

TRUTH COMMISSIONS, TRANSITIONAL JUSTICE,  
AND CIVIL SOCIETY

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Many societies seeking a just transition from authoritarian regimes or civil wars to democracy have employed official truth commissions to investigate systematic violations of internationally recognized human rights.<sup>1</sup> These abuses – which include extrajudicial killing, genocide, disappearance, rape, torture, and severe ill treatment – may have been committed by a previous government against its own citizens (or those of other countries), by its opponents, or by combatants in a civil or international armed conflict. Recently utilized in South Africa and Guatemala, such investigative bodies have been employed in at least 20 countries and are being considered for such nations as Bosnia, Cambodia, Indonesia, and Kenya. Truth commissions can contribute to achieving many important goals in societies during the transition to democracy. But, as we shall see, they must be supplemented by other measures and institutions, such as trials and judicial punishment.

This paper will first clarify eight goals for reckoning with past wrongs and, in the light of this framework, assess the strengths and weaknesses of official investigatory bodies. Second, the paper shows that a nation's civil society – especially when it practices public deliberation or deliberative democracy – is often indispensable to the success of truth commissions and, more generally, to reckoning with past wrongs. Third, the essay contends that *international* civil society may play a useful role in advancing the goals of national truth commissions and transitional justice.

## The Challenge of Transitional Justice

The question of “transitional justice,” as I shall be employing the term, is how should a fledgling democracy reckon with severe human rights abuses that earlier authoritarian regimes, their opponents, or combatants in an internal armed conflict have committed? Sometimes the term “transitional justice” is used to refer exclusively to penal justice and even to retributive interpretations of trials and punishment. I employ the term more broadly to cover in addition such concerns as compensatory, distributive, and restorative justice. The challenge for new democracy is to respond appropriately to past evils without undermining the new democracy or jeopardizing prospects for future development.<sup>2</sup>

Societies in transition to democracy have employed many means in reckoning with human rights abuses that a prior regime or its opponents have committed. In addition to domestic trials, amnesties, and investigatory bodies, these measures embrace but are not limited to international war crime tribunals; social shaming and banning of perpetrators from public office (“lustration”); public access to police records; public apology or memorials to victims; reburial or reparation of victims; literary and historical writing; and general or individual impunity (the ignoring or accepting of past violations).

To decide among these tools, as well as to fashion, combine, and sequence them, a society ideally should consider what it is trying accomplish as well as its institutional and political capabilities and limitations.

## Strengths and Limitations of Truth Commissions

To evaluate truth commissions as one kind of measure, as well as any particular truth commission, requires standards of assessment. What standards should be used and where should they come from? In earlier essays, I clarified and defended a plurality of goals that

have emerged from worldwide moral deliberation on transitional justice.<sup>3</sup> In the present essay I employ these goals as criteria to evaluate truth commissions and to indicate where such bodies need to be supplemented or corrected by other tools.

1. Truth. To meet the challenges of transitional justice, a society should investigate, establish, and publicly disseminate the truth about past atrocities. What Alex Boraine calls “forensic truth“ or “hard facts”<sup>4</sup> is information about whose moral and legal rights were violated, by whom, how, when, where and why. Given the moral significance of individual accountability, the identity of individual perpetrators should be brought to light. There is also what has been called “emotional truth” – knowledge concerning the psychological and physical impact on victims and their loved ones of rights abuses and the threat of such abuses. Just as important is less individualized and more general truth, such as reasonable interpretations of state actions and those of its opponents, as well as causal explanations of the chain of command, institutional structures, and economic problems that resulted in rights violations.

Knowledge about the past is important in itself. One way to make this point is to say that victims and their descendants have a moral right to know the truth about human rights abuses. Moreover, without reasonably complete truth, none of the other goals in transitional justice, to be discussed presently, are likely to be realized. Appropriate sanctions are impossible without having a reasonable certainty about the identity of perpetrators and the nature of their involvement. Public acknowledgment must refer to specific occurrences, while reparations presuppose the accurate identification of victims and the kinds of harms they suffered. If reconciliation in any of its several senses is to take place, there must be

some agreement about what happened and why. Former enemies are unlikely to be reconciled if what count as lies for one side are verities for the other.

It is not enough to discern the truth; the truth also should be accessible to the public, especially if it is to contribute to other urgent goals such as public deliberation. Some commissions – in order to safeguard witnesses if not the commissioners themselves – have been forced to conduct their hearings and deliberations in private. South Africa’s Truth and Reconciliation Commission (TRC), however, has been particularly successful in making its activities public and transparent: it gathered testimony in various locations throughout the nation; its proceedings have been accessible to many South Africans. The media in many of the country’s languages extensively covered these activities, especially the hearings on individual human rights violations and amnesty applications.

Although some truth commissions have “named names,” their chief virtue is discerning overall patterns, institutional context, and, to a lesser extent, the general causes and consequences of atrocities. In taking testimony directly from the principals, sometimes not long after the violations being investigated, truth commissions play an indispensable role in getting a reasonably full picture of what happened and its ongoing consequences in people’s lives. Unlike judicial efforts to determine legal guilt or innocence, official investigatory bodies also can profile examples of moral heroism in the face of barbarism. Proponents of a truth commission for Bosnia, for example, emphasize the role of such a body in profiling Serbs that aided their Muslim neighbors (and vice versa): “Against the backdrop of all the evil that has taken place, the tale of the good is a part of the history to be revealed.”<sup>5</sup>

Truth commissions, however, also have limitations with respect to revealing truth. In order to get their work done in one or two years, truth commissions must select only a few

among a multitude of cases to investigate in depth. Furthermore, truth commissions usually lack the power of trials to subpoena and cross-examine witnesses, search and seize evidence, and independently corroborate witness testimony. Finally, official investigatory bodies, even when they avail themselves of historical studies, are often disadvantaged in comparison with historians. For professional historians are likely to have more time and skill in gaining access to documents, sifting through facts, unmasking distortions and lies, assessing explanatory hypotheses, and ascribing responsibility.<sup>6</sup>

One of the most difficult issues for a truth commission with respect to the goal of truth concerns the issue of whether there is “one truth or many.” Although most “forensic truths” will be relatively noncontroversial, citizens and even members of the truth commission itself may differ over comprehensive patterns of interpretation – especially over who or what is most responsible for atrocities. How should these differences be handled in a truth commission’s final report? One way, which Chile’s National Commission on Truth and Reconciliation practiced, is to employ general (and sometimes vague or ambiguous) terms in order to achieve unanimity at the expense of precision. A second method is to strive for agreement but also identify issues that remain matters of contention. In a third approach, which would resemble the practice of the U.S. Supreme Court, unresolved disagreements would be formulated as majority and minority judgments in the same or even in separate reports. Although these last two approaches to disagreement would be respectful of societal pluralism and stimulate further public deliberation, they would have the serious disadvantage of undermining the authoritative or collective character of an official truth commission’s final report.

2. **Public Platform for Victims.** In any society meeting the challenge of transitional justice, victims or their families should be provided with a platform to tell their stories and have their testimony publicly acknowledged. When victims are able to give their accounts and when they receive sympathy for their suffering, they are respected as persons with dignity rather than – as before – treated with contempt. The public character of the platform is essential, for secrecy about human rights abuses, enforced through violence and intimidation, was one of the conditions that made possible extensive campaigns of terror.

Depending on the number of testimonies taken and the context in which this is done, truth commissions often do well in attaining the present goal. South Africa's TRC took more than 22,000 testimonies from victims or their families, made its sessions public, encouraged extensive media coverage, including extensive radio coverage and nightly and weekly TV recaps of highlights, and maintains a web site.

3. **Accountability and Punishment.** Full transitional justice requires that there be fair ascriptions to individuals and groups on all sides of responsibility for past abuses and the meting out of appropriate sanctions to the perpetrators. Sanctions may range from legal imprisonment, fines, compensatory payments, and prohibitions on holding public office to public shaming.

Many questions about responsibility and punishment remain to be answered. How, for example, should accountability be assigned? How should we understand the degrees and kinds of responsibility with respect to the planning, execution, provision of material support for, and concealment of atrocities? How should "sins of commission" be morally compared to "sins of omission"? To what extent are groups -- particular police units, political parties, or professional groups such as medical associations -- responsible for rights violations?

Without a suitably nuanced view of accountability or responsibility, a society falls into the morally objectionable options of, on the one hand, whitewash and amnesia,<sup>7</sup> or, on the other hand, the demonization of all members of an opposing group.

Similar questions may be asked with respect to sanctions, whether criminal, civil, or nonlegal. What types of sanctions are appropriate for what violations, and on what bases? Should a theory of criminal punishment include a retributive element and, if so, how should it be understood, can it be distinguished from revenge, and how should it be institutionalized in relation to the other functions of punishment such as protection, deterrence, rehabilitation, restoration, and moral education?<sup>8</sup>

At first glance it might appear that truth commissions make no contribution to accountability and sanctions.<sup>9</sup> Indeed, it might be argued that truth commissions are designed precisely as a morally second-best alternative when attributions of guilt and punishment are ruled out because of fears that legal prosecution would further divide a society in need of healing or imperil a new and incomplete democracy by provoking an authoritarian or military takeover. And societies have often chosen truth commissions when amnesty or other laws enacted by the prior authoritarian government to protect itself and its functionaries have (largely) blocked the legal route. Alternatively, some have defended the claim that truth commissions – and especially the TRC – are not a moral second best but have advanced beyond penal and retributive justice to something called “restorative justice,” defined as rehabilitating perpetrators and victims and (re)establishing relationship based on equal concern and respect.<sup>10</sup>

This judgment – that truth commissions are incompatible with accountability and sanctions – is, however, mistaken, for three reasons. First, when a truth commission names

the names of (likely) individual and group perpetrators, that commission is contributing to ending a culture of impunity in which rights violators get away scot-free. In Argentina those named by that country's truth commission report, *Nunca Mas* [Never Again], have been subject to social stigmatization. Fellow citizens shun former military leaders and publicly express opprobrium by public cursing and spitting. In South Africa perpetrators from many walks of life – including doctors and scientists as well as police and military personnel – have to face their own families who, prior to truth commission hearings, may have had no idea that their spouses or parents were complicitous in horrendous acts. Sanctions need not be legal in order to impose a burden and control rights abuses. Moreover, with respect to holding perpetrators accountable, truth commissions often have an advantage over trials and legal punishment because – in comparison with the latter – the former usually can be launched and concluded more rapidly, cost less, and address the (alleged) crimes of more people.<sup>11</sup>

Second, as the cases of Argentina, Chile, Guatemala, and South Africa make clear, the work of truth commissions can be compatible with trials and punishments. In South Africa, the trial, verdict, sentencing, and imprisonment of police death squad commander and assassin Eugene de Kock took place just as the TRC began its proceedings.<sup>12</sup> In Argentina and Chile, criminal proceedings followed the publication of each country's truth commission report. Hence, those countries that choose to make a just transition by means of official investigatory bodies need not forgo the additional tool of trial and punishment. Even more, in South Africa trials and truth commissions worked together, for the threat of trial and punishment was a powerful incentive for those suspected of atrocities to apply for amnesty and tell the truth. As an editorial in a South African newspaper observed in 1996, “the



perhaps unintended combination of judicial stick and truth commission carrot has emerged as a potent force in flushing out former operatives who have adopted a wait-and-see-attitude.”<sup>13</sup>

Third, truth commissions often contribute directly to judicial processes by which perpetrators are held legally accountable and sanctioned by fines, imprisonment, compensation to victims, community service, or prohibitions on public careers. The Argentine and Chilean truth commissions recommended to their respective judicial authorities that certain individuals be prosecuted and the commissions provided evidence for judicial processes. Furthermore, the Amnesty Committee of the South African TRC has rejected amnesty requests from and urged prosecution of persons whom the Committee judged to have lied, violated rights with *non*political intent, or caused harm disproportionate to the agent’s political aim. And, of course, those who never applied for amnesty are subject to legal prosecutions and civil suits.

Guatemala’s CEH, initially criticized because its mandate prohibited it from having any judicial intent or effect, surprised most observers when it took advantage of provisions in Guatemala’s National Reconciliation Law (NRL) that held that amnesty could not be granted for genocide, torture, and forced disappearance. Finding that state agents committed acts of genocide against the Mayan people in four locations in 1981 to 1983, the CEH was not content merely to recommend further investigation (by government and civil society) of those disappeared, exhumation of bodies, and reparations. It also urged trials and -- for those found guilty -- punishment for those who committed those acts in violation of the international Genocide Convention and not exempted by the NRL amnesty agreement.<sup>14</sup>

Finally, insofar as a truth commission makes recommendations to remedy the earlier causes of rights violations, it is in a good position to help transform the judicial system and, thereby, increase the possibility of fair judicial processes and punishment in the future.<sup>15</sup> Hence, a truth commission's success in getting at the truth is compatible with and often contributes to the assignment of responsibility and imposition of legal and other sanctions.

While truth commissions have particular merit in promptly addressing the causes and consequences of systematic abuses and the related contours of collective responsibility, trials are more suitable for holding accountable individual political leaders and the architects of atrocities. The either/or of "truth v justice" must be avoided; both truth commissions and trials have distinctive and mutually supplementary roles in achieving the multiple goals of transitional justice.

4. Rule of Law. Transitional societies should comply with the rule of law, which, as Luban argues, is one of the abiding legacies of Nuremberg.<sup>16</sup> The rule of law includes respect for due process, in the sense of procedural fairness, publicity, and impartiality. Like cases must be treated alike, ex post facto laws eschewed, and private revenge prohibited. Rule of law is especially important in a new and fragile democracy bent on distinguishing itself from prior authoritarianism, institutionalized bias, or the "rule of the gun."

The most obvious application of the ideal of the rule of law is in and through a nation's courts and its other judicial bodies. Yet truth commissions also may presuppose, illustrate, and strengthen the rule of law. Truth commissions depend on the rule of law to the extent that enabling legislation or constitutional provisions – such as the Postamble to South Africa's Interim Constitution – authorize them. Even a duly constituted investigatory body, however, might be biased against one side in an earlier conflict or dictatorship. And in

encouraging victims to give testimony, truth commissions often fail to give those accused or their attorneys the right to confront and cross-examine their accusers.

On the other hand, truth commissions can implement the rule of law to the extent that they are public, investigate all sides in a conflict, recognize ways in which perpetrators can also be victims, and adopt measures to reduce bias.<sup>17</sup> One such measure is to appoint commission members who represent various and opposing political factions and who have a reputation for fairness. Those who write the final report must be vigilant against (but not overcompensate for) unintentional racial, class, or ideological bias.<sup>18</sup> Further, a truth commission respects due process when persons who come before it are treated evenhandedly and impartially. TRC hearings by and large were successful in avoiding a “kangaroo truth commission” and in respecting in their own way the rule of law:

5. Compensation to Victims. Compensation, restitution, or reparation, in the form of income, medical services, or educational and other opportunities, should be paid to individuals and groups whose rights have been violated. Depending on the scope of its mandate and the duration of its existence, a truth commission may contribute to compensation. In Chile, a body institutionally separate from the nation’s Truth and Reconciliation Commission has compensated the survivors of human rights abuses and the families of victims. This division of labor came about because while the truth commission had to complete its work in a relatively short time, a longer period was needed for deciding on criteria for compensation and for identifying and treating harms, some of which emerge years after being inflicted. The TRC’s Reparation and Rehabilitation Committee (R & R) is following the Chilean model. Although it implemented some “Urgent Interim Relief” toward the end of the TRC’s life, the R&R’s power was almost exclusively that of making

recommendations to Parliament, which – if accepted – would be implemented by a permanent body, the President’s Fund. Though truth commissions should not be artificially limited to achieving only one aim, such as truth, they should not be expected to do too many things, either. Following Chile’s example, South Africa is implementing a nuanced “reparation and rehabilitation policy” that defends reparation on both moral (“restoration of dignity”) and legal grounds and provides several types of both individual and communal reparation. Individuals are compensated both through monetary packages that take into account severity of harm, number of dependents, and access to services, and through services such as reburials and providing of headstones.

One criticism of the TRC, however, is that it has failed to provide needed support for those who testified before it. After having testified before the TRC, some victims reported that afterwards they suffered flashbacks, sleeplessness, and depression. Not receiving material or other compensation that they believed they were promised or due, these victims insist they have become expendable means to the end of the TRC’s work.<sup>19</sup> It would seem, however, that these criticisms should be directed less at the TRC and more at the South African government for failing, up to this point at least, to aid and compensate victims in a timely and adequate manner.

6. Institutional Reform and Long-term Development. To reckon fully with past wrongs, an emerging democracy must identify the causes of past abuses and takes steps to reform the law and basic institutions to reduce the possibility that such violations will be repeated. Basic institutions include the judiciary, police, military, land tenure system, tax system, and the structure of economic opportunities. One temptation in postconflict or postauthoritarian societies is to permit euphoria (which comes with the cessation of hostilities and the

launching of a new democracy) to preempt the hard work needed to remove the fundamental causes of injustice and guard against their repetition.

In both Guatemala and South Africa, for example, the fundamental causes of repression and human rights abuses were racism and economic inequality. A transitional democratic society must try to remove such deep causes of human rights abuses, and do so in a way that will deepen its democracy and promote just economic development in the future. The long-term development goal should be that all persons, regardless of race, ethnicity, or inherited wealth, should have opportunities to participate politically and live minimally decent lives.

What, if anything, can a truth commission contribute to such an ambitious goal for transitional justice? First, insofar as its search for truth involves a grasp of the complex causes of past human rights abuses, a truth commission is well positioned to make recommendations for institutional reform. Because of its public prominence, an official investigative body is likely to provoke public debate and encourage national and international efforts to ensure “nunca mas.” Second, a truth commission's actions can be directly linked to reduction of poverty and racism. For example, confessed perpetrators may make reparations to their victims by contributing time or money to society-wide poverty alleviation. Third, the TRC’s sectoral approach to institutional reform and long-term development was an important breakthrough in transitional justice; the TRC held hearings in such sectors or institutions as health, business, the judiciary, the media, prisons, and faith communities, and encouraged each to engage in a process of institutional self examination and reform. Fourth, as Gutmann and Thompson argue, a truth commission can contribute to

long-term democratization and equal respect for all citizens by practicing in its “process” what it preaches in its “product.”<sup>20</sup>

7. Reconciliation. A newly democratic society in transition from a conflictual or repressive past should aim to reconcile former enemies and reintegrate them into society. There are at least three meanings of reconciliation, ranging from “thinner” to “thicker” conceptions. On the most minimal account, reconciliation is nothing more than “simple coexistence,”<sup>21</sup> which means no more than that former enemies comply with the law instead of killing each other. Although this *modus vivendi* is better than violent conflict, transitional societies should aim for more: while they may continue to disagree and even be adversaries, former enemies must not only live together nonviolently but respect each other as fellow citizens. Osiel calls this kind of reconciliation “liberal social solidarity”<sup>22</sup> while Gutmann and Thompson term it “democratic reciprocity.”<sup>23</sup> Among other things, this means that people hear each other out, enter into a give-and-take with each other about matters of public policy, build on areas of common concern, and forge compromises with which all can live.

A third and more robust conception of reconciliation has sometimes been attributed to the truth commissions of Chile and South Africa – reconciliation as a shared comprehensive vision, mutual healing and restoration, or mutual forgiveness.<sup>24</sup> (Both of these commissions include the word “reconciliation” in their names.) These thicker conceptions of reconciliation are much more difficult to defend than the thinner notions, especially if we are considering the contributions of truth commissions. There are both practical and moral reasons to favor the first and second over the third notion of reconciliation.

First, the reduction of enmity between former adversaries — let alone the seeking and granting of forgiveness — is less likely to happen through the short-term efforts of a truth

commission than when former enemies work together on common projects over a period of years, for example, in the same political, economic, and civil organizations. Transitional justice takes time (often many generations) and goes through several phases, and there are limits to what a truth commission can do in one or two years. The best hope is often lies in a new generation that has not experienced past conflicts. Second, truth commissions can permit and even encourage both confessions of guilt and mutual forgiveness, especially in a society in which a religious imperative to forgiveness is widely accepted. Yet to prescribe these acts legally would be to compromise the moral autonomy of both victims and perpetrators as well as promote feigned professions of guilt and contrition. More generally, it is morally objectionable as well as impractical for a truth commission or any other governmental body to force people to agree about the past, forgive the sins committed against them, or love one another.

8. **Public Deliberation.** Given the second sense of reconciliation just discussed, a newly democratic and transitional society should aim to include public debate and deliberation in its goals and strategies for transitional justice. It is unlikely that in any given society there will be full agreement about the aims and means for dealing with past abuses. Moreover, all good things do not always go together, for sometimes achieving one end will be at the expense of (fully) achieving another. Legal sanctions against human rights violators can imperil a fragile democracy in which the military responsible for the earlier abuses still wields social and political power. In order to protect witnesses or secure testimony from alleged perpetrators, a truth commission's interrogation of witnesses or alleged perpetrators sometimes may have to take place behind closed doors. Testimony by victims and confessions by perpetrators at least in the short run may worsen relations among former

enemies.<sup>25</sup> Truth commissions, let alone trials, use resources that could be employed in poverty alleviation.

What can be aspired to is that disagreements about ends, trade-offs, and means will be reduced as much as possible through public deliberation that permits a fair hearing for all and promotes morally acceptable compromises.<sup>26</sup> The goal of public deliberation is relevant for an investigative body's composition. One reason the Argentine, Chilean, and South African truth commissions gained legitimacy was that their respective members represented a wide spectrum of political positions.

The public deliberation norm should also guide a commission's mode of operation. A truth commission's activities should go on in public rather than behind closed doors and be accessible — linguistically and in other ways — to every citizen. Various truth commissions have realized this goal of public deliberation and decision-making in different ways and to different degrees. The TRC, for example, sought to practice deliberative give-and-take internally; publicly vetted its procedures, problems, and preliminary conclusions; it stimulated enormous public debate and comment; it was willing to respond to public criticism; and its eventual report stimulated at least as much public discussion as did those in Argentina and Chile.

#### Domestic Civil Society and Transitional Justice

A nation's civil society is often well suited to decide on and prioritize the ends of transitional justice as well as to design, implement, monitor, and improve various means. In particular, without a vigorous domestic civil society, backed up on occasion by certain types of international civil society, new democracies are unlikely to establish effective truth commissions.



Three models emphasize different aspects of civil society relevant to transitional justice. An antigovernmental model, in which civil society includes all and only nonstate bodies, emphasizes that civil society can be a bulwark of freedom against an oppressive state.<sup>27</sup> An associational model conceives of civil society as a third sector between the (coercive) state and the market.<sup>28</sup> It recognizes that private associations can generate civically valuable byproducts (social trust, civic capacities)<sup>29</sup> as well as civically noxious attitudes (clannishness, private revenge, and resistance to democratic change). A third – the public sphere model – focuses on how civil society groups, especially those that are internally democratic and egalitarian, nourish the kind of informed public opinion that makes viable democratic government possible.<sup>30</sup>

These three models alert us to the positive and negative roles civil society organizations can play in transitional justice and to the challenge that social pluralism poses to a just and democratic transition. Although usually appointed by a government's executive or legislature, official truth commissions can be viewed either as parts of civil society or as hybrid entities that mediate between the state and civil society. For truth commissions are normally composed of prestigious and respected citizens not holding public office, and often these citizens represent important NGOs, a spectrum of political outlooks, commercial groups, and religious institutions. Desmond Tutu, for example, the head of South Africa's TRC, is an Anglican archbishop. Let us consider some of civil society's contributions, limitations, and dangers.

Formation of Truth Commissions. Civil society groups have played crucial roles in establishing truth commissions. Conversely, in countries with a weak civil society, such as

the Republic of the Congo, neither official nor unofficial truth commissions have been established.

Groups in South Africa's civil society – through conferences and public hearings – helped forge the idea of a truth commission. A presidentially appointed committee, many of whose members represented civil society, received nominations for TRC commissioners and recommended twenty-five to President Mandela, who appointed seventeen of them.<sup>31</sup>

In the difficult and drawn-out peace negotiations between the Guatemalan government and the 20-year-old guerrilla movement, the Guatemalan National Revolutionary Union (URNG), civil society played a strong role. The UN-brokered Framework Agreement signed in January 1994 "recognized the role played [in earlier negotiations] . . . by the various sectors of organized civil society and gave them a legitimate place within the negotiating process in an Assembly of Civil Society (ACS)."<sup>32</sup> Chaired by the highly respected cleric Monsignor Rodolfo Quezada Toruño, the ASC formulated and transmitted, to the negotiating parties and the UN mediator, the ASC's consensus positions on the various topics being negotiated, including the formation of a truth commission, an agreement on indigenous rights, and an agreement on socioeconomic goals.<sup>33</sup> Moreover, the Guatemalan Alliance against Impunity was crucial in influencing a National Reconciliation Law that, in advance of similar Latin American laws, excludes crimes such as genocide from its amnesty provisions.<sup>34</sup>

Investigation. Civil society groups can be enormously helpful and even indispensable in obtaining the truth about the past. During the seventeen-year Pinochet dictatorship, two religious organizations — the ecumenical Comité de Cooperación Para la Paz en Chile (1974-75) and the Roman Catholic Church's Vicaría de la Solidaridad (1976-92) —

collected thousands of judicial transcripts concerning disappearances. Such records were invaluable for the investigations of the presidentially appointed National Commission for Truth and Reconciliation, which had to complete its work in only eighteen months. In Uruguay a non-governmental report on governmental abuses committed between 1972 and 1985 was more comprehensive, accurate, and widely distributed than the little-known and anemic government report.<sup>35</sup>

In Guatemala, prior to the peace accords and the founding of Guatemala's official truth commission, the Historical Clarification Commission (CEH), the Guatemala City archdiocese's human rights office launched an unofficial Project for the Recovery of Historical Memory (REMHI). Increasingly dissatisfied with CEH's limited mandate, meager resources, and initially slow progress, REMHI engaged in what Popkin has called "the most comprehensive civil society effort to investigate a country's past atrocities."<sup>36</sup> Local citizens, whom REMHI trained as "ambassadors of reconciliation," recorded more than 6,000 testimonies, which communal leaders, elected by their villages, gave in their native (Indian) language. On April 24, 1998, REMHI presented and summarized its report, "Guatemala: Nunca Mas." A press release and public lecture charged that the army and so-called civilian self-defense patrols were responsible for by far the greatest percentage of the 150,000 deaths and 50,000 disappearances in the war. Because Guatemalan illiteracy is so high, diffusion of the report employed theater, radio, videos, public workshops, and ceremonies. REMHI, like other Guatemalan human rights groups and the CEH itself, has directly contributed to truth about the past and manifested respect for victims by providing them a platform in their own language.

The challenges and dangers involved in uncovering truth about past evil were tragically underscored two days after the presentation of REMHI report: Auxiliary Bishop Gerardi Conedera, the director of the archdiocese's human rights office and coordinator of the report, was brutally bludgeoned to death in his home in Guatemala City.

**Adversarial Public Action.** Some organizations in a nation's civil society devote themselves to monitoring and evaluating the government's (and wider society's) actual steps toward achieving peace, democratization, and transitional justice. One role of civil society is to constitute an independent site to assess whether promises are kept and rhetoric becomes reality. Such monitoring and assessment is part of what Sen calls "public action" designed to advance the public good.<sup>37</sup> Possible actions include public petitions, protests and marches (sometimes with pictures of the "disappeared"), strikes, press conferences, public forums, public burials of the remains of those recently exhumed, and complaints addressed to public officials.

Each of these activities helps undermine what Leo Valladares, the Honduran human rights ombudsman, calls the "culture of impunity." In such a culture, government officials, the police and military, and ordinary citizens routinely break the law without fear of punishment, for there is a shared understanding that each person will be silent about the other's abuses as long as the favor is returned. Many NGOs in transitional societies are seeking to replace such a culture of impunity with a "culture of responsibility" or a "culture of rights" in which citizens are responsible for respecting human and legal rights and publicly protesting their violation. As the 1996 report of Honduras's National Commission of Human Rights puts it:

Civil Society ought to join forces so that judicial reform is a reality, and this requires the strengthening of a democratic and human rights culture in order to halt the epidemic of corruption and be able to save our democratic institutions. As the Commissioner has expressed it: 'Democracy is shown not only at the ballot box but also by accusations, by opposition to official abuse and corruption, and by the system of justice. Hence, democracy ought to fight so that injustice is the exception and justice the rule.'<sup>38</sup>

In Guatemala, NGOs have not always agreed in their assessment of governmental efforts to implement transitional justice. Some civic groups pressured the official Guatemalan truth commission to violate their legal mandate and name perpetrators. Others urged that “naming names” risks a blanket amnesty (as occurred in El Salvador) or a return of military repression (as was threatened in Argentina), subjects those incorrectly named to undeserved abuse, and distracts attention from the general pattern (and remedy) of human rights abuses. Even an investigative body as internationally applauded as the South African TRC is not immune to criticism from South African civil society. Groups such as the Centre for the Study of Violence and Reconciliation and the Khulumani Victim Support Group, for example, criticized the TRC for overemphasizing the ideal of reconciliation-as-forgiveness and failing to give sufficient attention to other goals of transitional justice such as accountability, punitive justice, and compensatory support for victims. They argue that the TRC should collaborate more fully with NGOs – for example, by contributing to NGO efforts to organize survivor support groups.<sup>39</sup>

**The Public Sphere and Public Deliberation.** The civil public sphere clearly functions in countries undergoing transitional justice insofar as the mass media and civic groups promote

a society-wide debate that evaluates and seeks to improve the ends and means of transitional justice. For instance, South African newspapers and television reported daily on the TRC's work. They also provided opportunities for a spectrum of critics and defenders of the Commission. Likewise, since the mid-eighties, many Guatemalan newspapers have enlarged and invigorated the public sphere by reporting and commenting on the peace process and by opening their pages to a variety of public opinion.

The foregoing examples illustrate what a country's civil society, however conceived, and its civil public sphere in particular may do to advance the aims of transitional justice. Civil society, however, is not without some limitations, and there are some dangers in putting undue (and the wrong kind of) emphasis on it.

Groups in civil society, especially following prolonged authoritarianism, may be very weak and disunited, thereby limited in their potential impact on transitional justice. Just as civil society groups can differ considerably within a given national society, so too the civil societies of particular nations or regions exhibit much variety. Civic groups and national civil societies as a whole differ with respect to longevity, vitality, formality, resources and sustainability, orientation (inward or outward), internal structure (democratic vs. hierarchical), and external relations (grassroots, regionally/nationally federated, or internationally linked). Depending on their type and social context, many groups and networks are limited in what they can contribute to transitional justice, for often they have scant resources, outreach, and staying power. They may rise and fall before they are able to make much of a difference in the lives of their members or the larger society. Their knowledge of similar groups or networks also may be limited, so that they are unable to learn from each other. Their scope may be entirely at the "grass roots," preventing them

from influencing national institutions. Even worse, some civil society groups may be bent on vengeance or amnesia, two morally defective goals for societies in transition.<sup>40</sup>

Given these limitations, societies undergoing transitional justice should beware of certain dangers in thinking about the potential roles of civil society in meeting the challenges of transitional justice and democratic development. First, civil society must not be annointed as the new source of salvation, permanently assuming roles that other actors, including national and local governments, should play. As innovator, facilitator, critic, educator, and (temporary) substitute, there is much that civil society can contribute to transitional justice. Yet, here as in other areas, the state must be "brought back in,"<sup>41</sup> for government has an indispensable role with respect to some forms of prosecution, punishment, investigation, compensation, and commemoration. And just as civil society can supplement and correct the state; a democratizing state may fortify and help unify a weak, timid, and fragmented civil society. This outcome is especially likely when a truth commission conducts activities that are public and decentralized; seeks civil society's continual evaluation of its work; cooperates with parallel or supplemental civil society initiatives (such as medical attention to victims); and, upon the conclusion of its work, recommends ways in which civil society might continue the struggle to right past wrongs.

A second peril is the opposite of the first, namely, that civil society will narrow its scope, functioning as an assortment of exclusively inward-oriented voluntary associations, and thereby fail to assess, debate with, and influence other institutions that affect transitional justice. A self-help group of human rights victims or perpetrators, while important in a free and pluralistic society, is not all that civil society can be in relation to the challenge of transitional justice. Especially when trials and truth commissions finish their work, citizens

and civil society groups have important outward-oriented responsibilities and opportunities. In a radio interview at the end of the TRC's work, Tutu observed that the commission by itself could not bring about reconciliation and that "each south African is going to have to say, 'What is the contribution I am going to be making to what will be a national project?'"<sup>42</sup>

A third peril is that civil society will lose its independence and become a mere rubber stamp – rather than monitor and critic – of the government. Cases in point are Uruguay's truth commission<sup>43</sup> and Yugoslavia's television since 1989.<sup>44</sup>

#### International Civil Society and Transitional Justice

It is in relation to the strengths, limitations, and dangers of domestic civil societies (DCS) that we can best understand the ways in which international civil society (ICS) may contribute to a nation's approximating the goals of transitional justice. The paradigm case of international civil society, as I am using the term, would be voluntary associations such as the Roman Catholic Church, Doctors Without Borders, the International Campaign to Ban Land Mines, the International Red Cross, and the International Soccer Federation. These nonstate organizations and movements are composed of members whose concerns extend to other nations and to international structures and issues.<sup>45</sup> My emphasis here is on globally-oriented networks of individuals and voluntary *institutions* and not merely on the world moral *opinion*, let alone the public opinion of powerful Western nations.

Let us first distinguish two types of ICSs and a closely related type of international institution: civil society groups from one country that aid the efforts of civil society groups in another country, which is undergoing transitional justice; international not-for-profit organizations and movements; and transnational institutions such as the Organization of



American States and institutions within the United Nations system. The first type, an internationally oriented DCS, is illustrated by the Washington Office on Latin America (WOLA), a group that emphasizes police, judicial, and economic reform. Composed largely of U.S. citizens, this U.S. advocacy group supplies moral and financial support and U.S. speaking opportunities to representatives of NGOs from countries such as Guatemala. Moreover, WOLA transmits lessons that DCSs learn about transitional justice in one country to DCSs confronting the challenge of transitional justice in another country.

The second type of ICS is illustrated by a profusion of heterogeneous international NGOs and movements composed of members from many nations. The term "globalization" is often used to denote global capital flows and transnational economic institutions. There is, however, another kind of globalization — movements and NGOs that investigate, debate, and help implement policies of many kinds in particular nations and regions. This network is constantly changing and often lacks formal institutional definition; sometimes an ICS is little more than a "virtual community" committed to a common cause and linked by e-mail, fax, and list servers. Still the contributions to transitional justice by groups of this second type should not be underestimated. Let me indicate a few of these ICSs and what they are providing.

Consider the global scholarly community concerned with issues of righting past wrongs in the context of democratic transitions.<sup>46</sup> It generates conferences, often subsidized by private philanthropic organizations such as the Aspen Institute, the Soros Open Society Foundation, the Friedrich Ebert Foundation (Germany), the Instituto de Defensa Legal (Peru), and the World Peace Foundation (USA) that bring together scholars, policymakers, and policy analysts to understand, compare, and improve approaches to transitional justice.

A notable achievement in this area is the United States Institute of Peace's important three-volume study entitled *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*.<sup>47</sup> Emphasizing both national and international assessments of the ends and means of transitional justice, these three volumes include general essays, twenty-one country studies, and a collection of laws, rulings, and reports that have emerged in the last fifty years. Thanks to these and similar studies, when a country embarks on a path to transitional justice, its government and DCS will have intellectual resources and practical models on which to draw. They will not, as ex-President Raúl Alfonsín said about Argentina's efforts in the eighties, have to invent "their approach from nothing."<sup>48</sup> With international philanthropic support, those designing and implementing South Africa's TRC were able to learn valuable lessons from the Chilean and other truth commissions.

Also noteworthy are the international investigatory/advocacy groups that conduct inquiries into and denounce human rights violations, monitor human rights compliance, and make recommendations as to how past abuses should be treated and future violations prevented. By providing international attention and support, these international groups can also lend legitimacy to and strengthen the hand of domestic civil groups and democratically elected governments in pursuing the goals of transitional justice.<sup>49</sup> Funded by a variety of private and national sources, these ICSs include Amnesty International and Human Rights Watch, the NGO Coalition for an International Criminal Court, and the Joint Evaluation of Emergency Assistance to Rwanda, the latter being an international team that investigated the international response to the Rwandan massacres. Through their published documents and press conferences, these sorts of groups can inform domestic and world opinion and contribute to public deliberation about what should be done.

Closely related to international civil society, but a product of inter-governmental cooperation, are those organizations of the United Nations system that play a variety of roles in national transitional justice. Although the UN has been beset with financial problems (largely due to the United States), waste, and inefficiencies, it has contributed to transitional justice in several significant ways. In 1991, responding to a request by the Salvadoran government and the political opposition, the UN established, funded, and provided personnel to the Salvadoran truth commission. Later in Guatemala the United Nations Human Rights Observer Mission in Guatemala (MINUGUA) facilitated the peace negotiations, including agreements between the contending parties with respect to truth commissions and other measures of transitional justice. The UN also established and funds two ad hoc international criminal courts, the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.

In sum, the UN has tried to influence and assist states in transition, encouraging them to forgo morally untenable approaches, such as private revenge, victor's justice, and impunity, and to adopt mechanisms likely to realize the multiple legitimate aims of transitional justice. In these efforts the UN has a mixed record, ranging from an important — if not unqualified — success in El Salvador, to slow progress in Guatemala, Bosnia, and Rwanda, to a controversial and still unimplemented agreement for an International Criminal Court.<sup>50</sup>

I conclude by suggesting some distinctive merits, effects, and limitations of ICS with respect to transitional justice when assessed in relation to the roles of national governments and domestic civil societies. We have seen that ICS (and international regimes) can promote transitional justice by providing to domestic civic groups and democratically elected governments such things as material resources, lessons learned by other new democracies,

international legitimacy, and moral support. Such assistance may be indispensable as domestic civil groups and fledgling democracies face the forces of revenge or appeals to social amnesia. ICS can also adopt an adversarial role and criticize or temporarily substitute for domestic civic groups and national governments when there is good reason to believe that these have succumbed to unjust or antidemocratic forces.

Finally, whether in a collaborative or adversarial relation to domestic civil societies and national governments, ICS plays an important role in hammering out, justifying and diffusing universally applicable norms relevant to transitional justice.<sup>51</sup> Conversely, these norms, which include universally accepted human rights, are one impetus for what Mandela calls “the creation of an international community predicated on human dignity and justice.”<sup>52</sup> International civil society is deepened and widened by appeal to a fundamental normative perspective that includes, in addition to universal human rights, the fundamental goals to which a new democracy should aspire in designing and evaluating its attempts to deal with a terrible past.<sup>53</sup>

Yet, ICS can also weaken or prevent a society from effectively meeting the challenges of transitional justice. As Nino rightly insists, too much or the wrong kind of international response to a country’s past rights violations can do more harm than good.<sup>54</sup>

International involvement and intemperate appeals to universal human rights can give some factions — for instance, the military — in a nation the pretext to reject, as an “outside job,” international recommendations or pressure. In El Salvador, the fact that three non-Salvadorans composed the Salvadoran Truth Commission was used as public justification for the government to declare — the week after the Commission’s report was released — a general amnesty for all those individuals charged with violating rights during the civil war.

Furthermore, international aid for domestic transitional justice can backfire. Instead of nurturing robust domestic civil societies, public deliberation, and responsive governments, international support for a nation's democratic transition in fact may insulate governmental efforts from domestic criticism. In turn this insulation may cause reduction of public deliberation, the narrowing of the national consensus, and, thereby, the loss of popular support for the government's efforts. For example, instead of trying to address the objections of some of its most trenchant critics, South Africa's TRC sometimes took refuge in the consolation offered by its many international supporters.

Finally, due to ignorance of a transitional society's particular challenges, ICS's timing may be wrong.<sup>55</sup> It may act too soon, before conditions are ripe and to the detriment of future domestic efforts. Both within and without Bosnia, there is a vigorous debate about whether this divided country is ready for the truth and reconciliation commission currently being promoted by such groups as the United States Institute of Peace.<sup>56</sup> Or ICS may stay involved too long, and hence prevent a nation's government and civil society from developing its own capabilities. Finally ICS may act too late, after a window of opportunity has been closed.

To mitigate such risks, groups in ICS must interact with both governmental and civil groups in the transitional society. Moreover, ICS must become knowledgeable about the particular society in transition as well as recognize that each new democracy has the *primary* and *ongoing* responsibility for achieving the multiple goals of transitional justice. Not only does this responsibility imply the government's duty – often by means of an official truth commission -- to investigate, sanction, and compensate rights violations but also citizens' rights to public deliberation, adversarial public action, and democratic rule.

Like domestic civil society, however, a well-informed international civil society is often helpful, sometimes indispensable, but never sufficient if a new democracy is to utilize truth commissions and other means to meet the complex challenges of transitional justice.<sup>57</sup>

#### NOTES

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<sup>1</sup> The best multidisciplinary collections on transitional justice are Neil J. Kritz (ed.), *Transitional Justice: How Emerging Democracies Reckon with Former Regimes, I, General Considerations; II, Country Studies; III, Laws, Rulings, and Reports* (Washington, D.C., 1995); Naomi Roht-Arriaza, (ed.), *Impunity and Human Rights in International Law and Practice* (New York, 1995); and A. James McAdams (ed.), *Transitional Justice and the Rule of Law in New Democracies* (Notre Dame and London, 1997). See also Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston, 1998).

<sup>2</sup> Nations other than new democracies also have occasion to decide what they “should do about a difficult past,” (Timothy Garton Ash, “The Truth About Dictatorship,” New York Review of Books, XLV [February 19, 1998], 35. For these broader issues, see Ash’s essay

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and David A. Crocker, "Reckoning with Past Wrongs: A Normative Framework," Ethics & International Affairs, XIII (1999), 43-64.

<sup>3</sup> David A. Crocker, "Transitional Justice and International Civil Society: Toward a Normative Framework," Constellations, V (1998), 492-517; "Civil Society and Transitional Justice," in Robert Fullinwider (ed.), *Civil Society, Democracy, and Civic Renewal* (Lanham, MD, 1999), 375-401; and "Reckoning with Past Wrongs."

<sup>4</sup> Alex Boraine, "The Societal and Conflictual Conditions that are Necessary or Conducive to Truth Commissions," South African Truth and Reconciliation Commission Conference, World Peace Foundation, Somerset West, South Africa, 28-30 May 1998.

<sup>5</sup> Neil J. Kritz, "Is a Truth Commission Appropriate in the Former Yugoslavia?" International Conference on War Crimes Trials, Belgrade, Yugoslavia 7-8 November 1998, 3. See also Neil J. Kritz and William A. Stuebner, "A Truth and Reconciliation Commission for Bosnia and Herzegovina: Why, How, and When?," Victimology Symposium, Sarajevo, Bosnia, 9-11 May 1998.

<sup>6</sup> In Santos Juliá et al, *Las Víctimas de la Guerra Civil* (Madrid 1999), Spanish historians and social scientists give an insightful accounting of the horrendous wrongs committed by all sides in the Spanish Civil War of 1936-39 and by the Franco dictatorship that lasted until 1976. The volume, shattering the conventional image of Spain as a successful example

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of “forgive and forget,” also details the way in which Franco as well as his democratic successors dealt – in very different ways – with forty years of atrocities and repression.

<sup>7</sup> See Carlos Nino, *Radical Evil on Trial* (New Haven and London, 1996), ix-x.

<sup>8</sup> See, for example, Jean Hampton, “The Retributive Idea,” in Jeffrie G. Murphy and Jean Hampton, *Forgiveness and Mercy* (Cambridge, 1988), 111-161; Naomi Roht-Arriaza, “Punishment, Redress, and Pardon: Theoretical and Psychological Approaches,” in Roht-Arriaza (ed.) *Impunity and Human Rights*, 13-23; Michael Moore, *Placing Blame: A General Theory of the Criminal Law* (Oxford, 1997); and Aryeh Neier, *War Crimes: Brutality, Genocide, Terror and the Struggle for Justice* (New York, 1998), 80-85.

<sup>9</sup> See Jennifer Llewellyn, “Justice for South Africa: Restorative Justice and the South African Truth and Reconciliation Commission,” in Christine Koggel (ed.), *Moral Issues in Global Perspective* (Peterborough, ON, 1999), 96-107.

<sup>10</sup> *Ibid.*, 103-105.

<sup>11</sup> See Kritz and Stuebner, “A Truth and Reconciliation Commission.”

<sup>12</sup> See Eugene de Kock, as told to Jeremy Gordin, *A Long Night’s Damage: Working for the Apartheid State* (South Africa, 1998).



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<sup>13</sup> “Between the Carrot and Stick,” Sunday Independent, 14 July 1996, 10.

<sup>14</sup> Margaret Popkin and Nehal Bhuta, “Latin American Amnesties in Comparative Perspective,” *Ethics & International Affairs*, XIII (1999), 117-118. See also “Guatemala Memory of Silence, Report of the Commission for Historical Clarification, Conclusion and Recommendation” (25 February 1999), 58.

<sup>15</sup> Priscilla Hayner, “Official Truth-Seeking: A Tool for Peacemaking?,” Preliminary Discussion Paper, Committee on International Conflict Resolution, National Research Council, 16 June 1998, 15-16.

<sup>16</sup> David Luban, “The Legacies of Nuremberg,” in *Legal Modernism* (Ann Arbor, 1994), 344-346. Cf. Lon L. Fuller, *The Morality of Law*, rev. ed., (New Haven, 1977), 33-39.

<sup>17</sup> See Sanford Levinson, “Investigatory Bodies and the Due Processes of Law” (in this volume).

<sup>18</sup> Wilhelm Verwoerd, “The Commission Report: History? Advocacy? A Verdict,” South African Truth and Reconciliation Commission Conference, World Peace Foundation, Somerset West, South Africa, 28-30 May 1998.

<sup>19</sup> Susanne Daly, “In Apartheid Injury, Agony is Relived but Not Put to Rest,” New York Times, 17 July 1997, A1, A10.

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<sup>20</sup> Amy Gutmann and Dennis Thompson, "The Moral Foundation of Truth Commissions," (in this volume), 2-3, 17.

<sup>21</sup> Charles Villa-Vicencio, "A Different Kind of Justice: The South African Truth and Reconciliation Commission," Contemporary Justice Review (forthcoming).

<sup>22</sup> Mark Osiel argues that what he calls "liberal" or "discursive social solidarity" can be promoted "through public deliberation over continuing *disagreement*, a process by which rules constrain conflict within nonlethal bounds and often inspire increasing mutual respect among adversaries" (*Mass Atrocity, Collective Memory, and the Law* [New Brunswick and London, 1997], 17, n. 22; see also 47-51, 204, n. 136, 263-65).

<sup>23</sup> Gutmann and Thompson, "Moral Foundations," 15-24.

<sup>24</sup> Villa-Vicencio, 12-14. See also Donald Shriver, *An Ethic for Enemies: Forgiveness in Politics* (New York, 1995).

<sup>25</sup> See Gilbert A. Lewthwaite, "In South Africa, Much Truth Yields Little Reconciliation," Baltimore Sun, 30 July 1998, 12.

<sup>26</sup> See James Bohman, *Public Deliberation: Pluralism, Complexity, and Democracy* (Cambridge, 1996). See also Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge, MA, 1996).

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<sup>27</sup> See Michael Ignatieff, "On Civil Society: Why Eastern Europe's Revolutions Could Succeed," Foreign Affairs, LXXIV (1995), 128-136. Ignatieff captures the spirit of the antigovernment model when he observes that for the East European intellectuals in the 1970s and 1980s civil society was "the kind of place where you do not change the street signs every time you change the regime (128).

<sup>28</sup> See Benjamin R. Barber, "Clansmen, Consumers and Citizens: Three Takes on Civil Society," in Fullinwider (ed.), *Civil Society*, 9-29.

<sup>29</sup> See Robert D. Putnam, "Bowling Alone: America's Declining Social Capital," Journal of Democracy VI (1995), 65-78.

<sup>30</sup> See Jean L. Cohen, "American Civil Society Talk," in Fullinwider (ed.), *Civil Society*, 55-85.

<sup>31</sup> Alex Boraine, "Truth and Reconciliation in South Africa: The Third Way," (in this volume), 10-14.

<sup>32</sup> Teresa Whitfield, "The Role of the United Nations in El Salvador and Guatemala: A Preliminary Comparison," paper presented at the conference "Comparative Peace Processes in Latin America," Woodrow Wilson International Centre for Scholars, 14-15 March 1997, 16-17.

<sup>33</sup> *Ibid.*, 17.

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<sup>34</sup> Popkin and Bhuta, “Latin American Amnesties,” 116.

<sup>35</sup> Priscilla Hayner, “Fifteen Truth Commissions – 1974-1993: A Comparative Study,” Human Rights Quarterly, XVI (1994), 232-233.

<sup>36</sup> Margaret Popkin, personal communication, April 22, 1998.

<sup>37</sup> Amartya Sen and Jean Drèze, *Hunger and Public Action* (Oxford, 1989), 275-279.

<sup>38</sup> *El Difícil tránsito hacia la democracia: Informe sobre derechos humanos, 1996* (Honduras, 1996), 20-21. The translation is my own.

<sup>39</sup> Graeme Simpson, “Lessons for the World: The Uses of Truth Commissions,” presentation to South African Truth and Reconciliation Commission Meeting, Somerset West, South Africa, 28-30 May 1998.

<sup>40</sup> See Crocker, “Transitional Justice and International Civil Society,” 495-496.

<sup>41</sup> See Michael Schudson, “The ‘Public Sphere’ and Its Problems: Bringing the State (Back) In,” Notre Dame Journal of Law, Ethics and Public Policy, VIII (1994), 529-546. For a compelling argument that (un)civil society also contains groups that imperil democratization and justice, see Xiaorong Li, “Democracy and Uncivil Society: A Critique of Civil Society Determinism,” in Fullinwider (ed.), *Civil Society*, 403-18.

<sup>42</sup> Cited in Lewthwaite, 12A.

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<sup>43</sup> Hayner, "Fifteen Truth Commissions," 616-617.

<sup>44</sup> Warren Zimmerman, "The Last Ambassador: A Memoir of the Collapse of Yugoslavia," *Foreign Affairs*, LXX (1995), 12.

<sup>45</sup> Cf. Gordon A. Christenson, "World Civil Society and the International Rule of Law," *Human Rights Quarterly* XIX (1997), 731.

<sup>46</sup> See Naomi Roht-Arriaza, "Conclusion: Combating Impunity," in Roht-Arriaza (ed.), *Impunity and Human Rights*, 295.

<sup>47</sup> See above, note 1.

<sup>48</sup> Kritz, "The Dilemmas of Transitional Justice," in Kritz (ed.), *Transitional Justice*, I, xxi.

<sup>49</sup> Roht-Arriaza, "Conclusion: Combating Impunity," 302.

<sup>50</sup> See Steven R. Ratner and Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy* (Oxford, 1997); and Belinda Cooper (ed.), *War Crimes: The Legacy of Nuremberg* (New York, 1999).

<sup>51</sup> Roht-Arriaza, "Conclusion: Combating Impunity," 294. For the role of ICS in forging and promoting international human rights, see Michael Ignatieff, "Human Rights: The Midlife Crisis," *New York Review of Books*, XLVI (20 May 1999), 58-62.

<sup>52</sup> Nelson Mandela, "Foreword," in Kritz (ed.), *Transitional Justice*, I, xi.

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<sup>53</sup> Kathryn A. Sikkink points out “Chilean organizations formed to confront government repression, especially the Vicaria de Solidaridad, became models for human rights groups throughout Latin America and a source of information and inspiration for human rights activists in the United States and Europe.” (“Nongovernmental Organizations, Democracy, and Human Rights in Latin America,” in Tom Farer (ed.), *Beyond Sovereignty: Collectively Defending Democracy in the Americas* (Baltimore and London, 1996), 155.

<sup>54</sup> Carlos Nino, "Response: The Duty to Punish Past Abuses of Human Rights Put into Context: The Case of Argentina," in Kritz (ed.), *Transitional Justice*, I, 417-436.

<sup>55</sup> See Anita Isaacs, “International Support for Democratization: A Map and Some Policy Guidelines Derived from the Four Case Studies,” in Farer (ed.), *Beyond Sovereignty*, 281-282.

<sup>56</sup> Kritz and Stuebner, “A Truth and Reconciliation Commission.”

<sup>57</sup> See Sikkink, “Nongovernmental Organizations,” 160-168.