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THERE ARE JUST TWO THINGS

Ríos Montt, Justice, and The Meaning of the Law During and After the Guatemalan Civil War

by Michael Flynn

Abstract

After a fiercely contested trial, in 2013 Guatemalan judges convicted the former head of state, General José Efraín Ríos Montt, of genocide and crimes against humanity, only for the country's highest court to overturn this ruling ten days later. Human rights and watchdog groups tend to see this opposition as a disingenuous and transparent attempt by those connected with the former military state to subvert any attempt to establish real law and order. Yet many in Guatemala, even during the trial, remembered Ríos Montt as the purveyor of "law and order," and Ríos Montt's lawyers themselves appealed to the same principles as the prosecution. In this essay, I examine how the very meaning of law—that is, the basis on which one could claim legitimate authority in relation to the shared social values of Guatemalan society—was contested during and after the Guatemalan civil war. While reformist elements in Guatemala attempted to tie legitimate law to abstract or universal principles, defenders of the old regime advocated for a self-legitimizing definition of law that tied it to the state. From the time of the Ríos Montt regime (1982-1983), through the post-civil war construction period (1996-2011), and culminating in the highly-publicized trial of Ríos Montt (2011-2013), both sides mobilized these antagonistic definitions of law and order in order to retain or gain ground in the battle over Guatemala's institutions and historical memory. Considered within this historical context, the trial takes on new meaning as a public theater in which both sides consciously sought to shape and co-opt principles of legitimate law and authority.

On May 9th, 2013, High Risk Court A of the Republic of Guatemala prepared to hear the closing arguments in the trial of General José Efraín Ríos Montt. The general, who had been the de-facto military dictator of Guatemala from 1982 to 1983, faced charges of genocide and crimes against humanity on account of the systematic violence his regime had enacted against Guatemala's Ixil Mayans during the peak of Guatemala's Civil War. In the afternoon, Ríos Montt's primary defense counsel, Francisco Guidel, argued that he should not be forced to give his concluding statement because he was hungry and Judge Yassmin Barríos had refused to let him take a break to eat. This almost comical exchange evidenced the extent of the enmity that had developed between Guidel and the panel of judges. The attorney went as far as to call the judges "criminals" and "rebels," and he declared, "I will not rest until I see you in jail."¹ Nevertheless, by the end of his closing statement, Guidel transitioned into a very different sort of rhetorical appeal: "I ask God to enlighten you," Guidel pleaded, "To wash away your grudges. To wash away your hatred. And when you hand down your verdict, you do it by following the law, and providing justice."²

Against the backdrop of a trial in which Guidel and the defense team had vigorously attacked the credentials of the presiding judges and constantly derided their impartiality, Guidel's final appeal to the higher ideals of justice and impartiality may seem pointless and contradictory. If Guidel's appeal was meant to sway the verdict of the trial, it seemed doomed to fail before the judges—whom he had vilified for even conducting the trial in the first place. However, Guidel was not only addressing the judges. Enunciating and gesticulating like a classical orator, Guidel delivered his closing statement in front of cameras and court reporters that broadcasted the most publicized and contested trial in Guatemalan history.³ He was not only speaking to Barríos, nor to the court; he was speaking to all of Guatemala. The next day, as Judge Barríos delivered the historic verdict of guilty, she also appeared to speak directly to Guatemala. She, like Guidel, framed the outcome within the higher imperatives of the law. "Without justice, there will be no peace," Barríos proclaimed before an eruption of applause in the courtroom. "Acknowledging the truth helps to heal the wounds of the past and the pursuit of justice is a right of the victims, which also contributes to the strengthening of the rule of law in our country."⁴

Both Judge Barríos and Counsel Guidel constructed their arguments in the trial of General Efraín Ríos Montt around judicial legitimacy to enforce the rule of law. To many activists, judicial watchdog groups, and human rights advocates, Guidel's appeals to the higher principles of law appeared to be a poorly masked facade, mere "legal tricks" intended to "derail" the trial and "prevent justice."⁵ However, in a country in which the very prospect of prosecuting the head of state through the judiciary would

have been unthinkable only decades earlier, Guidel's choice to mobilize the same vocabulary of impartiality, justice, and rule of law should not be overlooked. Many contemporary observers of Guatemalan politics have recognized the law as one of the principal arenas in which activists have attempted to wrest institutional power away from the army following the uneasy end of the Civil War in 1996. These observers often portray a battle over judicial outcomes—a contest over the sympathies of magistrates, the advancement of trials, and the procurement of convictions of high-ranking former officials.

In this essay, I frame the struggle between these elements of Guatemalan society for control of the law as a battle over *definitions* and *meanings*. Understanding "law" as both a reflection of and an influence on social and political norms, I argue that the battle for institutional power between Guatemalan activists and the former military played out, in part, as a discursive contest over the meaning of law itself, and the legitimate form of its expression in democratic institutions. During and after the Guatemalan Civil War, the military state, embodied in Ríos Montt, maintained institutional power and impunity by fundamentally conflating the law with the state. Agents of the regime justified violence against the Guatemalan population as within the bounds of the law in the abstract, and silenced dissidents with force while accusing them of being unpatriotic. In doing so, the regime posited obedience to the state as the normative basis of all law, simultaneously creating the state as a legitimate authority in itself and precluding universalist value systems—such as that of human rights—from being considered legitimate in a Guatemalan context. Nevertheless, after the deescalation of the violence, activists from both within and outside of Guatemala challenged this circular alignment of law and state, and posited an alternate vision of legitimate law grounded in human rights. Through the judiciary, both the state and the activists employed their respective (and mutually exclusive) definitions of law to co-opt social norms from which legitimate authority in Guatemala was understood to derive in order to challenge and undermine the authority of the other. During the highly publicized trial of Ríos Montt, both the defenders of the old state and the activists mobilized competing definitions of legality, justice, and impartiality. They did this not only to influence the outcome of the Ríos Montt trial, but also to condition the way Guatemalans understood these principles and their relationship to legitimate government. In doing so, the principal actors in the Ríos Montt trial placed the event at the center of the public discourse over the definition of legitimate law.

In the first section of this analysis, I introduce my framework, based in the legal theory of Robert Cover, which places the law within a "complex game of social legitimation."⁶ In the second section, I examine how the imperatives of the Civil War led the state to posit a new understanding

- 1 *Dictator on the Dock: Genocide on Trial in Guatemala*, produced by Pace de Onis, directed by Pamela Yates, Skylight, 2013.
- 2 *Dictator on the Dock*.
- 3 *Dictator on the Dock*.
- 4 *Dictator on the Dock*.
- 5 *500 Years: Life in Resistance*, produced by Pamela Yates, New Day Films, 2017; Open Society Foundations, "Judging a Dictator: The Trial of Guatemala's Ríos Montt," Open Society Justice Initiative, accessed December 15, 2019.

- 6 Robert M. Cover, "The Folktales of Justice: Tales of Jurisdiction," *Capital University Law Review* 14 (1985): 181.

of law based in obedience to the state. In the third and fourth sections, I address the tension between the state and activists in post-conflict discourses, and demonstrate the ways in which Ríos Montt simultaneously adapted to and resisted the democratization of Guatemalan society. In the fifth section, I explore the judiciary, particularly the cases pertaining to the 1982 massacre of Las Dos Erres, as the bridge between the discursive and institutional battle over impunity. In the final section, I offer a close reading of parts of the trial of Ríos Montt versus the Ixile Mayans, placing it in dialogue with the themes of the preceding sections. While my essay begins and ends with the trial of Ríos Montt, my aim is not to offer an exhaustive dissection of the trial itself. Rather, I seek to situate the trial within the larger discursive contest that I delineate, demonstrating continuities and discontinuities between the law as a reflection of social norms across changes in Guatemalan society. In doing so, I hope to offer a more holistic way in which to understand the past and present complexities of justice and the rule of law in Guatemala.

Law as the "Object of Contention"

7 It is important to note that I do not speak or read Spanish, and have thus been unable to engage with any untranslated Spanish-language sources. It is perhaps not the case that Spanish-language literature on the Guatemalan legal system reflects the same assumptions and motivations which I attribute to English-language literature. As such, my critiques of secondary literature on the subject of this essay is confined only to those English-language sources.

8 For example, see: International Federation for Human Rights, "Genocide in Guatemala: Ríos Montt Guilty," International Federation for Human Rights, last modified October 2013, accessed December 11, 2019.

In much of the contemporary English-language literature pertaining to Guatemala's judicial systems, the phrase "rule of law" is almost endemic.⁷ This literature often counterposes the "rule of law" to total lawlessness, with Guatemala inhabiting some position on a sliding scale between the two.⁸ Any given development within Guatemala's judicial or political system, such as a scandal or verdict, may either strengthen or weaken the rule of law, shifting the country's position on this sliding scale. The underlying assumption is that the "rule of law"—and by extension, the related concepts of law, legality, and legitimate authority—have an objective, universal meaning and form which can be used as the criteria by which to assess the status quo in Guatemala or in any other country. It is no coincidence that this apparent consensus emerges from a body of literature overwhelmingly produced by human rights groups, international governmental bodies, non-profit organizations, and court-watching groups. Here, I attempt to work outside of the specific normative frameworks in which these concepts, primarily "law," and "rule of law," have been located. Instead, I adopt a framework that treats these concepts themselves as contested spaces worthy of investigation.

In his 1985 essay *The Folktales of Justice: Tales of Jurisdiction*, Robert Cover theorizes that the "label of 'law'" constitutes a "legitimizing force" that sanctifies and universalizes norms across contexts.⁹ To Cover, simply calling something "law" is to declare its alignment with a fundamental norm that is considered legitimate in itself. Because social norms are, by definition, intersubjectively determined, the process by which these norms are contested and mutated is necessarily discursive: when people simply generate and circulate new ideas or propositions in society, they compel

society to reassess and potentially alter its most fundamental or sacred norms. Consequently, Cover argues that "the word 'law' itself is always a primary object of contention."¹⁰ Moreover, "there is not automatic legitimation of an institution by calling it or what it produces 'law,' but the label is a move, the staking out of a position in the complex social game of legitimation."¹¹ To Cover, the state may institutionalize particular norms via the law, but those norms must vie for legitimacy with other norms generated elsewhere in the social body.

In political contexts, the law "connotes legitimacy in the exercise of coercion and in the organization of authority and privilege," with legitimacy understood to mean in accordance with the most fundamental norms shared between members of the social body over which the state governs.¹² Insofar as the state monopolizes and directs coercive power to create the institutions through which it exercises law, it naturally commands immense power over what constitutes law.¹³ This power is not only confined to institutions, like a congress, judiciary, or police force; it also translates to the state's huge presence in and influence over public discourse through a broad arsenal of official channels, most noticeably in public press releases or broadcasts, but more subtly in official messages propagated by its myriad of local agents.¹⁴ Using Cover's terms, the state's power gives it automatic claim to a particularly prominent position in the social game of legitimation.

Nevertheless, if the state is seen to offend, rather than affirm, the fundamental norms of the social body, the members of that body may reject the state's claims to legitimacy. Individuals or groups who reject the legitimacy of the state, its laws, or its actions can mobilize alternative definitions of law against the state. Through national discourse, they expose the state as unfaithful to its promises to reflect the fundamental norms of society. Alternately, they charge that the norms to which the state sources its legitimacy are outdated. New definitions of law introduced into the social body (either indigenously or exogenously) necessarily contest the dominant understanding of law in place, on the basis of appealing to higher norms. Thus when human rights groups charge the state or its agents of impeding "the rule of law," they implicitly ground "law" in norms independent of the state, and so deprive the state of its claims to "make the law."

Authoritarian states—which control virtually all institutions and discourse through untempered use of coercion—face far fewer pressures to conform to normative ideas of the social body. On the contrary, they have the power to morph, change, or even create those ideas, as I will demonstrate in the context of Guatemala. In more democratic (or, in the words of Robert Dahl, polyarchic) systems of government, discourse is more open, and officials who hold positions of power can be opposed through electoral politics.¹⁵ In such polyarchic settings, officials must act more in

9 Cover, "The Folktales," 181.

10 Cover, 181.

11 Cover, 181.

12 Cover, 180.

13 Here I defer to Max Weber's famous definition of the state. Max Weber, *Max Weber's Complete Writings on Academic and Political Vocations*, ed. John Dreijmanis (New York City: Algora Publishing, 2008), 156.

14 To be more specific: government administrators, agents, or representatives—for example, policemen or administrators—are authorized to enforce the power of the state, and in doing so, they often replicate and translate the state's official messages power in a local context.

15 Robert Dahl, *Polyarchy: Participation and Opposition* (New Haven, CT: Yale University Press, 1971), 8.

16 Neil MacCormick, “Norms, Institutions, and Institutional Facts,” *Law and Philosophy* 17, no. 3 (May 1998): 317, <https://www.jstor.org/stable/3504883>.

line with norms that originate in the social body than with norms that originate in the state. Yet even if official institutions, such as a legislature or a courtroom, are specifically designed to produce outcomes in pursuit of some higher principle—for example, “justice” or “impartiality”—these concepts are inherently ambiguous and contested. In some capacity, officials at every level of government necessarily exercise their own discretion when applying these fundamental norms to the many particularities of the real world.¹⁶ In interpreting norms at their own discretion, government officials contribute to the larger discourse in society to define those norms.

Because officials operate under particular institutional frameworks, they are expected to act in accordance with the specific procedures of that institution. Officials are presumed to be legitimate authorities, but they are not necessarily guaranteed to be seen as such, insofar as they may come to be seen as betraying the norms and values they are authorized to protect. Thus officials may claim “procedural correctness” as evidence of their own virtue, and deride their rivals’ disregard of procedure in order to undermine the normative claims that their rivals make.¹⁷ In institutional conflict between officials or organizations—in this case, the legal battles that followed the Civil War—such procedural challenges become a primary mode for one actor to undermine the legitimacy (that is, their claim to make or enact “law”) of the other without denying the institutional basis of their own legitimacy. Yet these conflicts extend beyond mere procedure: the real contest is over the definition of legitimate law.

The game of social legitimation concerns the infinitely complex social body, as well as the myriad web of both official and unofficial organizations and institutions. For the purposes of this essay, however, I simplify the contestants in this game to two major parties. On one side, there is the state, embodied in the army and in Ríos Montt, and all its agents, including the officials and judges who are sympathetic to the old military regime.¹⁸ On the other side, there are the activists from both within and outside of Guatemala, including human rights groups, non-profit organizations, Mayan activists, and reform-minded officials or public agents.¹⁹ While the subsequent sections of this essay move between different events, actors, time periods, and levels of conflict (institutional vs. discursive), they all return to this idea of law as a contested claim to legitimacy.

During the Guatemalan Civil War, the military state was determined to ensure its own survival from the guerilla threat by any means necessary. Consequently, the military state—culminating in the regime of Efraín Ríos Montt—suspended all democratic institutions of law. In order to ensure impunity for its violent measures, the military co-opted virtually all aspects of Guatemalan civil society in which its authority and capacity to

rule could be challenged. Despite seizing control of Guatemala’s judicial institutions, the military did not forfeit all claims to legitimate authority via respect for the rule of law. To the contrary, throughout the worst periods of violence from 1982–1983, known popularly as “*La Violencia*,” the Ríos Montt regime actively sought to define law in ways that eliminated any distinction between the law and the state.²⁰

In 1956, a CIA-backed coup against the democratically-elected President Jacobo Arbenz by anti-communist military members brought an abrupt end to an era of liberal reform in Guatemala. The coup ushered in almost a half-century of right wing authoritarian rule. As the ineptitude of the country’s new leaders in positions of civilian government provoked civil unrest, the army began to consolidate power over Guatemala’s primary political institutions. In 1963, the military intervened directly in the election to prevent the return of the president, and by 1966 had restructured the political process to ensure that only parties sympathetic to its interests could participate in governance.²¹ As state repression increased, rebel groups—which the army uniformly labeled the “guerilla”—emerged in protest and began to operate in Guatemala’s mountainous countryside.

As the conflict between the state and rebel groups escalated and the military consolidated institutional power, the army adopted the “National Security Doctrine” as the basis of its policy in all aspects of Guatemalan society.²² Predicated on the assumptions of the Cold War, the National Security Doctrine conceived that any organized challenge to the status quo posed an existential threat not only to the state, but to the Guatemalan nation itself. Consequently, total and utter suppression of opposition became the sole imperative of the state, to which all other normative commitments were subordinated. In these terms, the National Security Doctrine naturally understood the status quo as lawful and legitimate, and opposition as criminal and illegitimate. For the duration of the thirty-year conflict, the state used appeals to the law to delegitimize the guerilla opposition, repeatedly deriding them as “criminals” and “subversives.”²³

In 1982, General Ríos Montt became the president following a coup against the incumbent military dictator. Though Ríos Montt was once thought to be a moderate among the military hardliners, the general was determined to exert every coercive means at the disposal of the state to retain control of the guerillas.²⁴ Consequently, upon seizing power, Ríos Montt annulled Guatemala’s 1965 constitution, dissolving the Guatemalan parliament and declaring martial law in its place.²⁵ A constitution, by definition, establishes the set of principles and norms on which state governance is based, and to which the state is held accountable. Martial law, by contrast, suspends any constitutional principles and procedures of government in order to ensure the survival of the state. It therefore formalizes the law as an instrument of self-preservation of the state, and not as a means of enforcing constitutional rights. Thus, under Ríos Montt, the

19 Certainly, not all of these actors are “activists” in the colloquial sense of domestic grassroots organizers who are unaffiliated with the government. Nevertheless, they are united by the general activist desire to reform and restructure Guatemalan social and political life within the framework of citizen and human rights. Hereafter, I use the term “activist” to refer to this broad grouping of actors.

20 Though Victoria Sanford notes that “*La Violencia*,” a popular term used by Guatemalans to reflect on the violence of the Civil War, contains different meanings depending on the speaker, for the purposes of this essay I use the term to refer only to the peak of the violence in 1982–1983, during the Ríos Montt regime. I use the term “Civil War” to refer to the entirety of the conflict from the 1960s to 1996, and accordingly use the terms “post-conflict” and “transitional period” interchangeably to refer to the period after 1996. Victoria Sanford, *Buried Secrets: Truth and Human Rights in Guatemala* (New York, NY: Palgrave Macmillan, 2003), 15.

21 Jim Handy, *Gift of the Devil: A History of Guatemala* (n.p.: South End Press, 1984), 150.

22 *Guatemala: Memory of Silence* (1999, Guatemala: Commission for Historical Clarification, 25), 19, accessed December 15, 2019, <https://hrdag.org/wp-content/uploads/2013/01/CEHreport-english.pdf>.

23 *Guatemala: Memory*, 34.

24 *Granito: How to Nail a Dictator*, produced by Pamela Yates, New Day Films, 2011.

17 Cf. As Irene Weipert-Fenner observes, in the Egyptian parliament, “procedural correctness was a norm claimed by all sides,” even though some members of parliament seemed to pursue blatantly anti-democratic outcomes. Irene Weipert-Fenner, “Autocratic Institutional Norms and Contesting the Democratic Façade,” in *The Autocratic Parliament* (Syracuse, NY: Syracuse University Press, 2020), 168.

18 Hereafter, I use the terms “military,” “military state,” “regime,” “state,” and in certain contexts “government” somewhat interchangeably to refer to this grouping of actors.

La Violencia y La Ley:
Law and the State during the Civil War

- 25 Patrick Ball, Paul Kobrak, and Herbert F. Spierer, *State Violence in Guatemala, 1960–1996: A Quantitative Reflection* (Washington D.C.: American Association for the Advancement of Science, 1999), 27, accessed December 11, 2019, <https://hrdag.org/wp-content/uploads/2013/01/state-violence-guate-1999.pdf>.
- 26 Sanford, *Buried Secrets*, 251.
- 27 Ann L. Sittig and Martha Florinda González, “Guatemalan Civil War and Postwar Rebuilding,” in *The Mayans among Us: Migrant Women and Meatpacking on the Great Plains* (n.p.: University of Nebraska Press, 2016), 33, <https://doi.org/10.2307/j.ctt1d41ctn.9>.
- 28 Ball, Kobrak, and Spierer, *State Violence*, 27.
- 29 Sanford, *Buried Secrets*, 208.
- 30 Sanford, 208.

conflation of the state and the law became total, and the dissolution of the independent judiciary was complete. The regime exercised coercive power almost entirely through extrajudicial means, such as the army and death squads. Given the framework I have established, we may understand this extrajudicial repression as a deliberate tool to eliminate discourse. The very act of speaking out threatened to undermine the army’s authority. Civilians who made complaints through official avenues signalled that the army ought to be held accountable for its actions by an independent legal system. Following the prescriptions of the National Security Doctrine, eliminating these dissidents became one of the logical and necessary ways in which the army protected the country from the guerilla threat.

Consequently, the army and police routinely killed anyone who requested any form of judicial redress.²⁶ Even within the military, commanders routinely subjected low-ranking dissidents to severe punishments, including torture and execution.²⁷

The so-called *Policía Judicial* (“Judicial Police”), a counterinsurgency wing of the national police that functioned as a death squad in Guatemalan cities, exemplifies the extent to which the law and violence were intertwined in the state’s program of repression. Its name in particular suggests the type of legal doublethink that the regime employed to maintain legitimacy in spite of its blatant human rights abuses.²⁸ By labeling the apparatus responsible for *extrajudicial* killings as the embodiment of *judicial* authority, the regime blurred the line between the two, and thus eliminated any normative distinction between legitimate and illegitimate state power.

The state’s total control over Guatemalan discourse allowed it to determine the definition of the law. In a 1998 interview with journalist Victoria Sanford, one Ixil Mayan named Mateo recounted how the army would come to his village and execute the village men in public spaces. The soldiers would then shout at the onlooking peasants they had perpetrated the killings because “*Es la ley*” (“it is the law”).²⁹ At the time, Mateo did not speak Spanish; it was not until he learned Spanish later in life that he “realized that ‘*la ley*’ did not mean the army’s right to kill civilians.” At that point, according to Sanford, “Mateo knew that the soldiers were lying—in the sense that law does not mean the right of the army to kill civilians—and telling the truth—in the sense that in the absence of the rule of law, guns become the law.”³⁰ Mateo’s story demonstrates the ways in which the army conflated the law with the state to justify its violence. The soldiers not only attributed the legitimacy of their actions to the law—they asserted that their actions *were* the law, because they were agents of the state acting in its interests. This circular definition of authority implicitly reflected the National Security Doctrine, and enshrined into law the self-preservation of the state. Moreover, Mateo accepted the state’s definition of law as the *only* definition of law. It was only when

he was able to learn about and engage with alternate definitions of law that he began to question the “rights” which the army claimed to possess. In the absence of any alternative to the army’s definition of “*la ley*,” the prospect of law based on individual rights rather than state prerogatives became virtually inconceivable. At the very least, the army denied Mateo any independent reference point from which he may form his own assessment of legitimate or illegitimate authority.

Later in his life, Mateo understood that what the soldiers claimed was “*la ley*” was, in fact, the “absence of the rule of law.”³¹ Although Mateo had been previously unable to imagine that law could be severed from the state, he came to believe that law reflects the inherent rights of citizens, not those of the army. It is this framework of rights that allows Mateo to conceive and articulate his rejection of the army’s claims to authority. Mere exposure to an alternate definition of law induced this change in Mateo’s thinking. His story, therefore, also exemplifies the profound danger to the state that uncontrolled discourse posed, insofar as it enabled ideas of universal rights to reach people like Mateo across the country.

The army was consciously aware of this danger. Not only did it often kill or threaten to kill anyone who championed human rights (as was fairly standard practice during *La Violencia*), it also retaliated with its own conceptual attacks on human rights. One K’iche peasant, whom Sanford interviews, recalls how in 1983 an army officer convened a meeting of everyone in his village. The officer told to the assembled villagers:

There are just two things: one is human rights and the other is Guatemala. If you’re going to defend Guatemala, then that means you’re from here; that means you’re Guatemalans. And if you’re going to defend human rights, that means you’re a foreigner because that belongs to gringos and other people out there.³²

Within the framework of human rights, there is no contradiction between universal rights and national membership. However, the army officer constructs “Guatemala” and “human rights” as dichotomous and antithetical. This construction highlights two major themes in the state’s understanding of, and response to, human rights. First, the officer effectively undermines the legitimacy of human rights simply by claiming that they have nothing to do with law. Rather than a valid normative framework, he suggests, “human rights” are a Western cultural artifact that is incompatible with, and even hostile to, Guatemalan cultural values and norms. Second, the officer discusses both Guatemala and human rights in terms of defense. In the context of civil war, the phrase “defend Guatemala” would undoubtedly imply material warfare against the guerillas, fought with guns and grenades. However, to “defend human rights” would mean to offer a rhetorical defense, the only weapon being words or gestures. The

31 Sanford, 208.

32 Sanford, 174.

officer conflates discursive threats to the state with the guerilla threat to Guatemala, and represents the two as commensurate in scope and severity. As everyone in that K'ich village would have been well aware, the army claimed the prerogative to exterminate the guerilla—after all, “es la ley.”

As the scale of the violence began subsiding after 1982-1983, the preservation of the state no longer demanded widespread repression and violence. Under new leadership, the military relaxed its hold on Guatemala's political structures. In 1985, the government ratified a new constitution which, at least nominally, restored the rights of Guatemalan citizens as the legal basis for the authority of government. By the mid-1990s, activists emerged in Guatemalan civil society and began pushing for reforms and the restoration of Guatemala's judicial structures. The bloodless end of the Cold War undermined the grim assumptions on which the National Security Doctrine was based and opened up a new international atmosphere of cooperation and humanitarianism. Accordingly, the presence of international human rights groups in Guatemala increased dramatically. In 1996, under pressure from reformers, human rights groups, and NGOs, the Guatemalan government signed peace accords with the remaining guerilla groups, marking the end of the Civil War.³³

The emergent activists engendered fundamental changes in the institutional structures of Guatemala and reintroduced democratic principles into social discourses. Under the direction of the United Nations, the Guatemalan government and the rebel groups agreed to create the Commission for Historical Clarification (CEH) in order to investigate past human rights violations by the Guatemalan government. In its comprehensive and widely-circulated 1999 report, *Guatemala: Memory of Silence*, the CEH concluded:

Human rights organisations [have] made decisive contributions to establishing new principles of social relations and to reconstructing the social fabric [of Guatemala]. Although these organisations emerged from those sectors most affected by the confrontation, their claims immediately extended to other sectors of society... The CEH considers that these efforts promoted a new awareness of the need for justice, respect for the law, and the validity of the rule of law as basic requirements of democracy.³⁴

The CEH report demonstrates that human rights organizations brought about meaningful shifts in the way Guatemalans thought about the law. Its focus on the new democratic “awareness” demonstrates how transformations in the way Guatemalans thought about justice and the law alongside the institutional transformation of Guatemala. It therefore

suggests that the efforts of human rights organizations was centered on influencing social discourses and norms as much as on rooting out corrupt officials. However, *Memory of Silence* itself makes an important contribution to this new “awareness.” In important ways, the report's analysis rebuts many of the state's narratives about the Civil War. For one, it locates the origin of many human rights organizations within Guatemala, challenging the army's assertion that human rights “belong to gringos.” The report also represents the changes to Guatemala's social fabric as “reconstruction” as opposed to, say, “construction.” In this sense, it partially reads democratic norms back into Guatemalan society, presumably to before the Civil War. Although the report does acknowledge that many of these changes are “new,” its implicit representation of Guatemalan history offers another subtle challenge to the narrative that human rights are inherently un-Guatemalan. Moreover, the report represents “respect for the law” and “the validity of the rule of law” as prerequisites for democracy. There is a certain causal logic here: norms pertaining to the law precede, and indeed enable, the establishment of a legitimate (and necessarily democratic) state. The report inverts the logic of the National Security Doctrine, which understood all legitimate law as generated by the state. “Respect for the law” implies a normative emphasis on adherence to legitimate law; however “respect” denotes self-conscious, reasoned acceptance rather than unquestioning obedience.

Despite their successes, activists in Guatemala did not automatically undo the understandings of law which the state had instilled in the social body during *La Violencia*. In 1994, Juan Manuel Gerónimo mobilized the community of Rabinal to petition the mayor to recognize the mass grave in the village as a legal cemetery. Gerónimo recalls telling his community that “we won't be afraid...if we are all together, we can do this work. What we are doing is legal and the law isn't going to put all of us in jail.”³⁵ On one hand, Gerónimo believes that his demands are legal, not because they conform to what the government labels “law,” but because they derive from his inherent rights as a citizen and as a human. On the other hand, he recognizes “the law” as an instrument of state coercion, in the sense that it represents the state's power to put him in jail. To return to Robert Cover, the simple act of applying the label of “law” to the state is an admission of the state's legitimacy. In that sense, Gerónimo affirms the authority of the state to put him in jail, even if it does so only because he dared to acknowledge the atrocities of *La Violencia*. Gerónimo's language simultaneously reflects the definition of law grounded in human rights and the definition of law grounded in the National Security Doctrine, even though these definitions are mutually exclusive. Out of context, jail time may seem like a disproportionate punishment for Gerónimo's seemingly mild transgression. The real risk that Gerónimo may suffer for this severe response to his symbolic act of dissidence affirms that the state

³³ Ball, Kobrak, and Spierer, *State Violence*, 32.

³⁴ *Guatemala: Memory*, 33.

³⁵ Sanford, *Buried Secrets*, 40.

36 The International Commission against Impunity in Guatemala: A Wola Report on the CICIG Experience, 4, June 2015, accessed December 11, 2019, https://www.wola.org/wp-content/uploads/2015/07/WOLA_CICIG_ENG_FNL_extra-page.pdf.

The Power of Ríos Montt in the Post-Conflict Political Landscape

recognized the political implications of such challenges to its legitimacy, and highlights the extent to which it still regarded all dissidents as criminals, even after the end of *La Violencia*.

The evident cognitive dissonance in Gerónimo's testimony illustrates the complex ways in which Guatemalans absorbed and reproduced competing definitions of law, to which they were exposed through social and official discourse. Gerónimo internalizes a new understanding of law based in individual rights, but in certain ways, he still thinks about the law in the terms of the National Security Doctrine. In this sense, Gerónimo demonstrates how the meaning of the law remained a primary site of contention, even as Guatemala transitioned into democracy. Nevertheless, as it was Gerónimo's understanding of what is "legal" that compelled him to speak out against the state, changes in the way Guatemalans thought about the law had profound implications on their political behaviors. The fact that Gerónimo decided to speak out despite the personal risk to himself, something which few would have dared to do during *La Violencia*, affirms the successes of the activists in undermining the authority of the military state.

Despite significant transformations in Guatemala after *La Violencia*, Ríos Montt and the remnants of the former military dictatorship retained much of their power in Guatemala's political institutions. Although military rule weakened after the 1980s and ostensibly ended with the Civil War in 1996, the grip of the old state over the loci of power remained tight in many sectors of society. Control of the justice system was nominally returned to civilian officials. However, many judicial officials remained beholden to members of the former state.³⁶ In 1989, Ríos Montt founded the Guatemalan Republican Front (FRG). In 1994, the FRG became the majority party in congress. Through his leadership of the FRG, the former dictator retained so much power in the national government that his relationship with Alfonso Portillo, the elected president from 2000-2004, was described as a "political cohabitation."³⁷ Ríos Montt wielded significant influence over presidential appointments, directly shaping the composition of Portillo's cabinet and military high command. Though his candidacy would be denied on constitutional grounds (former perpetrators of coups could not run for president), Ríos Montt made bids for the Guatemalan presidency as the FRG candidate in both 1990 and 2003.

The remnants of the old regime had to abide by democratic procedures in order to retain legitimacy. Whereas in 1982 Ríos Montt had taken power via a coup, as Guatemala transitioned to democracy he stayed in power through electoral politics. In the new pluralistic political landscape, Ríos Montt could no longer control the discourse about what constituted

legitimate law, as the state was able to do during *La Violencia*. A charismatic born-again Christian with a strong, fatherly appearance, Ríos Montt became a constant and prominent presence in Guatemalan public discourse. He frequently appeared on television and radio talk shows, and held large, publicized political rallies. Through these mediums he continued to offer rhetorical understandings of law that worked to bolster his legitimacy as a political figure. During his 1990 run for the presidency, Ríos Montt declared to a large crowd of supporters in Nebaj—which had, paradoxically, been the site of some of his regime's worst human rights violations—that: "Guatemala is not the police, the captain, the mayor, or the congressman... The mayor may think he is the authority. The captain may think he is the authority. The policeman may think he is the authority. But authority is he who obeys the law! Even if he has a pistol or machine gun, this is not authority!"³⁸ The position Ríos Montt takes in this speech suggests that he attempted to legitimize himself in accordance with the democratic values of the time. Ríos Montt acknowledges that the state may no longer rely on coercive power ("guns") to maintain legitimacy. Similarly, when he asserts that "the captain" does not automatically command authority, he suggests that not even the army possesses inherent legitimacy. This rhetoric marks a significant departure from the attitude towards authority which he implicitly took as his regime declared martial law in 1982.

However, the general's renunciation of might-makes-right authority does not suggest that he had subscribed to the view that legitimate authority is grounded in human rights. Ríos Montt dislocates authority from the elected figures of "the mayor" and "the congressman," and relocates that authority in "the law" in the abstract. He then insists that "authority is he who obeys the law." He does not claim that any rights or principles—such as those enshrined in the restored Constitution—form the basis of legitimate authority. Whereas the CEH spoke of "respect for law," the general urges obedience to the law. The relationship between the citizen and the law becomes one of obligation to authority in the abstract rather than reasoned adherence to principles or norms. Ríos Montt suggested the authoritarian character of this emphasis on obedience in a 1990 interview with the newspaper *The Village Voice*. In that interview, he preached to listeners: "Our problem is disorder. We have to put law into our lives. We need law, order and discipline... What's important is that the people understand that we know what law is and that we will apply it. Democracy isn't letting people do whatever they want. Democracy means fulfilling your duties."³⁹

Ríos Montt presents law, order, and discipline as components of the broader goal of fostering democracy, seemingly reflecting the CEH's belief in "validity of the rule of law as [a] basic [requirement] of democracy." However, he offers a different interpretation of the normative basis

- 38 David Stoll, "Guatemala: Why They Like Ríos Montt," *NACLA Report on the Americas* 24, no. 4 (December/January 1990/1991): 6, <http://sites.middlebury.edu/dstoll/files/2018/01/Why-They-Like-Rios-Montt-1990.pdf>.
- 39 Stoll, "Guatemala: Why They," 7.
- 40 Sanford, *Buried Secrets*, 17.

of democracy (and by extension the meaning of the law) when he argues that “Democracy means fulfilling your duties.” Importantly, he erases the validity of dissidence when he urges listeners to accept that “we [the state] know what law is and that we will apply it.” Democratic government, he suggests, is not meant to protect the rights of citizens, but rather to enact the law *as the state defines it*. In this light, his insistence that “democracy isn’t letting people do whatever they want” posits a vision of government in which the state is justified, and even obligated, to control the behaviors of its citizens in order to uphold the law. The rights of citizens were subordinated to the state’s prerogatives.

Through these and countless other public proclamations, Ríos Montt posed a serious roadblock to the reformatory efforts of activists and human rights groups. He maintained a popular image of himself as a champion of law and order, even as strong evidence of the systematic violence his regime enacted surfaced throughout the country. From the mid-1990s onwards, human rights groups conducted investigations and exhumations of hundreds of mass graves from sites around Guatemala, consequently producing an increasingly irrefutable body of evidence of the regime’s crimes against humanity.⁴⁰ The CEH released *Memory of Silence* in 1999; by 2001, many in Guatemala would have been aware of credible allegations regarding the extent of Ríos Montt’s brutality. Yet Dirk Kruijt, writing in 2001 in the *European Review of Latin American and Caribbean Studies*, noted that Ríos Montt was popularly “remembered as the military president who restored law and order in the capital and the country, although with an extremely hard hand.”⁴¹ Kruijt’s simple observation suggests that many Guatemalans viewed Ríos Montt’s counterinsurgency as the necessary evil by which the regime *restored* the law. Even when confronted with evidence of systematic rights abuses, many Guatemalans simply refused to believe the accusations. According to David Stoll, one North American human rights worker recounts how in 1990 he “had huge fights all summer” with his Guatemalan friends who refused to hear about the human rights cases against Ríos Montt.⁴² After Stoll suggested to a schoolteacher in Nebaj that Ríos Montt had committed atrocities in her town only years before, the teacher responded by shouting: “Lies! Lies!...If it hadn’t been for Ríos Montt, we all would have disappeared!”⁴³ The schoolteacher’s overestimation of the guerilla threat and her faith in the army reproduces the paranoid assumptions of the National Security Doctrine. Operating on these assumptions, the teacher remembers Ríos Montt as her savior, and dismisses entirely the insinuation that Ríos Montt’s counterinsurgency ought to have respected the rights of Guatemalans.

Although the end of *La Violencia* created the space for activists and human rights groups to challenge the state’s hegemony over public discourse, Ríos Montt worked to define law and authority in such a way as to

translate the legitimacy he had enjoyed as a military strongman into legitimacy as a democratic politician. In doing so, the former president actively resisted activists who attempted to attribute law in democracy to the basis of human rights. Both Ríos Montt and the emergent activists claimed to champion democracy, though they disagreed about what that actually meant. Though many Guatemalans defended the charismatic general, many others (like Mateo and Gerónimo) remembered the state’s role in perpetrating *La Violencia*. These citizens increasingly saw the brutality of Ríos Montt’s counterinsurgency as illegal within the framework of human rights. In the transitional political landscape, the newfound democratic institutions would serve as one of the principal testing grounds for these competing understandings of law and legitimate authority.

*Justice, Prosecutions,
and Appeals in the Transitional Period*

Guatemala’s transition to democracy following the end of the Civil War coincided with a global shift in international human rights jurisprudence. Human rights theorists and organizations had, since the Nuremberg trials in 1945, believed that impunity for perpetrators of former regimes was necessary to preserve the delicate stability of societies transitioning to democracy.⁴⁴ However, in the 1990s, these theorists began to argue that prosecutions rather than impunity for perpetrators represented the more effective means by which transitioning societies may achieve psychological, social, and political recovery from civil war.⁴⁵ In her 1991 foundational contribution to this body of thought, *Settling Accounts: The Duty To Prosecute Human Rights Violations*, Diane F. Orentlicher argues that:

The case for prosecutions turns on the consequences of *failing* to punish atrocious crimes committed by a prior regime on a sweeping scale. If law is unavailable to punish widespread brutality of the recent past, what lesson can be offered for the future? A complete failure of enforcement vitiates the authority of law itself, sapping its power to deter proscribed conduct.⁴⁶

For Orentlicher, the legitimacy of the law is contingent upon its ability to produce just outcomes through official channels of authority. In particular, the most important imperative of the law in transitional societies is to produce justice for (i.e. convictions of) the worst perpetrators of violence of the former regime. In this view, a justice system which only ceremoniously investigates perpetrators or puts them to trial without any conclusion is thoroughly inadequate to meet the basic requirements of democracy. A court faced with a claim against a perpetrator of human rights may consider the claim, conduct an investigation, and hold a trial, thus acting in total compliance with Guatemala’s law and constitution.

⁴⁴ David Scheffer, “Postscript on Law, Crimes, and Impunity,” in *All the Missing Souls: A Personal History of the War Crimes Tribunals* (Princeton, NJ: Princeton University Press, 2012), 437.

⁴⁵ Scheffer, “Postscript on Law,” 437.

⁴⁶ Diane F. Orentlicher, “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime,” *Yale Law Journal* 100, no. 10 (1991): 2542, <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=7376&context=yjlj>.

⁴¹ Kruijt, “Post-War and Post-Electoral,” 100.

⁴² Stoll, “Guatemala: Why They,” 4.

⁴³ Stoll, 5.

- 47 Sebastian Rotella, "Finding Oscar: Massacre, Memory and Justice in Guatemala," *ProPublica*, last modified May 25, 2012, accessed May 2, 2020, <https://www.propublica.org/article/finding-oscar-massacre-memory-and-justice-in-guatemala>.
- 48 *Guatemala's Justice System: Evaluating Capacity Building and Judicial Independence*, 7, June 2019, accessed December 11, 2019, https://www.wola.org/wp-content/uploads/2019/07/Informe_cam_english_final7.1.pdf.
- 49 "Still No Justice for Guatemala Massacre Victims after 26 Years," *Amnesty International*, last modified December 5, 2008, accessed May 2, 2020, <https://www.amnesty.org/en/latest/news/2008/12/still-no-justice-guatemala-massacre-victims-after-26-years-20081205/>.

50 The IACHR is an independent international jurisdiction based in Costa Rica. It is designed to provide an avenue through which claims regarding human rights violations can be brought against member states in Central America.

However, unless the court actually delivers a guilty verdict, it has not claimed legitimate authority. Orentlicher's argument that the outcomes of judicial processes provide "lessons for the future" intrinsically locates the contest over outcomes that occurs within the courtroom (i.e. the battle between the prosecution and the defense for a verdict) within the larger contests over the fundamental norms of society.

Influenced by this new jurisprudence in criminal rights law, activists sought reforms of the justice system. These activists greatly expanded the justice system's formerly nonexistent presence in much of the country and took steps to combat the rampant corruption among judges and other officials. With their newfound power and relative (though by no means absolute) independence from the army, prosecutors began to initiate investigations into the sites of massacres and other human rights abuses. Although the army had painstakingly attempted to erase any documentation of these sites, such as that of the 1983 massacre of the village of Las Dos Erres, local witnesses kept the memory of these sites alive and guided their exhumations.⁴⁷ In the early 1990s, prosecutors brought charges of lower-level perpetrators—such as former field officers and local army administrators—and secured their first conviction in 1999.⁴⁸

Pro-reform officials quickly found that their efforts to strengthen the judiciary did not guarantee the outcomes they wanted. These officials recognized the democratic necessity of a robust appeals process to prevent corrupt judges from arbitrarily exercising power. However, their commitment to judicial impartiality required them to grant symmetrical rights to appeal for both defendants and prosecution, regardless of the nature of the charges, or the strength of the evidence. Defendants whom the state may have sought to prosecute for subversion or dissidence would therefore receive the same rights as defendants whom activist prosecutors sought to convict for war crimes or human rights violations.

In 1994, prosecutors tried to press charges against former *Kaibiles* (army commandos) for their role in the massacre of Las Dos Erres.⁴⁹ The legal drama surrounding the Las Dos Erres cases exemplify the ways in which former state agents thwarted or delayed prosecution by employing the appeals process. After years of bureaucratic stagnation, representatives of human rights organizations—including Claudia Paz y Paz, who would later play a key role in the prosecution of Ríos Montt as Guatemala's Attorney General—brought the cases before the Inter-American Court of Human Rights (IACHR).⁵⁰ These representatives secured a settlement with the Guatemalan government in April 2000. The government promised that the Las Dos Erres cases would move forward; however, between April 2000 and March 2003, the accused *Kaibiles* filed 33 appeals for legal protection, 19 appeals for reversal, 19 claims for remedy, 2 motions for amendment, and one constitutional motion.⁵¹ This flood of appeals effectively halted the trials, ostensibly until the motions were given due

consideration. However, even after years had passed, many of these appeals were never reviewed.

Those in power argued that the appeals process was necessary for the justice system to uphold its legal and democratic commitments. In *Mack Chang v. Guatemala* (2003), the Constitutional Court (Guatemala's highest court of judicial review) ruled that "the law itself places...courts under the obligation to process any appeal for legal protection, even if it is 'expressly inadmissible.'"⁵² The Court argued that generous appeals processes were necessary to ensure impartial and just enactment of the law, even if the appeals themselves were legally baseless and obviously diversionary. The Court, therefore, formally prioritized the defendant's almost unlimited right of appeal over their victim's right to justice.

In 2008, Paz y Paz again brought the Las Dos Erres cases before the IACHR, this time explicitly targeting the appeals process.⁵³ Paz y Paz argued to the IACHR that "the appeal for legal protection has been transformed into a means to delay and hinder the judicial process, and into a factor for impunity."⁵⁴ In rebuttal, the representatives of the Republic of Guatemala asserted that the pursuit of impartiality mandated the judiciary preserve its own internal processes, regardless of the justice of their outcomes.⁵⁵ The tribunal sided with Paz y Paz. In its ruling, it stated that "the current structure of the appeal for legal protection in Guatemala and its inadequate use have impeded its true efficiency, as it is not capable of producing the result for which it was conceived."⁵⁶ In turning to an international tribunal after they had been frustrated by domestic courts, Paz y Paz and the other claimants issued a fundamental challenge not only to the validity of the appeals process, but also to the validity of a justice system that did not protect or legitimate human rights.

Insofar as the trials would be publicized in some capacity, they fed into the battle over the meaning of law that I have herein established. During *La Violencia*, the army had proclaimed that there were "just two things." After the Civil War, this conceptual antagonism between human rights and Guatemala did not dissipate; rather, it took new form in inter-court conflicts.

"You Are Violating the Law:" The Trial of Ríos Montt

Ríos Montt represented the ultimate prize for activist prosecutors. While justice for the offenses of lower level offenders such as *Kaibiles* would provide valuable attacks on impunity, a conviction of Ríos Montt would undermine the impunity of the former state at its very highest level. Against this backdrop, Ríos Montt became the symbolic locus of the national contest over what the enactment of law, justice, impartiality, ought to look like in democratic Guatemala. Thus the trial of Ríos Montt for genocide and crimes against humanity, conducted between 2011–2013 in the Guatemalan High Risk Court A, intertwined the various threads of

- 51 Case of the "Las Dos Erres" Massacre v. Guatemala (Inter-American Court of Human Rights Nov. 24, 2009), 31, Accessed December 11, 2019. http://www.corteidh.or.cr/docs/casos/articulos/seriec_211_ing.pdf.
- 52 Case of the "Las Dos Erres," 34.
- 53 Case of the "Las Dos Erres," 34.
- 54 Case of the "Las Dos Erres," 36.
- 55 Case of the "Las Dos Erres," 12.
- 56 Case of the "Las Dos Erres," 36.
- 57 International Federation for

the discursive and institutional battle for legitimacy and brought them to a head.

In 2001, Guatemalan activists filed the first complaints against the former dictator. Domestic courts considered these complaints, but as in Dos Erres, a flood of appeals prevented the complaints from moving forward. The institutional transformation of the justice system accelerated with the establishment of the International Commission against Impunity in Guatemala (CICIG), a cooperative effort by the government and the UN to root official corruption. In 2010, Claudia Paz y Paz was elected Guatemala's first female Attorney General. The ambitious reformer cleared the way for fresh charges against Ríos Montt to proceed. In 2011, prosecutors led by the Attorney General's office succeeded in removing Judge Carol Flores from presiding over preliminary hearings via constitutional appeals. A new preliminary judge approved the charges, and the trial proceedings began in early 2013 in the courtroom of Judge Yassmin Barrios.⁵⁷

From the first day of the trial, Ríos Montt's defense team barely focused on undermining the veracity of the evidence against their client.⁵⁸ In fact, the defense seemed to undermine its own case, at one point trying to argue that the Barrios Court had illegally admitted evidence which the defense had itself presented. Rather than win by force of evidence, Ríos Montt's lawyers sought to protect their client by issuing onslaughts of challenges to the constitutionality of the courtroom proceedings. The general's legal team, headed by Francisco Guidel, immediately barraged the court with motions and appeals to suspend or halt the trial on account of procedural issues. In one motion, Guidel sought to have Judge Barrios removed from the case on account of enmity between himself and Judge Barrios.⁵⁹ Under the Guatemalan legal code, this concern presented a valid reason for scrambling the judges presiding over the case. However, instead of complying with the petition, Barrios worked within the law to invert it against Guidel, whom she ordered ejected from the courtroom. Guidel then appealed his removal to an equal court over which Judge Carol Flores presided. Subsequently, Judge Flores issued an order to the Barrios court to suspend proceedings pending review by the Constitutional Court. The Barrios Court admitted Guidel back into the courtroom, thus resolving the issue that Judge Flores' order was meant to address in a way that allowed Barrios to sidestep the order to suspend the trial before review by the Constitutional Court.⁶⁰ However, thereafter the defense issued more challenges, and the whole process repeated. Such legal maneuvers between the Barrios court, the defense, and prosecution characterized the trial from its beginning through to its conclusion.

To the Open Society Justice Initiative, the willingness of the Barrios court to continue the trial proceedings despite the onslaught of legal challenges "demonstrated the possibilities for justice to be blind."⁶¹ Yet

because the nation still regarded Ríos Montt as a figurehead of law and order, the defense's focus on legal maneuvers does not merely indicate an attempt to avoid an unfavorable outcome, such as jail time, for their client. Rather, the defense sought to fundamentally challenge the legitimacy of the Barrios Court to enact law. Barrios was a reform-minded judge who clearly sided with the prosecution and who believed in the necessity of "acknowledging the truth" for "strengthening the rule of law."⁶² Both the prosecution and the Barrios court evidently hoped that if they were able to continue the trial to its conclusion and produce a guilty verdict, they would legitimize the already widely-available mound of evidence against the former President and thus unwrite the legacy he had created for himself. To maintain its own legitimacy, however, the Barrios Court needed to both comply with judicial procedures and maintain impartiality in the eyes of the public. Following Barrios' decision to overrule a minor objection by the defense during a cross-examination on March 21st, the prosecutor told the court: "Thank you Your Honor, I appreciate your intervention to clarify this [issue]. This tribunal is completely impartial. And throughout these proceedings, I want to defend judicial independence."⁶³ Similarly, in front of a packed courtroom on March 31st, Barrios responded to Guidel's objections by pronouncing that "We are not here to create situations of conflict...Remember, we are not here to attack the tribunal...we are a tribunal that guarantees respect for that law and for all parties in these proceedings."⁶⁴

Judge Flores and the defense asserted their own impartiality against what they derided as Barrios' partiality. Judge Flores initially presided over the preliminary stages of the Ríos Montt trial in 2011, but the prosecution successfully forced her to recuse on account of her bias in favor of Ríos Montt.⁶⁵ Though her specific motivations remain somewhat unclear, Judge Flores' repeated injunctions are evidence of a desire to prevent Barrios from bringing the trial to its conclusion and delivering a guilty verdict. On April 18th, Flores ruled on an appeal regarding the preliminary hearings and ordered that the entire trial process be reset to where it was in 2011, before Ríos Montt had even faced charges. When confronted at a hearing by a representative of a victims' group, Flores argued that: "I am not denying access justice to victims and I am not mocking them. I am resolving what corresponded to me to decide."⁶⁶ ⁶⁷ Echoing the logic of the court in *Guatemala v. Mack*, Flores argued that justice for victims was subordinate to her duty to respect the processes of law. The only reason the case had proceeded in the first place, she then implied, was because the judge who had replaced her in the preliminary hearings "[didn't] know the law." Flores defends her ruling as the objective and impartial application of the law. Not only does she dismiss accusations regarding her own bias to defend Ríos Montt, the reason she was removed from the pre-trial in the first place; she also delegitimizes the pre-trial judge, and by

Human Rights, "Genocide in Guatemala," International Federation for Human Rights, 8.

⁵⁸ Open Society Foundations, "Judging a Dictator," Open Society Justice Initiative, 7.

⁵⁹ Open Society Foundations, 4.

⁶⁰ Open Society Foundations, 4.

⁶¹ Open Society Foundations, 3.

⁶² *Dictator on the Dock*.

⁶³ *Dictator on the Dock*.

⁶⁴ *Dictator on the Dock*.

⁶⁵ Mike McDonald, "Judge Suspends Genocide Trial of Guatemala's Rios Montt," Reuters, last modified April 18, 2013, accessed May 2, 2020, <https://www.reuters.com/article/us-guatemala-riosmontt/judge-suspends-genocide-trial-of-guatemalas-rios-montt-idUSBRE93I03620130419>.

⁶⁶ Kate Doyle, "Day 20: Defense Attorneys Walk Out of Trial in Protest; Preliminary Court Judge Annuls Trial as Attorney General Calls Action Illegal and Promises Legal Challenge," International Justice Monitor, last modified April 19, 2013, accessed December 11, 2019.

⁶⁷ Doyle, "Day 20: Defense," International Justice Monitor.

⁶⁸ *Dictator on the Dock*.

extension Barrios, by presenting them as uninformed and partial. Moreover, she insinuates that they are, perhaps, motivated by an activist agenda rather than a respect for law. In a sense, Flores subtly defines the imperatives of the law in terms of obedience, insofar as she denies that normative considerations—including those pertaining to justice and human rights—play any part in the application of the law. Law itself becomes the primary authority, though Flores has the sole ability to interpret it.

The April 18th injunction left little room within the legal codes for the Barrios court to continue while keeping its obligation to honor the rulings of Flores' co-equal court. On April 19th, Barrios reluctantly suspended the trial for the time being. As she announced the decision, she declared:

The tribunal will not abide by manifestly illegal mandates. No one is above the law, the law is in place to be respected. Until a higher court orders us to cease the trial we will continue. So we will temporarily suspend the trial, and note that we don't take illegal orders. And only a higher court, in this case the Constitutional Court, can rule whether or not to annul this ruling.⁶⁸

Despite her fiery rhetoric, Barrios tacitly accepts that Flores acted within her judicial authority to issue an injunction, and complies out of respect for the procedures of the justice system from which Barrios derives her own status as an official. In this sense, Barrios signals her trust in the judicial system as a whole. Because Barrios does, in fact, comply with Flores' ruling, her denunciation of it reads more as a rejection of its interpretation than of its statutory validity. Barrios' defiant declaration that her court "will not abide by manifestly illegal mandates" fundamentally challenges Flores' authority, on the grounds that Flores' ruling presents a deliberate attempt to derail the trial, and thus to prevent justice. Her contention that "the law is in place to be respected" frames the relationship between the social body and the law in terms of respect rather than in terms of obedience. In mobilizing the label of the law against Flores, Barrios rejects the normative definitions of legality, impartiality, and justice which Flores posits, and offers in their place her own definitions grounded in respect for rights.

The intercourt conflict between these two judges had a certain symmetry to it: each judge presented herself as impartial and reverent of the law, and each presented her rival as partial and irreverent. Yet within Barrios' courtroom, Ríos Montt's defense team took the attacks on Barrios' legitimacy a step further. Wielding Flores' rulings as one of their primary weapons, the defense mustered the themes of the National Security Doctrine and aimed them at Barrios and the other judges. Following yet another injunction issued by Judge Flores, on May 8th, Guidel told the

69 *Dictator on the Dock*.

panel of judges: "You are the rebels. You are the ones being called rebels. You are the ones being called disobedient."⁶⁹ Waving a copy of Judge Flores' injunction in his hand, Guidel threatened to bring charges against the judges:

I consider myself to be a tenacious attorney who doesn't stand for injustice....You are not above the law, nor above justice. And I state publicly, I will not rest until I see you put on trial. Deprived of this impunity, and this air of superiority, like you're some kind of super judges. But you are not above the law. I will tell you that. 'Honorable' judges, let justice be served in this country. Don't contribute to impunity.⁷⁰

First, by declaring that the Barrios court was violating the law by subverting Flores' injunctions, Guidel reinforced Flores' position that respect for law requires respect for its procedures. Guidel's explicit denunciation of the court as "disobedient" for subverting Flores echoes Ríos Montt's own declaration that "authority is he who obeys the law." By casting the disobedience of the Barrios court as "injustice," Guidel intertwines justice in the abstract with his own rearticulation of the National Security Doctrine, and reasserts obedience to the state as the ultimate expression of justice. Even decades after the civil war, the term "rebels" would have certainly evoked the guerillas; thus, in charging that the judges were "rebels" for being disobedient, Guidel rhetorically connects the conduct of the judges—who were acting within the law—to the guerillas who sought to overthrow the state with violence during the civil war. In this way, he exhibits continuity with the state's attempts during *La Violencia* to define any challenges to its authority as illegal.

As the Open Society Justice Initiative notes, the defense made these attacks against the Barrios court as part of a strategy of "undermining the tribunal in the media," which was broadcasting the court proceedings to the nation.⁷¹ The aforementioned exchange between Judge Flores and the victims' group representative occurred at a publicized hearing which was transmitted to the public via the press; Barrios made her speeches of defiance in front of an army of reporters. In this light, Guidel, Flores, and Barrios consciously issued their rhetorical appeals to the higher principles of justice, impartiality, and legality as the epicenter of the larger national discourse.

When Barrios delivered the historic verdict on May 10th, 2013, shockwaves reverberated through the country. Yet the period immediately following Barrios' May 10th verdict was no less contentious than the trial proceedings. As thousands across Guatemala took to the street to celebrate the ruling, thousands more protested it. Pamphlets and ads began circulating media outlets attacking the ruling and accusing its authors of

70 *Dictator on the Dock*.

71 Open Society Foundations, "Judging a Dictator," Open Society Justice Initiative, 7.

72 Jo-Marie Burt, "Historic

betraying Guatemala. CACIF, an enormously powerful business conglomerate connected to many in Guatemala's old regime, denounced the Barríos court as "excessively ideological" and urged the Constitutional Court to "rectify" the "anomalies produced in the proceedings" that had just unfolded.⁷² While many in Guatemala lauded the verdict as a victory for the rule of law, many others regarded it as illegitimate. Clearly, even though the Court had issued an official ruling, the meaning of the law and the legacy of Ríos Montt's regime were far from settled.

Conclusion

During the Guatemalan Civil War, the state treated every threat to its legitimacy as potentially existential. The military seized control of virtually all Guatemalan institutions and discourse in order to preserve itself. Under Ríos Montt, the state sought to legitimize its own actions by framing them as the law. In doing so, the state used its hegemony over public discourse to entrench a circular definition of law that automatically legitimated state actions. This definition of law was fundamentally incompatible with notions of human rights. After the violence diminished and the state's control of public discourse lapsed, democratic activists challenged the fundamental conflation of law and state, and posited an alternate vision of legitimate law grounded in respect for human rights. Through judicial processes, these activists sought to expose and punish perpetrators of human rights abuses as part of their larger effort to wrestle institutional power from the military. While activists successfully reframed judicial legitimacy in terms of democratic values, the procedures of the judiciary nevertheless left room for the state to define law in terms of obedience rather than rights. In the trial of Ríos Montt, this was on display before Guatemala as the prosecution and defense presented radically different visions of what constituted impartiality, justice, and even legality.

Post-conflict Guatemalan legal history remains a relatively understudied topic, at least among English-speaking circles. The end of the Civil War marked an inflection point, not only in the country's political trajectory, but also in the English-language literature concerning Guatemala: it is the point at which the historian passed the torch to the watchdog, the journalist, or the non-profit organization. Certainly, these groups have produced valuable analyses of the post-conflict Guatemalan social and political landscape, many of which inform this essay. Yet the firm belief in universal human rights and democracy that motivates many of these groups may impede their ability to recognize the ways in which their messages are undermined. If we assume that "the rule of law" or "respect for the law" have set meanings—that is, the establishment of efficient and impartial political institutions which protect the rights of citizens—how then can we account for Ríos Montt's reputation as a candidate of law and order? If those Guatemalans who defended and protected

Ríos Montt during his trial are unequivocally, in the words of Jo-Marie Burt, the "forces of impunity," what may we make of attorney Francisco Guidel's warning to Judge Barríos not to "contribute to impunity?"⁷³

Discourse continues to play an important role in the interpretation and application of Guatemalan law, even after Guatemala has, for the most part, adopted democratic institutions. Law, justice, impartiality, and other principles have no set meaning, and even in contemporary Guatemala we still find these principles being mobilized for or against impunity. For example, in 2019 President Jimmy Morales ejected CICIG from Guatemala on the grounds that it had committed a "severe violation" of Guatemalan and international law.⁷⁴ "CICIG has put at risk the security of the nation, public order, governance, respect for human rights and above all the sovereignty of the state of Guatemala," Morales claimed.⁷⁵ Placing claims like these within the broader historical battle over the themes of order, security, and, of course, law helps to illuminate the ways in which they reflect the doctrines of the Civil War. Highlighting such continuities (or discontinuities) in the discourse around the law in Guatemala exposes the ways in which the law continues to be weaponized in pursuit of particular political ends.

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74 At the time, CICIG was investigating Morales for corruption. Tom Phillips, "Guatemalan President Condemned after Ejecting UN Anti-corruption Group," *The Guardian* (London, UK), January 8, 2019, accessed May 3, 2020.

75 Phillips, "Guatemalan President."

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