle on 'their' land and in their villages at the estate. In this way the refugees would have to subordinate themselves to the existing communal hegemony of the *mozos colonos* and add numbers and thereby force to the villages, which is a crucial factor in the control of land. But by insisting on returning as property owners, the refugees challenged this hegemony by obtaining a higher social status, secure land tenure and a separate settlement. As one of the village leaders said, 'This Andrés [the refugee leader] he walks around saying "Ahh, I really fucked them" (*les metí la verga*).'

As the date of return approached in early 1994, rumours went around in the area and in the institutions concerned, saying that 'there will be trouble' if the refugees return and settle on the land they had purchased. The *mozos colonos* had a well-established reputation of being impulsive and capable of violent action, of being people who 'don't analyse', who are 'unable to reason'. Therefore, the mayor cancelled the planned repatriation and called for a meeting with representatives of 10 different institutions, comprising the Church, the army, several branches of the government, the UNHCR, and a counsellor of the villagers.

After four months of meetings, threats and demonstrations, they reached a compromise that gave the *mozos colonos* an exceptional access to credit (otherwise reserved for returning refugees and their 'productive reintegration') for the purchase of half of the land in dispute, which would also earn them the right to 'income-generating projects' from the credit institution. The justification for the exception was the 'social and historical rights' of the *mozos colonos*. On their part, the two parties promised to embark on a process of reconciliation and peace 'under a pact of non-aggression'.²⁰ The accord also stipulated that the National Institute for Agrarian Transformation (INTA), the responsible state institution for land measurement and division since 1962, would measure the land in order to divide it between the parties.

The return took place a month later, before the land had been measured and divided between the returnees and the villagers. In stark contrast to other returns, which were staged as highly public events, this return was kept a secret and the refugees smuggled across

²⁰ Acuerdo Final, 19 September 1994.

the border in order to avoid confrontation on the way. But rumour spread rapidly, and on the second day 100–200 men from the villages went to ‘check out what was going on’ because ‘the accord had been broken’. The Guatemalan refugee agency (CEAR) helped the leader of the returnees back into Mexico, while the intruders waved machetes in the air, cut down CEAR’s flag and ‘welcome-to-Guatemala’ sign, urinated in the pond that was supposed to supply the water for the settlement and shouted threats at the scared returnees.

The CEAR representatives eventually talked the *mozos colonos* into leaving, promising them to call for a high-level meeting on the conflict and to make sure that INTA would be present. The villagers insisted that if INTA were not present ‘We will proceed violently, whatever authority may be present here.’ Four days later, the meeting took place in the provincial capital at CEAR’s premises next to the military base in Huehuetenango. CEAR’s director, INTA’s chief engineer and a couple of UN representatives were helicoptered in from the capital, and the commander of Zona Militar #19 also attended the meeting, together with the chief of their Civil Affairs section. This was indeed a high-level turnout for the return of 44 refugees; it signals the strategic importance of the case. The failure of this return would jeopardize the return of perhaps another two thousand refugees to this border area.²¹

At the meeting, the *mozos colonos* insisted that they had reacted to the return because the refugees ‘violated the accord which was signed by *licenciados*. We respect the law. They can come when the papers are in order.’ And they restated that the legitimacy of their acts stemmed from their loyal defence of the *patria* and the land – to which the head of the refugee commission dryly remarked that the land they had defended was in fact the property of the landowner who had decided to sell it.

The refugees, on their part, stated that ‘We have the right to the land because we bought it. They [the *mozos colonos*] were refugees together with us in Mexico. They know very well that there you have

²¹ It should be mentioned also that the government of Guatemala had a particular interest in this return because it was the first made by a group that had separated from the left-leaning anti-statist organization of refugees, the Permanent Commissions, who had negotiated the accord on return.

to pay for everything: the land, the water, the wood . . . Why do they oppose our return? They are just *posados* [living as a guest without rights to residence or property]²² on somebody else's property.' I knew from my work among refugees in Mexico that the trope of 'being *posados* in the land of others' epitomized a feeling of powerlessness, since the lack of rights was a constant source of insecurity, humiliation and truncated economic development. But the remark of the returnees also spoke of the implicit hierarchy of the liberal order in which property owners with all the ethnicized attributes of dynamic, rational and civilized (*ladino*) citizens were seen as much superior to the backwards, parochial and non-productive (*Indio*) subjects who were forced to work for others.

Finally, after lengthy speeches, the parties signed a new agreement and the general congratulated the parties on their civilized behaviour in this 'truly historical moment'. INTA would start the measurement of the land on 10 November in order to close the conflict by means of a neutral and unambiguous delimitation and division of the land. By drawing boundaries, INTA would break the stalemate between different forms of forceful possession of land and the repeated but inconsistent reference to national law, at once broken and reconfirmed.

MEASUREMENT

At the meeting, the INTA engineer mentioned that they had a problem with the map. The owner had only provided a 'cadastral map', which had been drawn up at a desk in the central administration on the basis of abstract polygons. The polygons suggest that trigonometric surveys had served as the basis for mapping, a method which was developed in the eighteenth century for the precise measurement of surfaces and construction of cartographic maps.

In the case of Kanter's properties it seems that a proper measurement was never undertaken. On the cadastral map, the boundaries of Kanter's properties were straight lines, but in the deed there was no

²² See Robert Redfield, 'Primitive Merchants of Guatemala', *Quarterly Journal of Inter-American Relations*, 1: 4, (1939), pp. 42–56. See also Georg Simmel, 'The Stranger', in D. N. Levine (ed.), *Georg Simmel. On Individuality and Social Forms. Selected Writings*, Chicago, Chicago University Press 1971, pp. 143–9.

indication of corresponding markers in the terrain. The deed only mentioned the names of the adjoining properties, and, as the only fixed line, the national boundary constituted by the 17°49' latitude. The borderline between Mexico and Guatemala was defined in 1874–82, when the two countries decided, once and for all, to fix the mutual boundary. Before that, the border undulated between ill-defined possessions that were registered in either Guatemala or Mexico, but the governments decided to draw the border as a straight line in areas where no rivers were available as markers. It is not clear whether this was an attempt by the governments to give their countries a modern representation in the style of the US internal and external borders²³ or if it was the result of the capricious idea of the Guatemalan President Barrios of giving the country the shape of the national icon, the Quetzal bird, as is often suggested by people living at the border today.²⁴ The result was a swap of territory, and affected property holders were given the opportunity to decide whether they wanted to become Mexicans or Guatemalans and the option of retaining their property. Many others, without registered properties, were forcibly displaced, as in the case of the Lacandones.²⁵

Since the cadastral map as well as the deed was rather unhelpful for the precise definition of the boundaries of the purchased property in the terrain, the INTA engineer had to rely on other devices in the form of local knowledge. He asked the parties to the land conflict to provide 20 men for the measurement and demarcation of the line in the terrain. These should include some of the old *mozos colonos* who had participated in the recurrent ritual of walking and refreshing the boundaries of the properties by opening a line in the vegetation with machetes (*abriendo las brechas*). These had been agreed upon by the owners, and in the time of the 'real' (i.e. not absentee) *patrones*, the boundaries had been refreshed and introduced to new generations

²³ As suggested by Jan de Vos, *Las Fronteras de la Frontera Sur. Reseña de los proyectos de expansión que figuraron la frontera entre México y Centroamérica*, Villahermosa, Mexico, Universidad Juárez Autónoma de Tabasco, 1993.

²⁴ As Anderson noted, shapes of national territories have become icons of the nation-states, but in this case it could be the other way round. Benedict Anderson, *Imagined Communities*, London, Verso, 1983.

²⁵ The lack of confidence in the methods and intentions behind the fixing of the border resulted in Guatemalan complaints of having lost much more territory and population than the Mexicans due to a misinterpretation of the names of the rivers in the Petén. It took 13 years of renegotiations before the issue was finally settled in 1895.

of *mozos colonos* on a recurring basis and very much in the tradition of the colonial 'tour of inspection' by the royal representatives. Since much of the land was covered with dense forest on steep hillsides, the task was not a simple one and was scheduled to last a whole week.

INTA's topographic team arrived with their equipment and set up their headquarters in the camp in Yoltún the day before the measurement was to begin. On 10 November, everybody met on time and in good mood. I arrived with the *mozos colonos* who, however, were sceptical as to the neutrality of the survey team since they were based in the camp of the returnees, who entertained them and gave them food. While waiting for the arrival of the representative of the credit institution, the sponsor of the measurement, the leaders of the *mozos colonos* and the returnees approached each other cautiously and chatted for a while, exchanging experiences with regard to the game in the forest, the quality of the land and the shock – the *susto* or spirit-loss – that is felt when a grenade explodes nearby: 'The shock stays with you forever,' they agreed, seeking to ward off potential violence.

Meanwhile I sat with the members of the survey team, middle-aged men with a great deal of field experience. They were having fun, telling each other stories about peasants cutting land surveyors into pieces or chasing them away with their machetes. They made jokes of their own alertness and disposition to flee as fast as possible if they ran into trouble. Land surveyors have indeed been among the front-line representatives of the state and the spearheads of the attempt to establish de facto state sovereignty within its territory. As noted by Craib, they were always at the mercy of the inhabitants they worked among and the parties of the conflicts they were engaged to solve by technical means. As a slip of paper told a Mexican land surveyor in the 1880s: 'Surveyor, my friend, go back to where you come from because if you stay, we'll meet you in *el monte* [the bush] one day.'²⁶

The representative of the public credit institution in charge of the formalities of the land purchase was a young and inexperienced *licenciado*. According to him, nobody else in the institution would deal with the thorny task. When he arrived on his motorbike, he called everybody together, read aloud a declaration in which the parties committed themselves to work together in peace and order, and asked the representatives to sign it. In this way, by 'elevating acts'

²⁶ Craib, *Cartographic Mexico*, p. 107.

(*levantar actas*) along the way, every step in the process was fixed on paper with signatures (or fingerprints) and lifted into the space and language of law and administration.

Given the lack of a map and a deed with land markers, the exercise itself was a hybrid of a precise, topographic survey and the negotiated 'tour of inspection' of the colonial administration that described markers in the landscape as they appeared en route. The latter practice also has a long history as a means and ritual of solving land conflicts, as in the case of the *juicio común* in Mexico.²⁷ Craib describes the *juicio común*, in which the entire community may take part together with respected local mediators, as an alternative to the much more expensive official arbitration in which only representatives of the communities took part. In my interpretation, the communal participation serves two purposes: the bodily presence of the whole community is a way of exerting pressure, and also a way of controlling the actions of the representatives in the process.

That the measurement involved negotiation en route became obvious when the party reached the boundary between Yoltún and Trinitaria, a property belonging to a community of industrious merchant peasants who had bought this former estate in 1987, in the midst of the war. The Chuj-speaking *mozos colonos* and the returnees were not looking forward to meeting their *ladino* neighbours: 'They know how to reason (*saben razonar*), they are not that easy to convince,' they told me.

The neighbours arrived on horseback, but without their deed. 'It is prohibited to bring the deed out of the house where it is hidden, it's very fragile.' They told INTA about the measurement of their land, which had taken place without the participation of the owner of Yoltún. Therefore the *mozos colonos* and returnees expressed their doubts about the current definition of the boundary, but the people from Trinitaria argued that the engineers back in 1987 had given them less land than they themselves thought belonged to their estate, and that the deed therefore was credible. 'For us, the paper commands (*el papel manda*), the paper and the engineers are right (*tienen razón*).'

One of the *mozos colonos* replied that 'Sometimes the paper lies. There are many pieces of paper and they do not always say the same.' He went on talking about how he, as an assistant for a

²⁷ Craib, *Cartographic Mexico*.

surveyor team in the past, had seen how communities and landowners paid the surveyors to push the boundaries or 'run the markers'. As an alternative source of authorized knowledge about the extension of the estate, he referred to the elders: 'The old people can have reason/are right too (*tienen razón*). They worked with the owners of the old days. They were very strict with regard to the boundaries.' This was in the 'time of the slavery' when the legitimate owners, who lived on the estate, jealously watched the negotiated boundaries of their territory.

A long discussion developed concerning which of the hilltops was actually 'Centinela II', which in the collective memory of the *mozos colonos* marked the boundary of the estate. In the end, the surveyors did not listen to the elders. The suggestions of the elders would include too much land in the Yoltún estate, the surveyors argued. Besides, listening to the elders would bring them into direct confrontation with the people from Trinitaria. The *mozos colonos*, on their part, were sure that the land surveyors had received money from Trinitaria: they had seen the surveyors in Trinitaria the day before, surrounded by people.

Nevertheless, at the end of two days of hard work, the survey team ended up having included a surplus of 150 hectares of land in Yoltún, either stemming from Trinitaria or from the owners' own, adjacent property, La Gloria. The representative of the credit institution went away on his motorbike in order to contact his superior and ask for orders. The phone was three hours away, so he came back the next day with an order to keep secret the result of the measurement. The plan was to have the representatives sign a document that had the true measures in the text, but to hide this part of the text from the representatives and to omit it when reading aloud the text. The young *licenciado* was terrified by the orders, but he was fortunate. The news had slipped out when he returned.

The land surveyors tried to figure out how to reduce Yoltún to the purchased amount of land. The first solution, however, left out the water source and the only good land of the property, an option which put the returnees in a state of shock. Playing around with different lines and angles the surveyors came up with another solution that put the water source and the good land back on the property. This solution implied the invention of a new boundary marker, but the *mozos colonos* were happy to show generosity by conceding this 'vital liquid', as they put it, to the returnees. Together they baptized the

new boundary marker 'the accord' (*mojón el Acuerdo*) and signed a new act. The joy in making the accord was remarkable.

END OF THE STORY?

In 'the end', the *mozos colonos* never entered the credit scheme for their part of the property. Knowing that international funds were behind land purchase and having several groups of refugees competing for the purchase of his various properties in the area, the owner's price was much too high when considering the poor quality of the land, which could never pay off the investment. Rumours would also know that the 'monkey hand' was involved, which is the percentages shared between the owner and the intervening agencies. Furthermore, it appeared that the directly affected group among the *mozos colonos* was very small and they soon lost their influence over the rest of the three villages of *mozos colonos*, who got tired of the constant mobilizations and burdens of extra work.

Shortly after the conflict had been mitigated, the *patrón* paid a week-long visit to his estate in order to reinstate his authority and legitimacy through his presence and performance of his role as *patrón*. The *mozos colonos* fed him, took care of him, protected him from the guerrillas, accompanied him as he rode the land on horseback and got drunk with him, and at the same time were extremely servile in their attitudes towards him. Meanwhile, however, they sought ways to fend off the consequences of his renewed presence, for example by seeking advice at the nearby military outpost, and at the new human rights office in a large return community in the area.

The *patrón* wanted to assert his authority as owner of the land since another five groups of refugees were interested in buying land from him and because he, having inherited the land during the war, had never received any rents. Before his arrival he had communicated that he would either gather all the *mozos colonos* in one settlement (with school and clinic), or sue them for 'usurpation of private property' and have them removed from the land by force in order to have 'clean land' to sell. During his stay he modified his position while he struck a balance between being firm and wrathful, and exercising paternalistic benevolence. He reinstated the administrator (the son of the one who was killed by the guerrillas) and suggested that the *mozos colonos* could work as 50/50 sharecroppers, pay rent in

cash per hectare and per head of cattle, or find money to buy the land, although still at an outrageous price, considering the quality.

The owner ended up selling huge chunks of his biggest property – the one with the most pacific of the three villages²⁸ – but he never succeeded in receiving stable rents from the rest of his land. In the village that stirred up resistance in the first place, they were not unhappy with the overall outcome of the conflict. As the young village secretary said, ‘Now everybody in Guatemala knows that there will be trouble if somebody tries to buy this land.’

CONCLUSIONS

The above case illustrates how the legal regime of the nineteenth-century liberal land reforms – which was based on the appropriation of land superficially disguised as purchase in a not yet existing market – has permeated and structured rural society in Guatemala and even emerged in a reinforced form in the wake of the armed conflict. The armed conflict disrupted this legal regime because the guerrillas actively undermined the market and private property rights by killing estate administrators and peasant representatives who negotiated communal land purchases. Boundaries of private property became obsolete or fluid, and the land and its fruits could be appropriated depending on the balance of forces, conditions of security, capacity for negotiation with shifting allies, access to arms and degrees of risk-taking.

To some extent, the *mozos colonos* benefited from this new regime in which might was right. From their perspective, the internationally supported return of refugees was a kind of re-appropriation of land that they had become entitled to. The return contributed to the re-establishment of property relations at the frontier by increasing the available financial and institutional resources for land purchase, measurement and conflict mediation. The return also created new conflicts or renewed old ones, some of which still, 15 years later, remain unresolved sources of tension. The Yoltún conflict has been solved for practical purposes – not least because land has lost importance in comparison to trade, smuggling and labour migration to the

²⁸ As members of Jehovah’s Witness they were entirely against the use of violence and had successfully resisted the demand to organize a civil patrol.

north, which have taken over as the main elements of livelihoods – but the technical problems have not been solved, and tensions remain alive.²⁹ As such, this case confirms that the issue of land in relation to armed conflict and its aftermath is a difficult and potentially conflictive problem to tackle, due to the changing regimes of land tenure wrought by armed conflict, to the lack or duplicity of registers and titles, and to the event of returning refugees and IDPs.

Three points of importance for understanding this issue emerge from the case study. First of all it is obvious how much physical presence means for the positioning and strength of negotiations over entitlements. With reference to their rights as property owners, the refugees and their allies in the Guatemalan state insisted on returning and setting up camp on their land before the conditions of the agreement had been met. The *mozos colonos* on their part reacted by making themselves (or the males at least) present en masse in the returnee camp at the disputed land, where they used and nurtured their image as violent and impulsive hotheads.

Bodily presence on the land brings the issue into the domain of sovereignty since some kind of force/violence is necessary for the removal of bodies from the land. Using the body for this purpose is a well-known strategy in protest movements (*à la* Greenpeace and anti-missile movements) and in the ubiquitous land occupations in Latin America and elsewhere. But, as we can see from other examples such as the visit of the *patrón* to his estate, the ‘tour of inspection’ and the *juicio común*, bodily presence is also an important factor in the performance of legitimate ownership and authority.

Second, it is notable that threats of violence were instrumental in bringing the *mozos colonos* into a position of negotiation over their entitlements. The threats and protests, on the other hand, allowed the authorities to make an exception from the regulations of the credit institution in the name of the peace process and the need for reconciliation. This paradoxical force of violence in the context of peace-making is central to the dilemma of ‘giving in’ and embarking on negotiations with hijackers and kidnappers, or to the problem of recognizing ‘terrorist’ groups by inviting them to peace negotiations.

²⁹ For example, Yoltún has no electricity yet, despite the fact that the infrastructure has been installed. But the *mozos colonos* are in control of the supply line running through their village, and the returnees have not been able to deliver on their economic demands.

Outlawing and focusing on the violence of non-state agents seem to make the use of violence particularly powerful.

In the conflict in this case, the presence as well as the associated violence was justified with reference to membership of the national political community. Both returnees and *mozos colonos* make references to their membership and the laws of the national community of Guatemalans, but whereas the returnees refer to liberal dimensions of the community *qua* the sovereign market and the inviolability of private property, the *mozos colonos* refer to the illiberal side of the political community *qua* their service in support of the army and their own sacrifice of life.

Underneath, however, a different political community, the marginalized community of *mozos colonos*, is brought into play through the violence in Yoltún. Challenged and emasculated by the returning refugees, the *mozos colonos* claim recognition by returning to violence. But (threats of) collective violence is also a way of performing community and reinforcing the communal strategy for upholding a partial and fragile sovereignty that permit them to continue living on and from the land despite the lack of legal access to it. To some degree their performance and potential for violence exempts them from the strict application of national laws.

Thirdly, the measurement of the purchased land took the form of a well-known ritual of negotiating and recognizing boundaries by walking them, even though the ritual was clad in the gowns of a scientifically based technique of government. The fact that neither the government nor the property owners were able to establish unambiguous boundaries in the territory speaks of the weakness of sovereign control, and makes clear how hard it is for any government to solve land conflicts with reference to the law and to establish a reliable basis for taxation of landed property. Comprehensive measurement and registration of properties is an immense task that still, 120 years after the first law on central land registers was given, has not been completed.

Of course, new techniques such as the Geographic Information Systems can ease mapping exercises. As part of the peace process in Guatemala, the available resources and institutional set-up have improved since the state, with international support, has moved towards the development of a decentralized, national cadastral register, as well as institutions for conflict prevention and mitigation. But the question is whether old and new loop-holes and challenges will

continue to obstruct the establishment of a rational and efficient register in the context of a fragile legal system and pervasive corruption.

In the gap between the legal and the real country, physical presence, threats of violence and ambiguous measurement have major roles to play in the distribution and access to land. Land appropriation and measurement are not undertaken once and for all 'at the beginning of every historical epoch', as Schmitt suggested.³⁰ Rather, they have become recurrent and enduring features of the system itself, a system of overlapping and fragile sovereignties.

³⁰ Schmitt, Carl. *The Nomos*, p. 48.