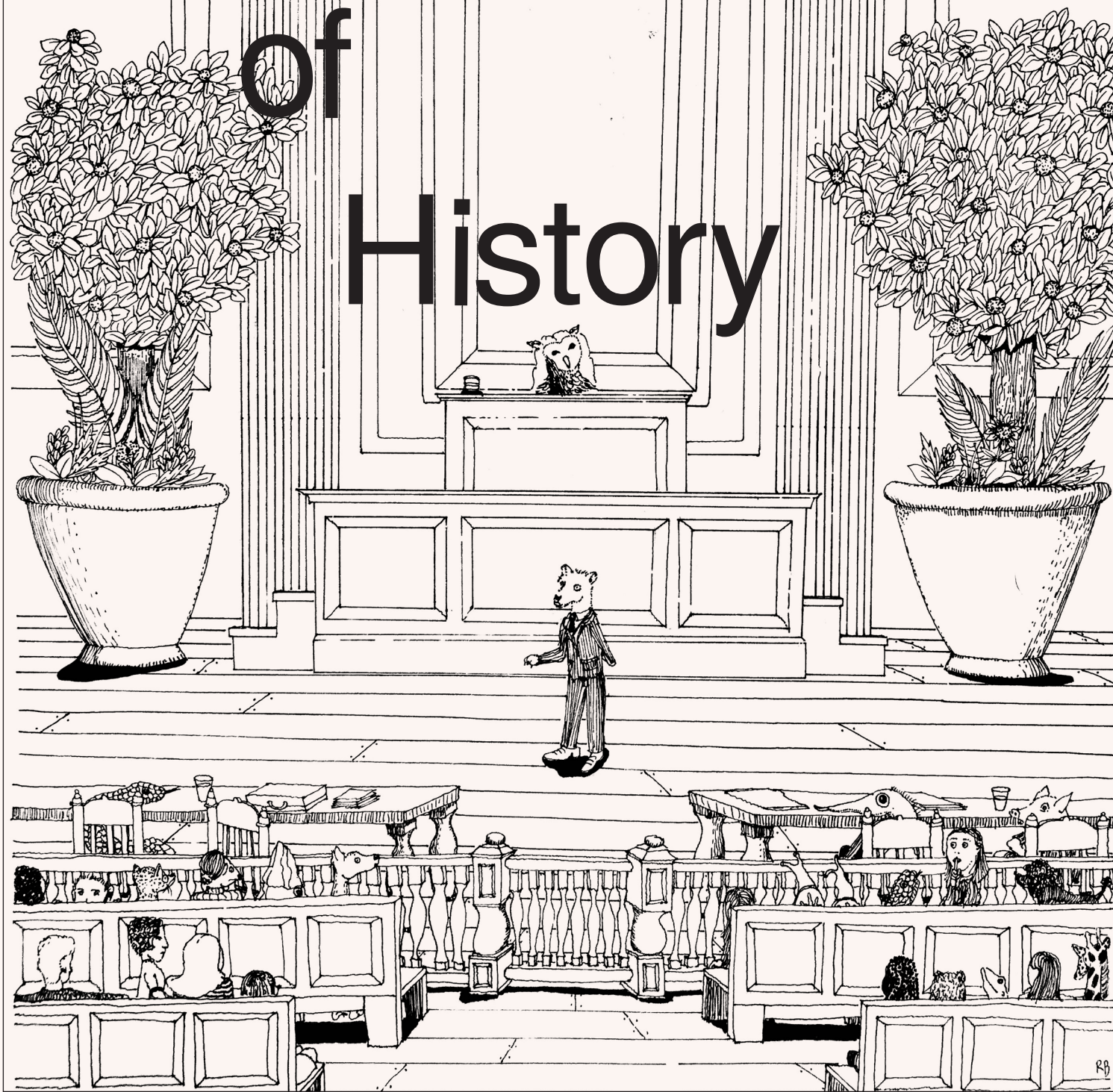


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Editors' Note

Dear Readers,

At the time of this issue's publication, we find ourselves grappling with difficulties in the present and uncertainty regarding the future given the COVID-19 pandemic. In terms of the Brown Journal of History alone, the truncation of Brown's semester forced us to delay publication by several weeks, move all of our staff meetings online, and limit publication of the Journal to online for the time being. The impact of these difficulties, however, pales in comparison to that of the personal hardships that our authors, editors, collaborators, and their loved ones have endured over the past few months. Therefore, we would like to dedicate this issue not only to our staff, for their sacrifices for our little Journal in these challenging circumstances, but also to all of the members of the Brown community for continuing their work in these trying times.

Each of the six essays in this year's issue were selected for excellent historical analysis and exemplary engagement with primary sources and the existing historiography. While they differ in terms of analysis, theme, and geographic and temporal bounds, they all touch on the contours of change during historical crises, making them particularly relevant to our present moment. We are indebted to our advisors who have given us guidance for this endeavor. In an attempt to preserve a sense of normalcy and elevate exceptional scholarship, we are proud to present to you the fourteenth edition of the Brown Journal of History.

Sincerely,

Rose Lang-Maso '20

Noam Bizan '22

Jacob Alabab-Moser '20

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ACHIEVING AGENCY THROUGH OWNERSHIP

*How Antebellum Mistresses
Derived Power from the Sexual
Exploitation of Enslaved Women*

by Aliyah Blattner

Abstract

Drawing from the slave narratives of Harriet Jacobs and Louisa Picquet, this project reimagines the archival conception of the Antebellum mistress in relation to economic incentives, cultures of sexual violence, and the ideal of southern, white womanhood. The perception of white women as non-violent participants in slavery both negates the agency of white women during this period and erases the sufferings of enslaved peoples at the hands of their abusive mistresses. Additionally, the economy of slavery as it related to capital, labor, and ownership was equally as relevant to white women as it was to white men and it ensured mistress’ economic independence. White women were not motivated by their shared sufferings at the hands of patriarchy to defend enslaved women from the pursuits of rapists; instead, mistresses perceived the rape of enslaved women as a threat to their own power within the home and an invalidator of their marriages and their ability to fulfill a standard of idealized white womanhood. Mistresses acted in ways to protect their own agency and reputation, not to protect black women from rape. Finally, the efforts of mistresses to fulfill the expectations of an idealized white womanhood ultimately resulted in paternalism and performative abolitionism, reinforcing a dynamic of ownership and possession of enslaved women.

“This bad institution deadens the moral sense, even in white women,” remarked Harriett Jacobs in her self-authored narrative *Incidents in the Life of a Slave Girl Written by Herself* (1861).¹ After detailing her mistress’ extensive cruelty in response to her master’s repeated attempts at rape, Jacobs identified how the treatment of enslaved women by white mistresses, while motivated in some ways by shared suffering at the hands of the patriarchy, functioned primarily as a mechanism through which white women aimed to achieve greater power and agency within the home.² Instances of similar violations appear throughout the archives—white women exploited enslaved women to gain social and economic power during the Antebellum Era. The plantation home existed as a microcosm of society, where the white mistress ruled with complete authority over enslaved women in the same way that the master ruled over enslaved laborers in the plantation fields. The abuses committed against slaves in the domestic sphere, though, constituted a more intimate violation, as it compromised the sanctity of the home and prevented enslaved women from accessing a space where they could exist in privacy or with dignity.³

Within the historiography of slavery, white women are frequently portrayed as passive enforcers of hierarchy within plantation life. This false narrative is predicated by an assumed or constructed belief that white women were either incapable of committing the acts of violence so heavily detailed in the archives, or that instances of cruelty were an effect of broader gendered oppression experienced by all women, black and white, under slavery.⁴ But white women were masters in their own right.⁵ Additionally, by operating exclusively within the landscape of the home, the veil of privacy offered by closed doors led to an absence of accountability for the violent behaviors of white mistresses. The suffering of white women under slavery emboldened mistresses to mistreat their slaves as a source of economic and social independence.⁶

Exploring the accounts of Harriet Jacobs and Louisa Picquet, this project aims to reveal how sexual violence functioned within the lives of enslaved women during the Antebellum Era. Writing under the pseudonym of Linda Brent, Jacobs reluctantly published her narrative in 1861 at the behest of abolitionist editor Lydia Maria Child, twenty years after initially recording her story privately.⁷ Specifically, Jacobs’ writings identified the complex relationships between enslaved women and their white mistresses, exploring the influence of the peculiar institution on the ways women supported, and sabotaged, one another in navigating the intersecting systems of oppression that ruled the plantation home. Jacobs disclosed within her narrative the unique horrors that women faced as both mothers and victims of sexual violence under slavery, and she appealed to white women to advocate for abolition at the outbreak of the Civil War.⁸ Conversely, Picquet’s illiteracy barred her from penning her own narrative; instead, northern reverend and abolitionist Hiram Mattison transcribed

her account, focusing on her experiences as a white-passing slave and her relationship to Christianity as a mechanism of personal liberation.⁹ Both Jacobs and Picquet are unique in their perspectives as the archives are bereft of sources documenting relationships between white and enslaved women from the perspective of the slave. The emphasis that both Jacobs and Picquet place upon white women as key players in the incitement and treatment of rape in the domestic sphere necessitate further investigation of the ways that white women derived power from the sexual exploitation of their slaves.

Drawing from the work of Thavolia Glymph and Stephanie Jones-Rogers, historians whose research investigates the economic, social, and political positioning of white and enslaved women within the plantation home, this project aspires to build upon their arguments as articulated in their works *Out of the House of Bondage*¹⁰ and *They Were Her Property* respectively.¹¹ While Glymph’s scholarship focuses on disrupting the gendered narrative of violence by reimagining white women as capable and documented insitigators of physical and psychological torture,¹² Jones-Rogers focuses on assessing how the economics of slavery as a capitalist institution motivated slave mistresses to posssess and exploit their slaves.¹³ Based on their research, my project hopes to intervene in the portrayal of white women as protective agents against the threat of rape. White women benefitted economically and socially from the spoils of slavery, and while abolitionist sentiments in the South did exist in certain isolated cases, the vast majority of white women relied upon the labors and sufferings of black women to gain power in their communities. Relying upon Glymph’s assertion of white women as enactors of violence in the plantation home and Jones-Rogers’ articulation of the motives of white women to support slavery as an avenue through which to derive systemic power, my project applies this scholarship to the context of sexual violence experienced by enslaved women.

My project will aim to define the relationship between Antebellum mistresses, enslaved women, and white masters as a system of triangulation. To achieve power within the constraints of the patriarchal plantation model, white women violated the agency of enslaved women by physically, sexually, and psychologically abusing their slaves. Relationships between white women and enslaved women functioned on an economic and social level as a practice of ownership. The labor, bodies, spirituality, and sexuality of black women were possessed and exploited to serve the needs of white mistresses. Much of the physical violence that mistresses performed emerged from the same motivations that drove white masters to sexually violate their slaves—a reinforcement of complete and total ownership over the life and agency of another person. With reference to Jacobs’ and Picquet’s experiences, this project will reimagine how economic incentives, sexual violence, and the ideal of southern, white womanhood all

- 9 Louisa Picquet, *Louisa Picquet, the Octoroon: or Inside Views of Southern Domestic Life* (New York, 1861), 5-53.
- 10 Glymph, *Out of the House of Bondage*, 1-17.
- 11 Jones-Rogers, *They Were Her Property*, ix-xx.
- 12 Glymph, *Out of the House of Bondage*, 1-31.
- 13 Jones-Rogers, *They Were Her Property*, ix-xx.

1 Harriet Jacobs, *Incidents in the Life of a Slave Girl Written by Herself* (Boston, 1861), 57.

2 Thavolia Glymph, in *Out of the House of Bondage* (New York: Cambridge University Press, 2008), 20.

3 Glymph, *Out of the House of Bondage*, 3.

4 Glymph, 26.

5 Stephanie E. Jones-Rogers, *They Were Her Property*, (New Haven and London: Yale University Press, 2019), xv.

6 Jones-Rogers, *They Were Her Property*, xvii.

7 Jacobs, *Incidents...*, 5-8.

8 Jacobs.

Economic Influence

contributed to the evolution of a complex, abusive relationship between white and enslaved women during the Antebellum Era.

Slavery existed first and foremost as a system of ownership. Economic incentives drove white women to occupy and exploit the labors and bodies of black women for capital gain.¹⁴ An example of this dynamic existed in Jacobs’ depiction of her grandmother’s relationship with her mistress. The daughter of a South Carolina planter, Jacobs’ maternal grandmother was highly valued by her mistress for her intelligence and overall proficiency at domestic tasks.¹⁵ Jacobs describes a deal struck between her grandmother and her grandmother’s mistress early on within her narrative, where, after completing the labors of the household during the day, Jacobs’ grandmother was granted permission to bake crackers for sale at night.¹⁶ The profits earned through these midnight baking sessions were saved over time with the intent of later purchasing her children’s freedom.¹⁷ However, when Jacobs’ grandmother’s mistress requested a loan for three hundred dollars to purchase a silver candelabra from the grandmother’s cracker baking profits, “trusted solely to her honor” that she would be repaid, the agreement was violated when her mistress died without repaying her debts.¹⁸ Jacobs asserted that the mistresses’ descendant, Dr. Flint, “retained[ed] the silver candelabra, which had been purchased with that money...[to] be handed down in the family, from generation to generation.”¹⁹ This anecdote exemplified one of the many ways that white mistresses relied upon the labor of enslaved women to bolster their own influence and power within the home.

While an argument can be made that the mistress’ desperation to purchase the candelabra, as implied by Jacobs’ word choice of “begged,” resulted from the expectations of white women to run impeccable and materially substantiated households, Jacobs identified that, regardless of motive, white mistresses exploited enslaved women as avenues through which to accrue wealth. Additionally, by addressing the generational benefits of this exploitation, Jacobs reveals how the labors of enslaved women served to provide mistresses with increased economic independence. The ownership and treatment of enslaved women by mistresses paralleled the same systemic and multi-generational benefits observed in masters’ exploitation of slave labor on the plantation. The monetary gain derived from farming labor that allowed white southern families to live off generational wealth mimicked the longevity of the candelabra in Jacobs’ narrative. Furthermore, this example illustrated how white mistresses took advantage of their slaves’ labor, as similarly exploited by white masters, to economically profit from slavery.

Mistresses derived other economic powers from the ownership of slaves outside of the direct exchange of money. Specifically, white women

wielded the ownership of property as an influencing factor in attracting potential husbands and achieving economic independence within existing marriages. Throughout the Jacobs narrative, Dr. Flint hid behind the excuse that Jacobs did not truly belong to him, but rather, to his daughter Emily as a way to justify his unwillingness to free or sell her.²⁰ However, when Emily came of age and married Mr. Dodge, she wrote to Jacobs and appealed to her to return from the North as her slave. At this point, Jacobs has been living in New York as a fugitive slave for many years. Emily states in her letter, “I have always been attached to you, and would not like to see you the slave of another, or have unkind treatment,” evoking a false emotional tie to convince Jacobs to return to a life of bondage.²¹ Additionally, she concluded her letter by reemphasizing, “I remain your friend and mistress,” coloring dynamics of ownership with the nostalgia of family and sentimentalism.²² Within nineteenth-century marital relations, the wife’s property was transferred to the husband, creating incentives for white men to marry women who owned slaves or land.²³ Emily’s letter reveals the ways white women were economically dependent on the labor and ownership of black women. Her insistence that Jacobs return home early on within her marriage to Mr. Dodge indicates a recognition of the risk of her own ephemeral power without the ownership of slaves.

This idea is further illuminated by Mr. Dodge’s travels in New York. Mr. Dodge inquired, “Where’s that negro girl, that *belongs* to my wife,” communicating how that which belonged to his wife, by default, belonged to him.²⁴ In this capacity, Mr. Dodge was inquiring after his own property. This example reflects an important distinguishing factor of relationships between white and black women under slavery. Jones-Rogers specifically reflects that white mistresses’ “fundamental relationship to slavery [was] a relation of property, a relation that was, above all, economic at its foundation.”²⁵ When applying her understanding of the economic motives that guided the actions of white mistresses to the fictitious depiction of emotional attachment in Emily’s letter, it is revealed that Emily employed sentimental rhetoric to mask the deeper and far more insidious hierarchy of power within the plantation home. Jacobs existed as property to be owned, a source of capital and power that protected Emily from the whims of her husband. By identifying this motive, the archive shifts to reflect white female ownership of black women as a perceived protective factor against the indomitable power of the husband. However, this example also illustrates how the arbitrary line erected between masters and mistresses remained obsolete in regards to their economic motives and benefits from slavery. White men and women alike relied on the ownership of slaves to increase and fortify their personal power, which existed as an economic commodity, both in terms of labor as well as in terms of property ownership.

14 Jones-Rogers, *They Were Her Property*, xviii.
15 Jacobs, *Incidents...*, 11-13.
16 Jacobs, 12-20.
17 Jacobs, 12-13.
18 Jacobs, 13-20.
19 Jacobs, 20.

20 Jacobs, 55.
21 Jacobs 280.
22 Jacobs, 280.
23 Jones-Rogers, *They Were Her Property*, xiii-xiv.
24 Jacobs, *Incidents...*, 297. Emphasis added.
25 Jones-Rogers, *They Were Her Property*, xii-xiii.

Sexual violence disrupted the ways that enslaved women existed as a source of power for white mistresses; their presence within the home threatened the sanctity of marriage between the master and the mistress and provided white women with incentives to intervene in the advances of their husbands on their slaves.²⁶ With respect to rape culture, both white and enslaved women suffered as a result of the violent appetites of white masters; however, white mistresses took out their frustrations over their husbands' sexual promiscuity on enslaved women through acts of cruelty and violence to reestablish a sense of control and security within the home. Jacobs detailed her interactions with Mrs. Flint within her narrative, focusing on how her mistress' "jealousy" influenced both the protections she received and the suffering she experienced under slavery.

Throughout the narrative, Dr. Flint's fixation on Jacobs as a sexual conquest encouraged Mrs. Flint's resentment of Jacobs as she symbolized a threat to both her marriage as well as her control within the home.²⁷ Jacobs described Mrs. Flint in terms of her emotional range, stating, "She was not a very refined woman, and had not much control over her passions. I was an object of her jealousy, and, consequently, of her hatred; and I knew I could not expect kindness or confidence from her."²⁸ By specifically calling herself "an object" of jealousy and hatred, Jacobs acknowledged how Mrs. Flint never truly viewed Jacobs as an equal in womanhood; rather, Mrs. Flint reduced Jacobs' worth to that of a sexual object, stripping Jacobs of her sexual agency and ownership over her body, reasserting a hierarchy of power.

Rape and sexual violence functioned as a reminder of the limitations of the mistress' influence within the plantation household. Complete ownership over the bodies and sexualities of enslaved women became the master's jurisdiction, and the mistress was left with the shambles of a desecrated marriage and a deep-seated insecurity that she had failed to achieve the sexual standards outlined in the ideal of southern white womanhood.²⁹ Consequently, white women chose to abuse and degrade enslaved women, as opposed to protecting them from their husbands, in order to establish that, even if the master could override the voice of the mistress within the home, the mistress still existed as superior to her slaves.

Jacobs specifically identified within her narrative the frustration of Mrs. Flint in her husband's refusal to punish Jacobs.³⁰ Jacobs commented, "[Dr. Flint] had never punished me himself, and he would not allow any body else to punish me. In that respect [Mrs. Flint] was never satisfied."³¹ This communicates the relationship between physical violence and possession of the body as a tool wielded by white mistresses in the home. When Dr. Flint forbade his wife from punishing Jacobs, he asserted his own claim to Jacobs' body as being above that of Mrs. Flint. Jacobs later returned to this idea, commenting that Mrs. Flint "would gladly have me

flogged," which demonstrates Mrs. Flint's eagerness in resorting to violence to regain power over her slaves and her life.³² Furthermore, this example illustrates that white women not only explicitly sought to violently punish their slaves, oftentimes with less restraint than their husbands, but that they also directly drew power from the physical act of abusing the bodies of enslaved women.

Jacobs later documented a conversation with Dr. Flint, where in the midst of an argument, Dr. Flint proclaimed, "I have never allowed you to be punished, not even to please your mistress," as an appeal to Jacobs to have gratitude for his treatment of her.³³ When disrupting the narrative of white women as passive or non-violent participants in plantation life, it is important to acknowledge that even masters understood how crucial the physical punishment of slaves was to ensuring the power and agency of white women within the home. By explicitly forbidding Mrs. Flint from abusing Jacobs, Dr. Flint was asserting his own power over his wife, declaring that he alone could choose to exploit the bodies of enslaved people. Dr. Flint portrayed his wife as a sadist, communicating that the act of punishing Jacobs with violence would have "please[d] your mistress."³⁴ In this respect, black women existed as pawns to be manipulated in a game of power between the master and the mistress. Jacobs' autonomy, physically and sexually, was negated in the machinations of Dr. Flint as well as Mrs. Flint's desire to achieve ownership over Jacobs. Furthermore, the actions of white women in either diverting the attempts of masters to rape female slaves or in the physical punishment of female slaves for being victims of sexual violence reveals how white women were solely focused on protecting their own power and agency within the home, regardless of the sufferings of their female slaves.

When Mrs. Flint asked Jacobs to reveal the attempts of her husband to rape her, Jacobs documented Mrs. Flint's reactions, stating,

As I went on with my account her color changed frequently, she wept, and sometimes groaned. She spoke in tones so sad, that I was touched by her grief... her emotions arose from anger and wounded pride. She felt her marriage vows were desecrated, her dignity insulted, but she had no compassion for the victim of her husband's perfidy.³⁵

This moment of reflection is crucial. It provides a direct window into Jacobs' understanding of Mrs. Flint's struggle to reconcile how her own power and freedom could exist, both within her marriage and within the plantation home as a whole, if her husband had sought to claim ownership of the body of her slave.³⁶ The adoption of a "martyred" perspective indicates that white women were so completely concerned with their own sufferings and struggles at the hands of the patriarchy that they were not even aware of the feelings and sorrows of the violated slave.³⁷ Mrs. Flint

31 Jacobs, 51.
32 Jacobs, 55.
33 Jacobs, 56.
34 Jacobs, 56.
35 Jacobs, 53.
36 Jacobs, 49-57.
37 Jacobs, 53.

26 Glymph, *Out of the House of Bondage*, 26-27.
27 Jacobs, *Incidents...*, 49-57.
28 Jacobs, 53.
29 Glymph, *Out of the House of Bondage*, 21.
30 Jacobs, *Incidents...*, 49-57

treated Jacobs as a passive participant, an objectified player in the unraveling of her carefully cultivated position within plantation life.

The empathy that Jacobs expressed for Mrs. Flint is shocking when compared to the cruelty that her mistress afforded her even at the best of times when striving to circumvent sexual violence at the hands of her mistress’ husband. However, in her sympathies, Jacobs conveyed an underlying frustration with Mrs. Flint’s self-centered attitude, acknowledging that while her mistress played the helpless victim, in actuality, she retained a unique capacity to protect her slaves from the sexual advances of the master.³⁸ It was Mrs. Flint’s need to physically claim ownership of the bodies of her slaves through violence that exposed the ultimate parallel between the actions and desires of masters and mistresses. Both Dr. Flint and Mrs. Flint found power in the exploitation and occupation of enslaved women’s bodies; the only distinguishable difference was that Dr. Flint had the capacity to prevent his wife from actualizing her desires, ultimately reinforcing a gendered power dynamic that shaped the ways that enslaved women experienced sexual violence during the Antebellum Era.

However, when turning to the narrative of Louisa Picquet, a very different perspective emerges that details a contrasting relationship between white women and enslaved women within the context of sexual violence. At this point in Picquet’s adolescence, she was laboring for David R. Cook, her master, in a boarding house in Mobile, Alabama owned by the Bachelor family. While there, Picquet described her master’s continued attempts to lure her into rooms where she would be alone with Mr. Cook with the intent of raping her.³⁹ When Picquet confided in Mrs. Bachelor and Mrs. Bachelor’s sister, Mrs. Simpson, about Mr. Cook’s requests, they intervened and implemented protective measures to ensure that Picquet would not be put at risk by continuing to serve Mr. Cook alone.⁴⁰ Unfortunately, when Mr. Cook learned of these protections, he spoke harshly to Picquet. She recounted the experience, stating, “he said he wanted me to understand that I belong to him, and not to Mrs. Bachelor—that when he called, or wanted me, I was not to consult with Mrs. Bachelor, or any person else.”⁴¹ By reasserting his ownership over Picquet, a parallel emerges from the archives, connecting the actions of Dr. Flint with the actions of Mr. Cook. Both masters perceived the interventions of white women as disruptions of their own power and their ownership of their slaves. To rectify that lapse of power, they both acted to silence the voices of white women as a means by which to protect their own power within the domestic hierarchy.⁴² This reveals that white women gained greater power and agency when protecting enslaved women from sexual violence. Furthermore, this understanding clouds the purity of the intentions of white women in their attempts to protect enslaved women from rape. White women’s actions were not exclusively performed out of a shared

hatred of gender-based violence; they were often executed to selfishly bolster their own power.

Picquet reflected on her relationship with Mrs. Bachelor with appreciation and gratitude, going as far to say that Mrs. Bachelor “was the best friend [she] had;”⁴³ however, Mrs. Bachelor’s kindness may not have been a mere extension of good will but rather a means by which to protect her own power within her home. When Picquet depicted an instance where Mrs. Bachelor criticized Mr. Cook, she stated, “ [Mrs. Bachelor] had no patience with [Mr. Cook]—he was the meanest man she ever saw. She abused him then a great deal, before her sister and before me.”⁴⁴ Picquet’s choice of “abused” to describe Mrs. Bachelor’s insulting of Mr. Cook evokes a parallel between the ways Jacobs portrayed Mrs. Flint in her own narrative. By characterizing both women as abusers, a qualifier that implies violence, Jacobs and Picquet communicated how white women sought to assert their own agency within the home through acts of violence.⁴⁵ Mrs. Bachelor defended Picquet from Mr. Cook’s advances to protect the sanctity of her boarding house and to protect the power of herself and her sister within that space. As victims to the culture of sexual violence normalized under slavery, either directly as survivors of rape or otherwise, acting on Picquet’s behalf, in actuality, was an action on the behalf of herself.

Mrs. Flint and Mrs. Bachelor were both acting in their own self-interest, treating enslaved women according to what ensured the protection of their own power within domestic environments. While Picquet perceived Mrs. Bachelor’s aid as a positive action, it remains likely that Mrs. Bachelor’s motivations emerged, even on a subconscious level, from a desire to protect her home and her role within that home from the insidious actions of Mr. Cook.⁴⁶ Mrs. Flint was more blatant in her desire to violently possess Jacobs through physical punishment. Neither Mrs. Bachelor nor Mrs. Flint adopted a subservient or passive attitude in response to the assertion of superiority by Mr. Cook and Dr. Flint respectively.⁴⁷ White women held more power than often acknowledged within the historiography of slavery. Both Jacobs and Picquet confirm that, in terms of sexual violence, white mistresses had the capacity to intervene on the behalf of enslaved women. Unfortunately, the motives for these interventions often emerged from desires for power and ownership of enslaved women’s bodies and sexualities.

White mistresses relied upon the labors and exploitation of enslaved women to fulfill the prescribed archetype of southern white womanhood. In order to embody this role, white mistresses were responsible for upholding the moral sanctity of the home, managing the household duties performed by slaves, and supporting the integrity of the family structure.⁴⁸

- 43 Picquet, 11.
- 44 Picquet, 14.
- 45 Jacobs, *Incidents...*, 14, 49-55.
- 46 Picquet, *Louisa Picquet, the Octaroon...*, 10-14.
- 47 Picquet, 12-14; Jacobs, *Incidents...*, 49-55.
- 48 Glymph, *Out of the House of Bondage*, 21.

The Ideal of White Womanhood

38 Jacobs, 52-57.
39 Picquet, *Louisa Picquet, the Octaroon...*, 10-15.
40 Picquet, 10-11.
41 Picquet, 11.
42 Jacobs, *Incidents...*, 49-57; Picquet, *Louisa Picquet, the Octaroon...*, 10-15.

49 Glymph, 6.

50 The Picquet narrative was a transcribed interview conducted by Hiram Mattison, a northern reverend and abolitionist. As Picquet was not literate enough to pen her own narrative, it must be acknowledged that the questions and framing of Picquet’s narrative was in service of abolitionism on the basis of reconstructing the relationship between race and freedom. Specifically, Mattison focused on colorism and how the enslavement of white-passing individuals provided justification for the abolition of slaves. Picquet’s narrative was included within the scope of this investigation because it specifically shed light on the relationships between white and enslaved women during the Antebellum Era. The communication of those relationships was through Mattison’s voice, but because the archives are limited in terms of narratives told from the perspectives of enslaved women, the Picquet interview exists as an important resource for reconstructing the image of the white mistress.

51 Picquet, *Louisa Picquet, the Octaroon...*, 20.
52 Picquet, 20.
53 Picquet, 20-21.
54 Picquet, 20-22.
55 Glymph, *Out of the House of Bondage*, 6.

White women often resorted to extremes when they failed to meet the standards that slavery made impossible. This gap between aspiration and actuality fueled the violence and abuse with which mistresses tortured their female slaves.⁴⁹ An example of this dynamic existed in the Picquet narrative, where Picquet detailed an interaction between herself and her childhood mistress, Mrs. Cook, that exemplified the efforts of white women to fulfill their idealized role through the psychological torture of female slaves. When her interviewer,⁵⁰ Hiram Mattison, inquired if Picquet felt that she was “doing right in living,” which connoted an implicit judgment of her perceived moral character,⁵¹ Picquet responded by documenting her first exposure to scripture, stating, “Mrs. Cook, used to read the Bible, and explain it to us. One night she read the commandments about... commitin’ adultery. They made a great impression on my mind.”⁵² Mrs. Cook referenced the lives of other female slaves to define adultery to Picquet, explaining, “You see Lucy, how many children she’s got?... [S]he did not know the father of any of them children,” concluding by emphasizing that “when folks had children they must be married.”⁵³ This anecdote revealed the ways that white mistresses psychologically and spiritually abused their slaves to uphold notions of purity essential to the fulfillment of an idealized white womanhood. To protect her ability to exist as a perfect wife, Mrs. Cook taught the concept of biblical adultery to her female slaves as a protective measure intended to dissuade them from engaging sexually with her husband. Mrs. Cook adopted a paternalistic attitude, teaching Picquet the Bible in order to strengthen her own role within the home as a pillar of morality. This practice failed to acknowledge how rape performed by white masters onto enslaved women was never the choice of the slave. Additionally, by constructing a false narrative where the victim of sexual violence was responsible for its moral consequences, Mrs. Cook sought to ensure that her marriage and the power she derived from it remained intact.

Mrs. Cook’s teaching of biblical adultery also motivated Picquet to fear the consequences of Mr. Cook’s sexual advances and violence on her spiritual identity throughout the narrative.⁵⁴ In her efforts to protect her own marriage, Mrs. Cook laid an impossible framework for enslaved women to achieve religious fulfillment. Both because of the complications surrounding slave marriages throughout the Antebellum Era, as well as the prevalence of rape and sexual violence, enslaved women were denied access to a source of hope and private power through religion. Moreover, this violation illustrates how the corruption of the home as a place of privacy and dignity served the warped anxieties of the plantation wife to achieve an impossible and iniquitous standard. To exist as the perfect mistress, white women were expected to be the moral backbone of the home, ensuring that their marriage to their husband remained pure within a Christian context.⁵⁵ Sexual violence and infidelity threatened the ability of

white women to fulfill this expectation and provided possible motives for the cruel and violent ways they abused their female slaves in relation to rape culture in the home.

Outside the context of sexual violence, the efforts of white mistresses to succeed in their performance of womanhood also manifested in similarly paternalistic methods, as observed in the Picquet example. Within the Jacobs narrative, the relationship between Jacobs and her first childhood mistress may have represented the potential of white mistresses to develop genuine, familial relationships with their female slaves. However, when evaluating this dynamic through the lens of fulfilling an idealized role, it became apparent that Jacobs’ mistress’ actions were not performed in Jacobs’ best interests; rather, they were done to protect the mistress’ own power and reputation within the home.⁵⁶ After the death of her mother, Jacobs was owned by a new mistress, a woman raised and nursed by Jacobs’ own grandmother. As the “foster sister” of Jacobs’ mother, Jacobs reflected on her mistress fondly, stating, “I loved her, for she had been almost like a mother to me.”⁵⁷ Unfortunately, even when taught to read by her mistress, Jacobs acknowledged an insidious irony to her mistress’ behaviors and attitudes.

When Jacobs’ mistress taught her the Bible, Jacobs reflected, “My mistress had taught me the precepts of God’s Word: ‘Thou shalt love thy neighbor as thyself’... But I was her slave, and I suppose she did not recognize me as her neighbor,” to identify that even in her mistress’ teaching of religion and morality, Jacobs, and by extension other enslaved people, had no place as equals in the moral world of the mistress.⁵⁸ This was because white womanhood was dependent upon the labor of black women. For Jacobs to exist as her mistress’ neighbor, her mistress could no longer own her or other human beings. The nature of possession and ownership that was critical to the fulfillment of this archetype barred mistresses from cultivating equal or familial relationships with their slaves. In this respect, Glymph articulates how “failure threatened their status as ladies,” inspiring white mistresses to behave in ways that defended their authority, as masters of labor and gate keepers of Christian morality, within the plantation home.⁵⁹ Jacobs’ reflections on her first mistress identified that while certain expectations of white women led to positive outcomes for enslaved people, specifically providing Jacobs with literacy, the motivations of mistresses to engage with their slaves always stemmed from a need to protect their own power through performative womanhood.

Abolition efforts made by white women also echoed this need to fulfill a prescribed standard of white womanhood that transcended geographies of north and south. Jacobs’ relationship with Mrs. Bruce, her employer and eventual owner, illustrated how seemingly positive actions oftentimes emerged from selfish beginnings in service of the power of the white woman. When Mr. Dodge, the husband of Emily Flint, travelled

56 Jacobs, *Incidents...*, 14-16.

57 Jacobs, 14.

58 Jacobs, 15-16.

59 Glymph, *Out of the House of Bondage*, 6.

to New York to purchase Jacobs, Mrs. Bruce “intended to put an end to [Jacobs’] persecutions by buying [her] freedom.”⁶⁰ But Jacobs staunchly opposed this false kindness, writing to Mrs. Bruce and “thanking her, but saying that being sold from one owner to another seemed too much like slavery,” emphasizing that she “preferred to go to [her] brother in California.”⁶¹ Mrs. Bruce’s choice to purchase Jacobs’ freedom against her explicit wishes encapsulates how performative abolitionism aided the desires of white women to succeed in achieving a higher standard of womanhood. Furthermore, this example identifies how the ownership and economic possession of enslaved women was essential in this effort.

While a true ally would have supported Jacobs in escaping to California, as was her desire, Mrs. Bruce chose to claim control of Jacobs’ path to agency, permanently stripping her of her own right to claim her freedom on her terms alone. The relationship between labor and ownership should also be scrutinized, as Mrs. Bruce was not merely a friend of Jacobs but rather her employer.⁶² Jacobs’ work as a nurse for Mrs. Bruce’s child paralleled the roles that enslaved women held in plantation homes in the south. This interaction drew into question if freedom was truly possible for enslaved women when they were owned and in service to the domestic responsibilities of white women. Because the success of the plantation home was a validator of the extent to which a mistress achieved the ideal of white womanhood, when applied to the abolitionist context of Mrs. Bruce, her household and economic ownership of black female labor continued to function in service of this ideal. Her home, the care of her child, and her “morally-grounded activism” were all reflections of Mrs. Bruce’s worth in broader society as a woman.⁶³ Her paternalistic attitude and actions stemmed from an unconscious desperation to fulfill these expectations, even when they compromised the freedom and agency of Jacobs.

Conclusion

As historians strive to reconstruct a more accurate and nuanced understanding of the role that white women played in the exploitation and oppression of enslaved women, it is essential to acknowledge that in both their desires and their behaviors, mistresses functioned very similarly to their male counterparts. The only true difference between the master and the mistress was the capacity of the master to intervene and influence the actions of white women. The narratives of Jacobs and Picquet both portray mistresses as cruel and violent, behaving in ways that maximized their own ephemeral power within the domestic sphere. While certain protective actions may have been performed, they ultimately served the interests of the mistress and not the interests of the slave.

To assess the validity of the methodologies employed to complete this project, the slave narratives included should be examined for their limitations. This paper only draws from two perspectives, that of Jacobs and that

of Picquet, because the archives more broadly lack extensive documentation of relationships between white and enslaved women as told from the perspective of enslaved and formerly enslaved women. While Jacobs’ narrative remains one of the most foundational texts written by a formerly enslaved woman during the Antebellum Era, her experiences as a mother and a literate person distinguish her from the experiences of other enslaved people during this time. Picquet’s words, as accessed through her interviewer, also portray a singular experience, one that challenges by its very nature the ability for enslaved women to be referred to and understood in the archives as a monolith. It was important to the focus of this project that the relationships explored were told from the perspectives of those most impacted by the cruelties and skewed power dynamics enforced by white women. However, a lack of diversity of opinion should be acknowledged as a methodological downfall of this investigation.

When evaluating the effectiveness of this project in understanding the relationships between white women and enslaved women during the Antebellum Era, four crucial takeaways emerge. Firstly, mistresses existed as the masters of the domestic sphere. The gendered assumptions that white women were non-violent participators in slavery both negates the agency of white women during this period and erases the sufferings of enslaved peoples at the hands of abusive mistresses. Additionally, the economy of slavery as it related to capital, labor, and ownership was not only equally as relevant to white women as to white men during slavery but in actuality was also crucial to ensuring the economic independence of white women within their communities and marriages. Thirdly, within the context of sexual violence, white women were not motivated by a shared resistance of patriarchy to defend enslaved women from the pursuits of rapists. Instead, white women perceived the rape of enslaved women as a threat to their own power within the home and an invalidator of their marriages and their ability to fulfill a standard of idealized white womanhood. Mistresses acted in ways to protect their own agency and reputation, not to uplift or protect black women from rape. Finally, the efforts of mistresses to fulfill the expectations of an idealized white womanhood ultimately resulted in paternalism and performative abolitionism, reinforcing a dynamic of ownership and possession of enslaved women.

With reference to these interventions, the function of the white mistress within slavery archives emerges anew. The romanticized image of the kind mistress suffering beneath the weight of southern societal expectations and indifferent husbands fails to encompass the reality of the culture of abuse and violence that protected white women’s power within the home. This project’s findings remain crucial to our understanding of how power functioned in the American South during the Antebellum Era and its implications extend to transhistorical contexts. By assuming that women were incapable of violence or that sexism mandated a shared

60 Jacobs, *Incidents...*, 299.
61 Jacobs, 299-300.
62 Jacobs, 254-255.
63 Glymph, *Out of the House of Bondage*, 6.

resistance effort against male oppressors, the archival narrative erased the experiences of those women who did not benefit from the white supremacist, colonial, and capitalist heteropatriarchy. Women are not impervious to the allure of power and access that often comes from the subjugation of more vulnerable communities, and Jacobs’ and Piquet’s narratives confirm this. It is the responsibility of historians to lift up and shine light upon the lives and records of these marginalized women, as our collective understanding of slavery’s influence on the modern socio-political climate will remain incomplete otherwise. Only when the mistress’ true identity as one who enforces and benefits from the horrors of slavery persists as the predominant narrative can historians proceed to fully comprehend and honor the sufferings of enslaved women within the plantation home.

About the author

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A PROBLEM OF PEOPLE
Displaced Chinese in Hong Kong and the Ambiguities of International Law, 1947-56

by Xiaoyu Huang

Abstract

Between 1947 and 1956, and for some years thereafter, over one million Mainland Chinese migrated over the Hong Kong-Canton border into the former British colony. The situation aroused a confused response from the international community, which was marked by the ambiguous post-war codification of customary international law and emerging multinational alliances to confront the onset of the Cold War. Against this backdrop, the existence and subsistence of displaced Mainlanders in Hong Kong was legally ambiguous and elicited conflicting responses from state actors, the People’s Republic of China, and the Nationalist Republic of China government-in-exile. The scant literature of the period is problematized by the lack of reliable data, and conflicting government and scholarly sources. This article outlines what is known about this understudied period and surveys two prevalent strategies for understanding it: one which studies the displaced Chinese through the lens of international law, and the other which elevates the importance of *realpolitik* and necessities on the ground to explain the phenomenon. The article concludes with an evaluation of the response of the United Nations and an exhortation for future studies of displaced populations on other premises than “a problem of people.”

This article concerns the one million, possibly more, displaced Mainland Chinese who arrived in British Hong Kong between 1947 and 1956, and the broad international legal history within which this large but relatively understudied displacement was circumscribed, debated, and subsequently understood. These individuals were from continental China and predominantly of Han ethnicity. Having no prior long-term connection with Hong Kong, they crossed into the colony for the purpose of settling there semi-permanently or permanently following the Second Sino-Japanese War, the Chinese Civil War, and the establishment of the People's Republic of China (PRC). While the influx of Mainland Chinese also occurred in large numbers before and after this interval, the years 1947 and 1956 bookended a period in Hong Kong history characterized by interlocking practical and policy limitations and social circumstances that, working together, compelled an influential contemporary United Nations (UN) ethnographer to call the phenomenon of displaced Mainlanders "a problem of people."¹ Paradoxically, these individuals were both legally stateless persons and *de facto* colonial subjects, for whom benefits arising from both citizenship and subjecthood were systematically denied. Their movement coincided with the post-WWII realignment of the international legal regime, testing the ability of the newly formed United Nations to effect action among Member States. In the meantime, the émigrés' social and economic disadvantages were magnified even as local and international governments debated responsibility for their stewardship, a process that accentuated the need for such stewardship.

Categorizing the influx of displaced persons as a "problem," British colonial officials, the Republic of China (ROC) Nationalist government-in-exile, and the UN used terms such as "illegal immigrants," "economic migrant," and "refugee" to describe displaced Mainlanders in Hong Kong and to ascribe or, more commonly, disavow, political, jurisdictional, and legal responsibility for their welfare.² Curiously, while the large body of governmental and policy writings surrounding this displacement was deterministic in nature, there lacked a precise legal lexicon to categorize displaced Mainlanders in such a way as to effectuate existing protections under domestic and international law. When administrators, international bodies, and commentators took part in this lexical interchange, they often created contradictory implications that showed international law to be only weakly effective, if at all. The national and jurisdictional status of the displaced Mainlanders was both repeatedly reinforced by the casualness of the deployment referents and continuously attenuated because jurisdictions could not reach linguistic agreement. Far from being mere placeholders, the common nouns assigned to displaced Mainlanders created historical implications and withheld legal remedies.

I begin with a narrative of the circumstances of the arrival of Mainlanders in Hong Kong in the wake of China's domestic wars. In the

analysis, I draw from two strands of historical inquiry into this period, one of which sees the indeterminate identity-making of the displaced Chinese as an outgrowth of international law, and another which emphasizes Cold War tensions and alliance politics as predominant animating factors that diminish the relevance of law. I will finish by presenting an alternative view that re-centers émigrés as the subject, not object, of international law. This reorientation, far from ignoring the State-centered approaches above, attempts to displace the trope of "problem of people" and revivify the purpose of law itself.

Background

The Sino-Japanese War broke out in 1937. At the time, British Hong Kong had offered asylum to Chinese nationals fleeing the Chinese Civil War.³ Before that pronouncement, movement across the Canton-Hong Kong border had no precise legal character and largely proceeded without impediment. Between 1931 and 1941, the period during which colonial Hong Kong data-keeping was most rigorous, the colony's population rose from 805,000 to 1,640,000, a 95 percent increase, suggesting a high number of permanent exogenous entries.⁴ Record-keeping faltered somewhat following Japanese occupation of Hong Kong in late 1941, but we still know reliably that between 1941 and 1951, the overall population increased to 2,318,000, a tamer increase of 30.4 percent since the beginning of that decade. This smaller increase was also inflated by the return of expatriate Hong Kongers who returned following the Japanese surrender of Hong Kong to Britain on 30 August 1945, after its defeat in the Pacific theatre.⁵ After the Communist victory at the Fall of Shanghai in May 1949 and the subsequent establishment of the People's Republic of China (PRC) in October, the influx of Mainland Chinese again became pronounced. Most scholars agree that one million unique Mainlanders entered Hong Kong between 1949 and 1955, a period during which only estimates are available.⁶ All things considered, the scant figures available to us suggest two bursts of intense emigration toward Hong Kong: during the height of the anti-Japan resistance, and during the founding of and early years of the PRC.

By late 1949, when a Communist administration became all but assured, Hong Kong authorities imposed the requirement that only "Cantonese" may enter the colony without special permission, but "other Chinese" (meaning the Mainland-born) must hold entry visas or permits.⁷ "Cantonese" was not defined in contemporary official documents. The word could refer both to people from Canton, an area including both Hong Kong and surrounding municipalities on the southeast Chinese Mainland, and Hong Kong residents carrying British papers. The latter meaning is more likely. However, this seemingly stringent regulation did little to regulate entry. Between 1954 and 1961, five years after the

1 Edward Hambro, *The Problem of Chinese Refugees in Hong Kong* (Holland: A.W. Sijthoff-Leyden, 1955): 3.
2 For an example of the general confusion surrounding the use of these terms, see *Hong Kong Annual Report* (Hong Kong, 1945): 1, where presumably all three of these designations apply to Mainland Chinese migrants.

3 Edvard Hambro, "Chinese Refugees in Hong Kong," *The Phylon Quarterly* 18, no. 1 (1957): 75.
4 Hambro, "Chinese Refugees in Hong Kong," 75.
5 John P. Burns, "Immigration from China and the Future of Hong Kong," *Asian Survey* 27, no. 6 (June 1987): 682.
6 Kowk Bun Chan, "Hong Kong's Response to the Vietnamese Refugees: A Study in Humanitarianism, Ambivalence and Hostility," *Southeast Asian Journal of Social Science* 18, no. 1 (1990): 98.
7 Hu Yueh, "The Problem of the Hong Kong Refugees," *Asian Survey* 2, no. 1 (March 1962): 29.

imposition of the entry limitation, more than 200 migrants were still entering Hong Kong per day, a figure which largely exceeds official counts.⁸ According to one calculation, over half of those who made their way in during this interval did not use regular legal channels.⁹ At this time, Hong Kong authorities had not made border control a significant part of colonial policy. Political scientist Hu Yueh wrote in 1962 that detainment and deportation were still more or less discretionarily in practice.¹⁰ These observations tell us that both policy and enforcement were uneven, for it could not have escaped the colonial administration that the population on the peninsula was increasing, on average, by at least 70,000 annually. The migratory movement finally waned around the first decade of PRC rule.¹¹

The discrepancy between the extraordinarily large number of entrants and the relatively slow pace of population increase in Hong Kong is not irreconcilable. First, as the military and surveillance apparatus of Communist China matured, enforcement from the Guangdong (Canton) side could have become more robust. Second, the late 1950s marked the start of the Hong Kong exodus to such far-flung destinations as San Francisco, New York, and Toronto. In any case, in Hong Kong, both official counting and deterrence measures were far from rigorous. Detention and repatriation by Hong Kong authorities was much less common than deterrence measures by PRC authorities, at least through the 1960s.¹² After February 1952, Communist authorities strictly checked for entry and exit visas, issued by the State Department, a process enacted to discourage dissent and to curtail the draining of the workforce.¹³ The measure, especially, seems to be in response to possible Nationalist defectors. PRC authorities had long identified the Guangdong corridor, within which lies Hong Kong, as the only viable place of exit out of China's enormous landmass.¹⁴ China was circumscribed in the north by Soviet Russia's inhospitable hinterlands; in the west by towering Yunnan and Sichuan mountain ranges; and in the east by the Pacific Ocean. If they were to defect, disaffected or politically vulnerable Mainlanders could only hope to leave via the mountainous but passable terrains of the New Territories, which lie between Hong Kong and the PRC-controlled Pearl River Peninsula.

Discrepancy between the official daily entrance quotas and actual numbers of Mainland entrants had existed since the early years of the exodus. Some scholars, led by Agnes Ku, argue that immigration occurred mostly *outside* of the purview of Hong Kong authorities in the 1950s and 1960s.¹⁵ Ku believes that native Hong Kongers with Mainland ties or genealogical links tended to acquiesce to the influx without applying social pressures to colonial officials, sometimes even welcoming them.¹⁶ Had native Hong Kongers intended to apply pressure to deal with the influx, they had sufficient legal remedies to do so. Under the Emergency Regulations Ordinance of 1922, legislated in response to a strike of the Seamen's Union (SU) whose actions included marching inland *into*

Mainland China, the chief executive may unilaterally enact any regulation "desirable in the public interest" in reaction to any event they consider to be "an occasion of emergency."¹⁷ Sufficient location pressure would have compelled the use of the ordinance, but no regulations with regard to the influx of Mainlanders were made. The least that could be said, then, was that colonial administrators at least partially turned a blind eye to the rapidly evolving situation. Among other industries, Hong Kong's resurgent postwar entrepôt economy, which had demand for untold numbers of temporary laborers and seamen, could have accounted for at least a portion of the absorption of displaced Mainlanders. Today, these mainlanders are largely indistinguishable from native Hong Kongers, having integrated into the population of 7 million living densely in the semi-autonomous Special Administrative Region.

The Hambro study:

Regional and international law and their abeyance

On the side of British administrators, Hong Kong's treatment of incomers was determined not by regional law but *realpolitik*, since so many managed to stay despite the existence of bilateral immigration controls. As Raphael Jacquet has pointed out, there was pressure on the British side to not depend heavily on the PRC economy, since Britain took part in the UN action to embargo China for its alliance with North Korea in the Korean War.¹⁸ Long-term antipathy against Hong Kong was not only anticipated, but expected. Consequently, Hong Kong's reliance on domestic manufacturing and heavy industry deepened, and regions such as Kowloon rapidly developed maritime trade infrastructure such as the Hong Kong Harbour. The colony's increasing industrial self-reliance was exploited by the incoming Mainland Chinese, who were willing to accept any alternative to working in the PRC's system of statewide collectivization. Local officials plausibly would not have resisted the influx of a mobile, majority male workforce which was willing to apply itself to Hong Kong's growing heavy industrial sector without adequate social protections or even legal status. As mentioned previously, their ambiguous legal status, which depressed the opportunity cost of accepting short-term, fluid industrial employment, may actually have been welcome to growth-minded colonial administrators who saw no benefit in repressing the growth of domestic industry.

Local acquiescence notwithstanding, the problem of Mainland Chinese immigrants in Hong Kong was made known in the UN at a time of burgeoning codification of the customary international law of displaced persons into treaty language, although it took place within the context of post-WWII displacement of European nationals. In 1951, the Convention relating to the Status of Refugees was adopted by a conference of the UN and subsequently entered into force on 22 April 1954, following ratification. Although the Convention applies only to European refugees,

- 17 Hong Kong E-Legislation, "Cap. 241. Emergency Regulations Ordinance," Art. 2(1).
- 18 Raphael Jacquet, "From Refugees to Citizens: An Identity is Born," *China Perspectives* 12 (July/August 1997): 26.

States could declare that it applies to refugees from other regions. The definition of refugee, proffered for the first time in international law, is set as any natural person

[as] a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.¹⁹

Britain, a Signatory Party to the Convention, elected not to extend the Convention's applicability to its colonies, including Hong Kong.²⁰ Recognizing that the Convention is binding for all signatories, and that perceived violations could not only attract rebuke from other Member States but may even be litigable, Britain chose to avoid testing the definition of “refugee” on its Hong Kong population. By Convention definition, however, if a State applies the Convention to the case of the displaced Chinese, any could ostensibly claim to have fled the PRC due to “well-founded fear of being persecuted for reasons of . . . political opinion.” Such a definition would thrust the responsibility of their economic guardianship into British hands. In any case, for non-Signatory jurisdictions, the Convention only applied as evidence of customary international law and created no immediate legal responsibilities, since the Convention had no case law or arbitration history before international courts and tribunals. As the following will show, the definition of “refugee” creates ambiguities for categorizing the displaced Mainlanders.

The UN itself took up interest in the Hong Kong situation after the adoption of the Convention. In 1952, the UN High Commission for Refugees appointed Dr. Edvard Hambro, a former registrar of the International Court of Justice (ICJ), to lead a Hong Kong Refugees Survey Mission in a comprehensive study of Mainland immigrants in Hong Kong.²¹ The result was the report *The Problem of Chinese Refugees in Hong Kong*. The text's entire tenor was affected by the stated reasons for the convening of the Mission—to determine to which extent the UN High Commissioner for Refugees was obliged to intervene. Hambro dedicated the meat of his text to explaining “the political character for the reason for . . . expatriation,” if there existed one at all.²² This approach seemed to imply that Hambro intended to close to the language of the Convention. Would its recent passing allow Hambro to conclude that the immigrants were legal refugees?

Hambro's formulations were complicated. In *The Problem*, Hambro

did not so much as refer to the possibility of prosecution under “political opinion.” Instead, he undertook a legal innovation to negate the possibility of classifying the displaced Chinese as refugees under the “nationality prosecution” protection of the Convention. He first outlined what he calls the “Two Chinas problem,” stemming from the fact that the Communist Party was the governing power in the PRC while the ROC, then a government-in-exile in Taiwan, was a founding member of the UN.²³ The ROC government, prior to the founding of the PRC, occupied a seat on the UN Security Council (UNSC) and acted internationally as the sole government of Mainland China. Hambro then posited that the High Commissioner must “act as if the [PRC] Government had a seat in the UN. . . [It] is the legal government of the country in question.” If the displaced Mainlanders held ROC citizenship, and had not attempted to resettle to Taiwan, then they could have been understood as “unwilling to avail themselves [of] the protection” of the ROC.²⁴

Under this formulation, all Mainland Chinese, displaced or otherwise, were considered to have ROC citizenship prior to the founding of the PRC, which was converted to PRC citizenship upon its founding on 1 October 1949.²⁵ The formulation does not explain how this theory applies to Mainlanders who left before that date, or how the legality of ROC citizenship documents was extinguished. Importantly, Hambro's theory relies on the assumption that if displaced Mainlanders in Hong Kong considered themselves citizens of the ROC, they could have sought the protection of the government-in-exile in Taiwan. This theory, possible as a thought experiment, was not a realistic option in the interwar context of Hong Kong-bound migration; the ROC also did not present such an option for political defection, which Hambro did not consider a possibility.

Hambro's team surveyed a sample of over 170,000 individuals who had entered Hong Kong between 1947 and 1954. The survey included questions for motivation for departure and willingness to return to the Mainland.²⁶ Views of (usually male) heads of families were assumed to represent that of all dependents. Although he did not consider political refugeehood to be a viable category, Hambro found that 61.8 percent of the Mainland immigrants considered themselves “political refugees,” although “from a strictly legal point of view the Chinese refugees may fall outside the High Commissioner's mandate.”²⁷ In a later piece, writing outside the context of the Commission, Hambro conceded that he had difficulty distinguishing “economic migrants” from “political refugees,” and acknowledged that survey responses may not have been completely candid.²⁸ Having scoured neighborhoods in which displaced Mainlanders were expected to congregate through pure word of mouth, Hambro's team arbitrarily identified and surveyed individuals without a method for assessing the veracity of their accounts. Selective disclosure or outright lies could have skewed Hambro's result significantly, although in the context of *ad hoc* postwar

23 Hambro, 32.

24 Hambro, 34.

25 Hambro's formulation also disregards the possibility of classification as a “particular social group”. Granted, that definition had not yet gained traction in the practice of international law until the late 20th century, but it is possible to articulate the displaced Mainlanders, as a “group,” disagreed Communist governance and would be “persecuted” for that disagreement due to membership in that group. This formulation overlaps with the theoretical underpinning of classification on the basis of “political opinion,” which could be the reason Hambro did not attempt it. To emphasize, Hambro used the words “political refugee” in the *Report* but not in a legal sense.

26 Hambro, “Chinese Refugees,” 75.

27 Hambro, *The Problem*, 37.

28 Hambro, “Chinese Refugees,” 75.

19 *Convention relating to the Status of Refugees* (189 U.N.T.S. 150, entered into force April 22, 1954), United Nations, 1951, Art. 1(A)2.

20 Burns, “Immigration from China,” 670.

21 Hambro, *The Problem*, 3.

22 Hambro, 32.

The ROC and PRC:
International recognition and its ramifications

administration and interjurisdictional research, there was hardly an alternative.

In February 1950, Britain officially recognized the PRC, which handcuffed its policy options in Hong Kong. For a time, London wrestled with whether to repatriate the Mainland migrants, which would have almost certainly faced international condemnation from UN Member States and Commonwealth democracies. The other option was to relocate the migrants to Taiwan—at least those who professed ROC citizenship. According to ROC data, 150,000 went through Hong Kong to voluntarily resettle in Taiwan.²⁹ Such “repatriation” was the favored outcome of British officials, as a population shock to an island of 10 million was preferable to increased influx to Hong Kong, whose population *doubled* in the 1940s.³⁰ Most displaced Mainlanders in Hong Kong thought of themselves as citizens of the ROC, according to Hambro’s commission, but relatively few chose to “repatriate,” and many presumably had no such means.³¹ Taipei likely knew that any policy response would straitjacket Taiwan into accepting a larger number of the displaced Chinese. In the frenetic post-Chinese Civil War atmosphere in Taiwan, in which the ROC’s main objective was an eventual retaking of the Mainland, such a refugee influx not only was a logistical vexation but also posed economic and social costs that it was not ready to bear.

Britain’s aversion to classifying the displaced Chinese as refugees is consistent with contemporary envisionments of the international legal regime. Historian Glen Peterson has formulated postwar Chinese migrants as excluded parties in the context of an “European international law,” following the writings of jurist Antony Anghie, who understands the international humanitarian regime as “deeply informed by histories of colonialism, racial inclusion, and Western inclusion of non-European Others,” which in this context applies to the decision of European colonial administrations to exclude the Chinese from its colonial territory.³² Their formulation is legible considering the history of the Convention, which goes to not inconsiderable length to circumvent direct applicability to potential non-European refugees.

Most crucially, Peterson points to a line buried deep in Hambro’s report, referring to Hambro’s (unadopted) recommendation for Britain to impose “contractual immigration” measures upon the Chinese “to various British territories” such as the “most sparsely populated areas of Asia and Oceania.”³³ This astounding requirement that the displaced Mainlanders be first subsumed under British subjecthood, and then have their personal liberties curtailed. In this formulation, Peterson finds that “Hambro... [views] refugee resettlement... in terms of older colonial strategies involving the use of contract labor and the mandated relocation

of ‘surplus populations’ to serve the needs of distant economies,” embedding a strategy of forced relocation of non-white colonial subjects into a strategy of population containment and disposal of undesirable or legally ambiguous natural persons.³⁴ Taken together, to Peterson, this proposal harkens back in international legal history to “the confinement of feudal obligations.”³⁵

Elsewhere, Hu Yueh has argued that British Hong Kong’s sealing of the border and disallowance of entry without necessary paperwork in 1950 violate Article 14(1) of the 1949 Universal Declaration of Human Rights (UDHR), which most jurists agree constitutes customary international law.³⁶ Although the definition of “persecution” has not yet then been articulated in the decisions of international tribunals (and the persecution-based definition of “refugee” not yet codified by 1950), Yueh sees the closing of the border in terms of a decision by colonial officials to exclude possible refugees from its geographical confines.³⁷ Yueh’s reading of the decision of colonial administrators in 1949 is essentially identical to Peterson’s. Both suggest that colonial Britain acted to exclude Chinese from Hong Kong, deploying instruments of international law to deny rights of displaced non-whites which the instruments ostensibly uphold. To extend Yueh’s formulation, restricting potential subjects of persecution within particular geographical confines would upset another provision of the UDHR: “Everyone has the right to life, liberty and security of person.”³⁸ Given the applicability of the UDHR as customary international law to which Britain’s signatory status does not include an opt-out provision for its provisions, Britain could be held in violation. In these formulations, Britain’s ambivalence toward displaced Mainlanders can be taken as a rejection of nascent codified international law.

An alternative view of the period decentralizes international law, holding that its nascent codifications and enactment paled in importance to realities on the ground. Historian John Burns focuses on the fact that the Convention, after all, did *not* have force and effect in Hong Kong, conjecturing that Britain did not extend it to the colony to avoid provoking the PRC over its insistence that Hong Kong was a part of the PRC and should be immediately repatriated despite its 100-year lease to Britain.³⁹ Applying the Convention to Hong Kong would take on the tricky corollary that the displaced Mainlanders could be considered “outside of their country of nationality,” reaffirming Hong Kong’s possession by Britain and risking remonstrance from the PRC. Burns’ view emphasizes geopolitical expediency over the wording of international law. Focusing on family reunion and availability of informal labor arrangements as possible reasons for the entry of Mainland immigrants, as well as the benefits accruing to Hong Kong’s new labor-intensive economy offered by a flexible and eager workforce, Burns rejects the view that international law was the primary animating factor in the considerations of any party.

34 Peterson, “Sovereignty,” 466.
35 Peterson, 464.
36 UDHR, Art. 14(1): “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”
37 For a full elaboration, see Yueh, “The Problem,” 29.
38 UDHR, Art. 3.
39 Burns, “Immigration from China,” 670.

29 Hambro, 75.
30 Hambro, 71.
31 Hambro, 75.
32 Quoted in Glen Peterson, “Sovereignty, International Law, and the Uneven Development of the International Refugee Regime,” *Modern Asian Studies* 49, no. 2 (2015): 445.
33 See generally Hambro, *The Problem*, 129-189.

40 Chi-Kwan Mark, “The ‘Problem of People’: British Colonials, Cold War Powers, and the Chinese Refugees in Hong Kong, 1949-62,” *Modern Asian Studies* 41, no. 6 (November 2007): 1179.
41 Mark, “The ‘Problem of People,’” 1165.
42 Mark, 1157.

In this reading, the political expediency of allowing the emigres to exist in a citizenship limbo but participate in local high-need industries, to the satisfaction of both British colonial administrators and implicitly the UN, outweighed the need to determine their status under international law. Elsewhere, Chi-Kwan Mark also finds international law to be of secondary importance to State practice: “the Cold War powers saw the Chinese refugees within the context of their foreign policy objectives and rivalries.”⁴⁰ In this view, colonial administrators had to attempt an equilibrium in which Beijing had disproportionate power in setting the tenor of British engagement, so as to avoid the “refugee questions” in order to not upset the delicate Cold War equilibrium.⁴¹ In this formulation, the larger picture of global instabilities and ideological realignments subsumed a “problem of people.” For example, the United States broadly disfavored the entry of Chinese to the continent US until well into the 1960s, using the Chinese Exclusion Act of 1882—the first piece of legislation in US history to ban an entire ethnic group—to withhold Chinese entry. In 1952, Washington called the Mainlanders in Hong Kong “defectors,” which is farther than Hambro or the UN ever went. However, the US did not legislate to assist in the resettlement of the displaced Mainlanders, but instead used the Europe-based Escapee Program to establish a new Far East Refugee Program, allowing American and international volunteer agencies to help the Chinese resettle, in very limited cases to the US.⁴² In the case of the displaced Chinese, the US government effectively contracted out its foreign policy.

In the historical milieu of the indeterminate “Two Chinas” and entrenched international coalitions of “Democratic West” and “Communist East” plus Cuba, the role of international law to these theorists and their sympathizers is one that upsets, not stabilizes. There was deep-rooted fear of an overt PRC reaction to the categorization of Mainlanders in Hong Kong. Importantly, whether historians prioritize international law, in the vein of Peterson and Yueh, or *realpolitik*, in the vein of Burns and Mark, the role of international law is seen to be receding, not ascending; not protective, but exclusionary; and not dominant, but subservient to either colonial legal conception or political contestation. Either way, the displaced Chinese was a “problem of people,” a phrase Hambro adopted for his report. International bodies were vexed and unwilling to afford concrete protections, although the need for such protection was ambiguous and uneven.

The Hong Kong government never accepted that there was a “a problem of people” at all. British archival sources used the words “refugee,” “squatterer,” and “illegal immigrants” interchangeably until the late 1950s.⁴³ Towards the end of that time, official wording became more

standardized, with “refugee” being the preference.⁴⁴ The trend could be explained by the increasing prominence of the Convention in international use, although British adoption of the word “refugee” did not enact legal responsibilities due to the inapplicability of the Convention in Hong Kong. Strains started to emerge in the latter part of the 1950s: mainland immigrants had stretched government resources and there was visible poverty in the streets and palpable incoordination of third-party assistance agencies.⁴⁵ Despite its prevalence in international documents and especially in the report of the Hambro commission, submitted to the UN to fade into obsolescence.⁴⁶ All in all, Mainland immigrants were doubly denied legal protections by legal as well as colonial institutions, dehumanized and submerged by the ostinato of “a problem of people.” The phrase appears prominently in Chapter 1 of the 1956 *Hong Kong Annual Report*, the only significant colonial document on the matter.⁴⁷ The document attacked the situation from the perspective of sanitation, overcrowding, and reduced social order, but no solution was forwarded. In fact, by the following decades, the million-plus cohort of displaced Mainlanders seemed to have merged into the Hong Kong population without significant government action, and no subsequent Annual Report mentioned such a “problem.” Nevertheless, the articulation of the situation at the time serves as useful historical evidence for how administrators constructed and understood the phenomenon in the broader context of the postwar international legal regime.

Indeed, Hambro himself came up with the most accurate way to characterize the status of the Mainland immigrants: “chronic marginality.”⁴⁸ Because international actors refused to acknowledge that the Chinese migrants were refugees under the international humanitarian regime, and the Hambro report insinuated that they were colonial subjects, liable to be relocated at the whims of British colonizers, they held no firm place in any society. They were persistently and irrevocably marginal. Nevertheless, the rhetoric of “chronic” still conjures overtones of prognostication.

Outside of the context of his commission report, Hambro wrote quite differently. He rightly recognized that the displaced Mainlanders existed both at the periphery of local and international law and were in limbo with regard to recognized and perceived nationality. Neither the international law nor *realpolitik* formulations considered the displaced Mainlanders to be a homogenous group that was in interaction with State actors as well as international bodies, when in fact the designation was only a placeholder for a collective of highly differentiated individuals acting with various restraints and motivations with little coordination. However, State actors inflicted daily tragedies along the Hong Kong-Canton frontier throughout the 1950s and into the 60s, with Communist border guards indiscriminately shooting border crossers, and British authorities prosecuting, apprehending, and deporting illicit emigres back to the PRC.⁴⁹

43 Mark, 1148.
44 Mark, 1148.
45 Hambro, “Chinese Refugees,” 70.
46 Hambro, 70.
47 Government Press, *Hong Kong Annual Report* 1956, 3.
48 Government Press, 3.
49 Yueh, “The Problem,” 31.

“A Problem of People”:
Characterizations from within

On the part of the UN, it took almost a decade for the body to issue a recognition of the displaced Mainlanders. In January 1958, at the 7th session of the Executive Committee of the UN Refugee Relief Foundation, a body of the UN formally classified the situation in Hong Kong as an “international concern.”⁵⁰ The declaration had no legal force and created no obligations. As it turned out, it took almost a decade for the UN to take responsibility for an event that to modern eyes was altogether within its purview. The Charter of the United Nations states that its purpose is to “achieve international cooperation in solving international problems of a... humanitarian character,” but the UN’s delayed and attenuated response contradicted its own Charter.⁵¹ In the same document, the UN also avoided the word “refugee” and avoided specifying to whom the displaced Mainlanders were concerned, making its response quite weightless indeed.

Conclusion

The issue of displaced Mainlanders in Hong Kong was not adequately addressed by the emergent international legal regime or State actors. Edvard Hambro, outside of the *Report*, was ready to concede that “some refugees” existed in Hong Kong “not in the legal sense but in the humanitarian or social sense.”⁵² The ambiguous and sometimes conflicting conclusions of his report and other writings point to the difficulty of enacting systematic protections under an international law which allowed State actors to opt out of international instruments, creating tiered and contradictory legal obligations. Although the dissolution of the “class” of displaced Mainlanders into Hong Kong society prevented this “problem of people” from enjoying extensive attention in the subsequent literature, it is important to not forget that this first test of codified customary international law ended, quite arguably, in a forgettable failure.

British colonial administrators, the US, and the UN (among others) have all attempted to construct official identities for the Mainland immigrants in Hong Kong in order to create categories of inclusion and exclusion, while shedding State responsibility for the plight of individuals for whom international legal obligations likely existed. The governmental literature was subsequently influenced by the same jurisdictional and discursive formulae which drove the political and legal exclusion in international discourse as well as in Hambro’s report, classifying the existence of displaced Mainlanders in Hong Kong as a “problem of people.” Future contributions to this small literature could rely on primary accounts, which with the passing of time could rapidly become unrecoverable, to supplement the limited and often unreliable government sources that are currently our only window into this period beside secondary historiography. It is perhaps heartening that since the late 1950s, the maturation of the international legal regime has involved more rigorous understandings of populations in flux, reshaping State actors’ view of itinerant peoples as something more than a “problem of people.”

50 Yueh, “The Problem,” 34.
51 *Charter of the United Nations*, Art. 1(3).
52 Hambro, “Chinese Refugees.” 74.

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CONTINUITIES AMIDST CHANGE

Deforestation and Land Control
in Late Choson and Colonial Korea

by Karis Ryu

Abstract

The Korean peninsula as a natural environment was constantly influenced by the actions of the human actors that ruled over it. This environmental history paper observes the exploitation of Korean pine trees and agriculture under two different and consecutive forms of state power: the late Choson kingdom, a ruling body indigenous to the peninsula, versus externally imposed Japanese colonial rule during the early twentieth century. While acknowledging the dichotomy between indigenous innocence and colonial tyranny that is often discussed in political and cultural histories of colonial Korea, this environmental history offers greater nuance and insight into the predicament of non-human actors within the same narrative. Maps, Choson dynasty annals, and secondary scholarship are used to identify both the Choson and Japanese states as environmental exploiters and to uncover the role of the Japanese Government-General of Korea in propagating ideas of Korean ineptitude in order to justify Japanese interference with Korean lumber and agriculture, and ultimately the acceleration of environmental exploitation to produce materials for the Second Sino-Japanese War. While fully acknowledging the atrocities of colonialism, this paper first and foremost strives to shed light on the reality of environmental damage under all forms of concentrated political power. The reality of environmental damage enacted by state agendas is continuously present in different capacities under different forms of rule, underneath the shifting plates of cultural changes and political conflicts.

Acknowledging the irrevocable entanglement of environmental manipulation with political state-building efforts is key to understanding the history of environmental exploitation in Korea. The Korean peninsula has long been a transformative, intermediary frontier in the midst of a multitude of cultural and political entities from the Chinese to the Mongols to the Japanese, its location making it a territory of contention and conquest throughout history. Korea is also home to an illustrious legacy of indigenous dynasties that enacted their own political agendas. The Korean environment, meanwhile, is also subject to a wide range of temperate possibilities, lending to what John S. Lee identifies as “significant climatic variations.”¹ The survival of populations and maintenance of political entities depended on working with these climatic changes. Therefore, survival in Korea was contingent on harnessing the environment in order to cope with climatic extremes.

This paper inspects the Korean environment under the jurisdiction of two forms of hegemonic power: the late Choson kingdom, of the late nineteenth and early twentieth centuries, and twentieth-century Japanese colonial rule. Careful to avoid the trap of simplifying environmental damage into the impacts of the “colonizer” versus the powerless “colonized,” this paper observes the Korean forests and fields in a particularly transformative timeframe, from the final centuries of late Choson to the twentieth-century height of wartime Japanese colonialism: the “cusp” of social and technological change. Existing historiography covering the impacts of Japanese rule has been divisive, with “colonial modernization” cautiously used as a term that describes both the atrocities of colonialism and the technological advancements made during the period.² The initiative of this paper is not to dismiss or fixate on Japanese colonial rule itself, but to understand how two distinct polities exploited the same place.

Late Choson was characterized by on the one hand, a political power that strove to protect and strengthen its kingdom through the manipulation of forests and extraction of natural resources, and extractive methods practiced by locals in order to survive Korea’s cold seasons on the other. Japanese imposition tainted perception of all Korean environmental practices, in general, with paternalistic assumptions of ignorance and unsustainability while promoting modern technological reforms that would replenish what Koreans had depleted. This advancement of “progress” was a complicated interaction between conservation and exploitation, especially when Japan accelerated industrial production during the 1930s for the Second Sino-Japanese War, a military conflict with China that later became a theater of World War II.³ Late Choson-era exploitative practices were always hierarchical, supervised by a larger political state controlling the behaviors of a common populace in order to prioritize its own prosperity. The Japanese reframing of all practices, state and local, as evidence of Korean ignorance, and of Japanese supervision as more

- 1 John S. Lee, “Protect the Pines, Punish the People: Forests and the State in Pre-Industrial Korea, 918-1897” (PhD diss., Harvard University, 2017), 22.
- 2 Jin-Yeon Kang, “Forging the Colonial State as an Arbiter of Internal Boundaries: Japanese Colonial Rule and the Agrarian Relational Shift in Korea,” *Agricultural History* 89, no. 2 (2015): 162.
- 3 David Fedman, “Wartime Forestry and the ‘Low Temperature Lifestyle’ in Late Colonial Korea, 1937–1945,” *The Journal of Asian Studies* 77, no. 2 (2018): aaa.

environmentally intelligent and efficient, was in itself ignorance of the fact that environmental extraction was maintained, if not exacerbated, during twentieth-century colonial rule. Japan’s interventions in the name of rescuing Koreans from themselves ultimately accelerated and brought about new forms of environmental damage.

The Korean peninsula of the late nineteenth century was home to an array of floral diversity, and the red pine tree was of particular significance.⁴ Proliferation of the red pine tree, and its ultimate placement at the top of Choson’s “sylvan hierarchy,” was both the intentional result and unprecedented byproduct of various Choson state-building efforts.⁵ The red pine became integral to how the state enforced kingdom boundaries and infrastructure. Timber built ships and structures in the capital city.⁶ After the Imjin Wars, Japan’s first attempts at invading the Korean peninsula in 1592 and 1597, forests were used to expand protective military garrisons.⁷ Meanwhile, local villages developed dependences on forests for sustenance and warmth. Villagers took to the hillsides to gather branches and roots for fertilizer and sustenance.⁸ By the eighteenth century, the need for timber was only increasing. Pine forests, therefore, and the harvesting of them, are integral to understanding the needs and motivations of the different players that composed Choson society.

On the other side of the Choson coin was agriculture and land development. Korean agriculture consisted primarily of rice cultivation, a system of “intensive horticulture” that led farmers to, as they exhausted their holdings, search for available land “beyond the natural growth of hillsides” and harvest fertilizer.⁹ Rice paddies were grown in wet fields, and while practices were not “monolithic,” swidden farming required deforestation and land clearance.¹⁰ The fertilizer that villagers gathered and made from hillside waste denuded the environment, which became overrun with scrub pines.¹¹ Thus, also important for consideration is the relationship between agricultural intensification and environmental damage. Local agriculture would come under the scrutiny of the late Choson state in its efforts to counteract the growing scarcity of the environment’s essential resources.

The Choson period itself spanned centuries of commercial development. By 1700 Korea saw the steady growth of commercial centers, as well as surges in urban population growth.¹² These concentrated populations, especially in urban centers, needed timber for construction and wood for fuel.¹³ Korea itself experienced throughout the Choson period a “broad ranging expansion of commercial activity,” both within the kingdom and with external states such as Tokugawa Japan.¹⁴ Commercialization, and the concentration of social and economic activity within designated centers, thus shaped the landscape and culture of Choson. The

construction and conduction of economic activity depended on resource extraction, especially from Choson forests, and the very nature of the commercial order that developed would affect the late Choson state’s attempts to oversee economic activities and exert control over both its people and its environment.

By the end of the nineteenth century, ecosystems were overburdened by timber extraction: the uplands deteriorated and lowlands suffered. Deforestation and land exhaustion were especially apparent in areas that surrounded urban centers, where rising populations in concentrated spaces required more resources.¹⁵ The constant demand for timber resulted in a scarcity in wood for both the state and Korean villagers. Even by 1700, almost all reclaimable land was under some form of cultivation.¹⁶ Choson was in a precarious environmental condition. Exploitation had brought the kingdom to this point, and the continuation of existing practices would continue to deplete the forests and hills. Out of this mire rose the kingdom state as the key player in determining the Korean response to these environmental issues.

Established in a “tumultuous environment,” the Choson state sought ways to solidify and strengthen its rule. State forestry became one of its key methods.¹⁷ In its earlier stages, fifteenth-century Choson saw the beginnings of a formal forest system through the “Great Code of Administration” in 1469.¹⁸ The Great Code was the first document to lay out severe consequences for what were deemed as illegal forestry activities by the state on local subjects. Specifically, the government was concerned with an “irresponsible populace”: uncivilized villagers who lacked the prudence and the knowledge to efficiently use the environment.¹⁹ The state established “Restricted Forests” to combat timber scarcity and created a corvée system to execute industrial activity, from wood cutting to the construction of state infrastructure.²⁰ Jurisdiction of oversight over the forests, specifically within the capital city of Seoul, was divided among the offices of the bureaucracy in somewhat blurry ways. From the Board of Military Affairs to the Royal Secretariat, the “overlap of duties and functions” concerning state forestry defined the way in which the central government came to impose itself over the administration of forestry and the distribution of its products.²¹ The Choson state employed forestry as a way to strengthen its borders, increase its control over the people, construct the kingdom, and ultimately enforce its own political authority.

The “Restricted Forests,” then, were not completely for the sake of conservation. Returning to the state’s concerns with its unknowledgeable population, it is important to consider whether the state’s interests lay not with efficient distribution of wood to its subjects, but with the preservation of resources for state use, and thus the barring of villagers from

14 Totman, 130.
15 Totman, 140.
16 Totman, 143.
17 John S. Lee, “Protect the Pines, Punish the People,” 67.
18 John S. Lee, 81.
19 John S. Lee, 70.
20 John S. Lee, 89.
21 John S. Lee, 82.

4 John S. Lee, “Protect the Pines, Punish the People,” 23.
5 John S. Lee, 26-27.
6 John S. Lee, 78.
7 John S. Lee, 35.
8 C.D. Totman, *Pre-industrial Korea and Japan in environmental perspective* (Leiden: BRILL, 2003), 141
9 Ibid., 163.
10 Wooyoun Lee, “Deforestation and Agricultural Productivity in Choson Korea in the 18th and 19th Centuries,” in *Community, Commons and Natural Resource Management in Asia*, ed. Yanagisawa Haruka (Singapore: NUS Press, 2015), 31.
11 Totman, *Pre-industrial Korea and Japan*, 155.
12 Totman, 134.
13 Totman, 140.

utilizing the same sources. In his aptly titled dissertation “Protect the Pines, Punish the People,” John S. Lee argues that the Choson government occupied itself with guarding Korean pines from “the very people it governed,” due to “statist interests” in utilizing the timber for its own infrastructure.²² Timber was needed to build ships for the navy, garrisons in the forests, and buildings in the capital city. While the state was concerned with deforestation, its motivations in enforcing regulations were more indicative of its state-building agenda than a sense of environmental preservation.

Throughout the middle to late Choson period, the government enacted a variety of codes, including the 1768 law code that included a tax rate for forestry, and limited the lands available for swidden in an effort to “control its ever expanding practice.”²³ By the nineteenth century, lumber shortages had only increased. Even as protections increased, so did the rate of illicit activities, resulting in extensive damage to “both private and state forests.”²⁴ The annals of King Kojong, the last king of Choson during the late nineteenth and early twentieth centuries, reveal what the forests looked like from the people “above” in the Choson social order. In one such account from 1866 concerning the *pongsan*, or government-restricted forest, of Uijeongbu, Kojong calls for the prohibition of pine tree cutting in the name of protecting the trees themselves from exploitative practices. He also identifies this action as beneficial to the *baekso’ng*, or subjects, who live in the area by preserving their environment.²⁵ His rhetoric exhibits both concern with state jurisdiction and the framing of it as concern for Choson subjects. The annal reveals that illicit activities continued to be a problem, even in areas designated as state grounds. Cracking down on such activities was a continued effort by the Choson government all the way through its final stages.

The development of commercial systems in Choson resulted in a unique brokerage system conducted by middlemen and local elites. Infrastructural development led to a “center and locality” dynamic within the Choson dynasty between the capital city and its surrounding towns. By the 1800s, what John S. Lee identifies as “High Choson,” Korea was a “brokered state” in which the intermediate space between the government and commoners was occupied by factions of nobles and merchants.²⁶ Especially following intense wars in the 1600s, local elites increased in power within Choson society, reclaiming land and monopolizing available forests.²⁷ The development of private forests alongside state lands, then, was indicative of the rise of private enterprise simultaneously with the state’s efforts to strengthen its hold on the Choson kingdom. The Choson government partnered with intermediate “brokers” in order to carry out state forestry and strengthen the state. Strengthening the state economically and politically required increasing market potential, which meant that an increase in regulations was also accompanied by the rise of local

elites, and cooperation with private merchants and private shipping.²⁸ Within state supervision of forests, merchants became responsible for the distribution of wood products.²⁹ Although the military largely retained control in the southern provinces, other regions developed a “dependence on merchants” through external conflicts and famines.³⁰

Choson state forestry was defined by both the increasing scrutiny of the state and a “reliance on brokerage in a changing economy.”³¹ From a political perspective, this dynamic contributed to the formation of a unique state system of jurisdiction. From an environmental perspective, however, damage continued, if not worsened. Wooyoun Lee argues that it was this form of state forestry that led to the collapse of Choson itself. Due to inefficient regulation of conservation, Lee characterizes the Choson government as “lax” in terms of permitting environmental damage.³² Deforestation reduced biodiversity, destroyed the “water control system” by increasing rain runoff into bodies of water, and opened reservoirs to sedimentation.³³ Whether actions were taken from the local or state level, exploitation was motivated by profit and power and had negative consequences for the environment.

A Missed Chance for Sustainable Practice?

The ecological damage inflicted through forestry during the late Choson period, both local and state-run, was extensive. Due to the potent mix of both state and private tree cutting and land clearance, even amidst claims of conservation, deforestation was “endemic in the agriculturally rich and populous regions of Choson.”³⁴ Even as the state sought to create “restricted” spaces, land clearance was accompanied by “no afforestation plans.”³⁵ Wooyoun Lee specifically inspects representations of biodiversity in Korean and Japanese traditional paintings of their respective environments, finding that realist paintings of Seoul by Chŏng Sŏn “conspicuously lack diversity of species” save the “ubiquitous pine tree, and willows by the side of rivers.”³⁶ Deforestation and land clearance clearly affected the Korean environment in drastic ways that impacted native flora and fauna.

On the other hand, an environmental method emerged during late Choson that claimed to make the practice of forestry sustainable. *Kum-songgye* were pine protection associations chartered by villages in southeastern Korea that engaged in a communal forestry system.³⁷ They were formed mostly for local interests, and were even in opposition to the state, at times.³⁸ *Songgye*, in the words of Chun and Tak, was a “community-based grassroots movement to protect people’s interest.” Such locally based systems enacted a range of activities, from establishing wood quotas to sectioning off forests into spaces for “specific activities.”³⁹ Local governments had the potential to convert state “restricted” forests in which peasant behaviors were made illegal into *songgye* forests, which were “sustainably maintained” due to their ability to “[weave] the social fabric of

- 28 John S. Lee, 177.
- 29 John S. Lee, 181.
- 30 John S. Lee, 178.
- 31 John S. Lee, 192.
- 32 Wooyoun Lee, “Deforestation and Agricultural Productivity,” 34.
- 33 Wooyoun Lee, 45.
- 34 Wooyoun Lee, 51.
- 35 Wooyoun Lee, 30.
- 36 Wooyoun Lee, 37.
- 37 John S. Lee, “Protect the Pines, Punish the People,” 217.
- 38 John S. Lee, 220.
- 39 Young Woo Chun and Kwang-Il Tak, “Songgye, a Traditional Knowledge System for Sustainable Forest Management in Choson Dynasty of Korea,” *Forest Ecology and Management* 257, no. 10 (2009): 2023.

the village” through shared “agro-forestry activities.”⁴⁰ According to Chun and Tak, *songgye* had the potential to establish communal, local forestry circuits that gave villagers a sense of ownership and accountability over their resources.

Whether such a system was truly sustainable, especially when juxtaposed with the political agenda of a larger state, is difficult to conclude now. What is true, however, is the elimination of *songgye* by the arrival and imposition of Japanese colonial rule onto the Korean landscape. The next phase of environmental exploitation on the peninsula was defined by the arrival of a new power that not only took exploitation to a new scale, but reframed Choson impacts on the environment as those of an incapable and uncivilized state and populace.

*From Kingdom to Colony:
Japanese Reconfiguration of Korean Land*

When Japan colonized Korea at the turn of the twentieth century, the established colonial governmental system, the Government-General of Korea (GGK), took it upon itself to reconfigure environmental conflict as indicative of Korean ineptitude. Japanese officials justified their arrival through the “implication of thin or bare vegetation,” as indicated through the Korean Forest Map of 1910, and painted Koreans as “undeveloped people” with “histories of devastation.”⁴¹ Both Japan and the West condemned Korea for “building their own ecological deathbed.”⁴² Even when research suggested that devastation was more due to Japanese newcomers than Korean natives, the GGK subsequently edited studies. Indigenous agricultural practices were causes of “land erosion,” and shifting cultivation, one of the ways in which Koreans farmed, was decried by professor of agronomy Denzaemon Hashimoto as “extreme predatory agriculture.”⁴³ By deliberately framing of Korean practices as responsible for fundamental damage, the GGK claimed Japan to be the power that was capable of turning the tide that Choson had caused. This declaration heavily influenced subsequent historiography on colonial environmental efforts.

The colonial government redefined the Korean rural environment through a variety of methods. First, Japanese officials came to occupy a particular space within the “brokered state” left by the obsolete Choson. As colonial arbiters, they rearranged the land system into one based on private ownership, which exacerbated the divide between peasants and landlords.⁴⁴ This restructuring fundamentally transformed Korean agricultural practices. Private ownership led to massive land reclamation, and a new emphasis on “economic transactions and contractual relations” rather than social relationships between landowners and farmers fostered animosity between the two parties. Organizations emerged for both peasants and landlords, backed by primarily leftists and the colonial state, respectively. Peasants came to “identify Korean landlords with the Japanese.”⁴⁵ Thus, colonial arbitration pitted classes of Korean people against each

other in a way that prevented one group from accumulating power and ensured the Japanese state ultimate sovereignty and control over Korea’s people and environment.

Environmentally, land reclamation, the ushering in of new technologies, and the intensification of agricultural production had long-lasting consequences on the peninsula. Reclamation projects were capitalistic business projects. As it was more worthwhile to invest in Korea than mainland Japan, the number of proposals for reclamation licenses increased throughout the late 1910s to early 1920s with “increases in rice and farmland prices.”⁴⁶ While not all proposals were accepted by the GGK, reclamation projects were primarily conducted on large scales, and the rights for Korean projects, even when initially proposed by Korean people, were often transferred to Japanese overseers.⁴⁷ Reclamation ultimately served to reinforce the food supply of the Japanese Empire and, as a medium for colonial arbitration, promoted colonial landlord-tenant relationships.⁴⁸ More and more, Korea became a producer of Japanese resources.

In addition to reclamation projects, Japanese officials replaced traditional Korean rice with “superior strains” and constructed more extensive irrigation networks, reshaping the Korean environment into more intensive agricultural systems.⁴⁹ Korea became a “convenient granary” for Japan, and Japanese officials sought to organize Korea into a site of efficient crop production.⁵⁰ Agriculture intensified for rice, millet, barley, and wheat on the peninsula through the Japanese regime, as well as for soybeans along the western coast especially (Appendix).⁵¹ Thus, the GGK used both physical manipulation and social reconfiguration of intra-Korean relationships to exert its control over Korea’s natural resources. However, as a non-Japanese colony, Korea was also expendable. When impacted by the global economic depression of the late 1920s, Japan set up economic protections for its nation that resulted in the accumulation of Korea-grown rice and grains within the peninsula, and a significant decrease in the prices of agricultural products.⁵² As much as the GGK claimed to be technologically and intellectually equipped to “better handle” the Korean landscape than Koreans themselves, first and foremost in its agenda, as expected of an empire, was the well-being of its nation-state, not the sustainability of its practices.

- 46 Chaisung Lim, “Reclamation Projects and Development of Agricultural Land in Colonial Korea,” *The Review of Korean Studies* 21, no. 2 (December 2018): 29.
- 47 Lim, 27.
- 48 Lim, 28.
- 49 Kang, “Forging the Colonial State,” 166.
- 50 John Wesley Coulter and Bernice Bong Hee Kim, “Land Utilization Maps of Korea,” *Geographical Review* 24, no. 3 (1934): 419.
- 51 Coulter and Bong Hee Kim, 420-421. See Appendix.
- 52 Kang, “Forging the Colonial State,” 175.
- 53 Wooyoun Lee, “Deforestation and Agricultural Productivity,” 26.

The Science of “Ondology”

Of particular significance was the cultural and environmental debate surrounding the technology of ondol, or underfloor heating through the transfer of heat from an active stove in Korean homes. The ondol system was integral to Korean life on all social levels; by the seventeenth century, ondol had become “the rule throughout the court compound in the capital.”⁵³ In 1872, King Kojong declared that Kyo’ngki, Junwo’n,

- 40 Chun and Tak, 2024.
- 41 Taisaku Komeie, “Colonial Environmentalism and Shifting Cultivation in Korea: Japanese Mapping, Research, and Representation,” *Geographical Review of Japan* 79, no. 12 (2006): 669-670.
- 42 John S. Lee, “Protect the Pines, Punish the People,” 237.
- 43 Komeie, “Colonial Environmentalism,” 672-674.
- 44 Kang, “Forging the Colonial State,” 161-163.
- 45 Kang, 171-173.

54 “경기전, 준원전 등을 온돌로 고쳐 대청을 만들어 이안하고 환안하게 하다,” [Kyo’ngk-ijo’n, junwo’njo’n tu’ngu’l ondollo koch’yo’ taech’yo’ngu’l mantu’llo’ ianhako hwanan-hake hata / Fixing kyo’ngki-jo’n and junwo’njo’n to ondol systems], From Choson Dynasty Annals, *Kojong sillok* 05/14/1872, http://sillok.history.go.kr/id/kza_10905014_002 (accessed December 2019).

55 Wooyoun Lee, “Deforestation and Agricultural Productivity,” 27.

56 David Fedman, “The Ondol Problem and the Politics of Forest Conservation in Colonial Korea,” *Journal of Korean Studies* 23, no. 1 (January 2018): 27.

57 Fedman, “The Ondol Problem and the Politics of Forest Conservation in Colonial Korea,” 33.

58 Fedman, 47-49.

and Yo’nghee halls were to have their main floors remodeled into ondol floors.⁵⁴ Other dynastic records stated that “even the slaves of officials” slept in ondol rooms, and in *Ojuyo’nmun*, an encyclopedia dated to the nineteenth century, author Yi Kyugyo’ng noted that people had expanded the ondol stove into an “ondol sluice system.”⁵⁵ Even during the final century of Choson rule, the state was more concerned with everyday living than “sustainable” forestry practices, in the purest form of the word. While the scale of it could be seen as luxury, ondol as a technology was a way in which Koreans coped with frigid winters. Upon charging into the peninsula, the forces of imperial Japan discovered that ondol was an irrevocable part of Korean life and sustenance.

When Korea became a Japanese colony in 1910, colonial authorities implemented the cultural reconfiguration of ondol in an attempt to assert Japanese authority. The Japanese perceived the timber required for such extensive heating to be wasteful. Ondol was a problem caused by the “imprudent Korean farmer.”⁵⁶ The calls for research into alternative fuels and the reform of the Korean household itself extended from Japanese intellectuals during the 1920s to “reform-minded Koreans” such as Yun Ch’iho.⁵⁷ By the 1920s, it was established that the Korean home *had* to be reconfigured: the question was how that would happen. Methods for “rehabilitated ondol” were proposed and proliferated by Japanese and Korean figures, from flower trays to increase oxygen circulation to remodeled “forest love cook stoves” that minimized the energy consumed by ondol.⁵⁸ According to “veteran woodsman” Doke Atsuyuki in a 1911 article published in the Japanese journal *Chōsen oyobi Manshū* (“Korea and Manchuria”), it was the responsibility of the Japanese to help Koreans overcome a nature of “sloth” that enabled them to degrade their landscape with little to no qualms.⁵⁹ This mentality enabled Japan to claim the upper hand, even in retaining or “preserving” Korean traditions.

The process of reconfiguring ondol during the early colonial period, then, was a way in which Japan claimed a sense of environmental awareness and enlightenment that, in comparison, Korea lacked. Even while retaining the forestry industry itself, the GGK could manipulate the way it was run in the name of conserving Korea’s waste. However, when Japan entered the Second Sino-Japanese War in 1937, the need for resources, supplies, and labor became more visceral and militaristic. The Japanese state then used this same authority to justify exploitation of Korea’s environment. Just as Japan had the responsibility to prevent Koreans from degrading their landscape, it also claimed the responsibility to properly utilize it.

The Second Sino-Japanese War engaged the Japanese empire in accelerated mobilization of its military and colonial resources. Korea became

an arena of “forest plunder” as the GGK ramped up the production of timber, charcoal, and chemicals. Korean forests were put under intense extraction practices, and Japanese policy focused on enhancing yields, rationalizing consumption, and varietizing fuel sources.⁶⁰ Early in the war, afforestation was still a public commitment of Japanese forestry officials, but as the conflict intensified, afforestation became a pretext for increased exploitation by the Korean Forestry Development Company (KFDC). In fact, afforestation was “curtailed” starting in 1942. As Korea was stripped of its forests on all levels from national to private, Japan fed a larger Korea-Manchuria economic bloc within the East Asian commercial sphere it strove to create. The state increased forestry quotas to accommodate for the war effort and sought to obtain concentrated control over the distribution of forestry products that ranged from construction materials to synthetic fibers.⁶¹

Amidst large-scale industrial mobilization, however, conservation continued to be a steady practice during wartime, but with different intensity, and with different motivations, than before. Key to this was a public relations campaign that encouraged “village-level sufficiency in fuel consumption.”⁶² Conservation rhetoric was geared toward local efforts and abilities, “practical objectives,” rather than the larger political capabilities of the GGK and Japanese empire. Changes were to start from the home, the hearth itself, especially concerning heat consumption, and this emphasis enabled the GGK to control the practices of Korean people from the most basic levels up. Such campaigns were also a useful framework to define conservation as the responsibility of locals. By making conservation a local effort, GGK could push for fuel conservation without specifically altering its extractive practices, all the while continuing to mobilize colonial production for the war effort. Both threads were ultimately rooted in utilizing the environment to maintain and extend Japanese imperial power.

Japan also wove environmentalism into cultural and political loyalty during the war period. Household actions that adhered to the GGK’s encouragements toward fuel conservation and remodeling of ondol were encouraged as “expressions of imperial fealty.” Such activities were grouped into what was identified as a “low-temperature lifestyle” that was first and foremost based on “individual” decisions. It was up to individual Koreans, then, to take the actions that would “tighten the social fabric of local society.”⁶³ Japanese empire-building on the Korean peninsula established levels for environmental interaction. On the local level, Koreans were to be diligent workers who combated laziness in order to ensure a sustainable environment for themselves and for the Japanese state. On the state level, meanwhile, the GGK used that basis to increase extraction of forestry and agricultural resources from the Korean environment.

59 Fedman, 53-54.

60 David Fedman, “Wartime Forestry and the ‘Low Temperature Lifestyle’ in Late Colonial Korea, 1937–1945,” *The Journal of Asian Studies* 77, no. 2 (2018): 333-334.

61 Fedman, “Wartime Forestry and the ‘Low Temperature Lifestyle’ in Late Colonial Korea, 1937–1945,” 339-340.

62 Fedman, 341.

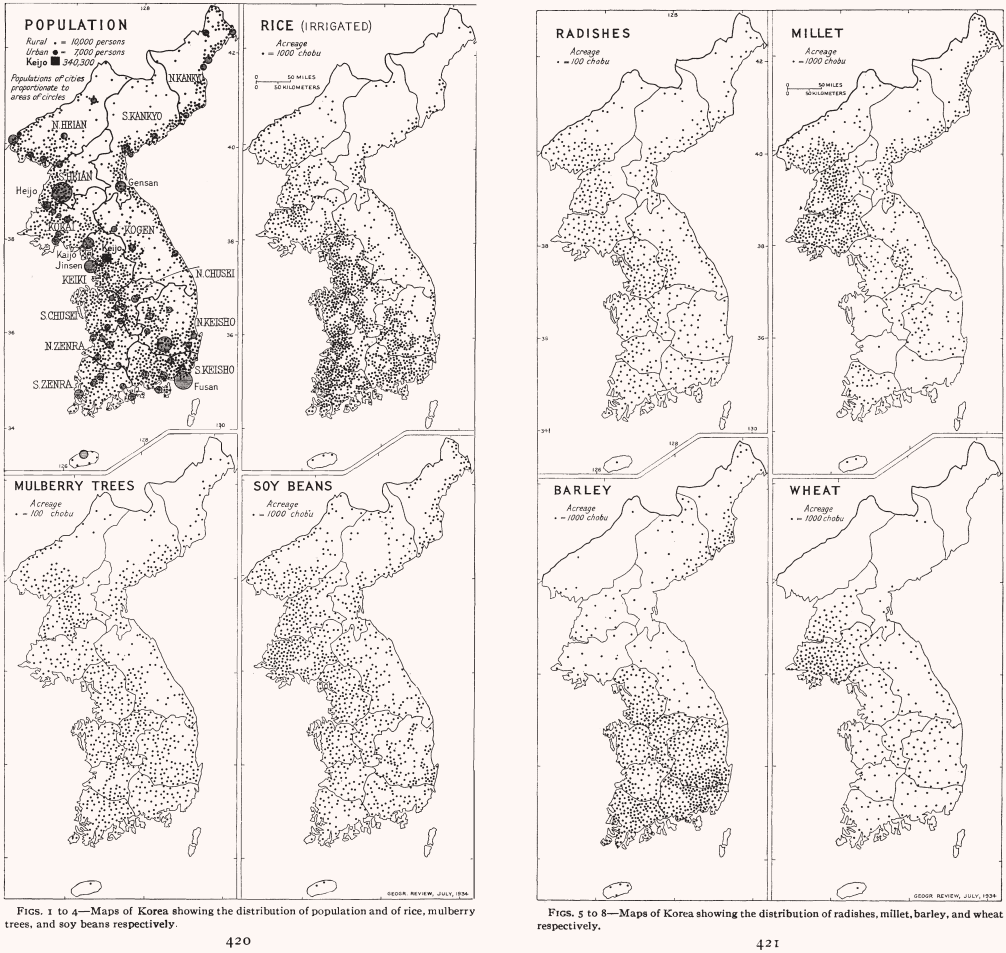
63 Fedman, 342-343.

Both late Choson and imperial Japan were hegemonic states that utilized the Korean environment for the expansion and maintenance of power. Both dove into the forests and fields as sources of productivity and mechanisms to bind subjects irrevocably in service to the state. Exploitation was based in the same essential industries, agriculture and forestry, and it was also conducted through the lens of state responsibility for an irresponsible populace that could not be left alone, lest the people extensively damage the environment. From this perspective, exploitation was a sustained continuity due to both the necessity of it for the survival of Korean people, especially for heat amidst climatic extremes, and the political agendas of the state.

The key difference between the two powers is that the Japanese empire explicitly took exploitation to a larger scale. The Japanese state claimed to be more knowledgeable about prudent environmental practice than the Koreans. The GGGK's claim to legitimacy was similar to the late Choson state's except that it extended the idea of incapability to Korean nature itself, using a cultural argument to argue for Japanese superiority and to encourage assimilation and loyalty to Japanese society. This involved a substantial reworking of cultural frameworks to center on the initiative of modifying Korean practices in agriculture and heat consumption on the local level, making conservation and sustainability a local responsibility. However, the Japanese state simultaneously dismissed all vestiges of traditional Korean interactions with the environment as impractical, which swept potentially sustainable practices such as songgye into obscurity in favor of "forestry cooperatives or forestry associations" that better acquiesced with the hierarchy of colonial rule.⁶⁴ Designating conservation as a village matter enabled the Japanese state to maintain steady exploitation of Korean resources, even increasing such production for the Second Sino-Japanese War. The Korean environment suffered further damage to its forests, and its land was extensively manipulated into intensive agricultural plots.

Therefore, environmental exploitation must be understood as a continuity through a variety of levels and motivations, from the survival of villages to the expansion of state governments, throughout both the late Choson and colonial periods. It is important to understand the Choson state as a significant actor on the Korean environment, and as a contributor to deforestation and land clearance, before the arrival of the colonial government, as well as observe colonial-era resource extraction through the lens of intensified damage by the Japanese under a guise of cultural enlightenment and conservation. At the end of each day, trees continued to be felled, land continued to be taken from locals and controlled by larger powers, and semblances of conservation veiled the larger, more deeply ingrained currents of environmental damage pushed by state agendas.

64 Chun and Tak, "Songgye, a Traditional Knowledge System," 2025.



Hee Kim, "Land Utilization Maps of Korea," *Geographical Review* 24, no. 3 (1934): 420-421.

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THERE ARE JUST
TWO THINGS

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

by Michael Flynn

Abstract

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

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

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

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

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

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

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

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

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

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

Law as the “Object of Contention”

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

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

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

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

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

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

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

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

9 Cover, “The Folktales,” 181.
10 Cover, 181.
11 Cover, 181.
12 Cover, 180.
13 Here I defer to Max Weber’s famous definition of the state. Max Weber, *Max Weber’s Complete Writings on Academic and Political Vocations*, ed. John Dreijmanis (New York City: Algora Publishing, 2008), 156.
14 To be more specific: government administrators, agents, or representatives—for example, policemen or administrators—are authorized to enforce the power of the state, and in doing so, they often replicate and translate the state’s official messages power in a local context.
15 Robert Dahl, *Polyarchy: Participation and Opposition* (New Haven, CT: Yale University Press, 1971), 8.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 *Guatemala: Memory*, 34.
24 *Granito: How to Nail a Dictator*, produced by Pamela Yates, New Day Films, 2011.

25 Patrick Ball, Paul Kobrak, and Herbert F. Spirer, *State Violence in Guatemala, 1960–1996: A Quantitative Reflection* (Washington D.C.: American Association for the Advancement of Science, 1999), 27, accessed December 11, 2019, <https://hrdag.org/wp-content/uploads/2013/01/state-violence-guate-1999.pdf>.

26 Sanford, *Buried Secrets*, 251.

27 Ann L. Sittig and Martha Florinda González, “Guatemalan Civil War and Postwar Rebuilding,” in *The Mayans among Us: Migrant Women and Meatpacking on the Great Plains* (n.p.: University of Nebraska Press, 2016), 33, <https://doi.org/10.2307/j.ctt1d41ctn.9>.

28 Ball, Kobrak, and Spirer, *State Violence*, 27.

29 Sanford, *Buried Secrets*, 208.

30 Sanford, 208.

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

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

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

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

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

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

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

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

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

31 Sanford, 208.

32 Sanford, 174.

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

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

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

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

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

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

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

35 Sanford, *Buried Secrets*, 40.

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

34 *Guatemala: Memory*, 33.

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

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

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

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

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

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

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

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

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

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

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

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

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

Justice, Prosecutions,
and Appeals in the Transitional Period

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

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

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

44 David Scheffer, “Postscript on Law, Crimes, and Impunity,” in *All the Missing Souls: A Personal History of the War Crimes Tribunals* (Princeton, NJ: Princeton University Press, 2012), 437.
45 Scheffer, “Postscript on Law,” 437.
46 Diane F. Orentlicher, “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime,” *Yale Law Journal* 100, no. 10 (1991): 2542, <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=7376&context=ylj>.

41 Kruijt, “Post-War and Post-Electoral,” 100.
42 Stoll, “Guatemala: Why They,” 4.
43 Stoll, 5.

47 Sebastian Rotella, “Finding Oscar: Massacre, Memory and Justice in Guatemala,” *ProPublica*, last modified May 25, 2012, accessed May 2, 2020, <https://www.propublica.org/article/finding-oscar-massacre-memory-and-justice-in-guatemala>.

48 *Guatemala’s Justice System: Evaluating Capacity Building and Judicial Independence*, 7, June 2019, accessed December 11, 2019, https://www.wola.org/wp-content/uploads/2019/07/Informe_cam_english_final7.1.pdf.

49 “Still No Justice for Guatemala Massacre Victims after 26 Years,” *Amnesty International*, last modified December 5, 2008, accessed May 2, 2020, <https://www.amnesty.org/en/latest/news/2008/12/still-no-justice-guatemala-massacre-victims-after-26-years-20081205/>.

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

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

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

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

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

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

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

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

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

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

There are Just Two Things

51 Case of the “Las Dos Erres” Massacre v. Guatemala (Inter-American Court of Human Rights Nov. 24, 2009), 31, Accessed December 11, 2019. http://www.corteidh.or.cr/docs/casos/articulos/seriec_211_ing.pdf.

52 Case of the “Las Dos Erres,” 34.

53 Case of the “Las Dos Erres,” 34.

54 Case of the “Las Dos Erres,” 36.

55 Case of the “Las Dos Erres,” 12.

56 Case of the “Las Dos Erres,” 36.

57 International Federation for

“You Are Violating the Law:” *The Trial of Ríos Montt*

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

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

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

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

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

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

63 *Dictator on the Dock.*
64 *Dictator on the Dock.*
65 Mike McDonald, “Judge Suspend Genocide Trial of Guatemala’s Rios Montt,” Reuters, last modified April 18, 2013, accessed May 2, 2020, <https://www.reuters.com/article/us-guatemala-riosmontt/judge-suspends-genocide-trial-of-guatemala-rios-montt-idUSBRE93I03620130419>.
66 Kate Doyle, “Day 20: Defense Attorneys Walk Out of Trial in Protest; Preliminary Court Judge Annuls Trial as Attorney General Calls Action Illegal and Promises Legal Challenge,” International Justice Monitor, last modified April 19, 2013, accessed December 11, 2019.
67 Doyle, “Day 20: Defense,” International Justice Monitor.
68 *Dictator on the Dock.*

Human Rights, “Genocide in Guatemala,” International Federation for Human Rights, 8.
58 Open Society Foundations, “Judging a Dictator,” Open Society Justice Initiative, 7.
59 Open Society Foundations, 4.
60 Open Society Foundations, 4.
61 Open Society Foundations, 3.
62 *Dictator on the Dock.*

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

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

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

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

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

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

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

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

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

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

70 *Dictator on the Dock*.
71 Open Society Foundations, “Judging a Dictator,” Open Society Justice Initiative, 7.
72 Jo-Marie Burt, “Historic

69 *Dictator on the Dock*.

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

Conclusion

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

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

Ríos Montt during his trial are unequivocally, in the words of Jo-Marie Burt, the “forces of impunity,” what may we make of attorney Francisco Guidel’s warning to Judge Barrios not to “contribute to impunity?”⁷³ Discourse continues to play an important role in the interpretation and application of Guatemalan law, even after Guatemala has, for the most part, adopted democratic institutions. Law, justice, impartiality, and other principles have no set meaning, and even in contemporary Guatemala we still find these principles being mobilized for or against impunity. For example, in 2019 President Jimmy Morales ejected CICIG from Guatemala on the grounds that it had committed a “severe violation” of Guatemalan and international law.⁷⁴ “CICIG has put at risk the security of the nation, public order, governance, respect for human rights and above all the sovereignty of the state of Guatemala,” Morales claimed.⁷⁵ Placing claims like these within the broader historical battle over the themes of order, security, and, of course, law helps to illuminate the ways in which they reflect the doctrines of the Civil War. Highlighting such continuities (or discontinuities) in the discourse around the law in Guatemala exposes the ways in which the law continues to be weaponized in pursuit of particular political ends .

North American Congress on Latin America.
74 At the time, CICIG was investigating Morales for corruption. Tom Phillips, “Guatemalan President Condemned after Ejecting UN Anti-corruption Group,” *The Guardian* (London, UK), January 8, 2019, accessed May 3, 2020.
75 Phillips, “Guatemalan President.”

Verdict in Guatemala’s Genocide Case Overturned by Forces of Impunity,” North American Congress on Latin America, last modified June 17, 2013, accessed December 11, 2019, <https://nacla.org/news/2013/6/17/historic-verdict-guatemala%E2%80%99s-genocide-case-overturned-forces-impunity-0>.
73 Burt, “Historic Verdict,”

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CALCULATED
IDEOLOGICAL PUBLISHING

How the Business Interests of American
Revolutionary Printers Transformed the Role
of Newspapers

by Zoe Magley

Abstract

Today’s newspapers and news outlets are critical actors in our public sphere as entities with political agency that inform and shape most aspects of public opinion. The causes and implications of newspapers’ evolution into ideological platforms broadens our understanding of the American Revolution and the role of news media today. This paper challenges the assumption that newspapers merely reflected revolutionary fervor in the colonies, and instead argues that newspapers actively shaped colonial attitudes toward Great Britain, fueled by the business concerns of Printers. Through analysis of newspaper responses to the Stamp Act in 1765 and efforts in 1773 to rally support for the American postal system, this paper examines the explosion of anti-British and pro-American rhetoric in Revolutionary-era newspapers. This paper argues that the transition of newspapers into ideological platforms occurred as a result of active choices by Revolutionary-era Printers. Prompted by economic concerns over the effects of the Stamp Act and imperial post office on the newspaper business, Printers helped mobilize colonial opposition to Great Britain by publishing rhetorically-charged pieces that shaped colonial attitudes and led newspapers to become enduring influencers of public opinion.

Introduction

American historians and scholars broadly recognize that the shift of newspapers from solely informational outlets into ideological mouthpieces occurred during the American Revolutionary Era. Existing scholarship recognizes the role of colonial-era newspapers as catalysts for the American Revolution, responsible for mobilizing colonial resistance against Britain by publishing ideologically charged pieces that both stoked and encouraged colonial opposition. Carol Sue Humphrey has deeply examined the early newspaper enterprise and the role of the press in the American Revolution. Other scholars such as Stephen Botein and Arthur M. Schlesinger have reviewed the financial motivations behind Printers’ responses to British enactment of the Stamp Act and their subsequent role in the American Revolution. Historian Joseph Adelman has further discussed the business implications of the British imperial post office for Printers.

This paper recasts the relationship between colonial newspaper Printers and the American Revolution to consider the business motivations and ideological publications of Printers in a broader context. Financial concerns of Printers in relation to the Stamp Act initially fueled Printers’ decisions to publish anti-British rhetoric and encourage colonial opposition to the Crown. This pattern of ideological publishing persisted to mobilize colonial resistance against further areas of concern for Printers. As a result, newspapers acquired political agency in the public sphere. The roots of modern, ideologically-charged news media are found in this era of rhetorical resistance.

This analysis will argue that Printers’ business concerns in direct response to the Stamp Act crisis in 1765 and the push against the British imperial post office in 1773 the American Revolution led newspapers to become enduring and effective influencers of public opinion. Invoking widespread anti-British and pro-American rhetoric that espoused revolutionary fervor, newspapers and their Printers played a vital role in shaping colonial attitudes and mobilizing opposition to Great Britain. Colonists and Printers alike were emboldened by their new rhetorical powers, giving birth to modern day ideological newspapers and the business of journalism.

Colonial-Era Newspaper Printing: A Business

Printers’ business concerns played a large role in the colonial newspaper enterprise. Managing a print shop and newspaper as a colonist in the eighteenth century was not lucrative. Unlike today’s newspaper industry, the colonial newspaper in the 1700s was a small-scale business, typically run by one or two Printers in a one, two, or three-press shop, with a daily output averaging around 2,000 to 2,500 pages.¹ Operating in the undeveloped colonial economy, the businesses of American colonial Printers were modest compared to such businesses in London; the costs of printing

1 Carol Sue Humphrey, *This Popular Engine: New England Newspapers During the American Revolution, 1775–1789* (Newark: University of Delaware Press, 1992), 27.

2 Stephen Botein, "Printers and the American Revolution," in *The Press and the American Revolution*, edited by Bernard Bailyn and John B. Hench (Worcester, Mass.: American Antiquarian Society, 1980), 16.

3 Humphrey, *This Popular Engine*, 29.

4 Humphrey, 31, 34.

5 Botein, "Printers," 17.

6 Botein, 17.

7 Joseph M. Adelman, "'A Constitutional Conveyance of Intelligence, Public and Private': The Post Office, the Business of Printing, and the American Revolution." *Enterprise & Society* 11, no. 4 (2010): 712; Humphrey, *This Popular Engine*, 35.

8 Humphrey, 35.

9 Humphrey, 27.

10 Botein, "Printers," 19.

11 Ralph Frasca, "Benjamin Franklin's Printing Network and the Stamp Act," *Pennsylvania History: A Journal of Mid-Atlantic Studies* 71, no. 4 (2004): 406, 409.

12 *Pennsylvania Gazette*, June 10, 1731, quoted in Botein, "Printers," 20.

13 William B. Warner, "Communicating Liberty: The Newspapers of the British Empire as a Matrix for the American Revolution," *ELH* 72, no. 2 (2005): 346; Botein, "Printers," 19.

14 Botein, "Printers," 19.

often outweighed its earnings.²

Printing presses were expensive and frequently in need of repair; a Printer's typefaces were "the costliest to maintain" as they broke, wore out, or needed replacement.³ Furthermore, Printers often resorted to importing typefaces, ink, and quality paper from Britain because American production of necessary supplies could not meet colonial printing demand. Particularly problematic was the lack of paper supply. American paper mills often could not keep pace with demand, resulting in a number of paper shortages that forced Printers to reduce their newspaper sizes.⁴

Colonial Printers were thus burdened by the tools necessary for printing itself, and so print shops regularly operated as general stores to stay competitive. Colonial Printers "sold whatever they could get their hands on" including everything from dry goods to book collections.⁵ Botein characterized eighteenth-century printing as a "slender living," compelling Printers to adapt and "play more varied roles in their communities than was customary for their brethren in London."⁶

Acquisition of news was also problematic. Printers depended on the mail system to obtain fresh news about Britain and other colonies and to distribute papers to their subscribers.⁷ Any obstruction of a postal route could impact fresh news and Printers' business outputs because "late mail delivery meant delayed news."⁸ The combination of an undeveloped colonial economy, costly materials, and the precarious postal routes delivering their news made printing an unstable career from the onset.

Business concerns were determinative factors in the decisions of colonial Printers. They knew operating a press was a "risky venture," and financial security was dubious at best.⁹ Printers were especially concerned about subscription sales, and in colonial America, a newspaper was often unable to rely on the "favor of any one group of his neighbors."¹⁰ Consequently, many Printers took the Benjamin Franklin approach of impartiality in their newspaper printing. Franklin, the Deputy Postmaster General and head of a large printing network, co-published the *Pennsylvania Gazette* with David Hall in Philadelphia.¹¹

Franklin's argument for the impartial press was launched in his 'Apology for Printers' published in the 1731 issue of the *Pennsylvania Gazette*, where he asserted that "Printers are educated in the Belief, that when Men differ in Opinion, both Sides ought equally to have the Advantage of being heard by the Publick."¹² Appearing too partisan could result in a loss of business and ad revenue from opponents, and Franklin's words indicate an early belief in liberty of the press.¹³ Printers thus published pieces with diverse opinions because it "suited their business interests to serve all customers."¹⁴ However, the balance of neutrality could also be tipped. Printers sometimes catered to the partisan attitudes of the colonies, finding that "in periods of political turmoil" abandoning neutrality proved to be more advantageous, and newspapers began serving "those

who insisted on and were willing to pay for partisanship."¹⁵

The Stamp Act of 1765 was a direct tax on the British American colonies enacted by the Parliament of Great Britain. The act required all printed materials and legal documents to bear a tax stamp from which British commissioners in the colonies collected revenue. The first notable instance in which Printers abandoned their neutral stances occurred at a politically tumultuous time in the colonies—after Britain's passage of the Stamp Act in 1765. At the outbreak of the Stamp Act crisis, publishing newly ideologically charged pieces became the *best* business tactic of Printers, who had a direct economic stake in the Stamp Act tax. Twenty-two newspapers were printed in the colonies when the Stamp Act took effect.¹⁶ The tax, levied on printed materials, "saddled the burden directly on the backs of [P]rinters" and sparked anxiety among the Printers, who worried they could not pass much of the tax onto their customers."¹⁷ In this context, Printers began retreating from their standard of neutrality as they realized the economic threat the Stamp Act posed to their businesses. David Hall, co-publisher of the *Pennsylvania Gazette*, reported to Franklin that customers "were already 'leaving off fast' in anticipation of the Stamp Act," because as a matter of principle, customers did not want "to pay anything towards that Tax that they can possibly avoid."¹⁸

Not only did the stamp tax itself endanger newspapers, but some printing businesses began suffering at the hand of others that had taken more stringent positions on the Stamp Act. Colonists mounted public pressure against Printers perceived to be too 'lukewarm' or neutral toward the stamp tax. Hall, who considered the Stamp Act a horrible law, did not publicly oppose it. As a result of his "policy of equal access for competing views," colonists cancelled subscriptions and began personally haranguing Hall.¹⁹ He wrote to Franklin complaining that "all the Papers on the Continent, ours excepted, were full of Spirited Papers against the Stamp Law, and...because I did not publish those Papers likewise, I...got a great deal of Ill-will."²⁰ Other Printers who did not publish critical responses to the Stamp Act were also punished economically. Peter Timothy, a Printer in the South, temporarily suspended his paper instead of taking a stance on the stamp tax. As a result, Charles Crouch started up a new *South-Carolina Gazette* that espoused "the cause of American liberty more boldly" and prospered because of its "warm criticism of the Stamp Act" that appealed to patriotic readers.²¹ Printers who spoke out against the Stamp Act were often rewarded, whereas those who did not suffered declines in their political reputation and economic success. Recognizing that the stamp tax posed "a threat to their livelihoods" Printers started taking clear sides.²²

In what Humphrey deemed "one of the first mass-media editorial campaigns" in American journalistic history, newspapers overwhelmingly

15 Botein, 21.

16 Frasca, "Benjamin Franklin," 403-404.

17 Schlesinger, "The Colonial Newspapers," 65; Botein, "Printers," 24.

18 Botein, "Printers," 25.

19 Frasca, "Benjamin Franklin," 410.

20 Hall to Franklin, June 20, 1765, *The Papers of Benjamin Franklin*, ed. Leonard W. Labaree et al. (New Haven: Yale University Press, 1959-), 12: 188-89, quoted in Botein, "Printers," 25.

21 Botein, "Printers," 26.

22 Frasca, "Benjamin Franklin," 407.

23 Carol Sue Humphrey, *The American Revolution and the Press: The Promise of Independence* (Chicago: Northwestern University Press, 2013), 50.

24 S. F. Roach, Jr, "The Georgia Gazette and the Stamp Act: A Reconsideration," *The Georgia Historical Quarterly* 55, no. 4 (1971): 478; Willi Paul Adams, "The Colonial German-language Press and the American Revolution," in *The Press and the American Revolution*, edited by Bernard Bailyn and John B. Hench (Worcester, Mass.: American Antiquarian Society, 1980), 183.

25 Frasca, "Benjamin Franklin," 407.

26 Letter to the commissioners of stamps in London, October 12, 1765, *Pennsylvania Journal*, September 4, 1766, quoted in Schlesinger, "The Colonial Newspapers," 73.

27 *New-Hampshire Gazette*, October 31, 1765, quoted in Frasca, "Benjamin Franklin," 407.

28 Frasca, "Benjamin Franklin," 412.

29 Roach, "The Georgia Gazette," 9; Ralph Adams Brown, "New Hampshire Editors Win the War: A Study in Revolutionary Press Propaganda," *The New England Quarterly* 12, no. 1 (1939): 36.

30 Humphrey, *This Popular Engine*, 38-39.

influenced colonial response to the Stamp Act.²³ Printers firstly kept colonists informed and energized regarding the status of the Stamp Act by publishing a continuous flow of information. Stories were published all over the colonies detailing "anti-stamp collector displays," and Printers like Henry Miller of the Pennsylvania German *Staatsbote* kept readers incessantly up-to-date: "news concerning the Stamp tax could be found in almost every number of the *Staatsbote*."²⁴ Printers further fired up colonial readers by publishing ideologically charged pieces.

Printers packed their papers with implicit—and even explicit—appeals to colonists to rally opposition to the stamp tax, urging American nationalism and calling for colonists to oppose the Stamp Act. Although the stamp tax was most onerous to Printers, newspapers published pieces rendering it a colonial-wide assault. With "ringing denunciations," Ralph Frasca asserted that Printers began "equating the tax with despotism and proclaiming that taxation without parliamentary representation constituted tyranny."²⁵ John Hughes, the stamp distributor of Pennsylvania, testified that "the [P]rinters in each Colony, almost without exception, stuffed their papers weekly for some time before with the most inflammatory pieces they could procure and excluded everything that tended to cool the minds of the people."²⁶ The *New-Hampshire Gazette* likened the tax to slavery, declaring the Stamp Act to be "as fatal as almost all that is dear to us."²⁷ Henry Miller of the *Staatsbote* also took a "vigorous anti-tax posture."²⁸

Alongside widespread condemnation of the Stamp Act itself, Printers were able to mobilize colonial opposition by creating an enemy. To unite colonists, Printers published "patriot propaganda" that repeatedly portrayed the actions of British troops as unjust, Britain as inimical, and criticized anti-patriot sentiment.²⁹ The *Boston Gazette*, consistently in support of the patriot cause, published pieces that depicted the British as oppressive enemies and endorsed American nationalism.³⁰ While the ostensible goal of Printers was to rally opposition against the Stamp Act, such pieces effectively demonized the British in the minds of colonists. Anyone who did not oppose the Stamp Act or who worked in imperial posts was targeted, such as when the *Boston Gazette* printed lists of stamp-tax collectors, labeling them "mean mercenary Hirelings or Parricides among ourselves, who for a little filthy lucre would at any time betray every Right, Liberty, and Privilege of their fellow subjects."³¹ In New Hampshire, press was almost entirely Whig, and "its columns...were filled with...warnings to Tories, or to those who might consider espousing the Loyalist side."³² Newspapers were communicating a clear message: if you are not with the colonists, you are with the British.

Beyond criticism of British actions and the stamp tax, Printers published explicit calls to protest the Stamp Act to further energize colonists. In reference to stamps, the *Connecticut Courant* expressed, "it is hoped that

every lover of his Country will spurn, with the highest Indignation, the base Thought of ever purchasing a single one."³³ Such language sought to deter colonists from purchasing stamps by invoking patriotic rhetoric and encouraging colonial solidarity. The *Boston Gazette* published an essay urging its readers to oppose the Stamp Act, crying, "AWAKE!--Awake, my Countrymen, and, by a regular & legal Opposition, defeat the Designs of those who enslave us and our Posterity. Nothing is wanting but your own Resolution."³⁴ Such open denunciations of the Stamp Act undoubtedly influenced colonists to some degree, and continuous disparagement by newspapers buoyed opposition to the stamp tax.

The single-issue *Constitutional Courant*, published pseudonymously, attacked the Stamp Act, containing phrases like "the vile minions of tyranny," "the chains of abject slavery just ready to be riveted about our necks," and the demand to "never...pay one farthing of this tax."³⁵ These rhetorical declarations represented a new and bold wave of intense criticism that characterized the Stamp Act as an unjust act of oppression. The paper consisted of two anti-tax essays and a reused propaganda cartoon first run by Benjamin Franklin before the meeting of the Albany Congress in 1754. Displayed on the front page, the image represented "the colonies as a snake broken into bits, with the admonition: 'JOIN OR DIE,'" and was intended to evoke colonial opposition to the Stamp Act and British authority.³⁶ The anti-tax essays of the *Constitutional Courant* were so compelling that in 1765, the English Annual Register referred to them as "the most influential Stamp Act essay[s] to appear in North America."³⁷ That the *Constitutional Courant* was recognized contemporarily demonstrates the substantive impact its essays had on readers. Such an acknowledgement of the *Constitutional Courant's* influence establishes that it had a registered effect on colonists and implies that other published pieces of the same nature were effective too.

The significant effects of newspapers on colonial response to the Stamp Act are further evident in the reflection of revolutionary contemporaries and newspaper Printers themselves. Joseph Galloway, a close ally of Benjamin Franklin, noted the impact of newspapers on the attitudes of colonists: "the people are Taught to believe the greatest Absurdities, and their Passions are excited to a Degree of Resentment against the Mother Country, beyond all Description."³⁸ This recognition is seen again by an anonymous writer 'Civis' in the *Connecticut Gazette*, who wrote, "alas, a perfect Frenzy seems to have seized the Mind of the People and renders them deaf to all Reason and Consideration."³⁹ A "Son of Liberty" in *A Providence Gazette Extraordinary* then lauded newspapers' role in the Stamp Act crisis, proclaiming "the press hath never done greater service since its first invention."⁴⁰ Recognition by non-Printers confirms that the broader public had been palpably affected by the newspapers' publications, and Printers themselves reflected on this. Henry Miller stated that

31 *Connecticut Courant*, October 28, 1765, quoted in Frasca, "Benjamin Franklin," 408.

32 Brown, "New Hampshire Editors," 36.

33 Frasca, "Benjamin Franklin," 407.

34 Humphrey, *The American Revolution and the Press*, 47.

35 Albert Matthews, "The Snake Devices, 1754-1776, and the Constitutional Courant, 1765," in *Publications*, Colonial Society of Massachusetts, xi (1906-1907): 417, 412-436, quoted in Schlesinger, "The Colonial Newspapers," 69.

36 Schlesinger, "The Colonial Newspapers," 69.

37 Frasca, "Benjamin Franklin," 413.

38 Joseph Galloway to Benjamin Franklin, January 13, 1766, in *The Papers of Benjamin Franklin*, ed. Leonard W. Labaree et al. (New Haven: Yale University Press, 1959-), 13:36, quoted in Frasca, "Benjamin Franklin," 407.

39 "Civis" in the *Connecticut Gazette*, August 30, 1765, quoted in Schlesinger, "The Colonial Newspapers," 72.

40 "A Son of Liberty," *A Providence Gazette Extraordinary*, March 12, 1766, quoted in Schlesinger, "The Colonial Newspapers," 81.

- 41 *Pennsylvanischer Staatsbote*, January 5, 1768, quoted in Adams, “The Colonial German-language Press,” 192; *Virginia Gazette*, May 16, 1766, quoted in Humphrey, *The American Revolution and the Press*, 51.
- 42 Frasca, “Benjamin Franklin,” 414.
- 43 Thomas C. Leonard, “News for a Revolution: The Expose in America, 1768-1773,” *The Journal of American History* 67, no. 1 (1980): 32, 33.

“the spirit of resistance [in New England and Virginia] spread through the public newspapers like a brush fire,” and William Rind commented in the *Virginia Gazette* that “a well conducted NEWSPAPER would, at any Time, be important, most especially at a Crisis, which makes a Circulation of Intelligence particularly interesting to all the AMERICAN COLONIES.”⁴¹ Printers could control the messages their papers espoused. After recognizing the economic impact that both the tax and their neutrality on its enactment could produce, newspapers seemingly “manufactured a reality for their audience” and made their fight “one for colonists more generally.”⁴² Printers effectively transformed their newspapers into ideological mouthpieces by centering their arguments upon a framework of British oppression, American nationalism, and a call for colonial unity in opposition to the Stamp Act.

Though concern for the economic success of their printing businesses initially and primarily motivated the Printers’ broadly waged war against the Stamp Act, the ideological role of newspapers was secured in the following years. Newspapers were used as an instrument of political force to rouse support for the nonimportation movement and became “a standard part of revolutionary action.”⁴³

Continuation of Ideological
Publishing After The Stamp Act

Separate from business concerns, Printers published ideologically-charged pieces in response to British actions in the Massachusetts Bay colony. Invoking anti-British rhetoric, Samuel Adams penned an anonymous piece encouraging colonists to assert their right to freedom. Since the Stamp Act crisis, liberty had become a growing claim among the colonies, and papers including the *Boston Gazette*, *New-York Gazette*, and *Virginia Gazette* defended “liberty of the press.”⁴⁴ Isolated from the business interests of the Printers, newspapers demonstrated their new political agency in a piece pseudonymously published by Samuel Adams in the *Boston Gazette*. Under the title “DETERMINATUS”, Adams responded to accusations by Thomas Hutchinson, the royal governor of Massachusetts Bay colony, of the Boston Whigs’ “unruly and unlawful mob behavior.”⁴⁵ John Hancock’s ship *Liberty* was seized by the royal navy for customs violations, prompting a riot by the people of the Boston province that forced customs commissioners to “flee Boston.”⁴⁶ In “Determinatus,” Adams declared that the actions of the people in response to the unjust seizure were reasonable, and that the accusations against them were unfounded. “I am no friend to ‘*Riots, Tumults, and unlawful Assemblies*,’” Adams said in agreement with Hutchinson, but went on to justify the liberty of the people in expression.⁴⁷

But when the people are oppress’d, when their Rights are infring’d, when their property is invaded, when taskmasters are set over them,

- 44 Schlesinger, “The Colonial Newspapers,” 75-78.
- 45 Warner, “Communicating Liberty,” 354.
- 46 Warner, 354.
- 47 “Determinatus,” *Boston Gazette and Country Journal*, August 8, 1768.

when unconstitutional acts are executed by a naval force before their eyes, and they are daily threatened with military troops...in such circumstances the people will be discontented, and they are not to be blamed...they will *boldly assert* their freedom; and they are to be *justify’d* in so doing.⁴⁸

In his essay, Adams admonished British authorities for their unjust actions, taking a clear patriotic stance by rattling off British oppression, infringement of rights, invasion of property, and asserting the unconstitutionality of their actions. Adams made use of earlier rhetoric published by Printers during the Stamp Act crisis to demonize Britain and paint them as the enemy of the colonists. Adams declared that “the people are seldom if ever discontented, without just cause,” and in making a case for freedom of expression, the publication of his assertions in a newspaper was a clear statement.⁴⁹ The press was newly minted as an ideological platform, and Adams’ strong opinions about personal liberties fit right into place. Newspapers had “become makers and molders of opinion,” and the publication of such a blatantly patriotic piece, outside of the Stamp Act’s context, exemplifies how Printers had paved the way for further ideological warfare.⁵⁰ After the initial growth of ideological publishing in response to the Stamp Act, the press was now being used as the powerful tool of influence that Printers had made it.

Printers and The British Imperial Post Office

Before the American Revolution, Great Britain operated the British Imperial Post Office that mostly connected ports along the Atlantic seaboard. It had legal monopoly over the circulation of materials between colonies, and its lack of comprehensive connections frustrated Printers. Business concerns did not disappear from the front of Printers’ minds. The same newspaper campaign waged by Printers against the Stamp Act resurfaced when Printers began reexamining the British imperial postal system in 1773. The postal system was of primary importance to Printers because it played a vital role in their acquisition of news and the distribution of their newspapers.

In colonial America, mail delivery in the North was controlled by the imperial post under the British Post Office Act.⁵¹ This control was strengthened with a new and reformed Post Office Act in 1765.⁵² The British post office itself was part of a larger British communications network, and it mainly served imperial needs. Its chief goals were to generate revenue, surveil colonial correspondence, and facilitate intergovernmental communication.⁵³ As a result, inadequacies plagued the imperial postal system in the colonies. The routes covered by the post office did not provide sufficient intercolonial connections and instead linked colonies only to Britain itself.⁵⁴ Moreover, postage rates were high and Britain

- 48 “Determinatus,” *Boston Gazette and Country Journal*, August 8, 1768.
- 49 “Determinatus.”
- 50 Schlesinger, “The Colonial Newspapers,” 81.
- 51 Adelman, “A Constitutional Conveyance,” 716.
- 52 Adelman, 718.
- 53 Adelman, 724.
- 54 William Smith, “The Colonial Post-Office,” *The American Historical Review* 21, no. 2 (1916): 273.

- 55** Smith, “The Colonial Post-Office,” 267-268.
- 56** Adelman, “A Constitutional Conveyance,” 716, 724.
- 57** Adelman, 722.
- 58** Adelman, 723.
- 59** Adelman, 715.
- 60** Adelman, 725.
- 61** Adelman, 726.
- 62** William Goddard, *The Plan for establishing a new American post-office* (Boston, MA: American Antiquarian Society and Newsbank, inc, 2002).
- 63** Goddard, *The Plan for establishing a new American post-office*.

possessed a legal monopoly over pricing and postal routes.⁵⁵ As a result, two avenues of communication existed in the colonies: the imperial postal system, and the informal “web of connections” constructed by colonists, who, to supplement services provided by the British imperial post office, established ad hoc networks between towns and colonies.⁵⁶

Printers were dependent on these links and operated in both the imperial and informal networks of communication. Mainly, they aimed to avoid the high rates and insufficiencies of the imperial system and devised alternative methods, such as hiring boys to deliver their newspapers locally or paying riders to deliver newspapers to other subscribers.⁵⁷ However, Printers grew frustrated with such an inconsistent arrangement. Postmasters across the colonies had different pricing standards for mailing newspapers, and the “absence of a standard policy regarding the distribution of newspapers and their pricing” became a source of aggravation for Printers.⁵⁸ Saddled with the insufficiencies of the monopolistic British imperial post office, and tired of operating within ad hoc colonial routes, Printers harnessed the ideological influence of their newspapers.

Printers employed the rhetorical strategies used in the Stamp Act crisis to advocate for a better, more comprehensive, *American* postal system from which they would benefit. Evident in their dependence on the postal systems for their news and revenue, Printers “had a direct financial and business interest in promoting a post office to their liking.”⁵⁹ Knowing this, Printers’ arguments were most effective by framing the need for an American post office within the narrative of British imperial oppression.

William Goddard, a printer who owned the *Pennsylvania Chronicle* in Philadelphia and *Maryland Journal* in Baltimore, championed the push for an American post office.⁶⁰ Goddard’s “Constitutional Post” was created after he enlisted a personal post rider to deliver his papers, and grew to become a broader plan for an American post office.⁶¹ Goddard introduced his idea to the Boston committee of correspondence, producing “*The PLAN for establishing a new American POST-OFFICE*.”⁶² The Boston committee’s support of the post office plan lay in its underlying connection to British imperial oppression. The British post office operated as an imperial arm, and with its explicit goals of revenue generation and imperial surveillance, the British post office was another grievance to colonists. In his plan, Goddard characterized British monopoly over postal rates as a “dangerous and unconstitutional Precedent of Taxation without Consent.”⁶³ Goddard, himself a Printer aware of the ideological power of newspapers, enlisted other Printers to support his plan. These fellow patriotic Printers knew of the economic potential an American post office could bring, and therefore a network of Printers emerged to publish support.

Newspaper Printers including Isaiah Thomas, Benjamin Edes and John Gill (*Boston Gazette*), John Holt (*New York Journal*), and Daniel

Fowle (*New-Hampshire Gazette*) began reprinting letters of endorsement that expressed support of the postal system by prominent colonists.⁶⁴ A letter from “A Gentleman at New York’ to a friend in Boston outlining the main arguments for the new post office” that “urged his friend [in Boston] to ‘use all your influence in the town of Boston’ to gather support for the plan” was printed in the *Massachusetts Spy*, *Connecticut Gazette*, *New-Hampshire Gazette*, and *Virginia Gazette*.⁶⁵ Newspapers published articles emphasizing approval of the American post among the community, such as a letter claiming that the American post was “supported by the most eminent merchants & other gentlemen in those places.”⁶⁶

The pieces Printers published framed the establishment of an American post office as necessary to combat British imperial policies in the same way they had framed opposing the Stamp Act as a logical protest of unjust British taxation and oppression. Printers did not explicitly acknowledge their own financial stake in the post office, despite how essential mail systems were to their businesses. Instead, support of the new post office in newspapers embodied a broader intercolonial cause. Newspapers propelled the ideological argument that the British post office was a form of imperial oppression. In the assertions of newspapers, the post office “represented unconstitutional taxation” and was used by British officials “to censor their communication” and “prevent...newspapers from circulating.”⁶⁷ The *Connecticut Gazette* published a piece declaring that the post office was

a parliamentary Establishment, that hath been the Foundation of, and Precedent for a Stamp-Act, a declaratory Law for binding the Colonies in all Cases whatsoever, a Tea Duty, and other Attempts to extort our Money from us, and infringe on our Rights and Privileges.⁶⁸

Though the writer in the *Connecticut Gazette* condemns the British post office’s “attempt to extort our Money,” the post office primarily impacted Printers. The British post that writers and Printers were advocating against was not the dominant source of communications among colonists because there were not adequate routes between colonies. Most colonists did not use the post, and instead sent letters “via traveling friends or servants.”⁶⁹ Yet, when couched in a broader call for intercolonial unity and resistance to British oppression, an American post office became the best interest of all colonists: “patriot [P]rinters and their allies therefore placed the post office in the growing line of oppressive imperial institutions.”⁷⁰ Although less widespread, Printers’ advocacy for the American post office paralleled their response to the Stamp Act crisis. In both instances, Printers were faced with an economic obstacle that, when given extensive publicity in their papers, they could frame as a widespread colonial concern. Though Printers suffered the most significant burden under the

- 64** Adelman, “A Constitutional Conveyance,” 733.
- 65** Adelman, 734.
- 66** *Massachusetts Spy*, March 17, 1774, quoted in Adelman, “A Constitutional Conveyance,” 734. The letter was reprinted in *Boston Evening Post*, March 21, 1774; *Connecticut Courant*, March 22, 1774; *Essex Gazette*, March 23, 1774; *Norwich Packet*, March 24, 1774; *Connecticut Gazette*, March 25, 1774; *Connecticut Journal*, March 25, 1774; *New-Hampshire Gazette*, March 25, 1774, *Virginia Gazette*, April 14, 1774.
- 67** Adelman, “A Constitutional Conveyance,” 735.
- 68** *Connecticut Gazette*, April 1, 1774, quoted in Adelman, “A Constitutional Conveyance,” 736.
- 69** Adelman, “A Constitutional Conveyance,” 720.
- 70** Adelman, 736.

Stamp Act and the British imperial post office, publication of patriotic rhetoric painted each act as an attack on colonial rights, paving the way for newspapers to take the charge on helping shape colonial response.

Conclusion

Today’s news media has a distinctly ideological role: news outlets maintain distinct partisan stances and often amplify polarized public opinions. We look to newspapers not just for informational news, but for editorial takes on the latest domestic and international crises, for intellectual opinions on the actions of the government, and for ideologically-charged political statements from party lawmakers. Although in their colonial-era infancy newspapers acted as “mere disseminators of information,” often balancing opinions to maintain neutrality, newspapers became a powerful political force as a result of these events leading up to the American Revolution.⁷¹ Newspapers grew from disseminators of information into ideologically distinct entities that broadly publicized partisan ideas and patriotic ideals. Since newspapers were such small-scale endeavors in the colonies, the essays and articles published were chosen by Printers themselves. The transition of newspapers into platforms elevating undeniably partisan and ideological views occurred as a result of active choices by Printers. Printers were prompted by business concerns and published pieces with clear calls to oppose the Stamp Act and to support an American post office. These pieces then shaped colonial attitudes by framing the Printers’ arguments in wider rhetoric that portrayed Great Britain as an oppressive enemy, whose actions were unconstitutional and adverse to colonial interests. Such rhetoric mobilized intercolonial opposition to Great Britain. Business concerns may have prompted the significant and widespread charge that Printers and their newspapers took in criticizing the British; without this prompting, the revolutionary fervor generated among colonists might not have been as extraordinary. Printers acting in their best economic interests and in response to the opinions of colonial readership thus transformed their newspapers into important entities with political agency, whose crucial role in the public sphere endures today.

71 Arthur M. Schlesinger, “The Colonial Newspapers and the Stamp Act,” *The New England Quarterly* 8, no. 1 (1935): 81.

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ACCORDING TO THE FASHION
Elite Cultural Tensions and the Eighteenth-Century Russian Lubok

by Emma George

Abstract

While much scholarship has investigated the ways in which the eighteenth-century Russian state displayed its power to its subjects, popular prints remain a little-explored source base through which to understand the popularization of the state’s Enlightenment-era cultural reforms. *Lubki* (singular *lubok*)—cheap popular prints produced via engraving—combined elements of Western European prints with romanticized, “uniquely Russian” visual and textual characteristics, and functioned to communicate ideas of imperial power to a broad audience. A primarily visual medium able to effectively reach a population whose level of literacy was limited, the *lubok* combined illustrations with brief prose or verse captions. *Lubki* could depict narratives, news events, or even political satires. Although they were produced in state-licensed factories and targeted an elite and emerging middle-class urban audience from the mid-18th century onwards, much scholarship from the nineteenth century to the present day has consistently and incorrectly identified *lubki* as reflective of a unified, agrarian Russian folk culture. This paper seeks to reinterpret *lubki* as a medium through which conceptions of Russian identity with their origins in the state’s Enlightenment-era cultural reforms were communicated to an elite and middling audience.

Before the *lubok* (plural *lubki*) became a topic of historical scholarship in the early nineteenth century, it went by a variety of names. Defined as cheap popular prints produced via woodcut or copperplate engravings, eighteenth-century *lubki* were manufactured in cities, and most notably in Moscow. They featured illustrations accompanied by captions, verses, or songs, and encompassed a wide range of subject matter, from traditional folktales to (factual and invented) news reports, satires on social life, and religious images.¹ Disseminated to a wide audience primarily composed of elites and merchants in metropolitan areas, they were often seen as distinctly Russian, albeit “low,” art in the eighteenth century, sometimes used for the decoration of houses or collected as cultural heritage artifacts.² Referred to by different names (varying by region, era, and class), the prints that nineteenth-century, Soviet, and contemporary scholars designate *lubki* could be called *poteshnye listy* (“funny sheets”), *panki* (“little panels”), *Moskovskie kartiny* (“Moscow pictures”), or *satire* (satires) in the eighteenth and nineteenth centuries.³ The ethnographer Ivan Snegirov (1793–1868)—also associated with nineteenth-century antiquarian collecting, research on “folk” rituals and proverbs, the censorship of literature under Nicholas I, and the tenets of “Official Nationality”—is commonly considered the first scholar to examine the *lubok* as an artifact of cultural history. Scholars’ long-standing use of the term can be traced to Snegirov’s work, although he acknowledged the ambiguity of the term’s origins. Subsequent work has questioned its applicability to all popular prints in eighteenth- and nineteenth-century Russia. Did *lubok* originate from *lub*, the type of tree bark from which the folk artists supposedly produced these pictures? From Lubianka Street in Moscow, where some *lubok* printers operated presses and sold their wares? Or simply from *lubok*’s association with things disposable, cheap, crude, and poorly made? Though the term’s origins are ambiguous, it became the catch-all name with which to refer to eighteenth and nineteenth-century popular prints by the publication of Snegirov’s *On the Lubok Pictures of Russians* (1844). Additionally, it came to denote the *lubok*’s associations with the idea of a romanticized Russian agrarian “folk” culture developed throughout the nineteenth century.⁴

From the era of Karamzin’s first official histories of Russia, scholarship on the *lubok* associated it with an idea of a unified Russian “folk” or *narod*. Though *lubok* collectors like imperial official Adam Olsufyev and historian Mikhail Pogodin established this link as early as the late eighteenth century, Dmitry Rovinsky definitively linked the form to the agrarian masses in his 1881 collection *Russian Folk Pictures* (*Russkie narodnye kartinki*).⁵ While popular prints did reach the peasantry by the later nineteenth century, more recent scholars note that eighteenth-century *lubki* were not only principally metropolitan in origin (despite their conscious use of “folk art” conventions), but also primarily produced by and targeted

towards the elite and merchant classes within urban society.⁶ Twentieth-century Soviet scholarship continued to comment on the *lubok* as a window into the psyche of a unified Russian folk. As late as 1984, Alla Sytova’s introduction to *The Lubok*—a compilation of *lubki* chiefly taken from Rovinsky’s collection—described it as “profoundly” and “essentially” defined by “the spirit of the people” and of “the common man.”⁷

More recent authors have acknowledged the limitations of associating the *lubok* with a unified Russian folk culture. However, little contemporary work has attempted to tackle the topic, with some of the most recent scholarship being Stephen M. Norris’s work on the *lubok* as an instrument of enforcing perceptions of a unified national culture after the social destabilization of the Napoleonic wars.⁸ With respect to the eighteenth-century *lubok*, Dianne Ecklund Farrell’s scholarship is the most notable example, highlighting the Moscow factories where popular prints were produced and providing insight into their content, development, and increasing popularity over the course of the eighteenth century.⁹ It seems useful, therefore, to re-examine the eighteenth-century *lubok*—its particular use of both “Western” and “Russian” sources and artistic and literary elements, its relationship to the state and to censorship, its particular employment of satire, and its treatment of the *narod*. Rather than representing a manifestation of “folk” spirit, *lubki* were concerned with elite cultural tensions about identity, and with mediating between the “Western” and the “Russian” in politically significant ways. Though the necessary scale of such a re-evaluation is beyond the scope of this overview, I will attempt to outline ways in which to re-interpret the *lubok* of the eighteenth century as an object consciously created by and for urban elites and merchants that expressed their particular cultural tensions. In the eighteenth-century *lubok*, artistic and literary motifs perceived as uniquely Russian were blended with Western European conventions; satire was light enough to evoke notions of an “enlightened” sphere of public discourse without posing a political threat; the state influenced popular print through both direct legislation and cultural reforms; and elements that evoked an agrarian *narod* were chiefly valued for their appeal to the urban consumer.

Eighteenth-century Russian *lubki* combined both “Russian” vernacular elements and Western European elite ones in order to appeal primarily to their elite and merchant-class urban consumers. The prints most often cited to connect the *lubok* with a unified “folk”—those concerned with folk tales, motifs, and legends—recalled Russian folktales (like that of Baba Yaga), but also medieval Western European legends (like that of Melusina the Fish). Such *lubki* displayed legendary tales of figures like Alexander the Great, fairytales of all kinds, historical epics with both Western and Russian subjects, and older Western European tales taken from chivalric

- 6 Elise Kimerling Wirtschafter, “The groups between: *raznochintsy*, intelligentsia, professionals,” in *The Cambridge History of Russia: Volume 2, Imperial Russia, 1689–1917*, ed. Dominic Lieven, Maureen Perrie, and Ronald Grigor Suny (Cambridge: Cambridge University Press, 2006), 253.
- 7 Alla Sytova, *The Lubok: Russian Folk Pictures, 17th to 19th Century* (Leningrad: Aurora Art Publishers, 1984), 6.
- 8 Stephen M. Norris, “Images of 1812: Ivan Terebenev and the Russian Wartime *Lubok*,” *National Identities* Vol. 7, No. 1 (2005), 10.
- 9 Farrell, “Popular Prints,” 42.

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- 1 Dianne Ecklund Farrell, “Popular Prints in the Cultural History of Eighteenth-Century Russia,” (PhD diss., University of Wisconsin-Madison, 1984), 65.
- 2 Gary Marker, *Publishing, Printing, and the Origins of Intellectual Life in Russia, 1700–1800* (Princeton: Princeton University Press, 1985), 120.
- 3 Jose Alaniz, *Komiks: Comic Art in Russia* (Jackson: University Press of Mississippi, 2009), 18.
- 4 Alaniz, *Komiks*, 18.
- 5 Farrell, “Popular Prints,” 4.

- 10 Farrell, 5.
- 11 Farrell, 37.
- 12 Dianne Ecklund Farrell, “Medieval Popular Humour in Russian Eighteenth Century Lubki,” *Slavic Review*, Vol. 50, No. 3 (1991), 551.
- 13 Farrell, “Popular Prints,” 76.

Fig. 1. “Gloriously He Dined and Gaily He Drank.” RNK No. 99. Photo courtesy of the New York Public Library Digital Collections.

romances.¹⁰ Rovinsky’s writing on the *lubok* devoted particular attention to identifying which popular prints had Western sources and whether they incorporated narratives or topics common in Western European popular prints, or whether a given *lubok* could be traced to a contemporary or historical Western European source.¹¹ Some *lubki* dealt with topics or scenarios representative of what Dianne Ecklund Farrell has called a vernacular culture of “medieval popular humour.”¹² Others were directly based on Western European sources which urban printers and consumers would have likely been exposed to. *Lubok* No. 99 in Rovinsky’s collection, “Gloriously He Dined and Gaily He Drank” (Figure 1), was copied from a French popular print caricature of Louis XVI and reprinted in Russia multiple times throughout the eighteenth century. Although the target of its satire (a man whose appetite resembles that of “five hefty barge-haulers”) was not immediately apparent in Russia, it was speculated in the nineteenth century to perhaps depict Grigory Potemkin (in a later nineteenth-century reprint) or Peter I (in an earlier edition).¹³

Lubki with Western European elements or sources thus appealed to the elite and merchant-class consumer enough for Moscow’s state-licensed factories (like that of Ilya Akhmetev, who operated twenty presses in the city) to reprint them multiple times throughout the century.¹⁴ Further Western elements introduced to the eighteenth-century *lubok* are depicted in advertisements (as in No. 277b in the Rovinsky collection, “The Party Smoking Tobacco”) for foreign products, which simultaneously designate the object as appealing because it is Western and identify the consumer with both Russian characteristics and Westernized refined taste (“Foreign gentlemen like to use tobacco...therefore they stay healthy”; “tobacco amuses us and heals our eyes”).¹⁵

Similarly, state-controlled and licensed eighteenth-century *lubki* self-consciously blended Western and Russian elements in order for their messages to appeal more broadly to the consumer, such as prints produced under Catherine II that ridiculed Old Believers, or the earlier “The Barber Cutting the Beard of an Old Believer.” Though previously considered a satire of Petrine policies, this latter example has been recently reinterpreted as a print issued to enforce conformity to state reforms on a popular level.¹⁶ As *lubki* had to adhere to state restrictions on printing, many of those produced during Peter I’s reign purposefully combined antiquated “folk” artistic elements and themes with new imperial script and spelling reforms.¹⁷ The character of the eighteenth-century *lubok*, in its visual and textual conventions, was consciously developed according to the cultural demands made by its urban, merchant-class, and elite consumers. The most demanded *lubok* art style was the “Koren” style, developed in the early eighteenth century by the Yaroslavl engraver Vasily Koren who would later work in Moscow. Yaroslavl itself was notable in the early eighteenth century for its “folk” art-style woodcuts, but also for its growing wealth from trade, exposure to Western culture, and dominant well-to-do merchants.¹⁸ This art style—which came to characterize the *lubok* form and remained popular into the early nineteenth century—arose out of a particularly eighteenth-century confluence of “folk” art and Western European artistic conventions, and combined elements of both in a way that appealed to its urban consumers. Western European artistic elements were blended with traditional “Russian” imagery in multiple ways. *Lubki* could depict subjects in Western European eighteenth-century dress but portray them in a woodcut art style reminiscent of older Russian art. They could depict Western folktales or chivalric romances in a “Russian folk” style (or vice versa), or combine Koren-style depictions of Russian characters from vernacular with text taken from various Western sources. One *lubok* portrayed Alexander the Great in the Koren style, and with a distinct resemblance to Peter I. Western and Russian elements were here combined in a way that reflected the tensions expressed by imperial performances of culture throughout the Petrine period and later eighteenth century.¹⁹

- 14 Farrell, 33.
- 15 Farrell, 206.
- 16 Farrell, 205.
- 17 Marker, *Publishing, Printing, and the Origins of Intellectual Life in Russia, 1700–1800*, 21.
- 18 Farrell, “Popular Prints,” 253.
- 19 Farrell, “Popular Prints,” 229.





Fig. 2. “When I Lived In Kazan.” RNK No. 234. Photo courtesy of the New York Public Library Digital Collections

20 Farrell, 411.
21 Farrell, 81.

Another *lubok* in the Koren style depicts a character who comments on his transition from wearing traditional Russian dress to wearing Western eighteenth-century dress: “When I lived in Kazan, I strolled about in a sarafan...a goat-fur coat. Now I...dress according to the fashion...[and] take walks in elegant gardens” (Figure 2).²⁰ This *lubok*’s combination of vernacular, elite, Russian, and Western visual and textual elements reflects specific eighteenth-century Russian elite cultural tensions, between the necessity of adopting Western fashions in opposition to antiquated customs and the shortcomings of those fashions.²¹

Mimicking eighteenth-century Western prints that satirized popular fashions, the characters in this *lubok* take the era’s trends (and their wigs) to ridiculous new heights. Finally, the text of the eighteenth-century *lubok*

expressed similar tensions, targeted the elite consumer, and blended elite and vernacular elements—texts were often freely taken from both Western and Russian sources, elite authors like Sumarokov contributed verses, and many *lubki* that feature verses of folk songs actually made use of elite poetry composed in a self-consciously “folk” style. This literary characteristic of the *lubok* lasted beyond the eighteenth century—verses by Pushkin, Lermontov, and Nekrasov appeared on *lubki* throughout the nineteenth century.²² The *lubok*’s blend of Russian and Western visual, literary, and thematic elements expressed the cultural tensions that characterized its urban elite, merchant-class, and *raznochintsy* consumers over the course of the eighteenth century.

Lubki and Enlightenment Satire

Cultural tensions were also at work within eighteenth-century *lubki* in their treatment of satire—it is the specific qualities of the “satirical *lubok*” that have been most controversial in scholarship on the topic. From the earliest collectors of *lubki* to the present-day, writing on *lubki* has produced different interpretations of their various “satirical” elements. One of the most famous *lubki*, “The Mice Are Burying the Cat” (Figure 3), has long been held as an Old Believer satire concerned with Peter the Great’s burial. The text of the *lubok*—which identifies its subject as “the Cat of Kazan, the Mind of Astrakhan, the Wisdom of Siberia”—parodies the Russian ruler’s extensive title and imperial holdings, while the mice rejoice that the cat has died, transporting his coffin while his Finnish widow provides beer to the festive funeral’s attendees.²³ Various more recent interpretations, however, have posited that, rather than being satires that specifically target Peter the Great, prints like this simply represent a “culture of medieval popular humor” concerned with animal humour and festive inversion, and do not have political commentary as their central function. While interpretations like these are ostensibly meant to distance modern *lubok* scholarship from its older counterpart, the generalizations they make about an inherently apolitical, unified “culture of medieval popular humour” seem intrinsically tied to nineteenth-century conceptions of the *lubok* as expressive of the spirit of the Russian *narod*.²⁴

Other more recent scholarship has moved in a different direction, rejecting the *lubok*’s identification with an agrarian “folk” vernacular or any democratic realm of “the people” while also re-examining the issue of satire.²⁵ Under such an interpretation, a print like “The Mice Are Burying the Cat” would contain satirical undertones, but ones concealed enough for its creator to explain them away as simply representative of “folk humor.” Additionally, if Old Believer communities did produce such a print—though the creator of “The Mice Are Burying the Cat” has never been distinctly identified—they would have equally been part of an urban marketplace of print where the consumers were primarily elite, mercantile,

22 Farrell, 10.
23 Farrell, 89.
24 Farrell, “Medieval Popular Humour in Russian Eighteenth Century Lubki,” 565.
25 John Etty. “Krokodil’s Format and Visual Language.” In his *Graphic Satire in the Soviet Union*. Jackson: University Press of Mississippi, 2019, 39.



Fig. 3. “The Mice Are Burying The Cat”, RNK No. 166. Photo courtesy of the New York Public Library Digital Collections.

and later in the eighteenth century, middle-class consumers. Upwards of 20,000 Old Believers lived in communities in Moscow by 1800, and often sold religious art.²⁶ State control of printing prohibited the *lubok* from expressing targeted or explicit satire. As demonstrated by prints like “Gloriously He Dined and Gaily He Drank” or “The Mice Are Burying the Cat,” satires were, in Farrell’s words, “neither bold nor subtle” in order to evade imperial censorship.²⁷

The state closely watched the urban marketplace of popular print, concluding in an 1825 statute which declared that all popular prints had to be “moral” or “harmless,” not insult the government, particular persons or groups, and provide only positive portrayals of the imperial family. Yet paradoxically, it was state-led cultural reform efforts that made satirical *lubki* desirable in the eighteenth century among elite, mercantile, and middle-class consumers.²⁸ Efforts at effecting “Westernization” and “Enlightenment” throughout the eighteenth century expressed, in

court cultural performances, a tension between cultural homogenization and differentiation from Western Europe.²⁹ On the level of the imperial court, cultural performances that expressed this tension were what seemingly gave monarchs the right to rule. It was the combination of the values denoted by Catherine II’s embarking on Orthodox pilgrimages and those denoted by her devotion to Western Enlightenment artistic, literary, and philosophical trends that, Richard Wortman argues, legitimized the empress in the eyes of her subjects.³⁰ The eighteenth-century *lubok*’s relationship to satire expressed a similar cultural tension. “Enlightenment” discourse at the popular level was dependent upon the free circulation of new ideas in print, but this was not a feasible setting for the *lubok* to operate within eighteenth-century Russia. The *lubok*, therefore, became representative of the same cultural transformation in elite culture with its origins in the court throughout the eighteenth century. Catherine II enforced popular Enlightenment by licensing the production of light “satirical” material that adhered to Western trends, but only within the restrictions of strict autocratic censorship and the increasing limitations on independent publishing by the end of her reign. No true public sphere of popular print existed in which explicit satire was allowed to proliferate in a form like the *lubok*.

Dianne Farrell has described the later eighteenth-century *lubok* under Catherine II as representative of “the new critical attitude of the Enlightenment at a popularized level.”³¹ Though such a “popularized” reach did not extend to the peasantry and Farrell’s characterization of the *lubok*’s transition from a medieval to an Enlightenment attitude is an obviously problematic one, Catherine II did seek to popularize Enlightenment values through cheap print in a variety of ways. Though the production of *lubki* was usually only restricted, rather than orchestrated, by the state, imperial values influenced elite behaviors and ideas of what it meant to be cultured, which in turn influenced the metropolitan producers of *lubki* who catered to such consumers. These consumers also purchased other kinds of popular print products popularized under Catherine, such as cheap periodical literature and satirical journals.³² Thus, while serious political satire would have resulted in the punishment of *lubok* printers, the presence of satire—or the appearance of it—was taken to be an important part of Enlightenment popular culture. Therefore, when prints like “The Mice Burying the Cat” were reissued throughout the eighteenth century, they were attractive products both for their status as cultural heritage objects and for their implications of imperial satire—but only because such satire was light, indirect, and politically non-threatening.

Deprived of identifying details and politically threatening elements, eighteenth-century “satirical” *lubki* also often took the form of “social” satires ridiculing fashions and social mores, such as “When I Lived in Kazan” and No. 85 in the Rovinsky collection, “A Register of Ribbon

- 29 Richard Wortman, *Scenarios of Power: Myth and Ceremony in Russian Monarchy, Vol. 1: From Peter the Great to the Death of Nicholas I* (Princeton: Princeton University Press, 1995), 67.
- 30 Wortman, *Scenarios of Power*, 58.
- 31 Farrell, “Popular Prints,” 317.
- 32 Elise Kimerling Wirtschafter, “The groups between: *raznochintsy*, intelligentsia, professionals,” 254.

Colors and Beauty Spots,” which describes the exact meanings of various fashion choices.³³ However, *lubki* like this critique excesses of Western fashion for their lack of adherence to true taste, rather than critiquing the nature of Western fashions themselves. Finally, when individuals or groups were directly satirized, they were never those linked to the state. Instead, such *lubki* intended to use satire to justify imperial reforms to a wide audience of consumers—Catherine II sponsored the production of *lubki* that mocked monastic abuses in order to justify state reforms of the monasteries.³⁴ Satirical *lubki* of the eighteenth century did not, as some scholars previously argued, represent the responses of a vernacular “folk” to the imperial reforms they criticized. Instead, they represented the dissemination of imperial notions of Russian culture through the ranks of the elite, merchant, and eventually, middle classes, and expressed tensions that characterized their elite consumers’ conceptions of such a culture’s definition by both its uniquely Russian and fashionably Western European aspects.

Conclusion

Rather than expressing any kind of agrarian “folk” spirit, as earlier scholars claimed, the eighteenth-century *lubok* was a product defined by urban and elite production and consumption. It served a didactic function in terms of its cultural position, able to reflect the kind of culture deemed fashionable and politically necessary at court—both united with the tastes of Enlightenment-era Western Europe and differentiated from it by aspects that conveyed notions of distinct, essentially Russian character. Even *lubki* with satirical elements had a particular role to play, expressing the innate “Russianness” of the *lubok* that attracted the consumer while also appearing to emulate the Enlightenment satires deemed fashionable during Catherine II’s reign. The *lubok*’s power as a cultural form was established by the late eighteenth century, and as the years progressed, its reach extended further down the social hierarchy. Rather than coming to represent the spirit of the “folk,” however, it retained its urban and elite origin even as it began to reach the peasantry. In the aftermath of the Napoleonic wars, artists would turn to the *lubok* as an art form that would allow them to “redefine Russianness” in the wake of events that had destabilized it.³⁵ It was the *lubok*’s use of “popular” elements that made it an effective medium to popularize conceptions of a Russian culture whose origins lay in the state.

33 Farrell, “Popular Prints,” 408.
34 Farrell, 210.
35 Stephen M. Norris. “Petersburg Patriotism in 1812: Lubok Artists and Russian National Identity,” Miami University (Symposium: “Imagining St. Petersburg”), 2003.

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