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**The Experience of Guatemalan Women who Seek
Asylum in United States Courts:
A Legacy of Paternalism and Gendered Violence**

LATIN AMERICAN STUDIES HONORS THESIS

Nina Harris

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Advisor, First Reader: Professor Kristina Mani

Other Readers: Professor Jan Cooper and Professor Patrick O'Connor

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ABSTRACT

Karen Musalo, a leading asylum attorney, explains, “In the United States, few refugee issues have been as controversial as that of gender asylum.” Despite perceived progress, inconsistent judicial decisions engender doubts about the viability of gender-based asylum cases. The U.S. courts continue to see violence against women as a personal or family matter rather than a pattern of accepted social behavior supported by the political and legal authorities. Using cases from Guatemalan women seeking asylum, my research scrutinizes the asylum system, and shows how the U.S. furthers a colonial, paternalistic narrative—allowing U.S. judges, adjudicators, and policymakers to decide who is worthy—or not worthy—of U.S. protection. The asylum system interacts with an embedded structure of power that disregards the impact of the historical relationship between the U.S. and Guatemala. Using a textual study of specific case documents, this paper analyzes the experience, ability, and process of seeking asylum as a method for examining the legacies of paternalism. In asylum cases, adjudicators can make decisions based on their own bias against a woman’s testimony. Judges can require women to reshape their experience to meet the provisions of the law and make rulings that deemphasize the experience of violence. My specific study of Guatemalan women seeking asylum shows how factual distortions, institutionalized prejudice, and misogyny impact the asylum process.

INTRODUCTION

Inconsistencies in United States asylum decisions are not new, but the recent hyper-politicization of immigration policy has elevated the stakes. President Donald Trump is unabashedly anti-immigrant and has referred to immigrants as “criminals” and even “animals.”¹ President Trump has insisted to the American public and to the international community that the asylum system is a “loophole.”² To defend his perspective, he cites policies which allow unauthorized immigrants to be “caught and released” into the United States. In his election campaign, President Trump articulated plans to reduce immigration. The rallying cry of “Build the Wall!” saturated national and international media. Though the Trumpian shibboleth remains incomplete, the Administration has successfully constructed daunting boundaries to limit migration.

In his first days in office, President Trump issued the “Muslim Ban” (Executive Order 13769), which suspended refugee admissions from an idiosyncratic list of countries where Muslims reside; the list included Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. The final order that survived legal challenge decreased the number of refugees accepted into the United States during Fiscal Year 2017 by about 50%.³ The Trump Administration also enhanced regulations for establishing credibility during the initial asylum interview. Increasing these restrictions has placed severe limits on the ability of asylum seekers to navigate the adjudication process.⁴ In May 2018, Attorney General Sessions announced the “Zero Tolerance Policy” for

¹ Julie Hirschfeld Davis, “Trump Calls Some Unauthorized Immigrants ‘Animals’ in Rant,” *The New York Times* (2018).

² Miriam Jordan, “A Day After It Was Filed, New Trump Asylum Policy Gets Hit in Court,” *The New York Times* (2019).

³ United States Office of the President, *Executive Order 13769: Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States*, 3 C.F.R. (2017).

⁴ United States Citizenship and Immigration Services, “Reasonable Fear of Persecution and Torture Determinations,” Asylum Division (2017).

illegal entry along the Southwest border. This policy created the grounds for U.S. attorneys to prosecute asylum seekers as criminals and justify family separation.⁵ In November 2018, the Department of Homeland Security announced the “Remain in Mexico” policy; migrants who arrive at the United States Southern border without documentation must wait in Mexico throughout their immigration proceedings.⁶ In April 2019, under the premise of “restoring integrity to our immigration system,” the Trump Administration issued a memorandum to begin requiring fees for asylum applications, making the United States one of only four countries to charge people for seeking asylum.⁷ President Trump also increased the regular citizenship application fee, and the renewal fee for Deferred Action for Childhood Arrivals (DACA).⁸ In July 2019, the Trump Administration threatened to impose tariffs, enforce travel bans, and tax remittances against Guatemala unless this developing country in Central America signed the Safe Third Country Agreement.⁹ This policy allows the United States to deport and repatriate asylum seekers if they pass through this “safe third country” during migration.¹⁰ As 2020 began, President Trump reduced legal refugee admissions to 18,000 human beings, a striking decrease from the 110,000 admittances President Obama established at the end of his term.¹¹

⁵ United States Department of Justice, “Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry,” Office of Public Affairs (2018).

⁶ Kirstjen M. Nielson, “Policy Guidance for Implementation of the Migrant Protection Protocols,” Department of Homeland Security (2019).

⁷ Zolan Kanno-Youngs and Miriam Jordan, “New Trump Administration Proposal Would Charge Asylum Seekers an Application Fee,” *The New York Times* (November 8, 2019).

⁸ United States Office of the President, *Presidential Memorandum on Additional Measures to Enhance Border Security and Restore Integrity to Our Immigration System*, 3 C.F.R. (2019).

⁹ Steve Holland, “Guatemala Agrees to New Migration Measures to Avoid Trump Sanctions Threat,” *Thomson Reuters News* (July 27, 2019).

¹⁰ Office of Treaty Affairs, U.S. Department of State, *Guatemala (19-1115)—Agreement on Cooperation Regarding the Examination of Protected Claims* (July 26, 2019).

¹¹ United States Office of the President, *Presidential Determination on Refugee Admissions for Fiscal Year 2020*, 3 C.F.R. (November 1, 2019).

Under current policy, refugees seeking protection in the form of asylum are treated as criminals. Upon entry into the United States, many asylum seekers are forcibly separated from their families, experience cursory immigration hearings, and are thrown into deportation centers. If the asylum seeker is not detained in the United States, the Remain in Mexico Policy and the Safe-Third Party Agreement subject the applicant for “safe” refuge to further harm.

Women who claim asylum following gender-based violence have always faced particular scrutiny. They must negotiate the suspicion that their claims do not meet the requirements of asylum law. Asylum law stipulates five possible grounds to seek protection: race, religion, nationality, political opinion (PO), or membership in a particular social group (PSG)—this final ground is the most nebulous. Asylum seekers fleeing gender-based violence—including intimate partner violence, sexual violence, gang-related violence, and violence against LGBTQ people—most often utilize the PSG ground. In recent years, Central American women are seeking asylum following gender-based harms at increasing rates.¹² Public officials who discuss the legality and purpose of asylum jurisprudence often cite the increase in women asylum seekers as a reason for heightened examination of the asylum system.

In 2009, an Immigration Judge granted Rody Alvarado, a Guatemalan woman, asylum after an exhaustive 14-year odyssey within the U.S. courts and immigration system. Ms. Alvarado had fled Guatemala following years of domestic violence. Following this case and a related Board of Immigration Appeals¹³ decision in the *Matter of A-R-C-G-* (2014), using the particular social group ground to seek asylum following gender-based violence appeared to be

¹² Cecilia Menjivar and Shannon Drysdale Walsh, “Gender-based Violence in Central America and Women Asylum Seekers in the United States,” *Translational Criminology*, (Winter 2019).

¹³ The Board of Immigration Appeals (The Board or BIA) is an administrative appellate panel of judges that reviews the decisions of immigration courts. BIA decisions can overturn or uphold the decision by a lower court. Most BIA decisions are unpublished; however, some decisions are selected for publication and become precedential law.

settled law and policy. However, a recent decision by the Trump Administration, *the Matter of A-B-*, has shattered the PSG ground in cases of gender-based violence. In the current political environment, gender-based asylum has become even more tenuous.

The immigration system includes asylum officers, immigration judges, appeals courts, appellate judges, the Board of Immigration Appeals, Federal Court of Appeals, and on occasion, the Supreme Court. Asylum seekers who are not guaranteed representation must navigate this labyrinth and struggle against hopelessness. The *Matter of A-B-* illuminates the complexities that limit, challenge, and ultimately block women's ability to seek asylum in the United States.

Ms. A.B. entered the U.S. to seek protection following fifteen years of extreme abuse by her ex-husband.¹⁴ Immigration Judge Couch did not find her claim credible and denied her asylum application.¹⁵ Ms. A.B. appealed to the Board of Immigration Appeals; the three-judge panel found her testimony credible and asserted that her PSG followed precedent. The BIA remanded the case to the Charlotte Immigration Court pending further background checks. Judge Couch refused to re-hear her case. Attorney General (AG) Jefferson Sessions took advantage of this divergence of opinion, asserting a rarely-used power under the 1980 Refugee Act authorizing U.S. Attorneys General to remand cases to themselves. AG Sessions specifically questioned "whether, and under what circumstances, being a victim of private criminal activity constitutes a cognizable 'particular social group' for purposes of an application for asylum or withholding of removal."¹⁶ On June 11, 2018, Attorney General Sessions overturned the BIA

¹⁴ *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018). This decision has been amply documented by the Center for Gender and Refugee Studies (CGRS). CGRS provides legal support, produces research, and engages in appellate litigation to protect the rights of refugee women, children, LGBT individuals, and others fleeing persecution. For more information, please turn to the CGRS website: <https://cgrs.uchastings.edu/about>.

¹⁵ In August 2019, President Trump promoted Judge Stuart Couch to the Board of Immigration Appeals.

¹⁶ *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), 317.

ruling and denied Ms. A.B. asylum. This decision has had tremendous impact. The *Matter of A-B* overturned years of legal precedent that established avenues to seek asylum following gender-based harms. AG Sessions' decision misunderstands the reality of violence against women by placing gender-based violence in the private sphere.

Karen Musalo, UC Hastings law professor and asylum authority explains, "In the United States, few refugee issues have been as controversial as that of gender asylum."¹⁷ To explain and critique this controversy, I will scrutinize the U.S. asylum system, which allows judges, adjudicators, and policymakers to determine who deserves U.S. protection. These decisions function within a paternalistic system that reproduces forms of power reminiscent of colonialism. To properly address this systemic injustice, I apply a feminist anti-colonial approach to fully demonstrate the existence of such paternalistic roots.

The discourse within asylum decisions reveals how the U.S. judicial system exercises undue and imbalanced power over asylum seekers. Further, asylum decisions provide insight into the global treatment of women. The justice establishment's positions illuminate how gender *operates* as a form of marginalization to perpetuate the "differential humanity" of colonialism.¹⁸ Examining asylum decisions also writes a larger story: how power is *practiced* in the United States. Gender-based asylum case law implicates the colonial nature of the relationship between the United States and Guatemala, a paternalistic structure that emphasizes superiority and

¹⁷ Karen Musalo, "A Short History of Gender Asylum in the United States: Resistance and Ambivalence May Very Slowly Be Inching Towards Recognition of Women's Claims," *Refugee Survey Quarterly*, Vol. 29, No. 2 (January 2010), 46.

¹⁸ Lucy Mayblin defines the concept of "differential humanity" as a term used to make sense of modern hostility toward asylum seekers. The process of colonization created different "categories of man," and assigned levels of worth to individuals depending on their position within this power structure. "Differential humanity" underscores how human bodies are ordered depending on their "worth." I extend Mayblin's theory to the experience of women immigrants, who are further marginalized within this system of "worth" because of their gender. Lucy Mayblin, *Asylum after Empire: Colonial Legacies in the Politics of Asylum Seeking*, (Lanham, Maryland: Rowman & Littlefield International, 2018), 37

control. The paternalistic power relationship—which extends back decades—is emblematic of systems of power and control that the U.S. has employed in other countries in Latin America. The U.S. tested practices in Guatemala that later expanded across the region. As a result, this analysis of recent Guatemalan history illuminates broader trends across the region.

In Chapter I, I provide a review of the frameworks that have helped to situate my argument. I discuss the developments of feminist international relations and provide an explication of a feminist, anti-colonial approach. The discussion of these feminist theories underscores the lens I apply in the chapters that follow. The methodology section explains the decision to utilize a textual analysis, as well as the process I used to obtain the case documents.

Chapter II explores the historical relationship between the United States and Guatemala, in order to situate the paternalistic nature of asylum. I review the 1954 U.S. backed coup d'état which overthrew the democratically-elected president and installed a military dictatorship. During the thirty-six-year Guatemalan Civil War which followed, the United States provided weaponry, military training, and guidance that led Guatemalans to commit acts of mass killings, disappearances, and rape. The end of the Civil War did not end the violence in Guatemala. I examine the connections between United States policy and increased drug and gang violence in post-war Guatemala. I explore how the genocidal Civil War solidified an enduring culture of violence—in particular gender-based violence—which created an impetus for survivors to seek asylum in the United States.

Chapter III examines the culture of gender-based violence in Guatemala, and its relationship to the Civil War, which established a cultural norm that accepts violent aggression. I discuss the realities of domestic violence, femicide, non-intimate partner violence, and gang violence, and identify how these realities are impacted by socioeconomic status and indigeneity.

I evaluate the written legal guarantees and systems of protection and security within the Guatemalan state, demonstrating the systemic weakness and glaring levels of impunity. The system's abject failures result in hopelessness and provide the stimulus for Guatemalan women to take the drastic step of leaving their home and family to seek protection in the United States.

Chapter IV offers an explanation of the international definition and evolution of the asylum system. I provide a succinct review of regulations within United States asylum law and policies.

With this contextualization, Chapter V, the body of this research, focuses on the human beings impacted by asylum policy. I interrogate the marginalization and reproduction of victimhood by addressing the gendered factors that influence asylum. A textual analysis on the legal documents of 24 gender-based asylum cases supports this examination. Specifically, I consider the issue of victimization, examine the limitations of the "particular social group" rubric, and explore how this distortion demoralizes the asylum seeker. The next section unpacks the challenges for a woman who must prove she experienced "persecution," a problematic linguistic model which misnames gendered violence as a private act. To prove persecution, asylum seekers must establish a nexus claim—a connection between acts of violence and the stated enumerated ground—and meet a judge's determination of credibility. The next section discusses the gendered structure within the use of narrative, and how the act of storytelling creates a problematic dichotomy separating the "deserving" from the "undeserving." I have chosen to examine the particular experience of Guatemalan women seeking asylum to showcase how factual distortions, institutionalized prejudice, and misogyny impact the asylum process.

In sum, this thesis argues that the roots of the controversiality of gender-based asylum lie in a paternalistic structure that continues to reproduce harm. Despite a philosophical framework

in which asylum is declared a universal right, I conclude that the United States and the developed world in general behave otherwise. Instead, I explore how the United States asylum process reflects the U.S. perception of Guatemalan women, rooted in colonial power.

CHAPTER I: EPISTEMOLOGY AND METHODS
An Anti-colonial Feminist Understanding of Asylum

Examining United States asylum law requires a recognition of its transnational nature. In this chapter, I discuss the theoretical frameworks that have influenced my central argument: the United States asylum system is rooted in a paternalistic power structure indicative of colonialism. In International Relations, paternalistic relationships create the assumption that people from the developed world are superior to people from the less developed world. This structure facilitates hierarchies of power where “liberal states need to take care of backward peoples or lower races.”¹⁹ In this thesis, I define paternalism as actions that articulate power and superiority by enforcing control. Paternalistic acts of control favor one person’s or government’s choices over another’s, with the implied assumption that the power is asserted over another for that other’s own good.²⁰ To begin this argument, I summarize the advancement of feminist international relations, a perspective that developed from discourse in international law and international relations. This project also utilizes an anti-colonial feminist approach to articulate the roots of power. When understood in unison, these feminist theories inform the lens I apply to asylum law. I conclude this chapter with a discussion of my primary methodology, a textual analysis of relevant case documents.

¹⁹ In Hobson’s analysis, the “developed” and “less developed” world are categorized as “imperial powers” and “backwards people.” David Long, “Paternalism and the Internationalization of Imperialism: J.A. Hobson and the International Government of the “Lower Races,” in *Imperialism and Internationalism in the Discipline of International Relations*, edited by David Long and Brian C. Schmidt, (Albany, New York: SUNY Press, 2005), 72.

²⁰ David Long explains: “From a feminist perspective, the metaphor of the parent-child is in fact paternalistic in a more specific sense [...] It might indeed be argued that the discourse of paternalism feminizes as well as infantilizes the other in order to create a domesticated context in which the usual rules of public order and property in international relations can be suspended or deferred, and coercive policies justified.” Through paternalism, the “other” is positioned as inferior, which validates the use of “coercive” (in this thesis: controlling) political agendas. Ibid, 73. Citing to J.A. Hobson, *Imperialism: A Study*, (New York, New York: James Pott and Company, 1902).

Part I: Feminist International Relations

United States asylum policy was formulated in recognition of International Law (IL). I turn to IL theory as a means to understand the imbalanced relationship between the United States and Guatemala.²¹ The discipline of IL centers around the rules and norms that are accepted by states in the international community. Without any singular overarching enforcer, theorists puzzle over why states abide by the provisions set by IL. Jana Von Stein explains that the lack of a clear authority to oversee decisions creates challenges. Compliance with international law becomes a “problem of enforcement.”²² Countries often use other strategies to engender compliance: inducements, reciprocity, and reputation. I find that theories of international law cannot fully articulate why countries comply with international standards. However, international law “serves as a framework for the practice of stable and organized international relations (IR).”²³ International Relations provides scaffolding to analyze the structure of migration law and asylum policy.

International Relations emerged with the two World Wars as a sub-discipline within political science.²⁴ IR used methods from natural science and economics to build theory—with a primary focus on conflict and war.²⁵ Traditional IR scholarship utilized primarily positivist methods, asserting that the social world can be examined using the same methods as the natural world, and establishing a focus on the use of neutral facts.²⁶ Feminist International Relations

²¹ United States asylum law developed in response to the United Nations’ 1951 Refugee Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.

²² Jana Von Stein, “Compliance with International Law,” *Oxford Research Encyclopedia of International Studies*, (November 20, 2017).

²³ Von Stein, “Compliance with International Law.”

²⁴ J. Ann Tickner, “Gendering a Discipline: Some Feminist Methodological Contributions to International Relations.” *Signs* Vol. 30, No. 4 (2005), 2175.

²⁵ *Ibid*, 2175.

²⁶ *Ibid*, 2176.

emerged in the 1980s as part of a broader critique to the positivist standpoint as an inadequate and incomplete approach to IR studies. Theorists expressed skepticism of traditional knowledge-building that centered masculine views and men's lives. Feminist IR scholars critiqued mainstream IR for being uninterested in the ways in which gendered concepts influenced international events, including conflict. The new strand of IR gave scholars greater purchase to the kinds of problems that exist in the global world.

In 1988, the IR journal *Millennium* devoted a special issue to women in international relations. This issue contained a critique by scholar Fred Halliday. He emphasized that traditional IR theory, rendered from a masculine viewpoint, excludes women from study—hindering the ability of IR theory to explain global political realities.²⁷ In a subsequent issue, scholars Rebecca Grant and Kathleen Newland argued that IR theory was severely restricted by a focus on conflict and outright war, traditional “manly” pursuits.²⁸ This militarized focus sidelined “soft politics” (read: feminine politics), which emphasized structural injustices that often lead to war. Ann Tickner contends that many feminist theorists of IR are “post-positivist,” challenging the perspective that states and the global world must be studied objectively, numerically.²⁹ Instead, Tickner asserts that feminist IR scholars rely on “narrative-based, interpretative, and ethnographic methodologies” which focus on the lived experiences of people as a method of understanding the social components of politics.³⁰ This approach threatened traditional IR scholarship. As Tickner explained, feminist IR scholars developed “distinctive

²⁷ Jacqui True, "Feminism and Gender Studies in International Relations Theory," *Oxford Research Encyclopedia of International Studies* (November 30, 2017).

²⁸ Rebecca Grant and Kathleen Newland, *Gender and International Relations*, (Bloomington, Indiana: Indiana University Press, 1991).

²⁹ J. Ann Tickner, "You Just Don't Understand: Troubled Engagements between Feminists and IR Theorists," *International Studies Quarterly*, Vol. 41, No. 4 (1997), 622.

³⁰ True, "Feminism and Gender Studies in International Relations Theory."

methodological perspectives or frameworks which fundamentally challenges the often unseen androcentric or masculine biases in the way that knowledge has traditionally been constructed.”³¹ Brooke Ackerly and Jacqui True claim that feminist writers contribute to the field of IR by asking specific questions about the representation of women in conversations about international security and prosperity.³²

Feminist IR is “bottom up”³³: focusing on the lives of the disadvantaged to address and transform institutional structure. Annica Kronsell writes, “the personal is the international.”³⁴ The study of women’s lives allows for a better understanding of the pattern of global politics.³⁵ Tickner writes, “Whereas much of IR is focused on explaining the behavior of states, feminists are motivated by emancipatory goals — investigating the often disadvantaged lives of women within states or international institutions and structures in order to change them,”³⁶ Emphasizing the significance of gender in the structures of international life, feminist IR focuses on the individual experience. The lived realities of one woman become useful in examining the wider context of implicit gendered power relations by providing a specific subject of study. Feminist

³¹ J. Ann Tickner, “Feminism Meets International Relations: Some Methodological Issues.” In *Feminist Methodologies for International Relations*, edited by Brooke A. Ackerly, Maria Stern, and Jacqui True, (Cambridge, United Kingdom: Cambridge University Press, 2006), 20.

³² Brooke A. Ackerly and Jacqui True, “Studying the Struggles and Wishes of the Age: Feminist Theoretical Methodology and Feminist Theoretical Methods.” In *Feminist Methodologies for International Relations*, edited by Brooke A. Ackerly, Maria Stern, and Jacqui True, (Cambridge: Cambridge University Press, 2006), 243.

³³ J. Ann Tickner, “Gendering a Discipline: Some Feminist Methodological Contributions to International Relations,” 2182.

³⁴ Annica Kronsell, “Methods for Studying Silences: Gender Analysis in Instructions of Hegemonic Masculinity” In *Feminist Methodologies for International Relations*, edited by Brooke A. Ackerly, Maria Stern, and Jacqui True, (Cambridge: Cambridge University Press, 2006), 127.

³⁵ Ibid.

³⁶ J. Ann Tickner, “Gendering a Discipline: Some Feminist Methodological Contributions to International Relations,” 2178.

IR argues that to understand social reality, studying the perspectives of people at the margins or on the lower rungs of the power hierarchy provides an essential view.³⁷

Feminist IR is particularly necessary when critiquing the complex power structures relevant to the study of asylum. Those seeking asylum are supplicants, on bent knee, literally begging for safety. Asylum seekers are on the lowest rungs of the power system and live at the margin of their society. Only by fully understanding the specific experience of individual women seeking asylum can we understand the wider dimension of the international power relationship. As Bina D'Costa explains, an “unresolved past has the power to ferociously destabilize the present.”³⁸ D'Costa affirms the process of studying marginalized groups that have often been excluded from the body of produced knowledge, in order to create a more complete picture of nation building.³⁹ D'Costa defines marginalization as a “social status linked to particular identities or social groups.”⁴⁰ Women remain marginal in traditional power hierarchies. Refugees and immigrants are marginalized further in developed nations due to nationality, ethnicity, and language ability.⁴¹ In Guatemala, societal standards inform gender roles that implicate women's ability to act with autonomy. I draw on the feminist IR strategy of analyzing marginalized people by highlighting the ways in which women are treated within Guatemala. This methodology allows for conclusions about political realities in Guatemala, and the compelling needs for migration.

³⁷ S. Laurel Weldon, “Inclusion and Understanding: A Collective Methodology for Feminist International Relations.” Chapter. In *Feminist Methodologies for International Relations*, edited by Brooke A. Ackerly, Maria Stern, and Jacqui True, (Cambridge, United Kingdom: Cambridge University Press, 2006), 79.

³⁸ Bina D'Costa, “Marginalized Identity: New Frontiers of Research for IR?” Chapter. In *Feminist Methodologies for International Relations*, edited by Brooke A. Ackerly, Maria Stern, and Jacqui True, (Cambridge, United Kingdom: Cambridge University Press, 2006), 129.

³⁹ Ibid, 129.

⁴⁰ Ibid, 130.

⁴¹ Ibid, 130.

Part II: From Colonialism and Coloniality to a Feminist Anti-Colonial Approach

In this research project, I assert that recognizing the impacts of marginalization requires a specific awareness of the legacies of colonialism, and the effects of this historical relationship on individuals who seek asylum. Arpita Chakraborty writes that the “ghost of colonialism is not yet dead, and every now and then it raises its ugly head.”⁴² Lucy Mayblin defines colonialism as “a form of domination, the control of individuals or groups over the territory and or behavior of other individuals or groups.”⁴³ Mayblin explains that while historians now view colonialism as a “dirty business,” conducted by malevolent opportunists, early historians often accepted the colonists self-serving argument that they were engaged in a “praise-worthy endeavor” enacted by great nation benefactors who volunteer to save the “wretched, the savage, the unfortunate.”⁴⁴

Anibal Quijano defined this hierarchy as the “coloniality of power.”⁴⁵ This system reduced and dehumanized the colonized, creating a structure of power where certain individual’s rights—to land, education, healthcare, and opportunity—are more worthy than other individuals’.⁴⁶ The idea of modernity, which orders humanity into either past or present/future, supports colonialism. Modern states view less developed peoples as backward and unworthy, allowing colonists to assert that human rights deemed fundamental in their own country are actually “earned through promotion into the ranks of the modern.”⁴⁷ I utilize this idea to

⁴² Arpita Chakraborty, “Can postcolonial feminism revive international relations?,” *Economic and Political Weekly* 52, no. 20 (2017), 53.

⁴³ Lucy Mayblin, *Asylum after Empire: Colonial Legacies in the Politics of Asylum Seeking*, (Lanham, Maryland: Rowman & Littlefield International, 2018), 8.

⁴⁴ *Ibid*, 8.

⁴⁵ Anibal Quijano, “Coloniality of Power and Eurocentrism in Latin America.” *International Sociology* 15, no. 2 (June 2000).

⁴⁶ Maria Lugones, “Toward a Decolonial Feminism.” *Hypatia* Vol. 25, No. 4 (2010), 743.

⁴⁷ *Ibid*, 740.

formulate my argument that the asylum system is rooted in modernity. Asylum seekers must “earn” the right to safety.

This dichotomous relationship between entitled human and non-entitled human in the structure of colonialism was further reproduced in categorizations of men and women. In “Toward a Decolonial Feminism,” María Lugones argues that Quijano’s framework is too narrow: it does not account for the effects of gender relationships. She asserts that the very existence of gendered power distinctions is rooted in coloniality. Therefore, questioning the ways in which gender is a colonial imposition becomes the foundation of decolonial work. As colonialism expanded, the Western man imposed a “non-human” identity on the colonized which enforced conceptions of man and woman. Lugones argues that understanding colonialism and the “capitalist world system of power” requires analyzing the “intersection of gender, class, and race.” Engaging with work of feminists of color, Lugones showcases how the sophisticated organization of people by gender mirrored colonial production of racial hierarchies. In Lugones’ argument, decolonial work must explore how women have been “subalternized,” systematically banished from the hierarchies of power in the colony.⁴⁸ Lugones proposes that feminist researchers must “learn about each other as resisters to the coloniality of gender at the colonial difference.”⁴⁹ Instead of attempting to erase the colonial difference, Lugones calls on feminist scholars to stress recognition. Lugones’ thinking informs my perception of how Guatemalan women exist within the coloniality of gender. In order to perform an anticolonial feminist analysis of the asylum system, I first articulate how women are “subalternized” before entry, and

⁴⁸ Lugones utilizes the term decolonial to address the systematic development of unequal power. In this thesis, I use the term anti-colonial; however, I similarly emphasize how the actions of colonial powers have left Guatemalan women in positions of inferiority. Ibid, 747.

⁴⁹ Ibid, 753.

then how they are subjugated further in the judicial system, a system that fails to recognize the impact of past colonial relationships.

Gayatri Chakravorty Spivak provides further analysis about the production of the subaltern. She writes, “The ‘third world woman,’ [is] silenced [...] through a form of ventriloquism.”⁵⁰ Through the guise of providing a voice to the oppressed, Western academics erroneously position themselves as “knowers of and spokespersons for the subaltern.”⁵¹ This false representation can be addressed by incorporating a feminist response to colonialism.⁵² To grapple with the unfinished nature of colonization, which maintains structures of power, the observer should recognize the process of representation.

I avoid false representation by incorporating an anti-colonial feminist perspective. This form of analysis provides theoretical and methodological frameworks to perform cross-cultural research. In “Decolonization is Not a Metaphor,” Eve Tuck and K Wayne Yang warn that colonial structures of power can be reproduced during efforts to decolonize.⁵³ They argue that in order to achieve authentic decolonization, work must include “giving back land and relations to land that have been taken.”⁵⁴ Often conversations that use the phrase “decolonize” fail to include this step, making decolonization a metaphor. By using the term decolonization to describe all work that struggles against imperialism, researchers and activists perform “moves to innocence.”⁵⁵ Tuck and Yang describe these actions as sets of “distractions and diversions” that

⁵⁰ Breny Mendoza. “Coloniality of Gender and Power: From Postcoloniality to Decoloniality.” In *The Oxford Handbook of Feminist Theory*, edited by Lisa Disch and Mary Hawkesworth, (Oxford, United Kingdom: Oxford University Press, 2016).

⁵¹ Ibid.

⁵² Gayatri Chakravorty Spivak, “Can the Subaltern Speak?” In *Marxism and the Interpretation of Culture*, edited by Cary Nelson and Lawrence Grossber (1988), 271–313.

⁵³ Eve Tuck and K. Wayne Yang, “Decolonization is not a metaphor,” *Decolonization: Indigeneity, Education & Society*, Vol. 1, no. 1 (2012), 1-40.

⁵⁴ Ibid, 7.

⁵⁵ Ibid, 3.

do not actually support decolonization.⁵⁶ This work falls within the category of social justice activism—but should be labeled anti-colonial.⁵⁷ This research does not focus on returning colonized land. Therefore, to avoid performing the “metaphor” of decolonization, I utilize an anti-colonial lens in my evaluation of the asylum system. This system often uses and reproduces paternalistic, colonial thinking and practice as those in power decide whom among the many are worthy of humanitarian aid. Applying an anti-colonial lens to the asylum system reframes the discussion of power. I incorporate anti-colonial praxis by discussing the continuing injustice within the system through an examination of issues that are hidden or sidelined.

In “Decolonizing Feminism: Challenging Connections between Settler Colonialism and Heteropatriarchy”, authors Maile Arvin, Eve Tuck, and Angie Morrill argue that feminist theory overlooks two connected issues: The United States is a settler colonial nation-state, and settler colonialism is rooted in gendered structures. Therefore, feminist scholarship must focus on the still-functioning structure of settler colonialism, and how this structure affects marginalized people.⁵⁸ The U.S., by definition an immigrant country, evolved through notions of white supremacy and heteropatriarchy. Since the beginning of U.S. settlement, people have been racialized and gendered.⁵⁹ Studies of indigenous people, or other marginalized peoples, often remain rooted in colonialism. Settler colonialism, Arvin, Tuck, and Morrill explain, is characterized by a drive “to make itself seem natural, without origin (and without end), and

⁵⁶ Ibid, 21.

⁵⁷ Ibid, 19.

⁵⁸ Maile Arvin, Eve Tuck, and Angie Morrill. “Decolonizing Feminism: Challenging Connections between Settler Colonialism and Heteropatriarchy,” *Feminist Formations*, Vol. 25, No. 1 (Baltimore, Maryland: Johns Hopkins University Press, Spring 2013), 9.

⁵⁹ Ibid, 9.

inevitable.”⁶⁰ Feminists perform anti-colonial work by including the marginalized as they critique systems of power and suggest remedies in the form of structural change.⁶¹

Lucy Mayblin provides an example of the utility of an anti-colonial framework to examine asylum policy in her work *Asylum after Empire: Colonial Legacies in the Politics of Asylum Seeking*.⁶² She utilizes the British state as a case study to argue that contemporary hostility toward asylum seekers is “dehumanization within the context of colonial histories.”⁶³ Mayblin emphasizes how current exclusionary asylum policies developed directly from the settler colonial system and concepts of modernity. She argues for an analysis of this broader power system through a view of the relationship between coloniality and modernity, stating that “The refugee—is the embodiment of the darker side of modernity and of global fallout from colonialism.”⁶⁴ Mayblin emphasizes that historical ideas of “differential humanity” that have roots in colonialism led to modern treatment of asylum seekers. Mayblin explains that anti-asylum sentiments are entangled with historical ideas of racism, but asylum policy should not be conceptualized distinctly as a form of racism. This type of analysis ignores the “colonial histories which have allowed for the assignment of differential worth to various human bodies.”⁶⁵ Recognition of this stratification of worth provides a more complete view of the experience of asylum seekers. Examining the legacies of colonialism develops a framework for understanding how historical ideas of “differential humanity” have led to the treatment of asylum seekers in the modern Western world.

⁶⁰ Ibid, 14.

⁶¹ Ibid, 19.

⁶² Mayblin, *Asylum after Empire: Colonial Legacies in the Politics of Asylum Seeking*.

⁶³ Ibid, 12.

⁶⁴ Ibid, 3.

⁶⁵ Ibid, 4.

Finally, Arpita Chakraborty, Geeta Chowdhry and L.H.M. Ling discuss how international relations can address colonialism: bridging the two lenses I incorporate in my analysis.

Chakraborty warns that traditional IR scholarship is born out of imperialism, so IR requires a new perspective to reflect the “lived reality” of subjects.⁶⁶ Chakraborty emphasizes the use of a postcolonial feminist version of IR to add the voices of the powerless. Adding this perspective provides a better understanding of the “matrices of power” which are produced by the legacy of colonization.⁶⁷ Chowdhry and Ling also defend the use of “postcolonial feminism” in IR which specifically studies “world politics as a site of power relations molded by colonization.”⁶⁸

Postcolonial feminism calls attention to the ways in which first-world feminism continues to proliferate the “imperial agenda.”⁶⁹ A feminist viewpoint critiques the predominantly male view of most IR; an anti-colonial feminist IR perspective critiques the first-world standpoint that maintains the “white-women-as norm” phenomenon.⁷⁰ Chandra Mohanty similarly argues that first-world feminist texts often reproduce colonial viewpoints by portraying “monolithic images of the ‘third-world woman’ as women who can only be defined as material subjects.”⁷¹

Part III: Methodology and Sources

These two feminist approaches inform my examination of colonial power structures. Eve Tuck and K Wayne Yang’s text highlights the importance of selecting terminology with purpose.

⁶⁶ Arpita Chakraborty, “Can postcolonial feminism revive international relations?,” *Economic and Political Weekly*, Vol. 52, no. 20 (2017), 53.

⁶⁷ Geeta Chowdhry and L.H.M. Ling, “Race(ing) International Relations: A Critical Overview of Postcolonial Feminism in International Relations.” In *The International Studies Encyclopedia*, (2010).

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Chandra Talpade Mohanty, “Under Western Eyes: Feminist Scholarship and Colonial Discourses.” *Boundary 2*, Vol. 12, no. 3 (Durham, North Carolina: Duke University Press, 1984): 349.

In their argument, decolonial work describes acts of liberation. When these acts are performed incompletely or without critical change, they can fail. Anticolonial work emphasizes the need to take an activist-political position to reveal injustice. I label my approach anti-colonial in an effort to recognize the effect of this research and the distinction between the two terms. The impact of this project does not address the return of colonized land, but the anti-colonial lens facilitates a commitment to active work by addressing embedded power dynamics and exposing the systemic bias of the asylum system. The methods in this research focus on giving voice and creating space for histories and experiences that have been hidden, buried, or denied. By emphasizing personal narratives and previously disclosed pieces of the U.S.-Guatemalan relationship, I centralize the experience of people victimized by the system. Careful documentation of the consistent and repetitive patterns of injustices, empowers activists to work towards changing the system. Recording injustices within individual asylum cases gives essential voice to women asylum seekers, their lived reality, and the hurdles they must navigate to survive within the unjust system. The tools of analysis within the anti-colonial approach enabled the creation of this body of information: documentation which intends to change the nature of unequal power by constructing a more complete picture of historic and present injustice.

To provide the historical context for the relationship between the U.S. and Guatemala, I examine a wealth of analytical sources. I retrieved most primary source documents from the National Security Archives collection of declassified U.S. files on Guatemala. I surveyed all available documents with publication dates between 1940 and 1996, the end of the Guatemalan Civil War. To supplement this personal investigation, I communicated with Kate Doyle, the director of the National Security Archives Guatemala Project. I also read excerpts from the text *From Silence to Memory*, a report composed of primary source documents published by the

Archivo Histórico de la Policía Nacional in Guatemala, and reviewed documents released by the CIA under the Freedom of Information Act. When possible, I accessed archived United States newspaper articles that reported on major events which were of interest to U.S. publications. I also utilize secondary source material, principally scholarly books written by experts on the Guatemalan conflict and broader U.S. relations with Latin America. Many of the secondary sources apply similar investigation tactics: the scrutiny of declassified documents, examination of historical trends, and completion of a series of ethnographies.

A feminist IR framework helps establish my method of research for my primary investigation. I analyze twenty-four Guatemalan gender-based asylum cases. I use textual analysis to uncover different systems of prejudice and misogyny that develop within the judicial decisions. As previously noted, feminist IR recognizes the utility of using individual, specific subjects to address a wider experience. Sara McKinnon defines a text “as any instance where symbols are being used to convey meaning to an audience.”⁷² In this project, I focus on how texts convey meaning about the existence of power hierarchies and discriminatory beliefs, which are rooted in colonialism and displayed through asylum jurisprudence.

To perform this investigation, I used the online legal database LexisNexis to access relevant judicial decisions. The documents available on this site include opinions from the United States Appeals Courts, Immigration Judges (IJ), and the Board of Immigration Appeals (BIA). An IJ decision can either grant or deny asylum.⁷³ I searched for terms including: “Guatemalan gender-based asylum,” “Guatemalan woman asylum,” and “Gender, Asylum,

⁷² Sara L. McKinnon, “Text-Based Approaches to Qualitative Research: An Overview of Methods, Process, and Ethics,” *The International Encyclopedia of Media Studies* (2013), 2.

⁷³ In many asylum cases the immigration officials’ decision will also include a grant or denial of “Withholding of Removal” and “Convention Against Torture” (CAT). Following the publication of the decision, applicants and the government (The Department of Homeland Security) have thirty days to appeal the decision to the BIA. If no party appeals, the decision becomes a final outcome.

Guatemala.” The search terms yielded different case records. I used precedent-setting cases as search terms to identify other cases about gender-based asylum. I also utilized the Center for Gender and Refugee Studies (CGRS) database. Through the CGRS database, I accessed IJ and BIA decisions, as well as briefs written by attorneys to present the facts, arguments, and protected grounds. Selected documents on the CGRS database are available by request. CGRS also shares *amicus curiae* briefs and letters of support for more publicized cases.⁷⁴ Last, if the asylum seeker’s name was public information, I performed a routine Google search to find newspaper articles and other lay documents.

Within the textual analysis of the legal documents, I utilize both rhetorical criticism and a discourse analysis. Sara McKinnon defines rhetorical criticism as “a method that provides the means to analyze not only discourse itself, but also *how* messages are deployed through the body, voice, images, and objects, and *what* such messages do.”⁷⁵ Evaluating tone, word choice, and subjective assessment of the asylum seeker’s disposition, I critique *how* underlying conceptions of Guatemalan women are “deployed” within the documents. I explain how these messages function to reproduce marginalization and emphasize specific victimhood. Discourse analysis brings further strength to the method of textual analysis by calling on researchers to think about function: what effect does the text have on the organization, institutions, and societies in which it circulates?⁷⁶ I utilize this technique to emphasize how the documents reflect general societal perceptions of Guatemalan women within the United States. To denaturalize the acceptance of a paternalistic framework and discuss how outcomes maintain the creation of the

⁷⁴ “*Amicus Curiae*” meaning “friend of the court,” is the name for a brief filed by a someone who is not a party to the case. Often these briefs provide more information on a subject matter and present a specific opinion about the decision at hand.

⁷⁵ Sara L. McKinnon, “Text-Based Approaches to Qualitative Research: An Overview of Methods, Process, and Ethics,” 4.

⁷⁶ *Ibid*, 7.

“subalternized” identity, I perform a feminist textual analysis to highlight the injustices in the asylum system.

I do not claim that a singular case can represent all experiences; rather individual cases allow for an investigation of patterns in judicial decisions that reveal and document the overall hierarchy of power within the asylum system. Incorporating the anti-colonial framework, I study the ways in which asylum seekers are represented. I present my analysis with an intention to critique the power hierarchy embedded in the U.S. asylum system. Incorporating the International Relations framework, I offer conclusions about different international powers that have authority over the structure of asylum law. Because of my positionality as a white, privileged, educated, American citizen, I perform this analysis as an observer, removed from the system I am studying. Therefore, to properly articulate an anti-colonial perspective I commit directly to articulating methods to change the injustices within the asylum system. I discuss the United States asylum process through an anti-colonial framework to draw attention to how narratives of asylum seeking create labels of deserving and undeserving applicants. I fuse an anti-colonial feminist perspective with feminist international relations to bring recognition to the transnational implications of asylum and problematize understandings of power.

My choice to focus on cases of Guatemalan women is two-fold. First, the relationship between the United States and Guatemala provides a salient site to examine structures of power. As I will discuss in Chapter II, the United States has intervened in Guatemalan politics and economics for decades, with the intention to disrupt and overthrow popular movements and limit national prosperity. The relationship between Guatemala and the United States is not unique—instead, it can be read as emblematic of greater power trends between the United States and Latin America. The U.S. has acted in similar manners throughout the region, though many of the

specific government strategies were utilized first in Guatemala. Therefore, this particular case study could be extended to other regions. Second, multiple precedent-setting cases of gender-based asylum claims are from women of Guatemalan origin. Therefore, choosing Guatemala allows for a wider breadth of cases to analyze—an important feature for this project.

Finally, I have chosen Guatemala because of my own connection to the country. I have had the opportunity to spend extended time living in San Lucas Toliman, Guatemala—a small town on Lake Atitlan, ringed by dormant volcanoes. During this time, I have worked in a medical clinic and as an advocate at a women’s safe house, taught English classes, and learned to weave. The moments I remember with the most power and significance are the conversations I had with my host-father and friends about their lives. My host father told me about his time in the military during the Civil War, and the impact this experience had on his adult life. My weaving teacher confided in me about fears of interpersonal violence she faces daily. All these experiences have had a profound impact on my interest in studying Latin America. This investigation has given me the opportunity to learn more about the complex history of a country that has shaped my identity and academic interest.

Gender-based asylum is rooted in prejudiced understandings of women—and the immigration authorities’ ability to read and evaluate women refugees allows intolerant beliefs to function as accepted claims, emphasizing paternalistic power systems. The field of research devoted to gender-based asylum is vast; but this project attempts to bring in a new lens. By selecting one country of focus, I aim to provide specific conclusions about how asylum jurisprudence can characterize a bilateral relationship. Through both a review of the relationship between the United States and Guatemala, and an analysis of asylum decisions, this project will offer an anti-colonial critique of the asylum system.

CHAPTER II: THE UNITED STATES AND GUATEMALA
A History of Intervention, Instability, and Paternalism

"The United States [seems] destined to plague and torment the continent in the name of freedom" (Simón Bolívar, 1829).

In 1996, the signing of the Oslo Peace Accords ended thirty-six years of violence in Guatemala. The Accords established a truth commission, the Commission for Historical Clarification (CEH), with the slogan "*Es Tiempo de Decir La Verdad.*" Published in 1999, the final report, *Memoria de Silencio*, provided the Guatemalan people and the international community with needed information about the atrocities of the Civil War. The Report outlines U.S. influence and culpability. The CEH report recognized the United States' awareness of violence, and reluctance to intervene. After the release, President Bill Clinton traveled to Guatemala City. Clinton made a public speech "to an informal gathering of leaders from many sectors of Guatemalan society...". In an unusual statement of transparency, Clinton said: "For the United States, it is important that I state clearly that support for military forces and intelligence units which engaged in violence and widespread repression was wrong, and the United States must not repeat that mistake."⁷⁷ The introduction to *Memoria de Silencio* asserts, "The full extent of the U.S. involvement in *la violencia* is still not known."⁷⁸ Over two decades have passed. President Clinton's admission of guilt has not meaningfully informed either the greater U.S. government or the general public, many of whom remain unaware of U.S. involvement in Guatemalan affairs.

Susanne Jonas writes that the "fruits of [United States] interventions have been veiled in a vast shroud of silence in the U.S. press and public domain."⁷⁹ This silence perpetuates

⁷⁷ John M. Broder, "Clinton Offers His Apologies to Guatemala," *The New York Times* (Mar. 11, 1999).

⁷⁸ Daniel Rothenberg, *Memory of Silence: The Guatemalan Truth Commission Report*, (New York City, New York: Palgrave MacMillian, 2012), xxxii

⁷⁹ Susanne Jonas, *The Battle for Guatemala: Rebels, Death Squads, And U.S. Power*, (Boulder, Colorado: Westview Press, 1991), 2.

negligence and allows the United States to present a distorted picture of history. In *Turning the Tide: U.S. Intervention in Central America and the Struggle for Peace*, Noam Chomsky writes that an assessment of U.S. relationships to other countries provides “striking and systematic features” of how United States “international behavior[s] are suppressed, ignored or denied.”⁸⁰ This deliberate “suppression” and/or “silence” distorts reality. The United States government negates responsibility for its actions, sustaining a system that enables the powerful to intervene—without reckoning. In *Empire’s Workshop*, Greg Grandin argues that the United States used Latin America as a “workshop” to establish the mechanisms to build an empire. Grandin emphasizes the 1940s, when “Latin America once again became a school where the United States studied how to execute imperial violence through proxies.”⁸¹ In my view, Guatemala merits heightened focus as the *first* country where the U.S. used covert action to overthrow an elected government. After U.S. involvement in Guatemala, similar interventions occurred throughout Latin America. The United States’ actions in Guatemala were rooted in deliberate planning. U.S. intervention facilitated the creation of a hierarchy of power—where the U.S. enacted a system of “differential humanity,” guiding Guatemala into violence by perceiving the Guatemalan population as “undeserving” of stability or democracy.⁸² The Guatemalan genocide of the 1980s could not have been possible without the U.S. military training, economic aid, and political support that began in the 1940s and 1950s.

In this chapter, I provide the necessary context to understand the complex relationship between the United States and Guatemala. An understanding of this relationship—the

⁸⁰ Noam Chomsky, *Turning the Tide*, (Chicago, Illinois: Haymarket Books, 2015), 2.

⁸¹ Greg Grandin, *Empire’s Workshop: Latin America, the United States, and the Rise of the New Imperialism* (New York City, New York: Metropolitan Books, 2010), 4.

⁸² Lucy Mayblin, *Asylum after Empire: Colonial Legacies in the Politics of Asylum Seeking*, (Lanham, Maryland: Rowman & Littlefield International, 2018).

development and enactment of a power hierarchy—is necessary to properly interrogate the paternalistic nature of asylum. I trace the lasting power structures within this relationship in order to defend my argument that the asylum system reproduces forms of power reminiscent of colonial paternalism. This section will provide the information to answer the following questions: Why did the United States choose to intervene in matters of Guatemalan domestic policy during the 1940s and 50s? How did this intervention lead to the events of the Civil War, and the development of the “culture of violence”? How has the United States continued to support violence, contributing to overall destabilization?

To address the concerns of Jonas, Chomsky, and Grandin, leading scholars in the field of Latin America history, the next sections focus on the U.S. role in Guatemala. I rely on publications by social and political scholars, as well as primary source documents that reveal U.S. intentions. Though not intended as a complete monograph of Guatemalan history, this discussion highlights U.S. interventions that destabilized Guatemala and fomented rampant violence, and particularly violence against women.

First, I address the interactions between the United States and Guatemala pre-1954, including the establishment and monopolistic business venture of the United Fruit Company (UFCO). Next, I highlight the planning and execution of the 1954 U.S.-backed coup d'état (the coup), overthrowing democracy and installing a military dictatorship. I continue my timeline with an analysis of U.S. involvement in the Civil War, including the decision to provide political guidance, weaponry, and military training. These interventions propelled Guatemalans to commit acts of mass killings, disappearances, and rape against their own people. Throughout *La Violencia*, the U.S. government and general public turned a blind eye to the acts of violence.

Finally, I follow the rising violence during the Civil War to the influx of organized crime that remains a powerful force in modern Guatemala.

A discussion of the relationship between the United States and Guatemala is essential to understanding the injustices of the asylum system. First, pursuant to the Immigration and Nationality Act, asylum decisions require the claimant to demonstrate that the sending country was “unable or unwilling” to protect the applicant. In most asylum cases, this evaluation is limited to country conditions research that highlights levels of violence within the sending country. This choice is too narrow and enables the U.S. to “silence” and “suppress” its culpability in the creation of violence. Second, U.S. intervention during the 20th century demonstrates a willingness to prioritize American ideology and financial prosperity at any cost.⁸³ The history of the U.S. relationship with Guatemala showcases actions of paternalism that are mirrored in the current asylum system. Actions during the 20th century also demonstrate the use of a paternalistic ideologic guise to mask fear and aggression over the loss of control. In this thesis, I define paternalism as actions that articulate one person’s—or one government’s—superiority over another. Through the enactment of power, the paternalistic body enforces control. Paternalistic acts of control favor one group’s choices over another’s, within this defined hierarchy, on the basis that the body with power is imposing rules and regulations for the other’s own good.

⁸³ This idea of centering U.S. ideology recalls the Roosevelt Corollary. The Roosevelt Corollary defined President Theodore Roosevelt’s assertive approach to Latin America—often characterized as a “big stick” policy. This 1904 addition to the Monroe Doctrine articulated the American plan to intervene in Latin American affairs to ensure the civility of nations. President Roosevelt emphasized the United States’ duty and obligation to intervene in the Western Hemisphere. President Roosevelt wrote that the U.S. desired “to see the neighboring countries stable, orderly, and prosperous.” The Monroe Doctrine detailed an essentially passive statement by European countries to refrain from recolonizing Latin America. On the contrary, the Corollary asserted democratic unity under specific situations. Latin American countries “whose people conduct themselves well can count upon [the] hearty friendship” of the United States. President Theodore Roosevelt, “Roosevelt Corollary to the Monroe Doctrine,” United States Office of the Historian, 1904.

President Donald Trump's hateful disposition has elevated the problems in an immigration system that already contained paternalistic beliefs. He consistently frames the "migrant crisis" as a problem created by foreign governments in foreign territories. This rhetoric permits his claim that migration "is a way they get certain people out of their country and dump [them into the] U.S."⁸⁴ In addition to revealing President Trump's absence of compassion, this ahistorical view ignores the U.S.'s colonial past and present, and its culpability in creating the violence from which so many now flee. The United States has *caused* migration, through many years of implicit and explicit actions that destabilized the Guatemalan state. To understand the great injustices of the current asylum system, we turn to the historical legacies that established the Guatemalan state and failed to provide security for its people.

The History of the U.S. Coup d'état

Part I: Developing Economic Concerns and The United Fruit Company

The impact of the United States on Guatemala began many years before the 1954 Coup. The U.S.' first major act of paternalism begins with the United Fruit Company's monopoly over the banana industry.

The coffee plantations, known as *fincas*, brought Guatemalan products to the world market, but led *finqueros* to exploit indigenous workers.⁸⁵ When the coffee market collapsed in the 1930s, the *ladino* population, the non-indigenous and economically advantaged class in Guatemala, sought a strong leader who would maintain control and develop new economic

⁸⁴ President Donald J. Trump on Twitter (Nov. 25, 2018). Available at: <https://twitter.com/realDonaldTrump>.

⁸⁵ Nick Cullather, *Secret History: The CIA's Classified Account of Its Operations in Guatemala, 1952-54*, Second Edition (Stanford, California: Stanford University Press, 2006), 9. In reference to: Jim Handy, "'A Sea of Indians': Ethnic Conflict and the Guatemalan Revolution," *The Americas* 46, 1989, 190-191.

opportunities. The *ladinos* hand-picked Jorge Ubico, infamous for his ruthlessness. Ubico ran unopposed and was inaugurated President of Guatemala in 1931. President Ubico focused his attention on big American investors like the United Fruit Company (UFCO).⁸⁶ In hopes of elevating Guatemala in the U.S. trade market, President Ubico gifted huge amounts of land to UFCO. In response, UFCO invested financial resources and infrastructure into the country.⁸⁷ With investments valued at nearly \$60 million in pre-WWII U.S. dollars, UFCO provided jobs directly or indirectly for 40,000 people in Guatemala.⁸⁸ UFCO monopolized banana production, and constructed the national railroad and the electric company.⁸⁹ The Ubico government gave UFCO exemptions from paying taxes and duties. Further, United Fruit enjoyed unlimited profit remittances and nonregulation of their labor practices.⁹⁰ Possessing complete control over a wealthy export, UFCO continued to provide infrastructure and access to the job market to maintain the guise that their economic influence facilitated greater good for the Guatemalan people. Because of this involvement in the economic infrastructure, UFCO held great influence over the Guatemalan government.

Part II: The October Revolution and the “Ten Years of Springtime”

In the 1940s, the Guatemalan public began to resent U.S. economic influence and exploitation of local resources. This period became known as the “October revolution” and was characterized by democratic changes and modernization.⁹¹ In June of 1944, public

⁸⁶ Jonas, *The Battle for Guatemala: Rebels, Death Squads, And U.S. Power*, 14.

⁸⁷ Cullather, *Secret History: The CIA's Classified Account of Its Operations in Guatemala*, 10.

⁸⁸ Ibid.

⁸⁹ Stephen C. Schlesinger and Stephen Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala* (Cambridge, Massachusetts: Harvard University Press, David Rockefeller Center for Latin American Studies, 2005), 14.

⁹⁰ Jonas, *The Battle for Guatemala: Rebels, Death Squads, And U.S. Power*, 19.

⁹¹ Susanne Jonas, "Dangerous Liaisons: The U. S. in Guatemala." *Foreign Policy*, no. 103 (1996), 146.

demonstrations, strikes and petitions overwhelmed the Guatemalan capital. In response, President Ubico relinquished his power to his military generals, who allowed for the first open democratic election. In 1945, Juan José Arévalo took office and set four primary goals: to create agrarian reform, protect labor, consolidate political democracy, and install a better education system.⁹² Calling his progressive political platform “spiritual socialism,” Arévalo promised to “make men equal to men...[and] give civic and legal value to all people who live in this Republic.”⁹³ The U.S. attention was generally focused elsewhere in the early 1940’s—WWII was raging—but declassified documents from this time show the U.S. State Department had an early positive perception of President Arévalo. This perception changed in 1947, when the anti-communist Cold War began, and President Arévalo instituted a new Labor Code.⁹⁴ This Code, modeled after the U.S. Wagner Act, allowed workers to develop unions, administer collective bargains, and strike with legal protection. Additionally, the Code provided protections for rural workers, improved conditions for women and child laborers, and created fixed pay scales.⁹⁵ Why would the United States concern itself with the labor code of a foreign country?⁹⁶ A 1951 declassified State Department Policy Statement explains the U.S.’s concern:

The [Arévalo] Government’s excessively zealous approach resulted in a biased, pro-labor attitude. This, together with increasing nationalism and chauvinism brought it into direct conflict with [...] U.S. interests. [...] The principal targets for the demands of these labor unions were U.S.-owned companies, which were the largest and the most important

⁹² Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 37.

⁹³ Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 34. Translated from *El Imparcial*: March 16, 1945.

⁹⁴ Susan Holly ed., United States Office of the Historian, *Foreign Relations of the United States, 1952–1954, Guatemala: Introduction* (Washington D.C.: United States Government Printing Office, 2003), xxiv.

⁹⁵ Susan Holly ed., United States Office of the Historian, *Foreign Relations of the United States, 1952–1954, Guatemala: Introduction*, xxv.

⁹⁶ Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 38.

in Guatemala's economy. Singled out particularly were the U.S.-owned United Fruit Company and the International Railways of Central America (IRCA)...⁹⁷

UFCO enjoyed tremendous freedoms during the Ubico regime; the U.S. perceived that the changes under the Arévalo Administration had assaulted "free enterprise."⁹⁸ UFCO felt targeted by the Labor Code—and complained that the U.S. Embassy provided inadequate support. The company enlisted lobbyists to convince President Truman that the new "revolutionary" labor policies proved that Guatemalans were developing communist attitudes.⁹⁹

Despite growing tension, President Arévalo concluded his presidential term. Jacobo Arbenz assumed the presidency. The U.S. State Department considered President Arbenz an "opportunist" who would "steer a more nearly middle course than Arévalo."¹⁰⁰ In his inaugural address President Arbenz committed himself to three primary objectives.¹⁰¹ He wanted to create: an independent economy, a modern capitalist state, and a higher standard of living for the Guatemalan public.¹⁰² Determined to transform the Guatemalan economy, President Arbenz instituted another series of economic reforms. The CIA referred to these reforms as part of "an intensely nationalistic program of progress colored by the touchy, anti-foreign inferiority complex of the 'Banana Republic.'"¹⁰³ The dismissive label "Banana Republic" reveals U.S. bias about Guatemala, perceived as an economic hub of banana production—and alludes to the power of the United Fruit Company.

⁹⁷ The United States Office of the Historian, "[800] Policy Statement Prepared in the Department of State," Secret Document, May 2, 1951, Published in *Foreign Relations of the United States, 1951, The United Nations; The Western Hemisphere, Volume II*.

⁹⁸ Cullather, *Secret History: The CIA's Classified Account of Its Operations in Guatemala*, 15.

⁹⁹ Cullather, *Secret History: The CIA's Classified Account of Its Operations in Guatemala*, 16.

¹⁰⁰ The United States Office of the Historian, "[800] Policy Statement Prepared in the Department of State."

¹⁰¹ Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 52. Translated from *El Imparcial*: March 16, 1951.

¹⁰² Ibid.

¹⁰³ Susan Holly, ed. United States Office of the Historian, *Foreign Relations of the United States, 1952–1954, Guatemala: Introduction*, Washington D.C.: United States Government Printing Office, 2003.

In 1952, President Arbenz passed *Decreto Número 900*, the Agrarian Reform Law, which redistributed uncultivated land.¹⁰⁴ This policy was central to the platform of the *Partido Guatemalteco de Trabajo*, a communist-leaning labor party that emerged at the end of the Arévalo presidency.¹⁰⁵ Conservative Guatemalans were fearful of the plan, concerned the decree would provide agency to rural indigenous laborers.¹⁰⁶ This concern resonated within the American government. The CIA had already labeled the Arbenz administration as a potential threat to U.S. security and financial interests. The U.S. government asserted that land reform policies signaled communist expansion.¹⁰⁷ Following the mandates of the Decree, the Arbenz government confiscated 55,000 acres of land from the United Fruit Company. The Decree intensified conflict between the Guatemalan government and UFCO, which continued to deploy lobbyists and publicists to convince Americans of developing evil in Guatemala.¹⁰⁸ Both the Arévalo and Arbenz administrations faced allegations of communist sympathies. The U.S. government voiced determination to stop the expansion of the “Soviet menace.”

Part III: The 1954 Coup d'état

Under the pretext of eradicating communism, the CIA backed the 1954 coup d'état, which ended the “ten years of springtime,” returning Guatemala to an oppressive regime characterized by violence. In the late 1950s and 1960s, the practice of U.S. paternalism transitioned to covert intelligence gathering, military training and operations, and the direct use

¹⁰⁴ This policy only applied to uncultivated land that exceeded 223 acres. Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*. intro history doc

¹⁰⁵ Cullather, *Secret History: The CIA's Classified Account of Its Operations in Guatemala*, 14.

¹⁰⁶ Ibid, 23.

¹⁰⁷ Ibid, 24-25.

¹⁰⁸ Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 97.

of violence. The relationship between U.S. covert operations and Guatemalan security forces would endure through *La Violencia*. Less visible, the lessons of military brutality became ingrained in Guatemalan culture.

The first coup attempt, code-named PBFORTUNE, represented a collaboration between Nicaraguan dictator Anastasio Somoza, exiled Guatemalan general Carlos Castillo Armas, and the United States CIA. PBFORTUNE failed, but the CIA did not give up their efforts. In August of 1953, newly elected President Eisenhower authorized and provided a budget of \$2.7 million for PBSUCCESS.¹⁰⁹ The CIA supported the Coup through four initiatives: a propaganda campaign, overt diplomatic initiatives, covert paramilitary operations, and a political program. The CIA office of Guatemala operations received the code name LINCOLN.

The CIA developed a propaganda campaign to wage “psychological warfare” against the Guatemalan enemy: the “pro-Communists.”¹¹⁰ The aim was to discredit the left, while simultaneously building support among conservative allies.¹¹¹ The propaganda campaign directly targeted the civilian Guatemalan community. PBSUCCESS relied on the American news media’s willingness to accept U.S. intervention as an anti-communist effort.¹¹² Articles in leading U.S. publications including *Reader’s Digest*, the *Chicago Tribune*, and *The New York Times* painted disturbing portraits of the dangers in “communist” Guatemala.¹¹³

¹⁰⁹ Cullather, *Secret History: The CIA’s Classified Account of Its Operations in Guatemala*, 40

¹¹⁰ A declassified State Department report outlines the tactics involved in the propaganda campaign. The April 23, 1954, document discusses the CIA’s plans to drop leaflets throughout the central locations in Guatemala City. Next, distributors are told to decentralize the production of leaflets in order to minimize “discovery.” The CIA document also included suggestions to “put up posters and stickers” especially in “inaccessible spots” where the removal of the propaganda materials will “cause considerable trouble.” Finally, the document highlights different tactics to minimize the impact of the “enemy” spreading a pro-communist message to Guatemalan citizens. Central Intelligence Agency, “KUGOWN: Suggestions for Propaganda Techniques,” *The Guatemala Collection*, Doc. No. 0000916116 (Apr. 23, 1954).

¹¹¹ Cullather, *Secret History: The CIA’s Classified Account of Its Operations in Guatemala*, 55.

¹¹² Cullather, *Secret History: The CIA’s Classified Account of Its Operations in Guatemala*, 56.

¹¹³ *Ibid*, 56.

The CIA attempted to convince the Guatemalan people that an underground resistance of communists planned to overthrow the Arbenz administration.¹¹⁴ First, the Agency partnered with the CEUA student group, an existing anti-communist student network, to create rumors of insurgency. A declassified document reveals that CIA operative Donald Hediger approached two members of the CEUA with a cover story that he “knew of a group of American and Guatemalan business men who were willing and anxious to financially contribute to an anti-communist campaign in Guatemala.”¹¹⁵ With this fabrication, Hediger garnered support from the student group and created an entity known as the “*Organizaciones Anti-Comunistas Unidas*.”¹¹⁶ CEUA students dominated the OAU. The CIA dominated the students. This intervention disguised the role of the CIA operatives, who took “no part in the overt operations” of the propaganda campaign.¹¹⁷

With the support of the CEUA students, CIA operatives invented the “Organization of the Militant Godless” in an effort to garner the support of religious Catholics. A declassified memorandum written by LINCOLN operation Chief of Staff discusses how the CIA “might best exploit their resources” for the propaganda campaign.¹¹⁸ Eventually, CEUA students grew fearful and resigned their participation, but by then, the CIA had already developed a clandestine radio campaign and provided Gen. Castillo Armas the resources to release propaganda leaflets from an aircraft into the Guatemalan capital.¹¹⁹

¹¹⁴ Cullather, *Secret History: The CIA's Classified Account of Its Operations in Guatemala*, 64.

¹¹⁵ Central Intelligence Agency, “Individual PP Assessment, Guatemala with Particular P.P (Unreadable) to CEUA (Unreadable)” *The Guatemala Collection*, Doc. No. 0000923963 (Nov. 2, 1953).

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Central Intelligence Agency, “Kugown Operations: Potential Media for Anti-Communist Propaganda,” *The Guatemala Collection*, Doc. No. 0000923790 (Mar. 2, 1954).

¹¹⁹ Cullather, *Secret History: The CIA's Classified Account of Its Operations in Guatemala*, 67.

To disguise CIA involvement, the Agency placed the clandestine radio station in Nicaragua after determining that the “site is both technically feasible and politically tenable.”¹²⁰ The Agency launched the radio station *Voz de la Liberación* seven weeks prior to the invasion. The propaganda campaign and psychological pressure created the intended fear and panic that Castillo Armas’ rebel forces were spreading across Guatemala.¹²¹ The propaganda campaign allowed the CIA to create their version of reality; Guatemala was a repressive communist regime in desperate need of intervention and support.

The CIA’s overt diplomatic initiatives began a few years prior. In 1951, the U.S. restricted its own sale of arms to Guatemala, and blocked deals from Canada, Germany, and Rhodesia.¹²² However, overt pressure climaxed at the 1954 Inter-American Conference. The Conference convened to address economic matters, but Secretary of State, John Foster Dulles, used the occasion to create an anti-communist resolution directed at Guatemala.¹²³ Prior to serving as President Eisenhower’s Secretary of State, Dulles was an attorney for UFCO. During this period, Dulles’ brother, Allen Dulles, served as Director of the CIA. The resolution called for “hemispheric unity and mutual defense against ‘communist aggression,’” and provided a roadmap for future interventions.¹²⁴ This broad initiative justified U.S. intervention in any Latin American country where the U.S. identified a potential communist threat. Though the stated

¹²⁰ Central Intelligence Agency, “Selection of Site for Propaganda Broadcast,” *The Guatemala Collection*, Doc. No. 0000914518 (Jan. 4, 1954).

¹²¹ The CIA knew that the real paramilitary force could not match the strength of the Guatemalan army, so the Agency used propaganda to convince the Guatemalan people of an alternative reality: Castillo Armas’ rebel forces expanded across the country and had received extensive military training. Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 169.

¹²² Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 148.

¹²³ Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 142.

¹²⁴ Jonas, *The Battle for Guatemala: Rebels, Death Squads, And U.S. Power*, 29.

purpose of the Caracas Resolution was to protect the region against communism, the resolution gave the U.S. the authority to defend their actions in PBSUCCESS.¹²⁵

The CIA's political program, referred to as the "K-Program," intimidated the Guatemalan army to support the CIA-backed anti-communist insurgency.¹²⁶ The K-Program staffers at the LINCOLN office drafted editorials to destabilize the Guatemalan military. The Agency published articles like "A Time to Choose" which called on officers to "break their ties with the government and offer their services to the rebellion 'if they wish to share in the triumph over communism.'" ¹²⁷ The K-Program reinforced perceptions that the anti-communist "liberation forces" were supported by the U.S. In *Shattered Hope*, Piero Gleijeses documents CIA interventions. Guatemalan Colonel Ernesto Paiz Novales told Gleijeses that the officers "were under enormous pressure. The U.S. military mission even hinted that the U.S. would invade."¹²⁸ Despite this pressure, early efforts to recruit Guatemalan forces were unsuccessful.

The CIA shifted efforts to paramilitary action. Operatives recruited Guatemalan exiles living in Honduras and Nicaragua to join the Liberation Army, *El Ejército de Liberación*. The CIA handpicked Colonel Carlos Castillo Armas, a graduate of U.S. military training, to lead the liberation forces.¹²⁹ Howard Hunt recalled that Castillo Armas had no strong ideology, but that "He had that good Indian look about him" and would be "malleable" to the CIA because he was a "stupid man."¹³⁰ Hunt's assessment is telling. The CIA did not choose a capable leader, inclined and qualified to bring Guatemala to thriving democracy. Rather, the U.S. selected a

¹²⁵ Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 143.

¹²⁶ Cullather, *Secret History: The CIA's Classified Account of Its Operations in Guatemala*, 67.

¹²⁷ Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 68. Citing to: [] to Frances R. Hegarty, 23 February 1954, "Letter of Instructions," Job 7901025A, Box 101.

¹²⁸ Piero Gleijeses, *Shattered Hope: The Guatemalan Revolution and the United States, 1944-1954*, (Princeton, New Jersey: Princeton University Press, 1991), 305.

¹²⁹ Jonas, *The Battle for Guatemala: Rebels, Death Squads, And U.S. Power*, 29.

¹³⁰ Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 122.

mediocre leader who would defer to the CIA. Originally, Castillo Armas' forces served as a psychological weapon: an explicit warning of U.S. military power.¹³¹ However, the paramilitary threat forced President Arbenz to make a critical decision.

Recall that the United States had imposed an arms embargo on Guatemala and convinced other countries to collaborate. The legitimate Guatemalan government knew that its military strength had diminished. Fearful of an impending invasion, Arbenz purchased five million U.S. dollars' worth of ammunition from Czechoslovakia, a Soviet-controlled state.¹³² The Swedish ship *Alfhem* carried the Czech ammo to Puerto Barrios, within the Gulf of Honduras, on May 15, 1954. The CIA had long been waiting for an opportunity to justify invasion.¹³³ That time had arrived.

"If the [invasion] fails, the flag of the United States has failed," President Eisenhower told high-level PBSUCCESS operatives on June 15, 1954.¹³⁴ Just two days earlier, General Castillo Armas traveled to Honduras to meet his force of CIA-trained mercenaries.¹³⁵ The troops were sent to small border towns in Honduras, outposts of United Fruit Company's Honduran division.¹³⁶ While preparing to invade, the CIA still hoped to intimidate Arbenz into submission.¹³⁷ After a series of setbacks, CIA Director Allen Dulles convinced Eisenhower to

¹³¹ Cullather, *Secret History: The CIA's Classified Account of Its Operations in Guatemala*, 74.

¹³² United States Office of the Historian, "Briefing Paper: Guatemala Briefing," *Foreign Relations of the United States, 1952–1954, Guatemala*, Doc. No. 281, (undated); Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 147-148.

¹³³ Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 151.

¹³⁴ *Ibid*, 170.

¹³⁵ The declassified documents reveal an unsigned training file called "a study of assassination." The guide tells trainees that "The simplest local tools are often the most efficient means of assassination." The training file instructs that assassination could use "anything hard, heavy and handy" but "Absolute reliability is obtained by severing the spinal cord in the cervical region". The guide warns trainees not to record their action, enabling "plausible deniability."

¹³⁶ Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 170.

¹³⁷ *Ibid*, 172.

send more planes into Guatemalan airspace, to intensify the perception of an impending invasion. Dulles was correct; the airplane deployment demoralized Arbenz' forces. Eventually, the Guatemalan army gave Arbenz an ultimatum and proposed his resignation. On June 27, 1954 President Arbenz addressed the country:

Guatemala is enduring a most difficult trial. For fifteen days a cruel war against Guatemala has been underway. The United Fruit Company, in collaboration with the governing circles of the United States is responsible for what is happening to us...¹³⁸

At the conclusion of his broadcasted address, President Arbenz resigned. On September 1, 1954, Carlos Castillo Armas disembarked from a U.S. airplane to become the new President of Guatemala.

Part IV: The Aftermath of the Coup d'état

Prior to the 1940s, economic control had been the primary lever by which the U.S. exerted influence over Guatemala. The years before and during the coup saw the addition of military influence as well, under the guise of anti-communist efforts.

While many examinations of U.S.-Latin American relations point to the Cold War as the reason for U.S intervention in Guatemala, scholar Jorge Dominguez argues that the purpose of U.S. political and military intervention was economic all along.¹³⁹ Dominguez asserts that the U.S. focused on maintaining dominance, often using illogical methods to effect political aims. He classifies methods as illogical because they were “extremely costly” or “inappropriate instruments” to achieve success. The Eisenhower administration adopted anti-communist rhetoric to justify military intervention to overthrow a democratic process. Underlying this

¹³⁸ Ibid, 199. Citing to: *El Imparcial*, July 28, 1954.

¹³⁹ Jorge L. Dominguez, “US-Latin American Relations During the Cold War and its Aftermath,” in *The United States and Latin America: The New Agenda*, edited by Victor Bulmer-Thomas and James Dunkerley, (Cambridge, Massachusetts: Harvard University Press, 1999).

exercise of power was a desire, in the words of the State Department, “to install and sustain a pro-U.S. government.”¹⁴⁰

What was the real threat of the Guatemalan Revolution? As he insisted in his resignation address, President Arbenz posed a threat to the prosperity of the United Fruit Company and U.S. monopolistic control. Susanne Jonas contends, “The overthrow of Arbenz is one of the clearest examples in modern history of U.S. policy being affected by direct ties of public officials to private interests.”¹⁴¹ American journalists and historians published in the late 1950s have corroborated the claim that U.S. actions were motivated by the corporate interests of UFCO: “If the United Fruit Company had not existed there would have been no U.S. pressure or intervention. The U.S. wouldn’t have cared...there would have been no problems.”¹⁴²

Whether the U.S. actions were purely anti-communist or motivated by economic interests, the effects of the 1954 coup were significant and long-lasting. First, the “liberation” removed Guatemala’s democratically-elected President. Second, the intervention ended the policies of the “ten-years of springtime,” aimed to promote greater equality among Guatemalan citizens. Third, the coup reinstated military rule “turning the country into a literal hell-on-earth, which has been maintained by regular U.S. intervention.”¹⁴³ Finally, the coup impacted the optimism of the Guatemalan people, who hoped for a brighter future for the rural working population. Susanne Jonas states succinctly: “The reversal of the revolution and its land reform set the stage for the 40 years of turbulence.”¹⁴⁴

¹⁴⁰ Cullather, *Secret History: The CIA’s Classified Account of Its Operations in Guatemala*, 152.

¹⁴¹ Jonas, *The Battle for Guatemala: Rebels, Death Squads, And U.S. Power*, 32.

¹⁴² Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 203.

¹⁴³ Noam Chomsky, *Turning the Tide*, 216.

¹⁴⁴ Susanne Jonas, “Dangerous Liaisons: The U. S. in Guatemala.” *Foreign Policy*, no. 103 (1996), 146.

Developing Counterinsurgency and the Guatemalan Civil War

Part I: Not a Showcase for Democracy, but a Laboratory for Repression: 1954-1963

After the CIA overthrew Arbenz in 1954, Washington promised that it would turn Guatemala into a “showcase for democracy.” Instead, the U.S. created a laboratory of repression.¹⁴⁵ General Castillo Armas could not maintain control of the government, so the U.S. continued to intervene directly through political procedures and economic aid.¹⁴⁶ In July 1957, President Castillo Armas was assassinated by a member of the palace guard with leftist sympathies. His military clique, who had united as the *Movimiento de Liberación Nacional* (MLN), kept the governmental power in their hands.¹⁴⁷

Military and military-backed rule became the norm in Guatemala. General Miguel Ydigoras Fuentes assumed the presidency in 1958. At first, he received admiration from the Guatemalan public. This trust faded when he resumed open relations with the United States, allowing U.S. instructors to train Cuban exiles on Guatemalan soil.¹⁴⁸ Increasing dissatisfaction with non-representative government led to massive student and labor protests, and the formation of the Rebel Armed Forces—the beginning of a guerilla insurgency.¹⁴⁹ President Ydigoras Fuentes called for an election the following year. Juan Jose Arévalo announced that he would return from exile to run for president.¹⁵⁰ Seventeen months after the Cuban Missile Crisis, the United States had a different plan. Concerned that Jose Arévalo would institute policies unsupportive of the United States, the U.S. military backed a second coup d'état. Ydigoras

¹⁴⁵ Jonas, *The Battle for Guatemala: Rebels, Death Squads, And U.S. Power*, 9.

¹⁴⁶ Cullather, *Secret History: The CIA's Classified Account of Its Operations in Guatemala*, 57.

¹⁴⁷ Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 235.

¹⁴⁸ *Ibid.*, 241-242.

¹⁴⁹ Cullather, *Secret History: The CIA's Classified Account of Its Operations in Guatemala*, 10.

¹⁵⁰ Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 243.

Fuentes resigned the presidency. On March 31st, 1963, U.S-backed Colonel Enrique Perlata Azurdia became the next President of Guatemala.¹⁵¹

In general, historians emphasize the coup of 1954, and deemphasize the coup of 1963. In my view, this imbalance misses significant aspects of Guatemalan history. First, Arévalo's attempt to return to leadership represented a fleeting moment of hope for the Guatemalan public. Instead, Azurdia's installation resulted in more suffering. The evolution of the military dictatorship under Perlata Azurdia represents a turning point towards increased brutality. Further, during the Castillo Armas and Ydigoras Fuentes presidencies, the working and rural classes grew increasingly outraged over economic injustice. The people's frustration led to formations of guerilla networks who were willing to use force to advocate for their needs. Tone deaf to the movement for autonomy across Central America, the U.S. government continued to advance its own interests and ignore the suffering of the rural, largely indigenous majority. With the "laboratory for repression" established, Perlata Azurdia acted as an agent for increased tyranny.

Part II: The Counterinsurgency and Civil War Heighten

President and dictator Perlata Azurdia supported increasing levels of violence by the Guatemalan military, while opening the door for increased U.S. military influence. During the first years of his dictatorship, he utilized his military power against the developing guerilla forces; however, he could not gain control of the emerging guerrilla insurgency.¹⁵² In 1966, Perlata Azurdia permitted another election. Julio Cesar Mendes Montenegro became president in

¹⁵¹ Jonas, *The Battle for Guatemala: Rebels, Death Squads, And U.S. Power*, 60; Jonas, "Dangerous Liaisons: The U. S. in Guatemala," 146.

¹⁵² Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 244; Jonas, "Dangerous Liaisons: The U. S. in Guatemala," 146.

March 1966.¹⁵³ Fearful of the Guatemalan military and pressured by the U.S., President Montenegro agreed to station U.S. Green Berets in Guatemala.¹⁵⁴ He signed a pact brokered by the U.S. Embassy to develop the Guatemalan army's counterinsurgency techniques in return for economic aid.¹⁵⁵ Montenegro named Carlos Arana Osorio as the new military commander in the Zacapa province, the center of increasing guerilla activity.¹⁵⁶

On December 3, 1966, the U.S. Deputy Chief of Mission in Guatemala, Viron Vaky, forwarded a secret cable to SOUTHCOM Commander-in-chief General Porter. The cable described a request by the Guatemalan Vice Defense Minister for U.S. "assistance in covert training special squads to kidnap certain selected individuals."¹⁵⁷ Porter declined the request, but stated that the U.S. will "fully support current police improvement programs and [will] initiate military psychological warfare training and additional counter-insurgency operations training." Porter also made clear that the U.S. government "stand[s] ready [to] assist in every way possible in training Guatemalan armed forces in fields [of] military psyops and CI operations."¹⁵⁸

Commander Carlos Arana Osorio sent his men to train with U.S. Green Berets in counter-insurgency warfare.¹⁵⁹ The United States, now directly involved in counterinsurgency operations, claimed their intention was to "professionalize" the military.¹⁶⁰ The basic training provided by

¹⁵³ Ibid, 245.

¹⁵⁴ Ibid.

¹⁵⁵ Jonas, *The Battle for Guatemala: Rebels, Death Squads, And U.S. Power*, 60; Jonas, "Dangerous Liaisons: The U. S. in Guatemala," 146.

¹⁵⁶ Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 245.

¹⁵⁷ Viron Vaky, "Request for Special Training," U.S. Department of State, Doc. No. 3, (Dec. 3, 1966). Available from Kate Doyle and Carlos Osorio, *U.S. Policy in Guatemala 1966-1996*, in *National Security Archive Electronic Briefing Book No. 11*.

¹⁵⁸ Ibid.

¹⁵⁹ The United States referred to the Green Beret Training program as the Military Assistance Program. The U.S. gave nearly \$6 Million in aid to Guatemala's armed forces and \$11 Million in American equipment. Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 245.

¹⁶⁰ Jonas, "Dangerous Liaisons: The U. S. in Guatemala," 147.

U.S. operatives put members of the Guatemalan army through a set of exercises intended to remove their humanity. Greg Grandin in his text *Empire's Workshop* details the type of training: “they were beaten, degraded, made to bathe in sewage and then forbidden to wash the feces off their bodies. Some were required to raise puppies, only to be ordered to kill them and drink their blood [...]”¹⁶¹ The CEH report contends that the training was focused on “extreme combat situations,” which included torture techniques and simulated destruction of civilian villages.¹⁶²

The goal of the U.S. government in providing military training was two-fold. According to a declassified document assessing the “Public Safety Program” the U.S. government’s goals included: first improve and provide “support to the armed and police forces in order [...] to face the threat posed by violent opposition;” and second, “to ensure that the United States maintains its influence over the military establishment, which occupies an important position in the Guatemalan political structure.”¹⁶³ To the “satisfaction of the Americans” the Guatemalan government, led by Arana Osorio, unleashed a new technique against the guerillas: the death squads.¹⁶⁴

The first sustained campaign of death-squad “disappearances” occurred in 1966. The Guatemalan military unit tasked with inflicting terror was trained and directly supervised by U.S. security advisers.¹⁶⁵ During the Montenegro presidency, the U.S. provided substantial financial assistance to the Guatemalan police: over 2.6 million dollars in instruction and equipment.¹⁶⁶ By

¹⁶¹ Grandin, *Empire's Workshop: Latin America, the United States, and the Rise of the New Imperialism*, 90.

¹⁶² Daniel Rothenberg, *Memory of Silence: The Guatemalan Truth Commission Report* (New York City, New York: Palgrave MacMillan, 2012), 103.

¹⁶³ Archivo Histórico de la Policía Nacional, *From Silence to Memory: Revelations of the AHPN* (Eugene, Oregon University of Oregon Libraries, 2013), 199.

¹⁶⁴ Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 246.

¹⁶⁵ Grandin, *Empire's Workshop: Latin America, the United States, and the Rise of the New Imperialism*, 96.

¹⁶⁶ Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 247.

1970, over 30,000 Guatemalan police had received training through the U.S. Office of Public Safety.¹⁶⁷ The *New York Times* reported that the U.S. government was pleased to have finally found a “willing partner [to] accomplish things with.”¹⁶⁸ The partnership between the U.S. and Arana Osorio led to the death of thousands of people, including many women and children.¹⁶⁹

In 1970, the military helped Arana Osorio become the next “democratically” elected president. After his election, he worked to “exterminate all opposition.”¹⁷⁰ During Arana Osorio’s presidency, levels of state-sanctioned murder increased; reported numbers range between 3,500 and 15,000.¹⁷¹ In 1974, the moderate political sector proposed General Rios Montt as a candidate for the presidency. Although Montt won the election, Arana Osorio blocked his inauguration and installed General Eugenio Laugerud Garcia as president. Following this inauguration, a new round of guerilla activity rose and solidified into the *Ejército Guerrillero de los Pobres* (EGP).¹⁷² Another fraudulent election occurred in 1978, and Gen. Romeo Lucas Garcia assumed the presidency with the intention to implement a “harsh campaign against the

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ In a 1968 secret memorandum to the U.S. Department of State, Viron Vaky acknowledged the cruelty of the Guatemalan Governments use of counter-terror, indicting U.S. policy in Guatemala, and acknowledging the depth of U.S. knowledge that the “official squads are guilty of atrocities.” Vaky argues that the counter-terror tactics are “having a terribly corrosive effect on Guatemalan society and the nation’s political development.” He calls on the U.S. to take action against this “brutal” use of counter-terror that is presenting a “serious problem for the U.S. in terms of our image in Latin America.” The U.S. must recognize the indiscriminate nature of the violence and be “honest with ourselves.” Vaky admits that the U.S. government has not only “condoned counter-terror” but has “encouraged and blessed it.” Vaky highlights that the “counterinsurgency tactics” that the U.S. “fully supported” in 1966 have reached levels of brutality that could not have been intended and must not be accepted. Viron Vaky questions if the real reason the U.S. government has refused to become involved is because they believe that counterinsurgency is a “good tactic...murder torture and mutilation are all right if our side is doing it...” In a great plea, Vaky calls on the government to “take a clear ethical stand” against the continued brutality. This ethical position was ignored. Viron Vaky, “Guatemala and Counter-Terror,” U.S. Department of State, Doc. No. 5, (Mar. 29, 1968). Available from Kate Doyle and Carlos Osorio, *U.S. Policy in Guatemala 1966-1996*, in *National Security Archive Electronic Briefing Book No. 11*.

¹⁷⁰ Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 249.

¹⁷¹ Ibid.

¹⁷² Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 249.

Guerillas.”¹⁷³ An article published in *Campeñero*, the international magazine of the EGP, reported that the government had abandoned all efforts to alleviate the state of repression. Instead, Lucas Garcia turned to the Reagan Administration for aid. According to the EGP authors, the “public support voiced by the U.S. government has already resulted in a newly aggressive attitude on the part of the security forces which [...] have increased the terror campaign against ever-widening sectors of the population, including respected journalists and world-renowned intellectuals.”¹⁷⁴

As the 1980s began, the country remained in terror. The active military enrollment was above 14,000 and the U.S.-trained death squads “reached into every sector of national life.”¹⁷⁵ Military leaders, encouraged by the Reagan administration, launched a series of devastating military sweeps in large areas of the countryside deemed as pro-guerilla.¹⁷⁶ In 1981, the Guatemalan military organized the *Patrullas de Autodefensa Civil (PAC)*. The PACs consisted of unified civilian groups trained to carry out tasks for the army; the PAC groups generated heightened terror. The PACs forcibly recruited civilian men out of their communities, leaving women in increased danger from both the army forces and the guerilla insurgents. Also, the PAC groups embedded violence within the community. Civilians were forced to participate in the massacres, and commit acts of torture, mutilation, and destruction. The PACS converted “victims into victimizers.”¹⁷⁷ In modern Guatemalan history, the period of the early 1980s is called “La Violencia.”

¹⁷³ Ibid, 250.

¹⁷⁴ The Guerrilla Army of the Poor (EGP), “Article 1: The Guatemalan Revolution,” *Contemporary Marxism*, No. 3 *Revolution and Intervention in Central America* (Summer, 1981), 35.

¹⁷⁵ Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 251.

¹⁷⁶ Ibid, 258.

¹⁷⁷ Rothenberg, *Memory of Silence: The Guatemalan Truth Commission Report*, 48.

After the fraudulent 1982 election, General Efraín Ríos Montt staged a coup, backed by the United States.¹⁷⁸ General Ríos Montt, a member of the modernized Guatemalan army, had received counterinsurgency training from U.S. forces.¹⁷⁹ His military efforts enabled the “Scorched Earth” campaign in the highlands. Ríos Montt’s goal was to “drain the sea” of the guerilla movement.¹⁸⁰

A secret report sent to the State Department in late 1982 confirms U.S. knowledge of the Scorched Earth campaign. The report entitled “Guatemala: Reports of Atrocities Mark Army Gains,” discusses how the Guatemalan army has “improved its control over rural areas” throughout the country. The report details Ríos Montt’s plan to apply the Scorched Earth policy throughout the country. The U.S. acknowledges that the Scorched Earth policy is often “accompanied” by “government troops [that] are regularly guilty of massacres, rape, and mayhem.”¹⁸¹ A released report sent to the State Department almost a year prior acknowledges that the U.S. government had been aware of brutal tactics for an extended period of time—without any attempt to intervene. Dated mid-February 1982, the document details:

The commanding officers of the units involved have been instructed to destroy all towns and villages which are cooperating with the Guerilla Army of the Poor and *eliminate* all sources of resistance...since the operation began, several villages have been burned to the ground, and a large number of guerillas and collaborators have been killed...the army high command is highly pleased with the initial results of the sweep operation.¹⁸²

¹⁷⁸ Jonas, *The Battle for Guatemala: Rebels, Death Squads, And U.S. Power*, 148.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid, 149.

¹⁸¹ United States Department of State, “Guatemala: Reports of Atrocities Mark Army Gains,” Doc. No. 17, (Circa late 1982). Available from Kate Doyle and Carlos Osorio, *U.S. Policy in Guatemala 1966-1996*, in *National Security Archive Electronic Briefing Book No. 11*.

¹⁸² United States Department of State, “Scorched Earth Tactics,” (Feb. 1983). Available from Kate Doyle and Carlos Osorio, *National Security Archive Electronic Briefing Book No. 169*.

Susanne Jonas writes, “There is no more painful chapter in the history of modern Guatemala than the events of 1980-83.”¹⁸³ United States officials’ had concrete knowledge about the atrocities committed in Guatemala; their level of awareness is undeniable. Actions during the Civil War, a genocide, even received support from the highest level of the U.S. government. A *New York Times* article from December 7, 1982 reported a conversation between President Reagan and General Rios Montt, which occurred on December 5, 1982. President Reagan told reporters that Rios Montt was a “man of great integrity” and “totally dedicated to democracy.”¹⁸⁴ President Reagan insinuated that General Rios Montt was the victim of unfounded accusations of permitting human rights abuses. President Reagan stated that General Rios Montt received a “bum rap” from human rights organizations¹⁸⁵ President Reagan concluded his remarks with a promise that the U.S. would do “what it can to support [Rios Montt’s] progressive efforts.”¹⁸⁶

While President Reagan met with General Rios Montt, the killings escalated. A few weeks earlier, Deputy Assistant Secretary of State Stephen Bosworth wrote, “The military continues to engage in massacres of civilians in the countryside...[our] Embassy recently informed us of a new, apparently well-founded allegation of a large-scale killing of Indian men, women and children in a remote area by the Army.” Bosworth concluded that Rios Montt “seems either unwilling or unable to control this indiscriminate killing.”¹⁸⁷ This memo directly contradicts the public position.¹⁸⁸ On the same day President Reagan proclaimed General Rios Montt’s “integrity,” the Guatemalan Army “received orders to go to Las Dos Erres, a community

¹⁸³ Jonas, *The Battle for Guatemala: Rebels, Death Squads, And U.S. Power*, 146.

¹⁸⁴ Daniel Wilkinson, *Silence on the Mountain: Stories of Terror, Betrayal, and Forgetting in Guatemala* (Durham, North Carolina: Duke University Press, 2004), 328.

¹⁸⁵ Thomson Reuters News, “Guatemalan is Said to Pledge Elimination of ‘Death Squads’,” *The New York Times* (December 7, 1982).

¹⁸⁶ Ibid.

¹⁸⁷ Wilkinson, *Silence on the Mountain: Stories of Terror, Betrayal, and Forgetting in Guatemala*, 327.

¹⁸⁸ Ibid, 326.

that military intelligence considered to be sympathetic to the guerrillas.”¹⁸⁹ The following morning, *Kaibil* soldiers entered Las Dos Erres.¹⁹⁰ *Memoria De Silencio* details the horrific nature of the three-day event:

All of the minors were executed with blows from a sledgehammer to the head, while the smallest ones were held by their feet and smashed against walls or trees. Then, they were thrown down a well...on the nights of December 6 and 7, the soldiers again raped the girls that were still alive as well as various women that they had divided among themselves, ‘I could see how they fought for the minors to rape them’...On December 7, the *Kaibiles* began indiscriminately killing men and women. Some were executed by smashing their heads with a sledgehammer and others with firearms. Once the group of *Kaibiles* had finished, they left Las Dos Erres and went through the mountains in the direction of San Diego, La Técnica, close to the border with Mexico. The soldiers took two girls, ages sixteen and fourteen from the last group of victims...when they became bored with them, they strangled them...¹⁹¹

The massacre of Las Dos Erres is considered one of the most horrendous singular events of the war. The destruction of the entirety of Dos Erres cannot be read in isolation. The Report asserts that the events were the “culmination of combined acts of intelligence, displacement, and control.” As President Reagan, aware of the human rights abuses occurring in Guatemala, gave General Rios Montt public praise for his integrity, General Rios Montt provided the approval for the inhumane destruction of an entire community. This event could not have occurred without the knowledge “of the [U.S.] army’s high command.”¹⁹²

After information surfaced about the Las Dos Erres massacre, U.S. officials decided to investigate. The U.S. Guatemalan Embassy sent a secret cable to the State Department on

¹⁸⁹ Rothenberg, *Memory of Silence: The Guatemalan Truth Commission Report*, 50.

¹⁹⁰ *Kaibil* soldiers received especially brutal training: “the training encouraged a maximum level of aggression and courage through dehumanizing mental and physical pressure. Killing animals was required, particularly dogs, and then eating them raw or grilled, and drinking their blood as proof of courage . . .” The *Kaibil* soldiers received training from U.S. Rangers to become “killing machines.” *Kaibiles* were often involved in the most brutal massacres. The massacre at Las Dos Erres is one case that reflects the use of these units specifically for their aggression and barbaric methods. Rothenberg, *Memory of Silence: The Guatemalan Truth Commission Report*, 103.

¹⁹¹ Rothenberg, *Memory of Silence: The Guatemalan Truth Commission Report*, 52.

¹⁹² Ibid.

December 28, 1982 that explained the Embassy had learned through a “reliable” source of a “possible GOG army massacre of 200 villagers of los Dos R’s.”¹⁹³ The source told the Embassy, “On the eve of December 12, an army unit disguised as Guerillas entered los Dos R’s.”¹⁹⁴ The cable provided the State Department with a few theories for why the village appeared destroyed, but there were no signs of human bodies. The author speculated that perhaps the “army killed everyone in the village, dumped them in the well, and covered the well over.”¹⁹⁵ Because the Embassy trusted the source, the office decided to investigate further. On December 31st the Embassy sent a second secret cable to the State Department after their visit to Las Dos Erres. Although the pilot who brought the Embassy officials refused to land the helicopter in the ruins of the village, the officials reported that they saw “all of the houses in the area had been deserted; many had been razed or destroyed by fire.”¹⁹⁶ The Embassy concluded that “the party most likely responsible for this incident is the Guatemalan Army.”¹⁹⁷ These two cables provide direct insight into the level of U.S. awareness of the massacre.

The Guatemalan Civil War continued through the 1980s. Declassified materials have revealed the extent of U.S. recognition of the widespread atrocities through the years of the war. In a declassified State Department report dated March 28, 1986 a Department Official gives an unusually transparent description of the use of “forced disappearance” in Guatemala. The author contends, “While criminal activity accounts for a small percentage of the cases, and from time to

¹⁹³ The United States Embassy in Guatemala, “Alleged Massacre of 200 at Village of Dos R’s, Petén,” (December 28, 1982). Available from Kate Doyle, Jesse Franzblau, and Emily Willard, *U.S. Policy in Guatemala 1966-1996*, in *National Security Archive Electronic Briefing Book No. 316*.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

¹⁹⁶ The United States Embassy in Guatemala, “Possible Massacre in ‘Dos R’s’, El Petén,” (December 31, 1982). Available from Kate Doyle, Jesse Franzblau, and Emily Willard, *U.S. Policy in Guatemala 1966-1996*, in *National Security Archive Electronic Briefing Book No. 316*.

¹⁹⁷ Ibid.

time individuals ‘disappear’ to go elsewhere, the security forces and paramilitary groups are responsible for most kidnappings. Insurgent groups do not now normally use kidnapping as a political tactic.”¹⁹⁸ The document provides direct evidence of the Guatemalan Army’s engagement in brutal violence through the previous ten years. The official shields the reality that these “disappearances” are acts of brutal murder but acknowledges U.S. awareness. The document argues that the State Department and U.S. Embassy "have failed in the past to adequately grasp the magnitude of the problem" of forced disappearance.¹⁹⁹

Another declassified report shows the extent of U.S. knowledge of and involvement in the atrocities. Terry Ward directed CIA operations in Latin America from 1989 to 1993. The report sent by the President’s Intelligence Oversight Board notes that during Chief Ward’s tenure, the CIA provided monetary assistance to the Guatemalan military intelligence services valued at \$1 to \$3.5 million per year. Even after the U.S. terminated overt military aid, the CIA continued to send “vital” funds to the Guatemalan army whose human rights records "were generally known to have been reprehensible by all who were familiar with Guatemala."²⁰⁰ The Board learned “that in the period since 1984, several CIA assets were credibly alleged to have ordered, planned, or participated in serious human rights violations such as assassination, extrajudicial execution, torture, or kidnapping while they were assets—and that the CIA was contemporaneously aware of many of the allegations." The report recognizes that this knowledge

¹⁹⁸ The United States Department of State, “Guatemala’s Disappeared: 1977-86,” Doc. No. 8 (March 28, 1986). Available from Kate Doyle, Patrick Ball, Hugh Byrne, Anne Manuel, *Guatemala Death Squad Dossier*, in *National Security Archive Electronic Briefing Book No. 15*.

¹⁹⁹ Ibid.

²⁰⁰ The President Intelligence Oversight Board, “Report on the Guatemala Review,” (excerpt), Doc. No. 7 (June 28, 1996). Available from Tom Blanton, *The CIA in Latin America*, in *National Security Archive Electronic Briefing Book No. 27*.

of human rights abuses was not limited to the CIA; the report asserts that “US policy-makers knew of both the CIA's liaison with them and the services' unsavory reputations.”²⁰¹

Although there were exceptions, many government officials denied knowledge of systematic violence. A U.S. Embassy study reveals that the government took great efforts to reject identification of the Guatemalan army as the primary force of brutality. Through this denial, the U.S. disavowed the link between the violence and U.S. involvement. The study outlines the levels of violence, but concludes:

Our Embassy does not really know who is responsible for the killings in rural Guatemala [...] It is to my mind a proof of this situation that Embassy Guatemala has said for several months that it believes the Army is responsible for major human rights violations, but has not advised reported in any cable a single instance that it believes was done by the Army.²⁰² (Emphasis from original document)

In 1996, the Guatemalan government signed Peace Accords which officially ended the Civil War. The War lasted a total of 36 years. More than 200,000 people were murdered; eighty-three percent were from indigenous backgrounds. Roughly ninety-three percent of the crimes were committed by military personnel and other government-connected groups. More than 440 villages were entirely destroyed.²⁰³ The events of the War have been labeled a genocide.

Part III: The War's Effect on Guatemalan Women

Genocide intentionally destroys culture and community. The horrors committed during a genocide move beyond war; genocide is the devaluation of innocent people not tied to politics or power. Victoria Sanford argues that genocide is a *gendered* atrocity, meaning that acts of

²⁰¹ Ibid.

²⁰² United States Embassy in Guatemala, “Credibility of Embassy Guatemala Human Rights Reporting,” Doc. No. 12 (November 23, 1982). Available from the National Security Archive.

²⁰³ Jonas, *The Battle for Guatemala: Rebels, Death Squads, And U.S. Power*, 149.

violence often target reproductive capacity to end the existence of a population. For this reason, women are principal targets of genocidal violence.²⁰⁴

During the most brutal period of the war, *La Violencia*, the army committed uniquely horrific acts of violence against women. The CEH report notes that roughly 25% of the direct victims of violence during the War were women, who were raped, tortured, or murdered because of political ideology and social engagement.²⁰⁵ The final statistics from the CEH registered 9,411 female victims of sexual violence, and 1,465 cases of rape.²⁰⁶ An even greater number of women were indirect victims: mothers lost children, and wives became widows as a result of the violence.²⁰⁷ While women were not the majority of the victims of the Civil War, women were victimized in ways that correspond to their gender and sexuality, as well as “their identity as bearers and protectors of a community’s culture and future.”²⁰⁸

Violence aimed at women was specifically brutal. Targeting women effectively destroyed the entire community. The military viewed women during the War “as a threat based on the conception of females’ moral fragility and women’s roles as primary reproducers of society.”²⁰⁹ Almost one hundred percent of the crimes of sexual nature were committed against women; one official commented that it would be a challenge “to find a Mayan girl of 11 to 15 who had not been raped.”²¹⁰ The CEH report found that soldiers were specifically trained in sexual

²⁰⁴ Victoria Sanford, “From Genocide to Femicide: Impunity and Human Rights in Twenty-First Century Guatemala,” *Journal of Human Rights*, Vol. 7 Is. 2, 104-122 (June 14, 2008).

²⁰⁵ Rothenberg, *Memory of Silence: The Guatemalan Truth Commission Report*, 54.

²⁰⁶ Rothenberg, *Memory of Silence: The Guatemalan Truth Commission Report*, 54.

²⁰⁷ Ibid, 23.

²⁰⁸ Michele L. Leiby, “Wartime Sexual Violence in Guatemala and Peru,” *The International Studies Quarterly*, Vol. 53, No. 2 (June 2009), 446.

²⁰⁹ David Carey Jr. and M. Gabriela Torres, “Precursors to Femicide: Guatemalan Women in a Vortex of Violence,” *Latin American Research Review*, Vol. 45, No. 3 (2010), 19.

²¹⁰ Angelica Chazaro and Jennifer Casey, “Getting Away with Murder: Guatemala’s Failure to Protect Women and Rodi Alvarado’s Quest for Safety,” *University of California Hastings Women’s Law Journal*, Vol. 17, No. 2 (2006), 151.

violence.²¹¹ Soldiers used rape as an “element of war” that made women’s bodies into active symbols of aggression.²¹² Rape was the most frequent form of abuse. In Michele L. Leiby’s examination of the CEH report, she determined that rape comprised approximately 84% of all sexual violations during the War; the military committed roughly 70% of the acts of rape.²¹³ Sexual assault was not a random event. Women were deliberately chosen by the perpetrators. The orders to attack were often given by high commanders of the military prior to entering the community.²¹⁴

The commander has his group of killers, and he tells them how they have to kill. Today they are going to behead or hang them, today they are going to rape all the women. Many times, orders are given to the soldiers before they go out...They were also ordered to do the *percha*...where 20 or 30 soldiers would rape a single woman.²¹⁵

Today we are going to slash throats and finish them off with wires, today we are going to rape all of the women, and kick them viciously, later we will put our guns in their rectum or vagina.²¹⁶

The CEH report found evidence that soldiers were punished if they didn’t participate in these acts of brutality.²¹⁷

Sexual violence effectively instilled mass fear throughout Guatemala. Soldiers used systematic rape as a form of torture that caused community destruction. Soldiers turned rape into an act of communal shame by making the aggressions public. Military forces would deface the

²¹¹ Rothenberg, *Memory of Silence: The Guatemalan Truth Commission Report*, 55.

²¹² Roselyn Costantino, Karen Smith Rotabi, and Debra H. Rodman, “Violence Against Women and Asylum Seeking: Global Problems and Local Practices Applied to Guatemalan Women Immigrating for Safety,” *Advances in Social Work*, Vol. 13, No. 2 (Summer 2012), 434.

²¹³ Leiby, “Wartime Sexual Violence in Guatemala and Peru,” 456.

²¹⁴ Rothenberg, *Memory of Silence: The Guatemalan Truth Commission Report*, 12.

²¹⁵ Leiby, “Wartime Sexual Violence in Guatemala and Peru,” 459.

²¹⁶ Claudia Paz y Paz, “Declaration of Guatemala Expert Claudia Paz y Paz,” 2016. Available online by request through the Center for Gender & Refugee Studies.

²¹⁷ M. Gabriela Torres, “Bloody Deeds/Hechos Sangrientos: Reading Guatemala’s Record of Political Violence in Cadaver Reports,” In *When States Kill: Latin America, the U.S., and Technologies of Terror*, edited by Cecilia Menjivar and Nestor Rodriguez (Austin, Texas: University of Texas Press, 2005), 163.

bodies of their victims and put them on display to draw an audience.²¹⁸ Members of the community were forced to view the victims of rape: “She was raped by I don't know how many soldiers, they cut out her tongue, cut off her ears and eyes, they cut off her breasts and left her by a rock...They left her impaled and naked body...what was left of her body.”²¹⁹ Forcing the community to view acts of rape in this way undermined male masculinity. Further, using rape to create terror “reinforces feelings of vulnerability that the agents of politically motivated violence hoped to instill.”²²⁰ Rape became a tool to assert dominance over women, and to create a general sense of powerlessness. The acts of sexualized violence led to profound suffering for the direct victims as well as their families, spouses and entire communities.²²¹

During the War, women were also directly targeted as victims of torture. The Guatemalan army committed eighty-eight percent of the crimes of torture.²²² Often, the army killed their victims following prolonged acts of torture. For women, torture often included the use of sexual violence. The army would keep women alive for longer periods of time in order to exaggerate the acts of torture:

Women were kept in separate rooms where they were repeatedly raped and tormented. One soldier after another would swagger into the places where the women were kept, and then other soldiers would take their turn. This horror and humiliation would go on for hours.²²³

The level of brutality within these acts of torture is notable. Women were treated with excessive violence to send messages about their worth. Torture, carried out with specific intention to assert

²¹⁸ David Carey Jr. and M. Gabriela Torres, “Precursors to Femicide: Guatemalan Women in a Vortex of Violence,” *Latin American Research Review*, Vol. 45, No. 3 (2010), 158.

²¹⁹ Leiby, “Wartime Sexual Violence in Guatemala and Peru,” 461.

²²⁰ M. Gabriela Torres, “Bloody Deeds/Hechos Sangrientos: Reading Guatemala’s Record of Political Violence in Cadaver Reports,” In *When States Kill: Latin America, the U.S., and Technologies of Terror*, 149.

²²¹ Rothenberg, *Memory of Silence: The Guatemalan Truth Commission Report*, 218.

²²² Rothenberg, *Memory of Silence: The Guatemalan Truth Commission Report*, 25.

²²³ Beatriz Manz, *Paradise in Ashes: A Guatemalan Journey of Courage, Terror, and Hope* (Berkeley, California: University of California Press, 2004), 146.

dominance and superiority, dehumanized women. Jennifer Harbury records the story of Anita, a woman who joined the URNG.²²⁴ Anita describes her discovery of her friend and colleague Melissa, who had been providing medical support for guerilla insurgents:

She was naked and battered, her face bluish from strangulation, small razor cuts and cigarette burns up and down her arms and legs. Her autopsy report showed vaginal slashes, as if her captors, once finished with her themselves, had raped her with a broken bottle. Her eyes were gone, the sockets filled with mud.²²⁵

Survivors of gender-based violence faced further victimization because of the cultural practice of remaining quiet about the abuse. Most who survived extreme sexual violence chose not to report their experiences because of the shame attached.²²⁶ The CEH document discusses the challenges the Commission faced to find women survivors of violence who were willing to discuss their experiences. In many cases, this silence has continued into modern day.²²⁷ Women told the Commission for Historical Clarification that:

I have never spoken about how the soldiers raped the women, much less that they had also abused me . . . I am going to the grave with this . . . No one can know . . . My children don't know, El Señor doesn't know . . . No one knows . . . It is not easy for a woman to dare to mention that she was raped...²²⁸

²²⁴ Jennifer Harbury has changed the names of all individuals cited in her text to protect their privacy.

²²⁵ Jennifer Harbury, *Bridge of Courage: Life Stories of the Guatemalan Compañeros and Compañeras* (Monroe, Maine: Common Courage Press, 1994), 37.

²²⁶ Leiby, "Wartime Sexual Violence in Guatemala and Peru," 451.

²²⁷ During my investigation, I contacted Kate Doyle, a Senior Analyst at the National Security Archive who is the primary expert on all the declassified Guatemala documents released by the United States. I asked Ms. Doyle if she had located any specific documents that pay particular attention to levels of violence committed against women during the most brutal parts of the Civil War. Ms. Doyle informed me that the NSA never did any investigation within the Freedom of Information Act that specifically focused on sexual violence. Ms. Doyle affirmed that their research discovered documents about massacres during the Civil War where sexual violence occurred: Las Dos Erres and Rio Negro. Ms. Doyle attributed this lack of specific information to two issues. First, her team never asked for documentation on the matter—it was not a subject that was considered of primary importance to their investigation. Second, Ms. Doyle notes that the subject of sexual violence was so taboo that survivors of sexual violence during the Scorched Earth campaign were unlikely to discuss their experience with U.S. officials—officials who would never have brought up the topic on their own. Paraphrased from exchange with Kate Doyle (February 19, 2020).

²²⁸ Rothenberg, *Memory of Silence: The Guatemalan Truth Commission Report*, 53.

The hesitation to report acts of sexualized violence is evident even in the testimonies that women agreed to provide. Women utilized “qualifying euphemisms” to talk about their experience. Instead of using the word “*violar*” to refer to rape, survivors or witnesses of rape would use words like “*pasar*” or “*usar*.”²²⁹ Because of the prevalence to choose silence, the Guatemalan army’s acts of sexual violence continue to degrade women.

Women fell victim to specific acts of violence, including rape and torture because of their reproductive capacity and their role within the community. Targeting women for egregious acts of violence paralyzed the entire community with fear. Women faced the constant threat of violence, and men were humiliated and emasculated by watching their wives, daughters, and mothers raped or beaten. Gender-based violence became a powerful tool for domination. The pervasive use of violence during the Civil War normalized two generations of Guatemalan men to sexual and physical violence as tools to assert and consolidate power over women.²³⁰ In the words of one indigenous woman survivor from Polochic, Guatemala:

You could say I’m lucky to be here to talk to you. So many sisters didn’t survive, they were tortured for so long. I was the victim of kidnapping, of torture. Soldiers passed over my body; they played with my body—and not just with me. And it hasn’t stopped, our bodies are still used to torture and divide our communities.²³¹

The great harms perpetrated during the Civil War continue to live in the minds of many Guatemalans; the War is considered a root cause for much of the violence and crime that has persisted since the war’s conclusion.²³² The Civil War and resulting “cultural” acceptance of extreme violence has had a decisive and enduring impact on the lives of women.

²²⁹ Ibid.

²³⁰ Chazaro and Casey, “Getting Away with Murder: Guatemala’s Failure to Protect Women and Rodi Alvarado’s Quest for Safety,” 151.

²³¹ Just Associates: Building Women’s Collective Power of Justice, “From Survivors to Defenders: Women Confronting Violence in Mexico, Honduras, and Guatemala,” Nobel Women’s Initiative (July 2012), 19.

²³² Rothenberg, *Memory of Silence: The Guatemalan Truth Commission Report*.

Part IV: Moving into the 21st Century: Organized Crime and U.S. Involvement

With the signing of the Oslo accords, the conflict ended—but visible signs of the destruction of Guatemalan society pervaded the landscape. Entire villages in rural communities were burned to the ground. Stockpiles of weapons and ammunition contributed to the atmosphere of sustained fear and violence. While the United States funded and distributed firearms during the years of conflict, no one collected the instruments of violence at war’s end. Tens of thousands of former combatants ended the war without jobs or land.²³³

A special report published by the Council on Foreign Relations connects the chaos in the aftermath of the War to the subsequent rise in organized crime.²³⁴ After the sophisticated and “professionalized” training received by the Guatemalan military, many officers turned to participation in organized crime.²³⁵ The UNHCR, United Nations High Commission for Refugees, reports that following the War, many prior military officials trained by the U.S. consolidated into “Illegal Clandestine Security Apparatuses” (*Cuerpos Ilegales y Aparatos Clandestinos de Seguridad, CIACS*).²³⁶

In 1996, the same year Guatemala signed the Peace Accords that ended the Civil War, the U.S. passed the “Illegal Immigration Reform and Immigrant Responsibility Act.”²³⁷ This Act led to the deportation of thousands of “criminals” back to Central America—and specifically to

²³³ Richard Millett and Thomas Shannon Stiles, “Peace Without Security: Central America in the 21st Century,” *Whitehead Journal of Diplomacy and International Relations*, Vol. 9, No. 1 (Winter/Spring 2008), 36.

²³⁴ Michael Shifter, “Countering Criminal Violence in Central America,” *Council on Foreign Relations*, Special Report No. 64 (April 2012), vii.

²³⁵ I use the term organized crime to refer to the illicit activities of non-state groups.

²³⁶ United Nations High Commissioner for Refugees (UNHCR), “Eligibility Guidelines for Assessing International Protection Needs of Asylum-Seekers from Guatemala,” U.N. Document No. HCR/EG/GTM/18/01 (Jan. 2018), 5.

²³⁷ This new policy banned U.S. officials from disclosing criminal backgrounds. Therefore, the new governments unaware of potentially violent pasts. Ana Arana, “How the Street Gangs took Central America,” *The Council on Foreign Relations, Foreign Affairs*, Vol. 84, No. 3 (May-June 2005), 100.

fragile, post-war Guatemala.²³⁸ The UNHCR notes that Guatemala had already experienced a subculture of violent street gangs, but the U.S. decision to deport immigrants intensified this situation. Many of the “criminals” considered themselves American and had lived the majority of their lives on U.S. soil. Their families migrated to the U.S. during the years of the Civil War.²³⁹ In the prisons of Los Angeles, these young men learned the culture of California street gangs. Deported back to Guatemala, they took these lessons with them.²⁴⁰ The U.S. prisons acted as a “criminal finishing school” and created a transnational gang network. The deported gang members consolidated Guatemalan street gangs and created a hierarchy reflecting the structure in the U.S.²⁴¹ The new gangs assumed control of neighborhoods throughout the country and linked these novel organized crime groups to the rival international gangs *Mara Salvatrucha* (MS 13) and *Barrio-18*.

Conclusion

“Guatemala is still paying for the American ‘success.’” – Piero Gleijeses²⁴²

This chapter has traced the history of social, political, and economic conflict in Guatemala. I have focused specific attention on the U.S. role in creating and facilitating violence, as well as perpetuating the effects of instability. Throughout the decades of violence, the United States intervened to escalate conflict, and contributed to a pervasive culture of violence. This culture has outlasted the brutal 36-year Civil War.

²³⁸ Maureen Meyer and Elyssa Pachico, “Fact Sheet: U.S. Immigration and Central American Asylum Seekers,” The Washington Office on Latin America (February 1, 2018).

²³⁹ Arana, “How the Street Gangs took Central America,” 103.

²⁴⁰ United Nations High Commissioner for Refugees (UNHCR), “Eligibility Guidelines for Assessing International Protection Needs of Asylum-Seekers from Guatemala,” 36.

²⁴¹ Maureen Meyer and Elyssa Pachico, “Fact Sheet: U.S. Immigration and Central American Asylum Seekers,” The Washington Office on Latin America (February 1, 2018).

²⁴² Cullather, *Secret History: The CIA's Classified Account of Its Operations in Guatemala*, xxxvi.

In the imbalanced relationship between the U.S. and Guatemala, the U.S. exercised paternalistic control. The U.S. emphasized superiority through economic measures and political involvement, and then transitioned to active military training and engagement. The United States government's stated reason for political intervention can be loosely traced back to the events of the "Ten Years of Springtime" and a developing "revolutionary" platform. As the Arévalo and Arbenz governments became more liberal, the U.S. raised fears of a developing communist takeover. In reality, the monopolistic interest of the United Fruit Company and the loss of economic and political control provided much of the motivation for U.S. action. As Stephen Schlesinger and Stephen Kinzer state, "the forcible interruption of the Guatemalan political process [...] has remained the central episode in the modern history of the country."²⁴³ The events of the 1954 coup stimulated years of volatility that culminated in the Civil War.

Ronald Schneider, a leading historian of the 1954 coup, conceded that "while the short run outcome of the intervention in 1954 was viewed at the time as a success for the U.S. in the Cold War, in a larger perspective it is increasingly difficult to see it as such."²⁴⁴ The United States made the explicit decision to turn a blind eye to the rising levels of violence, feigning ignorance to maintain control. The United States military may not have directly committed murder—or ordered Guatemalan soldiers to slaughter, rape, burn, and decimate the indigenous and rural populations—but "the U.S. armed the murderers."²⁴⁵

The impact of the coup, counterinsurgency, and Civil War pertains to the current climate of the Guatemalan state. Today, politically motivated violence is understood as a "cultural fact,"²⁴⁶

²⁴³ Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 254.

²⁴⁴ Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 227.

²⁴⁵ Cullather, *Secret History: The CIA's Classified Account of Its Operations in Guatemala*, xxxiii.

²⁴⁶ M. Gabriela Torres, "Bloody Deeds/Hechos Sangrientos: Reading Guatemala's Record of Political Violence in Cadaver Reports," In *When States Kill: Latin America, the U.S., and Technologies of Terror*, 143.

and the cycle of violence is “traceable to the bitter hostilities engendered by PBSUCCESS.”²⁴⁷ The Guatemalan military—backed by U.S. support—has shown a generation of Guatemalans that terror and murder are “appropriate ways to achieve both political and personal ends.”²⁴⁸ In Guatemala, violence is perceived as normal and natural.²⁴⁹

The atrocities and violence of the Civil War, along with the War’s legacy of continuing violence, explain the choice for migration, especially among Guatemalan women. According to a report by the Migration Policy Institute, Guatemalan migration served as a “response valve” to the events of the Civil War.²⁵⁰ Following the gruesome war, migration expanded in response to “Guatemala’s severe and continuing socioeconomic problems, successive natural disasters, increasing social violence — and a weak state, lacking the vision, capacity, and resources to resolve these problems internally.”²⁵¹ As the post-war era continued, the “extreme structural violence” caused many to be “forcefully displaced” or to attempt migration.²⁵²

Would Guatemala have a different history without U.S intervention? Throughout this lengthy history, there have been moments of possible change—brief glimpses of a departure from corruption. If the U.S. had not intervened in 1954, Arbenz’s liberal platform might have promoted greater equality among Guatemalan *ladinos* and *indigenos*. In 1963, the U.S. prevented Arevalo’s effort to return to the presidency. The U.S. replaced a man who represented a chance for reform with a man who increased violent terror. During the Civil War, the U.S. government might have used their authority to bring attention to the grave human rights abuses. Instead, the

²⁴⁷ Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 254.

²⁴⁸ Schlesinger and Kinzer, *Bitter Fruit: The Story of the American Coup in Guatemala*, 257.

²⁴⁹ M. Gabriela Torres, “Bloody Deeds/Hechos Sangrientos: Reading Guatemala’s Record of Political Violence in Cadaver Reports,” In *When States Kill: Latin America, the U.S., and Technologies of Terror*, 143.

²⁵⁰ Susanne Jonas, “Guatemalan Migration in Times of Civil War and Post-War Challenges,” *The Migration Policy Institute* (March 27, 2013).

²⁵¹ Ibid.

²⁵² Ibid.

U.S. forces trained the Guatemalan army with tactics of great brutality. American presidents continued to pay lip service to a human rights agenda while covertly sending aid and munitions in support of a genocide. Reflecting on the history of U.S. intervention illuminates how self-described American superiority and a desire to dominate Central America allowed for continued violence.

With few exceptions, the U.S. government and the general public have denied responsibility for almost a century of direct and indirect interference in Guatemalan society. The “great silence” about the events in Guatemala creates separation and lack of culpability.²⁵³ By “suppressing” and “silencing” this brutal history, the U.S. remains in a position of power and putative moral superiority. Recall Mayblin’s concept of differential humanity: due to colonial histories, different bodies are assigned different levels of worth. The actions of U.S. intervention highlighted in this chapter showcase the colonially informed ideas of the U.S. government about Guatemalan people—a people of “differential worth,” undeserving of democracy, freedom, or safety. The history of U.S. intervention in Guatemala and the current asylum system perform similar acts of paternal posturing. The U.S., acting as the higher power, decides how history plays out and disregards the creation and amplification of violence. The paternalistic nature of asylum must be viewed in recognition of this lengthy history. The United States history of power in Central American informs the perspective of U.S. officials who believe they have the right to judge and determine the destiny of others who are less fortunate.

²⁵³ Jonas, *Battle for Guatemala: Rebels, Death Squads, And U.S. Power*, 146.

CHAPTER III: THE SYSTEM OF GENDER-BASED VIOLENCE IN GUATEMALA Colonial Roots, Civil War Exacerbation, and an Inadequate Legal System

According to a 2019 *New York Times* report, every week Guatemalan newspapers address stories of mutilation, gruesome torture, and acts of dehumanization perpetrated against women.²⁵⁴ These reports of violence echo the systematic violence of the Civil War. As articulated in the previous chapter, women experienced acts of violence during the War that targeted their gender. The grave harms against women extended beyond the signing of the Peace Accords in 1996.²⁵⁵ Following the War, the social fabric of Guatemala “broke down.”²⁵⁶ The United States had trained Guatemalan soldiers to commit acts of killing and torture. When the War concluded, the military sent these men back to their communities without a plan to reincorporate them into society: “One day these men were encouraged to commit violence in the name of the state, the next, they were sent back to civilian communities which were in many ways unprepared for their return.”²⁵⁷

The Civil War normalized gender-based violence.²⁵⁸ Claudia Paz y Paz, the first woman Attorney General of Guatemala, explained: “Guatemala’s history of militarism, genocide and war crimes bears a direct relationship to the current vulnerability of women [...]”²⁵⁹ David Carey Jr. and M. Gabriella Torres study the cadavers of female victims of violence. They found

²⁵⁴ Azam Ahmed, “Women Are Fleeing Death at Home. The U.S. Wants to Keep Them Out,” *The New York Times* (August 18, 2019).

²⁵⁵ Linda Green, “Declaration of Guatemala Expert Linda Green,” 2016. Available online by request through the Center for Gender & Refugee Studies.

²⁵⁶ Ibid

²⁵⁷ Ibid.

²⁵⁸ Lynn Stephen, “Violencia Transfronteriza De Género Y Mujeres Indígenas Refugiadas De Guatemala / Cross-border Gender Violence and Guatemalan Indigenous Women Refugees.” *Revista CIDOB D’Afers Internacionals*, No. 117 (2017), 30. Original Spanish Text: “*Después de la guerra, la violencia de género –anteriormente normalizada como parte de una campaña general de terror y genocidio en contra de los pueblos indígenas– se convirtió en una violencia normalizada que acompañó la amplia presencia del crimen organizado en Guatemala.*”

²⁵⁹ Claudia Paz y Paz, “Declaration of Guatemala Expert Claudia Paz y Paz,” 2016. Available online by request through the Center for Gender & Refugee Studies.

that the bodies of victims in contemporary Guatemala display evidence of rape, extreme torture and murder that are reminiscent of cadaver reports published during the War.²⁶⁰ The Guatemalan organization *Fundación Sobrevivientes* released a report that postulated that the same people responsible for contemporary violence were responsible for wartime atrocities. The “sense of power” displayed by the perpetrator is a “unifying factor” between the modern and wartime acts of violence.²⁶¹

Many scholars and legal advocates connect the continuation of brutal violence to the high level of impunity for wartime crimes. Although the War ended after the government signed the Peace Accords, crimes against women, and especially crimes against indigenous women, remain unsolved.²⁶² The War enabled generations of Guatemalans to use acts of violence as a means for control; the War’s conclusion created systemic impunity.²⁶³ The Truth Commission written report establishes that the perpetrators of 99% of war crimes against women have never faced trial.²⁶⁴ Paula Barrios, a Guatemalan lawyer who represents female survivors of violence, highlights the top-down mechanism of impunity: “The interest of successive Guatemalan governments has always been to remain silent—to make us unaware of what really happened and forget the massacres or the sexual violence committed against women as a weapon of war.”²⁶⁵ The impunity for Civil War violence facilitates modern brutality.²⁶⁶ Despite her efforts and

²⁶⁰ Carey Jr. and Gabriela Torres, “Precursors to Femicide: Guatemalan Women in a Vortex of Violence,” 156. M. Gabriela Torres, “Bloody Deeds/Hechos Sangrientos: Reading Guatemala’s Record of Political Violence in Cadaver Reports,” In *When States Kill: Latin America, the U.S., and Technologies of Terror*,

²⁶¹ Claudia Paz y Paz, “Declaration of Guatemala Expert Claudia Paz y Paz,” 2016. Available online by request through the Center for Gender & Refugee Studies.

²⁶² Linda Green, “Declaration of Guatemala Expert Linda Green,” 2016. Available online by request through the Center for Gender & Refugee Studies.

²⁶³ Carey Jr. and Gabriela Torres, “Precursors to Femicide: Guatemalan Women in a Vortex of Violence,” 159.

²⁶⁴ Ibid.

²⁶⁵ Natalia Bonilla, “Guatemala’s civil war has created a legacy of rape and teen pregnancy,” *Women’s Media Center* (July 5, 2017).

²⁶⁶ Carey Jr. and Gabriela Torres, “Precursors to Femicide: Guatemalan Women in a Vortex of Violence,” 144.

actions during her tenure as AG, Paz y Paz declares that it continues “to be very dangerous to be a woman in Guatemala.”²⁶⁷

In this chapter, I focus on the ways in which the creation and systemic nature of gender-based violence within Guatemala corresponds to patterns of migration. I address the types of violence experienced by women in Guatemala, and the connection these forms of violence have to legacies of colonialism. Next, I explore the development of unequal societal power structures formalized in the Guatemalan Civil Code. I also highlight the development and execution of *machista* culture, a system based on male superiority. Although the Government has attempted to protect women from gender-based violence, the laws created have roots in a system of power that devalues women. Despite the high levels of gender-based violence throughout the country, failure to properly investigate and prosecute crimes has led to widespread impunity.

The continuation of violence with high levels of impunity are essential to understanding why women flee Guatemala to seek protection in the United States. However, while the conditions that cause an individual to seek asylum are profound, many analyses rely too heavily on this lens. During asylum cases, judges will often overemphasize these country conditions to either disregard individual experiences of violence or position the violence as specifically pervasive in Guatemala—which gives the U.S. the chance to act as a paternal protector. I highlight Civil War violence—and specifically the violent training of men in the military, paramilitary, and the *patrullas de autodefensa civil* (civil self-defense patrols)—as a way of reinforcing the connection between the wartime influence of the United States, and contemporary levels of violence. Perpetrators of violent acts against women seek to enact control over the victims.

²⁶⁷ Claudia Paz y Paz, “Declaration of Guatemala Expert Claudia Paz y Paz,” 2016. Available online by request through the Center for Gender & Refugee Studies.

When possible, this thesis employs the phrase gender-based violence as opposed to violence against women. I use this terminology in an effort to expand my understanding of forms of violence. However, much of the formal legislation in Guatemala uses the phrase violence against women. Agana Chatterji, Shashi Buluswar, and Mallika Kaur explain that “Gendered violence targets all non-dominantly gendered subjects regardless of their gender status (as cisgender or transgender, multigender) or sexuality (as LGBTIQ).”²⁶⁸ The premise of gender-based violence emphasizes that people of all genders can be victims; however, women experience gender-based violence at disproportionately high rates.²⁶⁹ Amy Elman’s definition specifically addresses how women are more affected by gender-based violence. She defines gender-based violence as practices that “represent a violent reproduction of gender that specifically functions to enforce and perpetuate female subordination.”²⁷⁰ Gender-based violence includes actions that are physical and sexual, as well as actions that cause economic hardship or psychological pain without physical harm.²⁷¹ Finally, I choose to use this term to emphasize how gender-based violence should operate as an “analytical category” to examine how actions are committed through normative ideas of masculinity.²⁷² Using the term gender-based violence allows for greater recognition of the influences of gender roles, and the enactment of gender stereotypes.

²⁶⁸ Natasha Behl, *Gendered Citizenship: Understanding Gendered Violence in Democratic India* (Oxford, United Kingdom: Oxford University Press, 2019), 127. Citing to Agana Chatterji, Shashi Buluswar, and Mallika Kaur, *Conflicted Democracies and Gendered Violence: The Right to Heal* (Berkeley, CA: Berkeley Haas Press, 2015), 45.

²⁶⁹ Behl, *Gendered Citizenship: Understanding Gendered Violence in Democratic India*, 127. Citing to Sally Engle Merry, *Gender Violence: A Cultural Perspective* (Malden, MA: Wiley-Blackwell, 2009), 1.

²⁷⁰ Behl, *Gendered Citizenship: Understanding Gendered Violence in Democratic India*, 9. Citing to Amy R. Elman, “Gender Violence,” in *The Oxford University Handbook of Gender and Politics*, edited by Georgina Waylen, Karen Celis, Johanna Kantola, and S. Laurel Weldon, (Oxford, United Kingdom: Oxford University Press, 2013), 237.

²⁷¹ Behl, *Gendered Citizenship: Understanding Gendered Violence in Democratic India*, 127. Citing to Chatterji, Buluswar, and Kaur, *Conflicted Democracies and Gendered Violence: The Right to Heal*, 45; and Merry, *Gender Violence: A Cultural Perspective*, 1.

²⁷² Behl, *Gendered Citizenship: Understanding Gendered Violence in Democratic India*, 127. Citing Banerjee et al., “Engendering Violence: Boundaries, Histories, and the Everyday,” *Cultural Dynamics*, Vol. 16, No. 2–31 (2004), 132–133.

Part I: Types of Violence Against Women

In the first six months of 2018, the Public Ministry received 21,400 reports of violence, in a country of about 17 million people.²⁷³ On average, authorities receive 116 reports of gender-based violence every day.²⁷⁴ Gender-based violence in Guatemala takes on many forms. U.S. professors Cecilia Menjívar and Shannon Drysdale Walsh research the impacts of violence in Latin America, and argue that three types of non-physical violence underlies, provokes, and permits the physical kind.²⁷⁵ First, they define “structural” violence as high-level systems that promote continued gender inequality. In Guatemala, structural violence presents within the economy and labor system: women—especially indigenous, poor, and rural women—experience severe disadvantages.²⁷⁶ The second form of violence is “political,” characterized by actions of the State. Wartime violence falls into this category. “Symbolic” violence is the internalization of inequality between men and women: acts of aggression or enactments of inequality that are labeled as “everyday practices.”²⁷⁷ These practices include:

“Robadas” (women being ‘taken’ or ‘stolen’) as part of courtship; extreme control over their bodies, social relations and physical movement; a social premium on their honor and “good behavior”; the expectation that they will be partnered and be mothers...²⁷⁸

Symbolic forms of violence are often classified as part of the culture of a nation and are ignored by the justice system.²⁷⁹ Symbolic violence perpetuates other acts of violence because it allows injustice to become institutionalized. Those suffering, committing crimes, or interpreting and

²⁷³ Ivonne Gordillo, “Más de 100 denuncias por violencia contra la mujer se reciben en promedio cada día” *PublicNews Guatemala* (July 24, 2018).

²⁷⁴ *Ibid.*

²⁷⁵ Cecilia Menjívar and Shannon Drysdale Walsh, “Subverting Justice: Socio-Legal Determinants of Impunity for Violence against Women in Guatemala,” *Domestic Violence and Family Law*, Vol. 5, Is. 3 (July 11, 2016), 2.

²⁷⁶ *Ibid.*

²⁷⁷ *Ibid.*

²⁷⁸ *Ibid.*, 6.

²⁷⁹ *Ibid.* .

creating laws all live within the greater social structure that has allowed for a “we are used to it” perspective.²⁸⁰

Recognizing the impact and development of non-physical violence helps to underscore how acts of intense physical violence occur. Women in Guatemala are at risk for sexual violence, including assault and rape, as well as physical violence that can result in murder. According to the Crime and Safety reports published by the U.S. Department of State, sexual assault numbers decreased from 613 in 2015, to 571 in 2016, to 551 in 2017 and then to 527 in 2018. The figure for 2019 has not been published. However, the report acknowledges that the actual numbers are almost certainly much higher.²⁸¹ The IACHR reported different numbers based on data from the Secretariat against Sexual Violence, Exploitation, and Trafficking in Persons, a Guatemalan governmental office. According to this report, the office recorded 7,845 *denuncias* (reports) of sexual violence in 2015 and 7,949 *denuncias* in 2016.²⁸²

As of 2013, Guatemala had the third highest rate of femicide in the world.²⁸³ Sociologist Diana Russell defined femicide in the late 1980s as the “the killing of females by males because they are female.”²⁸⁴ Russell highlights that femicide is a “form of terrorism” because it generates terror, reinforces male dominance, and renders “all women chronically and profoundly unsafe.”²⁸⁵ Acts of femicide often include a “shock factor” recalling the extreme brutality of the

²⁸⁰ Cecilia Menjivar and Shannon Drysdale Walsh, “Subverting Justice: Socio-Legal Determinants of Impunity for Violence against Women in Guatemala,” *Domestic Violence and Family Law*, Vol. 5, Is. 3 (July 11, 2016), 2-3. .

²⁸¹ The United States Department of State, “Guatemala 2019 Crime & Safety,” Overseas Security Advisory Council, Bureau of Diplomatic Security (February 28, 2019).

²⁸² Inter-American Commission on Human Rights, “Situation of Human Rights in Guatemala”, *The Organization of American States*, Doc. No. OEA/Ser.L/V/II (December 31, 2017), 184.

²⁸³ Karen Musalo and Blaine Bookey, “Crimes without Punishment: An Update on Violence Against Women and Impunity in Guatemala,” *The Hastings Race and Poverty Law Journal*, Vo. 10 (Summer 2013), 270.

²⁸⁴ Victoria Sanford, “From Genocide to Femicide: Impunity and Human Rights in Twenty-First Century Guatemala,” *Journal of Human Rights*, Vol. 7 Is. 2, 104-122 (June 14, 2008), 3.

²⁸⁵ Carey Jr. and Gabriela Torres, “Precursors to Femicide: Guatemalan Women in a Vortex of Violence,” 143.

War. Mutilated and dismembered bodies of murdered women are often left on display in public places.²⁸⁶ A majority of cases of femicide are seen in instances of intimate partner violence.²⁸⁷ Chazaro and Casey connect the rise in femicide in the early 2000s to the increased presence of women in the public sphere, engaging in society outside of domestic work.²⁸⁸ A Guatemalan non-profit, *Grupo Guatemalteco de Mujeres* reported 7,357 violent deaths between 2008 and 2017, with similar numbers in 2018 and 2019.²⁸⁹ Victims of femicide are often poor.²⁹⁰ Femicide commonly follows months or years of sustained violence against a female victim.²⁹¹

In the last few years, the spread of gangs throughout Guatemala has intensified the level of violence in the cities and in rural regions. With the increased activity of the 18th Street Gang and MS13, unsafe conditions for women have intensified. Gang members often force women into relationships, or rival gangs will target women because of previous relationships with gang-affiliated men.²⁹² Sometimes, women are assaulted and killed by gang members as a demonstration to prove their masculinity and receive a promotion within the gang.²⁹³ The Advocates for Human Rights in Guatemala found that women who “come into contact with gangs are subject to threats, kidnapping, extortion, rape and sexual assault, and

²⁸⁶ Roselyn Costantino, Karen Smith Rotabi, and Debra H. Rodman, “Violence Against Women and Asylum Seeking: Global Problems and Local Practices Applied to Guatemalan Women Immigrating for Safety,” *Advances in Social Work*, Vol. 13, No. 2 (Summer 2012), 434.

²⁸⁷ Musalo and Bookey, “Crimes without Punishment: An Update on Violence Against Women and Impunity in Guatemala,” 273.

²⁸⁸ Chazaro and Casey, “Getting Away with Murder: Guatemala's Failure to Protect Women and Rodi Alvarado's Quest for Safety,” 153.

²⁸⁹ Cora Currier, “Trump Administration's Limits on Asylum for Domestic Violence Put Guatemalan Women in Peril,” *The Intercept* (November. 2, 2018)

²⁹⁰ Chazaro and Casey, “Getting Away with Murder: Guatemala's Failure to Protect Women and Rodi Alvarado's Quest for Safety,” 149.

²⁹¹ See generally, Carey Jr. and Gabriela Torres, “Precursors to Femicide: Guatemalan Women in a Vortex of Violence.”

²⁹² Gabriela Bernal, “A closer look at the dark fate of Guatemalan women,” *Human Development Research Initiative* (March 2018).

²⁹³ Ibid.

murder.”²⁹⁴ Women in Guatemala face multiple levels of violence on a day-to-day basis. I discuss the roots and proliferation of this hierarchy of power in the following section.

Part II: The Roots of Violence and The Legal Framework

The Civil Code

Male dominance and gender-based violence were not clear features of ancient Mesoamerica. In fact, anthropological research suggests that women and men played fairly equal roles in society, except for a few ancient Mayan cities that had matrilineal power structures. Patriarchy was a colonial import. Lynn Stephen explains how modern violence “indirectly replay[s] crucial colonial and postcolonial tropes.”²⁹⁵ Colonizers exerted their control over the indigenous populations through physical as well as political acts; for example, Spanish colonizers raped Mayan women. Lynn Stephen writes:

Since the arrival in 1519 of Cortés and his troops in what is now Mexico, the subjugation of indigenous identity, the feminization of indigenous men through domination by other men, the conquest of indigenous women and men through sexual assault and coercion have been standard practices... ²⁹⁶

Both men and women were affected by acts of brutality that stripped men of their masculinity, and victimized women. Acts of colonial aggression enforced the idea that women’s bodies could be abused and manipulated as a method of exerting power. Stephen continues, “Historically, indigenous women have been projected as ‘available’ to outsiders and invading military forces.”²⁹⁷ Identifying the indigenous population as inferior through acts of physical and sexual

²⁹⁴ The Advocates for Human Rights, “Guatemala’s Compliance with the Convention on the Elimination of All Forms of Discrimination Against Women,” Submitted to the 68th Session of the Committee on the Elimination of Discrimination Against Women (August 2017), 7.

²⁹⁵ Please note this article centers on colonial violence in Mexico. Lynn Stephen, “The Construction of Indigenous Suspects: Militarization and the Gendered and Ethnic Dimensions of Human Rights Abuses in Southern Mexico.” *American Ethnologist* Vol. 26, No. 4 (1999), 823.

²⁹⁶ Ibid.

²⁹⁷ Ibid, 827.

violence became a common practice. Colonialism reinforced a dominant relationship between the powerful and the subordinate that used political control and acts of violence to maintain superiority. Former AG Claudia Paz y Paz affirms the connection between the development of patriarchal relationships during colonization and modern violence in Guatemala.²⁹⁸

The roots of colonial practices are evident in the Guatemalan Civil Code. The Civil Code contains strict provisions that served as scaffolding for a society dominated by patriarchal conditions. Certain elements directly disadvantage women. Specific parts of the Family Code, including the marriage and divorce laws, have handcuffed modern legislation, in both interpretation and implementation.²⁹⁹ What follows is a limited sample of the laws that facilitated the creation of unequal relationships between men and women.

As Cecilia Menjívar and Shannon Drysdale Walsh explain, because the Family Code is rooted in the idea that the “family unit” is the basis of society, seemingly neutral laws enable the proliferation of gender inequality, “further normalizing and formalizing the symbolic violence of such inequalities.”³⁰⁰ Article 113 of the Code states that “A woman will be permitted to work, exercise a profession, or participate in industry or commerce, when her work does not interfere with caring for the children, or her household responsibilities.”³⁰¹ Similarly, Article 114 establishes that a husband may prohibit his wife from participating in activities outside of the home. A husband need only provide sufficient evidence or justification that this work would

²⁹⁸ Claudia Paz y Paz, “Declaration of Guatemala Expert Claudia Paz y Paz,” 2016. Available online by request through the Center for Gender & Refugee Studies.

²⁹⁹ Menjívar and Walsh, “Subverting Justice: Socio-Legal Determinants of Impunity for Violence against Women in Guatemala,” 8.

³⁰⁰ Menjívar and Walsh, “Subverting Justice: Socio-Legal Determinants of Impunity for Violence against Women in Guatemala,” 8.

³⁰¹ Original Spanish Text: *La mujer podrá desempeñar un empleo, ejercer una profesión, industria, oficio o comercio, cuando ello no perjudique el interés y cuidado de los hijos ni las demás atenciones del hogar.* El Gobierno de La República de Guatemala, *El Código Civil*, Art. 113 (1996).

jeopardize the well-being of the household.³⁰² Article 169 states that only “innocent women” are eligible for alimony following divorce.³⁰³ To prove innocence, women must show that they are not at fault for the divorce and that they have maintained “good conduct.”³⁰⁴ Menjivar and Walsh note that the provision to prove “good conduct” often leads men to continue to exert their control by surveilling their ex-spouse. This type of monitoring may become the basis for violence—including femicide.³⁰⁵ The Code does not contain similar provisions for a man’s behavior. The Civil Code facilitated the establishment of a legal system that continued to support the existence of gender inequality.

The patriarchal laws within the Code replicate colonial practices and ideology. Through colonialism, the colonizer asserts superiority by labeling the colonized as inferior. The colonizer rewrites laws and uses physical and sexual violence to legitimize their power.³⁰⁶ The Guatemalan Civil Code echoes this structure through the creation of a system that establishes male superiority. Through these acts of symbolic violence, men legitimize their power. The Civil Code enshrines paternalistic thinking—transferring the power dynamic from colonizer and colonized, to men and women. Although the government has appealed some of the laws within the Civil Code, the legacy of state-sanctioned patriarchy endures.³⁰⁷ The aftermath of colonial superiority,

³⁰² The Guatemalan government appealed Article 114 in 1998. Original Spanish Text: *El marido puede oponerse a que la mujer se dedique a actividades fuera del hogar, siempre que suministre lo necesario para el sostenimiento del mismo y su oposición tenga motivos suficientemente justificados*. El Gobierno De La República de Guatemala, *El Código Civil*, Art. 114 (1996).

³⁰³ The Advocates for Human Rights, “Guatemala’s Compliance with the Convention on the Elimination of All Forms of Discrimination Against Women,” 3.

³⁰⁴ Menjivar and Walsh, “Subverting Justice: Socio-Legal Determinants of Impunity for Violence against Women in Guatemala,” 10.

³⁰⁵ Ibid.

³⁰⁶ See generally, Albert Memmi, *The Colonizer and the Colonized* (Boston, Massachusetts: Beacon Press, 1967).

³⁰⁷ Chazaro and Casey, “Getting Away with Murder: Guatemala’s Failure to Protect Women and Rodi Alvarado’s Quest for Safety,” 151.

and much of the Code, impacts the way that laws intended to protect women are interpreted, often rendering them ineffective.

Domestic Legal Framework

After the Civil War, women's rights groups mobilized to convince the Guatemalan government to create legal protections against crimes of gender-based violence.³⁰⁸ Women's rights activists called on Congress to ratify the provisions within the Belém de Pará Convention, a 1995 Inter-American Convention.³⁰⁹ All Latin American countries signed this international convention.³¹⁰ According to the provisions of the Belém de Pará Convention, women have the right to live a life free of violence.³¹¹ The Convention called on signatory nations to create legislation that would "prevent, punish, and eradicate violence against women"³¹² Following the Convention, the Guatemalan government faced challenges to create and implement legislation. The political arena remained male-dominated.

In 1996, Guatemala became compliant with the Convention by passing the Law to Prevent, Punish, and Eradicate Intra-familial Violence (Nº 97-1996, passed November 28, 1996). The law articulated legal actions to address domestic violence within the "family unit"—including marriage, civil marriage, or people who have children together.³¹³ The Law specifically defined domestic violence as "any action or omission that in a direct or indirect

³⁰⁸ Menjívar and Walsh, "Subverting Justice: Socio-Legal Determinants of Impunity for Violence against Women in Guatemala," 11.

³⁰⁹ Ibid.

³¹⁰ Ibid.

³¹¹ Alicia Deus and Diana Gonzalez, "Analysis of Femicide/Feminicide Legislation in Latin America and the Caribbean and a Proposal for a Model Law," *The United Nations Women* (Clayton Panama: House of the United Nations, 2018), 23.

³¹² Ibid, 7.

³¹³ Cecilia Menjívar and Shannon Drysdale Walsh, "'What Guarantees Do We Have?' Legal Tolls and Persistent Impunity for Feminicide in Guatemala," *Latin American Politics and Society* Vol. 58, No. 4 (2016), 41.

[method] causes injury or physical, sexual, psychological or proprietary harm, as much as in the public realm as in private [...].”³¹⁴ The new law enabled women to file for a protective order.³¹⁵ However, these orders would only be enforced if the receiving agency—for instance, the *Ministerio Publico, Policia Nacional, or the Procuraduría General de la República*—filed a complaint to a court.³¹⁶ The law did not criminalize domestic violence. Often the “receiving agencies” failed to report the violence to the court systems, likely due to ingrained bias about interpersonal violence.³¹⁷ The 1996 law also put too much emphasis on the family unit. The law did not criminalize all gender-based violence, it only indirectly addresses these harms. Guatemalan attorney Hilda Morales Trujilo notes that this focus “upheld the hierarchy of the family” which already had primary focus within the Civil and Criminal codes.³¹⁸ Without explicitly mentioning the vulnerability of women both within and outside the family, the law accomplished little genuine protection.

In 2008, the Guatemalan government attempted to remedy the inequities within the Civil Code and the inadequacy of the 1996 Law by passing the 2008 Law Against Femicide and Other Forms of Violence Against Women. The 2008 Law had the aim of protecting the “life, liberty, integrity, dignity, protection, and equality of all women before the law.”³¹⁹ In addition to crimes of a physical or sexual nature, the law included economic violence, defined as: “Restrictions on disposing of one’s own property, forced signature on documents that affect property or liberate

³¹⁴ El Congreso de la República de Guatemala, *Ley para Prevenir, Sancionar y Erradicar la Violencia Intrafamiliar* (November 28, 1996)

³¹⁵ Elisa Portillo Nájera, “Declaration of Guatemala Expert Elisa Portillo Nájera,” 2012. Available online by request through the Center for Gender & Refugee Studies.

³¹⁶ Menjivar and Walsh, ““What Guarantees Do We Have?” Legal Tolls and Persistent Impunity for Femicide in Guatemala,” 41.

³¹⁷ Ibid, 12.

³¹⁸ Ibid.

³¹⁹ El Congreso de la República de Guatemala, *Ley contra el Femicidio y otras Formas de Violencia Contra la Mujer*, Artículo 1 (May 2, 2008).

an aggressor from responsibilities, extortion denying economic support, infliction of violence in order to control income.”³²⁰ Furthermore, the 2008 Law formally recognized femicide, the murder of a woman “because of her condition as woman,” as a criminal offense.³²¹ Originally, the law established a prison sentence of 25-50 years without the possibility of parole.³²² In addition to recognizing new categories of violence as crimes, the law established Specialized Courts for Violence Against Women as a method for addressing these crimes. Prosecutors, judges, lawyers, social workers, and psychologists received specific training on how to handle gender-based violence.³²³ On face value, these courts demonstrate a positive step in the direction toward equality. However, the Specialized Court system contains essential flaws.

First, the ability to report violence remains limited. There are only eleven Specialized Courts in Guatemala, although the country is divided into 22 departments. Women living in one of the other eleven departments face great challenges to reach a court.³²⁴ Women in rural areas—where the prevalence of femicide is higher—often live several hours from the nearest court. In these remote areas, women rely on *agentes*, local authorities, who *may* report the crimes to the National Civil Police (PNC).³²⁵ Although the 2008 Law established multiple pathways for reporting violence, the PNC is most accessible for Guatemalan women. However, the police commonly refrain from getting involved in gender-based violence cases that occur within the

³²⁰ El Congreso de la República de Guatemala, *Ley contra el Femicidio y otras Formas de Violencia Contra la Mujer*, Artículo 8 (May 2, 2008).

³²¹ Menjívar and Walsh, “‘What Guarantees Do We Have?’ Legal Tolls and Persistent Impunity for Femicide in Guatemala,” 50.

³²² The Advocates for Human Rights, “Guatemala: Violence Against Women,” Submitted to the 28th Session of the Working Group on the Universal Periodic Review (November 6, 2017), 3.

³²³ Héctor Ruiz, “No Justice for Guatemalan Women: An Update 20 Years After Guatemala’s First Violence Against Women Law,” *Hastings Women’s Law Journal*, Vol. 29 (2018), 102.

³²⁴ *Ibid*, 110.

³²⁵ Lynn Stephen, “Fleeing rural violence: Mam women seeking gendered justice in Guatemala and the U.S.,” *The Journal of Peasant Studies*, Vol. 46, Is. 2 (December 14, 2018), 241.

home.³²⁶ Police officers may share the sexist views of the abuser, or believe that intimate partner violence does not merit the involvement of law enforcement.³²⁷ The Advocates for Human Rights published an account of how the legal system failed one woman. She could not report the abuse to the police because her husband, a police officer, informed her that if she involved the police “there was nothing that would be done.”³²⁸ Because of the normalization of violence, and the acceptance of female subordination as routine—the written law fails to support female victims.

Second, legal mishaps restrict the ability of these laws to guarantee protection. While both the 1996 and 2008 Laws attempted to criminalize behaviors in both public and private contexts, the Laws were enacted outside the boundaries of both the Civil Code and the Criminal Code. This structural problem limits the courts’ abilities to prosecute gender-based violence.³²⁹ Despite the provisions of the 2008 Law, rates of femicide in Guatemala have continued to increase. In June of 2019, the Guatemalan government took a major step backwards, declaring Article 6 of the Law “partially unconstitutional”.³³⁰ With this resolution, the government reduced the penalty for femicide and affirmed the ability of abusers to seek parole. The international community has viewed this decision as a miscarriage of justice, putting the life and dignity of survivors at risk.³³¹

³²⁶ Ibid.

³²⁷ Linda Green, “Declaration of Guatemala Expert Linda Green,” 2016. Available online by request through the Center for Gender & Refugee Studies.

³²⁸ The Advocates for Human Rights, “Guatemala: Violence Against Women,” 5.

³²⁹ Musalo and Bookey, “Crimes without Punishment: An Update on Violence Against Women and Impunity in Guatemala,” 287.

³³⁰ Carlos Álvarez and Manuel Hernández Mayén, “Crece el rechazo a la reducción de penas para sentenciados por femicidio,” *Prensa Libre* (July 3, 2018).

³³¹ *El Periodico*, “ONU alarmada por reducción de penas por femicidio en Guatemala” (June 30, 2018).

Finally, both laws fail to properly recognize the effects of the pre-existing systems of power. When judges evaluate gender-based violence cases, they often utilize “adjacent laws” to make their decisions.³³² By using “adjacent laws,” reports are not sent to the Specialized Court system. For instance, the justice system may investigate and prosecute a crime of femicide as murder, which ignores the gendered implications and avoids the heightened scrutiny of the Specialized Court. In the general criminal court, abusers can receive reduced sentences. Judges in this system may also completely disregard interpersonal violence as a crime. Judges will refuse to use the 2008 and 1996 Laws, claiming these Laws violate the principle of “equality under the law,” because there are no “analogous” laws to protect men.³³³ Moreover, because the laws are embedded in discriminatory practices, crimes against women persist with impunity. The Guatemalan government’s response to the systemic culture of violence against women has failed.

Machismo

The laws dedicated to eradicating gender-based violence, as well as the provisions of the Civil Code, must be understood within a particular social context. A country’s legal system does not exist in isolation; rather, it is reflective of larger structures of power. Relics of colonial thinking have infused modern ideology. In many Latin American countries, the result is the phenomenon of *machismo*.

The Guatemalan National Institute of Forensic Science defines *machismo* as “an arrogant attitude of men with respect to women, discrimination and undervaluation of women by

³³² Menjívar and Walsh, “Subverting Justice: Socio-Legal Determinants of Impunity for Violence against Women in Guatemala,” 16.

³³³ The Advocates for Human Rights, “Guatemala’s Compliance with the Convention on the Elimination of All Forms of Discrimination Against Women,” 4.

considering them inferior to men.”³³⁴ *Machismo* fosters “an exaggerated importance of maleness” and leads to an expectation that men can use sexual or physical aggression to control women.³³⁵ Social scientists consider *machismo* an important cultural variable in Latin America which fosters the notion that women are submissive to men.³³⁶ This assumption normalizes gender-based violence. Furthermore, *machista* culture facilitates the choice to uphold laws that re-assert male superiority, which often conflict directly with the newer laws that provide protection for women. The Inter-American Commission on Human Rights found that the “prevalence of a machista culture...lead[s] to particular brutality against women in Guatemala.”³³⁷

The acceptance and normalization of violence is particularly evident within intimate partner relationships. Women are viewed as the “daughters” of their husbands, requiring women to obey their husband’s desires.³³⁸ Infidelity, or suspected infidelity, transgresses this expectation and allows men to “justify” acts of rape and sexual assault.³³⁹ However, men are “almost culturally expected to be unfaithful.”³⁴⁰ This type of double standard places women at fault in both situations. Either she is punished physically for her actions, or she is shamed for being unable to satisfy her partner.³⁴¹ Former Attorney General Paz y Paz affirms that this behavior is particularly intentional. Often, forms of sexualized violence are used as mechanisms for

³³⁴ Original Spanish Text: *la actitud de prepotencia de los varones respecto a las mujeres, discrimina y menosprecia a la mujer considerándola inferior al hombre*. Silvia María Ocampo Sánchez, “Estereotipos socioculturales y violencia contra la mujer,” *Instituto Nacional de Ciencias Forenses de Guatemala (INACIF)* (January 4, 2018).

³³⁵ Lynne Duffy, “Viewing Gendered Violence in Guatemala Through Photovoice,” *Violence Against Women*, Vol. 24, No. 4 (March 2018), 422.

³³⁶ Ibid.

³³⁷ Inter-American Commission on Human Rights, “Situation of Human Rights in Guatemala,” 183.

³³⁸ Elisa Portillo Nájera, “Declaration of Guatemala Expert Elisa Portillo Nájera,” 2012. Available online by request through the Center for Gender & Refugee Studies.

³³⁹ Inter-American Commission on Human Rights, “Situation of Human Rights in Guatemala,” 183.

³⁴⁰ Ibid.

³⁴¹ Ibid.

retaliation when women attempt to “challenge their subordinate roles within traditionally expected gender relationships.”³⁴² Men use violence to punish women for departing from the accepted, dominant structure. Acts of revenge within an intimate partner relationship reestablish order and reaffirm the patriarchal relationship that inscribes male dominance.³⁴³

Machista culture activates when women attempt to denounce their abusive relationships by seeking protection or obtaining a divorce. As Paz y Paz observes, a woman who leaves her relationship emasculates a man and humiliates him “before his peers, his family, and himself.” Therefore, others may seek to exert revenge against the woman.³⁴⁴ Because friends and family of the abuser are also humiliated by this transgression of ascribed norms, a woman who leaves her abuser fears retaliation by her husband and the wider community. Because of the normalization of *machista* culture, women continue to live in fear and in danger.³⁴⁵

Fear of retaliation because of *machismo* places restrictions on women’s ability to report or denounce violence. *Prensa Libre*, the leading Guatemalan newspaper, covered a 2016 protest in Guatemala City. Women called on the government to recognize the epidemic of violence. *Prensa Libre* published the response of the Public Ministry: “In Guatemala, there exists a culture of discrimination and sexist stereotypes that permeates all of the institutions within the justice sector.”³⁴⁶ Stereotypes about women’s roles and actions reinforce impunity. Elisa Portillo Nájera explains that *machismo* is deeply entrenched in the way law enforcement personnel and judicial officials will respond to reports of violence. Officials refuse to protect women because

³⁴² Claudia Paz y Paz, “Declaration of Guatemala Expert Claudia Paz y Paz,” 2016. Available online by request through the Center for Gender & Refugee Studies.

³⁴³ Ibid.

³⁴⁴ Ibid.

³⁴⁵ Ibid.

³⁴⁶ Original Spanish Text: *En Guatemala existe una cultura de discriminación y de estereotipos sexistas que permea todas las instituciones del sector justiciar. Prensa Libre*, “Piden erradicar la violencia en contra de las mujeres” (November 25, 2016).

they hold the same beliefs as the perpetrators. “Law enforcement and judicial officials often blame women for their partners’ ‘misbehavior’.”³⁴⁷

Plaza Publica, a progressive Guatemalan newspaper, argues that *machismo* is a form of psychological violence. Although the 2008 Law recognizes psychological violence as a crime, *machismo* limits the ability to properly protect women. The effects of *machismo* taught generations of women “that violence is part of what it means to be a woman, wife, or mother.”³⁴⁸ Elisa Portillo Nájera determined that the root cause of violence “stems from a culture that embraces the subjugation of women and celebrates a man’s right to dominate.”³⁴⁹ Understanding the impact of *machismo* on the levels of violence within Guatemalan society is essential to evaluating broad levels of impunity.

This discussion of *machismo* is not meant to characterize all men as abusive, or Latin America as uniquely violent. Rather, it is important to recognize how these cultural understandings of power operate within society to perpetuate abuse. The connection between *machismo* and colonialism is essential—within the structures of colonization, imbalances of power became natural and enforcing this power through violence was the norm.

Part III: Impunity for Crimes of Gender-Based Violence

In the law, “impunity” means the ability to commit crimes or act unjustly without fear of consequences. Just as the wartime genocide occurred unchecked, the perpetrators of modern

³⁴⁷ Elisa Portillo Nájera, “Declaration of Guatemala Expert Elisa Portillo Nájera,” 2012. Available online by request through the Center for Gender & Refugee Studies.

³⁴⁸ Original Spanish Text: *En el contexto guatemalteco actual, la asignación de roles de género enseña a las mujeres a que la violencia es parte de ser mujer, esposa o madre.* Heissel López and Diego Manrique, “Sin sangre no hay violencia: la violencia psicológica contra la mujer en Guatemala,” *Plaza Pública* (July 7, 2018).

³⁴⁹ Elisa Portillo Nájera, “Declaration of Guatemala Expert Elisa Portillo Nájera,” 2012. Available online by request through the Center for Gender & Refugee Studies.

gender-based violence believe they can “get away with murder in Guatemala.”³⁵⁰ The Guatemalan Human Rights Commission reported that “prosecution and conviction for gender and sexual crimes is almost nonexistent and almost absolute impunity for the perpetrator is the norm.”³⁵¹

The levels of impunity are striking. The UN Women’s Office reported that in Guatemala the level of impunity for femicide remains at 98%.³⁵² The Guatemalan Newspaper, *El Periodico*, reported that only 3% of cases of gender-based violence receive recognition from the justice system. The most recent report from the Integrated Justice System found that of 461,528 cases reported, only 13,626 received a response from the justice system.³⁵³ The Prosecutor’s Office has an impunity rate of 97.5%; the Public Ministry has an impunity rate of 97%.³⁵⁴ Although the violence against women laws were created to defend women and establish legal protections, this failure to respond halts potential progress. Most offices within the judicial system report staggeringly different statistics on the rates of violence and judicial response—which enables further impunity. The 2008 Law attempted to remedy this issue by establishing the National Institute of Statistics (INE) to gather and generate information regarding the trends of gender-based violence.³⁵⁵ The INE requests data from eleven different governmental organizations, and

³⁵⁰ Amnesty International, “Why does Guatemala have one of the highest rates of femicide in the world?” (Accessed on March 29, 2020). See generally, Musalo and Bookey, “Crimes without Punishment: An Update on Violence Against Women and Impunity in Guatemala.”

³⁵¹ Roselyn Costantino, Karen Smith Rotabi, and Debra H. Rodman, “Violence Against Women and Asylum Seeking: Global Problems and Local Practices Applied to Guatemalan Women Immigrating for Safety,” *Advances in Social Work*, Vol. 13, No. 2 (Summer 2012), 434.

³⁵² United Nations Women, “Guatemala: Background,” (Accessed on March 30, 2020).

³⁵³ Original Spanish: *Tres de cada cien casos de violencia contra la mujer posiblemente tenga alguna respuesta del sistema de justicia. De un volumen de 461 mil 528 casos, a noviembre de 2018 se había dado respuesta a 13 mil 626 de ellos, de acuerdo con el informe más reciente del Sistema Integrado de Justicia. El Periodico*, “Impunidad prevalece en casos de violencia contra la mujer” (March 7, 2019)

³⁵⁴ Ibid.

³⁵⁵ Ruiz, “No Justice for Guatemalan Women: An Update 20 Years After Guatemala’s First Violence Against Women Law,” 106.

then reviews and analyzes the reports to publish a formal record.³⁵⁶ The INE has discovered great inconsistencies within the reports of each organization; some organizations even refuse to cooperate in sharing their reports.³⁵⁷ The efforts of the INE—established to address the miscarriage of justice—often publish “outdated” and “inconsistent” reports.³⁵⁸

Guatemala is unable to translate the rights that are codified in the rules of law into legal action. In addition to the use of “adjacent laws,” impunity arises from the normalization of violence that is rooted in a culture of gender discrimination. The socio-legal context of the country was significant to writing and developing these laws. This significance remains true within the application of the law. Menjívar and Walsh explains that “laws are likely to be ineffective and futile because the socio-legal context that generally discriminates against women is left unchanged even when laws meant to protect women are passed.”³⁵⁹ The laws specifically address behavior, not the roots of inequality; therefore, in even the best cases, the judicial system offers a minimal response.³⁶⁰ Social contexts enable the perspective that gender-based violence is not extraordinary, therefore, basic procedures utilized in criminal investigations are often dismissed.³⁶¹ For example, police refrain from collecting or preserving evidence.³⁶² This creates a great challenge for survivors during litigation. Without proof, convincing the judge of the facts

³⁵⁶ The INE requests data from: *the Organismo Judicial, the Ministerio Público, the Procuraduría General de la Nación, the Procurador de los Derechos Humanos or PDH, the Ministerio de Gobernación, the Policía Nacional Civil or PNC, the Instituto de la Defensa Pública Penal, the Bufete Popular de USAC, the Popular de la Universidad Rafael Landívar, the Instituto Nacional de Ciencias Forenses or INACIF, the Dirección General del Sistema Penitenciario, the Ministerio de Educación, and the Ministerio de Salud Pública y Asistencia Social.*

³⁵⁷ Ruiz, “No Justice for Guatemalan Women: An Update 20 Years After Guatemala’s First Violence Against Women Law,” 106.

³⁵⁸ Ibid.

³⁵⁹ Menjívar and Walsh, “Subverting Justice: Socio-Legal Determinants of Impunity for Violence against Women in Guatemala,” 2.

³⁶⁰ Ibid.

³⁶¹ Ibid.

³⁶² Ruiz, “No Justice for Guatemalan Women: An Update 20 Years After Guatemala’s First Violence Against Women Law,” 111.

of the case is arduous. Furthermore, justice system officials often claim a lack of awareness or maintain a willful ignorance about the legal protections available to women.³⁶³ In regard to the 2008 Law Against Femicide, many judges claim that “they do not understand its provisions and that it is very complicated.”³⁶⁴ Masking their biases as confusion, judges disregard violence, which renders the justice system dysfunctional.

When the justice system forgoes its responsibility, the burden of pursuing justice is placed on the survivors of violence. However, this creates further impunity because many women fear retaliation, or anticipate that the justice system will not respond to their needs.³⁶⁵ Instead, women choose silence.³⁶⁶ Cecilia Menjívar contends that fear alone does not drive this silence. Silence is rooted in the “habit of keeping quiet in a world that coercively demands women’s compliance, sacrifice, and enduring violence.”³⁶⁷ Finally, further impunity results from the stereotype that women who survive abuse must somehow have provoked their abuser’s actions.³⁶⁸ As former Attorney General Thelma Aldana reports, during court proceedings, judges will tell survivors of domestic violence to “go back to your husband, attend to your husband, this is why you were beaten.”³⁶⁹ This type of blame is widespread in the Guatemalan legal system. Elisa Portillo Nájera, explains that a judge’s blame is rooted in a lack of recognition about the severity of gender-based violence:

³⁶³ Menjívar and Walsh, “Subverting Justice: Socio-Legal Determinants of Impunity for Violence against Women in Guatemala,” 14.

³⁶⁴ Ibid.

³⁶⁵ Claudia Paz y Paz, “Declaration of Guatemala Expert Claudia Paz y Paz,” 2016. Available online by request through the Center for Gender & Refugee Studies.

³⁶⁶ Menjívar and Walsh, ““What Guarantees Do We Have?” Legal Tolls and Persistent Impunity for Femicide in Guatemala,” 40.

³⁶⁷ Ibid.

³⁶⁸ Cora Currier, “Trump Administration’s Limits on Asylum for Domestic Violence Put Guatemalan Women in Peril”, *The Intercept* (November. 2, 2018).

³⁶⁹ United Nations Women, “Take Five: A feminist in decision-making roles makes a difference,” (May 3, 2018).

In one instance, a judge at a training I held asked me if I would please inform the women not to dress too provocatively and cause men to commit crimes. In other instances, women have reported to me that policemen have suggested that problems can be fixed if the woman complies with norms specified by society, such as preparing a man's favorite meal. Because the police, prosecutors, and judges believe that men have the right to use violence against their partners to control them, they do not take cases of violence against women seriously. Furthermore, these officials are often indifferent to or ignorant about the cycle of domestic violence, whereby women are abused over and over or even killed by their partners.³⁷⁰

This socio-legal context intensifies the problems of the ineffective legal measures. The result is a high and often insurmountable level of impunity.

Conclusion

Guatemalan women seeking support must navigate a justice system that has failed to address gender-based harm and has institutionalized violence as normal. Instead of recognizing the gravity of gender-based violence, the justice system supports embedded social inequality. Women in Guatemala face many forms of violence: non-visible forms of violence such as structural, symbolic, political, and economic, as well as physical and sexual assault, rape, and murder. The social understandings of women's roles in society have limited real progress in both creation and enactment of law. As Menjívar writes: "The law should be an arena where the less powerful are put on equal footing with the more powerful, but in the context of Guatemala, it often becomes an arena where women's relative lack of power is reinforced and its effects amplified when they seek help."³⁷¹

³⁷⁰ Elisa Portillo Nájera, "Declaration of Guatemala Expert Elisa Portillo Nájera," 2012. Available online by request through the Center for Gender & Refugee Studies.

³⁷¹ Menjívar and Walsh, "Subverting Justice: Socio-Legal Determinants of Impunity for Violence against Women in Guatemala," 18.

The system of violence within Guatemala is a root cause for migration. Understanding this system is imperative to recognizing the injustices that proliferate within the United States asylum system. The next chapter provides an overview of the U.S. asylum system.

CHAPTER IV: THE U.S. ASYLUM SYSTEM

Throughout human history, people have migrated for economic opportunity, or to flee natural disasters, violence, and persecution. Migration defines the movement of people within or between countries. Migration is a global phenomenon affecting thousands of people every day. The term immigrant refers to an individual who enters a new location with intentions to remain, either temporarily or permanently. Most countries have created systems to recognize legal structures of migration: tourist visas, legal permanent resident cards, sponsorship by a legal family member, and other structures that identify a human being whose status is in transition. The United States offers these options for immigrants who enter with express legal permission. The term immigrant is often used as the catch-all phrase to refer to anyone outside of their country, state, or city of origin. However, there is an important and specific distinction within the category of immigrant; the subset of people defined as refugees and asylum seekers are entitled to explicit protections universalized in international law and established through domestic policy. By contrast, people who move voluntarily, presumably for economic opportunity, do not receive protections under international law.³⁷²

Blurring the distinction between asylum seekers and other immigrants ignores the specificity of their circumstances. This chapter will provide an overview of the international and domestic policies that provide specific legal protections for seeking asylum. I focus first on international regulations and U.S. policies. I then provide an analysis of unresolved problems within asylum law. Finally, I highlight the specific legal parameters for gender-based asylum.

³⁷² Elizabeth G. Ferris and Katherine M. Donate, *Refugees Migration and Global Governance*, Routledge Press (2020), 3. Karen Musalo, “Evolution of Refugee and Asylum Law in the United States” in *Refugees and Asylum Seekers: Interdisciplinary and Comparative Perspectives*, S. Megan Berthold and Kathryn R. Libal, Editors, Library of Congress (2019), 18.

This discussion of asylum jurisprudence is pertinent to understand the analysis of individual asylum cases and their implications in Chapter V.

Asylum Law in the United States

The Origins and Classification of International Asylum Policy

The United Nations defined the right to asylum during the 1951 Convention Relating to the Status of Refugees (Convention or 1951 Convention).³⁷³ The Convention provided a set definition for a refugee: an individual with a “well-founded fear” of persecution due to their “race, religion, nationality, membership in a particular social group or political opinion...”³⁷⁴ The global community focused on creating a policy that would establish protections for refugees who were persecuted during WWII. The Refugee Convention *only* provided legal pathways to asylum for people of European origin who became refugees due to the “events occurring before January 1951.”³⁷⁵ Sixteen years later, the international community recognized the need for a policy that would address future circumstances. In response, over 100 countries signed the United Nations’ 1967 Protocol Relating to the Status of Refugees (Protocol or 1967 Protocol).³⁷⁶ The content of the Protocol replicated the 1951 Convention, but abandoned location and time-

³⁷³ UN General Assembly, *Convention Relating to the Status of Refugees*, July 28, 1951, United Nations, Treaty Series, Vol. 189, 137

³⁷⁴ *Ibid*, 152.

³⁷⁵ The Convention contained articles that provided specific geographical and time barriers for determining a person’s refugee status. *Convention Relating to the Status of Refugees*, 154.

³⁷⁶ UN General Assembly, *Protocol Relating to the Status of Refugees*, January 31, 1967, United Nations, Treaty Series, Vol. 606, 267.

based restrictions.³⁷⁷ International Law provided an outline for creating domestic policies to protect people who fell under the newly defined term: refugee.³⁷⁸

United States Domestic Policy

The United States did not come into compliance with the Protocol until 1980, thirteen years later. In that year, President Jimmy Carter signed the Refugee Act as an addendum to the Immigration and Nationality Act of 1965 (the INA) and the Refugee Assistance Act of 1962. The Refugee Act (the Act) employed the same definition of “refugee” as both the Convention and the Protocol:

Any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion...³⁷⁹

Under the Act, individuals seeking refuge had two primary procedural options for securing protection.³⁸⁰

³⁷⁷ Both international documents contain the definition of a refugee, Article 1 of the Convention. Both treaties also discuss the policy of “non-refoulement”—non-return to a place of insecurity that would put the person in harm’s way (Article 33)—and suggestions for countries to provide pathways to citizenship within their domestic policies (Article 34). Karen Musalo, “Evolution of Refugee and Asylum Law in the United States,” 19.

³⁷⁸ The terms refugee and asylum seeker are often used interchangeably. Asylum seekers are individuals who are seeking international protection, but their claim for refugee status has not yet been determined. During the asylum proceedings, asylum seekers must prove that they meet the definition of a refugee. Because asylum cases are often denied, not all asylum seekers will ultimately be recognized as refugees. Yet, most refugees initially are defined as asylum seekers, unless they enter the U.S. through the USRAP program.

³⁷⁹ The INA, signed by President Johnson, abolished the National Origins Quota System which regulated immigration numbers based on race. Written during the Civil Rights Era, this Act was intended to adopt new policies of non-discrimination. Gabriel J. Chin and Rose Cuison Villazor, editors, *The Immigration and Nationality Act of 1965: Legislating a New America*, Cambridge University Press (2015); Sara L. McKinnon, *Gendered Asylum: Race and Violence in U.S. Law and Politics*, University of Illinois Press (2016), 9.

³⁸⁰ Karen Musalo, “Evolution of Refugee and Asylum Law in the United States,” 20.

First, the Act established the U.S. Refugee and Admission Program (USRAP).³⁸¹ Under this program, the President—in collaboration with Congress—sets an “admissions ceiling” for refugees in a calendar year. The President determines potential admittance by numbers, priority, and country of origin.³⁸² Refugees who are living abroad apply for admittance. The specifications of USRAP allows the U.S. government to establish the “admissions ceiling” through a discussion of the reasons “for believing that the proposed admission of refugees is justified by humanitarian concerns or grave humanitarian concerns or is otherwise in the national interest...”³⁸³

Second, the Act established a procedure for refugees to apply for asylum “irrespective of such alien’s status.”³⁸⁴ The individual might be in transit to the U.S, or have already arrived, but must meet the definition of a refugee. First, the individual must prove “persecution or a well-founded fear of persecution.” Second the individual must be “unable or unwilling” to return to their country of origin. Third, the individual must show a “nexus” between the persecution and “race, religion, nationality, membership in a particular social group, or political opinion.”³⁸⁵ The other legal option for refugees at the border or within the U.S. is a “withholding of removal”³⁸⁶

³⁸¹ United States Citizenship and Immigration Services, Department of Homeland Security, *The United States Refugee Admissions Program (USRAP) Consultation and Worldwide Processing Priorities*.

³⁸² USRAP identifies three “priorities” in determining the admissions ceilings. “Priority 1: Cases that are identified and referred to the program by the United Nations High Commissioner for Refugees (UNHCR), a United States Embassy, or a designated non-governmental organization (NGO). Priority 2: Groups of special humanitarian concern identified by the U.S. refugee program. Priority 3: Family reunification cases.” *The United States Refugee Admissions Program (USRAP) Consultation and Worldwide Processing Priorities*.

³⁸³ The United States Government, *The Refugee Act of 1980*, 96 STAT.-212 (March 17, 1980).

³⁸⁴ Ibid.

³⁸⁵ Ibid.

³⁸⁶ A grant of asylum is preferable than that of “withholding.” Karen Musalo explains that the differentiation is the pathway to citizenship and the opportunity for family reunification. Asylum provides a pathway to become a legal permanent resident and then a citizen after one full year, while withholding does not provide any path toward legal permanence. Further, asylees are able to later apply for their family, their spouse and/or children, to join them. Refugees granted withholding are never able to apply on behalf of family members. Karen Musalo, “Evolution of Refugee and Asylum Law in the United States,” 23.

grant, secured only if an individual can prove that their “life or freedom would be threatened” if returned to their country of origin.³⁸⁷

The Adjudicatory Levels of the Asylum Process

The first level of the asylum process is “non-adversarial.”³⁸⁸ Refugees meet with an Asylum Officer (AO) at one of eight Asylum Offices throughout the country for an interview. Individuals at the AO level seek “affirmative” asylum—they are already living within the U.S. and voluntarily present themselves to USCIS. After the interview, an AO can either grant relief (asylum status) or refer the case to an Immigration Judge for further review.

Cases heard at Immigration Courts are adversarial, mirroring a typical hearing. A representative of the U.S. government, typically an attorney with U.S. Immigration and Customs Enforcement (ICE) or the Department of Homeland Security (DHS), presents the government’s side of the case; the applicant defends their asylum claim. Although an attorney may represent an asylum seeker, representation is not provided automatically.³⁸⁹ An Immigration Judge decides to grant or deny asylum. Either the applicant or the government can appeal the decision to the Board of Immigration Appeals (BIA)—under the Department of Justice. A decision may then be appealed to a Federal Circuit Appeals Court, and an Appeals Court’s decision can be appealed to the U.S. Supreme Court. Finally, the U.S. Attorney General is given a rarely used discretionary privilege to remand cases to themselves if they find that the Immigration Judge, BIA, and/or a

³⁸⁷ The United States Government, *The Refugee Act of 1980*.

³⁸⁸ Karen Musalo, “Evolution of Refugee and Asylum Law in the United States,” 23.

³⁸⁹ U.S. law states that asylum seekers have the “privilege” of representation—but at their personal cost. Asylum seekers must either find pro bono representation or pay for private counsel. According to TRAC (Transactional Records Access Clearinghouse), applicants with representation are much more likely to be granted asylum—but only about 37% of immigrants have representation, and only 14% of detained immigrants. Karen Musalo, “Evolution of Refugee and Asylum Law in the United States,” 23, Citing to Ingrid Eagly and Steven Shafer, Access to Counsel in Immigration Court, American Immigration Council (September 28, 2016).

Federal Court made an unjust or improper decision. Those eventually denied asylum are subject to deportation to their country of origin.

A Few Problems of Refugee and Asylum Law

While the 1980 Refugee Act placed the U.S. in compliance with international norms, the law is overtly political in its application. Quotas for refugees are explicitly based on “national interest,” which gives the President wide latitude to determine allowances based on contemporary agendas of foreign policy. In times of conflict, this provision has allowed the government to raise the ceiling for people coming from “enemy” territory for reasons of propaganda. For instance, during the Cold War the highest refugee allotments went to people fleeing the USSR and denouncing communism. By contrast, during decades of U.S. government support to Latin American dictatorships, the government approved low numbers of refugees from Latin America, disregarding grave human rights abuses.³⁹⁰ In practice, the Refugee Act can place national interest above humanitarian concerns.³⁹¹

Scholar Karen Musalo writes that the asylum and withholding pathways for legal admission to the U.S were “intended” to be free of politics and foreign policy.³⁹² Still, the process is arduous. First, asylum applicants bear the burden of proof to demonstrate that they meet the conditions for asylum. To meet the definition of a “refugee,” they must prove one of the five enumerated grounds, a well-founded fear, and a nexus between the two. Often, an Asylum Officer, the Immigration Judge, and/or the BIA will require applicants to provide physical proof of persecution. For example, if an asylum seeker filed a police report after surviving domestic

³⁹⁰ Ibid, 28.

³⁹¹ Ibid, 21.

³⁹² Ibid, 22.

violence, the asylum seekers must provide a physical copy of the report. Many applicants are unaware of this obligation. Meeting the burden of proof also requires establishing that the applicant's country of origin is unable or unwilling to provide protection. Providing documentation of country conditions or expert declarations to meet this burden is almost impossible for asylum seekers without legal representation. Asylum seekers must provide sufficient evidence to be considered credible, but without physical documentation, the immigration official may determine credibility subjectively, based on testimony.

The second core problem results from the determination of credibility. Asylum decisions are “discretionary,” meaning that the immigration official has the power to choose relief or deportation. Although the legal structure of asylum only requires an applicant show a 10% probability of future persecution, the results of discretionary decision-making reveal great disparity.³⁹³ In their book *Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform*, Jaya Ramji-Nogales, Andrew Schoenholtz and Phillip Schrag discuss the “great deal of statistical variation in the outcomes pronounced by decision makers.”³⁹⁴ Their text demonstrates the biases in the decisions and the significant variation in decisions between offices, regions, courthouses, year, and even gender. Decisions may even reflect the prior career of the adjudicator.³⁹⁵

³⁹³ For withholding of removal, applicants must show that future persecution is more likely than not—50%. Karen Musalo, “Evolution of Refugee and Asylum Law in the United States,” 23.

³⁹⁴ Jaya Ramji-Nogales, Andrew Schoenholtz and Phillip Schrag, *Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform*, (New York, New York: New York University Press, 2009), 302.

³⁹⁵ *Refugee Roulette* concluded that female judges grant asylum at a rate 44% higher than male judges. Judges who worked in DHS prior to joining the bench are less likely to grant asylum. On the other hand, judges who previously practiced immigration law, worked at non-profits, or taught full-time are more likely to grant asylum. Ramji-Nogales, Schoenholtz, and Schrag, *Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform*, 377.

Like problems within the USRAP policy, asylum grants also demonstrate favoritism. During the Civil War, Guatemalans were denied asylum at a rate of 99 percent, while immigrants from Soviet-controlled territories fared much better.³⁹⁶ Ramji-Nogales, Schoenholtz, and Schrag quote former Attorney General Robert Jackson who argues, “It is obviously repugnant to one’s sense of justice” that asylum decisions depend in large part on “purely fortuitous circumstance; namely the personality of the particular judge [...]”.³⁹⁷ Although the Refugee Act established pathways for asylum, the application of the Act restricts access to legal protections.

Gender-Based Asylum

In 2018, The UNHCR reported that of the 258 million migrants around the world, about 10% are refugees. Of this 25.9 million, half are women or children.³⁹⁸ The Convention, Protocol, and 1980 Refugee Act do not address specifically the status of women or children. In all three legal documents, the definition of a refugee is gender neutral.³⁹⁹ Gender is not provided as one of the five enumerated grounds under U.S. asylum law. This creates a paradox for a woman seeking asylum: requiring her to shape her experience to fit within a different category, commonly the “particular social group” ground.

The BIA first defined “particular social group” in the seminal 1985 case, *Matter of Acosta*.⁴⁰⁰ A Salvadoran taxi driver, who had created a cooperative taxi association, requested asylum due to fear of persecution by a guerilla group. He claimed his fear of persecution was on

³⁹⁶ Karen Musalo, “Evolution of Refugee and Asylum Law in the United States,” 24; Sara L. McKinnon, *Gendered Asylum*, 28.

³⁹⁷ Karen Musalo, “Evolution of Refugee and Asylum Law in the United States,” 25.

³⁹⁸ Elizabeth G. Ferris and Katherine M. Donate, *Refugees Migration and Global Governance*, Routledge Press (2020), 35.

³⁹⁹ Nancy Kelly, “Gender-Related Persecution: Assessing the Asylum Claims of Women,” *Cornell International Law Journal*, Vol. 26, Is. 3 (1993), 674.

⁴⁰⁰ *Matter of Acosta* (19 I&N. Dec. 211, BIA 1985)

the account of his membership in the group comprised of “COTAXI drivers and persons engaged in the transportation industry.”⁴⁰¹ The *Acosta* decision used the theories developed in *ejusdem generis* (“of the same kind”), to propose that the particular social group⁴⁰² definition should be applied in the same manner as the other considerations for asylum: race, religion, nationality, and political opinion.⁴⁰³ In evaluating the other four grounds, the BIA concluded that each contained an “immutable characteristic” or a fundamental part of a person’s identity that they should not be required to change.⁴⁰⁴ In *Acosta*, the BIA extended the understanding of “immutable” to particular social groups, specifying that “the shared characteristic might be an innate one such as sex, color, or kinship ties, or ... it might be a shared past experience.”⁴⁰⁵ In 2006, the BIA also began to require a showing of “social visibility,” asserting that the proposed particular social group must be “recognizable and distinct in society.”⁴⁰⁶ The *Acosta* standard became precedent for proposing social groups defined by “sex.”⁴⁰⁷

Eleven years later, the BIA issued another landmark decision: *Matter of Kasinga*.⁴⁰⁸ The BIA granted asylum to a woman who fled Togo as a teenager to escape female genital cutting. The BIA accepted Ms. Kassindja’s attorney’s argument that her particular social group was

⁴⁰¹ Ibid, 232.

⁴⁰² The particular social group enumerated ground was created as an “after-thought” to minimize gaps of coverage left by the other four categories. Until the *Acosta* decision, the meaning of the term remained unclear. As a result, “judicial and agency interpretations are vague and sometimes divergent [...] courts have applied the term reluctantly and inconsistently.” Allison W. Reimann, “Hope for the Future? The Asylum Claims of Women Fleeing Sexual Violence in Guatemala,” *University of Pennsylvania Law Review*, Vol. 157, No. 1199 (2009), 216.

⁴⁰³ Ibid, 233.

⁴⁰⁴ Ibid, 233; and National Immigrant Justice Center, “Asylum Practice Advisory: Applying for Asylum After *Matter of A-B*” (Jun. 21, 2018)

⁴⁰⁵ *Matter of Acosta* (19 I&N. Dec. 211, BIA 1985), 233. Blaine Bookey, “Gender-Based Asylum Post-Matter of A-R-C-G-: Evolving Standards and Fair Application of the Law,” 1 *Southwestern J. Int’l L.* 22 (2016), 6.

⁴⁰⁶ Blaine Bookey, “Gender-Based Asylum Post-Matter of A-R-C-G-: Evolving Standards and Fair Application of the Law,” 6.

⁴⁰⁷ Karen Musalo, “Personal Violence, Public Matter: Evolving Standards in Gender-Based Asylum Law,” *Harvard International Review* (2015), 46.

⁴⁰⁸ Note: Kassindja is the proper spelling of her name, the BIA erred when issuing the decision.

comprised of “young women of the Tchamba-Kunsuntu Tribe who have not had FGM [female genital mutilation], as practiced by that tribe, and who oppose the practice.”⁴⁰⁹ The decision set the precedent that women fleeing gender-based persecution could be eligible for asylum.

Despite the Kassindja victory, asylum officers and immigration judges remained skeptical when ruling on gender-based asylum claims.⁴¹⁰ In the interim between the *Matter of Kasinga* and the next major victory in 2014, many judges rejected domestic violence cases outright, reasoning that domestic violence is “personal” and not a matter of public concern. On August 26, 2014, the BIA issued the precedential decision, *Matter of A-R-C-G-*, recognizing domestic violence as a basis for asylum.⁴¹¹ In this case, the BIA found that Ms. Aminita Cifuentes was a member of the particular social group of “married women in Guatemala who are unable to leave their relationship.”⁴¹² The *Matter of A-R-C-G-* decision affirmed the immutability of gender and asserted that marital status can be immutable depending on extenuating circumstances.⁴¹³ This decision established that domestic violence could provide the basis for an asylum claim, but the legal holding in *A-R-C-G-* is narrow and leaves much discretion to immigration judges.⁴¹⁴ The cases of Acosta, Kassindja, and *A-R-C-G-* form the basis for most

⁴⁰⁹ *Matter of Kasinga* (21 I. & N. Dec. 357 (BIA 1996)).

⁴¹⁰ Most notably is the case of Rody Alvarado, referred to in the introduction of this work and evaluated extensively in Chapter V.

⁴¹¹ The Center for Gender and Refugee Studies, “Domestic Violence-Based Asylum Claims: CGRS Practice Advisory,” (September 12, 2014).

⁴¹² *Matter of A-R-C-G-* (4 26 I. & N. Dec. 388. BIA 2014)

⁴¹³ The extenuating circumstance included “whether dissolution of a marriage could be contrary to religious or other deeply held moral beliefs or if dissolution is possible when viewed in light of religious, cultural, or legal constraints.” The Center for Gender and Refugee Studies, “Domestic Violence-Based Asylum Claims: CGRS Practice Advisory,” (September 12, 2014).

⁴¹⁴ Blaine Bookey, “Gender-Based Asylum Post-Matter of A-R-C-G-: Evolving Standards and Fair Application of the Law,” 6.

gender-based asylum cases. Yet, as Karen Musalo summarizes, “few refugee issues have been as controversial as that of gender asylum.”⁴¹⁵

Conclusion

The jurisprudence of asylum and refugee law shapes the discussion of gender-based asylum cases in the next chapter. Discretionary privilege, bias, and implications of foreign policy are evident in the way adjudicators interpret gender-based claims. The fact that gender is *not* an enumerated, statutory ground, as well as the precedents set in decisions like *Kasinga* and *A-R-C-G-*, create requirements for women to shape their experiences to fit into a limited understanding of persecution. Within this limitation, interpersonal violence committed against women is often labeled as private and undeserving of state intervention. Discounting the experience of women who are victims of gender-based violence reveals inherent bias about the risk of harm sustained by these women, and their limited options for self-protection. To meet the burden of proof, asylum seekers endeavor to prove that gender-based violence is pervasive in their country of origin—allowing the U.S. to position itself as separate from and without culpability for the culture of violence in Latin America. These complex issues correlate directly to the way the U.S. views the third-world woman as inferior—a remnant of colonial ideology—and views itself as a benevolent grantor of paternalistic protection.

⁴¹⁵ Karen Musalo, “A Short History of Gender Asylum in the United States: Resistance and Ambivalence May Very Slowly Be Inching Towards Recognition of Women’s Claims,” *Refugee Survey Quarterly* Vol. 29, no. 2 (January 2010), 46.

CHAPTER V: AN ANALYSIS OF ASYLUM DECISIONS

Throughout the 20th century, the United States acted with paternalism and superiority to control the Guatemalan political and economic systems. The United States played a significant role in the destabilization of Guatemala. At each stage of involvement, the U.S. increased and exaggerated its methods to exercise control—through economic monopolies, political mischief, and finally engagement with violence. As Chapter III highlighted, the Civil War, decades of violence, and the government's inability to provide adequate protection, has led many Guatemalan women to seek asylum in the United States.

The U.S. asylum system mirrors past actions of paternalism. The U.S., through the direct actions of immigration officials, continues to act in a controlling manner, either by granting asylum to women who fit within the specific parameters of “worthiness” or deporting women who do not meet these expectations. This chapter will evaluate a selection of asylum cases to explore the perceptions of gender within the immigration system and, specifically, how immigration officials apply paternal superiority. The asylum system for Guatemalan women must be evaluated with a clear understanding of the shared histories of the U.S. and Guatemala. The U.S. asylum system contains essential flaws that work to frame a woman's experience in a particular manner. Often, women are framed as “unable” (unable to leave) in order to meet the parameters of an enumerated ground and must prove they experienced persecution to meet varied criteria across the U.S. Circuit Courts. Guatemalans must meet perceived standards of credibility, and argue that the gender-based violence was egregious, in a country where, paradoxically, gender-based violence is viewed as the norm.

I selected a set of twenty-four gender-based asylum cases.⁴¹⁶ I narrowed my analysis to this set of twenty-four cases because each case provides enough specific detail to interrogate the trajectory of the claim. All cases within my study were opened following the conclusion of the Civil War and the signing of the Peace Accords. Though each case represents a unique experience of suffering, strength, and survival, the twenty-four documents contain similarities. Given the specific goals of my project, each case centers the experience of a woman who is a survivor of gender-based violence.⁴¹⁷ The spectrum of violence includes rape, attempted rape, intimate partner violence, sexual assault, sexual harassment, reproductive control, violent threats, economic restrictions, physical beating, use of weapons, attempted murder, and gang violence—including rape, forced relationships, and coercion. All of these actions can be understood within the larger sector of actions committed to exhibit control.

In the majority of cases, the woman survived multiple violent acts. In three of the cases, women received beatings because they were pregnant. Actions sometimes targeted women's reproductive capacity—including violent demands for sexual intercourse with the purpose of reproduction, and physical harm to reproductive organs. A majority of the cases refer either to violence during the Civil War, or recent violence that resembles actions that took place during the Civil War massacres: "he stated that he would kill her children in front of her, then torture her, rape her, and cut her into pieces."⁴¹⁸ Of the twenty-four asylum seekers, the majority are indigenous; therefore, they do not speak Spanish as their primary language. Moreover, most

⁴¹⁶ Some cases are publicly available through a subscription to a LexisNexis product. Oberlin College subscribes to NexisUni. I requested other specific cases from the Center for Gender & Refugee Studies. CGRS provided me with case documents submitted by attorneys to the CGRS Technical Assistance program.

⁴¹⁷ The woman in each case is the Lead Respondent in legal terminology. Given the parameters of asylum law, many cases also include a "Rider Respondents." Rider Respondents are either children of the woman, a close-family member, or, in a select few, the woman's partner. For the purposes of my examination, I focus only on the specific experiences of the woman (the Lead Respondent).

⁴¹⁸ CGRS Database Case No. 21229 (July 29, 2019).

women report that the National Civil Police (PNC) did not offer protection, seriously address their complaints, or prosecute their abusers. Many women choose not to report the violence to the police because their abusers threatened retribution. A few women reported fear of the police due to collusion or direct involvement of their family members in law enforcement. Finally, all cases identify connections to societal understandings of the woman's role: "Because we are women, we're not worth anything. People see us just as the property of the men we are with...your job as a woman is to serve your man."⁴¹⁹

I have obtained these decisions from the online legal service LexisNexis, or from the Center for Gender and Refugee Studies database. Many of the decisions redact names, locations, ages, and other personal details to maintain anonymity. Therefore, I have chosen to analyze the cases by theme, concept, and argument—switching between specific cases frequently. When possible, I have utilized other details to distinguish among cases. Although my analysis centers on the twenty-four asylum cases, not all cases are cited directly. I used some cases primarily to shape my analysis, but do not provide examples from the decision documents. I have chosen to name the women within the redacted cases with a distinct color—i.e. Ms. Blue—rather than numbers or letters, which felt dehumanizing. This choice is not meant to apply alternative meaning to individual cases; rather this effort intends to maintain privacy. With this limitation in mind, I emphasize three focal cases, the cases of Rody Alvarado, Reina Izabel Garcia Martinez, and Aminita Cifuentes (ARCG). Because the courts published these decisions, the asylum seeker's names and details about their experiences within the immigration system are public record. I will begin this chapter with an outline of these three cases.

⁴¹⁹ CGRS Database Case No. 13726 (March 29, 2017).

Rody Alvarado (First decision: 1996, Final outcome: 2009)

Rody Alvarado⁴²⁰ married Francisco Osorio in 1986 at the age of sixteen. After suffering years of interpersonal violence at the hands of Mr. Osorio, Ms. Alvarado fled to the United States, seeking asylum status.⁴²¹ In 1996, an Immigration Judge granted Ms. Alvarado asylum based on a defined social group of “women who have been involved intimately with their male companions, who believe in male domination,” and an imputed political opinion—the enumerated ground—that Ms. Alvarado believed she should live free of violence. However, in 1999, Ms. Alvarado’s asylum status was reversed by the BIA.⁴²² The Board ruled that she had not proven membership in a particular social group, nor had she proven that Mr. Osorio abused her on account of her group or an imputed political opinion. The Board did not believe her claims satisfied the nexus requirement, a connection between the abuse suffered and an enumerated ground. In 2004, the Department of Homeland Security submitted a brief to Attorney General John Ashcroft who had recertified the case to himself.⁴²³ This brief challenged the Board’s ruling and offered support for the original asylum grant. Notably, DHS agreed that the original particular social group did not qualify, and instead identified a new social group: “married women in Guatemala who are unable to leave the relationship.” After further procedural irregularities, Attorney General Michael Mukasey ordered the BIA (in 2008) to make a final decision. The BIA sent the case back to an Immigration Judge. A San Francisco Immigration Judge granted asylum to Rody Alvarado in 2009 after she reconceptualized her

⁴²⁰ Many court documents refer to Ms. Alvarado as Rodi Adali Alvarado Peña. The proper spelling of her name is Rody Alvarado.

⁴²¹ In Re R- A-, 22 I. & N. Dec. 906 (BIA, June 11, 1999).

⁴²² Ibid.

⁴²³ In Re Rodi Alvarado-Pena (DHS Brief, 2004).

story to fit within the parameters outlined by the Department of Homeland Security. This concluded a 14-year battle with United States immigration forces.

Reina Izabel Garcia Martinez (First decision: 2001, Final outcome: 2004)

Just two years after Ms. Alvarado's initial asylum grant, Reina Izabel Garcia Martinez received a Notice to Appear (NTA)⁴²⁴ from Immigration and Naturalization Services (INS).⁴²⁵ Ms. Garcia Martinez grew up in the rural village of San Andres Villa Seca in Southern Guatemala, a central location of violence during the Civil War. Around 1985, a coalition of guerilla soldiers arrived in her village to conscript the local men; they kidnapped Ms. Garcia Martinez's brother.⁴²⁶ A few years later, the Guatemalan military arrived in her hometown and repeatedly attacked, raped, and killed the villagers under the assumption that the entire community supported the guerilla insurgency. One night, at 9pm, soldiers entered her family's home, beat her parents, and gang-raped nineteen-year-old Reina Izabel Garcia Martinez.⁴²⁷ The soldiers threatened to return if the family revealed what had happened. Ms. Garcia Martinez fled to the United States in search of safety. The Immigration Judge who heard her case in 2001 stated that Ms. Garcia-Martinez had "testified sincerely and genuinely without hesitation."⁴²⁸ However, while he affirmed her narrative's authenticity, the judge did not believe that these violent acts were connected to her political opinion, or her membership in a particular social group. The Immigration Judge denied her claim, ruling that the horrific event was "only a criminal act that was committed against her by a soldier," so it did not establish a well-founded

⁴²⁴ A Notice to Appear is a governmental document given to an undocumented person ordering them to appear in front of an immigration judge on a particular date.

⁴²⁵ *Garcia-Martinez v. Ashcroft*, 371 F.3d 1066, 2004 U.S. App. LEXIS 11589.

⁴²⁶ *Ibid.*

⁴²⁷ *Ibid.*

⁴²⁸ *Ibid.*

fear of persecution.⁴²⁹ Following this decision, Ms. Garcia-Martinez appealed the ruling to the BIA. In 2004, the BIA granted her asylum, based on conclusions about the pervasiveness of violence within Guatemala following the conclusion of the Civil War.

Aminita Cifuentes (First Decision: 2009, Final outcome: 2014)

For over a decade, Ms. Aminita Cifuentes's (ARCG) husband raped, beat, and tormented her. She lost her hearing, gave birth prematurely, and had difficulty breathing and speaking due to his acts of physical violence.⁴³⁰ Ms. Cifuentes sought protection from the Guatemalan police and court system. The authorities did not offer support and told her to return to her husband. In fear for her life, Ms. Cifuentes escaped to the U.S. The IJ who heard her case first found Ms. Cifuentes credible, and the abuse "unconscionable," but the harm suffered was "not persecution."⁴³¹ Because the abuse took place "without reason," the IJ determined that Ms. Cifuentes had not proven nexus to her proposed PSG or a political opinion.⁴³² In 2014, the BIA, on appeal, granted Ms. Cifuentes asylum with the PSG of "married women in Guatemala who are unable to leave their relationship." Following the same line of reasoning as Rody Alvarado, the decision in the *Matter of A-R-C-G-* established the legal precedent of this particular social group.⁴³³

⁴²⁹ Garcia-Martinez v. Ashcroft, 371 F.3d 1066, 2004 U.S. App. LEXIS 11589.

⁴³⁰ In re A-R-C-G-, 26 I. & N. Dec. 388, 2014 BIA LEXIS 18 (B.I.A. August 26, 2014).

⁴³¹ Ibid.

⁴³² Ibid.

⁴³³ The decision became precedent for all immigration courts because it was released publicly by the Board of Immigration Appeals. The language in the Alvarado decision was only persuasive in courts outside of the Ninth Circuit.

Asylum Law Constructs and Challenges

The precedent set in the *Matter of A-R-C-G-* marked a critical advancement in gender-based asylum. However, the case did not address fundamental questions: What constitutes a sufficient “inability” to meet the standards of the precedential particular social group established in the *Matter of A-R-C-G-*? How will women demonstrate their “inability”? What enumerated grounds remain for women who are deemed “able”? How can a woman prove the motivations of others behind acts of brutal violence? Will all interpersonal violence be considered persecutory? How will perceived “credibility” shape an outcome? How much attention should judges pay to the conditions in the country of origin?

These questions frame my analysis of the twenty-four asylum decisions. This chapter analyzes how the asylum system operates in a paternalistic manner through general patterns of control. I emphasize the intrinsic challenges of the structure, and then apply the ways in which the system’s paternalistic operations are especially problematic when addressing the asylum claims of Guatemalan women. An important distinction within the application of bias in cases of Guatemalan women arises from judges’ perceptions of women from the Third World. Judges and asylum officers typically place Guatemalan women in one of two camps: unworthy applicants who abuse the asylum system, or desperate and weak women who are begging for safety from the tyranny of their own culture.⁴³⁴

I will discuss the challenges posed by the reality that gender is not an enumerated ground—a barrier in asylum law that has forced women to use other methods. Within this discussion, I address the rhetorical issues of deriving asylum claims from a term of subordination: “unable.”

⁴³⁴ Eithne Luibhéid, *Entry Denied: Controlling Sexuality at the Border* (Minneapolis, Minnesota: University of Minnesota Press, 2002), 119.

Next, I focus on the issue of proving persecution, and the challenges of a successful nexus claim (i.e. an abuser's motivation). I will also focus on the problems inherent in the subjective determination of credibility. Finally, I discuss how the asylum system erroneously views gender-based violence as pervasive only within the developing world.

Part I: How General Structural Problems Impact Gender-Based Asylum

I begin my analysis by highlighting the general structural pitfalls within the asylum system as applied to gender-based claims. My research centers on the specific cases of Guatemalan women: however, women of other nationalities experience similar challenges. This first section makes note of the impact of structural issues within the asylum system. Women experience challenges through the process of outlining membership in one of the enumerated grounds and connecting this ground to a viable claim for the experience of persecution. This limited understanding of persecution often dismisses forms of violence that women experience within the "private" sphere, revealing bias about women's right to safety. This bias becomes operationalized when immigration judges utilize their discretionary privilege to evaluate the credibility of women's claims. The structural problems that impact gender-based asylum cases have profound resonance in Guatemalan women's asylum claims.

The Enumerated Ground: The Use of the Term "Unable"

The first problem that women asylum seekers face is the reality that gender is not an enumerated ground. In order to meet the legal requirements, asylum seekers must prove that their persecution is based on race, religion, nationality, political opinion, or membership in a particular social group (PSG). PSG is composed of members who share a common immutable

characteristic that is socially distinct and visible within their society. The precedent established in *A-R-C-G-* enables women—Guatemalan women especially—greater ability to position their claim. However, the precedent set by this case developed from a limited legal holding based on the defined PSG “married women in Guatemala who are unable to leave their relationship.” This decision often requires women to reconceptualize their experience to meet the legal precedent of the PSG defined by “unable to leave.”.

The word “unable” is itself problematic. Unable, as an antonym to able (capable, qualified etc.), it places the lack of capacity on the shoulders of the woman. The lack of ability is hers. Asylum cases aside, in many instances of intimate partner violence, the survivor hears these questions: “Why didn’t you leave?” or “Why didn’t you tell someone?” These questions blame the victim, and, to a certain degree, take responsibility away from the abuser. The implication: if the victim had found the strength to ask for help, she might have stopped the abuse. Essentially, interrogating the victim lets the abuser off the hook.

Structuring a case based within the terminology of “unable” raises the issue of victim-blaming. In 1971, Dr. William Ryan coined the phrase “victim-blaming” to describe white people who attempt to justify racial “inequality by finding defects in the victims of inequality.”⁴³⁵ The disturbing idea of blaming the victim for their inability to act underscores cases of interpersonal violence. Individuals may cite specific incidents that allow them “to hold the victim as least partially responsible for the incident.”⁴³⁶ The precedent set in *A-R-C-G-* that focused on a woman's “inability” to leave positions the asylum seeker as having some responsibility for her situation.

⁴³⁵ The Associated Press, “William J. Ryan, 78, Sociologist; Explored the Blaming of Victims,” *The New York Times* (June 13, 2002).

⁴³⁶ Rebecca M. Hayes, Katherine Lorenz, and Kristin A. Bell, “Victim Blaming Others: Rape Myth Acceptance and the Just World Belief,” *Feminist Criminology*, Vol. 8, No. 3 (July 2013), 203.

Determining whether a woman is actually “unable to leave” has confounded adjudicators and led to incongruent outcomes. The *Matter of A-R-C-G-* set precedent that “inability” should be determined by the facts of the asylee’s experience and country conditions evidence. However, no specific methods for evaluating “inability” were outlined in *A-R-C-G-*. There are no guidelines about whether “inability” is determined by the physical actions of the asylum seeker, or, rather, the change in patterns of violence committed by the abuser. *A-R-C-G-* did not include a specific analysis of the available legal structure’s efficacy or sufficiency.⁴³⁷ Some judges focus primarily on whether an asylum seeker obtained legal separation or physically moved away from their abuser. If the judge finds either form of separation, the review into the asylum seeker’s “ability” may conclude. Judges may ignore continued verbal or physical threats, or disregard acts of violence in making this conclusion. This cruel catch-22 requires gender-based asylum seekers to carefully craft their personal testimonies to fit a particular model and convince adjudicators of their need for protection. This produces two-dimensional narratives that transition women’s lives and experiences into static stories.⁴³⁸ The limitations of the structure of enumerated grounds create further challenges for women to prove persecution.

Proving Persecution

In order to gain asylum, applicants must also prove “persecution or a well-founded fear of persecution” as well as a “nexus” between the violence and an enumerated ground.

Unfortunately, asylum laws do not clearly define “persecution,”⁴³⁹ and neither has the Supreme

⁴³⁷ Blaine Bookey, “Gender-Based Asylum Post-Matter of A-R-C-G-: Evolving Standards and Fair Application of the Law,” *Southwestern Journal of International Law*, Vol. 1, No. 22 (2016).

⁴³⁸ Natalie Nanasi, “Domestic Violence Asylum and the Perpetuation of the Victimization Narrative,” *Ohio State Law Journal*, Vol. 78, No. 3 (June 1, 2017), 753.

⁴³⁹ Caroline McGee, “*Matter of A-R-C-G- and Domestic Violence Asylum: A Glimmer of Hope Amidst a Continuing Need for Reform*,” *University of Miami Law Review*, Vol 70 (2016), 1039.

Court, which leaves each of the twelve U.S. Federal Court Districts free to craft its own definition and follow its own district precedents. Some definitions include “suffering” or “harm” against “those who differ” in an “offensive way”; and an “extreme concept” that does not encompass all offensive actions and terms in society.⁴⁴⁰ Because the definition of “persecution” remains malleable, an individual judge’s perspective may inform the decision in an asylum case. For example, in many of the court opinions discussed below, judges denied asylum to Guatemalan women because, in their view, gendered violence, including sexual violence, was not considered a grave enough harm. Gender-based violence is framed as a “private” matter rather than an instance of “persecution.” When asylum seekers attempt to prove a nexus between the harm and their defined enumerated ground, judges require women to provide specific explanations for why the abuse occurred—with a level of scrutiny that often becomes unreasonable and inhumane. Nancy Kelly argues that this lack of acknowledgement of gender-based harms has roots in the collective worldview of rape. In her view, many people are challenged to “accept rape and other forms of sexual abuse as violence, and [have a] tendency to ascribe personal motivations to persecutors when the harm is sexual.”⁴⁴¹ Some immigration judges determine that sexualized violence occurred because of an individual actor’s personal desire to inflict harm; therefore, the asylum seeker does not require state protection—an example of the conflation of the public and the private sphere.

The Convention, Protocol, and Refugee Act all utilize the same “gender neutral” definition of a refugee. Semantics do not inform reality for women refugees. Sociologist Ethne Luibheid explains that the developed world’s paradigm of a refugee is male. She writes, “Realms

⁴⁴⁰ Nancy Kelly, “Gender-Related Persecution: Assessing the Asylum Claims of Women,” *Cornell International Law Journal*, Vol. 26, Is. 3 (1993), 674.

⁴⁴¹ *Ibid.*

of experience that usually belonged to women—including experiences of rape—were foreclosed from consideration as ‘political’ and as possible grounds for asylum.”⁴⁴² Gender-based violence, and specifically sexual violence, is viewed as a “private matter even when committed by a government official or in a political context.”⁴⁴³ Ulla Wischermann explains the relationship between the public and private sphere in her piece “Feminist Theories and the Separation of the Private and the Public: Looking Back, Looking Forward.” Wischermann writes that feminist theory has offered extensive critiques on the political concept that “holds on to a separation of the two spheres.”⁴⁴⁴ In Wischermann’s view, these spheres are given specific gendered connotations: public, which is read as “male,” and private, which is read as “female.”⁴⁴⁵ Wischermann asserts that by creating this separation, the political world also creates a hierarchy that positions “women’s lives and work” as invisible.⁴⁴⁶ The private sphere, coded as the “women’s realm,” is rendered apolitical.

Karen Musalo contends that the creation of these “spheres” has roots in the beginning of the international human rights movement. The human rights agenda viewed violations of women’s rights as derived from cultural or religious norms. Violent acts committed against women were ignored and downgraded to the “private sphere.” Second-wave feminists, and specifically women’s rights activists, criticized the lack of attention paid toward gendered

⁴⁴² All three legal documents focus primarily on the need to link “persecution” with a public actor or a public inability to protect the victim. If the actions are seen as private, they cannot have a political connection. Eithne Luibhéid, *Entry Denied: Controlling Sexuality at the Border*, 105.

⁴⁴³ Ibid.

⁴⁴⁴ Ulla Wischermann, and Ilze Klavina Mueller. “Feminist Theories on the Separation of the Private and the Public: Looking Back, looking Forward.” *Women in German Yearbook: Feminist Studies in German Literature & Culture*, Vol. 20, No. 1 (January 1, 2004), 185.

⁴⁴⁵ Ibid.

⁴⁴⁶ Ibid.

violence.⁴⁴⁷ The human rights arena and the work of second wave feminism amplified the perspective that violations of women's rights that occur in "private" spaces must be understood as political and a matter of public concern.⁴⁴⁸ Actions against people living in oppressed or marginalized communities should be labeled—publicly and politically—as injustices. The dichotomous relationship between the private and public spheres continues to surface in gender-based asylum cases. As compared to other types of persecution, the asylum system often views instances of rape and interpersonal violence as "private" and therefore "categorically different" than persecution that occurs in the "public" sphere.⁴⁴⁹ Grave injustices may occur when asylum officers, immigration judges, and others relegate violent actions to the private sphere, effectively dismissing the gender violence as apolitical and falling short of "persecution."

Nexus and Credibility: The Problems of Bias

After women successfully prove that the harm they suffered rose to the level of persecution, they must meet an additional criterion: asylum status requires a connection, a nexus, between one of the five enumerated grounds and past persecution or a well-founded fear of future persecution. This final provision requires women to provide an explanation for the abuse they suffered. The *Matter of A-R-C-G-* made it possible for more women to make asylum claims based on domestic violence; but, the *A-R-C-G-* decision did not articulate how women establish the motivation of their abuser, the nexus between domestic violence and persecution.⁴⁵⁰ Without

⁴⁴⁷ Ulla Wischermann, and Ilze Klavina Mueller. "Feminist Theories on the Separation of the Private and the Public: Looking Back, looking Forward." Karen Musalo, "Personal Violence, Public Matter: Evolving Standards in Gender-Based Asylum Law," *Harvard International Review* (2015).

⁴⁴⁸ Musalo, "Personal Violence, Public Matter: Evolving Standards in Gender-Based Asylum Law," 46.

⁴⁴⁹ Allison W. Reimann, "Hope for the Future? The Asylum Claims of Women Fleeing Sexual Violence in Guatemala," *University of Pennsylvania Law Review*, Vol. 157, No. 1199 (2009), 1217.

⁴⁵⁰ Blaine Bookey, "Gender-Based Asylum Post-Matter of A-R-C-G-: Evolving Standards and Fair Application of the Law,," 16.

a clear guideline, women seeking asylum must determine what evidence to utilize in order to prove the motive behind their abusers' actions. This problem is confounded by the issue of adjudicators' "discretionary" privilege: the subjective power Department of Justice representatives hold to evaluate a case. This authority allows immigration officials to assess individual claims and evaluate asylum seekers. This "privilege" centralizes the perspective of the immigration official, often at the cost of the woman seeking asylum.

Discretionary privilege creates a related problem. Immigration officials are required to make a "credibility" determination of the asylum seeker.⁴⁵¹ In her article "Citizenship and the Performance of Credibility: Audiencing Gender-based Asylum Seekers in U.S. Immigration Courts," Sara L. McKinnon explores how "audiences" evaluate and determine credibility in cases of gender-based persecution.⁴⁵² She defines an audience as "those that are the gatekeepers to US Citizenship, those who read the potential citizen and determine if they deserve access."⁴⁵³ In McKinnon's analysis, judges evaluating gender-based asylum cases focus more on the interpretation of credibility and pay less attention to the specifics of an applicant's asylum claim.

The establishment of "credibility" accentuates the issue of "audiencing." The audience at a play or movie has an expectation of the action they will see and hear. Many audience members enter the performance space with preconceived ideas of what they will feel. Similar expectations are present when immigration officials "audience" asylum claims. Judges, and other gatekeepers, anticipate the vocal and corporeal response of the asylum seeker during a "performance." Judges may find incongruities between their expectations of an appropriate testimonial "performance"

⁴⁵¹ See *Matter of O-D-*, 21 I&N Dec. 1079 (BIA 1998).

⁴⁵² Sara L. McKinnon, "Citizenship and the Performance of Credibility: Audiencing Gender-Based Asylum Seekers in U.S. Immigration Courts," *Text and Performance Quarterly*, Vol. 29, No. 3 (November 6, 2009).

⁴⁵³ *Ibid*, 209.

and “what the woman claimant actually performs in court.”⁴⁵⁴ These conventions rely heavily on “racist, sexist, classist, and nationalist discourses that favor certain subjects.”⁴⁵⁵ The assumptions applied to immigrant women are not impartial. The expectations do not consider cultural norms or the emotional challenge of speaking about intense trauma: “For Westerners, it is hard to imagine why so few traumatized persons cry when describing the trauma. Many applicants have described experiences of the utmost horror without any obvious emotional expression at all.”⁴⁵⁶

Preconceived ideas about how a woman will perform create challenges for asylum seekers who would naturally appear submissive and speak with hesitation or ambiguity. Vague answers, a complete failure to respond to direct questions, or a diminished vocal presentation all reflect an asylum seeker’s state of trauma.⁴⁵⁷ Asylum attorney Blaine Bookey extends this argument. She explains that in gender-based asylum claims—specifically in cases of marital violence—judges may apply their own opinions about a woman’s performance in court, and extend their perspective to draw conclusions about the parameters of a marital relationship.⁴⁵⁸ Using their privilege as the prime “audience”, the judges may ignore the law.⁴⁵⁹ Rather than make an adverse credibility determination based on inconsistent evidence, or critique disparities between testimony and country conditions documentation, judges use their power as the

⁴⁵⁴ Ibid, 214.

⁴⁵⁵ Sara L. McKinnon, “Citizenship and the Performance of Credibility: Audiencing Gender-Based Asylum Seekers in U.S. Immigration Courts,” 206.

⁴⁵⁶ Ibid.

⁴⁵⁷ CGRS Database Case No. 11335 (Mar. 17, 2015).

⁴⁵⁸ Blaine Bookey, “Gender-Based Asylum Post-Matter of A-R-C-G-: Evolving Standards and Fair Application of the Law,” 13.

⁴⁵⁹ 8 U.S.C. § 1229a(c)(4)(B)-(C) (2015) established that asylum seekers had the burden to support their asylum claims with detailed and credible testimony. The statute also explained what factors judges should consider when making their determinations of credibility. Blaine Bookey, “Gender-Based Asylum Post-Matter of A-R-C-G-: Evolving Standards and Fair Application of the Law,” 12.

“audience” to discredit the asylum seeker on the basis of personal conclusions.⁴⁶⁰ The immigration system often characterizes gender-based harm as a less severe form of violence. The impact of the adverse credibility ruling is extremely paternalistic. The violence is insufficient, and women are “typecast” as liars and deceivers.

The structural problems within gender-based asylum cases may result in unjust outcomes. The following sections apply the problems to the case documents of Guatemalan women to showcase how these subjective viewpoints become operationalized. By examining the ways in which the structures develop in each case, the level of bias, prejudice, and paternalism become evident.

Part II: The Exaggeration of Paternalism in Guatemalan Women’s Asylum Cases

In this section, I apply each structural problem to the cases of Guatemalan women, discussing the requirements to identify an enumerated ground, prove persecution, and establish nexus. I conclude with a discussion of how the paternalistic relationship between Guatemala and the United States exacerbates the structural problems and serves to minimize U.S. culpability for the gender-based violence.

Creating a PSG: Guatemalan Women Reposition their Claims

The issue of the enumerated ground is illustrated through Rody Alvarado’s quest for safety. Because Rody Alvarado could not rely on gender to construct her enumerated grounds for asylum, she had to reconceptualize her story. In the original hearing, the IJ found that Ms. Alvarado met the burden of proof for asylum based on two enumerated grounds. First, the IJ

⁴⁶⁰ Blaine Bookey, “Gender-Based Asylum Post-Matter of A-R-C-G-: Evolving Standards and Fair Application of the Law,” 12.

determined the viability of the PSG: “Guatemalan women who have been involved with Guatemalan male companions, who believe that women are to live under male domination.”⁴⁶¹ Second, the IJ inferred Ms. Alvarado held a political opinion that women deserve a life free of violence.⁴⁶² The linguistic structure of the PSG casts Ms. Alvarado’s abuser, Osorio, as the primary “actor”—he believed that women belong under male domination, and therefore Rody Alvarado deserved protection. Osorio’s beliefs and harmful actions characterized the PSG. The defined political opinion presented Ms. Alvarado as a woman with agency and strength. In this determination, Ms. Alvarado deserved asylum because her husband believed he had the right to abuse her in order to maintain control.

The BIA disagreed with the Immigration Judge’s conclusion. First the BIA determined that there was no recognizable political opinion. The BIA found that Osorio “harmed the respondent regardless of what she actually believed or what he thought she believed.”⁴⁶³ Because Ms. Alvarado did not present specific testimony to indicate Osorio stated a reason for the abuse, the BIA determined that the violence could not be attributed to any held belief. Instead the Board focused on Ms. Alvarado’s statements that: “He hit me for no reason at all,” and that he “would hit or kick me whenever he felt like it.”⁴⁶⁴ The Board ruled that unless “one assumes that the common human desire not to be harmed or abused is in itself a ‘political opinion’,” Ms. Alvarado did not present sufficient evidence to determine the motivation behind his violence.⁴⁶⁵ This thought process extended to the PSG. Because Ms. Alvarado did not prove a reason for the abuse, the Board determined that the social group was adopted “exclusively for the purposes of

⁴⁶¹ In Re R-A-, 22 I. & N. Dec. 906 (BIA, June 11, 1999, AG, January 19, 2001).

⁴⁶² Ibid.

⁴⁶³ Ibid.

⁴⁶⁴ Ibid.

⁴⁶⁵ Ibid.

this asylum case.” The BIA ignored established PSG precedent, disregarding the fact that gender had been considered both “immutable” and “distinguishable.”

Despite the restrictive lens employed by the BIA initially, Ms. Alvarado did gain asylum status after the Department of Homeland Security (DHS) intervened. The DHS crafted a new PSG: Guatemalan women who are “unable to leave” her marriage. In this formulation, Ms. Alvarado was the primary “actor”; but she lacked agency. In 2014, the *Matter of A-R-C-G-* made this definition precedential law. The “unable to leave” PSG limits the protection and acceptance of female victims of violence who seek asylum, and diminishes their autonomy.⁴⁶⁶

Following the line of reasoning in the cases of Rody Alvarado and Aminita Cifuentes (ARCG), the attorney in Ms. Blue’s case followed the description of the violence suffered with a powerful statement of agency: “she *defied* her common law husband, *stood up* for her human rights as a woman by freeing herself of the abuse (emphasis added).”⁴⁶⁷ The word “defy” and “stood up” imply capability—placing the applicant in challenging territory. This brief articulated sixteen different PSGs, all of which used combinations of the immutable characteristics “Guatemalan” and “women,” and one of several qualifiers which articulated both agency and a lack thereof: “unable to leave”, “viewed as property”, “lacking control over their bodies” and “women who invoke their human rights.” Responding to the complications that arose after the *Matter of A-B-*, Ms. Blue’s attorney submitted a second brief. The two briefs contain great similarities—but with a salient difference. The attorney did not include statements articulating Ms. Blue’s agency, but instead offered thirty additional PSGs that focus on Ms. Blue’s inability and her indigenous status. In the final decision, the IJ granted asylum, but focused only on the

⁴⁶⁶ Natalie Nanasi, “Domestic Violence Asylum and the Perpetuation of the Victimization Narrative,” 738.

⁴⁶⁷ CGRS Database Case No. 26017 (Dec. 12, 2018).

PSGs describing inability.⁴⁶⁸ Distorted by legal precedent, Ms. Blue's case necessarily structured her experience within the confines of "unable." Would the case outcome have been different if the statement of agency remained within the legal argument? Like Ms. Alvarado, Ms. Blue had to position herself as a powerless woman in order to receive protection.

In another case, the attorney representing Ms. Red proposed eighteen different particular social groups to defend her case for asylum.⁴⁶⁹ Only two of the proposed social groups contained the word "unable." However, the judge focused on these two groups, and ascribed her inability to her vacillations about leaving her husband. In her testimony, she described a day she tried to leave her husband. He got in front of their car to physically prevent her from leaving.⁴⁷⁰ He begged her to forgive him, and "she stayed because she loved her husband." The judge evaluated this experience as a signal of inability and weakness, not as an act of further violence.

As demonstrated by Ms. Alvarado, Ms. Blue, and Ms. Red, Guatemalan women seeking asylum after enduring interpersonal violence are further victimized by the essential placement of their stories.⁴⁷¹ The specific category "unable to leave" generates the conception "that women are deserving of status [only] when they are perceived of as weak, passive victims."⁴⁷² By focusing on perspectives that further victimize the asylum petitioner, the United States government "rewards" asylum to Guatemalan women who present as weak. When Guatemalans do not fit the expected "profile", they risk exclusion.

⁴⁶⁸ CGRS Database Case No. 26017 (Dec. 12, 2018).

⁴⁶⁹ CGRS Database Case No. 26052 (Mar. 4, 2019).

⁴⁷⁰ Ibid.

⁴⁷¹ Natalie Nanasi, "Domestic Violence Asylum and the Perpetuation of the Victimization Narrative," 738.

⁴⁷² Ibid.

In the case of Ms. Indigo, the IJ found the respondent “credible and determined that her sexual abuse and experience rose to the level of persecution.”⁴⁷³ Despite this determination, the IJ ruled that Ms. Indigo did not provide sufficient proof regarding her protected ground. In another case, Ms. Green, a minor, suffered from abuse perpetrated by her family.⁴⁷⁴ Her defined PSG focused on her economic reliance on her abusers because of her age. The judge ruled that this PSG was not “cognizable”; it lacked social distinction, and was “overbroad.” The abuse was considered commonplace and insufficient to merit state protection. Essentially, both Ms. Green and Ms. Indigo failed to meet the accepted profile for Guatemalan women seeking asylum, because they did not open the lock with the word “unable.”

When the defined particular social group includes the phrase “unable to leave,” investigators may ask the abuse survivor, “Why were you unable to leave?”⁴⁷⁵ Rody Alvarado positioned her inability to leave on Osorio, her abuser. She explained that whenever she tried to protest, Osorio responded: “You’re my woman, you do what I say.”⁴⁷⁶ The consequence was explicit; Osorio threatened murder if she were to try to leave. Although Osorio’s behavior included extreme threats, Alvarado’s inaction to protect herself—the use of the word “unable”—suggests potential flaws in *her* character. In another case, Ms. Brown positioned her inability on failure by the judicial system to protect her.⁴⁷⁷ Ms. Brown was a victim of cruelty during the Rio Negro massacre during the Civil War. As an adult, her husband abused her verbally and physically. Ms. Brown wanted to report the abuse but feared repercussions. Her husband’s brother served in the police force. The judge determined that Ms. Brown did not prove an

⁴⁷³ *Alvizuriz-Lorenzo v. United States AG*, 791 Fed. Appx. 70, 2019 U.S. App. LEXIS 32153.

⁴⁷⁴ *Ibid.*

⁴⁷⁵ Natalie Nanasi, “Domestic Violence Asylum and the Perpetuation of the Victimization Narrative,” 761.

⁴⁷⁶ *In Re R-A-*, 22 I. & N. Dec. 906 (BIA, June 11, 1999, AG, January 19, 2001).

⁴⁷⁷ CGRS Database Case No. 11335 (Mar. 17, 2015).

inability to leave because there was no “legal impediment” to obtaining a divorce—she did not provide evidence that her husband prevented her from leaving. In this instance, Ms. Brown was “blamed” for her inaction. The judge perceived her failure to secure protection not as a fault of the legal system, but as her fault. The rhetoric of victim-blaming that emerges from the phrase “unable to leave” places responsibility for self-protection onto the woman—a responsibility that she fails to uphold. Both cases conflated a personal history of violence and subsequent search for safety with the victim’s character flaws.

Proving Sufficient Inability

In some cases, Guatemalan women seeking asylum must also prove *sufficient* inability. Both Ms. Coral and Ms. Yellow fled their homes to escape their abusive husbands.⁴⁷⁸ Ms. Coral left her husband to live with her sister. Her husband continued to make verbal threats; he said he would come find her and attack her. However, since her sister’s home was thirty minutes from his village, the physical abuse stopped.⁴⁷⁹ In Ms. Yellow’s case, the IJ determined that the “respondent’s act of separating” demonstrated her ability to leave.⁴⁸⁰ Despite the change of residence, Ms. Yellow’s husband continued to “rape and beat her,” but he never “physically forced her return.”⁴⁸¹ The IJ determined that the impetus for these continued attacks was that she “*did* leave the relationship, not that she was *unable* to” (emphasis added).⁴⁸² Despite the continued violence, both IJs determined that the women’s affirmative act of separation indicated ability.

⁴⁷⁸ CGRS Database Case No. 12489 (May 11, 2015). CGRS Database Case No. 25501 (September 17, 2015).

⁴⁷⁹ CGRS Database Case No. 25501 (September 17, 2015).

⁴⁸⁰ *Ibid.*

⁴⁸¹ CGRS Database Case No. 12489 (May 11, 2015).

⁴⁸² *Ibid.*

Both Ms. Coral and Ms. Yellow reported the abuse. The judge ruled that Ms. Coral was “able to leave” the situation because of her report.⁴⁸³ However, the judge noted that “the effectiveness of the police and judicial systems response is an open question.”⁴⁸⁴ In essence, the judge overlooked the inadequacy of the institutional response and instead punished small acts of agency as demonstrations of sufficient ability. In response to the IJ determination, Ms. Coral emphasized that she could not obtain a divorce. She did not have the money to pay for the cost of divorce, nor would her husband commit to payment. The judge responded that this was not “sufficient inability” because it was based on “economic constraints” not “societal expectations.”⁴⁸⁵ Similarly, the IJ in Ms. Yellow’s case determined that she showed her ability to leave the relationship because she obtained a protective order against her husband. To the IJ, this signified a lack of societal expectations or cultural constraints to constitute inability.⁴⁸⁶

Both women were denied asylum, because they demonstrated small acts of agency. The subjective, “unable to leave” PSG is legally problematic, and has strong resonance with the paternalistic relationship between Guatemala and the United States. Parallel to the United States’ intervention in Guatemala before and during the Civil War, the contemporary court system is judging in a microcosm how Guatemalan women live their lives. Though women of other nationalities have followed this legal precedent to use the “unable” terminology, this phrasing originated within the cases of Ms. Alvarado and Ms. Cifuentes—two Guatemalan women.

⁴⁸³ CGRS Database Case No. 25501 (September 17, 2015).

⁴⁸⁴ Ibid.

⁴⁸⁵ Ibid.

⁴⁸⁶ CGRS Database Case No. 12489 (May 11, 2015).

Defining Persecution

Because gender-based violence—sexualized violence in particular—may not rise to the legal standard of persecution, Guatemalan women relive horrendous trauma to no avail. The cases of Reina Izabel Garcia Martinez, Ms. Purple, Ms. Yellow, and Ms. Orange illuminate this issue. As discussed previously, the judge in Reina Izabel Garcia Martinez’s case concluded that the gang rape she endured was “a *criminal* act that was committed against her by a soldier.”⁴⁸⁷ Ms. Purple was pulled into an alley by a group of masked men who raped her repeatedly, and threatened to kill her. The IJ found that the attack on Ms. Purple “was an instance of *ordinary crime* not political persecution.”⁴⁸⁸ Ms. Yellow received a protective order from the Guatemalan Police. Her abusive husband violated the order and brutally beat and “raped her twice in the street.” The IJ determined that these acts of violence constituted “a *crime* or *violation* of an order, not a ground for protection.” Ms. Orange was harassed and physically beaten by Mara 18 gang members. On one occasion a gang member attempted to force her to have sex with him. When she protested, he pushed her against a wall, threw himself against her, “grabbed between her thighs, and kissed her.”⁴⁸⁹ The IJ ruled that “the incident the Respondent suffered is not sufficiently ‘extreme’” to constitute persecution, rather she was a “victim of *opportunity* and *generalized criminal* activity.”⁴⁹⁰

Viewing rape and sexual assault as “criminal acts”—not grounds for a showing of persecution—disregards the realities of Guatemalan history and society. How do Immigration Judges frame their decisions? How do they come to the conclusion that the harm is not grave

⁴⁸⁷ Garcia-Martinez v. Ashcroft, 371 F.3d 1066, 2004 U.S. App. LEXIS 11589.

⁴⁸⁸ Menendez-Donis v. Ashcroft, 360 F.3d 915, 2004 U.S. App. LEXIS 2775.

⁴⁸⁹ CGRS Database Case No. 28816 (June 2019).

⁴⁹⁰ Ibid.

enough to rise to the level of persecution? The answer is coded in understandings of Guatemalan women as sexual objects.

The immigration judge in Ms. Garcia-Martinez’s case ruled that gang rape could not provide a well-founded fear of persecution, because Ms. Garcia-Martinez could not prove that anyone “would have any present interest [in her] whatsoever.”⁴⁹¹ Further, the IJ erred in describing a central fact of Ms. GM’s case. Reina Izabel Garcia Martinez was *gang* raped. The judge however repeatedly referred to the action as involving only a single attacker (“a soldier,” “*the individual* that attacked her.”)⁴⁹² The judge’s decision entirely distorted Ms. Martinez’ experience. He described actions of a soldier—not multiple soldiers—who acted *outside* of his military role, in an isolated act of rape. The judge’s misattribution ignores the extensive history of gang rape as a weapon of war by the Guatemalan military.

Ms. Purple could not identify her masked attackers. The IJ subsequently determined that Ms. Purple could not prove the “motives for their attacks.”⁴⁹³ The judge speculated that the attackers chose Ms. Purple at random, rendering their actions criminal and not persecutory. The IJ in Ms. Yellow’s case focused exclusively on the existence of her protective order. The judge decided that her husband’s repeated abusive acts constituted a criminal violation of the protective order. Ms. Yellow was denied asylum because the IJ determined that she had already been granted sufficient protection. Finally, the IJ in Ms. Orange’s case specifically evaluated the gang violence and determined that the actions did not rise to the level of persecution. The IJ informed Ms. Orange that persecution “does not encompass all treatment that society regards as unfair, unjust, or even unlawful.”⁴⁹⁴ In the IJ’s perspective, Ms. Orange:

⁴⁹¹ Garcia-Martinez v. Ashcroft, 371 F.3d 1066, 2004 U.S. App. LEXIS 11589.

⁴⁹² Garcia-Martinez v. Ashcroft, 371 F.3d 1066, 2004 U.S. App. LEXIS 11589.

⁴⁹³ Menendez-Donis v. Ashcroft, 360 F.3d 915, 2004 U.S. App. LEXIS 2775.

⁴⁹⁴ CGRS Database Case No. 28816 (June 2019).

Only suffered bruises. She never required medical attention and does not allege to have suffered any lasting injury. Additionally, despite the constant harassment, Respondent was never actually forced to carry out any tasks for the gangs. Further, while any form of sexual assault or harassment is offensive, the incident Respondent's suffered is not sufficiently 'extreme' to rise to the level of persecution. [...] Although Respondent was kissed and touched inappropriately, she managed to run away and was not raped.⁴⁹⁵

If Ms. Orange was raped by her attackers would the IJ conclude that this abuse was “sufficiently extreme”? The judge’s decision reveals that in his view, meeting the standard of persecution requires visible injuries. In these cases, all four women faced an insurmountable obstacle. Beyond convincing the judge of the violence they endured, they also had to penetrate pre-existing biases about the significance and gravity of gender-based violence perpetrated against Guatemalan women.

The Private vs. Public Sphere

The judges in the cases of Ms. Orange, Ms. Yellow, and Ms. Purple ruled that the gender violence suffered by the women did not constitute persecution, because the violence was private, personal, criminal, and/or insufficiently severe. Their analysis elides the fact that gender-based violence is rooted in colonial history and now firmly planted within the Guatemalan social structure. Gender-based violence is considered a lesser crime in Guatemala, and the military and gangs use gender violence as a means to terrorize a community and maintain control.

The immigration judge’s ruling that denied Ms. Garcia Martinez’ asylum provides evidence of this problem. In Ms. Garcia Martinez’ case, the judge focused exclusively on the events that occurred inside Ms. Garcia-Martinez’ home, and did not acknowledge the soldiers’ systematic use of gang rape in the village as a campaign of extreme violence and misogyny. The army’s actions were public and political, even if the physical act occurred in the home. By

⁴⁹⁵ CGRS Database Case No. 28816 (June 2019).

sidelining the actions of the Guatemalan military, the judge inaccurately assigned her suffering to the private sphere.

Worse still, the judge failed to acknowledge the public and political nature of this crime by attributing the rape to an apolitical motive: the soldier's desire "to be with a woman."⁴⁹⁶ This perspective fully and erroneously placed the rape into the private sphere of sexual desire, while ignoring the glaringly public motives behind the assault. The immigration judge perpetuated the myth that "rape is just forceful sex by men who cannot control themselves" [when] in reality 'rape is not about sex; it is about power and control.'⁴⁹⁷ Allison Reimann argues that petitioners for asylum based on gendered violence suffer in the immigration courts from "discursive positioning as private subjects," and the belief that sexual violence cannot be related to larger political issues.⁴⁹⁸ Reframing the legal lens recapitulates the paternalistic actions of the United States *vis a vis* the Guatemalan people.

The distortion of public and private sphere occurs frequently in cases of intimate partner violence. The courts often interpret abuse that occurs within the home as occurring within the private sphere; as a result, attorneys face challenges not only to criminalize the abusers' actions, but also to show the violence meets the nebulous definition of persecution. This can be an insurmountable problem for Guatemalan women, because, as I have shown, levels of impunity for intimate partner violence are extraordinarily high in the country. In the cases of Ms. Cifuentes and others, the Guatemalan Police refused to respond to reports of domestic violence, because they do not intervene in a marital relationship.⁴⁹⁹ Both Ms. Alvarado and Ms. Cifuentes

⁴⁹⁶ *Garcia-Martinez v. Ashcroft*, 371 F.3d 1066, 2004 U.S. App. LEXIS 11589.

⁴⁹⁷ *Ibid.*

⁴⁹⁸ Allison W. Reimann, "Hope for the Future? The Asylum Claims of Women Fleeing Sexual Violence in Guatemala," *University of Pennsylvania Law Review*, Vol. 157, No. 1199 (2009), 1206. Sara L. McKinnon, *Gendered Asylum: Race and Violence in U.S. Law and Politics*, University of Illinois Press (2016), 26.

⁴⁹⁹ *In re A-R-C-G-*, 26 I. & N. Dec. 388, 2014 BIA LEXIS 18 (B.I.A. August 26, 2014).

had to prove the violence they endured was persecution on the basis of an enumerated ground. Because the violent abuse was considered private, the women had to realign their narratives within the public sphere. To represent the actions as public, both women focused on their inability to leave the relationship, rather than the events that occurred within it. Both Ms. Alvarado and Ms. Cifuentes recast their stories so that they appeared weak, lacking in agency: “unable to leave.” They were eventually granted asylum; others, such as Ms. White, were not so successful.

Ms. White was abused by her domestic partner who threatened to kill her and her son. The court determined that these actions were not persecutory because of the circumstances of their relationship. The judge defined the abuse as criminal and “apparently meted out against [Ms. White] for [her husband’s] own personal reasons.”⁵⁰⁰ Because abuse must be proved on a basis of greater concern (read: public concern), rather than “incidental, tangential, superficial, or subordinate to another reason” the judge ruled that Ms. White failed to establish sufficient harm.⁵⁰¹ The judge found that her husband committed the abuse as a means of intimidation and to maintain control within the home. Therefore, the abuse was committed by a “private actor” and motivated by a “private concern.” Ms. White was denied asylum. Ms. Alvarado, Ms. Garcia-Martinez, Ms. Cifuentes, and Ms. White all struggled to overcome distorted perceptions of violence as occurring within the private sphere.

Establishing Nexus

Guatemalan women experience particular challenges in proving the motivation behind their abusers’ actions, necessary to establish the nexus between their protected ground and the

⁵⁰⁰ CGRS Database Case No. 34798 (Jun. 3, 2019).

⁵⁰¹ Ibid.

defined acts of persecution. Rody Alvarado first attempted to prove nexus by providing Osorio's statements: through direct testimony, and through the submission of evidence of Osorio's actions. The first BIA decision reasoned that the intense intimate partner violence was not considered persecution because the evidence demonstrated that Osorio did not harm other women.⁵⁰² Ms. Alvarado was his only victim; therefore, the abuse could not have been connected to her membership in the group of "Guatemalan women who have been involved intimately with Guatemalan male companions, who believe that women are to live under male domination."⁵⁰³ The BIA determined that she did not meet the nexus requirement because her husband had not "shown an interest" in other Guatemalan women, nor were other women "at risk of harm."⁵⁰⁴ In response, Ms. Alvarado's legal team attempted to reposition her statement, asserting the abuse was motivated by Ms. Alvarado's political opinion "to live a violence-free life." However, the BIA disagreed that Ms. Alvarado's intention constituted a political opinion, replicating the logic that she was the sole victim. In Ms. Alvarado's case, the BIA created a dangerous precedent: dismissing intimate partner violence as a less extreme form of violence, unworthy of asylum protection, simply because of the marital relationship between the perpetrator and the survivor.

Next, Ms. Alvarado attempted to explain the motivation through her own reasoning and interpretation of her experience. Ms. Alvarado testified,

[Osorio] had been mistreated when he was in the army and, as he had told her, he treated her the way he had been treated. [...] He harmed her, when he was drunk and when he was sober, for not getting an abortion, for his belief that she was seeing other men, for not having her family get money for him, for not being able to find something in the house, for leaving a cantina before him, for leaving him, for reasons related to his mistreatment in the army, and "for no reason at all."⁵⁰⁵

⁵⁰² In Re R-A-, 22 I. & N. Dec. 906 (BIA, June 11, 1999, AG, January 19, 2001).

⁵⁰³ Ibid.

⁵⁰⁴ Ibid.

⁵⁰⁵ Ibid.

In response to this litany of harms, the BIA determined that the abuse was arbitrary. Mr. Osorio abused Ms. Alvarado often, and without a clear cause. Instead of comprehending Ms. Alvarado's assertion that she was abused for "no reason at all"--as a signifier for the relentless abuse--the BIA determined that the violence was senseless. Ms. Alvarado failed to establish nexus.

The IJs in the cases of Ms. Cifuentes and Ms. Black also found these women's explanations unsatisfactory. The IJ determined that although the abuse Ms. Cifuentes survived was "unconscionable," the abuse happened with great frequency, which normalized the abuse.⁵⁰⁶ The IJ considered Ms. Black, who was raped by ex-guerillas, the victim of "random criminal violence" because of her inability to explain why she was "selected" as the victim.⁵⁰⁷ The IJ determined that the men attacked Ms. Black because they were "looking for money and food."⁵⁰⁸ Without documentation, Ms. Black could not sway the IJ's determination that the attack was arbitrary. In my view, the word choice "selected" undermines the judge's position that the abuse was "random." Because Ms. Alvarado, Ms. Cifuentes, and Ms. Black were unable to definitively prove motivation, the extreme abuse they experienced became separated from any protected ground. The courts viewed their abuse either as ordinary or as arbitrary, allowing the judges to rule against asylum.

Ms. Grey relied on specific evidence to establish an explanation for the abuse. Two masked men raped Ms. Grey in retribution for her husband's political position as an ex-guerilla.⁵⁰⁹ To prove this motive and establish nexus, Ms. Grey provided documentation substantiating her husband's role during the Civil War. The masked men told Ms. Grey that they were looking for her husband; they mentioned him by name. Ms. Grey also provided evidence

⁵⁰⁶ *In re A-R-C-G-*, 26 I. & N. Dec. 388, 2014 BIA LEXIS 18 (B.I.A. August 26, 2014).

⁵⁰⁷ *Castillo-Hernandez v. United States AG*, 297 Fed. Appx. 894, 2008 U.S. App. LEXIS 22294.

⁵⁰⁸ *Ibid.*

⁵⁰⁹ *Garcia-Milian v. Holder*, 755 F.3d 1026, 2014 U.S. App. LEXIS 2759, 2014 WL 555138.

that a group of masked men had been following her for approximately three years.⁵¹⁰ The court concluded that this evidence established that the “masked men wanted information.” An attack for the purpose of eliciting information is considered criminal, not persecutory. The court determined that Ms. Grey’s rape did not have a connection to a protected ground.⁵¹¹

In these cases, the asylum seekers attempted to prove a connection between the violence they experienced and one of the five grounds. All of these women met great obstacles. These complexities develop from the restrictive parameters within asylum law, that require women to prove the source of harm, and also provide a reason for this harm. The bar is high. Is there any explanation that meets credibility from the perspective of the immigration courts? Actions of this nature are rooted in the need to establish power, to assert a form of control that reflects the colonial and patriarchal practices of the United States policies toward Guatemala. The immigration system attempts to frame the demand to provide an explanation for abuse as an aspect of the legal provision of nexus. In practice, proving nexus places an unimaginable burden on women who are already victims.

Credibility

Guatemalan women must respond to preconceived ideas about how they will perform in court in order to establish their credibility. In one case, the judge characterized Ms. Maroon’s testimony as “vague, meager, and inconsistent” in both substance and style.⁵¹² His evaluation of

⁵¹⁰ The case document does not specify the type of evidentiary documents. *Garcia-Milian v. Holder*, 755 F.3d 1026, 2014 U.S. App. LEXIS 2759, 2014 WL 555138.

⁵¹¹ All four women also provided country conditions documentation. These documents included U.S. State Department Country Reports on Human Rights Practices, Amnesty International Reports, published findings of the United Nations, and even specific news articles. However, because there is no specific instruction about how to utilize country conditions reports to establish nexus, most of this evidence is taken—at least originally—as inadequate.

⁵¹² *Juarez-Lopez v. Gonzales*, 235 Fed. Appx. 361, 2007 U.S. App. LEXIS 9881.

Ms. Maroon’s vocal pattern grounded the judge’s conclusion that her allegations were false. The judge implied that if she truly had been raped repeatedly by her domestic partner, she would have presented her testimony with more clarity and vigor. Instead, the Judge focuses on the discrepancies in her responses to questions about her children and derives a lack of credibility from the fact that Ms. Maroon gave her children her husband’s last name.⁵¹³ Ms. Brown faced a similar obstacle when she tried to overcome the judge’s preconceived ideas about the assault she endured. The judge first identified Ms. Brown as a woman with a “strong personality and physical demeanor.”⁵¹⁴ However, the judge determined she was not credible because she “failed to directly answer the questions she was asked.”⁵¹⁵ Her failure to answer questions in a direct manner did not align with the judge’s expectations for clarity, or his preconceptions about her character.

Furthermore, it is important to consider the Guatemalan cultural stigma surrounding sexualized violence. As reviewed in Chapter 2, women rarely spoke about rape following the Civil War. The Commission for Historical Clarification struggled to find women willing to discuss the details of their traumatic experiences—due to cultural stigma surrounding sexual violence, and a culture propensity to endure in silence. Although the desire to keep experiences of sexualized violence private predated the asylum cases in this data set, the legacy persists. Rather than recognize that both trauma and culture impact a victim’s ability to respond to direct questions with clarity, judge’s “audience” this hesitation as uncertainty, or even deception.⁵¹⁶

⁵¹³ *Juarez-Lopez v. Gonzales*, 235 Fed. Appx. 361, 2007 U.S. App. LEXIS 9881.

⁵¹⁴ CGRS Database Case No. 11335 (Mar. 17, 2015).

⁵¹⁵ *Ibid.*

⁵¹⁶ Sara L. McKinnon, *Gendered Asylum: Race and Violence in U.S. Law and Politics*, University of Illinois Press (2016), 214.

Minor changes in a woman's testimony may create a similar outcome. In a 2017 case, the BIA concluded that Ms. Aqua lacked credibility on the basis of two inconsistencies in her testimony:

During her interview with the asylum officer, [Ms. Aqua] said that on March 19, 2013, two men on motorcycles shot at her at a town fair, but during the hearing before the IJ, [Ms. Aqua] testified that her ex-husband XXX (*name redacted*) beat and tried to kill her outside of a church on that day; and during her interview with the asylum officer, [Ms. Aqua] said that she was on her way back from shopping when she found a young girl hanged, but before the IJ, [Ms. Aqua] testified that she was on her way home from work, and that the girl had been tied up with wire and shot several times.⁵¹⁷

Because Ms. Aqua reported her observations of the murdered girl differently, four years after the event, the judges found that she was not credible. The BIA did not acknowledge that Ms. Aqua testified at both her AO interview and IJ hearing using a court-assigned interpreter. Subtle differences in interpretation may have resulted in these minor discrepancies.

In “audiencing” Ms. Coral’s case, the judge masked his perceptions about Guatemalan women by stressing the insufficiency of the evidence produced. The judge determined that the presented reports were “inconsistent” and lacked specificity.⁵¹⁸ Ms. Coral submitted a Guatemalan police report to the court.⁵¹⁹ As her asylum proceedings continued, the court discovered a different copy of the police report, dated a few days later.⁵²⁰ In the judge’s view, this minor discrepancy rendered the evidence inadmissible. The judge deemed other documents insufficient because they contained the statement: “this is not a translation of the entire original document. The translator has extracted the more important information from the original

⁵¹⁷ Ortiz-Ortiz v. Sessions, 698 Fed. Appx. 868, 2017 U.S. App. LEXIS 10306, 2017 WL 2493534.

⁵¹⁸ CGRS Database Case No. 25501 (September 17, 2015).

⁵¹⁹ Ibid.

⁵²⁰ Ibid. .

document.”⁵²¹ In the judge’s perspective, the redaction diminished the value of the documents--to the extreme. The judge determined the documents were fraudulent.

These decisions suggest cultural bias. Language barriers should not influence a judge’s determination that a woman does or does not deserve protection. Ms. Coral’s marriage license included the same statement of redaction; the judge decided that he could not determine if she was married. Without documentation of marriage, Ms. Coral lacked a PSG. Ms. Coral did not merit protection because the court doubted her truth. Time elapsed and language barriers may explain a survivor’s difficulties in articulating trauma, and their inconsistent testimony. When judges fail to account for these human variables, they have lost objectivity.

In the most extreme cases, the survivor is presented as a liar, who intends to deceive the court. Ms. Brown’s case provides an example.⁵²² In his decision, the IJ concluded that “[t]he marital relationship is intensely personal and complicated. Allegations of spousal abuse compound the complexity. Because asylum proceedings are *ex parte* it is difficult and sometimes impossible for an immigration judge to ascertain the veracity of domestic violence allegations made by [an applicant] against his or her spouse.”⁵²³ The judge wrote his decision within a cloud of misogyny. Instead of examining the facts of the case—police reports and documentation of the Rio Negro massacre—the judge focused on his subjective views on the institution of marriage. He stated that there was no “corroborating evidence” to warrant the conclusion that she belonged to the PSG of “married women in Guatemala who are unable to leave the relationship.”⁵²⁴ Although Ms. Brown submitted documentation of the police reports, widely

⁵²¹ CGRS Database Case No. 25501 (September 17, 2015).

⁵²² CGRS Database Case No. 11335 (Mar. 17, 2015).

⁵²³ Ibid.

⁵²⁴ Ibid.

considered substantive, this evidence was ignored in his court. The judge concluded that her allegations were “unsubstantiated and frankly implausible.”⁵²⁵

This judge’s determination is not extraordinary. In the case of Ms. Silver, the IJ declared the asylum seeker unreliable because she “exaggerated her claim” during the trial.⁵²⁶ The IJ came to this conclusion based on a disbelief that her partner raped her—thinking that this action was out of the realm of possibility.⁵²⁷ In a 2007 case, Ms. Maroon testified that she survived multiple episodes of rape by her partner, beginning at the age of 12 or 13. The IJ’s grossly insensitive disposition was revealed in a series of rhetorical questions suggesting Ms. Maroon’s claims were dubious:

Now, how do I know this was not a consensual arrangement? Unfortunately, on occasion people lie. And even in this country young ladies who had arrangements with other boyfriends later charged them with rape. And in some cases innocent boys are sent to jail because the lady changed her mind. How do I know that this is not the incident in your case? How do I know that you're not making up this story? [...] there's reasons [sic] for you to misstate the facts, because you want to stay here and there's no other way that you can stay here unless you make up a story. Now, how do I know, do I have anything other than your statement that you claim that you were raped by this young man in Guatemala?⁵²⁸

The judge sided with the “innocent” man, who wasn’t present. Using his power to “audience” Ms. Maroon’s testimony, the judge belittled her as a “young lady.” This articulation showcases the depth of prejudice held by some asylum judges, who are willing to disregard evidence and testimony because of a supposition that the history of violence is false. The judge in Ms. Maroon’s case implies that she “made up a story” to leverage the sympathy of the U.S. court.

Finally, judges have also written decisions that reveal preconceived ideas about femininity. Ms. Gold’s judge described her demeanor as “forthright” and “respectful” to her

⁵²⁵ CGRS Database Case No. 11335 (Mar. 17, 2015).

⁵²⁶ CGRS Database Case No. 27878 (Apr. 14, 2017).

⁵²⁷ Ibid.

⁵²⁸ *Juarez-Lopez v. Gonzales*, 235 Fed. Appx. 361, 2007 U.S. App. LEXIS 9881.

attorney.⁵²⁹ Because Ms. Gold respected her lawyer, a person of greater authority and education, she met the judge's expectations of how a woman should behave, recalling traditional, colonial understandings of women as quiet and docile. In a seeming contradiction of perspectives, women must also meet Westernized expectations of an expansive, emotional performance when describing the gravity of their abuse. Women must also avoid becoming *too* emotional, falling into the risk of becoming labeled "hysterical" or "unruly." Guatemalan women are caught within the confines of subjective expectations, with their lives at risk.

Framing Gender-Based Violence as Pervasive

A final obstacle arises when the asylum seeker attempts to establish the failure of the Guatemalan government to protect them. As noted above, prior to addressing this challenge, the asylum seeker must have proven already that the harm warrants public attention—outside of a private relationship. To transcend this final obstacle, asylum seekers commonly rely on individual testimony and country conditions evidence. Country conditions documentation is an essential part of the asylum process.

In my analysis of the 24-case data set, the attorneys' reports submitted to the immigration officials centered around the levels of violence against women in contemporary Guatemala, including: femicide statistics, reports from the Specialized Courts, and specific data about women's role in society. Although providing this evidence is an essential part of the process, framing gender-based violence as pervasive in Guatemala allows for paradoxical decisions. The Guatemala country conditions normalize violence against women. A judge may reason that asylum is reserved for special victims in particular circumstances. Country-based evidence allows U.S. judges to find women's trauma unexceptional. Because the judge interprets the

⁵²⁹ CGRS Database Case No. 34357 (May 15, 20159).

violence as pervasive, they can offer a rebuttal to the asylum seekers claims for protection. The survivor of gender-based violence may be deserving of sympathy, but not asylum. The framing of violence as ubiquitous in Guatemala also allows the U.S. to act as the paternal protector—while avoiding culpability.

Rebutting Persecution, Deemphasizing Individual Harm

Rebuttals to asylum claims take different approaches. First, Immigration officials may assert that political and societal conditions in Guatemala have transformed in ways that would protect the claimant. In a 2004 case, the judge determined that the end of the Civil War marked such a transformation. This judge cited U.S. State Department reports that determined the conclusion of the War signaled a decrease in violence. This judge ruled that the asylum seeker would not face harm if deported to Guatemala.⁵³⁰ In this case, the judge disregarded evidence of continuous violence.

Second, officials may argue that there is a marginal probability of future abuse. For example, an asylum seeker who came to the United States to escape her abusive husband argued changed circumstances. Her husband had followed her to the U.S., but was deported back to Guatemala by ICE.⁵³¹ The court claimed that the fact that he had followed her to the U.S. demonstrated a negligible probability of future abuse because there was no evidence that he tried to harm her while they both lived outside of Guatemala. The IJ doubted the asylum seeker's testimony that her abuser threatened to kill her if she returned to Guatemala.⁵³²

⁵³⁰ *Menendez-Donis v. Ashcroft*, 360 F.3d 915, 2004 U.S. App. LEXIS 2775.

⁵³¹ *Tovar v. Lynch*, 674 Fed. Appx. 691, 2017 U.S. App. LEXIS 373, 2017 WL 74723.

⁵³² *Ibid.*

Third, immigration officials cite country conditions reports to justify returning the applicant to Guatemala. In Ms. Black's case, the IJ determined that the Guatemalan government would protect the asylum seeker from future gang violence; they recommended that she relocate within Guatemala to access the protections available, including the Specialized Courts for Violence Against Women.⁵³³ The IJ did not address the ineffectiveness of this institution. The judge concluded that Ms. Black's mother and sister live in another part of Guatemala and have not reported experiencing harm. This ruling did not address the levels of gang violence throughout the country. An analysis of asylum decisions by the Center for Gender and Refugee Studies found that few cases reach a conclusion about "safe and reasonable relocation options for women in their home countries."⁵³⁴ However, immigration officials continue to use this loophole to frame their rebuttal.

Finally, immigration officials who must address country conditions that establish constant violence within Guatemalan society may respond by downgrading the experience of the individual claimant. The violence is normalized. In 2015, one immigration judge ruled that the country conditions evidence was the only permissible exhibit in the case.⁵³⁵ The judge recognized that Guatemala "experiences significant societal problems related to domestic violence..." but general country conditions evidence "does not corroborate the respondent's specific claim of mistreatment by her domestic partner."⁵³⁶ Two years later, a different immigration judge came to a similar conclusion. After receiving reports of sexual and physical gang violence against women, the judge responded that Ms. Coral "was the victim of opportunity

⁵³³ *Castillo-Hernandez v. United States AG*, 297 Fed. Appx. 894, 2008 U.S. App. LEXIS 22294.

⁵³⁴ Blaine Bookey, "Gender-Based Asylum Post-Matter of A-R-C-G-: Evolving Standards and Fair Application of the Law," 18.

⁵³⁵ CGRS Database Case No. 25501 (September 17, 2015).

⁵³⁶ *Ibid.*

and of generalized criminal activity.” Although the IJ concluded that the country conditions evidence proved that “gang related violence in particular remains a prevalent concern in Guatemala,” he found nothing in the woman’s testimony to establish that “she faces an appreciably different risk from those faced by the general population.”⁵³⁷

In both cases, the IJs used country conditions evidence to “render [their] past harm indistinct.”⁵³⁸ Recasting intense violence and deeply personal trauma as universal demeans the victim. The U.S. government’s power to rewrite the asylum seeker’s personal narrative is troubling, especially when the revision denies or diminishes the victim’s authentic experience. The government’s ability to discredit the asylum seeker’s history validates the existing power structure.

Part III: Conclusion: The Legacies of Colonialism—Paternalism, “True Womanhood,” and Gaslighting

The problems of defining an enumerated ground, proving persecution, establishing nexus, meeting credibility standards, and working within a system that has labeled violence as pervasive—all connect to the paternalistic nature of the asylum system. From a position of imbalanced power, the United States immigration courts establish who deserves protection.

The phrase “unable to leave” limits the options of Guatemalan women asylum seekers. The U.S. Government’s Department of Homeland Security proposed the “unable to leave” particular social group. DHS established—though in a veiled manner—a provision that required Ms. Alvarado to frame her story to highlight her lack of ability. *The Matter of A-R-C-G-* and *The Matter of R-A-*, the two cases that set the precedent for this particular social group, marked great progress for gender-based asylum; however, these decisions have informed a specific

⁵³⁷ CGRS Database Case No. 25501 (September 17, 2015).

⁵³⁸ Ibid.

understanding of Guatemalan women asylum seekers, and more generally women from the developing world. The U.S. government sees Guatemalan women as humans of “differential humanity” who are weak, powerless, and fragile.⁵³⁹ When Guatemalan women fall outside of this conceptualization, they risk safety and protection.

In Ms. Red’s case, the Judge determined that she was deserving of asylum because “she wanted to leave” but was “helpless to do so.” Nowhere in the record does the respondent use the word “helpless.” To the contrary, she described traveling two hours from her home to file a police report, physically standing between her husband and her children when he attempted to abuse them, and reporting violations of her protective order to police.⁵⁴⁰ Ms. Red confronted her husband on many occasions. She was “able.” The judge inserts the word helpless in order to provide a legal justification for granting her the asylum status she deserved. These linguistic acrobatics reflect a paternalistic asylum system. The women who successfully navigate this legal mess spend significant time in limbo. Women who pass through the procedural hurdles of the asylum system must swallow their pride, give up self-respect, admit their inferiority and weakness, deny their agency, and hope for an understanding and benevolent judge. Guatemalan women must adjust to the paternalistic asylum system in order to survive within it.

The action of DHS to centralize the term “unable” amplifies perceptions of Guatemalan women’s inferiority, which reflects colonialism. Further, the establishment of “unable to leave” has given individual judges the latitude to use similar stereotypes in their decisions. The category of inability plays into perceptions of Third World women as inferior. Chandra Mohanty explains that the stereotype of the Third World woman produces two constraints. She is “sexually

⁵³⁹ Chandra Talpade Mohanty, "Under Western Eyes: Feminist Scholarship and Colonial Discourses." *Boundary 2*, Vol. 12, no. 3 (Durham, North Carolina: Duke University Press, 1984).

⁵⁴⁰ CGRS Database Case No. 26052 (Mar. 4, 2019).

constrained” by her femininity, and further “constrained by being ‘third world’ (read: ignorant, poor, uneducated, tradition-bound, domestic, family-oriented, victimized, etc.).”⁵⁴¹ The use of the term “unable” shackles Guatemalan women and plays into the “matrices of power” entwined with the legacy of colonization.⁵⁴²

By requiring women to define and prove persecution, immigration judges and the asylum system enact paternalistic control. Requiring women to prove sufficient harm, or viewing the violence they endured as “private”, demonstrates the concept of differential humanity. The colonial history of Guatemala assigns “differential worth” to different human bodies. The Guatemalan woman is of less “worth” than the Guatemalan man.

On the individual level of the asylum-seeker, the system re-victimizes the woman. Women’s experiences are evaluated for credibility, sufficiency, and particularity. Judges scrutinize their personal lives; then they assess, and, often, criticize their character. The most personal details of their lives are forced into the open, repeatedly and with specific restrictions, all in order to prove their worth. Not only must she tell and retell to establish “credibility,” for legal reasons, she must often frame the retelling within the paternalistic parameters of “unable.” A. Cheree Carlson, a rhetoric professor focused on law, explains that this expectation is “derived from years of exposure to preexisting narratives.”⁵⁴³

⁵⁴¹ Chandra Talpade Mohanty, "Under Western Eyes: Feminist Scholarship and Colonial Discourses." *Boundary 2*, Vol. 12, no. 3 (Durham, North Carolina: Duke University Press, 1984): 335.

⁵⁴² Arpita Chakraborty, "Can postcolonial feminism revive international relations?," *Economic and Political Weekly* 52, no. 20 (2017), 53. .

⁵⁴³ Cheree A. Carlson, *The Crimes of Womanhood : Defining Femininity in a Court of Law*, University of Illinois Press, 2008.

Carlson argues the narrative expectations placed on women in the legal system are based on the virtues of “True Womanhood.”⁵⁴⁴ The feminine is characterized by “submissiveness” and “domesticity.”⁵⁴⁵ Carlson contends that what happens in a courtroom reflects prevailing ideas about the character of women. Non-citizens—Guatemalan women asylum seekers—are expected to present narratives that fall in line with the U.S. notion of womanhood (i.e. True Womanhood). Simultaneously, they must present narratives that correspond to the U.S. political understanding of the asylum seekers’ country of origin.⁵⁴⁶ By asserting discretionary privilege, asylum judges make decisions based on their assessment of a Guatemalan women’s worth. Judges rely on their subjective perspectives to determine how women should act within the courtroom, what constitutes violence, and how to properly display femininity. Enforcing these expectations—while compelling the use of narrative, and doubting credibility—is a distortion of power.

On a system level, the approach to a Guatemalan woman’s claims can be viewed as gaslighting on a grand scale. As I have shown previously, a judge’s ability to determine that sexual violence is not a significant harm can be traced back to the earliest days of colonialism. Colonizers used sexual violence as a strategy to control the colonized race.⁵⁴⁷ Lynn Stephen explains: “Indigenous women have been projected as ‘available’ to outsiders and invading military forces.”⁵⁴⁸ Sexual violation was a powerful tool of colonization, terrorizing women physically while also exerting control over colonized men, who were rendered powerless to

⁵⁴⁴ The classic statement of this argument was made by Barbara Welter in the late 1960s. Welter reviewed novels, women’s magazines, religious literature, and gift annuals published between 1820 and 1860, and discovered therein a cluster of virtues that she termed “the Cult of True Womanhood.”

⁵⁴⁵ Cheree A. Carlson, *The Crimes of Womanhood: Defining Femininity in a Court of Law*, University of Illinois Press, 2008.

⁵⁴⁶ Sara L. McKinnon, “Positioned in/by the State: Incorporation, Exclusion, and Appropriation of Women’s Gender-Based Claims to Political Asylum in the United States,” *Quarterly Journal of Speech*, Vol. 97, No. 2.

⁵⁴⁷ See generally, Susanne Jonas, *The Battle for Guatemala* (Boulder, Colorado: Westview Press, 1991).

⁵⁴⁸ Lynn Stephen, “The Construction of Indigenous Suspects: Militarization and the Gendered and Ethnic Dimensions of Human Rights Abuses in Southern Mexico,” *American Ethnologist* Vol. 26, No. 4 (1999), 827.

protect and defend their families. Over time, the systemic sexual objectification of women facilitates ambivalence toward sexual violence, even among the colonized.

Positioning gender-based violence as pervasive within Guatemala allows for a crucial act of paternalism. This position, exaggerated by the complete lack of acknowledgement of the history between the U.S. and Guatemala, facilitates the applications of labels of superiority and inferiority. In the review of all twenty-four case documents, the only record that referenced the U.S. role in Guatemala was a legal brief submitted by an attorney. This is not surprising. However, the effect of the lack of acknowledgment is significant. First, judges may focus on the levels of violence in Guatemala, and label gender-based violence as apolitical, ordinary, and undeserving of protection. Next, judges may shift their perspective: the violence becomes political but located specifically in Guatemala. Judges either construct asylum seekers from the “Third World” as “unworthy claimants” or they are “begging to be saved from tyranny of their own cultures, communities, and men.”⁵⁴⁹ This ignores history and denies the responsibility the U.S. bears, as a colonist, for the extreme gender violence and impunity about that violence within in Guatemala.

The case of Ms. Yellow illustrates this argument. After the first hearing, the IJ denied the asylum claim, labeling the interpersonal violence criminal and not persecutory. The IJ concluded that Ms. Yellow lacked membership in a particular social group because she was “able to leave” the relationship. The IJ viewed the violence as personal, unique to the woman’s experience, and undeserving of protection. A few years later, Ms. Yellow appealed the decision to the BIA. The Board did not comment specifically on her experience of violence. Rather, the BIA remanded the case to an immigration judge for further proceedings regarding the country conditions. Almost

⁵⁴⁹ Eithne Luibhéid, *Entry Denied: Controlling Sexuality at the Border*, 113.

two years after the initial hearing, the immigration judge granted Ms. Yellow asylum and made the sweeping claim that “Guatemala continues to facilitate domestic and sexual violence.” The violence became political, and specifically located within Guatemala. In this final declaration, Ms. Yellow’s partner was not defined as the primary actor of abuse. The statement placed the country of Guatemala at fault. Ms. Yellow was granted asylum.

This was a good outcome for Ms. Yellow, personally, but it is accomplished by finding interpersonal violence as essential to the “values, beliefs, and rituals of the people living in these countries and in the region.”⁵⁵⁰ Defining violence as endemic to Guatemala without acknowledging U.S. complicity is an analytical sleight of hand available to a colonial power. The U.S. creates a “rhetoric of absence,”⁵⁵¹ distancing itself from any connection to gendered violence. Localizing the abuse within the borders of Guatemala paints the Third World woman as “always in danger” and the violence as a “natural fact experienced by particular bodies in particular places of the world.”⁵⁵²

In evaluating an asylum claim, the U.S. evades responsibility, plays the paternal protector, and advances colonial notions of Western superiority. By elevating notions of authority, the U.S. conveniently forgets its role as a “violent participant,” instead positioning its role as the civil, decent, “detached outside observer.”⁵⁵³ This freedom from responsibility allows U.S. immigration officials to admit “deserving” women asylum seekers through activating their role as defenders, and, often, by positioning women as “unable”. Once gender-based violence

⁵⁵⁰ Sara L. McKinnon, *Gendered Asylum: Race and Violence in U.S. Law and Politics*, 32.

⁵⁵¹ *Ibid.*, 33.

⁵⁵² *Ibid.*

⁵⁵³ Sara L. McKinnon, *Gendered Asylum: Race and Violence in U.S. Law and Politics*, 30. Eithne Luibhéid, *Entry Denied: Controlling Sexuality at the Border*, 113.

becomes understood as pervasive, the U.S. assumes the role of absolute protector—controlling the process at every step of the way.⁵⁵⁴

When the asylum system views gender violence as a lesser harm, it replicates the idea that Guatemalan women are of lesser worth. When the asylum system requires Guatemalan women to provide a reason for their abuse, it ignores the colonial history from which the gendered violence arose. When U.S. asylum officers or immigration judges dismiss the gendered sexual violence as insignificant, exaggerated, doubtful, or insufficient evidence of persecution, they essentially recapitulate the colonialism and ignore or rewrite history. And when immigration officials grant asylum, they may require the Guatemalan woman to frame her claim in a way that privileges the opinion of the judge over the experience of the survivor, allowing U.S. to avoid responsibility, and act as a paternalistic hero—a person of greater worth.

⁵⁵⁴ Sara L. McKinnon, *Gendered Asylum: Race and Violence in U.S. Law and Politics*, 30. Eithne Luibhéid, *Entry Denied: Controlling Sexuality at the Border*, 113.

CHAPTER VI: CONCLUSIONS

The relationship between the United States and Guatemala is built on a paternalistic power system that extends back many decades. The asylum system reproduces this unequal power dynamic through immigration officials' evaluations of individual cases. This chapter extends the paternalistic issues present in the asylum cases of Guatemalan women to broader injustices in the immigration system, as well as anti-immigrant sentiment in U.S. society. Within this conclusion, I offer possible changes to promote greater justice for asylum seekers.

The Trump Administration has heightened levels of prejudice against immigrants, amplified further against immigrant women from the developing world. New regulations and legal structures have rendered the asylum system ineffective. This reality is not unique to our time; the United States has faced other periods of strict nativism. The unjust application of humanitarian rights is rooted in the intention to sustain power. The United States maintains power and control through government officials and agencies, media outlets, and appeals to the general public utilizing rhetoric that centralizes the fear of overwhelming the U.S. with a “flood”⁵⁵⁵ of immigrants.

⁵⁵⁵ The “floodgates” argument refers to the potential “flood” of litigants who would make claims if the legal pathway were opened—inundating the courts with a swell of claimants. Anti-immigrant spokespeople utilize the “floodgates” argument to instill fear about overriding the immigration system; however, this argument is used across legal and social fields to limit potential outcomes and protections for litigants. The concern arises most frequently in common law cases regarding damages and economic responsibility. In general, the rhetoric of the “floodgates” has an underlying connotation that the claims made following the new “opening” lack proper legal basis, and do not deserve legitimate attention. Sandra F. Sperino and Suja A. Thomast, “Fakers and Floodgates,” *Stanford Journal of Civil Rights & Civil Liberties*, Vol. 10, No. 2 (Jun. 1, 2014); Karen Musalo, “Protecting Victims of Gendered Persecution: Fear of Floodgates or Call to (Principled) Action?,” *Virginia Journal of Social Policy & the Law*, Vol. 14, Is. 2 (2007); W.J. Stewart, “Floodgates,” *Collins Dictionary of Law* (2006).

Invoking the “Fear of the Floodgates”

In 1939, the President of Cuba turned away the *St. Louis*, a ship carrying 937 German Jewish refugees. The *St. Louis* was denied permission to dock on the shores of Havana.⁵⁵⁶ Desperate, the ship’s Captain appealed to the U.S. government, which also declined the ship entry. Patrolling the waters, the U.S. Coast Guard prevented any passengers from swimming to safety on U.S. shores. The ship returned to Europe. Hundreds of Jewish refugees on board were murdered during the Holocaust. Absorbing the hateful sentiments of World War II ideology, liberal and conservative-minded people argued that the immigration system faced two futures: either the U.S. maintained a zero-tolerance policy, or the “floodgates” opened to all entries.⁵⁵⁷ This rhetoric is reflected in contemporary conversations about immigration. This “fear” informs paternalistic views of controlling entry, disregarding safety and humanitarian commitments.

In 1991, a group of religious and refugee advocacy organizations filed a class action lawsuit, *ABC v. Thornburgh*, against Immigration and Naturalization Services (now USCIS), the Executive Office for Immigration Review, and the U.S. Department of State, on behalf of Central American refugees.⁵⁵⁸ The plaintiffs, a group of Guatemalan and Salvadoran refugees, alleged that immigration officials acted with adjudicatory bias when rendering decisions in their asylum claims.⁵⁵⁹ The government agreed to settle, in recognition of bias. The settlement agreement states: “The same standard for determining whether or not an applicant has a well-founded fear of persecution applies to Salvadorans and Guatemalans as [it] applies to all other

⁵⁵⁶ United States Holocaust Memorial Museum, “The Voyage of the St. Louis,” *The Holocaust Encyclopedia* (accessed on April 2, 2020).

⁵⁵⁷ Sonia Nazario, “Opinion: ‘What Part of Illegal Don’t You Understand?’,” *The New York Times* (February 19, 2020).

⁵⁵⁸ *American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991).

⁵⁵⁹ Karen Musalo, “Evolution of Refugee and Asylum Law in the United States,” 20.

nationalities.”⁵⁶⁰ Despite the settlement agreement, prejudiced trends continue, especially in regard to the asylum claims of women.

As asylum advocates fought for the rights of women refugees, a national response began to call for limitations, raising the specter of the incoming “flood.” Anti-immigrant forces renewed the invocation of “the floodgates” following the case of Fauziya Kassindja, who was granted asylum because she faced female genital mutilation in her home country. Millions of women seek to avoid or suffer the consequences of female genital cutting every year.⁵⁶¹ Immigration opponents felt that granting Ms. Kassindja asylum would lead immigrant women to overwhelm the asylum system. The detractors raised the fear of “the floodgates” with greater fervor during Rody Alvarado’s long battle with the immigration system.

Asylum attorney and advocate Karen Musalo explains that this fear has a gendered component; it is “disproportionally raised in the context of *women’s* asylum claims on the basis of *gendered* violence” (emphasis added).⁵⁶² In my view, this concern derives from an aversion to the specific and frequently sexual nature of women’s asylum claims. By denying the reality and truth of women’s lived experience, misogynistic approaches dismiss the claims as “feminine” and invalid.

The usage of the word “floodgates” has particular resonance as applied to immigrants who are women. The word “flood” conjures the image of an uncontrollable, vast, and dangerous amount of water overwhelming the land. The Bible describes a flood so severe that it nearly destroyed all of humankind. Floods are considered environmental disasters, a catastrophe that

⁵⁶⁰ *American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991).

⁵⁶¹ Karen Musalo, “Protecting Victims of Gendered Persecution: Fear of Floodgates or Call to (Principled) Action?,” *Virginia Journal of Social Policy & the Law*, Vol. 14, Is. 2 (2007), 124.

⁵⁶² Karen Musalo, “Matter of R-A-; An Analysis of the Decision and its Implications,” *Interpreter Releases*, Vol. 76, No. 30 (August 9, 1999), 1186.

governments must address. Positioning this idea in reference to women seeking safety in the United States suggests “swells” or “waves” of entries: waves of immigration that are dangerous—and risk the “demise” of established government.⁵⁶³

When applied to immigrant women, the “floodgates” metaphor signifies “the power and the threat of the feminine.”⁵⁶⁴ Sara McKinnon takes this metaphor a step further, suggesting that “flood” and “flow” symbolize menstruation, a “dark” and mysterious force, repellent and threatening to men.⁵⁶⁵ Comparing immigrant women to concepts of darkness emphasizes the fear of the Third World woman as someone of “differential humanity.”⁵⁶⁶

Anti-immigration thought and rhetoric with regards to women include fears about reproduction and changing what it means to be an American. The metaphor of “flow” and “flooding”—by alluding to menstruation—references this fear of women’s reproductive place as immigrants.⁵⁶⁷ The flood metaphor ties together fears about women generally, with specific fears about women immigrants—erroneously linking considerations of women seeking protection with the danger of women “flowing” into the space. The language of the “floodgates” also implies that women seeking asylum status on the basis of gendered violence are unexceptional; rather, they are part of the “swell” of women seeking safety. The intensity and horrific nature of the gendered violence they experienced is recast as ordinary.⁵⁶⁸ The “floodgates” argument de-

⁵⁶³ Sara L. McKinnon, “Positioned in/by the State: Incorporation, Exclusion, and Appropriation of Women's Gender-Based Claims to Political Asylum in the United States,” *Quarterly Journal of Speech*, Vol. 97, No. 2, (2011), 191.

⁵⁶⁴ Ibid.

⁵⁶⁵ Ibid.

⁵⁶⁶ Lucy Mayblin, *Asylum after Empire: Colonial Legacies in the Politics of Asylum Seeking*, 37.

⁵⁶⁷ Sara L. McKinnon, “Positioned in/by the State: Incorporation, Exclusion, and Appropriation of Women's Gender-Based Claims to Political Asylum in the United States,” 191.

⁵⁶⁸ Ibid.

emphasizes the experiences of unique human beings who have suffered extreme abuse and focuses concern instead on the impact of immigration to the United States.

Opponents of gender-based asylum claims often use the “floodgates” argument to assert that the United States will become overwhelmed if the “door” is opened.⁵⁶⁹ This concern allows opponents to defend a closely held conviction. These challengers do not believe the women refugees. The news media has disseminated the deniers’ viewpoint in publications over the last two decades. In an interview with the *Christian Monitor*, Jack Martin, the FAIR⁵⁷⁰ Special Projects Director, stated that it is unreasonable to expect U.S. immigration judges to evaluate cases of “problems for women” in other countries. In his view, it would be too hard for them to come to an “accurate assessment” of the interpersonal situations that should be considered crimes, as opposed to national practices.⁵⁷¹ This statement evokes the floodgates as code for his actual belief that women who seek asylum fraudulently assert abuse. Anti-immigrant attorney Dan Stein told CNN that he “feared the floodgates” would override the already backlogged asylum system through deception:

[The asylum system is] barely keeping up with new claims [...] This new definition is a magnet that draws people in illegally to try to take advantage of the system [...] We cannot bring people here simply because they are- are suffering under general cultural forms of oppression, even though, you know, it's obviously a problem, it's not the way we're going to solve it.⁵⁷²

⁵⁶⁹ Angelica Chazaro and Jennifer Casey, “Getting Away with Murder: Guatemala's Failure to Protect Women and Rodi Alvarado's Quest for Safety,” *University of California Hastings Women's Law Journal*, Vol. 17, No. 2 (2006), 143.

⁵⁷⁰ FAIR, the Federation for American Immigration Reform, is a non-partisan public interest group that advocates for the development of policies to reduce immigration. Asylum advocates consider FAIR an anti-immigrant hate group.

⁵⁷¹ Amy Lieberman, “Is Domestic Violence Cause for US to Grant Asylum?” *Christian Science Monitor* (February 2011).

⁵⁷² Andrea Arceneaux, “Proposal Would Give Asylum to Victims of Political Rape,” *Cable News Network* (May 30, 1995).

The fear of the floodgates and the connected assertion that women make gender-based claims fraudulently underscore the essential flaws of the U.S. immigration system; the asylum system requires women to surmount great hurdles, and immigration authorities often view cases with prejudiced lenses in order to stop the incoming “flood.” Requiring women to reposition their experiences to fit the confines of an enumerated ground, to establish the severity of their abuse, and to provide a specific explanation for the motivation of their abusers are all actions the asylum system takes to *control* the “flood.”

Attorney General Sessions' decision in the *Matter of A-B-* reflects the “floodgates” concern in the Trump Administration’s anti-immigration policies, and has also intensified the paternalistic problems that Guatemalan women face. AG Sessions’ June 2018 decision, overturning the ruling in the *Matter of A-R-C-G-*, clarified the government’s position on asylum claims for women fleeing interpersonal violence. AG Sessions wrote: “The mere fact that a country may have problems effectively policing certain crimes—such as domestic violence or gang violence—or that certain populations are more likely to be victims of crime, cannot itself establish an asylum claim.”⁵⁷³ With this decision, the Trump Administration took a clear stance against women seeking asylum. As this thesis has demonstrated, this position has a long history. AG Sessions' position is rooted in decades of injustice practiced by the United States against Central America.

⁵⁷³ The Office of the United States Attorney General, *Interim Decision # 3929: Matter of A-B Respondent*, 27 I&N Dec. 316 (A.G. 2018).

Recommendations: What change is possible?

The decisions within the twenty-four asylum cases evaluated in this research elucidate the continuation of defining violence suffered by women in the “private sphere.” Domestic violence is not private. Gender-based violence is not personal. Though these forms of brutality often occur behind closed doors, violence against women must be understood as a public concern, a problem of society. Gender-based violence arises from socialized power structures, where men control women’s bodies and women learn they must submit to survive. European colonists forced onto the Mayan world their notions of *machismo* and male dominance. In Guatemala, generations of men learned brutality against women during the Civil War. U.S soldiers taught violence against women as a weapon of war. The paradigm of asylum status develops from a system of paternalism within the United States. This model positions the United States as a protector: the U.S. establishes itself as a safe zone, a place of refuge from uncivilized violence. Gender-based violence happens everywhere, in every country, including this one. Rectifying the asylum system must begin with this recognition.

The United States government should commit to addressing this unjust system. Immigration rights activists should direct U.S. officials to peer countries for recommendations on how to address gender-based asylum claims. In 1993, Canada became the first nation to institute country-specific guidelines for refugee women, largely based on actions of the United Nations High Commissioner for Refugees (UNHCR). The “Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution” had two primary goals: to heighten judges’ sensitivity to the unique problems faced by refugee women, and to provide clear instructions for evaluating women’s asylum and refugee claims.⁵⁷⁴ The Canadian government recognized that women are

⁵⁷⁴ Valeria L. Oosterveld, "The Canadian Guidelines on Gender-Related Persecution: An Evaluation." *International Journal Of Refugee Law* Vol. 8, No. 4 (1996), 570.

disadvantaged by the original definition of a “refugee.”⁵⁷⁵ The Canadian Guidelines responded clearly to the frequent argument proposed by opponents that gender as a particular social group is “too large” by stating: “the fact that the particular social group consists of large numbers of the female population in the country concerned is irrelevant — race, religion, nationality and political opinion are also characteristics that are shared by large numbers of people.”⁵⁷⁶ The Guidelines stated clearly that gender-based violence constitutes persecution: “The fact that violence against women, including sexual and domestic violence, is universal is irrelevant.”⁵⁷⁷ After establishing the Guidelines, Canada was the first country to develop clear case law that defended the rights of women fleeing gender-based violence.⁵⁷⁸ In 2006, the Swedish government passed the Swedish Aliens Act which changed the definition of a “refugee” to include gender and sexual orientation. Other countries, including the United States, issued guidelines reflective of both UNHCR and Canadian policy thereafter. Canada is one of the few countries that has remained committed to these guidelines and at “numerous times reaffirmed its commitment to the principle in both theory and practice.”⁵⁷⁹ The United States commitment is insufficient—or empty.

In recent years, levels of immigration and asylum applications have reached crisis levels worldwide. Studying the history and roots of injustice that are replicated within the asylum system is imperative to understanding the current immigration crisis. I have focused specifically on Guatemala, a single country in Central America, whose history reflects larger trends of U.S.

⁵⁷⁵ Eva Nilsson, “Persecution on Account of One’s Gender: Refugee Status or Status Quo?,” *The Journal of Feminists at Law*, Vol. 2, No. 1 (2012).

⁵⁷⁶ Valeria L. Oosterveld, “The Canadian Guidelines on Gender-Related Persecution: An Evaluation,” 577.

⁵⁷⁷ *Ibid.*, 578.

⁵⁷⁸ Karen Musalo, “Comments on the occasion of the tenth anniversary of the Immigration and Refugee Board Gender Guidelines,” *The Canadian Council for Refugees* (March 2003).

⁵⁷⁹ *Ibid.*

colonial interference. United States intervention in Guatemala should be viewed as a “test case” for U.S. involvement in other nations that are perceived as “inferior.” The United States was deeply engaged in political realities that led to the Civil War in Guatemala, and U.S. armed forces promoted the violence that endured for three decades. The implications of these actions—and the research in this study—can be extended across Latin America.

At the broadest level, this thesis has explored the power systems that operate in today's world. Modern U.S. asylum law undermines the principles of international asylum law that were created, however imperfectly, after the global horrors of World War II. The international principles established in the 1951 Convention and 1967 Protocol were designed for impartial application, using a humanitarian lens to emphasize the needs of the individual refugee. However, as nations have applied these principles, individual states have assumed the power to make asylum decisions based on their own interests. When the United States implements policies that disregard individual human suffering, the result has clear implications around the globe.

This study serves as a critique of global power relations, and the problems embedded in paternalistic control. The United States asylum system evidences the harm that arises when powerful nations grant themselves the authority to evaluate the needs of other human populations. The gender-based asylum decisions analyzed in this thesis reveal how the U.S. judicial system ignores history, demeans asylum seekers, and exercises imbalanced, paternalistic power in its decision-making. The case law of Guatemalan women's claims inscribes the relationship between the United States and Guatemala.

In my view, the United States government should reinvent the process for women to apply for asylum. The immigration system should set aside the artificial legal hurdles of establishing a particular social group, and proving persecution and nexus. The asylum system

should move away from positioning women as weak, powerless, or “unable” by establishing clear definitions and just protocols. Paternalistic ideology controls who has permission to enter the United States—who merits safety—and also controls how the asylum claim is framed by immigration officials. The U.S. government, immigration officials, and the media should avoid the rhetoric of “floodgates” and “loopholes”—and recognize instead the implications of the U.S. interventions in Latin America. The U.S. government has a moral obligation to change the asylum system. After decades of covert intimidation and direct involvement in instability and violence, the United States government must address the continuing injustice that exists at the border, in courtrooms and government offices, and in the language used to describe immigrants and refugees.

The layers of injustice committed by the United States are continuous. The approach taken in this thesis has collected, identified, and revealed the systemic nature of destructive power by giving voice to narratives and creating space for histories that are untold. Collecting and identifying the unremitting nature of this unequal power relationship compels activism. How can the United States address our heritage as a country of immigrants—and our history of paternalism in the developing world with authenticity? As Senator Bernie Sanders stated in the February 25, 2020, South Carolina presidential debate: “It might be a good idea to be honest about American foreign policy. That includes the fact that America has overthrown governments all over the world in Chile, in Guatemala, in Iran.”⁵⁸⁰ Senator Sanders’ confronts the duplicity of U.S. actions, and suggests that authentic public conversations about the U.S. role in Latin America are possible. Instead of creating a “flood” of fear, we must promote the truth by emphasizing pieces of history that are often purposefully undisclosed or improperly cast aside.

⁵⁸⁰ Senator Bernie Sanders, “Sanders Defends Cuba Remarks: When Dictatorships Do Something Good, You Acknowledge That,” Real Clear Politics (February 25, 2020).

On November 21, 2019, Senator Patrick Leahy of Vermont and Representative Zoe Lofgren of California introduced the bicameral Refugee Protection Act in the U.S. Congress.⁵⁸¹ The Bill—which has been referred to the Subcommittee on Immigration and Citizenship—outlines a plan to revise United States policy toward refugees and asylum seekers. The Refugee Protection Act would establish protocols to minimize detention, define pathways to provide legal counsel to immigrant children, and set an annual refugee admissions goal of at least 95,000 people—while placing a limit on presidential authority.⁵⁸² Further, the Refugee Protection Act lays out a plan to provide protection for women and girls fleeing gender-based violence. In proposing the Bill, Senator Leahy explained: “The world faces the worst refugee crisis in recorded history. The United States should be embracing our role as the humanitarian leader of the world – not retreating from it.”⁵⁸³

The future of gender-based claims within the United States asylum system is at a critical juncture. AG Sessions decision in the *Matter of A-B-* created devastating results for women fleeing domestic violence, but the fight is not over. In December 2019, the Center for Gender and Refugee Studies submitted an appeal to the Board addressing Ms. A.B.’s asylum eligibility. In late March 2020, Attorney Blaine Bookey presented oral argument in a case of an asylum seeker who was wrongly denied asylum in light of *A-B-*. Four more cases of gender-based asylum cases have been appealed to the Ninth Circuit and will be heard in the upcoming weeks.

While legal advocates continue to argue in the courtrooms, President Trump upends the immigration system without regard for the rule of law. Tonight, as I finish this year-long research project, President Trump released this tweet: “In light of the attack from the Invisible

⁵⁸¹ S.2936 - Refugee Protection Act of 2019, 116th Congress (2019-2020).

⁵⁸² Ibid.

⁵⁸³ Office of United States Congresswoman, Zoe Lofgren, “Leahy & Lofgren Introduce Bicameral Refugee Protection Act of 2019,” (November 21, 2019).

Enemy, as well as the need to protect the jobs of our GREAT American Citizens, I will be signing an Executive Order to temporarily suspend immigration into the United States!” (7:06 PM April 20, 2020).⁵⁸⁴ The stakes are rising once again. The consequences of President Trump’s latest threat to disregard human suffering is unknown. However, allies in the legal world will continue to fight, and their commitment to justice must be mirrored in civil activism.

This thesis has centered the voices and experiences of those most effected by injustice, and elevated the power of learning the complete truth. Activism supporting changes to the asylum system should reflect the intention to confront historic and modern injustice. United States history has shown the capacity to create genuine change when people begin to question the systems of power operating around them. We must start with authentic education: the dissemination of critical information that exposes the truth in order to create a generation of informed U.S. citizens who accept their responsibility to advocate for the rights of all. To achieve long-lasting structural change, advocates for immigration reform must mobilize broad public support. This effort has already begun in San Francisco, Los Angeles, and Cambridge; these cities have passed resolutions that condemn the *A-B-* decision, and commit to protecting survivors of gender-based violence who are seeking asylum. These resolutions reached local governments following the dedicated work of community organizers calling for direct action. Other cities and counties must follow.

After the *Matter of A-B*, the Center for Gender and Refugee Studies began Immigrant Women Too, a national movement dedicated to uplifting the stories of women asylum seekers in the United States. This movement provides public spaces and online platforms for immigrant survivors of gender-based violence to share their stories. Now, allies must work to spread these

⁵⁸⁴ President Donald J. Trump on Twitter (Apr. 20, 2020). Available at: <https://twitter.com/realDonaldTrump>

powerful testimonies, a direct action that will continue to spread truth and awareness. Armed with a body of information about the brutal history of the U.S. relationship with Guatemala and the region of Latin America, the labyrinthine asylum system, and a commitment to centering the voices of survivors, we can fight against this time of sanctioned prejudice in our country and across oceans. We have a moral responsibility to bring the United States back in line with international humanitarian obligations for safety and justice.

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