

COMMUNICATIVE ACTION AND HUMAN RIGHTS IN COLOMBIA

When words fail

LA ACCIÓN COMUNICATIVA Y LOS DERECHOS HUMANOS EN COLOMBIA

Quando las palabras fallan

Alison Brysk*

Resumen:

Para el siglo XXI, en la mayoría de Latinoamérica, una combinación de presión internacional y de la sociedad civil ha producido una reforma notable, si bien incompleta, por los derechos humanos. Sin embargo, en Colombia, asesinatos continuos, secuestros, desplazamiento forzado y tortura han recibido atención internacional limitada, y han tenido una respuesta Estatal mezclada. Éste ensayo argumentará que la estructura simbólica de las violaciones, y el ambiente político en Colombia, más allá de limitaciones institucionales o materiales, disminuyen el impacto de la sociedad civil y la respuesta del Estado. La acción comunicativa y sus carencias son la clave a la persistencia del abuso y la demora en la respuesta internacional en Colombia. Específicamente, rastreamos problemas en la definición de derechos, identificación de víctimas, reclamos de legitimidad del Estado, discurso de atribución causal, y las dinámicas de la comunicación transnacional.

Palabras clave: derechos humanos, relaciones internacionales, acción comunicativa, constructivismo, política latinoamericana comparada.

Abstract

By the 21st century, in most of Latin America a phased combination of international and civil society pressure has produced notable if incomplete human rights reform. Yet in Colombia, continuing assassinations, kidnappings, forced displacement, and torture have received limited international attention and met with a checkered state response. This essay will argue that the symbolic structure of the violations and political environment in Colombia, above and beyond material and institutional constraints, diminish civil society's impact and state responsiveness. Communicative action and its failures are the key to the persistence of abuse and lag in international response in Colombia. Specifically, we will trace problems in the definition of rights, identification of victims, legitimacy claims of the state, discourse of causal attribution, and transnational communication dynamics.

Keywords: human rights, international relations, communicative action, constructivism, comparative Latin American politics

"In times of war, the law falls silent..." Cicero

Introduction

In the 21st century, the era of the international human rights regime, Latin America is generally deemed to have reached

the "prescriptive status" stage of the spiral model of human rights reform. In this model, a phased combination of international and civil society pressuring leads to an acknowledgement

* Professor of Political Science and International Studies at the University of California, Irvine, United States.

of human rights norms by target states, along with initial reforms and compliance improvement (Risse, Ropp and Sikkink 1999). Yet in Colombia, continuing assassinations, kidnappings, forced displacement, and torture have received limited attention and met with a checkered state response. In 2006 alone, more than 770 civilians were assassinated or disappeared, while over 200,000 were forcibly displaced. A portion of U.S. aid, temporarily suspended due to human rights concerns including paramilitary links with public officials, was quickly restored (AI 2007). The Colombian government, while disbanding paramilitary groups and initiating limited prosecutions against military and civil leaders implicated in the killings, has failed to significantly prevent impunity or provide sustainable security in rural areas—or to stem the remobilization of an estimated 3,000 to 9,000 paramilitary fighters (ICP 2007). Moreover, dozens of members of the Colombian Congress are in jail or indicted for links to the paramilitary groups (Romero 2008a). The stagnation of principled reform in Colombia can be seen in the contradictory response to the recent 2008 grassroots peace marches that attempted to transcend the conflict, only to be met with government condemnation of the movement's motives and affiliations, followed by a renewed wave of violence against human rights advocates and civil society organizations¹ (Gómez Maseri 2008).

Yet Colombia possesses all of the ingredients for change predicted by comparative study of human rights reform. Colombia is a democratic regime, relatively visible to international media, sufficiently developed to generate a stable civil society, and possesses the potential leverage point of U.S. aid. While Colombia is a U.S. ally and trade partner, the hegemon is less invested in repression than it was in Central America during the 1980s, and the U.S. has a positive interest in suppressing violent actors linked to the drug trade. A plethora of human rights organizations have formed in Colombia, including transnational coalitions, and the United Nations has had a strong presence via the High Commission on Refugees, the High Commission on Human Rights, UNICEF, and other programs since the early 1990s. But human rights mobilization has been less effective than in peer states such as the Southern Cone or even Andean neighbors like Peru—where violence was framed as political rather than criminal. In fact, the current Colombian government has tried to restrict civil society organizations and successive regimes have attempted to depoliticize the violence.

This essay will argue that the **symbolic structure** of the violations and political environment in Colombia diminish civil society's impact and state responsiveness. Although there are ample material constraints on human rights reform, what distinguishes Colombia from similarly situated zones

1 In the spring of 2008, tens of thousands of Colombians protested against all forms of violence by state and non-governmental forces. This culminated a series of increasing citizen and victim repudiations of guerrilla kidnappings for the past decade. But because the spring 2008 marches included left and former guerrilla participants and explicitly critiqued government abuses, Uribe administration spokesmen questioned their impartiality and linked them to "subversion." Immediate paramilitary attacks on some of the organizations condemned by the government followed.

of insecurity which have received greater response is hearts and minds, not guns and butter. The power of words in the Colombian conflict, for good and evil, is signaled by the government's response to the peace movement's challenge: verbal condemnation and labeling that signals elite-supported non-state actors that civil society advocates are a legitimate target of violence, which is followed by assassinations and attacks on unionists, human rights organizations, and NGOs.

Communicative action and its failures are the key to the persistence of abuse in Colombia. In general, analyses of transnational social movements and political campaigns increasingly emphasize the role of symbolism and "information politics" in transforming states and global institutions (Keck and Sikkink 1998). In our age, the language of rights is a predominant parameter of political discourse (Bobbio 1996)—human rights discourse is a form of communicative action (Li 2003). Constructivists suggest that communicative action can transform world politics through the power of persuasion (Risse 2000). But we must also analyze when and why words fail. As a communicative action, human rights claims must be articulated by legitimate social actors, reflect recognizable and governable social processes, and reach a relevant transnational audience. When any of these semantic elements are lacking, words fail. Furthermore, human rights are a counter-hegemonic claim (Brysk 1995), that must contest and deconstruct reigning paradigms of sovereignty, states of exception, and neo-liberal autonomy from social structure. Rights speak of universality, indivisibility, and inaliena-

bility can fail to overcome the dominant discourses of dehumanization of victims, blurring of responsibility, and national insecurity.

1. Communicative Action and the Effectiveness of Human Rights Movements

Human rights have emerged as a theoretical normative constitution for the global world order, an emerging consensus affirming the inalienable dignity and moral equality of individuals (Donnelly 2007). The principle of human rights limits the exercise of authority to bounded, legitimate forms of coercion and deprivation, generally assumed to be in the State's control. Beyond the universal protection granted to all individuals regardless of citizenship, human rights norms propose special protection for vulnerable populations such as immigrants, women, and children. An "international human rights regime" of United Nations bodies led by a High Commissioner for Human Rights, human rights courts and commissions in regional organizations, government human rights offices and ambassadors, international NGOs, transnational legal processes, post-transition tribunals and investigations, and local social movements combine to offer a panoply of modalities for intervention in cases of abuse against human dignity (Forsythe 2006; Mertus 2005).

What do previous studies on the responsiveness of human rights networks, at the local and global level, tell us about the determining factors of the impact on the mobilization against human rights abuse, and the role of communicative action in this process? The success of civil society advocacy will be influenced by a range of material and normative factors

at both international and domestic levels, including the role of hegemonic states, international institutions, international persuasion, national regime type, and domestic factions. Within the limits of these domestic and international power configurations, civil society seems at its most effective when it works in tandem with transnational networks to frame local problems in terms of globally legitimate norms (Cardenas 2007).

Many authors trace limitations of human rights campaigns to the needs of state sovereignty, and the resistance of strong authoritarian states to international intervention. In this interpretation, members of the “club of states” use their legal standing and physical authority to block transnational monitoring and leverage (Donnelly 2007). Related factors include the authorities’ perception of a threat to national security, use of rules of exception, and the consequent mobilization of a pro-violation constituency (Cardenas 2007)—all of which are highly relevant to Colombia, while influenced by the discourse of sovereignty and narratives of fear and authority (Brysk and Shafir 2007). The logic of chronic counter-insurgency often inspires security forces to further victimize civilians, partly to justify their own standing and performance, in part to enact the “social cleansing” agenda of social elites in violent and unequal societies. In Colombia, hundreds of marginalized civilians each year have been murder-

red by troops and falsely claimed as combat casualties (Romero 2008b).

Others focus on the availability of transnational links to global civil society. According to Keck and Sikkink, the key determinant is the existence of international issue-networks around relevant human rights issues (Keck and Sikkink 1998). For Clifford Bob, it is the ability of domestic human rights organizations to “pitch” their cause to international gate-keepers that is believed to influence issue salience and ultimate success (Bob 2002). In Colombia, transnational connections are present, but they were established decades later and less forcefully than in other Latin American cases, for reasons explored below.

In the reflection of Risse, Ropp, and Sikkink, the effect of international networks depends on the presence of, and their connection with, domestic civil society. Social movement theorists examine the globalized resources, opportunities, and framing of human rights NGOs (Tarrow 1998). Generally speaking, civil society’s capacity for resistance to repression is connected to “social capital”—networks of rapport and trust (Putnam 2002). Yet others argue that social capital is a neutral resource that can be turned to organize death squads as easily as NGOs, and insist on a focus on the purposes and norms of civic life (Armony 2004)—suggesting greater focus on civil society’s political culture and normative orientation.

2 La Violencia refers to Colombia’s decade of civil conflict between 1948–59 that killed an estimated 300,000 and displaced millions in fighting between guerrilla and paramilitary forces of the Liberal and Conservative parties. Guerrilla violence resumed under different auspices by the late 1960s, and escalated notably during the 1980s with an increase in drug trafficking and the formation of self-defense and later paramilitary groups. This violence also eventually displaced millions of citizens and physically destroyed public spaces and social networks.

In either version, it could be noted that Colombia's history since La Violencia destroyed social capital.² Both the authorities and challengers have promoted a singularly zero-sum partisanship, reminiscent of Argentina's historic Peronist-military divide that blocked significant human rights advocacy until the appearance of family-based groups in the late 1970s (Brysk 1994a). While such non-partisan family or Church-based human rights movements transnationalized and transcended the military-guerrilla divide in some of Colombia's Latin American neighbors, the first wave of human rights advocacy in Colombia was tightly linked to the national political left, and therefore seen as illegitimate in a Cold War environment.

The nature of the violations may also facilitate or impede recognition, framing, and mobilization. Historically recognized violations such as genocide carry moral authority, international legal reaction, specialized international institutions and NGOs, and leverage against the sovereignty defense. The United Nations' mandate for humanitarian intervention, the International Criminal Court, and many bilateral mechanisms specify "genocide, war crimes, and crimes against humanity." Meanwhile, chronic violations of social and economic rights are more controversial, difficult to measure, and lack issue-oriented networks (Felice 2003). Violations against women and children are prosecuted more vigorously than similar behavior against male victims (Carpenter 2006). Tate notes the importance of the frame change from drug-related to political violence in persuading the UN High

Commission on Human Rights to appoint a Permanent Representative for Colombia (Tate 2007).

In a broader sense, the study of symbolic politics and constructivism suggests that political communication requires the following elements: legitimate speakers, a coherent narrative, and an appropriate audience. The success of political communication can influence the more structural factors of sovereignty, social capital, and transnational ties. The state's discursive strategy and perceived international role affect its status vis-à-vis the international human rights regime (Brysk 2007). The narrative of human rights violations fosters or hinders civil society in framing, claiming, and forming collective identities around human rights (Brysk 1995). Transnational ties are established through the communicative processes of identification with the Other, clear causal narratives of injustice and redress, and "branding" of locations and victims (Brysk 2000; 2005). Recognition of human rights violations in Colombia is founded on precisely these grounds.

2. Colombian Human Rights and the "Glass Ceiling"

The struggle for human rights in Colombia appears to have reached a "glass ceiling"; after a phase of initial recognition and pressured reforms, ongoing violations are only sporadically discussed and have been normalized in the international consciousness. Colombia's political environment is peculiarly impervious to transnational pressure due to the nature of the state, the genre of violations, the quality of civil society, and distorted transnational relationships.

Moreover, recent governments have learned to semantically manipulate and diminish human rights accountability by taking advantage of these discursive features of the Colombian experience (Tate 2007). Responding to the U.S.'s concern with continuing killings of union members and the arrest of his cousin and political confidante on charges of sponsoring paramilitaries, President Uribe responded that, "Colombia is not in the time of crisis, but in the time of remedies" (Romero 2008a). In a further illustration of this dynamic, since the prospective Colombia trade pact with the U.S. hinges in part on the international public perception of Colombia's human rights record, the Colombian government has invested millions of dollars in U.S. public relations firms and Congressional trips to promote its image (Lipton and Weisman 2008).

The Colombian state is discursively constructed as sovereign, despite significant shortfalls in authority and citizenship (McLean 2002). Since the international human rights regime—like all international law—operates when "domestic remedies have been exhausted," the presumption of sovereignty sets the bar for intervention high. The Colombian government claims to be both too strong to warrant international intervention, and too weak to exercise full control over paramilitary and guerrilla violence. Thus, Uribe downplays both human rights conditions and risk assessment claims over trade and uses continuing violence to argue for more U.S. aid, stating, "We need association with the United States, not to hide our problems, but to help us in solving them"

(Romero 2008a). While the indefinite postponement of the free trade agreement with the U.S. is a partial response to these concerns, there have been no significant long-term cuts in U.S. military aid; an investigation of a 2007 wave of civilian killings shows that almost half of the military units involved were financed by the United States (Romero 2008b).

The predominance of non-state actors in the Colombian conflict blurs the boundaries between counter-insurgency, drug trafficking, law enforcement, warlord, and vigilante practices. The pattern of covert or unstructured armed violations within a democratic and sovereign state leans toward the use of international humanitarian law (of war) rather than international human rights law and its associated standards and mechanisms. However, the chronic and internal nature of the Colombian conflict, as well as the prevalence of non-state actors, complicates the application of this genre of laws of war (Rodley 1993). For example, in Colombia, over 130,000 legal private security contractors patrol urban streets, rural lands, and multinational facilities, exceeding the official armed forces of around 100,000 (Garay 2003). An estimated majority of the latest massacres are committed by paramilitary groups and most kidnappings by guerrillas; despite official military involvement.

Moreover, as a democratic sovereign state, Colombia is shielded from pariah status or from being pressured for regime change. The international human rights regime is backstopped by a transnational network for democracy promotion, with its own cross-cutting NGOs, international

institutions, stalwart support from strong states, and reinforcing regional nodes in Latin America (Santa-Cruz 2005). As Tate 2008 notes, even symbolic U.N. sanctions are usually used on a country-specific basis, only against dictatorships. Southern Cone human rights movements of the 1980s faced illegitimate military dictatorships, while ethnocratic countries like South Africa or Serbia that systematically disenfranchised identity-based groups are now generally stigmatized. By contrast, Colombia's free elections, impressive Constitution, and well-developed judicial system generate admiration, confusion, and "plausible deniability" from a variety of international observers. Colombia's citizens have strong rights in a weak state—somewhat like receiving an impressive settlement of a lawsuit drawn on a bankrupt account.

Within this political environment, the kinds of violations in Colombia are extremely difficult to capture in a human rights narrative context. Despite the equal moral worth of all victims and types of suffering, we can easily observe that some kinds of victims and violations receive greater political attention and generate a more emphatic response from concerned audiences. Keck and Sikkink 1999 posit that violations are more readily recognized when they involve "acute bodily harm to innocent victims," which is difficult to identify in a chronic and diffuse civil war characterized by significant cross-cutting criminal activity. "Private wrongs" by non-state actors stretch the human rights frame developed for government and political dissidents—the Amnesty International "prisoner

of conscience" model that established the human rights regime (Brysk 2005). As far as root causes, the narrative of long-term social injustice is trumped by a story of immediate national insecurity that articulates well with dominant narratives generated by the hegemon: from the Cold War to the War on Drugs to the War on Terror. Colombian elites consciously manipulate these frames; Uribe recently claimed that "In Colombia, we have not insurgents against dictators... We have terrorists against democracy" (Romero 2008a).

Colombia also suffers from a strategy widespread throughout the repressive forces to derail political communication: killing the messenger. Despite the dedication of courageous local reporters, the targeting of journalists by all parties to the conflict has diminished coverage of Colombia, and made it more dependent on scarce foreign correspondents. In a 2005 report, Reporters Without Borders concludes that in areas of persecution, threats and killings produce a climate of "anxiety and circumspection among the remaining journalists.... 'We are very passive in our work,' several have said" (RWB 2005). Within Colombia, journalists are further hindered by government persecution and military influence over mainstream outlets (Brittain 2006). From late 2003 through 2004, President Uribe denounced NGOs and human rights monitors as "terrorists," leading to international concern that they would be targeted by paramilitaries. International attention to the War on Terror has further displaced reporting on all other conflicts and of Latin America in general.

On the international level, stories of suffering are assessed by referencing to regional and historical baselines (Brysk 1994b)—tragically, the world has learned to depreciate violations from perpetually troubled or exceptionally brutal zones. An abuse which would generate headlines in a neighboring or peer country may not even be reported when coming from Colombia. If it is reported, political violence in Colombia is more frequently described by dominant international media as war, crime, or terror—rather than a violation of citizens’ rights by political authorities, or their delegated surrogates. As one small illustration of this trend, a search of the New York Times index since 1981 showed 99 stories using the term “human rights” in Colombia—compared with 140 labeled as “human rights” regarding Colombia’s much more tranquil neighbor Ecuador.

Within Colombia, civil society is communicatively delayed in generating speakers as well as narratives on human rights. Colombia has not created charismatic figures or cause célèbre that has spearheaded successful human rights movements, such as Argentina’s Madres de Plaza de Mayo or Brazil’s Chico Mendes. Very recently this may be changing with the international campaign for Ingrid Betancourt, a maternal figure, martyred opposition politician kidnapped by the guerrillas. It appears to be more difficult to construct a collective identity around Colombian civil society’s struggle for peace and neutrality than to advocate a principled opposition political program, in the manner of cause célèbre like

Nelson Mandela or Aung San Su Kyi. Although Tate 2008 discusses the successful deployment of professional identities by Colombian jurists in the international human rights system, comparative analysis suggests that high-level sustained international attention requires a symbolic presence—not just information and principled appeals. One countervailing source of evidence for this analysis of Colombian civil society is the isolated success of Colombia’s identity-based indigenous groups such as the U’wa and Kogi in receiving international recognition, with highly visible symbolic representatives (Ulloa 2005).

These same communicative characteristics impede transnational links. The nature of violence in Colombia discriminately blocks transnational communication. First of all, violence is directed at foreigners at a relatively high rate, which discourages direct monitoring and exchanges of solidarity. Furthermore, some civil opposition forces and even some international advocates have been slow to distinguish themselves clearly from violent militants whose tactics are condemned by transnational entities; this distinction was one of the fundamental elements for international support for South Africa’s anti-apartheid movement. Criminalized elements of guerrilla forces further cloud the potential for mainstream transnational publics to identify with the Other; Colombia is no David-and-Goliath style Chiapas rebellion, as the FARC forces have increased its drug trafficking and kidnappings markedly since the 1990s.

Moreover, the prevalence of internal displacement over internatio-

nal refugees has diminished the availability of the refugee networks that helped to build human rights advocacy for the Southern Cone and even Central America—they are present for Colombia but at a much lesser degree and later than similarly situated groups. Internationally displaced Colombians appear to be more frequently middle-class professionals seeking “exit” than political exiles who raise consciousness in their new homes. Internally displaced persons are by definition less visible than international refugees; Tate describes a breakthrough 1997 incident in which IDPs received recognition in the words of a foreign diplomat who registered African-looking concentrated waves in terms that this group “really looked like refugees” (Tate 2007).

Finally, the perennially problematic interpenetration of social and political rights struggles is much more difficult to articulate in democratic, developed Colombia than in dictatorial and impoverished Central America. The social roots of Colombia’s conflict are much more about inequity than absolute poverty—resource-rich, middle-income Colombia has one of the highest levels of inequality in the Western hemisphere, with a GINI Index of 58.6 according to the World Bank. Once again, this complicates the establishment of a clear and cognizable human rights narrative. At the same time, as the recent identification of Venezuela’s Hugo Chavez with the FARC demonstrates, a sector of the Latin American left conflates populist banditry with anti-imperialist or socialist struggle, further muddying the waters.

3. Improving Societal Responsiveness: Making Sense of Human Rights in Colombia

The first requirement for an effective response to human rights abuse is that rights must make sense (Brysk 2007). Given the communicative characteristics of the Colombian experience, how can we improve civil society’s international perception?

As in the case of Latin America’s indigenous peoples, human rights networks alone will not suffice for the complex matrix of violations and victims in Colombia (Brysk 2000). Therefore, we must construct broader channels of communication that transcend specific violations, establish attentive constituencies and foster empathic with at-risk populations. This implies increasing cross-cutting coalitions with environmentalists, religious communities, and other universalist social sectors beyond dedicated human rights monitors. Institutionally, promoting the deepening of democracy, judicial reform, and refugee protection networks can bolster weak State capabilities and build outward from the core human rights agenda to related issues with their own international networks. The involvement of international entities further builds transnational social capital with foreign citizens who are institutionally situated in their own states.

Within the human rights network itself, a related form of broadening relationships is the international human rights community’s growing awareness of Colombia’s peculiar positioning, and increasing willingness to attempt to reframe and preempt violence rather than the traditional reac-

tive, case-by-case approach. Thus, we now see reports tracking the reemergence of paramilitaries, joint communiqués condemning the Uribe administration's labeling of NGOs as terrorists, and links to free trade with the U.S. as situational patterns that may contribute to *future* abuse.

Second, as in the era of Latin American dictatorships and the contemporary U.S. counter-terror regime, we must deconstruct the concept of "Dirty Wars". This means dismantling the politics of fear promoted by the Colombian state and reinforced by the U.S. Accurate and transparent threat assessment and counter-insurgency logic can lead away from abuse when national security is democratized (Brysk and Shafir 2007). Like community policing, the best legitimate defense is the construction of an autonomous civil society. In this regard, the emerging peace movement in Colombia has the potential to create a collective identity that will serve as a source of mobilization, a legitimate point of reference, and a bulwark against the cycle of violence. International support for this sector should be complemented by more academic research and dialogue on humane and alternative security.

The struggle against "private wrongs" in Colombia seems to require a search for new mechanisms to apply leverage, where transnational pressure on the state does not avail. "Follow the money" strategies of financial accountability (Brysk 2005) could undercut the coercive authority of some of the predatory contenders. U.S. financial sanctions against Colombian paramilitaries

listed as terrorist groups are a good first step. Similar campaigns by civil society and international institutions to "just say no" to dirty money have achieved some traction over corruption in some developing regions, and more specifically in the regulation of blood diamonds (Tamm 2002). As an illicit good, cocaine is not susceptible to the certification mechanism—but coffee is, and "fair trade" mechanisms already exist for Colombia's leading legal product.

Finally, we must ask what the shortfalls of human rights demands in Colombia reveal about the global inadequacies of the international human rights discourse. Rights discourse that does not address legitimate public fears of insecurity will fail until advocates a thoughtful vision of the reconstruction of democratic authority. As Cardenas reminds us, "Human rights norms must be supported by a wide range of groups within civil society, not just committed activists... One of the most basic if overlooked functions that advocates of international norms can play, therefore, is to help define a viable alternative future" (Cardenas 2007, 56). Along other lines, the international regime must expand public understanding of the links between long-term social rights and immediate civil rights violations, which is the leading dynamic of abuse in contemporary Latin America (Brysk 2008). In addition, human rights advocates and scholars must continue to insist that elections are necessary but not sufficient in and of themselves for democracy. The international community can continue to expand the vocabulary of issue types and logics of interdependency, beyond the legally-derived

human rights repertoire. In the case of Colombia, the conceptual innovations of “internally displaced persons” and “humane security” have special potential to articulate violations that do not fit the classic human rights and refugee modes of international law (Hampson 2002).

Rethinking rights is the first step towards improving their salience in hard cases like Colombia. When the law falls silent, it is time to raise your voice.

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