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Guatemala's Genocide Determination and the Spatial Politics of Justice

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Abstract. This paper focuses on the Guatemalan Commission for Historical Clarification's (CEH) determination that state violence in Guatemala between 1981 and 1983 constituted acts of genocide. The construction of the CEH's argument is analysed, together with its implications for political dynamics within post-war Guatemala. The potential new 'geographies of justice' that flow from the CEH's genocide argument are explored in terms of new venues and avenues for prosecution of Guatemalan genocide cases. It is shown how the CEH made nuanced connections between territory, political practice, ethnic identity and violence, and it is argued that these connections were key to its genocide argument. Finally, the relationship is interrogated between the CEH's genocide determination and the figure of the 'neutral Maya' as the post-war representation of an indigenous subject inhabiting a space untainted by the stain of a (failed) revolutionary past.

Introduction

'Genocide' emerged as a term in international law and politics in 1948, with the advent of the UN Convention on the Prevention and Punishment of the Crime of Genocide (hereafter referred to as the Genocide Convention). Article 2 of the Convention defines genocide as the "intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such" through means that include killing or causing serious harm to members of the group; imposing measures to prevent births within the group; or forcibly removing children from the group. Classifying acts of violence as genocide entails more than just objective data such as testimonies and clandestine cemeteries; it also requires proof of the subjective element of *intent*, in other words, that members of a group were targeted as such. Prosecution of genocide requires a legal infrastructure and political landscape capable of addressing such contentious charges.

The classification of violence as genocide may lead to further conflict in societies grappling with the aftermath of atrocities. The difficult, often conflictive,

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aftermath of a genocide determination has been studied most obviously in the Jewish experience under Nazism in Europe and the subsequent establishment of the state of Israel, (Segev, 1993), but also in the case of Rwanda (Straus, 2006) and the former Yugoslavia (Morus, 2007). A genocide determination sets a legal and, we argue, a highly symbolic threshold, because the term genocide designates and sets apart a new class of victims: persons targeted by virtue of who they are. Having one's pain and suffering called 'genocide' has ramifications; in turn, having one's experience ignored or deemed below this threshold also has consequences.¹

This essay traces the experience and impact of the Guatemalan Commission for Historical Clarification (Comisión para el Esclarecimiento Histórico, or CEH) and its determination that 'acts of genocide' occurred in Guatemala between 1981 and 1983. Guatemala's armed conflict lasted for more than three decades, from the early 1960s to the mid 1990s, and it left in its wake enormous social wreckage: 200,000 people dead, hundreds of thousands displaced and a society warped by terror. A brutal counter-insurgency campaign in the early 1980s destroyed at least 600 villages and, in a country where more than half of the population is Mayan, indigenous communities bore the brunt of the scorched earth violence.² The CEH was Guatemala's version of a Truth Commission, charged with writing a report to document the human rights abuses and other acts of violence during the three-decade conflict.³

The two authors of this essay are geographers with an interest in the social effects of political violence and the efforts at collective redress of such violence. Amy Ross has researched the experiences of Truth Commissions in Guatemala and South Africa, and her most recent work concerns international courts and universal jurisdiction. Elizabeth Oglesby was a member of the CEH staff and writing team from 1997–1998 and her reflections in this essay are based on that experience, as well as on prior experience studying the effects of rural counter-insurgency in Guatemala.

We came together in this piece to analyse the genocide determination in Guatemala from distinct but related angles, seeking to understand the construction of the CEH's argument and its implications for political dynamics within post-war Guatemala, as well as the potential new 'geographies of justice' that might flow from the CEH's genocide argument, in terms of new venues and avenues for prosecution of Guatemalan genocide cases. We engage with two main issues. How did the CEH make its determination of genocide in Guatemala in a way that avoided reifying the racial dynamics of the violence? And, what is the significance, in terms of future political and judicial processes, of the fact that the Guatemala commission, as an 'official' entity, actually used the word genocide?

As geographers, we begin with the observation that the spatial practices of violence in Guatemala's armed conflict are undeniable. The widespread village-level massacres occurred in regions that are overwhelmingly Mayan. The initial scorched-earth sweep was followed quickly by a militarised reconstruction of the conflict zones, as the army sought to build a permanent local-level counter-insurgency state apparatus that could seize and hold control over these territories and make them 'governable' (see section 2). A territorial analysis is crucial to how the CEH was able to make its argument. Through the careful study of four regions, the CEH was able to demonstrate that the Guatemalan army's definition of 'internal enemy' (intrinsic to the counter-insurgency response) came to be applied to entire areas of the countryside. In effect, large swaths of territory where the Mayan population reached 90 per cent or greater came to be viewed

as 'subversive'. We follow Cowen and Gilbert's (2007, p. 16) definition of territory as meaning not simply land or space, but "land or space that has had something *done to it*—it is acted upon". Territory is thus both a spatial expression of power and constitutive of power relations. Using this simple definition, we show how the CEH made nuanced connections between territory, political practice and ethnic identity, and violence. These connections were key to its genocide argument.

Even though the violence against Mayan communities in the early 1980s was massive, the genocide argument was one of the most difficult parts of the CEH process. Genocide could not simply be deduced from the large number of human rights abuses against Mayans, as compelling as the testimonial evidence was. The high burden of proof for making a genocide argument—that people are killed because they belong to a particular national, ethnic, racial or religious group *as such*—meant that the CEH's genocide determination was far from inevitable. It had to be constructed from a nuanced reading of recent international jurisprudence *vis-à-vis* the 1948 Genocide Convention, as well as a highly contextualised analysis of state violence in Guatemala.

The difficulties the CEH had in articulating a position on genocide reflected a lacuna within the Convention itself. Scholars have pointed to a 'blind spot' within the Convention's definition of genocide that excluded 'political' as a category (see, for example, van Schaack 1997). Guatemala exhibited systematic political persecution against members of the Communist Party in the 1960s and eventually against anyone who could remotely be labelled a communist or 'subversive', even if this meant anyone organising for political, social or economic rights. Yet 'political group' was excluded in the language of the 1948 Genocide Convention.⁴

This lacuna matters in the case of Guatemala's armed conflict. In Guatemala, structural injustice, historical racism and an increasingly anti-democratic state combined to produce a wholesale army assault against civilian populations in the early 1980s. Yet, state violence in Guatemala was not only directed at Mayan populations, but also at many different sectors organising for social, economic and political change. These movements intersected at various times with the armed revolutionaries until, finally, the militarised state made no distinction between armed combatants and unarmed activists. In its report, the CEH had to navigate between a language of human rights, which tends to posit victims as "passive beings, harmed by the actions of others" (Jelin, 2003, p. 54) and a historical analysis that could recognise different sorts of protagonisms, including significant Mayan participation in social, political and revolutionary movements in Guatemala, especially in the 1960s and 1970s.⁵

As the editors of this Special Issue observe, calling a period of violence 'genocide' may contribute to reshaping political subjectivities among affected groups, as the new category of 'victim' takes on even greater political and material significance (with struggles over reparations, for instance). One of the issues we address in this essay, albeit in a preliminary way, is the relationship between the CEH's genocide determination and the figure of the 'neutral Maya' (Lofving, 2005) as the post-war representation of an indigenous subject inhabiting a space untainted by the stain of a (failed) revolutionary past.

Another important issue relates to what might be called a spatial dialectic between the CEH's genocide determination and the opportunities for prosecution in diverse venues. That is, the CEH drew on a developing body of international

jurisprudence to make its situated argument for Guatemala and that argument, in turn, may contribute to opening up new possibilities for the prosecution of genocide cases internationally.

The essay proceeds in two parts. First, in section 2, we detail the determination of genocide and how it occurred within the CEH. Section 3 discusses the implications of the CEH's finding of genocide. We discuss the legal efforts to prosecute those responsible for the violence, the impact of the CEH's report on these activities and the transforming geographies evident in the battles over where trials should take place—nationally, regionally or in the so-called international arena. Finally, we conclude with a discussion of the CEH's report within the context of the politics of memory/memory of politics in Guatemala.

The Commission for Historical Clarification and the Genocide Argument

Final peace accords between the Guatemalan government and the Guatemalan National Revolutionary Unity (URNG) were signed in December 1996. The final cease-fire was the culmination of several years of peace negotiations that set the terms for ending the war and projected the promise, if not the reality, of social reforms to bring about a 'firm and lasting peace' (see Jonas, 2000, for an overview of Guatemala's peace process). One of the first agreements, in June 1994, called for the establishment of a Commission for Historical Clarification to investigate human rights abuses and other acts of violence that occurred in Guatemala during more than three decades of armed conflict. Critics pointed out that the CEH lacked the authority to identify or punish offenders and that the accord failed to guarantee any material reparations for the victims/survivors (Ross, 2004, 2006; Wilson, 1997). Furthermore, the initial time-frame of 6–12 months seemed hopelessly inadequate for the task of investigating a 34-year conflict.

The CEH was to be comprised of three persons; two Guatemalans and one international.⁶ Following the finalisation of the peace process in December 1996, the government and the URNG were consulted as to the selection of the three commissioners. The February 1997 selection of Christian Tomuschat (a German law professor and human rights expert with experience in Guatemala) as head of the commission, was followed by the appointments of Edgar Alfredo Balsells Tojo, a former constitutional court judge, and Otilia Lux de Coti, an indigenous leader considered a political moderate, but active within Mayan politics. The commission employed a large staff (almost 300 persons, also comprised of nationals and internationals) and established field offices throughout the country. The field offices collected over 8000 testimonies in the countryside between September 1997 and February 1998. The commission also received submissions from civil society organisations, key witnesses and declassified US documents (the Guatemalan government and army tolerated the commission, but the military refused to share significant information and very few military officers gave testimony to the commission). The three commissioners and their staff debated intensely on how to elaborate a strong report within the confines of the accord's mandate. For example, since the commission was prohibited from 'naming names', it chose to focus on the institutional structures that perpetrated the violence.⁷ Of particular importance was the deliberation over the question of genocide.

Given the perceived weakness of the CEH's mandate, the Guatemalan public was shocked when, on 25 February 1999, the CEH released a surprisingly

strong report called *Memoria del Silencio* (Memory of Silence). In more than 3500 pages, the CEH determined that 93 per cent of the documented abuses were committed by the military or their agents,⁸ and that, between 1981 and 1983, the state had committed acts of genocide. When lead commissioner Tomuschat spoke the word 'genocide', the audience in Guatemala's National Theatre, including dozens of Mayan activists, erupted in a standing ovation, while Guatemalan president Alvaro Arzú sat stone-faced. The commission had put its finger in the open wound (see Nelson, 1999) of the Guatemalan body politic.

Initially, support for a genocide determination was not strong within the CEH. The commissioners and their legal staff recognised the need to draw attention to the massacres in hundreds of Mayan communities from 1981 to 1983. Yet, the lawyers were not confident about scaling the legal barrier to a genocide determination. In particular, head commissioner Christian Tomuschat was sceptical about the genocide argument. During a rare public forum in May 1998, for instance, Tomuschat faced down vociferous criticism from several Mayan organisations when he refused to commit the CEH to a genocide determination (Ross, 2004, p. 76). Certainly, the intense emotion conveyed to the CEH by social organisations and individuals within Guatemala helped to push the three commissioners to articulate the report's conclusions with increasing moral force and clarity. Yet the arguments for or against genocide could not be simple moral judgements. The arguments had to be constructed within the framework of existing international law, with the main obstacle being how to demonstrate that the Guatemalan state *intended* to kill Mayans *as* Mayans.

The CEH's mandate called for the commission to analyse the root causes of the armed conflict in Guatemala and this melding of juridical and historical methods set the Guatemalan CEH apart from other similar experiences (broadly referred to as 'truth commissions') in Latin America (Grandin, 2005; Oglesby, 2007). Combining history and human rights was problematic, however. Did the state kill Mayans *as* Mayans, or because indigenous communities were organising against the state? Would a genocide determination reify the racial characteristics of the conflict, portraying Mayans as passive victims of a racist state, when in fact many were protagonists of a broad political struggle? Moreover, even though a large number of people were killed in Mayan communities in the early 1980s, the CEH was documenting a 34-year war, in which there were other sorts of victims, such as *ladino* (non-indigenous) politicians, labour leaders and urban intellectuals. Would a genocide ruling overshadow the longevity of the conflict and the existence of non-indigenous victims?

The CEH developed a hard-hitting analysis of the causes of the conflict that emphasised multiple forms of social, political and economic exclusion. In addition to Guatemala's structural inequities, the CEH focused particularly on political processes such as the closing of political 'space' for opposition following the overthrow of the reformist government of Jacobo Arbenz in 1954, and in the early 1960s. As new movements arose to counter the various structural and political exclusions, the CEH concluded that the state responded with a "disproportionately repressive response":

The inclusion of all opponents under one banner, democrat or otherwise, pacifist or guerrilla, legal or illegal, communist, or non-communist, served to justify numerous and serious crimes. Faced with widespread political, social, economic, and cultural opposition, the State resorted

to military operations directed towards the physical annihilation or absolute intimidation of this opposition (CEH, 1999, Conclusions and Recommendations, para. 25).⁹

Racial exclusion and persecution against Mayan populations were important factors in the intensification of the violence in Guatemala, but not the only factors, or even the most important ones. The essence of the conflict was not a war by the state against Mayans *per se*, but a repression against popular movements that challenged Guatemala's exclusionary political, economic and social structures. Many Mayans joined these movements, especially in the 1960s and 1970s. Because of this, a genocide argument built solely around the categories of race or ethnicity would be counter-historical.

Despite these concerns, the CEH continued to wrestle with the genocide issue. Thousands of testimonies told a story of intense brutality against Mayan communities and the commissioners wanted to condemn those human rights violations in the strongest possible terms. The debate had political resonance, too, since immunity for genocide was not included in the 1996 Law of National Reconciliation, an amnesty law that preceded the peace accords (see later).¹⁰ The genocide question kept weighing upon the commissioners and their legal staff, until they could see their way clear to addressing both the objective and subjective elements of a genocide argument.

Article II of the Genocide Convention defines the crime of genocide in terms of both *objective actions* and a *subjective* element of intent. The objective actions against particular groups must include one or more of the following: killing members of the group; inflicting serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life intended to bring about its destruction in whole or in part; imposing measures intended to prevent births within the group; and, forcibly transferring children of the group to another group.¹¹ The subjective element refers to the "intent to destroy the group, in whole or in part". The objective actions were relatively straightforward to document in the case of Guatemala, due to the thousands of testimonies, individual and collective, that the CEH obtained in rural areas and the hundreds of massacres in Mayan villages that it documented. The subjective element of intent is more complicated to prove, of course, and to make this part of its argument, the CEH reviewed recent advances in international jurisprudence related to the definition of genocide.

In 1996, the International Criminal Tribunal for the Former Yugoslavia (ICTY) had interpreted the subjective element of genocide in a way that helped the CEH to move forward on its own analysis. Specifically, the ICTY asserted that the *intent* to commit genocide did not have to be expressed verbatim; rather, it could be inferred from a "general political doctrine" combined with the repetition of destructive and discriminatory actions.¹² In other words, if the *motive* for destroying an ethnic group is not racist *per se*, but strictly military, this is still a basis to determine *intent*, and therefore the crime of genocide, so long as the victims are targeted because of their membership in the group.

Two distinctions are important to this line of reasoning. The first is the distinction between motive and intent, as Grandin (2000) observes in his analysis of how the CEH used history to construct its argument. The second is the distinction between genocidal policy and 'acts of genocide'. The CEH report notes that "it is enough to intend to destroy the group, whatever the motive may be".

Distinguishing between motive and intent allows the CEH to differentiate between a genocidal policy and acts of genocide

A genocidal policy exists when the final objective is the extermination of a group, in whole or in part. Genocidal acts exist when the final objective is not the extermination of the group, but other political, economic or military ends, in which the means used to achieve this goal contemplate extermination of the group in whole or in part (CEH, 1999, ch. 2, vol. 3, para. 856, authors' translation)

So, in the case of Guatemala, the state's ultimate *motivation* was to defeat the armed insurgency, but in order to do this, it *intentionally* destroyed Mayan communities seen as a potential support base for the guerrillas. This was sufficient to assert the crime of genocide, according to the CEH.

The term 'acts of genocide' is analytically important to the CEH report in that it allows the CEH to assert that a genocidal crime was committed, even if the state's actions against Mayan communities were motivated by political and military criteria rather than purely racial objectives. The point is to understand how these various factors came to be intertwined in particular times and places, and how the army's 'general political doctrine' allowed for a broad territorial assault against Mayan communities.

The National Security Doctrine (NSD) was the guiding military principle of the Guatemala army during the Cold War, as it was for many other Latin American militaries.¹³ The National Security Doctrine held that it was the responsibility of the military to protect the country against internal 'subversion', specifically the threat of 'Communism'. The NSD promoted the idea of the 'internal enemy' as a prime threat to the nation's stability and this notion of internal enemy was intrinsic to the repression in Guatemala during the years of the armed conflict. The concept of internal enemy became operationalised in different ways throughout the period of the conflict: sometimes it meant actual members of the Communist Party, or opposition politicians; other times it was urban labour leaders, intellectuals or rural activists. Key to concluding that acts of genocide were committed in Guatemala was showing how the concept of internal enemy came to be applied territorially to Mayan areas and how, in the words of the CEH, the Guatemalan state opted for the counter-insurgency option with the "highest toll on human life" among the civilian population in Mayan villages (CEH, 1999, ch. 2, vol. 3, para. 1251).

The CEH's genocide analysis centred on four regions where the evidence indicated that the brunt of human rights violations took place (from 1981 to 1983). These four regions were: Maya-q'anjob'al and Maya-chuj, in the municipalities of Barillas, Nentón and San Mateo Ixtatán, in northern Huehuetenango department (province); Maya-ixil, in the municipalities of Nebaj, Cotzal and Chajul, department of El Quiché; Maya-k'iche' in the municipality of Zacualpa, department of El Quiché; and, Maya-achi, in the municipality of Rabinal, Baja Verapaz. All four regions, in Guatemala's northern and northwestern highlands, have mainly Mayan populations.¹⁴

Prevailing settlement patterns in these and other highland regions included a municipal town centre, where commercial and residential space was dominated by *ladinos* (non-Mayans) and surrounding villages that were overwhelmingly Mayan. As anthropologist Charles Hale notes, "when the military attacked these villages, they could be fairly sure that all the inhabitants were indigenous".¹⁵

Highland towns experienced selective repression, while outlying villages suffered indiscriminate killings.

In the four regions cited earlier, where 98–99 per cent of the victims of human rights violations were Mayan, the CEH's analysis was made after a careful and integrated study of testimonies, cases, key witness interviews, secondary sources and detailed maps of insurgent activity, military command structures and massacred villages. The CEH also elaborated regional 'context reports' for each of the field offices, in an attempt to situate the testimonies of human rights violations within the contexts of place-specific social and political dynamics. The CEH was very clear that it focused on only these four regions because of the practical limitations in its investigative capacity, without meaning to conclude that these were the only places in Guatemala where acts of genocide may have taken place.

In these four regions, Mayan populations were the targets of systematic human rights violations (see Table 1; for the CEH national data on massacres, broken down by department, see Figure 1). These included the individual execution of Mayan community leaders (catechists, Mayan priests, co-operative members and members of local development committees and social organisations), as well as collective massacres. Soldiers and paramilitary forces made no distinction by age, sex or condition of the victims. Members of the army or army-directed civil patrols systematically carried out acts of extreme cruelty, including torture and other inhuman and degrading treatment, whose intention was to terrorise the community and destroy the foundations for social cohesion. This included the collective rape of women and the murder and mutilation of children and elderly people, as well as women and men. Indiscriminate massacres were accompanied by the razing of villages; in the Maya-ixil region, for example, between 70 per cent and 90 per cent of the villages were destroyed. In northern Huehuetenango, 80 per cent of the population was forcibly displaced. Crops were burned, leaving these populations without food, and survivors were persecuted and bombed as they fled into the hills. The CEH demonstrated that these crimes were not excesses committed by rogue troops, but actions strategically planned by the army high command to destroy the actual or potential social support base of the guerrillas.

The Guatemalan state intended to kill Mayans, the CEH asserted, because it conflated these populations into its target of 'internal enemies' even though its

Table 1. Massacres and deaths documented by the CEH in the four genocide regions

Region	Number of massacres	Number of deaths
Ixil	32	6986
Rabinal	19	3637
Zacualpa	24	897
N. Huehuetenango	19	2636

Notes: The numbers refers to killings documented by the CEH. The actual death tolls may have been much higher. For instance, geographer George Lovell argues that the population deficit in the Ixil region reached 50 000 by the late 1980s; this would include people who died of illness or starvation during the forced displacement, as well as the precipitous decline in the birth rate during this period (Lovell, 1990, p. 11).

Source: Based on CEH (1999, ch. 2, vol. 3, paras 895–1231).

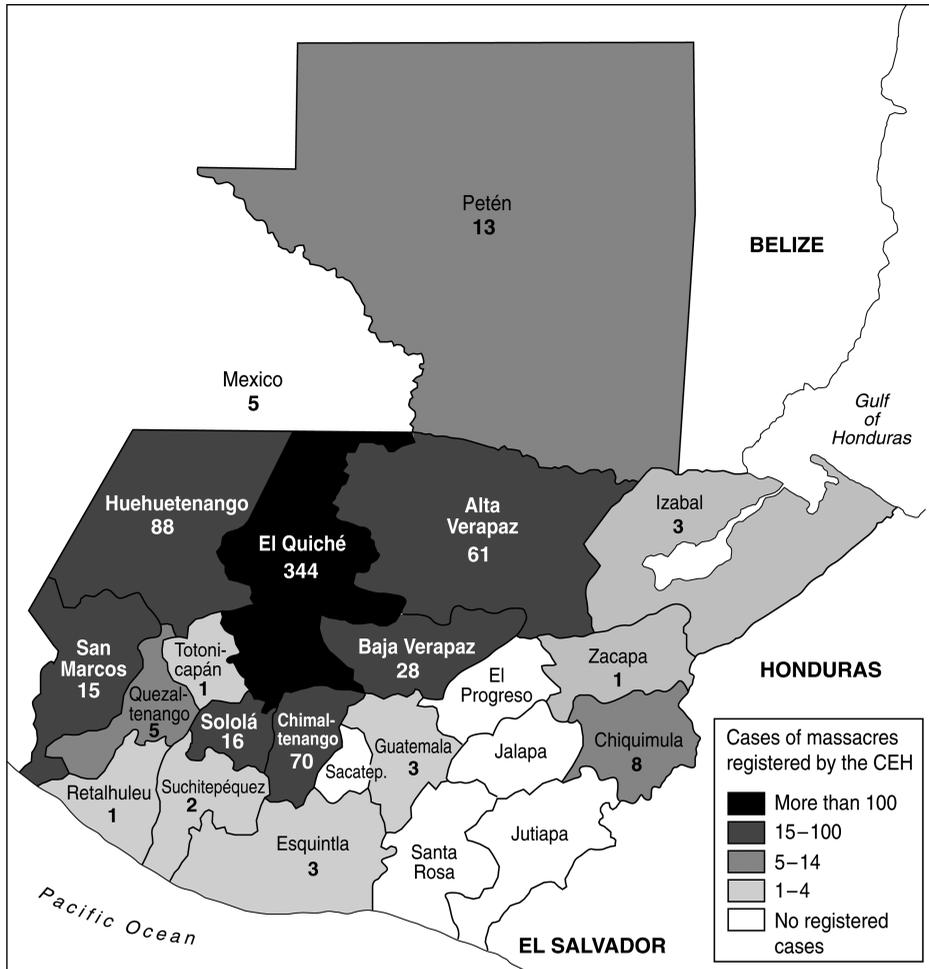


Figure 1. Massacres in Guatemala Documented by the Commission for Historical Clarification, by Department (Province). *Source:* CEH Database; CEH 1999, Conclusions and Recommendations, Annex 5.

overarching goal was the defeat of the guerrillas. The army redefined indigenous populations into 'good' Mayans (deemed to be on the side of the army) and "bad" Mayans (believed to be supporting the insurgency). 'Good' Mayans could be redeemed, but 'bad' ones had to be eliminated.¹⁶ How entire communities, ethnic groups, and geographical areas came to be defined as 'bad' Mayan (i.e. targets for elimination) had to do with the legacy of racism in Guatemala (and associated atavistic fears of Indian uprisings), as well as the army's evaluation of place-specific political histories.

For example, the CEH's summary of genocide in the Maya-ixil region of northern El Quiché notes that army officials studied the history of the region in depth. A series of revolts in the Ixil area in the 19th and 20th centuries marked the Ixils as a 'historically rebellious' ethnic group and a 'natural support base' for the guerrillas. The army designated the area around the three main Ixil towns as the 'Ixil Triangle', after which the entire region came to be known by this military term

taken from the name of the Mayan ethnic group that resided there (the military's 1982 counter-insurgency campaign in this region was called 'Operation Ixil'). The crux of the CEH genocide argument is that historical and socio-political criteria led the army to consider the Ixil population *as such* to be 'internal enemies', or 'bad Mayans'. This is what brought about acts of genocide directed at the Ixil territory as a whole, including mass killings and forcible displacement.

Such place-based practices of repression meant, for example, that people fleeing the Ixil region and other areas often discarded their distinctive indigenous dress. Army officers were trained to detect the weaving patterns traditional to particular regions and the simple act of wearing indigenous clothes linked to specific places could mark a person as 'subversive' (Manz, 1988; AVANCSO, 1990, 1992).

In the aftermath of the massacres, rural spaces in these four regions and other affected areas of Guatemala were rebuilt by the military as part of its 'war of reconstruction' (AVANCSO, 1992) to cement a permanent counter-insurgency state presence in the conflict zones. Dispersed displaced populations were rounded up and resettled into urbanised 'model villages' and 'development poles', and the army sought to replace the guerrillas' communal-level leadership with its own local power structures, including paramilitary village-level civil patrols. In these reconstructed spaces, 'good' Mayans could survive, precariously, while recovered 'bad' Mayans, those who had not been killed, could be politically re-educated. One army officer in 1988 compared this resettlement of internally displaced Mayan populations with the colonial-era system of '*reducciones de indios*', whereby dispersed indigenous groups were concentrated into nucleated 'governable' spaces subject to the authority of the church and crown.¹⁷ Both phases of the Guatemalan army's counter-insurgency campaign in the 1980s—the war of extermination and the war of reconstruction—involved this sort of systematic re-ordering of rural territory in wide areas of the countryside.

In summary, the genocide argument made by Guatemala's Historical Clarification Commission was not simply deduced from the large number of human rights violations experienced by Mayan populations during the height of the counter-insurgency war. The distinctions between motive and intent, and between genocidal policy and acts of genocide, allowed the CEH to manoeuvre around the lacunae in the 1948 Genocide Convention and to construct an argument that incorporated the political histories of Mayan communities as well as their status as persecuted ethnic groups. The army was not simply killing Mayans; it was killing Mayans *in particular places* where social organising was most intense. By situating its argument in the concrete geographies of genocide in Guatemala, linking both historical and territorial dimensions of violence and resistance, the CEH avoided framing Mayans as passive 'victims' of state violence. Mayans *were* victims of horrible crimes, but at the same time, thousands of people in the hard-hit communities were also participants and protagonists in broad struggles for political and social change.

A distinctive characteristic of Truth Commissions is that these commissions usually have no institutional life beyond the publication of their investigations. The CEH was disbanded in early 1999 following the publication of its 12-volume final report. The interpretation of the CEH report, and implementation of its recommendations, became arenas of struggle in Guatemala in the commission's wake (Oglesby, 2007). An important question that we take up next has to do with the legacy of the CEH's genocide determination. What does it mean for Guatemalan society that a truth commission deemed its violence 'genocide'? In

what ways (if any) does the CEH's genocide argument help to open up space for collective redress of the crimes that the report describes? In what ways might the genocide determination reshape or harden political identities in contemporary Guatemala? What are the implications of the term 'genocide' for the politics of historical memory in Guatemala?

Implications of the Genocide Determination

There were many strong parts of the CEH report, including the historical documentation of the origins and deepening of the armed conflict, and the analysis of the central role that clandestine military intelligence structures played in the repression. Yet, distilling a 12-volume report into a digestible message is difficult if not impossible, especially since the lack of formal follow-up to the CEH made dissemination of the report—and interpretation of what the report might mean for post-war Guatemala—a matter of contention. The fact that the CEH called the violence in Guatemala 'acts of genocide' hangs in the air, then, as the central point that gets remembered and referenced. As we discuss next, however, the ways in which genocide gets taken up reflect the political dynamics and narrative framings of the present.

For human rights organisations in Guatemala, the strength of the CEH's final report, especially its determination of genocide, was a rare, and welcomed, victory. Many activist groups felt vindicated by the report's conclusions precisely due to the genocide determination. In contrast, members of the Guatemalan state and military refused to accept the report (Ross, 2004 and 2006). President Arzú literally refused to step up to the podium to receive the report from head Commissioner Tomuschat, sending an aide instead. His government never responded formally to the CEH report (Mersky and Roht-Arriaza, 2007, p. 31). Guatemalan defence Minister general Héctor Barrios called the report "a partial history" that reflected the "perspective of the commission" (Grandin, 2000, p. 408). Soon after the CEH report was published, former *de facto* head of state General Rios Montt was swept back into office as head of the Guatemalan Congress. In 2002, an effort by the Ministry of Education to create a new high-school textbook based on the CEH report, which included the CEH's analysis of genocide during Rios Montt's reign in 1982, was cancelled abruptly through congressional intervention and the textbooks were recalled (Oglesby, 2007). In fact, although the Guatemalan government has apologised publicly in several instances for 'excesses' committed during the armed conflict, it has yet to acknowledge genocide.

Prosecuting Perpetrators

The military had permitted the establishment of a Commission for Historical Clarification on the basis that such a body's findings would lack judicial consequences. As agreed upon in the course of the lengthy and precarious peace process (1990–96), amnesty for the belligerents was an accepted fact of the negotiations (Ross, 2006). As the peace process was moving into its final stages in December 1996, the Guatemalan government promoted and passed a 'National Reconciliation Law', which was widely perceived to be the main legal instrument by which perpetrators of human rights violations would be assured amnesty. Yet, the National Reconciliation Law contained a clause (Article 8) specifically prohibiting the granting of amnesty for the crimes of "genocide, torture or forced disappearance".

The CEH's genocide determination seemed to open a legal loophole around this amnesty legislation.

Granted, the problem with prosecuting mass atrocity in Guatemala had less to do with deficiencies in the legal code¹⁸ than with the political and social context. Although Article 8 of the National Reconciliation Law prohibited the granting of amnesty for genocide, the law ran the risk of being interpreted in a manner contrary to international law and the Guatemalan state. The linchpin was the ability to define an act of violence as a 'crime' (and therefore outside the parameters of the amnesty) rather than an act of war (and therefore protected by the National Reconciliation Law). It is left to judges to make such rulings and Guatemalan judges have been notoriously reluctant to prosecute on issues concerning the state and human rights. The problem is less the actual wording of the amnesty legislation, but rather the world (and the courts) in which it would likely be interpreted. Cases against the state or individuals have rarely been taken up in Guatemalan courts (Mersky and Roht-Arriaza, 2007).¹⁹ While numerous attempts have been made to bring forward more than a dozen genocide cases in the Guatemalan courts, in each instance the cases have met with significant obstacles, from legal manoeuvres in the form of appeals to dangerous threats against those involved in such cases.²⁰

More than 100 Guatemalan human rights cases have been taken up within the Inter-American system. As Mersky and Roht-Arriaza (2007) observe, for many years the Guatemalan government stonewalled the Inter-American Commission on Human Rights and refused to accept responsibility for human rights cases presented to the Inter-American Court. After 2000, the government's stance shifted to admitting limited responsibility and agreeing to implement the court's decisions involving reparations to victims. Mersky and Roht-Arriaza argue that this shift was calculated towards improving Guatemala's international image. The government of Alfonso Portillo (2000–04) was allied politically with former *de facto* ruler General Rios Montt (who was at that time head of Congress) and, by professing its support for human rights, the government could shore up sorely needed foreign support (Mersky and Roht-Arriaza, 2007). Both the Catholic Church's 1998 human rights report (ODHAG, 1998) and the CEH's 1999 genocide determination had focused attention on the massacres committed during Rios Montt's tenure (1982–1983).

Even though the Guatemalan state has shifted towards a more collaborative stance *vis-à-vis* the Inter-American court, Mersky and Roht-Arriaza note that this falls far short of achieving 'accountability' in that: the Inter-American Court lacks the ability to determine individual criminal accountability; in many instances, it is unclear what kind of responsibility the Guatemalan government is accepting (for obstruction of justice or actual responsibility for the crimes committed); and, collective reparation measures have been at best modest and at worst divisive for the communities affected by the violence.

In contrast to other sites of mass violence (such as for the former Yugoslavia, Rwanda, Sierra Leone and Cambodia),²¹ the United Nations has, to date, failed to establish an international court to investigate and prosecute the Guatemalan atrocities. Guatemalans, however, in conjunction with human rights advocates and lawyers trained in transnational jurisprudence, have pursued cases abroad under the principle of universal jurisdiction.²² Frustrated by impunity and inadequate judicial remedies at home, and in collaboration with increasingly sophisticated activists, Guatemalans (like others across the globe) have found

certain national courts receptive to the idea that some crimes are so heinous as to make them 'crimes of international concern' and hence, appropriate for investigations and/or trials, despite the fact that the alleged crimes occurred 'far' from the seat of the court (Sriram, 2005). Madrid and Brussels have been particularly sympathetic hosts to such suits.

In 1999, Mayan activist and Nobel laureate Rigoberta Menchú Tum and others filed a complaint in the Spanish National Court in Madrid. The complaint charged eight prominent Guatemalans, including former heads of state Efraín Ríos Montt, Óscar Humberto Mejía Victores and Romeo Lucas García, with genocide, torture, terrorism, summary execution and unlawful detention.²³ Dozens of plaintiffs joined the case, which addressed atrocities in the communities of Plan de Sánchez and Río Negro, the murder of members of Ms Menchú's family and violations against Spanish nationals living in Guatemala.²⁴

The genocide case moved forward in fits and starts, as different levels of the Spanish judiciary debated the merits of the jurisdictional tie to Spain, at one point restricting the complaint to victims that held Spanish nationality (Roht-Arriaza, 2006). A further challenge was the attempt to require that the plaintiff prove that the Guatemalan state was unable or unwilling to prosecute the case in its own national courts. In 2005, however, the Spanish Constitutional Court ruled that, under the principle of universal jurisdiction, the Spanish National Court had appropriate jurisdiction over the Guatemalan case, as with others concerning genocide, torture and other crimes against humanity, regardless of where the crimes took place.²⁵ At the time of this writing, the case is proceeding: the Spanish National Court has heard testimony from victims and expert witnesses (February 2008, May 2008).

The fate of the Guatemalan genocide case in Madrid is tied to the fate of the principle of universal jurisdiction, and advances have encountered resistance. For an international order that relies upon guarantees of diplomatic immunity between nations, universal jurisdiction represents a troublesome trend—a disruption of the established order between nations. In dynamics classic to this tension, the Guatemalan case has advanced and retreated before various Spanish courts. The central tension is between the universal imperative to prosecute (and therefore resist and deter) heinous crimes and the desire to preserve state sovereignty and the international order.

The genocide determination by the CEH exists within complex geographies of justice, in which accountability for mass atrocity is increasingly housed in courts far from the site of the violence. The 1999 genocide complaint initiated by Ms Menchú cited the CEH report as a key source. Although the CEH report itself is not admissible as judicial evidence, it has been used as contextual background in human rights cases in Guatemala and the lead attorney in the Spanish proceedings affirmed that the CEH report was 'the map' used to construct the genocide argument for the proceedings in Spain. In an interview, she made reference to the logic of the argument and the data included in the report. Furthermore, for the plaintiffs, the CEH report provided a vindication and support for their claims.²⁶

In the Inter-American cases in San José, Costa Rica, and those moving forward in Madrid, Spain, one of the central arguments put forward by the plaintiffs is that the Guatemalan state has failed to prosecute these cases within its own judiciary, such that the failure to investigate/prosecute constitutes a further crime, as well as the rationale for bringing such cases before alternative (regional

and international) jurisdictions. Indeed, in many instances, Guatemalan plaintiffs seek redress before regional and international bodies based on the failure of the Guatemalan state to handle effectively such complaints.²⁷ Having both the CEH's documentation and determination of the crime of genocide, as well as the absence of judicial remedies at home, bolsters the rationale of universal jurisdiction in Madrid and the pursuit of cases before the Inter-American Court. In turn, the prosecution of genocide in Guatemala contributes to the particular global movement. In short, the CEH's determination of genocide has implications within and beyond Guatemala, for the way in which it might bolster the growing practice of universal jurisdiction.

Finally, it is important to note that the Guatemalan cases being brought forward in Madrid seek to utilise the international arena, but with the express purpose of furthering judicial developments within Guatemala. Sources within Guatemala describe their efforts in the international arena as being a component of a broader strategy to promote the development of the justice system and therefore accountability in Guatemala.²⁸ Prosecuting the genocide at home is seen as a way to develop the judicial system and defeat future impunity. The stated goal, consistent with the 'Pinochet precedent', is that the persistence of legal cases in the international arena can advance prosecution at home. In addition to emboldening victims within Guatemala, international trials may generate pressure on the Guatemalan judiciary.²⁹

The CEH and its report have a dialectic relationship to these events. The CEH was able to envision, debate and publish an analysis that called the Guatemalan state violence acts of genocide, in part due to developments in international legal jurisprudence, as referenced earlier. In turn, the CEH's analysis of genocide in Guatemala has contributed to these developments concerning universal jurisdiction via the Spanish trial.

Conclusion: Genocide and the Place of Politics

On 18 July 1982, in the village of Plan de Sanchez, in the Guatemalan highland municipality of Rabinal, more than 250 people, mainly Maya Achi women and children, were massacred by Guatemalan soldiers and paramilitaries. Plan de Sanchez illustrates our point about the legal and social reverberations of a genocide determination and the ways that distinct 'geographies of justice' are mutually constitutive.

This village was part of the CEH genocide deliberations; it is also part of the domestic genocide initiative in Guatemala and the international case in Spain. The Plan de Sanchez massacre was brought before the Inter-American system and the Guatemalan state eventually admitted institutional responsibility (although without acknowledging genocide). In its 2004 judgment, the Inter-American Court of Human Rights noted that it was not competent to rule on the issue of genocide but, citing the CEH report, it pointed to the 'aggravated impact' of the crime and the necessity of taking this into account when deciding reparations for the victims.³⁰ In 2005, as part of the Inter-American Court's judgment, the Guatemalan government apologised in a public ceremony in Plan de Sanchez. During this moving ceremony, the children of victims and survivors re-enacted the massacre in front of the vice-president and other functionaries, and the event received wide press attention in Guatemala (Mersky and Roht-Arriaza, 2007, p. 17).

One of the judges in the Inter-American case wrote a 'personal' second opinion, noting that Plan de Sanchez was the first case of wholesale massacre the court had heard:

Even though the facts occurred 22 years ago, they are certainly still alive in the memory of the survivors. The years of silence and humiliation, faced with the difficulties of locating the clandestine cemeteries and exhuming the corpses of those murdered in the massacre, and the prolonged denial of justice, could not erase what happened in Plan de Sánchez on July 18, 1982, from the memory of the survivors.³¹

The genocide determination in Guatemala, and the circulation of legal remedies that flow from this determination, have opened space to address the ravages of the violence against Mayan communities. This provides a certain vindication for the victims, even though they may be only partial victories. Yet, at the same time, these processes create pressure for the performance of a new sort of political subjectivity, that of the Maya as victim. What is being remembered and what is forgotten? Does historical memory mean only memories of violence?³² The genocide determination gave the CEH report greater resonance, in Guatemala and abroad. Yet there is a risk of untethering the contemporary understanding of genocide in Guatemala from the concrete connections made in the CEH report between territory, history, political practice, racism and violence. There are very strong reasons why this happens in Guatemala. These reasons include the crushing failure of the revolutionary movements and the strong logic for indigenous communities to reposition themselves as victims *vis-à-vis* the human rights cases and reparations programmes.

More research is needed to understand how this positioning occurs. An excellent start in this regard is AVANCSO (2008), an oral history produced in collaboration with Ixil women and genocide survivors, who speak of the terrible victimisation they endured, but also of their struggles and aspirations, including their lives as revolutionaries.

Notes

1. Other studies explore how the labelling of violence as genocide is significant. For example, Morus (2007) demonstrates how the gravesites around Srebrenica remain an intense site of social struggle, with Bosnian and Serbian communities seeking to claim that the violence inflicted on their own communities was the most egregious.
2. For additional studies of the aftermath of counter-insurgency in Guatemala, see AVANCSO (1990, 1992); Gonzalez (2002); Green (1999); Manz (1988, 2004); ODHAG (1998); and Zur (1998).
3. See Grandin (2005) and Hays-Mitchell (2007) for other examples of Truth Commissions in Latin America and Nevins (2003) for the case of East Timor. Human rights abuses in the context of Guatemala's CEH report refer to crimes committed by agents of the state, and 'acts of violence' refers to irregular forces such as the insurgency or private death squads.
4. This exclusion occurred in part because of opposition from Soviet delegates during the deliberations leading up to the elaboration of the Genocide Convention. Legal scholars at the time agreed that the inclusion of political genocide could water down the impact of the Genocide Convention, enabling any group to claim victimisation by genocide. In the past two decades, however, international legal scholars have attempted to address this lacuna (van Schaack, 1997).
5. On the relationship between diverse indigenous movements and the armed revolutionary movement, see CEH (1999, ch. 1, paras 291–358); Gonzalez (2002); Manz (2004); Hale (2006); AVANCSO (2008) and McAllister (forthcoming).

6. Guatemalans were aware of the experiences of several other 'truth commissions' in the region, particularly Chile and El Salvador. In Chile, the eight commissioners were all nationals; in El Salvador three foreigners were selected. Guatemala's was a 'hybrid' approach, reflecting the compromises made by both parties.
7. Marcie Mersky, co-ordinator of the CEH's final report, *Memoria del Silencio*, "Guatemala: unanswered questions on truth and transition", public presentation, University of Arizona, 2 April 2003.
8. Three per cent were attributed to the rebel forces and 4 per cent were unknown (CEH, 1999).
9. English-language summary of *Memoria del Silencio* (CEH, 1999). Available at: <http://shr.aas.org/guatemala/ceh/report/english>; last accessed 27 November 2008. The section on genocide of the CEH report can be found in ch. 1, vol. 3, paras 849–1257 (full CEH report available at: <http://shr.aas.org/guatemala/ceh/report>; last accessed 1 December 2008).
10. Certain other crimes were also excluded from the 1996 National Reconciliation Law, a topic discussed in greater detail later.
11. For the text of the Genocide Convention, see http://www.unhcr.ch/html/menu3/b/p_genoci.htm; accessed 27 November 2008.
12. CEH, 1999, ch. 2, vol. 3, para. 854. The CEH based its analysis on the following case: International Criminal Tribunal for the ex-Yugoslavia IT-95-5-R61/IT-95-18-R61, Karadzic and Mladic, 11 July, 1996, para. 94.
13. For an explanation of military strategy in Guatemala, see Gramajo Morales (1995) and Schirmer (1998). For comparative analysis on the National Security Doctrine in other Latin American countries, see the electronic briefing books of the National Security Archives: <http://www.gwu.edu/~nsarchiv/NSAEBB/>; last accessed 28 November 2008.
14. According to census data, the population of these four regions in the early 1980s ranged from 82 per cent Mayan to well over 90 per cent Mayan.
15. Charles R. Hale, expert testimony for the Guatemala Genocide Case, Audencia Nacional, Spain, 27 May 2008. Available at: <http://www.gwu.edu/~nsarchiv/guatemala/genocide/index.htm>; last accessed 2 December 2008.
16. For example, the CEH cites *de facto* head of state General Efraín Ríos Montt:

Naturally, if a subversive operation exists in which the Indians are involved with the guerrillas, the Indians are also going to die. However, the army's philosophy is not to kill the Indians, but to win them back, to help them (Foreign Broadcast Information Service, Central America, Ríos Montt Views on Peasant Killings, Communism, 2 June 1982).

Even more succinctly, in explaining the military's 'beans and bullets' counter-insurgency programme in 1982, an army officer in El Quiché said that the army's message to indigenous populations was "If you're with us, we'll feed you. If not, we'll kill you" (Bonner, 1982).
17. Interviewed by Guatemalan anthropologist Myrna Mack, April 1988 (cited in CEH, 1999, ch. 2, vol. 3, footnote 150). For more on the resettlement of the displaced populations in the 1980s, see AVANCSO (1990, 1992); Manz (1988); and Stepputat (2001). The militarisation of rural villages in the conflict zones began to ease by the late 1980s and the civil patrols were disbanded in the early 1990s, as the peace process neared conclusion.
18. Guatemala is a signatory to the Genocide Convention and the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.
19. Rare human cases have been prosecuted in Guatemala. One example is the prosecution of a general and two colonels for the assassination of Guatemalan anthropologist Myrna Mack. That paradigmatic case illustrates the difficulties and dangers of the pursuit of justice within Guatemala (Hale *et al.*, 2002). One witness was killed, several more went into exile and the case was shuttled from judge to judge for 12 years.
20. Almudena Bernabeu, personal communication with Amy Ross, January 2008. Almudena Bernabeu is a lawyer with the Center for Justice and Accountability (San Francisco, California) and lead attorney for the victims of genocide in Guatemala in a case brought before the Spanish National Court (see later). Ms Bernabeu related one instance in which a genocide case had been met with 35 separate appeals, stalling the process in the Guatemalan judiciary for nearly a decade.
21. The genocide of 1981–83 falls outside the temporal jurisdiction of the International Criminal Court, which can only prosecute crimes committed after 1 July 2002.
22. The doctrine of universal jurisdiction holds that certain crimes are so heinous as to be of international concern. In its broadest interpretation, universal jurisdiction means that any court,

- anywhere, can prosecute the perpetrators of crimes such as torture, even if the accused is from a nation other than where the suit is brought (see Sriram, 2005). Universal jurisdiction received little attention until it ensnared Chile's General Augusto Pinochet Ugarte in October 1998; since that time, scholars have noted an acceleration in activities (Roht-Arriaza, 2005).
23. Other senior Guatemalan officials charged are: ex-Minister of Defence Ángel Anibal Guevara Rodríguez, former Minister of Interior Donaldo Álvarez Ruiz, ex-Chief of the Armed Forces General Staff Manuel Benedicto Lucas García, former Director of National Police Germán Chupina Barahona and head of the police unit *Comando Seis*, Pedro García Arredondo. Chupina Barahona died in February 2008 after eluding a Guatemalan arrest warrant due to illness.
For documents related to the case in English, see The National Security Archive, Guatemala project (<http://www.gwu.edu/~nsarchiv/guatemala/genocide/index.htm>). See also the Center for Justice and Accountability (<http://www.cja.org/cases/guatemala.shtml>), The Rigoberta Menchú Foundation (<http://www.frmt.org/es/>) and the Centre for Legal Action and Human Rights (<http://www.caldh.org/>); last accessed 2 December 2008.
 24. Spain has a particular interest in the history of political violence in Guatemala. In January 1980, Guatemalan security forces set fire to the Spanish Embassy in Guatemala City after it was occupied by peasant protestors. As a result of that incident, Spain broke diplomatic relations with Guatemala for four years. Several Spanish clergy were assassinated in Guatemala.
 25. For English or Spanish versions of the 'Spanish Constitutional Court Decision Accepting Jurisdiction' (SCCD 237/September 26, 2005, Guatemala Genocide Case 331/1999-10) see: <http://www.cja.org/cases/guatemaladocs.shtml>; last accessed 2 December 2008.
 26. Almudena Bernabeu, personal communication with Amy Ross, January 2008.
 27. Although in the latest round of appeals, the Guatemalans won in that the Spanish courts accepted that they had jurisdiction and that the Guatemalan plaintiffs did not have to show lack of progress at home.
 28. Frank LaRue, former director of the Center for Human Rights and Legal Action (CALDH), personal communication with Amy Ross, September 2002.
 29. After returning home to Chile from London, Pinochet faced hundreds of suits in Chilean courts (Roht-Arriaza, 2005). In Guatemala, after international arrest warrants were issued in Spain against the Guatemalan genocide defendants, Guatemalan courts accepted the warrants and two of the defendants were arrested. In 2007, however, the Guatemalan Constitutional Court ruled that Spain did not have jurisdiction and the two were released.
 30. Inter-American Court of Human Rights *Case of Plan de Sánchez Massacre v. Guatemala, Judgment of April 29, 2004*.
 31. Inter-American Court of Human Rights, case of Plan de Sánchez Massacre v. Guatemala, judgment of April 29, 2004, separate opinion of Judge Antônio A. Cançado Trindade, p. 13, para. 40.
 32. We have written elsewhere on debates over historical memory and tensions in the narrative framing of Mayans as protagonists and/or victims (Oglesby, 2007). See also Hale (2006, pp. 83–110) for an excellent discussion.

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