

AN EXAMINATION OF THE RULE OF LAW IMPROVEMENT EFFORTS OF
PLAN COLOMBIA AND PRESIDENT ALVARO URIBE, 2002-2010

By

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To My Mother and Father

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Abstract of Thesis Presented to the Graduate School
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Tilly's (1985:170) "war makes states" is one of the most cited passages on state formation and versions of his bellicist account of state making have been used to explain state formation in Latin America and Africa (Centeno, 2002; Herbst, 2000). Desch (1996:242) cites China, Cuba, Israel and South Korea as states that through war making preparations in the contemporary era have "developed much more extensive and more cohesive states." This thesis examines the case of Colombia and the "Colombian Miracle" as another example where through war making the state has been able to successfully increase its institutional power without becoming a totalitarian regime. The Colombian case reaffirms classic conceptual arguments as to how preparation for war builds institutional state power and collective group identity. The Colombian case is also an exceptional one because of the significant amount of military and technical assistance that has been provided by the United States. Therefore the generalizability of these findings to other contemporary cases of state making through war making requires numerous caveats which this thesis explores.

CHAPTER 1 INTRODUCTION

Empirical Puzzle

Tilly's (1985:170) "war makes states" is one of the most oft cited passages on state formation and versions of his bellicist account of state making have been used to explain state formation in Latin America and Africa (Centeno, 2002; Herbst, 2000). Centeno (2002:127) argues that Latin America historically had the wrong types of wars for state making, limited wars instead of total wars.

Centeno (2002) makes a compelling argument, based on the bellicist account of state making, to explain why states have been historically weak in Latin America. Unfortunately, several empirical questions are left unanswered by Centeno's (2002) bellicist framework. First, variance in outcomes between cases with the same limited history of interstate wars is not accounted for with his model. Kurtz (2009) highlights this contradiction with Centeno's (2002) framework, arguing against the bellicist account of state making as instructive for Latin America. Kurtz (2009:479) uses the example of Chile and Peru, two Andean neighbors "situated in similar strategic and natural resource environments" but with very different outcomes "in terms of state capacity or strength." Therefore, there are those who have questioned how much insight we can hope to gain from a generic bellicist account of state making as applied to the history of state formation in Latin America. If both Peru and Chile have had the same limited number of interstate wars, the key variable for Centeno (2002), why are the outcomes so vastly different when the key variable is the same?

Second, Centeno (2002:1) concedes that "conversations with colleagues" convinced him that Central America represents important exceptions to his arguments.

Central America and South America share a similar Spanish colonial history and the same dearth of interstate wars, although there have been far more US military interventions in Central America than in South America. However, the majority of US military interventions in Latin America took place after the Spanish-American war in 1898 and concentrated on the Caribbean and not Central America (Musicant, 1990). For example, Panama was briefly occupied by US troops from 1885-1904, as was Nicaragua in 1912 and again from 1927-1934 (Musicant, 1990). There were also US military interventions in South America during this period in Argentina (1890) and Chile (1891). However, the bulk of the infamous “Banana Wars” took place in the Caribbean: Cuba (1899-1917), Haiti (1915-1934), and the Dominican Republic (1916-1924 and 1965) (Musicant, 1990). There is a long history of US intervention in Latin America, both in Central and South America during the Cold War; however, Centeno’s (2002) argument appears to be chiefly concerned with interstate war during the formative years after independence from Spain and Portugal. The period of independence for most of the new republics in Central and South America took place between 1810 and 1822. If both Central America and South America had the same dearth of interstate wars during the formative years after independence, why would his conceptual framework not apply to both regions?

Finally, while there have been relatively few interstate wars in the history of Latin America, both during the post-independence period through present day, there have been numerous internal wars. If “war makes states” because of the causal mechanisms that take place during a total war, can war build states in those instances? If not, why? I posit that if many of these interstate wars in Latin America meet the standard for

classification as a total war according to Centeno's (2002) typology, then we should also see increases in state capacity in cases where those causal mechanisms are at work.

Preliminary Research Questions

There are three preliminary questions that must be explored before I posit my formal research hypothesis. The first general question is: "Can war build states in the contemporary era?" One looming question left unanswered by Centeno (2002) is whether his bellicist account of state making in Latin America, which explains the long history of state weakness in the region, is only meant to apply to a very limited period of history in Latin America. For example, it seems plausible that Centeno's (2002) hypothesis relies on causal processes that created certain outcomes at a specific time period. The importance of path dependence and conditional antecedents should factor heavily into Centeno's (2002) argument. Kurtz (2009:484) summarizing much of the bellicist accounts of state building argues that, "Most scholars see state building as a long-term and path-dependent process; long-run outcomes are most profoundly shaped at the outset." Therefore, I acknowledge that I am stretching the original intent of Centeno's (2002) argument, but I am doing so with the hope to help build upon his conceptual framework as applied to state building in Latin America. I will look to the larger literature to see what other scholars have argued regarding the bellicist account of state making in the contemporary era.

The second general question is: "Can internal war build states?" Centeno (2002) makes the distinction between limited war and total war and claims that most wars in Latin America have been the former. The reason he argues is, "Latin American states did not have the organizational or ideological capacity to go to war with one another" (Centeno, 2002:66). Instead, the numerous internal conflicts in Latin America "often

reflected the inability of the nascent states to impose their order over the relevant societies” (Centeno, 2002:66). Centeno’s (2002) argument in this context is more concerned with outcome as compared to process. He is interested in a generalizable theory to explain why states in Latin America are weak and have a long history of instability. He does not address the conceptual question as to whether internal wars could build states because that is beyond the scope of his inquiry. Therefore, I will explore the larger literature in order to address this question.

The third and final preliminary question is contingent upon somewhat positive replies to the previous two inquiries. Therefore, if war can build states in the contemporary era, and if internal war could also conceivably build states if the same causal mechanisms are at work, the final question is: “Under what conditions could internal war build states in the contemporary era?” This question is not investigated by Centeno (2002) and therefore I will need to survey what other scholars have argued.

Can war build states in the contemporary era?

At least two scholars have researched this question and made findings that I argue support the claim that war can build states in the contemporary era. In this context “build states” refers to not just the initial formation of the state but also the ability of the state to increase its institutional power. Desch (1996:242) in “War and Strong States, Peace and Weak States?” does concede, like most others who subscribe to the bellicist theory of state making, that “war might have been centrally important in forming the strong states of Western Europe and North America.” He also agrees that the conditions at the formation of many of the states in the Third World, particularly the lack of strong external threats, could also explain their legacy of weakness. Desch (1996:242) argues that “One might concede that war plays a critical role in state

formation but still argue that once established, states no longer depend upon external threats to maintain cohesion and continue to grow or remain large in scope.” However, Desch (1996:242) extends his analysis further to argue that there are several examples of Third World states who through war making preparations in the contemporary era have “developed much more extensive and more cohesive states.” This includes China, Cuba, Israel and South Korea.

Thus, “war, or preparation for war” argues Desch (1996:242), can also play a “significant role in maintaining the scope and cohesion of states.” Desch (1996) argues that there are several possible causal mechanisms at work which contribute to the outcome. First, the scope of the state is enlarged because government control of the gross domestic product increases and “people consume more public goods than private goods” (Desch, 1996:242). Second, the social cohesion of the state increases when facing an external threat. Durkheim (1951:208) explains this argument at the individual level; “great social disturbances and great popular wars rouse collective sentiment...as they force men to close ranks and confront a common danger, the individual thinks less of himself and more of the common cause.” Finally, the war preparation or actual warfare forces the state to expand its scope and capacity to control the means of violence akin to a “ratcheting effect” that does not usually shrink after the threat passes (Desch, 1996:243). Therefore, I posit that the three causal mechanisms specified by Desch (1996) could conceivably build states even in the contemporary era.

One caveat specified by Desch (1996:244), which is also applicable to my conceptual framework, is that the strategy the state chooses to mobilize for war can be an important intervening variable in the ultimate cohesion of the state. Desch

(1996:244) identifies two general types of state mobilization: “coercive extraction” and “contractual mobilization.” Conceptually, a state could decrease cohesion by alienating a significant portion of the population if its mobilization for war is perceived as excessive or illegitimate.

Migdal (1988) in “Strong Societies and Weak States” also could be interpreted to argue that contemporary war can build states. In this context “build states” refers not just to the initial formation of the state but also the ability of the state to increase its institutional power. In his concluding chapter, a framework for “Sufficient Conditions for Creating Strong States” he outlines four elements: “world historical timing,” “military threat,” “basis for an independent bureaucracy,” and “skillful leadership” (Migdal, 1988:269-275). Migdal (1988:273) acknowledges that the “structure of post-World War II politics has sufficiently minimized external risks” and that “not one state has disappeared in this generation due to war.” However, Migdal (1988:274) also argues that “those countries mentioned as strong states, including Israel, Cuba, Vietnam, and the Koreas, have been exceptional because they have actually been invaded at least once since World War II.” He also speaks about Taiwan and China as cases of strong states that did not engage in war, but had credible threats of going to war, and thus their strength can be attributed to this preparation. Migdal (1988:274) does not speak to the causal mechanisms at work that he believes caused these outcomes except to say “war itself and the threat of war induce state leaders to take unusual risks to consolidate social control, creating a strong state.”

In sum, after surveying the works of Desch (1996) and Migdal (1998) I posit that there is sufficient scholarly evidence to support the argument that war and the

preparation for war, even in the contemporary era, can build states. The key finding is the three causal mechanisms specified by Desch (1996). However, there are four caveats I want to identify. First, “build states” in this context refers to the strengthening of the institutional power of the state, particularly in the Weberian sense of a monopoly over the means of coercion within a defined territory (Weber, 1978). All of the authors make sure they distinguish between world historical timing in initial state formation, and state building that occurs at a later period. Second, the type of regime is not a factor in the argument and based on the empirical examples listed by the various authors, the majority of the cases listed are authoritarian states: Cuba, Vietnam, North Korea, and China. The other non-authoritarian states are: Israel, South Korea, and Taiwan (Although both South Korea and Taiwan underwent periods of authoritarian rule).

Third, the nature of the international system post World War II is another key point that must be remembered. This is briefly discussed by both Migdal (1998) and Centeno (2002); however, the argument is fully developed by Jackson and Rosberg (1982) in, “Why Africa’s Weak States Persist: The Empirical and Juridical in Statehood.” Jackson and Rosberg (1982) argue that prior to World War II, empirical statehood in the Weberian sense was a prerequisite before juridical statehood in the international system. However, in the post-World War II international system, where interstate wars and territorial conquest are discouraged, many modern states, especially in the Third World, have juridical statehood without meeting the classic requirements for empirical statehood. Therefore, the large number of contemporary weak states is an unintentional byproduct of an international system that seeks to prevent interstate war.

Finally, Desch's (1996:244) distinction between "coercive extraction" and "contractual mobilization" are worth remembering for the distinction between of the type of causal mechanism at work. Therefore, how the state decides to prepare for war and how those preparations are received by the masses, can have a significant impact on how cohesive the state becomes. I posit that how the state decides to mobilize and how the general population views the mobilization will also have a direct impact in both how well the state is able to prepare for war and perform in war. Therefore, Thies (2004:54) may be correct when he argues that "the same processes that ultimately led to strong states in Europe may be at work in their early phases in the postcolonial developing world". However, we need to be mindful of the details of each specific case, paying attention to the causal mechanism at work, while avoiding being seduced by the simplicity of Tilly's (1985) "states make war, and war makes states."

Can internal wars build states?

Conceptually, Desch's (1996) framework for how war can build states could apply to both internal and external wars. However, there are at least three caveats worth noting. First, there must be something that can be identified as an existential threat that the state can begin to direct its resources to fight against it. In practice, this appears much easier to do in cases where the threat is easily identifiable. When the threat is another state with a clearly demarcated territory, distinct dress, and different language, Durkheim's (1951:208) argument that the collective threat will "force men to close ranks and confront a common danger" is easier to conceptualize. Durkheim (1951:208) speaks of both "great social disturbances and great popular wars" that can "rouse collective sentiment" and therefore I think in some cases internal war can clearly fit within his two categories. Porter (1994:2, 28), for example, argues that according to

the historical record internal war strengthened the state in Europe and North America. In the case of the US Civil War it is easy to see how the internal conflict met the requirements for an identifiable existential threat and how Desch's (1996) mechanisms could have been at work.

Second, the state must have sufficient institutional power at the onset of hostilities to begin to mobilize state resources for war fighting, and ultimately the state must defeat the threat. If not, the internal war could just serve to further weaken the already weak state capacity or in some cases totally destroy it, i.e. contemporary Somalia, Somaliland, Sudan, and South Sudan. On one hand, the lack of state institutional power could be the proximate cause for the internal war in the first place. Centeno (2002:66) makes this argument, claiming that the numerous internal conflicts in Latin America "often reflected the inability of the nascent states to impose their order over the relevant societies." Conversely, the coercive response of the state could be so overwhelming that the end result is a totalitarian regime. For example, O'Kane (2000:) after examining the cases of civil war in Ethiopia, Iran, and Nicaragua argues that "revolutionary reigns of terror" during internal wars did contribute to state building in Ethiopia and Iran. I would argue that "revolutionary reigns of terror" might in some cases strengthen the institutional power of the state, but there is also the likelihood that the state cohesion will decrease.

Finally, a contemporary international system that legally forbids interstate conquest and the expansion of territory through war has serious consequences for the bellicist theory of state making. International law formally forbids interstate war in all cases other than those of individual or collective self-defense. For purposes of theory

building and theory testing, one implication is that internal war remains the only type of conflict that is still legally permitted by the international system. The United Nations (UN) has been able to attract virtual universal membership of the world's states because of its deference to state sovereignty (Goldstein and Pevehouse, 2009).

Under what conditions can contemporary internal war build states?

Taylor and Botea's (2008) research is the closest that I have found that attempts to answer this question directly. They argue that contemporary internal war can indeed build states, "but only under fairly specific conditions" after examining the cases of Afghanistan, 1978-present, and Vietnam, 1946-1989 (Taylor & Botea, 2008:28). Taylor and Botea (2008) argue that "there appear to be two main factors that contributed to state-making in Vietnam that were absent in Afghanistan." Factor one is the "existence of a core ethnic group that had served as the basis for a relatively long standing political community in the past," and factor two is "the combination of war and revolution, which facilitated the promulgation of a unifying ideology that combined nationalism with a powerful political ideology" (Taylor & Botea, 2008:28).

While, Taylor and Botea (2008) do address the question directly, there are at least two limitations with their findings. First, because they compare just two different cases and two key variables in their study, the generalizability of their results are suspect. Taylor and Botea (2008:35) admit this limitation as they argue that their case studies are "more like a 'plausibility probe'" as opposed to a "firm test" of their hypothesis. Nevertheless, if there is even one case where their analysis is correct I argue that we still gain analytical leverage to aid in our understanding of the processes and interactions of internal war, order and state building.

Second, at least one of the two factors they identify in their findings “existence of a core ethnic group” appears to be directly tied to their negative case of Afghanistan and has little application to regions where ethnic fractionalization is not a significant factor. In Afghanistan, much has been written about the historical ethnic cleavages between Uzbeks, Tajiks and Pashtuns where the ethnic fractionalization score is .78. In their positive case, Vietnam, the ethnic fractionalization score is .23. Therefore, the “core ethnic group” finding appears tied directly the negative finding of their case of Afghanistan (i.e. small N) and therefore should not be considered to be generalizable to other cases. Nevertheless, Taylor and Botea (2008) do devote a significant amount of time on process tracing in their comparison and exploring the possible causal mechanisms at work. For this reason, their study serves as a good point of departure.

Research Design

I am chiefly concerned with gaining greater analytical leverage over the possible causal mechanisms at work when internal war builds states. I hope to contribute to the findings of Taylor and Botea (2008) in conjunction with the theoretical observations of Centeno (2002), Desch (1996) and Migdal (1988) to test whether contemporary internal wars can build states. In this context, build states refers primarily to increasing the institutional power of the state in the Weberian sense. Centeno (2002:2) argues that the most basic “functions of a state include ... the control of both internal and external violence” and his observation serves as my point of departure for how I conceptualize the primary function of the state. This thesis relies on secondary sources and their interpretive findings of those experts to measure state institutional power before the internal war, during, and after its conclusion. I have included the arguments and observations from scholars that reflect my current conceptualization of the Colombian

case based on my own experiences working and traveling in the region and from my current understanding of the relevant scholarly literature.

Methodology

A case study is “an intensive study of a single unit for the purpose of understanding a larger class of (similar) units” (Gerring, 2004:342). This case study attempts to better understand causal relationships through process tracing. Process tracing is “the minute tracing of the explanatory narrative to the point where the events to be explained are microscopic and the covering laws correspondingly more certain” (Roberts, 1966:66).

Case Selection

My primary case is that of Colombia. I will spend the majority of my time on this case for three reasons. First, I argue that Colombia is the most illustrative case for my analysis because of the length and lethality of its internal war, which is the longest in Latin America and still ongoing (Bushnell, 1993; Castaneda, 2009; Kline, 1999, 2009; Marks, 2007; Pizzaro, 2005; Richani, 2007; Safford & Palacios, 2002; Sanchez & Meertens, 2001). Second, much has been written about the nature of Colombia’s internal conflict and therefore there is sufficient data to complete my project. Finally, the recent success of the Colombian state has been labeled the “Colombian Miracle” because scholars have argued that the state has been unusually successful in a reasonably short period of time in dramatically increasing the institutional power of the state (Boot & Bennet, 2009). Therefore, findings from the Colombian case regarding state building through internal war have the potential to significantly improve our understanding of the causal processes at work.

Colombia is just one case, but it is not just one observation. Instead, because the internal war in Colombia has been ongoing since 1964, each year of the conflict could be considered an observation and therefore there are 46 possible observations between 1964 and 2010. Additionally, one could also argue that the internal conflict has been different in each of the 1,099 Colombian municipalities. Therefore, by one measure it could be argued that there are 50,554 observations (46 years x 1,099 municipalities) related to the Colombian internal war between 1964 and 2010. In practice, data are not available for each municipality for every year group, and even if they were, it would not necessarily improve the robustness of my findings.

Ethnography

I developed a conceptual framework for this project after a detailed survey of both the political science and security studies literature on Colombia's democracy, internal war, guerilla organizations, narcotic trafficking, and the United States (US) sponsored Plan Colombia. The literature on Plan Colombia was divided between two very different extremes. The dominate narrative in the political science journals was very critical of Plan Colombia. Much of this work speculates that US military assistance to Colombia inherently exacerbate violence and conflict there. They argue that increased militarization in Colombia fuels more human rights abuses and repeatedly cite Human Rights Watch reports that have been extremely critical of the Colombian government. The preferred policy option for the Colombian government, according to these scholars, is for the Colombian Government to immediately terminate counter-insurgency operations and instead negotiate a peaceful settlement with the guerillas.

The narrative in the military professional journals makes a very different argument. They argue that Plan Colombia has revolutionized the Colombian military, making it a

much more respectable state institution that can now conduct very effective counter-insurgency missions against the guerillas. This narrative claims that law and order returned to Colombia as the murder and kidnapping rate was cut in half, while the Colombian military continued to aggressively pursue the guerillas and demonstrate superior skill on the battlefield. Some argued the US could learn lessons from the Colombian experience that would help them with counter-insurgency in Afghanistan.

While these different positions could be said to representing different levels of analysis and therefore not necessarily contradictory I find that they two positions depict a fundamental disagreement over whether increased militarization can ever be argued to be a good thing. The US support for repressive military dictators in South and Central America in order to contain Communism is still a relatively recent example of the danger of military centric solutions. Additionally, many of the scholars who have written about the Colombian case are heavily influenced by the experiences of the extremely repressive military regimes in El Salvador, Peru, Guatemala, Chile, Argentina, Brazil, Nicaragua, and Uruguay. There are far more historical cases of militaries in Latin America acting as oppressors as opposed to liberators, especially since 1960. Political scientists are correct when they observe generally that violence usually begets more violence, especially when the military is led by an authoritarian regime. However, I posit that the Colombian case is an exception to the rule.

Additionally, the critical distinction between an official member of the state, who is legally empowered with the ability to due violence on behalf of the state, and others who do violence, even with good reason, but without the bureaucratic state requirement of going through the administrative law channels to receive the appropriate

documentation. This is a critical distinction that should not be conflated if one is attempting to gain greater analytical leverage on understanding the mechanisms of state building.

In reading these two very different narratives, I empathized more with the arguments being made by the military journals regarding what was happening on the ground in real time. This comes from my own experience living, working, and traveling in the region. I have spent a total of 32 months living in Latin America since 1999. In 2002, I spent six months driving the Pan American highway and a year at the University of Puerto Rico as a visiting law student in 2002-3. I was also assigned to the US Embassy in Bogota, Colombia in June of 2003 as a US Marine 1st Lieutenant to serve as a force protection officer assisting with one small piece of Plan Colombia. I had been a member of the United States Marine Corp (USMC) Reserve since graduating high school and had ten years of experience in a variety of capacities in the US military when I arrived in Colombia in 2003. I had just graduated law school and volunteered for a posting in Latin America with United States Southern Command. Initially I was assigned to a small team of US military commissioned officers and non-commissioned officers (all US Army) whose mission was to improve the security posture at many of the Colombia's most remote military bases. Historically, these Colombian military bases were prone to constant harassment by the guerillas in areas called jokingly Farclandia, who were under constant attack from improvised mortars and improvised explosive devices. I knew nothing about base fortifications but my boss, an African American Army Major with a Ranger tab qualification did. He took his job very seriously and worked his team hard. I remember his insistence that he would not order or authorize

the use of powerful foliage removers (Roundup) because of how they could potentially damage the ground water and have other potential negative impacts on the community. It was my first job posted abroad in an official capacity and as a representative of the United States. What I found so remarkable was the overwhelming number of compassionate and empathetic people I met who were part of the US military and also assigned to Colombia. They cared deeply about how their decisions impacted others and were not at all like the personality types depicted in the damning critiques of Plan Colombia. The people that I interacted with and the decisions that I saw them make were very different from the critical narrative of Plan Colombia and the people charged with implementing it. The Colombian police and military officers that I interacted with in 2003 were all extremely professional. Additionally, I spent a year working in the legal office at US Southern Command (SOUTHCOM) in Miami, Florida where I had the opportunity to work with other military officers from Latin America and the Caribbean.

I returned to Colombia in July of 2010 to spend six weeks conducting field work inside of Bogota. I had resigned my officers' commission in 2009 and therefore was no longer in the military and therefore did not have access to the same insider networks that I was exposed to in 2003. I was now the outsider looking in. I had no special badge when I went to the US embassy in Bogota to interview lawyers from the United States Department of Justice (DOJ) and the United States Agency for International Development (USAID). I did however know one key informant from my year at the University of Puerto Rico. One of the non-military benefits of Plan Colombia was training and assistance from the DOJ and USAID in order to strengthen the Rule of Law. The Colombian Criminal Justice System underwent a paradigm shift in January of

2005 when Colombia began a four year transition from a written Spanish Code inquisitory system to an oral American accusatory system. The change in Colombia had been discussed in legal circles there for at least 25 years when legal scholars returned from periods of study abroad and then attempted to integrate those elements from the foreign system into their home countries law. Puerto Rico played a unique role as a case study form many Colombian scholars and policy makers because Puerto Rico has a US oral accusatory system conducted in Spanish. Therefore, it served as a powerful ideal type for how justice could potentially work in Colombia. My roommate at the international house at the University of Puerto Rico turned out to be a visiting law student from Bogota, Colombia. His mentor was one of the Colombian legal scholars who had taught at the University of Puerto Rico and was in favor of using Puerto Rico's system as the model in which to base Colombia's new system. When the large scale legal reforms were finally approved in 2005, my colleague was uniquely situated because of his mentor and his own experience working with Puerto Rican criminal law.

My research plan was to utilize snow ball sampling of members involved in the Colombian legal community to learn more about their experiences with the new accusatory system, advantages, disadvantages, suggestions, etc. I interviewed over 30 judges, law students, law professors, police officers, military officials, forensic investigators, prosecutors, defense attorneys, victims' rights advocates, and government bureaucrats.

There are several obvious limitations of my research design. The first category is regarding the potential generalizability of my findings. There are at least three elements of this limitation. First, Bogota, the capital city where I conducted my field research is

definitely not representative of all cities in Colombia. I know from previous travel in Colombia that Bogota is very different from Medellin, Cartagena, and Cali. Additionally, the rural areas in Colombia are also particularly distinct from city life. I did not travel to any regions outside of Bogota during my fieldwork in 2010 but instead relied on the testimony of experts who were familiar with those regions that I interviewed. I can personally testify to the huge changes I observed in Bogota between my first trip in 2003 and my most recent trip in 2010. However, due to budgetary and logistical limitations I was unable to travel to regions outside of Bogota in 2010. Second, it is possible that even if my conceptual arguments are empirically accurate as they relate to Colombia the Colombian case is arguably so unique that it is not generalizable to anything else. Finally, perhaps the Colombian case is still an epiphenomenon because of the intervening variable of overwhelming US military support. It is very difficult to disaggregate causality for who deserves the bulk of the credit or the blame, the US or the Colombian forces?

The other limitation of my research is based on my own positionality as a researcher in Bogota. First, I was only able to gain interview access to the vast majority of my informants because of introductions made on my behalf by the criminal defense firm that hosted me. This firm was an enthusiastic supporter of the changes to the criminal defense system, and President Uribe and therefore it is possible that some of my informants adjusted their narrative to perform to what they thought I was hoping to hear. Even though all but two of the interviews were conducted in Spanish the normal pre-interview pleasantries usually included some question about whether it was my first trip to Colombia. I replied truthfully that I had been assigned briefly to Bogota as a

USMC Officer in 2003, and had returned again in 2005 but that now I had returned to conduct field research as part of my graduate education. I'm sure my story sounded somewhat implausible to some informants who could have reasonably believed that I was doing an evaluation of some facet of Plan Colombia for some US government agency. US military personnel do not usually wear their service uniforms while assigned to Colombia in order to minimize their identification as members of the US Government to reduce the likelihood of kidnapping or assassination. Instead, US military personnel generally wear formal business attire. I was dressed in formal business attire, understood the relevant military acronyms, and therefore it would have been totally reasonable for many of my informants to conclude that I was still affiliated with the US government. I did my best to counter this perception but in the course of my interviews with members of the Colombian government I ran into at least two other Americans from US government agencies (Department of Justice and Department of State) who were also waiting to interview Colombians, and therefore I did my best to clarify that I was a researcher and not a government official.

Conceptual Framework

My analysis isolates three structural factors and three exogenous shocks to better understand the Colombian case. The three structural factors are: 1) historically weak Colombian state institutions, 2) a historically strong disloyal opposition, and 3) the presence of lootable resources. I argue that the three exogenous shocks are: A) the US demand for cocaine, B) the US War on Drugs and C) the US War on Terror. My causal story relies very heavily on the role that the US has played throughout Colombia's history. First, the historically strong disloyal opposition in Colombia must be understood in the context of the Cold War and the impact that the 1959 Cuban revolution had on US

policy throughout Latin America. Economic and military assistance to Colombia in that period shape how the country develops. Second, the US demand for illegal drugs, particularly cocaine, must be examined for the role it has played in democratization and state development in Colombia. Finally, military and security assistance provided to the Colombian state by the US has also played a critical role. It has been used to bolster the Colombian state against Communist guerillas during the Cold War, combat drug traffickers, and to help the Colombian government maintain a successful counter-insurgency campaign against the guerillas, the Armed Revolutionary Forces of Colombia- People's Army (FARC-EP). Therefore, I also include literature from the US government and security studies and foreign policy practitioners in order to better inform my study.

Overview of Chapters

Chapter 2 surveys the literature on US foreign relations with Colombia because my causal framework relies very heavily on the role that the US has played throughout Colombia's history. First, I introduce the theme of security that has long defined US and Colombian foreign relations. Second, I contextually situate US relations with Colombia and other nations in Latin America. Third, I frame US relations with Colombia during the Cold War and the 1959 Cuban Revolution. Fourth, I discuss the impact of the US demand for cocaine and the subsequent US War on Drugs. Fifth, I discuss the role that the US Global War on Terror (GWOT) has had for US relations with Colombia. Finally, I survey some of the less widely held explanations for understanding US relations with Colombia.

In chapter 3 I offer a framework for understanding why Colombia has remained an outlier in democratization which is centered on the state's longstanding inability to

control a monopoly on the use of violence within their defined territory. Another way to conceptualize this problem is through a Rule of Law (ROL) framework. I use Dahl's (1971) definition of polyarchy in combination with Freedom House scores to show that since 1974 Colombia has met the two basic de jure requirements for democracy; contestation and participation. However, since 1989, the country no longer has been considered a democracy by Freedom House because of the lack of ROL, operationalized by the high level of violence.

Chapter 4 unpacks the definition of the rule of law in Colombia. Colombia is often cited as a country where there is a lack of rule of law, but many of these scholars do not fully explain what they mean. Rachel Kleinfeld (2006) brought significant clarity to the debate through her ends-based definitional approach to the rule of law question. The ends-based approach focuses on the five distinct goals of the rule of law: 1) making the state abide by the law, 2) ensuring equality before the law, 3) supplying law and order, 4) providing efficient and impartial justice, and 5) upholding human rights (Kleinfeld 2006:35). I discuss each of these goals and apply them to the Colombian case. I pay special attention to law and order, which was the key concept behind President Uribe's Democratic Security policy. I also discuss Colombia's attempts to provide efficient and impartial justice in light of Colombians' new oral accusatory system of justice.

Chapter 5 discusses the critical state building developments that have taken place between 2002 and 2010 with the "strong" leadership of President Uribe and the "smart" assistance of the US government. The primary focus of these efforts has been on supplying law and order, a key component of state building. During these eight years the Colombian government has doubled the size of its security forces and made

significant advances in supplying law and order. This is the period where war making has been cited as the proximate cause for contemporary state making in Colombia.

The final chapter attempts to make logical sense out of some potential empirical paradoxes. Despite the significant advances made between 2002 and 2010, Colombia has not brought the rule of law to all of its territory. I apply Snyder's (2009) work on State Sponsored Protection Rackets with my findings on Colombian state building.

Here is a simple nomological deductive attempt at extrapolating this argument:

Colombian security forces have made extreme tactical advances against the FARC-EP. Colombian security forces are now present in all 1099 municipalities. The number of kidnappings and murders are down by half. But by all measures the cocaine trade, the publically stated goal of Plan Colombia has not at all been impacted by it. One possible explanation that would make sense of all this conflicting data is the presence of State Sponsored Protection Rackets. Duran-Martinez & Snyder (2009) use the case of Mexico to demonstrate that illegality does not necessarily breed violence when the state security forces agree to certain codes of conduct with key leaders from certain transnational narcotics smuggling organizations. Probably even more likely an explanation but far less romantic is that drug traffickers have become so sophisticated and dispersed that the Colombian state is simply always one step behind the smugglers. Smugglers have always excelled at evading state security forces. They have expert local knowledge and they are only paid if they can successfully remain outside of the grasp of the security arm of the state. But how hard can it be you ask to find and destroy all that cocaine? We must remember that the coca farmers and producers are well seeped in local knowledge and the incentive to evade arrest and

remain hidden are traits of the job. Even in the United States, the most advanced surveillance and police state in the world, with the most sophisticated data gathering equipment, is home to large quantities of clandestinely grown marijuana and clandestinely produced methamphetamine. Therefore, the most likely explanation for why the price of cocaine has not dropped is because there is such a profit to be made that human ingenuity will always outwit security forces. Smugglers take great risks for the chance of great reward. We generally only read about the unsuccessful ones that get caught. Logically, there are many more illicit producers and smugglers who have never been captured and will never get caught.

CHAPTER 2 UNITED STATES AND COLOMBIAN RELATIONS

The Core Theme of Security

On January 13, 2009, Colombian President Alvaro Uribe Velez was awarded the Presidential Medal of Freedom. The United States' highest civilian award is bestowed for, "especially meritorious contribution to the security or national interests of the United States, or world peace, or cultural or other significant public or private endeavors" (Roig-Franzia, 2009). President Uribe was elected in 2002 and finished his second and final term as the democratically elected leader of Colombia in 2010. Since 2000, Colombia ranks first in Latin America and third in the world in terms of the amount of foreign aid received from the United States. Colombia has enjoyed a special relationship with the US in terms of presidential recognition and foreign aid on balance with other countries in Latin America. According to Bush, Uribe has been a strong supporter of the US Global War on Terror (GWOT) and a strong supporter of US counter drug efforts. The literature on foreign relations between the US and Colombia is predominately focused on security (Arson & Tickner, 2010).

US and Colombia Relations in Comparative Perspective

Before discussing the intricacies of the security focused relationship between the US and Colombia, it is important to situate US relations with Colombia with US relations with the rest of Latin America. Because of the asymmetry in wealth and power between the US and Latin America, many scholars have framed the US as the powerful actor and "Latin America as the dependent, defenseless object" (Pastor 2001:x). Pastor and Long (2010) argue that there are two primary reasons for this: empirical and theoretical. The empirical reason is that much of the internal files and foreign policy documents from

countries within Latin America and the former Soviet Union have generally been unavailable to scholars. Consequently, scholars have generally relied primarily on US based sources to frame interactions of the US with countries in Latin America. Pastor and Long (2010) argue that the dependency school has long been the dominant theoretical paradigm for examining inter-American relations. Crandall (2008) has classified literature in this style as “anti-imperialist”. Friedman (2003) argues that such an approach could not be sustained if scholars were to examine Latin American sources and perspectives. Brands (2010) in “Latin America’s Cold War: An International History” and Joseph and Spenser (2008) in “In From the Cold: Latin America’s New Encounter with the Cold War” both attempt to do so. My discussion of US and Colombia relations attempts to also follow Friedman’s (2003) suggestion by incorporating Latin American sources and perspectives. I will now highlight key points of the US-Colombian relationship.

A Brief Historical Overview of US and Colombian Relations

Panama. In 1848 the US ratified the Bidlack-Mallarino Treaty with Colombia that allowed the US to establish a presence in what is today Panama, but at the time was part of Colombia. The treaty guaranteed that “the right of way or transit across the Isthmus of Panama, upon any modes of communication that now exist, or that may be...constructed, shall be free to the Government and citizens of the United States” (Musicant, 1990:83). In return the US pledged to defend the neutrality of the Isthmus and guaranteed the rights of sovereignty which Colombia possesses over said territory (Musicant, 1990:83). It is important to understand the historical context of the signing of this treaty. There was not yet a transcontinental railroad in the US and therefore it often took six months to travel overland from Missouri to Oregon. Conversely, it took less

than two months if one were to travel by ship from New York to the Atlantic coast of Panama, over the isthmus by mule and flatboat, and then by ship from the Pacific coast of Panama to San Francisco, California. In 1855 the American owned Panama Railroad Company opened, connecting the Atlantic coast city of Colon with the Pacific coast city of Panama City. It was the world's first transcontinental railroad and a one-way passage cost twenty five dollars in gold and three hours to complete the forty-eight mile long journey (Musicant, 1990:83).

The Thousand Day War was the name for the Colombian civil war between the Conservative and Liberal political parties between 1899 and 1902. An estimated 100,000 people were killed in the three years of fighting. The two political parties were divided on three core issues: 1) the role of the central government, 2) voting rights, and 3) state relations with the Catholic Church. The Conservative party favored a strong central government, constrained voting rights and a robust link between the Colombian state and the Catholic Church. The Liberal party favored strong regional governments, expanded voting rights and a reduced role for the Catholic Church in state business. These two factions had existed since the dissolution of Simon Bolivar's Gran Colombia in 1831.

The violence of the Thousand Day War also spread to the region of the transcontinental railroad in Panama. US military forces landed several times to ensure the railroad was kept open under the spirit of the Bidlack-Mallarino Treaty. At this time, the US government was exploring options to build a canal in either Nicaragua or Panama. The US ultimately offered \$10 million in gold coin and an annual annuity of \$250,000 to Colombia for rights to build a canal in Panama under the Hay-Herran

Treaty. It was ratified by the US Senate in March of 1903 after stiff resistance by senators preferring the Nicaragua canal option. Dr. Herran, the Colombian charge de affairs at the Colombian embassy to the US made the following observation:

Should this treaty unfortunately fail of approval by the [Colombian] Congress, one of two results must follow. Either the United States in accordance with [the Spooner Amendment] will enter into treaties with Nicaragua...and proceed to construct the Nicaragua Canal or...they will seize upon the Isthmus by force and make their own terms for the retention of it" (DuVal, 1940:215).

In August of 1903 the Colombian Congress unanimously voted to reject the Hay-Herran Treaty as it felt that better terms could be negotiated. Meanwhile, pro-independence forces in Panama made public their offer to grant the US access to build a canal in exchange for assistance with their revolution. Publically, the US President made no such commitment but also secretly dispatched four warships to Panama. US forces prevented Colombian and pro-independence forces from using the railroad. This had a much stronger negative impact for Colombian troops who arrived at the port in Colon from Cartagena but were unable to reach Panama City. On November 4th the Colombian troops from Cartagena outnumbered the US landing party by a ratio of 10:1; however, the US force also could make use of the naval guns from the warship that accompanied them (Musicant, 1990:133). Bloodshed was avoided with the arrival of an additional US warship and the landing of two more companies of US Marines. Panamanian independence was declared that evening and two weeks later the Hay-Bunau-Varilla Treaty granted the US in perpetuity the land to construct, maintain, operate and protect a canal across the isthmus (Musicant, 1990). The US completed the canal in 1914 and in 1921 signed the Thomson-Urrutia Treaty with Colombia. The treaty included a masked apology for the US role in Panamanian independence, a US

payment of \$25 million dollars and the Colombian recognition of Panama (Musicant, 1990).

The Cold War, Cuban Revolution and Alliance for Progress

Colombia was the only country in all of Latin America to send troops in support of the Korean War. Approximately 6200 Colombian troops served with US forces in Korea, suffering casualties of 163 killed and 448 wounded. I argue that Colombia's decision to send troops to Korea was done in order to strengthen Colombia's security relationship with the United States. In 1948 the assassination of Liberal party presidential candidate Jorge Eliécer Gaitán triggered the period of large scale violence known as "La Violencia". During the next ten years an estimated 300,000 people would be killed in violence between supporters of the Liberal and Conservative parties. General Rojas seized power in 1953 and some members of the Liberal party refused to turn in their arms but established independent "republics" in isolated areas of the Colombian territory. In 1958, leaders of the Liberal and Conservative party met in Spain and established a formal power sharing agreement called the National Front coalition government.

On January 1st of 1959 Castro overthrew the government of Batista in Cuba. In October of 1959, a "US Special Survey Team" arrived in to Colombia in order to assess the potential risk of Communist insurgency there (Stokes, 2005). In 1960 the US signed the Act of Bogota and in 1961 the Charter of the Alliance for Progress. In 1961, Soviet Premier Nikita Khrushchev announced that the Soviet Union would support "wars of liberation". In the climate of the Cuban Revolution, Che Guevara's efforts to promote insurrections in Latin America and the Soviet promise to support wars of liberation, the US was deeply fearful of Communist inspired insurgency in Colombia. In February of

1962, another team of counterinsurgency experts from the US arrived in Bogota under the leadership of General William P. Yarborough.

In general, the Yarborough team recommended that the US provide guidance and assistance in all aspects of counter-insurgency...Civilian and military personnel, clandestinely selected and trained in resistance operations, would be required in order to develop an underground civil and military structure. This organization was to undertake 'clandestine execution of plans developed by the United States Government toward defined objectives in the political, economic, and military fields'...it would...undertake...'paramilitary, sabotage, and/or terrorist activities against known communist proponents'" (Amnesty International, 2002).

Plan Lazo

Yarborough's recommendations were instrumental in the creation of Plan Lazo, the Colombian military strategy to defeat insurgency. Transitioning the military for use in internal security was one of the changes advocated by this policy. Plan Lazo was apparently based on US military successes in counterinsurgency operations in the Philippines and relied on a carrot and stick approach (Carpenter, 2004). The carrot portion included civic action programs whereas the Colombian military would assist in road building, school construction, and other ostensibly goodwill projects to win the trust of the local communities. The other purpose of the civic action programs was to gain intelligence on the communist groups. The stick portion of the approach included the targeting of known insurgents and the occasional public parading of killed guerillas (Carpenter, 2004).

The US signing of the Act of Bogota in 1960 and the Charter of the Alliance for Progress in 1961 were both framed as economic policies linked to the principles of social reform in Latin America (Barner & Ronning, 1966:3). However, the US fear of Communist-inspired social revolution was the real policy motivator behind each of these international agreements. In support of this end the US pursued a policy to strengthen

the national security forces of regimes throughout Latin America as a more immediate technique to prevent violent social revolution (Barner & Ronning, 1966:3). Scholars and policy makers have long recognized the inherent dilemma in such a policy.

Strengthening the security forces within Latin America meant a strengthening of the armed forces- the very institutions that had often been associated with reaction and dictatorship” (Barner & Ronning, 1966:3).

Supporters of US military assistance to Latin America argued that in addition to preventing Communist inspired violent social revolutions that US assistance could reorient the Latin America armed forces to respect democratic government and the rule of law. Advocates claimed that the exposure to military trainers from the US, and professional courses in the US would socialize those trained in democratic values and the supremacy of civilian authority in government. The School of the Americas (SOA), which changed its name in 2001 to the Western Hemisphere Institute for Security Cooperation (WHINSEC), has trained over 60,000 Latin American soldiers in US military tactics, techniques and procedures since 1935. According to WHINSEC the official mission of the institute includes: “fostering mutual knowledge, transparency, confidence, and cooperation by promoting democratic values; respect for human rights; and an understanding of U.S. customs and traditions” (WHINSEC 2011). Those opposed to US military training of Latin American soldiers claim that the training is routinely used to “wage a war against their own people” by the formation of death squads and the specific targeting of “educators, union organizers, religious workers, student leaders, and others who work for the rights of the poor” (SOA Watch 2011).

Counterdrug primacy and the intersection of domestic politics

In 1984, President Reagan declared that the threat of drugs constituted a threat to the national security of the United States. Crandall (2008) focuses on the intermestic

nature of US foreign policy with Colombia centered around the theme of US counterdrug concerns.

Intermestic issues refers to those matters of international relations which, by their very nature, closely involve the domestic economy of a nation” (Barilleaux, 1985:754).

The literature tells us that Colombia was the traditional supplier of marijuana for the US market, arguably providing up to 80% of the market share between 1960 and 1983 (Drexler, 1997). We also know that Colombia has always been the predominate supplier of cocaine for both the US and the world market. In the beginning of this trade, the late 1970s and early 1980s, the majority of the drugs entered by air or water through Miami (Crandall 2008). The cocaine wars that ravaged Miami in the 1980s resulted from the violent struggle between various criminal factions in South Florida (especially between various Colombian and Cuban criminal organizations), fighting for domestic market control of the distribution networks. The worst of the violence in Miami was fueled by these various “cocaine cowboys”, with many national news stations reporting on the violence and multiple homicides (Drexler, 1997). Additionally, the crack cocaine epidemic in the US, starting in the 1980s, resulted in an unprecedented rise in gang violence, murder, robbery, homelessness, addiction and created “crack houses” and “crack babies.” What was also discussed in these news reports and television programs was an explanation of where these drugs were coming from and who was reputed to be conducting much of the violence (Drexler, 1997).

The drug barons of Colombia, non-state actors who threatened the national security of the US from within the borders of Colombia, were identified by the US as the proximate cause (Crandall, 2008). Furthermore, the Colombian state was too weak to adequately deal with these threats (Crandall, 2008). The policy of supply side drug

eradication argues that eradicating the source at the supply end will remove the substance from the global market. Another element of supply side practices is to focus on the dismantling of the criminal networks and key individuals who control these networks in the supply countries (Crandall, 2008). Therefore, the US focused its foreign policy towards Colombia with the eradication of illicit drug supplies and the dismantling of narcotic criminal syndicates (Crandall, 2008).

Counterinsurgency and the Global War on Terrorism

Several scholars have discussed the interplay of the US War on Drugs in Colombia with US policy on counterterrorism (Manwaring, 2001; Peceny & Durnan, 2006; Vauters & Smith, 2006; Walsh, 2006) There are two important themes that develop from this literature: unintended consequences and convergence.

US foreign policy to dismantle specific cartels, namely the Medellin Cartel, resulted in unintended consequences in respect to the strength of the Colombian state. The cartels maintained large private armies, called paramilitaries, to protect their illicit crops, processing labs and airfields. Because their cocaine was grown in remote areas of the country where guerillas were present, the guerillas attempted to tax and control some of the profits being made by these cartels, when the cartels expanded into territory that was traditionally controlled by the guerillas (Crandall, 2008). The cartels responded not by paying "guerilla taxes" (as the ranchers did before them), but by engaging the guerillas in direct combat. A war of attrition followed with significant collateral damage. The guerillas primary mission has always been the overthrow of the Colombian state in order to establish a Marxist state. Therefore, the presense of paramilitaries fighting the traditional enemy of the Colombian state was not of concern for Colombian state security forces (Walsh, 2006).

Unintended Consequences of Destroying the Cartels

US foreign policy to dismantle the cocaine cartels in Colombia created two significant unintended consequences. First, the Colombian state security forces targeted the cartels and the cartels responded by engaging in direct combat with the state, particularly in urban areas. Pablo Escobar and his Medellin Cartel declared “total and absolute war” against the Colombian government for cooperating with US authorities in their War on Drugs and supporting a policy of extradition to the US. A period of spectacular terror and violence followed that was directed at members of the Colombian government and security forces. The highest profile murder was the 1989 assassination of Luis Carlo Galán, the leading presidential candidate. The cartel bombing of Avianca flight 203, also in 1989, was targeted at another presidential candidate and killed all 110 passengers on the plane. The Colombian state security forces suffered greatly because of their battle with the cartel. Many state officials were killed, resigned, or bought off. “Plata o plomo” (Silver or lead) means that one could either accept a bribe or risk being assassinated. During this period the Colombian state was being threatened by both the guerillas and the cartels, which resulted in an even weaker Colombian state capacity to provide law and order.

Second, the guerillas military strength increased when the cartels directed their paramilitary forces against the Colombian state. Additionally, the guerillas were able to enter the cocaine market as primary suppliers fulfilling a role that was previously done by the cartels. While many of the big names in the cartels were killed, other smaller organizations formed that continued to grow and ship cocaine to the US. Therefore the guerillas entered the drug market in a large way (formerly they generated most of their

proceeds through taxes on ranchers/elites/businesses, and ransom from kidnapping) and thus became what the US foreign policy saw as lawful targets in the drug war.

Convergence. The second theme is how the convergence of counterdrug and counterinsurgency changed in 2001. In April of 2001, three Irish Republican Army (IRA) trainers were captured in Colombia who were allegedly teaching the FARC-EP advanced techniques in improvised explosives and improvised mortars (Manwaring, 2001). The idea of European terrorists operating abroad in an area of “traditional US influence” was reminiscent of Nazi operatives in Latin America prior to WWII, communist Soviet trainers in Nicaragua during the Sandinistas, and communist Cuban trainers in Bolivia in the 1960s. The US could not allow such a threat to survive in its own backyard, as both the narcotics traffickers and terrorist trainers were perceived as significant threats to US national security (Manwaring 2001). This argument was made even more persuasive in the political climate following the attacks on September 11, 2001. Therefore, the need for the US to pursue a counterinsurgency and a counterterrorist campaign in Colombia was also consistent with the US led Global War on Terrorism (GWOT) (Walsh 2006). GWOT demands, argues Walsh, that the US target terrorists or insurgents anywhere in the world where US interests are threatened (Walsh, 2006).¹ Like the Cold War, GWOT is an even better pretext for unilateral military action in Latin America. President Uribe was a strong supporter of GWOT, supporting the US invasions in Afghanistan and Iraq, as well as arguing that the Colombian government was also engaged in a war on terror against the narcoterrorists

¹ Walsh advocates an increased US military presence in Colombia and a removal of current congressional prohibitions of US forces engaging in direct conflict there. In essence, Wash argues that US foreign policy in respect to preserving US national security demands that the US bring the full weight of its military might on the narcoterrorists in Colombia. Walsh also argues that customary international law would support this policy.

of their country (Arson & Tickner 2010). This argument has been repeatedly used by those supporting increased military and security assistance to Colombia.

CHAPTER 3 COLOMBIA AS AN OUTLIER IN DEMOCRATIZATION

In 1960 nine of ten South American countries of Iberian heritage had democratically elected governments; by 1973 only two, Venezuela and Colombia, did" (Huntington, 1991:21).

Colombia has long been an outlier in the democratization literature on Latin America, although for two very distinct reasons. I argue that the lack of rule of law (ROL), specifically the Colombian's state inability to supply law and order help us understand why Colombia has followed a different historical trajectory than most other countries in the region. The first period of Colombia as an outlier occurred between 1962 and 1973 when many countries in South America experienced "backslides" to authoritarian rule but Colombia remained democratic (O'Donnell, Schmitter, & Whitehead, 1986). The second period of Colombia as an outlier is from 1989 till present. While most countries in Latin America were making transitions from authoritarian rule to democratic government, Colombia's democracy was getting progressively worse.

Freedom House

Colombia, from the late 1980's until present, has been widely considered by scholars as a "qualified democracy" due to the high level of violence and lack of respect for individual rights and lack of state controlled law and order. This is best demonstrated by Colombia's rating with Freedom House, which since 1989 has listed Colombia as "partly-free" (Freedom House, 2010). Freedom House defines freedom as "the opportunity to act spontaneously in a variety of fields outside the control of the government and/or other centers of potential domination" (2010). Freedom House measures freedom according to two broad categories: political rights and civil liberties,

in which they assign a numerical rating from one to seven. A rating of one is ideal and signifies the maximum amount of freedom, while a rating of seven signifies total absence of freedom. A combined average rating of 1-2.5 classifies the country as “free”, 3-5 as “partly free”, and 5.5-7 as “not free”.

Freedom House gave Colombia a number two rating on both the political rights and civil liberties variables in 1972-1974, earning the designation “free”. Colombia was still designated as “free” from 1974-1988, however the civil liberties variable was downgraded to a number three while political rights remained at a number two. From 1989- 2009, Colombia has been designated as “partly-free”, with a civil liberties rating between number three and number four and a political rights rating between number two and number four.

Understanding the Freedom House Classification, Political Rights

Political rights, according to Freedom House “enable people to participate freely in the political process through the right to vote, compete for public office and elect representatives who have a decisive impact on public policies and are accountable to the electorate” (2010). The analysts at Freedom House use 10 questions divided into three sub-categories when rating political rights: 1) electoral process, 2) political pluralism and participation, and 3) functioning of government. When applying these standards to the case of Colombia it is helpful if we speak of both de jure political rights and de facto political rights.

Robert Dahl’s (1971) approach in “Polyarchy” offers the best framework for understanding the de jure requirements of political rights. According to Dahl, there are three structural dimensions for a polyarchy: 1) participation- inclusion of the majority of the adult population through universal suffrage, 2) contestation- selection of political

leaders through competitive, free, and fair elections and, 3) unfettered command of government- the ability of elected officials to govern without being subjected to external control by unelected actors (i.e. the military). Colombia has met the minimum requirements for all three of these factors since 1974. Colombia has had regular and free elections since 1830, and only three brief periods of authoritarian rule.¹ In 1958 women were given the right to vote and therefore the first formal requirement was met in regards to participation. However, between 1958 and 1974 the element of contestation was not met because of an elite pact called the National Front between the Liberal party and Conservative party that excluded all other potential political parties. In 1974, this pact was removed and other political parties were legally allowed to register their candidates, and therefore the requirement for contestation was met. In the most basic sense the requirement of unfettered government is met when the elected government is not subjected to external control by unelected actors, which is generally understood to be the military. Therefore, in the most basic sense Colombia has met all three of Dahl's requirements for political rights from a de jure perspective.

Violence and De facto Participation. However, if we also look at political rights from a de facto perspective it gives us a better understanding of why Freedom House has assigned numerical ratings of three and four in the area of political rights since 1989. The Colombian reality is that there have long been threats to participation, contestation, and unfettered command of government as a result of the high degree of violence and criminal activity. Legally the majority of the adult population is allowed to vote, but many have been unable or unwilling to exercise that legal right due to the

¹ 1830, 1854, 1953-1958

presence of illegal actors who have violently prohibited it. Therefore, participation, particularly for those on the political left, has been severely constrained by those on the right who have often used violence to ensure compliance. The most striking example of this is evident in the case of the Patriotic Union (UP) political party, officially a leftist party, but considered by some to be the political wing of several violent Marxist guerilla groups. According to a 1990 US government published country study guide of Colombia:

By mid-1988 the UP asserted that 550 of its members and supporters- including Jaime Pardo Leal, the party's leader and its candidate for the 1986 presidential elections- had been murdered by right-wing terrorist groups and death squads" (1990:303).

Corruption and De facto Contestation. The factor of contestation is also at issue, particularly the language of free and fair, when one realizes the impact that narco dollars have had on corrupting the entire election process. Thoumi (2003) argues that money from narcotics trafficking has corrupted a great deal of Colombian politicians, and influenced an untold number of election results. The ongoing "Para-politics" scandal of 2006 includes 62 members of congress as official suspects for accepting large campaign contributions from paramilitaries involved in the narcotics trade. In 2008, there were 33 lawmakers in jail for accepting bribes in this matter including the President of Congress (Colombia Reports, 2008).

Guerillas and De facto Government Control. Additionally, the third requirement of unfettered government rule has been complicated by both the absence of government in many regions of the country and also the government being violently challenged by guerillas and narco elites. Therefore, while Colombia has met the de jure

requirements for political rights since 1974, the de facto analysis helps us better understand the Freedom House ratings.

Understanding the Freedom House classification, Civil Liberties

Freedom House defines civil liberties as allowing “for the freedoms of expression and belief, associational and organizational rights, rule of law, and personal autonomy without interference from the state” (2010).² What happened in 1989 to change the Freedom House rating of Colombia from “Free” to “Partially-Free”? First, throughout the 1980’s there were several high profile cases of narco terrorism, in which Pablo Escobar and his Medellin Cartel declared war on the Colombian state and systematically assassinated a large number of political candidates, and state security officials. The first key assassination occurred in 1984 with the murder of justice minister Rodrigo Lara Bonilla in 1984. Arguably the tipping point incident occurred on August 18th, 1989 with the assassination of Luis Carlos Galán, the Liberal party presidential candidate. An article in the Los Angeles Times in August of 1989 summarizes the climate in Bogota, “In 48 hours, the narcos hit a judge, a senator who was also a leading presidential candidate and a state police chief” (Rodriguez 1989). Second, the murder rate in the country surpassed 20,000 killed annually since 1986.³ Third, Colombian actors are

² It has been argued that all of the items of violence I cite in the 1980’s are evidence of private acts of violence and not a result of interference from the state as they argue that Freedom House’s (FH) definition of civil liberties hinges on “without interference from the state”. First, I argue that the phrase of “without interference from the state” only applies to the concept of personal autonomy which is the word listed before its use. Therefore, the FH framers intent was limited to personal autonomy without interference from the state. Second, I argue that the key concept in the FH definition is “rule of law” which I argue in chapter 3 speaks to “supplying law and order” which is clearly a component of private violence that occurs within the state. Third, I posit that the state can delegate authority but not responsibility and therefore the state must be held accountable for a culture of violence and lawlessness. The blame must fall upon the state if it is not fulfilling their primary responsibility in the Weberian sense as the sole legitimate user of violence within the defined territory of the state.

³ If the murder rate per capita is the proxy that Freedom House uses to determine Civil Rights then why Colombia has been classified as a Partly Free Democracy since 2005 until present is a mystery.

credited for fueling the “cocaine wars” that occurred in Miami in the 1980’s and crack cocaine epidemic in many major US cities clearly are responsible for creating the “perception” of a failed narcostate in the mind of many American’s, including scholars and those employed by Freedom House.

The Freedom House data set only captures the state of Colombian democracy from 1972 to present. A survey of Colombian history since 1831 shows a long record of violence between the two competing ideologies of the Conservative and Liberal parties. The two parties were historically divided on three core issues: 1) the role of the central government, 2) voting rights, and 3) state relations with the Catholic Church. The Conservative party favored a strong central government, constrained voting rights and a robust link between the Colombian state and the Catholic Church. Conversely, the Liberal party favored strong regional governments, expanded voting rights and a reduced role for the Catholic Church in state business. My ultimate aim is to provide a structural framework which helps to explain the long history of violence and insecurity in Colombia.

Explaining the Colombian Crisis, Three Structural Factors

I posit that there are three structural factors that are responsible for the crisis of political rights and civil liberties: 1) weak state institutions, 2) disloyal opposition, and 3) lootable resources. First, I will use a historical approach to argue that Colombia’s severe geography, particularly the Andean mountain chains and remote jungles, made it difficult for the central government to create an “empirical” state and to “monopolize the

Colombia’s murder rate per 100,000 was 39 in 2005, 40 in 2006, 39 in 2007, and 36 in 2008. Both Jamaica and El Salvador have had higher murder rates than Colombia since 2005 however they are both still classified as Free.

legitimate use of violence within the country” (Weber, 1978). Second, I argue that the appearance of a strong disloyal opposition (guerillas, narcos, and paramilitaries) fueled by its ability to use cocaine as a lootable resource to fund prolonged revolutionary struggle acted in concert to seriously undermine the Colombian state. Third, I will apply the literature on civil war and lootable resources to that of cocaine in Colombia as the third structural component. In this section I will also discuss the exogenous shocks of the US demand for cocaine, and subsequent War on Drugs.

Conceptually, I put particular emphasis on Colombia’s weak state institutions because I argue that strong state institutions could usually overcome both a disloyal opposition and lootable resources. I mention all three factors when discussing the Colombian case to distinguish it from the multitude of other cases in Latin America where state institutions are also weak. Also, the existence of a disloyal opposition is not unique to Colombia. What makes the disloyal opposition in Colombia distinguishable from other Latin American armed groups is that the severe geography of Colombia have allowed the disloyal opposition to evade government persecution by remaining hidden in isolated jungle hideaways that are paid for primarily through lootable resources in the form of cocaine.

Factor One, Colombia’s Crisis of Statehood

The nation-state is not an automatic phenomenon. Just declaring that a nation exists does not mean that all people who live within its frontiers will accept the decision of the central leadership” (Kline, 2009).

Max Weber (1978) identifies two core requirements in order for a state to exist: 1) clearly defined territory and 2) “monopoly of the legitimate use of physical force in the enforcement of its order” (54). However, in the case of Colombia we must distinguish between that of an “empirical state” and a “juridical state”. An “empirical state” is that

which Weber is referring to in his classic definition. A “juridical state” is one that is recognized by the international system, but that does not necessarily have a monopoly on the use of force within its defined territory (Jackson & Rosberg, 1982). This distinction was developed by Jackson and Rosberg while speaking about many of the countries in Africa that in the early 1960’s received formal independence from colonial rule, and a seat at the UN, but which lacked the ability to control their territory with force. They argue that but for the international system that discourages conquest and violence between states, many of the “juridical states” in Africa would cease to exist (Jackson & Rosberg 1982). Instead, there would be a phenomenon similar to that of traditional Europe where strong states conquered weak states and juridical statehood formed after empirical statehood was solidified.

Catherine Boone’s (2003) work on the varying degree of state control within a state is also applicable to the case of Colombia. She argues, again in the African context, that states routinely use a different strategy of control over different regions within their defined territory in order to maximize those attributes that they value most (Boone 2003). I argue that a similar phenomenon has occurred in Colombia where until as recently as 2003, there was a total absence of official state presence in many regions of rural Colombia.

I posit that the most persuasive causal factor for understanding the history of the weak state in Colombia is geography. The severe terrain has created four distinct political topographies within the country. Colombia is situated among the Andes (three separate mountain chains), with fertile valleys between each range; the Pacific and Caribbean coasts are abutted with dense jungles, large swamps and vast pampas that

seasonally flood (US Federal Research Division, 1990). Some have argued that Colombia's geography is the world's third most adverse for economic development (Reid, 2009). The most economically successful areas of Colombia are located near the fertile valleys where agriculture flourished and merchants prospered. The population currently estimated at forty seven million is the most dispersed geographically in Latin America (Reid, 2009). It is these geographic factors that have fostered an inward-looking people, and have made the country difficult to govern and police (Reid, 2009). It is notable that the grand liberator, Simon Bolivar, whose forces were successful at driving the Spanish army from South America, was unable to establish a unified command over Gran Colombia, which broke into what is present day Panama, Colombia, Venezuela, and Ecuador. Since the time of Bolivar, the severe topography has ensured that the Colombian state has remained weak, with regional power bases being formed in four geographic areas: the Caribbean coast (Cartagena and Barranquilla), the Cauca Valley (Santiago de Cali), the Aburra Valley (Medellin), and the Savannah of Bogota. Each of these four geographic areas in Colombia has a distinct regional identity, including a strong regional accent (Williams & Guerrieri, 1999). As you can see in figure 3-3, even as late as 1970, all economic industry was centered around one of the four key geographical power centers, with the southeastern portion of the country virtually uninhabited.

Coffee has remained one of the key exports of the Colombian economy since exports began in 1835, as the world's 2nd largest exporter of coffee after Brazil. Colombia grows the Arabica bean, which is much preferred internationally over the inferior Robusta bean, for its "rich, full-bodied, and perfectly balanced taste." The

Arabica bean does not grow well in the wet, lowlands of Vietnam, but prefers the alpine, volcanic soil of the areas around Medellin and Bogota.

The area around Cali was historically home to large haciendas, specializing in cattle, and sugar cane (Williams & Guerrieri, 1999). The Cali elite formed around these two industries and could export its product through the Pacific port of Buenaventura, the largest on the Pacific side.

The city of Cartagena on the Caribbean side was founded by the Spanish in 1533. Its “impregnable” fortifications were completed in 1756 and served as a key port in the Spanish Viceroyalty for 275 years (US Federal Research Division, 1990). Cartagena’s strategic location as a port city on Spanish and English trading routes helped form a substantial ruling elite class on the Caribbean coast. Bogota’s location as the capital of the Spanish Viceroyalty of Peru and proximity to fertile growing areas ensured that it became a key city in the Colombian state.

I argue that these four geographic power bases created two elite ruling classes in Colombia: 1) the landed aristocracy who controlled the production of agriculture and 2) the merchant class who was involved in the export of these goods and the import and resale of other critical goods (Bushnell, 1993). Each geographic region had its own landed and merchant elite that formed patron-client relationships with those that they employed (Taylor, 2009). The power struggle during the viceroyalty period between Cartagena and Bogota resulted in an eventual compromise of a weak capital being erected in Bogota. Therefore, what evolved was something closer to a feudal state, with the real power residing in each of the home base areas. In an effort to prevent one region from controlling another, elites formed a pact that institutionalized a weak central

government in Bogota with relatively weak state infrastructure, in terms of its ability to exert force over the other key cities.

Until very recently, the Colombian security forces were inadequate in numbers and capacity to exert dominion over all areas of national sovereignty. While there were security forces and state institutions present in all major cities, up to 30% of the country existed without official state presence (Crandall, 2008). Thus, what existed was a very different experience with the state for citizens that resided in areas with a formal state presence and in areas that were devoid of state institutions, but that were geographically located within the state boundaries. Kline (2009) has called the situation a “weak state with political archipelagoes.” The absence of the state; particularly the ability to exert force throughout their defined territory is not enough to produce problems. To this day there are indeed many examples throughout the world where the lack of state presence or capacity does not lead to disorder. However, the subsequent emergence of disloyal state actors (guerillas, paramilitaries, and narco elite), fueled by profits from easily extractable resources (cocaine), was made much easier by the lack of state presence in many areas and the state’s inability to credibly threaten these groups with violence. Also, whether you subscribe to a Hobbesian state where the lack of authority equals anarchy or where the search for resources causes violence, we must agree that polities that develop without a strong rational-legal bureaucratic framework create different realities.

Factor Two, Colombia’s Crisis of Disloyal Opposition: Guerillas, Narcos, and Paramilitaries

Democracies exist as consolidated rules of a game, where all political members respect the general rules of the game and agree to abide by those set rules. The “loyal

opposition” are those that lawfully challenge the ruling party for control while still respecting the established rules of the game and respecting their right and authority to govern. The “disloyal opposition” are those that challenge the ruling party for control while not respecting the established rules of the game. Therefore, instead of attempting to lawfully seize power through elections they attempt to seize power through a coup, or revolution, or through other extra-constitutional means. I argue that there have been three key disloyal opposition forces at work in Colombia: the guerillas, the narco elite, and the paramilitaries.

Until the election of Uribe in 2002, Colombian politics were dominated by two political parties: the Liberal party and the Conservative party. The lineage of each of these parties can be traced back as far as Simon Bolivar. Historically, the Liberal party has generally favored decentralized power while the Conservative party has supported stronger central government (Thoumi, 2003). A form of clientalism has also been a long hallmark of Colombian politics where peasant support has reflected the political party of their benefactor.

In 1948, the Liberal Party candidate, Jorge Eliecer Gaitan was murdered by a peasant mob that sparked 10 years of fighting between supporters of the Liberal and Conservative parties, resulting in approximately 300,000 killed, in a period now called La Violencia. In 1953, with consent from both Liberal and Conservative party elites, General Gustavo Rojas seized power of the country in order to stop the violence. The military government offered amnesty to all belligerents, but some fighters, distrustful of the government offer, fled to more remote parts of the country to continue armed resistance. In 1958, elites between the Liberal and Conservative Party established a

power-sharing pact, called the National Front coalition government, which was a bipartisan agreement that excluded all other potential political parties.

The formation of the Marxist Guerillas

The Colombian Communist party had elements of support within some of the groups that had fled into the wilderness during the military rule of 1953-8. Many of these Marxist groups, who had called for land reform, developed a significant following among the rural bases. These autonomous communities, labeled “independent republics” by one Colombian senator, existed in harmony until 1964 when the Colombian National Army was ordered to take full control of the areas in which the communities operated. It was in the following conflict that Colombia’s oldest and strongest guerilla army was formed, the Armed Revolutionary Forces of Colombia- People’s Army (FARC-EP). The original goal of the FARC-EP was to “overthrow a government it perceived as elitist and corrupt and establish an agrarian and communist state with small-sized industries” (Marks, 2007).

Since the formation of the FARC-EP in 1964, and until 1980, the strength of the group was between 1,000-3,000 fighters and posed no serious threat to the survival of the Colombian state. It lacked the ability to project military force outside of its rear basing areas, and the lack of state presence in those areas resulted in years of “mutual peaceful toleration” (Marks, 2007). In light of the successful Cuban revolution of 1959, the emergence of Marxist guerillas in Colombia was consistent with what was happening in many other countries throughout Latin America at this time. In addition to the FARC-EP, several other Marxist guerilla groups formed at this time and there were periods when they worked together through a “unified revolutionary council” to negotiate with the government. Many of these groups have since been co-opted, disarmed, or

destroyed and in 2011 there were just three remaining Marxist guerilla groups in Colombia: the Armed Revolutionary Forces of Colombia- People's Army, the National Liberation Army, and the Popular Liberation Army.

In the remote areas in which they have operated these different guerilla groups have acted in the role of the state, collecting taxes (for their revolutionary cause), providing security, setting the rules, and arbitrating disputes among residents. They traditionally were supported by occasional ransoming of elites and, according to some sources, by Cuban and USSR assistance (Thoumi, 2002).⁴

In 1984, the FARC-EP, in collaboration with several other Marxist groups created the Patriotic Union (UP) as its political party. The UP also attracted Colombians who were not active guerillas, but who agreed with their social justice and wealth redistribution platforms. Conversely, not all members of the Patriotic Union supported armed struggle. Nevertheless between 1984 and 1988, over 500 Patriotic Union members were murdered by paramilitary and government forces, and up to another 1500 between 1988 and 1992.

The formation of the Narco Elite

In the late 1970's, cocaine became a major resource as demand for it increased significantly in the US (Crandall, 2008). In the beginning, the majority of the coca was grown in neighboring Peru and Bolivia where it was processed into coca paste (Thoumi, 2002). The coca paste was transferred to Colombia for processing into cocaine and was then smuggled to the United States for distribution. The Colombian processing

⁴ The FARC official website does not speak of any outside support and prides itself on being a Marxist group that pre-dates the revolution in Cuba in 1959. The website also does not speak of the use of landmines, or drug trafficking. <http://www.elortiba.org/farc.html>

labs and remote airstrips were located in areas of the country generally devoid of any official Colombian government state presence. The large amount of money generated from cocaine fostered the creation of a new elite group in Colombia, the narcos. The narcos used their capital to become involved in politics, legitimate business, and also purchased large parcels of cattle land. The ranchers that had previously occupied those lands generally paid “taxes” to the dominant guerilla group in the area in order to remain free from harassment. The guerillas realized that the narcos had much more disposable capital than the previous ranchers and therefore attempted to extract higher taxes from the occupants and kidnapped family members of some of the occupants in exchange for the payment of ransom. Some of these narcos paid the new taxes or worked with the guerillas in order to continue their trafficking, which allowed the guerillas to build their war chest and in a very limited capacity become involved in the narcotics business.

The formation of the Paramilitaries

However, the vast majority of the narcos, especially the larger syndicates who were already very experienced with the use of violence, instead expanded and directed their own private armies to protect them from the guerillas. Their extensive capital allowed them to field large and extremely well-armed militias that were effective at challenging the guerillas in many of these areas. These private armies, both small and large, are called the paramilitaries, and in their pursuit of the guerillas and/or protecting their patrons they have routinely massacred entire peasant communities. According to Human Rights Watch, their record for human rights abuses is worse than both the Colombian Army and the FARC-EP. The paramilitaries were originally organized as small, private militias reporting to a particular narco or landed elite. Other paramilitary

groups formed under a charismatic leader, sometimes a former soldier or mercenary, and they offered their services to various individuals. It is important to note that these various paramilitary organizations also had unique names, organizational structure, and did not report to a central chain of command. In 1997 several key paramilitary leaders created the United Self-defense Forces of Colombia (AUC), an umbrella group of approximately 20,000 paramilitaries. Even the AUC was not a unified paramilitary group but rather an association of key paramilitary leaders that sometimes conducted joint operations. The AUC was officially disbanded in 2006 through a negotiated settlement with the government; however, clearly many paramilitary elements still exist today.

The Colombian state was indeed aware of the existence of the paramilitaries, however it adopted a philosophy of 'the enemy of my enemy is my friend', nor did the Colombian security forces possess the ability to effectively counter these illegally armed groups and therefore did not attempt to interfere with their operations. The amount of official collusion between the paramilitaries and the Colombian state is hotly contested; however, it is beyond dispute that the Colombian state did not retain exclusivity on the use of violence in the country.

Unintended Consequences of the War on Drugs

Two exogenous factors set in motion some significant changes in Colombia. First, the US sponsored war on drugs that focused on the aerial eradication of coca in Peru and Bolivia, in conjunction with successful aerial interdiction of coca paste smuggling between Peru and Colombia caused a significant spike in coca plantings in Colombia (Thoumi, 2002). These controversial measures included the large scale spraying of herbicide that often destroyed legitimate crops too, as well as the shooting down of

civilian aircraft suspected of trafficking in drugs. The US changed its official policy in Peru in 2001 after one civilian aircraft piloted by American missionaries was mistakenly shot down, although the pilot survived (Rosenberg, 2010). Many of the geographical areas that were then used to plant coca in Colombia were remote and under guerilla or paramilitary control. Also, in addition to coca plants, opium was planted in these remote areas. Therefore the guerillas, the narcos and the paramilitaries profited from these new plantings.

The second exogenous factor was the US targeting of cartel leaders for extradition to the US, also a result of the US sponsored war on drugs. In the past, as the US demanded that key cartel leaders be arrested, the Colombian government complied when it could and jailed many of the leaders. However, due to their wealth and influence, and the weak nature of the Colombian institutions, the narcos lived in relative luxury, going home on the weekends, and continuing to conduct their trafficking business from jail. The US demanded extradition to the US for trial and punishment and the Colombian state initially agreed. However, because of their military strength, the narcos (a group called the Extraditables) successfully petitioned the state to change its position on extradition to the US, employing a combination of lobbying, bribery, and intimidation. Some Colombian elites and judges agreed with the narcos, but the key Colombian leaders did not. In response, the Extraditables attempted to use force (terrorism) in order to persuade the Colombian state to change its position on extradition. The Medellin Cartel unleashed a reign of terror on the state establishment with hundreds of Colombian police, prosecutors, judges, and government officials being executed. Some Colombian politicians ultimately sided with the drug traffickers and

opposed extradition. The US then came to the aid of the Colombian state in its military battle with the narcos and was eventually successful in dismantling the Medellin cartel (Bowden, 2001). One of the unintended consequences of dismantling the large narco cartels was that the guerillas became stronger and were provided with new opportunities to become involved in the narcotics trade (Peceny & Durnan, 2006).

The guerilla groups in Colombia have been the primary disloyal opposition whose strength and operational capacity was significantly increased by the US War on Drugs (Peceny & Durnan, 2006). Additionally, the paramilitaries and various narcotic organizations have controlled areas of the Colombian state and acted as their own version of a state. The proto-state areas were widely distributed throughout the territory, were not contiguous of extra state actors (i.e. none of the groups: narco, paramilitaries, or guerillas had their territory located together), and were also fiercely contested between the three disloyal actors and occasionally the Colombian state. The resulting situation was analogous to the feudal states of Japan or Afghanistan, with warring factions fighting for control of an area with no real central government.

In addition to the lack of physical state infrastructure in many of these proto-state gray areas, in the eastern part of the country the guerillas and paramilitary groups substituted for the state, imposing a very authoritarian rule, defining and applying their own laws and justice, and providing health care, social services, and dispute resolution services for the people under their dominion. Some peasants migrated to the remote coca growing areas in order to improve their standard of living, while others were living in land that was subsequently occupied by a guerilla or paramilitary group. In some areas, control of the region was in flux, and peasants faced a high likelihood of being

mistaken for a combatant by either side. Additionally, the guerillas emplaced a significant amount of anti-personnel mines in strategic areas, indiscriminately maiming or killing Colombian security force personnel, paramilitary, and civilian peasant farmers.

Factor Three, Cocaine as a Lootable Resource

The presence of natural resources has emerged as a significant factor in explaining civil conflict when the rebels are able to exploit (loot) this resource (Lujala, Gleditsch and Gilmore, 2005). A loutable resource is something that can be extracted without significant investment or equipment, and can be easily smuggled (Billon, 2001). The two types of diamond deposits, alluvial versus kimberlite, found in Angola illustrate this distinction. Alluvial deposits are found in riverbeds and can be extracted with very simple hand tools, while kimberlite deposits are found in volcano pipes and require a high level of equipment and investment to extract (Billon, 2001). Once a resource is looted, then the party can use it to fund its continued operations.

Cocaine. Coca leaf has been grown in the Andes and used as a stimulant by pre-Colombian people since between 2500-1800 BC. Cocaine trafficking has a much higher value to weight ration than marijuana, and coca cannot be produced in Europe or the US, except for a few areas in Guam, Puerto Rico or Hawaii (Thoumi, 2002).

Cocaine meets the basic definition for a loutable resource, and due to its illegal nature, it is highly unlikely that a modern state would choose to exercise dominion over its illicit production. Burma and the state's involvement in the production of opium is a unique example of a state that is significantly involved in the production of illicit substances. However, Burma is an authoritarian state and even there the state does not officially operate the opium fields or the heroin production laboratories, but instead operates what Richard Snyder (2006, 2009) calls a State Sponsored Protection Racket,

offering protection to the producers and traffickers in exchange for a percentage of the profits.

Scholars of social movements argue that rebellion is decided by motivation, opportunity, and identity; the primary factor being that of motive. The classic choice in the literature on African civil wars and diamonds is whether the motivation for revolution is based on a grievance against the existing state or greed- a desire to get rich. Conceptually, these choices are not mutually exclusive. I posit that in the Colombian case, the guerillas were initially motivated by grievances against the state and many are still drawn to the cause because of these grievances. Their mission was to replace the existing Colombian state with a Marxist-Leninist Communist state. Their first grievance was political inclusion of the Colombian Communist Party into a system that only allowed the traditional Liberal and Conservative Parties. Later in 1974, when the structural barrier was removed, the grievance included a demand for peasant land reform. Since the creation of the Patriotic Union Party in 1984 and the systematic execution of all personnel associated with it from 1984 until 1992, the FARC-EP has not petitioned seriously for formal political inclusion. Many of those who decide to join the FARC-EP cite their strong support for the revolutionary goals of the organization. Nationally, though, the FARC-EP enjoys such low popular support today that it cannot expect to accomplish any of its stated goals through the formal voting process.

When the FARC first became involved in narcotics trafficking it did so, not as its primary motivation, but rather to increase its military and operational capability in order to continue its armed struggle against the government. Whether the FARC-EP remains true to that in its current form is debated by scholars (Collier &Hoeffler, 2002). Some

have argued that the FARC-EP is like any other violent criminal organization that uses its Marxist-Leninist past as a cover to continue to profit from drug trafficking. The strongest evidence for this argument is that the FARC-EP now enjoys very low popular support among the population, the primary requirement of any people's army, but continues to engage in armed struggle. Those that have argued that the FARC is still primarily a revolutionary guerilla army, point out that the guerilla fighters do not earn a salary, or a percentage of any narcotics profits, as all profits are channeled to the FARC Bloc for use in procurement of weapons, and supplies (Ortiz, 2002). Additionally, the life of a guerilla is by no means enjoyable, and only those committed to the ideological struggle of the movement would agree to accept such hardship. I tend to find the second position more persuasive; if the FARC was primarily greed motivated, those in the organization would be more inclined to agree to some sort of negotiated settlement with the government, as in the case of many narcos and paramilitaries. Many of the paramilitaries have taken the Colombian government offer of amnesty and then soon returned to their former trade. Some of these have since been arrested and extradited while others continue to engage in illegal activity without knowledge or pursuit of the state.

Therefore, the lootable resource of cocaine in Colombia has financed three groups that have been instrumental in undermining the Colombian democracy, particularly its ability to guarantee civil rights. The first group, the guerillas, used cocaine to further advance their struggle for the destruction of the current Colombian state. The guerillas have used the profits received to launch attacks against government infrastructure, as well as targeting Colombian security forces and political officials. Also, the guerillas'

establishment of proto-state fiefdoms, informal areas and the formal 'free zone', worked to delegitimize the Colombian state as the sole lawful agent to bring law and order and to use violence in a lawful but coercive manner. The second group, the narco elite, emerged as a result of the lootable resource of cocaine. They supervised the production of coca paste (originally purchased in Peru and Bolivia) into cocaine in Colombia and combined their ability to smuggle and market the drug in the United States with extremely effective and brutal business strategy. The narcos have used their profits to undermine the democratic nature of the state by directly targeting Colombian state officials and security forces during the period of the Extraditables terrorist reign, but also by fighting for control of key trafficking areas, as well as bribing/corrupting many elected officials and judicial/law enforcement authorities. The third group, the paramilitaries, was created as private militias by the narcos in order to protect their ranches, processing labs, and cocaine fields from the guerillas. However, the paramilitaries soon became directly involved in the narcotics business instead of just providing defensive and offensive military operations against the guerillas.

The general violence between the guerillas and the paramilitaries has resulted in numerous negative consequences for Colombia. First, there are those that have been killed, either intentionally or unintentionally as a result of the violence. This is observed by Colombia's historic high murder and violent crime rate. Second, there are those who have been forced to flee their homes as a result of the violence. There are over two million Internally Displaced Persons (IDP's) in Colombia, the highest in the world after Sudan.

The combination of a weak state, strong disloyal opposition, and the lootable resources of cocaine created a situation in which “a state of law” did not exist in Colombia. In the following chapter I will evaluate the five goals of rule of law in the Colombian case: 1) making the state abide by the law, 2) ensuring equality before the law, 3) supplying law and order, 4) providing efficient and impartial justice, and 5) upholding human rights.

CHAPTER 4 THE RULE OF LAW IN COLOMBIA

Western governments and international organizations have spent over a billion dollars in the last twenty years promoting “the rule of law” in developing and less developed countries (Carothers, 2006). The lack of the rule of law is often claimed to be the root problem for a country’s underdevelopment or stalled democratic transition and the promotion of the rule of law is hailed as the solution.

Like a product sold on late night television, the rule of law is touted as able to accomplish everything from improving human rights to enabling economic growth to helping to win the war on terror (Kleinfeld, 2006:31).

Unfortunately, there is considerable ambiguity as to what exactly the rule of law means to various scholars, policy practitioners, and legal entrepreneurs. This conceptual stretching has led some to claim that the phrase has become meaningless “thanks to ideological abuse and general over-use” (Shklar & Hoffman, 1998:21).

Colombia is an example where scholars have cited the lack of the rule of law as the key problem but have not distinguished which particular elements of the rule of law are missing (Bejarano & Pizarro, 2005:237). Kleinfeld (2006), after surveying the literature between theorists and practitioners, has developed an approach which is useful for unpacking the concept of rule of law and applying it to a particular country.

The ends-based approach lists the goods that the rule of law brings to a society, such as a government subject to the law and law and. The ideal type consists of an efficient and adequately trained judiciary, an incorruptible professional police force, and published, publically known laws. I will utilize the ends-based approach, applying each of five distinct goals to the Colombian case.

Ends-Based Application of the Rule of Law

According to Kleinfeld (2006) there are five distinct goals in an ends-based definitional approach to the rule of law: 1) making the state abide by the law, 2) ensuring equality before the law, 3) supplying law and order, 4) providing efficient and impartial justice, and 5) upholding human rights. Clarity when discussing these goals is important because they are not necessarily related to one another in their implementation. For example, supplying law and order in an absolute sense does not speak to the protection of human rights. Additionally, political elites may indeed agree to support certain rule of law goals while resisting others. For instance, governing elites in a transitioning country may agree to prosecute state officials involved in certain high profile human rights abuses, supporting goals 1 and 5; however, they would balk at the application of the law if it were to indict them or their supporters either for other human rights abuses or other transgressions of the law, not supporting goal 2. Therefore, it is important to remember that these five goals are ideal types which will aid in our understanding of the rule of law in Colombia but that some of these goals will conflict with each other.

Goal 1: Government Bound by Law

The core concept behind the rule of law as argued by the early Greek philosophers was in creating a system of government in which the rulers were bound by the law and not above it. The certainty of being governed legally in accordance with known rules was preferred to the arbitrary rule of tyrants (Hayek, 1960:165). This created an environment that valued stability and predictability. Aristotle favored an approach in which kings were bound by laws and not their discretion because “passion perverts the minds of rulers, even when they are the best of men” (Tamanaha, 2004:9).

A system that is institutionalized and bureaucratic is favored over a system that relies on discretion and whim because the potential for capricious and discriminatory acts are less likely. The advantage of such a system in the modern era is that governments bound by the law will follow established, pre-published protocols before interfering with the lives of the governed. Additionally, there is a normative assumption that the passing of laws will require negotiation with other branches of government that will act as checks on the power of the executive. Theoretically, particularly in undemocratic countries without independent judiciaries or legislatures, the process of passing new laws can be reduced to a mere legalistic formality by the autocrat. However, even in the authoritarian cases, scholars have argued that there is still some degree of negotiation between the various branches of government if that autocrat hopes to remain in power (Gandhi & Przeworski, 2007).

Elected government officials in Colombia have generally followed the pre-published laws of the country in regards to remaining in power. As discussed in chapter two, Colombia has met Dahl's (1971) definition for a polyarchy since 1974, as the three requirements of participation, contestation, and unfettered command of government have been met. The re-election of president Uribe is an example of how the country abided by the existing laws. When Uribe was elected in 2002, the Colombian constitution allowed just one four-year presidential term. Uribe's supporters held a popular referendum in 2004 in order to change the constitution and allow a president to serve a second four-year term. The constitution was changed after a popular vote and in 2006 Uribe was elected to a second four-year term. In 2009, Uribe's supporters again campaigned to hold a popular referendum to change the constitution and allow for

a third consecutive presidential term. Uribe's supporters received a sufficient number of signatures on the petition in order to hold the popular referendum; however, the constitutionality of the proposal was called into question by some of Uribe's opponents. The referendum was ultimately rejected by the Colombian constitutional court which ruled 7-2 that "it endangered institutional checks and balances provided for in the 1991 constitution" (Murphy & Cuadros, 2010). In the summer of 2010 Uribe enjoyed some of the highest approval ratings in Colombian history, was the first president to serve two four-year terms, and enjoyed the unconditional support of the military and security forces. The supporters of the referendum argued in their briefs to the constitutional court that the special situation caused by a prolonged insurgency was analogous to the United States position in World War II where President Roosevelt was elected to four terms. For anyone familiar with the history of Latin America, it would not have been too surprising if Uribe would of clung to power in Colombia, either by declaring a state of emergency and staying in office or by running for a third term immaterial of the findings of the Colombian constitutional court. I argue that Uribe's choice to respect the decision of the constitutional court is evidence of the government being bound by the rule of law.

Unfortunately, there are also examples of the government in Colombia not being bound by the law. The most damning evidence is of government officials who have been complicit with paramilitary groups in the commission of massacres. The most egregious scenarios are when Colombian security forces work directly with paramilitary forces involved in extrajudicial killings. An example of this occurred in Mapiripan in July of 1997 when Colombian police and military forces allowed several chartered planes full of paramilitaries led by Carlos Castano to disembark at San Jose de Guaviare airport.

The paramilitaries then spent five days in the Mapiripan area where they killed between 15 and 30 civilians. After the murders they departed the area in Colombian Army helicopters. The local military base commander did not respond despite receiving several reports of problems, including killings in the town. A declassified CIA intelligence report documents these facts and concludes:

Castano would not have flown forces and weapons into a civilian airport known to have a large police presence if he had not received prior assurances that they would be allowed to pass through (CIA 1997:3).

The police commander at the airport and the military base commander are both agents of the Colombian state and their failure to be charged for their complicity in a massacre are examples where the government has not been bound by the law. Additionally, it is quite likely that this case shows that the complicity went far higher up the chain of command in both the military and police hierarchies. In Colombia, the military and the police are separate organizations with a distinct command and control apparatus. In order for Castano to coordinate his arrival into the airport and to ensure that he was able to conduct his activities unhampered by the local military forces he would have had to have the backing of several high ranking individuals in both the military and police establishments.

Unfortunately, the massacre at Mapiripan is not an isolated incidence; however in many other cases it is harder to determine whether the state was complicit in the killings or simply criminally negligent. In cases where the state forces had a duty to prevent the homicides but failed to act, citing a lack of sufficient forces or transportation, then the state has been negligent but not necessarily complicit. It is easier to empathize with a police sergeant who does not send his three poorly trained deputies armed with revolvers to attempt to stop a paramilitary force of 100 armed with automatic rifles and

crew served weapons. Nevertheless, a failure to fully investigate each of these instances, in order to determine the facts, is also evidence of the state not being bound by its own rules. It is also difficult to disaggregate cases of institutionally sanctioned assistance to paramilitaries by individual Colombian officers who are sympathetic to their counter-revolutionary cause and larger scale institutional support from the top of the chain of command. In both cases, the state is not being bound by the law; however, the magnitude of the impunity is different. Individual cases of complicity by officers can be corrected through disciplinary procedures aimed at those rogue individuals, and the occasional transgression by a rogue officer is not an indictment of the entire force.¹ I will argue in Chapter 5 that Colombia has made substantial progress in this area since 2002 as these types of incidences are far less common and many of the “tainted” officers have, according to Colombian officials, have been purged from the forces or charged with crimes.

Goal 2: Equality Before the Law

The original idea of equality before the law can also be traced to the early Greek philosophers who argued for “equal laws for the noble and the base” (Hayek, 1960:164). The application of this principle should ensure that all citizens, immaterial of their wealth, ethnicity, or political connections, are judged for their actions by the same laws. Throughout Latin America there is a large gap between the codified written law and the brutal reality for most of the population, particularly the poor (Pinheiro, 1996:17). This creates a situation that scholars have labeled “democracy without citizenship” as the vast majority of the rank and file is not allowed to enjoy the rights of citizenship

¹ All militaries have cases where individual soldiers fail to follow orders and commit abuses. I posit that the critical test is whether that individual is then held accountable for their illegal action.

(Pinheiro, 1996). Pinheiro (1996) argues that in the Brazilian case the poor cannot go to the police for justice because the police are only concerned with keeping the elites safe. Additionally, he argues that the police do not investigate the types of crimes most often perpetrated by the elites, which are predominately white collar offenses. Latin America has a long tradition of the powerful elite being able to manipulate the law in their favor both in criminal and civil matters (O'Donnell, 1999:312). O'Donnell (1999:312) argues that this "discretionary, and often exactingly severe, application of the law upon the vulnerable can be a very efficient means of oppression."

This analysis can also be applied to the Colombian case. A distinction needs to be made between the de jure written law and the practiced de facto law. In both Colombia and Brazil, the written law gives the same rights and protections to all citizens, immaterial of wealth, ethnicity, or political connections. However, in the Colombian case there are least four examples of how equality under the law is hampered. First, many parts of Colombian territory have, at least until 2004, been devoid of official state presence. In these areas the law that was applied by private actors (guerillas, narcos, or paramilitaries) was not the same law as written in the Colombian constitution or enjoyed by the middle and upper classes that lived in the cities. Second, even within the cities where a security presence has long existed, the law has not been equally applied. Analogous to Brazil's favelas, Colombia has shanty towns called comunas in the major cities where the police response is severely limited. There appears to be an unwritten police policy to allow "street justice" to rule in these shanty towns just as long as the violence remains constrained in those areas (Guillermoprieto, 2000). Therefore, the law as experienced by the residents of

Colombia's shanty towns is less than required by the written law. Third, police resources have generally been insufficient in order to investigate and prosecute the vast number of reported crimes. Colombia has had one of the highest murder rates in all of Latin America but a relatively small police force by comparative standards. Therefore, police only investigate the crimes that they are likely to solve or the crimes that they are pressured to investigate by their superiors. This creates a situation where there is an unequal application of the written law, either by virtue of only the easy crimes will get investigated and/or only those with connections in the police get resources diverted to their case. Additionally, it can be argued that the police also focus their limited investigations on crimes that are committed by the poor. As Pinheiro (1996) argued in the case of Brazil, the police in Colombia do not focus their resources to investigate the types of crimes most likely committed by the upper classes, namely white collar offenses such as tax evasion, fraud, and misuse of government resources. Fourth, the large presence of illegally armed groups in the country has further impacted the concept of equality under the law in Colombia. These groups have created a de facto alternative to the written law in Colombia where people can turn in order to seek "instant justice." This is best observed in the case of "sicarios", who are street assassins that can be hired for as little as \$100. They have been used not only by drug traffickers and guerillas but also by house wives and businessmen who can afford their fees. "Sicarios" are further evidence that equality of the law is a constrained concept in Colombia.

According to O'Donnell (1999:311), only two countries in Latin America, Costa Rica and Uruguay, have a legal system that "functions across its whole territory and in relation to most social categories." While Colombia is still far from this standard, with

the help of USAID it has made some recent advances to address some of the problems experienced by the traditionally excluded classes. Centers of Attention for the Victims of Violence and Crime (CAVID) have recently opened in Bogota and are planned to open in Medellin and Cartagena in early 2011. CAVID's are designed to be the first stop for a victim of a violent crime to go in order to seek assistance from the Colombian state. I visited the first of these new centers in Bogota in July of 2010 and was impressed with the center's design, staffing, and advertised capabilities. The center is located within a quiet wing of the main court room building in the center of Bogota. Upon entry there are several new computers connected to the internet as well as ample seating and private bathrooms. There were intake counselors at the front desk and beyond that there were private interview rooms with a separate exit. CAVID in Bogota is primarily staffed by 80 law and 100 psychology students in their final year of studies. In Colombia, both of these professions require a one year practicum in their fifth year of studies in order to receive state licensing. There are several experienced and licensed lawyers and psychologists on the permanent staff who supervise the students. The director of the center, a senior state prosecutor, is appointed by the senior district attorney of Bogota. Victimhood is currently loosely defined by CAVID and their services are available to anyone who has been impacted by a violent crime. Employees at the center guide each victim through the entire judicial process and inform them of their rights and responsibilities at each stage of the process. The initial visits are designed to act both as a grief counseling session and as an opportunity to speak with an attorney. That is why there are private bathrooms and a separate entry (both luxuries in public buildings in Colombia) to allow the victims the highest degree of privacy and respect

during this emotional process. Police are not present at CAVID and the formal reporting of a crime is a separate procedure that must occur at a police station.² Employees of CAVID can and do accompany victims to police stations to report crimes if that is the wish of the victim. However, the designers of CAVID understand that some Colombians have had unpleasant experiences with the police in the past and that many victims are ignorant of the criminal process or their rights if they are a victim of a crime. Victims are allowed to participate in many phases of the criminal trial if they chose and their consent is required before any plea bargaining can be approved.³ CAVID seeks to educate victims of their rights under judicial system and guide them through the process. CAVID employees will also accompany the victims to criminal proceedings and speak on their behalf. However, a more fundamental problem is simply keeping the victims informed of upcoming trial and arraignment dates. This generally includes phone calls and letters explaining the key dates and locations of the proceedings. For those clients that do not have phones or stable mailing address, the CAVID employees set up an email account for them with Google or yahoo so that the center can communicate with them. While

² While there are not any police present with CAVID, all guests to the courtroom building, where CAVID is located must pass through a security checkpoint staffed by police officers who search each person for weapons before being allowed to enter the courtroom building. These security checkpoints are present in all state buildings.

³ This is very different from the criminal proceedings in the US where the prosecutor is not required to consult with the victims at any time throughout the process. In Colombia, the victim must be first be financially compensated for damages and sign a form stating such before the prosecutor can reduce the charges or plea bargain with a criminal defendant. There are both advantages and disadvantages to this system. The advantage is that the victim can be financially compensated for damages in the criminal proceeding as civil proceedings after a conviction are very unlikely. Additionally, requiring the victims consent acts as another check on the prosecutor to do their job and arguably makes it harder for a prosecutor to be corrupted with bribes from the defendant. The disadvantage is in the administration of justice in practice where victims are unavailable or unwilling to accept a settlement and therefore justice is severely delayed and backlogged because prosecutors are not empowered with discretion.

still very new, these centers are a positive attempt by the state to help bridge the gap in the equitable application of the law in Colombia.

Goal 3: Law and Order

The concept of law and order under the rubric of rule of law did not come from the Greeks but instead was a contribution of the enlightenment thinkers, particularly Hobbes and Locke (Kleinfeld, 2006:39). Hobbes argued that the state of nature was inherently “nasty, brutish, and short” because one was subject to the whims, crimes, and passions of one’s fellow citizens (Hobbes & Curley, 1994). According to Hobbes, it was the fundamental duty of the state to provide the law and order that was absent in the state of nature. Locke also argued that people join society for the “mutual preservation of their lives, liberties, and estates”, something that today we would call law and order. Kleinfeld (2006:40) argues that the focus on order and security is most desirable in states with historically weak institutions: “Most citizens within weak states see law and order as perhaps the main good of the rule of law.” President Uribe framed the crisis of the Colombian state in this respect and his democratic security policy aimed at providing law and order to all of Colombia. The overwhelming popular support that Uribe enjoyed in his eight years in office is further support for this point. Law and order or the lack thereof in the Colombian case can best be observed through the scale and scope of lawless violence and also in the presence of areas that were long devoid of state control.

Colombia has long had one of the highest rates of violent crime in Latin America. According to a 1966 declassified CIA report, banditry and insurgency in Colombia have been endemic to the country since the colonial period where “groups have engaged in cattle rustling, theft of coffee crops, the protection racket, kidnapping for ransom, armed

robbery, hijacking, and similar activities”(CIA 1966:1-3). The “core symptom of failed institutionalization” argues Elster et al.(1998, 27), “is violence.” Schedler (2001:70) expands on this point, “Political competition within a liberal-democratic framework entails the unconditional renunciation of violence.” Colombia’s high level of violence and criminal activity can be directly traced to a failure of the Colombian state to provide law and order.

The first documented period of this widespread public disorder and violence occurred between 1948 and 1959 in what is called “la violencia” where an estimated 300,000 Colombians were killed. It is widely cited as a rural conflict between supporters of the Liberal and Conservative parties that started with the assassination of the Liberal party candidate of Jorge Eliécer Gaitán; “It soon denigrated, however, into unbridled criminality characterized by savagery and sadism” (CIA 1966:1). The large scale violence stopped not because of state action but because of negotiations between Liberal and Conservative party elites who agreed to a formal power sharing arrangement. Therefore, small scale banditry still continued throughout many parts of the country. The murder rate was reduced by two thirds between 1962 and 1965 by the efforts of President Valencia whose administration “carried out vigorous operations against bandit gangs” (CIA 1966:3). The next significant period of violence occurred between 1980 and 2000 when the “Colombian homicide rate has more than quadrupled” (Rubio 1999:214). This most recent period of large scale violence was fueled by rents generated in the narcotics trade. Also, less than 20% of all homicides resulted in the arrest of suspects in the 1990’s wherein more than 60% of all homicides led to the arrest of suspects in the 1970’s (Bejarano & Pizarro, 2005:256). Colombia’s

murder rate from 1995-2005 had an annual average of 24,228 murders, 2,142 kidnappings, and 272,443 persons displaced (Taylor, 2009:2). This is in a country of just 45 million inhabitants.

The international homicide rate tracks the number of intentional homicides per 100,000 inhabitants. According to a 2004 report the world average was 7.6, North America was 6.5, West and Central Europe 1.5, the Americas 16.2 and Africa 20. Colombia had rates of 63 in 2000, 65 in 2001, 66 in 2002, 53 in 2003, 44 in 2004, 39 in 2005, 40 in 2006, 39 in 2007, 36 in 2008, and 35 in 2009 (Taylor, 2009).

In the late 1970's most violence in Colombia can be directly traced to one of the three main actors: Marxist guerillas, right wing paramilitaries, and narcotics traffickers. However, by the mid 1980's it becomes extremely difficult to disaggregate which violence was a result of political revolution and counterrevolution, narcotics trafficking, or simply criminal banditry. The Colombian state's capacity to monopolize power dwindled in the late 1980's, as the size and strength of the guerillas and paramilitaries expanded (Bejarano & Pizarro, 2005:254). The high level of violence and the state's inability to control it produced a climate of general insecurity where other private actors emerged and profited. US based criminologists have called this phenomenon the "broken windows theory" of crime that acts to establish norms, confirm the lack of police monitoring and signal a crime plagued area (Wilson & Kelling, 1982). Wilson and Kelling (1982) argue that a disordered environment sends out a signal to potential criminals that this is a place where people do as they please and where they get away with it, without being detected by the authorities. The case of kidnapping for ransom in Colombia is something that was initially done solely by the guerillas for quasi political reasons but

which soon expanded to many unlawful actors with profit being the sole motivator. In addition to the guerillas, paramilitaries and criminals, corrupt police and military personnel have also been accused as participating in kidnapping for profit. A similar situation has arisen in modern Iraq where the line between insurgents, criminals, and militias has been blurred, particularly in the case of kidnapping for ransom (Williams 2009).

The second area where the concept of law and order can be seen in Colombia is in regards to the large areas under the territorial jurisdiction of the state but devoid of many of the vestiges of state control. It has been stated that upwards of 40% of the national territory was absent of state control, although it is important to remember that these areas have always been sparsely inhabited. Nevertheless, in these remote regions the Colombian state allowed de facto control of these areas to be ruled by illegally armed groups (guerillas, paramilitaries, and narcos) who imposed their own form of law. These “proto-state” areas were present throughout the country and particularly in the cocaine growing zones of the eastern foothills and Amazon basin (Bejarano & Pizarro 2005:257). Additionally, the Colombian state between 1998 and 2002 gave both de jure and de facto recognition to one of the FARC-EP’s “proto-state” areas, in the form of a 42,000 kilometer section of the country which was called the “despeje” or Colombian demilitarized zone (2005). According to one CIA report the FARC-EP state “is a remote region about twice the size of El Salvador but with only some 90,000 inhabitants” (CIA 1999:3). President Pastrana ceded the area to the FARC-EP as part of peace talks with the guerilla group which stationed 2,000 to 3,000 of its combatants there (CIA 1999:3). The 90,000 Colombians who lived in the despeje

were not allowed a formal vote as to whether the territory was ceded to the FARC-EP and the removal of the four military and police installations within the territory meant that the only law and order that the inhabitants of the despeje could seek was through the FARC-EP. According to one declassified CIA report there were indeed cases of “forcibly recruiting minors, arbitrarily detaining people, and extorting assets from merchants and land owners” (CIA 1999). In February of 2002, the Colombian military announced that they were retaking the despeje after a FARC-EP hijacking. Since 2004, the Colombian state claims to be present in all 1,064 departments of the country. However, according to the 2010 UN World Drug Report Colombia still managed to produce 68,000 hectares of coca and 356 hectares of opium poppies (132,167). Therefore, the prime accelerant of the Colombian violence between 1980-2004 is still very much present in the country.

Goal 4: Predictable and Efficient Justice

The idea of predictable and efficient justice is typically seen by legal practitioners as attributes of the judiciary (Kleinfeld, 2006:43). Therefore, there must be a clear and transparent process in place for the administration of justice. The fair and speedy trial of the Sixth Amendment to the US Constitution and the due process clause of the Fourteenth Amendment are examples of this concept in practice. However, the rules of evidence as well as the rules within a trial are also key elements that impact predictable and efficient justice. One could also argue that police practice in respect to criminal procedure, especially the rules for search and seizure and pre-trial confinement, are also chiefly concerned with predictable and efficient justice.

Colombia, like most countries in Latin America, had an inquisitorial system of justice based on the Spanish civil code in which the judge and prosecutor are one. In

this system the key parties are the accused and the judge. The police works for the judge to “discover” evidence and the prosecutor, who is theoretically independent, represents society and his role is to formulate charges and request a sentence. The role of the defense is limited in this process as “the accused is conceived as an object of the process more than a subject with rights” (Duce & Perdomo 2003:71). In theory, the system claims to work to discover the truth through a collaborative process between the judge and the police. However, in practice the system in Colombia resulted in extensive pre-trial confinement, drawn out semi-secret written proceedings, the inability to challenge evidence, and rife with corruption and incompetence.

Colombia in 2005 started a four-year gradual transition to an accusatory oral US style system of justice in addition to a totally new criminal code. This dramatic paradigm shift has the potential to significantly improve the quality of criminal justice in Colombia. There are now very strict rules of evidence and police procedure. The new system also stipulates very clear guidelines for pre-trial confinement and police conduct. Additionally, a public defender’s office has been established as well as separate offices that act on the behalf of victims of crime. The office of the prosecutor general has created a one stop shop for all evidence collection, storage and presentation in court. Court rooms have been built that are open to the public and lawyers, judges and forensic examiners have received extensive training from the US Department of Justice and through contractors hired by the US Agency for International Development.

While many of these changes are indeed promising there are still some serious concerns with their implementation and therefore it is too early to speculate on the long term effects of these changes. One of the most troubling indicators is in regards to the

concept of plea bargaining. The US model that was adopted by Colombia is entirely reliant on only 20% of all cases going to trial. Therefore, most cases need to be plea bargained and settled without going to trial as the judicial system is not equipped with a sufficient amount of attorneys, court rooms, or judges to have every case go to trial. Therefore, one of the hallmarks of the US system is in the discretion of the prosecutor to determine which cases to drop, which cases to reduce, which cases to plea bargain, and which cases to prosecute to the full extent of the law. Unfortunately, Colombia has not given their prosecutors very much discretionary power. Therefore, by doctrine they must fully prosecute every crime to the full extent of the law. Obviously, this is an embodiment of the second goal we discussed, equality under the law, where prosecutor discretion can be viewed as giving favored treatment to some individuals.

The second level effect of this lack of prosecutorial discretion means that the new system is quickly becoming overwhelmed by the sheer number of cases. Prisons are becoming filled beyond capacity and both judges and attorneys are tasked with many more cases than they can reasonably expect to manage. The third level effect of this is that the overall quality of justice is suffering because forensic examiners and prosecutors are so overwhelmed that they cannot efficiently prosecute cases; consequently, otherwise straightforward cases are being lost on account of sloppy evidence or by not adhering to the new speedy trial requirements.⁴ There are only two possible solutions to this current problem. The first is that the entire Colombian criminal justice apparatus is doubled or tripled in size in order to allow the full prosecution of all

⁴ From interviews conducted with Colombian prosecutors, defense lawyers, and judges in July of 2010

cases. This is unlikely due to limits on the number of trained personnel and the funding available for the criminal justice system.

The second option is that prosecutors are empowered with some degree of discretion in order to prosecute the “best” cases and plea bargain the rest. While this second option would clearly conflict with the goal of equality before the law, I argue that is an acceptable trade off when faced with the status quo. Unfortunately, the current political climate makes it extremely difficult for politicians to support changes to the judicial system that could be interpreted as “soft on crime”. There have already been several very high profile cases of defendants being released under the new system on legal due process “technicalities” where the evidence against them was substantial. Many in the general public cite these high profile examples as proof that the new system is not tough enough on crime and those examples of “guilty” defendants being released is further proof of a corrupted system.

Goal 5: Human Rights

Many of the modern rule of law building programs were a result of a desire to improve human rights in Latin America in the 1980’s and to create liberal democracies in Eastern Europe in the 1990’s;persuading states to recognize and respect human rights was from the beginning a core motivation of many of these efforts (Kleinfeld, 2006:44). Human rights are one of the most disputed ends of rule of law definitions (Kleinfeld, 2006:45). The dispute is centered on the competing principals of the substantivists and the formalists. The substantivists argue that the rule of law must contain some content and limits on what a government can ever legally do. Their position is represented by both Aristotle and Locke who require that laws must be “good” and that natural laws exist even without state approval. Formalists, claim the

rule of law is about procedure and not content. Justice Scalia supported this position when he remarked that there “are times when even a bad rule is better than no rule at all” (Scalia, 1989:1179). International legal scholars have also complicated the debate when they point to contradictions between natural law, human rights conventions and the law as practiced by many sovereign states. The use of capital punishment is cited as one example as is the application of Sharia law, particularly the punishments for theft, adultery, and apostasy (Peerenboom, 2004-5).

While there can be significant theoretical disagreement between legal scholars and human rights practitioners in the abstract sense, there is no such conflict when discussing basic human rights in Colombia from an international law perspective. The Universal Declaration of Human Rights (UDHR) was adopted by the United Nations in 1948 and article 3 reads: “Everyone has the right to life, liberty and security of person”. Colombia is party to several treaties on human rights including the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, both ratified by Colombia in 1969. Human rights practitioners as well as scholars agree that there are multiple areas of international concern in Colombian that are directly related to the prolonged violence. The most serious human rights abuse is the direct threat to life that has been posed by paramilitaries, guerrillas, state security forces, and criminal miscreants. According to Amnesty International's 2006 Annual Report, "Although the number of killings and kidnappings in some parts of the country fell, serious human rights abuses committed by all parties to the conflict remained at critical levels. Of particular concern were reports of extrajudicial executions

carried out by the security forces, killings of civilians by guerrilla groups and paramilitaries, and the forced displacement of civilian communities."

Another significant human rights abuse documented in a 2010 Amnesty International report are the large number of Colombians that remain displaced as a result of the violence:

Between 3 and 5 million people, mostly Indigenous Peoples, as well as Afro-descendant and peasant farmer communities living in rural areas, have been forced to leave their homes and lands, often violently, during Colombia's 45-year-old internal armed conflict (Human Rights Watch, 2010).

Some of these individuals have recently returned to their lands and attempted to re-claim ownership and have been violently removed by the current land owners. While the Colombian government has passed legislation to return this stolen land to its rightful owners there are not sufficient controls in place to protect the safety of these claimants from violence.

The third item of concern for many human rights advocates is to ensure that the past perpetrators of human rights abuses are brought to justice. In practice there is a conflict between the goals of the state to end hostilities with the goal to hold criminals liable for their actions. Decree 128 of 2003 grants legal and economic benefits to members of armed groups who have demobilized. These benefits include "pardons, conditional suspension of the execution of a sentence, a cessation of procedure, a resolution of preclusion of the investigation or a resolution of dismissal." In 2006 Colombia passed the Peace and Justice Law which was designed to offer paramilitary fighters incentives to put down their arms and confess to their prior crimes. The intent of both of these laws was to demobilize illegally armed groups while also bringing closure to the victims of past crimes by providing detailed information on who was killed

by whom and where they were buried. The law stipulates that seven years in prison is the most time that a perpetrator can receive if they fully confess their crimes to the commission and renounce any further criminal activity.

Many human rights groups opposed both decree 128 of 2003 and the Peace and Justice Law of 2006 because they argued that such legal provisions would give impunity to individuals who should be held fully accountable for their crimes. The Colombian government, like many other governments attempting to negotiate with illegally armed groups after a protracted armed conflict, placed a higher value on reducing the number of illegally armed actors and bringing some justice to the victims. What the detractors of degree 128 and the Peace and Justice Law fail to acknowledge is that there is scant evidence and suspects for the vast majority of the massacres and extra judicial killings that have occurred in Colombia. Therefore, while it is indeed unfortunate that someone who admits to complicity in multiple murders receives less than a life sentence in prison it is arguably a better alternative than a murderer who is never brought to justice because his crimes are unknown. Additionally, there is some value for the relatives of loved ones who were killed to be told where the remains are located in order to give them a proper burial. One unintended advantage of both laws is that justice has been swift for those that received a limited amnesty and have since been indicted for continued illegal activity. A large number of former paramilitaries have been extradited to the US to stand trial for drug trafficking and murder after they were later found to be in violation of their amnesty agreements.

Tentative Conclusions

What the preceding discussion makes clear is that there have long been impediments to the rule of law in Colombia. Using the ends-based approach we

surveyed the five goal areas of: 1) making the state abide by the law, 2) ensuring equality before the law, 3) supplying law and order, 4) providing efficient and impartial justice, and 5) upholding human rights. I will argue in chapter 5 that the Colombian state has made significant progress in the third goal, supplying law and order as a result of President Uribe's eight year reign and the substantial military and technical assistance provided by the United States. Since 2002, there have also been some critical changes to the judiciary that have improved equality before the law and providing efficient and impartial justice. The most egregious violations of making the state abide by the law and in upholding human rights are directly related to the prolonged civil conflict between the various illegally armed groups and the misguided attempts by certain members of the state. If the Colombian state can gain a monopoly on the use of force within the territory and remove the disloyal actors, something that has been happening each year since 2002, then the prospects for a state of law in Colombia is indeed possible. Arguably the most difficult goal for the rule of law in Colombia after law and order is achieved is in ensuring equality before the law. As argued by O'Donnell (2003) the sheer degree of economic inequality in Latin America makes the prospect for true equality under the law a very difficult prospect that has only been achieved by Costa Rica and Uruguay.

CHAPTER 5 COLOMBIAN STATE MAKING THROUGH WAR MAKING

The traditional bellicist account of state making provides three possible causal mechanisms about how war contributes to state making: 1) raising money through extraction, 2) building armies for order and control, and 3) making nations through the creation of a collective identity (Taylor and Botea, 2008). Desch (1996) and Taylor and Botea (2008) provide insights on how to apply the traditional bellicist framework to contemporary cases of internal war. Additionally, Desch's (1996:244) distinction between "coercive extraction" and "contractual mobilization" are worth remembering as state preparations for war could alienate the masses if done incorrectly. I interpret this factor as another measure for state legitimacy, something first identified by Weber (1978). Another argument for why legitimacy is needed for effective order, control, and extraction is that otherwise extraction becomes coercive which detracts from the state's ability to make war (Sorenson, 2001:1).

Insurgency, Internal War and Counterinsurgency

Centeno (2002:61-5) created a conceptual typology of five types of internal wars in Latin America: regional rebellions, ideological battles, caudillo wars, race/ethnic wars, and revolutions. Unfortunately, it is much more difficult empirically to distinguish between internal wars in Centeno's (2002) typology because often the underlining motivations run together, and combatants often join the fighting for multiple reasons. Instead, most scholars of internal war do not subscribe to Centeno's (2002) typology of internal war, but instead group them all together as insurgency. Insurgency is defined as "an organized movement aimed at the overthrow of a constituted government

through the use of subversion and armed conflict” (JP 1-02). The same phenomenon has also been called internal war.

Counterinsurgency (COIN) is defined as “military, paramilitary, political, economic, psychological, and civic actions taken by a government to defeat insurgency” (US Military Joint Publication 1-02). How a juridical state responds to insurgency within the territorial boundary is COIN. Conceptually, there are at least four different strategies of how a government could prosecute a counterinsurgency campaign: Hearts, Galula, Flood, and Hama. These are all ideal types that I have created after surveying the available literature on insurgency, and COIN (Kilcullen, 2009; Department of the Army, 2007, 2008; Hashim, 2007; Felbab-Brown, 2010).

The Hearts approach is a strategy which focuses on winning over the hearts and minds of the public, thereby drawing popular support away from the insurgency. This approach recognizes that the population must be separated from the insurgents in order to undermine the legitimacy of the armed resistance. Key leaders of the insurgency are targeted for arrest and the government security forces engage in an ideological battle for the support of the public. This approach requires leadership that is committed to a potentially long COIN campaign, the acceptance of losses and of higher risk to the COIN force, and an extremely well-trained and well-disciplined COIN force.

The Galula approach, based on the experiences of a French military officer and his study of 130 years of French colonial history can be summarized as clear, hold, and build. While the Galula approach also seeks to win popular support for the government forces and delegitimize the insurgency, the approach relies more on COIN forces to be involved in intelligence, policing, and enforcement. The clear phase is when the COIN

force initially occupies an insurgent area by force. In the hold phase the COIN forces “dig in” and create expeditionary shelters and bunkers inside traditional insurgent areas. The build phase is when COIN forces and state officials transform their expeditionary structures into permanent dwellings. This approach requires committed leadership, well-disciplined forces, and sufficient resources to accomplish the strategy.

The Flood strategy relies on an overwhelming number of COIN forces from the state in order to flood all possible areas of insurgency with an overwhelmingly number of state security forces. The Union occupation of the Southern states after the American Civil War is an example of this strategy. Enormous amounts of manpower are needed for an extended period of time to quell resistance over every possible insurgency area. This strategy requires a large number of COIN forces and the resources to transport, supply, and maintain such a large force.

The Hama approach is named after the infamous Hama Massacre of 1982 when al-Assad of Syria, used artillery shelling to kill an estimated 25,000 people as a response to the country wide Muslim Brotherhood insurgency that threatened to unseat him. Hama was considered the home of the insurgency and therefore al-Assad targeted it for severe destruction in order to strike fear into anyone who supported the insurgents. Al-Assad also razed the historic mosque in Hama and replaced it with a parking lot. The strategy, despite being ethically unconscionable was militarily effective.

The Colombian experience offers a contemporary case study in COIN. The Colombian experience with COIN demonstrates how strategy changes over time. The recent tactical COIN success of President Uribe and Plan Colombia has been labeled the “Colombian Miracle” (Boot & Bennet, 2009). Some have argued that the Colombian

experience offers a model to be followed by US forces in Afghanistan (Marks, 2007). Marks (2007) and others who advocate the Colombian model fail to recognize two key points. First, the Colombian internal war has been ongoing since 1964 and despite significant advances by Colombian COIN forces between 2002 and 2011, the insurgency is still ongoing. Second, the COIN forces of Colombia have only since 2002 subscribed to a comprehensive COIN strategy. Since 2002, the Colombian government has been successful with their application of a Galula approach to COIN.

Colombia at a Critical Juncture

Colombia was at a critical juncture in the 1990's when guerilla and paramilitary strength was increasing while the Colombian state's capacity to monopolize force was decreasing. The high level of criminal delinquency in the form of violent robbery, theft, burglary and kidnapping for ransom further contributed to the overall gloom of the country. The mood in the country was extremely dim as Colombians inquired about the potential prospects for migration from a society that looked like it was on the verge of collapse. It was impossible to travel by road between any of the major cities due to the high likelihood of kidnapping by guerillas, or criminal elements. The guerillas, funded with their narcotics trafficking and extortion rackets, were able to successfully mount large scale conventional attacks against the Colombian security forces, causing significant casualties. The guerillas also targeted Colombian cities where they placed car bombs outside of social clubs, and threw grenades inside of popular restaurants. The paramilitaries were not challenging the Colombian state directly, but their use of indiscriminate violence against suspected guerillas sympathizers caused wholesale slaughter, raising the murder rate, scaring away potential investors and adding to the already significant number of internally displaced people (IDP's). Colombian security

forces also were the subject of intensive scrutiny by international human rights organizations which accused them of colluding with paramilitary death squads. Many researchers, investors and tourists avoided Colombia because of these developments.

In previous chapters I have argued that to understand the situation in Colombia one must also pay attention to the role that the US has played. US bilateral relations with Colombia, especially since 1959, have been overwhelmingly focused on the theme of security. The “Colombian Miracle” of Plan Colombia and President Uribe must be understood in this context.

President Pastrana and the Plan for Colombia’s Peace

The original Plan Colombia was first proposed in 1998 by Pastrana after the first round of presidential elections in a speech about a “Marshall Plan for Colombia” (The Heritage Foundation, 2001). Pastrana argued:

[Drug crops are] a social problem whose solution must pass through the solution to the armed conflict...Developed countries should help us to implement some sort of 'Marshall Plan' for Colombia, which will allow us to develop great investments in the social field, in order to offer our peasants different alternatives to the illicit crops (Pastrana& Gomez, 2005).

Once Pastrana was inaugurated as president he proposed to develop a comprehensive "Plan for Colombia's Peace", which Pastrana defined as "a set of alternative development projects which will channel the shared efforts of multilateral organizations and [foreign] governments towards Colombian society" (Pastrana& Gomez, 2005). The original Plan Colombia did not focus exclusively on military and security assistance but was structured at 55% military assistance and 45% developmental assistance (Stokes, 2005). In August of 1998, President Pastrana met with President Clinton to request an increase in US foreign assistance to support “counternarcotics projects, sustainable economic development, the protection of human

rights, humanitarian aid, stimulating private investment, and joining other donors and international financial institutions to promote Colombia's economic growth" (Pastrana & Gomez, 2005). While Pastrana envisioned Plan Colombia as a comprehensive agreement to bring peace to Colombia, members in the US delegation saw it as an opportunity to institutionalize a more effective bilateral counter drug agreement. Pastrana (2005) has written that US Under Secretary of State Thomas R. Pickering suggested that the US could commit to aid given over three years, instead of continuing with yearly aid packages (203). According to a former high ranking US diplomat, the US version of Plan Colombia was much different from the original Colombian version.

If you read the original Plan Colombia, not the one that was written in Washington but the original Plan Colombia, there's no mention of military drives against the FARC rebels. Quite the contrary. [Pastrana] says the FARC is part of the history of Colombia and a historical phenomenon, he says, and they must be treated as Colombians... [Colombia] comes and ask for bread and you [US] give them stones (Gardner, 2000).

It is important to remember that the US contribution was just one small portion of the Plan for Colombia's Peace as envisioned by Pastrana. In the final US aid package to Colombia for 2000, 78% was allocated for military and counter drug assistance. Pastrana has argued that while the US contribution was overwhelming focused on security and counter drug assistance, the US aid accounted for only 17% of funding needed to execute his Plan Colombia. He planned for the bulk of the developmental and social assistance to be provided by other countries and the international community (Pastrana & Gomez, 2005). According to official Government of Colombia documents, Pastrana's original plan required a budget of \$7.5 billion, with 51% for institutional and social development, 32% for counter narcotics, 16% for economic revitalization, and 1% to support peace talks with the countries illegally armed groups (Government of

Colombia, 2005). Pastrana pledged \$5 billion of Colombian resources and asked the international community to provide the remaining \$2.5 billion (Government of Colombia, 2005). US aid to Colombia for 2000 was initially set at \$330 million with an additional \$818 million to assist with Pastrana's Plan for Colombia's Peace. The US also agreed to contribute \$256 million in 2001. The US offer also included the promise to send up to 500 US military personnel and up to 300 US civilians to train and assist Colombian security forces in counter drug operations. US policy has always expressly prohibited US personnel for engaging in direct combat operations while in Colombia (Baker, 2008). Other international donors provided assistance in the form of \$128 million in 2000 to support Pastrana's efforts. International donors have continued to provide foreign assistance to Colombia however semantically they are quick to argue that their aid is distinct from Plan Colombia. Veillette (2005:23) argues, "European countries provide economic and social development funds but do not consider them to be in support of Plan Colombia." Plan Colombia, in that context, refers to US security assistance that supports Colombia's counter drug and counter insurgency efforts since 2000.

President Pastrana served as the president of Colombia from 1998 to 2002. His presidency is best remembered for its focus on peace negotiations with Colombia's two strongest guerilla groups, the FARC-EP and ELN. In support of these negotiations, he ceded a 42,000 square mile piece of Colombian territory to the FARC-EP in 1998 known as the free zone (despeje). Pastrana met with the leader of the FARC-EP, Manuel Marulanda in the despeje several times between 1998 and 2002. A declassified CIA report from 1999 states that Pastrana viewed the despeje as key for the Colombian governments peace negotiations with the FARC-EP and that US analysts detected no

significant rise in drug activity in the area since the despeje was formed in 1998 (CIA, 1999). On February 20th, 2002, elements of the FARC-EP hijacked a domestic aircraft and kidnapped Senator Jorge Gechem Turbay. Turbay was the fifth congressman to be kidnapped since 2001 and for Pastrana this was an inexcusable provocation.

Consequently, Pastrana ordered Colombian security forces to retake the despeje and he ended peace negotiations with the FARC-EP.

The Election of Alvaro Uribe

The first two years of Plan Colombia did not demonstrate any measurable effects in the state's ability to improve dominion over its sovereignty or to reduce the supply of drugs, primarily because Pastrana was focused on peace negotiations and not a purely military victory over the FARC-EP. It was in this climate of uncontrolled violence, a growing guerilla insurgency, and recently failed peace negotiation that Alvaro Uribe, a former governor of Medellin, was elected into office on a hard-line platform called "Democratic Security" (Embassy of Colombia, 2003). Uribe argued that the most important mission of the government was to be able to gain effective control of the Colombian state, including all areas that previously lacked any governmental presence (International Crisis Group, 2003). He claimed that the lack of law and order was the root cause of Colombia's social, economic, and political ills (Uribe, 2003). For Uribe, the proximate cause for the lack of law and order was the Colombian state's absence from large portions of the national territory (Uribe, 2003). Uribe made his number one priority the ending of this lack of state presence (Uribe, 2003).

The terrorist attacks of September 11, 2001 also helped the Colombian state convince the US of the need to assist the Colombian government in counterinsurgency. When Uribe was elected he was quick to offer his condolences to the US and to equate

the Colombian struggle against Marxist guerillas, paramilitaries, and narcotics traffickers to the US declared Global War on Terror (GWOT). The enemies of the Colombian state were soon confirmed as narco-terrorists and listed as terrorist threats by the US as well as lawful targets under GWOT. Plan Colombia was still in effect, however, the previous limitations on the use of US assistance in counter insurgency operations were lifted and there was no longer any distinction between guerillas and narcos for purposes of US assistance. Uribe, who had defined the core problem of the Colombian state as one of law and order, was the ideal candidate to make use of US assistance after 9/11/2001. Uribe first set out to increase the size and strength of the Colombian security forces. He levied a one-time war tax on the rich to fund his security force expansion efforts in addition to the military hardware, specialized training, and technical assistance that Plan Colombia offered. Uribe's second priority was placing Colombian security forces in all 1099 municipalities of the country, something he accomplished by 2004 using the clear, hold, and build strategy. Uribe's third priority was to directly target the guerilla leadership and pursue them in the jungle sanctuaries. Plan Colombia assisted Uribe in all three of these endeavors.

Plan Colombia

While Plan Colombia was designed to strengthen Colombian institutions, strengthen democracy, and assist in counter-drug operations, under Uribe the program was able to focus on the military aims. Since its inception, Plan Colombia has drawn heavy criticism by those who argue that it fuels militarism, violence, and human rights abuses while doing little to stop the flow of illegal drugs (Carpenter 2003; Kirk 2003).

There were three types of assistance furnished by Plan Colombia. The first was military equipment that was given to Colombia. The most critical equipment was in the

form of US made helicopters that provided the Colombian security forces with critical airlift capabilities. According to a October 2008 US Government Accountability Office report on Plan Colombia the US provided a total of 72 military helicopters to Colombia in the form of 39 Bell UH-1 Huey and 33 Sikorsky UH-60 Blackhawk helicopters. The Huey helicopter can transport 6-8 combat troops and the Blackhawk helicopter can transport 11-20 combat troops. Both helicopters are also usually equipped with machine guns and rocket pods to serve in a close air support capacity. With these helicopters the Colombian forces could now project their combat power into remote parts of the country that would otherwise take weeks to reach by foot. Additionally, the helicopters provided the capability for the Colombian forces to use the element of surprise both in the insertion of forces, but also in the ability of the helicopters to provide a critical air over watch function for soldiers on the ground. Other key equipment was in the form of night vision goggles, body armor, armored crop dusting planes, patrol boats and battlefield medical equipment. Night vision is considered a force multiplier because it increases the combat power of the individual Colombian soldiers by enabling them to operate at night. Body armor and battlefield medical equipment significantly reduce casualties on the battlefield and have the added advantage of increasing morale for those soldiers on the front lines. The 13 Air Tractor 802U planes were designed to spray herbicide on opium poppy and coca crops. The Colombian Navy and Marines received 8 "Midnight Express" interceptor boat and 95 patrol boats equipped with night vision goggles and training to aid in coastal and river interdiction of illegal drugs.

The second contribution was in the form of the technical trainers that were provided by Plan Colombia. US law has always prohibited US personnel from engaging

in direct hostilities in Colombia but does not restrict the soldier's inherent right to self-defense if attacked. The law also sets a personnel cap of 500 US military personnel as well as 300 US contractors. It is difficult to quantify the exact number of Colombian military personnel trained by US military forces because the information is not readily available. A detailed reading of the October 2008 US Government Accountability Office report on Plan Colombia revealed that the US directly trained at least 15,900 Colombian troops between 2000 and 2008. This includes 10,000 trained for Joint Task Force-Omega, 2300 trained for the Counter Narcotics Brigade, 2000 trained for the Joint Special Forces Command and 1600 for the Infrastructure Security Support mission.

US Special Forces

One hundred men we'll test today, but only three win the Green Beret.
–The Ballad of the Green Berets

The majority of the personnel that have been sent to Colombia to act as trainers and advisors to the Colombian military are US Army Special Forces, also known as the Green Berets. They were officially founded in 1952 for the primary mission of unconventional warfare in the event the Soviet Union overran Western Europe (Robinson, 2004:15). Their official motto is “De oppresso liber” which means to “Liberate the Oppressed” and is based on the core mission of training and advising foreign indigenous forces. In addition to their core mission of training foreign forces they have five other general missions: 1) Foreign Internal Defense, 2) Special Reconnaissance, 3) Direct Action, 4) Hostage Rescue, and 5) Counter-Terrorism. The total strength of US Army Special Forces is approximately 5000 soldiers and they are some of the most professional and highly trained personnel within the US military. They are divided into five active duty and two national guard Special Forces Groups

(SFG). Each of the five active-duty SFG's are geographically aligned so that those personnel are familiar with the language and the culture where they will most likely be deployed. 7th SFG specializes in Latin America and many of the personnel are native Spanish speakers with parents or ancestry from Latin America and the Caribbean.

In Colombia, US military trainers have instructed the Colombian military in basic and specialized subjects. One advantage of Plan Colombia was that it institutionalized the training from the US so that the Colombian military was able to tailor its training to the US model. With each US sponsored 6 month training mission, the Colombian capabilities continued to improve while new Colombian recruits were indoctrinated in a standard fashion.

Technical assistance

The third contribution of Plan Colombia was in the form of technical assistance in the form of satellite imagery and communications intercepts. Very few countries possess the sophisticated imagery and intercept capabilities of the United States as the platforms that are used to collect this data are extremely expensive. The US possesses substantial resources in the form of spy satellites and dedicated military aircraft that can be used to collect imagery and intercept communications. The US provided these capabilities to Colombia to allow them to locate guerilla installations, track guerilla movements, target key personnel, and to intercept guerilla communications.⁵ This technical addition allowed the Colombian military to better plan their operations and to more accurately target guerilla formations even those that were hiding deep in the

⁵ While I imagine that these resources were also used to track and locate other illegally armed groups such as key paramilitaries or narcos I have not read any recent accounts of the use of these resources to that end. Nevertheless, there is precedence for this use as these sophisticated technical methods were used by those US personnel that aided the Colombian governments search for Pablo Escobar.

jungle. While the foliage of the jungle does obscure some forms of imagery the addition of thermal imagery makes it much easier to locate personnel. Arguably some of the Colombian government's most successful tactical operations against the FARC-EP are a result of this enhanced targeting ability. Arguably, the enhanced combat capabilities of the Colombian security forces also acted as strong incentives to encourage some individuals to renounce armed struggle and seek out the government amnesty.⁶

Colombia's Tactical Successes Against the Marxist Guerillas

The Colombian security forces have had numerous tactical successes against the FARC-EP between 2002 and 2010. These include operations to dislodge the guerillas from areas that they controlled, operations directed against key guerilla leaders, and operations to recover hostages. The first type of operation is designed to clear an area of guerilla control and focus on the maxim of clear, hold, and build. Colombian forces were divided into three echelons for these types of operations. The first echelon, called the shock troops were inserted into the guerilla controlled town by helicopter. The shock troops were accompanied by air support in the form of helicopter gunships and their mission was to seize key pieces of terrain within the town. The second echelon arrived shortly after, either by convoy or helicopter and was charged with establishing holding the terrain which including building expeditionary fighting pits, and fortifying their positions as best as they could. The third echelon contained the building element that was tasked with creating more permanent structures for the security forces and for contracting any other essential construction which needed to take place. The advantage of the clear-hold-build strategy is that once the Colombian forces re-took an

⁶ Interviews with security and defense personnel in Bogota, July 2010.

area they would not abandon that area later in the day. The previous tactic of the Colombian military prior to Uribe was to seize a town perhaps through sporadic fighting but the military would soon abandon the town as the military did not have sufficient resources for sustained operations. The guerillas learned to adapt to this strategy by blending in with civilians and hiding their arms and just waiting for the military to leave. With the adoption of the clear, hold and build strategy the guerillas were forced to either fight the Colombian military that possessed superior firepower or flee to the jungles. The guerillas generally chose the latter option but planted a substantial number of anti-personnel mines in their wake. These mines have been the number one proximate cause of injuries to soldiers and to a significant number of civilians.⁷

Additionally, the founder of the guerillas, Manuel Marulanda (who fled to the jungle in 1964) died of natural causes in 2008. Colombia also was successful in the bombing of FARC terrorist camp inside of Ecuadorian territory that killed 15 key FARC personnel and secured significant intelligence but that caused a substantial diplomatic rift with Ecuador, Venezuela and Nicaragua (the first two nations massed troops, while Nicaragua showed its solidarity by recalling its ambassador). Also in 2008, the Colombian military, through a daring rescue disguised as a Red Cross envoy managed to rescue fifteen guerilla hostages (including Ingrid Bettancourt and 3 US military contractors) in Operation Jaque. Colombia also enacted judicial reform changing their inquisitorial criminal justice system into an accusatory system, modeled after the US. Uribe's efforts have been praised by US exports as bringing Colombia back from the brink of state failure (DeShazo, et al., 2007; Boot & Bennet, 2009).

⁷ Interviews with security and defense personnel in Bogota, July 2010.

CHAPTER 6
TENATIVE CONCLUSIONS OF BELLICIST STATE BUILDING IN COLOMBIA

Empirical Improvements in Colombian State Capacity

The Colombian state has had a physical presence in all 1099 municipalities of the juridical Colombian state since 2006. The state's security forces have been doubled in number and they currently possess the capacity to project military force in all regions of the country. According to the senior representative of the US Department of Justice at the US Embassy in Colombia, whom I interviewed in July of 2010, both the Colombian judiciary and security forces have made significant improvements in terms of capacity and professionalism as a result of Plan Colombia. Other metrics support these findings. The capacity of the country's largest disloyal opposition group, the FARC-EP has also been significantly reduced. Therefore, "war, or preparation for war" as argued by Desch (1996:242), has played a "significant role in maintaining the scope and cohesion of states", even in the cases of contemporary internal war in Colombia. The two processes I argue at work are 1) state making, and 2) state cohesion. The empirical reality in Colombia is that the state has traditionally played a very minor role. I concur with Centeno (2002:8) when he argues "it has been the *absence* of a state that has been largely responsible for deaths among the greater population." Weber's (1978) classic requirement for statehood of controlling the means of violence within a defined territory is not usually met. The crisis of internal war in Colombia has provided the stimulus for the state to increase its institutional power.

The second causal mechanism that I argue is present is increased social cohesion when facing an identified existential threat. Durkheim (1951:208) explains this argument at the individual level; "great social disturbances and great popular wars

rouse collective sentiment...as they force men to close ranks and confront a common danger, the individual thinks less of himself and more of the common cause.”

There are, however, multiple caveats to these findings. First, state institutional power did not necessarily increase in Colombia at the onset of internal war. Instead, it took several decades of a low level insurgency and several years of crisis before the Colombian state was able to muster sufficient state resources to counter the threat. Additionally, the leadership of President Uribe and the material and technical support of Plan Colombia were also significant to the observed outcome. Finally, the net impact of the internal war in Colombia has caused a far greater number of disadvantages than advantages in terms of net human suffering, and utilization of resources. Therefore, my research does not support a universal bellicist theory of state building as applied to internal war. In other words, internal war does not generally build states in my analysis. Instead, internal war can build states, but only if several other pre-conditions are also met.

Second, the generalizability of my findings, as currently stated, is suspect due to the importance of foreign military assistance as an intervening variable. US military assistance was observed as a critical component in the Colombian case. US forces did not engage in actual war fighting in Colombia but instead acted as a catalyst to the improvement of the COIN force in each case. This is a critical point for my argument, as the assistance from outsiders does not logically impede with my causal story. If for example, Russians or Americans did the fighting, then my findings could be reflective of outside military intervention and not state building. However, the two causal mechanisms that I observed (state making and state cohesion) were not materially

altered by the type of aid that was provided. My other response to this critique is that during the Cold War, when three of the positive cases took place, it is hard to find an internal conflict in which the US and/or USSR was not involved. Additionally, I would argue in the great majority of those cases, particularly in Africa, internal war just beget more internal war, with very few cases of improvements in state institutional power. Nevertheless, additional research is needed to further disaggregate the relationships.

In addition to confirmation of my hypothesis, my research also supports some of the arguments made by other scholars. I confirmed the two conditions specified by Taylor and Botea (2008). First, existence of a core ethnic group was confirmed in my analysis despite ethnicity not appearing as a relevant factor in any of the narratives of internal war I surveyed.

Second, presence of strong unifying ideology was also confirmed by my analysis, although to a lesser degree than Taylor and Botea (2008) found in Vietnam. Colombia presents the most interesting example of a strong unifying ideology, framed by President Uribe through his policy of democratic security which capitalized on classifying the disloyal actors as illegitimate.

Finally, while I still have my reservations on how much the classic bellicist account of state making explains the long legacy of state weakness in Latin America, my findings do concur with much of what Centeno (2002) has argued. First, Centeno's (2002:8) primary observation that the history of violence in the region is a result of the *absence* of state is confirmed by my research. While this might seem obvious to students of state making this argument runs counter to the dominant grand narrative about Latin America from area studies and international relations scholars. The most

common explanation in those accounts blames the history of instability in the region on meddling from the United States. Smith's (1996) "Talons of the Eagle: Dynamics of US-Latin American Relations", Rosen's (2008) "Empire and Dissent: The United States and Latin America" and Schoultz's (1998) "Beneath the United States: A History of US Policy toward Latin America" are representative of this genre. The traditional grand narrative is being challenged by recent publications, including Joseph and Spenser's (2008) "In from the Cold: Latin America's New Encounter with the Cold War" and Brand's (2010) "Latin America's Cold War: An International History." These authors "encourage an interactive approach in which the United States and Latin American nations are both actors rather than the United States being the actor and Latin America the object" (Pastor & Long, 2010).

More importantly, my findings agree with Centeno (2002:106) when he argued, "Wars, in and of themselves do not make anything. Rather, they merely provide a *potential* stimulus for state growth." My research confirms too that internal war can also provide a potential stimulus for state growth. Therefore, the bellicist account of state making appears to have withstood another attempt to discredit it. However, this issue is far from settled and additional research is needed to further test the internal war as state building hypothesis in other settings.

However, there are several caveats to this increased security force capacity that we must consider. First, the state monopoly on the use of violence must be used judiciously if it is to be considered legitimate. Therefore, in order to retain their legitimacy the security forces must be professional, lawful and beholden to civilian control. The literature to date on the professionalism of the Colombian security forces

as a result of President Uribe and Plan Colombia is indeed positive, but hardly objective, as most of those authors are writing in US Army war college publications. We must remember that over the last twenty years several Colombian military units have been charged with human rights abuses, most commonly when colluding with right wing paramilitaries. This collusion was even recognized by US Department of State officials who were required to vet all Colombian military units and personnel before disbursing US assistance.

We should remain optimistic for the potential for the Colombian state to become the sole legitimate user of violence, however, we must also distinguish between the legitimate use of said violence and cases where state actors misuse their position and authority. Incidences of abuse of state authority are not in and of themselves enough for the state to lose its legitimacy. If the state punishes those who break the rules or abuse their state office, then legitimacy can still be preserved. Therefore, if the Colombian state remains vigilant and actively searches for and prosecutes these violations when they occur, then the state's legitimacy can remain intact.

Second, we also need to remember that while state presence and control of the territory is a requisite for statehood, there are indeed many existing social ills in Colombia that cannot be addressed with state presence of security forces alone.

Some caveats though must be mentioned in respect to the destruction of the FARC. The current numbers for guerilla membership is reported between 5,000-6,000 fighters, less than half as many as reported in 2002 which at that time was estimated at 12,000. The daring and successful rescue of Operation Jaque demonstrate that the Colombian security forces are becoming professionalized, and the government's social

programs to offer amnesty to former fighters, from any organization, are also positive developments to report. However, it must be remembered that the FARC operated and survived from 1964 until 1985 with a force of no more than 2,000. Whether the proverbial back of the resistance is broken is indeterminable at this time.

Another caveat is based on the tenets of US support through Plan Colombia. Plan Colombia officially ended in 2005 and has continued in other forms of military assistance. While the US and Colombia did sign a bilateral basing agreement in 2009, it is unclear as to what extent the US will continue to spend so much foreign aid in Colombia. After Israel and Egypt, Colombia is the number three recipient of US foreign aid. Additionally, under the current agreement, up to 800 US troops and 600 US military contractors are in Colombia to assist in training and assistance capacities. Many of these US trainers operate sophisticated US surveillance equipment that they use to pinpoint guerilla positions and relay that to Colombian Army units. The other group is US special operations force trainers that teach small unit tactics to Colombian military units. The impact of these trainers and the military equipment provided by Plan Colombia (particularly the helicopters) allow the Colombian military to project state power in areas where there are no roads and in which the guerillas and the narcotics fields are located. It is likely that this relationship between the US and Colombia will continue; however, at least one report mentions how the recent 2011 budget request has the aid to Colombia being reduced by 20%.¹ Therefore, there remain two unknown factors as to whether the Colombian miracle will continue: the leadership of the Colombian president, and the amount and type of aid that is received by the US.

¹<http://colombiareports.com/colombia-news/news/7975-plan-colombia-unmentioned-in-us-2011-budget-proposal.html>

Lootable Resources and Democracy

One unexplainable observation is that while violence and insecurity have decreased in Colombia, the export of cocaine appears largely unchanged. This claim is based on the purity level, retail and wholesale price of cocaine in the US as well as the fact that Colombia is the sole supplier of cocaine for the US market. The literature observes that Plan Colombia has been effective in COIN and state-building but does not posit explanations for this phenomenon. If the Colombian state now controls the entire Colombian territory², and cocaine is still grown and processed there, then one explanation for this phenomenon is the existence of State Sponsored Protection Rackets (SSPR's). As Snyder and Duran-Martinez (2009) have argued in the case of Mexico and Burma, illegality does not necessarily equate with violence. I argue that the Colombian state therefore has some sort of similar arrangement with the narcos, i.e. in exchange for the narcos not directly challenging the state then the state will allow the narcos to operate in remote areas. This is not to suggest that the Colombian state is knowingly receiving a commission from traffickers, however, I opine that an understanding has been arranged where the primary thrust of the Colombian security forces is on counter-insurgency and stability operations. While this arrangement is far from ideal for those concerned primarily with narcotics production, it appears a far better solution than the situation that existed before. This also seems to be the arrangement that the International Security Assistance Force (ISAF) has arranged in Afghanistan where US forces are targeting the Taliban exclusively but turning a blind eye to the production of opium (Felbab-Brown 2010).

² Even if the control by the government is only marginal, the government of Colombia has the appropriate data imaging capabilities that it could easily locate clandestine runways, processing planes, etc

A Strategy of Targeting Guerillas First?

While this practice of focusing on insurgency and not on the illicit drug production seems consistent with classical military doctrine of concentrating all of your force on the weakest point of the enemy, the larger question is how long can a state of “hear no evil, see no evil” exist before the US requires some results? Even with a robust airlift capacity (say triple) what the Colombian security force currently has, and a doubling again of the Colombian security forces, the ability of the Colombian state to entirely curb the production of cocaine in Colombia, based on the severe geographic challenges is extremely unlikely. While the Colombian security forces were initially successful in curbing the air bridge of illegal drug flights between Peru and Bolivia of coca paste, and late of refined cocaine from Colombia, the traffickers have simply evolved. They currently use semi-submersible submarines, constructed of fiberglass deep in the jungles that smuggle large loads of cocaine from both the Pacific and Caribbean coasts. These boats are scuttled once the semi-submersible arrives at its destination, usually an off the coast rendezvous point in Central America. Another very popular smuggling route is to transfer the cocaine overland to Venezuela as there are currently no US DEA agents there after Chavez expelled them all in 2006 for allegedly spying. Cocaine also continues to be disguised in standard 40ft and 20ft shipping containers where it is shipped to Central America or Mexico and then into the United States. As only a small fraction of these shipping containers are ever inspected, the likelihood of many of them getting through without being inspected is high.

I argue that as long as the US demand for cocaine is high, the substance remains illegal, and Colombia remains the sole supplier of the drug, then we can expect to see the problem of violence until some of these structural factors change. For instance, if

the demand for cocaine is significantly reduced, than the price would drop, and the crop would no longer remain a lootable resource.³ The only reasonable option for something impacting demand in the US is if a synthetic form of cocaine was developed that could be easily and cheaply produced in the US or in another country that would undercut the demand for Colombian cocaine. The factor of illegality also determines the large amounts of potential profits. If the US and Colombia changed the legal status of the drug, we could also expect to see this impacting the price point and the lootable status as then the Colombian state could legally enter this business and lawfully profit from it. There is a theoretical argument that Colombia could follow the lead of Evo Morales of Bolivia and say yes to coca but no to cocaine in order to change the legal status of the drug. There are two problems with this, first the US, based on previous statements similar to this by Colombian leaders would suspend military assistance. The second problem is that Morales' policy has left several questions unanswered, particularly as to the destination of all the coca that is not being used for internal consumption in Bolivia. The most obvious answer is that it is being converted into cocaine, either there or in Colombia and then shipped to the US. Therefore, Colombia could still expect to have to fight the existence of processing labs, airfields, and all the other accessories that accompany narcotics trafficking.

³Khat or Qat I argue is an example of this. From the LA Times, Jan 3, 2009 article "Khat- Is it more coffee or cocaine," available at: <http://articles.latimes.com/2009/jan/03/nation/na-khat3> "In the Horn of Africa and parts of the Middle East, khat is a regular part of life, often consumed at social gatherings or in the morning before work and by students studying for exams. Users chew the plant like tobacco or brew it as a tea. It produces feelings of euphoria and alertness that can verge on mania and hyperactivity depending on the variety and freshness of the plant."

State Sponsored Protection Rackets and Democracy

The last item is whether Colombia remains the sole supplier of the drug. First, the synthetic option could be applied here as well. Second, if a relative of the coca plant that grows sporadically in Brazil and Indonesia (with less purity yield per plant) is engineered to produce more and compete with Colombia then perhaps the price would go down. The latter, in conjunction with some sort of parasite or fungus attacking the Colombian coca plants, could also theoretically impact the price point of cocaine from Colombia. As most of these suggestions are very unlikely, it is easier to accept that cocaine will be around as a lootable resource for some time to come and continue to have a substantial impact on Colombia.

The Colombian state's physical presence in all of the 1099 municipalities of the country, in conjunction with the successful policy to kill or capture guerillas are requirements for any nation state. In that regard the Colombian state is clearly on the right path. However, the primary mission of Plan Colombia was to reduce the production of cocaine by 50%, something it has not come close to achieving, although at least one government report says that supply is down and the price up.⁴ Therefore as a counterdrug policy it has not accomplished its stated mission, but resulted in unintended consequences that actually benefited Colombian democracy in the short term. I conclude that the combination of Plan Colombia and President Uribe have made significant advances with regard to Colombian rule of law between 2002 and 2010. Further research, especially from other levels of analysis, that questions and builds upon these findings will assist with scholars and policy makers conception of the

⁴<http://www.state.gov/r/pa/ei/bgn/35754.htm>

relation between internal war, militarization, order, and state building. Colombia presents a fascinating case for additional study.

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Paul August Deis holds a Bachelor of Arts from Humboldt State University and a Juris Doctor from the University of San Francisco. As a Marine, Deis was qualified as a Recon Scout and Foreign Area Officer (FAO) for Latin America. Deis began graduate studies at the University of Florida in 2009. Supported by a travel grant from the Center for Latin American Studies, Deis spent six weeks conducting field work in Bogota in the summer of 2010.