The Dissertation Committee for Ana-Isabel Braconnier De León Certifies that this is the approved version of the following Dissertation:

Disputing Extractivism at the Court:
Elite Countermobilization and Backlash in a (Still) Colonial Guatemala

Committee:

Daniel M. Brinks, Supervisor

Paola Canova

Luis Cárcamo-Huechante

Rachel Sieder

Disputing Extractivism at the Court:
Elite Countermobilization and Backlash in a (Still) Colonial Guatemala

by

Ana-Isabel Braconnier De León

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Dedication

I dedicate this work to the brave people in the struggle for justice and dignity. I want to honor the Indigenous women and men putting forward their lives and bodies in the quest for a better existence. This work is also for us, the *mestizx* and *ladinx* persons, who sincerely are committed to these struggles. This is a reminder of our call to unveil the system of privileges we are all enmeshed in. Together, in diversity, we can create new spaces to grow and *cosechar frutos frescos*.

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Abstract

Disputing Extractivism at the Court:
Elite Countermobilization and Backlash in a (Still) Colonial Guatemala

Ana-Isabel Braconnier De León, PhD

The University of Texas at Austin, 2021

Supervisor: Daniel M. Brinks

My dissertation examines the process of backlash against the dissident constitutional magistrates and the support structures that aid them in promoting accountability and human rights in Guatemala from 2017 to 2019. While scholars noted that courts took a predominant role in Latin American politics in the last forty years of democratization, less attention has been given to the increasing challenges that courts are facing to remain independent from powerful actors. The theories have some difficulty accounting for a backlash against the courts, because the "strategic" models of judicial behavior predict that vulnerable magistrates in less independent systems are more likely to act in deference to the powerful. The Guatemalan case shows the opposite. In the context of magistrates expected to align with the dominant elites, why did a backlash against the Constitutional Court occur? How did it happen, and what are the implications for the constitutional justice system?

I argue that backlash is triggered when the courts produce rulings challenging the "red lines" of the regime—what matters most to the political and economic elites. In Guatemala, the *anti-extraction* rulings challenged the elites' core interests based on the

extraction of public resources through corruption and natural resources in Indigenous territories. Backlash happened when powerful elites activated *judicial advantages* to "re-colonize" legal interpretations, coalesced to dismantle dissident magistrates and the support structures, and captured the institutions. My focus sheds light on the persisting role of elites in limiting the scope of accountability and social change through the courts. These limits reveal not only the continuity of a conservative *status quo* but also the colonial foundations of an extractive regime.

I develop my argument through an in-depth qualitative study of four rulings that triggered backlash. The rulings sought to promote the Indigenous right to free, prior, and informed consultation and efforts fighting corruption. In building my theory, I analyze the logistical features of the fieldwork and my position as a local researcher conducting activist research with advocacy organizations. My methods include semi-directed interviews, secondary sources, and ethnographic work. I conclude with a comparative perspective on Latin America, and propose, for the Guatemalan case, to de-concentrate elite power in judicial politics.

Table of Contents

List of Tables

List of Figures

List of Illustrations

Chapter 1: Introduction

Increasingly in Latin America and other regions, judicial institutions are facing challenges to remain independent from politics and powerful actors (Bermeo 2016; Scheppele 2018; Gloppen 2018; "The PAL Project" 2020; forthcoming Botero, Brinks, and González-Ocantos, n.d.). These powerful actors can deploy strategies to attack judiciaries and constitutional courts undertaking accountability efforts, such as harassing dissident magistrates or non-compliance with the judicial rulings. In Guatemala in 2018, the Executive branch directly clashed against the Constitutional Court by non-complying with the Court's rulings. Political and legal analysts commonly referred to such situations as "rupture[s] of the constitutional order" ("*ruptura del orden constitucional*" in Spanish).

Another dimension of this critical juncture emerged when attacks included human and Indigenous rights advocates working at the international, national, and community levels. Reports by the United Nations' Office of the High Commissioner for Human Rights and the Inter-American Human Rights Commission's detail how dissident and autonomous judges, magistrates, and rights defenders are threatened and intimidated in the context of anti-corruption and extractive activities in Indigenous territories (OACNUDH 2018b; 2020; CIDH 2019). And step by step, elite countermobilization has dismantled efforts to hold human rights abusers accountable for their faults and crimes. Since 2018, elite countermobilization triggered a backlash that attacked the structures promoting human rights and accountability, to restore the regime which facilitates public and natural resource extraction.

In Guatemala and in other cases where government and other powerful actors—such as dominant economic sectors, corporations, and the military—are influential in

judicial politics, we would not expect such a crisis as judges and magistrates in such countries have been known to align with these powerful actors. Yet, in this case, dissident magistrates on Guatemala's Constitutional Court still chose to produce risky rulings, well knowing that they were working against these powerful actors. Why, then, did a backlash against the Constitutional Court occur when the magistrates were predicted to align with the dominant political and economic elites? How did this backlash happen, and what are the implications of said backlash in terms of constitutional justice?

This dissertation examines the process of backlash against the dissident magistrates on the Constitutional Court bench as well as the institutions that supported these magistrates promoting accountability through anti-elite rulings. I develop my argument through an in-depth and qualitative analysis of 2017 to 2019, covering the main constitutional crisis in Guatemala since the signature of the Peace Accords in 1996. In my view, the backlash against the high courts which aim to hold accountable human rights abusers, corrupt politicians, and corporate actors not only unveils the authoritarian shift of the Guatemalan regime but also its colonial and racialized foundations. I define regime as a social organization constantly reinforcing systems of dominance based on hegemonic and established social norms and ideology, political and economic structures, and institutional influence and control.

In this introductory chapter, I present the case of Guatemala and look at the current tendency of backlash against accountability from a global perspective. Then, I highlight the contributions made by this dissertation to the larger scholarly and political discussions on accountability and the problem of judicial independence. In the second section, I introduce an overview of my argument (developed in Chapter 3). In the third section, I highlight the background features of the Guatemalan case to introduce the field of the study. Finally, I outline the contents of this dissertation's subsequent chapters.

COURTS "UNDER SIEGE"[1]

"The 7th *Magistracy* (*Magistratura* will be used henceforth) has gone through difficult political situations due to the judicial decisions challenging the political and economic elites. How do you survive such pressure?"[2] To this last question of my non-recorded interview, constitutional magistrate Bonerge Amilcar Mejía Orellana replied that he survives under such pressure thanks to his family. He described how he often feels insecure because of his public position. Moreover, he said that he lives in a "red zone", in a popular neighborhood in Guatemala City, with a level of criminality that makes him feel vulnerable. The day before my interview with him, eight military J8 Jeeps passed in front of Mejía Orellana's house. Fearing retaliation from the political ruling elites, he carefully checked that the staff inside the Jeeps were not armed.

Mejía Orellana and other magistrates of the Constitutional Court (CC), as a bloc, decided to publicly denounce the threats and intimidation they were facing as a "weapon of defense" (Interview, 2019). To increase protection, the constitutional magistrates presented a complaint before the European Parliament. The Parliament's local office assigned one country coordinate swift support in case of an emergency. Also, in October 2019, Mejía Orellana and other magistrates obtained precautionary measures from the Inter-American Human Rights Commission. Former Guatemalan President Jimmy Morales (2016–2020) offered security staff from the Secretary for Administrative and Security Affairs, but Mejía Orellana did not trust this office, as the Secretary answers to

[1] Human rights associations started to use the phrase in Guatemala to signal the multiple attacks that dissident magistrates and judges received from the Judiciary, the executive, Congress, and/or civil society organizations (Rodríguez, Muñoz, and Socop 2017; Comisión Internacional de Juristas 2018; González et al. 2019).

[2] In Guatemala, since the creation of the Constitutional Court in 1986, the five-year period on the constitutional bench is called *Magistratura*. The 7th Magistratura refers to the 7th generation of constitutional magistrates for the period 2016–2021. This Magistratura operated during a politically sensitive period due to the large number of cases that the constitutional magistrates had to resolve. These cases had to do with corruption, natural resources extraction, and electoral politics.

the President. Mejía Orellana implied that he did not wish to rely on the President's security staff because he was supporting rulings that were negatively impacting the President's policies and interests. During our interview, Mejía Orellana remarked that being a magistrate was like being a "prisoner without a cell" (*"preso sin celda"*).

Constraints to the dissident magistrates at the Constitutional Court came in an escalation mode from the Executive, the Legislative, the Supreme Court, the organized business sectors, and the military, as explained in Chapters 4 and 5 of this dissertation. During a press conference held in January 2019, this large coalition of political and economic elites, public officials, bureaucrats, businessmen and privileged groups, and military officers joined President Morales blaming and shaming the national and international institutions promoting human rights and accountability. This press conference was the height of a backlash holding these institutions responsible for the critical juncture characterized by the "rupture of the constitutional order" and the lack of foreign investments for development and megaprojects the country.

The picture below (Illustration 1) shows the broad coalition of actors that participated in this press conference.[3] This coalition was not homogenous. The elites and their supporters are nowadays economically and socially diverse and can even have competing interests. However, I pinpoint the coalition aspect because when diverse elites and hegemonic groups with competing agendas coalesce against public policies and

[3] From front to back, left to right, some of the attendants in the picture are: (front row) the President and Vice-President; (second row) Minister of Education, Minister of Defense, Minister of Interior; (third row) Minister of Culture and Sports, Minister of Labor, Minister of Economy, Minister of Public Health, Minister for Energy and Mines; (fourth and back) relatives of indicted people by the Public Prosecution and the CICIG: members of the Guatemalan political and the economic elites and collaborators from abroad. For instance, there are family members of a prior Minister of Interior (Carlos Vielmann), members of important business families (Andrés Zimeri and the Valdés Paiz brothers), and foreign collaborators (the Bitkov family from Russia) (For more information: https://lahora.gt/morales-monta-un-show-para-ratificar-sus-deseos-de-expulsar-a-cicig/?fbclid=IwAR3uwZuzHo-M-viYpK-VGuCDXP-uCwipygynqWEsEPxMxsUywD9oRtD-JfM)

institutions, it helps the researcher to understand the common interests they have at stake. Central to my argument, these elites are not only economically but also racially advantaged (as can be noted in the picture). Indigenous individuals or groups are excluded from these elites and their supporters. Elites are structurally racialized. This picture shows the colonial foundations of the Guatemalan white and *ladino* (meaning non-Indigenous) elites controlling the state and territorial resources.

Illustration 1: The White and *Ladino* Elites and Privileged Groups' Coalition
Source: Prensa Libre, 01/07/2019

International and national human rights organizations in Guatemala have categorized what magistrate Mejía Orellana experienced as judicial harassment (Rodríguez, Muñoz, and Socop 2017; Comisión Internacional de Juristas (ICJ) 2018; González et al. 2019; CIDH 2019). "Under siege" has become a recurring expression used to describe what has been occurring in the country since approximately 2015:

"independencia judicial bajo asedio," "jueces bajo asedio," "Corte de Constitutionalidad bajo asedio." With the first criminal prosecution process in 2015 against the *La Línea* corruption scandal in the former *Patriota* government led by retired general Otto Pérez Molina and Roxana Baldetti, political and economic elites began to be held accountable through judicialization.[4] Since then, the Supreme and the Constitutional Courts have begun to play a central role in the political and economic life of the country, and therefore, the elites have deployed their resources to attack dissident magistrates and capture the courts.

Although the case of Guatemala is critical in terms of accountability and judicial independence, myriad examples of this kind of capture have taken place in other regions. Quantitatively, the World Justice Project Rule of Law Index 2020 measures justice performance (2020).[5] The available analysis does not, however, present rankings for autonomous justices or judicial independence. However, categories such as the effectiveness of dispute resolution mechanisms in the civil and criminal systems can provide a panorama of the increased tendency towards courts under siege. Venezuela, Honduras, Nicaragua, Brazil, Cambodia, Myanmar, the Philippines, Turkey, Egypt, Iran, Poland, Romania, Ukraine, Russia, Uganda, and Mauritania are some examples situated within the broader context of judicial attacks and backlash. Also, in a more qualitative

[4] *La Línea* is a case related to corruption in the tax and customs administrations. According to the criminal prosecution, this case unveiled in 2015 the operation of a white-collar network composed of public officials and companies negotiating fewer taxes in exchange for bribes. This corruption case is the continuation of a network led by the military in the 1970s during the war. See "How Predatory Informal Rules Outlast State Reform: Evidence from Postauthoritarian Guatemala", Schwartz 2021.

[5] The Index is built according to four measurable principles. 1) Accountability: "the government as well as private actors are accountable under the law." 2) Accessible and impartial dispute resolution: "justice is delivered timely by competent, ethical, and independent representatives and neutrals who are accessible, have adequate resources, and reflect the makeup of the communities they serve." 3) Just laws: "the laws are clear, publicized, and stable; are applied evenly, and protect fundamental rights, including the security of person and contract, property, and human rights." 4) Open government: "the processes by which the laws are enacted, administered, and enforced are accessible, fair, and efficient." ("Rule of Law Index 2020" 2020, 10)

narrative, the United Nations Special Rapporteur on the Independence of Judges and Lawyers reported in 2020 the systematic use of "disguised sanctions": "[…]to intimidate, harass or otherwise interfere with the professional activities of judges." (García-Sayán 2020, 14). According to Special Rapporteur García-Sayán, these disguised sanctions seriously undermine the capacity of judges and magistrates to operate autonomously on the bench.

THE LIMITS TO ACCOUNTABILITY: CONTRIBUTIONS OF THIS DISSERTATION

This dissertation concerns the high courts and the factors promoting or hindering the accountability of powerful political and white collar economic elites who have violated human rights and the rule of law. More precisely, it explores the implications for constitutional justice when the core foundations of a regime are challenged by the high courts. My focus on the backlash by the political and economic elites in a country with a recent history of military dictatorship, civil war and genocide, and neoliberal democracy sheds light on the continued and prevailing role of these elites in limiting the scope of accountability through the courts. These limits reveal not only the ongoing campaign to maintain a conservative *status quo*, but also the drive to shore up the continued colonial foundations of an extractive regime based on racial hierarchies. My theoretical framework draws upon the scholarship of judicial politics and Indigenous studies on colonialism. Moreover, my research contributes to both scholarly and activist efforts to understand the factors that are currently hindering the realization of Indigenous rights and anti-corruption in the judicial arena.

First, this dissertation emanates from and seeks to illuminate the current tendency towards autocratic politics. This retrenchment is reshaping the role of judicial institutions, undermining their ability to promote different forms of accountability, and attacking the

conditions they require to remain independent and autonomous from the dominant politics. Most of the leading literature on the role of courts in new democracies focuses on the capacity of judicial institutions to hold accountable massive human rights abusers (Gloppen, Gargarella, and Skaar 2005; Sieder, Schjolden, and Angell 2005; González-Ocantos 2016) or to enforce and legalize political, civil, social, economic, and cultural rights (Gauri and Brinks 2008).

However, less has been written to explain the new limits that democratic high courts are facing when endeavoring to enforce rights and to hold politicians and economic elites accountable for continuing, and even increasing, abuses of human rights in electorally democratic regimes. In this dissertation, I contribute to the increasing scholarship on the regressions of democratic rule of law and practice. Acknowledging the gap in this literature, scholars in the political and socio-legal fields are increasingly theorizing global tendencies towards "democratic backsliding" (Bermeo 2016), "autocratic legalism" (Scheppele 2018; "The PAL Project" 2020), and "lawfare" (Gloppen 2018; Zaffaroni, Caamaño, and Vegh Weis 2020) in various regions.

The limits to accountability and rights enforcement are therefore related to discussions of judicial independence and capture. In this dissertation, I use the notion of the "red lines" of a regime to identify areas in the judicial arena where political and economic elites strongly resist accountability. Scholars of political science and sociology have raised the following concern: "to what extent are courts in Latin America willing and able to arbitrate interbranch disputes that affect the separation of power?" (Helmke and Ríos Figueroa 2011, 5). This question is even more relevant in contexts where judicial institutions are not only concerned with government or congressional retaliation, but also with other significant economic and military actors. Concerning the Mexican and the Central American cases, political scientists Pilar Domingo and Rachel Bowen have

asked: “How much independence is considered due, and from whom? […] and at what time?” (Domingo 2000; Bowen 2013, 833–34).

The notion of “red lines”, mentioned in political scientist Tamir Moustafa’s work on the Egyptian case (2003, 906), explains to what extent high courts can take an active role in expanding and enforcing rights and the rule of law, and when they will face constraints and disguised sanctions. Judicial autonomy is tolerated by the powerful elites only insofar as the rulings do not disturb the core interests of the regime. Scholars and activists can use this notion to identify exactly where the core interests of the elites lie. In contexts where the elites have control of the regime, these red lines also shed light on the nature of the foundations of the regime.

Second, recent events in Guatemala show how constitutional rulings that attack the red lines of the elites’ extractive regime pose challenges for high courts and their dissident magistrates. To study the judicial processes involving Indigenous peoples is to demonstrate the continuum of colonial foundations within a formal democratic and independent judicial system. This dissertation shows that effecting social change by way of the courts is difficult in a regime whose foundations, the basis on which politics are grounded, continue to respond to strong political and economic elites with a colonialist logic. Whilst the existing scholarship on accountability and judicial independence mainly focuses on why and how regimes become autocratic or authoritarian, less attention has been given to the colonial structures that persist both before and after these political and legal regressions.

The recent events of judicial backlash in Guatemala represent this tendency towards political and legal regressions. But what these events also reveal is the persistence of the colonial and racial power structures embedded in these regressions. The power structures enabling the continued extraction of public resources from the state

and natural resources from Indigenous territories to benefit white and *ladino*[6] minority elites still prevail. In an imperfectly—at best—"postcolonial" and "postwar" society with a majority of Indigenous peoples, the backlash against constitutional decisions exposes the enduring colonial and conservative foundations of the regime.

By tracing and interpreting the process of backlash, I offer a settler-colonial and *colonialismo interno* (González Casanova 2006) lens of analysis to understand what these red lines represent for political and economic elites. It was the fight against political corruption and the promotion of Indigenous peoples' rights that triggered an elite recalcitrant countermobilization against the Constitutional Court. This countermobilization not only attacked the Court, it also sought to dismantle the Court's support structures, public institutions, international organizations, civil society, and Indigenous communities promoting accountability and human rights.

Backlash in this context is therefore multidimensional as it prompted attacks at different levels of judicial politics—magistrates, the institution itself, and the support structures—and hindered Indigenous rights to self-determination. The colonial and racialized lens allows scholars and activists to further our scope of analysis and address a political structure that is often excluded in political science and anti-corruption activism. It unveils not only the racialized asymmetrical power relationships in countries where extractive economies controlled by white elites depend on natural resources located in

[6] Although these socioracial categories find their roots back in the colonial caste society, they are currently used when talking about power relationships and their underlying asymmetries. Although these categories are, in reality, much more complicated, for the purpose of this study, I use the "white" category to refer to the *criollos*, the descendants of Spanish people that still control the state administration and concentrate territorial power. Together with the white elites, the dominant *ladino* elites generally undermine the Indigenous peoples' politics and believe in the superiority of the "national imagined community." Understanding these categories and their relationships entails an entire field of studies in Anthropology and History (see R. Adams and Santiago Bastos, *Las relaciones étnicas en Guatemala, 1944–2000*, CIRMA: Guatemala, 2003 or C. Hale, *More than an Indian. Racial Ambivalence and the Paradox of Multiculturalism in Guatemala*, SAR: New Mexico, 2006).

Indigenous ancestral territories, but also the *de facto* mechanisms to limit any progress towards Indigenous self-determination (Hale 2011; Barker 2011; Engle 2010). This lens of analysis can help scholars and activists to address the limitations and ambivalence of the human rights discourses, enforcement, and accountability in regimes that are still colonial and conservative.

Finally, I provide an analysis of those mechanisms that limit the efforts towards Indigenous self-determination and capture the judicial institutions that promote accountability and justice. This dissertation is aligned with the Law and Society and socio-legal scholarships which consider the "law in action" (Sieder 2019) and the "making of law" (Latour 2004) as what builds and shapes the law. Through the observation of lower levels of analysis—what people say and do—and self-reflection on my experience as a researcher, I provide conceptualizations grounded in the field such as *judicial advantages* and *re-colonization* of the judicial arena. These conceptualizations can illuminate similar cases where elite countermobilization is actively limiting accountability and rights expansion.

EXPLAINING BACKLASH: THE ARGUMENT IN BRIEF

Why is a backlash against high courts triggered in contexts where the courts are expected to align with dominant politics? I argue that backlash is triggered when the higher court of a country produces constitutional rulings challenging what matters most to the economic and political elites. In the case of Guatemala, those rulings disrupted what I will refer to as the "extractive" foundation of the economic and political regime. The Guatemalan regime was "extractive" in two interrelated respects: the control over, and extraction of, natural resources from the territory depends on control over, and extraction of, public resources, including both money and power, from the state. It is

colonial and racially inflected, because control over the state and the territory historically excludes the Indigenous peoples of Guatemala, and disproportionately targets Indigenous territories for extraction.

This set of extractive activities represents the core interests of the elites who, as much as their interests might diverge in the short run, have built their economic dominance through the control of public and territorial resources. This control is at times enabled by corruption—when and if necessary. But it is more commonly produced and legitimized by the entanglement of an economic system, based on private property and legal provisions, with racialized social and political hierarchies, that include the white and *ladino* groups and exclude Indigenous peoples.

A number of recent rulings by the Constitutional Court in Guatemala threatened the foundations of this extractive regime by purporting to grant Indigenous peoples more control over their territories and the natural resources it contained; and by threatening to undermine non-Indigenous elites' ability to put the state, its resources, and its coercive apparatus at the service of the extractive regime.

When the Constitutional Court produced these anti-extraction rulings holding to account dominant political and economic actors who have rarely been questioned judicially about their extractive activities (hereafter, accountable anti-extraction rulings), these actors countermobilized in legal and para-legal arenas to re-colonize legal frameworks and capture the institution. Legally, the elites activated what I call *judicial advantages* to influence judicial decision-making and re-colonize the legal interpretations promoting Indigenous rights. Politically, the elites made coalitions to capture the institution by, on the one hand, brutally attacking the dissident magistrates on the bench and their support structures, and on the other hand, by capturing the magistrate selection

process to fully control the justice system.[7] Figure 1 describes the backlash process and the repertoire for countermobilization:

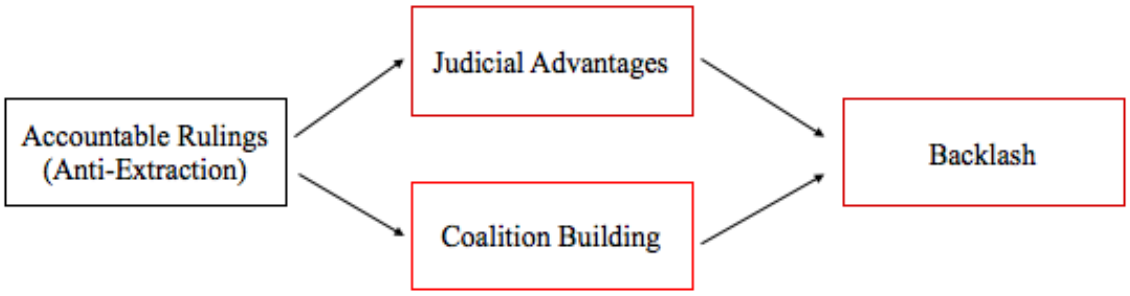


Figure 1: The Backlash Process.

I understand accountable anti-extraction rulings as all those judicial and constitutional decisions that challenge the resources elites use to maintain domination in a regime, and in this case, a regime based on the extraction of fiscal, public contracting, and other resources from the state (ICEFI 2019; Waxenecker 2020) and natural resources from Indigenous territories. I suggest that the judicial rulings that are likely to raise backlash are those which ultimately attack the elites' core economic interests. These economic interests are supported by predominantly legal mobilizations and racist discourses as examined in Chapter 4, and the political status quo as argued in Chapter 5.

[7] At the time I was carrying out field work, the evidence was still insufficient to prove this final effect. At the time of writing this dissertation, however, evidence of the Constitutional Court's capture has more clearly emerged. Today, candidates and officially elected magistrates are marked by linkages with dominant political and economic actors, including the natural resource extraction and organized crime sectors: "They [the elites] are preparing the way to continue exploiting the territories, polluting them and violating human rights. They are preparing to clear the way for nefarious and nefarious candidates of obscure origin like Zury Ríos to arrive to control the country but also to continue corruption and impunity, thus favoring the government of Giammattei [current President] and Jimmy Morales [former President]." (Asamblea Social y Popular Guatemala 2021). Two months after the official start of this Magistratura, the dissident magistrate (Gloria Porras) is still not formally appointed by Congress, and is currently in exile in the United States due to multiple threats (Convergence for Human Rights 2021). Hashtags were released, #CortesNoMafias and #AsaltoAlaCC, to publicly denounce and report the political capture of the Constitutional Court for the 2021–2026 Magistratura.

In general terms, the topics triggering intense backlash are those striking at the structures that have enabled the elites to uphold their domination.

The case of Guatemala particularly exemplifies this concept. The rulings that crossed the red lines and generated an intense backlash against the Constitutional Court are related to the extractive activities based, first, on natural resources in Indigenous territories, and second, on state resources through different forms of corruption. Empirically, natural resource extraction and corruption are intertwined: political elites in the Executive and Legislative branches across the political spectrum, receive bribes to allocate licenses to natural resource extraction and infrastructure executed by economic and business elites.[8] Judicial decisions that challenge this mechanism are anti-extraction rulings.

The Guatemalan case involved a challenge to the extraction of public and natural resources through corruption and the damming and mining in Indigenous territories. In Chapter 3, I explain backlash as the outcome resulting from accountable anti-extraction rulings. But the same dynamics can be expected in any cases where politics and power relationships are similarly based upon access to and control of public and natural resource extraction in Indigenous and native territories by hegemonic and racialized elites and settler colonizers. As institutions of constitutional control strengthen and seek to resolve this tension, the powerful and ruling elites seek in turn to disempower and push back against them. I expect this dynamic to appear not only in colonial and settler-colonial societies, but also within rentier states in countries that depend upon underground natural resources and countries with high levels of corruption under public prosecution (see the

[8] For more information, see "Caso Mecanismo de Corrupción en el Ministerio de Energía y Minas" prosecuted by the Special prosecuting Unit fighting impunity and made public on December 2020, https://www.mp.gob.gt/noticia/mp-devela-caso-mecanismo-de-corrupcion-en-el-ministerio-de-energia-y-minas/

"Project on Autocratic Legalism" in Brazil, India, South Africa). In sum, this argument might also apply to cases where the courts deeply challenge the primary interests of the power elites in still colonial societies.

Because these rulings challenge the very foundations of elite power, they require a level of judicial activism and structures of support that provide spaces for autonomy from dominant politics. Anti-extraction rulings are the outcomes both of legal mobilization and prosecution efforts (anti-elite demands), as well as magistrates' commitments and political entitlements (dissident judicial activism). These commitments and political entitlements allow magistrates to go beyond the Court's pure mediation role and to become implicated in structural issues through their decisions. The following section locates this study within the Guatemalan Constitutional Court.

BACKGROUND: BETWEEN ACCOUNTABILITY, RIGHTS EXPANSION, AND CAPTURE IN GUATEMALA

This section explains the relevant features of the Constitutional Court from the institutional, agency, and jurisprudence perspectives since the democratization of the regime. Through these features, I provide an overview of the Court's capacity both to hold politicians and economic elites accountable and to enforce and expand rights. First, I examine features of institutional design to understand to what extent the Court can effectively address accountability and rights expansions. Second, I focus on the characteristics of the 2016–2021 Magistratura (also known as the 7th Magistratura) to illustrate the Court's fragmentation into two antagonist blocs. I also trace a brief outline of the magistrates, their tendencies, and the rulings they produced during their time on the bench. Finally, I present an overview of the relationship between the Court and the

Indigenous peoples to explain the precedents of Indigenous rights expansion and how the Court came to cross the regime's "red lines".

The Constitutional System and Limits to Accountability

I address three aspects of the Constitutional system: the magistrates' appointment system, the internal accountability of the Constitutional Court, and the duty of ingratitude and its practice. These aspects of design and organization are theoretically and practically relevant to understand to what extent magistrates can engage in the accountability and expansion of rights.

Legal scholars have categorized the constitutional justice system in Guatemala as one that is pluralistic, autonomous, and democratic (García Laguardia 2001; Brinks and Blass 2018). Following the example of the United States Supreme Court, the Constituent Assembly created an autonomous judicial institution in 1985 to oversee constitutional control: the Constitutional Court. This Court is independent of the Supreme Court of Justice, and the former is hierarchically above the latter. The Constitutional Court manages unconstitutionality and the protection of individual and collective rights through the *amparo*. Moreover, the Constitutional Court is the national institution that has the last word regarding legal and political judgments prior to filing appeals before international bodies (such as the Inter-American Court of Human Rights).

From the standpoint of institutional design, autonomy and pluralism are ensured by the magistrates' appointment system. The bench is formed by five sitting magistrates and five substitutes. The Executive, Congress, the Supreme Court of Justice, the Bar Association, and the public university San Carlos de Guatemala (USAC) each elect one sitting and one substitute. The design, including five different institutions, is intended to avoid full control by any one branch of the state. Further, according to the memories of

members of the Constitutional Assembly in 1984, the spirit of this design was meant to guarantee different skills amongst the constitutional magistrates. In theory, the Executive nominates a specialist on administrative law, Congress on legislation, the Judiciary on the general issues of judicial review, the Bar Association on civil law, and the University a prominent legal scholar to provide an academic perspective.

Constitutional autonomy on the bench, even if ensured by the plural nomination system and the magistrates' professional skills, finds its limits in the duration of the tenure. Political scientists Daniel Brinks and Abby Blass argue that the five-year appointment and the possibility of impeachment reduce the autonomous capacities of magistrates while on the bench because they still depend on other branches of the state and the nominating institutions (2018, 163). On the one hand, the relatively easy requirements for impeachment ("*solicitud de antejuicio*") reduce autonomy. Although this is a legal resource to ensure accountability when constitutional magistrates violate the rule of law, it is also a political resource used to coerce and discipline (CIDH 2019). As I explain in Chapter 5, the *solicitud de antejuicio* was a recurring method used to punish magistrates during the backlash escalation. On the other hand, although reelection is allowed and, in practice, many of the previous magistrates assume low profiles following their stint on the bench, the short term also urges outgoing magistrates to find a professional future. Most magistrates pursue academic careers as law professors or keep working in their law firms.

Molina Barreto is the most salient case of the link between politics and justice. Zury Ríos is a politician whose father, General Efraín Ríos Montt, was convicted in 2011 of genocide and crimes against humanity for events that occurred between 1982 and 1983. On appeal, however, the Constitutional Court, with the vote of Roberto Molina Barreto, overruled this decision. When his term expired, Molina Barreto pursued the

2019 partisan race as the vice-presidential candidate for the Valor political party, with Zury Ríos standing for the presidency. He is currently an incoming magistrate elected by the Supreme Court for the 8th Magistratura (2021–2026).

Constitutional autonomy is also in jeopardy when considering the nomination process within each elective institution. Although the nomination processes are supposed to follow democratic procedures based on meritocracy and majoritarian elections, the current implementation of such procedures is questionable. Initially conceived as separate from politics, dominant politics have now clearly entered all the nomination processes, regardless of whether they are located in one of the branches of government, in the Bar Association, or in the academy, although the politics play out differently in the different areas.

With respect to the Executive and Congress, there are no records of the nomination process.[9] Journalists and specialists on the issue have reported on the lack of democratic operations within the nomination process of the state, and therefore, the limits for autonomy. Specialists on the issue assume that the president nominates their magistrates according to political loyalties. On the side of Congress, congresspersons are randomly selected to form the selection committee. Nominees present their dossier and, in theory, the best are selected based on their merits. Specialists also assume that partisan politics and the exchange of favors play out inside the selection group to ultimately nominate loyal partisan coalitions' magistrates.

Then, the thirteen judges of the Supreme Court's bench publically call for nominations through the newspaper of public record in Guatemala (*el Diario de*

[9] I requested public information from the General Secretariat of the Presidency and the information does not exist (Solicitud No.47-2019). I also requested an interview with one member of the committee in charge of the selection in Congress and was finally not granted one.

Centroamérica). They, too, are supposed to select based on merits.[10] However, specialists also assume that this process is filtered by political interests due to the Supreme Court judges' selection process in the first place. More specifically, the thirteen judges sitting in the Supreme Court are themselves linked to politics because they are ultimately elected by Congress. In sum, the constitutional magistrates' selection process on the side of the Executive, Congress, and the Supreme Court are permeated by the dominant politics. In Guatemala, these politics are closely related to organized crime, the military, and the economic elites.

On the side of the Bar Association and the Universidad San Carlos, according to my interviews conducted with nominating members, these institutions are less opaque due to the assembly model they use to vote for their nominees. The Bar Association assembly votes for lists of candidates and these candidates mobilize their networks and lawyers' associations. Although the process formally seems to abide by democratic procedures through the assembly, it is known that campaigns cost money, that candidates must find financers, and that clientelism and exchange of favors are at play. Dominant politics might also be at play in this selection process. Finally, the Universidad San Carlos de Guatemala is the more democratic model since it is less linked to dominant politics. Although recent newspapers have published corruption scandals and relationships between the dean's office and the dominant politicians linked to organized crime, the University assembly is plural, representing various interests and ideological lines. Due to the ideological tradition of this public university, constitutional magistrates elected are likely to be critical of dominant politics and inclined towards social issues.

[10] I also made a request to the Judiciary's Public Information Unit (Solicitud No.1851-2019) and had the copy of the selection procedures.

Officially, appointed constitutional magistrates should be independent of the bodies that selected them. This is referred to as "the duty of ingratitude". Prominent legal scholar, former constitutional magistrate, former acting president, and member of the Constituent Assembly, Alejandro Maldonado Aguirre wrote:

> It is said, and it is formally correct, that in the positions postulated by political parties, loyalty is a virtue. In judicial positions, this is, on the contrary, a degrading attitude. […] to judge impartially and with the maximum of certainty, judges must always observe the principle of ingratitude. That is, they owe the position to their own merits and not to their constituents. (Maldonado Aguirre 2020)

My interviews with constitutional magistrates highlight the importance of the duty to detach themselves from the institutions that endorsed them. However, according to an interviewee who was on the bench from 2011 to 2016, "the phone wire" ("*el cordón telefónico*") was still very important as an informal channel for consultation and decision-making. Currently, he told me, vaguely showing his cellphone, messages go through WhatsApp (Interview, 2019). As evidenced by the 2016–2021 Magistratura, loyalties and coercion still persist within the Constitutional Court, and this is seen through the voting tendencies of each magistrate.

To summarize, in this subsection, I highlighted the two-fold aspect of the constitutional design. As reported on the first page of this dissertation, the practice of constitutional justice reveals that the appointment system, the legal resources for accountability (the *solicitud de antejuicio*), and the duty of ingratitude are linked to dominant politics. These linkages can interfere in accountability processes and rights' enforcement because personal or sectoral interests are at stake. While the design sought to ensure pluralism and autonomy in 1985, the current development of judicial politics reveals the areas that can be used to capture constitutional justice and to follow the red lines of the regime.

The Context of a Fragmented "7ª Magistratura" and Magistrates' Decision-Making

In this section, I provide an overview of the atypical context that characterized this Magistratura and some elements for understanding the magistrates' scope of agency. Selected according to the constitutional system described previously, the 7th Magistratura, starting in April 2016 and ending in April 2021, was influenced not only by the dominant politics but also by a general environment questioning the (dis)function of the justice system. The context of anti-corruption efforts represented a window of opportunity in terms of the capacity of the Constitutional Court's dissident magistrates to cross the red lines of the extractive regime.

This environment of opportunity started in April 2015 when the Office of Public Prosecution (the *Ministerio Público* from now on) and the United Nations International Commission against Impunity in Guatemala (CICIG for its Spanish acronym) made public the *La Línea* corruption scandal, holding former President Otto Pérez Molina and former vice-president Roxana Baldetti accountable for corruption in the tax and customs administrations. Resulting from this case, several other cases were opened involving many politicians, state officials, corporate and economic elites, lawyers, and military officials. One year later, in April 2016, public officials, the Ombudsperson, the Office of the Inspector General, the Resident Coordinator of the United Nations, the Office of the High Commissioner for Human Rights, and the CICIG organized a national debate to start a constitutional reform in matters of justice. Three main topics were under discussion: respect for the Indigenous peoples' justice system, the separation of the administrative from the jurisdictional functions within the Supreme Court of Justice, and the selection process for judges (CICIG 2016).

Amid this juncture, constitutional magistrates created two visible antagonistic blocs. According to the decisions made in the difficult cases during this Magistratura, I

create a simplified dichotomy for the analytical purposes of this dissertation: on the one hand, the dissident *pro-rights* magistrates aligned with the reformist alliance, and on the other hand, the *status quo* magistrates aligned with the dominant politics. The difficult cases that this Magistratura had to decide on involved three areas: the right of Indigenous peoples to free, prior, and informed consultation, cases related to the anti-corruption efforts, and electoral cases.[11]

The magistrates nominated by Congress, USAC, and the Bar Association joined the pro-rights coalition, whilst the magistrates nominated by the Executive and the Supreme Court constituted the status quo coalition. The pro-rights bloc was much inclined towards expanding the rights of Indigenous peoples and recognizing the legitimacy of the Indigenous justice system, as well as facilitating the grounds to pursue anti-corruption efforts. These dissident magistrates were supported by the international community, grassroots associations, Indigenous communities, and the public at large. However, in the electoral cases, votes were more ambiguous. I analyze this ambiguity through the lens of the allegiances towards the political parties and their candidates that helped them to get on the bench.

In contrast, the status quo bloc, a more conservative one, was mostly inclined towards favoring the energy policies and industrial sectors in the cases involving Indigenous peoples whilst supporting the Executive and Congress' decisions to obstruct

[11] Guatemala held its general elections in 2019 and the Constitutional Court, through its rulings, participated in the making of the electoral environment. During the campaign in 2019, five presidential candidates were canceled by the Constitutional Court. Former Head of the Public Prosecutor, Thelma Aldana (*Semilla* party), could not participate due to a judicial case in process related to her work as Public Prosecutor. Zury Ríos (*Valor*) could not participate due to her family ties with a former head of a coup (Art. 186 of the Constitution). Mario Estrada (*UCN*) could not participate after being captured by the US Drug Enforcement Administration due to his ties to organized crime. The political party was also canceled due to financial impropriety. Edwin Escobar (*Prosperidad Ciudadana*) could not participate because he did not complete his settlement as an outgoing mayor. And Mauricio Radford (*Fuerza*) could not participate due to a judicial case in process related to his work in the National Registry of Persons (Del Aguila 2019).

the anti-corruption efforts against politicians, public officials, and economic elites. The status quo magistrates were mostly supported by the President, the majority in Congress, the Supreme Court, the organized economic elites through the Guatemala's Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (in Spanish *Comité Coordinador de Asociaciones Agrícolas, Comerciales, Industriales y Financieras*—CACIF), military officials, and veterans' associations. This bloc, as well as their supporters, constantly marked the red lines through the available political and legal resources (non-compliance and *solicitudes de antejuicio*, for instance).

Although politics, loyalties, and interests are central factors within constitutional justice and for the protection of the red lines, judicial agency also plays out in these decisions. Legal preferences and ideas are important to dispute the red lines, and the work of clerks is crucial to legally sustain the disputes. Magistrates have at their service teams of young legal experts, almost all in their late 30s and 40s, and together they build a proposal. Magistrates' legal preferences and political positions are expressed and debated during the plenary. Through the randomized system of case allocation, the magistrate receives the case file.[12] After a collective analysis with the magistrate's team of clerks, the magistrate defines the legal and jurisprudential line. When the case is politically sensitive, the trustworthy team of clerks, "*de confianza*", works nonstop on that case to build a strong proposal. This proposal is then presented to the magistrate in charge who submits revisions, and the final draft is discussed within the plenary of magistrates. The plenary is not accessible to the public nor are the records written by the Court's

[12] Since the 6th Magistratura 2011–2016, case allocation is randomized through a computer system. The Constitutional Court underwent a period of modernization and a technology shift to avoid paperwork and delays. Before that, case allocation and the conformation of the plenary of magistrates was defined by a tombola. The modernization, supported by the United Nations Development Program, sought to promote transparency within constitutional justice.

Secretary.[13] The magistrates I was able to interview told me that the debates are often harsh and animated, "*se pone alegre*". When magistrates finally decide, the first proposal is amended with the new insights from the plenary. Magistrates can write a separate reasoned opinion, concurring or dissenting. This is the opportunity to make a public statement on the preferences and positions that are not reflected in the final ruling. In Guatemala, separate reasoned opinions are a common practice.

One clerk described the job to me using the metaphor of an artisan. Clerks act as the artist's artisan, whose job is to prepare the canvas. The artist has an idea of how he wants his canvas to look. To achieve that, the artist instructs his artisans with general guidelines concerning the type of thread, the color of the cotton, and the type of stitch to be used. The artisans follow the instructions to create a sketch. However, the artisans do not know what the final product is meant to be, only the artist has such knowledge. The artisans are the "decision-drafters" and they never get too close to the "decision-maker". The role of artisans provides security and independence because the artists are always the main players in the game. As opposed to the clerks, the magistrate is the one who will dispute the red lines of the regime with the legal arguments prepared by their clerks.

Therefore, clerks need to move new ideas, especially in "difficult cases". This type of case requires a higher level of creativity to provide the best solutions to the problems at stake. To professionalize the staff, the Court's Constitutional Justice Institute has implemented a policy of constant training with the most novel developments on international jurisprudence and comparative law. Clerks have received much training

[13] Records are no longer available since the 6th Magistratura. The decision was made after the *Ixil Genocide* case ruled by the Constitutional Court in 2013. Human rights organizations requested a copy of the record from the Public Information Unit. After reading the debate between the magistrates, these organizations requested impeachments against magistrates that overruled the first instance judgment holding military officials accountable for genocide and crimes against humanity. These impeachments did not go through because of the legal protections magistrates enjoy to freely deliberate. Since 2013, records of the debates within the debating chamber are not disclosed.

through the agreements between international institutions, experts, and the Court. For instance, in June 2019 I attended a course to discuss the Inter-American Commission on Human Rights Journal of Jurisprudence on Tribal and Indigenous Peoples. All staff were present in the courtroom through an interactive teleconference.

The Court has organized hundreds of other trainings covering multiple topics. According to the list I received from the Public Information Unit, clerks have received since 2012 eleven trainings on topics related to Indigenous peoples' rights, green energy in Indigenous territories, Indigenous justice, and legal pluralism. Clerks are highly trained to legally analyze the struggles that Indigenous peoples are currently confronting, and therefore, to challenge the red lines of the extractive regime with strong legal arguments. These trainings are one factor explaining why the Constitutional Court has expanded Indigenous rights (González-Ocantos 2016). However, as explained below, these trainings have only contributed to expanding Indigenous rights in a way that does not compromise the elites' core interests. Professional trainings remain insufficient when the cases challenge the economic interests of the extractive regime.

The Court and Indigenous Peoples: An Overview

In this section, I present the evolution of the relationship between the Constitutional Court and Indigenous peoples' struggles. Since its creation in 1985, the constitutional bench had always been occupied by non-Indigenous lawyers until 2016 when the Universidad San Carlos selected self-identified Maya K'iche' Mynor Par Usen. His election as a substitute was supposed to bring an Indigenous perspective to the growing number of cases presented to the Court regarding Indigenous rights. At this moment, his role on the bench from 2016 to 2021 is still under scrutiny. However, the rest of the magistrates since the first Magistratura in 1986 have all been *ladinos* (non-

Indigenous individuals) from diverse socio-economic and geographic backgrounds. Some come from families from the capital city, others from small cities in other municipalities from the western highlands or southeast Guatemala. Some are members of the traditional oligarchic families, and some are educated middle-class. Some studied at the public university, and others at private universities.[14]

Such diverse backgrounds contribute to diversity within the Court. But the *ladino* majority also enhances the tendency to address Indigenous peoples' struggles from mostly theoretical perspectives detached from local realities. The multiple trainings that the Court's staff have received and the sustained litigation by Indigenous lawyers and allies have contributed significant legal insights to how to address Indigenous collective rights from point of view of constitutional and conventionality controls and examination (see González-Ocantos 2016; and Epp 1998 for their theoretical insights in other case studies). These factors have underpinned the expansion of Indigenous rights at the Constitutional Court since 2010 when the first landmark decision was issued[15], but may be insufficient when the core interests of power elites are at stake. Perhaps, as suggested in the conclusion to this dissertation, other protocols for access to constitutional justice can be implemented to balance the overwhelming elite power.

[14] In this work, I do not expand on the constitutional magistrates' profiles for two reasons. First, who the magistrates are, their backgrounds and trajectories, their trainings, and personal beliefs become less relevant when the courts are highly constrained. Magistrates' political strategies become crucial to understand how and why they stand with or against the elites' coalition. However, this is not a work about life stories, but about the more structural constraints within which they operate. Second, as a researcher, I intentionally decided to not to describe with detail their backgrounds to avoid drawing the actors' portrait without their consent.

[15] The first landmark decision on collective Indigenous rights was the *caso Chichicastenango vs. Telgua* in 2010. The Constitutional Court recognized the existence of legitimate Indigenous Maya K'iche' traditional authorities, the recognition of collective property belonging to the traditional authority instead of the municipal authority, and the recognition of an illegal appropriation of the collective property by the Land Registration System to favor the phone services company Telgua. This ruling opened a path for more litigation processes to secure Indigenous collective property in the country.

Indigenous lawyers have built strong litigation knowledge and practice since 2003—only seven years after the signature of the Peace Accords. Seventeen years ago, the Public Prosecutor's Office for Human Rights presented the first case related to racial discrimination against Maya K'iche' Nobel Peace Prize winner Rigoberta Menchú.[16] This was the first case related to Indigenous peoples' rights. Since then, a structure of multiple public and civil society institutions has prepared Indigenous lawyers and advocates to specialize and litigate Indigenous peoples' rights.[17] International organizations have supported this professionalization and sophistication. This sophistication was confirmed by a constitutional magistrate who, during a non-recorded and confidential interview, told me: "It is satisfactory when [community] organizations are advised by Indigenous lawyers with impeccable arguments, with providing context and [solid] legal points of view" (Interview, 2019).

This structure has allowed Indigenous communities to find legal support to channel their claims before the courts and has also provided judges and magistrates with sophisticated legal arguments to advance Indigenous rights. In political scientist Charles Epp's terms, in Guatemala, sustained Indigenous litigation brought "judicial attention to the new rights, judicial support for the new rights, and implementation for the new rights" (1998, 7). The Constitutional Court has favored Indigenous claims in cases mainly related

[16] This was a landmark case because the facts of the case occurred in the Constitutional Court's courtroom in 2003. Rigoberta Menchú Tum was presenting an unconstitutionality against former military head of the coup Efraín Ríos Montt. Ríos Montt was a presidential candidate for *FRG* party despite the constitutional ban on coup participants running for president. In the courtroom, FRG supporters harassed Menchú Tum with racist remarks "dirty indian… go sell tomatoes in the market…" *"india shuca… india... andá a vender tomates a la terminal… tomatera"* ("Aportes para el Litigio en casos de Discriminación Racial, Etnica y de Género" 2010, 78). The former president of the Court bench, Mario Guillermo Ruiz Wong, was also questioned because of his negligence.

[17] Some examples of these institutions are the Presidential Commission to Combat Discrimination and Racism—CODISRA— or the Defense of Indigenous Peoples in the Office of Ombudsperson—*Defensoría de Pueblos Indígenas*, the *Fundación Rigoberta Menchú Tum*, the Mayan Bar Association—*Asociación de Abogados y Notarios Mayas de Guatemala Nim Ajpú*—the *Consejo de Pueblos de Occidente*, and the *Bufete de Pueblos Indígenas*.

to legal pluralism and bilingual intercultural education.[18] The sustained litigation has allowed Indigenous associations to build legal, social, and political capacity to demand collective rights before the courts.

This sustained litigation has procured, to some extent, public recognition, and the political and financial "haves", a term scholar Marc Galanter employed to refer to the advantages that the "repeat players" (most likely industrial corporations, this type of players are repeatedly in litigation and have the resources to maintain their long-term interests) employ in the legal context of the United States (2006). The judicialization of Indigenous politics has evidenced that the "repeat players" are not systematically the natural resources corporations' law firms, as Galanter's theory would suggest, but Indigenous advocates and lawyers' associations. The multiple and repeated litigations have helped to strengthen legal arguments and political relationships to leverage Indigenous peoples' defense of self-determination before the courts.

The judicialization of extractive policies in Indigenous territories has increased considerably in recent years. As shown in Figure 2, within a period of 4 years (from 2015 to 2018), the Constitutional Court issued 17 judgments in this matter, which represent more than double of what was resolved in the previous 7 years.[19]

[18] According to the expert interviewees, the landmark cases are for legal pluralism: *caso Comitancillo* (1467-2014); for bilingual and intercultural education: *caso Santa María Ixtahuacán* (4783-2013, 4812-2013 and 4813-2013); for the respect for the Indigenous collective legal persons: *caso Chichicastenango vs. TELGUA* (1101-2010) and *caso Chuarrancho* (1052-2017).

[19] The first cases before the Constitutional Court were filed in 2007. From 2008 to 2014, only 7 decisions were ruled, as opposed to the period 2015–2018 where more than the double was ruled.

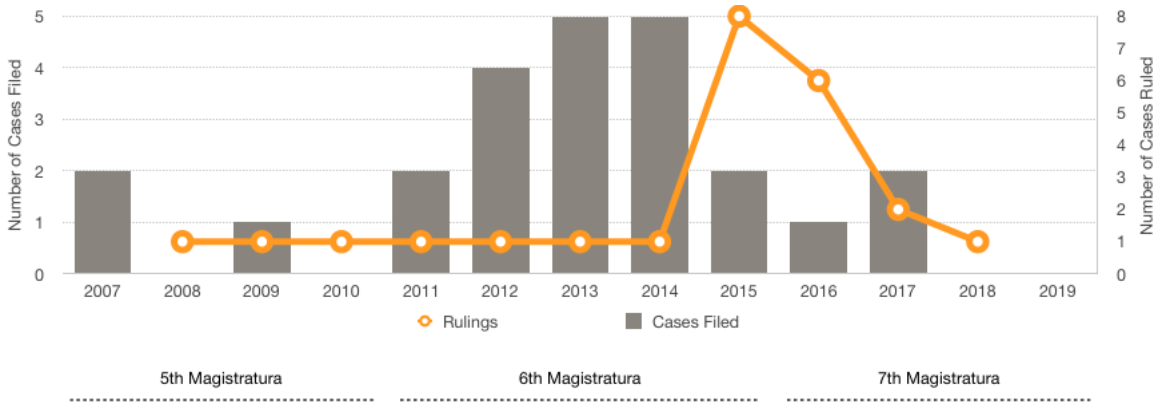


Figure 2: Free, Prior, and Informed Consultation Cases Filed Before and Ruled by the Constitutional Court.

Source: A compilation based on information supplied by the Constitutional Jurisprudence System

In sum, the Constitutional Court has expanded the scope of Indigenous Peoples' rights. More concretely, in the midst of the anti-corruption efforts, the right of Indigenous peoples to free, prior, and informed consultation has been progressively expanding since 2015. However, despite the existence of constitutional rights, the professionalization of Indigenous lawyers, the sustained litigation, the trainings to clerks, the receptiveness of sincere and committed constitutional magistrates, and the institutional design of judicial autonomy, the Indigenous right to free, prior, and informed consultation is still strongly disputed in the courts.[20] In this matter, the rulings have been progressive but palliative, meaning that the decisions have been made more to soften the conflicts by recognizing specific collective rights rather than to develop strong remedies for accountability and justice. I consider the rulings progressive because they have expanded step by step the application of the free, prior, and informed consultation process. However, they are

[20] Landmark rulings or prior consultation: *casos La Puya* (795-2016 and 1380-2016), *caso San Juan Sacatepéquez* (1031-2009 and 1925-2014), *caso Oxec* (90-2017, 91-2017 and 92-2017), *caso Minera San Rafael* (4785-2017).

merely palliative in that they do not solve the problem structurally embedded within natural resources extraction policies and legislation.

When the Court started to rule on Indigenous rights in 2008, it recognized the obligation of the state to carry out a prior consultation, although it denied that the consultation should have binding effects. Progressively, the Court has expanded this interpretation and it has even temporarily closed mines and dams. Yet, the rulings are only palliative because they do not expand on the right to self-determination. The progressive rulings have mediated between the Indigenous claims for self-determination and the elites' economic interests. To be sure, these progressive rulings do not transform the realities of the "colonial violence" lived daily in the communities affected by extractive activities: criminalization of protest, defamation against community leadership, murder, sexual violence, ecocide, and *terricidio*[21] (Sierra, Hernández Castillo, and Sieder 2013; Valladares de la Cruz 2014; Antileo Baeza et al. 2015). But they do challenge the elites enough to prompt them to countermobilize and backlash.

DISSERTATION OUTLINE

After locating this study within the field of judicial politics in Guatemala, in Chapter 2 I present the research process and the politics of my research. I integrate a causal explanation with interpretative approaches using a "studying-up" methodology: I examine the work and behavior of those in power, from the perspective of those below. In an in-depth qualitative analysis explaining the causes that triggered a backlash against

[21] "Terricidio" refers to "the death of the ecosystem, which encompasses the ecocide, femicide, and epistemicide". It is a term highlighting the effects of extractive activities in Indigenous territories by state institutions, corporations, and other actors in charge of extraction. The term was developed in 2015 by Mapuche activist Moira Millán after observing the similar struggles in the Americas and other regions of the world led by Indigenous and native women against extractive companies. The *Movimiento de Mujeres Indígenas del Buen Vivir* are seeking to recognize *terricidio* as a crime against humanity and as a legal mechanism to condemn extractive corporations when dispossessing Indigenous territories and other "forms of life" (water, forests, for instance) (Millán 2019; Alderete and Pardo 2021)

the Constitutional Court in Guatemala, I also bring into the conversation interpretations about the structural foundations of this event. The goal of bringing causality and interpretation together is to open conversations both with political science—more inclined towards a positivist tradition—and critical studies' goal of naming the structural discriminations and inequalities that produce struggles for justice. At the risk of being labeled as lacking *objectivity*, this dissertation aims to provide a causal analysis in the framework of activist scholarship aligned with Indigenous peoples' claims for social justice. As a scholar, I acknowledge the urgent need to critically address current trends of democratic backslidings and racist backlash, and this work is therefore embedded within this political and social context. My reflection on the demands of activist scholarship and self-reflection on my position in the Guatemalan context led me to reflect on key concepts—the *judicial advantages* and the *re-colonization* of the judicial arena—that have helped me to develop the argument of this research.

In Chapter 3, I review the existing literature on backlash and present my argument in detail. To summarize, backlash against the judicial institutions is a reaction to protect the *red lines* of a racialized capitalist regime entrenched in extractive activities. It is triggered by rulings challenging the extractive activities of natural resource industries and the control of public resources from the state through corruption (among other forms of exchange of favors and advantages). Together, natural resource extraction and state administration corruption constitute the core of extractivism. Backlash flags the limits of the core foundation of extractivism: the accountability to the dominant political and economic white and *ladino* elites with privileges historically obtained through state and natural resource control, mostly in Indigenous territories. Backlash entails countermobilization through two observable mechanisms: the activation of elites' *judicial advantages* and the joining together of a diverse coalition of colonial and conservative

actors. The type of backlash I discuss is not only a reaction against progressive legislation or public policy. Backlash, when judicial activism threatens the core foundations of the regime, entails the capture and re-colonization of courts.

In Chapter 4, I analyze the mechanism of *judicial advantages*, one of the resources elites used in their countermobilization. The in-depth study of the *Oxec* case reveals that economic countermobilization and the activation of judicial advantages were at play to re-colonize the judicial arena and influence decision-making within the Constitutional Court in favor of natural resource extractive activities in Indigenous territories. Ultimately, the Court ordered a consultation with the Q'eqchi' people to be carried out even after the construction and initiation of the hydroelectric plants in Santa María Cahabón (Alta Verapaz). The Court also ordered the Congress to issue a prior consultation law. Although this case motivated intense elite countermobilization and a perception of "loss of legal certainties", the ruling did not finally disrupt the status quo of the extractive regime. Nevertheless, the *Oxec* ruling served as one of several constitutional decisions that, taken together, crossed the red lines of the extractive regime. As my contributors and interviewees concurred, the most intense backlash against the Constitutional Court since the Peace Accords in 1996 coincides with rulings related to anti-corruption efforts and Indigenous peoples' rights, and more specifically in the latter case, to free, prior, and informed consultation. This backlash sought ultimately to capture the institution in order to suppress its potential to undermine the regime's foundations.

In Chapter 5, I identify the elements of the backlash process. As we will see, elite coalition building, involving the coalescing and organization of traditional and emerging white and *ladino* economic and political elites, is a significant indicator that the *red lines* of an extractive regime have been crossed. When diverse elites come together to defend a

political project based on impunity, it indicates that the core foundations of the regime are in danger (Siavelis 2006). Backlash against progressive rulings indicates the line that cannot be crossed: accountability of hegemonic political and economic elites for privileges historically obtained through state and natural resource control, mostly in Indigenous territories. In turn, I outline four types of violent reactions and attack strategies are identified. During this period, activation of legal resources, political non-compliance, intimidation through threats and public naming and shaming, and using media campaigns to discredit were all at play. The constitutional backlash outcomes are multidimensional because this reaction seeks, on the one hand, to break apart human rights and Indigenous movements, and on the other hand, to take back state and territorial control.

In Chapter 6, I conclude by highlighting comparative perspectives and recommendations to address the judicial disadvantages that Indigenous peoples meet before the Guatemalan Constitutional Court. After summarizing the argument and the main findings of this dissertation, I propose a most-similar comparative case studies design, comparing the case of Guatemala with the cases of Peru and Colombia. The research design can open new lines of inquiry to explain causality and variation on the existence of triggers (or the lack of triggers) for elite backlash against the high courts, the dissident magistrates, and their support structures. Finally, I present some practical recommendations to address the asymmetrical power relationships that play out within the constitutional justice system. Although the implications do not fully address Indigenous communities' disadvantages and racism before the high courts, or the structural constraints on the latter, they do provide some insight into efforts to de-concentrate the political and economic elites' control over judicial politics in Guatemala.

Chapter 2: Methodology, Politics of Research, and Theory Building

In this methodology chapter, I present the research design and my politics that resulted from my preliminary study and the conversations I had with my colleagues in Guatemala. First, I will explain the selection of the case, its relevance to national politics and in scholarly terms, and the methods I used to gather the data. Then, I will expand upon my politics of research. Here I focus on the logistics of the research process and offer an assessment of how my positionality as a researcher led me to develop two key concepts in this dissertation: *judicial advantages* and the *re-colonization* of the judicial arena.

This study is an in-depth within-case analysis, advancing a causal explanation with thick descriptions of *why* a brutal backlash against the constitutional authority was triggered and *how* it played out. I analyze the case of Guatemala during a critical juncture, referring to a period of systematic lawfare deployment to dismantle judicial and political advancements towards human rights. My study spans the period from February 2017 to July 2019, following the escalation of attacks against the Constitutional Court.

CASE SELECTION

I selected the case of Guatemala because the legal and political events I analyze in this dissertation embed *intrinsic importance* (significance) politically and scholarly. Politically, the paradox enmeshed within the case of Guatemala of the struggles for accountability and the capture of state institutions by organized crime (Bowen 2017; Mazariegos Rodas 2017; Schwartz 2021; Rodríguez, Muñoz, and Socop 2017; CICIG 2019a) calls for a scholarship that can actively contribute to addressing these urgent topics. As a Guatemalan citizen, I want my work to be in conversation with the ongoing debates in my home country.

In terms of scholarly relevance, the case of Guatemala is particularly salient due to the country's recent history of authoritarianism, civil war and genocide, and democratization. My study outlines a critical case whilst embracing the political, economic, and racial dimensions behind the constitutional backlash. It embeds several paradoxes. Although it is a country characterized by *de facto* lack of judicial autonomy due to the influence of societal actors (Bowen 2017) and tenure policy (Brinks and Blass 2018), it is also a country with a design that should provide some degree of pluralism and representation on the constitutional bench (García Laguardia 1994). After all, the Guatemalan 1985 Constitution was one of the first constitutions in Latin America to include provisions regarding Indigenous collective rights.

With the signature of the Peace Accords in 1996, legal frameworks and institutions were created to strengthen the democratic and multicultural justice system (Domingo and Sieder 2001). In this effort to democratize the justice system, international cooperation projects and the United Nations—first with the Peacekeeping Verification Mission in 1997, the Joint Programs of the United Nations System, and finally the International Commission against Impunity (CICIG) in 2006—have supported public institutions and civil society through technical assistance in litigation, prosecution, and decision-making.

An example of such support is the *Programa Maya*, which began in 2009 and was promoted by the UN Human Rights Office of the High Commissioner (OACNUDH), the UN Children's Emergency Fund (UNICEF), the UN Development Program (UNDP), and the Norwegian cooperation agency. This program seeks to contribute to Indigenous men and women's political and legal participation through training programs, advocacy towards justiciability of human and Indigenous rights, facilitating networking, and

communication.[22] This example illustrates that international institutions and NGOs in Guatemala have implemented efforts towards the democratization of the judicial system with a special emphasis on human and Indigenous peoples' rights. In this way, from a theoretical standpoint, a judicial crisis in Guatemala ought to be a rare event due to the strategic alignment of magistrates to dominant state politics (Helmke and Ríos Figueroa 2011; Helmke 2005). Still, from 2015 onwards the country has experienced a serious backlash against constitutional authority, the rule of law, and human rights in general.

The cases selected to explain the escalating and brutal reactions (e.g. the use of threats for intimidation and to discredit, and the activation of legal strategies to remove dissident magistrates) against the constitutional authority outlined in this dissertations stem from my exploratory interviews. My interviewees raised two independent factors to explain why the Constitutional Court was under attack: the fight against corruption and for Indigenous rights for free, prior, and informed consultation. Both factors, together, triggered intense reactions against a Court that was promoting anti-corruption efforts and expanding Indigenous rights.

The *Oxec* judicial case presents relevant features of legal mobilization and decision-making that I explain in detail in Chapter 4. Briefly, this case involved two dams owned by Oxec, S.A. established without proper free, prior, and informed consultation process and consent of the affected Indigenous communities at large. Inspired by legal scholar Néstor Pedro Sagüés, the constitutional reporting magistrate decided in 2017 to produce "an atypical ruling with nomogenetic aspects" (Oxec I and II 2017, 80).[23] This

[22] For more information, refer to https://onu.org.gt/onu-en-guatemala/programas-conjuntos/programas-cerrados/programa-6-2/

[23] We can read in the *Oxec* ruling that atypical and nomogenetic decisions "involve the production of normative guidelines that are inferred from the constitutional text itself. These rulings overcome the paradigm that conceived of constitutional courts as pure decisions makers where the annulment of normative acts or the definitive suspension of non-normative acts of authority were possible." (2017, 77)

ruling was made to address, on the one hand, the structural issues of Indigenous exclusion in the industry policy decision-making. And on the other hand, to provide solutions to the legal and institutional voids concerning the Indigenous right to free, prior, and informed consultation. In this way, the Constitutional Court took an active role in law and policymaking. The interested parties in this case—the Indigenous communities, the industry corporations, the lawyers, and the Ministry of Energy and Mining—were informed that the Court was taking an active stance with this nomogenetic decision-making project. The case became one of public interest because the ruling would ultimately regulate the national energy policy and the international market. In general terms, regulation would pass through the creation of a detailed administrative procedure to include Indigenous participation in the project's implementation. This procedure would ultimately impact programmed power demand and daily energy production for the national consumption and the exports.

At the time this project was conceived, the key question in Guatemalan judicial politics seemed to be why, in that context, was the Constitutional Court ruling in ways that appeared to be quite favorable to Indigenous claims. Because of its political, legal, and economic relevance to Indigenous strategic litigation, economic implications, and green energy governance, *Oxec* was initially my central case, that I would study in-depth and ethnographically. When I traveled to Guatemala to do fieldwork, however, the situation had changed. Instead of observing the Indigenous strategic litigation that, according to my initial hypothesis, explained the transformative rulings that the Constitutional Court produced in favor of Indigenous self-determination, the main argument that emerged from my fieldwork was the opposite. Elite countermobilization explained the backlash against the constitutional authority. The political juncture and my fieldwork experience in the midst of this political juncture informed the argument I

advance in this dissertation. The political juncture led me to include three other judicial cases related to anti-corruption efforts and natural resource extraction.

The other cases that I consider in this dissertation are also decisions issued by the Constitutional Court. In Chapter 5, I explore the relationship between the four legal cases and their impact in terms of backlash. The four cases are as follows:

1. the *Oxec* case,
2. the *CICIG* case, which deals with an unconstitutionality to protect the head of the CICIG, Iván Velásquez, and his work in the fight against corruption after being declared *persona non-grata* by former President Jimmy Morales (August 2017),
3. the *Criminal Code* case, which deals with an *amparo provisional* against the reforms to the Criminal Code seeking to set the conditions for impunity in corruption and prison sentences to politicians and business actors convicted for corruption, and military officials convicted for crimes against humanity and genocide during the civil war (September 2017) and,
4. the *Minera San Rafael* case, which deals with an *apelación de amparo* for San Rafael Mining to properly conduct free, prior, and informed consultation in the Xinca territory of San Rafael Las Flores, department of Santa Rosa (September 2018).

According to my interviewees, these four judicialized conflicts were key factors leading to the backlash against the constitutional authority.

I excluded intentionally from the case selection the multiple judicial decisions concerning transitional justice and crimes against humanity and genocide.[24] Although these cases contributed to intensify the backlash, I did not include them directly for two

[24] Some of the most well-known cases are the *Dos Erres Massacre* (2011) (see for instance Reynolds 2011), *Ixil Genocide* (2013) (see Bird 2013), the *Sepur Zarco* (2017) about sexual slavery (see Burt 2019; Velásquez Nimatuj 2021), the *Creompaz* (2016) (see González Chávez 2017) about enforced disappearances cases.

reasons. First, these cases were decided in the Judiciary's lower courts and most of them did not reach the Constitutional Court, which is the central institution under study in this dissertation. With the exception of the *Ixil Genocide* case that was overruled in 2013 by the Constitutional Court arguing procedural errors, none of the decisions have arrived at that Court.

Second, the military sectors negatively affected by the accountability efforts coalesced with the other sectors equally affected, and found the opportunity to countermobilize together in the political juncture between 2017 and 2019. The *CICIG* and the *Criminal Code* cases mentioned above were as significant for the military convicted to prison in crimes against humanity as they were for the corrupt politicians that were part of the backlash coalition. This coalition of different sectors, including political and economic elites, and their supporters in different realms of politics, came together with a strategy to ensure their privileges, which included dismantling the CICIG and reforming the Criminal Code. Therefore, although the transitional justice cases were also triggers for the backlash described herein, we can get an adequate sense of the origins and tactics of the coalition by examining the sample of cases listed above. The role of retired and in-office in the backlash strategy is fully described in Chapter 5.

EVIDENCE-GATHERING AND ANALYSIS

This qualitative study provides new evidence for *how* backlash occurs and plays out. The evidence I have gathered has mostly to do with political and economic elite countermobilization which, during my fieldwork, appeared to play a much more important role than expected. This research was previously informed by exploratory fieldwork conducted during the summers of 2016 and 2017. Such preliminary research

led me to view *Oxec* as the central case, and my primary fieldwork led me to incorporate the other three cases.

My personal research experience shows that the collection of data availability amid a political crisis involving backlash against a Constitutional Court is extremely difficult. During my 10-month fieldwork in Guatemala City and Santa María Cahabón (department of Alta Verapaz, where the Oxec, S.A.'s dams are located) from August 2018 to June 2019, gaining access to the Court and interviewing constitutional magistrates and their clerks proved to be challenging. Political crisis hinders accessibility and hampers research viability. However, such crises can also create the opportunity for unique and robust evidence of elite coalition building, the mechanisms used to backlash, and the discourses used to legitimize such backlash. Through secondary sources, semi-directed interviews, and ethnographic observation, I bring original evidence that is not readily available and that can be used for the purpose of theory building.

Secondary Sources

In the first stages of my fieldwork, I followed political events and collected data primarily from newspapers, political analysis broadcasts, and social media. I relied mostly on the newspapers to locate the discussion of the Oxec I and II megaprojects, the actors involved, the interests at stake, and the discourses mobilized in terms of development policy, legal certainty, green energy, and impacts within the Q'eqchi' communities of Santa María Cahabón where the dams are located. I explored the dominant newspapers *Prensa Libre*, *elPeriódico,* and *La Hora,* as well as the digital newspapers from a critical perspective *Plaza Pública*, *Nómada,* and *Prensa Comunitaria.*

Next, I accessed the criminal investigation reports which resulted mostly from prosecution processes by the Public Prosecutor's Office (*Ministerio Público*) and the

United Nations CICIG. These reports, as privileged and reliable sources, have made a fundamental contribution to uncovering what the CICIG has labeled as "the extraction of resources from the state" (2019b). The reports have opened a path for understanding the entanglements between the formal and the informal, the state capture, and the influences within ordinary politics, economics, and judicial politics (CICIG 2019b; 2019a; Open Society Foundation 2017). These reports have contributed to highlighting the relevance of the Guatemalan experience of the fight against corruption to the Central American region at large. Also, the reports have had policy implications mostly before US agencies in Washington D.C. to implement anti-corruption policies in the Central American region. For instance, in 2017 the US Government started to sanction several Guatemalan politicians and businesspersons because of human rights abuses and corruption through the bipartisan Global Magnitsky Human Rights Accountability Act enacted in 2016 in the US Congress.[25]

Semi-Directed Interviews

As the end of 2018 was approaching, I was able to conduct the first interviews with the parties in dispute at *Oxec*. Later, at the end of my fieldwork in 2019, I conducted interviews with clerks and magistrates. In sum, I interviewed Q'eqchi' community members from Santa María Cahabón, staff from the *Colectivo Madre Selva* who were providing litigation assistance, the Sustainability Director of Oxec, S.A., who was directly involved in the corporation's defense strategy, the corporate lawyer in charge of

[25] The Global Magnitsky Human Rights Accountability Act identifies human rights offenders throughout the world and imposes sanctions such as property and transaction blockages and visa withdrawals (https://home.treasury.gov/news/press-releases/sm0243). Moreover, in her first diplomatic trip in Guatemala in July 2021, Vice-President Kamala Harris informed the creation of an anti-corruption task force for the Central American region (https://lahora.gt/harris-crearemos-una-fuerza-de-tarea-anticorrupcion/).

the case, non-governmental organizations actively working for Indigenous rights, and the clerks and magistrates of the Constitutional Court.

I also interviewed key actors from the institutions in charge of the constitutional magistrates' selection process, namely, the Universidad de San Carlos de Guatemala and the former president of the Guatemalan Bar Association. Stakeholders from the Executive, Congress, and Supreme Court did not answer my requests. These interviews were intended to find causality, correlation, or any type of linkage or constraint vis-à-vis magistrates' decision-making. Although I did not find any significant relationship, the interviews were conducted to exclude aspects of theoretical interest such as magistrates' dependency towards their electorate. In total, I conducted 51 interviews, as Appendix A details (I mention the interviewees' affiliations for transparency purposes but I maintain anonymity to secure their integrity, although most of them agreed to be named and recorded).

Ethnographic Observation

Last, I carried out multi-sited ethnographic work in the Constitutional Court and in the worksites of both companies and their law firms, as well as in Santa María Cahabón, villages in the surrounding area, and the human rights organizations that community members are linked to. My visits and observations were noted in an agenda and then typed on a computer. The exercise of noting my daily visits and interactions occasioned both an active memory and constant reflection on the complex dynamics of the events studied. Although it is a method where the researcher's perspective is at the forefront of the description, the subsequent analysis helps to find behavior patterns on how and why actors act as they do. This ethnographic work delivered original qualitative

observations that helped me to make sense of the typical patterns that make up the judicial arena and to infer causal claims (Katz 2001; Wedeen 2010).

The evidence gathered was organized through a qualitative and informal matrix which I show in Appendix B for the purpose of research transparency. The matrix signals the very first hypothesis of this dissertation project. The first research design was intended to look closely at the Indigenous legal and political mobilizations and their effects in terms of Indigenous rights expansion. The initial and main hypothesis pointed to the sophistication of Indigenous movements and their networks in affecting constitutional decision-making towards Indigenous rights expansion due to their increased (1) political capacities to be players in the magistrates' selection process, and (2) legal sophistication to strengthen strategic and class action litigation. The matrix shows the research process that was followed. However, the research process revealed findings that led to the revision of the original hypothesis. Other observations highlighted the activation of elite countermobilization to hinder such rights expansion. Thus, the findings on the ground pushed me instead to write a dissertation on elite countermobilization rather than Indigenous mobilization.

LOGISTICS AND POSITIONALITY

Leading professor on methodology and political science John Gerring reminds us that evidence-availability results from the attributes of the researcher:

> [The availability] of within-case evidence is partly a product of the case itself and partly a product of the researcher's personal attributes – his or her linguistic competences, connections, and previous acquaintance with a region, time period, or topic. I assume that these logistical features are taken into account – implicitly if not explicitly – in any case-selection process. (2017, 44)

Here, I expand upon the *logistical features* of the research process through the critical lens of *positionality* and the implications of my role as a researcher in terms of

conceptualization and theory building. As a non-Indigenous ally in the Indigenous struggles for justice in Guatemala, I apply a "practice of reflexivity within research processes" (Soedirgo and Glas 2020, 527) which has generally been absent from the mainstream political sciences. In the same vein, I reveal how "the formations of political science as a discipline have erased Native identity, Native philosophy, and Native history from its areas of concern" (Ferguson 2016, 1029). This critical assessment of my discipline and my alliance with Indigenous organizations as a non-Indigenous scholar have led me to incorporate the lens of *colonialismo interno* (González Casanova 2006) and "settler colonialism" in the Americas (Ferguson 2016) for a critical political science. For the purpose of this dissertation, I focus on three aspects that influenced my access to evidence: the *advantages*, the *networks*, and the *informal relationships* prevailing in the field of study.

This is not my first time studying the judicial arena in Guatemala. In 2011, I worked for the *Instituto de Estudios Comparados en Ciencias Penales* (ICCPG), a think tank leading academic research and conducting political lobby, where I assessed transitional justice policy in Guatemala. Also, in 2014, I carried out a research project for the Mayan Bar Association on legal pluralism in the Supreme Court of Justice. Explicitly identified by my Maya colleagues as a non-Indigenous—more specifically, as a *kaxlana* in Maya language, meaning a person who does not belong to the Indigenous community—, they and I strategically opted to "study up" the political institutions (Nader 1972). Subsequently, during the PhD program, my research turned towards the Constitutional Court. My colleagues and I assumed that my academic networks and my relatively privileged position in Guatemalan society would grant me ready access to one of the most inaccessible institutions of the judicial field, the Constitutional Court.

Although my access to the field was not as ready as was first assumed by my Maya lawyer colleagues, the advantages that I embody, the networks that I have access, and the informal relationships that I have with my Guatemalan colleagues indeed facilitated my research process and my access to the Constitutional Court and the industry sector. The logistics were not as I initially envisaged, but I managed to accommodate new strategies to access the main stakeholders in the judicial arena. From my "personal attributes" as a researcher (Gerring 2017, 44) and my positionality (Haraway 1988; Bastos and Cumes 2007; Smith 2012), I was able to pinpoint the assumptions and biases underlying this dissertation's methodology and politics. By making these biases explicit, the data gathered and triangulated allowed me to develop grounded concepts such as *judicial advantages* and *re-colonization*, and to visualize the mechanisms leading to the backlash caused by two independent yet interconnected variables—anti-corruption and natural resources—which I conceptualize as *anti-extraction rulings*.

Whilst preparing the logistics to enter the field study, I had three strategies involving my connections whom I believed could facilitate access to the Constitutional Court. My first connection was a substitute magistrate affiliated with the Mayan Bar Association. I assumed that he would allow me to interview him and his colleagues at the Constitutional Court, but the follow-up interviews never did occur and I was not told why. My second contact was my previous employer at the ICCPG, who used to be a consultant in the UNDP and worked as a liaison and expert technician for the Constitutional Court, especially for one of the leading magistrates. I assumed that he would be able to introduce me to some magistrates and staff at the Court. My third contact was a colleague and friend that personally knows one of the constitutional magistrates and who proposed to introduce me to that magistrate. These last two

strategies did not yield results because personnel at the Court were focused on self-preservation as a result of sustained political attacks. In sum, access to the Constitutional Court was more difficult than I had imagined, and I was forced to find alternative strategies.

Being a Ph.D. student at a US-based university with a French last name finally acted as my ticket of admittance into the realm of the Court and the industry sector. It became apparent to me that the first constitutional magistrate I interviewed was himself a law professor who knew well UT Austin, and his son used to study at the French school I attended when I was young. This magistrate connected me with his son who is currently a clerk in the Court. During my interviews with him, we also discussed our shared school experiences, and he even introduced me to his own children who also are attending the same French school. The *advantages* that I possess provided me with the opportunity to create an *informal* connection with this clerk, who subsequently introduced me to his close *network* at the Court, some of whom I also interviewed.

My advantages also played out in the corporate side of the research process. It is true that the corporate actors explicitly told me that they were interested in telling their version of the story concerning the free, prior, and informed consultation situation in the country. And this interest facilitated my many interviews with the industry sector. However, most of the interviewees in the industry sector told me frankly that they were expecting a foreign researcher, due to my university affiliation and my last name. I suspect that such presupposition played in my favor with these interviewees, who appeared to be linked to the United States due to their Spanglish language and the several cultural features they referred to during the interviews.

In addition, at some point in almost every interview, after explaining my genealogy and cultural background, the conversation would turn towards mutual

acquaintances. These mutual acquaintances, I noticed, opened more "*en confianza*" interviews. For instance, at the end of the second interview with the lawyer representing Oxec, S.A., we found out that my mother is a good friend of his aunt and that his cousin and I also used to study at the same French school. When we came upon this connection, he said something along the lines of: "if I had known, I would have told you more things *en confianza*". In this way, after finding out from mutual acquaintances with some of the interviewees, my ability to access the industry sector occurred in a snowball fashion and I was able to interview various other actors.

In essence, the *advantages* and *networks* that helped me gain access to the field, as well as the mutual acquaintances found in an *informal* fashion, pushed me to critically reflect on my economic and socio-racial status within Guatemala and the implications of such status in terms of my research process. Together, my Guatemalan–French cultural background and socialization and my affiliation at UT Austin had an effect on my open access to the Court and the industry sector.

LIMITATIONS AND STRENGTHS

According to Gerring's categories of case studies, this study is an "omnibus" case because the study covers multiple topics of interest (2017, 42).[26] It must be noted here that my study does present methodological shortcomings. These shortcomings have to do with the unlikelihood of replicating this research design to similar cases, and the difficulty of making causal comparability (although I try to make a comparison with other Latin American cases in Chapter 6) and inferring generalizations due to the unique

[26] Gerring's typology of case selection strategy and criteria includes "descriptive", "causal", and "omnibus" goals. The "omnibus" case does not seek universalization, but "broad application" to other case studies (Gerring 2017, 42). Applied to data collection methods, "omnibus" surveys are surveys encompassing myriad topics of research interest (such as Public Opinion Projects) (Schutt 2012, 232).

critical juncture that I faced during my fieldwork. However, the overall argument of this dissertation, as explained in the introduction, can be applied to other case studies which deal with similar backlash processes. The generalizations of my argument, its scope of applicability, and variation measures might be developed later in subsequent research projects.[27]

Nonetheless, after acknowledging these limitations and the techniques used to overcome them, my dissertation's research design largely follows the rationale of interpretative works within the framework of activist research, which pays special attention to methodological rigor as a condition for scientific inquiry. In activist scholarship, methodological rigor and internal validity must be accountable not only to the criteria of scientific inquiry but also to the social movements involved within the selected case study. The edited book by anthropologist Charles Hale "reclaims for methodological rigor" in the framework of scholarship engaged with struggles for social justice vis-à-vis the critics of the prevailing positivist tradition (2008). From this standpoint, internal validity results from the debates carried out with my colleagues within the social organizations that carry out the everyday life of the struggles in the selected case. I showed some of my findings with my colleagues in Guatemala and have informally triangulated and verified with them the data collected.

As part of methodological rigor, critical anthropology has noted the importance of "includ[ing] systematic reflection on the positioned and intersubjective character of the research process" (Hale 2008, 13). In other words, the researcher's experience in the field and the positionality might also influence the data collected, and this should be taken into

[27] To address these gaps, I envision the possibility of conducting a Network Analysis. Network Analysis shows social linkages between persons or organizations (the *nodes*) through quantitative measures and allows the researcher to "capture important contours of opportunity and constraint that shape social, political, or economic behavior" (Ward, Stovel, and Sacks 2011).

account for analytical purposes. In the midst of intense and often violent struggles for social justice, scholarship must interrogate its own politics of research and the positionality of the researcher. In my personal situation, my colleagues from the Mayan Bar Association asked me in 2014 to study "what lies behind the judges and magistrates, what are the obstacles that *we*—the Indigenous lawyers—don't see, but that *you*—myself—can observe". Thus, the goal of this dissertation has been, from the very first moment, to uncover the backdrop of the *realpolitik* playing out in the judicial arena.

Chapter 3: Theory

INTRODUCTION

In Chapter 1, I explained how the Guatemalan Constitutional Court built its support structures to gain sufficient leverage to engage with dominant politics. Linkages with national, international, and transnational institutions allowed the dissident members in the Court to engage with the political and economic elites involved in corruption scandals and violations to Indigenous peoples' rights in a context of anti-corruption efforts. However, as noted in the introduction, the Constitutional Court remains controlled by dominant politics mainly because of its selection process model where these politics are in dispute. Therefore, the Constitutional Court underwent a period of fragmentation. This fragmentation motivated the elites to mobilize, influence decision-making in constitutional matters, and effect a backlash against the *pro-human rights* structures.

In this chapter, I draw upon the main scholarship in the Americas that has studied backlash within political science and the critical anthropology, to suggest an interconnected theory on backlash between judicial politics and racial politics. In a nutshell, I argue that backlash against progressive judicial rulings is not only a matter of hegemonic culture opposing more liberal rule of law. We need to address backlash as the reactions to maintain conservative and colonial structures and ideologies, mobilizing not only government actors, but also multiple networks of power. In the second section, I develop in detail a theory on the politics of backlash: the outcome of anti-extraction rulings challenging the core interests of dominant and racialized economic and political elites. I provide a general overview of the mechanisms that enable countermobilization

and backlash in the judicial arena. I expand in detail on these mechanisms in Chapters 4 and 5.

BACKLASH: CONNECTING JUDICIAL AND INDIGENOUS POLITICS

Although backlash is increasingly a topic of interest in the social sciences, especially in terms of government and racial relationships, they have not yet been studied in tandem. Below, I reflect on what backlash means and entails, drawings upon the scholarships on judicial politics and Indigenous politics that have contributed to its complex comprehension.

In judicial politics, three approaches have greatly contributed to understanding the causality embedded in backlash and its processes. The study of backlash –a conservative reaction against progressive judicial decisions– has been tackled from cultural, strategic, and structural perspectives. These perspectives point to different, although not mutually exclusive, aspects of backlash. Briefly, judicial backlash theory, coined after Klarman's and Rosenberg's scholarship, argues that backlash is more likely when judicial decisions engage with the hegemonic conservative public opinion (Klarman 2005; Rosenberg 2009). Second, the strategic accounts for judicial behavior and its effects suggest that backlash –or "judicial crisis"– happen when "expansive" or "activist courts" challenge government policies (Helmke and Ríos Figueroa 2011). Third, a structural or political economy perspective finds that backlash is the consequence of judicial decisions engaging with regimes' structural interests (Moustafa 2003; Scheppele 2018). These three approaches have accounted for many case studies in the Americas and other regions of the world when focusing strictly in government and judicial politics, and their effects in social life.

However, these approaches have disregarded the racial politics embedded in state politics. Increasingly, critical race theory in political thought and anthropology are analyzing the racial foundations of societies that explain the rise and expressions of white supremacism in the United States, and the violent racist reactions against Indigenous and black communities in Latin America. Therefore, the comprehensive study of backlash, including the "racial reaction against the expansion of rights made possible by the successful anti-racist activism of prior decades" (Hooker 2020a, 5), needs to address these racial foundations that constitute the whole event of backlash.

The "Judicial Backlash Theory": Insights from the Culture-Centered Perspective

In the United States, judicial backlash theory has focused on studying and discussing the causal connection between progressive judicial decisions and the conservative reactions that occur in other realms of politics, such as in elections, public policy, legislation, public opinion, and mass mobilization. What is at stake in the debate is the capacity of courts in promoting social transformations. Overall, proponents of this theory tend to adhere to a pessimistic perspective about the role of courts in the promotion of social transformations because of the resistance and opposition of dominant sectors of society defending hegemonic ideologies and social orders against progressive decisions advanced in the courtrooms. Backlash, in these cases, is motivated to maintain a status quo through dominant ideologies. Judicial backlash theory made visible the importance of culture and ideology in judicial politics and the aftermaths of judicial rulings.

More concretely, legal historian Michael J. Klarman (2005) traces the conservative reactions and brutal violence that followed the judicialization of politics such as racial desegregation (Brown v. Board of Education of Topeka ruled in 1954) and

same-sex marriage (Lawrence v. Texas in 2003) accordingly during the 60's in the southern states, and the 2000's. He highlights three main reasons to explain political backlash: "[The cases] raise the salience of an issue, they incite anger over 'outside interference' or 'judicial activism,' and they alter the order in which social change would otherwise have occurred." (2005, 473). Klarman insists that backlash exists because conservative forces are likely to mobilize multiple resources, both in the electoral and the legislative fields, where they have a wider range of possibilities to negotiate and maintain their political preferences (2005, 477). Similarly, political scientist Gerald Rosenberg argues that backlash is likely when rulings are unpopular and lack of elite and public opinion support. In the Brown case, the Supreme Court made a progressive decision in the midst of an apartheid structure with slavery legacies. As the post-Brown period showed in the United States, social and cultural barriers act as "constraints" for courts to rule towards civil rights' expansion (1991, 83).

Judicial backlash scholarship grants special attention to the role of ideas –white supremacy, for instance– that are likely to trigger brutal reactions against the Supreme Court's progressive rulings. Although ideas and culture are central aspects to explain backlash and the limits of courts in social transformation, I argue that these hegemonic ideas in a dominant culture indeed support profound social and economic structures. Like the dominant economic system in the South of the United States contested in the 50s and 60s and the still-prevailing *latifundio* in Latin America, social and economic structures have been and still are racially organized through mostly large land tenure in the hands of white elites and forced or cheap labor in charge of Indigenous peoples and black communities. Control of resources are central to this social and economic structures. Although this is a very schematic representation, the general structures respond to a racial division of class, and hegemonic ideologies still answer to this trend (see the

Modernity/(De)Coloniality Project). These structures organizing resources and their extraction are built upon racism and other forms of discrimination to maintain white colonial dominance.

In the light of this scholarship, I go beyond and argue that hegemonic ideologies are not only "constraints" for courts to decide for civil rights' expansion, but they actually reveal core foundations of regimes. Hegemonic ideologies and dominant culture reveal *who* has taken advantage of those structures and resources, *when* and *how*. Backlash, therefore, uses hegemonic ideologies to defend regimes that privileges elites and other dominant social sectors –by excluding others–. The Brown case in the United States reveals, for instance, that a racial capitalism constitutes the core foundation of a "social and economic regime in the South subordinat[ing] blacks to whites" (Tushnet 1990, 361; Bloom 2019).

In the same vein, more recent comparative judicial politics scholarship has focused on the rise of conservative countermobilizations in the Americas and Africa. Countermobilizations contest political decisions (Rakner 2018) or socially and ideologically sensitive demands, like abortion and sexual reproductive rights (T. Keck 2009; Gloppen 2018; Rubial 2019). According to these authors, ideology is central to motivate mass mobilizations. However, what these authors argue is that backlash is not only caused by courts' decisions but, often, by legislative or executive agendas, or massive social mobilizations promoting conservative agendas. Countermobilization, thus, exists because organized sectors react against legal, political or social developments that engage with hegemonic ideologies.

However, backlash against judicial rulings is not a permanent juncture nor a total phenomenon erasing all effort to progress. Political scientist Thomas Keck studied the advancement of same sex marriage in the USA. He argues that litigation and judicial

decisions in favor of this specific right stimulated Legislative reforms and electoral victories in some states of the USA and, that these victories were diffused to others (2009, 160). Not all unpopular decisions cause backlash since there are cases where courts have opened paths or political ways to advance rights' or policy change. Aligning with this more optimistic perspective, I claim that backlash, although can be a juncture of political violence and institutional attacks, also opens opportunities for renewed social mobilizations, litigation strategies, and other unintended political processes reshaping the hegemonic ideologies. Backlash is not a totalitarian effect, and instead, creates a new status quo.

This culture-centered approach highlights the importance of hegemonic ideologies, which are closely intertwined with the role of elites supporting the courts.[28] However, there are situations where the high courts decide in cases that have popular support but lack of the elites' support, and still backlash against those rulings is great. This kind of situations poses a different question. What does backlash reveal about the elites' ideologies and dominant culture when they perceive challenge coming from the high courts? Political scientist Ran Hirschl provides an answer to this question when studying the foundations of constitutional authority in times of inclusive politics.

According to Hirschl, the constitutional foundation of judicial power answers to elites arrangements: a "[…] conscious strategy (for judicial empowerment) undertaken by threatened political and economic elites seeking to preserve their hegemony vis-a-vis the

[28] The question about judicial independence and the role of elites in judicial politics have been tackled by varied scholarship in the political scientist. A critical Marxist approach is found in the work of Gramsci 1991 and Poulantzas and Hall 2014. This approach argues that the courts exist to defend the interests of the rich. In regard to the justices' appointment system in the United States, the other approach advanced by Dahl 1957 or Rosenberg 1994 argues that justices are less likely to challenge the political elites that have appointed them on the bench.

growing influence of "peripheral"[29] groups in crucial majoritarian policymaking arena." (2000, 91) In these terms, a backlash also needs to be understood as an elitist reaction against the courts breaking with that constitutional foundation of judicial power, and a motivation to capture the courts. The threat Hirschl talks about comes from the politics of accountability implied by the mobilization of the "culturally-different" groups, such as Indigenous peoples, or by a large civil society and international actors with sufficient leverage to engage with powerful economic and political elites. This is another type of backlash triggered by economic and political elites seeking to maintain their resources and privileges, and their economic interests and ideas about determined social orders.

The culture-centered perspective reminds us that ideologies need to be taken seriously when studying countermobilization and backlash. Therefore, one question that this dissertation answers is what are the elites' ideologies that are challenged when the high courts decide in cases that threaten their structural "hegemony"? This question leads to another concern: why would judges and magistrates challenge the elites, that, as we know, play a central role in supporting any judicial system?

Behavior, Networks, and Backlash: Insights from the Court-Centered Perspective

The common assumption in political studies is that judges and magistrates behave strategically to fit their interests and ideas in relation to the power dynamics in national politics. Therefore, judges challenging dominant politics led by political elites should be rare, and consequently, backlash against judicial institutions should be less likely.

[29] In Hirschl's theory, constitutional authority is an artifact of hegemonic elites at the center of judicial politics. When "well-organized minority groups" or "peripheral groups" as he calls them –in relation to the hegemonic elites- exert pressure in policymaking areas, elites "may initiate a constitutional entrenchment of rights in order to transfer power to the courts." (2000, 95)

This opens to the scholarship on judicial behavior that explains what motivates judges and magistrates to behave and decide as they do. The scholarship on judicial politics has advanced three models (which are not mutually exclusive) accounting for judicial behavior and decision-making. These are known as the legal, the attitudinal, and the strategic models (Baum 1997).[30] The basic common ground between these three main models is that backlash is the result of judicial decisions that challenge significant sectors of society. These decisions depend on the choices judges and magistrates make. Therefore, backlash against the judicial institutions depends on judicial decision-making within a specific political juncture.

Most of the judicial backlash scholarship has been focused within the strategic model.[31] To stay on the bench and to protect the judicial institutions, judges are more likely to perform strategically. In situations when government and Congress are aligned, judges have less opportunities to engage with dominant politics (Sieder, Schjolden, and Angell 2005; Helmke and Ríos Figueroa 2011). If judges engage to counter majoritarian tendencies in the other branches, those branches of the state are more inclined to "court-curbing" or "court-packing"—reducing the power of the courts—and to trigger judicial instability through actions signaling the court's illegitimacy. The available strategies become more complex when the political juncture places constraints on the bench which

[30] The legal model explains how the legal and constitutional frameworks structure and limit judges in their rulings. The attitudinal model explains to what extent the judges' own ideas matter to rule as they do. The strategic model sheds light on the "rational" aspect of judges' behavior perceiving them as economic actors seeking career and individual advancement. This model assumes that judges acknowledge relevant aspects of the judicial and political context (internal and external opportunities and constraints) to calculate their moves and enact their decisions.

[31] Almost a synonym of prudence, strategic behavior entails acting on the spectrum of the political possibilities, either to maintain popularity (Baum 2006), to enact certain ideas and commitments (González-Ocantos 2016), to survive politically (Helmke and Ríos Figueroa 2011), or to optimize and implement public policy (Gauri and Brinks 2008). Judges' actions cannot be explained only according to the laws or their ideas. They must act strategically, combining the legal frameworks, their own ideas and commitments, their personal interests, all in the light of the prevailing political context.

inhibit judges from producing expected rulings. These cases are generally conceptualized as difficult cases engaging powerful actors and potentially compromising the judges and magistrates.

Although these court-centered perspectives offer significant explanations for understanding *why* backlash against judicial institutions occurs and *how* it occurs, these perspectives mostly focus on the players in the formal game, privileging the three branches of the state as ideally separate powers: the Executive, Congress, and the Judiciary. These perspectives, I argue, are too narrow and dichotomous to explain my empirical findings. I hereafter claim for two theoretical and conceptual comprehensive contributions to understanding a backlash that seeks to protect the deep foundations of a regime. The first contribution relates to the need to expand the ideal of separation of powers in order to depict the hegemonic actors in the game. The second points to the limits of rights' expansion and judicial enforcement when these disturb the elites' core interests.

First, these perspectives tend to exclude *de facto* and relevant power networks, especially economic and social elites and coalitions, such as organized corporations, churches, military officials, prominent lawyers supporting and influencing political and judicial actors. The strategic model assumes certain degrees of state autonomy from societal dynamics and existing separation of powers between the branches of the state. Conceptually, these other elites and coalitions rarely appear in the institutional game although they often greatly play out formally and informally within the judicial politics.

To address this gap, I align with critical political theory of the state claiming that the distinction between the trilogy state-society-market is unclear and "elusive" in political theorist and historian Timothy Mitchell's words (2006, 170): "We must take such distinctions not as the boundary between two [or three, including the market]

discrete entities but as a line drawn internally, within the network of institutional mechanisms through which a social and political order is maintained." Foucauldian scholars, such as Mitchell and sociologist Nikolas Rose argue that it is misguided to study the state as a structure and a set of concrete practices in public institutions. Instead, they claim for the study of the mechanisms of power or "governance" that go beyond the state and its apparent frontiers: "modern systems of rule have depended upon a complex set of relations between state and non-state authorities, upon infrastructural powers, upon networks of power, upon the activities of authorities who do not form part of the formal or informal state apparatus. […] Governance refers to the outcome of all these interactions and interdependencies: "the self-organizing networks that arise out of the interactions between a variety of organizations and associations." (Rose 1999, 15–17).

Applied to judicial politics, this scholarship echoes with political scientists Rachel Bowen's concept of "judicial autonomy" (2013). Drawing from the Central American cases, Bowen highlights the shortcomings of the main models in judicial politics to address "judicial independence", all in relation to political actors in state institutions. Instead, she reminds us that in contexts where power is hold by "nonofficial" or "extragovernmental" actors, "judicial autonomy" refers "to the ability of the judges to decide cases without pressure from powerful groups in society" (2013, 831). Following this argument, I argue in this dissertation that judicial behavior and decision-making is embedded within relationships and networks of power that include not only political alignments in government, Congress, and the Judiciary. Here, other groups of interests, such as economic, military, and other professionals like lawyers and infrastructures corporations, are included in the analysis as wide coalitions advancing political projects when these are endangered by the high courts. The broad coalition mounts the backlash against the courts through legal and para-legal strategies, mobilizing formally and

informally resources and advantages in relevant sites of influence. This is when judicial capture might occur.

While these broad coalitions have the capacities to influence and capture the judicial system, they are challenged by social and legal support structures and activism in favor of human rights enforcement and judicial independence, for example. Following the court-centered approach and the strategic model, political scientists have argued that support structures are necessary conditions to enable judges willing to engage with powerful actors in difficult cases. These support structures provide enough leverage to judges and courts that seek to change the status quo by shifting legal interpretations.

On the one hand, according to political scientist Charles Epp, sustained litigation strategies, solid financial resources, and legal experts were necessary conditions to reach a "rights revolution" in the USA: "a sustained, developmental process that produced or expanded the new civil rights and liberties" (1998, 7). On the other hand, according to political scientists Margaret Keck and Kathryn Sikkink, "the transnational human rights advocacy network helped to create regional and international human rights regimes, and later contributed to the implementation and enforcement of human rights norms and policy" (1998, 79). The support structures at the national or transnational levels provide necessary conditions enabling civil and human rights' expansion and political transition towards more democratic regimes.

This scholarship on support structures in democratic regimes has focused on the crucial role of judiciaries in the promotion of democratic legislation and policies on health, housing, or education, including redistribution of wealth and recognition of rights (Sieder, Schjolden, and Angell 2005; Gauri and Brinks 2008). The case studies, although crucial to enforce human and political rights, focus on the dynamics and challenges of expansion of rights in the decade of the 1990s and 2000 when the judicialization of

politics and social relations was growing. Almost twenty years after these milestone references, we can observe the limits of the scope for the support structures theories. Indeed, more recent scholarship in political science, law and society, and even in Critical Race Studies are highlighting the limits of the last decades of rights' expansion either in liberal or so-called multicultural democracies (Scheppele 2018; Hooker 2020b, see forthcoming Botero, Brinks and González-Ocantos).

Here lies the second contribution in the scholarship of support structures and the expansion of rights. Drawing from my empirical observations, I claim that the "sustained rights-advocacy litigation" (Epp 1998) is meeting robust competition from elite countermobilization especially when it comes to extractive activities, such as natural resources and corruption (for the case of Guatemala and other countries in the region). Increasingly, political and economic elites and popular sectors are pushing against progressive rights, public policy, and judicial activism promoting social transformations. In turn, human rights advocates are facing serious challenges to advance their claims for justice, such as intimidation, criminalization, and murder.

The tendency to use violent resources to hinder human rights advocates' work motivates simultaneously protests and filing claims for protection before the justice system. This is particularly the case in the Americas concerning Indigenous leadership in defense of their ancestral territories or rights advocates denouncing systemic corruption. Increasingly, human rights cases are presented before the courts either seeking justice and reparation, or aiming to situate important societal matters within public debate. To address changes in the status quo that challenges elite privileges, judicial capture might occur through broad conservative coalitions and networks of power.

Topics concerning economic growth, territorial control over natural extractive activities, environmental governance, and corruption trigger countermobilization as these

are key activities for the political and economic elites to perpetuate their power based on the extraction of resources. While the recent scholarship explain backlash or 'democratic backsliding' as the result of the personal motivations of 'new autocrats' to stay in office (Scheppele 2018), the negative aftermaths of economic neoliberalism negative aftermaths (Hooker 2020a), or progressive rights (forthcoming Botero, Brinks and González-Ocantos), my perspective draws special attention to the extractive activities as a main explanation for backlash.

The "Red Line System", Extractive Regimes in Indigenous Territories, and Backlash: A Colonial Perspective

At this point, my argument centers the control and extraction of resources as structural activities of regimes sustained by hegemonic elites. Challenging these aspects are likely to trigger backlash against judicial institutions. Studies taking structural perspectives have also contributed to understanding *why* backlash is triggered. Inspired by Tamir Moustafa's work on judicial behavior in constrained political frameworks,[32] limits to judicial behavior exist because "[…] there are implicit understandings between the regime and the opposition over how far political activism will be tolerated" (2003, 906). This is what is called the 'red line system', as one of Moustafa's interviewees described the Egyptian political system. In this case, the Egyptian military regime liberalized the Supreme Court to show foreign investors that private property was ensured by committed liberal judges.

While the scholarship finds the importance of constraints for judicial decision-making both under democratic and authoritarian forms of government, the structural perspective is inclined to differentiate these two forms of government to address

[32] In the Egyptian case, the constraints and tensions are marked by an economic liberalization and promotion of private property within a military regime.

standards on the rule of law and levels of liberalization in the social, political, and economic realms. This dichotomy is a usual reference for political scientists to measure checks and balances mechanisms, autonomy between branches of the state, and the ultimate guarantee of civil and economic liberties. However, the democracy/authoritarianism dichotomy falls short when unveiling the profound foundations of regimes that have built their hegemony through the colonization and re-colonization of racialized nations, such as Indigenous peoples.

This is another contribution in terms of structure. When focusing on Indigenous politics, scholarship throughout the Americas—or rather Abya Yala—pinpoint that beneath democratic or authoritarian expressions of power, there is a long-lasting foundation that needs to be addressed: the colonial relationships derived from European invasions in the Americas remaining in the post-independence period and the twentieth century, transiting both authoritarian and democratic rules. Colonizers in Australia signal that, in Patrick Wolfe's often cited formulation, "invasion is a structure not an event" (Wolfe 1999, 2). With "modernity" unfolding, the deep structure prevailing is the one subordinating culturally, socially, politically, and economically Indigenous peoples to the dominant "settlers" (Wolfe 2006; Speed 2017) or "*mestizos*" (Euraque, Gould, and Hale 2004; González Casanova 2006; Rivera Cusicanqui 2010; Antileo Baeza et al. 2015). In other words, the other side of modernity is the colonialism based on racial hierarchies for "territorial devastation, slavery, genocide, plundering, and exploitation" (Moraña, Dussel, and Jáuregui 2008, 2). Colonialism and its racialized economic structure is ongoing: "racial capitalism, a social formation predicated on colonial dispossession and racial terror […], whose basic features have remained in place, while its ideological manifestations have evolved with the political times […]" (Hale and Leith Mullings 2020, 25).

I argue that a structural approach to the study of judicial politics and backlash must address the colonial origin of the regime—even in an apparently democratic one. Moustafa's *red lines* are also found in the structure of a colonial regime –not only in a militaristic one such as under the authoritarian Egypt. Backlash is not only a brutal reaction against progressive politics that challenges the core interests of the elites. It also entails reactions against actions that question racialized economic structures ordering social relationships. Backlash against judicial institutions that expand Indigenous rights in contexts of extractive economies is not only a concern in terms of democratic rule, but also a concern in terms of deep-rooted colonialism.

Development policies based on extractive industries have been challenged by Indigenous peoples' strategic litigation, even though structural shifts in legislation or policy implementation remain unresolved (Rodríguez Garavito 2012; Hale and Leith Mullings 2020, 25) –and will not be resolved as far as economic de-growth is not initiated and racist ideologies dismantled–. One could expect corporate countermobilization in reaction to these challenges. This countermobilization would seek to maintain the material privileges and hegemonic ideas that the elites have taken advantage of to maintain their power and wealth.

Connecting with the "judicial backlash theory" and the culture-centered approach, the "racist backlash" argument pinpoints the recalcitrant reactions of "important sectors, among both powerful actors of the dominant culture and their lower-class counterparts, aggrieved and angered by a perceived loss of racial privilege." (Hale, Calla, and Mullings 2017, 86). The structural perspective allows us to address backlash as a colonial reaction unveiling the racialized asymmetrical power relationships in countries where white elite-controlled extractive economies depend on natural resources located in Indigenous ancestral territories.

I argue that backlash against judicial decisions entails a conservative foundation revealing a strategy to maintain structural privileges that enables private extraction from state resources and natural resources in Indigenous territories. This strategy consists in obstructing any effort to hold political and economic elites accountable for contentious extractive activities. In addition, I argue that backlash entails a colonial foundation revealing a political project based on what anthropologists Charles Hale, Pamela Calla and Leith Mullings have conceptualized as a "racist backlash" (2017).

The backlash I am referring to is built upon a "racist backlash" that places "national energy development ahead of [Indigenous and black] community welfare and environmental concerns." (Hale, Calla, and Mullings 2017, 86) As anthropologist Shannon Speed points out: "Capitalism's current iteration —neoliberalism— continues to be shaped by the settler colonial imperative of dispossession/extraction/elimination justified by racialized and gendered logics that while shifting continue to emerge from that imperative." (2017, 788). Although the Indigenous critical scholarship has identified legal, military, epistemic and more forms of violence as inherent to settler colonialism and extraction (Sierra, Hernández Castillo, and Sieder 2013; Antileo Baeza et al. 2015), less attention has been brought to the study of corruption and influences enabled by informal networks as a form of state resource' extraction and structural violence. Although the study of corruption and informality is theoretically and methodologically complex to address (Dressel, Sanchez-Urribarri, and Stroh 2017; Hammergren 2019; Fortes 2019), they are crucial to include within the analysis as factors enabling the whole extractive activities.

Part of my argument explains backlash as a brutal reaction against the judicial institutions and support structures promoting accountability in core extractive activities through the right of Indigenous peoples to free, prior, and informed consultation and

consent, and the fight against corruption. Backlash against the courts needs to be addressed as the reaction "[…] by disaffected sectors of dominant groups against hard-fought (but nevertheless hardly far-reaching) gains, showing that—contrary to left critics of so-called identity-politics—the losses and anxieties produced by the failures of neoliberalism have been understood in racial terms." (Hooker 2020b, 2). When judicial decisions challenge elites' core interests, corporate countermobilizations are likely to highlight the structural damages to "economic development" caused by so-called "legal uncertainty". This reaction points to the colonial and conservative foundations of a racial capitalist regime.

Hence, I argue that, in societies with racialized asymmetrical power relationships, crossing the red lines of the extractive structures of a regime gives backlash a different dimension than that hitherto explained until now by political scientists. Backlash entails not only the capture of judicial power but also the re-colonization of courts and other institutions attempting to hold the hegemonic elites accountable. Drawing from the case of Guatemala, 1) the relative promotion of Indigenous peoples' rights and 2) the anti-corruption efforts, led by the Constitutional Court, in combination, disrupted the long-lasting pattern of racialized *extractivism.* Extractivism is at stake when the high courts rule in favor of both anti-corruption efforts—because they challenge control over state resources—and Indigenous peoples' rights—because they challenge control over natural resources and territory. Challenges to them are likely to trigger backlash against the judicial institutions and their support structures promoting accountability. In the Guatemalan case, it is a constitutional backlash because the elites' motivation was ultimately to attack the Constitutional Court and capture the institution.

EXTRACTIVISM AT THE CORE OF BACKLASH

Applied to the particular case, the question is why did the Guatemalan Constitutional Court's rulings on Indigenous peoples' rights and anti-corruption activities in 2017 unleash an ongoing backlash in Guatemala when the scholarship on court behavior suggests that the Court is expected to align with dominant politics? I argue that dissident members of the Constitutional Court and their support structures crossed the *red lines* of extractivism entrenched in a racial capitalistic regime. I understand extractivism in a broad sense. The extractive regime enables control over public and territorial resources for the benefit of white and *ladino* groups, at the expense of historically marginalized Indigenous peoples. This regime promotes private property and "ownership" (Moreton-Robinson 2015) legitimized by legal frameworks seeking to protect development and infrastructure megaprojects.

Within the concept of extractivism, I include both the process of natural resources extraction and the process of public resources extraction, mostly through corruption. Natural resources in Indigenous territories and public resources from the state are valuable activities for the power elites to maintain their dominance. Anti-corruption efforts matter because they disrupt the established political and economic elites' ability to secure private benefits from state resource extraction challenges (Hammergren 2008, 95; Robinson 1998; Taylor 2020).[33] Indigenous peoples' rights also matter because they challenge the colonial foundation of a long-lasting natural resource extractive regime often deployed in Indigenous territories (Bargh 2007; Goodale and Postero 2013;

[33] Several countries in Latin America and other regions are going through anticorruption processes. In the case of Guatemala, a United Nations sui generis institution was created in 2008 to address the Illegal Bodies and Clandestine Security Apparatus. The CICIG uncovered the existence of "Illicit Networks" dating from the transition to democracy. These judicial processes involved the most important political elites of the country since the democratic era.

"Declaración del Encuentro Continental de los Pueblos de la Abya Yala por el Agua y la Pachamama" 2011).

Figure 3 traces the process that I envision when magistrates decide in anti-elite demands (in this case anti-extraction demands), and the impact in the elites countermobilization:

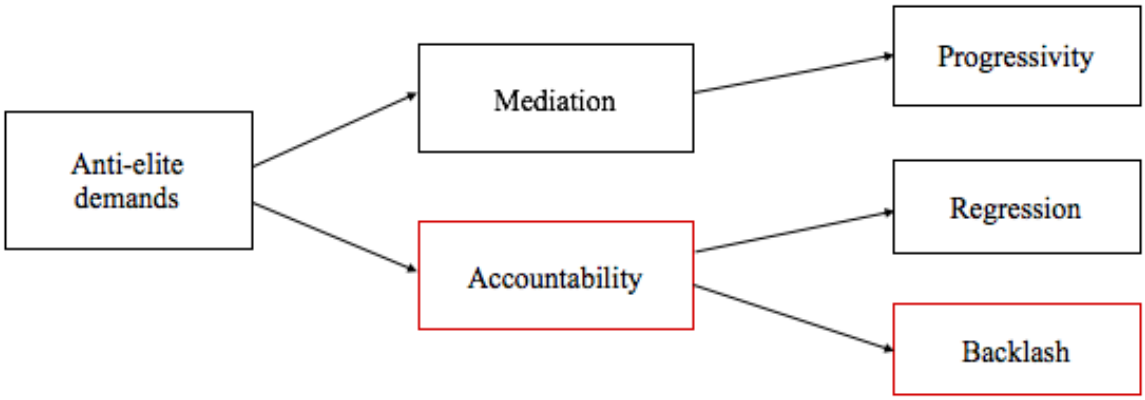


Figure 3: Legal Demands, Constitutional Decision, Impact.

The anti-extraction demands were the legal demands (mobilized through special prosecution and strategic litigation) for accountability and reparation in conflicts on irregular extractive activities. Irregular extractive activities encompassed natural resource extractive activities without the due process, and public resource extraction through corruption. In the Guatemalan case, on the one hand, irregular natural resource extractive activities did not comply, among other legal provisions, with International Labor Organization Convention 169. Strategic litigation carried out by Indigenous communities and their legal advocates sought to stop the extractive activity (mining, dams, oil, cement plants, electricity transmission infrastructure, for instance) and to conduct a proper consultation process towards consent.

On the other hand, irregular public resources extraction took the form of corruption—bribery, fraud, graft, misappropriation of public funds, and influence peddling—(CICIG 2019b, 21). Corruption was prosecuted through criminal law. Prosecution sought the annulment of ownership and administrative expropriation of illicitly acquired land and goods, and imprisonment for the members of criminal networks.

I imagine two paths that magistrates can take to deal with these anti-extraction demands. Magistrates can decide to *mediate* and adjust the demands for justice and accountability—posed by the anti-corruption lawyers or the Indigenous communities—and ultimately accommodate the powerful elites' interests in the final ruling. Mediation, I claim, entails "bring[ing] to a more satisfactory state" (definition for "adjustment" by the Merriam-Webster), or in other words, "go[ing]-between" the interests of the parties in conflict (Shapiro 1981, 4). Mediation entails the idea of "progressivity"—meaning the gradual adjustments between human rights improvements and the neoliberal capitalism project as Hooker's recent edited book *From Multiculturalism to Racist Backlash* explains. With recognition of rights but poor reparation measures, the elites have more room to accommodate their extractive activities within a framework of "neoliberal multiculturalism" (Hale 2007; Hooker 2020a) and to pursue *progressively* a "racial capitalism" project (Speed 2017): "[progressivity] failed miserably to address historical problems of structural racism" (Hale and Leith Mullings 2020, 24). Therefore, *mediation* does not challenge the core interests of the elites and fails to address the structural causes of exclusion, poverty, and discrimination. This case scenario follows the upper path of Figure 1.

Other theoretical and practical approaches have advanced the idea that progressivity is positive when rulings softly open the gap in contexts of recalcitrance to

social changes (Brinks and Gauri 2014; OHCHR 2008, 13 on the "progressive realization" clauses).[34] Concerning these approaches, I suggest that the paths of mediation and accountability are not mutually exclusive. Instead, I contend that mediating rulings have previously opened the path to more accountable and challenging anti-extraction rulings by expanding over the years the scope for rights' recognition, reparation, and legalization (Gauri and Brinks 2008; Rodríguez Garavito 2011; Brinks and Forbath 2011; Uprimny Yepes 2006). In this way, progressivity plays out as a precondition for enabling more accountability through the courts (the next section expands on how progressivity in Guatemala expanded the opportunities to demand more rights and more accountability regarding the implementation of Indigenous rights). However, when rulings seek to hold the powerful economic and political elites accountable and to counterbalance the systematic extraction of resources from both the state and the environment, countermobilization and backlash are triggered and can be oriented to capture and re-colonize the courts.

In contrast, magistrates can decide to hold these powerful actors accountable. Accountability, I argue, seeks to counterbalance the systemic extraction of resources from the state administration and the natural resources located in Indigenous territories—through 'transparency', 'answerability', and 'controllability' as scholars have understood the concept in the political science (see Gloppen, Gargarella, and Skaar 2004).[35]

[34] The United Nation's Office of the High Commissioner of Human Rights has defined what "progressive realization" entails: "At its core is the obligation to take appropriate measures towards the full realization of economic, social and cultural rights to the maximum of their available resources. The reference to 'resource availability' reflects a recognition that the realization of these rights can be hampered by a lack of resources and can be achieved only over a period of time."

[35] In the Introduction of "Democratization and the Judiciary: The Accountability Function of Courts in New Democracies", the authors define accountability as the capacity for "ensuring *transparency*; obliging public officials to justify that their exercise of power is in accordance with their mandate and relevant rules (*answerability*); and imposing checks if government officials overstep the boundaries for their power as defined in the constitution, violate basic rights or compromise the democratic process (*controllability*)" (Gloppen, Gargarella, and Skaar 2004, 1). These criteria are drawn from

Therefore, accountability challenges the dominant actors economically, politically, and ideologically because it disrupts the long-lasting structures that have enabled them to gain advantages and maintain their hegemony. Theoretically, in contexts of judicial dependency to political and economic dominant actors, the accountable rulings would be more difficult to reach because judges are not likely to challenge these actors' interests and ideas. To challenge would cost too much.[36]

Economically, rulings promoting accountability endanger the elites' investments when it comes to contentious megaprojects, and their financial and material benefits when related to corruption. Politically, these rulings evidence the formal and informal mechanisms of extraction that have contributed to build and sustain dominant elites in a continuum through both authoritarian and democratic forms of government. Ideologically, the accountable rulings endanger the practice of impunity that the elites have taken advantage of to advance their individual and sectorial interests. Impunity has allowed the dominant elites to attack all forms of counter-hegemonic organization in favor of greater Indigenous autonomy, and to violate the rights of Peoples to self-determination. In sum, accountability challenges the conservative and colonial underpinnings of a regime based on forms of extraction taking advantage of racialized asymmetrical power relationships.

Guillermo O'Donnell, 'Horizontal Accountability in New Democracies', in Andreas Schedler et al. (eds), The Self-Restraining State: Power and Accountability in New Democracies (Boulder, CO: Lynne Rienner, 1999), pp.29–51.

[36] Indeed, many scholars have been interested in understanding "under what circumstances are [courts] most likely to develop a strong accountability function vis- à-vis the other branches of government—and is it always desirable to encourage them to do so?" (Gloppen, Gargarella, and Skaar 2004) and "to what extent are courts willing and able to arbitrate interbranch disputes that affect the separation of powers?" (Helmke and Ríos Figueroa 2011).

Challenging these extractive activities attacks the foundations and the reproduction of their power. According to my argument, when rulings promote accountability, elite countermobilization can seek *regression* or *backlash*. On one hand, as the scholarship in political science and Critical Race Theory has shown, countermobilization and recalcitrance are not surprising, either from conservative social sectors (Rosenberg 1991; Klarman 2005; Gloppen 2018; Ruibal 2019) or white supremacists (Hale, Calla, and Mullings 2017; Hooker 2020a). This countermobilization, I expect, can negatively affect in terms of human rights and democratic governance in the form of *regressions*, which is another version of a status quo. In the fields of legislation or government measures, as political scientists have argued, laws and policies seeking limiting civil, political, social, economic, and cultural rights, for instance, are advanced (Ferraz 2011). In Guatemala, Legislative bills limiting freedom of speech and association and states of siege under military control in communities were initiated to control Indigenous resistance against extractive activities.

On the other hand, backlash, I claim, is a more concerning effect of the accountability path. Backlash, as I argue in this dissertation, seeks to re-colonize the justice system, to dismantle dissident magistrates and their support structures that promote human rights and democratic governance through accountability, to ultimately capture the institutions. This backlash goes beyond *regression* because it aims to dismantle institutions and civil society promoting accountability and racial justice. It is a form of "democratic backsliding" with a racist project as its underpinning, as the Critical Race scholarship has argued.

In the Guatemalan case, the power elites reacted to protect those red lines that preserve the structural foundations of their power. The elites re-colonized legal interpretations over the Indigenous right of self-determination and coalesced to capture

the institutions to, ultimately, maintain control over public resources and natural resources in Indigenous territories. Re-colonization and capture were successful when a) elites mobilized formal and informal *judicial advantages* influencing relevant sites of power, such as the Judiciary, the media, and the diplomacy; and b) the hegemonic actors prevailing in the political and economic life largely coalesced (refer to Figure 1 in Introduction).

Examples of these two different paths are the following. The accountable "anti-extraction" ruling looks like the one that orders the annulment of a megaproject license until the project proves social, environmental, and economic liability. It orders the Executive or mining company to repair the damages caused. It instructs the institutions at stake to carry on a proper consultation process according to Indigenous self-government. Finally, it orders follow-up reports to inform on the implementation of the ruling. This happened in Guatemala when the Constitutional Court ruled against mining megaprojects—in the La Puya (2016) and San Rafael Las Flores (2018) cases—and instructed them to operate in a more accountable fashion. Following these cases, Indigenous leaderships were criminalized, the companies filed commercial suits against the Guatemalan state, and corporate lawyers pursued efforts to turn the right of Indigenous peoples to free, prior, and informed consultation into a mere administrative procedure emptying its spirit seeking self-determination.

By contrast, the mediation ruling looks like the one that encourages the state to mediate a dialogue between the corporation and the Indigenous leadership, to collect information about the community's interests, and to gather proposals for remediation plans. It generally defines Indigenous rights according to the international standards. At the same time, it allows megaprojects to be implemented under assumptions of good faith, although sometimes the extractive companies are instructed to temporally close the

activities down. It does not require follow-up measures. This also happened in Guatemala with cases related to hydroelectric dams—in Nebaj (2017) and Oxec (2017).Besides the criminalization of the Indigenous leadership and the persistence of Indigenous and environmental activism, nothing really changed in terms of justice in the aftermath of the ruling.

Anti-extraction rulings, although they can deeply challenge the political and economic elites' interests, usually do not fully satisfy Indigenous peoples' claims. These rulings are not properly "pro-Indigenous rulings"[37] because the decisions rarely open the space for Indigenous self-regulation –and even less self-government– over water, land, and natural resources, as the varied international legal frameworks state (Anaya 2005). However, through the litigation processes, these rulings expose the extractive activities, the mechanisms, and the multiple violations caused by them. As a lawyer for an Indigenous organization in Guatemala mentioned in the activist scholarship event "*12 Congreso de Estudios Mayas*" in Guatemala City: "litigation is not worth it only because of the outcome, but because it reveals the mechanisms of power" (Benito Morales, 2017, who is a Maya K'iche lawyer for the Indigenous organization *Coordinadora de Pueblos de Occidente*).

Therefore, these anti-extraction rulings publicly reflect on Indigenous stories of brutal repression and dispossession. This contributes to obtaining visibility and demanding dignity before a state that has systematically diminished them (Laplante and

[37] During the research period, I first conceptualize these as "pro-Indigenous rulings" because they relatively advance Indigenous peoples' rights. However, with the development of the analysis, I realized that although they promote some degree of rights recognition and reparation, they never meet Indigenous communities' demands for individual and collective claims for dignity. Instead, these rulings challenge the elites' hegemony. My findings in the field made me to turn the category towards an elite-oriented perspective. Although the analysis is no longer centered on Indigenous politics, as I first envisioned for the dissertation project, the elite-oriented perspective allows me to approach "coloniality at large" from the side of the dominant actors and structures. Therefore, this categorization stems from *studying-up* as it is commonly called in Anthropology (see Laura Nader 1972).

Theidon 2007; Collins 2010). The legal mobilization that precedes the ruling is an act of resistance in the legal arena. This understanding of the judicial process, the decision-making, and the rulings themselves resonates with feminist anthropologist Abu-Lugohd's approach of resistance among Bedouin women in capitalist Egypt as a "diagnostic of power". Instead of "romantically" studying resistance as "the signs of the ineffectiveness of systems of power and the resilience and creativity of the human spirit in its refusal to be dominated", she claims for:

> […] trac[ing] how power relations are historically transformed -especially with the introduction of forms and techniques of power characteristic of modern states and capitalist economies. Most important, studying the various forms of resistance will allow us to get at the ways in which intersecting and often conflicting structures of power work together these days in communities that are gradually becoming more tied to multiple and often nonlocal systems (1990, 42).

Taken as object of study, the anti-extraction rulings and the information contained within the text contribute precisely to approach those ways in which structures of power work in the judicial arena, and more specifically in constitutional justice. The right of Indigenous peoples to free, prior, and informed consultation and consent involves multiple actors (Indigenous communities, corporations, state stakeholders, domestic and international non-governmental organizations, academic experts), sites of action (Indigenous territories, national courts, international and supranational organizations, bilateral associations and diplomacy), legal framings (national laws, international human rights, trade agreements). In Abu-Lugohd's terms, the judicialization of extractivism allows us to trace developments and intersecting structures in the legal arena in modern states and capitalist economies.

To this, I add that the judicialization of extractivism allows us to observe these developments in contexts of racialized asymmetrical power relationships where white elite-controlled extractive economies depend on natural resources located in Indigenous

ancestral territories. Anti-extraction rulings contain the evidence of the legal and political structures allowing us to trace in the judicial field how dispossession is judicially managed by the settler-colonial elites (Simpson 2014; Moreton-Robinson 2015; Muru-Lanning 2016; Speed 2017; Nichols 2020).

When the judicial panorama seems to turn into a more accountable form of justice, the elites' loss of control and influence over the high courts is perceived as a "loss of legal certainty", and more particularly a "loss of legal certainty for investments". This happens either because the legal interpretations are increasingly following significant reparation measures in favor of Indigenous communities or because the high courts are more and more challenging the political and economic elites' core interests through their decisions. In both cases, the accountability path produces dominant elite recalcitrant reactions.

Through the lens of racialized relationships and colonial structures, political scientist Juliet Hooker, in an article analyzing "white grievance" in the Obama era in the United States, asks "how white grievance, particularly the inability to accept loss (both material and symbolic), continues to be the dominant force shaping contemporary racial politics" (Hooker 2017, 484). She argues that:

> […] the political imagination of white citizens has been shaped not by the experience of loss but rather by different forms of white supremacy and that this results in a distorted form of racial political math that sees black gains as white losses, and not simply losses but defeats. As a result, in moments when white privilege is in crisis because white dominance is threatened, many white citizens not only are unable or unwilling to recognize black suffering; they mobilize a sense of white victimhood in response. (2017, 485)

Hooker's argument for US black political theory helps to shed light on the racial underpinnings when discourses of "loss of legal certainty" are mobilized in the contexts of anti-extraction rulings. White grievance pinpoints to how privileges have historically

advantaged some at the expense of racialized "others". The "loss of legal certainty" discourse –or rather the loss of influence over the high courts– resulting from the anti-extraction rulings, indicates this intertwined relation between the judicial backlash and a racist backlash: the reactions to recover control over the public institutions, the legal frameworks, and the social relationships, all built to maintain the white-*ladino* elites' dominance based on extractive politics.

Recent developments in Guatemala's judicial politics allow us to observe the reactions to recover control after the red lines were crossed. Two significant mechanisms of countermobilization led to a backlash: the activation of *judicial advantages* in the legal field and the *coalition building* of large hegemonic sectors of society in the political field, both seeking to re-colonize and capture constitutional justice. These mechanisms are deployed through formal and informal repertoires, through relationships of linkage and loyalty or coercion and scuffles. In Table 1, I provide a synthesis of actions that appeared in the case of Guatemala. These are developed in Chapter 4 and 5.

Loyalties	Coercion
Acquaintance and friendship Professional and career fellowship Political ties Collaboration through shared interests	Activation of legal resources Noncompliance Discrediting media campaigns Public naming and shaming Intimidation

Table 1: Repertoires for Countermobilization in Judicial Politics.

Judicial Advantages

By *judicial advantages*, I refer to the political, economic, and judicial privileges used by powerful elites to position their interests and preferences in the courts, and influence in the process of judicial decision-making. Turning to judicial advantages seeks

to increase the possibilities of obtaining rulings in their favor when the red lines have been crossed. In other words, the desired result is to obtain *mediation* decisions that allow the powerful elites to maintain their extractive activities.

As explained in detail in Chapter 3, judicial advantages play out in significant sites of influence. In the case of Guatemala, these sites are:

- the Constitutional Court, through informal relationships with aligned magistrates;
- in the mass media, through costly defamation campaigns and political influence, and;
- in diplomacy, through lobbying diplomats at embassies economically connected to and involved in the natural resource extractive economy of the country.

The countermobilization networked by the dominant economic sectors involves strategies parallel to the formal rules of judicialization (e.g., the use of public audiences to place arguments and claims, legal briefs, amicus curiae). Through national and transnational contacts, acquaintance, and networks, informal countermobilizations are used to hinder the work achieved by broad Indigenous alliances and to influence constitutional decisions.

Judicial advantages are always there yet inactive when there is no need to influence decision-making. Generally, judicial advantages are not perceived by the elites as mere advantages since they have naturalized their inherited class and racial benefits. There is a lack of knowledge about the privileges these, often white and *ladino*, elites enjoy because of the dominant position they occupy in a still colonial society. In this sense, this understanding of judicial advantages echoes with Hooker's comment: "White ignorance is a crucial feature of the politics of white grievance. It allows whites to deny the unearned advantages they have accrued as a result of white supremacy, and it also makes it possible for them to reject the assumption of any responsibility as individuals for

its continuation." (2017, 487). Judicial advantages, I claim, can only be related to white and *ladino* collectivities because the advantages are a result of a system of privileges where exclusive particular groups have inherited or gained economic, symbolic, social, and cultural capitals in the bourdieusian terms. Judicial advantages are opposed to the sorts of 'capacity-building' strategies that Indigenous communities or other dissident social movements have had to learn in order to be competitive in such asymmetrical dominance relationships.[38]

When activated, judicial advantages enable elite countermobilization and networks of power to assertively influence decision-making and create the favorable ground in public opinion reinforcing hegemonic ideas of justice and injustice, legality and illegality, development, and ultimately, legitimize a backlash that protects the foundations of a conservative and colonial regime. Judicial advantages also enable coalition building among other powerful sectors of society threaten by the accountability efforts in contentious extractive activities.

Coalition Building

According to my interpretation, the existence of *coalition building* –meaning the alliance of multiple sectors of society pursuing a common goal– among powerful sectors of society is an indicator of the red lines of a regime. In the case of extractive regimes, coalition building seeks to maintain a conservative and colonial status quo, allowing the multiple sectors to preserve their privileges. The rationale of building coalitions is to create strategies to pursue this goal.

[38] The scholarship on Indigenous Capacity-Building is very rich and raises several issues and contradictions. In this dissertation, I do not expand on how Indigenous movements have struggled before state institutions to position their claims. Scholarship on public policy and development offer many studies on this topic.

Coalition building is sometimes difficult to observe on the field. However, some events reveal strategies of action that are planned in networks and coalitions. The case of Guatemala allows to observe reactions and attack strategies, most of them in brutal manners. These strategies are:

- the activation of legal resources to remove dissident members of the Constitutional Court and their support structures;
- political noncompliance from government and corporate actors as strategies for deadlock;
- public naming and shaming against dissident members of the Court;
- discrediting media campaigns.

These strategies were deployed in an escalating fashion in relation to the Constitutional Court's deliberation in cases related to extractive activities, including natural resources extraction and extraction of state resources through corruption. The strategies, I claim, sought to dismantle the constitutional authority to, ultimately, capture the Court.

I characterize these coalitions as *colonial-conservative* as they come together to maintain the status quo benefitting hegemonic elites –conservative– in a basis of colonial foundations of a regime taking advantages from Indigenous territories –colonial-. These colonial-conservative coalitions compete against the "pro-rights coalitions" that enabled anti-extraction rulings. The pro-rights coalitions, in general terms, advance fundamental human rights including rights for Indigenous peoples. These pro-rights coalitions have provided enough support for dissident constitutional magistrates to engage with elites' interests through their rulings.

Colonial-conservative coalitions encompass hegemonic white and *ladino* traditional families and oligarchies, new economic groups and businesspersons, political

elites (politicians and stakeholders in the three branches of the state), high-ranking public servants, lawyers, think tanks, the dominant media, and military officers who may be retired or in office. As it will be better explained in Chapter 4, these coalitions have already been characterized by political science scholarship in Central America as well as the United Nations International Commission Against Impunity in Guatemala (CICIG by its acronym in Spanish) as "Illicit Political-Economic Networks" *(Redes Político-Económicas Ilícitas* in Spanish) in the context of anti-corruption efforts. However, in my interpretation, these coalitions are racialized in countries where relationships are shaped by racial hierarchies. One of the factors that allows coalitions and elites to maintain control over resources is that they belong to socioeconomic classes in a society where ideas of racial superiority in relation to Indigenous peoples prevail.

In the case of Guatemala, the activation of judicial advantages and coalition building enabled elite countermobilization towards the re-colonization and capture of the Constitutional Court. This is *how* anti-extraction rulings triggered backlash, and *why* extractivism was at the core of this outcome.

CONCLUSION

This chapter presents the three main theoretical frameworks accounting for backlash against judicial institutions and progressive policies from the perspective of judicial politics and racial politics. I argue that backlash cannot only be understood in terms of reactions from hegemonic cultures opposing progressive rulings and policies, or from strategic government actors against rulings negatively affecting their interests. I contribute to the scholarship on backlash by, first, critically assessing dominant concepts of formal separation of powers to include the *de facto* networks of power encompassing relevant societal actors in the game which, second, sustain colonial structures through the

continuation of racialized asymmetrical power relationships. The recent scholarship on backlash and judicial politics does not include the racialized underpinnings in countries where racialized elites hold power by the domination of racialized "minorities". Rulings from high courts affecting the core interests of the powerful political and economic elites unveil the long-lasting foundations of the regime. Backlash against the judicial institutions holding accountable white elites involved in rights' violations reveals the *red lines* or the areas where these foundations are fiercely disputed through legal battles.

As recent developments in Guatemala show, I suggest that backlash against the Constitutional Court, its dissident members, and their support structures (the large *pro-rights coalition*) resulted from constitutional rulings crossing the red lines of an extractive regime historically based on the extraction of natural resources in Indigenous territories and resources from the state through corruption. These *anti-extraction rulings* unveiled the long-lasting foundations of the colonial and conservative regime in Guatemala as a regime where the dominant elites have historically held their power through the extraction of such resources without accountability. These rulings motivated elite countermobilization. Backlash against the Court and its support structures seek to protect the status quo that benefits these elites through loyalties and coercion. I argue that backlash ultimately seek to, on the one hand, re-colonize the constitutional institution through the activation of *judicial advantages* to influence legal interpretation and decision-making. On the other hand, it seeks to capture de institutions through *coalition building* to attack dissident Court members and their supports and control the institution.

Chapter 4: Countermobilization and Judicial Advantages: Elites Disputing Indigenous Rights

INTRODUCTION

As I explained in the Introduction of this dissertation, for the first time in Guatemala, a bloc of magistrates of the Constitutional Court challenged the powerful political and economic elites of the country by destabilizing their entrenched interests. The empirical evidence indicates that the 2016–2021 Constitutional Court is not a monolithic entity.[39] On the contrary, the Court was fragmented and made up of two antagonistic blocs with divergent alliances, interests, and ideas. The 2016–2021 Court was divided on whether to place more weight on Indigenous rights or on the country's extractive policy interests. I claim that one of those blocs was aligned with the country's hegemonic industrial and extractive elites (the status quo) and the other, dissident group was aligned with sectors inclined towards human rights, including the rights of Indigenous peoples (the pro-rights bloc). The latter group destabilized the historical and privileged relationships existing between the political and economic elites and the Constitutional Court.

Political and economic elites accused the dissident bloc of judicial activism after the latter bloc decided to close megaprojects for failure to comply with free, prior, and informed consultation. It should be noted that these accusations were also launched in the context of the fight against corruption that the pro-rights bloc also encouraged. One of the factors enabling the pro-rights bloc to comply with demands of Indigenous peoples in closing megaprojects was that since approximately 2010, it had sufficient national and international support to face the pressure of the Guatemalan political and economic elites

[39] Constitutional magistrates are elected for a period of five years.

in a context of constitutional reforms and the fight against corruption.[40] Even though magistrates from the pro-rights bloc found support structures to confront the most powerful elites in the country in cases related to extractivism and corruption, it seems that this support has been insufficient.

In this chapter, I argue that the political and economic elites activated their networks of power to hinder accountability regarding megaprojects and to regress in terms of the rights expansion of the last decade. In the case of Guatemala, organized elites mobilized what I call *judicial advantages* to influence the courts in their decisions and re-colonize constitutional justice. These judicial advantages are political, economic, and judicial privileges used by powerful elites to position their interests and preferences in the courts and increase the possibility of obtaining decisions in their favor. Elite countermobilization is a contributing factor towards a backlash to the extent that these organized sectors find a common interest in coalescing with other sectors to dismantle the legal advances accomplished by the Indigenous movements, to attack the dissident members in the Court, and to capture the institution.

Judicial advantages play out in: (1) the Constitutional Court, through informal personal relationships with aligned magistrates and other para-legal resources, co-opting the constitutional justice; (2) the media, through costly defamation campaigns and political influence as well as the diffusion of hegemonic discourses in the elites' favor; and (3) diplomacy, through lobbying diplomats at embassies economically connected to

[40] Support structures included Indigenous community authorities, Indigenous and human rights organizations at the national level, student organizations from Universidad San Carlos de Guatemala, the Office of the Human Rights Ombudsman, Indigenous political parties (Convergencia, Comité Campesino del Altiplano, Winaq), the Office of the United Nations High Commissioner for Human Rights, the International Commission against Impunity in Guatemala, the Swedish Embassy, and transnational non-governmental human rights organizations (such as the International NGO Forum in Guatemala, made up of 28 civil society organizations from Germany, Belgium, Canada, the United States, Holland, Ireland, Norway, France, Sweden, Switzerland, and Spain and having an advisory opinion before the Delegation of the European Union and the United States Embassies in Guatemala).

and involved in the extractive economy of Guatemala. The desired result is to halt legal advancements in terms of Indigenous rights and to obtain judicial decisions that allow the powerful elites to maintain their extractive activities.

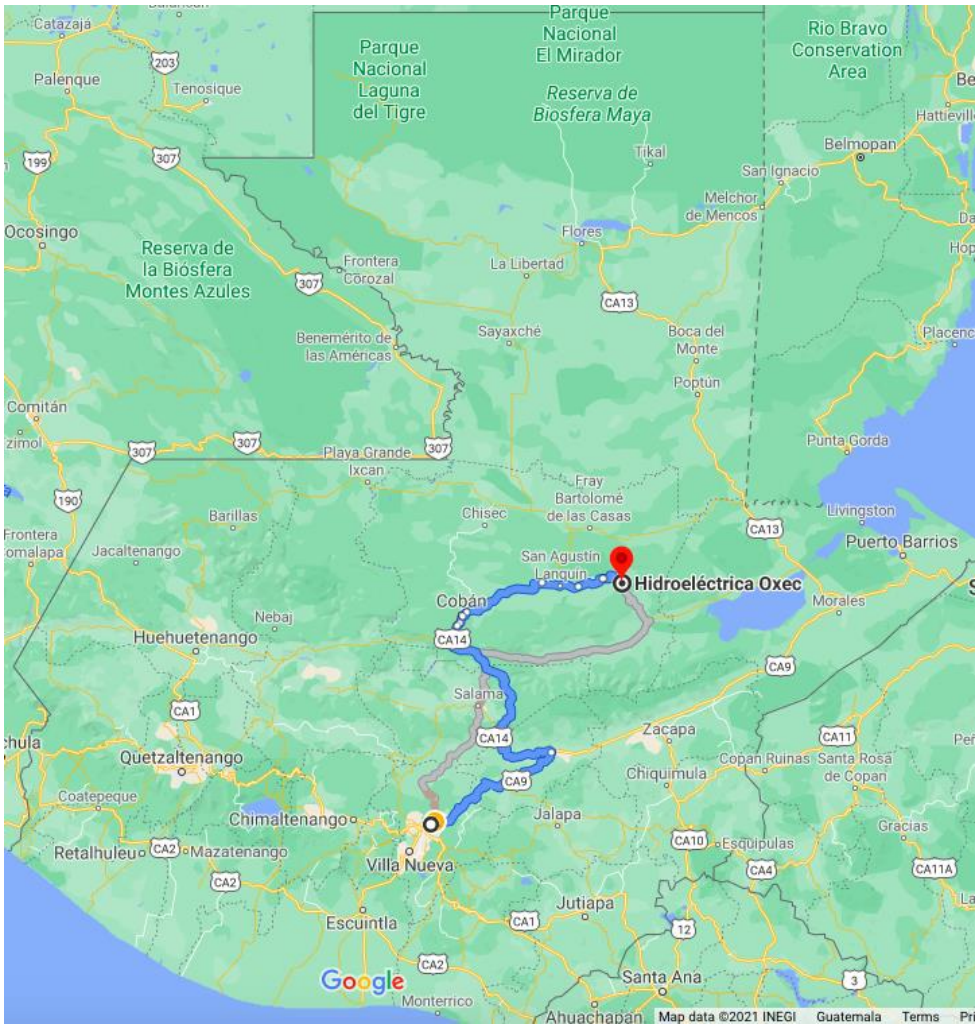
The elites' networks were activated most often in situations of judicial "uncertainty"—that is, when the party involved in a judicial process no longer has the certainty of obtaining a response from the courts favorable to their interests. "The loss of judicial certainty," as the elites have called the political juncture between 2017 and 2019, indicates the elites' loss of control over the judicial system. The loss of control over the judicial system entails endangering the elites' investments resulting from rulings that promote accountability. Uncertainty puts the established privileges of these political and economic elites at risk. Consequently, judicial uncertainty has relevant implications that motivate elite countermobilization to influence the decisions of the high courts and ensure a ruling favorable to their interests.

This chapter first presents the *Oxec* case. *Oxec* became a relevant case for policy surrounding the extraction of natural resources because the ruling would establish the procedure for the right of Indigenous peoples to free, prior, and informed consultation. This ruling would mark the most important policy for the economic and political elites that have benefited from the extraction of resources in Indigenous territories. Therefore, elites' countermobilization became crucial to influence decision-making and secure their interests. After locating this case within national politics, I introduce my conceptual contribution on *judicial advantages* from a mainly ethnographic approach. I draw upon the literature on colonization in Indigenous territories and extrapolate elements of colonial power into the judicial arena. I focus on the sites of judicial influence and the type of re-colonization that is displayed in these sites: the informal personal relationships that co-opt para-legal resources, the battles in the media that diffuse hegemonic

discourses in the elites' favor, and the diplomatic lobby that reverses the legal advancements that secure Indigenous rights.

THE *OXEC* CASE: THE RED LINES OF NATURAL RESOURCES EXTRACTION AND FORMAL ELITE COUNTERMOBILIZATION

Oxec deals with a judicialized conflict related to the construction of two hydroelectric plants on Maya Q'eqchi' territory. According to the plaintiff, the company Oxec, S.A. did not carry out a consultation or obtain free, prior, and informed consent as stated in the international standards. Oxec, S.A., using Guatemalan capital, built the Oxec I and Oxec II hydroelectric plants, located on the Oxec and Cahabón rivers, in the municipality of Santa María Cahabón, department of Alta Verapaz (see Map 1).



Map 1: Oxec, S.A.'s Geographical Location.

Source: Google Maps.

This company generates only 6% of the country's hydropower, but Oxec I and Oxec II are part of a larger hydroelectric complex. The Cahabón river is dammed by four other hydroelectric plants (developed by Renace, S.A., which belongs to the largest Central American multinational using mainly Guatemalan capital: Corporación Multi

Inversiones, S.A.).[41] Currently, six hydroelectric plants operate on the Cahabón River. One-quarter of the electricity market for domestic consumption as well as exports to Mexico and Central America depend on the hydroelectric generation of this complex.

The hydropower market is constitutionally protected by the national electric power law and policy, which orders the use of water as a source of energy. From an economic policy perspective, *Oxec* at the Constitutional Court questioned the extractive policy in Guatemala. Specifically, the case questioned the electric energy policy, currently in the hands of the companies of the largest oligarchic families in Central America with mainly Guatemalan financial capital. Ultimately, *Oxec* could affect the entrenched interests of the country's elites and, therefore, cross the *red line* of the extractive policy, the exports, and the industry sectors as a whole. Therefore, *Oxec* was relevant because the final decision in the hands of the Constitutional Court would outline the procedures, scope, and limits of the country's natural resources extractive policy, with reference to the right of Indigenous peoples to free, prior, and informed consultation.

The conflict brought before the Constitutional Court was decided in the first instance in the Supreme Court of Justice in January 2017 through an *amparo* at the "Preliminary Trials" Chamber (*Cámara de Amparos y Antejuicios*). The Maya Q'eqchi' community that lives in Santa María Cahabón filed an *amparo* before the Supreme Court, through Bernardo Caal Xol[42] as representative and with the legal support of the Madre Selva Environmental Collective (*Colectivo Madre Selva*). The *amparo* was filed against the Ministry of Energy and Mines, which was expected to carry out free, prior, and informed consultation before granting concessions to megaprojects. The litigation

[41] Corporación Multi Inversiones, S.A. (CMI) is a family corporation with activities in the food and energy sectors. The corporation gathers the traditional oligarchic families in the country, and their members have performed as directives in the CACIF. CMI is a foundational pillar of the Guatemalan economy.
[42] Caal Xol is currently serving a sentence of almost eight years in jail.

conducted by the Indigenous community demanded a suspension of the licenses of the hydroelectric plants "and that, when expired, the licenses will not be reauthorized, as long as the Q'eqchi' Indigenous community has not been consulted under the provisions of ILO 169" (Oxec I and II 2017, 5). The Supreme Court ordered that the licenses of the hydroelectric projects be suspended and ordered the Ministry to carry out a free, prior, and informed consultation (2017, 12). In January 2017, the Supreme Court of Justice protected the demands of the Q'eqchi' community of Cahabón, following Guatemalan legal precedents already affirmed by the Constitutional Court in previous years, the megaprojects had been momentarily suspended until the consultation could take place.

The Ministry of Energy and Mines and the company Oxec, S.A. appealed the decision of the Supreme Court before the Constitutional Court as a court of second (and last) instance. The Ministry and Oxec, S.A. argued that dialogues started in 2013 and the process ended in July 2016 with a good faith consultation to the community members inhabiting the so-called "area of influence" (Direct Appeal 2826-2015, Supreme Court of Justice sitting as *amparo* tribunal). The results of this pre-consultation would have permitted construction on the megaprojects to proceed. Also, according to interviews with the Director of Sustainability of Oxec, S.A. and the lawyer from the firm in charge of the appeal, the company had reached an agreement with community members to implement corporate social responsibility projects (First Level Health Care Program, Productivity and Development Program, Educational Program)[43] and to enter into a shareholder-type relationship with annual payments based on a percentage of profits. In addition, they claimed that the generation of hydroelectric energy followed the guidelines set by the electric energy policy and that the Supreme Court decision harmed economic

[43] See Oxec, S.A. website: http://oxec.klarocom.com/programas-y-proyectos/.

investment and the distribution of electricity by increasing market costs. In short, the Supreme Court had crossed the *red lines* of extractive policy and energy sector interests. Yet the Supreme Court's decisions, although very important, are less relevant than the ones coming from the Constitutional Court, which holds the last word. The litigation strategy before the Constitutional Court was the main site of dispute.

The claims before the Constitutional Court were formally filed through memorials. The appellants, which are the Ministry and Oxec, S.A., decided not to go through the public hearing and opted for the written procedure. This litigation strategy followed a specific logic: to avoid contact with the Q'eqchi' community members who were against the megaproject. Generally, in these situations, Indigenous communities choose strategically significant dates to protest and demonstrate in the square in front of the Court building and demand respect for Indigenous peoples' rights. According to the corporate lawyer: "We didn't choose the public audience because many times it leads to a lot of people coming, booing there, mistreating" (Interview, March 2019). Instead, close statements were presented through memorials and amici curiae.

Three amici curiae were filed to support the claims of the elites. These amici were filed by the Wholesale Market Administrator (*Administrador del Mercado Mayorista*) which manages the hydroelectric market in the country, the Renewable Energy Generators Association (*Asociación de Generadores de Energía Renovable*) which promotes hydropower as green energy, and the American Chamber of Commerce in Guatemala (*Cámara de Comercio Guatemalteco-Americana*). They all supported the relevance of Oxec, S.A. in the national and regional economy, as well as the disastrous consequences of non-compliance with international free-trade agreements resulting from the closure of megaprojects (such as CAFTA, Plan Puebla Panamá, or Alliance for Prosperity, all signed with the United States). According to some magistrates interviewed

for this research, the amicus explained why the hydroelectric dams were so important for the national economy and the green turn towards sustainable energy and development. They explained the difference between green energy and mining activity. The socio-environmental impacts caused by the current hydroelectric industry are lesser than those caused by mining. Because of the technology used to produce renewable energy, the impacts are not as disastrous, and therefore there is not enough concern to interrupt hydroelectric activity or to suspend licenses. The amici were significant not only to legally sustain the claims advanced by the industry sector but also to show the existence of a coalition politically interested in maintaining the status quo regarding the extractive policy.

Once *Oxec* was filed in the Constitutional Court, reaching a decision took four months, instead of the period of five days established by law.[44] The four-month delay, along with delays from other simultaneous, difficult, and political cases linked to the fight against corruption, caused the magistrates multiple attacks and scuffles mainly through the media. They were accused of malicious delay (Martínez 2017). According to the interviews conducted with some magistrates of the Court, the pressure from the energy sector was strong and overwhelming. These pressures were directed mainly at the pro-rights bloc which opposed the extractive activities. According to the interviewees, the decision-making process within the plenary was highly contested. In the struggle to reach a consensus, the most difficult point between the two blocs in the plenary session was the suspension of the licenses of Oxec, S.A. In May 2017, the Constitutional Court issued its final decision in the context of internal fragmentation. Although the decision-making

[44] According to Article 39 of the Law on Amparo, Personal Exhibition and Constitutionality, 1986.

appeared to be highly debated in a fragmented court, the vote was unanimous. The Court, through a "structural" and "nomogenetic" ruling, finally decided as follows. The Court:

1) ruled to maintain the licenses and generation of electricity;

2) ordered that a consultation be held in the next twelve months;

3) proposed "basic guidelines" for carrying out a "pre-consultation"[45] and consultation;

4) ordered Congress to approve a consultation law

The corporate and industrial sectors accepted the final constitutional ruling because it increased the conditions for "legal certainty of investments." Because this ruling was supposed to be a "structural" decision that would be implemented in future cases, the industry sector was satisfied overall.

In contrast, for Indigenous communities, the ruling was ambivalent because: (1) the project closures and license suspensions were only temporary, instead of being permanent until public policy was reviewed; (2) the consultation was to be made after the start of a project, which was not a "prior" consultation but a subsequent one; (3) the collective process established in order to carry out the consultation included some communities and excluded those that were outside the so-called "area of influence," creating discrimination in an area culturally understood as a whole; (4) the right to consent was not considered because consultation became an administrative tool instead of a tool for self-determination; (5) the ruling ordered a consultation guide to be implemented for the Oxec region and other future cases, while the Indigenous organizations' position is to conduct consultations according to local self-government procedures; (6) the Constitutional Court urged Congress to vote for a consultation law,

[45] The "pre-consultation," or consultation on the consultation, is the procedure that the United Nations Special Rapporteur on the Rights of Indigenous Peoples has developed for the organization of the consultation itself.

while the Indigenous organizations consider that ILO 169 has already constitutional status. In sum, from the perspective of the Indigenous organizations, the constitutional ruling did not promote free, prior, and informed consultation or consent. On the contrary, it pleased economic elites, as K'iche' politician Mario Sanic Acabal, on behalf of the Council of the Maya People (CPO), claimed in a public hearing of the Commission of Indigenous Peoples of Congress:

> Now, with the *Oxec* ruling, there is a new attack [against Indigenous rights]. The ruling calls for a consultation after the implementation of the projects. […] The Guatemalan corporate sectors are seeking to neutralize the development of Indigenous peoples through pressure on the Constitutional Court to urge the Congress of the Republic [to vote for a consultation law]. For this reason, the Commission for Indigenous Peoples [of Congress] should be alerted that such a consultation law is a domestic law that seeks to denigrate and restrict ILO's Convention 169 regarding Indigenous and Tribal Peoples in Independent Countries. This convention has constitutional status, and any measure [to regulate it] is a restriction of rights. (Mario Sanic Acabal, December 2017, Report of Public Hearings to address the Constitutional Court's call to the Congress derived from the *amparo* ruling dated May 26, 2017, within the accumulated files 90, 91 and 92-2017)

According to my analysis, *Oxec* ultimately accommodated the elites' extractive interests. The decision was ambivalent, and I categorize it as a *mediating* ruling according to my argument stated in Chapter 3. The ruling was ambivalent because it momentarily challenged the elites and their extractive privileges, but it was not transformative, nor did it come close to meeting the demands of Indigenous peoples to self-determination. In the end, the declaration of rights was strong but the reparation measures accommodated the interests of the corporate sectors. I understand "ambivalence" using anthropologist Charles Hale's notion as a "contradictory mix of opportunity and refusal" (Hale 2004, 16). This mix of opportunity in terms of rights recognition and refusal in terms of concrete accountability leaves an open door to

"neoliberal multiculturalism" that recognizes collective and individual Indigenous rights as long as the capitalist economy based on racialized relationships is not affected.[46]

The discourse of "the loss of legal certainty" was no longer applied. The Ministry of Energy and Mining and Oxec, S.A. implemented the "post-consultation" between June and November 2017 and obtained consent from the same people they had already consulted at least twelve months ago in 2016. Although the ruling accommodated the corporate interests, according to a non-recorded interview with Oxec, S.A., we need to understand this ruling within a political juncture of anti-corruption efforts.

The Constitutional Court was looking to increase public legitimacy by deciding in cases of public officials involved in corruption scandals occurring within the Executive, Congress, and the Supreme Court of Justice, and by punishing the company, which was the only case regarding prior consultation before the court at this moment. To please the public, the Court released the provisional *amparo* (February 2017) ordering a temporary closure of the activities of the dams until the consultation was organized. According to the interviewee, this resolution "came out of nowhere, they could not believe it, it was a joke." The case was politicized by a Court that became ideological in the context of anti-corruption efforts. In turn, along with the formal countermobilization that responds to the legal frameworks and institutional policy, other informal practices appeared to have played out to address the magnitude of the case that, according to the non-recorded interviewee at Oxec, S.A., became political and ideological.

[46] I also consider that ambivalence can be a strategy on the part of the Judiciary to protect itself in the event of extreme opposition to the political-business elites. I am aware that this strategic perspective is problematic from a radical point of view towards rights enforcement. That said, it is important to recognize that action within the Judiciary also depends on the correlations of power and on other powers within and outside the state (Helmke and Ríos Figueroa 2011).

JUDICIAL ADVANTAGES, INFORMAL ELITE COUNTERMOBILIZATIONS, AND RE-COLONIZATION

The research experience in two geographical sites, Guatemala City (location for the Constitutional Court, central government, corporations, law firms, and the offices of human rights associations) and Santa María Cahabón (location for the hydroelectric Oxec, S.A. and a key site of the community resistance), brings me to the concept of *judicial advantages*.

While around 300 members from the Q'eqchi' community of Cahabón undertake two days of travel and transfers on public transport to peacefully demonstrate in front of the Constitutional Court in Guatemala City, the white-collar agents of the hydroelectric Oxec, S.A. can travel to their homes in the city by helicopter in a few hours. The kind invitation the Director of Sustainability of Oxec, S.A. extended to me to visit the hydropower plants in Cahabón never materialized. However, the plan of the visit was: "We leave the building by helicopter on Thursday, we spent the day there so that you could visit the plants and learn about the corporate social responsibility programs, and in the afternoon, we are back home in the city." This is also how Oxec, S.A. took[47] a delegation of ambassadors in three helicopters to see the company's facilities and machinery. The objective of that visit (unknown date) was to show the diplomats the high-level quality of the green and sustainable hydropower industry. The diplomats invited to that visit were indeed the most important ones in terms of international cooperation for development; they are organized through the G13 Donor Group. Their partnership is, therefore, crucial to keep business on track.[48]

[47] The interview was not recorded and I do not have in my notes the exact moment when the diplomatic delegation visited the Oxec, S.A. facilities in Cahabón.

[48] According to the website: "The G13 Donor Group was created in 1999 with the objective of supporting Guatemala in its development to achieve an equitable society, sustainable economic growth and the rule of law. The G13 is made up of the following donor countries: Germany, Canada, Spain, the United States of America, the United Kingdom, Italy, Sweden, Switzerland, France, and the European Union and the

In contrast, leaving Cahabón by public transportation and traveling more than 300 kilometers for nine hours requires a high level of organization (see Map 1 to visualize the travelled distance). The community members of Cahabón must prepare their mobilization to Guatemala City in advance. The *kub'sink* is organized where everyone contributes as much as they can to collectively rent transportation and get to the Central Norte bus station in the City. The women prepare food, some *tayuyos* (corn-made *tortillas* filled with black beans), that lasts for several days so as not to have to spend money (Interview, July 2019).

They travel from the villages in the late afternoon to reach Cobán, the departmental capital of Alta Verapaz, at night. Although traveling at night is not common in Guatemala, the community members of Cahabón set out at 11:00 pm from Cobán to arrive at the bus station Central Norte at 5:30 am the next day. According to the interviewees, from the Central Norte they walked for almost two hours to the city center, where the public institutions are located: "At 7:30 am we had everything ready [referring to the blankets with different slogans and objects for the demonstration, especially pitchers as a metaphor to claim for access to water], and at eight in the morning we were already marching, starting from the presidential residence to the Constitutional Court, where we stay outside for about an hour," explains Mario Coq Raxh, in charge of the agroecology program of Cahabón's *Fundación Fray Domingo de Vico* (Interview, April 2019).

The contrast in the travel logistics between the corporation's staff and the Q'eqchi' groups to Guatemala City revealed to me the asymmetries in terms of access to

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following multilateral organizations: the Inter-American Development Bank, the World Bank, the International Monetary Fund, the Organization of American States and the United Nations System in Guatemala." https://gt.usembassy.gov/es/grupo-de-donors-g13-2/

a place—in this case to the capital city. I took this contrast as a metaphor to describe the advantages (and disadvantages) playing out within the judicial arena.

I understand *judicial advantages* as the activation of the political, economic, and judicial privileges of the powerful elites to influence decision-making through loyalty and linkages or coercion and threats, as explained in the theoretical chapter of this dissertation. They are advantages because the political and economic elites have maintained powerful contacts and acquaintances in favor of their interests with actors within the political and judicial institutions and have the resources to trigger campaigns in public media. These personal relationships are the result of the accumulation of various capitals in the sense provided by Bourdieu.

When are *judicial advantages* mobilized? The case of Guatemala reveals that the advantages are activated above all in situations of "uncertainty." Since the beginning of the anti-corruption efforts in 2015, the scenario in the courts has no longer been taken for granted by the elites. When there is no certainty of the votes that will be cast in the plenary session of court, the elites activate their judicial advantages to influence the magistrates' votes in their favor. The strong elite countermobilization indicates that the interests of the hegemonic elites are being threatened, and the red lines of the extractive activities are being crossed. This countermobilization utilizes judicial advantages and seeks to counter Indigenous and allied mobilizations that support the pro-rights bloc.

What do judicial advantages aim for? Following the Indigenous scholarship on colonization and settler colonial processes, I argue that judicial advantages imply a *re-colonization* in the judicial arena. Concretely, re-colonization occurs in three aspects: (1) co-opting resources for purposes of judicial influence; (2) establishing control over the discourses by diffusing ideas of conflict related to legitimate Indigenous resistance; and (3) seizing and dismissing the legal interpretations of the Indigenous rights to

consultation and consent to dispossess Indigenous peoples from territories. In this case, dispossession plays out in the legal field.

I acknowledge that Indigenous and native scholarship in colonial contexts strongly pinpoint the colonial origins of current Western legal systems in Indigenous and native territories (for instance Walsh 2005; Smith 2012; Moreton-Robinson 2015; Nichols 2020) and its limitations to achieve justice: "Being central to colonialism, a system that appropriates and exploits land and labor, race's economic and political dimensions are obvious enough, as is its legal function of marking the uneven distribution of juridical statuses and rights between communities" (Wolfe 2016, 50). However, with the judicialization of politics, Indigenous communities and movements have also used strategically the legal frameworks and the judicial institutions to channel their struggles for justice and accountability (Hernández Castillo 2016; Sieder 2017). I argue that elite countermobilizations applied through judicial advantages aim to colonize again those legal spaces already won by the Indigenous mobilizations.[49] Re-colonization and invasion in the legal and judicial arenas are embedded within the judicial advantages, as I explain later on, through informal personal relationships, battles in the media, and the diplomatic and political lobby.

First, the mobilization of the informal personal relationships unveils that the formal resources used to build up the appeal strategy before the Constitutional Court were not enough. The elites recalled informal relationships and acquaintances to influence ideas and judicial decision-making. In my perspective, this is a renewed form of co-opting resources, *acumular recursos*, to seize and take control of the institution that

[49] My perspective on re-colonization is based on the assumption that the current legal system in Nation-States come from original Western colonial structures (for instance, the idea of the "republic" and the "rule of law"). However, given the current legal system, I acknowledge that legal frameworks have been advanced by Indigenous movements and other groups to use those frameworks for Indigenous individual and collective benefits.

elites need to maintain their dominance. By "co-opting para-legal resources," I refer to the act of grabbing, accumulating, and misusing available resources due to privileges, in this case informal personal relationships, to obtain what the elites are seeking. I draw upon literature on colonization and land grabbing, where grabbing Indigenous territories takes a central role in the colonial process (Wolfe 2016; Moreton-Robinson 2015; Nichols 2020). Extrapolating this concept into the judicial arena allows us to explain why these advantages take new forms for judicial colonization.

Second, the battles in the media and public opinion once again impose hegemonic discourses about Indigenous resistance and conflict making. The Executive Director of the Chamber of Industry stated during an interview,

> Three groups, which I call "merchants of conflict" that, under the umbrella of environmental justice or ancestral issues, have taken refuge in ILO 169. What they really do is raise conflict because, where there is conflict, there are invasions and blockades of private property, assaults on people, and so on. These are NGOs financed by foreign countries, the Nordics, and some other countries. What they do is generating conflict as a business because the more conflict there is, the more funds they receive, and that is what we have seen as one of the very serious experiences of ILO 169: misapplication, misrepresentation, misinformation that this type of NGOs have created to influence certain Indigenous communities. (Interview, June 2019)

This kind of discourse diffused in the public opinion contributes to strengthen the ideology of Indigenous barbarism within a widespread rhetoric of "savagery", "terrorists" and an "international left-wing." These discourses refer to a colonial and racist rationale that is also supported by the legal and political structures.

Third, the lobby's actions in the diplomatic and political arenas are renewed strategies for legal seizure that operate by erasing the legal advancements that favor Indigenous peoples and the respect for their specific rights to self-determination, instead imposing legal norms that advance extractive megaprojects in a racial capitalist regime.

Legal seizure occurs in the interpretation of legal norms, for example, when the corporate lawyers and diplomatic officials do not recognize or reject the evolutions in ILO 169 interpretations. The corporate lawyers advocate for the "spirit of the law" that favors economic interests and financial investments through "dialogue mechanisms" to achieve agreements, while disregarding the right of Indigenous peoples to consent as international rulings have advanced, especially those of the Inter-American Human Rights Court. This strategy is particularly applied in cases related to so-called sustainable and responsible "green" energy projects when corporate lawyers highlight the positive impacts of renewable energies in national economies and local communities.

The same Executive Director of the Chamber of Industry mentioned,

> […] at some point, the concept of consultation has been distorted and has become a veto, a yes or a no. Consultation is none of it. Consultation is actually a mechanism for dialogue between the three parties, the community, the project, and the State, to find measures that can mitigate possible risks. I think that this hasn't been understood. On the contrary, we have understood this distortion as a result of the conflict that ILO 169 has generated. (Interview, June 2019)

Re-colonization ultimately sets the ground for a backlash by authorizing the questioning of legal advancements and precedents benefiting Indigenous self-determination. It allows bringing together hegemonic sectors of society sharing the same extractive interests and ideas. Elite networks and countermobilization protect the red lines of extractive politics and the institutionalization of consultation in a colonial logic. In this logic, networks seek, as they have historically done, to utilize Indigenous territories for the continuous extraction of natural resources.[50]

What are the limits of the judicial advantages? First, the advantages playing out in the judicial arena, mostly sustained by political and economic elites, are difficult to trace

[50] In the territory of Cahabón, extraction began at the end of the 19th century when German settlers began the agro-export of coffee and cardamom. Now, diversified economic elites are exploiting the river and the water.

both methodologically and empirically speaking due to their informal and "invisible" nature. Also, theoretically, the existence of advantages does not fully explain causation in terms of decision-making and outcomes due to that methodological difficulty. Nevertheless, the existence of these advantages does not strictly exclude the possibility of influence over the outcomes, either. Also, from an activist research perspective, I consider that the first-hand information gathered from privileged fieldwork needs to be made public, at least for the sake of Indigenous struggles for access to justice that might be hindered by this type of elite countermobilization.

I also assume that judicial advantages are privileges activated by the elites. I posit a difference between advantages and capacity building. Although Indigenous organizations have gradually built capacities to position agendas in the high courts, they do not resemble the advantages marked by historically acquired privileges. For example, the Mayan Bar Association of Guatemala (*Asociación de Abogados y Notarios Mayas de Guatemala Nim Ajpu*), one of the main Indigenous rights advocacy organizations in the country, has developed its own network of actors who support Indigenous claims before the courts. This network includes a few magistrates in the high courts. Specifically, the Mayan Bar Association, along with the Universidad San Carlos de Guatemala, selected a Mayan lawyer with knowledge of the rights of Indigenous peoples as a substitute constitutional magistrate.

Informal Personal Relationships

One of my first interviews was with the defense lawyer of the hydroelectric company Oxec, S.A. Answering my first question about how the case arrived at their office, it did not take him more than two minutes to tell me that the case had arrived at his firm because:

> We have been attorneys for them [a family that owns a hydroelectric plant] for a long time. They were also involved in a consultation case. That is why we have that experience. My father is also a very experienced lawyer in these issues, constitutional issues. He was a magistrate. He was president of the Supreme Court of Justice, and well, because of *conectes* ("connections"), as one would say in Guatemala, for which people come to us. And that's how the *Oxec* case came to us. (Attorney from the representing firm, March 25, 2020)

His father is the firm's senior attorney and is in an advantageous position, being familiar with the internal institutional practices based on fifteen years of experience in the Supreme Court of Justice (two terms as alternate and one as principal magistrate in the 2000s). Litigation work requires strategy and familiarity with the magistrates of the Constitutional Court. When asked about how they calculate the magistrates' votes in litigation in general, the interviewee replied that "there are so few [between five and seven depending on the case] that we know how they are going to vote." But later he acknowledged that it is never known in advance how exactly the magistrates will decide. With the former magistrate and the rest of the team, the magistrates who are going to make the decisions are profiled to learn a little about the tendencies and probabilities involved in the decision. Responding to how to know the tendencies of each justice, he added,

> It's like human relationships, right? […] If I ask him for a favor, he does it ... Let's see, no, I mean to say "ask a favor" ... If I go to this person [the justice] to ask him about "such and such", his answer will almost certainly be "this." (Attorney from Oxec, S.A. representing firm, March 25, 2019)

Although this intervention speaks of hypothetical situations, this interview shows an example of judicial advantages through the informal linkage relationships that this corporate law firm may maintain with members of the high courts (the Supreme and the Constitutional Court), which might have causal effects. The fact that the senior lawyer has been a member of the two courts represents a great utility for them that allows asking for favors and obtaining favorable responses.

This interview correlates with what a clerk from the Constitutional Court described:

> Sometimes those of the trade associations, the businessmen come to speak with the magistrates about their cases, only that they enter there [signaling the back of the building]… the back entrance gate. Sometimes it is for security matters. Once, this guy from *Fundaterror* [an association gathering former military officials], what's his name?, came into the court through the *11 avenida* [where the back-entrance gate is located] because, with those CICIG cases, the main door, where you came in, was full of protesters shaming him; there is a picture of this moment in the guy's Twitter. […]

Later in the interview, when we were talking about the places of influence, the clerk repeated,

> Sometimes we don't know who is visiting. Sometimes we see [from the window of the office] fancy cars (*carrozas*) entering but we don't know who they are, where they are going, or who receives them. From here, we cannot see, and there is no control of who enters although there is a list. In the back entrance gate, only the administrative office knows because they authorize parking lots, but after, where they go or with whom, that we don't know. We, as clerks, don't have that information and we are not looking for that information either. […] The parties [meaning the people related to a case] rarely ask for meetings. And people come but untied to a case; not as parties but as citizens, they want to say hello or to express a concern, but not about a concrete case. Mayra Veliz, when she was the General Secretary of the *Ministerio Público*… Not for a concrete case, but "*a saludar vine*", to ingratiate herself, right? But not for concrete cases. (Interview, March 2019)

These private meetings between constitutional magistrates, public officials, or businessmen were, apparently, a common practice. However, this common practice was publicly recognized as a problem of conflict of interests and influence and, in 2017, it started to be counteracted as an internal rule in the institution. As a "self-imposed restriction" plan during the term of former magistrate De Mata Vela president (2017–2018), magistrates were forbidden to hold private meetings in the Court. This was confirmed by one clerk:

> […] in his inaugural discourse [as the Court's president in turn] two years ago, magistrate De Mata Vela expressed that the five magistrates agreed that they wouldn't receive litigant lawyers. […] These five magistrates decided not to receive, not to give private hearings to the lawyers in particular, precisely to avoid that type of inequalities, perhaps, or to avoid bad thoughts, like to do good things that seem bad. But in the case of Cahabón, magistrates received two small committees from the communities, some in favor and other against the dam […]. (Interview, March 2019)

Indeed, in the *Oxec* case, interviews with community leaders confirmed that the president magistrate received a committee of five leaders, three men and two women, but no one knows the impact of that meeting on decision-making. Instead of these private meetings, the Constitutional Court's magistrates encourage the parties in a judicial process to use the public audiences, where the magistrates hear the two contending parties about fifteen minutes and orally present their claims supported by interpretation services from the Mayan languages to Spanish. Although the institutional policy to limit private audiences with constitutional magistrates was implemented in theory, in practice, the private meetings kept being held as the interviews presented above reveal.

These informal personal relationships seek to influence decision-making at the Constitutional Court. According to my interpretation, activating these personal relationships and linkages to increase influence within the Court goes beyond the formal resources to dispute a judicial case. Instead, elite countermobilization plays out as a form of re-colonization through co-opting more informal and para-legal resources, such as the corporate law firm connections.

Battles in the Media

The elite countermobilization activated media strategies to address their messages to the Court via public opinion. According to the non-recorded interview with Oxec, S.A., the company decided to put some pressure on the Constitutional Court through the

media because they understood that the case had become political with a media resonance. According to the interviewee, the Court did not notify the company of the provisional *amparo* resolution, but they read the notification through the Court's press conference that appeared in the newspaper. According to Oxec, S.A., this became a media case and they had to react in the same way.

The messages published in the main newspapers of the country promoted the green industrial sector. They were also intended to pressure the magistrates through open letters urging them to vote on time. Lastly, they pushed the Court to be the guarantor of "legal certainty" and "investment certainty." In sum, these messages exerted media pressure on the magistrates to vote in favor of Oxec, S.A. According to the interviewee at Oxec, S.A., this media strategy was partly financed with support from the German Embassy, although this information was denied by the officials from the Embassy and the International Cooperation GIZ.[51]

The coalition in the media occurred at the national, regional, and binational levels. The main actors were Oxec, S.A., the CACIF (the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations), and its allies in Guatemala, Latin America, and Germany. Table 4 traces the actors from the coalition, what they represent in the national arena, and what their demands are according to their messages in the newspaper.

Actor	What do they represent	Message

[51] The specific information about the participation of the German Embassy in the media strategy remains unclear. Although this was the information obtained in a non-recorded interview at Oxec, S.A., the interview held with the German officials of the embassy and the German International Cooperation GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit) denied the information. What the interviewees confirmed is that, although they do not have projects at stake, they closely follow the developments regarding ILO 169 and specifically the prior consultation topic, and they promote a guide for dialogue in cases related to the consultation.

Energy Resources Capital Corp	Oxec, S.A. shareholder based in Panama	Respect the Ministry of Energy and Mining Allow the dams to produce
Asociación de Generadores de Energía Renovable	Gathers 50 members, mainly dams and other services	Secure development Allow the dams to produce
Asociación Nacional de Generadores	*No public information*	Consider the negative impact Prioritize ILO 169
Instituto Nacional De Electrificación	Public service for transportation and distribution of electric energy	Reminder of the efforts for bringing renewable energy in the country
Gremial de Grandes Usuarios de Energía Eléctrica	Gathers the main industrial corporations in the country (food, grey industry, drugs…)	Comply with existent legal frameworks Secure development
Administrador del Mercado Mayorista de Electricidad	Private service for electricity supply	Reminder of the positive effects of dams in the energy market
Cámara Guatemalteca de la Construcción	Gathers the main grey infrastructure corporations	Prioritize development Regulate prior consultation
Asociación Guatemalteca de Exportadores (AGEXPORT)	Gathers several exporters	Comply with existent legal frameworks Secure development
Gremial Forestal de Guatemala	Gathers wood industry and subsidiaries	Secure investments
Amigos del País	Association created in 1795 promoting enlightenment and progress	Comply with existent legal frameworks Secure development
Movimiento Cívico Nacional	Right-wing think tank	Make a decision
Federación de Entidades Privadas de Centroamérica, Panamá y República Dominicana (FEDEPRICAP)	Gathers 150,000 corporations in the region. Related to the Central American Integration System	Regulate prior consultation Allow the dams to produce Secure industry's freedom
Asociación de Industriales Latinoamericanos	Gathers 17 national federations of the industry corporations in Latin America	Prioritize ILO 169 Secure industry's freedom Secure investments through legal certainty

Cámara de Comercio e Industria Guatemalteco-Alemana	Provides support for economic and legal interests between the two countries	Secure industry's freedom Prioritize ILO 169 Respect Rule of Law

Table 2: Actors of the Coalition in the Media for the *Oxec* Case.
Source: Colectivo Madre Selva database, own elaboration

Most of the messages communicate that it is important to prioritize ILO 169, comply with existent legal frameworks, and secure industrial freedom and development. Illustration 2 shows some paid advertisements in the national press marking the reasons why megaprojects should not be suspended (Appendix C displays more examples). Twenty-eight paid advertisements of this nature were published in newspapers in eleven months. To counter the elite massive media battle, communities and allies organized a smaller campaign to tell their vision of the case. On a disproportionate level, the Q'eqchi' communities against the megaprojects and their allies only published nine communiqués freely in digital media. This campaign was promoted via radio, through the *Federación Guatemalteca de Escuelas Radiofónicas* (FGER) and *Emisoras Unidas*, in digital press, through *Prensa Comunitaria*, and through the Facebook page "*Pelón Cobanero*" and by Maya journalists Sam Chun and Santiago Botón.

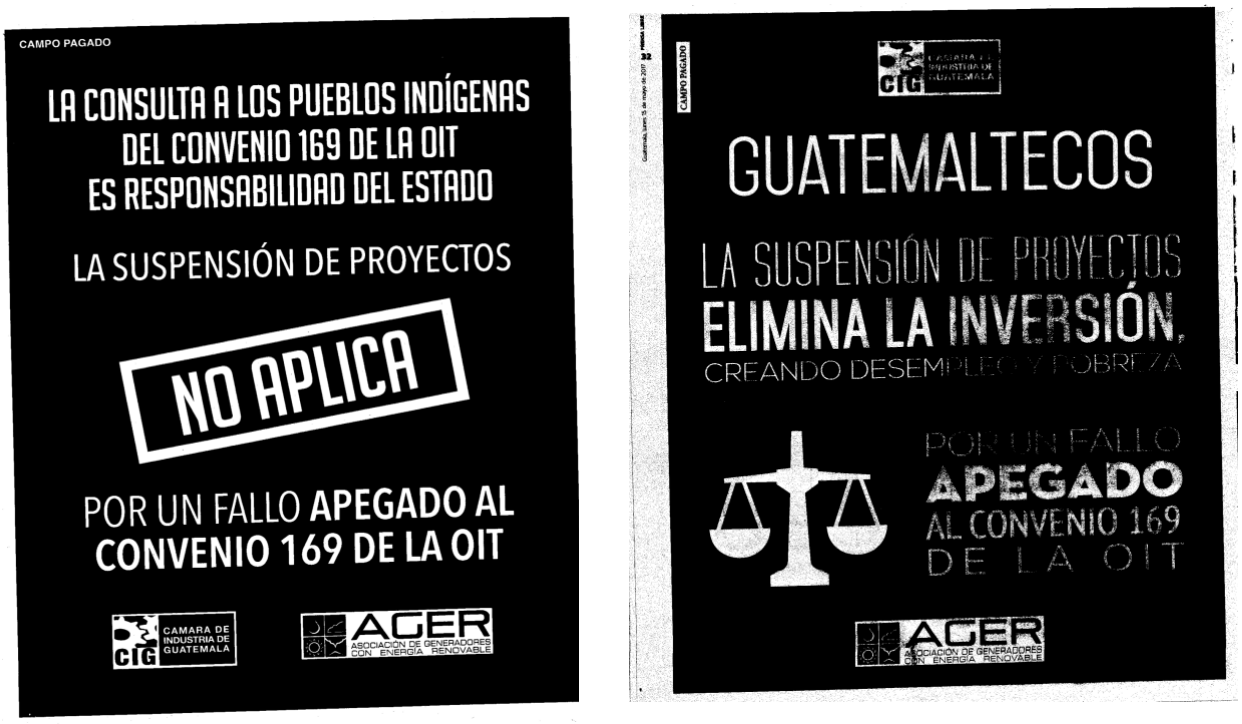

Illustration 2: Examples for Paid Fields in the National Press Favoring Megaprojects.

Source: Prensa Libre, 05/12/2017 and 05/15/2017. Form a compilation supplied by Colectivo Madre Selva.
In English:
Right Image: ILO 169 on the consultation to the Indigenous Peoples is a state responsibility. Projects suspension DOES NOT APPLY. For a ruling in accordance with ILO 169.
Left Image: Guatemalans: Project suspension eliminates investments, creating unemployment and poverty. For a ruling in accordance with ILO 169.
A campaign by: the Guatemalan Chamber of Industry and the Renewable Energy Generators Association

In addition, billboards were hung anonymously outside the Court, also putting pressure on the magistrates to rule in favor of the hydroelectric plant. No pictures from this campaign are available, but something similar occurred later in January 2019 when the pro-rights bloc of magistrates was accused of being "*traidores de la patria*" (traitors of the fatherland) with their anti-corruption rulings, as shown in Illustration 3.

Illustration 3: Example of Public Defamation Against Magistrates

Source: January 2019
From left to right: Magistrates Bonerge Mejía Orellana, Francisco De Mata Vela, Gloria Porras Escobar, Neftaly Aldana. This group was called "*la banda de los togados*" ("the robed band") by the elite coalition.

Finally, videos were circulated on YouTube discrediting the community movements of the Cahabón area, as shown in Illustration 4. (Appendix D displays more examples of defamation videos on the web). We do not know who is behind the YouTube channel "*El Noruego Distinto*" disseminating these videos.

Illustration 4: Example of Discrediting Campaign Against the Community Movements of the Cahabón Area.

Source: ElNoruegoDistinto, 2017. From a compilation supplied by Colectivo Madre Selva.
In English:
So-called "community leader". The Ministry of Education removed him in 2013 because he did not show up for work. The Public Prosecution Office is looking for him for fraud to the state. He earned more than a year of wages without showing up for work. He does not live in Santa María Cahabón, but in Chimaltenango. He calls himself a "leader" of the 'q'eqchís'.

What the media strategy revealed was the formation of an industrial coalition. The coalition sent a clear message to the constitutional magistrates to decide quickly and in favor of the hydropower industry. The messages were meant to persuade the public in general that the Constitutional Court was going beyond its mandate and that green energy is positive for the national market.

Answering the question of how the media influences the decision-making, the magistrates and the clerks who were interviewed all agreed that the media is indeed a channel of pressure. However, both magistrates and clerks told me that they read the

newspaper but they try to not be influenced by its contents. On the contrary, one clerk observed,

> [Media pressure] is something that is quite strong. I don't dare to tell you that it affects [the outcome], but it is quite strong in the environment. The issue of time, for example, because much of what appeared in the media was "solve now, do." Perhaps the population couldn't see that we were working at full speed because the teams were almost concentrated or spending a good part of their days in getting out of those cases without neglecting the others. […] I think that this factor [the media] doesn't affect [the outcome] on the bottom line; as you say the courts do not isolate themselves and on the other hand, in this type of case, at least in this team, that is my experience, there is considerable interest in maintaining the legitimacy of the Constitutional Court. In other words, the population can understand and accept the decision of the Constitutional Court in relation to thousands of things that can be said to them. In here, we see and say "look at the press, they say something", but we know that it is not true [...] We have to take care of the precedents in every word, we have to maximize the constitutional language so that the press can see that if we say something, here is the evidence. So that legitimacy, I think, forces the Court to be even more focused on what it stands for. (Interview, June 2019)

Although media pressure did not have a direct impact on the *Oxec* decision, the quest for institutional legitimacy might have influenced a *mediating* decision. We cannot be sure of a causal relationship between the battle on the media and the decision-making, but this media campaign exerted pressure on the magistrates and the clerks, and the constitutional ruling ultimately aligned with the corporate demands.

Diplomatic and International Lobby

In the political-diplomatic arena, judicial advantages in the context of the countermobilizations of the political and economic elites activate their international networks of commercial partners, precisely, within the diplomatic corps that have extractive interests in the territories. The lobby before representatives of international and bilateral economic cooperation seeks to counteract the alliances that Indigenous organizations have built with international human rights institutions. The international

commercial networks play out as new contenders against the international human rights movements. These commercial networks encompass embassies, bilateral cooperation institutions, and as a central institution, the International Labor Organization.

In 2019, the ILO Committee of Experts on the Application of Conventions and Recommendations, in a report written after tripartite discussions (the government, the corporations, and the Indigenous peoples' representatives), provided the following information:

> […] the CACIF expresses its concern about the absence of adequate regulations that guarantee the proper application of the right to consultation enshrined in the Convention, as well as the uncertainty caused by the decisions issued by the national courts of justice that have generated contradictory jurisprudence regarding the scope and manner in which consultation with Indigenous peoples should be carried out. (Minutes ILO'S International Labor Standards Department, March 2019)

The position taken by the CACIF and the government seeks to create regulation or a law ordering the process for consultation with Indigenous peoples in extractive activities. At the moment of the fieldwork, ILO was supporting this position and promoting the Peruvian model for the consultation law. This position was radically opposed by the Indigenous organizations that are actively participating in these tripartite discussion tables. According to the perspective of the Indigenous organizations, the consultation process should, instead, follow the lead set by the Inter-American Court of Human Rights. The Inter-American Court of Human Rights has produced jurisprudence expanding the right of Indigenous peoples to free, prior, and informed consultation including consent and the Indigenous communities' self-government (see, for instance, Corte Interamericana de Derechos Humanos 2018). Therefore, to strengthen the corporate interests towards regulation against the human rights perspective advanced by the

Indigenous organizations, the corporate strategy included diplomatic lobbying with business partners.

My colleague from an Indigenous organization I used to work for in 2014 provided analysis and description regarding the role of diplomacy and international cooperation in Indigenous matters. The right wing, most precisely led by the CACIF, "co-opts" Indigenous persons within the business associations and the different projects to counterbalance the international processes for lobbying conducted by the Indigenous social organizations. The international lobby is financed in the framework of projects, themselves financed by cooperation agencies. My colleague mentioned that there is great inequality in terms of travel treatments with the different Indigenous delegations, according to the political sides they participate in. An example of the differences of travel treatments is if the delegation belongs to a CACIF office, the cooperation agency will provide the best hotels, all expenses included, and the delegation visits mostly encompass the OAS and the United Nations.

In contrast, the agencies provide to the Indigenous social organizations with the minimum expenses for a cheap hotel, and (if organizers are lucky) the flight tickets. Materially speaking, the Indigenous persons lobbying for the interests of the CACIF are advantaged in relation to the others. Also, at the level of relationships and networks, these delegations are better connected with the United States, as opposed to the social organizations which are mainly related to the Scandinavian countries, like Sweden or Norway. These social organizations have other networks, and that makes a difference in terms of leverage: in national politics, the US is politically more important than the Scandinavian countries, for instance.

In terms of influence and pressure in policy-making, my colleague told me that one cooperation agency from the US almost made its aid conditional on support for the

regulation for prior consultation, the one that the government was promoting. This regulation was indeed supported by the former US ambassador in Guatemala because the office considered that this was the only solution to the issue of investments in the country. Seemingly, the same happened with other cooperation agencies. The issue of regulation had reached such a high level that, during a meeting with Democrat Congresswoman Norma Torres' advisor, the advisor mentioned that my colleagues' organization should support the regulation. My colleague told me that he was not supporting the regulation project because the Indigenous organizations were instead aligned with a human rights perspective on the matter. As my colleague explained, the US mostly hears the Indigenous *caciferos* (meaning those aligned with the CACIF). According to him, the ILO is pressured by the corporations seeking to regulate this right of consultation, and the ILO's role is turning towards the legalization of consultation to ensure legal certainty to the investors. "ILO is retreating because of the corporate pressure," he clarified.

Indeed, non-recorded interviews with constitutional magistrates confirmed that representatives of the diplomatic corps in Guatemala, including the ILO representatives, used to invite constitutional justices to cocktail parties where they spread the main messages that, on the one hand, the prior consultation needed to be regulated by a law, and on the other, that hydroelectric power is the future of the "green" and sustainable economy in a country like Guatemala with great potential to use the rivers as sources of energy. In sum, the right to prior consultation needed to be regulated and that hydropower is desirable in the country. The magistrates interviewed asserted that due to the influence exerted in these informal social events with the diplomatic corps, they stopped attending the gatherings. However, the *Oxec* ruling ultimately incorporated all the elites' demands to keep the extractive activities on track.

CONCLUSION

The case of *Oxec* reveals how elite countermobilization is at play within the constitutional justice system. Through the advantages mobilized within the judicial arena, the elites seek to benefit the industry and energy sectors by limiting the scope of rights of Indigenous peoples to self-determination. These judicial advantages result in rulings that adjust the claims of the Indigenous communities for self-determination to the interests of the corporations and economic elites. The mediating ruling entails ambivalence—granting rights without transformative reparation measures—and re-colonization in the legal arena, which involves co-opting resources, controlling hegemonic rhetoric, and seizing and dismissing legal interpretations.

Theoretically, the judicial advantages are contributing factors towards a backlash that, besides the regression in the legal interpretations of the right of Indigenous peoples to free, prior, and informed consultation and consent, creates the political and legal environment for coalitions. These coalitions, in the context of anti-corruption efforts, will have a central role in the materialization of a backlash that ultimately seeks to capture the Constitutional Court.

Politically speaking, these judicial advantages mobilized by the elites are harmful vis-à-vis the Indigenous movements struggling for constitutional justice. The elite countermobilization is actively jeopardizing the advances carried out by Indigenous and allied advocates in the last decade. However, the advantages are also mobilized in other arenas of politics. The usage of the term "advantage" in Guatemalan politics is indeed not new. As the United Nations' International Commission against Impunity in Guatemala (CICIG) says of the Illegal Clandestine Security Apparatuses (*Cuerpos Ilegales y Aparatos Clandestinos de Seguridad*, CIACS),

> It is not the formal linkage of their members to the state that characterizes these groups, but rather their level of influence through corruption, infiltration, or co-optation of decision-making processes within the state apparatus. Such criminal units are networks made up of individuals in a specific socio-historical and institutional context, who compete for the maintenance of *comparative and competitive advantages* against the state and the market. Bribery, fraud, embezzlement, influence peddling, among other illicit practices, appear linked to the action of criminal networks entrenched in the state, whose members have accessed key positions within the public administration to interfere in the systems of management, redirecting them towards the satisfaction of particular interests. (CICIG 2019b, 21) (Emphasis mine)

According to the CICIG, the advantages find their origin in the military authoritarian regime and continue to operate within this democratic regime. Although the *Oxec* case does not directly involve systematic corruption scandals at the highest levels of government, the CICIG unveiled the mechanisms of "political advantages" to control public administration and generate profits. What is interesting is unveiling the most strategic moments these advantages are visibly activated. These judicial advantages are activated in moments of judicial uncertainty, more specifically when the elites are not sure to get the necessary vote to pass their preferences. In the *Oxec* case, through the judicial advantages, the elites expected to obtain judicial decisions that allow them to maintain domination of Indigenous territories for the extraction and use of resources.

Advantages and influence in the high levels of institutions, as I explain in the next chapter, are more likely to be deployed when large sectors of society—the *colonial-conservative coalitions*—come together to trigger a backlash and undertake a political project. Maintaining the extractive activities—securing natural resources and state resources through corruption—is at the core of these political and economic coalitions that seek to capture the Constitutional Court, the *jewel of the crown*.

Chapter 5: Coalition Building and Backlash: Extractivism at the Core

INTRODUCTION

The Guatemalan constitutional rulings ordering the implementation of anti-corruption policies and the closure of natural resource extraction projects—which violated the right of Indigenous peoples to a free, prior, and informed consultation—motivated violent reactions against judicial institutions between 2017 and 2019. Anti-corruption efforts and Indigenous peoples' rights, more specifically those aiming at self-determination in ancestral territories, seem to be distinct matters.

However, the brutal reactions that followed these two apparent distinct matters unveil the core foundations of a regime led by the interests and ideas of hegemonic non-Indigenous elites still controlling state and Indigenous land resources. Following the argument of this dissertation, the accumulation of constitutional anti-extraction rulings promoted elite accountability, disrupted the long-lasting pattern of racialized extractive activities that underlies the basic power structures in Guatemala, and triggered intense backlash against the Constitutional Court and its support structures.

When the *red lines* of an extractive regime are crossed, they demarcate not merely the policy preferences of power holders, but rather the very foundations of their power, the mechanisms they use to secure and perpetuate ongoing access to power and resources. Political scientist Tamir Moustafa's discussion on the limits of judicial decision making in constrained military regimes uses the term "red line system" to refer to "[the] implicit understandings between the regime and the opposition over how far political activism will be tolerated" (2003, 906). I use the term to identify explicitly the areas in judicial politics where the core foundations of a regime are disputed through legal battles. I claim

that crossing those lines is likely to trigger backlash because it challenges the powerful political and economic elites' interests and ideas.

In this chapter, I argue that (1) the anti-corruption efforts and (2) the promotion of Indigenous peoples' rights by the Constitutional Court, in combination, sought to hold political and economic elites accountable for violations of the rule of law and, therefore, triggered an intense backlash. Together, both forms of extraction are the foundation for the colonial and racial power structures in Guatemala, and challenges to them are likely to trigger backlash against constitutional authority. I trace the process of backlash by identifying four key elements: (a) the triggers; (b) colonial-conservative coalition building; (c) escalating reactions; and (d) multidimensional outcomes.

These extractive politics are grounded in colonial and conservative relationships. These relationships are colonial because they seek to retain the structures allowing dispossession of Indigenous territories, and they are conservative because they seek to maintain the systems of privileges allowing the extraction without any type of accountability. Anti-corruption efforts matter because they disrupt the established political and economic elites' ability to secure private benefits from state resource extraction challenges (Hammergren 2008, 95; Robinson 1998; Taylor 2020).[52] Indigenous peoples' rights also matter because they challenge the colonial foundation of a long-lasting natural resource extractive regime often deployed in Indigenous territories (Bargh 2007; Goodale and Postero 2013; "Declaración del Encuentro Continental de los Pueblos de la Abya Yala por el Agua y la Pachamama" 2011). Politics in an extractive

[52] Several countries in Latin America and other regions are going through anti-corruption processes. In the case of Guatemala, a United Nations sui generis institution was created in 2008 to address the Illegal Bodies and Clandestine Security Apparatus. To date, the CICIG uncovered the existence of "Illicit Networks" dating from the transition to democracy. These judicial processes involved the most important political elites of the country since the democratic era.

regime dispute the share of state and Indigenous lands resources that can be claimed by white and dominant *ladino* elites. Extractive politics are at stake both when the Constitutional Court rules in favor of anti-corruption efforts—because they challenge control over state resources—and of Indigenous peoples' rights—because they challenge control over natural resources and territory.

A backlash triggered by a constitutional transgression against the very foundations of a regime based on colonial and conservative extractive politics can unfold in ways that are distinct from the ordinary patterns of countermobilization that have been documented in other contexts. Chapter 3 of this dissertation explored how judicial and other policy decisions that challenge the preferences of established groups can lead to recalcitrance and countermobilization—as shown by Klarman (2005), Rosenberg (1991) and others (T. Keck 2009; Gloppen 2018; Ruibal 2019; Wilson and Gianella 2019). But what happened in Guatemala goes beyond this. Backlash, I argue, entails the institutional dismantling of the courts and their support structures to neutralize threats to the foundations of the regime. In these cases, backlash entails a coalescence of opposition against the high courts, and challenges these core politics and interests through noncompliance, threats, and institutional attacks. This type of backlash against a constitutional authority—which is trying to deconstruct the red lines of white-*ladino* or other dominant groups' core interests—is likely to manifest as an escalating and violent reaction that can include a threat to the institutional authority itself.

It would be inaccurate to understand a constitutional backlash as a total political and judicial effect that erases all efforts and sites for contestation. Although it is a critical moment that restricts contestation, the outcomes are not absolute tyranny. Post-backlash resets a new status quo with renewed opportunities for social and political agendas.

First, this chapter starts by establishing the red lines of the extractive regime, encompassing public resources through corruption and natural resource extraction in Indigenous territories. Second, I present an interpretation of a backlash and its components following the events that occurred between 2017 and 2019: a coalition-building, the escalating reactions, and the multidimensional outcomes.

PRIOR CONSULTATION AND ANTI-CORRUPTION EFFORTS: THE RED LINES OF AN EXTRACTIVE REGIME AND THE TRIGGERS FOR BACKLASH

This qualitative study reflects on four judicial cases decided by the Constitutional Court in 2017 and 2018.[53] Two of these cases have to do with the right of Indigenous peoples to free, prior, and informed consultation and consent: the *Oxec* case decided in May 2017, and the *Minera San Rafael* case decided in September 2018. The other two cases have to do with the unconstitutionality of legislation and Executive decisions favoring impunity of public servants: the Presidential declaration that the head of the United Nations' International Commission against Impunity (CICIG on its Spanish acronym) was a *persona non grata* in August 2017, and the *amparo provisional* against the reforms to the Criminal Code in September 2017 giving impunity to criminal actors in political positions.[54] These constitutional decisions challenged the economic and political elites' interests in natural resource extraction from Indigenous territories and in accessing

[53] The Guatemalan Judicial System is comprised of a Judiciary and a separate Constitutional Court. The head of the Judiciary is the Supreme Court. The Constitutional Court is the tribunal specialized in constitutional law, habeas corpus, and *amparo*, which is a special judicial protection for human rights.
[54] The CICIG was created in 2007 with the "purpose of bringing support to the General Prosecution Office, the National Police, and other institutions, both in the investigation of crimes committed by members of the Illegal Bodies and Clandestine Security Apparatus, and in general in the actions that tend to dismantle these groups." (CICIG's Mandate and Agreement, 2018).

state resources through corruption.[55] Table 3 summarizes what these cases are about and how they are anti-extraction rulings.

What is the case about	Interested Actors	Implications for the regime
	Oxec	
FPIC *Amparo*'s appeal	Ministry of Energy and Mining Oxec, S.A. The Industry Sectors CACIF	Energy Policy: the procedure for prior consultation in Indigenous territories is ruled
	CICIG	
Unconstitutionality (Constitution art. 182) President acting in favor of a political party	Dominant Political Parties CACIF Military NGOs	Anti-corruption Policy: the head of the CICIG can stay in the country and pursue the commission's work against corruption
	Criminal Code	
Amparo provisional Diminishing criminal responsibilities	Political Parties	Anti-corruption Law: criminal responsibility remains applicable for political parties' general secretaries (illicit campaign financing) and sets the terms of prison sentences
	Minera San Rafael	
FPIC *Amparo*'s appeal	Minera San Rafael CACIF	Industry Policy: the mine's activities are closed

Table 3: The Anti-Extraction Rulings and their Implications.

Between 2015 and 2019, intense anti-extraction prosecutions—in which I include anti-corruption efforts and Indigenous strategic litigation to stop natural resource

[55] The question about the capacity of the Guatemalan high courts to challenge the elites implies a whole supplementary analysis. Briefly, the Constitutional Court built significant support structures encompassing civil society organizations, national and transnational human rights institutions, and international institutions. These support structures, mainly focused on the fight against corruption, provided enough leverage to magistrates from the Constitutional Court to challenge the powerful political and economic elites.

megaprojects—were led by the *Ministerio Público*, the CICIG, and other institutions and civil society actors, with the support of the Constitutional Court. In short, 41 lawsuits were filed in the courts to prosecute actors involved in corruption, and 17 before the Constitutional Court claiming the Indigenous right to free, prior, and informed consultation. The Court, and more specifically the three dissident magistrates on the bench (Gloria Porras, Bonerge Mejía, and Francisco de Mata Vela), supported many of these prosecution strategies. The number of cases and their relevance for the dominant politics and market-driven interests triggered concerns against a Constitutional Court and its authority to have the last word and dismantle the foundation of the elites' power.

The Constitutional Court became the target of intense attacks coming from several powerful sectors endangered by these prosecutions: the Executive and the dominant Legislative branches; the powerful economic chambers, organized through the Coordinating Committee of Agricultural, Commercial, Industrial, and Financial Associations (CACIF); and military officials in charge and organized through associations.

Among the Court's decisions, four constitutional rulings triggered intense reactions. They involved Indigenous peoples' rights to prior consultation and self-determination, and anti-corruption efforts. These four cases, cumulatively, were the "straw that broke the camel's back." They engaged with the central interests of colonial-conservative elites to retain control of the extraction of resources. These rulings sought to protect human and Indigenous rights by holding political and economic elites accountable for the power they exercise through the control of state and territorial resources in Indigenous territories. Holding accountable hegemonic elites that have built their dominance based on the systematic control over state and territorial resources is already a trigger. The Constitutional Court crossed the red lines of the extractive regime.

Two of the constitutional rulings that raised intense reactions regarding Indigenous peoples' rights concerned the right to free, prior, and informed consultation. The Oxec (May 2017) and the Minera San Rafael (September 2018) rulings both drew particular attention from the most powerful industrial sectors. According to political analysis radio and television broadcasts, the constitutional magistrates crossed some red lines: the Court ordered the temporary suspension of the dam and the mining licenses; it ordered the conduct of prior consultations to Indigenous peoples following their traditional forms of self-government; and it ordered the Executive and the Legislative branches to amend the legal and political voids related to Indigenous peoples' right to prior consultation. In sum, the Court was too activist and it exceeded its powers.

The two other rulings engaged with acts of corruption. One unconstitutionality ruling regarding the Presidential Declaration excluding the head of the CICIG from Guatemala (August 2017), and one *amparo provisional* against the criminal code reforms (September 2017) caused reactions from the political elites in government branches as well as economic elites and military officials directed involved in prosecutions. These two constitutional decisions supported efforts to stop corruption and illicit electoral financing, which had been obstructed by the Executive and the Legislative branches. According to the elites, these rulings crossed the red lines: the Constitutional Court overruled a President's decision and a legislative law reform process. In sum, the Court again exceeded its powers.

These rulings have great implications for the political and economic elites that have historically gained advantages from the regime. The rulings challenged the elites' interests and hegemony economically and politically: economically by generating losses in terms of business, and politically in terms of influence and decision making over

extractive policies and legislations. The whole extractive regime was made visible by this attempt to dismantle it through accountability.

For example, the prior consultation rulings challenged the elites by compromising the established corporations' economic gains and causing the temporary closure of extractive activities. Economically, this was one of the first times that a court intervened decisively in economically relevant market-led matters on behalf of Indigenous rights and international standards. The Oxec case involves the Oxec I and Oxec II dams located on the Cahabón river in Indigenous Q'eqchi' territories in Alta Verapaz. Although these two dams only generate 6% of the electricity produced in the country, they are part of an important hydroelectric complex located in the Cahabón River. According to the National Electric Energy Commission, this river is crucial to hydroelectricity generation because it hosts seven dams that generate at least 25% of the national effective capacity in a country where 66% of the energy production comes from dams destined to national and international markets (Comisión Nacional de Energía Eléctrica 2020). The Oxec ruling ordered the temporary closure of the two dams, which affected the river's flow and therefore the national and international market performance.

Something similar happened with the *Minera San Rafael* case involving The Escobal and Juan Bosco mines located in Indigenous Xinca territories in Santa Rosa. These two mines were relevant to the mining sector because they had stabilized the mineral extraction market in the country after the closure of other mines.[56] The closure of the Minera San Rafael, according to the several CACIF public releases in its Twitter

[56] According to the National Mining Direction, the Minera San Rafael contributed to balance the metallic minerals production, which had been decreasing due to the depletion of the well-known Marlin mine.

account, resulted in great economic losses: the equivalent of "USD $ 252 million that the state has stopped receiving."[57]

Second, the rulings politically engaged the economic elites by questioning the established methods for the prior consultation process and the socioenvironmental impact studies. The Court laid stress on the illegality of the existing ministerial protocols for consultation processes and impact studies. These protocols had until then been merely administrative protocols that disregarded the international legal frameworks with respect to Indigenous self-determination. The Court pointed out the need to conduct prior consultations according to the Indigenous communities' traditional self-government, as the International Labor Organization's Indigenous and Tribal Convention 169 stipulates. This is a crucial aspect challenging the colonial foundation of the regime: in relative terms, the rulings opened the field for Indigenous participation and decision making, going beyond the "discussion tables" promoted by the Ministry of Energy and Mining and the corporations.

These rulings show the Court's activist potential to overrule Executive natural resource extraction licenses and engage with the other branches of the state. Politically, a Constitutional Court is authoritative and its role is to act as more than a mediator, setting policy and making laws that give it more control over extractive policies.[58] This activist potential to challenge economic and political elites motivated diverse dominant sectors to

[57] Tweet released during the Constitutional Court's decision making with estimations of the economic losses for the country if the mine stayed closed during that process. See Twitter @CACIFnoticias "Caso Mina San Rafael: Suman 378 días sin operar y 266 días sin que la @CC_Guatemala resuelva", July 18, 2018.

[58] Described in this way, these rulings seem to be transformative, but this is not the case. These rulings are progressive, and have also been widely criticized by the Indigenous parties in the dispute, the environmentalists, and the human rights defenders. They fall short of meeting the Indigenous movement's demands for greater social and environmental justice. However, for the elites, these rulings disturbed their historical advantages for extraction.

come together and take action against this Court and its support structures. After crossing the red lines of the extractive regime, the second element of backlash is creating wide coalitions that share similar interests and ideas.

TRACING BACKLASH: COALITION BUILDING, ESCALATING REACTIONS, MULTIDIMENSIONAL OUTCOMES

My findings show that backlash against constitutional authority, in the Guatemalan context, is the reaction against accountability seeking to counterbalance and democratize the systematic extraction of resources from the state and Indigenous territories. The reaction is triggered mostly after legal interpretations and constitutional rulings. It is a violent reaction organized by the hegemonic political and economic elites against accountability efforts that challenge privileges historically obtained through state and natural resource control.

Backlash against constitutional authority shows the foundations and the red lines of a regime controlled by white and privileged *ladino* elites over Indigenous and poor populations. Backlash is conservative and colonial because the expected outcome is the restoration of a status quo benefitting the elites and sustaining the dispossession of Indigenous territories.

Coalition Building

Backlash against constitutional authority unveils the continuation of what I call *colonial-conservative coalitions*. Colonial-conservative coalitions encompass hegemonic white and *ladino* traditional families and oligarchies, new economic groups and businesspersons, political elites (politicians and other key actors), high-ranking public servants, and military officers who may be retired or in office. The scholarship on Central American governance points to the "perpetuation of an elite-dominated sociopolitical

system that still concentrates wealth and political influence in a small number of people" in the region (Martí i Puig and Sánchez-Ancochea 2014, 5).

These elites are much more economically and socially diversified today than in the past. Since economic liberalization in the 1990s, they include traditional families and new economic dominant groups. Even though the elites have become diverse, extraction is still central to economic activity. Elites might dispute the shares of state and territorial resources, but the core still remains natural resource extractive activities, and they certainly approve and take advantage of the extractive regime. As this scholarship reminds us, "it is true that we can no longer talk about a single, coherent elite, but about different segments that sometimes collaborate with each other and sometimes pursue opposing agendas" (Martí i Puig and Sánchez-Ancochea 2014, 19 referring to Schneider 2012). I lay stress on the coalition aspect because when different elites and hegemonic groups with varying agendas come together and coalesce against public policies and institutions, it allows us to grasp the interests at stake and the elements used to protect those extractive politics.

A narrow focus on the economic dominance of privileged groups can disregard their racialized aspect. Central to my argument, these elites and hegemonic groups are not only economically advantaged but are also racially advantaged. Anthropological scholarship sharpens the analysis in the region by crossing class and racial categories to understand the elites' rationales. One of the factors that allows these elites to maintain control over resources is that they belong to socioeconomic classes in a society where ideas of racial superiority in relation to Indigenous peoples prevail. According to this anthropological scholarship, politics and economics are driven by relationships seeking wealth concentration and white or *ladino* socioracial reproduction through familial bonds and lineages, economic and business alliances, and political and military coalitions

(Guzmán Böckler and Herbert 1974; Euraque, Gould, and Hale 2004; Casaús Arzú 2007; Hale 2007). This approach unveils the colonial and conservative foundations of Central American economic elites controlling the state and territorial resources, even going so far as to use armed forces to repress social mobilizations (Sierra, Hernández Castillo, and Sieder 2013; Yagenova, Donis, and Castillo 2012; Mingorría 2018) or using diplomatic resources to advance economic projects.[59]

Control over state administration and natural resource extraction are intertwined and operate together through interlocutors. For instance, a founding partner from one of the most prestigious corporate law firms leads the Energy and Infrastructure sector nationwide.[60] The person acts as the Corporate Affairs Director of Minera San Rafael, directly involved in the *Minera San Rafael* case resolved by the Constitutional Court. Minera San Rafael, first owned by Tahoe Resources (based in the United States), currently belongs to the Canadian multinational corporation Pan American Silver Corp. This person accumulates other strategic positions in the energetic and mining sectors. In addition, the same person performs as Head of the energy Wholesale Market Administrator (*Administrador del Mercado Mayorista*), a private institution created by law during the electric energy privatization in 1996, in charge mostly of coordinating power stations and setting prices.[61] The same person is also advisor for the Renewable Power Generators Association, which brings together the private corporations

[59] I align with a "resource-based approach" to characterize different elites and other groups with influence and power according to their control over resources (Bull 2014, 17). Applied to the scholarship on environmental governance in Latin America, Bull summarizes four analytical categories to approach the political uses of resources: "organizational resources (control over organizations); political resources (public support); symbolic resources (knowledge and ability to manipulate symbols and discourses); and personal resources (such as charisma, time, motivation, and energy)" (Bull 2014, 17 drawn from Etzioni-Halevy 1997, xxv).

[60] I draw this profile on the basis of interviews conducted.

[61] For more information, see the *Administrador del Mercado Mayorista* webpage https://www.amm.org.gt/portal/

to develop this specific sector in the country. Finally, this person plays a central role in advising the Chamber of Industry in the country, which at the same time tried to influence the Oxec's litigation strategy. The profile is an example of the interlocutors or *hinges* which connect private and corporate interests with the state administration.

Also, as one interviewee mentioned, historically, the Ministry of Energy and Mines has had close connections with the mining and the energy sectors and with the environmental consultants authorized to conduct the socioenvironmental impact studies:

> There were strong indications that the consulting firms carrying out the environmental impact studies for the hydroelectric and mining companies were former minister Sobenes' family members. And the environmental impact assessments are the basis, so to speak, for granting the country's mining and hydroelectric concessions and licenses. (Interview, May 30, 2019)

These examples support the argument that the Guatemalan state has been *corporatized*, referring to the "symbiotic relationship between states and multinational corporations, adjusting public policies and legislations to the protection of private economic interests" (Mazariegos Rodas 2017, 80). They demonstrate how important informal channels enable the elites to gain advantages and maintain their hegemony through the natural resource extraction regime (Yagenova, Donis, and Castillo 2012).[62] These channels enable the elites to control the state administration and the licenses to pursue extractive activities without due process or any significant form of accountability.

The investigations conducted by the United Nations CICIG resulted in a conceptualization of these elites gaining advantages through illegal activities, the "Illegal Bodies and Clandestine Security Apparatus" (CIACS for "*Cuerpos Ilegales y Aparatos*

[62] The same can be argued regarding the land registration regime, the electoral regime (CICIG 2019a), and the tax regime (Schneider 2012; ICEFI 2019; CICIG 2018), all advantaging the elites to maintain their dominant position.

Clandestinos de Seguridad") acting through "Illicit Political-Economic Networks" (RPEI for "*Redes Político-Económicas Ilícitas*"):

> The CIACS, which are prevailing in the Guatemalan context, can be understood as illicit political-economic networks […] We can therefore claim that the CIACS, currently, are networks, groups of persons that are interlinked either hidden or semi-hidden in order to exercise political control and generate profitable businesses. Therefore, political parties and the RPEI constitute central powers in the legislative space. (Fundación Myrna Mack 2019, 6)

Likewise, a Congressional advisor commented:

> Erick Archila [former minister of Energy and Mines and currently a fugitive from justice] is being prosecuted for bribery. But what could not be determined, or did not want to be determined, is the degree of participation or connection he had with the extractive or hydroelectric companies in the country. We have to remember that the "State Co-optation" case[63] is investigating bribes delivered by large companies' stakeholders. In fact, […] the family that owns Pepsi Cola is being investigated. But with the economic diversification, these same families are also investing in hydroelectric projects in some parts of the country. So, it is not inconceivable to think that some resources that could have come into the hands of the current or former ministers of Energy and Mines, were through the bribery of hydroelectric and mining companies in the country. (Interview, May 20, 2019)

Indeed, between 2017 and 2020, significant criminal prosecutions against corruption, human rights judicial protections through *amparos*, and cases alleging unconstitutionalities targeted central political, judicial, military, economic, lawyers, and financial actors of corruption and violations to the rights to life, to health, to a healthy environment and ecological balance, to water, and the right of Indigenous peoples to prior consultation. These prosecutions unveiled "the existence of criminal networks infiltrating and influencing the state—eventually in collusion with corporations—creating the state's structural weakening." (Mazariegos Rodas 2017, 81).[64]

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[63] Briefly, this judicial case revealed a complex network of money laundering for electoral and government purposes. For more information, refer to CICIG's report: https://www.cicig.org/casos/caso-cooptacion-del-estado/

[64] Concretely, presidents, ministers, members of Congress, political parties' general secretaries, governors, mayors, public institutions' directors, members of the Tax Administration, the Customs

In this context of intense criminal investigation and prosecution, the political and economic elites coalesced, forming what was popularly called a "#CriminalAlliance" on social media. On the side of the Executive, the President and the Guatemalan Solicitor General (*Procuraduría General de la Nación*) reacted legally against the CICIG, the *Ministerio Público*, and the Constitutional Court. From the Legislative branch, the dominant Legislative groups with the leadership of the right and left-wing caucuses[65] also reacted through legal resources to support the Executive. On the side of the powerful CACIF, as well as other nonmember corporations, they endorsed the Executive and the Legislative actions by showing support through social media and public statements. In the legal field, the *Asociación Dignatarios de la Nación* (a nonprofit gathering together prior constitutionalists of the 1985 National Assembly) also joined the coalition, bringing legal and political support. Last but not least were the organized right-wing military officials through two main nonprofit organizations: the *Asociación de Veteranos Militares de Guatemala* and the *Fundación Contra el Terrorismo* also stood by the Executive.

This large and diverse coalition building is a significant indicator of the lines in judicial politics that are being crossed. Combined with a judicial and legal environment

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Service, the Port System, bureaucrats, prosecutors, the police, the Penitentiary System, judges and magistrates, and active and retired military officers were and still are prosecuted. Also, lawyers and attorneys, engineers, businesspersons in the construction and property development sectors, private security companies, public transportation associations, bankers, active members of the powerful organized economic chambers, and the illicit traffic networks were also targeted. In sum, politicians and public servants from the last three governments (2008–2019) and traditional and emergent economic elites were targeted in anti-corruption prosecutions and *amparos* to enforce the right of Indigenous peoples to prior consultation.

[65] The alliance encompassed several members of Congress from the traditional and conservative oligarchy (*Partido de Avanzada Nacional*) to the wrongly labeled social democracy (*Unidad Nacional de la Esperanza*) political parties.

favoring the fight against extractive activities, the colonial-conservative coalitions are more likely to react, as a third element of backlash.

Escalating Reactions

Because the Constitutional Court has been one of the last judicial institutions to challenge the elites' extractive interests, this high court has openly become the target for escalating attacks and intense discredit. Attacks were condensed in a period of over a year and a half, from August 2017 to January 2019, from the moment former President Morales declared Iván Velásquez, the head of the CICIG, *non grato*. On January 7th, 2019, Morales held a public press conference attacking the CICIG's head Velásquez, the Public Prosecutor Thelma Aldana, and the Constitutional Court, more precisely the three magistrates Porras, Mejía Orellana, and de Mata Vela, who had made things uncomfortable for the colonial-conservative coalitions.[66]

Throughout this period of time we observed four types of violent reactions and attack strategies: the activation of legal resources, political noncompliance, intimidation through threats and public naming and shaming, and discrediting media campaigns. These four strategies constitute direct backlash against constitutional authority. The conservative and colonial reactions and strategies play out simultaneously, and what makes the entire campaign escalate is the accumulation of attacks and reactions.

These attacks were directed against the main pro-human and Indigenous rights magistrates and the Court as an institution. Although these attacks did not ultimately lead to the removal of magistrates and dissolution of the Court, they were intended to clarify and protect the red lines of the extractive regime by threatening the magistrates and

[66] To watch the public press conference, refer to: https://www.youtube.com/watch?time_continue=3477&v=40DjLxF65CY

weakening the Court's authority. Ultimately, what the colonial-conservative coalition was disputing was the Court's level of judicial activism, which challenged their extractive interests.

First, backlash against constitutional authority translated concretely into noncompliance with the constitutional orders and rulings. The Executive, Congress, and the economic elites did not completely comply with the orders. For instance, the Oxec, S.A. dams and the San Rafael mine did not fully shut down their activities. Reports from the Indigenous communities indicated that these megaprojects continued to operate.[67] Also, President Jimmy Morales opposed compliance with the constitutional orders, arguing they were "illegal and arbitrary orders […] violating established deadlines for due process." Noncompliance resulted in nine *amparos* against the Executive, all decided by the Constitutional Court.[68] These nine cases triggered escalating reactions in other realms of politics.

Legal resources and legislative bills, secondly, were activated to break down the dissidents within the Court. Impeachments against the constitutional magistrates were filed to remove them from the bench and criminal investigations were opened. On December 14th, 2018, the *Asociación Dignatarios de la Nación* filed a first impeachment procedure. Then, on December 26th, 2018, the Solicitor General on behalf of the Executive branch filed a second impeachment procedure against the magistrates, in the case challenging the *non grato* presidential declaration against the head of the CICIG.

[67] Prensa Comunitaria and Nim Ajpu are some organizations publicly reporting news in Indigenous communities.

[68] The Constitutional Court's follow-up mechanism is nonexistent, which is a serious gap in constitutional justice implementation. This Court, like others, does not have punitive capacities in cases of noncompliance or non-follow-up.

Finally, on January 3rd, 2019, an independent lawyer[69] filed a third impeachment procedure in the Mina San Rafael case. Filed over 20 days during the Christmas holidays, these three impeachment procedures sought to accuse the three magistrates of decisions violating the Constitution, abuse of authority, prevarication, and malicious delay. These procedures did not go through, but the Court was under constant attack.

Regarding legislative bills, a group of representatives initiated a legislative effort to reform the Constitution and dissolve the Constitutional Court. This initiative was intended to bring the pre-1985 authoritarian constitutional justice design back. In this model, an extraordinary collegiate body of magistrates from the high courts were in charge of constitutional control. It is indeed convenient for the political and economic elites that control the election of high courts' magistrates through the polemic selection committees.[70] Also, threats to reform the Impeachment Law were discussed. The reform sought to suppress the current two-step judicial review (through the Supreme Court) and political accountability (through Congress) and to reduce it to a one-step mechanism under the control of Congress. This reform aimed to subordinate public servants to a political arena already infiltrated by groups linked to organized crime (CICIG 2019a). Therefore, via their control of Congress, the colonial-conservative coalition would likely be able to remove contesting constitutional magistrates from the bench.

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[69] Mario Roberto Passarelli Bran was Mauricio López Bonilla former Minister of the Interior's counselor and also acted as prior Head of the National Domain Extinction Secretary (in Spanish, *Secretaría Nacional de Administración de Bienes de Extinción de Dominio*).

[70] Magistrates from the high courts are selected through a two-step mechanism involving first Selection Committees, or *Comisiones de Postulación*, gathering the country's Law School deans, and then, the Congress. This pluralistic model originally intended to democratize the Judiciary. However, according to lawyers and political scientists, this model has been largely captured by political and economic elites to place their loyal candidates and secure impunity. In 2018, the Public Prosecutor and the CICIG opened a criminal case called "*Comisiones Paralelas*" where the capture mechanism is explained. Several operators are in judicial process and in preventive prison. For more information: https://www.cicig.org/comunicados-2018-c/com_023_20180227/

Third, as retaliation mechanisms, public naming and shaming strategies and threats were at play, calling the constitutional magistrates "traitors to the fatherland" ("*traidores de la patria*"), and even using banners in the main axis of the city. "An internal government source warned Nómada [a progressive newspaper] about the placement of twenty banners with the pictures of the magistrates […]. The source said the banners were made by a ministry faithful to Jimmy Morales" (Estrada Tobar 2019). In addition, the United Nations Human Rights Office of the High Commissioner and other international institutions reported a serious intensification of intimidation strategies against constitutional magistrates, leading to precautionary measures from the Inter-American Commission of Human Rights (CIDH 2017; OACNUDH 2018a).

To these strategies, discrediting media campaigns are added. This fourth type of attack took place in the newspapers, social media, television, and radio broadcasts. For instance, several right-wing opinion columnists intended to discredit the Constitutional Court by blaming them for making political decisions.[71] Also in social media, Twitter users publicly known for their polemic publications and "crowdsourcing manipulation" attacked the Court as well as their support structures (Waxenecker 2017). And retaliation campaigns and media purges were conducted to boycott the main supporters of the Constitutional Court and dissidents against the elites' interests. To mention some examples, printed newspaper *elPeriódico* and TV broadcaster *Canal Antigua* were defunded. The news director at the TV broadcaster *Guatevisión* was removed. Journalists faced "intimidation and surveillance" (CIDH 2018, 666).

The escalating reactions, marked by the use of violence and para-legal strategies, created an environment of threat and constraints affecting the Court's behavior and its

[71] As examples, see "Encefalograma plano" (Trujillo 2017), "Apelando a Sócrates" (Kaltschmitt 2017), or "Lawfare o guerra con leyes" (Kaltschmitt 2018).

scope of action. Backlash against the Constitutional Court is not the only consequence when the colonial and conservative politics of extraction are endangered. Backlash also seeks, on the one hand, to dismantle the human rights and Indigenous movements, and, on the other, to take back state and territorial control. The case of Guatemala exemplifies the breadth of these multidimensional outcomes, as the fourth element.

Multidimensional Outcomes

Backlash efforts also involve the support structures that allow high courts to engage against the elites' interests. They seek to dismantle the institutions and organizations that engage against extractive politics. Tellingly, a political analyst in an interview used the metaphor the "battle of Jericho" for understanding how the backlash, escalating reactions, and violent attacks operated.[72] In this metaphor, the main target—the Constitutional Court or the crown jewel as explained in the beginning of this chapter—becomes the entry point to Canaan, the promised land in the Old Testament and Christian tradition. To conquer the Court, as in the "battle of Jericho" in which the protective walls had to be destroyed first, the support structures must first be brought low. The attacks on the Court and its support structures are intertwined and play out simultaneously to increase leverage. According to this explanation, the support structures needed to be dismantled and the Court's influential institutions to be captured.[73]

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[72] My interviewee explained that this metaphor was used with one Christian constitutional magistrate to facilitate a political analysis of the particular juncture occurring in the country. Ethnographically, this metaphorical interpretation for backlash from the Christian genealogy reveals at least two relevant aspects. First, it reveals the new frameworks and discourses for making sense of political developments from a growing hegemonic religious faith. And second, the use of this metaphorical interpretation confirms the general Latin American trend of deploying resources of the Christian faith for political purposes, most of the time to strike back against any perceived progress. In sum, it reveals the use of religious conservative resources for shaping dominant politics.

[73] The Constitutional Court's magistrates are selected by a plural model. The executive, Congress, the Supreme Court, the public San Carlos University, and the Guatemalan Bar Association select two magistrates, one sitting and one reserve. The political and economic elites seek, formally and

In the case of Guatemala, the three constitutional magistrates who were strongly attacked had aligned their positions with extended anti-corruption, human, and Indigenous rights coalitions. These coalitions comprised the *Ministerio Público*, the CICIG, the Ombudsperson's Office, the General Comptroller's Office, Indigenous—Maya, Xinca, and Garifuna—traditional authorities, university student organizations, civil society organizations through at least three platforms (such as the *Convergencia por los Derechos Humanos*, *Movimiento Pro Justicia*, and the *Frente Ciudadano Contra la Corrupción*, among others), the United Nations High Commissioner for Human Rights (OHCHR), diplomatic officers from Sweden, the Netherlands, Canada, and the United States of America (particularly in anti-corruption efforts),[74] the International Non-Government Organizations Forum (FONGI),[75] and the public at large with sustained public protests.[76] As part of the backlash, some of these institutions were undermined through the same attacks as the Constitutional Court (activation of legal resources, political noncompliance, intimidation, and discrediting media campaigns).

Moreover, the institutions financially dependent on ordinary politics (mostly in the context of Congress budget approvals), such as the *Ministerio Público*, the San Carlos

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informally, to influence these institutions to ensure strategic alignments on the bench. Although these alignments often are conserved (especially for those appointed by the executive, Congress, and the Supreme Court), evidence shows that they can be fractured. The Guatemalan case shows that when alignments are broken, strong threats are at play.

[74] Diplomatic offices and international cooperation agencies are central political and economic actors in Guatemala. Historically, since the dictatorship and after the Peace Accords in 1996, the diplomatic offices of the United States, Norway, and Sweden have played crucial roles to orient public policy and government decisions.

[75] FONGI is a platform bringing together NGOs from Germany, Belgium, Spain, the United States, the Netherlands, Ireland, Norway, Switzerland, and Sweden. Its representatives meet regularly with the European Commission as experts and lobbyists for issues concerning regional or bilateral relationships with Guatemala.

[76] These coalitions were strongly established since 2015 as a result of the high-profile corruption scandal named "La Línea", involving the President and Vice-president. Twenty-six political actors were brought to trial for customs fraud and bribery.

public university, and the Ombudsperson, were punished with budget reductions.[77] The international institutions promoting human rights, such as the Office of the United Nations High Commissioner for Human Rights, were threatened with the nonrenewal of bilateral agreements. Also, civil society organizations were threatened through legislative bill proposals such as the "*ley de ONGs*" (the NGO law) seeking Executive control of nonprofits' activities. These actions ultimately failed, as constitutional rulings declared them illegal. However, the threats unfolded as attempts to protect the red lines through disciplinary and restrictive actions.

As the backlash continued, elites sought state and territorial capture and control. These other dimensions reveal the aim of recovering the extraction of territorial and state resources. One common feature found in Indigenous lands is the capture of judicial institutions in territories of interest for natural resource extraction. Elite control over judicial institutions is crucial to regain extractive activities in places where struggles against megaprojects are taking place. The Judiciary in Alta Verapaz, a region with high levels of conflict due to megaprojects, is known for its high degree of indulgence towards the economic and political elites' interests (CIDH 2018, 652; OACNUDH 2018b, 10–11). Particularly, in the Oxec case, one of the main Indigenous Q'eqchi' community leaders, Bernardo Caal Xol, was criminally charged in January 2018 and is currently imprisoned without real possibility for appeal.[78] Criminalization of human rights defenders,

[77] See "Quieren consolidar el reino de la impunidad" in Prensa Libre, 11/14/2018 or "PDH en peligro de paralizar por recorte presupuestario: ni siquiera tiene para sueldos de octubre" in elPeriódico, 09/20/2019.

[78] Bernardo Caal Xol is deprived of liberty in a parallel criminal case related to the Oxec case. He is accused of being the intellectual author of computer damages. The computers belong to a company in charge of the security system of Oxec, S.A. Caal Xol is sentenced to 7 years in prison. He is a "political prisoner" according to Indigenous and human rights activists. His appeal has been hindered by the Court of Appeals in Cobán (the main city of the Alta Verapaz region), which has been listed by the CICIG as one of the most corrupt courts in the country.

especially when it comes to Indigenous peoples, is a form of violent colonial dispossession according to the critical scholarship on development, the law, and Indigenous peoples (Gall 2007; Engle 2010; Antileo Baeza et al. 2015; Proulx 2018).

While criminalizing Indigenous leadership, environmental, and human rights advocates contributes to break down the Constitutional Court's social support structures outside the capital city, it also attacks Indigenous resistance against natural resource extraction. Through a discourse of "lack of legal certainty", "lack of certainty of the investment", or "lack of equality before the law" caused by the dissidents, the elites legitimize the danger of resisting the dominant conception of development and the rule of law that works towards extraction. Indeed, former President Morales, answering questions about employment and investments during a private interview, blamed the Constitutional Court for causing a financial and economic backlog:

> If you add all that persecution, and the stagnation due to the closed companies, the closed mines, the closed hydroelectric dams, no investment, public-private nor international private, because of the fear of precisely the legal uncertainty issue, therefore, there is much reason of being able to say we have not managed to generate the standards or the levels of job creation. […] Now, go and ask the businessmen if they want to continue investing, based on the fact that a Constitutional Court paralyzes the construction of two hydroelectric plants. Go and ask the banks if they want to lend money to projects that can be suspended due to court orders. Then you can get an idea of where the little investment decisions or intention to invest may come from. (*Prensa Libre* 2018)

As part of the same effort to maintain control and impunity, other reforms moved forward. Two institutions dedicated to the preservation of historical archives were closed down. The General Central American Archive and the Historical Archive of the National Police, which were of great support to advancing human rights, transitional justice, and Indigenous collective rights claims, are no longer accessible to the public. In addition, legislative threats (through the "National Reconciliation Law") to ensure total amnesty

for military officials responsible for crimes against humanity and genocide against the Indigenous peoples were triggered. Again, these shut downs and threats are evidence not only of the conservative foundations of the hegemonic elites to restore control of the state and the Indigenous territories, but also of their efforts to erase collective and historical memory as a colonial strategy.

Electorally, the presidential, legislative, and municipal elections that followed in August 2019 marked the continuation of these extractive politics. On the one hand, the dominant political parties agreed to maintain CICIG's nonrenewal, to increase investment offers to natural resource extractive corporations (national, foreign, and multinational), and to increase law and order activities against terrorist groups, a term used to refer to both gangs and Indigenous protesters against natural resource extraction. These electoral issues were legitimized within the general hegemonic conservative and colonial discourse of regaining "good governance" and "sovereignty over the national territory through the military." This is to say, as Rosenberg and Klarman and others, that backlash against constitutional rulings indeed played out in the electoral and legislative fields as part of the political countermobilization. Through these political arenas, the extractive core foundations of the regime are kept untouched, reproducing a renewed status quo while reactivating social movements with new challenges.

At the same time, this renewed status quo motivates efforts against extractive politics. A major proof of these efforts is the high electoral ranking of Indigenous Maya female candidate Thelma Cabrera. She and her political party (*Movimiento de Liberación de los Pueblos*) were rooted in the struggle for the nationalization of electric energy, among other topics affecting Indigenous and peasant communities. The 2019 party's campaign focused on the historic marginalization of Indigenous and peasant communities in the decision making for so-called development through megaprojects, especially

regarding hydroelectric dams in regions with poor access to electric energy and clean water. Also, as a legacy of the criminal investigations and prosecutions led by the *Ministerio Público* and the CICIG, nonprofits have strengthened their work towards political monitoring and accountability.

These efforts, although still constrained by political actors through the same types of threats and attacks, are contributing to make public action transparent. This backlash has endangered many basic constitutional rights, but there is still room to maneuver. Currently, what is being discussed is the selection process for the next constitutional magistrates on the bench. At this moment, it is still early to write about this, although the next most likely step is the capture of the process (CICIG 2018; CIDH 2017, 52). Capture of the Constitutional Court's selection process would enable the colonial-conservative elites to control this *crown jewel* and maintain their advantages. In case the Court is not captured, the study of the "post-backlash" period will be relevant to understanding how the renewed status quo will be reconfigured and why capture did not occur.

CONCLUSION

The study of backlash resulting from constitutional rulings reveals more than why and how conservative and authoritarian political regimes develop. The question why certain topics trigger more backlash than others drives this chapter. I argue that when the core foundations of the state are challenged by the courts, judicial backlash is more likely. Drawing from the case of Guatemala, the anti-corruption efforts and the progressive Indigenous rights triggered conservative reactions against the Constitutional Court and its support structures that were coalesced, intense, and violent. These reactions are organized by dominant political and economic white and *ladino* elites that have historically controlled and benefited from state resources. By controlling key state

administrations, the hegemonic elites are able to negotiate advantages for territorial control and extractive activities.

When related to resource extraction in Indigenous territories, an intersectional analysis crossing race, class, and territory needs to be applied. Therefore, extractive politics refers to the politics and relationships in societies where established, non-Indigenous elites coordinate to preserve their hegemony through the control of the state administration and territorial resources. In a supposedly "postcolonial" and "post-conflict" society with a majority of Indigenous peoples, this type of backlash unveils the ongoing colonial and conservative foundations of the regime, regardless of the type of government (democracy or dictatorship). Under these conditions, constitutional backlash is not only a marker of conservative red lines but also demarcates the colonial underpinnings of a regime based on the extraction of state resources and natural resources on Indigenous territories. In countries with recent histories marked by authoritarian civil war and genocide, and multicultural democratization, racialized and colonial politics need to be incorporated within any study of judicial backlash.

Throughout this chapter, I traced the backlash process identifying its four elements: the triggers, coalition building, escalating reactions, and multidimensional outcomes. Colonial-conservative coalitions have stayed active at the center of Guatemala's politics and economics even through the political government change from a dictatorship to a democracy. These coalitions possess the capacities, the resources, and the willingness to combine efforts and protect sectorial benefits. Their influences not only extend to electoral or legislative actions. They also have the capacity to formally and informally attack constitutional justice and its support structures.

Backlash seeks to hinder all forms of systemic accountability of hegemonic political and economic elites in their exercise of power over the territory through the

control of state and territorial resources, especially resources from Indigenous territories. The backlash itself highlights the red lines of conservative and colonial extractive politics, core foundations of the regime. When constitutional control challenges these politics, four types of violent and escalating reactions and attack strategies are triggered: legal resource activation, politically driven noncompliance with court orders, intimidation through threats and public naming and shaming, and discrediting media campaigns. The outcomes of this backlash are multidimensional because they not only seek to neutralize dissidents within the Constitutional Court, but also dismantle the support structures allowing them to challenge the dominant elites. A backlash seeks to take back state and territorial control through institutional capture. While many of these outcomes are negative in terms of accountability and human and Indigenous rights, other unintended results offer some positive outcomes for the reconfiguration of a renewed status quo.

Chapter 6: Conclusions

Drawing from the case of Guatemala from 2017 to 2019, this dissertation expands upon the growing scholarship on authoritarian backsliding by analyzing the reasons for and mechanisms of backlash against constitutional justice. The scholarship on judicial politics had focused largely on backlash as a reaction from conservative and/or autocratic actors against progressive judicial decisions, policy, or legislation, occasionally including efforts to capture the courts through appointments, internal and external constraints, and influence (Rosenberg 1991; Klarman 2005; Scheppele 2018). In this project, I present a case of backlash that is also a brutal reaction to restore a *status quo* structured not only by conservative and autocratic politics but also by racist and colonial dynamics.

This kind of backlash, because it is protecting the very foundations of the political and economic regime, goes well beyond a fight over more or less progressive constitutional meaning, seeking to undermine the institutional and political foundations of the threat. Capturing the courts is only one aspect of this backlash; another aspect of backlash, explored in this dissertation, is the re-colonization of the judicial arena by deploying the judicial advantages enjoyed by conservative actors at the center of the regime. Importantly, in an effort to prevent the threat from recurring, it can also include dismantling the public and civil society institutions that sought to promote human rights and accountability.

Somewhat understudied in political science, an awareness of Indigenous politics towards self-determination shines a light on the colonial foundations of many democratic regimes and the ambivalence of the judicial enforcement of human rights. This research unveils the racialized asymmetrical power relationships in countries where white elite-controlled extractive economies depend upon the natural resources located in Indigenous territories. Through an in-depth qualitative analysis, this dissertation provides unique

evidence on the law in action and the making of the law, the entanglement between the formal and the informal elite networks prevailing in the system of constitutional justice. The study of these networks and the elite countermobilization helped me to explain the intense backlash that occurred in Guatemala.

In this conclusion, I first present a summary of the argument of this dissertation and the main findings developed throughout each chapter. Second, I open a ground for comparative perspectives in Latin America, concretely in the cases of Peru and Colombia, where the background conditions might be similar and therefore my argument could be tested or replicated. Third and last, I reflect on some practical implications for the constitutional justice in Guatemala to address re-colonization. These practical recommendations are certainly not a panacea to address re-colonization nor capture—for that, the concentration of power among economic and political elites would need to be dismantled.

The purpose of this dissertation was to answer the following questions: why did such an intense backlash against the Constitutional Court in Guatemala occur in a context where magistrates are most likely to align with the dominant political and economic elites of the country? How did this backlash happen? What are the implications in terms of constitutional justice system as a whole?

The Introduction provided background on the case of Guatemala, the constitutional system, and its relationships with the Indigenous peoples. Despite having an institutional design that in theory can ensure a high level of autonomy due to the plural selection model of its magistrates (Brinks and Blass 2018), the constitutional system is captured by politics led by dominant political parties, economic elites, retired military officials, and organized crime (Bowen 2017). In the context of political capture of the constitutional system, dissident magistrates were less likely to appear on the bench.

However, since 2015, the juncture of anti-corruption efforts and reforms to the justice system led by the Office of the Public Prosecutor (*Ministerio Público*), the United Nations International Commission against Impunity in Guatemala (CICIG), and other national and international human rights, student organizations, and organized Indigenous traditional authorities created an opportunity for constitutional magistrates committed to human rights and accountability (the *pro-rights bloc*) to engage against the *status quo* political and economic elites and their supporters. The Constitutional Court aligned itself with institutions leading anti-corruption prosecutions and challenged the economic elites through their anti-extraction rulings upholding the Indigenous right to free, prior, and informed consultation and consent.

My colleagues in Guatemala confirmed that these two topics (the anti-corruption and prior consultation cases) triggered intense elite countermobilization. In Chapter 2, I outlined the methodology that I used to conduct this research project. The judicialization of the *Oxec* case (opened in 2015 and closed in 2017, involving a dam in Cahabón and the Oxec rivers, located in the Maya Q'eqchi' territories in Santa María Cahabón, Alta Verapaz) was relevant as it was the first case that clearly revealed the multilevel advantages of political and business elites influencing constitutional decision-making on energy policy. This decision gave rise to a structural and "nomogenetic" ruling[79] in which the Constitutional Court would lay the foundations for addressing the structural causes that lead to conflicts between extractive companies, state institutions, and the Indigenous communities that oppose the megaprojects.

The *Oxec* case, followed by the *CICIG* case (the Constitutional Court overruled the Executive decision to declare the head of the CICIG *persona non grata* in

[79] A term used in Guatemala to refer to the rulings that set precedent, thus becoming law. For more detail, refer to Chapters 2 (p.48) and 4 (p.102)

Guatemala), the *Criminal Code* case (the Constitutional Court banned a reform of the Criminal Code which seemed to favor impunity to criminals), and the *Minera San Rafael* case (the Constitutional Court ordered a prior consultation in favor of the Xinca people and closed the mine's operations) all triggered intense elite countermobilization. Together, these cases crossed the red lines of the extractive regime in Guatemala. My interviews, my previous professional experience in Guatemala, and the fieldwork logistics pushed me to critically reflect on my position as a local researcher and to ground the concepts that nurtured the theory building process.

In Chapter 3, I drew from judicial politics and Indigenous studies literature to argue that dissident constitutional magistrates, committed to human rights and anti-corruption efforts, challenged the "red lines" (Moustafa 2003) of the extractive regime through anti-extraction rulings. I used the term red lines to identify explicitly the areas in judicial politics where the core foundations of the extractive regime are disputed through legal and para-legal battles. The anti-extractive rulings challenged the economic and political elites' core interests and the continued foundations of their power: control over public and territorial resources. The anti-extractive rulings ultimately sought to hold political and economic elites accountable for violating the rule of law and human rights.

The extractive regime is a political organization based on the extraction of public resources—mostly through corruption—and natural resources in Indigenous territories. Control over one form of extraction enables control over the other. For instance, controlling the energy sector might increase influence over the public institutions that regulates the energy industry. Likewise, controlling the public institution that regulates the energy industry might facilitate connections with the energy sector. The constitutional decisions studied in this dissertation crossed the red lines of this integrated extractive regime.

In a country such as Guatemala where economic, political, and ideological structures continue to favor white and *ladino* elites, the extractive regime is (still) based on colonial and conservative foundations. The foundations are conservative because the power and ruling elites seek to maintain their privileges and the structures that enable them to remain in power. The foundations are also colonial because these structures are based on public resources and the dispossession of Indigenous territories for extractive activities. Backlash in the context of racialized asymmetrical power relationships aims to center the elites' interests at the core of the extractive regime.

How did such backlash happen in Guatemala? And what are the implications of this backlash in terms of constitutional justice system? In Chapters 4 and 5, I explain that backlash occurred when a) elites activated formal and informal *judicial advantages* in sites more likely to influence judicial decision-making, and when b) hegemonic actors prevailing in the political life made large coalitions to engage against dissident judicial politics. Backlash comprises four key elements: a trigger, coalition building, escalating reactions, and multidimensional outcomes.

The economic elites involved in the *Oxec* case revealed their strategies to limit the Indigenous right to free, prior, and informed consultation. They activated judicial advantages through personal relationships, a massive media campaign, and diplomatic lobby before international cooperation agencies also involved in the extractive activities within the country. These judicial advantages sought to influence the magistrates' constitutional decision-making to obtain favorable rulings. This elite countermobilization through such judicial advantages ultimately implied a re-colonization of the judicial interpretations on the Indigenous right to self-determination and "to determine the priorities for the development or use of their lands or territories and other resources" (art. 32.1 United Nations 2008).

Some months later, the Constitutional Court actively supported through its rulings the accountability efforts led by the *Ministerio Público*, the CICIG, the public institutions (mainly the Ombudsperson), civil society organizations, and Indigenous traditional authorities. In Chapter 5, I show why these actions meant that the Constitutional Court had crossed the red lines of the extractive regime. In response, political and economic elites coalesced with supporters in state political and administrative positions, members of organized crime, and retired military officials to put an end to these accountability efforts. In Chapter 5, I explain that the Constitutional Court crossed the red lines of the extractive regime. The constitutional rulings triggered a large elite coalition that started a lawfare strategy to attack dissident magistrates, to dismantle their support structures, and to capture the Constitutional Court and other institutional spaces.

Recently, in March 2021, the five institutions in charge of the constitutional magistrates' selection process (the Executive, Congress, the Supreme Court, the public *Universidad San Carlos de Guatemala* Higher University Council, and the Guatemalan Bar Association General Assembly) elected their sitting and substitute magistrates. The results point to a likely continuation of the colonial and conservative *status quo.* Magistrates on the bench have already ruled to prosecute independent judges from the Judiciary and to allow Executive control over Non-Governmental Organizations (Román and Cuevas 2021; Federación Internacional por los Derechos Humanos 2021).

The only dissident *pro-rights* magistrate re-elected for the 2021–2026 Magistratura, Gloria Porras, has not been appointed by Congress due to her ongoing legal processes, according to interviews with the President of Congress, Allan Rodríguez (Menchú 2021), from the ruling political party VAMOS. Gloria Porras is currently in the United States along with former Public Prosecutor and Presidential candidate Thelma Aldana, former Public Prosecutor Claudia Paz y Paz, and former appeals judge Claudia

Escobar. These four women are known for their fight to hold political and economic elites to account for their many violations of human rights and the rule of law (EFE 2021). They no longer live in Guatemala due to the multiple threats they have received.

BACKLASH IN COMPARATIVE PERSPECTIVE IN LATIN AMERICA

This backlash is likely to occur in similar cases, especially in Latin America. As background factors for a backlash to occur, I claim that (a) economic and political elites protecting the status quo and the red lines of the extractive regime, and (b) dissident judicial activism at the constitutional courts—challenging the status quo and the red lines—need to exist. These two factors brought together are likely to cause contention and to develop forms of regression in public policy and legislation or backlash against the institutions, their dissident members, and their support structures. As stated in the introduction, I envision my argument to be generalizable to cases where the foundations of a regime involve extractive activities—either through the extraction of public resources through corruption and/or through the extraction of natural resources in Indigenous territories.

To establish comparative lines of inquiry with the case of Guatemala, I ground the exploration in Latin America, as the region represents a cluster sharing—with variations—similar background factors in terms of power structures. More specifically, I open these observations with the cases of Peru and Colombia. Table 4 depicts two similar background factors, the independent (the anti-elite demands challenging the *status quo*) and the dependent (backlash triggered by the dominant elites) variables.

Cases	**Dominant Elites**	**Dissident Judicial Activism**	**Anti-Elite Demands**	**Backlash**
Peru	Yes	Yes	No	No
Colombia	Yes	Yes	Yes	No

Guatemala	Yes	Yes	Yes	Yes

Table 4: Comparative Perspectives: A Most-Similar Design Exploring Backlash

First, I hypothesize that the three cases appear to have strong political and economic elites either prosecuted or with judicial cases against them due to conflicts related to natural resource extractive activities and/or corruption (Durand 2016; Payne, Pereira, and Bernal-Bermúdez 2020; Yagenova, Donis, and Castillo 2012). Political and economic elites are likely to be intertwined when it comes to financing and building extractive and infrastructure megaprojects (Bull 2014; Payne, Pereira, and Bernal-Bermúdez 2020). Recently in Colombia, scholars and legal advocates revealed the influence of corporations from important industries within the three branches of the state (Albarracín Caballero et al. 2021; Payne, Pereira, and Bernal-Bermúdez 2020).

More concerning is when the political and economic power of elites is concentrated in the hands of a few and supported by public institutions (Durand 2016, 15 citing Omelyanchuk, O. 2001). In Guatemala, the intertwined relationship between economic elites and the public administration is labeled as the "corporatization" of the state (Mazariegos Rodas 2017). The same relationship might be identified in Peru, where corporate elites captured the state to maintain control over the extractive economies: "[the] broker state […] facilitated the financing, approval, and eventual development [of natural extractive megaprojects, oil in this specific case]" (Urteaga-Crovetto 2012, 103). The concentration of political and economic power is likely to create actors and elites with massive influence on public institutions, favoring their private interests.[80]

Second, I hypothesize that the three cases might share similar levels of dissident judicial activism in the constitutional courts when elites' interests are at stake. To

[80] This huge concentration of political and economic power hinders the basic foundations of a democracy (Global Witness and ESCR-Net, n.d.).

illustrate, Latin America has met a period of increasing judicial activism to expand the scope of social, economic, and cultural rights (Rodríguez Garavito 2011; Brinks and Forbath 2014). However, the prevailing linkages between economic, political, and judicial actors might trump the accountability of powerful economic actors. Although the high courts have promoted judicial activism against powerful political and economic elites either through processes of corporate accountability in transitional justice frameworks (Payne, Pereira, and Bernal-Bermúdez 2020) or criminal cases against corruption (Hammergren 2019), fighting impunity in corporate and white-collar crimes remains difficult. The cases of Guatemala, Colombia, and Peru could be examples of such difficulty. Dissident judicial activism—the sort of activism that challenges the status quo—has existed in these three cases, albeit cautiously.

Most probably, these three courts have received anti-elite demands. Promoted by human rights organizations, these demands would seek to hold political elites (former military officials) accountable for crimes against humanity in the case of Peru, and business actors in charge of grave human rights violations in the case of Colombia. The Peruvian courts have convicted military officials during Peru's authoritarian regime, as argued by Ezequiel González-Ocantos (2016). The Colombian courts have also convicted business actors in the ongoing transitional justice process (Bernal-Bermúdez 2019).

In both cases, the courts have faced reactions from the ruling elites. According to González-Ocantos, after the sentencing of military officials, the Peruvian Constitutional Court was captured by "recalcitrant judges" (2016, 197), putting an end to a period of accountability. And, according to political scientist Francisco Durand, state institutions in Peru do not even challenge the natural resource extraction regime (2016). In other words, the Peruvian Constitutional Court may no longer be an institutional venue for accountability due to its capture by political and economic elites.

In a similar vein, according to political scientist Juan Carlos Rodríguez-Raga, when the Colombian Constitutional Court rules on topics engaging the Executive and Legislative's decisions on national security, economics, emergency decrees, the jurisdiction of military tribunals, and the budget, the elites react negatively. He notes "several public threats of retaliation issued by government officials and the president himself since 1992, when the court began its operation" (Rodríguez-Raga 2011, 85). What is more, recently the Colombian Constitutional Court decided that the transitional justice special courts would not have jurisdiction over "third parties" (i.e., business and corporate actors) involved in grave human rights violations (Payne, Pereira, and Bernal-Bermúdez 2017).

Both in Peru and Colombia, and most certainly in cases with similar conditions, political and economic elites tend to mobilize to protect their core interests. However, levels of backlash vary, as do the mechanisms through which backlash is conducted. The case of Guatemala can henceforth theoretically inform where the red lines of regimes in these cases lie, and to what extent high courts can engage with political and economic elites violating the rule of law and human rights before triggering intense reactions. Moreover, the case of Guatemala reveals the mechanisms used in backlash and the intertwined formal and informal networks and connections that play out within the judicial arena. This research project, where I took into consideration the role of the researcher as well as the fieldwork logistics, can contribute to the ethnographic study of the "law in practice" (Sieder 2019) and to "study up" to critically address power institutions (Nader 1972).

ADDRESSING RE-COLONIZATION AND ELITE INFORMAL NETWORKS

The second aspect of my argument is the deployment of informal networks to re-colonize the judicial arena. In the framework of the dissertation, re-colonization seeks to restore dispossession through limiting the legal interpretations advancing Indigenous peoples' rights to self-determination. Therefore, it has implications in terms of access to justice for Indigenous peoples. The increasing racist backlash against historically excluded communities needs to be addressed not only in scholarly terms but also politically and practically (Hooker 2020b). The final section of this conclusion aims to reflect on and offer some practical implications for Indigenous peoples in the context of backlash.

In this dissertation, I showed that producing social change through the courts is difficult in a regime whose foundations, the basis on which politics are grounded, continue to respond to strong political and economic elites with a colonialist logic. I described the linkages playing out within the Guatemalan Constitutional Court through an elite-oriented perspective in the context of racialized asymmetrical relationships. This perspective allowed me to examine the formal and informal connections deployed by the elites to protect their core interests when the Constitutional Court crossed the red lines of the extractive regime. It appeared that cases involving the interests of powerful political and economic actors pose serious challenges for constitutional courts, despite the supposed institutional autonomy to hold these actors accountable (Bowen 2017; Brinks and Blass 2018), the representation of Indigenous peoples on the bench, and specialized training to advance human rights (González-Ocantos 2016). These aspects speak of the difficulty for Indigenous peoples to prevail in cases highly disputed by powerful elites.

In political and practical terms, however difficult it may appear, the response to re-colonization within the judicial institutions would be to dismantle the elite structures

that maintain their dominance and advantages: political parties, concentrated trade and financial associations, legal interpretations legitimizing colonial and conservative political and social relationships, hegemonic prejudices and discourses reproducing exclusion, bureaucratic practices reinforcing these advantages. In fact, public institutions, civil society and international organizations, the academic communities, Indigenous traditional authorities, and the business associations debated in 2016 the terms to reform the political and judicial systems. Efforts to democratize and increase accountability have been advanced since 1985 (the Constituent Assembly), 1996 (the Peace Accords), and 2016 (the Constitutional reform), but are quickly jeopardized by the established ruling and power elites that control the regime.

Regarding the problem of concentration of economic elites, more recently in 2021, the *Consejo Nacional Empresarial* (CNE) emerged to counteract the dominance of the CACIF and the traditional oligarchic families. It is still too early to evaluate and analyze the impact of this organization in terms of elite power de-concentration. What could come next is an empirical study of how these now competing business groups will impact the capacity of the courts to challenge the established power elites and their extractive activities. Nevertheless, I am skeptical that this newly formed business organization will, in the first place, have the capacity to compete with historically oligarchic elites that have built the regime through linkages and advantages. And in the second place, this organization is not likely to question the extractive regime and its colonial foundations. Despite some emerging diversity of interests in business politics, the racial capitalist orientation of the state and its institutions is most likely to remain in place until the extractive regime and the racism upon which is built are directly dismantled.

Appendix

APPENDIX A: INTERVIEWS CONDUCTED AND INTERVIEWEES' AFFILIATIONS

Concerning the *Oxec* case:

Site	Organization	Position	Number
Constitutional Court	Magistratura	Magistrates	8
		Clerks	5
	Unit for Attention to People in Vulnerability Conditions	Officials	2
Litigation organizations and socio-legal assistance	Madre Selva	Indigenous rights advocates	4
	Abogados Mayas		
	Pastoral Social		
Santa María Cahabón	Peaceful Resistance of Q'eqchi' Communities	Community members	6
	Municipal Hall	Acting Mayor and Secretary	2
Corporations, Law firms, and Economic Chambers	Oxec, S.A.	Sustainability Director	1
	Anonymized	Corporate lawyer for Oxec, S.A.	1
	Anonymized	Lawyer and Director	1
	Industry Chamber	Director	1
Human Rights	Ombudsperson	Ombudsperson for Indigenous Peoples, Ombudsperson for the Environment	3
International Organizations	ILO	Technical Officer Specialist in Indigenous Peoples	1
	CICIG	Political Analyst	1
	FONGI (Foro de ONG Internacionales)	Director	1
	Peace Brigades International	Volunteer	1

International Cooperation	GIZ Germany	Head of Cooperation, Director of the Conflict Program	2
	Grupo Filtro (Coalition of embassies)	Group Coordinator	1

Concerning the Magistrates' Selection Process:

Site	**Organization**	**Position**	**Number**
Universidad San Carlos de Guatemala	Upper University Council	Student Representative	1
		Professor Representative	1
		Former Dean	1
		Former Secretary	1
Congress	Bench of Comité Campesino del Altiplano (CCDA)	Indigenous Peoples Legislative Commission	1
Bar Association	Board of Directors	Former President	1

Concerning the Magistrates' Selection Process:

Lawyer, advisor for *Cementos Progreso* Industry	1
Lawyer, expert on unconstitutional actions	1
Lawyer, business advisor for human rights issues and prior consultation, former constitutional clerk	1
Lawyer and professor	1

APPENDIX B: MATRIX FOR RESEARCH PROCESS

This matrix is used by the CIESAS graduate program "Antropología Jurídica y Estudios Políticos: Poder, Democracia, Violencia y Género" at Mexico City

Questions		Goals	Facts	Sources	Methods
Background 1: The right to prior consultation How has the normative framework of the right to consultation evolved in the history of constitutional litigation in Guatemala? Who benefits from the current and debated regulatory framework?		Finding the advances and regressions in a longitudinal perspective of the interpretations of the right to consultation	Interpretation: taking international standards as a reference: depending on the right defended, the subject of law, the resolution, and the reparation	Compilation of significant rulings in consultation	Informal survey to lawyers and experts in consultation to determine the most emblematic sentences
	1.1.				Rulings analysis
	1.2.	Locating the Oxec ruling in the history of the right to consultation and critically analyze its "nomogenetic" nature	Definition of "nomogenetic"	Bibliography on nomogenetic rulings	-
			Interpretations of the nomogenetic nature of the Oxec ruling	Experts: lawyers, magistrates	Interviews to experts
				Interested: Indigenous leaders and business	Interviews to experts
	1.3.	Mapping the actors that have historically been involved in the right to consultation litigation to identify the interests at stake	Courts and interests of: company, community, lawyers, plaintiffs, ministries, amicus curiae	Significant rulings in consultation	Rulings analysis
	1.4.	Mapping the actors who have been interested in defining the right to consultation (promotion or limitation)	Political actors and mechanisms proposed to carry out the consultation	Legislative initiatives	Access to public information
				Consultation regulations	Access to public information
			Social and business actors, and proposed mechanisms to carry out the consultation	Counter proposed regulations	Access to public information
Background 2: Constitutional Justice How has constitutional policy evolved in matters	**2.1.**	Knowing the regulatory framework of the CC and the rules for the magistrates	Legal rules that frame the actions of magistrates	Laws: *antejuicio, amparo*, personal exhibition and constitutionality, of the	Law analysis

of autonomy / authority for CC magistrates?				Judicial Organism	
				Constitution	
			Political rules that frame the actions of magistrates	Peace Accords	
				Five-Year Plan 7a Magistratura	Access to public information
	2.2.	Identify the moments of construction of authority of the Court in democratic history	Against which situation / actors did the CC stand out, the resolution and dissenting opinions	Bibliography on Guatemalan Constitutional History	-
			Dynamics during and after reactions to those critical moments	Newspapers	Online
				Experts	Interviews to experts
	2.3.	Finding the relationship (commitment or rupture) between magistrates, the actors who elected magistrates and their interests when they decide on the right to consultation	Dynamics during and after reactions to those moments of decision	Results of magistrates' elections	Newspapers
				Appreciations and sanctions	Access to public information
Decision-Making Based on what and how CC magistrates make decisions in cases of Indigenous peoples? Particularly in the right to free, prior, and informed consultation? How to explain the variation in magistrate decisions?	**3.1.**	Identifying the significant factors (necessary and sufficient) in the decision-making of magistrates	Existing jurisprudence	Compilation of jurisprudence in cases of the right to free, prior and informed consultation	Access to public information
			Magistrates' interpretations on the right to consultation	Magistrates	Interviews to magistrates
	3.2.	Describing the networks and internal and external	The role of clerks and advisers registered in the list of	Institutional regulatory framework	

		processes that operate in constitutional justice and that are defining the field of the right to free, prior and informed consultation	employees (room for maneuver, limits of their work, internal and external directives)	Clerks' experiences	Interviews to clerks
			The role of constitutional management (bureaucracy, discussions in plenary sessions)	Institutional regulatory framework	Five-Year Plan
				Secretary General's experience	Interview to Secretary
				Programs for the modernization of constitutional justice	Access to public information
					Interviews to people in charge
			The role of electoral politics (Executive and Legislative)	Newspapers notes on alliances and attacks	Newspapers
				Institutionalized actions for or against magistrates	Newspapers
				Non-institutionalized actions for or against magistrates	Newspapers
			The role of the media	Newspapers notes on the actions of magistrates and their decisions	Newspapers
				Paid fields of supports or attacks	Newspapers
			The role of elective corps	Results of magistrates' elections	Online
				On the principle of "ingratitude"	Interviews to magistrates
			The role of international cooperation and international	Clerks and magistrates	Interviews to clerks and magistrates

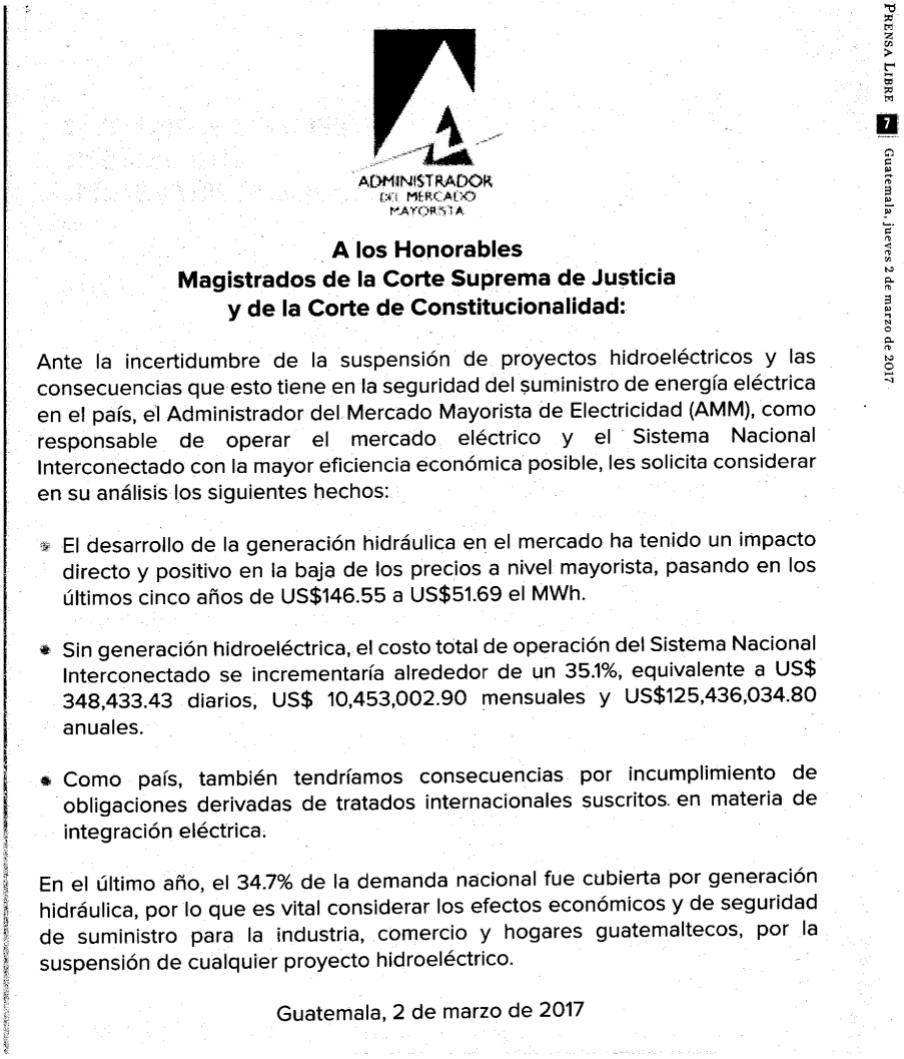
			accompaniment of human rights defenders	Organized activities (forums, workshops...)	Annual work report (?)
			The role of Indigenous mobilizations and litigation on the rights of Indigenous peoples	Clerks and magistrates	Interviews to clerks and magistrates
			The role of extractive companies	Clerks and magistrates	Interviews to clerks and magistrates
	3.3.	Analyzing dissident positions and their endorsements in significant cases of free, prior and informed consultation	Arguments in dissenting opinions	Caso de Oxec, San Rafael and La Puya	
	3.4.	Understanding different interpretations of career and professional community affiliations	Magistrates' ideas for their professional future	Magistrates (motivations, ambitions, interests)	Interviews
				Positions after the bench	Mapping where magistrates of the 5th and 6th Magistrates work
Indigenous mobilization during magistrates' elections and during strategic litigation How are Indigenous movements related to the CC and its decisions? What mechanisms are activated at the local level to be successful at the state-central-constitutional level? Where does mobilization fail? What impact does Indigenous mobilization have on constitutional	**4.1.**	Identifying the networks, strategies and intermediaries of Indigenous litigation organizations in the election of magistrates and evaluate the impact of their mobilization	Voting directives of Indigenous associations in the Bar Association	Elections 2011 and 2016	Survey
			Advocacy strategies in Executive, Congress, Supreme Court, USAC		Survey
			Advocacy strategies in other institutions (media, human rights organizations)		Survey
			Subjective measurement of the performance of the chosen ones	Associations	Survey
	4.2.	Creating an overview of Oxec and San Rafael community internal and	The role of community organization and mobilizations	Bibliography and photographs of mobilizations of Oxec	-

decisions?		external organizational networks and processes to maintain constant strategic litigation (in preparatory, procedural and implementation stages)		and San Rafael	
				Point of view of community leaders on the impact of the mobilizations on the decisions of the CC	Interviews
			The role of international accompaniment	Types of accompaniment to human rights defenders	Reports
					Interviews with international companions
				Point of view of community leaders on the impact of accompaniment in the decisions of the CC	Interviews to community leaders
			The role of constitutional management (bureaucracy, discussions in public hearings)	Point of view of community leaders on the impact of the mobilizations on the decisions of the CC	Interviews to community leaders
				Associations	Interviews
	4.3.	Knowing the internal and external factors that negatively affect mobilization	Interpretations of obstacles (in relation to State institutions, companies, rivalries between organizations, community struggles)	Point of view of community leaders on the obstacles	Interviews to community leaders
				Associations	Interviews
Red Lines and Backlash What does the political crisis tell us about the possibilities and	**5.1.**	Understanding the configuration of coalitions and networks in democratization (interactions	Description of #PactoDeCorruptos and the relative institutional resistance: who they are, what	CICIG, Impunity Watch, OACNUDH, Fundación Myrna Mack	Reports on the capture of the state

limitations of constitutional justice? How to understand the dispute for the right to consultation within this political crisis? What is the "red line" in the case of democratization in Guatemala (its contours, its elasticity)?		between the 3 branches of the state and the *poderes fácticos*)	interests they have, where they are located, what arguments they mobilize, what mechanisms of impunity and defense	Newspapers	
			Description of what is at stake with the judicialization of the right to consultation in relation to the #PactoDeCorruptos	Newspapers	
				Experts and Interested	Interviews to experts
	5.2.	Analyze this configuration reflected in the Constitutional Court	Description of the actors, institutionalized and informal actions in favor of and against the Court, and those who keep silent	Newspapers	
				Political actors	Interviews to interested actors
	5.3.	Analyze this configuration reflected in the mobilization of Indigenous peoples and the right to free, prior and informed consultation	Description of the actors, institutionalized and informal actions in favor of and against the mobilizations, and those who keep silent		Interviews with community leaders, Indigenous politicians, civil society organizations

APPENDIX C: PAID ADVERTISEMENTS IN THE NATIONAL PRESS IN THE *OXEC* CASE

The media campaign organized by Oxec, S.A. was part of the countermobilization strategy. Based on the data gathered by Colectivo Madre Selva, twenty-eight paid advertisements were published in newspapers in eleven months. Below are some examples of the different messages that were addressed to the public at large, but more specifically to the magistrates of the Constitutional Court.



PRENSA LIBRE 7 Guatemala, jueves 2 de marzo de 2017

ADMINISTRADOR DEL MERCADO MAYORISTA

A los Honorables
Magistrados de la Corte Suprema de Justicia
y de la Corte de Constitucionalidad:

Ante la incertidumbre de la suspensión de proyectos hidroeléctricos y las consecuencias que esto tiene en la seguridad del suministro de energía eléctrica en el país, el Administrador del Mercado Mayorista de Electricidad (AMM), como responsable de operar el mercado eléctrico y el Sistema Nacional Interconectado con la mayor eficiencia económica posible, les solicita considerar en su análisis los siguientes hechos:

- El desarrollo de la generación hidráulica en el mercado ha tenido un impacto directo y positivo en la baja de los precios a nivel mayorista, pasando en los últimos cinco años de US$146.55 a US$51.69 el MWh.
- Sin generación hidroeléctrica, el costo total de operación del Sistema Nacional Interconectado se incrementaría alrededor de un 35.1%, equivalente a US$ 348,433.43 diarios, US$ 10,453,002.90 mensuales y US$125,436,034.80 anuales.
- Como país, también tendríamos consecuencias por incumplimiento de obligaciones derivadas de tratados internacionales suscritos en materia de integración eléctrica.

En el último año, el 34.7% de la demanda nacional fue cubierta por generación hidráulica, por lo que es vital considerar los efectos económicos y de seguridad de suministro para la industria, comercio y hogares guatemaltecos, por la suspensión de cualquier proyecto hidroeléctrico.

Guatemala, 2 de marzo de 2017

CAMARA DE INDUSTRIA DE GUATEMALA

CIG

GGUEE

ANTE LA POSIBLE SUSPENSIÓN DE LA OPERACIÓN DE PROYECTOS HIDROELÉCTRICOS

MANIFIESTA:

1.- Su alto nivel de preocupación por el impacto negativo que causarán estas medidas a todos los guatemaltecos en el corto, mediano y largo plazo.

2.- Su rechazo a la intención de suspender operaciones a empresas que han cumplido con todos los procedimientos que las leyes vigentes establecen, generando precedentes con consecuencias nefastas incalculables.

3.- La energía eléctrica es un insumo esencial para el desarrollo del ser humano y la economía de un país y en Guatemala, después de 20 años, el mercado eléctrico ha alcanzado un alto grado de madurez. En la actualidad la matriz eléctrica de Guatemala es de las más diversificadas de Centroamérica, con una participación de todas las formas de energía renovable y no renovable, lo que ha permitido una reducción importante en el costo de este insumo esencial.

4.- La generación de energía es una actividad que proporciona beneficios importantes, entre ellos inversión y beneficios ambientales. Cualquier suspensión de la operación de proyectos hidroeléctricos pone en grave riesgo estos beneficios que, como guatemaltecos, hemos alcanzado.

5.- A los grandes consumidores de energía eléctrica, nos preocupa profundamente que este tipo de acciones contra el sector eléctrico ponga en riesgo un suministro de electricidad sostenible, eficiente, y no contaminante, en detrimento del empleo y desarrollo de todos los guatemaltecos.

6.- Finalmente, a los honorables Magistrados de la Corte de Constitucionalidad, solicitamos que se cumpla lo que establece la legislación vigente y los instamos a que tomen en consideración las consecuencias que pueden provocarse con este tipo de acciones en las actividades económicas, de desarrollo, de empleo y de bienestar de los guatemaltecos.

Guatemala, 27 de febrero 2017

CARTA ABIERTA
A LOS HONORABLES MAGISTRADOS
DE LA CORTE DE CONSTITUCIONALIDAD

Honorables Magistrados:

En el Convenio 169 de la OIT se destaca que la Consulta con las comunidades debe llevarse a cabo respetando los enfoques de interculturalidad, género y participación. En el proceso seguido por el Ministerio de Energía y Minas para el caso de las hidroeléctricas Oxec, el diálogo e intercambio de información se hace en idioma Q´eqchí´, garantizando el espacio para que las mujeres, al igual que los hombres, opinen libremente. Durante el proceso de Consulta se resguardan los principios de oportunidad, interculturalidad, buena fe, flexibilidad, plazo razonable, ausencia de coacción o condicionamiento e Información oportuna. La comunidad tiene la oportunidad de expresarse democráticamente, amparada en el marco legal.

A falta de un reglamento y cumpliendo su rol de ente rector, el Ministerio de Energía y Minas se vio en la necesidad de diseñar una metodología para llevar a cabo el proceso de Consulta, respetando los enfoques y principios arriba mencionados con la finalidad de alcanzar el objetivo del Convenio 169 de la OIT establecido en su artículo 6: *"(...)2. Las consultas llevadas a cabo en aplicación de este Convenio deberán efectuarse... con la finalidad de llegar a un acuerdo ..."*.

Como consta en los expedientes que el Ministerio de Energía y Minas, en representación del Estado de Guatemala, oportunamente hizo llegar a las Cortes, en el caso de Oxec y Oxec II efectivamente se logró alcanzar el objetivo del Convenio 169 de la OIT, toda vez que la empresa y las comunidades suscribieron acuerdos, como lo demuestran las Escrituras Públicas redactadas para el efecto.

El proceso de Consulta implementado por el MEM (Memorial de Apelación del MEM páginas 30 a la 35), se fundamenta en las 7 fases que a continuación se resumen:

1. Reuniones iniciales a fin de establecer comunicación en el territorio, presentación institucional del MEM e identificación del área de influencia, según el Estudio de Impacto Ambiental.
2. Pre-consulta: construcción conjunta del plan de consulta, con el objetivo de construir confianza, así como visita de líderes indígenas de las comunidades al área de los proyectos.
3. Presentación de información de las autorizaciones en idioma Q´eqchí´ y escucha activa de preocupaciones o planteamientos de los pueblos indígenas con respecto a las afectaciones derivadas de los proyectos, actividad que se realiza de manera permanente.
4. Creación de espacios de diálogo permanente con el objetivo de despejar cualquier duda, consulta y/o preocupación.
5. Comprobación de la existencia de mesas de diálogo permanente por parte del MEM.
6. Verificación por parte del MEM de la existencia de acuerdos obtenidos en dichas mesas de diálogo.
7. Conformación de una comisión de verificación y diálogo continuo.

Por lo anteriormente descrito, la decisión de las Cortes de suspender las autorizaciones de Oxec y Oxec II va en sentido contrario del proceso de Consulta implementado por el MEM. El proceso ha impactado positivamente en las comunidades indígenas y ha alcanzado el objetivo del Convenio 169 de la OIT en cuanto a lograr acuerdos entre las partes, utilizando una metodología coherente con dicho propósito.

¿Entonces, cuál es el motivo por el que se resolvió suspender la operación de las hidroeléctricas?

A Ustedes, Honorables Magistrados de la Corte de Constitucionalidad, solicitamos:

- Que reconozcan y respeten las actuaciones del Ministerio de Energía y Minas, que en ejercicio permanente de su función, lleva a cabo en las comunidades pertenecientes al territorio del área de influencia de las hidroeléctricas Oxec.
- Que consideren que el MEM realiza un proceso permanente de consulta tomando en cuenta los principios y criterios del Convenio 169, con la participación de las comunidades indígenas del área de influencia de los proyectos, proceso que hemos apoyado, apoyamos y continuaremos apoyando.
- Que no se suspendan nuestras operaciones, por actos u omisiones que no nos corresponde realizar.

Seguimos creyendo en Guatemala.

ENERGY RESOURCES

CFG CÁMARA FINANZAS GUATEMALA

CARTA ABIERTA A LOS MAGISTRADOS DE LA CORTE DE CONSTITUCIONALIDAD

Honorables Magistrados,

Ante el gran reto que afrontan al conocer en apelación la Resolución en Definitiva de la Corte Suprema de Justicia de fecha 4 de enero 2017 en cuanto a la Suspensión de la Autorización para el Uso del Agua de las Hidroeléctricas OXEC I y OXEC II, la Cámara de Finanzas de Guatemala con apego a la institucionalidad seria, reflexiva y creíble hace una llamado a cada uno de ustedes para que **previo a dictar la resolución correspondiente** se considere lo siguiente:

La energía eléctrica es un insumo esencial para el desarrollo del ser humano y la economía de un país, en Guatemala la generación de dicha energía por medio de hidroeléctricas representa más del 80% de la energía que se consume a nivel nacional.

El Estado de Guatemala, a través del Ministerio de Energía y Minas (MEM), es la autoridad administrativa competente para otorgar la Autorización del Uso de Agua, misma que es aprobada cuando quien la solicite haya cumplido con el procedimiento y los requisitos legales establecidos. Una vez emitida la autorización correspondiente, el solicitante cuenta con la herramienta esencial para llevar a cabo las inversiones necesarias, tanto en infraestructura como en capital humano, para empezar a operar. La autorización del MEM le otorga certeza y seguridad jurídica al inversionista.

La presunción de legalidad y certeza jurídica de la cual goza OXEC I y OXEC II, fue determinante para que la banca local e internacional respaldara su construcción y operación con el financiamiento necesario para lograr la puesta en marcha del proyecto. El fallo de la Corte Suprema de Justicia, hoy recurrida y puesta ante ustedes, amenaza la amortización oportuna de los créditos otorgados e incluso la solvencia misma del sector afectando a todos los guatemaltecos, sin distinción alguna.

El Convenio 169 de la OIT determina en su Artículo 6, literal a) que los gobiernos deberán consultar a los pueblos interesados, mediante procedimientos apropiados y en particular a través de sus instituciones representativas, cada vez que se prevean medidas legislativas o administrativas susceptibles de afectarles directamente. La consulta a la que se refiere el citado artículo ha sido objeto de múltiples diferencias de criterio y opinión, a tal punto que, al día de hoy **la ausencia de una norma o conjunto de normas** que adecuadamente regule su implementación ha llevado a que emprendimientos de gran envergadura, trascendentales para el desarrollo humano y económico del país se vean afectados de forma negativa y definitiva.

En virtud de lo anterior, la Cámara de Finanzas de Guatemala que aglutina a la Banca, Financieras, Aseguradoras y demás entidades financieras del sector llama a la reflexión a los Honorables Magistrados de la Corte de Constitucionalidad para que, previo a la emisión de su resolución, **tomen en cuenta las dañinas consecuencias económicas, de desarrollo, empleo y bienestar de los guatemaltecos** que pueden desencadenarse con mantener la Resolución Definitiva recurrida y suspender la autorización de OXEC I y OXEC II.

Guatemala, 7 de marzo de 2017

CAMPO PAGADO

APPENDIX D: DEFAMATION VIDEOS ON THE WEB

As part of the Oxec, S.A. countermobilization, a defamation strategy was deployed against the movements opposing the dams in Santa María Cahabón. These movements included the Peaceful Resistance of Q'eqchi' Communities and the Colectivo Madre Selva. The defamation campaign was broadcast through Youtube and other online webpages (https://www.youtube.com/channel/UCxXLUcWdLQR-9JOklHu63Rg).
The messages in these videos seek to delegitimize the Indigenous movements.

Bibliography

Abu-Lughod, Lila. 1990. “The Romance of Resistance: Tracing Transformations of Power Through Bedouin Women.” *American Ethnologist* 17 (1): 41–55.

Albarracín Caballero, Mauricio Ariel, Diana Guarnizo Peralta, Maryluz Barragán González, Paula Alejandra Angartia Tovar, and Jesús David Medina Carreño. 2021. *Demanda de Inconstitucionalidad contra el literal e) del artículo 1 de la Ley 2003 del 2019*. Bogotá, Colombia.

Alderete, Carolina, and Belén Pardo. 2021. “Las mujeres indígenas reclaman terminar con el «terricidio».” *Agencia de Noticias*, May 2021, Universidad de Buenos Aires edition, sec. Comunidad.

Anaya, S. James. 2005. “Indigenous Peoples’ Participatory Rights in Relation to Decisions about Natural Resource Extraction: The More Fundamental Issue of What Rights Indigenous Peoples Have in Lands and Resources.” *Arizona Journal of International & Comparative Law* 22 (1): 11.

Antileo Baeza, Enrique, Luis E. Cárcamo-Huechante, Margarita Calfío Montalva, and Herson Huinca-Piutrin, eds. 2015. *Violencias Coloniales en Wajmapu*. Temuco, Chile: Comunidad de Historia Mapuche.

“Aportes para el Litigio en casos de Discriminación Racial, Etnica y de Género.” 2010. Guatemala.

Asamblea Social y Popular Guatemala. 2021. *Jornadas de protesta por la justicia del 9 al 11 de marzo*. Guatemala, Guatemala.

Bargh, Maria. 2007. “Introduction.” In *Resistance. An Indigenous Response to Neoliberalism*, 1–21. New Zealand: HUIA.

Barker, Joanne. 2011. *Native Acts: Law, Recognition, and Cultural Authenticity*. Durham: Duke University Press.

Bastos, Santiago, and Aura Cumes, eds. 2007. *Mayanización y vida cotidiana: la ideología multicultural en la sociedad guatemalteca*. Vol. 1. 3 vols. Guatemala: FLACSO Guatemala, CIRMA, Cholsamaj.

Baum, Lawrence. 1997. *The Puzzle of Judicial Behavior*. Ann Arbor: University of Michigan Press.

———. 2006. *Judges and Their Audiences: A Perspective on Judicial Behavior*. Princeton, N.J: Princeton University Press.

Bermeo, Nancy. 2016. “On Democratic Backsliding.” *Journal of Democracy* 27 (1): 5–19.

Bernal-Bermúdez, Laura. 2019. “Unmasking Veto Power: Backlash against Corporate Accountability for Grave Human Rights Violations in Colombia.” In , 33. Bogotá, Colombia.

Bird, Annie. 2013. “The Ixil Genocide Trial: The Case Against Efraín Rios Montt Tests The Independence Of The Judiciary And Pushes Guatemala’s Military Political Project To The Limit.” Rights Action.

Bloom, Jack M. 2019. *Class, Race, and the Civil Rights Movement*. 2nd ed. Blacks in the Diaspora. Bloomington: Indiana University Press.

Botero, Sandra, Daniel M. Brinks, and Ezequiel González-Ocantos. n.d. *Broken Promises? Taking Stock of the Judicialization of Politics in Latin America*.

Bowen, Rachel. 2013. “Judicial Autonomy in Central America: A Typological Approach.” *Political Research Quarterly* 66 (4): 831–42.

———. 2017. *The Achilles Heel of Democracy: Judicial Autonomy and the Rule of Law in Central America*. Cambridge; New York: Cambridge University Press.

Brinks, Daniel M., and Abby Blass. 2018. *The DNA of Constitutional Justice in Latin America: Politics, Governance, and Judicial Design*. Cambridge UK ; New York, NY: Cambridge University Press.

Brinks, Daniel M., and William Forbath. 2011. “Commentary: Social and Economic Rights in Latin America: Constitutional Courts and the Prospects for Pro-Poor Interventions.” *Texas Law Review* 89: 13.

———. 2014. “The Role of Courts and Constitutions in the New Politics of Welfare in Latin America.” In *Law and Development of Middle-Income Countries: Avoiding the Middle-Income Trap*, edited by Randall P. Peerenboom and Tom Ginsburg, 221–45. New York: Cambridge University Press.

Brinks, Daniel M., and Varun Gauri. 2014. “The Law’s Majestic Equality? The Distributive Impact of Judicializing Social and Economic Rights.” *Perspectives on Politics* 12 (2): 375–93.

Bull, Benedicte. 2014. “Elites, Classes and Environmental Governance. Conceptual and Theoretical Challenges.” In *Environmental Politics in Latin America: Elite Dynamics, the Left Tide and Sustainable Development*, 1st ed., 15–30. Studies in Sustainable Development Series. Routledge.

Burt, Jo-Marie. 2019. “Gender Justice in Post-Conflict Guatemala: The Sepur Zarco Sexual Violence and Sexual.” *Critical Studies*, 34.

Casaús Arzú, Marta. 2007. *Guatemala: Linaje y Racismo*. 3d ed. Guatemala: F&G Editores.

CICIG. 2016. “Exposición de Motivos. Reforma Constitucional en Materia de Justicia.” Guatemala: CICIG.

———. 2018. “Traficantes de influencias.” January 2018. https://www.cicig.org/comunicados-2018-c/com-009-caso-traficantes-de-influencias/.

———. 2019a. “El financiamiento de la política en Guatemala.” Guatemala, Guatemala: CICIG.

———. 2019b. “El Legado de Justicia en Guatemala.” Informe de Cierre. Guatemala, Guatemala: CICIG.

CIDH. 2017. “Situación de derechos humanos en Guatemala.” Informe de país. CIDH.

———. 2018. “Informe de seguimiento de recomendaciones formuladas por la CIDH en el informe sobre situación de derechos humanos en Guatemala.” Informe anual 2018. CIDH.

———. 2019. “Segundo Informe de seguimiento de recomendaciones formuladas por la CIDH en el informe sobre situación de derechos humanos en Guatemala.” Informe anual 2019. CIDH.

Collins, Cath. 2010. *Post-Transitional Justice: Human Rights Trials in Chile and El Salvador*. University Park: Pennsylvania State University Press.

Comisión Internacional de Juristas. 2018. “Guatemala: La Independencia Judicial Bajo Asedio.” June 2018. https://www.icj.org/es/guatemala-la-independencia-judicial-bajo-asedio/.

Comisión Internacional de Juristas (ICJ). 2018. “Guatemala: La coyuntura actual en Guatemala. Análisis de la Comisión Internacional de Juristas (CIJ).” Guatemala: ICJ.

Comisión Nacional de Energía Eléctrica. 2020. “Plan de Expansión Indicativo del Sistema de Generación 2020-2034.”

Convergence for Human Rights. Twitter. 2021. “Judicial Independence Under Threat as Guatemala’s Congress Blocks Appointment of Constitutional Justice Gloria Porras,” April 2021.

Corte Interamericana de Derechos Humanos. 2018. “Pueblos Indígenas y Tribales.” 11. Cuadernillo de Jurisprudencia. Corte IDH.

“Declaración del Encuentro Continental de los Pueblos de la Abya Yala por el Agua y la Pachamama.” 2011. Guapondelig, Ecuador.

Del Aguila, Alejandro. 2019. “Caracterización de las Elecciones Generales 2019.” 19. Análisis de Situación. Guatemala: El Observador.

Domingo, Pilar. 2000. “Judicial Independence: The Politics of the Supreme Court in Mexico.” *Journal of Latin American Studies* 32 (3): 705–35.

Domingo, Pilar, and Rachel Sieder, eds. 2001. *Rule of Law in Latin America: The International Promotion of Judicial Reform*. University of London. London: Institute of Latin American Studies.

Dressel, Björn, Raul Sanchez-Urribarri, and Alexander Stroh. 2017. "The Informal Dimension of Judicial Politics: A Relational Perspective." *Annual Review of Law and Social Science* 13 (1): 413–30.

Durand, Francisco. 2016. "Cuando el poder extractivo captura el estado. Lobbies, puertas giratorias y paquetazo ambiental en Perú." Perú: OXFAM.

EFE. 2021. "Kamala Harris se reúne con exfuncionarias de justicia de Guatemala y defiende 'firmemente' la independencia judicial." *Prensa Libre*, May 2021, sec. Justicia.

Engle, Karen. 2010. *The Elusive Promise of Indigenous Development: Rights, Culture, Strategy*. Durham: Duke University Press.

Epp, Charles. 1998. *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. Chicago: University of Chicago Press.

Estrada Tobar, Javier. 2019. "Por qué 'El Moralazo' pone en una situación vulnerable a la CC." *Nómada*, January 2019.

Euraque, Darío, Jeffrey Gould, and Charles Hale, eds. 2004. *Memorias del Mestizaje: Cultura Política en Centroamérica de 1920 al presente*. Guatemala: CIRMA.

Federación Internacional por los Derechos Humanos. 2021. "Guatemala: Resolución de la Corte de Constitucionalidad restringe la libertad de asociación." May 2021.

Ferguson, Kennan. 2016. "Why Does Political Science Hate American Indians?" *Perspectives on Politics* 14 (4): 1029–38.

Ferraz, Octavio Luiz Motta. 2011. "Harming the Poor Through Social Rights Litigation: Lessons from Brazil." *Texas Law Review* 89: 26.

Fortes, Pedro. 2019. "An Agenda for Latin American 'Law and Development.'" In *Routledge Handbook of Law and Society in Latin America*, 138–51. New York and London: Routledge.

Fundación Myrna Mack. 2019. "Redes ilícitas y crisis política: la realidad del Congreso Guatemalteco." Guatemala: Fundación Myrna Mack.

Galanter, Marc. 2006. "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change." In *The Canon of American Legal Thought*. Princeton University Press.

Gall, Olivia. 2007. "Relaciones entre Racismo y Modernidad: Preguntas y Planteamientos." In *Racismo, mestizaje y modernidad visiones desde latitudes diversas*, 63–91. México: Universidad Nacional Autónoma de México.

García Laguardia, Jorge Mario. 1994. “La Corte de Constitucionalidad (Tribunal Constitucional) de Guatemala. Orígenes y competencias.” *Instituto de Investigaciones Jurídicas UNAM*, Cuadernos Constitucionales México-Centroamérica, 8.

———, ed. 2001. *Transición democrática y reforma constitucional en Centroamérica: pensamiento y acción para una nueva Centroamérica*. 1a ed. Serie Democracia y constitución. San José, Costa Rica: Fundación del Servicio Exterior para la Paz y la Democracia (FUNPADEM).

García-Sayán, Diego. 2020. “Report of the Special Rapporteur on the Independence of Judges and Lawyers.” A/75/172. United Nations General Assembly.

Gauri, Varun, and Daniel M. Brinks, eds. 2008. *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*. Cambridge; New York: Cambridge University Press.

Gerring, John. 2017. *Case Study Research: Principles and Practices*. Second edition. Cambridge; New York: Cambridge University Press.

Global Witness, and ESCR-Net. n.d. “Developments in the Fields of Corporate Capture and Company Ownership Transparency.” Corporate Accountability Working Group.

Gloppen, Siri. 2018. “Conceptualizing Lawfare: A Typology and Theoretical Framework.” Centre on Law and Social Transformation.

Gloppen, Siri, Roberto Gargarella, and Elin Skaar. 2004. *Democratization and the Judiciary: The Accountability Function of Courts in New Democracies*. Psychology Press.

———, eds. 2005. *Democratization and the Judiciary: The Accountability Function of Courts in New Democracies*. London ; Portland, OR: Frank Cass Publishers.

González Casanova, Pablo. 2006. “El Colonialismo Interno.” *CLACSO* Sociología de la Explotación.

González Chávez, María Patricia. 2017. “Impunity and Transitional Justice in the Recent History of Guatemala: Towards a Democratic Rule of Law.” *Anuario Latinoamericano – Ciencias Políticas y Relaciones Internacionales* 4: 255–72. https://doi.org/10.17951/al.2017.4.255.

González, José, Brenda Isabel Rodas, Juan José Margos, and Mynor Ixmay. 2019. “Jueces en Mayor Riesgo: Amenazas a la independencia judicial en Guatemala.” Observatorio de Independencia Judicial. Guatemala, Guatemala: Impunity Watch.

González-Ocantos, Ezequiel A. 2016. *Shifting Legal Visions: Judicial Change and Human Rights Trials in Latin America*. Cambridge University Press.

Goodale, Mark, and Nancy Grey Postero, eds. 2013. *Neoliberalism, Interrupted: Social Change and Contested Governance in Contemporary Latin America*. Stanford: Stanford University Press.

Guzmán Böckler, Carlos, and Jean-Loup Herbert. 1974. *Guatemala: una interpretación histórico-social*. 4. ed. México: Siglo Veintiuno Editores.

Hale, Charles. 2007. *Más que un indio: ambivalencia racial y multiculturalismo neoliberal en Guatemala*. Guatemala: AVANCSO.

———, ed. 2008. *Engaging Contradictions: Theory, Politics, and Methods of Activist Scholarship*. Global, Area, and International Archive. Berkeley: University of California Press.

———. 2011. "Resistencia Para Qué? Territory, Autonomy and Neoliberal Entanglements in the 'Empty Spaces' of Central America." *Economy and Society* 40 (2): 184–210.

Hale, Charles, Pamela Calla, and Leith Mullings. 2017. "Race Matters in Dangerous Times: A Network of Scholar-Activists Assesses Changing Racial Formations across the Americas—and Mobilizes against Renewed Racist Backlash." *NACLA Report on the Americas* 49 (1): 81–89.

Hale, Charles and Leith Mullings. 2020. "A Time to Recalibrate: Analyzing and Resisting the Americas-Wide Project of Racial Retrenchment." In *Black and Indigenous Resistance in the Americas: From Multiculturalism to Racist Backlash*, 21–65. Lanham, Boulder, New York, London: Lexington Books.

Hammergren, Linn. 2008. "Twenty-Five Years of Latin American Judicial Reforms: Achievements, Disappointments, and Emerging Issues." *Whitehead Journal of Diplomacy and International Relations* 9 (1): 89–104.

———. 2019. "New Influences on Legality and Justice in Latin America." In *Routledge Handbook of Law and Society in Latin America*, 420–32. Routledge Handbooks. New York and London: Routledge.

Haraway, Donna. 1988. "Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective." *Feminist Studies* 14 (3): 575–99.

Helmke, Gretchen. 2005. *Courts under Constraints. Judges, Generals, and Presidents in Argentina*. Studies in Comparative Politics. Cambridge University Press.

Helmke, Gretchen, and Julio Ríos Figueroa, eds. 2011. *Courts in Latin America*. Cambridge; New York: Cambridge University Press.

Hernández Castillo, Rosalva Aída. 2016. *Multiple Injustices: Indigenous Women, Law, and Political Struggle in Latin America*. Critical Issues in Indigenous Studies. Tucson: The University of Arizona Press.

Hirschl, Ran. 2000. “The Political Origins of Judicial Empowerment through Constitutionalization: Lessons from Four Constitutional Revolutions.” *Law & Social Inquiry* 25 (1): 91–149.

Hooker, Juliet. 2017. “Black Protest / White Grievance: On the Problem of White Political Imaginations Not Shaped by Loss.” *South Atlantic Quarterly* 116 (3): 483–504.

———. 2020a. “Introduction.” In *Black and Indigenous Resistance in the Americas: From Multiculturalism to Racist Backlash*, 1–19. Lanham, Boulder, New York, London: Lexington Books.

———. 2020b. *Black and Indigenous Resistance in the Americas: From Multiculturalism to Racist Backlash*. Lanham, Boulder, New York, London: Lexington Books.

ICEFI. 2019. *Política Fiscal: Expresión del Poder de las Elites Centroamericanas*. Instituto Centroamericano de Estudios Fiscales. Guatemala.

Kaltschmitt, Alfred. 2017. “Apelando a Sócrates.” *Prensa Libre*, May 30, 2017, sec. Opinion. https://www.prensalibre.com/opinion/apelando-a-socrates/.

———. 2018. “Lawfare o guerra con leyes.” *Prensa Libre*, April 10, 2018, sec. Opinion. https://www.prensalibre.com/opinion/lawfare-o-guerra-con-leyes/.

Katz, Jack. 2001. “From How to Why: On Luminous Description and Causal Inference in Ethnography (Part 2).” *Ethnography* 2 (4): 443–73.

Keck, Margaret E., and Kathryn Sikkink. 1998. *Activists Beyond Borders: Advocacy Networks in International Politics*. Ithaca, N.Y: Cornell University Press.

Keck, Thomas. 2009. “Beyond Backlash: Assessing the Impact of Judicial Decisions on LGBT Rights.” *Law & Society Review* 43 (1): 151–86.

Klarman, Michael J. 2005. “Brown and Lawrence (and Goodridge).” *Michigan Law Review* 104 (3): 431–89.

La Puya. 2016. Constitutional Court.

Laplante, Lisa J., and Kimberly Susan Theidon. 2007. “Truth with Consequences: Justice and Reparations in Post-Truth Commission Peru.” *Human Rights Quarterly* 29 (1): 228–50.

Las Brisas. 2017. Constitutional Court.

Latour, Bruno. 2004. *La fabrique du droit*. Paris: La Découverte.

Maldonado Aguirre, Alejandro. 2020. “El Principio de la Ingratitud.” *elPeriódico*, January 2020. https://elperiodico.com.gt/noticias/domingo/2020/03/01/el-principio-de-la-ingratitud/.

Martí i Puig, Salvador, and Diego Sánchez-Ancochea. 2014. "Central America's Triple Transition and the Persistent Power of the Elite." In *Handbook of Central American Governance*, 4–22. Routledge International Handbooks. London; New York: Routledge.

Martínez, Allan. 2017. "Hidroeléctrica Oxec acudirá a instancias internacionales." *República.Gt*, April 2017, sec. Economía, Negocios.

Mazariegos Rodas, Mónica. 2017. "Impunidad, corrupción y derechos humanos: ¿Qué es lo que resguarda el corazón del Estado?" *Revista Justicia*, no. 20: 79–82.

Menchú, Sofía. 2021. "Congreso de Guatemala rechaza nombrar a jueza anticorrupción como presidenta de corte." *Reuters*, April 2021.

Millán, Moira. 2019. *El Tren del Olvido*. Planeta de Libros.

Minera San Rafael. 2018. Constitutional Court.

Mingorría, Sara. 2018. "Violence and Visibility in Oil Palm and Sugarcane Conflicts: The Case of Polochic Valley, Guatemala." *The Journal of Peasant Studies* 45 (7): 1314–40.

Mitchell, Timothy. 2006. "Society, Economy, and the State Effect." In *The Anthropology of the State: A Reader*, 1 edition. Malden, MA ; Oxford: Wiley-Blackwell.

Moraña, Mabel, Enrique D. Dussel, and Carlos A. Jáuregui, eds. 2008. *Coloniality at Large: Latin America and the Postcolonial Debate*. Latin America Otherwise. Durham: Duke University Press.

Moreton-Robinson, Aileen. 2015. *The White Possessive: Property, Power, and Indigenous Sovereignty*. Indigenous Americas. Minneapolis: University of Minnesota Press.

Moustafa, Tamir. 2003. "Law versus the State: The Judicialization of Politics in Egypt." *Law & Social Inquiry* 28 (4): 883–930.

Muru-Lanning, Marama. 2016. *Tupuna Awa. People and Politics of the Waikato River*. Auckland University Press.

Nader, Laura. 1972. "Up the Anthropologist: Perspectives Gained from Studying Up."

Nichols, Robert. 2020. *Theft Is Property! Dispossession and Critical Theory*. Radical Americas. Durham London: Duke University Press.

OACNUDH. 2018a. "Informe de la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos sobre las actividades de la Oficina del Alto Comisionado en Guatemala." Guatemala: OACNUDH.

———. 2018b. "Informe de la Relatora Especial sobre los derechos de los pueblos indígenas sobre su visita a Guatemala." Human Rights Council.

———. 2020. “Informe de la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos sobre las actividades de la Oficina del Alto Comisionado en Guatemala.” OACNUDH.

OHCHR. 2008. “Frequently Asked Questions on Economic, Social and Cultural Rights.” Fact Sheet 33. The Human Rights Fact Sheet. Switzerland: Office of the United Nations High Commissioner for Human Rights.

Open Society Foundation. 2017. *Against The Odds: CICIG in Guatemala*. Open Society Justice Project.

Oxec I and II. 2017. Constitutional Court.

Payne, Leigh A., Gabriel Pereira, and Laura Bernal-Bermúdez. 2017. *Intervención Ciudadana de Académicos Del Grupo de Responsabilidad Empresarial y Justicia Transicional de La Universidad de Oxford En El Proceso Que Revisa La Constitucionalidad Del Acto Legislativo n.001 de 2017 "por Medio Del Cual Se Crea Un Título de Disposiciones Transitorias de La Constitución Para La Terminación Del Conflicto Armado y La Construcción de Una Paz Estable y Duradera y Se Dictan Otras Disposiciones*. Bogotá, Colombia.

———. 2020. *Transitional Justice and Corporate Accountability from Below: Deploying Archimedes’ Lever*. United: Cambridge University Press.

Prensa Libre. 2018. “Jimmy Morales: A mí me han investigado todo,” October 4, 2018, sec. Política.

Proulx, Craig. 2018. “White Backlash Against Indigenous Peoples in Canada.” *The Canadian Journal of Native Studies* XXXVIII (1): 75–101.

Rakner, Lise. 2018. “Breaking BAD: Understanding Backlash Against Democracy in Africa.” Academic. *CMI Insight* (blog). 2018.

Reynolds, Louisa. 2011. “Dos Erres Unearthed Again.” Lapress.Org. 2011. http://www.lapress.org/articles.asp?art=6301.

Rivera Cusicanqui, Silvia. 2010. *Ch’ixinakax utxiwa: Una Reflexión Sobre Prácticas y Discursos Descolonizadores*. Buenos Aires, Argentina: Tinta Limón.

Robinson, Mark. 1998. “Corruption and Development: An Introduction.” *European Journal of Development Research* 10: 1–14.

Rodríguez, Alejandro, Juan Pablo Muñoz, and Kevin Socop. 2017. “Justicia en Riesgo: Obstáculos a la independencia judicial en Guatemala.” Observatorio de Independencia Judicial. Guatemala, Guatemala: Impunity Watch.

Rodríguez Garavito, César. 2011. “Beyond the Courtroom: The Impact of Judicial Activism on Socioeconomic Rights in Latin America.” *Texas Law Review* 89 (November): 1669–98.

———. 2012. *Etnicidad.gov: los recursos naturales, los pueblos indígenas y el derecho a la consulta previa en los campos sociales minados*. Primera edición. Colección Dejusticia. Bogotá, Colombia: Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia.

Rodríguez-Raga, Juan Carlos. 2011. "Strategic Deference in the Colombian Constitutional Court, 1992–2006." In *Courts in Latin America*, 81–98. Cambridge; New York: Cambridge University Press.

Román, Julio, and Douglas Cuevas. 2021. "Corte de Constitucionalidad resuelve que trámite de retiro de derecho de antejuicio contra jueza Erika Aifán debe continuar." *Prensa Libre*, June 2021.

Rose, Nikolas. 1999. *Powers of Freedom: Reframing Political Thought*. Cambridge: Cambridge University Press.

Rosenberg, Gerald N. 1991. *The Hollow Hope: Can Courts Bring About Social Change?* American Politics and Political Economy Series. Chicago: University of Chicago.

Rosenberg, Gerald N. 2009. "Saul Alinsky and the Litigation Campaign to Win the Right to Same-Sex Marriage." *The John Marshall Law Review* 42 (3): 643–70.

Rubial, Alba. 2019. "Forms of Countermovement and Backlash. The Abortion Constitutional Controversy in Latin America." Bogotá.

Ruibal, Alba. 2019. "Forms of Countermovement and Backlash. The Abortion Constitutional Controversy in Latin America." In , 1–19. Colombia.

"Rule of Law Index 2020." 2020. Washington, D.C: The World Justice Project.

Scheppele, Kim Lane. 2018. "Autocratic Legalism." *The University of Chicago Law Review* 85: 545–83.

Schneider, Aaron. 2012. *State-Building and Tax Regimes in Central America*. New York: Cambridge University Press.

Schutt, Russell K. 2012. *Investigating the Social World: The Process and Practice of Research*. 7th ed. Thousand Oaks, California: Sage Publications.

Schwartz, Rachel A. 2021. "How Predatory Informal Rules Outlast State Reform: Evidence from Postauthoritarian Guatemala." *Latin American Politics and Society* 63 (1): 48–71.

Shapiro, Martin M. 1981. *Courts: A Comparative and Political Analysis*. Chicago: University of Chicago Press.

Siavelis, Peter. 2006. "Accomodating Informal Institutions and Chilean Democracy." In *Informal Institutions and Democracy: Lessons from Latin America*, 33–55. Baltimore: The John Hopkins University Press.

Sieder, Rachel, ed. 2017. *Demanding Justice and Security: Indigenous Women and Legal Pluralities in Latin America*. New Brunswick, NJ: Rutgers University Press.

———. 2019. *Routledge Handbook of Law and Society in Latin America*.

Sieder, Rachel, Line Schjolden, and Alan Angell, eds. 2005. *The Judicialization of Politics in Latin America*. Studies of the Americas. New York; Basingstoke: Palgrave Macmillan.

Sierra, María Teresa, Rosalva Aída Hernández Castillo, and Rachel Sieder, eds. 2013. *Justicias indígenas y Estado: Violencias Contemporáneas*. México: FLACSO México.

Simpson, Audra. 2014. *Mohawk Interruptus: Political Life Across the Borders of Settler States*. Durham: Duke University Press Books.

Smith, Linda Tuhiwai. 2012. *Decolonizing Methodologies: Research and Indigenous Peoples*. 2nd ed. London; New York: Zed Books, Palgrave Macmillan.

Soedirgo, Jessica, and Aarie Glas. 2020. "Toward Active Reflexivity: Positionality and Practice in the Production of Knowledge." *PS: Political Science & Politics* 53 (3): 527–31.

Speed, Shannon. 2017. "Structures of Settler Capitalism in Abya Yala." *American Quarterly* 69 (4): 783–90.

Taylor, Matthew M. 2020. "Coalitions, Corruption, and Crisis: The End of Brazil's Third Republic?" *Latin American Research Review* 55 (3): 595–604.

"The PAL Project." 2020. Https://Autocratic-Legalism.Net/About/. 2020.

Trujillo, Pedro. 2017. "Encefalograma plano." *Prensa Libre*, March 7, 2017, sec. Opinion. https://www.prensalibre.com/opinion/encefalograma-plano/.

Tushnet, Mark. 1990. "Book Review: Class, Race, and the Civil Rights Movement." *Constitutional Commentary* 7 (2): 361–65.

United Nations. 2008. *United Nations Declaration on the Rights of Indigenous Peoples*. Vol. 61/295.

Uprimny Yepes, Rodrigo. 2006. "Should Courts Enforce Social Rights? The Experience of the Colombian Constitutional Court." In *Justiciability of Economic and Social Rights: Experiences from Domestic Systems*, 25. Oxford: Intersentia.

Urteaga-Crovetto, Patricia. 2012. "The Broker State and the 'Inevitability' of Progress: The Camisea Project and Indigenous Peoples in Peru." In *The Politics of Resource Extraction. Indigenous Peoples, Multinational Corporations, and the State*, 103–28. International Political Economy Series. London: Palgrave Macmillan UK.

Valladares de la Cruz, Laura Raquel. 2014. *Nuevas violencias en América Latina. Los derechos indígenas ante las políticas neoextractivistas y las políticas de seguridad*. 1era ed. México, D.F: Universidad Autónoma Metropolitan.

Velásquez Nimatuj, Irma Alicia. 2021. “The Case of Sepur Zarco and the Challenge to the Colonial State.” In *Indigenous Women and Violence: Feminist Activist Research in Heightened States of Injustice*, 100–124. University of Arizona Press.

Walsh, Catherine, ed. 2005. *Pensamiento Crítico y Matriz (De)Colonial. Reflexiones Latinoamericanas*. Quito: Universidad Andina Simón Bolívar / Ediciones Abya-Yala.

Ward, Michael D., Katherine Stovel, and Audrey Sacks. 2011. “Network Analysis and Political Science.” *Annual Review of Political Science* 14 (1): 245–64.

Waxenecker, Harald. 2017. “Así se fabricó el #JimmySeQueda: el netcenter de @rodrigopolo, @rmendezruiz y @pirulismo.” *Nómada*, November 16, 2017.

———. 2020. “Economía de Captura: Desigualdad, excedentes y poder.” Guatemala: ParaisoDesigual.

Wedeen, Lisa. 2010. “Reflections on Ethnographic Work in Political Science.” *Annual Review of Political Science* 13 (1): 255–72.

Wilson, Bruce M., and Camila Gianella. 2019. “The Judicialization of Politics in Latin America.” In *Routledge Handbook of Law and Society in Latin America*, 325–41. New York and London.

Wolfe, Patrick. 1999. *Settler Colonialism and the Transformation of Anthropology. The Politics and Poetics of an Ethnographic Event*. Writing Past Colonialism. London; New York: Cassell.

———. 2006. “Settler Colonialism and the Elimination of the Native.” *Journal of Genocide Research* 8 (4): 387–409.

———. 2016. *Traces of History. Elementary Structures of Race*. London ; New York: Verso.

Yagenova, Simona, Claudia Donis, and Patricia Castillo. 2012. *La industria extractiva en Guatemala: políticas públicas, derechos humanos, y procesos de resistencia popular en el período 2003-2011*. 1st ed. Guatemala: Editorial de Ciencias Sociales.

Zaffaroni, Eugenio Raúl, Cristina Caamaño, and Valeria Vegh Weis. 2020. *Bienvenidos al Lawfare! Manual de Pasos Básicos Para Demoler El Derecho Penal*. Capital Intelectual.