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HUMAN RIGHTS QUARTERLY

Lynchings and the Democratization of Terror in Postwar Guatemala: Implications for Human Rights

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I. INTRODUCTION

On 24 January 1999, an estimated three thousand people gathered in the remote rural community of El Afán, Quiché, in the highlands of Guatemala, to witness the execution of four men. Outraged by the robbery of a local merchant, a group of area residents had apprehended the suspects and conducted an impromptu investigation, discovering weapons and cash. They then summoned the population to participate in a hastily convened "Popular Tribunal" to decide the accused men's fate. Holding police and human rights authorities at bay, the crowd voted to execute the men by stoning. The sentence was carried out at once, and the victims' corpses were cast into the nearby Chixoy River—after being sliced open and stuffed with rocks, to prevent them from floating to the surface for easy recovery by the authorities.

Grisly incidents such as this one are not uncommon in contemporary Guatemala, where from 1996 to 2001, the United Nations Mission to Guatemala (MINUGUA) documented 421 *linchamientos*, or lynchings,[1] for

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1. For purposes of this paper, lynchings are defined as incidents of physical violence committed by large numbers of private citizens against one or more individuals accused of having committed a "criminal" offense, whether or not this violence resulted in the death of the victim(s). Therefore, confrontations between armed groups, military actions,

an average of more than seven per month; many more have likely gone undetected. Unprecedented during the country's thirty-six-year civil war, these acts of collective vigilantism began during the first democratically-elected administrations of the early 1990s and accelerated after the peace accords were signed in 1996. By involving mass civilian participation, often in broad daylight, and at times including attacks against the state itself, lynchings constitute a new form of vigilante "justice" and a new type of human rights abuse. These practices blur the distinctions between victim and victimizer, popular mobilization and mob rule; and in so doing, they challenge many of the implicit assumptions that underlie contemporary thinking on violence, democracy, and human rights.

Without a doubt, the Guatemalan lynchings are a legacy of state terror. Yet to understand their complex origins, and the ways in which they depart from previous patterns of violence, we need to think about violence in new ways. While most studies of state violence focus on its effects upon individual victims, in the first part of this article, the author argues that certain forms of massive violence cause a type of social trauma that is more than the sum of the individual traumas suffered. In other words, there are uniquely sociological effects of state terror, which affect not only individuals but the social spaces they inhabit: their institutions, their customs, their ways of interacting with one another. In this article, the author suggests that the Guatemalan lynchings are a manifestation of precisely this kind of sociological trauma. Drawing on my own ethnographic research in Guatemala,[2] the author examines the process by which state violence ruptured and replaced the preexisting institutions of civil society in Guatemalan communities, and the ways in which this process has led to lynchings in the postwar period. The author shows that terror not only traumatizes individuals, but in some cases may transform the social fabric of entire communities, thus explaining the persistence of its effects even in settings where all those who survived the initial violence have departed or died, or where new, non-state forces predominate in decision-making processes.

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disputes over land which may result in murders, individual settling-of-accounts or vengeance killings, and other types of violence are not considered "lynchings." The numbers of lynchings cited here reflect the number of incidents, not the number of victims; in fact, many lynchings involve multiple victims.

2. From May to August 1999, and in October and November 2000, the author conducted ethnographic research on lynchings in Guatemala. The author interviewed over 150 people from all sectors of Guatemalan society, from a former president and several sitting congresspeople to teachers, housewives, campesinos, landowners, and businessmen. Many interviews were extremely illuminating—but none so much as those interviews the author conducted on a trip to the highlands province of El Quiché, where the greatest number of lynchings have occurred. Here, assisted by local human rights organization CERJ, the author was able to interview dozens of residents of communities where lynchings had occurred, many of them eyewitnesses to these incidents.

In the second part of this article, the author argues that the contemporary rise in lynchings points to a need to reassess some of the assumptions underlying contemporary human rights in theory and practice. Specifically, the author suggests that these new forms of human rights abuse challenge three central tenets: first, the centrality of the state as the primary force behind human rights abuses; second, the notion that rights expand from a fundamental core; and third, the adversarial approach to human rights work that currently characterizes the movement. While the author draws on research conducted in a relatively remote setting—the rain forests of Central America—she argues that lynchings contain lessons the broader human rights community cannot afford to ignore.[3]

II. LYNCHINGS IN GUATEMALA

A. Background

In 1996, thirty-six years of civil war drew to a close in Guatemala, leaving some 200,000 people dead or suspected of disappearing in Central America's longest-running armed conflict between government forces and leftist rebels. From the early 1960s to the late 1980s, the war was characterized by a series of brutal counterinsurgency campaigns, in which the Army relied heavily on tactics such as forced disappearances, torture, political killings, and eventually, all-out massacres, to subdue the civilian population and thus drain the "water" in which the guerrilla "fish" swam.

While the war's early campaigns were concentrated in the East, and violence shook the capital city in successive waves throughout the conflict, the brunt of the violence was borne by the primarily indigenous communities of the central and western highlands. These areas, long the poorest and most marginalized regions of the country, and largely neglected by the state prior to this period, became the setting for the infamous "scorched earth"

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3. Furthermore, it should be noted that lynchings are not limited to Guatemala. Similar acts of collective vigilantism have been documented in Brazil, Ecuador, Mexico, Venezuela, and many other countries. *See, e.g.*, Informe Anual, Programa Venezolano de Educacion y Accion en Derechos Humanos (PROVEA) (2001), *available at* <http://www.derechos.org.ve/> (on lynchings in Venezuela); Carlos M. Vilas, *(In)justicia por Mano Propia: Linchamientos en el Mexico Contemporaneo*, 63 Revista Mexicana de Sociologia, at 131–60 (on lynchings in Mexico); Jose Martins de Souza, *Lynchings—Life by a Thread: Street Justice in Brazil, 1979–1988, in* Vigilantism and the State in Modern Latin America: Essays on Extralegal Violence (Martha K. Huggins ed., 1991) (on lynchings in Brazil); Eduardo Castillo Claudett, *La Justicia en Tiempos de la Ira: Linchamientos Populares Urbanos en America Latina*, Ecuador Debate No. 51, *available at* <http://www.lahora.com.ec/paginas/debate/paginas/debate12.htm> (on lynchings in Peru, Ecuador, and Guatemala).

campaigns of the late 1970s and early 1980s, in which hundreds of Mayan villages were quite literally wiped off the map. The UN-sponsored Historical Clarification Commission ("truth commission") concluded that during this period, the state's terror tactics took on genocidal proportions for the first time.[4] By the mid- to late 1980s, thanks in part to the sheer totality of these killing campaigns, the guerrilla threat in the highlands had been neutralized, and the country embarked on a lengthy peace process which eventually culminated in December 1996.

For many Guatemalans, however, the signing of the peace has not brought an end to the violence. The character of the killing, certainly, has changed: the number of politically-motivated murders has declined sharply; disappearances are now much more infrequent; acts of genocidal state terror are thankfully a thing of the past.[5] Nonetheless, the cessation of formal hostilities between the Army and guerrillas has been accompanied by a marked increase in the incidence of common crime. Many estimates place the country's contemporary homicide rate among the highest in Latin America, a continent which already boasts a regional homicide rate twice the world average.[6] In 1997, for example, the World Bank estimated Guatemala's homicide rate at 150 per 100,000 population. (By way of comparison, the same source puts the United States rate for the same year at 10.1 per 100,000, suggesting that Guatemala may outpace the US *fifteenfold* in its murder rate.[7]) In Guatemala, although official government statistics are largely unavailable and problems in the system of data collection call into question the reliability of those numbers which can be obtained,[8] the National Institute of Statistics' figures on violent deaths suggest a 1996 rate

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4. For a discussion of this finding, see the Commission's 1999 report *Guatemala: Memoria del Silencio* [hereinafter CEH Report]. Comisión para el Esclarecimiento Histórico (CEH), Guatemala: memoria del silencio (1999). For this portion of the report, see <http://hrdata.aaas.org/ceh/report/spanish/conc2.html.>
5. Readers should bear in mind that an alarming number of political crimes still do happen in Guatemala; there has been a notable decrease since the darkest days of the armed conflict, but the massive violence of the war makes even dangerously high levels of contemporary violence appear moderate. Although the human rights climate improved measurably after the war's end, political crimes experienced a marked resurgence after mid-2000, prompting Amnesty International to proclaim the country had experienced a "human rights meltdown" in 2002. Nonetheless, a significant change *has* happened in Guatemala since the 1980s, and in sheer numbers, most of the killing today does not respond to political concerns nor is it carried out by state actors. Amnesty Int'l, Guatemala's Legal Legacy : Past Impunity and Renewed Human Rights Violations 62 (2002).
6. Mayra Buvinic et al., Inter-American Development Bank, Violence in Latin America and the Caribbean: A Framework for Action 2 (1999).
7. *Id.* at 3.
8. For a discussion of the shortcomings of government crime statistics, see CIEN (Centro de Investigaciones Económicas Nacionales), Investigando la Violencia en Guatemala: Algunas Consideraciones Conceptuales y Metodológicas (unpublished manuscript, on file with author).

of 58.68 per 100,000.[9] Even this figure, while significantly below most estimates by international sources, places Guatemala's homicide rate at more than twice the generally accepted rate for Latin America as a whole.[10]

To make matters worse, the Guatemalan criminal justice system lacks the capacity, resources, and political will to investigate and punish most crimes, from wartime atrocities to present-day criminal attacks. In part, this too is a legacy of state violence: under authoritarianism, the Army deliberately maintained the civilian authorities in a state of institutional ineptitude, thus allowing and justifying the erection of a parallel military "justice" system. In the wake of the war, very few cases of war crimes have gone to trial, and fewer still have resulted in convictions. The system is equally ineffective at dispensing justice for contemporary victims of common crime. As a result, most citizens are understandably cynical about official law enforcement efforts, judging the authorities to be incompetent at best, if not complicit in criminal activity.

Driven by fear of crime and disinclined to confide in the police or courts, many communities have turned to what is commonly known as "*justicia a mano propia*" (literally, "justice by one's own hand"). The most sensational and well-publicized, but certainly not the only, form of *justicia a mano propia* is that of public lynchings, in which ordinary citizens apprehend a "criminal" and decide to punish him or her with their own hands. In most cases, the incidents being punished are property crimes involving modest amounts of money or goods. Frequently, but not always, suspects are doused with gasoline and burned alive. Sometimes thousands of people are present, participating as witnesses or members of a "Popular Tribunal" to determine the fate of the accused. In addition to attacking alleged criminals, participants have sometimes destroyed municipal buildings, jails, and/or police vehicles; not infrequently, mobs have forcibly wrested suspects from police custody in order to lynch them, believing that the police or courts would only let them go.[11] In most cases, attempted interventions by the police, the Army, and international organizations such as the United Nations have been repelled; crowds have threatened to lynch anyone attempting to interfere with the proceedings, and frequently the "authorities" have fled for their lives.

While the public character of lynchings attracts considerable attention

9. *Id.* at 2.
10. Although estimates vary, the Inter-American Development Bank calculates Latin America's overall homicide rate to be 28.4 per 100,000 population, based on 1994 figures. *See* Buvinic et al., *supra* note 6, at 2. Most estimates hover around the 30 per 100,000 mark.
11. *See* MINUGUA, El Primero-Decimo Informes Sobre Derechos Humanos de la Misión de Verificación de las Naciones Unidas en Guatemala (1994–2000), *available at* <http://www.minugua.guate.net/derhum/>.

to this practice, these incidents may be less common than other more clandestine forms of *justicia a mano propia*. These include the formation of organized social cleansing groups which eliminate real or suspected criminals, including street children, prostitutes, and homosexuals;[12] the use of hired assassins; personal vengeance killings; and other acts. As these practices are generally not carried out in public, it is difficult to obtain reliable data about their frequency, although some human rights groups suggest they are also on the rise in the postwar period. Lynchings, therefore, should be understood as one manifestation of this widespread behavior rather than as a unique phenomenon for which individual communities should be blamed in isolation. Indeed, in one recent survey, some 75 percent of the national population expressed at least some support for acts of *justicia a mano propia,*[13] broadly defined.

B. The Sociological Effects of War

Contemporary lynchings are only comprehensible against the backdrop of the war's extraordinary violence. While the devastating effects of state violence on individuals and communities alike have been amply documented in the scholarly and human rights literatures on Guatemala,[14] its legacy in the postwar period is most often discussed through analyses of the fear and trauma suffered by individual survivors. While psychological

12. CEH Report, *supra* note 4. Such clandestine forms of "crime control," of course, have a long history in Guatemala; death squads played key roles at many points during the armed conflict. During the war, the possession of certain political sympathies was seen by some as constituting a criminal threat to the community, and the language which groups like *La Mano Blanca* and others used when talking about their targets ("*delincuentes*," "*grupos actuando fuera de la ley*") is strikingly similar to what is heard today in reference to common criminals. Today, there is evidence of such groups' reemergence in a number of areas, likely with the participation of people with links to the military or especially to local mayors (themselves often with strong military connections). At least some of these groups advertise their existence and distribute lists of victims, past and future, to corroborate their claims. One group claims to roam the national territory, "taking care of" one state at a time.
13. Víctor Ferrigno, El Estado Democrático de Derecho Frente al Conflicto Social, paper presented at the conference Linchamientos: Diagnóstico y Búsqueda de Soluciones, Panajachel, Guatemala, May 1998.
14. *See* Harvest of Violence: The Maya Indians and the Guatemalan Crisis (Robert M. Carmack ed., 1988); Oficina de Derechos Humanos del Arzobispado de Guatemala (Human Rights Office of the Archbishop in Guatemala), Guatemala: Nunca más: informe del Proyecto Interdiocesano Recuperación de la Memoria Histórica, vol. I–V (1998) [hereinafter REMHI Report]; CEH Report, *supra* note 4, *available at* <http://hrdata.aaas.org/ceh/index.html>; Ricardo Falla, Masacres de la selva : Ixcán, Guatemala, 1975–1982 Guatemala (1992); Rigoberta Menchú, Me llamo Rigoberta Menchú y así me nació la conciencia (Elisabeth Burgos ed., 1983); Linda Green, Fear as a Way of Life: Mayan Widows in Rural Guatemala (1999).

problems stemming from wartime experiences undoubtedly lead some individuals to engage in present-day acts of violence, this alone cannot explain the diverse emergence of lynchings: in some cases, these acts are instigated by former perpetrators of wartime violence; in others, by former victims; and in yet others, by individuals who fled to avoid violence.[15] These collective practices have their roots in the collective experiences of wartime terror, the ways in which the war affected these communities *as communities*, rather than merely groupings of individuals.

While violence and terror are always devastating to individuals, and by extension to the communities they inhabit, genocide is more than merely massive violence. Defined by the UN Genocide Convention as "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group," whether by killing its members, causing them serious bodily or mental harm, forcing them to live under conditions calculated to cause their destruction, or other means,[16] it means the destruction of collective life itself. In Guatemalan highland communities, both the guerrillas and government forces committed atrocities against the civilian population. But the Army's efforts were uniquely aimed to eliminate an entire social world. It set out to accomplish this through a two-step process: first, the Army decimated the preexisting institutions of civil society, and second, it replaced these with new, perverse forms of social organization that have endured into the postwar period.

To begin with, the Army sought to destroy highland communities as social units. During its early incursions into the area, it systematically eliminated an entire generation of community leaders: members of such organizations as trade unions, Catholic Action groups, student activist committees, and other entities with a real or supposed social justice agenda were assassinated.[17] Eventually, however, the Army's failure to draw a distinction between the Mayan population and the guerrillas meant that a series of military governments viewed *any* community leader—not only those involved in overtly political activities—as a representative of the internal enemy. This led to the widespread elimination of Mayan priests, mayors, village elders, traditional authorities, and others. As those charged with carrying out important tasks in local government, passing on religious

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15. Here the author refers to the fact that lynchings have also taken place among communities of returned refugees, many of whom spent most or all of the last fifteen to twenty years in Mexico.
16. This is the definition adopted by the UN Genocide Convention into international law. Many social scientists have used different definitions. For a partial list of these, see the Association of Genocide Scholars' web site, *available at* <http://www.isg-ags.org/definitions/def_genocide.html>.
17. *See* CEH Report, *supra* note 4; REMHI Report, *supra* note 14.

and cultural traditions to future generations, and guiding their communities through times of trouble, the loss of these leaders had far-reaching effects on collective life in the region.

In addition to leadership figures, however, rank-and-file community members were slaughtered in the many massacres of the 1970s and 1980s. Entire communities were eliminated: the truth commission estimates a total of 626 massacres during the war, and in the province of El Quiché alone, some 344 villages were razed.[18] Yet more than merely collective assassinations, these massacres were attempts to destroy society itself. Even when all human inhabitants of targeted villages had been killed or forced to flee, homes and crops were set afire; household implements were systematically destroyed; livestock and animals—horses, dogs, pigs—were killed. At times, when the Army abandoned a community following a massacre, it left bags of poisoned foodstuffs at the site of its encampment, or attempted to poison the water;[19] every effort was made to ensure that no one returning to the village could reestablish a settlement there. The effects of these tactics, then, have a permanence that extends beyond the numbers of dead or disappeared; for those who survived the killing campaigns, there was literally nothing left to return to.

As the truth commission states:

> Between 1980 and 1983 the military strategy caused the dismantling of the Mayan communities as social collectivities. It oriented its activities toward the destruction of order based on authority and the organization and abolition of the symbols of cultural identity. In its extreme form, the Army carried out the total elimination of communities, as in the scorched earth operations, massacres, executions, torture, and mass rapes.[20]

Among survivors, the second and perhaps more insidious feature of the transformation of highland community life was the Army's effort to replace the previously existing institutions of civil society with new, militarized substitutes. Traditional leaders were supplanted by a network of Army informants and collaborators, including military commissioners, civil patrollers, and individuals known as *orejas* (literally "ears") who conducted surveillance, provided information, and carried out orders issued by the Army. In many communities, militarized authority came to be so pervasive that military commissioners, patrollers, or the Army governed everyday decisions about the distribution of aid, the granting of permission for cultural events, and the resolution of daily conflicts, including marital disputes and quarrels between neighbors. The Army thus controlled social

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18. CEH Report, *supra* note 4, at 97.
19. REMHI Report, *supra* note 14, at 106.
20. CEH Report, *supra* note 4, ch. 3, at ¶ 459.

life so completely that other, non-military forms of organization were not only illegal, but unthinkable.

Perhaps the most pervasive of these structures was the civil patrols (*patrullas de autodefensa civil*, or PACs), in which male residents of highland communities were obligated to serve as paramilitary forces—informing on community members' behavior, assisting the Army in counter-insurgency operations, patrolling the community to "protect" it from guerrilla infiltrators, and at times, participating in executions and massacres of community members. In 1986, an estimated one million citizens were involved in the patrols—up to 80 percent of the male population aged 15 to 60 in the rural zones of the indigenous highlands.[21] At their height, the patrols were described by Americas Watch as "the most extensive counterinsurgency model of its kind in the world."[22]

By supplanting local authorities with paramilitary figures chosen from within the communities themselves, the Army was able to effectively "divide and conquer" the civilian population, neutralizing resistance at its root—in the very sense of belonging to a community. This disruption of social bonds between neighbors and kin was further heightened by forcing some to participate in atrocities against members of their own community. In some 13 percent of the massacres documented by the Catholic Church's human rights report (REMHI), the Army used people from the target communities themselves to identify others for execution, frequently assembling all members of the community and obligating a collaborator to point out the guerrilla sympathizers among them.[23] One out of every four mass killings included the participation of civil patrollers or military commissioners.[24] These practices replaced community cohesion based on shared traditions with submission to the military based on fear.

In the wake of the war, these forms of authority remain embedded in local practices, not only because many ex-paramilitary leaders retain de facto control over their communities, but more significantly, because community life itself—people's ways of coming together and relating to one another, their interactions and expectations—have been deeply infused with violence. The war's most lasting legacy in Guatemala, then, may lie not in the long lists of victims nor the hundreds of unmarked grave sites. It may reside in something that left no visible remains: these violated networks of community cohesion, trust, and meaning. Although new generations of Guatemalans now inhabit the places left vacant by the massacres, the social space which binds them is still haunted by its history of terror.

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21. REMHI Report, *supra* note 14, at 119.
22. Americas Watch, Civil Patrols in Guatemala 2 (1986).
23. REMHI Report, *supra* note 14, at 34.
24. *Id.* at 122.

III. EXAMINING THE LYNCHINGS

How does this translate into lynchings today?

First, in the wake of the fighting, many highland communities remain deeply divided. In some cases, victims of violence live side-by-side with Army collaborators; returned refugees inhabit the same areas as former residents of Army hamlets; and human rights groups and widows organize alongside ex-patrollers. In this atmosphere of fragile coexistence, collective decision-making is fraught with difficulty, particularly around topics—such as crime—which ignite passionate reactions. The elimination of traditional Mayan leaders and their replacement with militarized forms of authority have left these collectivities profoundly vulnerable, forced to confront contemporary problems without leadership structures that transcend wartime differences.

In many cases, lynchings are instigated or carried out by former paramilitary leaders.[25] Although the peace accords stripped ex-civil patrollers and military commissioners of all formal authority, they have retained de facto power in many areas. In some cases, they have now assumed leadership roles as auxiliary mayors or members of local municipal councils, often affiliated with the right-wing FRG;[26] this legitimates their ongoing influence in the community and perpetuates old patterns of resolving conflicts through violence. Frequently, their involvement in such activities creates a climate of fear and intimidation, in which other community members are obligated to participate in order to avoid suffering reprisals. In one community, for example, residents told me that a former patrol commander had taken up a collection among the villagers. Each adult was charged one *quetzal* to pay for gasoline, which he would purchase and keep "should the need for action arise." Some reported that they were afraid of him because of the atrocities he had committed in the past, and therefore felt forced to contribute to the fund-raising effort whether or not they supported the idea of lynching.[27]

As one elderly man told me:

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25. MINUGUA (Misión de Verificación de las Naciones Unidas en Guatemala), Décimo Informe Sobre Derechos Humanos de la Misión de Verificación de las Naciones Unidas en Guatemala (Jan. 2000); MINUGUA (Misión de Verificación de las Naciones Unidas en Guatemala), Los Linchamientos: Un Flagelo Contra la Dignidad Humana (Dec. 2000); Amnesty Int'l, Guatemala's Lethal Legacy: Past Impunity and Renewed Human Rights Violations 62 (2002).
26. The FRG, or *Frente Republicano Guatemalteco*, is a right-wing party founded by former dictator Gen. Efraín Ríos Montt. The party, which includes many military hard-liners and their civilian sympathizers, was swept into power in the elections of 1999, in large part thanks to its get-tough-on-crime platform.
27. Personal interview, 24 Oct. 2000 (on file with author).

> There are local authorities. There are local authorities but they have those ideas of the past stuck in their heads. So those people, now they're the authorities, but many of them have ideas, well, they were brainwashed by the Army. They told them that the guerrillas were the ones who stole the chickens, who raped the women, all those things, but the people know, the guerrillas didn't have problems with the people because it wasn't true, the ones who did those things were the soldiers and the people knew it, although you couldn't say so, but it's known, it's known nowadays who were those who killed people, who were those who burned people, it's known who they were but you can't say anything to them about it. So that's the root of the problem, because since they organized the civil patrols, there those people that were in the patrols got accustomed to those things, to burning and all of that. Nowadays they don't burn with their houses and all, but they're still burning. Those people are trained [*viene orientada esa gente*], that's the problem. The people are trained but the rest don't know it, the rest allow themselves to be manipulated by the fear that exists in the communities. That's the problem. There are some who are naïve, who get involved with things without really knowing what they're doing. Since the 1980s we knew that this type of thing was going to happen, these lynchings, because those were the ideas that they taught the leaders of the patrols, because our people, people from our own community were patrollers, and they heard the what's it called, the orientations that they gave them in those days. They said don't back down [*no se dejen*], when we go another time will come [*cuando nos vamos habrá otra época*], and for a long time you will have to be like this with the people [*y durante tiempo ustedes tienen que ser así con la gente*]. They already knew that things were going to change and they were preparing the people. Since then. So we know, because many of our people were part of the patrols and received that training, and there was information since that time that things like lynchings were going to happen.[28]

At times former paramilitary leaders act independently in their communities, but in some cases, evidence suggests that they remain organized from community to community in clandestine structures. In the region surrounding Chichicastenango, El Quiché, for example, many residents report the existence of a paramilitary group known as *La Cadena* (The Chain). Originally formed during the war, *La Cadena* served as a way for patrol commanders to coordinate their actions between communities and with the Army. The formal dissolution of the civil patrols forced the organization underground, but it remains active today, and some of its members hold local political office. Numerous alleged members of *La Cadena* have been implicated in highland lynchings.

Not only does the participation of individuals and structures linked to past practices of violence lend itself to the repetition of familiar patterns; it

28. Personal interview with a K'iche' Mayan man from municipality of Chichicastenango, 24 Oct. 2000 (on file with author).

also makes it possible for such forces to wield their influence to implicate past political adversaries in acts of common crime. In one recent case, a July 2000 lynching claimed the lives of five members of a single family, all survivors of a 1993 massacre at the hands of civil patrollers; some of the victims had testified about the wartime massacre before the truth commission and in court, resulting in the detention of two former patrollers for two months.[29] When the author visited the area two months later, local residents told me that members of *La Cadena*, including several ex-patrollers, had organized the lynching, obligated villagers to attend, and further forced their participation in several meetings in its aftermath. For example, in response to declarations by President Alfonso Portillo that those responsible for the lynching would be apprehended, thousands of area residents were summoned to sign a defiant statement warning the president that if a single arrest were made, "there would be consequences."[30]

Although most lynchings appear to target petty criminals rather than members of the political opposition, it is impossible to know how many executions of apparent "criminals," like the one at Xalbaquiej, may have claimed innocent victims implicated for their political affiliation, personal animosities, or other reasons. As one man, a member of a local human rights group, told me:

> They say that the organization [of the patrols] was destroyed, but it hasn't been destroyed. They're organized, they're coordinated, and they're united clandestinely. Only they know, but whatever thing that happens, there they take advantage of the popular organizations to eliminate the leaders [*descabezar*, literally "to decapitate"] again, just like in the past it's happening today. Before they didn't burn people, they kidnapped them, and who knows where they threw their bodies. So now they can't do that, since they signed the peace. Now they're blaming the government authorities, because they say that the judges don't make justice, that the Public Ministry, that the courts, that's what they say, but it's purely a strategy of those people [*es pura estrategia de esa gente*]. So nowadays I think, from what I've lived and what I've heard in Chichi—I'm talking about Chichi here—that they know the relatives of the organized people, or the people who were involved in the war, and they take advantage to get rid of those people, so now they're accusing them of being thieves, of being criminals, of other things. Today they're taking advantage of the situation to burn people in these areas. I don't know if you've noticed, but only in the areas where there was conflict during the war, that's where these things are happening now, and in other areas nothing has happened. Why? Because in other areas there are no patrol leaders, or there are but they're not organized, so there isn't any structure. For me that's the root of the problem, the first root of

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29. Juan Carlos Llorca, *Xalbaquiej visto como masacre encubierta, no un linchamiento*, El Periódico, 2 Oct. 2000, at 3.
30. *Linchamientos: Vecinos de Xalbaquiej justifican muertes*, Prensa Libre, 22 July 2000.

> the problem that we're seeing. We're seeing that the ones they're burning now are people who have struggled since the beginning, they're eliminating them for being thieves, like in the case of Chiché recently. . . . Now they're burning people, they're burning, but they're trained by certain people, and that's the real root of the problem, I think, it's not the people's fault because they were trained, they filled their heads with many things.
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> . . . . Now there aren't any [kidnappings], but there have been rumors. Just rumors and like that, because like they say, the peace has been signed and the people have already seen how the war was, and all of those things. What's happening now is that they're in La Cadena, and they're orienting people, telling them that they shouldn't let those people make fools of them, that it's better to shut them up so they stop bothering, and so that's when they come up with the idea of burning them, to get rid of those people. That's what's happening, but they're all rumors. They're the men who were the leaders of the patrols, who manipulate the people in the communities, who say these things.[31]

Why do ex-patrollers engage in such acts? Some may use them as a way to maintain their power in the postwar era, relying on the same tactics of terror and intimidation used during the war to preserve their sense of authority. Others may genuinely believe they are doing the community a service by ridding it of thieves. Many observers see an even more sinister subtext here, suggesting that the lynchings may be evidence of a larger plan to mobilize lingering paramilitary structures to destabilize postwar democracy, prompting calls for greater military intervention in daily governance. The frequent involvement in lynchings of local political leaders, often from the right-wing FRG, is clear; what remains uncertain is the extent to which they choose to act independently, or are instructed to do so as part of a coordinated political strategy.

Second, in the wake of the war many communities lack traditions of peaceful conflict resolution. Before the war, Mayan communities generally resolved local conflicts through a traditional system of justice known as *derecho consuetudinario*, or customary law.[32] Yet the arrival of the Army hastened the abandonment of such practices, replacing them with militarized patterns of local governance—and practices such as public tortures

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31. Personal interview with a Maya K'iche' man from municipality of Chichicastenango, 24 Oct. 2000 (on file with author).
32. The Mayan *derecho consuetudinario*, or indigenous customary law, is built on past practices as opposed to a legal code, much like English common law. It is based on restitution of damages rather than punishment, and on mutually satisfactory accords reached through negotiation and discussion rather than the winner-takes-all model of Western justice. For more on these forms of justice, see MAYA DEFENSORÍA, SUK'B'ANIK, ADMINISTRACIÓN DE JUSTICIA MAYA, EXPERIENCIAS DE DEFENSORÍA MAYA (1999); RAQUEL Z. YRIGOYEN FAJARDO, PAUTAS DE COORDINACIÓN ENTRE EL DERECHO INDÍGENA Y EL DERECHO ESTATAL (1999); CLAUDIA DARY, EL DERECHO INTERNACIONAL HUMANITARIO Y EL ORDEN JURÍDICO MAYA: UNA PERSPECTIVA HISTÓRICA (1997).

and executions as punishment for criminal offenses. While the imposition of militarized authority came at a terrible human cost, it did provide a system of order and stability for highland communities during the war, providing a means, however brutal, for resolving disputes. In the wake of the war, the Army's retreat has left these areas newly vulnerable to criminal violence, and suddenly stripped of not only their traditional means of self-government, but also of the militarized substitute to which they had been subjugated. Crime is rampant; citizens live in fear; and the authorities and legal system lack the legitimacy, capacity, and perhaps even the will to provide justice and order for area residents.

As a result, even where communities have come together across political differences to seek solutions to the crime problem, they often reenact the violent practices of the recent past. The lynchings are a prime example: during the war, both the guerrillas and Army forces often punished "criminals" in public executions before large crowds. In these public displays of what was termed "justice" (these acts were sometimes called *ajusticiamientos*, or "justice-making") the use of burning as a method of execution was common. As one woman told me:

> Lynchings were learned. The lynchings started when the violence happened, in the 1980s, because the Army was the one who started to burn people alive around here. And that happened close to the community where the [recent] lynching was, and they saw it, those people lived it. Even minors, children were burned alive by the Army. The Army gathered stalks from the corn fields (*caña de milpas*) and put them on top of a girl, and there they set fire to her. Because since they believed that even the children, even the dogs, even the animals were part of the guerrillas. So they were the ones who were burning around here.[33]

Other reports confirm the frequency of such practices. In more than half (some 56 percent) of the eyewitness accounts from massacres collected by the Catholic Church's REMHI report, the incineration of houses and/or bodies was reported;[34] after gunshot wounds, burning was the second most common cause of death documented in the massacres.[35] Even the original name of the Army's 1982 offensive in the highlands, *Operación Ceniza* (Operation Ashes)[36] alludes to the importance of this strategy. While not all lynchings involve burning, the prevalence of this pattern—and its roots in the region's collective memory—underscore the influence of wartime

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33. Personal interview with a Maya K'iche' woman, 25 Oct. 2000.
34. REMHI Report, *supra* note 14, vol. II, at 15.
35. *Id.* at 56.
36. Jennifer Schirmer, The Guatemalan Military Project: A Violence Called Democracy 44–45 (1998).

tactics in contemporary practices.[37] During the war, of course, such punishments were inflicted upon political enemies; today, they are primarily directed against common criminals. But the methods clearly resonate with past practices.

While at times these acts are instigated by ex-paramilitary leaders, there is a danger in overstating the military's role in promoting lynchings, and thus reifying the opposition between an oppressive Army and victimized villagers. It is important to note that all too often, members of highland communities unambiguously support, advocate, and instigate lynchings, with or without logistical support by ex-patrollers; today, in many areas, past victims have themselves become victimizers.

At a meeting of a local human rights group, one woman, visibly upset, exclaimed:

> On the one hand, those who are in *La Cadena*, on the one hand I think they do something useful, because now what the law demands is not being met, [*por una parte, pienso que esa gente que está encadenada, por una parte pienso que cumplen, porque ahorita hay una ley que no se está cumpliendo*] and therefore other initiatives are born. Since there is no law which is being respected, well, they take the law into their hands, and there are times when they find the guilty parties in the act of committing a robbery, and if they put them in jail, in two or three days they're out again. On the streets. So in that sense, the people become furious, they don't like it that the thieves get out of jail just like that. . . . What are we going to do? Because, when we talk about the past, well, I think we're old, those of us who suffered the violence of the past, but those who are young now, those who are in gangs aren't ex-patrollers, they are sometimes even the children of members of organizations . . . what solution can we come up with? My concern is that of the present, because of the past, that's past, well, the *compañeros* have already died, may God keep them in His glory but what worries me the most now, right now, is what we're living now. I'm very worried. What are we going to do?
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> . . . . Because the people who are active now in the violence, when they find you, they don't take any pity on your life. They rape a girl in front of her parents. And that's the problem that we have. Because not long ago, when those people who did the lynching not long ago in Santa Bárbara,[38] I know why they

37. Other methods include stoning, shooting, and beating victims to death; MINUGUA documented at least one case in which a victim was thrown from a bridge in Chichicastenango at the urging of the assembled crowd. And the extensive media attention received by lynchings predisposes later cases to mimic the methods of execution so noted in earlier attempts, such that every incident of burning does not reflect a community's independent invention of the technique. Clearly, the phenomenon is more complex than a mechanistic repetition of wartime practices in new contemporary settings; my intention here is not to oversimplify this process, but merely to call attention to its origins in wartime practices. MINUGUA, *supra* note 25.
38. The name of this community has been changed to protect the informant.

were so angry, because . . . I know all about what happened. The people who lynched the criminals, they were very, very wounded, because one day, one Sunday they [the criminals] took all the people from the community, and they raped the young women, minors [*menores de edad*], like from [age] 14 and up! Fourteen and up! So that girl, the young girl, I saw her with my own eyes, she was injured from the abuse, sexually, and she was taken to the hospital. Still today she is in a wheelchair, and she's a minor. That's why, like Efraín Ríos said in his political campaign, the rats, we're going to kill them all! In other words, we're going to finish off the lives of the criminals. And that mentality stayed inside people. The same people, our people from here. So with those things that the terrible people do, well they have to make their own justice with their own hands. . . . For that, on the one hand the people are right. On the other hand, the people themselves turn into criminals. Criminals fighting criminals, on both sides they're criminals. That's what worries me. That young girl, I saw her myself, I know that she is still in a wheelchair, she was left really wounded . . . because so many men [raped] her, and for me, it caused me great pity, I cried in front of her when I saw her like that, all twisted. That's why the people get angry. And of course, if that's why they organized to do that [the lynching], then in part they're right. It's not that I'm in favor of it or I'm opposed to it, I'm just trying to speak about the reality.[39]

For this woman, and many others like her, the human rights struggles of the past are fundamentally different from the challenges that confront her community today. As an active member of a local human rights group, she is adamantly opposed to the Army's former practice of executing political opponents during the war. But she told me that today's public executions, because they target hardened criminals, may actually be useful for crime prevention.

The author discussed this topic with a group of four Mayan men and one woman from a village near Santa Cruz del Quiché:

Q: Would you say that a majority of the people in your community supports the lynchings as a response to all of this [the crime problem]?

[Unanimously]: Yes.

Respondent #1: Yes, the majority. They support the lynchings now. In earlier times, no. When they used to burn people during the armed conflict, they didn't support it. But what they're doing now, yes, they support it.

Respondent #2: Since they saw that nothing else can be done, they support it now. I don't remember when the first lynching around here was—was it the one in Joyabaj?—I think so, but anyway that was when they found out that only in this way could this [crime] be detained a bit. Only in this way. That's how it

39. Comments from a Maya K'iche' woman during group discussion about La Cadena, 24 Oct. 2000.

was, and we've heard that in many places the same thing has happened, until finally it hit close to home, right close to where we live.

Q: And did you see it?

[Unanimously]: Yes.

Q: What was it like? What happened?

Respondent #3: Terrible. It was terrible! Imagine, let's say, to see an animal be burned, alive, not even talking about a human being. You don't even kill animals like that!

Respondent #4: Yes, even with animals, you look for the least cruel way to kill them, it's true. And with a person . . . ! But we have seen what they've done, the criminals, and they do horrible things. So we can't have pity on them.

Respondent #1: But it's all due to the poor administration of the law. They say that earlier, when you did something wrong, the community itself corrected you, told you to do this or that, gave you a punishment. And if you did it again, again there would be another justice, but it never reached the point of taking away your life, because [the communities] didn't live that way before the violence came. But like many said, since the violence came and disrupted everything, now there is no system, now there is no justice.

Q: And when the lynching happened, did many people attend?

Respondent #3: Oh, yes, lots.

Respondent #2: Almost the whole village.

Q: I've heard that in some other places, sometimes people attend lynchings, but because someone obligates them to . . . but it seems like, from what you're saying, that wasn't the case in your community.

Respondent #2: Oh, no, it was voluntary.

Respondent #1: And the people were right. Because in these regions, almost 90 percent of us work on the coast,[40] and [to do that is] only to suffer, to be counting the days until we can go home, and if you come back with your hands empty because they robbed you along the way, the pain is really intolerable. So, knowing that those people live by stealing money from honest people who come from working on the plantations, knowing that, the people couldn't put up with so much abuse. And after the lynching, everyone saw that the violence calmed down. Not all of it, but it calmed down. There are still problems, but less.

Respondent #5: More or less it served as a lesson, an experience, because there they saw that the communities made justice, and that they couldn't go on like that. So giving that example is providing a lesson.

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40. Due to economic necessity, many residents of the highlands travel to the coastal plantations to work, generally for months at a time, during harvest season. Although wages are low and working conditions harsh, many families depend on this source of temporary cash income.

Q: So do you think that lynchings could be a solution?

Respondent #5: Yes.

Respondent #1: Yes, because we had nothing else left. I don't know what else we could have done.

Another woman, herself a witness to a lynching in her community, told me,

> We went to watch when they were setting them on fire. *Ay*, you should've seen how that stank, even my head hurt from the stench, and to see them melting like that . . . I felt pity [*me daba lástima*], and I cried. But on the one hand I give thanks to God that they burned them. May God forgive me, but it's good that they finished them off. Also, that way things get more peaceful around here. It's that . . . it was no kind of life [*Es que ya no era vida*]. We couldn't go out to do an errand because we were afraid, all of us were afraid, we didn't know when from one minute to the next they were going to come and finish us off, and since we live in the mountains, we were scared to go out. Even more so at night. And worse with the girls. Sometimes when there was an errand to do, I would say to them, "It's better if I go, you stay here, because I don't want anything to happen to you on the way." Then after that [the lynching] happened, then things calmed down a bit.[41]

In this way, not only ex-paramilitary leaders, but everyday citizens and even some members of progressive organizations have occasionally endorsed lynchings in their communities. The Army's occupation of these communities not only eliminated traditional leaders, but eradicated the practices of conflict resolution based on consensus and peaceful coexistence which had characterized these collectivities for centuries.[42] As a result, at war's end the very notion of what constitutes "justice," or the means by which it should be obtained, has been deeply transformed in highland communities.

IV. THE SOCIOLOGICAL LEGACY OF TERROR AND ITS IMPLICATIONS FOR HUMAN RIGHTS

Although lynchings are clearly legacies of state violence, today these acts are carried out at the behest of new and emerging forces in civil society. In many ways, the lynchings reveal that the transformation of social life in the highlands was so far-reaching that its effects have outlasted the war itself.

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41. Personal interview with Mayan woman from rural Quiché, 26 Oct. 2000.
42. The author does not intend to imply here that these communities lived conflict-free prior to the Army's arrival or that the war was the only force eroding community norms. Economic transformations, land disputes, and other forms of conflict preceded the militarization of the area, and have lingered in its wake.

Today, there exists a profound ambivalence in the highlands—in Guatemalan society as a whole—around the question of violent justice, of governance by force, of human rights and their place in postwar democracy. While most Guatemalans embrace the political rights associated with democracy, and almost all told me they condemned extrajudicial executions, acts of torture, and other egregious violations of human rights when targeted against political opponents, the lynchings reveal a high tolerance for such abuses against purported criminals. The logic of governance through fear infuses much of Guatemalan society, and is nowhere more palpable than in the highlands. More than evidence of individual human rights abusers' ongoing influence, the lynchings attest to a profound transformation of society itself.

As one woman told me:

> The violence left this sickness. This is sown here [*esto está sembrado aquí*], it didn't exist before but it's a legacy of what we have lived. All those who participated in the massacres of the 1980s, those are our own people, Mayan people, campesino people. Those were the people who chased us to try to kill us. And those people, our people, were left deeply affected, our culture, our society is affected. That doesn't get erased with a signing of a peace treaty [*No con una firma de paz se borra eso*].[43]

The lynchings constitute a new form of human rights abuse, unique to the postwar period. On the one hand, lynchings underscore the ongoing relevance of the conventional human rights approach. They show that the failure to redress past acts of state violence by prosecuting those individuals and structures responsible for abuses leads to further human rights violations in the postwar period. At the same time, however, such an approach cannot explain the apparent popularity of lynchings in some communities. Indeed, by "blaming" the lynchings almost exclusively on the Army or its agents, and thus continuing to view these communities primarily as victims of state violence rather than agents pressing for social change, scholars and activists alike drastically underestimate the complexity of communities' reactions to lived violence. They also unwittingly deny what may be ambivalent, confounding, and potentially contradictory, but nonetheless important expressions of local agency.

The emergence of new forms of human rights violations in postwar societies challenges conventional human rights thinking in a number of ways. First, it urges us to replace the predominantly "backward-looking" human rights discourse so common in postwar societies with a new "forward-looking" approach, able to understand and act against an evolving

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43. Personal interview with Maya K'iche' woman in Santa Cruz del Quiché, 25 Oct. 2000.

range of human rights abuses committed by a variety of actors. Here the author does not intend to imply that calls for justice in cases of past atrocities are no longer relevant. Quite the contrary: as the lynchings reveal, the roots of many contemporary problems lie, at least in part, in postwar societies' failure to address structures of entrenched impunity established under authoritarianism. At the same time, however, a more flexible approach is needed, one which understands the importance of persevering in these demands for justice while simultaneously pressing forward with innovative approaches to contemporary problems, many of which do not fit into the conventional paradigm of abuses and abusers.

Key to such an approach is an awareness that in an increasing number of postwar societies, the state no longer possesses a monopoly on violence, nor is it the only actor capable of violating the rights of citizens on a large scale. Such an awareness is already spreading throughout the human rights movement, as evidenced by an increased willingness to work on abuses committed both by armed opposition forces and corporations even among giants like Human Rights Watch and Amnesty International. Yet the lynchings suggest we should push the envelope even further: not only powerful "state-like" institutions, but civil society itself—individual citizens, members of municipal councils, local development committees, citizens' groups—can be capable of tremendous violence. This challenges the implicit dichotomy between violent state and virtuous civil society that underlies much of the theory and practice of human rights today.

By the same token, a "forward-looking" approach should emphasize both positive and negative rights: its flexibility cannot be limited to the mere substituting of state targets with corporate ones, but must also include a recognition of the fact that actors must undertake positive actions (not merely restrain from committing violations) to foster a culture of respect for human rights. As the case of Guatemala shows, state capacities must be strengthened—including the inherently repressive[44] capacities necessary for maintaining order, preventing crime, and punishing offenders—not at the expense of civil society, but in concert with it.

Second, the violent character of democracy in Guatemala underscores the inadequacy of the familiar model of "generations of rights," first laid out in T.H. Marshall's 1950 treatise on the topic.[45] Namely, it forces us to

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44. In labeling these functions "repressive" the author simply means to suggest that they rely upon the exertion of state power to restrain the rights of certain individuals, not that they should have a repressive effect upon society as a whole. The point here is to suggest that forces in civil society must move beyond suspicion of the security forces to support for their strength—under conditions which guarantee their accountability, of course. In Guatemala, these conditions have yet to be met.
45. *See* T.H. Marshall, Citizenship and Social Class, and Other Essays (1950).

reexamine the logic that rights are interdependent and expansionary, that the granting of a certain "core" of civil and political rights enables further struggles for social, economic, and cultural rights. These assumptions have long informed not only practical pro-democracy struggles in many countries, but the academic literature on democratization. Yet as the example of postwar Guatemala illustrates clearly, there exists no guarantee that democracy will lead to an embrace of social justice. Just as civil society is not an inherently progressive force, its empowerment at the ballot box does not necessarily ensure a greater enjoyment of social and economic rights. Today, in a number of contemporary societies, political democracy coexists with widespread tolerance for the massive violation of minority rights—particularly those of so-called "criminals," a category whose boundaries blur with racial, ethnic, and class identities—and these exclusionary systems show no signs of abating over time. And when the legacies of past violence infect society itself, there is no guarantee that citizens of new democracies will not use their newly-acquired democratic rights to support past dictators, as they have in Guatemala.[46] Democracy, therefore, is in no way incompatible with human rights violations on a massive scale; the granting of political rights does nothing to ensure that these will be used to promote progressive policies.

Lastly, lynchings may lead us to wonder about new forms of human rights activism. If the human rights movement has responded but lukewarmly to the challenge of such acts, it is not because we do not perceive them as violations. Rather, we are at a loss as to how to act in the face of such amorphous enemies. In the case of the lynchings, to whom should we direct our letter-writing campaigns? And more broadly, if we recognize poverty, or crime, or death by preventable childhood disease as violations of basic human rights, where do we draw the boundaries of our work? These are important, practical questions, but we should not allow them to blind us to the shifting nature of human rights today. As the demands for our work change, so too must our organizations, our approaches, and the theories that inform them. In the era of state terror, it made sense for the primary human rights groups to be independent NGOs, defined in opposition to state actions. In the new millennium, such ways of working are far from obsolete; but perhaps new actors, working at the intersection between state and society rather than in opposition to either, are also needed to confront these changing times.

46. The current president of Guatemala's Congress, Gen. Efraín Ríos Montt, was popularly elected despite having served as head of state during the bloodiest period of the war. Well-known as one of the architects of the scorched earth policies, he now heads the right-wing FRG party and was chiefly responsible for its electoral triumph in 1999.

In Guatemala, the postwar wave of lynchings tells us as much about the present as it does the past. While these acts bear witness to the lingering legacies of state terror, including the ongoing influence of its protagonists in postwar politics, they also reveal that genocide is more than the sum of its parts. In viewing the Guatemalan killing campaigns as a collection of atrocities suffered by individual victims, we miss the ways that fear infuses not only people but the social space between them—their institutions, customs, and ways of relating to one another. In this way, the residue of state terror may outlive its survivors and even its perpetrators, replicating itself in new settings and circumstances. To understand and thus combat these new forms of human rights abuse, scholars and activists alike must reexamine the premises that underlie our views of violence, civil society, and the state.