

The Hidden Story— Violence and the Law in Guatemala

PABLO PICCATO

Like all good historical research, “Gloria’s story” raises more questions than it can answer. My reaction to the article, which I initially shared with the author as an anonymous reviewer for *Law and History Review*, assumes that this incompleteness is a welcome aspect of the historian’s trade, rather than a gap that we should cover with theorization or redundant evidence. Yet the narrative structure of case studies like this makes it necessary to probe what is left outside the story, however unpleasant it might be. In these comments I will try to do that by inserting this fascinating case into a historical reflection about the relationship between violence and the law, an aspect of Guatemalan history that “Gloria’s Story” reluctantly illustrates.

How to locate Gloria and the other characters in that history? Their belief in the role of the state in solving domestic conflict is hard to reconcile with our knowledge of the politically repressive practices of contemporary Guatemalan regimes and with the tradition of labor coercion that characterized class and ethnic relations since colonial times. How to understand the modern, if modest, style of Gloria’s clothes, in Julio’s photograph of her arrest, and her independence within the stark ethnic and gender divides that characterized Guatemalan society? Wertheimer’s article frames these problems in terms of the paradoxes of modernization, specifically by pointing out the unintended consequences of progressive family law. In so doing, it forces us to question our assumptions about the proper cor-

Pablo Piccato is an associate professor in the department of history at Columbia University <pp143@columbia.edu>.

respondence between legal practices and court records, and to uncover complex interactions between individuals, families, and civil society that could hardly be inferred from codes, official reports, or the press only.

Adding violence into that already productive mix does not undermine it—by, for example, implying that the history of Guatemala is ultimately a history of victimization. But violence is the clearest index of the ambivalent relationship between the safe realm of courts and laws and the confusing and unfair world of politics and gender relations, which Wertheimer notes in the “striking” increase in family-support prosecutions in the 1960s, “notwithstanding the government’s shameful human rights record.”¹ Gloria can be a paradigm of how people navigated the conflicting rules of modern equality and patriarchal domination but only, I would argue, if she also serves as an anchor to reconstruct circumstances, such as social and political violence, that dictated the costs of breaking those rules.

We must start by asking about state and political violence and its impact on the everyday use of legal institutions. If, as researchers of Latin America believed almost unanimously two decades ago, laws were fictions parodied by reality, the rich texture of the paper trail left by Gloria and Julio is an ineffectual, almost naïve exercise. Since the 1954 coup against the progressive regime of Jacobo Arbenz, Guatemala seemed to spiral into state terrorism, corruption, and futile, although long-lasting, guerrilla resistance. Recent historical research on Guatemala and Central America (that seeks to draw a more nuanced explanation of the devastating civil wars of the 1970s and 1980s and their denouement) reminds us, however, that even during the depths of the cold war political activity was still possible without necessarily leading to violence and the absolute denial of the loser’s rights.² Although there is no evidence that any of the actors in this case were openly engaged in politics, we should not hold them to a restrictive definition of political agency: going to court, moving out of town, pushing the state to enforce new laws—these were small gestures that nevertheless we can incorporate into a larger account of state formation and the corresponding cultural change.³

1. John Wertheimer, “Gloria’s Story: Adulterous Concubinage and the Law in Twentieth-Century Guatemala,” *Law and History Review* 24 (2006): 404.

2. Greg Grandin, *The Last Colonial Massacre: Latin America in the Cold War* (Chicago: University of Chicago Press, 2004), sees the massacres and extreme repressive violence of the late 1970s as a turning point in the use of violence instead of politics.

3. This has been examined in Gilbert M. Joseph and Daniel Nugent, eds., *Everyday Forms of State Formation: Revolution and the Negotiation of Rule in Modern Mexico* (Durham: Duke University Press, 1994). See also Gilbert M. Joseph, “On the Trail of Latin American Bandits: A Reexamination of Peasant Resistance,” in *Patterns of Contention in Mexican History*, ed. Jaime E. Rodríguez (Irvine: University of California Press, 1992). For a useful

Political periodizations can be deceiving in structuring our understanding of contemporary history. Wertheimer skillfully interweaves a domestic story with contemporaneous transformations of institutional framework and legal practices regarding family relations. The two suits about parental obligation he examines may seem like a blink in the grand process of state building; yet, as he argues, they refer to the endurance of courts as a column of political legitimacy already established since the colonial era—an expectation among subjects toward authorities that did not change so easily in spite of political turmoil.⁴ The stability of popular attitudes toward the law might begin to explain the paradox of a government and particulars that seem to agree on expanding the role of the law inside the family while Guatemalan society is torn apart by foreign intervention, coups-d'état, and state repression of social movements. Modernization, expressed here with the establishment of family courts, may not have been so modern after all: those courts gave Gloria access to another venue to negotiate, with some additional legitimacy, better terms in her domestic partnership, however imperfect the harmony she tried to preserve. Other venues, either structured by the all-inclusive codification of Spanish imperial *Leyes*, national codes, or based on communal *usos y costumbres*, could have served the same purpose in other times or places.⁵

Something similar might be said about Gloria's concern for the names on her children's birth certificates and her own—perceptively discussed in Wertheimer's article. We should not take for granted the effort to substantiate citizenship and paternity or to document unions with or without marriage—both particularly onerous undertakings for a mother who had to take in washing to make up for the uncertain help from her children's father. She even began to call herself Gloria Peralta Valderrama, although her father's last name (Valderrama) was not added to hers in her birth certificate. What does this tell us about citizenship in Guatemalan society? Once more, the tensions between norms and practices are revealing. Gloria

review of recent changes in ways to address problems of law and society, see Joel Horowitz, "Corruption, Crime, and Punishment: Recent Scholarship on Latin America," *Latin American Research Review* 40.1 (2005): 268–77.

4. Woodrow Wilson Borah, *Justice by Insurance: The General Indian Court of Colonial Mexico and the Legal Aides of the Half-Real* (Berkeley: University of California Press, 1983); Tamar Herzog, *Upholding Justice: Society, State, and the Penal System in Quito (1650–1750)*, *History, Languages, and Cultures of the Spanish and Portuguese Worlds* (Ann Arbor: University of Michigan Press, 2004).

5. See, for example, Rosalva Aída Hernández and Héctor Ortiz Elizondo, "Diferentes pero Iguales: los Pueblos Indígenas en México y el Acceso a la Justicia" (May 15, 2003). Center for U.S.-Mexican Studies. Project on Reforming the Administration of Justice in Mexico. http://repositories.cdlib.org/usmex/prajm/hernandez_ortiz.

knew that, regardless of liberal reforms before and after Arbenz's regime, identity papers and work certificates were necessary for Guatemalan peasants. With these they might avoid the state's enforcement of vagrancy laws and enganche contracts that secured cheap labor for commercial fincas. The vindication of communal land titles was important in spite of the army's displacement of indigenous populations from their lands.⁶ Her parents' and her own decision to move to a bigger city represent an attempt to avoid those forms of coerced labor but did not necessarily place them under a different legal system.⁷

Tensions between norms and practices were becoming particularly sharper in the years covered by this case. At the same time as the government was trying to introduce Guatemalan audiences to the benefits of family court, the army consolidated a central role in politics and many aspects of society and economy. Even as money for social development from the U.S. -financed Alliance for Progress tried to improve education and legal services and prevent another Cuban revolution, U.S. advisers trained Guatemalan armed forces and paramilitary organizations in assassination and torture. Disappearances and judicial corruption, as in other Latin American authoritarian regimes of the era, went hand in hand with state responses to the alleged threat of guerrillas.⁸ This certainly does not fit the standard paradigm of democratization as a process where multiple aspects of the state evolve in parallel toward the rule of law and political accountability. As in much of contemporary Latin America, prevalent class and gender biases in the rule of law meant "democracy without citizenship."⁹

Wertheimer's article demonstrates that the state is not a homogeneous, single-minded force and, in doing so, argues for further examination of the ways in which social actors distinguish between judicial and executive authorities, military and civilian rule, rural and urban settings and, in a broader sense, "politics" and the private realm.¹⁰ Here, I believe, is

6. For an account of the connections between land and labor, David McCreery, *Rural Guatemala: 1760–1940* (Stanford: Stanford University Press, 1994).

7. Full rights were not necessarily guaranteed by the urban labor market, particularly for women. See James McCreery, "'This Life of Misery and Shame.' Female Prostitution in Guatemala City, 1880–1920," *Journal of Latin American Studies* 18.2 (1986): 333–53.

8. James Dunkerley, *Power in the Isthmus: A Political History of Modern Central America* (London: Verso, 1988), 430, 441, 445, 456.

9. Paulo Sérgio Pinheiro, "The Rule of Law and the Underprivileged in Latin America: Introduction," in *The (Un)rule of Law and the Underprivileged in Latin America*, ed. Juan E. Méndez, Guillermo O'Donnell, and Paulo Sérgio Pinheiro (Notre Dame: University of Notre Dame Press, 1999), 2.

10. Teresa Pires do Rio Caldeira, *City of Walls: Crime, Segregation, and Citizenship in São Paulo* (Berkeley: University of California Press, 2000); David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford: Oxford University Press, 2001).

the key of Gloria's decision to accuse Julio. Although we tend to think about the public/private divide as a way to reinforce patriarchal rule and discipline women, we can also understand it as a useful fiction for women like Gloria, given the threats posed by contemporary public life. Patriarchy and gender roles are privileged indices of the links between public and private domination. As Wertheimer notes, for example, for Julio "[t]he public side of concubinage . . . offered him social prestige,"¹¹ in addition to more intimate joys. Gloria brought private disputes to a public forum in order to undermine those rewards. The increase in the number of family-related crimes detected by Wertheimer after 1960 responds as much to legal changes as to Guatemalan women's increasing willingness to press charges, thus opening their intimate troubles to public review.

Here again violence complicates things. Wertheimer acknowledges that domestic violence is hard to document although he admits its role in this case and in broader patterns in Latin American family relations.¹² Domestic violence prompted Gloria to bring her suit to family court. Although she accused Julio of withholding support, we could argue that his physical abuse broke the informal rules of an otherwise stable relationship—the same way it probably affected Julio's relation with his official wife Cristina, as suggested by "historical precedent." Conversely, Wertheimer notes, a sense of masculine honor may have prompted Julio to present his own accusation against her for the abandonment of their children. Far from being an outdated feeling, honor continued to shape masculinities, not only feminine domesticity, in twentieth-century Latin America. Violence against women and children, we should remember, was a legitimate and often legal resource to protect honor.¹³

Wertheimer did not examine records of battery and homicide that probably contained many cases of domestic violence. His decision is understandable from the point of view of research design, but raises questions about the use of violence as a tool to resolve conflict—not only to express it. If, as he claims, the law protected the family over marriage, giving female concubines a more level field, to what extent, we can ask, did silenced domestic violence, a prevalent phenomenon in Latin America, make up for that newfound leverage? Wertheimer admits the possibility but faults other

11. Wertheimer, "Gloria's Story," 386.

12. See Mariclaire Acosta, "Overcoming the Discrimination against Women in Mexico: A Task for Sisyphus," in *The (Un) rule of Law*, 169; Sueann Caulfield, *In Defense of Honor: Sexual Morality, Modernity, and Nation in Early-Twentieth-Century Brazil* (Durham: Duke University Press, 2000).

13. Lyman L. Johnson and Sonya Lipsett-Rivera, eds., *The Faces of Honor, Sex, Shame, and Violence in Colonial Latin America* (Albuquerque: University of New Mexico Press, 1998); Pablo Piccato, *City of Suspects: Crime in Mexico City, 1900–1931* (Durham: Duke University Press, 2001).

researchers for their failure to back “these suspicions with hard data.”¹⁴ A look at not obviously family-related criminal cases in Quetzaltenango, or other places, will yield interesting correlations between spousal or children battery and homicide, on the one hand, and denial of support or other family-related prosecutions, on the other. A thorough examination of judicial archives may not be sufficient, however, to answer our question, as wives were reluctant to press charges against abusive husbands, and police and judges avoided meddling with paternal authority. Underreporting of domestic violence is probably even more serious in cases of sexual violence, which Wertheimer excludes from his sample of cases about family conflict—although evidence from other periods and societies suggests that rape often took place at home and between relatives.¹⁵

Introducing violence as a factor does not define Gloria merely as a victim, as she obviously knew how to play the hand she was given: she suspected that her protest against abuse would be more effective if presented through family rather than criminal court. As many women had done before, she could play one segment of the state against another or against patriarchal power.¹⁶ Responses to domestic violence were not only, and probably not mainly, solved through legal means. Cases like this invite further research concerning the role of communities around the family. Since “everyone else in the neighborhood undoubtedly knew that Julio had two families,”¹⁷ Gloria’s legal complaint could be a symptom of the failure of relatives, friends, or neighbors to prevent, through negotiations or shaming, the escalation of domestic conflict.¹⁸

The question is how to take this study into a broader discussion that would incorporate violence into the study of legal institutions and practices. It is hard for historians who read judicial sources to shed the judge’s perspective and go beyond the argumentative logic implicit in judicial cases. It would

14. Wertheimer, “Gloria’s Story,” 403, n.109.

15. Acosta, “Overcoming the Discrimination”; Piccato, *City of Suspects*.

16. Katherine Elaine Bliss, *Compromised Positions: Prostitution, Public Health, and Gender Politics in Revolutionary Mexico City* (University Park: Pennsylvania State University Press, 2001); Steve Stern, *The Secret History of Gender: Women, Men, and Power in Late Colonial Mexico* (Chapel Hill: University of North Carolina Press, 1995).

17. Wertheimer, “Gloria’s Story,” 385.

18. There is much work to be done to examine informal communal interventions and their interactions with legal institutions. There are important insights in John Braithwaite, *Crime, Shame and Reintegration* (New York: Cambridge University Press, 1989). “Microhistory” also means an approach that stresses the local dimension of long-term processes, even if that implies a challenge to grand national narratives. See Luis González y González, *San Jose de Gracia: Mexican Village in Transition* (Austin: University of Texas Press, 1974); Carlo Ginzburg, “Microhistory: Two or Three Things That I Know about It,” *Critical Inquiry* 20.1 (Autumn, 1993): 10–35.

be useful, however, to step beyond the text of trials and legal procedures in order to break with the framework set by the archive—although not with the demands of proof. Doing so would help us to transcend the old dichotomy of judging against understanding.¹⁹ Already exemplary in its ability to gather evidence from diverse archival contexts, “Gloria’s Story” contains an implicit invitation to complement the written record with interviews. Doing so could shed light on such aspects of this case as the role of the community, the negotiations that might have preceded and followed legal proceedings, or Gloria and her children’s view of these cases as part of their family’s struggle and survival. Following the example of ethnographic research, oral history has been recently explored not only as an additional source but also as a fruitful way to ask subjects about, and reflect on, the building of identities and the everyday aspects of politics.²⁰ “Gloria’s Story”’s sense of irony, and its drive to explore concubinage, an institution “shrouded by legality and informality,” points toward oral testimonies to measure the limits and context of institutions, particularly family law.

The present speculation about other sources and fields of conflict is a preliminary step toward understanding the violence and trouble that surrounded this case and many others. Doing so might temper Wertheimer’s thesis that modernization buttressed the “infamy” of adulterous concubinage. What were the choices for Gloria? Can we judge her from our (U.S., contemporary) views about marriage and family? The author’s references to “machismo” and his skepticism about legal modernization implicitly recommend a more punitive approach to adulterous concubinage. But Guatemalan society offered a limited set of options for women and cold-war authoritarianism made violence an everyday possibility—thus justifying civil society’s reluctance to give more punitive powers to the state. Gloria, however, was not thinking in terms of Latin American “stereotypical machismo,” nor was she planning to make her private problems the stuff of political liberation. As Wertheimer notes, “Gloria may . . . have perceived concubinage as an economically and socially sensible option.”²¹ In a society marked by violence, she used the tools of family court and migration to the city to deal with circumstances she did not judge but survived with dignity.

19. For a treatment of the dilemma, and an argument to maintain the good links between judge and historian, see Carlo Ginzburg, *The Judge and the Historian: Marginal Notes on a Late-Twentieth-Century Miscarriage of Justice*, trans. Antony Shugaar (London: Verso, 1999), 12–17.

20. See Daniel James, *Doña María’s Story: Life History, Memory, and Political Identity*, Latin America Otherwise (Durham: Duke University Press, 2000). Interviews, of course, would seem to erase the distinction between judge and historian, in which the latter is unable to produce sources. Ginzburg, *The Judge*, 35.

21. Wertheimer, “Gloria’s Story,” 386.

Q