Confronting the Past? The Challenge of Truth, Justice and Reparations in Guatemala

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Theme: This essay examines the politics of memory in Guatemala as a country emerging from civil war and a repressive dictatorship.

Summary: Countries emerging from civil war and repressive dictatorship have tested a variety of transitional justice mechanisms, often in combination with one another. Most have opted for truth commissions, a few have established tribunals, domestic or international, others have purged and reformed key institutions (the security forces, the intelligence apparatus and the judiciary), several have pursued reparations and the occasional country, like Spain, has simply tried to forget. This essay examines the politics of memory in Guatemala, which has been more experimental than many of its peers. Guatemalans have pursued truth, clashed over justice, confronted the challenges of reparations and tinkered with institutional reforms, the first three of which are my principal focus here.

Analysis: The Guatemalan elite and military offer a recipe for how to deal with the country’s violent past. Sitting in offices in Guatemala City, they advocate forgiving, forgetting, and focusing instead on the pressing challenges of democracy and development. ‘I believe that if we continue to look backwards there will be no future. What we have to do is make a fresh start and sit down as Guatemalans and see how to move ahead, but making sure we get results’, one landowner explains. A former Minister of Defense insists, ‘we have to forgive in order to reach our goals together. If we don’t do that, there will be no reconciliation. If deep down you’re resentful, there’s no reconciliation. If you want peace, peace should come from the heart and to have peace in your heart you must have forgiveness. If not, there’s no peace.’

Forgetting and forgiving are not choices which survivors in war-torn communities scattered throughout Guatemala’s western highlands feel like taking. As one widow says, ‘it’s like a thorn no one can remove. You don’t know what to do with the people who took part in the killing. Sometimes you think about it and wonder why it’s happened. You can’t get rid of the sorrow –the thorn–, you remember it all. It only goes when you die.’ Another puts it slightly differently, ‘I can’t, it’s in my eyes, my mind, my ears, my memory, it’s impossible to get rid of it, but remembering it always is also important because it comforts you.’ And pointing to her heart, a third maintains, ‘there’s no forgiveness here. We can’t forgive an army that murdered us. A state that murdered, massacred and destroyed our communities. We say they should pay for it.’

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Most transitional justice scholars and practitioners agree that it is neither feasible nor desirable to do what those most implicated in—and sometimes most divorced from—wartime atrocities would wish. The slate cannot be wiped clean and forgiveness—however welcome or convenient—cannot be demanded. At the same time, most also caution against too much memory and too much accountability, concerned lest either preclude the reconciliation necessary to sustain peace and strengthen democracy.

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**Guatemala’s Search for Transitional Justice**

The Guatemalan armed conflict was the subject of two investigatory commissions, an Archdiocesan Project for the Recovery of Historical Memory (the REMHI) and a Commission for Historical Clarification (CEH) established by the peace accord. Drawing on primary documents and survivor testimonies, the two reports, released in 1998 and 1999 respectively, reached essentially similar conclusions. They blamed the state and its security forces for somewhere between 90% to 93% of the 200,000 deaths and disappearances that occurred during a 36-year armed internal conflict (1960-96). The CEH went a step further, finding the army guilty of genocide against Guatemala’s Mayan population based on its analysis of data for four particularly hard-hit regions of the country.

The hope that truth would promote reconciliation was dashed by the political reactions that followed publication of the reports. On the one hand, several thousand victims and members of human rights and indigenous organizations demonstrated in the streets and crowded into a stadium to greet the release of a report that had wildly surpassed popular expectations of an official whitewash. Buoyed by the findings and its recommendations—which included a call for the prosecution of those who instigated and promoted crimes of genocide, torture and forced disappearance—, the NGO community redoubled its quest for justice. They initiated legal proceedings, timidly at home and more energetically abroad, seeking recourse to the San José-based Inter-American Court of Human Rights and to a Spanish legal system that had shown a willingness to prosecute both Pinochet and members of the Argentine military dictatorship.

Army, elite and state responses were equally swift and dramatically different. Military officers denounced the reports as biased or, as several noted, the product of ‘committees of lies’. The political battle lines thus drawn, there was more than just a war of words. Bishop Juan Gerardi was brutally murdered less than two days after presiding over the release of the REMHI’s *Guatemala Nunca Mas*. An understandably chastened President Arzu chose not to personally accept the CEH report, *Memoria del Silencio*, in February 1999 and

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played down the need to take specific measures to implement its recommendations, which urged reparations and institutional reforms, in addition to justice.

Gerardi’s assassination was only the first in a series of chilling reminders of Guatemala’s violent past. In national elections held nine months after the CEH completed its work, Guatemalans voted the Frente Republicano Guatemalteco (FRG) into office, a party founded and led by General Ríos Montt, the central architect of the genocidal policy highlighted in *Memoria del Silencio*. The campaign of violence and intimidation shifted into full gear. A clandestine security apparatus operating on the margins of power targeted forensic anthropologists, human rights activists, journalists, lawyers and judges—in almost every case individuals who sought either to uncover evidence of atrocities or to bring their perpetrators to justice. Further exacerbating the tense political climate, the FRG campaign had promised to compensate the civil self-defence militias (PACS) that had provided much of the cannon fodder for the counterinsurgency campaign and committed a substantial portion of its abuses.

Partly to defuse the politically and legally charged issue of payments to ex-PAC members along with the judicial stalemate inherited from the FRG, the newly-elected Berger administration established a *Comisión Nacional de Reparaciones* (CNR) in July 2004, with the mandate to devise a plan for reparations to victims of the armed conflict, as recommended by the CEH. Awarded an annual budget of 300 million quetzals, it was led by the respected director of the *Coordinadora Nacional de Viudas de Guatemala* (CONAVIGUA) and comprised government representatives and members of indigenous, victims and human rights organizations. Sixteen months later the government intervened, assuming control of a badly-bruised Commission that had failed as of yet to issue a single reparations payment.

*What Went Wrong?*
- *Political Commitment and Resistance*

Like any policy initiative, the effectiveness of a transitional justice programme depends on the political leadership’s commitment to shepherd the project through its various phases. It also reflects the degree of engagement, acceptance and resistance of other actors, both those involved in the process and those potentially affected by its outcome. Admittedly, some political players will be more defensive than others, more resistant to any given policy initiative than they are to another. Nonetheless, given the uncertain political context (post conflict, post dictatorship) within which unpredictable transitional justice initiatives are typically embarked upon, the political risk is especially great. Because so much is at stake for so any actors—members of both the incoming democratic regime seeking to stabilise democracy, and the outgoing regime endeavouring to protect its interests—the political game tends to be a defensive one.

This was certainly true in the Guatemalan case. Fearful of its outcome, government, armed forces and even guerrilla representatives negotiating the terms of peace assumed a defensive posture from the start, doing their best to avoid and then to water down civil society’s demands for accountability. When a CEH which was not to name names nor to serve as a prelude to justice, and which was poorly funded, pressed for time and without the power to demand documents or present witnesses, produced despite this a startling finding of army genocide, those implicated balked. Victims cheered from the sidelines, only to watch the defence tighten. Truth and justice were denied, reparations postponed and violent resistance ensued.
- Depoliticization, Dialogue and Reconciliation?

Transitional justice supporters pin enormous hopes on both process and outcomes. As they see it, a carefully planned and executed reckoning with the past actually stabilizes democracy. It does so by providing a neutral site for the discussion of highly sensitive political issues: a commission, or tribunal, led and staffed by a select group whose members, either as individuals or as a team, are considered professional and non-partisan. It then reaches out to engage former political adversaries and society at large in a process that fosters democratic values of dialogue, compromise and tolerance if not consensus. And it produces knowledge and acknowledgment of wrongs perpetrated and a commitment to repair, crucial outcomes which promote the reconciliation needed to consolidate peace and democracy.

Some transitional justice mechanisms are clearly favoured over others. Truth generally affords the greatest opportunity to achieve the cluster of goods conducive to both democratic stability and reconciliation, while trials provide the least. The key distinctions between the two are clearly labelled. In contrast to a vengeful or retributive justice dispensed by tribunals, truth (like reparations) offers a conciliatory, or restorative form of justice.

Guatemalans have not had much of an opportunity to assess the impact of legal justice. The FRG-dominated legislature, headed since 2000 by Ríos Montt, appoints the country’s high court judges, thereby guaranteeing the continued impunity the FRG favours, while the mere threat of legal accountability has triggered a violent reaction sufficient to further derail its pursuit at home and to explain the persistent search for justice abroad.

This poses something of a puzzle for the transitional justice field. On the surface, the facts confirm a conventional wisdom which sees trials as a divisive and destabilising means of accountability, unlikely to lead to reconciliation and not worth the risk to peace and democracy. Yet many Guatemalan survivors, often the best organized among them, are adamant in their continued quest for justice. ‘But how can it be possible?’, one Mayan leader explains, ‘they lead peaceful lives, have power, it’s not fair, because they’re guilty and should be punished somehow’. Despite the obstacles, survivors persist in viewing justice as a fundamental form of acknowledgement and repair, and its absence as an impediment to both democracy and reconciliation. Arguably, tensions provoked by the fight for justice may be as destabilising as the punitive outcome of a trial.

Political neutrality, dialogue and reconciliation are ideals difficult to attain everywhere, whatever the mechanism employed. The challenges are especially great in countries, like Guatemala, emerging from particularly repressive dictatorship and divisive conflict. There were no obviously neutral or professional figures beyond reproach, either domestic or international, to lead Guatemala’s truth commissions. The process itself was also neither apolitical, nor conducive to dialogue. Perpetrators and victims understood the political stakes involved and acted accordingly. Guatemala’s military withheld evidence, while survivors exercised the power of their numbers. The successful mobilisation of a fraction of the counterinsurgency’s victims to give testimony helped the commission reach its verdict of army genocide. Not surprisingly, the unexpectedly harsh outcome which raised the possibility of new forms of accountability generated greater polarisation rather than reconciliation. Ever shriller accusations of ‘committees of lies’, staffed by guerrilla priests and unrepentant leftists, at the same time as escalating intimidation and violence
confronted the mounting demands for real and deserved justice by victims’ associations and human rights organizations.

The government’s decision to establish a reparations commission was a political manoeuvre, undertaken in an effort to extricate itself from something of a quagmire caused by the lingering debate over payments to former PAC members along with unsettled (and unsettling) claims for justice upon which survivors continued to insist. The Berger administration hoped the PNR would enable it to defuse political tensions by offering compensation to indisputably worthy victims of the armed conflict and, more generally, by substituting material and symbolic reparations for legal justice.

But its plan failed. The government merely succeeded in transferring unresolved differences from Congress and the courts into a new arena, which soon became a magnet of its own for battles, familiar and fresh, over how to confront the past. There was a great deal of dialogue, but little compromise, tolerance or consensus. Indigenous, human rights and victims’ representatives on the PNR clashed with government delegates over whether justice constituted a form of repair, and if genocide should serve as the basis for determining a compensatory scale. Largely in agreement on the issue of justice and genocide, civil society representatives bickered amongst themselves over programmatic priorities, approaches and the administration of funds. And all these differences spilled over, involving outsiders with a stake in the process – on this occasion not just the perpetrators of human rights abuses –. Conflicts also divided communities of survivors, separating those who stood to gain from those who feared they would not figure among PNR recipients. Finally, as programmatic paralysis set in, survivors became increasingly vocal opponents of an initiative that had raised expectations and failed to deliver, victimising them once again in the process.

- Unfulfilled Promises?
Transitional justice mechanisms may disappoint most perhaps because they overreach. Their advocates typically find themselves making a case for confronting a past which remains a ‘thorn’ in the lives of the powerless but which many powerful actors, for a variety of reasons, would much rather put behind them, ‘wiping the slate clean’. In winning over the sceptics, therefore, they tend to promise more than they can deliver, insisting that the envisioned process of reckoning will have tangible and almost immediate benefits not just for victim-survivors but for society as a whole.

This has been especially apparent in the case of the most popular and studied mechanism, the truth commission. Its champions stress the psychological benefit truth-telling provides survivors of mass violence who are finally listened to, heard and affirmed. Authors speak of surviving victims breaking a ‘conspiracy of silence’, overcoming their ‘isolation, loneliness and mistrust’, ‘defeating their fear’ and ‘retrieving their human dignity’. They also insist that truth commissions aid both survivors and society as a whole come to terms with the past partly through the conciliatory knowledge, or understanding, they acquire in the process. Everyone also gains, moreover, because the truth gathered comes to constitute a historical record that shapes the country’s political future, promising to prevent a recurrence of mass violence: ‘never again’.

Each of these aspirations informed the Guatemalan truth commissions. Yet the actual Guatemalan experience was quite different. While some survivors ‘released what they had inside’ for the first time, as they put it, more often than not those who gave their testimony
had already told their stories before, while the vast majority who did not refrained out of fear, sadness or because no one asked them to tell. Those who told knew they would feel sadder afterwards. But they testified anyway, because they wanted others to know what happened to them and because they hoped to retrieve their dignity through reparations they believed would follow. As we know, however, the truth gathered was hardly acknowledged, and has been more polarising and conducive to violence than to reconciliation and peace.

The Reparations Commission, which pledged to dignify victims through reparations also failed to live up to its promise. The PNR never delivered reparations, in part because its process failed to advance the dignification of victims. Indigenous delegates to the PNR clashed with non-Mayan representatives over more than tactics and strategy. Indigenous insistence on culturally appropriate reparations also drew the resistance and the scorn of ladino members who accused them of seeking to ‘indianise the process’. ‘Yes, we wanted to restore the customs of our elders, our spiritual guides, and as a memorial we want the restoration of our shrines that were destroyed by the army’, a Mayan delegate explained; ‘but they insisted on Western therapy, and for them a memorial means placing a cross or a sign in a park saying something like “a call for reconciliation”. But for us that doesn’t mean much’. So long as the PNR was a mirror reflection of a discriminatory Guatemalan society it would be unable to fulfil its mandate, dignifying individuals, communities and a culture that had historically been denigrated.

**Conclusion: What is to be done?**

By now it may seem inevitable that truth, justice and reparations in Guatemala would disappoint. Their advocates overreached: they exaggerated the potential of transitional justice mechanisms to advance reconciliation and democracy in a society that had known too little of both, in which wounds remained raw, and in which there was no incentive for those who could have made a real difference to cooperate.

But failure was never inevitable. It became so because the crucial transitional mechanism went missing. Reform, of institutions and of attitudes, needed to precede the pursuit of truth, justice and reparations, or at least to accompany the efforts. After all, survivors will only testify when they no longer fear reprisals from a neighbour who perpetrated the harm, trials can only occur when the rule of law prevails, and repairs can only dignify a culture that is respected. Reform of the security apparatus, judicial overhaul and the introduction of a legal and educational framework that tackles deeply embedded racism, were thus required to make transitional justice work. Yet because these problems were too entrenched and because they lacked necessary political support, truth and reparations came to serve instead as substitutes for more fundamental change, with the misplaced hope that they might yield a foundation and an impetus for crucial reforms. As Guatemalans often say, ‘how are we going to become reconciled if we’ve never been conciliated?’.

Events of the past summer have reminded Guatemalans that the slate cannot be wiped clean. In July firemen summoned to investigate a feared gas leak in a munitions plant, instead found a vast lost police archive. The plant’s vermin-infested rooms contained piles of documents lying in bundles, tossed in plastic bags and meticulously filed in cabinets, their doors inscribed as to their content –‘assassinations’, ‘disappearances’–. The firemen had stumbled upon an official history of Guatemala’s counterinsurgency, data which security forces had consistently denied existed. One month later, massive mudslides coming on the heels of Hurricane Stan buried indigenous communities in the western
highlands. Stan destroyed the lives and livelihoods of those who had already lost everything once, or sometimes twice, before –during the armed conflict and earlier, during a massive earthquake that shook parts of those same highlands in 1976–. It was in the rubble of the earthquake that the military lost its struggle for the hearts and minds of Guatemala’s indigenous poor to a guerrilla movement which capitalised on a state response of total disregard for the suffering endured.

Even before these shocks, Guatemala had begun to show hopeful signs of change. Military and judicial reforms were gathering steam, laws were passed penalising discrimination and educational reforms were introduced recognising Guatemala’s multiculturalism. The state has now been granted another opportunity, which it can ill afford to lose, to pursue comprehensive transitional justice. Much hinges on government support for the cataloguing and dissemination of archive contents, bound to yield new truths and intensified demands for legal justice and security reform. By coming to the assistance of survivors of Stan in ways that affirm their human dignity, the government can also turn an important historical page. While it cannot remove the ‘thorn’, it can begin to foster a new relationship between the country’s elites and its indigenous majority, premised on a commitment to respect, tolerance and equality, the beginning of a process of conciliation.