PART I

FOUNDATIONS

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Introduction

Undermining the State in Civil War

On April 16, 2015, the Guatemalan Public Prosecutor's Office (MP) alongside the UN International Commission Against Impunity in Guatemala (CICIG) uncovered a massive customs fraud network operating within the country's tax administration. Dubbed *La Línea* after the telephone line used to negotiate illegal adjustments to customs duties,[1] the network was comprised of a mix of public and private actors – customs agents, port administrators, union bosses, retail business owners, tax authorities, and, at the top, then-President Otto Pérez Molina and Vice President Roxana Baldetti.

According to wiretaps and computer files, importers contacted *La Línea* operatives to arrange adjustments through which they paid 40 percent of the customs duties they legally owed to the state and 30 percent to the criminal structure, pocketing the remaining 30 percent.[2] Recovered Excel spreadsheets, in fact, divide the customs revenue into two separate pools: "R1," the amount directed to the Superintendent of Tax Administration (SAT), and "R2," the amount captured by the illicit network.[3] Initial investigations indicated that *La Línea* siphoned off some $330,000 on a weekly basis.[4] Though the precise amount diverted from state coffers is impossible to discern, Guatemalan think tank ASIES estimates that in 2014 alone, the Guatemalan state was defrauded roughly $940 million, or 1.6 percent of its GDP.[5]

The exposure of *La Línea* prompted a series of popular protests on a scale unprecedented since Guatemala's return to civilian rule in the

[1] Barreto 2015. [2] CICIG and MP 2015. [3] De León 2015. [4] *El Periódico* 2015.
[5] ASIES 2017: 13.

mid-1980s. Guatemalans of all political stripes converged on the capital city's *Plaza de la Constitución* with signs excoriating the country's corrupt political class and demanding "¡*Renuncia Ya!*" – that Pérez Molina and Baldetti tender their resignations immediately. Galvanizing a broader coalition of university students, indigenous Mayan communities, business elites, and urban popular sectors, the protests eventually brought down the sitting government – an achievement that many had once considered impossible in a country where impunity reigns.

The *La Línea* revelations and the resulting popular response served as a watershed moment in the country's history. However, buried within the renewed political fervor was something else equally striking: This was not the first time that a massive customs fraud network had been uncovered within Guatemala's tax administration. In fact, in September 1996, almost two decades prior and on the eve of the signing of peace accords to end Guatemala's 36-year civil war, the MP exposed a nearly identical scheme that had taken root within the Ministry of Finance. This earlier criminal structure was named the Moreno Network after the lower-ranking military intelligence agent who managed the scheme – a man by the name of Alfredo Moreno Molina.

The investigations, however, revealed that Alfredo Moreno was not the one pulling the strings. Instead the alternative, predatory institutional arrangements within the customs apparatus were devised and implemented by an elite clique of high-ranking military intelligence officers from within the president's inner circle, which had seized control of the state as the country's civil war escalated in the late 1970s. Under the pretext of leftist insurgent expansion and with significant US government backing, this narrow coterie of counterinsurgent elites crafted new procedures for fabricating customs forms and "disappearing" shipping containers to siphon off revenue destined for state coffers. At the height of the state's counterinsurgent struggle, they used their political power and discretion to introduce new institutional innovations that subverted the Guatemalan state's extractive activities on a systematic basis. The pernicious institutional arrangements are emblematic of a key concept at the heart of this book: *undermining rules*, or those that produce institutional outcomes that contravene core state activities like the collection of tax revenue. Through the wartime entrenchment and enforcement of the undermining rules, counterinsurgent leaders remade the fabric of the central state according to predatory, criminal logics that would distort development for decades to come.

Far from a new phenomenon, *La Línea* was instead an artifact of Guatemala's nearly four-decade civil war, which was brought to a close in 1996. The emergence, evolution, and consolidation of the Moreno Network and *La Línea* thus raise a series of important questions for scholars of conflict and post-conflict politics: How does civil war shape state development in the longer term? What accounts for the emergence of new, sometimes predatory procedures, or undermining rules, within the state apparatus amid civil war? How do such institutional formations survive democratic transition, peace, and postwar reforms and continue to distort political and economic development?

This book seeks to pull back the curtain on the counterinsurgent state to better understand how conflict dynamics affect state institutions and how wartime institutional transformations continue to structure state activities in the postwar period. In a turn from decades of scholarship on the causes of civil war, conflict scholars have directed increasing attention to what civil war leaves behind.[6] This burgeoning research agenda on the legacies of civil war has produced valuable insights on how the experience of conflict shapes political attitudes, identities, and participation at the individual level;[7] the lasting effects of war on local community structures;[8] and the relationship between armed conflict and broader patterns of postwar democratization and violence.[9] Yet, the machinery of the central state has been subject to less systematic scholarly inquiry. While classic theories of state formation point to the central role of foreign conflict in building the state apparatus, the institutional effects of civil war remains a nascent area of research.

Indeed, there are clear reasons to think that civil war dynamics might also spur institutional innovation and change within the state. In reorienting the power and resources of the state to eliminate an internal enemy, the existing rules governing state activity may be altered, discarded, or refashioned to facilitate counterinsurgency. This often occurs, in part, because the campaign to put down rebellion empowers new actors – specialists in information gathering, surveillance, and violence – in the process.[10] The heightened sense of threat and anxiety allows these actors to operate in the shadows and devise their own counterinsurgent methods – methods that fundamentally remake state institutions

[6] See Kelmendi and Rizkallah 2018.
[7] Balcells 2012; Lupu and Peisakhin 2017; Bellows and Miguel 2009; Blattman 2009.
[8] Gilligan et al. 2014; Bateson 2013.
[9] Huang 2016; Cruz 2011.
[10] Eibl et al. 2021; Slater 2020.

themselves. As a result, civil war can constitute a powerful site of institutional transformation. This project is an attempt to understand civil war as a site of institutional creation and change within the central state and to examine its lasting effects for state development long after the fighting has ceased.

THE PROBLEMS OF THE POSTWAR STATE

Though this book largely explains historical processes of wartime institutional change, it takes as its point of departure a more contemporary problem: the woes of postwar societies and the attendant difficulties of sustaining peace. The devastation of civil war often leaves behind a range of social, political, and economic challenges that make postwar recovery, at best, slow and uneven and, at worst, doomed from the outset. The physical destruction wrought by civil war wipes out household assets, education and health facilities, and basic infrastructure, hampering human development. According to the World Bank, conflict-affected and recovering states account for 77 percent of the world's school-age children not enrolled in primary school, 61 percent of the world's population in poverty, and 70 percent of global infant mortality.[11] The postwar obstacles to economic recovery only exacerbate these problems. Persistent volatility within conflict and post-conflict settings often shakes investor confidence, disrupting foreign direct investment and depressing growth.[12]

The consequences of civil war for human and economic development are only compounded by the social and political problems that plague postwar countries. Formal peace at the national level does not automatically induce quotidian local peace. Post-conflict societies continue to face staggering levels of violence, sometimes due to criminal activity by demobilized combatants.[13] The trauma experienced by individuals affected by conflict violence has significant, often lifelong mental health consequences.[14] Wartime displacement can also trigger postwar social conflict as internally displaced persons (IDPs) return to claim the property and assets they were forced to abandon, only to find that others have confiscated them.[15] And, of course, the negotiated settlements or power-sharing agreements to end war and cement stability ultimately sit atop fragile

[11] World Bank 2011: 63. [12] Murdoch and Sandler 2002.
[13] Trejo et al. 2018; Daly et al. 2020; Paris 2004; World Bank 2011.
[14] Murthy and Lakshminarayana 2006. [15] Charnysh and Finkel 2017; Steele 2017.

political coalitions and less-than-credible commitments, which may give way to perceived political inequalities and continued strife.[16]

Combined, the nagging social, political, and economic problems that hamstring postwar recovery also contribute to another well-known phenomenon: the recurrence of civil war. As Barbara Walter notes, "the problem of civil war is now almost exclusively a problem of repeat civil war."[17] Civil wars often generate a "conflict trap" in which "hatred and other rebellion-specific capital accumulates during war, making further conflict more likely."[18] Indeed, for countries approaching the end of war, the risk of returning to conflict within five years is 44 percent.[19] Of the conflicts initiated in the twenty-first century, some 90 percent took place in countries that had already experienced civil war.[20] While there is still debate on the causes of conflict onset, there is little question that once initiated, conflict begets conflict.

Why is peace so difficult to sustain following civil war? And when peace does endure, why do the developmental deficits that characterize postwar settings remain so deeply entrenched? In seeking answers to these questions, scholars and policymakers alike have overwhelmingly converged on the same common denominator: the weakness of state institutions.[21] There is a fairly broad consensus that a defining feature of fragile, war-torn countries at risk of relapsing into conflict is the state's "weak capacity to carry out basic functions of governing their population and territory."[22] Postwar state weakness is thought to fuel violence, first and foremost, because ineffective institutions are unable to peaceably channel political disagreement. But beyond this, weak state institutions are incapable of providing basic goods and services like justice, security, and healthcare, which can foster widespread grievances and empower violent, non-state actors to fill the governance void.[23]

The link between armed conflict and ineffective state institutions has prompted scholars of peacebuilding to focus increasing attention on post-conflict "statebuilding" or "governance" as the critical determinant of durable peace. For example, Paris argues that "a rudimentary network of domestic institutions" is the first imperative of peacebuilding,[24] while Walter similarly posits that "good governance" in the form of robust political and legal institutions is the answer to staving off renewed conflict

[16] Stedman 1997; Daly 2014. [17] Walter 2015: 1242.
[18] Collier and Sambanis 2002: 5. [19] Collier et al. 2003: 83. [20] Walter 2010: 1.
[21] Steenkamp 2009; Boyle 2014. [22] OECD 2011: 11.
[23] World Bank 2011: 7; see also, Doyle and Sambanis 2006. [24] Paris 2004: 7.

in post-civil-war settings.[25] Similarly, Lake contends that peace is contingent upon the state's establishment of social order – rules and laws – in which society becomes invested and which, in turn, become self-enforcing.[26] Though the precise terminology varies, contemporary scholarship generally portrays statebuilding as "the *telos* (or end goal) of consolidating peace."[27]

The ineffectiveness of post-civil-war states is thus not only widely recognized but understood as the core problem underlying civil war recurrence and motivating peacebuilding agendas.[28] Yet curiously, we know very little about *why* civil war weakens states. Indeed, the wartime central state remains somewhat of a black box within contemporary conflict scholarship. And while the corrosive effect of civil war on state institutions has been corroborated by many studies,[29] these findings stand in stark contrast to the long-standing social science literature on state formation, which posits that war serves as a primary impetus for "making" the state or building administrative institutions.[30] What are the mechanisms linking civil war and "weak" states? And how does civil war shape state institutions more generally?

THE ARGUMENT

This book departs from the conventional wisdom, which tends to assume that civil war generates ineffective states because it degrades or destroys institutions. Rather than deny the institution-building character of armed conflict, I posit that civil war is often a site of institutional innovation; however, the rules and procedures introduced amid civil war may come to undermine the formal functions of the state – as the case of the Moreno Network suggests. At its core, this book thus reexamines long-standing questions on the relationship between war and state formation through a new lens: that of institutions and institutional change. My central claim is that rather than prompting sweeping processes of statebuilding or

[25] Walter 2015. [26] Lake 2016: 27–29. [27] Sisk 2013: x.
[28] It is important to note that the empirical relationship between civil war and state weakness is very difficult to disentangle. While early studies within conflict research posited that state weakness fueled conflict onset, more recent scholarship that addresses endogeneity concerns directly finds that civil war onset induces state weakening. See Thies 2010.
[29] Besley and Persson 2008; Thies 2005, 2006, 2010.
[30] Tilly 1975, 1990; Bates 2001; Mann 1988; Rodríguez-Franco 2016.

destruction, civil war dynamics induce more minute changes at the level of state institutions, or the rules and procedures that structure behavior within core government policy arenas. These changes, in turn, distort routine state activities, like the extraction of tax revenue, control over the means of violence, and the administration of basic goods and services. Put simply, armed conflict alters the rules by which a host of state and non-state actors operate; precisely how state institutions change – the *kinds* of rules that evolve – shapes the effects of conflict on state performance.

This book focuses primarily on a particular kind of rule guided by a particular kind of institutional logic: *undermining* rules, or those that generate outcomes that contravene a given state function. Undermining rules are institutional procedures that subvert routine state activities like the extraction of tax revenue, the monopolization of coercive force, and the administration of basic goods and services, among others. Drawing on this concept, I build a new theory of wartime institutional change within the state, which accounts for how undermining rules crystallize as the escalation of the insurgent threat generates lapses in institutional enforcement and allots heightened discretion to small, insulated cliques of military leaders as the architects of counterinsurgency.

Through the empowerment of this new counterinsurgent elite or the centralization of authority in existing rulers, new, undermining rules take root within state arenas deemed key strategic sites in the struggle against rebel forces. Whether motivated by illicit profit-seeking or the preservation of political power, the absence of countervailing political forces allows this counterinsurgent elite to craft and implement new rules corresponding to their narrow interests and thus distort state activities. The trajectory of wartime state development and variation in wartime institutional logics is thus primarily a question of coalitional configurations.

Further, this book contends that the wartime institutional procedures are reproduced, become self-enforcing, and endure depending on whether the counterinsurgent elite forges a broader alliance of sectoral interests with a stake in the new institutional status quo. This broader network of actors – what I term the "distributional coalition" – often encompasses more than top military brass, bringing into the fold private sector elites who benefit from wartime economic activities, organized criminal operatives engaged in illicit wartime trades, and judicial and political officials who grant impunity for wartime abuses to maintain their power. The postwar adaptation and survival of this dominant wartime coalition dictates whether the undermining rules endure in the longer term. The

reshuffling of elite political alignments, by contrast, can generate "chronic instability," which inhibits the survival of the wartime rules of the game.[31]

In sum, this approach posits a new explanation for the deleterious effects of civil war on state development through the lens of institutional change. To the extent that civil war inhibits routine state activities, it is because of the kinds of rules and procedures that civil war *creates* – rules and procedures that remake the institutional fabric of the state itself. In other words, rather than constituting the "wrong kind" of war for building states, as scholars of state formation have suggested, civil war instead often builds the "wrong kind" of state institutions. To the extent that such institutional formations survive into times of peace, they constitute a powerful legacy of counterinsurgency.[32]

THE LIMITS OF EXISTING APPROACHES

Though various strands of social science literature address the effects of civil war on state development, on the whole, they leave us with few accounts of *how* conflict processes distort state activities – that is, how they render state institutions ineffective in carrying out core functions like the extraction of tax revenue, the control over violence within society, and the administration of public goods and services. To the extent that existing analytical approaches offer insights on this question, they fall into four camps: (1) war and statebuilding; (2) conflict, predation, and corruption; (3) wartime orders and institutions; and (4) peacebuilding and postwar governance. I address each of these analytical approaches and this book's contributions below.

War and Statebuilding

Prominent theories of state formation hold that war plays a critical role in building the state's administrative apparatus. Notably, Charles Tilly argues that national states in Western Europe were forged through the societal mobilization, territorial consolidation, and bureaucratic development required for fighting a foreign enemy. Compelled to accumulate

[31] Bernhard 2015; Levitsky and Murillo 2013.

[32] This book follows Wittenberg (2015: 375) in conceptualizing historical legacies as "a phenomenon that persisted from the past," which has "at least two historical periods" and is not fully "explainable with contemporaneous causal factors." Though contemporaneous conditions may contribute to the adaption and persistence of the undermining rules rooted in civil war, they developed through wartime processes of institutional change.