
Violence and neo-constitutionalism: a comment on Breny Mendoza's text

Julieta Lemaitre*

In his work on civil wars Stathis Kalyvas (2006) argues persuasively that the violence of civil wars combines aggression against a political enemy with violence that is nurtured under much more familiar circumstances. Many acts can be explained by greed, envy, revenge, lust, family hatreds and the other petty reasons that make humans so endlessly creative in their betrayal and hatred. Wars are also, of course, rife with all the selflessness and heroism that we can muster, as well as with meaningless tasks, and endless waiting, and ordinary acts of survival. In many ways a civil war is also ordinary life; eating, sleeping, raising children, dying and surviving. But what is perhaps more remarkable is how war adds unsuspected possibilities to ordinary human frailness: the possibility of bringing to violence the passions we usually keep in check. Coveting a neighbor's land, being betrayed by a friend, losing a lover, a long standing family feud, now take on the form of untethered partisan violence.

The relationship between civil wars and our ordinary life illuminates the way historic circumstances both constrain and free us, bringing out the best and the worst in us. As individuals we are formed, lifted and destroyed by the historical times and processes in which we have the good or bad fortune to be caught up, and it is only by chance that we, you the reader, I the writer, are sharing this moment of intimacy and not selling roses in the corner of a third world city, choking on the noxious fumes from an old bus, squatting on a worn down plastic stool, or maybe walking slowly up and down the same deserted street in a war torn country, fingering the cold trigger of our gun, adrenaline running down our pumping heart while nothing happens.

This is to say I find individuals endlessly interesting in their variations, but also endlessly boring in their similarity. Some are kind, gentle, others heroic and selfless, others are cruel - intentionally cruel, or simply cruel in their indifference. Individual qualities and character sometimes stand out, but usually it is the circumstances which shape the most important choices in our lives, from our choice of mate to the possibility of choosing acts we consider ethical, or indeed the possibility of wondering if our choices are according to some universal ethic or simply the way we find to best survive.

Likewise, I am generally unconvinced by the projection of individual qualities, especially ethical qualities, onto collectivities shaped by historical moments. One of the

* Assistant Professor, Universidad de los Andes Law School, Bogota, Colombia.

jlemaitr@uniandes.edu.co

ethical disasters of communism was to pass moral judgment on groups of people whose individuals were then chastened. “The rich,” “the bourgeoisie,” “the ruling class,” are, I believe generally no better and no worse than “the working class,” “the oppressed,” and so on. I am therefore hesitant to expect luminous insight, wisdom or kindness from a particular class of people because they have suffered, and revolted against this suffering. These qualities (insight, wisdom, kindness) are real in some individuals, but their being women, indigenous people or poor, I find, is generally unrelated to that fact. While it might make individuals more sensitive to others, just as often extreme suffering seems to degrade individuals rather than uplift them.

Circumstances of course bring out the best and the worse in humans. And arguably some circumstances, rural life perhaps, or life in small communities with extended families, or a life of faith and the practice of selflessness, bring out the best in most people. In other circumstances, like the guards in the Zimbardo prison experiment, the opposite is also true. But these circumstances are not generally linked to the categories we have constructed as the markers of our identities: class, gender, race, sexuality...

These facts should, I think, make us more aware of the importance of processes over individuals and classes. Processes and context shape us, and the shape we take may or may not be recognizable to our intimate selves. They will make us into what they will: drafted into an army in a time of civil war, we might become murderers of our kin and neighbors; entering a university in a time of social unrest and marches will lead us to be critical and prone to marches of protest; living in political exile from one’s homeland tends to radicalize former political allegiances. This is what we mean when we say “there but for the grace of God go I...”

This is not to say of course that there are no individual choices, or that individuals do not make very different choices when faced with the same circumstances. But it is to say that the choices available are more important in the long run, in the short run, than the individuals making them. For example, in a time of civil war, when one’s wealthy neighbor, one’s former brutish supervisor, belongs to the opposing faction, a person might chose to protect this person from an angry mob and risk her life to do so, or she might chose betrayal, for revenge, for greed, for principle. But what matters most in these circumstances is, I think, not individual character but the fact that these choices were available in the first place. And what is most desirable about peace (may you live in peaceful times, goes a blessing) is that while heroism is scarce, personal animosity rarely takes a tragic bend.

A revolution then, or a process of resistance like that described by Breny in this article, has its own dynamic that is independent of the class of people by which it is led. If it was in fact a case of “the people” against an “oligarchy” this does not guarantee, as so many revolutions have shown, that it will be the kind of process that brings out the best in men and women, or that limits the possibility of violence. Neither does the appeal to

a Constituent Assembly of course- the original one being linked not only to the French Revolution, but also to the Terror that followed.

People who do not like law or legal forms often also trust too much the innate goodness of certain social groups, and hope that once these groups have power justice will be achieved, and Terror avoided. However I like to think that the appeal to law is more revealing of a process than the fact that it is led, or not, by “the people.” Calls for legality, like the calls to nonviolence, signal processes that limit the legitimacy of violence, and thus the choices available to individuals, and that might be part of the kind of circumstances that bring out the best, rather than the worse, in individuals. If this eventually were the case in Honduras (the same government put in place after the 2009 coup is still in power,) then it would really signal a transformation of important proportions.

Of course legal forms are a constant disappointment as well, as we all know too well. But they do limit the available choices, and generally exclude political violence, and often personal violence, as one of them. A movement that sincerely calls for a Constituent Assembly as its main goal, an Assembly that is elected peacefully and where all groups, even enemies, can be represented, is probably a movement that eschews political violence and values dialogue. The process of free and peaceful elections, of rational argument is a historical process that seriously limits the violent choices available to political enemies. Their absence is a probable indicator that, at least for those in power, violence will be an easy resource. Once political and historical circumstances are such that violence is not an easily available choice, human pettiness and frailness is channeled differently, and in many ways human life thrives, or can thrive.

However the hopes raised by such a process in Central America are certainly limited, as is the possibility of a left or a right neo-constitutionalism of limiting the use and prevalence of violence. The tragedy of Honduras, as well as that of its neighbors, of much of Mexico, Colombia, as well as other countries in South America is that the possibility of having a future shaped by law and not by violence is constantly being undermined by the drug war unleashed and maintained by powerful sectors of the United States as well as in Latin America. Prohibition of a terribly lucrative business has placed a large portion of social life outside the purview of the law, and has made violence a normal part of everyday life. Prohibition creates a historical circumstance where violence is constantly available as a social choice, regardless of the political and economic system and of course, regardless of the law. And once the choice is freely available, it will be used by some individuals for all sorts of purposes: status, revenge, humiliation, greed... In other words the drug wars create an ordinary life where, not unlike a civil war, violence is often the norm and laws are not, and this process is unlikely to be derailed while prohibition, ironically also created by law, is still in place.

Reference

Kalyvas, Stathis. 2006. *The Logic of Violence in Civil War*. New York: New York University Press.