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## SPILLOVER CONVERSATION

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*Michal Ran-Rubin*  
*University of Chicago*

*Jonah S. Rubin*  
*University of Chicago*

### **Interview: Michal Ran-Rubin and Jonah S. Rubin on the Analyzing the Trial**

Two of the authors in our November 2008 issue respond to the “Directions” section, *Analyzing the Trial: Interdisciplinary Methods*. Responding to two targeted questions, Michal Ran-Rubin [MR] offer their insights into the conversation presented in *PoLAR*.

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#### **1. Why did you choose to focus on a single trial?**

**MR:** I initially became interested in analyzing the Reeds Murders case while reading media reports of the trial in various South African newspapers. What struck me about the media coverage of the trial was how evidence and testimony could be interpreted in such vastly different terms, especially as refracted by different papers’ editorial slant. For instance, several reporters argued that the accused were victims of state violence and police abuse, while others posited that the accused were the very embodiment of nihilistic violence and brutality.

As Marianne Constable phrases it in the Directions section, there was an “excess of interpretation” (309). I argue that it was precisely this ‘excess’ of meaning that enabled the Reeds Murders trial to become a site for public debate. As such, the media’s ambivalent reading of the accused opened up a space for South Africans to deliberate on the perceived threat of crime within post-apartheid society.

That being said, I think it is also helpful to highlight those reasons which did not animate my decision to focus on a single trial. First, I did not choose to focus on this trial because I thought it was an exemplary instance of post-apartheid justice. On the contrary, it is possible to argue that this case was somewhat of an anomaly, since it was tried at a fairly high level and received greater media attention than is typical for a murder trial in South Africa. Second, I did not posit it as being representative of the South African judiciary writ-large. While there are a number of judges on the bench that might have concurred with the decision rendered in this case, there is a growing number of recently appointed judges who would likely be distressed by many of the assumptions made by the presiding judge. For these reasons, I tried to focus not on whether this

particular case was ‘exemplary’ or ‘representative,’ but on how it coalesced around public anxieties and articulated widely held moral concerns.

I ultimately chose to focus on the particularities of the Reeds Murders trial – rather than examining the array of legal cases that have been tried by the post-apartheid judiciary – because I felt it crystallized an emergent sensibility of public morality in South Africa. At stake in this trial were fears that South Africa’s ostensibly peaceful transition to democracy was being undermined by the rise of violent crimes. In this respect, the sentencing phase was particularly interesting to analyze, since the presiding judge explicitly invoked the image of a nation rent by crime. Yet what made this trial unique was also how the accused were able to respond to the presiding judge by conjuring a history of state violence associated with apartheid governance.

The elaboration of these two histories of violence created a productive tension in the courtroom. And as Robert Burns suggests, the tensions embedded in trial narratives can provide an analytic lens for understanding how broader social tensions were being reworked in the public sphere. Of course, I should note that there were also methodological benefits to focusing on a single trial. The trial narrative is a particular kind of ethnographic moment, insofar as it is clearly delineated and bound to the spatio-temporal limits of the courtroom. As such, it allowed me to perform a close textual reading of the trial narrative and provide a comprehensive analysis of what was at stake for a wider South African public.

Nevertheless, I found that the delimitation of the ethnographic moment to the scene of the trial also posed potential risks. Precisely because the trial narrative is able to nicely encapsulate a set of diffuse and diverse social tensions, it gives the illusion of being a microcosm of the broader social field. In reality, however, the social world tends to be far messier and more complicated than can fully be captured in the space of the trial. In other words, although the very order and composition of the courtroom makes it an excellent site for excavating crystallized social logics, it can also tempt us into making overly strong claims about the social world writ-large.

**JC:** I chose to focus on Romagoza because of the difficulties this lawsuit posed for all of its participants. As an Alien Torts Claims Act (ATCA) lawsuit, Romagoza was tried in a civil court in the United States, a courtroom more accustomed to dealing with lawsuits concerning injuries, negligence, malpractice, and other common torts. Nonetheless, ATCA cases are evaluated on the basis of International Humanitarian Law, as interpreted by a civilian jury. Thus, the plaintiffs wound up in a courtroom that had little experience in these types of lawsuits, in an effort to declare two former heads of state tortfeasors for violations of their basic human rights. More, their lawyers were using an unprecedented legal strategy for ATCA lawsuits, relying the doctrine of command responsibility. In the Directions section of this issue of PoLAR (31:2), Marianne Constable calls upon legal scholars to pay attention to the “multiple stories embedded within each legal case” (p. 309). Because of the unique circumstances posed by an ATCA lawsuit such as Romagoza, the tensions that arise from the presence of these multiple stories is especially evident, as the stories I analyzed only tentatively congealed into a coherent legal case.

Beyond the more general tensions present in any lawsuit, I was fortunate to have the opportunity to discuss the case with one of the plaintiffs, Neris Gonzalez, who was extraordinarily generous in sharing her experiences in this courtroom. Also in the Directions section, Justin Richland calls attention to the incommensurabilities of Anglo-adversarial and Hopi legal conceptions (pp. 310-312). Throughout our conversations, Neris Gonzalez similarly emphasized the difficulties in

reconciling her political and psychological goals with the requirements of Anglo-style adversarial legal proceedings. Focusing on a single litigant not only shows the systemic incommensurabilities at play, but also the ways these logical contradictions “get negotiated on the ground in the face-to-face accomplishment of everyday tribal governance” (p.312). Importantly, as I show in my article, it was not always the Anglo-legal logic that prevailed in these situations, at least not to the exclusion of other logics.

## **2. How do you think we can relate individual trials to broader social and/or legal contexts?**

**MR:** As I began to explore above, I think making causal (or even correlative) statements about the relationship between an individual trial and its broader social context is potentially misleading, insofar as the trial represents a singularly demarcated event. While I therefore recognize the potential danger that inheres in presuming that a tightly choreographed legal trial will unconditionally map onto a larger social sphere, I think the key is to find instances where the trial calls into question its own limiting conditions.

As both Marianne Constable and Winnifred Sullivan show in their analyses of legal trials, the moment in which “the whole frame is under examination” is critical for understanding the relationship between an individual trial and broader social logics (p. 319). In the Reeds Murders trial, that moment occurs during the ‘trial-within-a-trial’. In the South African legal tradition, a trial-within-a-trial is held whenever the admissibility of a confession is questioned. In this case, the accused argued that their confessions were secured by force, thus spurring a trial-within-a-trial that lasted for several days. During that time, the accused were able to testify about their respective experiences with police brutality. By shifting the focus of their trial from assessing their own guilt to determining the culpability of state officials, the accused were able to locate their individual experiences within a collective biography of violence bequeathed to them from the apartheid era.

In this regard, the accused are able to challenge not only the legal-liberal logic of the presiding judge, but also the moral authority of the South African judiciary. As Sullivan points out, the trial-within-a-trial effectively puts “the whole event” on trial, so that “the legitimacy of what’s going on itself is always a question that’s present” (p. 319). Moreover, since the trial-within-a-trial provides a forum for the accused to explicitly draw on a sociohistorical account of state violence, they are able to posit a rejoinder to the juridical logic of the court, which had sought to reduce their case to an entirely ahistorical interpretation.

Through this process, the courtroom ends up reaching beyond itself, becoming entangled in the broader South African socio-historical context. Here, it becomes clear that public anxiety over historical and contemporary forms of violence is sutured to the legitimacy of the trial and judicial authority. However, the dialogue that unfolds from the trial-within-a-trial also showcases the conditions of limitations for the judiciary. Although the accused are not successful in persuading the court that their confessions were obtained illegally, they are able to undermine the judge’s singular claim to moral authority. As a result, the case led to a series of public debates over the role of violence in contemporary South Africa. In this sense, the internal tensions within the Reeds Murders trial became an index of public anxiety within the broader social context, yet only insofar as the courtroom was forced to self-reflexively assess its own claim to legitimacy.

**JR:** As Neris Gonzalez's lawyers remind the courtroom, Romagoza is not a typical civil lawsuit. Nonetheless, I hope that the conclusions that I draw in this article may be helpful to those studying more 'typical' lawsuits. For example, in the article I argue that the jury, more so than the judge, is the principle audience affecting the crafting of narratives within the courtroom. To what extent is this observation true in more traditional civil lawsuits, where procedure and precedent are perhaps more clear? In the Directions section of the current issue of PoLAR (31:2), Robert Burns argues that the trial is a privileged ethnographic site for understanding the nature of 'the law' (pp. 304-305). If we take seriously the jury's role in shaping not only the verdict, but also the types of legal narratives that are posited in the courtroom, then how does this affect our conception of what law is?

The relationship between Romagoza and the broader social context is a very difficult one to analyze, not least because it is unclear what the corresponding social context is. As I discuss in my article, torts lawsuits are limited to damages caused by a tortfeasor to the plaintiffs. We would expect torts lawsuits to conform to the standards of the local community in which they are tried. Yet the context for these courts is the Salvadoran Civil War. Moreover, both the plaintiffs and the defendants were Salvadoran nationals living in El Salvador at the time the damages occurred. This would seemingly make El Salvador the best corresponding society. Finally, the torts in question are to be evaluated with reference to International Humanitarian Law. Perhaps, then, the broader social context should be the international human rights community.

On the one hand, this ambiguity seems to be built into the very nature of an ATCA lawsuit. On the other hand, it may be useful to compare Romagoza to an earlier, unsuccessful ATCA lawsuit against the same defendants (*Ford v. Garcia*). Not only was Ford covered far more intensely than Romagoza in the Salvadoran and U.S. presses, but in my subsequent ethnographic research in El Salvador I discovered that people were far more likely to have heard of Ford than Romagoza. Without overstating the impact of Ford or understating the impact of Romagoza, it is worth questioning why an unsuccessful ATCA lawsuit seemed to resonate more than a successful ATCA lawsuit? Is it because the first lawsuit was prior in time, because the victims in question were more famous, or something else?

All of these questions require further research. I hope that my article proves to be a contribution to future scholars investigating these and similar questions about the nature of the trial and the law.