

**FROM EXTRACTION
TO EMANCIPATION:
DEVELOPMENT REIMAGINED**

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Raquel Aldana
Steven W. Bender

EDITORS

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Introduction

Raquel Aldana and Steven W. Bender

In June 2015, a delegation of law professors and lawyers from the United States and Canada traveled to Guatemala to study corporate social responsibility and sustainable development as the most recent LatCrit (Latina and Latino Critical Legal Theory, Inc) Study Space project. At the time, Guatemala was undergoing significant political turmoil. Months earlier, in April 2015, the United Nations Commission against Impunity (CICIG) and state prosecutors had uncovered La Línea corruption case and charged a number of politicians in the administration of President Otto Pérez Molina with setting up a customs corruption ring with the help of high-ranking officials in the tax and customs administration. For the first time in the near decade of its operation in Guatemala, the CICIG was finally touching “the devil” by outing the shameful and cynical acts of corrupt politicians. In May 2015, thousands of Guatemalan demonstrators took the streets seeking the resignation of Pérez Molina and his vice president Roxana Baldetti. By May 2015, Baldetti resigned to the jubilation of thousands of Guatemalans. This was only the beginning of several other corruption scandals involving dozens of high-level officials in several government institutions.

It might have seemed out of touch for our delegation to focus on corporate social responsibility in Guatemala at this tumultuous time, except that private corporations were very much a part of the corruption story. The CICIG captured and documented the known but largely hidden patterns of corruption involving illicit groups funding political campaigns and paying off judges, and companies paying bribes to avoid higher taxes or to be granted public concessions, such as mining licenses. Moreover, these revelations were only touching the iceberg’s tip. Beneath the surface was also the more nuanced corruption, the type that has already been legitimated through law but whose outcome was no different: the type that extracts from Guatemalans their most precious resources—e.g., their labor and natural resources—without just compensation and for the benefit of the few national economic elites, the politicians

who serve them, and the transnational corporations whose investors enjoy the unwavering protection of international law.

One case in point is metallic mineral mining in Guatemala. During our trip, the delegation met with government officials, nonprofit environmental justice groups, indigenous leaders, environmental justice activists, religious leaders, and representatives of the metal mining private sector to hear all perspectives on a very controversial industry in the country. It was an intense experience. The most emotional meetings were with indigenous and non-indigenous environmental justice activists from La Puya and San Rafael Las Flores. Each of these communities overwhelmingly voted against the mega-projects imposed on them. La Puya's El Tambor gold mine is operated by the U.S. company Kappes, Cassidy & Associates. In San Rafael Las Flores, the Escobal mine is operated by the Canadian company Tahoe Resources, which also has a U.S. presence in Nevada. Today, each of these communities remains engaged in anti-mining resistance that puts them at grave risk. The Guatemalan government, with the blessing of the U.S. and Canadian companies, has responded to each community's activism with violent military repression and by criminalizing hundreds of activists, yielding a new phenomenon of political prisoners in the country. In each of these communities, the environmental and community harms, encompassing drinking and agricultural water depletion and contamination, ruined crops, and human health and social consequences, are dire.

By law, mining extractive industries retain 99 percent of royalties. By the absence of law, mining companies do not pay for the tons of water they usurp from local communities. By the weakness of law, the industry is not held accountable through meaningful environmental impact assessments nor are they responsible for the harms they cause to the environment and to communities. Certainly they are not called upon to repair the mess they leave behind. And while local Guatemalan communities have exercised their legal right to consultations to say no in huge numbers to these mining projects, their voice has no binding force. Metal mining companies do provide economic benefits, but these go only to a few Guatemalans. The largest contribution is in procurements of supplies and equipment controlled by the economic elites. Metal mining companies are also the country's top taxpayers, but opaqueness and corruption mean that little is invested in the communities most harmed by their activities. Jobs are also created that include local workers who earn more than alternative jobs available to them, but after the mine is gone (usually in a decade), they are left without alternatives, not even agriculture. In sum, the entire enterprise is senseless, at least for the majority of Guatemalans.

Moreover, a similar story of senseless investment choices can be told across developing nations and across industries. But didn't the state of Guatemala exercise its sovereignty to validate its demise? Doesn't this make it legal? But isn't this the point? Should it be legal for multinationals to do business with corrupt and failed democracies willing to compromise their people and their country for self-gain?

These compelling stories and questions inspired the delegation to come together as scholars to produce an edited volume that considers Guatemala as a case study to examine broad global themes arising from development practices in emerging economies around the world. A significant economic development strategy of emerging economies has involved the promotion of direct foreign investment and trade. While these practices have promoted steady economic growth, the book offers important lessons to investors and policy makers on strategies to improve distributional justice and respect for the rule of law, including human rights and environmental norms. A large focus of the book, then, is on enhancing corporate social responsibility, recognizing the unwillingness or inability of failed democracies to regulate industry's potential ill effects on the environment and people, and in particular indigenous peoples who comprise a significant part of Guatemala's population and are disproportionately poor. The book also examines such global themes as climate change, labor regimes in the context of trade, and forced migration (mostly from indigenous communities), all of which have transborder implications and across-border commonalities.

At the global level, the themes engaged in this volume are intimately related to the "2030 Agenda for Sustainable Development," launched by the United Nations General Assembly's 2015 international agreement to promote sustainable development goals, and the "Post-2020 climate regime," established by the 2015 United Nations Paris Agreement to guide climate change action worldwide. No doubt President Trump's withdrawal from the Paris Accord has also raised questions about the sustainability of a development agenda that takes into account issues of the environment, human rights, and economic justice. Brexit also seems to indicate a preference for isolation and self-preservation. But strong voices and leaders have also emerged to affirm a commitment to ongoing collective engagement. Thus, the future of sustainable development depends on a consolidation of a global agenda that embraces these principles.

Corporations are entities with great potential to promote and further the public good, such as through job creation and economic development. Corporations, however, can also cause social ills: particularly when left unregulated or at times when supported by the state to pursue private interests that

conflict with the public good. In Guatemala, examples of deeply problematic unregulated arenas abound—from the lack of antitrust legislation to the absence of meaningful environmental protections for even the most precious of natural resources, such as water. There is also the misuse of public institutions and laws to shield corporations from their public and fiscal responsibility or to aid them in capitalizing on public goods, including minerals or land. Guatemala as a nation is experiencing tremendous social upheaval from the negative consequences of acts of corporations alongside the state that include environmental degradation, water depletion and contamination, forced displacement, and labor exploitation, to name a few. These consequences will likely be exacerbated by climate change, to which Guatemala is particularly vulnerable but did little to cause. Caught between the state and corporations are the communities most deeply affected by both the absence and the presence of law in ways that appear to conflict with the public interest. The questions that arise in this book include how law can and should restore the proper balance between the promotion of investment and economic development with the protection of the public interest and the preservation of the public good. These inquiries also involve issues related to the protection of rights, whether of individuals or communities in the collective, including the right to self-determination, the right to water, and the right to dignified work.

Guatemala's story of poor investment choices can be told across the Global South. This book provides comparative lessons to nations facing similar challenges. As well, Guatemala's story is global and international. The reality is that the bilateral and multilateral relations that Guatemala has with other more powerful nations aggravate many of its pressing problems. Consider, for example, what would happen if Guatemala were to ban mining or even to engage in mining law reform to bring some equilibrium between gains and harms experienced by its people. Investors undoubtedly would sue for—and probably win—millions of dollars before international arbitration tribunals claiming violations of the Dominican Republic-Central American Free Trade Agreement (CAFTA) or investment bilateral treaties. Expropriation claims are already pending against El Salvador, Costa Rica, Ecuador, and Bolivia—countries that undertook reforms or renegotiated deals to undo harms of preexisting laws depleting their natural resources. Questions about Guatemala's regulation of corporations, thus, must also address the relationship between the powerful transnational forces of globalization and the domestic laws of Guatemala, including those related to trade liberalization. This inquiry must also acknowledge how the absence of accountability of transnational corporations operating transnationally—including the power these

corporations wield to influence law-making—should lead us to a discussion of shared responsibility and proposed solutions that are transnational and international in character.

Moving beyond the mere identification of problems, this book is focused on solutions. We brought together scholars, lawyers, and other professionals interested in suggesting creative solutions for Guatemala and other emerging economies to help them responsibly and productively manage corporations. The book taps the expertise of scholars not just from the United States and Guatemala, but also from other countries in Latin America facing similar challenges that can provide prescriptions that are more viable and sustainable for countries like Guatemala. It also considers solutions that engage all relevant actors, not just states. These include an examination of best practices for developed nations, and for corporations that engage in business across borders.

The title of this edited volume encapsulates well the various themes and purposes of this project. The theme of extraction—whether referring to natural resources or people as workers or migrants—recognizes that currently these precious resources are being exploited for the benefit of an elite few with little benefit to the exploited spaces or communities. The theme of emancipation is one of reform that reimagines development to a model that promotes local sustainable growth and empowers local communities to engage in self-governance that best preserves their interests, their lands and livelihood, and the well-being of their people.

This book comes at a potentially critical time of transition in Guatemala and across developing nations. On September 2, 2015, President Pérez Molina resigned, a day after the CICIG and the Attorney General called for his impeachment. Today, Pérez Molina and Baldetti, among several other high level officials, sit in jail awaiting trial for corruption. By October 2015, Jimmy Morales Cabrera, a political newcomer, had been elected president based on his promise to end corruption. Two years later, Morales is himself embroiled in a corruption scandal as the CICIG and the Attorney General called for his impeachment in August 2017 to charge him with receiving illicit campaign funds for his 2015 campaign. Morales responded by seeking to expel the head of the CICIG, Iván Velázquez, a Colombian national, from Guatemala. But the Constitutional Court of Guatemala, the very tribunal whose magistrates the CICIG has investigated for corruption, stopped Morales dead in his tracks, and declared unconstitutional Morales's presidential decree against Velázquez. Morales attempted to seek constitutional relief from Guatemala's highest court. However, in September 2017, Guatemala's Supreme Court dismissed his claim and opened the way for Congress to decide his immunity. This was not the first time that Guatemala's highest courts have issued bold rulings in recent

years. In mining cases, for example, since our delegation visited the country, the Court suspended mining license concessions in both La Puya and San Rafael based on irregularities in the consultation process or due to water contamination respectively. We asked the lawyers who represented the residents why the Court seemed to issue much bolder rulings in these cases than in the past. The lawyers did not hesitate to attribute the shift to the anti-corruption gains in Guatemala.

Corruption, however, remains a large challenge in Guatemala. Days after the Supreme Court gave Congress the green light to hold Morales accountable, Congress chose to shield him from prosecution. Then, on the eve of the country's Independence Day celebration (September 15), Congress met in an extraordinary session to weaken substantially the country's anti-corruption laws. The very same day, Guatemala's Constitutional Court decided a habeas petition filed by the country's Human Rights Ombudsman and suspended the application of the laws. On Independence Day, Guatemala's citizens took to the streets by the thousands, and their calls for resignation of all members of Congress who supported Morales have not ceased. These demands have come from all sectors of society. Young students have started a movement they call "Guatemala Despierta, Ya Basta!" (Guatemala, Wake Up. Enough is Enough). Indigenous communities have blocked streets by the thousands. Some church leaders and even businesses have joined the protests. Even CACIF (the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations of Guatemala) issued a statement in support of constructive dialogue to end corruption and impunity in the country. CACIF's statement was quite surprising to many Guatemalans who expect the elite private sector to side with government which, however corrupt, continues to serve their interests. Thus, the future of sustainable development in Guatemala is entangled in its renewed efforts toward democratic consolidation as a nation.

Overview of Book

The book is divided into five parts. Part I provides a framework to reorganize the relationship between states and corporations. One framework provided by Marcia Narine's chapter is through the lens of voluntary codes on corporate social responsibility, which emphasize the importance of corporations obtaining both a legal and social license to operate effectively and legitimately in Guatemala and wherever they do business. Her chapter examines how corporate social responsibility (CSR) norms operate, including in Central America. These norms do contribute to corporations making modest

social investments beneficial to a few. However, alone, these contributions cannot make up for states' wholly inadequate social investment in their own people. More importantly, CSR cannot ameliorate states' unfair corporate subsidies, such as the allocation of scarce natural resources such as water in ways that compromise human life and health.

A second potential framework for improving CSR is provided in Mario Peña Chacón's chapter in which he examines how financial lending institutions, whether public or private, could infuse lending practices for development projects with environmental and human rights oversight. As Peña documents, both international and domestic norms, at least in a few nations, already exist to guide financial institutions when adopting more sustainable lending practices. Moreover, Peña makes a strong market-based case as to why financial institutions should adopt these best practices if only to protect themselves against liability from risky investments that either hurt communities or contaminate the environment. Unfortunately, the market-based argument only works when the risk of liability is likely. Here too, weak laws or failed institutions in developing countries, including Guatemala, undermine financial institutions' market-based incentives to do the right thing.

A third framework emphasizes state obligations under human rights law to regulate acts of corporations to comply with their human rights responsibilities. As detailed in Christian González Chacón and Fabiana Pardi Otamendi's chapter, states must not only hold corporations accountable for violating rights (e.g., compliance with labor laws), but must ensure that laws and policies neither unfairly enrich corporations (e.g., in their use of natural resources) nor fail to impose on corporations the true cost of doing business (e.g., obligations to prevent, ameliorate, or clean up contamination).

These important framing chapters must be considered with the lessons offered by the chapters in the book's remaining sections. These opening chapters illustrate that the primary challenge to sustainable development is not so much the absence of good norms, although this certainly remains part of the problem, but rather a lack of compliance by failed states with their obligation to create a just balance between the goals of development and protection of human rights for generations to come. We are intentional in referencing failed rather than weak states to describe this state of affairs. Unfortunately, state noncompliance is not about an inability to regulate corporations in ways that safeguard human and environmental rights, but rather an intentional choice to act in cahoots with corporations to maximize personal or private gain over the common good.

Part II turns its attention to development and the environment in business practices with Guatemala as an emblematic case study for comparable

phenomena occurring across many other nations, particularly in the Global South. Developing nations need economic development but the issue is how they can do so sustainably and responsibly during times of climate disruption that disproportionately affects the already vulnerable communities. The chapters in Part II document significant gaps or deficiencies in Guatemalan and other Central American nations' environmental and human rights regimes. The gaps and deficiencies are not always the absence of good norms; rather, they result from the poor enforcement of laws that reveal substantial weaknesses in the institutions charged with law's implementation (whether lack of resources or poor technical training) or simply a lack of political will to enforce existing laws.

Maria Antonia del Tigre's chapter, for example, documents Guatemala's persistent problem of deforestation despite the country's designation of vast protected areas and decent environmental laws on paper. Guatemala has one of the most extensive and diverse forest systems in Central America, but its forests are fast disappearing with severe impacts for Guatemalans. The country's economy is largely dependent on agriculture, which accounts for nearly 15 percent of the GDP and half of the labor force, but leads to deforestation. The country's reliance on wood as the main energy fuel also causes deforestation, in this case illegally, which is widespread and rarely controlled. Overall, the constitutional reach and national law have proven insufficient to protect Guatemala's forests, which face poor enforcement of laws, monitoring, and accountability.

Rachael Sakido's chapter focuses on Guatemala's poor implementation of its environmental impact assessment (EIA) mechanisms, despite recent reforms to improve it. As Sakido argues, EIA has become a bedrock of sound environmental decision-making throughout the world, appearing in the domestic laws of more than 100 nations and in many international environmental agreements. Unfortunately, in countries like Guatemala, EIA's promise as a tool to promote sustainable development fails to deliver. A looming problem is the disconnect between the aspirations of EIA, on the one hand, and Guatemala's flawed legal regimes, such as its mining and water laws, on the other. In turn, these contradictions of law play out in how Guatemala's decentralized and often discordant regulating institutions repeatedly fail beleaguered and repressed communities in their struggle to have their voices heard. Indeed, as documented in Part III of this book, often these communities must live while caught in between the frustration of institutions that cannot or are unwilling to help them or those, usually the military or police, which corporations effectively mobilize to enforce other laws that favor corporate interests.

Karrigan Börk's chapter in Part II documenting the dramatic fish kill in Guatemala's La Pasión river from the palm oil industry's water contamination offers a similar story of overwhelmed agencies unable or unwilling to meet their monitoring responsibilities. This fish kill serves as a dramatic example of the many ways agricultural production can significantly affect a region's aquatic resources. This chapter examines water quality monitoring in Guatemala as a case study of the enforcement challenges and potential solutions in managing agricultural growth in developing countries while protecting the environment.

In the case of water, as is well-documented in Mario Mancilla's chapter, the challenges to its treatment as a human right is both legal and political not only in Guatemala but throughout Central America. In some countries of Central America, such as Guatemala, their Congress has failed to enact laws as constitutionally required to create a coherent regime that prioritizes water for human consumption over commercial uses. Indeed, Börk's chapter and the chapters in Part III of this book focused on mining reveal the gross injustices that arise when the absence of laws or their enforcement ignores the dire human and environmental costs, including to animals, of commercial choices that deplete or contaminate water. While enough law exists in Guatemala to treat access to safe drinking water as a human right, the political landscape is entirely focused on moving the state apparatus to protect the rights of corporations to water usages while leaving many Guatemalans, especially the poor and indigenous, fighting for their lives or literally dying because of the lack of this precious resource. As Mancilla documents, for example, in Nicaragua, where water laws are the most progressive in recognizing the right to water as a human right, the indicators of compliance in terms of Nicaraguans' access to safe drinking water are among the worst in the region.

Finally, Patricia Ferreira's chapter in Part II moves us beyond domestic legal regimes to promote sustainable development to international norms. One of the most looming environmental challenges facing the world today is climate change, which states such as Guatemala, enduring disproportionate burdens, did little to cause. As Ferreira argues: "Guatemala perfectly illustrates the climate justice paradox: the countries that contributed least to climate change, and have lower financial and technological capacity to implement timely climate action, are often among the most vulnerable to climate impacts." Global warming is expected to continue to intensify extreme weather events, droughts, and floods, risking the livelihoods of millions of Guatemalans. Thus, Ferreira examines the policy challenges climate change poses to Guatemala and other lower middle-income countries, which contributed very little to the problem, have low financial capacity to address the costs of tackling climate effects, and

yet have large shares of their population highly vulnerable to climate impacts. Ferreira argues that a key strategy for these countries must be to prioritize climate adaptation over climate mitigation, and to gain access to sufficient international funds to finance the climate action needed.

All of the chapters in Part II and III, while presenting a bleak reality, make a concerted effort to prescribe solutions. Some of these solutions turn to law and law's implementation, including to the judiciary. Salcido, Mancilla, and del Tigre's chapters do place hope in recent developments to improve environmental processes and standards or to treat the right to water or to a protected environment as fundamental human rights, while still acknowledging that the success of these norms will rest on effective implementation. Here, judicial entities become beacons of hope for counterbalancing the weight of corporate interests against those of communities. Indeed, Part III of this book documents some of these Goliath versus David victories with courts playing the role of the sling and the rock. The David, however, is the power of organized communities, which can only succeed if they sufficiently strengthen to not only survive but thrive. This is extremely challenging in a country like Guatemala, where, in addition to extreme poverty, communities in resistance experience repression and violence. Despite this, as Part III documents, there are thousands of heroic Davids in Guatemala. Recognizing this, the authors also offer self-help solutions to communities used to functioning without the state's assistance. Börk, for example, presents resourceful Guatemalans with a bio-monitoring tool—a quick, easy, and low-cost method to monitor aquatic environmental impacts. The solutions proposed also consider the role of international norms—for example, in climate change—and the responsibility of other nations, corporations, and financial institutions to aid governments like Guatemala in protecting its environment. The struggle to craft hopeful solutions, however, is evident in all of these chapters. All of the authors are conscious of the endemic structural problems that underlie the validity of their proposed solutions.

Part III of the book, titled *Development and Sovereignty*, documents the imbalance of power in the development choices of the central government vis-a-vis rural and indigenous communities. Most development projects in Guatemala occur in the rural sectors and affect mostly indigenous communities; yet, it is the central government alone that decides whether and when to exploit its natural resources with few benefits staying with local communities. Part III of the book rests rightfully wedged in the middle because it features the compelling stories of the communities caught in the middle of laws, corporations, and the state, as well as the harms and

solutions embedded in development. Julie Davies's chapter makes the brilliant analogy between Guatemalan people's struggles against mining and the *Hunger Games Trilogy*. As Davies describes:

The [Hunger Games Trilogy of books] focus on a struggle between the wealthy Capital and the impoverished largely rural provinces. As punishment for their prior rebellion against the Capital, the rural provinces or "divisions" must send young people to the Capital as "tributes" to compete to the death for the enjoyment of the viewing public. While thankfully neither Guatemala nor any other actual country has devised such a sinister means of punishing its people, the books are striking in their portrayal of the dichotomies between rich and poor, powerful and powerless, and between the urban and rural populations. These same divisions play an important role in Guatemalan politics and policies regarding mining. As is true in Guatemala, rural provinces in the books grow the food and supply the resources for the Capital but their people dwell in abject poverty. For most of the story, the provinces operate in isolation from one another; their people are unable to stand up to the Capital in their own defense or to assert their power. Sadly . . . many of these same factors are at play in Guatemala.

Both Davies's and Aldana's chapters turn our attention to rural communities' (both indigenous and nonindigenous) struggles to assert their sovereignty to preserve their lives and livelihood by saying no to metal mining projects. Davies carefully documents why consultative rights in Guatemala have been a failed project by painting for the reader a comprehensive historical and social background where communities are disempowered while corporations and states unite to preserve the oligarchy or to feed global gluttonous consumption to the detriment not only of the communities that struggle but of the entire country and ultimately, the planet. Aldana takes this complex painting and fills it with characters from La Puya whose powerful story of anti-mining resistance is both mesmerizing and frightening. Not unlike *The Hunger Games*, we, the readers, become spectators and passive participants in the game. Except Guatemala is not fiction and La Puya is happening in hundreds of similar conflicts around the world. And we must ask ourselves as readers what we can do collectively as consumers to get up from the couch and join the struggle in some way before we too become prey. It is true that in the end, Guatemala, like other developing nations, has no choice but to root out corruption, address illicit organized crime, and start to remedy deep structural inequality to produce a strong democracy where good laws function because institutions are

accountable to an informed and strong citizenry. Davies makes this point compellingly in her analysis. But this does not mean we, the spectators, can simply wash our hands from the problem because we think we are not the cause or we cannot be part of the solution. La Puya residents allowed Aldana to tell you, the reader, their story in this book, because they hope that it will matter:

Their collective agreement to participate in this book and to permit us to tell you their story is to raise consciousness about the environment, corporate greed, and injustice in the degree of natural resource consumption and its impact on the mother earth. Their message is simple: Conserve, recycle, simplify your lives, and educate yourselves. "Water is sacred and it will not be around forever. Treasure it as if your life depended on it, because it does."

Part IV of this book examines economic development in the context of trade and investment norms. As seen in other chapters, while corporate social responsibility principles require corporations to comply with governing law, some multinational corporations regularly take advantage of failed states to manipulate or ignore that law, particularly environmental and labor laws. At the same time, as Beto Juárez's chapter details, international investment treaties, such as Chapter 10 of CAFTA, permit foreign investors, largely from developed countries, to initiate arbitration proceedings and potentially recover damages when the state attempts to assert its authority in the public interest to protect its citizens by regulation that impinges on corporate profits. In the case of Guatemala, corporations accordingly have benefited when Guatemala does not enforce its laws, as many chapters herein detail, yet also when Guatemala actually attempts to enforce its laws. While the arbitration provisions of these international investment treaties are designed to foment foreign investment to bolster emerging economies by ensuring that corporations have a ready remedy should the traditionally weak governmental system threaten their investment, Guatemala's experience to date suggests that this CAFTA procedure has operated largely to strengthen multinational corporations, not the Guatemalan state through corporate investment. This in turn suggests that developing countries such as Guatemala should hesitate to agree to similar dispute resolution mechanisms in future international agreements. Complementing this critique of free trade is the failed promise of economic opportunity presented by the maquiladora investment model, described by Steven Bender who details the failures of these foreign-owned labor-intensive sites for the assembly of goods (predominantly apparel in the case of Guatemala) for export. Rather than lifting its workers from poverty and serving as a catalyst

to broadscale economic development, this chapter posits that maquiladoras are yet another example of an extractive industry—in this case of cheap labor rather than of minerals or other natural resources—taking advantage of failures to enforce or enact fair labor and protective environmental laws. Exploring the role, if any, for the tax-favored maquiladora model in economies of poor countries, Bender examines how best (if at all) to realize that promise against the backdrop of failed expectations in Guatemala and other countries, such as Mexico, that have experienced similar chasms between economic promise to poor households and an exploitative reality of maquiladora investment.

Finally, Part V looks at the phenomena of migration and development. The recent surge of Central American unaccompanied minors and children fleeing with their mothers to the United States made us confront the human face of migrants whose fates are rooted in the dire reality that the countries from which they flee cannot or will not protect them. Largely, these migrants are escaping violence perpetuated by private actors, at times by gang members or even their own parents or spouses. Their stories of flight cannot be disengaged from the broader context in which the violence occurs. Theirs is also the story of failed nations, characterized by ineptitude, weakness and, even worse, indifference or at times even complicity. This story of failed nations applies beyond the reign of private “rogues” whom everyone agrees are bad actors (gangs, drug traffickers, violent criminals). The other side of the coin is a more nuanced story about the failing role of some of these Central American nations in regulating the acts of corporations, whether owned by the oligarchy or operated by transnational actors.

Blake Nordahl’s chapter, for example, narrates Evelia’s story. Evelia, like many other Central American asylum seekers, won her case based on a compelling story of domestic violence. Nordahl’s trip to Guatemala to study Evelia’s prior life in rural Guatemala, however, revealed to him and to readers a more complex entangled story of privatized violence that includes the historical and modern exploitation of people at the hands of Guatemala’s sugar industry. This carefully documented chapter makes a compelling case to move our own asylum and refugee laws beyond simple stories of individualized violence and to recognize the so-called “economic refugees” from nations like Guatemala as victims of a structural persecution that also involves collusion between the state and corporations.

Finally, Lauren Gilbert’s chapter connects Guatemala’s story of migration and violence to both the past and the present—the civil war years to now—and to the licit and illicit actors who exploit them. Her concluding chapter examines the role of gendered violence directed at women in El Salvador,

Guatemala, and Honduras both during the political upheavals of the 1980s and 1990s and over the last decade, examining how the failure then to confront gender violence as a form of state-sponsored terrorism led to its role today in contributing to the climate of fear and instability that plagues the region. The gendered violence that propels migration today from the Northern Triangle is connected to this dark yet largely untold history. Today, the levels of violence in these countries match or surpass those during war time. While today, Northern Triangle states largely blame private actors (e.g., gangs) for the resurgence of violence directed at women, Gilbert's chapter shows that this new terror cannot be disentangled from these nations' dark past with gendered state-sponsored violence.

In the end, both Nordahl and Gilbert look to international norms as part of the solution. Nordahl acknowledges that permanent solutions to Guatemala's structural violence are largely a Guatemala project. However, he also documents that for the past twenty years Guatemala's feeble attempts at land reforms and poverty alleviation through multiple policies have been largely inadequate. Thus, at least for now, Nordahl makes a compelling case that more expansive notions of persecution must be adopted as part of refugee law to recognize economic exploitation as persecution. For her part, Gilbert sees hope in international law's evolution in recognizing gendered violence, a significant shift from when she worked as a UN Truth Commission lawyer in El Salvador more than twenty-five years ago. This new visibility and naming of gendered violence is an important first step to counter practices, including in the United States, of turning our backs on persecuted women and girls.

As is evident in the chapters in this book, we came back from our visit to Guatemala with a range of mixed emotions. On the one hand, we felt frustrated and hopeless by what seemed like intractable challenges of a nation twenty years after achieving peace. On the other hand, the tenacity and conviction of many Guatemalans across sectors of society gave us immense hope. We continue to watch Guatemala's brave struggles today with rooting out corruption and we marvel at the many brave human rights activists and public officials who refuse to give up. We dedicate this book to them. We thank them for letting us tell their story. We thank you, our readers, for engaging this book. We hope it inspires you to action.