

ABSTRACT

Balancing Justice with Mercy: Two Approaches to Transitional Justice in Latin America

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In Latin America's third wave of democracy the region faces challenges with regard to its dark past left behind by abusive authoritarian leaders. Human rights abuse can hinder a nation's ability to develop strong democratic institutions and discourage popular participation in government. This thesis compares two approaches that respond to past human rights abuses and focus on the aspects of justice and mercy respectively. I argue that justice, represented by human rights prosecutions, ought to be complementary to mercy, represented by the Christian creative peace process, and that these transitional measures working concurrently can strengthen democracy. My inquiry proceeds with an examination of the recent dramatic increase of human rights trials in the region and compares this approach to that of the Christian creative peace process, using Guatemala as a case study. Through this inquiry, I hope to inspire a sense of hope about the future of democratic institutions in Latin American and prove that both justice and mercy play a vital role in the transitional process.

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BALANCING JUSTICE WITH MERCY:
TWO APPROACHES TO TRANSITIONAL JUSTICE IN LATIN AMERICA

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TABLE OF CONTENTS

Acknowledgements.....	iii
Dedication.....	iv
Introduction.....	1
Chapter One.....	8
Defining Human Rights Trials.....	8
Sikkink's Model.....	12
Sikkink's Empirical Analysis.....	19
Critique of Sikkink's Model.....	22
Challenges Faced by Transitioning Nations.....	28
Chapter Two.....	31
Lederach's Model.....	31
Elements of the Creative Peace Process.....	38
Comparison to Trials.....	41
Benefits of the Creative Peace Process.....	43
Critique of Lederach's Method.....	46
Compatibility with Trials.....	49
Chapter Three.....	51
Brief History of the Guatemalan Civil War.....	52
Ríos Montt- Initial Genocide Trial.....	54
Implications of a Historic Verdict.....	57
Justice Undone- Implications of the Annulment & Obstacles to Justice.....	60
Continued Efforts for Justice.....	63
Is Justice Cascading in Latin America?.....	65
Contemporary Implications.....	68
Chapter Four.....	71
Three Models of Creative Peace in Guatemala.....	71
Guatemalan Truth Commission.....	77
Compatibility with Lederach's Model.....	80
Conclusion.....	83
Bibliography.....	87

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DEDICATION

This project is dedicated to all of the peacemakers in Latin America fighting for a
brighter future. *Que Dios les bendiga*

INTRODUCTION

“Mercy without justice is the mother of dissolution; justice without mercy is cruelty.” –
Thomas Aquinas¹

Latin America is experiencing a third wave of democracy, the longest sustained period of democratic rule in the region’s history.² Many scholars find this third wave to be unprecedented and surprising given its temporally close proximity to anti-democratic regimes.³ Scholars have remarked incredulously that in only twenty years (1978-1998), Latin America has completely transformed from a region dominated by dictators to one that is striving for and successfully implementing liberal democracy in all but two nations.⁴ While this transition is astonishing, Latin America continues to face significant challenges as it continues to build and develop stable democracies. Threats to this new democratic era include economic inequality, the rise of populism, and a lack of protection for individual rights. The majority of the most pressing issues focus on the present realities of daily life within Latin American nations and the shortcomings of current regimes in place to meet basic needs of the population. One of the most significant threats

¹ SM V, cap. 1.2

² Samuel P. Huntington, “Democracy’s Third Wave,” *Journal of Democracy* 2, no. 2 (Spring 1991): 12–34.

³ Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics*, 1st ed (New York: W. W. Norton & Co, 2011).

⁴ Scott Mainwaring, “The Surprising Resilience of Elected Governments,” *Journal of Democracy* 10, no. 3 (1999): 101–14.

to democracy in contemporary Latin America, however, lies in the region's past and continues to haunt current states. Nations cannot begin to experience security or development unless they establish respect for human rights, and it is a historic lack of respect for human rights that is holding back many Latin American nations today.⁵

Latin American nations have struggled over the past several years of democratic development to deal with the specter of human rights abuse from past regimes. Almost every nation in the region has suffered from human rights abuse from an authoritarian government, and each nation has developed a different strategy to combat the challenges to democracy that arise in the wake of such abuse. One way to approach and address past human rights abuse is to do nothing and implement a strategy of amnesty and oblivion in which a nation chooses to simply move on in an effort to forget the past and march onward to a new and democratic future. Some governments in Latin America have chosen to offer blanket amnesty to perpetrators of human rights abuses and treat the past with oblivion as they seek to reconstruct their nation based on democratic principles and liberal ideology. In some cases, oblivion is easier for a newly transitioning government that faces a mountain of political reform, democratic institution building, and social trust formation.⁶ Empirically, however, the strategy of forgetfulness does not work when it

⁵ "Quotes on Human Rights | UNFPA - United Nations Population Fund," accessed April 13, 2016, <http://www.unfpa.org/resources/quotes-human-rights>.

⁶ Nicaragua, Spain, and Honduras have both relied largely on amnesties to progress post-conflict with few or no efforts to prosecute perpetrators. See: Astrid Bothmann, "Transitional Justice in Nicaragua 1990-2012: Drawing a Line under the Past" 2015. And Kathryn Sikkink and Carrie Booth Walling, "The Impact of Human Rights Trials in Latin America," *Journal of Peace Research* 44, no. 4 (2007): 427-45.

comes to building and strengthening a democratic state.⁷ The tension and distrust that arise in the face of dramatic human rights abuse demand a strong response from a new democratic government. Left unchecked, the damage caused by internal conflict and government persecution of groups of citizens can leave lasting marks on the electorate that can severely impact the effectiveness and strength of a young democracy.

Citizens of a state that has recently emerged from intrastate conflict experience a deeply divided society, and are likely to have difficulty trusting both their fellow citizens and the government. A transition to a democracy requires a state to have a strong sense of unified support from its citizens. When a government lacks legitimacy or approval, citizens often fail to participate in the democratic process. Perhaps worse, they may actively undermine the regime, and even replace a liberal democracy with an illiberal regime. Empirical evidence shows that regime stability depends heavily upon civil trust and approval, especially following the conclusion of domestic conflict.⁸ Given the government's prominent role in political repression during an authoritarian period, citizens will tend to distrust a new government that holds the same position that formerly threatened their lives and basic human rights.

There is a paradox that emerges from the need to cope with past human rights abuses while simultaneously building strong democratic institutions that citizens can trust. One of the difficulties a new democratic regime must face is the reality of weak

⁷ Juan E. Mendez, "Accountability for Past Abuses," *Human Rights Quarterly* 19, no. 2 (1997): 255–82, <https://doi.org/10.1353/hrq.1997.0018>.

⁸ William Mishler and Richard Rose, "What Are the Origins of Political Trust? Testing Institutional and Cultural Theories in Post-Communist Societies," *Comparative Political Studies* 34, no. 1 (February 1, 2001): 30–62, <https://doi.org/10.1177/0010414001034001002>.

democratic institutions. Mechanisms such as a fair and equal judicial system, checks on the executive branch, powers of the legislature, and fair enforcement of the laws by the executive branch present complications at every level of the democratic structure. An authoritarian regime leaves democratic institutions devastated: the executive branch has too much power that it wields in order to oppress certain members of the population often through corrupt law enforcement. The legislature is often left extremely weakened or disbanded altogether with no ability to check the executive's power. Finally, the judicial branch is often thoroughly abused by an authoritarian regime that uses the law as a weapon to control citizens, leaving this branch completely incapable of making decisions independent of a dictatorial executive. A new regime must effectively clear out those complicit in previous abuse and create a new system in which democracy is valued and protected, and justice and equality become the new norm. Building and strengthening these branches is and ought to be the first priority of a new post-authoritarian regime. A swift and strong response to the previous regime, however, must follow closely on the heels of this transition.

Taking a strong stance against the abuses of the old regime sets the tone for a new government based on principles of equality and fairness, one that values the rights of all citizens. Properly implemented transitional justice measures can strengthen the legitimacy of the government if it is able to successfully rebuild trust between citizens and the government, which is essential in the formation of a strong democracy. A botched attempt at rectifying past abuse, however, can lead to further human rights violations or a loss of legitimacy in the eyes of the people and the international community. It is a precarious activity in which newly democratic regimes must take part.

Each nation that has made this transition successfully has used slightly different techniques to approach and address their unique situation, however, the most successful democratic regimes have invested in reconciling the realities of the past with their hope for a democratic future.

The goal of this thesis is to compare two approaches to transitional justice in Latin America and evaluate their effectiveness and viability in the context of a developing democracy. I will begin with an examination of the use of human rights prosecutions in Latin America referring to the recent work of Latin American democracy scholar Katherine Sikkink who has observed the capacity of human rights prosecutions to strengthen democracy and respect for human rights. In her work, Sikkink examines the recent wave of human rights prosecutions that have spread across Latin America over the past several years in what she has termed a “Justice Cascade”.⁹ This wave of human rights prosecutions has encouraged increased judicial activity in Latin America and given researchers the opportunity to collect valuable data on the effects of these trials.

Next I will explore an alternative method to transitional justice known as the creative peace process, which operates on the community level and draws heavily the ideas of reconciliation and forgiveness in the context of Christian faith. I will refer primarily to the work of John Paul Lederach, a Mennonite peace scholar with practical experience as a mediator in a variety of international post-conflict settings, and compare this approach and its effects on a society to the effects and implications of human rights prosecutions. He lays out the foundation of his work and unique approach to mediation

⁹ Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics*, 1st ed (New York: W. W. Norton & Co, 2011).

and peace building in a seminal text, *The Moral Imagination: the Art and Soul of Peace Building*.¹⁰ Creative processes are less prominently used in Latin America and tend to garner less attention from the international community, yet they provide a uniquely faith-based approach to the problem of past state human rights abuse that has the potential to effect significant positive change at the community level.

Finally, using Guatemala as a case study, I will examine how both of these approaches have worked in practice and how they have strengthened or undermined national respect for human rights and support of victims of abuse from past regimes. Emerging from a lengthy and brutal civil war, the nation of Guatemala has struggled to transition to a strong democracy, and has, in the process, attempted to implement a variety of transitional measures. In this section of my thesis, I will outline two types of transitional measures Guatemala has used and compare the effectiveness of the trials approach and the creative peace process approach. This comparative study will reveal that while human rights prosecutions and the creative peace process each fall short of ideal transitional justice measures, each provides a necessary element of the transitional process: justice and mercy. As Thomas Aquinas points out, mercy without justice would breed dissolution where all crime is permissible; it would be wrong to allow perpetrators of human rights violations to walk free with no consequences and run the risk of society believing that this type of abuse is a viable political tool. A focus on justice alone, however, would be cruel, for to take from perpetrators all that was taken from those they deprived of life and liberty could result in an endless cycle of retribution that leaves a

¹⁰ John Paul Lederach, *The Moral Imagination: The Art and Soul of Building Peace* (Oxford ; New York: Oxford University Press, 2005).

society broken. This thesis proposes that justice and mercy can work in tandem in Latin America to encourage reconciliation at the community level and respect for human rights and the national governmental level.

CHAPTER ONE

Human Rights Prosecutions and the Cascade of Justice in Latin America

This chapter will provide an overview of human rights prosecutions as a transitional justice measure, specifically in Latin America. Drawing heavily upon the work of Kathryn Sikkink, I will examine the phenomenon that she has termed the “Justice Cascade” and discuss the conclusions she makes in her book of the same title. This literature review and analysis of the most recent research and empirical study of the effects of human rights prosecutions on democracy in Latin America will lay the foundation necessary to examine the consequences of this transitional justice measure, and determine if this is the best approach for Latin American nations struggling with the aftereffects of human rights abusive regimes.

Defining Human Rights Trials

Human rights prosecutions entail a legal trial of some of the military, government officials, or civilian personnel involved in past human rights violations. The manner in which these trials are conducted varies depending on the nation and its resources. Some trials are conducted in country in a matter of months, while others drag on for years at an international tribunal. Regardless of the diverse manifestations of trials, all share a few key characteristics. All trials involve legal arbitration, which is characterized by a declaration of guilt or innocence along with declared punishments by a judicial body with

the expectation that an executive power will enforce the sentence. Trials, in their essence, operate on the dualities of right and wrong, justice and injustice, guilty and not guilty, leaving little room for compromise or negotiation in any type of trial. This all-or-nothing nature makes trials a high-risk transitional justice measure.

For a transitioning nation in particular, a human rights prosecution carries enormous risk. If the trial court cannot find a known war criminal guilty, international perception of that state's rule of law as well as government legitimacy at a domestic level can be severely undermined. A successful prosecution, one that is characterized by the equal application of the law for all parties, has the potential to prove to citizens that the new government recognizes the importance of past abuse, seeks a remedy for it, and is committed to avoiding further abuse in the future. A well-executed trial that results in a guilty verdict can restore confidence in the government system for those who have suffered at its hands in the past and have felt alienated from the rule of law by demonstrating that the justice system is committed to remaining uninfluenced by political pressure and will protect and defend the powerless rather than trample their rights in favor of supporting the oppressor.

Although the use of human rights prosecutions is a relatively new concept dating mostly to the inception of the International Criminal Court at the end of the 20th century, in recent decades the practice has become increasingly popular in Latin America. Kathryn Sikkink examines this new wave of prosecutions in the region and the consequences of such a trend. While there are many studies of the concept and importance of human rights abuses and their effects on the development of democracy in a transitioning state, Sikkink is the first to capture the empirical trends emerging from the

recent implementation of this transitional practice around the world.¹ As an expert in the field of Latin American democratic development, her analysis on human rights prosecutions in this region is unmatched and groundbreaking, and for that reason, I will rely heavily upon her research and findings for the investigation of human rights prosecutions as a transitional justice measure. Her analysis suggests that trials have the potential to deter neighboring states from future human rights abuse. Relying mostly upon empirical data analysis, Sikkink creates several variable sets in order to determine the effects of human rights prosecutions on the region as a whole. In her book *Justice Cascade*, she records the results of her findings and enumerates several trends that emerge from the implementation of trials in the region. These trends include a decrease in domestic repression, increased respect for human rights, and international deterrence of human rights abuse.

Sikkink refers to three different types of human rights prosecutions (International, foreign, and domestic), categorized by issues of jurisdiction and location of the prosecutions. International prosecutions occur when states set up tribunals on behalf of international bodies such as the UN to try individuals associated with human rights violations in a particular nation.² Tribunals such as the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda are examples of human rights prosecutions that fall into this category. Foreign prosecutions take place when “a state decides to use its domestic courts to try an official from another

¹ Oskar NT Thoms, James Ron, Roland Paris, Olsen, Payne, Reitger, Orentlicher.

² Sikkink, *The Justice Cascade*.

state.”³ This type of prosecution can only happen when that nation has some claim to jurisdiction- such as if a victim was a citizen of that nation, or part of the event took place in that nation, such as in the United States trials against Chilean insurgents after the 1976 DC car bombing that assassinated a political rival of Augusto Pinochet.⁴ This trial took place in an American court because it occurred on US soil and some US citizens were affected. Finally, domestic prosecutions involve trials of an accused human rights criminal conducted within the state where the violations took place. Sikkink cites the Argentine Trial of the Juntas as the most successful example of domestic trials that have occurred in Latin America.⁵ Globally, “domestic prosecutions make up the greatest bulk of total prosecutions.”⁶ A state’s judicial strength, the nature of the violation, and the level of international interest in the case can all affect which type of trial will be conducted, which, in turn, can impact the results and amount of risk taken in trying individuals.

³ Ibid., 5.

⁴ Robert Pear, “Cuban Exile Pleads Guilty in the 1976 Bomb Slaying of Chilean Ambassador,” *The New York Times*, July 31, 1991, <http://www.nytimes.com/1991/07/31/us/cuban-exile-pleads-guilty-in-the-1976-bomb-slaying-of-chilean-ambassador.html>.

⁵ Sikkink, *The Justice Cascade*, 81, 149.

⁶ Hunjoon Kim and Kathryn Sikkink, “Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries1,” *International Studies Quarterly* 54, no. 4 (December 1, 2010): 939–63, <https://doi.org/10.1111/j.1468-2478.2010.00621.x>.

Sikkink's Model

Sikkink finds that human rights prosecutions provide five benefits to a developing democracy. Sikkink argues that prosecutions aid in development of a strong democracy, support the cessation of domestic human rights abuses, decrease the amount of interstate violence, strengthen the rule of law, and discourage nearby nations from engaging in similar abusive behavior. In this section, I will briefly lay out her argument and provide a general discussion of the data and findings that support it.

Sikkink begins her research from a defensive standpoint, seeking to debunk common myths that declare human rights prosecutions harmful in the transitional justice process. Her first point addresses the argument that prosecutions harm developing democracies. “Pessimists claim,” argues Sikkink, that prosecutions “undermine democracy and lead to military coups.”⁷ These claims on their face appear to hold some value. One can imagine how a new democracy could harm itself by placing former political and military leaders on trial. Creating a situation that encourages the renewed formation of a strong divide in society shortly after the end of intense intrastate conflict does not sound like a viable solution for most nations. Sikkink argues, however, that, in Latin America specifically, trials have been a more durable solution than alternative transitional justice methods such as truth commissions or victim reparations. The region has had the most stable and thorough transition to democracy in the world, and Sikkink argues that the third wave of democracy, and longevity of democracy in the region thus far could be partially due to the presence of human rights prosecutions.

⁷ Sikkink, *The Justice Cascade*, 149.

Relatively new to Latin America, the trial phenomenon first began in the 1980s. The region itself has been mostly peaceful and democratic for the past few decades. Currently, all but two of the region's nations are considered democratic⁸ and have experienced very few coups in recent years.⁹ In fact, there have been only four successful anti-democratic coups since the introduction of trials, none of which were provoked by human rights prosecutions and all have since been restored to democracies.¹⁰ In the way of positive evidence, Sikkink offers examples of the successful transitions of several countries such as Argentina. Argentina has had more human rights prosecutions than any other nation in the world and has simultaneously enjoyed the longest uninterrupted period of democracy in its history, and is considered one of the strongest democracies in the region. It is possible, Sikkink argues, that human rights prosecutions deter a return to authoritarianism by providing an example of what can happen to those who attempt to wrongfully seize power.¹¹ With these arguments, Sikkink dismantles the objection that trials undermine democracy in favor of the idea that they can, in reality, support the development of strong democracies.

Closely linked to the development of strong democratic tendencies is the need for rule of law. Sikkink contends that the implementation of trials can strengthen the rule of law in transitioning nations, thus expanding democratic institutions in Latin America.

⁸ Daniel Zovatto, "The State of Democracy in Latin America," *Brookings* (blog), November 30, 2001, <https://www.brookings.edu/opinions/the-state-of-democracy-in-latin-america/>.

⁹ Mainwaring, "The Surprising Resilience of Elected Governments."

¹⁰ Sikkink, *The Justice Cascade*.

¹¹ Sikkink and Walling, "The Impact of Human Rights Trials in Latin America."

There is little to no debate in democracies studies that strong rule of law is linked to the development of strong democracy, and many transitioning nations in Latin America face issues with judicial reform as an impediment to their democratic progress.¹² Transitional justice scholar Mark Freeman remarks that human rights trials “contribute to the objectives of truth, justice, reparation, reform, public debate, and the validation of victim experience,” which all factor into the development of a strong rule of law.¹³ Sikkink argues that the strengthening of rule of law and transition to democratic governance can happen simultaneously through human rights prosecutions precisely because the practices Freeman mentions are fostered throughout the process. Implementation of trials in the wake of authoritarian human rights abuse can set a strong enforcement precedent and display the new government’s commitment to ending their reliance upon abuse as a weapon to establish authority.

Sikkink then addresses the impact trials can have on human rights abuse within a particular nation. Her research suggests that human rights prosecutions are directly correlated with the protection of human rights in a country. Her research method consisted of comparing human rights scores in a nation before and after the implementation of trials.¹⁴ Her findings indicate that as the number of years of

¹² Jeremy Waldron, “The Rule of Law,” in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Fall 2016 (Metaphysics Research Lab, Stanford University, 2016), <https://plato.stanford.edu/archives/fall2016/entries/rule-of-law/>.

¹³ Mark Freeman, *Truth Commissions and Procedural Fairness*, 1st ed. (Cambridge ; New York: Cambridge University Press, 2006).

¹⁴ Using measures from Polity IV, the CIRI Human Rights Database, Political Terror Scale, and the UNOHCR Sikkink, *The Justice Cascade*, 272.

prosecution in a nation increase, the average human rights score improves. Specifically in Latin America, her data indicates that respect for human rights improved by an average of .9 on the Political Terror Scale, indicating a significant improvement linked directly to prosecutions.¹⁵ Some have argued that this correlation could be spurious. However, under closer examination, studies have found that isolating the impact of human rights prosecutions indicates a more rapid and consistent improvement in domestic human rights scores.¹⁶ In fact, analysis showed that those nations with more trials improved scores more than those with fewer trials. With empirical data to support her claims, Sikkink establishes the important interaction between human rights abuse and the implementation of trials.

Some argue that human rights prosecutions tend to increase domestic conflict generally. Trials, by their nature, foster disagreement and even conflict. Some scholars, including Huntington who coined the “third wave of democracy” term to describe Latin America in recent decades, worry that the combative atmosphere of the courtroom could translate to the streets and result in further civil conflict.¹⁷ Sikkink takes on this challenge by presenting evidence that justice and peace are not mutually exclusive, and that trials do not necessitate an increase in conflict. Sikkink first points out the weakness of the opposition’s claims. There is currently no evidence that prosecutions undermine peace, especially in Latin America. In seventeen Latin American nations where

¹⁵ Sikkink and Walling, “The Impact of Human Rights Trials in Latin America.” pp. 11.

¹⁶ Ibid, 9.

¹⁷ Ibid, 7.

significant and prolonged interstate conflict had persisted, there is no evidence that the prosecutorial actions that were taken immediately following the conflict prolonged or renewed conflict in any way. In fact, empirical data suggests that as prosecutions have increased, violence has decreased in the region.¹⁸ Additionally, human rights trials incentivize citizens to become involved in the process of uncovering truth and appropriating just punishment to the guilty, rather than taking justice into their own hands through violence. The official assignment of punishment also lends legitimacy to the regime and healing to victims. The government is seen enforcing the rights of the people and supporting the new democratic system, and citizens benefit from an example of how impartial justice will take place in their nation henceforth.

One break in the norm with the more recent trials compared with prosecutions that took place before the 1990s that Sikkink points out is the trend to prosecute heads of state. In past human rights trials, tradition has dictated that heads of state be granted immunity, or that transitioning states assign collective accountability to the highest ranking officials. The increase in prosecutions stems from the belief in individual accountability, that, “violations of human rights cannot stand as legitimate acts of state” and therefore “must be considered as criminal acts, committed by individuals who can and should be prosecuted in criminal proceedings.”¹⁹ In recent years, several Latin American heads of state have been placed on trial, some of the most notable being the

¹⁸ Sikkink, *The Justice Cascade*, 181.

¹⁹ "Individual Criminal Accountability." Human Rights History. Accessed January 15, 2018. <http://humanrightshistory.umich.edu/accountability/individual-criminal-accountability/>.

recent trial of Guatemalan leader Efraín Ríos Montt and 2007 trial of Peruvian leader Alberto Fujimori.²⁰ Sikkink argues that this break with tradition discourages further human rights abuse by showing heads of state that they are not immune to punishment, thus deterring domestic political observers from engaging in the same nefarious activity as their predecessors.

Her model suggests that no individual is safe from prosecution in the wake of serious violation of human rights in a state, and has implications across international borders. While some have argued that the protection of the head of state and other top officials prevents an endless cycle of retribution, Sikkink argues that heads of state must be prosecuted, largely in order to prevent human rights abuse in other nations. Human rights advocates celebrating the advent of individual accountability for human rights violations internationally have echoed this sentiment. Following the conviction of Peruvian leader Alberto Fujimori, a Human Rights Watch scholar noted, “the Peruvian court has shown the world that even former heads of state cannot expect to get away with serious crimes.”²¹ If one head of state can get away with violating the rights of their citizens, there is nothing to stop others from doing the same. As Hitler stated in justifying his invasion of Poland in World War II, “who still talks nowadays of the

²⁰ Ellen L. Lutz and Caitlin Reiger, *Prosecuting Heads of State* (Cambridge University Press, 2009).

²¹ “Peru’s Fujimori Gets 25 Years Prison for Massacres,” *Reuters*, April 7, 2009, <https://www.reuters.com/article/us-peru-fujimori/perus-fujimori-convicted-of-human-rights-crimes-idUSTRE5363RH20090407>.

extermination of the Armenians?”²² Sikkink’s argument addresses this point directly, suggesting that trials establish a record of wrongdoing that will stand as a testament to future would-be abusive leaders. If today’s leaders do not defend victims and punitively punish those who commit human rights abuses, there will be no precedent to deter other governments from taking the same path.

Not only can trials establish a trend of democracy and deter human rights domestically, Sikkink also offers evidence that the positive effects of human rights trials can impact nations beyond the borders of the country conducting the prosecution. Sikkink calls this phenomenon “deterrence across borders” and uses empirical data to support her assertions.²³ In a 2010 study, Sikkink concluded that human rights trials “have a deterrence impact beyond the confines of a single country” as they increase the cost of committing abuses.²⁴ She argues that these highly publicized human rights trials have resulted in a “cascade of justice” that deters potential perpetrators of human rights violations around the world.²⁵ Her argument holds that heads of state in nearby nations that face similar situations of transition, populist tendencies, etc., will see foreign

²² Adolf Hitler, 1939. English version of the German document handed to Louis P. Lochner in Berlin. It first appeared in Lochner's *What About Germany?* (New York: Dodd, Mead & Co., 1942), pp. 1-4. The Nuremberg Tribunal later identified the document as L-3 or Exhibit USA-28. Two other versions of the same document appear in Appendices II and III. For the German original cf. *Akten zur Deutschen Auswartigen Politik 1918-1945*, Serie D, Band VII, (Baden-Baden, 1956), pp. 171-172. <http://www.armenian-genocide.org/hitler.html>

²³ Sikkink, *The Justice Cascade*, 175.

²⁴ Kim and Sikkink, “Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries.”

²⁵ Ibid.

prosecutions as a threat to their own power and therefore will be less likely to engage in similar misbehavior that could land them in a trial court.

Conversely, when human rights violations in a region go unnoticed, or all involved are granted amnesty, heads of state may tend to believe that they can get away with committing crimes against their own people with little personal cost. Sikkink's research through interviews indicates that citizens in neighboring countries knew about nearby foreign prosecutions and easily made connections to their own government's history of abuse.²⁶ Additionally, the fact that neighbors in the Latin American region speak the same language increases the chance that citizens in a neighboring country will hear about nearby prosecutions and put pressure on their own government to take similar steps.

Sikkink's Empirical Analysis

Sikkink supports her assertions with groundbreaking research using statistical analysis and linear regression models. Due to the recent emergence of this cascade of human rights prosecutions, Sikkink compiles one of the first data sets on this wave and perform various analyses and tests to find correlations and determine the effects of these trials on human rights scores and the development and strength of democracy in transitioning nations. The research design begins by identifying and compiling a list of all currently transitioning nations. From this list, Sikkink divides the countries into those that have experienced human rights prosecutions, those that have had truth commissions,

²⁶ Sikkink, *The Justice Cascade*, 175.

and those that have had neither. From there her study examines the repression scores of each nation based on a 9-point scale taken from the Cingranelli and Richards human rights database.²⁷ Sikkink then uses the presence of trials in a nation as well as the number of cumulative years of prosecutions in a nation to analyze the effects of human rights prosecutions on a country's rate of repression. In her initial breakdown of the rate of repression over time, she finds an overall decrease in global repression since 1980. This data does not simply hold true for the world as a whole, but Latin America shows the most significant decrease in repression over the past forty years compared to other world regions. Among the regions listed (Asia & Oceania, Africa, Latin America, and Europe), Latin America has had the largest number of human rights prosecutions in the last five decades. This correlation alone suggests a positive effect between human rights prosecutions and human rights practices, but Sikkink takes her analysis further with regression models testing several models and variables.

Sikkink structures the study in such a way that she can isolate not only the effects of prosecutions on a transitioning nation, but also the particular aspects of prosecutions that promote democratic flourishing. She underscores the dual nature of trials, noting that they are both “highly symbolic events” and “a key form of material sanctions”.²⁸ Truth commissions also provide a similar symbolic step toward truth seeking for transitioning nations, and, given the abundance of nations that employ both truth commissions and prosecutions, Sikkink takes special care to observe the effects of both in

²⁷ Kim and Sikkink, “Explaining the Deterrence Effect”.

²⁸ Ibid.

her study. She includes truth commissions as a variable in the regression model and seeks to use it as a comparison to the effects of trials to determine the real effects of a mechanism with material punishments. If it is only material costs that matter in decreasing repression in a transitional nation, the data would be expected to show little to no impact from truth commissions, “because truth commissions do not result in any material punishment of individuals”.²⁹ Comparing the two mechanisms, Sikkink hopes to “separate out a purely normative mechanism from one that imposes both material and social costs.”³⁰

The results of Kim and Sikkink’s complex and precise regression models reveal that both truth commissions and trials have a positive impact on human rights practices in transitioning nations. She presents her results as both a dichotomous variable and as a cumulative variable measured in number of years. Both situations reveal that the presence and volume of human rights prosecutions in a transitioning nation are highly significant and correlated with lower repression scores. “In sum,” Sikkink states, “we found that countries with human rights prosecutions have better human rights practices than countries without prosecutions.”³¹ Additionally, truth commissions have a significant positive impact on human rights practices in a transitioning nation, indicating that transitional justice measures “involve a calculation of the possibility of punishment”

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

as well as processes that simply provide “information and communicative norms.”³²

Interestingly, Sikkink also includes the ratification of international human rights treaties as a variable, and found no correlation between this measure and an improvement in human rights practices. This finding indicates that a highly symbolic practice encouraged and delighted over as progress by international organizations such as the UN may not indicate significant real change in the human rights practices of a signatory.

Using empirical and qualitative data and research methods, Kathryn Sikkink builds a strong case in favor of human rights prosecutions as a positive transitional justice measure. Her argument suggests that previously held beliefs about the negative impact of trials are inaccurate, and that trials have been proven to deter domestic repression and international human rights violations. While her analysis is convincing and well supported by empirical data, Sikkink’s model leaves questions about the strength of less-tangible needs of a transitioning state. Her analysis successfully refutes the claim that human rights prosecutions are harmful to transitioning nations, but the question remains, are trials alone enough to heal a nation broken by internal conflict and pave the way for an effective and strong democracy?

Critique of Sikkink’s Model

Human rights prosecutions certainly do not address every issue that faced by a transitioning democracy, and some aspects of prosecutions may make the transition even more challenging. First, it is difficult to determine which perpetrators get placed on trial and which are allowed to escape consequences. Sikkink’s arguments and empirical

³² Kim and Sikkink.

research raise a procedural question about how the effects of trials can be isolated from other extraneous factors and other transitional justice solutions. While she does well in attempting to quantify issues like human rights improvement and rule of law in democratic development, these measures are notoriously difficult to quantify, and may not correspond directly to the intangible impacts of trials.

The first issue has more to do with the procedural logistics of human rights prosecutions in general than Sikkink's own analysis. Trials are quite costly (both in terms of time and money) to a judicial system, and it is, thus, impossible for a state to prosecute every individual who had anything to do with the human rights abuses of a past regime. States run the risk of entering an endless cycle of retribution and overrunning the prison system if they attempt to prosecute every foot soldier that participated in state sponsored violence. For the sake of stability and the preservation of resources, states must make decisions about whom to prosecute. Handpicking defendants can result in allowing many who are not prosecuted to go without answering for their crimes. It also suggests to the public that there are some above prosecution or perhaps that those who were not tried or not found guilty are innocent in the eyes of the state. This can lead to decreased social trust and decreased government approval- both important measures for a newly democratic state.

Trials also leave significant power in the hands of a judicial system that may not be prepared to determine guilt and mete out sentences to former government agents. In many Latin American states, the judicial branch is the last to fully recover from authoritarian control. Placing a Supreme Court that may or may not be prepared to make impartial decisions at the helm of the state's transitional justice movement could be

disastrous for a recovering state if the court proves incapable. Many authoritarian regimes cease to maintain any sense of a separation of powers between the executive and judicial branches, and it can be difficult for the courts to recover enough to try a case impartially. The Venezuelan Supreme Court, for example, “has ceased to function as an independent branch of government” and simply hands down verdicts that reflect the executive power’s political will.³³ If Venezuela or a similarly positioned authoritarian nation attempted to conduct human rights trials in the immediate wake of a democratic transition, the new court would likely be overwhelmed by the task, and risk botching the trial. Even Sikkink would likely agree that a not guilty verdict for a known war criminal could do serious damage to a state’s attempt to promote human rights and deter perpetrators.

While domestic prosecutions can be dangerous in light of biased or inexperienced courts, foreign and international prosecutions risk undermining the new government’s authority or exacerbating tensions between the transitioning government and the international community. Foreign prosecutions sometimes take place when a nation is unwilling to extradite a criminal back to their home country for domestic prosecution. Such is the case with Bolivia’s former head of state Gonzalo Sánchez de Lozada, who fled to the United States and is unlikely to ever be extradited. Instead, victims in the US are suing him in federal civil court for reparations on a much smaller scale than the international public eye that would be present for a human rights trial. In this case,

³³ Human Rights Watch | 350 Fifth Avenue, 34th Floor | New York, and NY 10118-3299 USA | t 1.212.290.4700, “Venezuela,” Human Rights Watch, January 12, 2017, <https://www.hrw.org/world-report/2017/country-chapters/venezuela>.

Bolivia has no power to try him and could be viewed as impotent in the international community for being unable to properly try and punish a known human rights criminal.³⁴

International prosecutions, although less common for Latin American cases, can also undermine the transitioning state's authority and imply that the domestic government is incapable of conducting a proper trial. Sikkink does not address this concern in her analysis. While she makes an initial distinction between types of trials, she appears to take for granted that some types of prosecutions may have unforeseen negative impacts such as fostering dependence or stirring up international resentment. For example, some have accused the International Criminal Court of bias against Africa, as the large majority of their trials and convictions have been against African leaders. While those convicted are likely guilty of human rights violations, the court's focus on Africa rather than other western nations has built up some resentment between African nations and this international body.³⁵

On a more empirical level, one of Sikkink's claims is that human rights trials deter neighboring states from engaging in human rights abuse; however, this effect is difficult to determine and quantify as there is no way to predict a contingent future. Sikkink does the best she can with data she has collected, but her data will never fully be able to comprehend the precise effect domestic trials have on actors in neighboring states. Similarly, Sikkink offers an argument that prosecutions are better able to positively effect

³⁴ "The Legal Case Against Gonzalo Sánchez de Lozada Moves into High Gear | The Democracy Center," accessed January 15, 2018, <https://democracyctr.org/the-legal-case-against-gonzalo-sanchez-de-lozada-moves-into-high-gear/>.

³⁵ "ICC's Toughest Trial: Africa vs. 'Infamous Caucasian Court,'" *Reuters*, October 28, 2016, <https://www.reuters.com/article/us-africa-icc/iccs-toughest-trial-africa-vs-infamous-caucasian-court-idUSKCN12S1U3>.

a change in the rule of law in Latin American nations than truth commissions. Again, this claim is difficult to measure quantifiably as most Latin American nations have utilized some combination of truth commissions and trials over their years of transition. While her analysis creates a distinction between symbolic transitional measures and those that impose material punishments, her results cannot isolate the punishment arm of trials. Her results indicate that truth commissions and trials both have positive impacts on human rights practices in a nation, which suggests that a symbolic step toward a revelation of truth supports the development of respect for human rights. This does not suggest, however, anything about the punishment aspect of trials. Perhaps punishment has no effect on a transitioning nation's human rights record, and it is only the public spectacle and symbolic nature of the legal proceedings that contribute to their success.

While her data sets support an excellent case in favor of trials, some of the data she has collected seems to contradict her claims. Her method involves the collection of information from nations that are undergoing or have undergone democratic transitions since the mid- to late-twentieth century. On her list of transitioning countries, fifteen are Latin American nations. Of these fifteen, thirteen have undergone human rights prosecutions since the late twentieth century. Despite the presence of past intrastate conflict in both of these nations, the only two transitioning nations in the region that have not experienced some form of human rights prosecution are the Dominican Republic and Paraguay. Comparing these two nations to others in the region based on common strength of democracy measures reveals no significant difference in democratic development or rule of law, suggesting that trials are not necessarily a pre-condition for

development of a strong democracy.³⁶ Additionally, ten of the thirteen nations in the region that have undergone trials, have also employed truth commissions, further complicating the isolation of the effect of trials on development and transition. The small sample size of Latin America makes each of these exceptions to her conclusions significant.

In addition to the difficulty of measuring several variables in her study, perhaps the most significant failure in Sikkink's conclusion about human rights prosecutions is its failure to address the human aspect of forgiveness and reconciliation. While trials are an effective means to assess guilt and assign blame, they do not necessarily aid in the healing of society. While such factors cannot be summarized in a spreadsheet or graph, creating a strong and stable society built on mutual trust is a pivotal part of any nation's transition to democracy. It is challenging to measure the effect that trials have on social atmosphere, but the protests and demonstrations that inevitably surround courthouses that hold human rights trials suggest that trials can contribute to an environment of division through the establishment and encouragement of a dualistic polarity among members of society. While such division may not manifest itself in intrastate violence, the social divides are stark and cannot be ignored by a newly transitioning democracy. It is this concern that has led so many transitional justice researchers before Sikkink to shy away from the idea of trials, as they have viewed them as too dangerous to an already unstable nation.

³⁶ According to a comparison of measures from Freedom House, World Justice Project, and LatinoBarómetro

Challenges Faced by Transitioning Nations

Newly established democratic governments must negotiate several tenuous relationships when in transition. Having inherited a society riddled with mistrust for government institutions, new leaders must negotiate the fear left over from past abuse with the need for the social trust and popular participation required for a successful democracy. It can be difficult to encourage citizens who have suffered at the hands of past governments to become enthusiastic supporters and participants of a new government that citizens have no reason to believe will treat them any differently than the previous regime. It is vital, therefore, that the transitional government prioritizes the rebuilding of trust between citizens and the government as they establish a new regime.

Understanding the lack of social trust and the need for uniting citizens in favor of the new government, new officials may be hesitant to take on trials immediately upon gaining power. Often, given the complications and difficulty new regimes face in strengthening the judicial branch, new democracies are hesitant to make use of a state apparatus that may only prove the incompetence of the new government and leave room for more public criticism. The international attention that results from human rights prosecutions (especially those of heads of state), places the transitional nation and its judicial system under scrutiny on the world stage. This can be helpful if the trial goes well, but can be detrimental to international support and perception if the result is negative. Trials that result in bad verdicts or cause more internal division will reflect poorly on a new government, and newly elected leaders may find it difficult to convince the public that they want to protect citizens when the judicial arm of the government cannot function properly and fails in such a public way.

Not only does the government face challenges in negotiating relationships between itself and the public, it must also assist in the strengthening of social trust among citizens. A period of state sponsored violence and intrastate conflict may see family members turn against one another and can result in a serious lack of social trust. An environment in which citizens are suspicious not only of their government but also their neighbors is not healthy for any state and can be disastrous for a young transitioning democracy. Trials tend to create renewed division and may not contribute to the social healing process. Even if guilt is properly assigned and punishment effectively delivered, there is no guarantee that citizens will be able to trust one another again. In a post-conflict society, victims have to live alongside perpetrators and learn to trust them again. Trials, whether or not they are effective in determining culpability, may not be the most effective way to rebuild a broken society.

Newly consolidated governments will also have to contend with the power of former government officials or their associates that may still hold significant power and may even maintain their popularity among citizens. A prosecution begun at the wrong time, such as when old regime members are still in government, or when members of the old guard maintain sway over public opinion and choose to speak out against the trial process, risks going horribly wrong. Thus, transitional regimes may choose not to prosecute particularly culpable individuals if they fear political fallout. Given the risks associated with prosecuting shortly after a nation makes its initial transition to democracy, it seems as though there is a need for an intermediary measure that does not depend upon the strength of the government, but provides an outlet that fosters social trust and paves the way for later and larger scale government interventions. Overall,

Sikkink's argument is strong, but weakened by several aspects of her empirical data as well as the stubbornly immeasurable aspects of the democratic transition process. The main weaknesses of her argument lie in the difficulty of isolating and measuring the positive effects of trials, and the fact that trials alone do not have the capacity to heal a divided society.

In light of this critique and in order to better illuminate the effects human rights prosecutions can and do have on transitioning Latin American nations, later chapters will compare the practice of trials as a transitional mechanism with a more grassroots community approach. Through an analysis of John Paul Lederach's theory of the creative peace process I will examine the effects this transitional process has on a developing democracy, paying special attention to its ability as a non-governmental solution to strengthening social trust and government trust.

CHAPTER TWO

The Creative Peace Process as an Alternative to Prosecutions

Synthesis of Lederach's Model

In his book *The Moral Imagination: the Art and Soul of Building Peace*, John Paul Lederach outlines his theory of the creative peace process.¹ He bases his approach to peace building on decades of work in the field negotiating international peace treaties and collaborations with global leaders to broker peace between various warring or otherwise conflicting groups within a nation. This theory is influenced heavily by the author's Mennonite roots, which inform his preference for political forgiveness at the community level in the wake of devastating intrastate conflict. His approach to transition in a post-conflict nation focuses heavily on the need for community healing and forgiveness and prioritizes the rebuilding of social trust among citizens.

Lederach begins explaining his theory by describing the way in which the moral imagination must approach the peace process. His approach to peace depends on the presence of a willing leader to imagine a world in which the opposing parties live in harmony with one another rather than at odds with one another. One of the key ways in which Lederach observes this ability for parties to imagine a more peaceful future is when leaders of both sides consider the future they envision for their children. Lederach, along with other mediation and peace studies scholars recognize that the beginning of this process requires a tremendous amount of faith on both sides of a mediation as both must trust that the other will not break the terms of the agreement and take advantage of their

¹ Lederach, *The Moral Imagination*.

weakened position in seeking peace. As peace scholars John Darby and Roger Mac Ginty express, “the pre-negotiation phase of a peace process requires faith. It is nothing less than a high-risk gamble to ascertain the seriousness of other conflict participants”.²

Acknowledging that need for immense faith, Lederach’s approach to peace is theologically based, and draws upon principles of Christian morality. He breaks down the concept of the “moral imagination” into its two terms, explaining their origin and importance. Lederach acknowledges that the term “moral” may make some uncomfortable, as it is associated with religious dogma. Used in this context, however, Lederach insists that morality encourages us to aspire to something higher, “to transcend [...] what exists while still living in it”.³ Lederach’s explanation for each person’s capacity for imagination originates from the Christian account of creation, or the act of speaking life into existence from nothing. Imagination, Lederach describes, “is the art of creating what does not exist”.⁴ Moral imagination, thus, breaks out of the expected and into the realm of new possibilities where peace is possible. This moral imagination is not simply a naïve ideal, but is “rooted in the day-to-day challenges of violence,” yet is “capable of giving birth to that which does not yet exist,” and generating “constructive responses and initiatives” in the face of such challenges.⁵ Lederach does not claim to

² J. Darby, Roger Mac Ginty, and Roger Mac Ginty, *Contemporary Peacemaking: Conflict, Peace Processes and Post-War Reconstruction* (London, UNITED KINGDOM: Palgrave Macmillan Limited, 2008), <http://ebookcentral.proquest.com/lib/bayloru/detail.action?docID=4326751>, 2.

³ John Paul Lederach, *The Moral Imagination: The Art and Soul of Building Peace* (Oxford ; New York: Oxford University Press, 2005), 28.

⁴ Ibid., 28.

⁵ Ibid., 29.

offer the ultimate solution to peace-building processes, but instead points readers toward a deeper consideration of turning points that make lasting peace possible. Lederach admits that this exercise of the moral imagination in the creative peace process is not easy and involves an acceptance of both paradox and risk, yet has the potential to create sustainable peace in what seems like a hopeless situation when participants recognize their position in relation to those around them.

Lederach describes our position as humans connected together as though by a web to every other person in the community. This illustration indicates that there is not a single person within a community that is unconnected from another or is not vital to the survival of the community. He shifts the status quo perspective from that of an individual seeking his own good without consideration for the effects of his actions on other members of the community, to one that recognizes the communal dependence each member has on the rest of the community. This recognition encourages peace seekers to take only those actions that will benefit the rest of the community and encourage a strengthening of the web, or the connections present between each member of society.

The web understanding makes human rights violations an irrational choice, as an action that harms a member of society would ultimately harm the leader ordering such abuse. “Violence is the behavior of someone incapable of imagining other solutions” to the given problem.⁶ The moral imagination, conversely, allows a person to embrace complexity and reimagine possible solutions to internal strife within a community. The main goal of the creative peace process, according to Lederach, is to create spaces in

⁶ Vicenç Fisas, *La Paz Es Posible* (Barcelona, Spain: Intermon Oxfam, 2002), 58.

which members of a community reeling from a recent serious conflict can reconsider their position within that web and rebuild the connections necessary to support a thriving community.

Viewed this way, the creative peace process is less about telling a group of people or community the solution to their problem, and more focused on providing them with safe opportunities in which to express the complexity of their problems and encounter their own solutions that will work best for the community as a whole. This approach has the potential to lead to lasting forgiveness and the strengthening of community trust at a level that is not possible with human rights prosecutions. Placing victims and perpetrators of human rights abuse together in the same room to discuss their differences can result in powerful change. The physical proximity between the two parties adds a human element that neither side can ignore. It is easy, especially once conflict has endured for many generations, to simplify the issues to an “us versus them” paradigm that tends to dehumanize the opposing side. Lederach recounts several stories in which simply creating the space for leaders from both sides to meet together in the same room has lead to significant progress towards peace when the two can find common ground, and discover that their goals are the same.

An example Lederach provides of this type of unexpected cooperation in the creative peace process comes from the Wajir district of Kenya where a few women that set out to simply make the local marketplace safe ended up stopping a violent conflict that had lasted for decades.⁷ Initially, a small group of women became frustrated with the daily violence that threatened them and their families. Warring clans had forced

⁷ Lederach, *The Moral Imagination*, 10-13.

thousands of refugees across the Somali border, making Wajir a hot spot for clashes and weapons trading. These conditions continued for generations, culminating in the declaration of Wajir as in a state of emergency in the early 1990s.⁸ A few women became concerned that their daughters would grow up with the same threats to their safety that they did. Motivated by hope for a better future, the women set out to make the marketplace safe for women. They established monitors to report infractions or crimes that took place in the market that targeted certain women because of their clan or geographic origin, and would resolve issues as a group when they arose. Their strategy made the market significantly safer for all women, yet the group (Wajir Women's Association for Peace) noticed that violence still impacted their daily life and sought to do more. They used personal connections to contact several elders of the regional clans and found one clan elder willing to become their spokesperson. When all the elders were gathered together for an unprecedented meeting, the elder, speaking on behalf of the women, asked the group why they continued fighting. "Who benefits from this?" he asked. "Our families are being destroyed."⁹ These questions prompted the formation of the Council of Elders for Peace, which began the efforts to restore peace to the region.

In this story, the women's willingness to challenge the status quo led to change more dramatic than any of them had initially imagined. Their ability to believe that change was possible in one small corner of their violent world sparked the impetus to form a lasting peace in the region. Once the conversation was begun, leaders noticed that they had more in common than they had originally suspected; they each desired

⁸ Lederach, *The Moral Imagination*, 11.

⁹ Ibid., 12.

protection for their families from violence. Based on common ground and a willingness to challenge an enduring culture of violence, a small group of women used the creative peace process to build a better future for their families.

Like the Wajir regional conflict, many multi-generational national conflicts can become an assumed part of the culture. Once a long-standing conflict like this has become entrenched in the social identity, the easiest path forward is to perpetuate the status quo of violence. Part of the long-term danger that stems from conflict emerges from the reduction of complex history into “dualistic polarities that attempt to both describe and contain social reality in artificial ways.”¹⁰ Anytime a relationship between groups of people is simplified to the right versus the wrong side, politics has been generalized and complexity ignored. It is within this typically ignored intricacy present in conflict that the solution and pathway toward peace can be found in the midst of violence and strife, Lederach claims.

Peace building can begin when someone in the midst of a rhetorically oversimplified conflict recognizes the inevitable complexity present in relationships between warring groups. A peacemaker must embrace such intricacies, seek to transcend the norm of violence, and find multi-faceted solutions to complex problems. This is where creativity comes in, and allows for the creation of wholeness from brokenness, and peace from hatred and violence. This process comes with serious risk, especially for the initiator of a new way of understanding the conflict at hand. A willingness to risk life and relationships in order to pursue a path other than violence can be all that it takes to assure opposing sides that one is serious about considering a peaceful resolution to shared

¹⁰ Ibid., 35.

problems. The imaginative act required for the creative peace process involves recognition of the complexity of issues of two parties, as well as the acknowledgement of some external higher good to which both parties can aspire when planning peace negotiations.

Lederach shares the story of a situation from his international mediation experience in which opposing sides from warring tribes in Ghana met to discuss a potential peace between their people. Due to prolonged violent conflict over land disputes involving kidnapping and raids, external mediators were not optimistic at the prospect of brokering a lasting peace between the two tribes. In this region of Africa, distinguished and respected tribes are marked by the presence of a chief. In this particular mediation situation, while one tribe, primarily Islamic, had a chief, the other, primarily Christian, did not. These differences made peace improbable and reconciliation challenging. The mediation began with an indignant and condescending statement from the chief of the first tribe, lamenting the hopelessness of peace with a tribe too uncivilized to have a chief. Mediators in the room, Lederach included, were dismayed by the discouraging rhetoric and a sense of defeat filled the room. The next statement, however, came from a member of the second tribe. He addressed the chief as “father” and expressed, with grace and humility, the difficulty of the position their tribe was in without a chief, and requested that they seek peace so that future generations would not have to suffer the same fate as previous generations.¹¹ The humility and respect afforded by the young man from the second tribe surprised the chief so much, that he apologized for his error in criticizing them for their lack of a chief and was willing to begin peace

¹¹ Lederach, 7-10.

negotiations. It was the willingness of one party to approach the other in humility and a communal recognition of the complexity present in longstanding and deeply rooted conflict that made progress toward peace possible.

Elements of the Creative Peace Process

As human rights prosecutions take different forms, Lederach's creative peace process also involves various elements that can be altered to create different forms of the creative peace processes. Lederach refers to several different types of mediators that can be involved in the peacemaking process. The most widely used type of mediator is known as outsider neutral mediator.¹² This mediator comes from outside of the region of conflict and does not have partiality for either side in a conflict. The second type of mediator that is rather new to the mediation scene is known as the insider partial is a mediator that emerges from within the conflict itself. The insider-partial mediator has intimate knowledge of the community and the conflict because he has lived within that particular community for his entire life. This person need not be a leader of either side, but in some cases, may be more effective if he has a say in the actions of one side of the conflict.

An outside neutral party act as facilitators and are usually defined by what they are not; biased or invested in either side of a conflict. This type of mediation has become so widely used because of the ability of an outsider to see past the biases of

¹² "International Peace Mediators and Codes of Conduct: An Analysis | The Journal of Humanitarian Assistance," accessed April 9, 2018, <https://sites.tufts.edu/jha/archives/756>.

either side, and work toward peace without regard for personal gain.¹³ Outsider neutral mediators are often provided by organizations such as the United Nations or other international non-governmental organizations that seek to ensure that the mediator is well trained and educated before sending them into a difficult situation. Lederach differs from the norm among mediation scholars, however, favoring the use of insider-partial mediators. This model “emphasizes individualism and egalitarian participation” because it relies upon the participation of disputants to solve their own conflicts.¹⁴

The inside mediator is partial because she has become involved in the conflict in some capacity, making her a clearly biased party, while maintaining a unique aspect of credibility as her party stands to gain or lose based on the outcome of the conflict. This type of mediator has become common practice in peace negotiations due to Lederach’s scholarship and research in Latin America.¹⁵ One of the most important benefits of having an insider-partial mediator present, and why it has become standard practice in Latin America is the capability of an insider to form relationships with both sides. An insider already has relationships within the community, and will generally be more respected than an outsider when offering an opinion that suggest a break with the status quo of violence.

Lederach’s insistence on this method comes from the value he places on the mediator’s intimate knowledge of community relationship dynamics as well as the continuity of their presence within the community, especially in the Latin American

¹³ “International Peace Mediators and Codes of Conduct.”

¹⁴ Faoliu, Ashley, “Insider-Partial Mediation,” Text, Beyond Intractability, July 7, 2016, <https://www.beyondintractability.org/essay/insider-partial>.

¹⁵ Ibid.

culture where the concept of *confianza*, or interpersonal trust, is integral to the establishment of any relationship. A sense of trust between negotiating parties can make or break a peace process in Latin America, and Lederach finds that the involvement of a person who already has established trust with at least one side of combatants can speed up the process.¹⁶ The insider partial mediator will notice nuances in behavior and conversation that an outsider would miss. Their firsthand knowledge of cultural norms and community particularities can ensure that nothing is overlooked in the negotiation process.

Partial insiders also have a higher incentive to make sure that the peace terms will work in practice and every issue is fully addressed, because they will have to live with the consequences of the agreed upon terms. Despite the concerns of some theorists, that insider-partial mediators will be influenced by their bias for one side, practice has shown that mediators that act in an even-handed way achieve better results that gain them more influence and the ability to effect more significant change.¹⁷ Their bias, in fact, can have a positive impact on peace negotiations. The side with which the mediator typically allies will want to preserve its relationship with the mediator, and the opposing side will strive to build a better relationship in order to please the mediator and secure more favorable terms for their side.

Lederach argues that the use of both types of mediators working in conjunction will achieve maximal results, depending upon the situation and cultural context. In Latin America, and the work of Lederach and his team specifically, a balance of leaders

¹⁶ Lederach, 41.

¹⁷ Faoliu, Ashley, "Insider-Partial Mediation."

familiar with the intricacies of relationships within the community paired with outsiders with no allegiance or history with either side makes for the strongest team of peace builders.¹⁸

The story of the women from the Wajir region of Kenya features a successful insider-partial mediator. The elder that spoke on behalf of the women's group served as the unofficial mediator of the group, asking provocative questions to the other elders in order to encourage positive change. His role as an elder made him partial to his particular clan, and potentially biased against the other clans represented by the other elders. His commitment to imagining a peaceful future despite his ties to the violence made his words at the meeting of elders more meaningful, as he was not merely suggesting something would require actions from the other elders, but rather a course of action that would require equal participation from him and his clan. The elder in the Wajir peace process showcases a tangible example in support of Lederach's insider-partial mediation theory. The elder's word meant much more to the other elders than the words of the women or any person that was not an elder would have meant because his title and position garnered significant respect from that particular group.

Comparison to Trials

The creative peace process offers a community-centered approach to transitional justice and has the potential to operate a successful peace-building program outside of the confines of a government branch. One of the most important distinctions between human

¹⁸ Paul Wehr and John Paul Lederach, "Mediating Conflict in Central America," *Journal of Peace Research* 28, no. 1 (February 1, 1991): 85–98, <https://doi.org/10.1177/0022343391028001009>.

rights prosecutions and the creative peace approach is that Lederach's method does not rely on newly implemented democratic government mechanisms functioning properly under immense scrutiny and strain to guarantee success of the peace process. Instead, the creative peace process takes place at the individual community level where progress is determined entirely by the willingness of community members to embrace the complex web of relationships in which they live. A grassroots approach can incorporate government involvement, however, a key difference from trials is that it does not have to rely upon what are often barely democratic government processes.

The community focus allows this transitional justice measure to affect social trust in a much more direct way than human rights prosecutions ever could. Creating space in which members of a community can sit down face to face and have discussions about the feelings they have toward one another and problems they have experienced allows for a significantly more personal experience than what participants would experience in trials. Forcing community members to face one another comes with a different set of risks from a prosecution setting. Where trials carry the risk of international exposure of weak democratic institutions, the creative peace process carries with it the personal reputations and livelihood of each participating member. Placing each person within a web of relationships raises the personal stakes each participant has in the peace process. If my neighbor fails to keep the peace agreement, my children are at risk. The risks involved ensure that nothing other than interpersonal trust can be bred in this process, as neighbors must trust one another in order to keep the peace. The creative peace process can also directly affect a greater number of people than trials. While governments are limited by time and resources to a fairly small number of people that can be prosecuted for their

crimes, a creative peace process can take place in any size of community and can encompass all the citizens willing to participate.

Lederach's model also encourages participants to recognize the complexity behind conflict and makes them less likely to view problems through the lens of dualistic polarity that trials unavoidably foster. A trial necessarily creates a combative environment in which one side wins at the expense of the other. The creative peace process, conversely, challenges community members to see beyond easy labels of good and bad, winner and loser, and strike at the root of the complex problems faced by each member of society. Trials leave little room for this type of dialogue, as the simplest explanation of the perpetration of a crime is usually the only explanation that makes it into evidence for the court. Creative community peace solutions allow for otherwise impossible dialogue that acknowledges real fear and hurt on both sides.

Benefits of the Creative Peace Process

Compared to human rights prosecutions, Lederach's creative peace process has several advantages that are impossible to achieve within the context of a human rights trial. The creative peace process offers the potential for community healing on a personal level that requires little to no government involvement. These benefits can have significant impact on the healing of civil society and the restoration of interpersonal trust that makes democracy in a transitioning nation strong.

As explained in the previous chapter, due to the constraint on resources, human rights prosecutions are often limited to the officials that are accessible to them. In some cases they are the lower ranking officials that have not been granted amnesty by the

government, and other times the prosecution entails a trial of a former head of state. Either way, trials have a limited number of individuals they can impact. Each trial requires significant manpower, making large-scale projects impossible, especially for a vulnerable, newly transitioning nation.

Regardless of the size or number of trials taking place, it is difficult for a prosecution to provide the necessary space in which a community can become reconciled. By their nature, trials set up an adversarial environment in which the dualistic polarity of guilty and not guilty simplifies what is almost always a more complex issue. The law and legal practice do not tend to leave room for mercy or forgiveness, and may, in fact, exacerbate tensions between opponents, forcing them to seek reconciliation outside of the courtroom. Within the confines of a courtroom, victims and perpetrators cannot speak directly, and instead they are instructed by legal professionals to speak in accordance with a particular set of rules and procedures, and are encouraged to share only the part of their story that supports their side's desired outcome.

Lederach's creative peace process offers an opportunity for victims and perpetrators to not only face one another, but also engage in dialogue in a low-stakes situation. This environment fosters accountability on an entirely different level. While human rights trials have the power to hold perpetrators of human rights abuse accountable for their actions through legal punishments and proclamations of guilt, community-level forgiveness engages the humanity of both perpetrators and victims as they work in tandem to create a better future based in the hope of forgiveness. Lederach emphasizes the need for creativity and the use of the moral imagination in order to create a peaceful future despite a violent and unstable past. Creating a space in which parties

are not constrained by rules of procedure or evidence and are instead have the freedom to imagine creative solutions is key to the formation of this new and hope-filled future.

When widows can sit across the table from the soldiers that took the life of their husbands and children, there is a greater potential for restoration and forgiveness than would have been possible through a human rights trial.

The creative peace process also has a lower start-up cost than human rights prosecutions. Trials require not only time and money from a government busy with the process of democratic transition, but also a strong and stable government capable of conducting a fair trial in accordance with the rule of law. In the case of a human rights prosecution, it is the government's judicial branch that effectively serves as the mediator. In the immediate wake of the end of conflict, a transitioning nation may not be able to field all of the resources necessary to conduct a proper human rights trial. Lederach's peace process is extremely low-maintenance with regards to the support needed from the government. While government support would be helpful as far as funding and encouraging key players to attend negotiation and reconciliation sessions, it is not necessary to make the peace process happen. In theory, all that is needed for this process to begin are a few participants from both sides willing to sit down and engage in meaningful dialogue and make compromises that allow them to live together in a peaceful community. This process can cut out the need for government mediation and instead place community members face-to-face with one another engaging in productive dialogue.

Another potential cost associated with trials is citizens' trust in the government. Cutting the government out of peace negotiations on the community level allows for

relationships to be facilitated directly between parties rather than through a government-run program that could be viewed with suspicion by citizens. Without the government as a mediator, the burden of peace falls upon citizens of each individual community. If they desire a peace that will secure a better future for the next generation, community members must come together and make living together in harmony a reality, as the government will not provide a safety net on which citizens can fall back in apathy. Since citizens do not trust the government, Lederach points out that a community-based solution is likely to be better for all involved parties. He argues that, “politics, economics, and global structures have become so inauthentic that few of us truly believe in them. We live in a paradox; the things most omnipresent that govern our lives are the very things from which we feel distant.”¹⁹

In the midst of a high-profile human rights prosecution, justice for past wrongs can feel inaccessible to average citizens living in a rural village. Providing a process by which citizens of any class can participate in the healing of their own community gives community members a sense of purpose and meaning as they seek to aid their nation in the healing process- each of which are essential aspects of the creation of a strong democracy, which depends on proactive citizens.

Critique of Lederach's Method

While Lederach's process has the potential for social healing and political forgiveness at a fundamental level in a transitioning nation, the very nature of this low-risk approach makes it incapable of producing some of the results made possible by

¹⁹ Lederach, 28.

human rights prosecutions. The creative peace process could encounter difficulties in nations that lack willing participants or the requisite knowledge of how to implement this process and instead foster dependency on an outside party. The lack of material consequences surrenders any chance of international deterrence and may not have any repression deterrence effects beyond the immediate community.

The creative peace process requires that some kind of mediator take part in the negotiation process. Although Lederach encourages the use of insider-partial mediators, in some cases, a third party may be required to initiate the beginnings of the peace process. In many such cases, the outside mediators must remain present to negotiate and hold opposing parties accountable for compromises and ongoing peace efforts for years to come. When this occurs, the presence of an outside mediator could foster a dependency on international assistance. If the two parties expect that the outside mediator will always be around to help them maintain peace, they have little incentive to create the necessary structures that will allow them to broker a long-lasting peace on terms that will function long after the mediator leaves. Encouraging this type of paternalism is dangerous in any situation, with any resource, and can be especially dangerous when the good exchanged is peace.

One of the main advantages of human rights prosecutions is their public nature as spectacles that can initiate a deterrence effect both domestically and internationally. The material punishment coupled with public exposure of the truth that occur in conjunction with a human rights prosecution create an environment hostile to further human rights abuse. International public attention garnered by these events allows them to have a widespread deterrence effect on human rights abuse. The grassroots nature and structure

of the creative peace process, by contrast, ensures that any effects will remain isolated to the immediate community. Using only a creative peace process surrenders the opportunity to use the abuse that has occurred in one nation as a warning to other nations or future leaders of the same nation that human rights violations are not acceptable and will have consequences.

Compared to Sikkink's model specifically, Lederach's model lacks the strong empirical evidence to support the creative peace process's effect on democratic institutions. The very nature of this community-centered approach makes it unlikely to influence the development of democracy on a national level. While Sikkink's model entails thorough empirical data collection and analysis, Lederach's model is much less measureable through standard indicators. Values such as forgiveness and community trust are nearly impossible to quantify, and do not lend themselves to mathematical analysis. While empirical indicators can measure social trust, there are currently no academic, empirical studies that confirm the direct results of a creative peace process in a community as compared to a community that has not undergone a creative peace process. Academics eager to hear positive numerical results may be hesitant to trust in a model that could not demonstrate certain quantifiable outcomes.

While this approach is particularly helpful for societies that have undergone a civil war with conflict between citizens, it may or may not be applicable to situations in which an authoritarian state has perpetrated violence against the citizens. If there is a divide between government officials and civilians rather than groups of citizens, the creative peace process may need to take place at the governmental level rather than the community, grassroots level, which may not see the same results on such a large scale.

Shifting the scale of the creative peace process and changing the types of participants involved could render peace negotiation based on forgiveness and individual relationships ineffective.

It would also seem as though this communally focused process of building peace may be too small to impact national policy or future human rights practices. While individual communities might benefit from the forgiveness process and the rebuilding of relationships with neighbors that may have perpetrated violence against them, it is unlikely that this model could impact the decisions of government officials to engage or not engage in human rights abuse. Unless this model is implemented in every community within the transitioning nation, it could not possibly be large enough to make a national difference. If each process requires some sort of outside assistance (whether that be the identification of an insider partial mediator or the introduction of a third party neutral mediator) it would take an immense amount of time to run the program in each community of a transitioning nation.

Compatibility with Trials

Given the strengths of this approach and the strengths of human rights prosecutions, it seems as though these two transitional measures could serve in a complementary fashion to one another with each filling in the gaps the other offers. Where trials cannot occur in the immediate wake of the transition process, Lederach's creative peace process offer a more immediate solution that could prepare a society for eventual large-scale human rights prosecutions. Where the creative peace process cannot usually effect a change across international borders, an effective human rights

prosecution has the potential to deter would-be human rights criminals from abusing foreign citizens. Where human rights prosecutions depend heavily upon the ability of the federal government to effectively use resources to support a strong judicial branch and makes a largely symbolic decision on the national level that can improve trust in government, the creative peace process works on the community level and builds up the interpersonal trust necessary to sustain a participatory democracy. The traits of each process make it likely that their use in concert could result in effective and efficient transitional reform at multiple levels.

Overall, Lederach offers a peace building method that is unique both within the field of mediation and transitional justice. His approach departs somewhat from the typical third party neutral mediator strategy, and substantially from the human rights prosecution process, yet it seeks to provide the same results of hope for a peaceful future. His preference for insider-partial mediators has proven to be especially useful in Latin American transitioning nations, and his methods hold promise for wider use and impact in the region. In contrast with human rights prosecutions, the creative peace process allows for a larger group of diverse citizens to participate in a healing process outside of direct government intervention, and holds stronger potential for rebuilding interpersonal trust between members of a community that has suffered years of internal strife. Lederach's creative peace process and reliance on the moral imagination offers a potential substitute for or complement to transitional justice measures such as human rights prosecutions.

CHAPTER THREE

Human Rights Prosecutions in Guatemala

The following two chapters will examine the effects of a human right prosecution and various forms of the creative peace process in a transitioning Latin American nation. I have chosen to examine both types of peace approaches in the same country to control for potential variables that could influence the success of one approach over the other. A side-by-side analysis of a human rights prosecution and a creative peace process in a post-conflict nation will provide insight into the advantages of each approach in practice and point to avenues for further investigation. This chapter will begin with a brief overview of the civil conflict and subsequent human rights abuses that took place in Guatemala before describing the most prominent human rights trial that has been taking place in the nation over the past several years and analyzing the potential effects this trial could have or has had on Guatemalan democratic society as a whole. While Guatemala has experienced several rights prosecutions at various levels, the case I will examine in this chapter is their landmark trial of a former head of state.¹ My focus on this particular trial does not mean that it is the only human rights prosecution that has taken place in Guatemala post civil war. There have, in fact, been many trials of military officers and

¹ Human Rights Watch | 350 Fifth Avenue, 34th Floor | New York, and NY 10118-3299 USA | t 1.212.290.4700, “World Report 2017: Rights Trends in Guatemala,” Human Rights Watch, January 12, 2017, <https://www.hrw.org/world-report/2017/country-chapters/guatemala>.

government agents at a smaller scale.² The Ríos Montt trial is by far the most internationally recognizable transitional justice measure that has come from Guatemala in recent years, and demonstrates the potential a widely publicized human rights trial can have on the strength of democracy within a state and across international borders.

Brief History of the Guatemalan Civil War

In 1960 a civil war broke out in Guatemala that would last for thirty-six years, take the lives of over 200,000 Guatemalans, and see the disappearance of over 50,000 citizens, 83% of which were indigenous Mayans.³ This civil war saw the use of scorched earth methods and genocide specifically targeting indigenous populations. During the 17-month military rule of General Efraín Ríos Montt, egregious human rights violations took place in the country, especially in the Ixil triangle, where Ríos Montt attempted to destroy the indigenous population. A UN report indicating the culpability of the national government showed that between 70 and 90 percent of Ixil communities were wiped out due to the state-sponsored genocidal campaign that took place during the war years.⁴ Children were forcibly adopted and assimilated, families were torn apart, women were sexually violated, and many members of Ixil communities were brutally executed in their own homes and communities.

² “The Past Is Never Far Away: Prosecutions for Human Rights Violations in Guatemala,” *Just Security* (blog), January 8, 2016, <https://www.justsecurity.org/28697/away-prosecutions-human-rights-violations-guatemala/>.

³ “The Guatemala Genocide Case,” *CJA* (blog), accessed March 12, 2018, <http://cja.org/what-we-do/litigation/the-guatemala-genocide-case/>.

⁴ Peter Canby, “The Maya Genocide Trial,” *The New Yorker*, May 3, 2013, <https://www.newyorker.com/news/daily-comment/the-maya-genocide-trial>.

Many of the killings were politically motivated attempts to rid the nation of communists, keep the indigenous population from joining guerrilla groups, or reclaim historically disputed land from the indigenous tribes of the region. The conflict left the countryside and farmland destroyed by scorched earth combat methods, and civil institutions were similarly decimated by authoritarian and military rule throughout the war years. Democratic mechanisms were undermined for years, as Guatemala saw its congress dissolved and reconvened several times during the war. Foreign relations suffered as the United States, Argentina, and South Africa interfered in various ways with the domestic politics of the nation. A UN-commissioned report concluded that the state, rather than the guerilla groups it blamed, was responsible for 93% of the human rights abuses that took place in the nation during the civil war.⁵

Domestic courts have made significant progress in prosecuting those responsible and charging previous government officials with crimes against humanity. They have faced significant barriers and setbacks from the highest judicial body in the nation, the Guatemalan Constitutional Court, which has refused to uphold charges against key war criminals, and will not accept rulings by international bodies despite their legality in accordance with the nation's constitution. Despite resistance at the highest level, human rights organizations in Guatemala have built strong cases and seen significant results and progress in domestic trial courts. The Ríos Montt case is a key example of the struggle for justice within a conflicted justice system in Guatemala.

⁵ Ibid.

Ríos Montt- Initial Genocide Trial

In the wake of the horrors of the violent civil war period, several groups in Guatemala mobilized to push for peace and efforts to hold perpetrators accountable for their crimes against humanity. At first, little traction was gained in Guatemala, as the nation's democratic mechanisms took time to recover from authoritarian rule, and evidence was collected in the form of a truth commission. The first attempt to hold someone accountable for crimes during the civil war took place in Spain under their universal jurisdiction laws for genocide and crimes against humanity. Guatemalan citizens raised claims of genocide and crimes against humanity in 1999 in Spain when Guatemalan courts would not take the case. In 2001, various human rights groups including the Association for Justice and Reconciliation and the Center for Human Rights Legal Action in Guatemala brought a case against former head of state Ríos Montt and several other officials in the domestic courts. The domestic case made little progress, but in 2006, the Spanish courts issued an arrest warrant for Ríos Montt. Impeding this arrest and trial, Ríos Montt was elected to congress in 2007, granting him immunity from all proceedings, even the universal jurisdiction case brought against him in Spain. During his tenure in the legislature, human rights groups continued to collect evidence and build a case against him. When his term was up in January 2012, he was subpoenaed and subsequently charged with genocide and crimes against humanity by the domestic courts along with his Chief of Military Intelligence, José Mauricio Rodríguez Sánchez. After a year of delays by Ríos Montt's defense team, the historic trial began in March 2013. It took two hours to read all of the charges listed on an indictment that went on for over 100 pages against the former head of state and Rodríguez Sánchez, and the court heard the

testimony of one hundred survivors.⁶ The prosecution team understood that it would take a mountain of evidence and quite a bit of luck in a weak justice system to obtain the first conviction of genocide against a former head of state in the region.

The prosecution's case saw the collective testimony of victims, international law scholars, military officials, and history and sociology experts. After years of preparation, there was ample evidence to present, and the attorneys for the state built an incredibly detailed case. Prosecution experts revealed that 5.5% of the indigenous population located in the Ixil triangle of Guatemala had been extinguished by the government campaign against them. In total, reports indicated that the government killed 18.3% of the nation's indigenous population, which testimony suggested was comparable to the 20% murder rate present in other acknowledged genocide cases such as those in Rwanda and Srebrenica. Military officials reported that their orders were clear: they were to kill any indigenous person they encountered.⁷ Anthropology experts presented evidence they had collected from exhumations of the bodies of over 400 Ixiles. Almost all of the deaths indicated that victims died at the hands of the military and suffered traumatic injury prior to death.

The defense case focused mainly on attempting to delay trial or end it altogether. Presiding Judge Yassmin Barrios read aloud from the Guatemalan Professional Code of Ethics for lawyers several times during trial to remind the defense counsel of their duty. The concern of Ríos Montt's attorneys did not appear to be building a strong case, but using the same tactics Ríos Montt himself had used for the previous thirty years in

⁶ International Justice Monitor, "The Guatemala Genocide Case."

⁷ Original quote in Spanish from former soldier Hugo Ramiro Leonardo "Indio visto, indio muerto" Ibid.

covering up his crimes against humanity. The witnesses they did call were political allies of Ríos Montt or an expert whose conclusions ended up supporting the case for genocide. Guatemalan legal precedent recognizes the appeal process for constitutional issues to be a common delay tactic. The Inter-American Court once ruled that these constitutional claims and appeals have “been transformed into a means to delay and hinder the judicial process,” and are “used maliciously,” and “frivolously” “with the justice system as an accomplice.”⁸ In all, the defense presented a weak case that relied most heavily on the attorneys’ ability to bog down the court in procedural holdups that would ultimately shut down the trial.

Aside from the constant procedural attempts of the defense counsel to bring the proceedings to an end, the court faced many obstacles and was temporarily suspended three times before the May 10 final verdict. After much delay and two months of testimony, closing arguments were heard on May 8 and 9. The prosecutor reiterated Ríos Montt’s key position that could have prevented the genocide at any time and requested 75 years in prison. Ríos Montt’s defense attorney used his closing argument to criticize the existence of international law and question the very existence of the court hearing this case.

⁸ Case of the “Las Dos Erres” Massacre v. Guatemala, Inter-American Ct. H.R., Nov. 24, 2009, para. 120.

Despite the attempts of the defense to skirt the issue at hand, the court quickly came back with an acquittal for Rodríguez Sánchez, and a historic conviction for Ríos Montt only one day after closing arguments.⁹

Implications of a Historic Verdict

On May 10, 2013, Ríos Montt became the first head of state to be convicted of human rights abuses in a domestic court. This was an enormous milestone, as courts in the region have been historically weak and post-conflict societies globally have proved incapable of properly conducting a trial of this caliber. Human rights organizations celebrated worldwide, and other states in the region saw hope for justice for their victims as well. The trial court took special care to run the case well, and after preparing for years, the prosecution team put together a detailed case that resulted in a resounding conviction. Citing the deaths of over 5,270 members of the ethnic Ixil Mayan group, the written opinion by the trial court lists every region affected by the genocide alongside the names of many of the victims that had been killed or suffered harm under Ríos Montt's military reign. The court cited the deaths of over 5,270 members of the ethnic Ixil Mayan group.¹⁰ Thirty years after the end of his rule, Ríos Montt was sentenced to fifty years in

⁹ Rodríguez Sánchez was acquitted based on the lack of a proven link between his position and his ability to disregard orders handed down to him. In short, the entirety of the blame was cast on the source of the orders; Ríos Montt.

¹⁰ Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos Contra El Ambiente [First Tribunal for Penal Sentences, Drug Trafficking, and Crimes against the Environment] No. C-01076-2011-0015 OF.2o, May 10, 2013, at 51 (Guat.), <https://hrdag.org/2013/05/20/hat-tip-from-guatemala-judges/> (follow “written opinion” hyperlink).

prison for genocide and thirty years for crimes against humanity.¹¹ This verdict was historic not only for Guatemala, but also for the region as a whole, as the Guatemalan court proved that it was possible to overcome the resistance present in a post conflict society and successfully convict a known war criminal within the domestic court system. For the indigenous population too, this verdict represented the first time Guatemalan Mayans had the opportunity to be recognized and have their voices heard by the government after decades of oppression.¹²

This was also a victory on the democratic level for the rule of law in Guatemala. Despite immense pressure and threats from the executive branch, supporters of the former leader, and public organizations, the trial court proved itself impartial and undaunted by external obstacles. The Guatemalan Civil War had left the court system decimated by biased judges that had sided with the military regime and actively suppressed supporters of human rights. As Sikkink notes, “Guatemala endured far greater repression than Argentina or any other country in the region, and the repression was so severe that it eliminated or silenced the human rights movement there.”¹³ Given that repression, the thirty-year interlude between Ríos Montt’s regime and the commencement of the trial is a surprisingly speedy recovery for a society that had been

¹¹ WOLA, “After the Verdict: What Ríos Montt’s Conviction Means for Guatemala,” WOLA, accessed March 11, 2018, <https://www.wola.org/analysis/after-the-verdict-what-rios-Ríos Montts-conviction-means-for-guatemala/>.

¹² Ibid.

¹³ Stephen C. Ropp and Kathryn Sikkink, “International Norms and Domestic Politics in Chile and Guatemala,” *Cambridge Studies in International Relations* 66 (1999): 172–204.

affected so severely by government repression. This successful trial proved to the world that the Guatemalan judicial system had, perhaps, recovered fully from the deleterious effects of a non-democratic regime. The Guatemalan judicial system distinguished itself within the region as the only nation that had successfully overcome the difficulties of trying a former head of state in his home nation by a domestic court, and took an important step towards peace. As Judge Barrios stated after the reading of the verdict, “there will be no peace without justice.”¹⁴

As the verdict was announced in court, Ríos Montt and his attorney attempted to slip out of a side door in what appeared to be a last minute attempt to escape consequences. Presiding judge Yassmin Barrios shouted across the courtroom that Ríos Montt was not permitted to leave and would be escorted directly to prison. Addressing Ríos Montt’s attorneys, she expressed dismay with their professional behavior yelling across the courtroom, “As lawyers you must not obstruct the application of justice!”¹⁵ Security rushed to block Ríos Montt’s exit, and preparations were hastily made to escort him directly to prison. Though human rights advocates had won a great victory, Ríos Montt’s behavior in court following the verdict was another reminder that the fight for justice would always face resistance, and that those in the habit of flouting the authority of the rule of law will continue to do so as long as they are able.

¹⁴ Jo-Marie Burt, “Ríos Montt Convicted of Genocide and Crimes Against Humanity: The Sentence and Its Aftermath,” accessed March 14, 2018, <https://www.ijmonitor.org/2013/05/rios-montt-convicted-of-genocide-and-crimes-against-humanity-the-sentence-and-its-aftermath/>.

¹⁵ Ibid.

Justice Undone- Implications of the Annulment & Obstacles to Justice

Rejoicing at the historic verdict did not last long, however, as the judgment was annulled only ten days later by the Guatemalan Constitutional Court (the highest judicial body in the nation) on what many view as questionable legal grounds. Ríos Montt's defense counsel had filed several motions for dismissal at the start of the trial, all of which were denied and appealed at a higher court while Ríos Montt's trial continued. This apparent bureaucratic attempt to clog the judicial system in procedural backlog was initially unsuccessful, as the appeals courts denied the motions as well and sided with the trial court. The Constitutional Court, however, disagreed, overruling the opinions of one of the motions denied by both the trial court and the appeals court. The Constitutional Court found that when the defense attorneys had been dismissed from the court for their incessant attempts to cease the trial proceedings the trial court did not properly address Ríos Montt's right to due process by quickly providing him with new counsel, despite the fact that the court had dismissed trial for the rest of the day in order for Ríos Montt to obtain new counsel. The appeals court had already heard this claim and deemed it unfounded, yet the Constitutional Court's 3-2 decision ruled that the trial court's violation of due process rendered Ríos Montt's guilty verdict null and void. This decision suspended further trial action until other constitutional challenges from Ríos Montt's defense attorneys could be resolved. The Constitutional Court ordered the trial court to rescind the opinion and reconvene in order to determine how to proceed. Judges from the trial court were given twenty-four hours to comply with the demands of the Constitutional Court or risk criminal sanctions or dismissal from their posts.

Division was present, however, even among these judges. In the decision that annulled the trial court's conviction, Judges Mauro Chacón and Gloria Porras Escobar wrote dissenting opinions expressing their disappointment in the failure of the judicial system. In his dissent, Chacón directly implicates Ríos Montt's defense attorney for his intentionally obstructionist efforts and laments the Constitutional Court's support of those efforts. He commends the trial court judges for not invoking anything that suggested a lack of impartiality throughout the course of the lengthy trial.¹⁶ Judge Porras Escobar, in her dissent, laments the precedent this case will set and its potential detrimental effects on victims stating that, in making this decision, the Constitutional Court leaves victims unprotected and without access to justice.¹⁷

The road to convicting Ríos Montt was not only fraught with procedural obstacles that culminated in an annulled conviction, but also with immense external pressure from national businesses and other interested parties. The court received numerous threats from Ríos Montt supporters, including bomb threats directed at the Constitutional Court and various government offices both before and after the announcement of the initial guilty verdict. Ríos Montt supporters, including powerful national organizations such as the CACIF of Guatemala (Coordinating Committee of Agriculture, Commercial, Industrial, and Financial Associations) protested the guilty verdict and lobbied the government to annul it because of the negative impact being labeled a "genocidal state"

¹⁶ Quote originally in Spanish, "*no invoco nada a cerca de la falta de imparcialidad de los integrantes de dicho tribunal*" Corte de Constitucionalidad Guatemala [Guatemalan Constitutional Court] No. 1904-2013, May 20, 2013 at 002067 (Guat.), <http://www.right2info.org/resources/publications/votos-razonados-may-21-2013>.

¹⁷ "Imminent Constitutional Court Judgments May Affect Guatemalan Genocide Conviction," accessed March 11, 2018, <https://www.ijmonitor.org/2013/05/imminent-constitutional-court-judgments-may-affect-guatemalan-genocide-conviction/>.

could have on foreign investment and commerce. Pro-Ríos Montt protests broke out in the streets in front of the Constitutional Court as judges met to determine the fate of the trial court's verdict. Other civil groups that had been involved with the negotiation of the peace accords in 1996 ran an ad in the national paper declaring that there had never been any genocide in Guatemala, and the trial was threatening domestic peace.¹⁸

The executive branch of the Guatemalan government maintained its distance for the most part, but reprimanded NGOs for supporting polarization in Guatemala in an official statement a few days after the verdict was announced.¹⁹ Then president Otto Pérez Molina had good reason to be concerned about the trial, however, as he was an officer under Ríos Montt's command during the years in question. Molina had long held that, while grave human rights abuses took place during the civil war, there was never genocide, and urged human rights groups to stop dividing and polarizing the country. Testimony implicating his complicity with Ríos Montt's genocidal actions, however, was elicited in court to the tune of audible gasps from the audience.²⁰ The trial court walked a thin line by bringing to light the truth about government officials still in power. Pushing lines of questioning too far into criticism of certain powerful leaders could lead to the shutting down of the entire process.

¹⁸ Canby, "The Maya Genocide Trial."

¹⁹ "Imminent Constitutional Court Judgments May Affect Guatemalan Genocide Conviction."

²⁰ Canby, "The Maya Genocide Trial."

Continued Efforts for Justice

In the months that followed the annulment, prosecutors maintained their resolve to try the case again to a final verdict and attempted to schedule a new trial as soon as possible. The Constitutional Court, however, continued to delay the rescheduling and the trial did not begin until after several false starts and blocked attempts. In their first attempt to delay the trial on October 22, 2013, the Constitutional Court asked the lower court that had convicted Ríos Montt to re-examine Ríos Montt's qualification for amnesty under the amnesty law of 1986—a law that had been ruled unconstitutional several years prior to the court's demand. This inquiry took significant time, and after further delay amidst claims that the court was busy with 2014 cases, the case was rescheduled for January 2015. Once the trial did finally restart in January 2015, it was suspended almost as soon as it began as the defense won a motion to recuse a judge who had written her university thesis on the issue of genocide. The trial was then set to begin again in 2017, and has been ongoing since October. In this retrial, Ríos Montt was declared incompetent, faced no prison time, and did not have to attend the trial proceedings. In short, the verdict in this new trial could only result in a symbolic statement reaffirming the victims and their families that the state recognized the injustice they suffered. Victims, however, have had to testify once again before a new court. At the beginning of the new trial, Ríos Montt's defense lawyers attempted to use the same procedural delay tactics previous attorneys had used in the last trial by filing several frivolous motions causing two of the three defense lawyers to be dismissed from court. The retrial process is proceeding slowly in the hopes of avoiding procedural grounds for annulment or dismissal, and proceedings are expected to continue for another several months before the

issuance of a new verdict.²¹ Ríos Montt's death on April 1, 2018 has significantly altered the ongoing proceedings. In the past few weeks, activists in Guatemala alongside the United Nations have urged the trial court to proceed for the sake of the protection of human rights.²² Guatemalan activists acknowledge, however, that it is unlikely that the trial will proceed at this point. The fact that the primary perpetrator of the violence never faced any punishment is a stinging blow to victims and their families. To prosecutors and government officials who have worked for years to gather the evidence and try the case, this development is a devastating blow. There is still hope that the trial will find Ríos Montt guilty of genocide, however, to the global audience, it may appear too little far too late. If a head of state can get away with killing thousands in the name of peace without facing any punishment, what is to stop other heads of state from attempting the same tactics in their nations? This case now hangs in procedural limbo, the fate of justice for victims of genocide hanging in the balance. The case of General Ríos Montt illustrates the complex paradox of progress and problems that emerge from human rights prosecutions in Latin America and perhaps even globally.

²¹ "Victims Testify in Genocide Retrial of Ríos Montt and Rodríguez Sánchez," accessed March 14, 2018, <https://www.ijmonitor.org/2017/12/victims-testify-in-genocide-retrial-of-rios-Ríos-Montt-and-rodriguez-sanchez/>.

²² "United Nations, Activists Urge Guatemala to Continue Trial of Deceased Dictator Efraín Ríos Montt," *Telesur*, April 6, 2018, <https://videosenglish.telesurtv.net/video/665736/the-1954-us-coup-in-guatemala/>.

Is Justice Cascading in Latin America?

Sikkink's theory, as stated in chapter one, holds that human rights prosecutions do not harm democratic institutions and instead provide three main benefits including domestic and international deterrence of human rights abuse, a strengthening of the rule of law, and improved domestic respect for human rights. With regards to these issues Guatemala appears to follow Sikkink's model in some ways, but deviate from what Sikkink might expect in other aspects. Making progress requires a few brave leaders to step up in a community and begin what is often a dangerous process of searching for and making known the truth. Leaders must be prepared for the challenges they will face in the midst of their work, and expect nothing more than slow progress.

With this reality in mind, Sikkink's description of a cascade of justice seems like it would be better described for Guatemala as the trickle of a slowly rising river that carves its way through a canyon after many years of slow erosion. The history of human rights prosecutions, though it can become a cascade of justice, as Sikkink terms it, it is often manifested at the local level as more of a small trickle of water down a rough and unforgiving mountain of stone. The cascade of justice, even if it results in a guilty verdict at the national level, may not have top-down effects for the community realities faced by average citizens. It would seem as though the main impact a human rights prosecution can have on individuals at the community level is the potential to deter future human rights abuses in those communities across borders. This value of human rights prosecutions cannot be understated, however. While the trial of Ríos Montt today can no longer result in punishment for the perpetrator, the trial court proceeds with the hope of setting a precedent that declares to the world that genocide is not an acceptable political

tool. As Sikkink's empirical research suggests, the success of a trial ought to perhaps be measured by the publicity it garners for the issue of human rights in the region and around the world. Despite complications in the Ríos Montt trial, the associated issues have been making headlines for years, reminding Guatemala's national government as well as the governments of its neighbors that human rights violations happen, victims will be given a voice, and no one is above the rule of law. With this view in mind, it is not necessarily a realistic expectation to expect that a human rights trial will solve all of the complex problems associated with a society scarred by abuses of the past. A trial will likely not impact the small communities directly impacted by human rights abuses that are now riddled with social trust issues. Trials have a greater chance of directly and significantly impacting perpetrators, current government officials, and the governments of neighboring nations.

At times, the process of holding government agents accountable for mass human rights abuses has encountered more obstacles than support. Even today, fair trials and just sentences are far from guaranteed in Latin America. Since the end of civil strife in the region in the mid- to late 90s, most nations have attempted to hold some sort of human rights prosecution for government actors involved in state sponsored violence. Guatemala is no exception, and a study of its journey toward reconciliation in the post civil war era is indicative of the trials and triumphs of human rights prosecutions. Perhaps some day justice will cascade like a waterfall over Guatemala and each nation that has experienced breaches of fundamental rights of its people. Until then, patient leaders must invest in individual communities to heal relationships at the grassroots level,

and officials must maintain the primacy of transparency and truth while they hold past leaders accountable for their actions.

While the landmark verdict convicting Ríos Montt of genocide stands as a shining beacon of hope for human rights activists and scholars like Sikkink, the trial's real impact on the healing of the nation remains to be seen. The verdict did not change the fact that Guatemala is the ninth most dangerous place in the world because a homicide occurs almost every ninety minutes.²³ The trial has not changed the fact that 59% of its population lives below the poverty line, and it has not made small communities willing to trust one another despite their complex history.²⁴ Working in one of Guatemala City's 'red zones' this year, an area known for its violence and extreme poverty, I asked a woman I met about the peace in Guatemala after the 1996 peace accords. "Peace?" she scoffed. "There is no peace in Guatemala. We live in the valley of the shadow of death."²⁵

Perhaps a peace treaty has been signed, but since 1996 gangs have replaced guerrilla bands, and corrupt politicians and police officers have replaced dictators. For the poorest and most vulnerable, this court case is meaningless. To the majority of Guatemalans that do not participate in government affairs, the case is simply another example of the government's empty promises. The vulnerable will continue to be oppressed by the strong, and the two sides have no reason to trust one another, and no

²³ "The World's Most Dangerous Cities," *The Economist*, March 31, 2017, <https://www.economist.com/blogs/graphicdetail/2017/03/daily-chart-23>.

²⁴ "Current Poverty Rate in Guatemala," *The Borgen Project* (blog), August 8, 2017, <https://borgenproject.org/exploring-poverty-rate-in-guatemala/>.

²⁵ Conversation with Mayra González (resident of Guatemala City), March 5, 2018, Guatemala City, Guatemala.

incentive to build stronger communities. The question remains, are trials worth the challenges they entail?

Contemporary Implications

Challenges, both domestic and international, are endemic to human rights trials, given their high-risk nature. As in Guatemala, inconsistent verdicts and the lengthy process of building a strong enough case to convict a well-known war criminal is not uncommon in the rest of the region. Human rights groups that have sought justice for victims in various countries in Latin America have faced death threats, torture, kidnappings, and bureaucratic resistance and barriers at every step. It seems as though the problem lies in the pattern of behavior present among perpetrators of human rights abuses. Individuals that have committed human rights violations have already weighed the options and determined that their actions are or ought to be exempt from the law. Every decision made following the initial decision to violate the fundamental human rights of their citizens is colored by that logic. If leaders are not immediately held accountable for misdeeds, it is almost impossible to change their own perspective on their actions because they have remained above the law for so long. It is uncomfortable and unfamiliar to be subject to the power of a competing branch of government, and abusive leaders tend to respond to the pressure in the only way they know how: they attempt to continue to evade the rule of law.

Many former government officials and heads of state retain significant influence and power that allows them to impede the judicial system and even obscure evidence that would implicate them or their regime. Ongoing efforts by these individuals to cover up

the misdeeds of the past and use force in order to keep sources that might implicate them hidden from the public eye continue to obscure the truth and delay justice.

A recent example of this effort to obscure the truth in Guatemala is an ongoing situation with an archive that was discovered a few years ago in Guatemala City. After the explosion of a bomb left over from the civil war near the police building, city officials began inspecting the area for other leftover bombs and hazards. In this search, they unearthed the records of the former Guatemalan National Police force, which implicated the former government in kidnappings, murders, and forced disappearances during the civil war.²⁶ The archive they found is stuffed with papers as trivial as parking tickets and as grave as assassinations. The government has been working in conjunction with a US-based nonprofit to sort through the paperwork and use any relevant evidence to hold former officers accountable for human rights violations committed during the war. Their work has been slow, but has already uncovered documents pertaining to disappearances and murders that implicate particular officers and have allowed current officials to indict them and begin proceedings against alleged perpetrators. Archivists have faced challenges in this process, however, as there has been at least one attempt to firebomb the archive, and the wife of the nation's ombudsman for human rights was kidnapped and tortured.²⁷ To destroy evidence, it would seem to those at risk of prosecution, is to destroy the chance of being held accountable for past actions. If violence and forced silence worked in the past, it must be the only way forward now.

²⁶ "Ríos Montt Convicted of Genocide and Crimes Against Humanity: The Sentence and Its Aftermath," accessed March 14, 2018, <https://www.ijmonitor.org/2013/05/rios-Rios-Montt-convicted-of-genocide-and-crimes-against-humanity-the-sentence-and-its-aftermath/>.

²⁷ "A Human Rights Breakthrough in Guatemala."

The story of the archive and the struggle to uncover the truth demonstrates the resistance present in many Latin American nations to a full reckoning with the past. It may seem as though a trial, a truth commission, or even a community based creative peace process is all that would be necessary to resolve many of the issues nations in the region are facing in democratic development. The reality, however, is that most nations face immense resistance on many levels- from members of the old regime, former members of the opposition, and other affiliated groups that fear the divulgence of the truth to the whole of society.

CHAPTER FOUR

Creative Peace Efforts in Guatemala

Three Models of Creative Peace in Guatemala

Chapter two outlined an alternative peace process termed by scholar John Paul Lederach the creative peace process. As previously explained, the creative peace process can operate outside of governmental control and could potentially be used as a supplement to other transitional justice mechanisms such as truth commissions and human rights prosecutions. In Guatemala, various national and international groups have implemented several types of creative peace processes. In this chapter I will highlight three variations of the creative peace process as they have been manifested in the Guatemalan post-conflict peace process.

While the collection of evidence and preparation for the trial of Ríos Montt and his associates took many years to finally culminate in a trial, there are several programs in Guatemala that have been ongoing since the beginning of the peace process in 1996. Such programs are mostly extra-governmental, but some have seen government sponsorship or support of their community reconciliation work. Programs not involved in complex legal processes or cumbersome governmental oversight have the potential to have a stronger impact at the local level than large human rights prosecutions that take place at the macro level. In Guatemala particularly the balance of community reconciliation and mediation programs with the national human rights trials has highlighted the key differences between the two approaches to peace after conflict and transitional justice more generally.

Various groups in Guatemala have implemented programs consistent with John Paul Lederach's methods of the Christian creative peace process in the wake of the peace accords of 1996. Most initiators of this type of reconciliation method have come from within the Catholic Church and Mennonite nonprofits. Beyond religious organizations, however, international bodies such as the United Nations and Organization of American States have also taken part in creating peace building programs in Guatemala and the surrounding region. The religious communities have initiated support groups, community strengthening projects, and truth-telling forums that foster dialogue between community members that suffered on both sides of the civil war. The international government organizations tend to focus on research and truth telling that leads to policy recommendations. These remedies often manifest themselves as truth commissions, research studies, or policy memos with recommendations for local government officials. These types of programs are often small in scale, but have the potential to significantly impact the lives of participants, especially in regards to their relationships with others in the community.

Lederach explains that there are several stages a post-conflict nation must pass through in order to promote stronger relationships. As Julie Hart of Mennonite Central Committee states, "the process of sustainable peace is about rebuilding broken relationships".¹ To that end, the Catholic dioceses in Guatemala have formed concerted efforts since the early 2000s to foster reconciliation, truth telling, and forgiveness in

¹ Julie Hart, "Grassroots Peacebuilding in Post Civil War Guatemala: Three Models of Hope," *Mennonite Life* vol. 60 no. 1, no. March 2005 (March 18, 2014), <https://ml.bethelks.edu/issue/vol-60-no-1/article/grassroots-peacebuilding-in-post-civil-war-guatemala/>.

communities. There are three main models that the Guatemalan church and other International non-governmental organizations have used in attempt to bring healing and reconciliation to the scarred communities in Guatemala. First is the Catholic Church's Trauma Healing Project. Launching its own investigation into the human rights violations and violence that took place during the civil war, the church compiled a report (The Recuperation of Historical Memory Report) and built a program responsive to the needs identified within that report.² The resulting program established small groups led by trained professionals that would lead rehabilitation and self-help sessions for victims of torture and other wartime violence.³ The groups meet regularly within the dioceses most heavily impacted by the war and provide a variety of services including exhumation and proper reburial of relatives and loved ones, reflection, and group and individual counseling. The program has also begun training community leaders as mental health promoters that can provide for the care of many who are suffering from Post Traumatic Stress Disorder. One key element of these small groups was their lack of professional leadership. In many rural communities, where violence was most intensely concentrated during the war, there is no access to professional mental health treatment due to a more general lack of health professionals. These groups have proved a versatile model that can function in a variety of settings to provide a much-needed outlet for victims of abuse to share their suffering in a healthy and supportive forum. Despite the lack of formal therapy in such groups, the church has found that the simple act of sharing one's story

² Jeffrey Haynes, *Routledge Handbook of Religion and Politics* (Routledge, 2008).

³ Ibid.

with a sympathetic group and learning that others feel similar pain can be a cathartic and healing experience.⁴

This particular approach is also self-sustaining and extremely efficient. The church provides the initial training of group leaders before sending them into their respective communities for group leadership and may pay any startup fees associated with initiating the meeting of the group. Once groups have begun and formed strong relationships, however, they require little to no more funding or support from the church that provided the initial training. Relying on the relationships they have built, these groups have all the tools they need to be effect agents of change in their communities. If groups are able to form strong relationships between members and meet regularly to discuss important issues, they will attract the attention of other community members, which could have a multiplying effect locally. In evaluations of the project, researchers discovered that the only weakness of this program is that it has not reached a very large proportion of the victims affected by wartime trauma. So far, the program involves approximately 10,000 participants, which is barely a fraction of those affected by the war.⁵ Though there are limitations to this type of peace process, small trauma groups provide a low cost solution that can yield significant, albeit slow, results.

The second model originated from the Mennonite Central Committee and seeks to provide education, post war healing, and a network for peacemakers in the region. The REDPAZ educational organization provides training in topics such as discrimination and genocide, creating communities of peace, social transformation, and many others focused

⁴ Ibid.

⁵ Hart.

on rebuilding strong and peaceful communities in a post-conflict society. Students from diverse communities and backgrounds learn together and form relationships outside of the classroom that can enrich their understanding of peace and the meaning of loving their neighbor. This program aims to equip young leaders with the tools they need to return to their respective communities and foster positive change. Similar to the small groups, this approach focuses on an initial investment of time and resource in hopes that students will multiply the effects of that investment many times over by expanding the reach of the organization through education. At this time, the program has only had approximately 150 students, however, indicating that the reach of the program is not expansive enough to include all who would like to participate or who might be qualified to participate.⁶

The final model is that of the international governing bodies such as the Organization of American States (OAS) and the United Nations (UN). The OAS created a subcommittee following the conclusion of the Guatemalan civil war to regulate and track the application of the peace accords and ensure that peace was maintained. Lacking police powers or the command of a standing army, these two international bodies worked in the area in which they could influence Guatemala's peaceful development most; inter-status dialogue. The OAS and UN jointly started several series of dialogue sessions between members of the government and members of communities on topic such as rural development, rights and identity of indigenous people, economic development, and modernizing the armed forces.⁷ One of the most important and groundbreaking aspects

⁶ Ibid.

⁷ Hart.

of the writing of the peace accords following the conclusion of the civil war was the intentional involvement of “representatives from diverse sectors of the Guatemalan public in defining the substantive agenda of the peace talks”.⁸ In keeping with the emphasis on diversity of opinion, the UN and OAS followed this same model in creating these dialogues, inviting police officers, university professors, agricultural workers, army officials, and participants from many other diverse backgrounds. The meetings took place in three-hour blocks once per week and each included over one hundred participants. Groups would be assigned several discussion questions, discuss as a large group, break into smaller groups, and eventually settle on a consensus statement that would then be shared publicly.⁹ This setting of placing people from different walks of life in the same room centered on the same discussion helped to rebuild trust between all members of society. Inherent in these groups were individuals that had fought on both sides of the war. Bringing them together to have dialogue about what it looks like to live together in a peaceful society had significant impacts on the establishment of mutual social trust. Not only were members of previously opposing sides interacting with one another, they were working together on tangible solutions to build a peaceful future in their shared nation.

⁸ Enrique Alvarez and Tania Palencia Prado, “Guatemala’s Peace Process: Context, Analysis and Evaluation,” Conciliation Resources, February 7, 2012, <http://www.c-r.org/accord/public-participation/guatemala-s-peace-process-context-analysis-and-evaluation>.

⁹ Hart, “Grassroots Peacebuilding in Post Civil War Guatemala.”

Guatemalan Truth Commission

It is worth noting that much of the work being done with human rights prosecutions and in the creative mediation and peace process in Guatemala depends upon the information that was discovered through the nationally sponsored truth commission, the Commission for Historical Clarification. The commission was formed in 1994 with the signing of the Accord of Oslo (the peace accords that ended the Guatemalan Civil War) and operated for three years collecting testimony and information from thousands of victims and witnesses affected by the indescribable violence Guatemala experienced during the civil war. This commission was extremely effective in its ability to collect and analyze large amounts of information. The commission was not permitted to name any potential perpetrators they investigated, however, given the pressure from society and the government on those involved with the human rights prosecutions to not accuse certain influential members of society, this mandate made it easier for the commission to tell the truth about what happened. The commission was made up entirely of UN-selected experts that had no ties to Guatemala. This resulted in a panel that was unbiased, but also lacked the language and cultural familiarity to be trusted by many of the Guatemalans they encountered. Some victims wondered if a committee of outsiders that only spent six months investigating a fourteen-year conflict that did not even have the power to name perpetrators could never make any real difference.¹⁰ This suspicion and lack of trust could have hindered the commission's collection of evidence, however, their data paved

¹⁰ "Roberto Cabrera, Guatemala – The Brudnick Center on Violence and Conflict," accessed April 6, 2018, http://www.northeastern.edu/brudnickcenter/past_conferences/third_world_views-2/transcriptions-of-presentations/roberto-cabrera-guatemala/.

the way for important steps in transitional justice that would be carried out by Guatemalans in years to come.

Behind the veil of anonymity, the commission revealed the key information that has been used in the human rights prosecutions and the aforementioned community-based reconciliation projects such as the fact that the government perpetrated 93% of the violence and that 83% of victims were Mayan.¹¹ After compiling the report, the commissioners presented it to the national government on February 25, 1999, providing recommendations and summarized findings to government officials and members of congress. Calling for judicial reform as well as reparation and efforts dedicated to remembrance at the national level, the commission's report was historic among truth commissions internationally due to the sheer amount of information collected and findings presented. The president issued an apology for the government's role in the violence and created a national Day of Dignity to commemorate victims to be celebrated annually on February 25.¹²

Nineteen years after the presentation of findings from the commission, the government has yet to respond to the other recommendations. Judicial reform and reparations to victims would be excellent progress for Guatemala; however, there has been little development on either front. The ongoing prosecutions against various members of the military and government officials during the most intense period of violence hold hope for the possibility for victim reparations. While the slow government

¹¹ "Truth Commission: Guatemala," United States Institute of Peace, accessed March 27, 2018, <https://www.usip.org/publications/1997/02/truth-commission-guatemala>.

¹² Ibid.

response to the findings in the report is disappointing, the publication of a synthesis of so much testimony is extremely significant and paves the way for future advances in the reconciliation process in Guatemala. Without this landmark report, the human rights prosecutions would not have had enough evidence to begin a trial, and the community creative peace process programs would have lacked the public support and general information necessary to garner public participation in such programs. Guatemala's particular journey towards peace has benefitted dramatically from the presence of this commission, and it is likely that other nations in the region would do well to begin their peace process with an effective and thorough truth commission similar to the Commission for Historical Clarification.

Following closely on the heels of this report, the Catholic Church issued its own report, "The Recovery of Historical Memory," which collected the personal testimonies of victims, resulting in the documentation of over 55,000 human rights violations.¹³ This report gave a voice to the victims and provided 1500 pages of raw material for education and reconciliation purposes. Coming after the Commission for Historical Clarification, this report reinforced their findings and published abridged versions that were more accessible to the common citizen and useful for starting conversations in a community setting.

Both of these attempts to report the truth and consolidate a coherent narrative of the events that took place during the course of Guatemala's civil war are key pieces of the peace and reconciliation process there. In any post-conflict society, the presence of a clear and publicly accessible version of events provides the basis from which transitional

¹³ "Roberto Cabrera, Guatemala – The Brudnick Center on Violence and Conflict."

justice efforts will flow. An effective report can streamline the evidence for a human rights prosecution discovery process and provide the materials necessary to begin important conversations at the community level to begin the creative peace process.

Compatibility with Lederach's Model

Each of these models aligns well with Lederach's theory of the creative peace process as each provides a space in which members of a community that used to be enemies fighting on opposite sides of a civil war have the opportunity to work together on crafting a new and better future. Providing victims with the space to be heard and express their emotions validates their experience, assists them on the journey toward healing, and encourages them that society cares about the wrongs they have suffered in the past. These programs exemplify the ways in which communities can leverage soft power to make progress toward positive social change. It is likely not a good idea to encourage community members to take justice into their own hands, but the provision of an outlet in which each side can share and receive support from the community can be invaluable to the strengthening of democracy at the grassroots level.

Each of these programs also focuses on the relational aspect of reconciliation at the community level. Lederach's theory emphasizes the web of relationships between members of a community, and encourages participants in the creative peace process to see every member of a community as essentially and inextricably linked to themselves as well as every other person. Programs that place individuals from different sectors of society with diverse backgrounds together and encourage them to focus on working together to solve the issues they see present in their

society have the potential to create and strengthen the web-like bond Lederach encourages. Simply placing individuals that were formerly enemies in the same room together and having a discussion about the ways in which life can be improved for all citizens has great potential to break down barriers of mistrust. The social stratification that was in place prior to the conflict and remains fairly strictly in place in this post-conflict phase has presented a particularly difficult barrier to reconciliation in Guatemala. Members of the same ethnic group or political leaning tend to live in the same locations and surround themselves with people similar in status to themselves. There is often little interaction between the lower and upper class, which can inhibit the development of strong ties across political and social lines. The aforementioned programs provide the necessary spaces that a trial might not otherwise provide in which members of separate classes are interacting on equal footing with an equal voice in the process. In a sense, the small group programs act as small democracies, simulating what it would be like to live in and participate in a small democratic state. Citizens practice having their voice heard and opinions considered while also listening to the opinions of others before considering what ideas and plans are best for the group as a whole. While there is little to no empirical data confirming this hypothesis, it is easy to imagine how such a microcosm of democracy could cultivate important civic virtues among victims and perpetrators in small communities

While they may simulate a government experience, one important aspect of these programs is that none of them require the direct intervention of the federal or local government. Local churches, nonprofits, and international bodies can implement these programs at a low startup cost; yet still effect a significant impact on national social trust

and reconciliation. While many of these programs have begun small, they are clearly sustainable and will only grow given more time and the accumulation of community interest as the reputation of the organization and the program improves. Currently, there is no empirical research available to indicate the precise impact of such programs on the social trust levels of participants before and after taking part in such a program, however, it is difficult to imagine that social trust scores could decrease from such collaborative activities. Given the potential politicization of the peace accords and the biases associated with the national government, the involvement of civil society and inter-governmental programs provides a much more reliable source of peace building that promotes a strong sense of community and the civic values necessary to promote wider democratic participation.

Given their low startup cost and potential to encourage the development of community understanding and civic responsibility, the grassroots creative peace process seems like an efficient solution to the need for social trust for the functioning of democracy. Without direct government involvement, the programs have little to lose in implementing small discussion groups or group leadership training sessions, but have much to gain from the potential for participants to become actively engaged in improving their community. If even a few group members from the peer counseling program and health promotion group can overcome their distrust of the government or former members of the opposition in order to work for the common good of society, the program is worth it and should be counted a success.

CONCLUSION

The peace that Christ preached, according to Christians, is the peace of *shalom*. That is, the peace of Christ is understood not only as the absence of war, but the product of *justice* and *harmony* in the relationships between men, God, and creation. It is a peace that conquers traps, slavery, and death. It is not the peace you would find in the cemetery- the peace of inaction, silence, death, as Guatemalan Christians have expressed, but it is the peace that is the fruit of justice that is reached in the recognition of the brokenness of humanity.¹

It is this idea of *shalom* peace that I hope to promote with this thesis. In this thesis I have addressed and evaluated two potential solutions to the need for transitional justice in Latin America. Human rights prosecutions offer a national, justice-centered approach that can lead to lower rates of domestic repression, stronger judicial institutions, and increased respect for human rights internationally. Despite these benefits, human rights prosecutions fail to address the human need for forgiveness and reconciliation at the community level and can cause deeper divisions that cannot be healed within the confines of a courtroom. The creative peace approach, conversely, offers a community-centered, faith-based approach to transitional justice, allowing community members to build relationships based on renewed trust. This approach does not require involvement of the state, which makes it a low-cost and replicable program, however, the community style of this transitional measure makes it inherently unlikely to influence national public policy or areas other than the immediate community.

The insufficiency of either approach alone to eradicate the specter of human rights abuse in Latin American nations suggests that collaboration between these two

¹ María Teresa Ruiz, *Los Cristianos Y Los Derechos Humanos En Guatemala*, Colección Análisis, trans. Rebecca Voth (San José, Costa Rica: DEI, 1994).

approaches is necessary. The strengths of each transitional justice measure suggest that a combination of the two is possible, and, perhaps, preferable to the operation of one individually. I propose that successful and fair human rights trials of key high-ranking individuals alongside many opportunities for community members to engage in creative peace settings would make for the ideal recovery for a transitioning nation in Latin America. Guatemala's example has the beginnings of a successful transition, yet is lacking a standing successful conviction of a high-ranking official, and could expand the reach of the various non-governmental organization-supported peace groups to include more citizens. Latin America, in its third wave of democracy, has the potential to strengthen its democratic institutions and enjoy greater freedom and economic success when it operates as a successful liberal democracy. This development will not occur without increased respect for human rights that can only result from reconciliation with history.

In Guatemala specifically, the government needs to intensify its focus on prosecuting key leaders implicated in the human rights violations committed during the course of the civil war, and nongovernmental organizations must increase the availability of alternative creative peace methods. The trial of Ríos Montt must proceed unabated by the dictator's death. Despite this setback, a fair domestic trial could serve as a symbol of hope for human rights prosecutions globally. Equipped with thousands of pages of reports and collections of victim testimony, the judicial branch has all of the resources it needs to arrest and prosecute leaders complicit in genocidal killings and crimes against humanity. The recommendations published in the Commission for Historical Clarification must be implemented and judicial reform must become a priority if victims

and perpetrators are to have a fair trial in the wake of the court's failure to convict and punish Ríos Montt. Attempts to try high-ranking officials and the successful convictions of several officers indicate progress, yet the failure to convict the highest-ranking official complicit in acts of genocide indicates a need for further action. The current community efforts to build peace and foster reconciliation and forgiveness at a local level appear to be operating successfully, and they must be expanded to include all communities affected by the violence of the civil war. The church ought to increase its presence in the communities most affected by violence (particularly the Ixil triangle and the surrounding region) and leverage its social influence to promote healing and reconciliation that will encourage citizens to take a more active role in their democracy. The groundwork that has been done to collect truth and testimony coupled with successful efforts at peace building that have already taken place indicate that progress in Guatemala's transitional process is both possible and necessary.

Further study on this topic could include a deeper inquiry into the relationship between the creative peace process and its empirical outcomes on society. There is currently no comparative study that indicates what impact groups, such as those mentioned in chapter four sponsored by the Guatemalan Catholic Church, have on important democratic indicators such as social trust, voter participation, and government approval. An analysis comparing two communities both similarly impacted by human rights abuses with one that implements creative peace methods and one that does not could reveal the specific outcomes caused directly by the presence of a creative peace program. Further analysis could also be provided on the impacts of human rights prosecutions as they relate to the rank of the individual on trial. Perhaps it is the case that

the higher ranked individuals on trial have a greater impact on repression and deterrence rates. A comparative analysis of cases involving lower ranking officers and high-ranking government officials or heads of state could reveal any nuances that result from the trials of different ranking individuals.

More important than the procedural specifics or the empirical results of transitional justice measures is the presence of real and lasting peace in a society that has suffered abuse and domination at the hands of terrible evil. The ultimate aim of this thesis has been to explore and propose ways in which peace can reign in Latin America. In light of the dark history of many nations in the region, it is only the presence of inexplicable hope that can result in a peace that passes all understanding. *Shalom* peace comes from Christ alone, and gives us hope that death is conquerable, the darkness must give way to light, and justice and mercy can coexist to result in peace.

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