

Morten Bergsmo, César Rodríguez-Garavito, Pablo Kalmanovitz and Maria Paula Saffon (eds), *Distributive Justice in Transition* (Torkel Opsahl Academic EPublisher 2010) ISBN 978-82-93081-12-8

Reviewed by Gunnar M Ekeløve-Slydal\*

The anthology explores different concepts of justice in situations of transitions, in particular the role of *distributive* justice versus transitional justice, which prioritises punitive actions against culprits and reparations for victims. It argues that distributive justice, instituting reforms leading to more just distribution of land and other resources, as well as concerns of economic efficiency should be part of the settlement of internal armed conflicts.

While transitional justice, in the forms of retributive justice against perpetrators, truth commissions and reparations to victims, focuses mainly on the past, distributive justice focuses on present and future needs. Often conflicts were caused by unequal distribution of resources as well as state institutions being unable to meet basic needs of the population. In laying the foundation for a peaceful and prosperous future, land reform breaking up monopolies of big farms and instituting a large number of small farms, could play an important role.

The book consists of two parts. Part II focuses on the complex case of Colombia; discussing the role of redistributing land as an important element of the justice process and as a precondition for any viable long-term solution to the conflicts between the government and rebel groups.

Recent negotiations between the parties have led to a breakthrough on this point. An agreement was reached in Havana in May 2013 that addresses inequality in rural areas. The book and the discussions it reflects seem to have played an important role in these negotiations. In a joint statement, quoted in *New York Times* (“Deal Reached to Reduce Inequality in Colombia”, 26 May 2013), the negotiators said that “what we have agreed to in this accord will be the start of radical transformations in Colombia’s rural and agrarian reality, with equality and democracy”.

Part I, *Theoretical and Comparative Approaches*, presents and discusses theoretical perspectives on the issue of redistribution of land and/or wealth as part of jus-

---

\* Gunnar M. Ekeløve-Slydal is Deputy Secretary General of the Norwegian Helsinki Committee; a Norway based internationally oriented human rights organization. He has previously been Editor of the Nordic Journal on Human Rights, and has taken part in numerous human rights related projects, written extensively on human rights issues, and given lectures on a wide range of human rights topics, including international justice.

tice processes. Examples include East Central Europe and El Salvador in addition to Colombia.

Interesting theoretical perspectives is presented by Pablo Kalmanovitz in his chapter on "Corrective Justice versus Social Justice in the Aftermath of War" (page 71-95). In 2005, the UN General Assembly adopted a set of basic principles and guidelines on the "right to a remedy and reparation" (UN GA Resolution 60/147 of December 2005). The principles maintain that states have an obligation to 'provide reparation to victims for acts or omissions which can be attributed to the state and constitute gross violation of international human rights law or serious violations of international humanitarian law'. They should also provide for 'any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case'.

Even though these principles are not legally binding on states, they indicate growing expectations by victims and of civil society in general, that programs of reparations and compensations becomes part of the transitional process in the aftermath of armed conflict and massive human rights violations. Transitional justice has definitely taken on a corrective approach.

Also at the international level, this development takes place. The International Criminal Court (ICC), as the first international court in history, has the power to order a criminal perpetrator to pay reparation to a victim who has suffered as a result of the perpetrator's criminal actions. Pursuant to article 75 of the Rome Statute, the ICC may lay down the principles of restitution, indemnification and rehabilitation. The Court may enter an order against a convicted person stating the appropriate reparation for the victims, and also order reparations to be paid through the Trust Fund for Victims, which was established by the Assembly of States Parties in September 2002.

Even if this approach makes sense in some situations, it does not in all, Kalmanovitz argues. If we take as a starting point a liberal understanding of justice, focusing on the loss and harm resulting from violent conflict and abuses for autonomous individuals and their projects, reparation should provide the harmed individual with a 'full and perfect equivalent' of the things lost. In other words, corrective justice aims to 'bring people back to where they were before the harmed suffered, not just to make them better off' (page 75).

Then the author invites the reader to consider the circumstances of 'massively destructive wars', where harm is the rule rather than the exception; there is generalised uncertainty and state institutions collapse along with productive sectors of the economy. Kalmanovitz goes on to argue that such wars 'cause losses so exten-

sive and widespread that it becomes impossible to reestablish [pre-war] ...conditions' (page 84).

The point is that corrective justice only makes sense in situations where destructions are limited. If destruction is vast, recovering a large number of individual's lives as they were is not realistic. The conclusion is therefore that 'those who are below the minimum threshold of primary goods at the end of the war should have priority access to public resources' (page 85). In other words, social justice considerations should triumph corrective justice considerations in times of acute paucity of resources and when public institutions are not functioning.

Only when society has started to function again, eliminating gross social injustice, corrective justice issues can be addressed again. In plain words, only when those who became poor because of the war or remained poor through the war has been supported sufficiently by state institutions, the issues of loss and compensation can be dealt with.

Colombia has suffered from violent conflict since the 1960s. In bringing that conflict to an end, the concentration of landholdings in the hands of a small number of powerful owners has to be addressed. The main rebel group, the Revolutionary Armed Forces of Colombia (FARC), was established exactly because of the inability of small farmers to gain access to land. There is little doubt that an agreement to distribute land to small farmers as well as undertaking development projects that improve education and infrastructure is necessary in order to bring peace.

The editors and authors of the book are not claiming that this is the only process that should happen. As one of the most prominent authors represented in the book, Jon Elster, argues: stable peace requires addressing both injustices that caused the war, as well as addressing injustice caused by the war.

Sometimes transitional and distributive justice might be combined, but in general the two processes are unconnected. There might be (extreme) situations where the new regime has to choose between the two, at least for a period, as Kalmanovitz shows. However, in my view, in order not to let armed and destructive rebellion be an attractive route to re-distribution of land, the existence of the ICC and its system of retributive international justice may prove important. In situations where national authorities are unable to prosecute those who committed the gravest crimes, the ICC may do that. The new regime may have some time to solve pressing issues of poverty and install some distributive justice. Eventually, transitional justice processes should start also at the national level.

In compensating losses, however, there might be many difficult decisions to take, such as what kind of losses should be given priority and should there be an

upper limit. When it comes to land, there might be disputing claims of previous ownership. Justice is always incomplete and mostly without easy answers.

The book, published three years ago, has already proven its relevance for the ongoing peace process in Colombia. It widens perspectives on justice; presenting important aspects that often were neglected in discussions about post-war or post-dictatorship transitions to democracy and rule of law. It should become an inspiration for finding the right balance between transitional and distributive justice in other situations as well.