The Unending Quest for Land: The Tale of Broken Constitutional Promises

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The issue of land redistribution has been present in Colombian constitutional history since the mid-1930s. In 1936, the Colombian constitution included an article that established the social function of property.[1] This limitation over absolute property rights was reiterated in multiple laws in the half century that followed and was included in the 1991 constitution.[2] Notwithstanding the constitutional and legal reforms, the quest for land redistribution has had little success: land concentration remains prevalent,[3] and the issue of redistribution is at the heart of the contemporary Colombian political agenda.[4]

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1. After the 1936 constitutional reform, the constitution read as follows:

> Private property and other rights acquired justly in conformity with the civil laws by individuals or juridical persons are guaranteed and may not be disregarded or violated by later laws. When, through the application of a law enacted for reasons of public welfare or social interest, there results a conflict between private rights and a necessity recognized by the same law, private interests must yield to public or social interests.
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> Property is a social obligation which implies obligations.
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> For reasons of public utility or social interest defined by the Legislature, expropriation may take place by means of judicial sentence and with previous indemnification.
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> Nevertheless the Legislature, for reasons of equity, may decide the cases in which no indemnity is payable, by a favorable vote of an absolute majority of the members of both Chambers.

CONSTITUCIÓN DE LA REPÚBLICA DE COLOMBIA [C.R.C.] 1886, art. 26 (Colom.) (1936).

2. *See, e.g.*, CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 58 (Colom.) (restating the provisions of 1936 constitutional reforms); L. 160/94, agosto 3, 1994, DIARIO OFICIAL [D.O.] (Colom.), *available at* http://www.paramo.org/files/recursos/L1601994.pdf (reforming the agrarian social structure to prevent inequitable land ownership); L. 6/75, enero 10, 1975, D.O. (Colom.), *available at* ftp://ftp.camara.gov.co/camara/basedoc/ley/1975/ley_0006_1975.html (setting standards for sharecropping contracts); L. 135/61, diciembre 13, 1961, D.O. (Colom.), *available at* http://www.notinet.com.co/serverfiles/servicios/archivos/n1961/ley135-61.htm (reforming the agrarian social structure to prevent inequitable concentration of land ownership); L. 200/36, diciembre 30, 1936, D.O. (Colom.), *available at* http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=16049 (setting basic rules for land tenure).

3. ABSALÓN MACHADO, LA CUESTIÓN AGRARIA EN COLOMBIA A FINES DEL MILENIO [THE AGRARIAN QUESTION IN COLOMBIA AT THE END OF THE MILLENNIUM] 63–91 (1998). According to Machado, 1.75% of landowners owned 46.35% of the total land area in 1984, whereas 1.33% of landowners owned 53.8% of the total land area in 1996. *Id.* at 63 tbl.8. This trend of increasing land concentration has continued since 1996. As Yamile Salinas Abdala observed:

There have been multiple academic interpretations that aim to explain the structural rigidity of land distribution in the Colombian context.[5] Nevertheless, the contribution of the law to this rigidity has been less explored.[6] In this Article, I will argue that shifts in legal theory as well as the interaction between different legal regimes and economic-development ideas

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> There are 2.6 million private land plots in the country that belong to 3.5 million landowners and represent almost 56% (68 million hectares) of the total surface area of the country (114 million hectares). 57.3% of landowners possess plots below 3 hectares in 1.7% of the total surface area, whereas less than 1% owns plots of over 500 hectares, spread over 61.2% of the land. Inequality in land ownership is reflected in the Gini index for 2004, which was 0.8517, and in the conflicts on the use of land. Land is used in 62.3% of the country's territory for activities for which it is unsuited.

Yamile Salinas Abdala, PODION, *Tenencia de tierra y conflicto interno* [*Possession of the Land and Internal Conflict*], DATOS Y COMENTARIOS DE COYUNTURA COLOMBIANA [FACTS AND COMMENTARIES OF THE COLOMBIAN *COYUNTURA*], 1–2 (Apr. 2007), http://www.podion.org/apc-aa-files/6c606489dc4c33a52d281c930806b63d/Coyuntura_Colombiana_14_Abr_2007.pdf.

4. During their first year in office, President Juan Manuel Santos and his Minister of Agriculture, Juan Camilo Restrepo, have placed a considerable emphasis on redistribution of land. *See, e.g.*, Press Release, Presidencia de República de Colombia [Presidency of the Republic of Colombia], ¡El proceso de restitución de tierras empieza ya! [The Land Restitution Process Begins Now!] (Oct. 20, 2010), *available at* http://wsp.presidencia.gov.co/Prensa/2010/Octubre/Paginas/20101020_01.aspx (describing the government's plan to return farmlands to farmers displaced by violence); Press Release, Presidencia de República de Colombia, MinAgricultura activó plan de choque para restituir y formalizar tierras a 130 mil familias [The Ministry of Agriculture Activated an Emergency Plan to Restore and Formalize Land to 130,000 Families] (Oct. 15, 2010), *available at* http://wsp.presidencia.gov.co/Prensa/2010/Octubre/Paginas/20101015_06.aspx (announcing the Ministry of Agriculture's plan to compensate victims of violent displacement and dispossession by restoring 312,000 hectares of farmland under the Victims Act); Press Release, Presidencia de República de Colombia, Gobierno radicó en el Congreso proyecto de ley de restitución de tierras [The Government Has Filed a Bill for Land Restitution] (Sept. 7, 2010), *available at* http://wsp.presidencia.gov.co/Prensa/2010/Septiembre/Paginas/20100907_11.aspx (discussing a bill before the Colombian legislature attempting to take and distribute 500,000 hectares of farmland a year to prevent concentration of land ownership); Press Release, Presidencia de República de Colombia, Palabras del Presidente Juan Manuel Santos Calderón en el lanzamiento de la Política Integral de Tierras [Remarks by President Juan Manuel Santos Calderón at the Launch of the Comprehensive Lands Policy] (Sept. 3, 2010), *available at* http://wsp.presidencia.gov.co/Prensa/2010/Septiembre/Paginas/20100903_15.aspx (noting the president's submission of the Comprehensive Land Policy to the Colombian congress).

5. *See, e.g.*, Thomas T. Ankersen & Thomas Ruppert, Tierra y Libertad*: The Social Function Doctrine and Land Reform in Latin America*, 19 TUL. ENVTL. L.J. 69, 103–04 (2006) (contextualizing Colombian land distribution policy within the framework of that nation's positive-obligation approach to the "social function" doctrine); Helena Alviar García, Redistributing Land in Latin America: Caught Between Economic Development and Positivism (June 26–29, 2008) (conference paper), *available at* http://www.law.yale.edu/documents/pdf/sela/Alviar.pdf (classifying Colombia as a nation where neoclassical interventionism has been the driving force behind land reform).

6. I have noted the importance of such studies elsewhere:

> If we take a more dynamic understanding of law, the way Ministries and government agencies function in terms of a specific goal is important. In this sense, an analysis of the type of public officials that set in place a norm, the number of agencies involved, the unification in one or many agencies and the coherence or incoherence of regulatory texts are extremely important.

Alviar García, *supra* note 5, at 18.

have been key to perpetuating land concentration even in the face of constitutional and legal provisions that demand its social use.

I will do this in three steps. In Part I, I will present a short account of the evolution of the social function of property. In this account, I will focus on the roles that different branches of government played in allowing or preventing this property restriction, as well as the underlying ideas about development that supported these norms. In Part II, I will describe the post-1991 interpretation of the social functions of property. This Part will assess the interaction between different legal definitions of property, the institutional arrangement in place for land distribution, the clashes and gaps it presents, and the economic frame within which this regime developed. Finally, I will present some conclusions.

My underlying view of law is greatly influenced by the work of Duncan Kennedy and David Kennedy.[7] Both of them are interested in fleshing out the legal theory that is prevalent at different historical periods and its relationship to ideas about economic development.[8] Most economists and policy makers in the Colombian context have an instrumental idea of law.[9] Nevertheless, this idea has not been static over time. Therefore, one of the basic goals of this Article is to look at the shifts and rigidities of the modes of legal reasoning, the interaction between the different legal regimes at particular times, and the changes in the relevance of certain actors (the executive, lawmakers, judges, administrative agency directors, and public officials). In addition, the analysis of the changes in law will include observations on whether the legal institutions and tools have been significantly transformed in order to achieve land redistribution, and on the way in which law is influential in structuring the market.[10]

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7. Specifically, my view has been influenced by DUNCAN KENNEDY, *The Stakes of Law, or Hale and Foucault!*, *in* SEXY DRESSING ETC. 83 (1993) [hereinafter DUNCAN KENNEDY, *The Stakes of Law*] (blending the views of Robert Hale and Michael Foucault, and discussing distributional realities of law); David Kennedy, *The "Rule of Law," Political Choices, and Development Common Sense*, *in* THE NEW LAW AND ECONOMIC DEVELOPMENT 95 (David M. Trubek & Alvaro Santos eds., 2006) (evaluating the impact of the emergence of the rule of law as a development strategy); Duncan Kennedy, *Three Globalizations of Law and Legal Thought: 1850–2000*, *in* THE NEW LAW AND ECONOMIC DEVELOPMENT, *supra*, at 19 [hereinafter Duncan Kennedy, *Three Globalizations*] (examining how the "three globalizations" of legal, institutional, and conceptual change affected development in the West, including Colombia); and David Kennedy, Law and Development Economics: Toward a New Alliance (Aug. 15, 2008) (unpublished manuscript) [hereinafter David Kennedy, Law and Development Economics], *available at* http://www.law.harvard.edu/faculty/dkennedy/publications/Law%20and%20Development%20EconomicsAug15Draft%20Stiglitz%20volume.pdf (discussing the relationship between legal choice and economic-development policy).

8. *See, e.g.*, Duncan Kennedy, *Three Globalizations*, *supra* note 7, at 20–22 (discussing the various legal theories related to historical time periods from the nineteenth through the twenty-first centuries).

9. *Cf.* David Kennedy, Law and Development Economics, *supra* note 7, at 29 (discussing instrumentalism inherent in neoliberal reforms in developing countries).

10. In the U.S. legal tradition, Robert Hale was one of the first legal theorists to explain to what extent the market is a legal arrangement. DUNCAN KENNEDY, *The Stakes of Law*, *supra* note 7,

As I will describe later in this Article, the executive branch has had an enormous amount of power in deciding the form and content of land distribution in the Colombian context. Nevertheless, other actors have restrained the executive branch's power at various times. At times, the judiciary has blocked redistributive impulses or the possibility of expropriating land for social purposes; at other times, the administrative agencies in charge of regulating land reform have been co-opted by reactionary forces; and at still other times, congress has curbed redistributive land policies.

I. Historical Account

A. Appeasing Landless Peasants

The quest for land started in the early 1920s, during which there was an extensive increase in the amount and forcefulness of the demands by landless peasants as well as the small, but growing, urban workforce. During this decade, union organization began and fierce demonstrations against state policy were staged.[11] Diverse associations of workers—tailors; shoemakers; railroad, port and public-works employees; as well as female workers—whose slogan was "equal pay for equal work" led illegal strikes or violent public demonstrations.[12] At the center of their demands were a minimum wage, social security, compensation for job-related health risks, legal protection for women's and children's labor, and minimum hygiene standards.[13]

Disputes over land were at the heart of these struggles. At the time, many peasants who had tenant-type arrangements—contracts by which they would be allowed to use a piece of land in exchange for money, work, or part of the harvest—were expelled from the land.[14] This expulsion occurred for two reasons: first, because landowners no longer viewed the tenant

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at 83. The relevance of this idea for the law-and-development tradition is clearly explained by David Kennedy in the following terms:

> The turn to law is important. Capital is, after all, a legal institution—a set of entitlements to use, risk and profit from resources of various kinds. Law defines what it means to "own" something and how one can successfully contract to buy or sell. Financial flows are also flows of legal rights. . . . Markets are built upon a foundation of legal arrangements and stabilized by a regulatory framework. Each of these many institutions and relationships can be defined in different ways—empowering different people and interests. Legal rules and institutions defining what it means to "contract" for the "sale" of "property" might be built to express quite different distributional choices and ideological commitments. One might, for example, give those in possession of land more rights—or one might treat those who would use land productively more favorably.

David Kennedy, Law and Development Economics, *supra* note 7, at 2.

11. *See* GERARDO MOLINA, LAS IDEAS LIBERALES EN COLOMBIA: 1915–1934 [LIBERAL IDEAS IN COLOMBIA: 1915–1934], at 112–17 (1974) (discussing the various workers' strikes that occurred in the early 1920s).

12. *Id.* at 112, 115, 121–23.

13. *Id.* at 117.

14. *Id.*

arrangements as economically attractive, given the rising value of land and tenant demands for better conditions,[15] and second, because landowners saw a risk that, as land was becoming more and more valuable, the tenants would claim ownership to it (after twenty years of possession).[16] The eviction of independent laborers in the regions of highest land quality increased property concentration and at the same time provoked social unrest.

The solution to this combination of demands was provided by the incorporation of Leon Duguit's ideas of property rights limited by a social purpose. Among members of the ruling liberal party, there was a group that understood that the party needed to transform its political content in order to both put an end to the escalating social conflicts and win the votes of the workers and landless peasants. Once the progressive wing of the liberal party was in power, they needed to institutionalize this ideological shift by providing the constitutional and legal instruments conducive to their efforts. As a consequence, on September 10, 1934, Dario Echandía, the Colombian Interior Minister, presented a constitutional reform project whose objective was to "de-individualize" the concept of rights[17] and transform the role of the state according to, in his words, a "modern" idea.[18] In the Minister's view, this reform was necessary because the increase in social conflicts, the escalation in the number and violence of illegal strikes, the constant and fair demands of workers, and the struggles over land demonstrated the need to put an end to the institutional failures produced by excessively individualistic conceptions of rights established in the constitution.[19]

In 1936, Law 200 established the presumption of ownership in favor of those who occupied the land and were exploiting it economically.[20] The law also gave ownership rights to squatters who in good faith thought that the land had no previous owner, and it extinguished the right of ownership for rural tracts larger than 300 hectares.[21] The legal provision, however, had very meager results in terms of redistribution for various reasons. As an

15. *See id.* (identifying rising land values—a result of the capitalist system and appreciation due to peasant labor—and peasant refusal to work under the condition of the tenant-type arrangements as factors contributing to the unraveling of the tenant system).

16. *See* CÓDIGO CIVIL [C. CIV.] [CIVIL CODE] art. 2531 (establishing twenty years as the period of time after which individuals in possession of land could claim ownership). The twenty-year period required to acquire property through possession was subsequently lowered to ten years. L. 791/02 art. 5, diciembre 27, 2002, D.O. (Colom.), *available at* http://portal.dafp.gov.co/portal/pls/portal/formularios.retrive_publicaciones?no=847.

17. *See* ALVARO TIRADO MEJÍA & MAGDALA VELÁSQUEZ, LA REFORMA CONSTITUCIONAL DE 1936 [THE CONSTITUTIONAL REFORM OF 1936], at 86 n.73 (1982) (explaining that the project called for individual rights to yield to the public interest when applying a law with a social purpose).

18. *Id.* at 86–87.

19. *Id.*

20. Economically exploiting the land meant, according to the law, "positive acts of ownership, such as planting, occupation with cattle, and other acts of economic meaning." L. 200/36 art. 1, diciembre 30, 1936, D.O. (Colom.), *available at* http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=16049.

21. *Id.* art. 6.

example, landowners became more diligent in evicting squatters before they could acquire rights through prescription. Additionally, the government made no effort to declare extinctions despite the fact that there were many large, unused tracts of fertile land at the time.[22]

B. Preventing the Cuban Revolution and Promoting Industrialization

Concerned with the Cuban Revolution[23] and given the very frustrating results of the law enacted in 1936, President Alberto Lleras proposed a law in 1961 to reform the land structure of the country, eliminate unequal land concentration, promote the productive and efficient use of land, distribute property to landless peasants, and give preference to those who work the land.[24] The enactment of this new law also created the Colombian Land Reform Institute (INCORA or the Institute) in order to manage and distribute land that had no owner. In addition, the Institute could acquire private lands in order to comply with the law's objectives.

The 1961 reform faced several obstacles.[25] First, instead of redistributing concentrated property, a large amount of the granted plots were in frontier lands lacking access to water or roads because of their remote locations, and were therefore unsuitable for agriculture.[26] In addition, INCORA acquired most plots during the two years before the redistribution process was halted.[27] The Institute did not distribute land at an efficient rate: of the 2,454,000 hectares acquired through property extinction, only 5,000 were granted to 281 beneficiaries.[28] The same happened with lands acquired

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22. *See* Roger W. Findley, *Ten Years of Land Reform in Colombia*, 1972 WIS. L. REV. 880, 883 ("[T]he Land Law of 1936 . . . did not result in significant redistribution of lands . . . . Landowners became more diligent in evicting squatters promptly before they made improvements or obtained prescriptive titles, and there were few, if any, governmental efforts to declare extinctions.").

23. *See* CHE GUEVARA, GUERRILLA WARFARE 242 (Brian Loveman & Thomas M. Davies, Jr. eds., Scholarly Res. Inc. 1997) (describing the state of Colombian politics in the 1960s, when the influence of Che Guevara and the Cuban Revolution was sweeping across Latin America).

24. L. 135/61 art. 1, diciembre 13, 1961, D.O. (Colom.), *available at* http://www.notinet.com.co/serverfiles/servicios/archivos/n1961/ley135-61.htm.

25. There are many articles that describe these frustrating results, including Ankersen & Ruppert, *supra* note 5; Peter Dorner & Herman Felstehausen, *Agrarian Reform and Employment: The Colombian Case*, 102 INT'L LABOUR REV. 221 (1970); Roger W. Findley, *Presidential Intervention in the Economy and the Rule of Law in Colombia*, 28 AM. J. COMP. L. 423 (1980); Findley, *supra* note 22; Kenneth L. Karst, *The Colombian Land Reform Law: "The Contribution of an Independent Judiciary,"* 14 AM. J. COMP. L. 118 (1965); and Joseph R. Thome, *Limitaciones de la legislación Colombiana para expropiar o comprar fincas con destino de parcelación* [*Limitations of the Colombian Legislation to Expropriate or Buy Farms with the Purpose of Parcelization*], 8 INTER-AM. L. REV. 281 (1966).

26. Findley, *supra* note 22, at 897.

27. *See id.* at 899 ("[O]ver half of the negotiated purchases and almost two-thirds of the expropriations were completed between August 1969 and July 1971. In July 1971 INCORA suspended all redistribution activities, and as of July 1972 the suspension remains in effect." (footnote omitted)).

28. *Id.* at 901.

by gratuitous transfers: of 310,000 hectares, only 44,000 were distributed.[29] Of the 1,647 farms acquired by INCORA, only 33 corresponded to expropriated land.[30]

Furthermore, after the late 1950s, the economic-development model set in place in Colombia was almost completely geared toward industrialization through the import-substitution model.[31] This fact had several consequences. First, public resources were redirected from land distribution toward production improvement.[32] Second, little attention was paid to agricultural development. Finally, the judicial branch contributed to the legal rigidities that prevented the constitutional promise from crystallizing. This happened in basically two ways. The first was the combination of administrative and judicial institutions, which prolonged adjudication processes and made distribution uncertain.[33] Second, the Council of State[34] ordered new inspections for contested expropriated land.[35] This procedure gave affected property owners an additional opportunity to make the necessary adjustments in order to prove their productive use of land.[36]

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29. *Id.*

30. *Id.* at 898 tbl.3. Other authors have shown how INCORA's task was mainly to distribute land from the public domain. *See* Dorner & Felstehausen, *supra* note 25, at 223 ("INCORA statistics show that 88,200 parcels of land were titled between 1961 and June 1969, adding 2.8 million hectares to the registered land area. But most of this land came from the public domain and does not represent expropriated or redistributed land." (footnote omitted)).

31. Albert Berry & Francisco Thoumi, *Import Substitution and Beyond: Colombia*, 5 WORLD DEV. 89, 89 (1977) (stating that industrialization policy was oriented toward the import-substitution pattern in post-World War II Colombia). Import substitution is an economic policy promoting industrialization by protecting domestic producers from the competition of imported goods through the imposition of high tariffs or quota restrictions. *Import Substitution*, ENCYCLOPÆDIA BRITANNICA, http://www.britannica.com/EBchecked/topic/284081/import-substitution.

32. Findley, *supra* note 22, at 905.

33. *See id.* at 908–11 (explaining the complex and time-consuming administrative and judicial procedures required to expropriate land for distribution).

34. The Council of State is part of the judicial branch with jurisdiction over all disputes within the government—which often involve the actions, omissions, operations, and contracts carried out by the executive branch. *See* JORGE PABLO OSTERLING, DEMOCRACY IN COLOMBIA 150–51 (1989) (detailing the functions of the Council of State, and noting that it "also plays the role of senior legal adviser for the Executive Branch"). Therefore, the Council of State is the highest authority regarding any sort of dispute with the administration. Its other functions include the review of congressional acts and constitutional control over administrative decrees promulgated by the government; it also has jurisdiction over all administrative agencies. Luz Estella Nagle, *Evolution of the Colombian Judiciary and the Constitutional Court*, 6 IND. INT'L & COMP. L. REV. 59, 79 (1995).

35. *See* Findley, *supra* note 22, at 911 ("Rather than relying on evidence introduced at the administrative proceedings with respect to whether the land was being 'economically used,' the [Council of State] ordered new visual inspections to determine the degree of use.").

36. *Id.*

II. Post-1991 Developments

A. Broadening the Social Function

The 1991 constitution went further than the 1936 constitutional reform in emphasizing a social function for property. Article 58 of the 1991 constitution adopted the wording of article 30 of the previous constitution but added the following provisions: (1) the social function of property not only "entailed obligations" but also an "ecological function"; (2) an obligation on the state to "protect and promote" associative and communal forms of property; (3) expropriation through an administrative procedure subject to judicial review; and (4) no judicial review of congressional invocations of social or public interest. Therefore, the text of article 58 as adopted in 1991 reads as follows:

> Private property and all other rights acquired according with civil laws are guaranteed, and cannot be disavowed or violated by future laws. If a conflict arises between the rights of individuals and a need recognized by a law enacted for reasons of public or social interest, the private interest must give way to the public or social interest.
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> Property is a social function that entails obligations. *As such, it also entails an ecological function.*
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> *The State shall protect and promote associative and communal forms of property.*
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> Expropriation will be allowed, by judicial decision and prior compensation, for public or social interest reasons that shall be defined by law. *Compensation shall be set, taking into account the interests of the community and the affected individual. Expropriation may be carried out through an administrative procedure, subject to judicial review, even with respect to the amount of compensation, in the cases determined by law.*
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> However, Congress may determine, for reasons of equity, those cases in which compensation is not due, with the favorable vote of an absolute majority of the members of each house. *Reasons of equity, as well as the public or social interest motives that may be invoked by Congress, shall not be subject to judicial review.*[37]

This distributive impulse was reiterated in several Constitutional Court rulings. One of the most relevant was a 1993 decision that linked the distribution of land to democracy:

> The numerous constitutional provisions on access to property . . . fall within a framework of distributive justice and seek to give a real basis to the principles of participative democracy and equality of opportunities. Democracy with hunger is a utopia and a farce. The unequal distribution of income and goods is only compatible with a

37. C.P. art. 58 (Colom.) (emphasis added).

> declaration of rights but not with their full and unrestricted exercise. Alongside the dimension of adequate economic exploitation of property traditionally associated with the social function of property, the idea of equality should now be placed on equal footing, as it is not limited to being a condition of legitimating private ownership but also the justification for emancipatory processes for the glaring number of those without property.[38]

Nevertheless, this provision was weakened by a 1999 constitutional reform that eliminated the last two paragraphs of article 58. This constitutional reform was proposed by the government as a way to promote foreign investment. According to the government, foreign investors had "well-known fears" because the possibility of decreeing expropriation without compensation ran counter to several bilateral investment treaties to which Colombia was a party, as well as the expropriation provisions of the American Convention on Human Rights.[39]

B. The End of the Distributive Impulse: Inefficient Procedures, Legal Restrictions, and Institutional Problems

1. Rigid Procedures and Regime Interaction.—The distributive thrust of the 1991 constitutional provision was further toned down through a combination of legal, administrative, and judicial acts. The first land reform law set in place after the constitutional reform, Law 160 of 1994, reduced the state's scope of action by setting the grant of credits as the main mechanism for peasants to acquire land.[40] Thus, distribution was left to market forces, as opposed to previously enacted systems where the state had some power in distributing land.[41] At the same time, the procedures set in place in order to expropriate and redistribute land were far from being expeditious or flexible. Finally, the institutional arrangement necessary to provide a significant impulse to land allocation was dismantled during President Uribe's government with the transformation of INCORA into a new institution called

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38. Corte Constitucional [C.C.] [Constitutional Court], enero 18, 1993, M.P: E. Cifuentes Muñoz, Sentencia C-006/93 (slip op. at 22), *available at* http://www.corteconstitucional.gov.co/relatoria/1993/C-006-93.htm.

39. No. 189, septiembre 21, 1998, GACETA DEL CONGRESO, pp. 1–2 (Colom.).

40. L. 160/94 art. 25, agosto 3, 1994, D.O. (Colom.), *available at* http://www.paramo.org/files/recursos/L1601994.pdf.

41. Law 160 of 1994 established a subsidy to be granted by INCORA for the beneficiary to acquire land in order to develop a "productive project." As opposed to the previous system, in Law 160 of 1994, INCORA was expected to be an actor in the market, not a distributor of land:

> A subsidy is hereby established for the acquisition of land in the modes and procedures established in this Law, as a non-reimbursable credit, originating from the budget of INCORA, which will be granted for one time only to each peasant subject to the agrarian reform, in accordance with the policies to be set by the Ministry of Agriculture and with the eligibility requirements that will be established.

Id. art. 20.

INCODER. In the following subsections, I will explain the role that each of these debilitating factors had.

Law 160 of 1994 entrusted INCORA with two main functions: acquire land and redistribute it.[42] These two functions entailed four different processes.

a. Direct Negotiation.—Direct negotiation consists of the negotiation that INCORA—and, since 2003, INCODER[43]—initiates, according to the law of convenience and the appropriateness of the identified terrain, in order to assign the land to its beneficiaries.[44]

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42. INCORA was created through Law 135 of 1961 as an autonomous administrative agency. L. 135/61 art. 2, diciembre 13, 1961, D.O. (Colom.), *available at* http://www.notinet.com.co/serverfiles/servicios/archivos/n1961/ley135-61.htm. Its basic functions were set out as follows:

> (a) to administer in the name of the State unoccupied lands of national property, adjudicate them or constitute reservations and carry out settlements on them, in accordance with . . . this Law. . . .
>
> (b) to administer the National Agrarian Fund;
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> . . . .
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> (d) to clarify the situation of land ownership . . . with the objective of identifying with precision which lands belong to the State . . . .

Id. art. 3, at 802.

43. In 2003, a number of institutions associated with agrarian reform were suppressed by the incoming Uribe administration. Through Decree 1300 of 2003, the government instead created one sole agency in charge of the functions of INCORA, the National Institute of Land Betterment, the Fund for Rural Investment, and the National Institute of Fishery and Agriculture; it also created the Colombian Institute for Rural Development, INCODER. Decreto No. 1300/03, mayo 21, 2003, D.O. (Colom.), *available at* http://www.secretariasenado.gov.co/senado/basedoc/decreto/2003/decreto_1300_2003.html.

44. The initiation of a direct negotiation and expropriation proceeding can be triggered by the identification of underworked land or for public interest reasons. According to Law 160 of 1994, public interest reasons included,

> 2. To benefit the persons or organizations for which the National Government has created specific programs.
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> 3. Relocating owners or occupiers of zones that have been designated as having special interest or being environmentally important. . . .
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> . . . .
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> 5. To give land to peasant men and women of low income, small landowners, peasant women who head a household and those in a situation of economic and social vulnerability caused by violence, abandonment or widowing, in cases in which agreement cannot be reached between peasants and landowners, or in negotiation meetings in the cases so determined by the Board of Directors.

L. 160/94 art. 31. The new Rural Development Statute defines the following public interest motives to expropriate land:

> (a) For indigenous, Afro-Colombian and other minorities that do not possess land, or are established in an insufficient extension of land.
>
> (b) To give land to peasants who inhabit regions affected by supervening natural disasters.
>
> (c) To benefit peasants, persons or organizations for which the Government established special programs for distribution of land or special handling zones or zones of special environmental interest.

L. 1152/07 arts. 4, 36, 38, julio 25, 2007, D.O. (Colom.), *available at* http://www.secretariasenado.gov.co/senado/basedoc/ley/2007/ley_1152_2007.html.

b. Expropriation.—Expropriation is done through complex proceedings, which include both administrative and judicial components. Once an offer is rejected, INCODER adopts a resolution for extinction of property rights that bear on the land plot. The owner may challenge the resolution through an administrative proceeding. If the resolution is confirmed, INCODER must file suit before the competent court in order to declare the extinction of property.[45]

c. Recovery of land.—Next, INCODER must deal with the demarcation and clarification of property rights, as well as the recovery of unduly occupied land. In some cases, the boundaries of rural land plots are not entirely clear. In others, property rights over the land plots are not clear.

d. Extinction.—Finally, INCODER is empowered to extinguish property rights on unused plots.[46] These processes are justified by a notion of property rights according to which property entails not only a right to own the land but also a correlative duty to use it. Unused lands are therefore subject to extinction processes. INCODER has to verify whether the land has been abandoned and whether the law applies.[47] Then, it must adopt a resolution extinguishing property. This resolution can be challenged directly before the State Council, the highest administrative court.[48]

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45. L. 1152/07 art. 146. Land acquisition had the following procedure:

> 1. Based on an annually defined program, INCORA shall identify the corresponding rural land plots.
>
> 2. The maximum negotiating price shall be that of the commercial value of the land . . . .
>
> 3. INCORA shall make an offer of purchase to the owners . . . .
>
> 4. The owner has ten days to accept or reject the offer. During the same timeframe and for one time only, he may object to the value assigned to the land and seek a new valuing of it . . . .
>
> 5. If the parties agree about the offer, a contract shall be done. . . . It is understood that the owner declines direct negotiation and rejects the offer if he does not expressly accept the offer within the set timeframe. It is also understood that the offer is rejected if accepted with conditions . . . .
>
> 6. Once the direct negotiation stage is exhausted, the General Manager shall order the expropriation of the land plot and other real property rights constituted on it, in accordance with the procedure set out in Chapter VII.

L. 160/94 art. 32. Article 33 contains a detailed description of the expropriation procedure, which has an administrative phase and a judicial phase. *Id.* art. 33.

46. L. 160/94 art. 52.

47. The causes for extinction are set out in Law 160 of 1994 as follows: (i) ceasing to exercise possession during three continuous years; (ii) violating regulations on conservation, management, and rational use of natural renewable resources; (iii) violating regulations on the preservation and restoration of the environment; and (iv) violating rules on zones of agricultural reserve or forest reserve as established in development plans for districts or municipalities of more than 300,000 inhabitants. *Id.*

48. *See id.* art. 53 ("Against the resolution that declares [extinction], the interested party may only file for reconsideration, within the five days after its notification, and an action for review before the State Council, Chamber of Administrative Controversies [with no right to appeal] in accordance with the provisions of Article 128(8) of the Code of Administrative Controversies.").

In addition to acquiring land, INCODER must also distribute the acquired lands. This is done through the granting of subsidies, voluntary negotiation, and adjudication of unoccupied lands. Appendix A summarizes the different administrative and judicial procedures necessary for land distribution. It shows that most of the procedures combine administrative and judicial aspects—a circumstance that illustrates the complexity and length of the distributive process and partly explains why land distribution has historically been so inefficient.

There are several conclusions that can be drawn from the previous description and explanation. First, the combination of administrative and judicial procedures makes the distribution of land cumbersome, rigid, and long. Second, administrative decisions are made by government agencies and can be more easily modified than judicial decisions.[49] This brings flexibility to some procedures, but it has also translated into high levels of corruption.[50]

2. Coexistence of Diverse Definitions of Property.—Property is defined by the civil code as "the right over a corporal thing to dispose of it arbitrarily, in accordance with the law and the rights of others."[51] This involves, according to Colombian civil law, an absolute, exclusive, and perpetual right of property. Possession, in turn, is the holding of a physical thing with an intent of owning the thing in good faith.[52] Possession can turn into a right of property after a period of five or ten years,[53] depending on whether in the particular case it is "regular" (just title and good faith) or "irregular" (invalid title, bad faith, or disturbance by third parties).[54] Three distinct problems for land distribution have emerged from this view of property: (1) the way in which property is in fact transferred is not reflected by the categories

49. Whereas judicial decisions generally cannot be modified by a judge unless there is an appeal, administrative acts may be freely modified and even reversed. *See* CÓDIGO CONTENCIOSO ADMINISTRATIVO [C.C.A.] [ADMIN. LITIG. CODE] art. 69 ("Administrative acts shall be revoked by the same officials that issued them, or their hierarchical superiors, ex officio, or by an ex parte request . . . ."); *id.* art. 71 ("Administrative acts may be revoked at any time . . . ."); CÓDIGO DE PROCEDIMIENTO CIVIL [C.P.C.] [CIVIL PROCEDURE CODE] art. 309 ("A judgment may not be reversed or reformed by the Judge that has pronounced it."). Even with those limitations, an administrative official enjoys far greater discretion than a judge in the modification of decisions.

50. *See* Samir Elhawary, *Between War and Peace: Land and Humanitarian Action in Colombia* 9 (Humanitarian Policy Grp., Working Paper, 2007), *available at* http://www.odi.org.uk/resources/download/1912.pdf ("[F]ailure can also be attributed to the levels of corruption within the institute . . . . INCODER has often bought noncultivatable land at excessive prices or with inherited debts, often from front-men linked to paramilitaries and/or drug-traffickers.").

51. C. CIV. art. 669. The word *arbitrarily* was struck by the Constitutional Court. C.C., agosto 18, 1999, M.P: C. Gaviria Díaz, Sentencia C-595/99 (slip op. at 14), *available at* http://www.corteconstitucional.gov.co/relatoria/1999/C-595-99.htm.

52. C. CIV. arts. 2527–34.

53. *Id.* arts. 2529, 2533.

54. *See id.* art. 2528 (describing "regular" possession); *id.* arts. 2531–32 (describing "irregular" possession).

contained in the civil code, which leads to informality or lack of legal stability;[55] (2) access to credit turns on whether one is a property owner or not, which in turn depends on the formal categories of "property"—categories that do not reflect the de facto relationships of property in rural Colombia;[56] and (3) the state uses these civil law categories in the design of public policy, thereby creating severe hurdles for national land policy.[57]

Collective property rights are in tension with classical understandings of property.[58] Law 70 of 1993 was enacted in order to provide the possibility of collective entitlement over land to indigenous and Afro-Colombian communities in certain zones.[59] Its purpose, however, has been frustrated by the advance of large-scale, long-term agricultural projects such as the

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55. The characteristics of land tenure are described by a World Bank document in the following terms:

> In practice, however, land markets have found to be thin, highly segmented, characterized by high transaction costs, and often pushed into informality. Credit market imperfections, lack of market information by potential sellers, and the lack of farm models suited to the specific needs and factor endowments of small agricultural producers, have prevented such an outcome and contributed to the fact that beneficiaries under the old-style reform program often acquired marginal lands at highly exaggerated prices without making productive use of it.

Klaus Deininger, Making Negotiated Land Reform Work: Initial Experience from Colombia, Brazil, and South Africa 14 (World Bank Policy Research, Working Paper No. 2040, 1999) (citation omitted), *available at* http://elibrary.worldbank.org/content/workingpaper/10.1596/1813-9450-2040.

56. *Cf.* Daniel Bonilla Maldonado, Legal Pluralism and Extra-legal Property, Class, Culture and Law in Bogotá 23 (2008) (unpublished manuscript), *available at* http://www.utexas.edu/law/centers/humanrights/events/speaker-series-papers/Bonilla_Extralegal%20Property.pdf (indicating that legalized property, as opposed to extrajudicial property, is a prerequisite for obtaining credit).

57. *See, e.g.*, Juan Camilo Restrepo Salazar, *Una Política Integral de Tierras para Colombia* [*A Comprehensive Land Policy for Colombia*], MINISTERIO DE AGRICULTURA Y DESARROLLO RURAL, REPÚBLICA DE COLOMBIA [MIN. OF AGRIC. & RURAL DEV., REPUBLIC OF COLOM.], 20–22 (Aug. 2010), http://www.minagricultura.gov.co/archivos/ministro_jc_restrepo_tierras_2.pdf (detailing a plan to formalize ownership rights in rural lands); *Autorización a la nación, a través del Ministerio de Agricultura y Desarrollo Rural, para contratar un crédito externo con la Banca Multilateral para financiar el programa de la dinamización del mercado de tierras rurales y la formalización de la propiedad rural y urbana* [*Authorization to the Nation, Through the Ministry of Agriculture and Rural Development, to Engage an External Line of Credit with the Multilateral Bank to Finance the Program to Revitalize the Rural Land Market and Formalize Rural and Urban Property Rights*], DEPARTAMENTO NACIONAL DE PLANEACIÓN [NAT'L PLANNING DEP'T], 1–5 (Oct. 12, 1994), http://www.dnp.gov.co/PortalWeb/Portals/0/archivos/documentos/Subdireccion/Conpes/2736.pdf (describing the national plan to formalize land ownership rights and recommending the arrangement of financing for the project).

58. Article 329 of the Colombian constitution establishes this regime:

> The establishment of indigenous territorial entities shall be created according to the rules of the Organic Law of Territorial Organization, and its delimitations will be set by the national government, with the participation of representatives of indigenous communities along with the concept of the Territorial Organization Commission. The reservations are collective property and cannot be alienated. Laws will define the relations and coordination of these entities with those of which they are a part.

C.P. art. 329 (Colom.).

59. A very complete account of Law 70 of 1993 can be found in KAREN ENGLE, THE ELUSIVE PROMISE OF INDIGENOUS DEVELOPMENT: RIGHTS, CULTURE, STRATEGY 224–73 (2010).

cultivation of the African palm tree and the persistence of mining activity in those territories. For example, in 1996, the Afro-Colombian community along the Mira River filed for collective entitlement under Law 70 of 1993, but the process of adjudication was burdened with the competing claims of palm producers.[60] The lives of the inhabitants of the Mira River basin have also been fraught with mass violence by guerrilla and paramilitary groups such that many persons have been forcibly displaced from their home territory.[61] In turn, the Uribe administration in 2002 sought to intensify palm production[62] and turned it into a privileged economic development objective, which runs counter to the idea of land distribution since mass production of palm involves a high concentration of land in the hands of a few people for a very long time.[63] This is one example of how the good redistributive intentions of the law ran into the hard reality of strong economic interests backed by governmental policy and widespread violence in the territories of Afro-Colombian and indigenous communities.[64]

3. Institutional Problems.—One of the most striking ways in which law and legal institutions contribute to the rigidities in land distribution in Colombia is found in INCODER, the administrative agency in charge of developing this policy. Among the most salient characteristics of its inefficiency are inadequate staffing (in terms of numbers, knowledge, and geographical distribution), gaps in information, and backlogs in the adjudication process. INCODER began operations with 472 employees—a very low number taking into account that the four agencies it replaced had a total of 2,139 employees.[65] The effects of this can be seen in the high level of the agency's inefficiency. In a 2004 report conducted by the attorney general's office to evaluate land distribution policies, the lack of results was attributed

60. Tatiana Alfonso et al., *Caso 1: Alto Mira y Frontera* [*Case 1: Alto Mira and Frontera*], *in* DERECHOS ENTERRADOS: COMUNIDADES ÉTNICAS Y CAMPESINAS EN COLOMBIA, NUEVE CASOS DE ESTUDIO [BURIED RIGHTS: ETHNIC AND RURAL COMMUNITIES IN COLOMBIA, NINE CASE STUDIES] 29, 30 (Julieta Lemaitre Ripoll ed., 2011) [hereinafter DERECHOS ENTERRADOS].

61. *Id.* at 30–31.

62. *See* Garry Leech, *The Oil Palm Industry: A Blight on Afro-Colombia*, N. AM. CONGRESS ON LATIN AM. REP. ON AMERICAS, July–Aug. 2009, at 30, 30–31, *available at* http://www.globalexchange.org/countries/americas/colombia/nacla5.pdf (observing that "[w]ith the government's encouragement, the Colombian palm industry has exploded in recent years," and citing a 300% growth in the value of palm oil exports from 2002 to 2006).

63. *See id.* at 32 ("Despite the prevalence of small growers, large palm companies . . . dominate the industry.").

64. *See* Alfonso et al., *supra* note 60, at 30 (discussing legal debates in 1996 and 2002 about whether and how to protect and promote the Colombian palm oil industry while accounting for individuals displaced by violence).

65. PROCURADURÍA GENERAL DE LA NACIÓN [ATT'Y GEN. OF THE NATION], ANÁLISIS A LA EJECUCIÓN DE LA REFORMA SOCIAL AGRARIA Y LA GESTIÓN DEL INSTITUTO COLOMBIANO DE DESARROLLO RURAL—INCODER [ANALYSIS OF THE EXECUTION OF THE SOCIAL AGRARIAN REFORM AND THE MANAGEMENT OF THE COLOMBIAN INSTITUTE FOR RURAL DEVELOPMENT—INCODER] 16 & n.2 (2006) (on file with author).

to the fact that INCODER had just sixty-one employees and twenty-six lawyers assigned to carry out all the administrative procedures of all nine programs.[66] In addition, with the transformation into INCODER, INCORA's regional presence was considerably diminished: only nine offices were dedicated to regional programs, compared with more than fifty that were running before.[67] The attorney general's report suggests that this outcome has prevented efficient decision making.[68]

Furthermore, the delays in the process to assign land in any one of the different procedures explained above are absolutely scandalous. According to a 1996 press report summarizing the findings of the attorney general's office, agrarian reform in Colombia has not worked because of INCORA's inefficiency.[69] At the time, in the department surrounding Bogotá (Cundinamarca), there were more than 10,000 requests for land—and most of these requests had been made more than ten years before.[70] In the Caribbean department of Cesar, where no offers to buy land had been processed in the preceding thirteen years, 375 offers to buy land remained unanswered.[71] In the Pacific department of Valle del Cauca, 5,800 processes had not been resolved in the last twenty years.[72]

In 2006, according to another press report summarizing the findings of the attorney general's office, the problems described above remained the same. According to the report, INCODER was unable to carry out its own programs.[73] In the previous calendar year, INCODER had acquired only 9,751 hectares for agrarian reform, most of them for indigenous communities.[74] The National Planning Department reported a total of 2,171 hectares of property in Ayapel and Tierralta (Córdoba) that were given to INCODER, but INCODER reports to have assigned just 934 of those hectares.[75] Finally, the attorney general's office has removed many employees of INCODER for corruption. A former deputy was removed

66. *See id.* at 25 ("This situation is worsened considering that, for the procedure of all nine programs, INCODER has only sixty-one processing authorities and twenty-six lawyers, which suggests that every processing authority would have to assume an average of 870.63 files and each lawyer 2,043 files in order to reach a decision.").

67. *Id.* at 16 & n.3.

68. *See id.* at 16 (decrying the practice of making land decisions in offices far from the location of the land—for example, sending decisions about lands in Riohacha to the Santa Marta office for processing).

69. *El Incora frenó la reforma agraria* [*Incora Halted Agrarian Reform*], ELTIEMPO.COM (Sept. 28, 1996), http://www.eltiempo.com/archivo/documento/MAM-513505.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Reforma agraria: 42 años negociando una finca* [*Agrarian Reform: 42 Years Negotiating a Farm*], ELTIEMPO.COM (Apr. 22, 2006), http://www.eltiempo.com/archivo/documento/MAM-1996221.

74. *Id.*

75. *Id.*

because he assigned land without following adequate procedures.[76] Other officials were removed for keeping money that was paid to INCODER by debtors.[77]

C. Interaction with Economic Development Ideas

As I have described in the previous subparts, the distributive promise present in the Colombian constitutions since 1936 was weakened through the interaction between the social function of property and the classical description of it. The burdensome combination of administrative regulations, judicial intervention, and legal dispositions that privileged either the adjudication of unused land or the conferment of subsidies—as opposed to the expropriation of land that was not exploited according to its social function—caused constitutional promises to go unfulfilled.

In addition, for at least fifty years, there was a bias against agriculture in favor of industrialization, resulting in a lack of resources to provide for social and economic progress in rural areas. In the last ten years, agriculture has played only a minor role in development plans, and land distribution has hardly been mentioned.[78] This fact, combined with agro-industrial projects such as biofuel production and mining, has precluded a more egalitarian rural society in Colombia.[79] As a matter of fact, there is a contradiction between land distribution on the one hand and agro-industrial development and mining on the other.[80]

In Appendix B, I present the few references to agriculture that the national development plans have had in the last twenty years. At the same time, agro-industrial projects and mining have acquired enormous

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76. *See Confirman destitución a ex Subgerente de INCODER* [*Confirming Removal of Former INCODER Deputy*], PROCURADURÍA GENERAL DE LA NACIÓN [ATT'Y GEN. OF THE NATION] (Oct. 13, 2010), http://www.procuraduria.gov.co/html/noticias_2010/noticias_728.htm ("According to the evidence, despite fulfilling a public calling process that was democratic and participative, Mr. Quessep Feria included a group of 50 more individuals, from which, finally, 24 benefited. Of the 1,591 individuals who began the initial process, only 13 were favored.").

77. *Pliego de cargos contra ex funcionarios del Incoder* [*Statement of Charges against Former Incoder Officials*], PROCURADURÍA GENERAL DE LA NACIÓN [ATT'Y GEN. OF THE NATION] (Nov. 7, 2008), http://www.procuraduria.gov.co/html/noticias_2008/noticias_505.htm ("Apparently, the official back then had acquired more than 10 million pesos that various debtors of INCODER had given to it as part of the payment for the respective loans that the institute had given to finance the acquisition of plots located in different municipalities of Sucre.").

78. *See* Julieta Lemaitre Ripoll, *Introducción: Derecho, Desarollo y Conflicto de Tierras: ¿La Próxima Frontera?* [*Introduction: Law, Development, and Land Conflict: The Next Frontier?*], *in* DERECHOS ENTERRADOS, *supra* note 60, at 15 (describing the tendency of state policy since 2000 toward large-scale agro-industrial and natural resource extraction projects).

79. *See id.* at 22–23 (noting that local populations pay high costs related to the cultivation of the African palm tree (a crop used in the production of biofuels), including deterioration of food security and increased poverty as a result of the transition to manual labor, while companies reap tremendous financial harvests).

80. *See id.* at 20 (identifying the conflict between indigenous communities with collective title and agro-industrial development projects).

importance as development tools. There are two preliminary conclusions that can be drawn from these two facts. First, the promotion of large-scale projects—such as mining and palm production—concentrate government investment and resources in these areas, as opposed to other styles of production and property that would promote less land concentration. Second, the fact that land distribution is hardly mentioned shows that the social function of property has been a broken constitutional promise.

For example, in 2004, the Colombian Agricultural Institute (ICA) transferred a land plot of over 17,000 hectares (known as Carimagua) to INCODER with the purpose of distributing title to the plot to several displaced families.[81] Instead, in 2007, INCODER opened a public offer and handed the plot to palm producers under a concession contract.[82] The attorney general and several opposition legislators objected to the decision to transfer the land to large-scale palm producers.[83] The government, headed by President Uribe, reasoned that land could be given to displaced persons only after being turned into productive land by large-scale entrepreneurs.[84] Thus, instead of adjudicating individual plots to families, the government thought it more efficient to hand the whole area to a long-term palm tree plantation that would employ the displaced persons but would not give them ownership of the land. Here, the government privileged the same model of production that had been privileged by Law 70 of 1993, which resulted in a greater concentration of land and ran counter to the redistributive goals of article 58 of the constitution and the various laws enacted to fulfill its objectives.[85] The government's view of distributive efficiency proved to be a very strong obstacle for land redistribution and is yet another example of how administrative agencies play a central role in the way that distribution ultimately unfolds.

Another important case on agrarian reform and displaced population is that of Montes de María, where several massacres have taken place during the last fifteen years.[86] Recently, the government gave property titles to

81. Alfonso et al., *supra* note 60, at 82.

82. *See id.* at 86 (describing initial news reports of the assignment of the plot to producers of palm and rubber trees and the cessation of public bidding for plots in 2007).

83. *See id.* at 87 (identifying the opposition of, among others, the attorney general and Cecilia López Montaño, a legislator).

84. *Id.* at 88.

85. Law 70 was intended to provide collective title to Afro-Colombian communities, but due to procedural delays and increasing government support of agro-industrial projects, the result was actually greater concentration of land in industrial hands. *See supra* notes 59–64 and accompanying text. Compare this result with the social function of property and land redistribution authorized by the constitution. *See supra* notes 37–38 and accompanying text.

86. For example, in January 2001, a paramilitary group killed twenty-eight peasants and burned down their houses. *Nación deberá pagar a víctimas por masacre en Montes de María* [*Nation Must Pay Victims of Massacre in Montes de María*], ELESPECTADOR.COM (July 22, 2008), http://www.elespectador.com/noticias/judicial/articulo-nacion-debera-pagar-victimas-masacre-montes-de-maria.

almost 100 displaced families.[87] But now new owners will face pressure to sell the assigned plots to agro-industrial palm growers. After having been abandoned for ten years, the assigned lands need investment for water, irrigation, and electricity—tasks that hardly any farmer can afford to complete.[88]

III. Conclusion

As I stated in the Introduction, my objective in this Article was to flesh out how law and legal institutions have prevented the constitutional promise of the social function of property. New notions of property rights—such as environmentally-protected areas, collective property for indigenous and Afro-Colombian groups, and informal possession arrangements—have met resistance from formalistic, rigid definitions of property that have remained mostly unchanged since 1887. In both the historical evolution and recent history, the constitutional distributive impulse has been weakened by establishing rigid, time-consuming, and elaborate administrative and judicial procedures. In addition, the institutional arrangement set in place in order to develop land adjudication policies has struggled with financial constraints and personnel problems, and it has concentrated its efforts on assigning public domain plots and raising productivity. All of these facts—combined with clear biases toward urban industrial development, agro-industries, and mining—have created a system in which land distribution is marginal or nonexistent.

87. *Restituyen tierras a 95 familias despojadas de Montes de María* [*Restoration of Land to 95 Families Displaced from Montes de María*], ELESPECTADOR.COM (Feb. 5, 2011), http://www.elespectador.com/noticias/politica/articulo-249185-restituyen-tierras-95-familias-despojadas-de-montes-de-maria.

88. *Restitución en Montes de María, entre la ilusión y el miedo* [*Restitution in Montes de María, Between Illusion and Fear*], VERDADABIERTA.COM (Feb. 8, 2001), http://www.verdadabierta.com/index.php?option=com_content&id=3020.

Appendix A. Administrative and Judicial Procedures Necessary for Land Distribution

Process	Administrative	Judicial
Direct negotiation. Complements the process of expropriation: if the owner does not accept the offer, INCODER proceeds to expropriate.[a]	X	
Expropriation of property. Follows direct negotiation. Begins with the expedition of a resolution that can be litigated.[b]	X	X
Demarcation and clarification of property. An administrative process, but the resolution can be litigated using the revision action.[c]	X	X
Recovery of illegally occupied unused land. An administrative process, but the administrative resolution can be litigated using revision or nullity actions.[d]	X	X
Property extinction of unused land. This administrative process *must* be reviewed by a judge.[e]	X	X
Subsidy assignment.	X	
Voluntary negotiation between owner and buyer. The state's role is to serve as an advisor for the potential buyer.	X	
Unused land adjudication. The resolutions that adjudicate land can be annulled in a judicial process.[f]	X	X

[a] L. 160/94 art. 33.

[b] L. 160/94 art. 33.

[c] L. 160/94 art. 50.

[d] L. 160/94 art. 50.

[e] L. 160/94 art. 53. Note that the revision is itself a judicial process before the administrative jurisdiction. Although the disposition is not mandatory, it is very likely that the owner of the land will oppose the resolution through both administrative and judicial procedures.

[f] L. 160/94 art. 72.

Appendix B. References to Agriculture in the National Development Plan (NDP), 1990–2010

NDP Years	References to Agriculture
1990–1994	• The bank in charge of rural issues (the Agrarian Bank) was capitalized in order to provide loans in order to acquire and improve rural housing. • Specific programs for irrigation and land productivity.
1994–1998	• Agrarian modernization, sustainable production and the strengthening of Colombia's comparative advantage. • Access to credits and subsidies to improve land productivity.
1998–2002	[This NDP does not include clear land-redistribution, social, or modernization policies for rural areas.]
2002–2006	Although public policies for agriculture and land distribution are not the main governmental objectives of this NDP, they are included as instrumental policies for the government's primary goals.
2006–2010	• Provisions are set to improve rural housing programs, including special access for displaced population. • Establishment of unused land adjudication for displaced population. • Promotion of agro-industry, ecotourism and rural micro-finance. • Improvement of the institutional management of INCODER.

Source: Texto de Planes de Desarrollo de Años Anteriores [*Text of Development Plans from Prior Years*], DEPARTAMENTO NACIONAL DE PLANEACIÓN [NAT'L PLANNING DEP'T], http://www.dnp.gov.co/PortalWeb/PND/PlanesdeDesarrolloanteriores.aspx.