

ABSTRACT

Title of Dissertation: TRUTH COMMISSIONS IN
TRANSNATIONAL PERSPECTIVE.
WORKING THROUGH THE PAST IN CHILE
AND ROMANIA

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Government and Politics

Truth commissions are an active deliberative process. Outgoing and incoming politicians, government and opposition parties, victim's groups, civil society, human rights organizations, the judiciary, and the media participate in truth commission processes to achieve multiple objectives. What makes them essentially deliberative is that the commissioners and the staff constantly makes choices when they define such basic objectives as truth, reconciliation, justice and memory and decide how those objectives should be met and whose needs should be served. Inevitably, there will be winners and losers in a truth commission process. Thus, assessing the conditions under which truth commissions are likely to emerge is vitally important in order to understand how truth commissions are capable of influencing policy.

TRUTH COMMISSIONS IN TRANSNATIONAL PERSPECTIVE. WORKING
THROUGH THE PAST IN CHILE AND ROMANIA

by

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Introduction

In a perfect society victims are entitled to full justice, namely trial of the perpetrator and, if found guilty, adequate punishment. That ideal is not possible in the aftermath of massive violence. There are simply too many victims and too many perpetrators. Even the most sophisticated criminal justice system would be completely overwhelmed. It is for this reason that societies have to find other solutions. Some countries simply forget the past and attempt to induce a national amnesia on its people. Of course, that is bound to fail as victims do not, and indeed cannot, forget.

In other countries wiser leaders recognized that in order to lay a foundation for an enduring peace, measures had to be taken to manage the past. It was acknowledged that history has to be recorded, calls for justice has to be observed, and perpetrators have to be called to account. Hanna Arendt contentiously asserted that in the face of genocides, we “unable to forgive what (we) cannot punish and (we) are unable to punish what has turned out to be unforgivable.”¹ In the course of such transitions, societies have to struggle over how much to acknowledge, whether to punish, and how to recover. How to treat the continuing presence of perpetrators, victims, and bystanders after the violence has ended is a central problem, or better put, a series of problems. A common formulation posits the two dangers of self-indulging in the past and forgetting it. Too much memory or not enough; too much enshrined victimhood

¹ Hanna Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958), 241.

² New York Times, “Mexico Restarts Case of Missing Students”, *The New York Times International*, Tuesday, December 4, 2018.

³ Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions are Changing*

or insufficient memorializing of victims and survivors; too much past or too little acknowledgement of the past's staging of the present. These joined dangers accompany not just societies emerging from mass violence, but also individuals recovering from trauma.

In an age when so many proclaim the advent of a "post-truth" era, the significance of social endeavors meant to document past abuses and crimes that took place in recent history, is vitally significant for democratic institutions and values. The underlying thought throughout this dissertation is the conviction that democracy and memory are intimately intertwined. Democracy without memory is doomed to ignore its own origins and fundamental engagements. Dwelling in the frozen space of inability and incapacity is unacceptable, unresponsive to victims, unavailing to the promise of a better future. This is what underlies attempts to act for victims in the affirmation of atrocity.

Coming To Terms with the Past

Political-institutional mechanisms to come to terms with the past have swept across the globe since the early 1980's. Although it does not enjoy the status of universal consensus, the demand that every polity confronts its past in an open-minded and critical fashion has become widely accepted. Human rights violators in Chile, Argentina, Romania, South Africa and Rwanda face domestic or international courts, legislatures all around the world recognize genocides and impose punitive measures against denial, governments apologize for past abuses to rectify historical injustice,

and victims receive material and symbolic reparations in many countries. All these measures address just a fraction of all political violence and human rights violations, and the forces of impunity and amnesia still prevails in most cases, but, arguably, individual and civil society advocacy in the wake of atrocities elicits official responses at a greater rate than any other period in human history.

One novel institution that appears to embody this spirit of coming to terms with the past is called “truth commissions”. Incoming democratic governments have been establishing truth commissions since the early 1980’s to investigate serious human rights violations committed under previous regimes.

A quick look at the news over the last few years shows that truth commissions are here to stay. During the last 35 years, truth commissions have been widely embraced around the world as effective mechanisms for redress. From 1974 to 2018 over 30 commissions dedicated to truth and/or reconciliation were set up in Europe (Germany, Romania), Africa (South Africa, Uganda, Liberia, Morocco, Zimbabwe, Chad, Burundi, Nigeria, and Sierra Leone), Asia (Sri Lanka, Nepal, and South Korea), Central and Latin America (Haiti, Bolivia, Uruguay, El Salvador, Argentina, Guatemala, Chile, Ecuador, Panama, and Peru), and even Canada, to name just a few. As of this writing, the Colombian truth commission is currently in progress and Mexico’s newly elected president Miguel Obrador mandated the establishment of a truth commission in December 2018.²Established in newer or older democracies by elected and non-elected heads of state, governments, national assemblies, political parties or the international community, truth commissions have been welcomed for

² New York Times, “*Mexico Restarts Case of Missing Students*”, The New York Times International, Tuesday, December 4, 2018.

their potential to educate future generations and to provide truth, justice and reconciliation to deeply divided societies.

Of course, not every truth commission initiative ends in success. Civic groups and legislators have recently proposed to establish truth commissions, to no avail, in settings as diverse as Indonesia and the United States, Mexico, and Turkey. Nepal's Supreme Court blocked an attempt to establish a truth commission in 2013 out of fear that such a panel would grant amnesties for serious crimes. Yet, even failed attempts reveal the extent to which this institutional response to past atrocities (and disagreements over the meaning of truth, justice, memory, reconciliation, recognition, and forgiveness) has become central to the political controversies of today.

The introductory anecdotes of these cases point to a simple fact: truth commissions are a political deliberative process. Outgoing and incoming politicians, government and opposition parties, victim's groups, civil society, human rights organizations, the judiciary, and the media participate in truth commission processes to achieve multiple objectives. What makes them essentially political is that the commissioners and the staff constantly makes choices when they define such basic objectives as truth, reconciliation, justice and memory and decide how those objectives should be met and whose needs should be served. Inevitably, there will be winners and losers in a truth commission process. Thus, assessing the conditions under which truth commissions are likely to emerge is vitally important in order to understand how truth commissions are capable of influencing policy.

Truth Commission Impact

As more countries adopt truth commissions, human rights trials, victim-centered reparations, and purges from human rights violators from public office, the ability of these institutional mechanisms to deliver on their promises of justice, reconciliation, restitution and democratic strengthening is increasingly questioned. Therefore, incoming regimes want to weigh the expected political benefits and costs before jumping on the global transitional justice bandwagon.

Scholar and practitioners in the field of transitional justice and peace studies often disagree on the very definition of such essentially contested concepts as justice, reconciliation, and truth. Even if normative disagreements are suspended, empirical research on the effectiveness of transitional justice yields widely divergent results, reflecting the deep epistemological and methodological divisions across disciplines. Are we observing a “justice cascade” increasingly overpowering obstacles to human rights accountability,³ or should we adjust our expectations to some form of justice “in balance” with amnesty?⁴ Do truth commissions promote reconciliation between victims and perpetrators, or is reconciliation an unrealistic conclusion given that truth commissions often leave behind dissatisfied victims and unrepentant perpetrators? Some answers come from detailed case studies, whereas others rely on comparative data from many countries. In the end, however, the enormous divergence in the answers and the difficulty in initiating dialogue across methodological and disciplinary boundaries limit our ability to make sense of the achievements and

³ Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions are Changing World Politics* (New York: W. W. Norton, 2011)

⁴ Tricia D. Olden, Leigh A. Payne, and Andrew G. Reiter, *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy* (Washington DC: U.S Institute of Peace, 2010).

shortcomings of transitional justice. After decades of scholarly and journalistic work on coming to terms with past human rights violations, it seems that we know a lot, but understand a little.

This dissertation offers a deeper understanding of the conditions under which truth commissions are likely to emerge and influence policy. The motivation comes from three key observations. Many truth commissions have published results that proved inconvenient to endorse and implement into policy for the political leaders. Second, some of the bolder truth commissions have generated surprisingly little impact in the form of policy reforms and the public acknowledgement of human rights violations by key political actors. And third, even when some truth commissions have failed to generate observable policy impact, they have managed to inspire civil society activism in unanticipated ways by triggering the creation of new victim's organizations, promoting social debates over social memory, inducing civil society actors to monitor the country's human rights policy.

Truth commissions are established as investigatory bodies free from direct political intervention, at least ideally. Truth commission's autonomy, political efficacy, and influence are therefore crucial for understanding what they expect to accomplish in contemporary societies. Yet, the very conditions under which truth commissions are set up, supported, and endorsed reveal their dependence on, and vulnerability before, influential decision makers and institutions that set limits on commissions' ability to transform politics and society.

Truth commissions arise from and generate impact through complex political and social processes. Naturally, the sponsoring institution (government, parliament,

courts, or international organizations) pursues a narrow set of political goals. The willingness of incoming governments to set up truth commissions has led critical commentators to label these bodies as instruments of political legitimation and therefore, biased. In addition, the widespread resort to truth commissions during negotiated transitions where the outgoing authoritarian elites enjoy significant de facto and de jure power has led many observers to portray truth commissions as a second-best policy option to criminal prosecution. Accordingly, the incoming democratic governments take the popular demand for the prosecution of human rights violators, but the threat of an authoritarian backlash prevents them from pursuing retributive justice. Instead, they adopt the less controversial policy of establishing a truth commission to satisfy the demands of victims and human rights organizations. Thus, truth commissions are modeled as a policy outcome reflecting the interests, and balance of power across influential political and social actors.

However, the convenience that truth commission offer political elites is only part of the story. The findings, historical narrative, and recommendations of truth commissions frequently surprise, upset, and delegitimize influential organizations and individuals, including the sponsors and advocates of the truth commission. Furthermore, the changes truth commissions have produced in policy and political attitudes do not necessarily conform to the expectations of politicians, human rights' advocates and scholars. Governments sometimes implement truth commission's recommendations, but politically driven impact often falls short of the original aspirations, as governments can ignore the recommendations or implement them selectively.

While truth commissions do not always generate impact in expected ways, their unanticipated effects need to be acknowledged. A truth commission may trigger civil society mobilization around its findings and recommendations, to the extent that even after the truth commissions disbands, the societal struggles over historical memory, human rights accountability, victim-centered reparations may reference the truth commission as a focal point. Civic pressures have resulted in the delayed adoption of recommendations into policy in several countries where governments initially ignored the commission's work. Civil society mobilization has been stronger in cases where domestic and international human rights organizations and victims' groups take active part in structuring the commission.

Since truth commission impact is largely determined by a commission's capacity to exercise agency, as well as its reception by politicians and civil society actors, variation across truth commissions in terms of agency should be explained. This dissertation documents sources of variation in truth commission impact at three different stages of a commission process. First, at the creation of a truth commission, a process in which the basic goals and procedures are decided on, and the commissioners are appointed. Secondly, during the truth commission process itself, which is shaped by a dynamics of collaboration and conflict between the commissioners, the political elite, bureaucracies, and civil society actors. Finally, at the post-commission process, in which these numerous actors acknowledge or deny, adopt or ignore, the findings and recommendations of a commission.

I would like to note that nothing would be more misleading than to suppose that all truth commissions operate uniformly. There is considerably variation across

commissions in terms of power dynamics, stated objectives, actual processes, and outcomes. Throughout my dissertation, truth commission refers to ad hoc panels with characteristics similar enough to make conceptualization and comparative analysis possible, while acknowledging the need to account for variation across experiences.

Outline

The first three chapters set the conceptual and theoretical frameworks for understanding truth commission's place in contemporary struggles for justice, truth, and reconciliation. Chapter 1 offers a precise definition of truth commissions and explores the evolution of truth commissions. I argue that for purposes of conceptual clarity, truth commissions should be distinguished from other similar investigatory institutions, such as parliamentary human rights commissions, courts and monitoring institutions. It is also important to acknowledge that some truth commissions were disbanded before they could finish their work, or that civil society initiatives to set up an official panel were frustrated in the first place.

Chapter 2 explores the political interactions between decision makers, civil society actors, and the commissioners. Truth commissions are neither state bureaucracies nor civil society organizations, and they find themselves facing the task of mediating between the state and a portion of society. Their transitional position vis-à-vis the state requires deeper understanding of state civil society dynamics in

commission processes. Furthermore, cooperative and competitive interactions among non-state actors have become so central to contemporary truth-finding efforts that the notion of civil society should be analyzed in further detail.

The chapter challenges many taken for granted explanations about the relationship between truth commissions, the state, and civil society actors. Even if political elites tend to see truth commissions as tools of political legitimation and national reconstruction, the independent agency of commissioners often frustrates narrow political calculations. Truth commissions create a field of political struggle, that is to say a site of contestation for material and symbolic power over questions of truth, memory, and justice. By its very nature, the field is pluralistic, provisional, limited in its time horizon, and uncertain with respect to its expected impact on politics and society.

Chapter 3 expands the analysis to situate truth commissions' narratives in the broader context of political struggles of memorialization . The historical context chapter in truth commissions' final reports reflects, to some extent, the memory narratives circulating in society and they often redefine the terms of the social debate. Truth commissions constantly renegotiate the tensions between their authoritative status enabling them to produce the truth over the past and the need to persuade those who question their truthfulness and overall legitimacy. Truth commissions resolve between contending positions by confirming or rejecting certain narratives and explanations that dominate in public debates. In contrast, at times they can simply just avoid the contentious issue at hand. Truth commissions can claim to give voice to memories and experiences that are systematically excluded from public debates, and

finally, they can modify the public debate by producing narratives and explanations that unsettle the status quo. A truth commission may combine some or all of these positions. Furthermore, the conscious or unconscious exclusions of a truth commission narrative may be a constitutive of historiography as the written text.

Part II focuses on the empirical studies of truth commissions' effects on and struggles for memory. Chapter 4 and 5 provide a detail comparison of the Chilean and Romanian truth commissions.

Chapter 4 explains why some truth commissions produce more direct political impact, while others tend to rely on civil society mobilization to generate impact. The truth commission creation process that sets the commission's goals, mandate, and composition is an initial factor that explains variation in terms of politically driven and socially driven impact. The more control key political decision makers (the government or a governing coalition) exercise over the design and mandate of a commission by excluding political rivals and civil society groups, the more likely that the truth commission will produce a final report in line with the decision-maker's expectations. Consequently, the more likely that impact will be through the endorsement of the truth commission's final report and adherence to its recommendations (direct political impact). However, the exclusionary truth commission creation process is likely to alienate civil society groups and reduce the likelihood of civil society mobilization around the commission. By contrast, an inclusive and comprehensive initial negotiation process tends to allow the truth commission to exercise greater political agency, independently of the interests and expectations of the political elite.

Chapter 5 offers an in-depth comparison of two truth commissions, namely, those in Chile and Romania, to explain why the different truth commissions elicit such divergent responses from politicians and civil society groups. A high degree of control in Chile's National Commission on Truth and Reconciliation (1990-1991) ensured greater political-institutional adherence in the post-commission setting, as the government endorsed the commission's final report and implemented major policy recommendations. The absence of civil society participation in the process resulted in a low degree of societal reception of the commission report and the dissolution of the Chilean human rights network in the early 1990s. In contrast, Romania's Presidential Commission for the Analysis of the Communist Dictatorship (2006) was established through a participatory process in which diverse civil society actors set the terms under which the truth commission operated. The commissioners produced a comprehensive history of political violence and proposed broad recommendations and a reparations program. Successive governments largely ignored these findings and recommendations, while victims' groups and human rights organizations continued to mobilize around the social and political goals set by the commission.

The concluding remarks suggest that a truth commission's contributions should be understood not merely as a matter of policy success but also in terms of an ethical commitment to equal participation. Truth commissions should open a space for every person who wants to take part in reflecting on past violence and violations but should also take into account the power asymmetries resulting from the same violations in question, as well as other violations and injustices that effectively force

many experiences and memories into silence. Finally, I conclude with an overview of the lessons learned from past truth commissions in the hope of providing useful guidelines for future truth projects.

Methodology

I use archival data to explain (1) how and why key actors decide to create truth commissions; (2) which actors were excluded from decision-making processes; (3) how the commission operated within the confines of its mandate; (4) aspects of the commission's work that satisfied, surprised, legitimized, or delegitimized important political, military, and judicial institutions; (5) the extent to which the government endorsed the final report and implemented its recommendations; and (6) the degree of civil society mobilization around the commission.

I complement the original empirical research on Chile and Romania with information of all truth commissions that can be strictly considered as such. Commission's own final reports contain valuable information. In addition, I use secondary sources, which include academic scholarship, journalistic accounts, and human rights reports. Some of these sources analyze broad patterns for a large number of truth commissions, such as the United States Institute of Peace (USIP) Truth Commission Digital Collection, Priscilla B. Hayner's articles and books, and transitional justice databases. I also rely upon case studies, which provide in depth information about one commission or a small number of them.

Reliance on secondary data may pose a major methodological problem if the sources are biased. For example, overreliance on the press reports of human rights NGOs may lead the researcher to overstate the efficacy of the human rights movement in pressuring the government and achieving policy outcomes. Media coverage might likewise suffer from for-or anti- commission bias. Many of the accounts of truth commission processes come from the commissioners and staff themselves. All these accounts need to be treated as invaluable yet partial contributions for a deeper understanding of truth commission processes.

Another major problem with conducting cross-national analysis concerns deficiencies in data. Truth commissions disband after producing the final report and therefore, they cannot monitor the social and political developments in the post-commission period. The media usually focuses on the visible and dramatic aspects of truth commissions, thus hiding from the view the subtle and longer-term effects of unanticipated processes during and after the commission's operation. Academic literature has the benefit of providing conceptual clarity in presenting data. However, since each scholar present a specific question that generates a particular set of conceptual and analytical categories, reliance on previous academic work may limit the conceptual tools and available information as well.

A further difficulty has to do with the asymmetry of available information across truth commission cases. Some commissions have attracted a large number of academic and nonacademic observers (e.g., Argentina, Chile, South Africa), while little has been written about others (e.g., Romania). The perceived importance of a country in world politics makes a difference, as well as its official language. For

example, commissions of English and Spanish-speaking countries have been covered more widely. Contextual factors are important, too: commissions operating in the midst of political violence (e.g., Sri Lanka) are less likely to be reported on, as journalists and NGO activists flee for security or get deported.

I acknowledge all the political problems that might arise in my analysis due to these data deficiencies. However, instead of abandoning the task of providing a cross-national analysis of truth commissions altogether, my research strategy is to keep the information sources as varied as possible to amplify access to data, overcome bias in data collection, and achieve precision in evaluating the validity of concepts and causal relations. I incorporate data from as many resources as possible for each commission.

To justify the research methodology employed in this dissertation, it is essential to give an account of the shortcomings of the existing methodological approaches. Chapter 4 provides an in-depth analysis of the strengths and weaknesses of alternative research methods. Large N-statistical analyses seek to isolate the truth commission effect by controlling for a number of alternative hypotheses. However, the number of commissions is relatively small compared to the large number of explanatory variables to justify statistical analysis; data collection problems abound; differences in model specification produce dramatically opposed results even for the same outcome of interest; and differences between truth commissions and nongovernmental truth-finding efforts, which are lumped together for the purpose of increasing observation points) are often not taken into consideration. Other transitional justice scholars turn to case studies, either of a single commission or a

small number of them. The ethnographic insights into the multilayered power dimensions in truth commissions and contextualized explanations of truth commission impact are they key contributions of the case study approach. The difficulty that arises from case studies is the loss of a comparative framework to make sense of the conditions under which truth commissions produce changes in policy, courts, and social norms.

Therefore, I advocate a research strategy that explains truth commissions' impact comparatively, but without losing sight of the context-specific insights gained in case studies. I conduct comparative case studies to analyze the extent to which, and the specific mechanisms through which, a truth commission produces politically and socially driven impact. I use a process tracing approach to examine within-case data collected in Chile and Romania. The technique of data analysis known as "process tracing" refers to a variety of procedures that perform different functions. Some scholars use it to analyze evidence in a case to build a general theory, while others test existing theories by exploring whether the observable implications of the theory fit the empirical evidence.⁵ Historical explanations based on process tracing may be formulated as general theories, or, conversely, the technique may illuminate the unique, even idiosyncratic, features of a case that resists generalizations.⁶ Process tracing is closely associated with qualitative data collection methods, which leads

⁵ Dereck Beach and Rasmus Brun Pedersen, "What is Process Tracing Actually Tracing? The Three Variants of Process Tracing Methods and Their Uses and Limitations" in *The Oxford Handbook of Political Methodology*, ed. Janet M. Box-Steffensmeier, Henry E. Brady, and David Collier (Oxford: Oxford University Press, 2008), 702-721

⁶ Andrew Bennet, "Process Tracing: A Bayesian Approach", in *The Oxford Handbook of Political Methodology*, ed. Janet M. Box-Steffensmeier, Henry E. Brady, and David Collier (Oxford: Oxford University Press, 2008), 683-702

many scholars to think that the technique promotes interpretative social-scientific epistemology, but it has been argued that process tracing is compatible with quantitative data collection, as well as a positivistic outlook on theory generation and theory testing.⁷

I use comparative process tracing to build and assess my theory of truth commission impact because process tracing can provide comparative insights into causal mechanisms across cases, even though it is primarily a within case analysis method.⁸ Through process tracing, I identify the mechanisms through which the pre-commission process, that is to say, the political bargain that sets the mandate and appoints the commissioners, shapes the commission's capacity to generate impact in the post-commission process. Process tracing also helps to assess the plausibility of various causal explanations of truth commission impact (Chapter 4), and eliminate

⁷ Jeffrey T. Checkel, "Tracing Causal Mechanisms," *International Studies Review* 8, no. 2 (2006): 362-370.

⁸ While it would have been tempting to limit my approach to Chile or South America, I found more challenging and heuristically appealing the comparative analysis of one post authoritarian commissions (i.e., Chile) and a post totalitarian one (i.e., Romania). More clearly, Pinochet's dictatorship in Chile was murderous but it did not attempt to reconstruct the human condition. In contrast, Ceausescu's murderous dynastic communism in Romania included a continuous and systematic attack on the human essence and mind. This distinction explains why the Chilean commissions did not have to deal with the significance of ideology, whereas for the Romanian one the ideological goals of the totalitarian party state appeared as crucial. Also, I select the truth commissions in Chile and Romania to allow for maximal variation with respect to the outcome of interest, that is, truth commission impact driven by political will and civil society pressure, to develop a theory. See David Collier and James Mahoney, "Insights and Pitfalls: Selection Bias in Qualitative Research," *World Politics* 49, no. 1 (October 1996): 56-91. The main rationale is to minimize the selection bias that would arise from small N-case selection. Chile had a commission that generated politically driven impact, whereas in Romania almost all politicians ignored the commission's work.

rival explanations of cross-national variation in impact, such as the nature of the democratic transition.

PART I

Part I (Chapter 1 through 3) explores the role of truth commissions in today's struggles for memory, justice, and reconciliation in democratic regimes. Some of the questions that I attempt to answer in the first three chapters are the following: What are truth commissions? What explains their global popularity? Are they different from other fact-finding projects? What is their relationship to the state? Who are the members of a truth commission and what role do they play during political transitions? What narrative strategies do they employ while rewriting the nation's history?

Part I sets a theoretical framework by engaging in academic and policy debates in three interrelated areas: Conceptual issues surrounding truth commissions and other fact-finding initiatives (Chapter 1), the politics of establishing, operating

and endorsing truth commission (Chapter 2), and the commission's role in the struggles for memorialization (Chapter 3). While differences between commissions are highlighted, these chapters focus more on what is common across multiple experiences. State-society relations, political legitimation, civil society participation, commission autonomy, divisions over social memory, and the tensions between forensic investigation and historiography are common themes that all truth commissions find themselves dealing with. Part I explores these themes and thus prepares the stage for the empirical analyses of truth commission impact in Part II, where variation across truth commissions is analyzed in further detail.

Chapter 1

History and Definition of Truth Commissions

In the following chapter, I offer a definition to set truth commissions apart from similar institutions and practices, such as governmental commission of inquiry, civil society truth projects, and courts. Next, I will introduce the notions of “unfinished truth commissions” and “truncated truth commissions” to distinguish failed truth commissions efforts from successfully completed ones and then employ Louis Bockford's notion of “unofficial truth projects” to refer to nongovernmental truth-finding initiatives.

Definition

A truth commission is a temporary body established with an official mandate to investigate past human rights violations, identify the patterns and causes of violence, and publish a final report through a politically autonomous procedure.⁹

The definition above specifies five fundamental characteristics that distinguish a truth commission from other investigatory bodies. First, it operates for a limited amount of time. Permanent organizations like human rights NGOs or parliamentary human rights commissions therefore do not fall under this dissertation's definition of truth commissions.

Second, a truth commission must issue a final report summarizing the main findings and making recommendations. Usually, the report is submitted first to the political institution that had issued the commission mandate, such as the office of the president, but it is common practice to make the final report available to the general public as well.¹⁰ Some scholars include those truth commissions that were disbanded before publishing a final report (e.g., Bolivia's 1982 National Commission of Inquiry into Disappearances and Ecuador's 1996 Truth and Justice Commission) in their truth commission list. It is problematic to include these commissions without qualification because the failure to publish a final report simply violates the essential task of a truth

⁹ Mark Freeman, *Truth Commissions and Procedural Fairness* (Cambridge: Cambridge University Press, 2006); Priscilla B Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York: Routledge, 2011).

¹⁰ The publicity of the final report should not be considered in dichotomous terms, as a final report can be more or less public among a continuum. Truth commissions in Uganda and Haiti published final reports in 1996 and 1994 respectively, but no more than a handful of copies were printed. For all practical purposes, these public reports are unavailable to the public. This contrasts sharply with the publicity of Argentina's 1983-1984-truth commission, whose final report became a national best seller. I follow the existing literature in including those final reports with limited publicity in my list of truth commissions, but their special condition has to be noted.

commission, namely, to disclose information on human rights violations. In addition, a final report does not only offer publicity, its existence also affirms the autonomy of a truth commission from direct political intervention. A political authority that disbands a truth commission or conceals its final report interferes with the publication and dissemination of facts about human rights violations and eliminates a commission's chances of influencing policy through its findings and recommendations. Those commissions that fail to publish a final report should be categorized as "incomplete truth commissions." Recognizing these commissions as a separate category prevents from conceptual stretching and enables a deeper understanding of the conditions under which truth commission projects fail to publicize their findings and recommendations.

Third, a truth commission examines a limited amount of past events and violations that occurred over a specific period of time, investigating not only instances of violence and violations, but patterns, causes, and consequences, as well.¹¹In other words, it establishes a circumscribed historical record. This circumscribed time period of investigation or "remit" may be extended to the study of a vast array of human rights violations and structural inequalities (e.g., Romania) or restricted to events and violations that affected the lives of a few hundred individuals. Likewise, the time period of investigation may cover several decades or just a few years. What matters for definitional purposes is that the periodization is stated in the mandate establishing the commission. The bounded character of the investigation

¹¹ Daan Bronkhorst, *Truth Commissions and Transitional Justice: A Short Guide* (Amsterdam: Amnesty International Dutch Section, 2003)

separates truth commissions from official nongovernmental monitoring institutions that investigate ongoing violations.

Fourth, a truth commission enjoys autonomy from direct intervention by political actors. It is possible to confuse presidential or parliamentary investigatory commissions with truth commissions, as truth commissions are also established by presidential (e.g., Argentina, Chile, Romania), parliamentary (e.g., Germany, Ecuador), or United Nations (Timor-Leste) mandate. The question of who established the commission (or to what political institution it is accountable) is not immediately relevant for determining procedural autonomy. Rather, a truth commission's mark of distinction is that its operation and final report are independent of the authority that establishes it. Mark Freeman is right to point out that truth commissions is analogous to judicial autonomy in that appointment by the state does not undermine the independence of a body as long as it enjoys operational autonomy.¹²

The crucial test for autonomy is whether or not the political decision makers change the content of the final report, either during or after the commission process. Most truth commissions defend their autonomy in the face of political intrusion. For example, the South African Truth and Reconciliation Commission (TRC) ensured that neither the governing African National Congress nor any other political actor succeeded in revising the content of its final report, despite the fact that many of its findings had delegitimizing consequences for the post-apartheid government and the opposition. A contrasting example is the final report of Uruguay's 1985 parliamentary commission of inquiry called the investigative Commission on the Situation of

¹² Mark Freeman, *Truth Commissions and Procedural Fairness*, 17.

Disappeared People and Its Causes. A commentator writes: “the final statement of the commission was negotiated between the participating parties,” that is to say, between members of the parliament representing different political parties.¹³ Thus, the South African commission qualifies as a truth commission, while the Uruguayan, one does not. Needless to say, the commissioners and the staff, aware of the political stakes involved, take into account the reactions of powerful actors. In other words, autonomy is not in isolation: the criterion of autonomy asks for freedom from direct political intervention, but not inattention to the political context.

Truth commission autonomy introduces a caveat that concerns the professional and prior political activism of commissioners. Commissions usually try to avoid appearing like partisan bodies, which separates them from bi-partisan or multiparty parliamentary commissions, like Uruguay’s 1985 Investigative Commission or Germany’s 1992 Commission of Inquiry for the Assessment of History and Consequences of the SED Dictatorship. Individual merit (a combination of professional standing and moral impeccability) is emphasized as the fundamental criterion for designating commissioners. Nevertheless, it is important to highlight that most commissioners come from a background of political activism or public service. In other words, the principles of nonpartisanship and individual merit guide all truth commissions, but in each process, the principles are interpreted differently.

¹³ Alexandra Barahona de Brito, “Truth and Justice in the Consolidation of Democracy in Chile and Uruguay,” *Parliamentary Affairs* 46, no. 4 (1993): 590. Furthermore, the report findings were not shared with the public, and there was no effort at dissemination of the final report. Nevertheless, Hayner, *Unspeakable Truths*, and Amnesty International list it as a truth commission, while Freeman, *Truth Commissions and Procedural Fairness*, and Barahona de Brito, “Truth and Justice,” do not.

Fifth, truth commissions are official in character, in the sense that a state institution or international organization authorizes the commissioners to undertake the truth-finding task. Nongovernmental truth-finding bodies are not truth commissions. It cannot be denied that efforts to come to terms with the past usually originate with civil society actors, prior to the establishment of a truth commission. For example, the meticulous documentation of abuses by human rights groups in Argentina and Chile, under high-risk conditions laid the groundwork for truth commissions in those countries, while similar civil society projects in other Latin American countries like Brazil, Uruguay, and Paraguay, contributed to the preservation of historical memory when governments refused to establish official truth commissions. Hence, the enormous impact of some civil society actors and initiatives cannot be overemphasized. In procedural terms, however, civil society investigations are not truth commissions because they lack an official mandate, and their findings do not carry the promise of official endorsement.

Unfinished Truth Commissions

Some commissions fail to publish a final report, and in other cases social and political actor's attempts to establish a truth commission fail in the first place. Failed attempts should not be called truth commissions in the interest of sustaining conceptual clarity. Rather, the process leading up to their failure should be addressed in further research. Those truth commissions that were disbanded before publishing a final report should

be called or classified as “unfinished truth commissions”. The existence of an unfinished truth commission means that the idea of a truth commission had considerable societal appeal, which had to be acknowledged by decision makers, but that the project was not completed for reasons that may shed light on that country’s politics around post-conflict truth and justice.

Five countries set up panels that could not publicize their findings and recommendations at all. In Bolivia (1986), Ecuador (1996), and the former Yugoslavia (2001), the commissions disbanded before completing their job; in Uganda (1974) and Zimbabwe (1983), the final reports, presented to presidents who had no interest in promoting human rights accountability, did not see the light of day.

In conclusion, unfinished truth commissions attempts teach two valuable lessons. First, a minimal degree of government support is necessary to have any truth commission at all. Second, none of these commissions produced any discernible social, political, or judicial impact, which suggests that even if commissions influence politics and society through their process well as product,¹⁴ a commission that fails or is not allowed to publish its final report produces no process driven impact. That is in part because the content of a commission’s final report matters: politicians and public officials make use of the findings and recommendations for policy reform either willingly or under pressure from civil society actors. Furthermore, the failure to produce a final report points to a faulty commission process in which the

¹⁴ Priscilla Hayner, “Past Truths, Present Dangers: The Role of Official Truth Seeking in Conflict Resolution and Prevention,” in *International Conflict Resolution After the Cold War*, ed. Paul C. Stern and Daniel Druckman (Washington, DC: National Academies Press, 2000), 369.

commissioners and staff did not work in peace and autonomy for the duration of their work.

Unofficial Truth Projects and Truncated Truth Commissions Attempts

The definition of truth commission provided above distinguishes between NGOs truth finding efforts and officially mandated truth commissions. Instead of confounding civil society truth-finding efforts with truth commissions, it is more clear using Louis Bickford's notion of "unofficial truth projects" to distinguish civil society projects from truth commissions.¹⁵ Such alternative truth projects capture the extent of civil society pressure on governments to establish truth commissions and reveal the discrepancy between the social appeal of the idea of a truth commission in a country and the government's incapacity to satisfy that demand.¹⁶ Thus, distinguishing NGO commissions from truth commissions would allow scholars to better appreciate the independent political and social impact of different kind of truth-finding projects.

Another category of observations concerns cases of frustrated truth commission attempts, when civil society actors lobby for a truth commission, but the government response is negative. In those cases, the absence of a truth commission cannot be attributed to society's indifference to human rights. Rather, the frustrated

¹⁵ Louis Bickford, "Unofficial Truth Projects," *Human Rights Quarterly* 29, no. 4 (2007): 994-1035.

¹⁶ José Zalaquett, "Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations," *Hastings Law Journal* 43 (1992): 1425-1438

attempt points to the discrepancy between a social demand and its political fulfillment. For example, in Uruguay civil society pressured the government for the official recognition of a variety of human rights violations through an investigatory body upon return to democracy in 1985. The government refused to establish a truth commission and the dissatisfaction with the parliamentary commission on disappearances led civil society actors to publish an NGO report on human rights violations that “seem(ed) to mimic truth commissions,”¹⁷ especially the Argentine one. The failure of a similar truth commission attempt in Paraguay in 1989 reveals that the aspiration to establish a truth commission swept through the Southern Cone between the 1983 Argentine national Commission on the Disappeared and the 1990 Chilean National Commission on Truth and Reconciliation, but the official responses tended to be negative.

The categories of unfinished truth commissions and truncated truth commission attempts point to the need for rigorous case studies to examine the role of truth commissions in world politics as popular transitional justice mechanisms. Exclusive focus on completed truth commissions may understate the demand for truth in countries where no observable truth commission took place. The final product, namely the final report, is the main objective of all truth-finding projects, but the significance of these processes cannot be reduced to the product. The enormous

¹⁷ For example, the failure of the Uruguayan transitional government to establish an independent truth commission and the dissatisfaction with the 1985 parliamentary commission of inquiry inspired a human rights organization, Servicio Paz y Justicia-Uruguay (SERPAJ), to carry out its alternative truth project called “Uruguay Nunca Más,” whose final report became a best seller. “Uruguay Nunca Más” captures the enormous appeal of the notion of a truth commission early in the transition, as well as its frustrations in the political process.

normative appeal and mobilization potential of a truth commission as an idea shape the values, interests, and strategies of civil society actors and politicians.

Conclusion

Truth commissions are no passing fashion. Since 2009, three countries transitioning from internal conflict (Kenya, Togo, and Côte d'Ivoire), three consolidated democracies (Canada, Brazil, Colombia), and one country facing regime instability (Thailand) established truth commissions. Many other countries have considered the idea of establishing a truth commission recently, although ultimately the decision makers chose not to establish one. In Venezuela, where parliament pressure to establish a truth commission about the April 2002 coup against Hugo Chávez was overturned by Chávez himself. In the United States, former President Barack Obama rejected proposals by Senator Patrick Leahy and Congressman John Conyers to establish a truth commission to investigate crimes under the outgoing Bush administration. In short, politicians and judges are not always convinced about a truth commission's usefulness and convenience. Nonetheless, the idea had such normative appeal that its advocates promote it under a variety of political configurations to investigate many types of violations (crimes against humanity, massacre, torture, sexual violence, coup attempts, assassinations, among others).

The enormous variety of responsibilities and functions attributed to truth commission across time and space militates against reaching simplistic judgments on

the role truth commissions play in contemporary politics. The following chapters will combine theoretical insights into transitional justice and politics of memory with case studies to understand and explain what is that truth commissions claim to do and what they do in fact.

Table 1. Truth Commissions in Sixteen Countries

	Reparations Recommended: Implemented	Publication of Final Report	Official Endorsement	Creation of Follow-up Institutions	Recommended Reparations Implemented as a result of Civil Society Mobilization	Publication of Final Report as a Result of Civil Society Mobilization
Argentina (1983)	Yes/No	Yes	Yes	None	No (reparations: 2004)	Immediate policy
Uganda (1986)	No/no	No	No	Ugandan Human Rights Commission	No reparations	No publication
Nepal (1990)	No/no	No	No	None	No reparations	Yes (1994)
Chile (1990)	Yes/yes	Yes	Yes	National Corporation for Reparation and Reconciliation	Immediate policy (1992)	Immediate policy

Chad (1991)	No/no	Yes	No	None	No reparations	Immediate policy
El Salvador (1992)	Yes/no	Yes	No	None	No reparations	Immediate policy
Sri Lanka (1994)	Yes/yes	No	No	Presidential Commission on Ethnic Violence	Yes (reparations: 1998)	Yes (2001)
Haiti (1995)	Yes/no	No	No	Office of the Public Prosecutor	No reparations	Yes (1998)
South Africa (1995)	Yes/no	Yes	Yes (government divided)	None	Yes (reparations: 2003)	Immediate policy
Guatemala (1997)	Yes/no	Yes	Yes	None	Yes (reparations: 2005)	Immediate policy
Nigeria (1999)	Yes/no	No	Yes	None	No reparations	Yes (2005; unofficial)
Perú (2001)	Yes/no	Yes	Yes	None	Yes (in process)	Immediate policy
Timor-Leste (2002)	Yes/no	Yes	No	Technical Secretariat	Yes (reparations: 2001)	Immediate Policy
Sierra Leone (2002)	Yes/no	Yes	No (delayed endorsement)	National Commission for Social Action	Yes (reparations: 2008)	Immediate Policy
Liberia (2006)	Yes/no	Yes	No	Independent National Commission on Human Rights	Ongoing civil society campaign	Immediate Policy
Romania (2006)	Yes	Yes	Yes	Consultative Commission for the Analysis of the Communist Dictatorship	Yes (reparations 2013)	Immediate Policy

Chapter 2

The Context of Truth Commissions

Chapter 1 identifies autonomy as a key element of what makes a truth finding panel a truth commission. Politicians may establish commissions with self-serving motives, but it is far from obvious that the commissioners share those motives. Commissions

are neither state bureaucracies nor pure civil society initiatives. Rather, they come into existence and carry out their task through interactions between politicians, bureaucracies, supportive and hostile civil society actors, and the commissioners themselves. This chapter explores these complex state-society dynamics.

First, this chapter identifies the decision points before and during a commission process, and the interactions between the commissioners and the broader political context, to explore the multiple layers of power relations at every stage of a commission's operation. The stakes involved in grassroots human right's activism, the political decision to establish a commission with a specific mandate, and the contestations among commissioners and the staff have powerful effects on the processes and outcomes of every truth commission. An official mandate sets the commission's goals and appoints commissioners, but once they begin their work, the commissioners and the staff use considerable discretion in deciding the panel's goals, procedures, and findings. Each decision reflects the politics around the commission, as well as within it.

I then address the question: under what conditions do commissions assume autonomy and agency with respect to the interests and expectations of key political decision makers? Portraying truth commissions as a policy tool that legitimizes the incoming regime, a common tendency among transitional justice scholars, is too simplistic and misses the fact that many commissions have defended their autonomy from political intervention and published findings that surprised and delegitimized the same politicians who established the commission in the first place. The relation

between the political elite and a truth commission is one of elective affinities, rather than instrumentalization.

This discussion is followed by the argument that truth commissions attempt to insert themselves into state-society relations as mediators. The historical background of massive human rights violations makes such a mediating role possible. Truth commissions tend to be attentive to the struggles of power and legitimacy that take shape between various political and social actors in the context of a regime transition, but their independent agency has to be acknowledged, too. Commissioners' professional and intellectual backgrounds, values, goals, and ideas reveal a lot about the specific ways in which they seek to build bridges between the state and the victims, as well as society in general.

Power Dynamics and Truth Commissions

Truth commissions stand out as an institutionalized means of coming to terms with the past. As such, they mediate between political decision makers and vulnerable sectors of the population (in particular the victims of human rights violations), regulate disagreements among political and cultural elites over the violent past, and create a space of contestation for grassroots activism and governmental institutions. Therefore, power relations permeate truth commissions. Exploring the interaction of bottom up and top down processes is useful in understanding what truth commissions set out to achieve.

My approach is partly inspired by Richard Ned Lebow's framework for the study of institutional memory in the introduction chapter of a coedited volume on the politics of memory in postwar Europe.¹⁸ He maps the study of memory politics onto three levels, individual, collective, and institutional. The individual level is the subject matter of psychology and psychoanalysis, while the study of collective memory falls within the scope of cultural sociology and history. The level of institutional memory, understood as the study of how individual memory can be shaped by political elites, is a proper political science topic. At this level, scholars should challenge the implicit and explicit assumptions that treat social memory like the common heritage of a culturally homogeneous collective and uncover the ways in which relations of power influence the institutional construction of memory. Lebow suggest that studying the interaction of top down and bottom up processes is a fruitful approach, as layers of grassroots organizing and elite involvement shape post-conflict truth and justice projects. My approach refines Lebow's general framework by examining the possibility that institutional fact finding and memory projects, such as truth commissions, take on a life on their own by acting somewhat autonomously from the broader political context. In addition, I show that relations of power operate on institutional memory projects, as well as within them.

The interplay of power relations takes place at three levels in a truth commission process: (1) civil society activism around a truth commission, (2) the

¹⁸ Richard Ned Lebow, "The Politics of Memory in Postwar Europe," in *Politics of Memory in Postwar Europe*, ed. Richard Ned Lebow, Wulf Kansteiner, and Claudio Fogu, 1-39 (Durham, NC: Duke University Press, 2006).

political decision-making process that establishes the commission with a mandate, and (3) the politics within the truth commission.

Civil Society and Truth Commissions

Defined broadly, civil society refers to spheres of activity outside the state. What is included in this formulation is of course debatable. While this dissertation is not primarily about civil society, the importance attributed to civil society movements in the literature on human rights make it necessary to clarify what is understood by civil society.

In the context of post-conflict truth and justice initiatives, civil society refers to the totality of nongovernmental groups organizing around human rights policy, retributive and restorative justice, and the preservation of historical memory. NGOs are the most visible elements of civil society, but it should be acknowledged that some of the most influential social movements originate from less organized citizen's initiatives, like victim's groups. Furthermore, there is nothing intrinsically pro-rights about civil society: it is impossible to understand why and how a country's justice and truth initiatives are created amended, and disbanded without taking into consideration the individual and organizational actors with a hostile attitude toward such initiatives. Even though civil society groups that matter for truth commissions tend to be domestic and international human rights organizations and associations of victims and victim's relatives, the human rights sector is not the exclusive agent of civil society

mobilization. Throughout this dissertation civil society mobilization refers to organized action in favor of a truth commission's findings and recommendations, since this is the dominant form of activism concerning truth finding initiatives, but mobilization against a truth commission is also taken into consideration.

Civil society's actors contributions to truth finding, justice, reconciliation and the preservation of historical memory should be assessed rather than assumed.¹⁹ Victim-survivors, victim's relatives, and human rights activists have established efforts to create truth commissions for the investigation, official acknowledgment, and dissemination of facts about violations.²⁰ They uphold the right to truth about violations both for its own sake and as the first step toward criminal justice and reparations. The truth commission idea provides a platform across diverse human rights initiatives. Many commissions, and especially the later ones, came into existence as a result of network encounters such as seminars, training programs, and

¹⁹ Kieran McEvoy, and Lorna McGreggor, *Transitional Justice from Below: Grassroots Activism and the Struggle for Change* (Oxford: Hart, 2010)

²⁰ Human rights groups have usually greeted the truth commission with enthusiasm, and more often than not, NGO initiatives have prepared the groundwork for an official commission. During Argentina's democratic transition, however, the victim's association and human rights groups approached the truth commission idea with suspicion, as they feared that a presidential commission would lack autonomy and replace criminal proceedings. Influential victim's organization like Mother of Plaza de Mayo and Liga Argentina por los Derechos de Hombre demanded a governmental or bicameral investigation commission, but President Alfonsín opted for an investigative body created by presidential decree and autonomous from the legislature. Ruti G. Teitel, *Transitional Justice* (New York: Oxford University Press, 2000), 78; Elin Skaar, "Truth Commissions, Trials or Nothing? Policy Option in Democratic Transitions," *Third World Quarterly* 20, no 6 (1999): 1109-1128; Emilio Crenzel, "Argentina's National Commission on the Disappearance of Persons: Contributions to Transitional Justice," *International Journal of Transitional Justice* 2, no 2 (2008): 173-191. Nevertheless, once the commission began the investigatory work, the initial suspicion gave way to critical and selective support.

demonstrations that brought together domestic and international civil society actors and members of previous commissions. For example, advice from the members of the Chilean commission was influential in shaping South Africa's transitional justice agenda in the mid 1990s. Later, some of the South African commissioners and civil society activists became the chief promoters of truth commissions and other transitional justice initiatives elsewhere in the world, especially through their participation in the creation of the International Center for Transitional Justice in 2001.

Once established, a truth commission presents opportunities for domestic and international human rights groups to work together. Collaboration across various NGOs involve the interchange of information, ideas, know how, and funds. Local human rights activists seek effective and innovative ways to reach out for victim's relatives and victim's survivors. The effect of mobilization outlives the commission itself when human rights organization monitors the country's human rights situation in light of the commission's findings and recommendations, scholars and activists conduct studies to evaluate the commission's achievements and shortcomings, and the networks established during the commission process are maintained. In some cases, human rights organizations promote the truth commission's message to such extent that they celebrate the day on which the commission's final report came out (e.g., Peru) as a platform for raising awareness about the country's human rights record. In short, truth commission processes can generate synergies for human rights activism beyond the duration of the commission itself.

Finally, the societal reception of a commission's findings depends as much on the government as grassroots publicity campaigns. If a commission fails to publish a final report, or the final report fails to satisfy civil society actors, unofficial truth projects may substitute for the failed official effort. Furthermore, truth commissions emerge, advance and produce results in those countries where victim's associations, as well as the domestic and international human rights associations, pressure the political decision makers successfully with their demands for historical truth.

The interactions between international NGOs, their national counterparts, and people without NGO affiliation may be mutually supportive, but the potential for conflict should not be ignored.²¹ The exchange of funds, information, and know how is often based on unequal power relations. The perceptions, policy priorities, and budgetary concerns of international NGOs may frustrate the expectations of their local partners. International organizations and NGOs are often criticized for having short time horizons, limited engagement with local actors, and one size fits all policy suggestions.

Similarly, the local grassroots level is not free from power relations, either. International organizations and NGOs seek domestic partners for their human rights campaigns. Victim's experiences, memories, and demands pass through leading individual actors and organizations. Therefore, domestic human rights activists compete with one another over clientele, funds, and recognition. Competition introduces leadership positions for those individuals and organizations that enjoy privileged access to resources (time, funds, governmental protection, and so on). At

²¹ Lucy Hovil and Moses Chrispus Okello, "Editorial Note," *International Journal of Transitional Justice* 5, no 3 (2011): 33-344.

the individual level, “norm entrepreneurs”²² establish the mobilization of grievances around memory, truth, and justice, devising strategies to bring those grievances to public attention. In those regions where historical exclusion and marginalization have deprived indigenous populations of access to the country’s resources, such as basic capacities as literacy set an individual apart from his or her fellow citizens as a community leader.

At the organizational level, the concentration of skills, expertise, and resources in particular NGOs generates a differentiation between more and less powerful actors within the broad human rights coalition. Access to local information is crucial, as are connections with governmental, intergovernmental, and non governmental institutions, to acquire and maintain leadership at the grassroots level. Ultimately, only those organizations that are recognized by governmental and/or international actors as leaders succeed in sitting at the negotiation table to establish a truth commission and have the opportunity to push their agenda in an official truth-telling project. Furthermore, the politics of local civil society is not merely a competition over funds and recognition, as local groups have serious disagreements about what truth, justice, and reconciliation involves. For example, faith-based initiatives that emphasize reconciliation and social healing might run up against international NGOs (and many victims’) insistence on the criminal accountability norm.²³ In conclusion, even those civil society groups that may agree on a similar set

²² Martha Finnermore and Kathryn Sikkink, “International Norm Dynamics and Political Change,” *International Organization* 52 (1998): 887-917.

²³ Aaron P. Boesenecker and Leslie Vinjamuri, “Lost in Translation? Civil Society; Faith Based Organizations and the Negotiation of International Norms,” *International Journal of Transitional Justice* 5, no 3 (2011): 345-365.

of substantive goals compete as much as collaborate during and after a truth commission process.

Establishment of Truth Commissions

Once civil society pressure succeeds in forcing the government to commit itself to creating a truth commission, a number of decision makers participate in issuing a mandate that delineates the basic tasks and the organizational structure of the commission. The political decision-making process creates the truth commission, designates some or all the commissioners and the staff, and sets the rules on how much discretionary power to grant the commission.²⁴ In most countries, the government establishes the mandate, but parliaments, high courts, or international organizations (such as the United Nations) have also sponsored truth commissions. Civil society groups may or may not find the opportunity to voice their interests and values in the initial negotiation process establishing a truth commission. Opposition parties, insurgent groups, the military, and courts often participate in the process, if not as decision makers, at least as key veto players. The inclusivity of the commission creation process is the key determinant of truth commission impact, largely dictating the goals, composition, and procedures of a truth commission.

²⁴ Mark Vasallo, "Truth and Reconciliation Commissions: General Considerations and a Critical Comparison of the Commission of Chile and El Salvador." *University of Miami InterAmerican Law Review* 33, no. 1 (2002): 155.

The commission mandate settles organizational and logistical issues, such as the duration of the commission and sources of funding. More important, those who establish the mandate make key political decisions, such as the commission's goals, specification of the crimes and violations under investigation (the remit), the periodization of political violence and violations, and the definition of the commission's judicial powers (to subpoena, to name perpetrators, and so on). At times, the mandate even sets limits on the nature of the truth commission's historical narrative, for example, when it prohibits the commission from passing judgment on certain historical events and periods—a topic examined in detail in Chapter 3. It is also possible that the political mandate leaves many of the logistical and substantive issues to be decided by the commissioners themselves. Finally, the decision-makers decide on the composition by appointing the commissioners. Combined, the mandate and composition decisions determine the extent to which, and the specific ways in which, a truth commission exercises agency in discovering facts and narrating the violent past.

Typically, the establishing mandate specifies a set of violations to be examined by the truth commission. In some cases, only one category of serious human rights violations, such as forced disappearance, is investigated (e.g., Argentina). In other cases a small set of violations, such as forced disappearance, cases of torture resulting in death, and attacks on state agents by the armed opposition, is under scrutiny (e.g., Chile). Yet, other truth commissions are mandated to study a wide array of violations (e.g., Peru). Sometimes, the limitations of a truth commission's mandate create discontent among the victims of human rights

organizations, who expect a more comprehensive investigation of the full horrors of an outgoing regime. For example, the exclusion of torture and exile from the mandate of Chile's 1990 National Commission on Truth and Reconciliation was seen as a serious shortcoming by human rights activists and motivated them to address torture and exile in subsequent official and unofficial truth projects. The decision to include a wide range of violations in the mandate is certainly in line with the quest for a comprehensive notion of truth, but it requires a longer duration for the commission, as well as more resources.

Delimiting the period of investigation is another political constraint on the truth commission. Periodization serves to bracket political violence and human rights violations on both ends of a linear historical progression. One end separates the pre-violence political community from one that is torn apart by the multiple effects of violence, failure of state institutions, and the loss of shared cultural and political meanings. The other end marks the beginning of a presumed return to post violence normality in which the promise of national reconstruction lies ahead. As such, periodization affects not only which crimes are covered by the commission's mandate but also the kind of historical narrative that can be produced.

The limits on periodization almost always create controversy. If the human rights violations took place at a massive scale under a military dictatorship or military-backed civilian government, as in the Southern Cone throughout the Cold War, the mandate asks the commission to examine precisely the period of undemocratic rule. In Chile the objection to the truth commission's periodization came from the defenders of Augusto Pinochet's regime, who asked for the

investigation of the acts of political violence before the military coup of 1973. In cases of civil conflict, it may be difficult to determine when the hostilities began, and, equally important, the assumption that the conflict did in fact come to an end might be unrealistic. The issue of setting the limits on violence and violations is even more complicated when a series of democratic governments were involved in the conflict or democratic and authoritarian governments alternated. Individual politicians, military, paramilitary leaders, and political parties take part in the periodization debate in an effort to exclude those periods may bring up evidence that compromises their present reputation.

Political decision makers simultaneously enable and constrain the truth commission in another way: they appoint the commissioners. The social pressure to establish an impartial truth-finding procedure introduces a new set of actors to the political stage. Most commissioners to date were jurists and social workers, but international diplomats (e.g., Perú, Colombia) also served on commissions. Truth commissions are defined as much by who composes them as who is left out. The implicit and explicit criteria for exclusion vary across commissions. They may exclude active-duty members of the military or guerrilla organizations. Sometimes victims and victims' relatives are excluded to sidestep accusation of bias (e.g., Chile). Some countries exclude foreigners, even if viable candidates do exist (e.g., Perú), while others designate only non-national commissioners, arguing that domestic actors introduce bias and security concerns (e.g., El Salvador). Some commissions try to represent the country's ethno-cultural diversity (e.g., South Africa and Guatemala, Romania), while others choose not to do so (e.g., Peru). Implicit and explicit

exclusion practices, insofar as they block direct access to a wide range of experiences, memories, opinions, values, and interests, deeply influence the ways in which a truth commission makes sense of the nation's history of political violence.

The Process of Truth Commissions

The fact that a commission is limited by a politically established mandate invites criticism that truth commissions appropriate the past in the service of narrow political goals. This instrumentalist critique captures the political limitations of truth commissions but misses the fact that commissions enjoy significant discretion once the mandate sets the basic framework. Commissioners usually appoint the staff, redefine the objectives and tasks, select cases to investigate, imitate and innovate methodological approaches, establish informational networks with civil society organizations, and seek external funding.

The commission process is not free of political contestation: commissioners reach consensus on many points, but they also disagree. Truth commissions try hard to fight off direct political pressures, but they also take into account the legal, political, and cultural contexts in which they operate. Since commissions do not publish their notes, our knowledge of debates and disagreements within commissions comes from commissioners' memoirs and public statements. For example, the commissioners and staff in Peru are known to have engaged in long discussions about

whether the “truth” should be understood as a forensic matter or part of a broader social history of the nation. In South Africa, the question of granting amnesty to the ANC leaders created tensions between the Truth and Reconciliation Commission and the Amnesty Committee that operated under it. When disagreements emerge, some commissions try to find the least common denominator: The Chilean commission, for example, sought unanimity, but keeping in mind that the memories of the military coup of 1973 still divided the nation (and the commissioners), the final report stated that people could “agree to disagree” over such issues. The Romanian truth commission tended to agree on most findings, explanations, and recommendations, but two members of the commission inserted a footnote in the final report in order to signal their doubts regarding the number of victims during the period of investigation covered.²⁵

Truth Commissions and Legitimacy

The political constraints on a truth commission’s work bring onto question the extent to which commissions serve the political actors who create them. It has been suggested that truth commissions tend to legitimate the incoming regime²⁶ and the hegemonic socioeconomic order.²⁷ If powerful political actors create commissions as a means of promoting national reconstruction and unity, how could commissions

²⁵ The two members are Dorin Dobrinu and Andrei Pippidi. Raport Final, pg 463.

²⁶ Richard A. Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State*(Cambridge: Cambridge University Press, 2001).

²⁷ Greg Grandin, “The Instruction of Great Catastrophe: Truth Commissions < National History, and State Formation in Argentina, Chile, and Guatemala,” *American Historical Review* 110, no.1 (2005): 46-67

possibly avoid accommodating to the interests and expectations of those actors? Why do politicians agree to establish truth commissions if they do not expect that the findings will serve their interests? How can truth commissions produce a historical narrative, which they hope will receive official recognition, without instrumentalizing the past? If they in fact cater to political interests, then why do so many politicians deny their findings and ignore their recommendations for reform?

I claim that the forensic and historical truth produced by truth commissions is not necessarily an instrumental appropriation of the past and that they have surprised and delegitimized political decision makers in many countries. In fact, their autonomy partly explains why societies invented or emulated truth commissions as ad-hoc truth finding bodies in the first place. The justification for existence of a truth commission is to establish an honest and impartial account of past events and reconstruct historical memory where conventional state institutions, such as courts and parliamentary committees, have failed to do so. The commissioners and staff who make up a truth commission are expected not to represent a government, institution, or party position. Instead, the criteria for selection tend to focus political impartiality, intellectual honesty, and moral uprightness. Ultimately, truth commission's findings, narratives, and recommendations do not necessarily advance the interests of power holders. Political needs delimit and partially condition what truth commissions produce, but they cannot determine the final outcome.

Truth commissions frequently surprise and upset politicians, including those that who had established the commission in the hope of advancing their political interests. The findings of the South African Truth and Reconciliation commission

delegitimized not only the representatives of the apartheid regime, but also some politicians with the incoming African National Congress government, so much so that some party members tried to stop the publication of the final report the day before it was submitted to President Mandela. After listening to the summary of the final report's content, Guatemala's president refused to receive the report from the hands of the commission's chair at the delivery ceremony. In Romania, the enormously high estimates of victims surprised the political class. The publication of the death toll in turn, slowed down the incorporation of the commission's recommendation (including a victim-centered reparations program) into policy. Furthermore, the commission pointed to not only ideology, but also structural racism and socioeconomic inequality at the root of nation building and, consequently, widespread political violence. Thus, the recommendations went beyond institutional reform, encompassing radical changes in social organization and dominant political discourses.

Do truth commissions serve to legitimize the incoming government? Yes and no. The commissioners' interests, goals, and ideology may match those of political decision makers, but they may just as well be in opposition. If, and when a truth commission legitimizes the new regime, the mechanism that ensures the convergence between the interests of the incoming political elite and the truth commission should be analyzed in further detail. The relative autonomy of a truth commission from direct political intervention means that the correspondence of the truth commission with the incoming regime is explained by elective affinities,²⁸ rather than crude instrumental

²⁸ I borrow the term *elective affinity* from the Weberian sociological tradition to examine the concurrence of ideas and interests. The relationship is not one of causation, and it should not be taken as a nomothetic universal rule that holds

appropriation.²⁹ In other words, the core values informing a commission's work may (or may not) be conducive to the legitimation of the political order.

Truth commissions tend to agree with the incoming political elite in that the prevention of violence is essential for social peace and political stability. Ideally, a commission provides citizens with the assurance that the political community is being reconstructed through the exclusion of violence and the affirmation of the rule of law. In a way, a truth commission "exorcises" terror³⁰ in line with the aspirations of the incoming regime to establish a stable and peaceful polity. Furthermore, incoming governments invoke the normative discourses of democracy, political liberalism, the rule of law, and human rights to distinguish the new political order from the preceding one and to gather support from domestic and international audiences. Insofar as truth commissions develop historical narratives and propose recommendations for institutional reform in accordance with such normative aspirations, the commission agenda may serve to legitimize the new regime. A high degree of control exercised by key decision makers in establishing the commission makes it likelier that the commission's findings and recommendations will satisfy those political actors.

across cases. See Richard Herbert Howe, "Maw Weber's Elective Affinities: Sociology Within the Bounds of Pure Reason," *American Journal of Sociology* 84, no. 2 (1978) 366-385.

²⁹ Richard Wilson mentions the "elective affinities between global human rights and particular social constituencies." Richard A. Wilson, "Afterword to 'Anthropology and Human Rights in a New Key': The Social Life of Human Rights," *American Anthropologist* 108, no. 1 (2006): 77-83. My approach is inspired by Wilson, but I treat elective affinities between the human rights discourse and political actors as a relationship mediated by truth commissions rather than something that exists prior to the truth commission process

³⁰ Ariel Dorman, *Exorcising Terror: The Incredible Unending Trial of General Augusto Pinochet* (New York: Seven Stories Press, 2002).

Critics have documented the degree of correspondence between truth commission narratives and the legitimization discourses of incoming political elites. Historian Greg Grandin analyzes truth commissions in Argentina, Chile, and Guatemala to develop a general critique of their achievements and limitations. He notes that truth commissions tend to promote a particular political project: “state sanctioned investigations into past episodes of political terror were one part of this transition’s agenda to cultivate a notion of liberal citizenship that viewed the state not as a potential executor of social justice but as an arbiter of political disputes and protector of individual rights.”³¹ The affirmation of liberal constitutionalism through the memories of political violence is in fact an exercise in forgetfulness, as socialist and social democratic visions of building a just and democratic society, a viable alternative to the liberal democratic project, are left to oblivion.³²

Grandin criticizes the de-politicization of history by truth commissions: in most truth commission, history was not presented as a network of causal social and cultural relations but rather as a dark backdrop on which to contrast the light of tolerance and self restraint.”³³ History as a source of critique and radical transformation is abandoned in favor of a “parable” that affirms liberal principles of tolerance and elimination of illegitimate violence. Moreover, Grandin notes that societies have not moved far beyond the nationalist genre of historical narrative: “truth commissions serve as modern day instruments in the creation of nationalism and embody what Benedict Anderson describes as nationalism’s enabling paradox:

³¹ Grandin, “Instruction of Great Catastrophe,” 47.

³² Grandin, “Instruction of Great Catastrophe,” 48.

³³ Grandin, “Instruction of Great Catastrophe,” 48.

the need to forget acts of violence central to state formation that can never be forgotten.”³⁴

Grandin’s critique of truth commissions captures the political stakes of writing history in several cases. I agree that the Argentine and Chilean truth commissions served to highlight the merits of a liberal notion of democracy in a way that discouraged the pursuit of socioeconomic and political transformations in the name of social justice. My research in Chile reveals that the truth commission narrated political violence as a product of political radicalism and ideological polarization, ignoring the deeper economic and historical reasons behind political conflict. However, as Grandin himself is careful to note in the example of Guatemala’s Commission for Historical Clarification, not all truth commissions have adopted historical narratives that affirm democratic capitalism uncritically. In fact, human rights activists and social scientists participated as commissioners to analyze the history of structural marginalization and exclusion of ethnic minorities populations in Romania. Consequently, the political class expressed dissatisfaction with these highly critical accounts.

In other words, the mutually reinforcing relationship between truth commission narratives and the incoming regime should not be taken for granted. New governments sometimes criticize the findings and historical explanations of a truth commission that they set up themselves. (e.g., Guatemala) The affirmation of the principles of the rule of law, political liberalism, and the human rights norm may serve to legitimize the new regime, but these principles also set a standard against

³⁴ Grandin, “Instruction of Great Catastrophe,” 48

which to evaluate a government's human rights policy. Domestic and international NGOs have been publishing reports to evaluate the national government's compliance with the truth commission's recommendations in some countries, successive government's failure to live up to those standards undermines the initial legitimacy drawn from the self declared willingness for reform.

To sum up: commissions sometimes legitimate the incoming regime by employing a liberal democratic discourse of nonviolence and tolerance. However, many truth commissions are not simple tools of political legitimation, thanks to their critical autonomous character. Some commissions have severely criticized, to the point of delegitimizing, outgoing as well incoming political elites and set alternative normative standards to reconfigure transitional politics thanks to their attentiveness to emerging global human rights sensitivities. In other words, the normative input of truth commissions goes beyond regime legitimation.³⁵ Given their capacity to surprise and upset their political sponsors, the legitimation offered by truth commissions should be examined contextually and within the framework of elective affinities between the commission and the incoming elites rather than simple instrumentalization.

³⁵ It should be noticed that not all truth commissions interpret the past in order to legitimize, delegitimize. Or set normative standards for the present. Especially post-transitional truth commissions, established at least one decade after return to peace and democratic rule, are under less pressure to envision a national reconstruction project, as institutional transformations had already taken place in their absence. For example, the presidential mandate that established the Uruguayan Commission for Peace (2000) does not specify any political objective, arguably because there was no expectation that the commission should develop one. The truth commission does not reinforce or question the legitimating discourses of the incoming regime; it simply sidesteps the issue.

The Agency of Truth Commission Members

The prominence of truth commissions in contemporary politics highlights the agency of commissioners and staff. Who are they? What kind of an ethical and political function do they fulfill at the margins of state institutions? Do they represent the state? Why do societies bestow upon them critical post-conflict tasks? It is impossible to classify the commissioners as a monolithic group because there is an enormous variation in respect to professional, ideological, gender, national, and ethno-linguistic compositions of truth commissions. Ideally, professional and moral standing is the primary criterion for the selection of commissioners. Their designation does not conform to the procedures of electoral politics because unlike the executive and legislative branches, commissioners are not elected officials, nor are they selected based on partisan commitments. They are not bureaucrats in the strict sense, either, since they are appointed for a temporary (and often pro bono) job with a vague set of tasks and objectives.

As they are not elected politicians, the commissioners cannot claim to represent the demands of constituencies. Rather, they assume the responsibility to bridge between the state and the victims. Truth commissioners have emerged and acquired such popularity in part because conventional mechanism of human rights investigation and provisions of justice (chief among them, judicial institutions) have failed to meet the demands of post violence reconstruction. Truth commissions foster a victim- focused approach, aiming to reintegrate those sectors of the population that have suffered the most from authoritarian rule and internal conflict. They are guided by the notion that the reintegration of victims into society as equal members worthy

of recognition, respect, and compensation is the precondition of a peaceful and functional democracy. Moreover, commissions often encourage the state and larger society to acknowledge violations, recognize the victimhood of fellow citizens, ask for forgiveness, and provide recompense through mechanisms of material and symbolic reparation.³⁶

An additional task of truth commissions, yet often ignored dimension, is to mediate between some sectors of society and the state, and not just between victims and perpetrators.³⁷ The state needs to reassert itself as an impartial and unbiased authority of social and political conflict after a period of violence during which representatives of the state had violated citizen's fundamental rights and/or failed to protect these rights against attacks by armed groups. An important sector of society, including the victim-survivors, victim's relatives, and some opposition groups, cannot easily restore their trust in state officials and institutions (even if there was any trust to begin with). Years of conflict have seen not only the violation of fundamental rights at the hands of the coercive apparatus of the state but also basic protection mechanisms like habeas corpus rights have been systematically ignored by the courts. Lawmakers and enforcement agencies have often intensified the violations.

³⁶ The reconstruction and legitimation of the state through an inclusive reparations program finds clear expression in the words of Ernesto Verdeja: "Reparations publicly reassert victim's moral worth and dignity, make society reconsider its notion of the "we" when faced with reintegrating as equals those who were violated, injured and marginalized in the past., foster the development of public trust in state institutions (important where the state is a primary violator of rights), contribute to undermining the justificatory narratives given by perpetrators by resituating victims as moral agents, and generate a public, critical interpretation of history." Ernesto Verdeja, "Reparations in Democratic Transitions," *Res Publica* 12, no. 2 (2006): 135.

³⁷ Joanna R. Quinn, "The Politics of Acknowledgement: Truth Commissions in Uganda and Haiti" (PhD. Diss., McMaster University, 2003).

Furthermore, in many countries the need to restore trust and legitimacy goes beyond undoing the harm caused by previous acts of violence as vulnerability, exclusion, and violence have characterized state-society relations in the form of repression of political dissent, practices of expropriation and coercion, and systematic neglect of social demands for decades.

Truth commission members insert themselves as mediators between state and society against such a historical backdrop.³⁸ The enactment of the testimonial process sought to reassert state sovereignty in parallel to the recognition of the deponents' victimhood. It has been suggested that the citizenship of victims is constituted performatively through truth telling in commissions.³⁹ The commissioners play a fundamental role in a context of mutual recognition in which society as a whole is expected to reaffirm the state as the sovereign political power through the works of the truth commission, while the state is expected to recognize and redress the vulnerability and victimization of social sectors in return. The presumed truthfulness, impartiality, and accuracy of a truth commission thus entitles it to an elevated ethical status that subjects the state to a mediation process. The mutual recognition is reaffirmed and accentuated if the state follows the truth commission's recommendations and puts into operation restorative and retributive justice

³⁸ During the individual and public testimonial procedures of the Peruvian Truth and Reconciliation Commission, for example, the commissioners always put a Peruvian flag on the table around which they met with the victims.

³⁹ Madeleine Fullard and Nicky Rousseau, "Truth Telling, Identities, and Power in South Africa and Guatemala," in *Identities in Transition: Challenges for Transitional Justice in Divided Societies*, ed., Paige Arthur (New York: Cambridge University Press, 2011), 54-86

mechanisms, which would presumably serve to place the state as a judge of social and political conflict again.

The bridging of the past with the future, individual suffering with national reconstruction, and the state with society generates tensions. Truth commissions are typically established as victim oriented mechanisms to achieve acknowledgement, social peace, and some kind of reconciliation. However, the task of producing a truthful account of the past, promoting the recognition of victimhood, and building social peace and reconciliation might be at odds with one another. Victims do not simply forget and forgive for the sake of enabling dialogue with perpetrators. Presumed perpetrators do not necessarily agree with the categorization of victims and victimizers, and even when they do, they tend to portray themselves as the actual victims of the violent process.⁴⁰ The task for bridging the informational gap between the state and victims forces the truth commissioners to take a stance in favor of victims, while the task of resolving on historical memory pushes them to avoid taking sides. Truth, justice, and reconciliation may not be mutually reinforcing objectives. This accentuates the difficult character of the mediating role assumed by commissioners.

The professional profile, socioeconomic, and cultural background, and political views of the commissioners shape the commission's goals, findings, historical narratives, and recommendations. Chile's 1990 National Commission on Truth and Reconciliation was integrated by human rights lawyers who opposed Pinochet's regime and high profile individuals with links to that regime, and the

⁴⁰ Leigh A. Payne, *Unsettling Accounts: Neither Truth nor Reconciliation in Confessions of State Violence* (Durham, NC: Duke University Press, 2008), 13-40.

commission reflected this political balance. Romania's 2006 Presidential Commission for the Analysis of the Communist Dictatorship was the brainchild of intellectuals whose striving to understand and transform the social reality left its mark on the commissions' goals, definitions, findings and narratives, and recommendations. Desmond Tutu's vision of forgiveness shaped the South African Truth and Reconciliation Commission's discourse in general and, arguably, provided philosophical justification for its amnesty program.

Conclusion

Critics from different political persuasions have wildly different perceptions of what truth commissions do. A communist conspiracy or an appendage to democratic neoliberalism; a tool of regime legitimation; the epitome of the victim-centered approach to transitional justice or an escape valve for perpetrators; and everything in between. Of course, some interpretations have more truth in them, and some carry the spirit of constructive criticism more than others, but still, how is it possible that these temporary institutions invoke so much passion and controversy?

The answer lies in the multiplicity of interests, incentives, and values that play into institutional mechanisms of coming to terms with the past. Truth commissions have been established as an institutionalized response to the problem of confronting the violent past in divided societies. They have an enormously difficult task to accomplish: to convey individual memories of suffering and trauma to the public within the framework of human rights and generate normative and practical

transformations in politics and society. They are constituted as much by bottom-up pressures as by top-down decision-making. Interactions at multiple levels simultaneously enable and constrain a truth commission, and power relations of political contestation develop within the commission itself.

The view of truth commissions as an uncontroversial alternative to adversarial models of fact-finding and justice, such as the courtroom, is not accurate. Truth commissions reflect and seek to transform societal disagreements over past atrocities, which make their work political and adversarial. They choose among the many possible ways of approaching the past. Their choices are shaped in great part by power relations between major political actors (like the incoming and outgoing governments and armed actors), as well as national and international human rights organizations, victims' groups, social sectors that are opposed to a truth commission, and, of course, bystanders. Yet, truth commissions cannot be reduced to the broader political context because the political, intellectual, and professional profiles of the commissioners shape a truth commission's perspectives on the past.

Thus, truth commissions processes are highly structured by the contents of the mandate and the selections of the commissioners and open to surprising twists because the mandate can be intentionally or unintentionally vague and because commissioners make a difference with their backgrounds, interests, experiences, worldviews, and skills. All commissions deal with the complex interactions between incoming and outgoing regime forces, state institutions (such as the military and the judiciary), civil society organizations, and the commission members themselves. Almost all of them deviate from narrow political constraints, but some do some more

than others. The reason for this variation is explained in Chapters 4 where I compare the Chilean and Romanian truth commissions.

CHAPTER 3

TRUTH COMMISSIONS' SEARCH FOR TRUTH AND MEMORY

Most truth commissions combine human rights investigation with a historical narrative explaining the causes and patterns of violence and violations. However, their historiographical function has been generally overlooked by transitional justice scholars, as well as historians. It is understandable that temporary panels established primarily for human rights investigations, rather than the publication of professional historiography, fail to draw attention to their engagement with the past. In addition, not all truth commissions complement forensic investigation with a historical narrative. Nonetheless, many truth commissions do take part in academic and non-academic controversies over the causes, patterns, and consequences of political violence: “The historical narrative written by a truth commission constitutes an important foundational text inserted in the mosaic of cultural memory. Thus, truth commissions produce a counterweight to other narratives circulating in public discourse”.⁴¹ They make a strong claim in favor of remembrance and truth as the precondition of individual and social processes of healing, reconciliation, and peace

⁴¹ Anika Oettler, “Encounters with History: Dealing with the “Present Past” in Guatemala,” *European Review of Latin American and Caribbean Studies* 81 (October 2006): 16.

building. Furthermore, truth commissions are sponsored by governments and sometimes by the United Nations and international NGOs. In other words, their verdict on history carries the stamp of official endorsement. Even though commission's historical narratives do not enjoy the status of professional historiography, their capacity to shape processes of societal contestation over the meaning of the past suggests that their historiographical function should be taken seriously.

This chapter explores the ways in which truth commissions reconstruct the national past. How do truth commissions combine forensic investigation with a historical narrative about past political violence? What entitles the commissioners and the staff, lacking the credentials of professional historians, to assume the responsibility to write history? In what ways do they participate in the debates over social memory? What are the common narrative strategies that allow truth commissions to interact with existing representations of the past circulating in public discourse?

Truth commissions have emerged in political contexts where societies' traditional mechanisms for investigating serious crimes and writing unbiased accounts of the past (the judiciary and the media, chief among them) had ceased to function. They face the double task of discovering forensic facts and forging societal consensus over the meaning of the past. On the one hand, political decision makers grant them, the authority to publicize the truth about the nation's past, above and beyond political and societal debates. On the other hand, commissions are firmly embedded in the social struggles over memory and history, which makes the

reception of their findings and narratives dependent on larger political and societal processes. They produce one truth among others.

Commissions constantly negotiate the boundaries between legal-forensic and narrative-historical notions of truth to validate their claim to truth (an authoritative account of the past) and memory (a shared account of the past). Furthermore, their methodologies, functions, and forms of public reception force observers to rethink the relationship between history and memory. They take a strong moral, political, and epistemological stance in favor of truth against the possibility of denial and relativization, which leads them to consider memory and history to be deeply intertwined.

Truth commissions are at once socially embedded and transformative. They are embedded in the sense that they draw their factual and discursive sources from the existing field of social memory: they use prior human rights documentation and forensic investigation, as well as narratives and memory tropes circulating in the public. Their transformative potential comes from their goal or aspiration to move beyond the limits of existing accounts of political violence by publicizing previously unacknowledged violations and providing new explanations for the causes and consequences of violence.

The tension between the social embeddedness of truth commissions and their claim to move beyond social and political cleavages in the name of truth forces the commissioners and staff to make strategic choices to interpret the past. I identify four such strategies: they might (1) resolve between contending positions by confirming or rejecting certain narratives and explanations that dominate public debates; (2) avoid

contentious issues; (3) give voice to memories and that are systematically excluded from public debates and (4) modify the public debate by producing narratives and explanations that unsettle the existing accounts of the past.

A specific truth commission may make use of one, some, or all of these strategies. Furthermore, truth commission narratives are produced as much by the exclusions as the written content. I develop an analysis of the silences of truth commissions to better understand the ways in which they reconstruct the past and provide illustrative examples of various commissions' narrative strategies and exclusions.

Truth Commissions and the Writing of History

A major source of disagreement among historians concerns the epistemological status of the relationship between history and collective memory⁴². Historical positivism finds memory's claim to truth rather weak. It asserts that memory belongs to the domain of fiction and myth, where social, ideological, and aesthetic concerns take precedence over the claim to represent the past truthfully. The relationship between history and memory is one of the opposition between fact and fiction, science, and myth, "hard" data and anecdotal evidence. Contrasting this position, other historians rightly point to the interdependent nature of this relationship: memory, whether in the

⁴² Jeffrey K. Olick, and Joyce Robbins, "Social Memory Studies: From Collective memory to the Historical Sociology of Mnemonic Practices," *Annual Review of Sociology* 24 (1998): 105-140; Aleida Assmann, "History, Memory, and the Genre of Testimony," *Poetics Today* 27, no. 2 (2006): 261-273; Kerwin L. Klein, "On the Emergence of Memory in Historical Discourse," *Representations* 69 (2000): 127-150

form of historical or written memory stored in archives, is the raw material of history, which in turn informs, and is at times challenged by, collective remembrance.⁴³ The standard of truth, let alone establishing the epistemological superiority of history over memory, in fact points to the dependence of the former on the latter for its truth claim: “we have no other source, concerning our reference to the past, except memory itself.”⁴⁴

The goals, aspirations, and expectations from truth commissions lead them to blur the distinctions between history and memory at every step of their investigatory and historiographical endeavor. They are expected to uphold a high standard of accuracy and truthfulness and simultaneously produce a historical narrative to produce agreement over the meaning of the past among most citizens. As I explain below, their double claim to truth and memory is marked by tension.

The primary task of truth commissions is to provide the full picture of human rights violations. Commissioners and the staff collect testimonial data from victims, observers, and occasionally, perpetrators. Although the human rights investigations is not conducted primarily for historiographical purposes, forensic truth, which can be defined as the totality of corroborated facts about human right violations, is not completely separable from historical truth, which incorporated these facts into

⁴³ Jacques Le Goff, *History and Memory*, trans. Steven Rendall and Elizabeth Claman (New York: Columbia University Press, 1992; Wulf Kansteiner, “Finding Meaning in memory: A Methodological Critique of Collective Memory Studies,” *History and Theory* 41, no. 2 (2002): 179-197; Claudio Fogu and Wulf Kansteiner, “The Politics of Memory and the Poetics of History,” in the *Politics of Memory in Postwar Europe*, ed. Richard Nebow, Wulf Kansteiner, and Claudio Fogu (Durham, NC: Duke University Press, 2004), 21

⁴⁴ Paul Ricoeur, *Memory, History, Forgetting*, trans. Kathleen Blamey and David Pellauer (Chicago, University of Chicago Press, 2004), 21.

explanations about conflict onset, patterns of violations, and their consequences.⁴⁵ Historical explanation is a crucial step for interpreting the occurrence of human right violations within a broader context and connecting individual stories of suffering to national tragedy. Furthermore, the claim that confronting past wrongs prevents future conflict, a foundational promise of truth commissions, requires knowledge about the circumstances that made violence and violations possible in the first place. Therefore, truth commissions write context chapters to analyze the proximal causes of conflict onset as well as its deeper roots.

There is considerable variation across truth commissions in terms of how they combine human rights investigations with historical explanation. All truth commissions contribute to the historiography of political violence, at least minimally, by publicizing the facts of human rights violations. Identifying patterns of violations and responsible institutional actors is another historiographical operation that most, if not all, truth commissions undertake. There is greater variation across truth commissions in whether or not they put the atrocities in historical context. Of the twenty-three truth commissions that produced a publicly viable final report as of 2014, seventeen have undertaken the task of writing a historical narrative. Among them, some prioritize rigorous forensic investigation over historical narrative, devoting a short chapter (e.g., Chile) or several paragraphs (e.g., Argentina) to situating political violence in context (e.g., Romania). Others limit the human rights investigation to a number of illustrative cases and pay closer attention to general

⁴⁵ For an illuminating discussion of the South African Commission's conception of truth, see Alex Boraine, *A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission* (Oxford: Oxford University Press, 2000).

patterns of violence (e.g., El Salvador). Some truth commissions highlight the outgoing dictator's personal disposition for brutality and corruption as a chief cause of national tragedy (e.g., Chad). Others produce several volumes to make sense of conflict and violence from political-institutional, economic, legal, and socio-historical perspectives (e.g., Romania). Some commissions declare themselves unfit to pass moral and political judgment on particular divisive and controversial historical events (e.g., Chile), while others consciously tackle the sources of bitter divisions and social memory (e.g., Romania). In short, there is no common historiographical approach across truth commissions.

Moral and political considerations shape the ways in which truth commissions make strategic decisions about the relative weight of forensic investigation and historical narrative. Forensic data are costly and difficult to obtain; yet publicizing the facts of forced disappearance, massacre, torture, sexual violence, and forced recruitment evokes the public's indignation against perpetrators and makes it difficult for the latter to question the commission's legitimacy. Focusing on forensic data, therefore, enhances the moral standing and political legitimacy of a truth commission in a way that historical explanation, typically considered a matter of opinion, cannot. However, overreliance on forensic data may have alienating effects on the victims, who want the public to understand why they were targeted. The choice of not contextualizing political violence or assigning individual and/or institutional responsibility for violations reduces forensic data to a set of isolated and incomplete

truths⁴⁶, empty of logical connection and meaning. At the extreme, the failure to respond to questions that matter to society about political violence and violations may drive a truth commission to irrelevance. Therefore, the most truth commissions, even the most forensically oriented ones, provide at least minimal historical explanation.

The claim to truth carries enormous political and moral weight.⁴⁷ Deponents (especially surviving victims and victim's relatives) want the commissioners to treat their memories as reflecting the truth, the real experience of violence. They do not regard testimony as an idiosyncratic account of episodes linking fact and fiction. Rather, the testimonial process is an act of witnessing the truth that links individual suffering to political repression and social breakdown. The timing and staging of the truth commission at the moment of political transition and reconstruction accentuates the moral and political character of truth commission narratives.

The demand for truth forces commissioners and the staff to take on the role of historians and social scientists,⁴⁸ but truth commission reports are addressed to the general public, rather than to the academic community. The public judges their historical narratives less on the merit of scholarship than on the basis of perceptions of their truthfulness, accuracy, and usefulness for a number of social and political

⁴⁶ Elizabeth Stanley, "Torture, Silence and Recognition," *Current Issues in Criminal Justice* 16, no. 1 (2004): 5-25

⁴⁷ Commissions' moral interests in historical truth can be situated in the broader context of the transformation of the historical profession in the wake of human rights violations. For a critical account of the increasingly moralized responsibility of historians and intellectuals, see: Richard J. Evans, "History, Memory, and the Law: The Historian as Expert Witness," *History and Theory* 41, no 3 (2002): 326-245; Paul Muldoon, "Reconciliation and Political Legitimacy" *The Old Australia and the New South Africa*, *Australian Journal of History and Politics* 49, no. 2 (2003): 182-196.

⁴⁸ Eduardo Gonzales Cueva, "The Contribution of the Peruvian Truth and Reconciliation Commission to Prosecutions," *Criminal Law Forum* 15 (2004): 62.

ends. As society's reception of a commission's findings, narratives, and recommendations involves the text of the final report as well as the performative or commemorative acts, the commission's role in guiding public discussion goes beyond just the text: "The work of a truth commission is memory work, the creation of collective history and national memory."⁴⁹

The dual claim to truth and social memory places truth commissions in an ambiguous position. Ideally, societies grant them the authority to tell the truth even if temporarily. Yet, their social embeddedness means that the same process of societal contestation over historical memory, which truth commissions supposedly mediate and even suspend in the name of overcoming biases arising from social divisions and political interests, deliver the ultimate judgment on their authority. Powerful political and military actors may impede truth-finding efforts to protect their personal reputation or maintain a status quo founded upon social amnesia. Likewise, many citizens who did not participate in committing violations may mistrust human rights defenders, victims, and the commission staff for various reasons. Thus, they may see a truth commission's narrative as one historical interpretation among others enjoying no special authority to interpret the nation's past.

Truth commissions are best understood as privileged participants in social struggles over memory, or what Eviatar Zerubavel famously calls "mnemonic

⁴⁹ Sophia A. McClennen and Joseph R. Slaughter, "Introducing Human Rights and Literary Forms; or The Vehicles and Vocabularies of Human Rights," *Comparative Literature Studies* 46, no. 1 (2009): 1-9. For a general theory of the performative and commemorative aspects of memory work, see Paul Connerton, *How Societies Remember* (New York: Cambridge University Press, 1989).

battles,”⁵⁰ that is to say, processes of social contestation over the veracity and moral political significance of multiple reconstructions of the past. Even though the commissioners and the staff share with historians, journalists, prosecutors, and social scientists the quest for truth, their authority on truth is somewhat different. Truth commissions’ legitimacy is found somewhere in between procedural authority (truth as an effect of the procedures that bring it into being), and personal authority (the truth value of a narrative is shaped by the moral and social standing of the narrator), the latter highlighting the impartiality and moral excellence of the commissioners. Often, truth commissions complement these two notions of legitimacy with a third principle: the orientation toward witnesses, especially victims, as the sufferers and narrators of personal and national tragedy.⁵¹

Commissions’ claim to authority regarding forensic and historical truth, coupled with their embeddedness in social struggles over the meanings of the past result in constant tension. The struggle for social memory typically precedes the truth commission process. Periods of political violence produce and reproduce incompatible interests, social demands and rival social memories. The presence of

⁵⁰ Social memories: Steps to a Sociology of the Past,” *Qualitative Sociology* 19, no. 3 (1996): 283-300

⁵¹ Some commentators hail the victim orientation in terms that resonate with studies on the epistemological and moral preeminence of the marginalized: “the (South African) TRC’s conscientious diffusion of the meaning of truth aimed at the provisional and transitional nature of truth, a kind of empowering critical element within truth that could only come from the position of the powerless.” Leigh M. Johnson, “Transitional Truth and Historical Justice: Philosophical Foundations and Implications of the Truth and Reconciliation Commission,” *International Studies in Philosophy* 38, no 2 (2006): 81.

alternative memory narratives and “frameworks of memory”⁵²simultaneously enable and constrain a commission’s construction of historical truth. As long as the interpretative frameworks, causal explanations, and memory tropes employed by a truth commission originate in the process of social interaction, the field of social memory enables the commission. However, the social embeddedness of the truth commission is also a constraint because the commissioners and staff cannot step outside the hermeneutics of social interaction to produce a completely independent narrative.

Truth commissions operate in the already existing field of social memory, yet their involvement may alter the field itself. While the social embeddedness of truth commissions creates a strong tendency toward agreement with existing representations of the past in scholarship and social memory narratives, truth commissions’ capacity to transcend taken for granted meaning frameworks should be acknowledged. The reason for existence of truth commissions is to uncover facts and provide new perspectives on national history.⁵³Their sponsors (politicians, civil society groups, international agencies) assume, implicitly or explicitly, that before the intervention of truth commissions, the social contestation around the past had been impaired by incomplete information, the presence of actors too biased to acknowledge the complete truth, and the absence of procedures and institutions to generate agreement over the facts as precondition of public deliberation. Therefore,

⁵² Maurice Halbwachs, *On Collective Memory*, trans. Lewis A. Coser (Chicago: University of Chicago Press, 1992).

⁵³ Verdeja, “Reparations in Democratic Transitions,” 135; Johnson, “Transitional Truth and Historical Justice.”

many truth commissions have incentives to redefine the terms of the debate to challenge the ongoing reconstructions of the past in the public sphere.

As is often witnessed during political transitions, the perpetrators and beneficiaries of violations prefer to live on as though past crimes did not matter. Likewise, bystanders might choose to turn the page on history in the name of political stability or a narrow notion of social reconciliation.⁵⁴ Many victims are no longer alive and victim-survivors are likely to face social exclusion. Under those circumstances, truth commissions break the forced normalization of social and political life by advocating a process of coming to terms with the violent and divisive past as a precondition of recovering a shared, un-coerced public space.

Truth commissions problematize the past in ways that may upset some sectors of the population, especially the presumed perpetrators and a significant portion of uninvolved bystanders, although an important measure of truth commission success is the ability to persuade precisely those potentially hostile sectors. To overcome the forced silencing of alternative memory narratives, commissions endow victims-survivors and victims' relatives with a historically unprecedented role in making meaning of the past. Yet, their empathetic engagement does not translate into full identification with the victims, as truth commission narratives often diverge from victims' own explanation of causes and consequences, thereby failing to fully satisfy victim's expectations.⁵⁵ Thus, commissions risk alienating all concerned actors while

⁵⁴ Alex Wilde, "Interruptions of Memory: Expressive Politics in Chile's Transition to democracy," *Journal of Latin American Studies* 31 (1999): 473-500

⁵⁵ For the challenges of writing victim-centered histories, especially the danger of over-identification with the victim and the traumatic narrative, see Diminick

trying to satisfy them all. The authority associated with their claim to truth is transformed into the need for legitimation through persuasion and agreement over the meaning of the past. Toward that end, truth commissions make strategic choices to produce historical narratives that disrupt existing meaning frameworks without destroying the possibility of mutual understanding and without compromising the claim to truth.

Truth Commissions and Narratives

Truth commission narratives make strategic interventions into the struggles for social memory, in dialogue (and contestation) with official statements, media coverage, scholarship in history and the social sciences, and the memory narratives of civil society groups, state security institutions, (in some cases) non-state armed actors and political parties. Truth commissions take part in the ongoing social debates by employing four main strategies: resolving, avoidance, the claim to giving voice, and modifying. A truth commission's final report may combine some or all of these positions.

The specific provisions of a commission's mandate set limits on what it can say. Sometimes the commissioners are discouraged from resolving politically contentious memory debates (e.g., El Salvador), whereas in others cases they are

LaCapra, *Writing History, Writing Trauma* (Baltimore: Johns Hopkins University Press, 2001)

explicitly encouraged by the mandate (e.g., Romania) or the silences of the mandate can be interpreted by the commissioners as an opportunity for historical interpretation (e.g., Guatemala). Furthermore, a commission's forensic investigation is powerfully shaped by the judicial attributes granted (and more often, not granted) by the mandate. While acknowledging the mandate constraints on commissions, however, I hold that commissioners and the staff exercise considerable agency in their choice of narrative strategies. Many commissions have surprised and even upset the political decision makers who establish them as limited fact-finding panels through their shocking findings, comprehensive historical narratives, and recommendations. Therefore, I treat commissions' narrative strategies as semiautonomous decisions made by commissioners and the staff under constraining circumstances.

Part of truth commission's memory work requires resolving competing social memories. The truthfulness and accuracy of existing historical interpretations are inspected and commissions confirm or disconfirm some or all the elements that make up various reconstructions of the past.

Truth commissions almost always refute the official propaganda circulating under authoritarianism and internal conflict. One example of this is Uruguay's Commission for Peace, which found that the majority of victims did not participate in subversive acts and were killed after the armed insurgency was defeated therefore, it

concluded that the practices of torture and disappearance were not in response to insurgency.⁵⁶

Besides refuting propaganda, some truth commissions also correct widely held misperceptions. The Romanian truth commission provided evidence for several crucial evaluations of the Communist regime that were radically different from those generated, perpetuated, and reproduced before the publishing of the final report. The report revealed new dimensions of the Romanian resistance to Communism. Contrary to the narrative promoted by the Far Right and Far Left that members of the Iron Guard represented the core resistance against fascism in Romania, the actual resistance was made up of former military officers, teachers, and people belonging to democratic parties.⁵⁷

The resolving function is not limited to exposing official lies and misperceptions. Truth commissions incorporate or exclude elements from a rich array of social memories. To the extent that they resolve between contenting memory narratives, their judgment risks political controversy. Argentina's national Commission on the Disappeared provides contextual background on the pre-coup violence with a single sentence, written by Ernesto Sábato in the prologue: "During the 1970s, Argentina was torn by terror from both the extreme right and the far

⁵⁶ Comision para la Paz, *Informe Final* (Montevideo: La Comision, 2003) para. 46, accessed January 2018, http://www.presidencia.gub.uy/noticias/archivo/2003/abril/informe_final.doc.

⁵⁷ Ruxandra Ceseranu, "The Final report on the Holocaust and the Final report on the Communist Dictatorship in Romania," *East European politics and Societies*, 22, no 2. (2008), pp. 271-172.

left.”⁵⁸ The sentence sparked such reaction from the relatives of leftist victims that after decades of controversy, it was deleted from the prologue of the 2006 edition of the final report. Chile’s National Commission on Truth and Reconciliation intervenes in the public debate over the legacy of the democratic socialist Unidad Popular government (1970-1973) experience that ended with the military coup. Drafted by historian and commission member Gonzalo Vial,⁵⁹ the commissions’ context chapter sides with the right wing historical narrative that sees decline, crisis, and potential for violence in the socialist experiment. The leftist memories of political mobilization and social transformation are entirely absent from the commission’s narrative. Nonetheless, the context chapter refutes the military regime’s characterization of the post-coup period as an internal conflict.⁶⁰

Commissions sometimes make the explicit decision not to take sides. Mandate limitations may force the commissioners to avoid judgment. At times, commissioners themselves prefer not to take a stance: the issue at hand may be considered irrelevant

⁵⁸ “Prologue” in *Nunca Más: Informe de la Comisión Nacional sobre la Desaparición de Personas* (Buenos Aires: EUDEBA, 1984), accessed January 27, 2018, http://web.archive.org/web/20031004074316/nuncamas.org/english/library/nevagain/nevagain_001.htm.

⁵⁹ Steve L. Stern, *Reckoning with Pinochet: The memory Question in Democratic Chile, 1989-2006* (Durham, NC: Duke University Press, 2010), 82.

⁶⁰ In countries that have undergone more than one truth commission process, the latter commission may correct the historical inadequacies of the earlier one. Chile’s 2003 Commission on Political Imprisonment and Torture devotes part of its context chapter refuting the thesis that a state of civil war existed before the coup. The earlier national Commission on Truth and Reconciliation Commission (or “Rettig Commission” after its chair) is ambiguous on the subject: it rejects that an actual civil war took place in Chile, but it also notes that “the objective conditions for a civil war were present in 1973. The later commission rejects the “objective conditions” argument, as well.

to the commissions work, the commissioners may declare themselves unfit to assert their point of view; or the commission may find the issue controversial to take the risk of making a judgment.

Avoidance should not be understood as the absence of historiography. A truth commission's decision not to intervene into the debates over social memory defines issue areas in which the commission puts no restrictions on the struggle for social memory. Opposing positions enjoy equal legitimacy and truth-value from the commission's perspective. In other words, if commissions are asked to "draw the moral bottom line"⁶¹ by setting limits on what can be said, then the strategy of avoidance identifies those parts of the past for which it sets no political limits on what can be said.⁶²

Chile's National Commission on Truth and Reconciliation decided not to comment on the legitimacy of the military coup of 1973 and the accomplishments or failures of the military regime. The final report declares that Chileans can have "legitimate disagreements" on those issues.⁶³ It can be argued that the polarization of the Chilean society around the legacy of the Pinochet dictatorship led the

⁶¹ Charles S. Maier, "Doing History, Doing Justice: The Narrative of the Historian and of the Truth Commission," in *Truth vs Justice: The Morality of Truth Commissions*, ed. Robert I. Rothberg and Dennis Thompson (Princeton, NJ: Princeton University Press, 2000), 267

⁶² The final report of El Salvador's 1992 Commission on the Truth acknowledges that the causes and conditions which generated the large numbers of serious acts of violence in EL Salvador derive from very complex circumstances and simply declared the commission uninterested (or unable) to pass judgment on Salvadorian history. *Report of the Commission on the Truth for El Salvador* (New York: United Nations, 1993), accessed January 27, 2018, www.usi.org/sites/default/files/file/ElSalvador-Report.pdf.

⁶³ Report of the *Chilean National Commission on Truth and Reconciliation*, vol.1, trans. Phillip E. Berryman (Notre Dame, IN: University of Notre Dam Press, 1993),64.

commissioners to take a cautious approach. In fact, the composition of the commission itself reflects the deep divisions over memory: the truth commission was split centrist or left leaning human rights advocates and sympathizers of the Pinochet regime. The commissioners sought to ensure consensus within the panel by refraining “ from taking a stand on whether the use of force on September 11, 1973, and immediately thereafter was legitimate.”⁶⁴

One of the key claims of truth commissions is to give voice to those experiences and memories that were forced into silence and oblivion. The appeal of truth commissions as tools of transitional justice and the preservation of historical memory owes partly to the fact that post-conflict societies face serious obstacles to instituting processes of dialogue free of intimidation, exclusion, and manipulation. The systematic exclusion of persons and social groups from struggles for memory threatens the very truthfulness of publicly circulated narratives. Ideally, commissions take into account the relations of political, cultural, and socioeconomic domination that deny victimized individuals and communities access to state institutions, civil society organizations, the media, and academia. In other words, truth commissions seek to transcend the existing field of social memory by granting access and visibility to previously silenced individuals and social groups.

⁶⁴ Report of the *Chilean National Commission on Truth and Reconciliation*, 31.

Commissions frequently bring into light those voices that otherwise remain excluded from public debates. Almost every final report has chapters devoted to addressing the needs and grievances of the victims. A number of procedures, including confidential testimony taking sessions and public hearings, are specifically designed to give voice to victim-survivors and victim's relatives.

Commentators note commission's considerable success in promoting official recognition of victimhood by incorporating the narratives of affected persons into national memory.⁶⁵ Fiona Ross notes that "individual experiences of suffering were harnessed to the imaginative work of forging a new public imagery and sociality" in the work of the South African TRC.⁶⁶ Elizabeth Lira argues that "the Report of the National Commission of Truth and Reconciliation (in Chile) built a bridge between private suffering and social policies."⁶⁷

Parallel to their orientation toward victims, truth commissions offer a platform for perpetrators to come forward to testify. Confessional narratives can be thought of as giving voice in a different way: they bring new voices into the public debate by overcoming self-concealment rather than forced silence and exclusion. Even under auspicious circumstances, however, a small number of perpetrators testify before truth commissions. Among those who do, many reproduce self-justifying tropes of

⁶⁵ Laurel E. Fletcher and Harvey M. Weinstein, "Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation," *Human Rights Quarterly* 24, no. 3 (2002): 573-639.

⁶⁶ Fiona C. Ross, "On Having Voice and Being Heard: Some After Effects of Testifying Before the South African Truth and Reconciliation Commission," *Anthropological Theory* 3, no. 3 (2003): 326.

⁶⁷ Elizabeth Lira, "Remembering: Passing Back Through the Heart," in *Collective Memory of Political Events: Social Psychology Perspective*, ed. James W. Pennebaker, Darío Páez, and Bernard Rimé (Mahwah, NJ: Lawrence Erlbaum Associates, 1997), 229.

heroism and sacrifice, while a few others add elements of confession, repentance, and apology into their narratives, thereby unsettling fixed positions on the struggles for social memory.⁶⁸ Despite the prevalence of the reconciliation discourse that emphasizes mutual respect and acknowledgement between victims, perpetrators and bystanders as a crucial step for forging lasting peace, the majority of individual and institutional actors implicated in past abuses have either kept silence or reacted to commission's findings and conclusions in angry and dismissive statements. As a result, truth commissions remain a predominantly victim-driven transitional justice mechanism.

Truth commissions do not merely address existing memory narratives, causal explanations, and justifications. They sometimes modify the public debate by incorporating novel vocabularies, narratives and explanations. As stated earlier, the transformative potential allows a truth commission to challenge the limitations arising from its social embeddedness. The primary source for the transformative narrative strategy is the moral and legal language of human rights and transitional justice. For example, the incorporation of material and symbolic reparations as a restorative justice mechanism relates strongly with truth commission's recommendations for monetary reparations, education, health benefits for victims, and commemoration

⁶⁸ Payne *Unsettling Accounts*. For a critical take on the practice of incentivizing perpetrators to testify, see Moon, *Narrating Political Reconciliation*, 91-114

measures as symbolic reparation.⁶⁹The consciousness around truth commission has also resulted in the inclusion of the right to truth as a human right that governments and courts are obliged to uphold in customary international law.⁷⁰If truth, memory, and reconciliation have become so central to post-conflict justice and reconstruction efforts in the contemporary period, truth commissions can claim much of the credit.

As truth commissions shape the human rights discourse in various ways, the evolution of the human rights discourse also creates new mentalities and sensitivities that truth commissions attend to. For example, the Romanian truth commission has attempted to transform the public debate through its conclusion that the communist repression in Romania was in fact an instance of “genocide”. The Final report includes in this category “the destruction of Romanian social system through collectivization, economic collapse and environmental disaster brought about by the pace of industrialization, the degradation of the education system, widespread religious persecution and deportations. The commission’s assertion that state agents committed “genocidal acts” against the Romanian population reflects the emerging consciousness that many atrocities should be re-conceptualized as genocide in today’s world.

⁶⁹ Pablo de Greiff, ed., *The Handbook of Reparations* (Oxford: Oxford University Press, 2006); see also Roy L. Brooks, “Reflections on Reparations” and Sharon F. Lean, “Is Truth Enough? Reparations and Reconciliation in Latin America,” both in *Politics and the Past: On Repairing Historical Injustices*, ed. John Torpey (Lanham, MD: Rowman and Littlefield, 2003), 103-114 and 169-191.

⁷⁰ Juan E. Méndez, “Derecho a la verdad frente a las graves violaciones a los derechos humanos,” in *La aplicación de los tratados sobre derechos humanos por los tribunales locales*, ed. Martín Abregú and Christain Courtis (Buenos Aires: Del Puerto-CELS, 1997), 517-540; Yasmin Naqvi, “The Right to the Truth in International Law: Fact or Fiction?” *International Review of the Red Cross* 88, no. 862 (2006): 245-273

Another prominent example of truth commission's attentiveness to emerging global human rights norms has to do with the way different commissions have dealt with sexual violence across time. While earlier truth commissions largely ignored the issue of sexual violence on the ground that this category of crime did not fall within their mandate,⁷¹ the worldwide recognition of sexual violence as a distinct category of human rights violations throughout the 1990s led some of the later truth commissions (South Africa, Chile, Peru, Colombia) to address the issue specifically.

For example, Chile's 1990 National Commission on Truth and Reconciliation did not conduct a separate investigation on sexual violence, as the commission's mandate limited the remit of investigation to forced disappearance, extrajudicial killings, and lethal torture. By contrast, the final report of Chile's 2003 Commission on Political Imprisonment and Torture devotes a section to sexual violence and two shorter sections to violence and the mistreatment of minors during the military rule. The commission attempts to overcome the silence on sexual violence with a mixture of modifying lack of discussion on rape and sexual torture and giving voice to the victims.

Truth Commission and Exclusions

⁷¹ The Salvadorian Truth Commission, facing a case in which "three U.S nuns and a lay worker had been raped by soldiers before they were killed," reported only that they were "abducted and killed" because the commission could not determine if the cases of rape fell within the scope of politically motivated acts, or they were committed at the initiative of the soldiers. Hayner, *Unspeakable Truths*, 87.

The exclusions of a text should not be considered the absence of narrative; to the contrary, conscious and unconscious exclusions may be as integral of historiography as the written text. In fact, the commissioners and the staff adopt specific case selection and analysis methods to conduct forensic investigation, make sense of the data through particular meaning frameworks and vocabularies, and shape historical narratives with their values, worldviews, and interests⁷². Therefore, the final reports necessarily exhibit selective and exclusionary features- with significant variation across truth commissions.

The decision makers who set up a truth commission's mandate partly account for historiographical exclusions. Most mandates do not allow the final report to identify perpetrators. Therefore, commission's usually produce something less than the "complete truth", that is, the identification of the criminal act, the harmed individuals, and the perpetrators.⁷³ Narrow definitions of human rights violations may also bias the reconstruction of the past. For example, the mandate of the South African TRC allows the investigation of only those crimes that had been committed with a "political motive." The definition facilitates the recognition of political activists in the resistance movements as victims, but not the sufferers of the everyday functioning of apartheid. Limitations and the remit may also create gender bias. A truth commission asked to investigate all the cases of death and disappearance exclusively is likely to put emphasis on young males victims, which in turn means

⁷² For an excellent account of the "technologies of truth" employed by the South African TRC, see Wilson, *Politics of Truth and reconciliation*, 33-45

⁷³ Elizabeth Stanley, "Truth Commissions and the Recognition of State Crime" *British Journal of Criminology* 45, no. 4 (2005): 582-597

that women experiences of suffering and vulnerability (for example, as widows and orphans facing poverty and social exclusion) are omitted from history.

Periodization plays an enormous role in shaping the historical narratives, as well. Arbitrary cutoffs dates inevitably produce incomplete histories of violence and trigger the suspicion of intentional bias. Social and political actors dispute a specific periodization because it has implications for which violations are under investigation, which individual and institutional actors are held responsible for the violations, and how the commission will narrativize the past.

In spite of mandate constraints, the commissioners and the staff exercise considerable discretion over the content of the historical narrative and, consequently, its exclusions. Their decisions often determine whether or not a truth commission will produce a comprehensive and inclusionary historical narrative. For example, the members of Chile's 1990 commission decided to write a short content chapter on the immediate causes of the military coup, overlooking the possibility of explaining the socioeconomic, political-institutional, and cultural factors underlying political conflict. In contrast, Romania's truth commission, bringing together famous social scientists, civil society and human rights advocates as commissioners, produced a comprehensive and methodologically pluralistic social history of the country, interconnected by a central narrative and spanning several volumes.

Some exclusions happen when commissions fail to give voice despite their best intentions to be all-inclusive and empowering, especially toward the victims. Technical difficulties make it impossible to reach all the affected areas. For example, the Chilean truth commission failed to take testimonies in faraway Andean towns.

The social climate of fear and mistrust also prevents the victims from testifying in those regions recovering from a prolonged period of violence. Furthermore, relations of social domination may also block vulnerable person's access to a commission, as their superiors claim the right to speak for them. The Regional Commission in East Timor (2002-2005) could not contact women during the testimonial process because, when the commissioners arrived at the villages, male heads of household directed them.⁷⁴ Complicating the picture is the fact that commissioners sometimes fail to understand the nature of victimization and to devise strategies to reach out to victims. Early commissions' failure to conceptualize sexual violence as a category of violation distinct from torture is one such example.

This limited capacity to discover memories of individual suffering has led some commentators to claim that commissioners are better equipped for capturing "macro truth" (patterns of mass violence) than "micro truth" (individual narratives).⁷⁵ Nonetheless, most commissions have been criticized for ignoring systemic violence. The South African TRC's lack of engagement with institutionalized violence is a case in point.⁷⁶ The tendency to create hierarchies of violations has led most commissions to prioritize civil/political rights at the expense

⁷⁴ Stanley, "Truth Commissions and the Recognition of State Crime," 590.

⁷⁵ Audrey R. Chapman, and Patrick Ball, "The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala," *Human Rights Quarterly* 23, no. 1 (2001): 41; Audrey R. Chapman, "Truth Finding in the Transitional Justice Process" in *Assessing the Impact of Transitional Justice: Challenges for Empirical research*, ed. Hugo van der Merwe, Victoria Baxter, and Audrey R. Chapman (Washington, DC: U.S. Institute of Peace Press, 2009), 104-105.

⁷⁶ Hugo van der Merwe and Audrey R. Chapman, "Did the TRC Deliver?" in *Truth and Reconciliation in South Africa: Did the TRC Deliver?*, ed. Audrey R. Chapman and Hugo van der Merwe (Philadelphia: University of Pennsylvania Press, 2008), 249.

of socioeconomic rights, although the final reports in Romania and Perú have moved beyond this narrow framework.

Several commentators have criticized truth commissions on the grounds that their historical narratives focus too much on individualized criminal acts, to the exclusion of the ordinary operation of violations and injustice. Mahmood Mamdani points out that “from the outset, there was a strong tendency in the South African TRC not only to dehistoricize and decontextualize the story of apartheid but also to individualize the wrongs done by apartheid.”⁷⁷ Millions of citizens who had suffered from the regime’s practices of forced labor, forced removal, and racial discrimination were excluded from the TRC’s broader historical narrative.

Mamdani’s criticism sheds light on a greater phenomenon that seems to have afflicted most truth commissions: overemphasis on forensic investigation excludes from historiographical interpretation those cultural, socioeconomic, ethno linguistic, racial, and gendered social hierarchies and relations of domination that produce, maintain, and perpetuate inequality, discrimination and violence. The Southern Cone dictatorships in the 1970s and 1980s, committed massive violations of bodily integrity rights in the context of ambitious economic liberalization projects that left significant portions of society under conditions of poverty, unemployment, and vulnerability. However, truth commissions in Argentina, Chile, and Uruguay have not addressed these social and economic factors as either underlying causes or motivations for political repression. On this point, Vladimir Tismaneanu points out that from the outset the Romanian truth commission “underscored the need to confront collective

⁷⁷ Mamdani, “Amnesty or Impunity?” 57; original emphasis.

and individual responsibilities and acknowledge the institutional mechanisms of regime reproduction across the entire society”.⁷⁸

This summary of shortcomings and exclusions of truth commissions takes the discussion of this chapter back to where it started: truth commissions are established, usually during political transitions, as a mechanism for coming to terms with a violent past, and as such, they are part of a larger national reconstruction project. As critics of the transitional justice paradigm suggest, the context in which truth commissions produce historical narratives is one of “nation-building and a hegemonic project of state formation”⁷⁹. One can argue that the potential for political and discursive violence is lurking at this founding moment of national reconstruction.⁸⁰ Various commissions have excluded key events, historical figures and forms of human suffering from their historical accounts, which raises the suspicion that the project of nation building through remembrance is a contemporary version of Ernest Renan’s famous association of willed forgetting and national (re)imagination. However, it is crucial to take into account those truth commissions that try to produce the most inclusionary and complex historical narrative possible. Many commissions, even those established for narrow political ends, have surprised and upset their sponsors with their findings, historical explanations, and recommendations- as shown in this chapter. Rather than losing faith in truth commission altogether, explaining variation across truth commissions offers a deeper understanding of the conditions

⁷⁸ Vladimir Tismaneanu and Marius Stan, “Romania Confronts its Communist Past” (*Cambridge University Press, 2018*), 134.

⁷⁹ Wilson, *Politics of Truth and reconciliation*, xvi.

⁸⁰ Aryn Bartley, “Violence of the Present: David’s Story and the Truth and Reconciliation Commission,” *Comparative Literature Studies* 46, no. 1 (2009): 103-124.

under which truth commissions assume a transformative role in reinterpreting the nation's history.

Conclusion

This chapter explores the ways in which truth commissions make sense of the past. Almost all truth commissions have dealt with the challenges of understanding and narrating violent and potentially divisive pasts, although there are differences across commissions in terms of the political and historical circumstances under, which they work, and the strategies they employ. Historically truth commissions emerged when the social communication over the meaning of the past failed. Some people did not know about the basic facts of human rights violations, either because basic facts were concealed or because they chose to ignore them. Even when facts were known, radical disagreement over their meaning threatened mutual understanding. Life shattering experiences of a significant portion of the citizenry were considered by their compatriots to be minor events-collateral damage of political conflict. The beneficiaries and sufferers of the past simply did not have venues for dialogue and contestation, not at least as a result of the asymmetries of power. The political implications of the breakdown in social communication led decision makers, often under civil society pressure, to intervene directly by endowing a temporary body, the truth commission, with the moral and procedural authority to discover and publicize the truth about the past.

Truth commissions expose the ethical and political implications of historiography, but this undertaking paradoxically puts their own basis of legitimation at stake. Thus, truth commissions constitute their legitimacy performatively as they narrate the nation's past. The realization that larger society does not grant them a priori legitimacy leads them to make efforts to bridge the gap between those political and social actors who establish and advocate them and those who question their accuracy, legitimacy and usefulness.

Critics have rightly pointed out that some commission risked putting the quest for historical truth in the service of the political objective of national reconciliation. While it should be acknowledged that the strategic interventions and silences of commissions have ruled out many alternative memories, it is also wrong to reduce commission narratives to politically usable reconstructions of the past. Even when an incoming government and a truth commission tended to share a narrow and expedient notion of reconciliation (Chile and South Africa) or a government intentionally deprived the commission of resources to curb its authority (Guatemala), the commissioners and staff surprised and upset governments, as well as other political and military leaders, through their findings, and recommendations. It is not their social and political embeddedness, or their transformative potential, but rather the interplay of these forces that characterizes truth commissions' struggle for truth and memory.

I make use of these broad insights to explore the ways in which the Chilean and Romanian truth commissions have reinterpreted the history of political violence differently in chapter 5.

PART II

Part II makes use of the previous chapters broad outline of truth commissions' place in contemporary societies in order to understand the variety of ways in which specific truth commissions change (or fail to change) politics and society. The theoretical discussions of state society relations, legitimation, commission autonomy, and social memory are observed in action. Do truth commissions influence policies, judicial decisions, and social attitudes? If yes, what are the specific mechanisms through which they achieve their goals? Why do political decision makers endorse a commission's final report and implement a good number of its recommendations in some cases, whereas a commissions' impact depend critically on the continued mobilization of supportive civil society actors in others? Why do some commissions explain the underlying causes of human rights violations in relatively short passages, whereas others seek to transform citizen's relationship to the national past with comprehensive historical narratives?

These chapters present a detailed analysis of truth commission process and impact in Chile and Romania. In this way, I address why and if the commissions in Chile and Romania have generated impact in different ways (Chapter 4), and the different ways in which the commissions in Chile and Romania memorialize the nation's history.

(Chapter 5)

CHAPTER 4

TRUTH COMMISSION CREATION: CHILE AND ROMANIA

This chapter focuses on truth commissions in two countries to examine in detail the creation, procedures, and outcomes of truth finding panels. The first case is Chile's 1990 National Commission on Truth and Reconciliation (also known as the Rettig Commission, the chairman of the commission) and the second case is the 2006 Presidential Commission for the Analysis of the Communist Dictatorship in Romania. The Chilean commission established by the president and his advisers in the absence of considerable civil society participation, faced mandate constraints. The findings and recommendations satisfied the expectations of the government and were mostly incorporated into political practice. However, the commission generated little civil society mobilization. In contrast, the Romanian commission was created in the context of important domestic and international human rights mobilization. The far-reaching conclusions and comprehensive recommendations of this highly autonomous commission were by and large ignored by successive governments, and the reparations program has made little progress. Nevertheless, the commission's work unleashed intense human rights mobilization. Society-wide reconciliation did not take place in the immediate aftermath of the truth commission in either country as the perpetrators and their political allies refused to acknowledge human rights violations.

The following sections then look at varying aspects of the Chilean and Romanian commissions: the commission creation process, the operation, findings,

and recommendations of each commission, the institutional and societal responses to the commission's final reports, and the long term trajectory of justice, memory, and reparation efforts in the wake of the commissions. The conclusion addresses the plausibility of alternative explanations of variations, such as the nature of the political transition and the timing of the truth commission in Chile and Romania.

Explaining Variation in Truth Commission Influence:

Why do some truth commissions receive endorsement and support from the political leadership, while others rely on the mobilization of civil society actors to produce impact? The variation starts from the commission creation process (i.e., the initial political decision making process that establishes a truth commission), which shapes whether or not, and the extent to which, the findings and recommendations generate impact in politics and society. The more control the key political decision makers (especially the government) exercise over the initial process, the more likely that they will set a limited mandate, appoint the commissioners in line with their political expectations, and empower the commission to the extent that it satisfies those decision makers. A commission creation process undertaken solely by the government leadership is normally called or typified as exclusionary or narrow.

Such a commission will be constrained in terms of how much agency it can exercise, and will be more likely to produce a final report in line with the government's expectations. Consequently, the government will endorse the final report by acknowledging its findings, and it will implement its recommendations, even if selectively. Thus, the commission is likely to generate direct political impact, although the degree of policy change depends on the government's willingness to implement recommendations. Evidence suggests that exclusionary commission creation process may produce relatively high direct political impact (as in Argentina, Chile, and Sri Lanka), but it is also likely that dependence on government endorsement and adoption leads to low impact in cases where the decision makers choose to ignore the commission. The exclusionary process is likely to alienate civil society groups and reduce the likelihood of civil society mobilization around the commission.

In contrast, a participatory or inclusive commission creation process enables a broader set of politicians, civil society actors, the commissioners, and the commission staff to exercise agency with respect to the commission's goals, procedures, and methodology. Such a high capacity and high autonomy commission is likely to produce more comprehensive and critical account of political violence and human rights violations and make demanding recommendations. The findings and recommendations may surprise and upset decision makers, perhaps delegitimizing the same politicians who sponsored the commission. Such a truth commission may or may not generate considerable direct political impact, as politicians will be unwilling to endorse the final report and implement the recommendations. Yet those civil

society actors who participated in the commission process will mobilize to disseminate the report, have the recommendations implemented into policy, and pressure the government for delayed implementation. Policy changes are likely to result through this indirect and longer influence.

Although the commission creation process sets limits on what a commission can do and how its findings are likely to be received, constraints on the commission are only part of the story. The commissioners' autonomous work and their actions with the state and non-state actors influence truth commission impact as well. The argument presented here points to the coexistence of path dependence and independent agency before, during and after a commission's operation

Chile's Truth Commission Creation

When Augusto Pinochet's military dictatorship (1973-1990) was coming to an end, the idea of establishing an official truth finding body to investigate human rights violations, along the lines of Argentina's 1983 National Commission on the Disappeared, resonated with the democratic politicians and human rights activists. It was Jose Zalaquett, an ardent advocate of truth commissions as the most suitable mechanism to uncover violations and design reparations, who convinced the government to establish the National Commission on Truth and Reconciliation in

1990.⁸¹ As a young lawyer, he had directed the legal assistance department of Comité pro Paz immediately after the coup.⁸² When the military regime adopted an openly hostile stance toward this mixed human rights initiative, he was arrested along 111 members of the Comité in November 1975, and soon thereafter he was deported to France. He devoted himself to human rights defense abroad, joining the executive committee of Amnesty International in 1979. When he returned to Chile before the 1989 elections, he participated in efforts to develop the newly elected Concertación coalition's human rights strategy.⁸³ When president Patricio Aylwin assumed the presidency and quickly realized the practical and legal obstacles to criminal justice, he called upon Zalaquett to establish a commission.⁸⁴ Aylwin would have much rather established a commission mandate by the legislature, but the weight of Pinochet supporters (Pinochetistas) in the Senate⁸⁵ undermined any possibility that human

⁸¹ Ascanio Cavallo argues that the truth commission idea originated with a report submitted by Zalaquett to the human rights commission of Aylwin's "presidential program group". Ascanio Cavallo, *La historia oculta de la transición* (Santiago: Grijalbo, 1998), 19.

⁸² Comité de Cooperación para la Paz en Chile was created in October 1973 by various religious denominations to provide legal and social assistance to the victims of human rights violations. It operated under the most repressive phase of the dictatorship and was forced to dissolve in November 1975. The Catholic Church continued the assistance and documentation work in the Vicaría de la Solidaridad from 1976 onwards.

⁸³ The Concertación was the electoral coalition of socialist, social democratic, and Christian Democratic parties that put an end to Augusto Pinochet's military regime and ruled between 1990 and 2000.

⁸⁴ Patricio Aylwyn, interviewed by Margarita Serrano and Ascanio Cavallo, in Margarita Serrano and Ascanio Cavallo, *El poder de la paradoja: 14 lecciones políticas de la vida de Patricio Aylwyn* (Santiago: Norma, 2006).

⁸⁵ The Concertación won the majority of elected seats on both houses, but the addition of nine unelected senators designated by Pinochet and his allies shifted the balance in favor of right wing sectors.

rights initiatives could go through the legislative route. The Rettig commission therefore, was established by presidential decree⁸⁶

Mandate

Supreme Decree. 355 limited the investigation of human rights violations to incidents that resulted in death. Leaving out torture, illegal imprisonment, mass layoffs, and exile, the mandate decided to forgo the opportunity to reveal the nature of repression under the dictatorship in its full horror.⁸⁷ Pinochet's Amnesty Decree Law of 1978 had moved almost all crimes committed by state agents in the first five years of the dictatorship outside the reach of courts.⁸⁸ The commission of the truth commission coincided with a legislative proposal by the right wing politician Ricardo Rivadeneira to extend amnesty to all political crimes committed between September 11, 1973, and March 11, 1990. The socialists, social democrats, and a section of the Christian Democrats defeated the bill in the Chamber of Deputies. Meanwhile, President

⁸⁶ Roberto Garretón notes that although a law would be preferable over a presidential decree to establish such a commission, the right wing Senate majority that "did not emanate from popular will" and "did not accept the truth during the dictatorship" made such an initiative impossible. Roberto Garretón, "Política de derechos humanos del gobierno democrático," *Política y Espíritu* 46, no. 391 (1992): 23.

⁸⁷ Domestic human rights defenders and international human rights NGO's sharply criticized the decision not to include cases of torture. See Amnesty International, *Chile: El legado de los derechos humanos*, AI: AMR 22/01/91/s (Madrid: Editorial Amnistía Internacional, 1991), 4.

⁸⁸ The only crime excluded from amnesty was the assassination of Orlando Letelier, a politician and diplomat during the Allende government, and his assistant Ronni Moffitt, in Washington, DC, on September 21, 1976.

Patricio Aylwin had to admit that the derogation of the Amnesty Law, stated in the governing coalition's political program, had to be abandoned in the face of the right wing majority in the Senate.⁸⁹ In other words, the Rettig Commission operated under conditions that did not entirely block the route to criminal justice, but there were few inroads.⁹⁰

The mandate was shaped by Zalaquett's careful approach to transitional justice that sought to balance the "ethical imperatives" of justice and "political constraints" of a negotiated transition.⁹¹ Article 2 of Supreme Decree 355 stated that the commission could not assume jurisdictional functions. By corollary, it was not allowed to name perpetrators, as this would violate the standards of procedural fairness. However, if "the Commission received evidence about actions that appear to be criminal" during its operation, "it will immediately submit it to the appropriate court."⁹² The commission was not granted subpoena powers, either. Instead, it relied on voluntary participation to collect information regarding death and disappearances.⁹³ Although the establishing decree obliged all government officials and agencies to "offer the Commission all the collaboration it may request, furnish the documents it

⁸⁹ Felipe Portales, *Chile: Una democracia tutelada (Santiago: Editorial Sudamericana Chilena, 2000)*, 69.

⁹⁰ For an overview of the political and legal context in the early years of the transition, see Rebecca Evans, "Pinochet in London-Pinochet in Chile: International and Domestic Politics in Human Rights Policy," *Human Rights Quarterly* 28, no. 1 (2006):207-244.

⁹¹ Zalaquett, "Balancing Ethical Imperatives."

⁹² Report of the *Chilean National Commission on Truth and Reconciliation*, vol. 1, trans. Phillip E. Berryman (Notre Dame, IN: University of Notre Dam Press, 1993), 7.

⁹³ The Chilean military did not reveal any information regarding deaths and disappearances, as its members were not coerced to testify before the commission and no amnesty for confession mechanism was in place.

may need, and provide access to such places as it may determine necessary to visit,”⁹⁴there was no penalty attached to noncooperation.

The mandate stipulated that the commissioners produce the complete picture about death and disappearance, including the fate and whereabouts of the disappeared persons, make recommendations for a reparations program, and suggest legal and administrative measures to prevent the repetition of such grave acts. It did not expect the commissioners to present a broader account of the causes and consequences of the military coup and the subsequent political repression and human rights violations, but neither did it explicitly prevent them from doing so. As explained in its final report, the commission used discretion when it decided to include with these accounts (of most serious human rights violation) some observations it believed to be essential to a better understanding of this matter.” The decision to study the “climate” before and after September 11, 1973,⁹⁵the commissioners argued, would serve to prevent violations from happening again.

Composition

President Aylwin carefully selected eight commissioners and the chair, Raúl Rettig, from among “highly respected people with moral authority in our country.”⁹⁶Thus, the criterion for the selection was individual moral and professional merit rather than

⁹⁴ Supreme Decree No. 355, art. 8, para.2.

⁹⁵ *Report of the Chilean National Commission*, 23.

⁹⁶ *Report of the Chilean National Commission*, 17.

participation in a political party or civil association. However, analyzing only the outcome without due attention to the appointment process may be misleading. Moral authority became the primary criterion for selection only because Aylwin's initial plan to recruit commission members directly from political parties, especially from the right wing opposition, had been frustrated. Aylwin was dedicated to the idea of a representative commission that would satisfy diverse constituencies of the political spectrum, unite them under the moral imperative of recognizing human rights violations, and minimize objections to the commission. As the leftists and the Christian Democrats already endorsed human rights defenders like José Zalaquett, he did not face pressure from those sectors. In order to include the Right in the process, he invited Francisco Bulnes and Ricardo Rivadeneira from the National Renovation Party (RN) to join the commission, and both refused.⁹⁷

Therefore, Aylwin turned to Ricardo Martín, Jose Luis Cea, Gonzalo Vial, Laura Novoa Velázquez, individuals known to represent right wing sectors but

⁹⁷ There are various interpretations for why the right wing politicians declined. Sergio Onofre Jarpa, the president of the RN in 1990, argued that the better strategy for a truth commission would be to recruit "independent persons" who were not active party members. Miguel Otero, the vice president of RN, gave deeper insights into the nature of the party's refusal when he declared that the negotiations with the government failed for the following reasons: first, the time period covered by the mandate of the commission (1973-1990) ran counter to the RN's suggestions to include the pre-1973 period of political polarization. Second, in his opinion the commission was devoted to replacing the judiciary rather than clarifying issues that could not be covered by courts, such as "the causes and origins of violence in Chile, those responsible for (violence), victims, and how to solve the problems caused by violence." Finally, he argued that the RN was against using the commission to initiate a campaign against the Armed Forces. In other words, the political Right envisioned a commission that would emphasize how the military had to take action to save the country from political and economic collapse in 1973 and preferably keep silent about the human rights violations. See Andres Allamand, "Verdad a Medias," *La Tercera*, April 29, 1990

without formal party commitment.⁹⁸The president's minimal precondition to name right wing individuals was either an attitude of self-distancing with respect to the military regime or at least some indication of sensitivity towards the human rights issue.⁹⁹It should be noted that victims' organizations had no representation. Perhaps Aylwin considered the victim's organizations as interested parties whose participation would be perceived as compromising the impartial nature of the commission's truth finding work. The outcome, only partially Aylwin's choice, was a commission that adopted as its operating principle a peculiar notion of political representation whereby some commissioners represented political ideologies but not political parties.¹⁰⁰The striving for ideological balance reflected the prospect of reaching a negotiated and final solution to the problem of human rights violations by promoting a reconciliation between the Left and the Right.

Romania's Commission Creation Process

In 1993 Ticu Dumitrescu, the president of the Association of Former Political Prisoners (AFDPR), submitted to the Senate a proposal for a Law of Access to Files

⁹⁸ Martín was a senator designated by the outgoing regime when appointed to the commission. He took part in the military government as the president of a government-appointed human rights commission analyzing exile. Cea was a professor of law. Vial served in the military government as minister of education.

¹⁰⁰ Zalaquett notes that the numerical balance of commissioners and the unanimity rule in making decisions enhanced the credibility of the commission.

and Exposure of the Securitate as a Political Police. It was first rejected but resubmitted in January 1997 and approved in November that year as Law 187.

Although the Ticu Law' was enacted in 1997 when the country was governed by a center-right coalition it had little impact in limiting the access to public office of former members of the communist nomenklatura or Securitate officers, collaborators and informers.¹⁰¹ In addition, there were two other provisions that also altered the original text and restricted the application of the law. First, only those files whose content posed no threat to national security could be made public and secondly, that all archives were to remain under the jurisdiction of those institutions that had produced these files. Finally, Dimitrescu renounced his authorship of the law because the legislation acknowledged and differentiated between two Securitate. One was the existence of a 'benevolent' Securitate that defended the national interests and the other was a " malevolent" Securitate, which engaged in political policing.

The return of the ex-communists to power in the 2000 elections, this time as the Social-Democratic Party (PSD, Partidul Social Democrat), again inhibited the activity of the National Council for the Study of Securitate's Archives (CNSAS) as well as more serious consideration of transitional justice policies¹⁰². However, the results of the 2004 elections that brought to power a liberal coalition government, the

¹⁰¹ This is partly explained by the fact that the committee charged with management of the files, a council of 11 members, was nominated by those political parties represented in parliament for a term of six years and not by politically independent individuals as required in Dumitrescu's proposal.

¹⁰² Lavinia Stan (2004) examines the following factors that constrained the activity of the CNSAS: unclear formulations in the law regarding the status of CNSAS and the statutes and procedures to follow in formulating verdicts; the alteration of the archive; the obstructive attitude of SRI and the political class in general and dissensions within the body itself.

Truth and Justice Alliance (*Allianta Dreptate si Adevar*) raised hopes among civil society groups.

The new President Traian Basescu further increased hopes after public statements, both before and after his election. Unlike many members of the political class who attempted to conceal their connection to the communist past, Basescu was willing to admit that the continuity of communist elites after 1989 was a serious problem of which he himself was also a part.¹⁰³ In two interviews that he gave in the summer of 2005 the daily *Romania Libera* and the weekly journal *22*, he declared that an official condemnation of the communist regime must require a scientific investigation. This came particularly to the attention of filmmaker Sorin Iliesiu, who was also vice-president of the Civic Alliance and a member of the Group for Social Dialogue (GDS). Iliesiu was the initiator of two important appeals. The first of them was 'The Appeal for Romania' endorsed by all civil society groups in June 2005 and published in *Romania Libera*, and secondly 'The Appeal for the International Condemnation of the Criminality and Illegitimacy of Communism' launched in April 2005 and endorsed by civic associations and former dissidents, as well as cultural personalities and social scientists. Additionally, with the documentation provided by the Sighet Memorial¹⁰⁴ Iliesiu provided Basescu with an unofficial report of 11 pages,

¹⁰³ By then Basescu, president of the PD, and before 1989 a captain of the commercial fleet Navrom, Mayor of Bucharest between 2000 and 2004 and subsequently re-elected, was already known as an astute politician capable of surprising his opponents and the public.

¹⁰⁴ The Sighet Memorial was established as a national historical site under Law 95 in 1997. The Memorial consists of a museum located in a building that had housed a Stalinist prison where pre-World War II political elites were incarcerated. It now also houses the Center for International Studies of Communism. The project was

containing 18 main accusations. Ultimately, the president was persuaded and responded to Iliesiu's appeal by officially announcing in April 2006 the formation of a presidential commission that would develop an official report within six months. Two other important international historical events are crucial in understanding the broader context under which the Romanian Truth Commission was set up. In January 2006, the Council of Europe voted on a resolution condemning the crimes committed by communist regimes and a year later, in January 2007, Romania was finally admitted to membership of the European Union.

Mandate

Just like its Chilean counterpart, the Romanian truth commission was created by presidential decree rather than legislative action. The mandate of the commission was to provide a scientific, rigorous, brief, and coherent document examining the main institutions, methods, and personalities who made possible the crimes and abuses committed during the Romanian dictatorship. President Basescu appointed Vladimir Tismaneanu as president of the commission and authorized him to decide the mandate of the commission, the appointment of its members, methodology of data collection and the option of naming or not naming the accused

In essence, President Basescu charged the commission with the task of producing a rigorous and coherent document that would examine the main

launched in 1993 by novelist Ana Blandiana and Romulus Rusan and in 1995 the Council for Europe took it under its patronage.

institutions, methods, and personalities that made possible the crimes and abuses of the Communist regime. In addition to its academic tasks, the Presidential Commission was established to pass moral judgment on the Communist dictatorship and produce a reckoning with the past through an acknowledgement of its crimes against humanity and other forms of repression. The commission aimed to understand the country's traumatic history through an academic approach that assumed distance from the surveyed topic and empathy for the victims. This required continuous efforts to balance normative and analytical approaches. The premise underlying the commission's activity was that, although historians are not judges, they cannot refrain from engaging in moral judgment when exploring crimes against humanity.¹⁰⁵

Composition

As previously mentioned above, president Basescu authorized the chair, Vladimir Tismaneanu, to appoint and select its members. This provided him with enough autonomy to work closely with human rights and civil society movements during the selection process. As a result, the composition reflected the expectations of the human rights and civil society movements: the commission was composed of twenty-two members who were respected public figures. Unlike the Chilean commission, where the legal profession dominated the composition, the Romanian commission was presided over by a professor of political science and it included intellectuals (Horia-

¹⁰⁵ Vladimir Tismaneanu and Marius Stan, "Romania Confronts its Communist Past" (*Cambridge University Press, 2018*), 63.

Roman Patapievici, Nicolae Manolescu, Romulus Rusan, and Stelian Tănase), former dissidents (Monica Lovinescu, Virgil Ierunca, and Radu Filipescu), historians (Marius Oprea, Dragos Petrescu, Andrei Pippidi, and Alexandru Zub), and former political prisoners (Constantin Ticu Dumintrescu). Therefore, the commission was prepared to move beyond forensic investigation and develop a broader sociological-historical analysis of the conditions that made violence and totalitarianism possible in Romania.

The composition of the commission should be analyzed not merely as a function of professional and moral background, but also in its sociological dimension. The Presidential Commission brought together Romanians, Germans, and Hungarians. Thus, it was fundamentally a multicultural project explicitly aimed at avoiding a geographical and ethno-cultural bias. The Presidential Commission was a multicultural project that focused on the history of Communism in the country from the vantage points and experiences of all Romanian citizens, regardless of nationality, religion, or gender. This also stands in stark contrast to the composition of the Chilean commission, which was comprised exclusively of commissioners from the capital city of Chile, Santiago. This geographical bias went hand in hand with an ethno-cultural bias, as none of the commissioners were of indigenous origin. In contrast, the Romanian commission was a transnational effort in terms of staff participation and consultancy.

The commissioners were grouped in three categories. The first group was comprised of mainly non-scholar members who assured the moral dimension and symbolic endorsement for the Final Report. The second group consisted of prestigious figures in Romanian studies that would work on the Report and guarantee

the epistemic validation to the final product. The final and third group comprised “junior” scholars who were asked to write on a particular topic considered essential to fulfilling the commission’s mandate.

The members of the Presidential Commission worked without compensation, with the exception of the scientific secretary of the commission, the historian Cristian Vasile. According to professor Vladimir Tismaneanu, the commission functioned largely on a dialogical basis and, even more importantly, independently of any political intervention. As chair of the commission, professor Vladimir Tismaneanu pressed hard on this matter. In a telephone conversation with President Basescu, before considering taking on this project, he explicitly asked, “ I need the following to be guaranteed. As chair, I request total freedom in selecting its members, complete autonomy in writing the report, and full access to the archives”.¹⁰⁶ Then, he asked president Basescu to confirm the approval of those conditions with the minister of internal affairs and other relevant government officials “fearing that the ill-strong Communist debris in the bureaucratic machine would doom the commission before it even started”.¹⁰⁷ Consequently, president Basescu guaranteed the chair Vladimir Tismaneanu that he would grant him all the authority of the Chief Executive of Romania. Romanian historian Ruxandra Ceseranu, complements this account by stating that the Presidential Commission “did not include any presidential advisor, so

¹⁰⁶ Vladimir Tismaneanu and Marius Stan, “Romania Confronts its Communist Past” (*Cambridge University Press, 2018*), 82.

¹⁰⁷ Vladimir Tismaneanu and Marius Stan, “Romania Confronts its Communist Past” (*Cambridge University Press, 2018*), 82.

that there were no interference by the authorities in the activity of the commission,” giving it a “ democratic and heterogeneous character.”¹⁰⁸

Chile’s Investigation Process

The Chilean commission’s mandate ordered the commission to investigate all cases of death and disappearance perpetrated by the state’s security forces, as well as deaths caused by the armed resistance to the dictatorship. The commission adopted a legalistic notion of truth that prioritized written documents as evidence, while testimonies were reduced to secondary status. The composition of the commission partly explains the legalistic bias: except for Mónica Jiménez, a social assistant, all commissioners had law degrees. The absence of precedents may be an important explanatory factor, too. The testimonial methodology became popular only later, thanks to the ritualistic public hearings of the South African TRC.¹⁰⁹ Another

¹⁰⁸ Ruxandra Cesereanu, “The Final Report on the Holocaust and the Final Report on the Communist Dictatorship in Romania,” *East European Politics and Societies*, 22, no. 2 (2008), pp.271-272

¹⁰⁹ It is worth noting that despite the decision to hold public hearings, the South African TRC separated the healing function of the testimonies from the actual task of finding facts. The testimonies were not used as data for verifying victims. See Wilson, *The Politics of Truth and Reconciliation in South Africa*, 41.

motivation for the commission's decision seems to be the fear that overreliance on victim's testimonies would jeopardize the unbiased and impartial character of the commission in the eyes of the pro-military sectors.¹¹⁰

The human rights archive at the human rights branch of the Catholic Church, Vicaría de la Solidaridad, was the most frequently consulted source of written documents. The list of disappeared individuals had been frequently updated by the Vicaría, thanks to the arduous labor of the Association of Relatives of the Disappeared that operated in the Vicaría's premises during the dictatorship.¹¹¹ Furthermore, the commission staff asked the victims' relatives to submit copies of initial court records, as well as reports from other governmental or nongovernmental organizations that had already investigated their case.

In July 1990, the commission began to schedule interviews with those relatives who requested a testimony session. The interviews were set up both to obtain additional information, offer an opportunity for family members to narrate their suffering, and create a database for the reparations program. These interviews sessions, while falling short of the public hearings that would revolutionize truth-finding methodology in the South African commission, nevertheless yielded beneficial results, according to the final report: "For many (relatives of the victims),

¹¹⁰ However, the legalistic/positivistic approach to truth finding did not alter the negative perceptions of the commission's right wing critics. Jaime Guzmán, leader of the UDI in 1990, commented that the commission provided the presumed perpetrators with no incentives to collaborate, as accused persons would not accept presenting their defense before a commission that, however respectable its members might be, is not a competent tribunal of justice for this purpose. "Deben respetarse las funciones propias del poder judicial," *El Mercurio*, April 7, 1990, my translation.

¹¹¹ As of 1988, the AFDD (Asociación Familiares Detenidos Desaparecidos) list contained 763 cases of disappearance.

this was the first gesture made by the Chilean government to acknowledge their situation.”¹¹² Furthermore, the organization of the meetings as small groups gatherings enabled the victims to narrate their stories and support each other.¹¹³

The commission collected about 3,500 testimonies from the victim’s relatives and victim-survivors. Because the commission lacked subpoena power and did not offer incentives for the participation of perpetrators, it failed to collect perpetrator testimonies except for a handful or repenting agents of the infamous secret service (DINA after its Spanish acronym).

The commission made sure that all agencies willing to contribute relevant information could do so. A wide array of organizations, ranging from the military and the police (Carabineros) to human rights groups, the Revolutionary Left Movement (MIR) and the Communist Party, prepared lists that included the names of their members killed during the military regime. Furthermore, in every case of violation that implicated the members of the military or the police as alleged perpetrators, the commission sought to engage those institutions in the fact-finding process by contacting the corresponding branch. While the final report points to the high response rate, the typical response was evasive: it either stated that the records were burned or destroyed in accordance with the laws and regulations, or that the institution did not possess any further information, or that it was legally prohibited from disclosing the information on matters of intelligence.¹¹⁴

¹¹² *Report of the Chilean National Commission*, 17

¹¹³ *Report of the Chilean National Commission*, 22

¹¹⁴ Although almost all of these requests were answered, none of the answers offered any information that could substantially serve the purpose of determining

Instead, the army provided the commission with four volumes of information and a video to justify the military coup and to document attacks by the armed opposition groups that resulted in the deaths of security personnel and civilians.¹¹⁵ The institution refused to share any information concerning the fate or whereabouts of the disappeared. In a way, the army affirmed the importance of not excluding itself from the task of illuminating the history of political violence, but employed a mixed strategy that combined noncooperation in cases of human rights violations with selective cooperation to justify the dictatorship.

Findings

The commission received 3428 cases of death and disappearance and qualified that 2,279 of them fell within its mandate; 2,115 people had been murdered by state agents and 164 by armed opposition groups. The commission also stated that extrajudicial murder, forced disappearance and torture were institutional and systematic practices. Using its only judicial power, “ in all relevant cases, the commission has sent the respective items of evidence to the courts.”¹¹⁶ The final commission established the moral responsibility of the Chilean state, which does not have any legal effects other than to lay the groundwork for measures of

what had happened to those persons identified as disappeared” *Report of the Chilean National Commission*, 21-22

¹¹⁵ “Ejército entregó amplio informe a comisión Rettig,” *El Mercurio*, August 7, 1990.

¹¹⁶ *Report of the Chilean National Commission*, 43

reparations.”¹¹⁷It assigned institutional, moral, and historical responsibilities to political parties and other institutions, most notably the military and police.¹¹⁸

Although the individual perpetrators were not named, the commission did not refrain from announcing those institutions and organizations responsible for the human rights violations. However, it is not clear from the final report how historical or moral responsibilities should be assumed. Finally, the commission suggested, again without clear definitions or guidelines, that the entire society could assume responsibility.

Recommendations

The Rettig Commission presented a recommendations plan encompassing reparations for victims and political-institutional reform. The recommendations were not legally binding on the government. In the area of reparations, the commission suggested a comprehensive program including social security, health, educational, and housing benefits, as well as special medical care for the victims of repression.¹¹⁹The clear message of the political-institutional recommendations was the need to strengthen the rule of law guarantees to prevent the recurrence of human rights violations. One

¹¹⁷ *Report of the Chilean National Commission*, 33

¹¹⁸ *Report of the Chilean National Commission*, 34-35

¹¹⁹ Mark Ensalaco, Truth Commissions for Chile and El Salvador: A Report and Assessment,” *Human Rights Quarterly* 16, no. 4 (1994): 664.

suggested measure was to make the constitution and the military code of justice compatible with the international human rights law. Another recommendation was the creation of the office of the human rights ombudsman. In terms of improving the human rights conduct of the military and judiciary, the commission emphasized education and training. The emphasis on education suggests that the commissioners thought at least some of the perpetrators and connivers were not sufficiently aware of the theory and practice of human rights. Ignorance was prioritized over intentionality as the chief explanation of the perpetrator's behavior. The final report also recommended public commemoration and education campaigns to cultivate a culture of human rights in Chile.

The omissions of the recommendations chapters should also be noted. The Rettig Commission did not demand the demotion and removal of military and civilian personnel implicated in human rights violations; did not push for the derogation of the 1978 Amnesty Law; did not develop a roadmap for criminal investigations; and certainly did not mention the need to overcome poverty, inequality, social exclusion, or any other structural failure that may have been the root cause for political violence. Since it concerned itself exclusively with the institutional and ideological crisis at the onset of the military coup, its recommendations were limited to institutional reform and consciousness-raising through education. The self-restrained and uncontroversial nature of the recommendations increased the likelihood of their implementation, but at the risk of amnesia concerning deeper causes for violence and violations.

Limited institutional reform put emphasis on the need to strengthen and legitimize the state to achieve the goals of political transition. The weight of legal-

administrative reform signaled the concentration of power in the hands of the executive, to the exclusion of civil society participation.¹²⁰ Aylwin did not envision a truth commission that would facilitate cooperation between civil society and the state. Rather, the Rettig commission was mandated to make a gesture toward the victims of the dictatorship and convince the pro-Pinochet political class of the need for minimal consensus on historical facts. The fundamental idea was to re-legitimize the state in its capacity to govern more effectively and in line with the ethical obligations of civility and human rights, and the commission worked toward that end when it sought to overcome what it identified as the proximate cause of the problem, namely the institutional breakdown and political polarization of 1973.¹²¹ In contrast to Romania, the consequence in Chile was the relative insignificance of the Rettig Commission for human rights mobilization.

Romania's Commission Process

The Final Report contained both original research and previously published material that had been revised and updated based on the Presidential Commission's unprecedented access to archives, which had been closed until 2006. In general terms,

¹²⁰ Hernán Vidal, *Política cultural de la memoria histórica* (Santiago: Mosquito Comunicaciones, 1997)

¹²¹ Zalaquett notes that the commissioners agreed to disagree on the justifiability of the coup itself. Interview with Correa Sutil

the new research focused on topics such as, mass organizations, the system of control of confessional institutions, the profile of secret police informers, the collectivization process, economic planning, policies of social control, and the fate of national minorities during the Communist dictatorship.

At the beginning of their work, the commissioners engaged in a theoretical discussion concerning the nature of the truth they were trying to construct. They could adopt a notion of truth finding more in line with the courtroom model (judicial truth) or produce a social history of violence in Romania (historical truth). The weight of social scientists in the commission shifted the discussion in favor of the latter option.

In regards to methodology, three types of sources were chosen. First, archive documents, to which for the first time unrestricted access to researchers was granted by the presidency. Secondary sources, including sociological, historical and political analyses of the communist and post-communist regimes produced by Romanian and foreign scholars and finally, memoirs of those who were either victimized or had been part of the repressive mechanisms. The commission did not undertake any interviews with victims.

The Romanian truth commission takes up almost 700 hundred pages and is organized into three large chapters. The Final Report contained both original research and previously published material that had been revised and updated based on the Presidential Commission's unprecedented access to archives, which had been mainly closed until 2006. The new research focused on the following topics: mass organizations, the system of control for confessional institutions, the profile of the

secret police informers, genocide, aspects of the collectivization process, economic planning, policies of social control, and the fate of national minorities during the Communist Dictatorship.

The Final Report analyzed the institution of the Communist system after 1945 and its destruction of the pluralist system and civil society. Based on the input from several experts, the Final Report also had a subchapter about the Communist genocide in Romania. It specifically dealt with the organization and functioning of the party-state; the ties between intellectuals and the party; purges; the role of ideology; the failed de-Stalinization of the period (1955-1958 and 1965-1971); the emergence of national Stalinism in the last years of the Gheorghiu-Dej's rule and the early stage of Ceausescu's regime; Ceausescu's dynastic Communism; the role of the judiciary; the Communist transformation of the economy (nationalization, forced industrialization and collectivization drives, and the economic crisis of the 1980s); the relationship between the Communist regime and religious denominations; the negative consequences of the 1948's education reform; cultural life and censorship, the situation of national minorities; Communist social control; repression; estimates concerning the Romanian Gulag; the political police apparatus and actions; repressive legislation; informers; the statistics concerning the number of political prisoners; deportations; armed anti-Communist resistance; the 1956 student movements; worker's protests; and dissidence. The repression in Bessarabia was carefully examined in a subchapter, despite limited access to the archives of the Republic of Moldova.

The commissioners also worked on writing a complete Encyclopedia of Communism, in order to supplement the topics that were only tangentially addressed by the Final Report. In addition, this encyclopedia provided further details regarding the role of the former Securitate and the repressive scale of the totalitarian/communist state. In 2012, the Romanian Academy Institute for the Study of Totalitarianism produced such an encyclopedia.

Findings

Overall, the Final Report charges the communist regime with being “illegitimate and criminal” and finds it responsible for the destruction of Romania’s political and intellectual elite, as well as for the murder of between 500,000 and 2,000,000 people. Moving beyond a general condemnation, the report identifies three categories of perpetrators. First, the report identifies those “guilty for the thousands of dead and deported” (i.e., top Party officials, cabinet ministers, police commanders, high-level magistrates). Secondly, classifies those “guilty for the annihilation of diaspora dissent” (i.e., the heads of the external services of the secret police and counter-intelligence), and finally, those “guilty for the indoctrination of the population” (the largest category, ranging from Party members and cabinet ministers to writers and poets).

The short biographies of members of the communist nomenklatura annexed to the report include former president and current PSD senator Iliescu¹²², who dominated politics after 1989 and is cited, as well, for his role in policing student and youth activities on Christmas Day 1968, when he was a leader of the Communist Youth Union.¹²³ These findings further substantiate the argument that former communist political activists continue to be influential in post-communist Romania.

Perhaps more importantly, more than for its actual findings, the report is significant for its use in President Bănescu's public condemnation of the communist regime. Civil society has adopted a de-communization discourse ever since 1990, but Bănescu's denunciation of the communist regime was the first official statement of this kind by a major political official. Moreover, the report extended responsibility beyond the Communist Party and the secret police. It does not assign responsibility solely at the top with the Party leaders (especially Ceausescu and his family), but instead names specific individuals, eliminating the image of the regime as a system so impersonal that blame is to be shared equally by all and, consequently, by none.

Recommendations

¹²³ The report also identifies the prominent journalists, writers, and poets who "indoctrinated Romanians," among them Corneliu Vadim Tudor, the current leader of the nationalist Romanian Mare Party and Ceausescu's "court poet," and the poet Adrian Paunescu, now a PSD senator

The last part of the report sets out various concrete legal and non-legal recommendations for the analysis, repudiation and condemnation of a communist dictatorship guilty of crimes against humanity. These recommendations referred to issues of memory and justice. Concrete measures were proposed in the following five areas: the condemnation of communism including the Romanian Communist Party and the Securitate; memorialization of the victims of communism; legislation and judicial proceedings involving lustration, the rehabilitation and compensation of victims and the criminalization of any type of apology for the regime or its leaders including any public display of communist symbols; archival research including unlimited access to communist files held by the national archives and various ministries of government as well as the professionalization of archival work; and education oriented towards the analysis of communist history in both schools and research institutions.

In other words, the Romanian Commission saw in the emerging consciousness around human rights a transformative potential to reform political institutions and the political culture, reconstitute the victim's rights, and ensure that fundamental rights would never be violated again. The historical evolution of state society in Romania let the commissioners to pay close attention to the inadequacies of merely demanding respect for rights in a society where many people lacked, in Hanna Arendt's words, "the right to have rights". In the words of Adrian Ciovanca, "Communist law was never anything other than autocratic decree. Referring to it as "law" was a lie, because law only comes from the preservation of human's value"¹²⁴

Chile's Truth Commission Effect and Reception

The final report of the Rettig Commission did not transform the political landscape. Parties of the governing coalition, human rights organizations, and victims' relatives endorsed the report, while the political Right and the armed forces were united in their rejection. President Aylwin embraced the report with a historic speech on March 19, 1991, in which he asked pardon of the victims' relatives.¹²⁵

Despite the designation of individuals associated with the military regime as commissioners, the armed forces and their civilian allies expressed disillusionment with the findings. The air force issued a somewhat cautious statement in which it neither endorsed nor rejected the report, and the air force commander in chief Fernando Matthei expressed sorrow for the loss of lives. The other branches of the military condemned the commission's work in stronger terms. The police (Carabineros) saw in the final report an effort to weaken the police force in their struggle against leftist terrorism. The army and the navy issued statements conveying serious disagreement three weeks after Aylwin's public endorsement. The commission had refuted many of the Pinochetistas rhetoric, which created the myth and notion that the military coup and subsequent abuses were justified because Chile

¹²⁵ It is important to note that Aylwin did not argue for a political or juridical mechanism for forgiveness of the kind that was later employed in South Africa. "I cannot forgive for another. Forgiveness is not imposed by decree. Forgives requires repentance on one hand, and generosity on the other." Aylwin quoted in Human Rights Watch, *Human Rights Watch World Report 1992: Events of 1991* (New York: Human Rights Watch, 1992), 162.

was undergoing an internal war.¹²⁶The military's critique was directed not only at the historical narrative but also the finding that the violations were the consequence of a systematic policy rather than sporadic excesses. The commissioners had adopted a strategy that emphasized facts rather than historical narratives.

The political Right chose to maintain its alliance with the military by rejecting the commissions findings. Alywin's strategy of including right-wing commissioners did not result in the kind of national reconciliation he had envisioned. As the right wing commissioners were not representative of the two right wing parties, RN and UDI, these parties' leaders found it relatively easy to ignore the facts of institutional and systematic extermination and disappearance.¹²⁷The assassination of UDI's leader Jaime Guzman on April 1, 1991, by the Manuel Rodriguez Patriotic Front created the appropriate excuse to reject the commission's work altogether. Among the civilian sectors, the Supreme Court went furthest in denial, threatening that the final report was putting the institutional stability of the new democracy in jeopardy.

Direct Political Effect

The Chilean truth commission generated high direct political impact. The president endorsed the commission's final report, and the government successfully implemented a victim-oriented reparations policy, published the final report,

¹²⁶ The liberal wing of the RN, represented by Andres Allamand, had a more positive attitude toward the final report than their conservative colleagues.

established a follow up institution to monitor the progress on the reparations program. The only ignored recommendation was the creation of the human rights ombudsman.

President Aylwin turned to reparations as mechanism of restitutive justice for the victims. Creating a database of recipients required a longer investigation than the one conducted by the nine month long truth commission. Therefore, Aylwin authorized the National Reparation and Reconciliation Corporation (CNRR in Spanish acronym) in 1992 to investigate the pending cases and establish a reparations program on the basis of additional information. When the CNRR investigation came to an end in 1996, the total number of dead was found to be 3,197. The families of the disappeared and executed received reparations in the form of monthly payments, exemption from military service, and tuition scholarships. The formation of the CNRR enhanced not only administrative efficiency, but also extended the official recognition of victimhood through reparations. The reparations policy was accompanied by the construction of a Memorial Wall in the General Cemetery of Santiago in 1997 to display the names of the dictatorship's victims-a commemorative gesture that solidified the Chilean state's victim-oriented approach to transitional justice

Civil Society

The human rights community in Chile had managed to survive the early violent and authoritarian phase of Pinochet's rule, however, despite the history of activism there was no civil society pressure on the government to implement truth commission

recommendations, and the human rights movement suffered a period of retrenchment in the wake of the commission. In other words, the truth commission generated little civil society mobilization, partly as a result of the government's endorsing posture and partly as a result of the mistrust on the part of the human rights community (especially the victim's relatives).

The commission failed to mobilize the human rights movement to monitor compliance with the recommendations. The movement saw the truth commission as a positive, yet incomplete step.¹²⁸ The government's quick adoption of some of the recommendations and the commission's failure to advocate key items on the human rights agenda, such as the derogation of the Amnesty Law, limited the mobilization of influential victim's associations and human rights organizations around the commission. In addition, the government attended to victims and their relatives as victims through the reparations program, but did not consider them important civil society partners in policy formulation. The alignment between the victims' groups and the Communist Party further strained the former's relation with the centrist Concertación.

Furthermore, the post commission period was marked by the disarticulation of the human rights coalition that kept the issue alive since the early days of the dictatorship. The Catholic Church closed the Vicaría in 1992, much to the dismay of the relatives of the victims who had found shelter in it for sixteen years. The church officials argued that the Vicaría was meant to be an emergency measure when other civilian initiatives were violently repressed and the courts were not fulfilling their

duties. As democracy and the rule of law were restored in Chile, the church would divest from this service to devote its resources to other areas of social work.¹²⁹ For the victims' relatives in the AFDD, the closure of the Vicaría was much more than the lost of a critical ally; they had to move out the premises of the Vicaría, and refashion themselves as a professional NGO within Chile's new civic sector- a task for which they were unprepared.

A further blow came in the same year as a result of the long-standing tensions among the victim's relatives: many decided to leave the AFDD to start their own organization, which they called AFDD (Founding Line). The tension that had remained dormant throughout the dictatorship was one of ideological commitment and priorities between AFDD's earlier members (who in 1992 called themselves the "Founding Line") and the members of the Communist Party¹³⁰ The common struggle

¹³⁰ The first wave of selective violence organized by the DINA took place in 1974-1975 and its victims were the members of the Revolutionary Left Movement (MIR), a leftist organization popular among the university youth. The relatives of the disappeared MIRistas (mostly mothers) did not necessarily shared their children's zeal for political activism; in fact, many of them were not even aware that their relatives participated in resistance against the dictatorship. The disappearance of their relatives at the hands of the secret police forced them to take action, for the first time in their lives that required political organization and confrontation with state agents. While they were struggling with this life transforming experience, the dictatorship's second wave of targeted repression of the Communist Party in 1976. The victims were not only the inexperienced militants: the party's leadership was disarticulated as well. The Communist Party was much older and institutionalized than the MIR, founded in 1922, the party was known to generate a strong sense of identity among its members, and it had already survived a wave of repression and clandestine existence between 1948 and 1958. In other words, the relatives of the Communist Party victims were often members of the Party themselves, well aware of the risks of political action under the dictatorship, and prepared to participate in opposition politics. They held together thanks to a strong party identity that they continued to cultivate in their new regroupings. When they arrived at the Vicaría in

against the dictatorship prevented the internal disagreements from surfacing during the dictatorship. But soon after the return to democracy and the frustration of the shared hope that the whereabouts of the disappeared would be discovered and perpetrators would face justice, a small group of relatives without Communist Party affiliation split definitively.¹³¹ They did not succeed in carrying the majority along with them therefore, the outcome was a two weakened relatives' association.

Accompanying the AFDD's own division was the broader phenomenon of civil society retrenchment. The lawyers and activists who were employed by the Vicaría, and later the truth commission, found jobs in the government sector. Human rights organizations lacked the resources to pay for comparable salaries. Furthermore, the precariousness for the struggle for justice, combined with the closure of the Vicaría threatened the very existence of a human rights sector autonomous from the government. It was painfully clear that the human rights movement, for which Chile was famous¹³² could not convert itself to a network of professional NGOs. The post commission process looked like the end for human rights activism in Chile, rather than an era of renewal. This trend would only be renewed after Pinochet's arrest in October 1998 and the subsequent process of civil society reinvigoration, especially around the issue of torture under the dictatorship.

1976, they found it relatively easy to occupy leadership positions among the victim's relatives, transform the organizational structure along the Communist Party model, and oblige their members to follow their vision of political action.

¹³² Randy B. Reiter, M. V. Zunzunegui, and Jose Quiroga, "Guidelines for Field Reporting of Basic Human Rights Violations," *Human Rights Quarterly* 8, no. 4 (1986): 628-653

Romania's Truth Commission Effect and Reception

The responses to the Chilean commission were institutional and more or less predictable. The striking feature of the Romanian experience was that its truth commission generated enormous controversy in the public sphere, yet few institutional responses. President Basescu received the Final report with an attitude of endorsement. His rhetorical support and positive attitude toward the commission and commissioners remained constant throughout his presidency. However, the attitude of endorsement did not usher in a coherent policy of incorporating the recommendations and conclusions into institutional reform.

Criticism of the Final Report grew at an exponential rate soon after it was issued. These criticisms argued that the report wanted to find an alibi for the crimes of the Dej period and emphasized them too much, charged the report of promoting collective culpability, and accused the commissioners of seeking financial benefits from participating in the commission. For instance, in chapter one critics argued that the chapter devotes a disproportionately short emphasis on the Ceasescu regime and that the unequal space devoted to these two different stages of communist history raised concern within the academic community about the scientific or objective value of the report.¹³³

¹³³ On March 29, 2006 a group of historians, sociologists, theologians, journalists and professors from the University of Bucharest organized a conference entitled To

The charge of promoting collective guilt is a sensitive one and needs clarification. The Final Report approached the category of perpetrator by dividing it into three types. First, one can identify those guilty for the thousands of dead and deported (i.e., top party officials, cabinet members, police commanders, high level magistrates). In the second group, one can identify those guilty for the annihilation of diaspora dissent (i.e., the heads of the external services of the secret police and counterintelligence). The third and final category is the largest category and includes those guilty for the indoctrination of the population and whose members ranged from party members to writers and poets.¹³⁴ In fact, the commission members explicitly rejected the principle of collective guilt/punishment and underscore the need to confront individual responsibilities while rejecting generic and decontextualized usages of collective guilt.¹³⁵ Similarly, the Romanian Orthodox Church also attacked the report for revealing incontrovertible evidence of “100 percent collaboration” between the church and the communist regime.

The strongest reactions came from those people highlighted in the Report, such as Ion Iliescu and the Institute of Revolution, which published an entire issue claiming that the Report and its findings were a sham. In addition, former Securitate agents were outraged by the fact that the Final Report contained evidence of the role played by the old repressive institution that they served, while also unequivocally rejecting the myth of the two Securitate apparatuses, the Cominternist versus the

whom does the Tismaneanu report belong? The final report: political document or scientific study, source of legality or a Trotskyist fight?1 (available at: www.civicmedia.ro, accessed 20 May 2007).

¹³⁴ Cosmina Tanasoiu, *The Tismaneanu Report*, p. 65.

patriotic one. Perhaps, one of the most controversial issues of the report concerns the characterization of repression as involving genocide.¹³⁶ The report argues that the acts that it interprets as genocide were accomplished through two methods. One was direct physical repression, such as incarceration and assassination in prisons and forced labor camps of more than two million people between 1945 and 1989. The other method was indirect repression implemented by the regime, including economic, educational and cultural policies.¹³⁷ The report also characterized as “intellectual genocide” the forced imposition of communist-nationalist ideology in literary works and subsequent censorship, intimidation and harassment of critics of the regime.

Expectedly, a number of current political actors violently rejected the report. What was intended to be a solemn break with the past and recognition of a new beginning as a nation now finally accepted into the European Union was unfortunately transformed into an embarrassing and undignified scene. The speech by Basescu officially endorsing the report on December 18, 2006 in the parliament met the challenge of the two main opposition parties; the Social Democratic Party (PSD,) and the Party of Great Romania in a thoroughly uncivil manner¹³⁸. These reactions

¹³⁶ The earliest repressive acts under consideration took place in August 1944 when the Soviet army took approximately 100,000 prisoners, both civilian and military after its break with Nazi Germany. This was followed by the brutal repression of an anti communist demonstration in 1945, the falsifying of the 1946 election results, and large scale political terror launched in 1948 when hundreds of thousands of political arrests were made by the secret police.

¹³⁷ The regime's economic policies comprised the forced industrialization that led to economic shortages, a poor healthcare system, high rates of infant mortality and morbidity, the highest number of handicapped persons in Europe and a generally low physical and mental health among the population

¹³⁸ In a conversation with Vladimir Tismaneanu in September 2016, he explains that a number of supporters of the PRM were illegally brought into the legislature and physically and verbally threatened members of the commission. Law enforcement

are not surprising given that a former and a current leader of the two opposition parties Ion Iliescu and Corneliu Vadim Tudor were listed in the report as agents in the general apparatus of communist repression.¹³⁹ The Final Report requested judicial investigations of the suppression of anti-communist demonstrations held between December 1989 and April 1990, and of the miners' militant protests in Bucharest in 1990, 1991 and 1999, which, in essence, accused Iliescu attempting to undermine the trajectory of the December 1989 revolution.

The prominence within the commission of individuals sharing a critical attitude towards the former communist regime provided those perceiving the communist past through a more favorable lens (the Social Democratic Party (PSD) and The Party of Great Romania led by Corneliu Vadim Tudor (PRM) with an opportunity to contest the legitimacy of the report. In particular, the critics argued that this undermined what should have constituted an essential goal of bringing about national reconciliation.

In contrast to many of the commission members, the majority of experts engaged in the commission tended to be young scholars who had recently gained their PhDs in social sciences with an active research agenda in the area of communist repression. As researchers appointed by the presidency their work was remunerated

officials and the presiding chair of the Senate, Nicolae Vacaroiu who represented the PSD, failed to intervene in any effective fashion. Perhaps more disturbing was the absence of Bogdan Olteanu, chair of the Chamber of Deputies, representing the Liberal Party (PNL,), which was at the time a partner in the coalition government [At the time the PNL and its prime minister, Calin Popescu-Tariceanu, were at odds with both their coalition partner the Democratic Party (PD,) and with Basescu.]

¹³⁹ In addition, some of the measures proposed by the report towards the condemnation of communism referred directly to post-1989 events involving both the National Salvation Front (FSN, Frontul Salvării Naționale) and its former leader Iliescu.

while the official members contributed their time pro bono¹⁴⁰. Critics also argued that the absence of any legal professionals among the members and experts contributed to the “often imprecise and confusing usage of concepts such as genocide, repression, or dictatorship”.¹⁴¹

Political Effect

The Romanian truth commission generated limited political impact. The Final report offers twenty-three recommendations. Basescu mentions in his speech only those he thought he could carry out. He did not mention lustration. After he created a presidential advisory commission in April 2007 to implement the proposals, it became simply an issue of money, and with the economic crisis, money became unavailable.

In the words of its chair, “ Unfortunately, the democratic forces did not respond with the necessary tenacity and firmness. Many legislative recommendations proposed by the Final report were delayed, hindered, or simply ignored”.¹⁴² Parliament has yet to adopt a legislative initiative to recognize the actions of the Jiu miners who revolted against the Communist dictatorship in August 1977 and were persecuted by the totalitarian regime. Neither has it established a National Museum of

¹⁴¹ Monica Ciobanu “Criminalizing the Past and Reconstructing Collective Memory: The Romanian Truth Commission” *Europe-Asia Studies*, Vol. 61, No.2 (2009): 313-336

the Communist Dictatorship, although between 2010 and 2012 important steps were made in this direction. All these frustrating delays notwithstanding, Romania is a different state than it was before. This change was brought about by the president, the most authoritative spokesperson of the Romanian democratic state, resulting in a final and irrevocable separation from the Communist state and its legacy.

On December 18, 2006, President Basescu endorsed the Final Report and presided over a special parliamentary session that categorically condemned the communist period in Romania. Characterizing the communist epoch as “illegitimate and criminal”, President Basescu said communism had robbed Romania of five decades of modern history. President Basescu endorsed several follow-up steps recommended by the commission, including establishing a Memorial Day and national monument for the victims of communist repression and construction of a National museum of the Communist Dictatorship. He also agreed on the need nullify politically based criminal sentences and to restore citizenship to individuals expelled by the communist regime. President Basescu also endorsed access to communist-period archives and the creation of a textbook on the communist period, based on the commission report. However, Basescu refused to urge parliament to adopt a lustration law as recommended by the report’s authors.

The commission report also named prominent perpetrators, including former communist party leaders Gheorghe Gheorghiu Dej and Nicolae Ceasescu, and listed Ilion Iliescu, former secretary of the Central Committee of the Communist party and a Minister of Youth in the early 1970’s, as a leading communist ideologist. Iliescu was

a central figure of post-1989 transition, serving as President from 1986-96 and 2000-04 and founder of the opposition Social Democratic Party (PSD).

The report also noted that the “golden age” of Ceasescu’s leadership received the support of a vast propaganda apparatus including “court poets”, such as Vadim Tudor who now heads the extreme nationalist Greater Romania Party (PRM)

Civil Society

Unlike Chile, In Romania the decision to establish a truth commission by president Basescu ultimately appeared as a natural outcome to a preexisting public outcry. Romania’s commission was mainly a merger of two factors, the initiative of individual politicians and a mobilized civil society. In fact, during his 2004 electoral president Basescu neither gave de-communization a prominent place in his platform nor pretended to have been a victim of Communism. However, the mobilization of civil society in Romania has continuously acted as catalysts for the reappearance in public debates of topics related to the Communist dictatorship and put pressure on the government to implement the truth commission’s recommendations. Since 2007, there has been tremendous interest in, and support for, various initiatives centered on dealing with the past and the continuing along the path set by the Commission. Along these lines, historian Marius Oprea, then president of the Institute for the

Investigation of Communism's Crimes in Romania, proposed a law according to which:

the pensions of the secret police employees, who were found by court to have been involved in repression, would be reduced to the level of the pensions of unskilled labors. The funds obtained through this pension cut would be allocated to the victims and the survivors of the Communist regime.¹⁴³

The draft submitted by Dr. Oprea was one of the recommendations of the Final Report in its section entitled "Legislation and Justice."¹⁴⁴ Later, in 2011, professor Vladimir Tismaneanu during his tenure as ICCMER's President of the Scientific Council, the institution's leadership attempted to promote a modified version of this legislative project but was again met with opposition from the Ministry of Justice.¹⁴⁵

One of the most important breakthroughs regarding the implementation of the recommendations of the Report was the nomination of Dr. Dorin Dobrinu as

Translation mine

¹⁴⁴ After several years of negotiations, this project was buried in the Parliament's archive because of an utter lack of political will to promote it.

¹⁴⁵ The social-liberal government did pass a law in 2013 that forces perpetrators to pay reparations to their victims. The law, however, is not so tough; reparations are not automatically demanded and can only be imposed after the person in question is sentenced. Suffice to say that no communist perpetrator has been sentenced in Romania, so implicitly this law is a Potemkin legislative act. For more details see Vladimir Tismaneanu, "Palme pentru victime: pensiile securiștilor și activiștilor," 19 September 2013, contributors.ro (<http://www.contributors.ro/reactie-rapida/palme-pentru-victime-pensiile-securistilor-si-activistilor/>).

Director of the Romanian National Archives.¹⁴⁶ Soon after his confirmation, he decided to grant free access for all researchers and individuals to the entire archive of the RCP's Central Committee.¹⁴⁷ Another important recommendation of the Final Report was implemented in November 2011. As a result of IICCMER's efforts, the Parliament passed Law No. 198 on "Declaring 23 August as the Day for Commemorating the Victims of Fascism and Communism and 21 December as the Day of Remembrance for the Victims of Communism in Romania."¹⁴⁸

Furthermore, in the wake of the publication of the final report and the mobilization of civil society, the climate has gradually shifted in favor of pursuing legal justice against those responsible for the past's abuses. Researchers working with the Institute for the Investigation of Communist Crimes publicized a list of Securitate perpetrators' names in 2007. Around the same time, the leadership of the institution announced that it had put forward a legal charge against 210 wardens and deputy-wardens of penitentiaries from the Communist period.¹⁴⁹ Similarly, between 2006 and 2013, IICCR and IICCMER provided expertise reports to Romanian prosecutors

¹⁴⁶ Dr. Dobrinu was a member of the Commission and an author and co-editor of the *Report*.

¹⁴⁷ In retaliation in 2012, the newly instated social-liberal government dismissed him from his position. However, the opening of the Romanian archives remains in place as a lasting legacy of the Commission.

¹⁴⁸ For details on this law and other legislative initiatives by IICCMER, see http://www.iiccr.ro/ro/proiecte_legislative_iiccmcr/proiecte_legislative/

¹⁴⁹ The national office of the prosecutor received a file of multiple famous crimes, what would later become "the group to pass judgment on the major crimes of communism" (*lotul procesul comunismului*). The 210 individuals were accused of using "the correctional program as a means of socially exterminating whole categories of people," actions which fell "into various category of criminal acts, such as first degree murder."¹⁴⁹

capable of initiating indictments for crimes perpetrated during the Communist period, but the information was simply ignored.

The effort of condemning the Communist dictatorship is at least tridimensional, existing in the realms of epistemology, legality, and memorialization. From an epistemic point of view, numerous volumes, memoirs, documents, diaries and historical, sociological, economic, philosophic literary and political science surveys have been published in the years since the condemnation. Most of these editorial projects were the collective works of government institutions such as the CNSAS, the National Archives, the Romanian Diplomatic Institute, or the IICCMER. From a legal perspective, some property restitution cases (in connection to the confiscation perpetrated by the Communist regime) have been resolved. Likewise, there have been juridical verdicts annulling prison, concentration camp, and death sentences from the 1950s.

As should be apparent by now, the IICCR (and then IICCMER) attempted to implement some of the Final Report's recommendations after 2006 and to continue the work of the Commission on multiple levels, such as scholarship, investigations, commemoration, and education.¹⁵⁰ The IICCMER has also published important monographs and edited volumes on the historical Communist period, and it promoted an extensive program (until the summer of 2012) for translating some of the most

¹⁵⁰ One website features an impressive collection of photos from those times; one investigates Nicolae Ceaușescu's politics of reproduction; one is dedicated to publicizing biographies of the nomenklatura; another discusses the geography of Romanian exile; yet another explores re-education in the Pitești penitentiary; one database displays the detention information of many political prisoners from the Communist period (and has proven to function as a valuable tool for those who wish to clarify or document individual contexts of repression); and a final website offers an educational platform on the history of communism in Romania.¹⁵⁰

important scholarship in the comparative study of totalitarianism. In 2010, the institute launched the first Romanian international peer-review journal in Communism, entitled *History of Communism in Europe*. It also publishes its own Romanian-language yearly review.

Chile's Truth Commission Effect in Perspective

The Rettig commission's final report did not serve the government's purpose of national reconciliation between the perpetrators and the victims.¹⁵¹ The unflinching attitude of the military, the Supreme Court, and the political Right revealed that neither the participation of conservative individuals in the commission process nor the undeniable facts of human rights violations overcame denial. In fact, President Aylwin's apology, which was meant to initiate a "ritual of reconciliation," only put the pressure off those who had much to apologize for.

The opposition blocked the incorporation of the final report into the educational curriculum. After the assassination of Jaime Guzman, the government suspended its earlier decision to disseminate the report,¹⁵² and this event of vengeful violence appeared to destroy hopes that some degree of self-reflection, dialogue, and consensus would be achieved. The dissemination of the report was further undermined when the minister of education Ricardo Lagos' proposal to use the final

¹⁵² Hayner, "Fifteen Truth Commissions," 622

report in textbooks was rejected in the face of Senate opposition. The report found its place in public library shelves in 1997 for the first time.

Was the assassination of Guzmán such a determining factor for the human rights issue? While there is broad consensus that the incident made it more difficult to advance truth and justice, it should not be singled out as the chief cause for the halt. Sociologist Manuel Antonio Garretón argues that the importance of the truth commission notwithstanding, it was not part of a clear political strategy. Rather, the government wanted to first evaluate other political actor's reaction to the commission before developing its own human rights strategy. The assassination had such drastic effect on the reception of the Rettig Commission and human rights policy only as a result of this reluctance to develop a consistent plan for action.¹⁵³

Commentators agree that the publication of the final report was meant to be the last, rather than the first, official mechanism to address the legacy of the dictatorship in the early years of the transition. Although Chile did not suffer cycles of violence in the democratic period, one cannot argue that the transformation of the political culture and mentalities through the truth commission accounts for this change. Refusal to learn from history, especially on the part of the perpetrators, is best illustrated by the constant military-civilian tensions that bordered twice on coup threats in 1990 and 1994. The Aylwin presidency always remained committed to the defense of rights rhetoric, but the issue of civilian-military relations let Aylwin to adopt a cautious approach, which he describes as “justice within the possible”. Truth and justice were further compromised under Eduardo Frei Tagle's presidency (1994-

¹⁵³ Manuel Antonio Garretón, “La redemocratización política en Chile: Transición, inauguración, y evolución,” *Estudios Públicos* 42 (Autumn 1991): 129.

2000), which treated the human rights issue as a closed matter, at least until Pinochet's London arrest.

The self perceived success of democratic transition and national reconciliation that permeated political discourse until October 16, 1998 when the optimism of the Chilean political elite dissolved in the face of Augusto Pinochet's arrest in London, which drew international attention back to Chile's pending human rights issue.¹⁵⁴ Serious generational, institutional, and political-cultural transformations would begin to shake Chilean politics around 1998.

Chile's participatory truth commission was the 2003 National Commission on Political Imprisonment and Torture, and interestingly, it was less a follow-up to the Rettig Commission than a reaction to its shortcomings. Torture under the military regime was discussed in general terms in the Rettig Commission's final report, but the commission was not mandated to draw a list of torture victims. The fact that the government did not formulate a policy of retributive justice or reparations throughout the 1990s meant that torture victims found no place in the official transitional justice framework. However, Pinochet's arrest in London and the subsequent human rights trials at home generated increasing awareness around the issue of torture in the early 2000s. Victim's associations successfully lobbied the government to create a torture commission, known as the Valech Commission after its chairman, Sergio Valech. Mandated to investigate torture, as well as sexual violence and mistreatment of minors, the Valech Commission served to extent official recognition and reparations

to victims who were excluded by the Rettig Commission. Thus, the activism around the Valech Commission sought to overcome the limitations of the previous panel.

Romania's Truth Commission Effect in Perspective

The establishment of the Presidential Commission and publication of the Final report raised expectations of change, but given the commission's mandate and the political situation in Romania, it would have been unrealistic to expect the Final report to have transformative impact on the local legal system.¹⁵⁵ The lack of subsequent reforms stems mostly from legislative incapacity, as truth commissions usually don't have the capacities of imposing punishments proportionate to the crimes committed, ensuring remorse from perpetrators, and ensuring that those dissatisfied with amnesties or the nature or extent of the amount of truth revealed will make no further demand for punishment or revenge. An example of this incurred when in 2013, Romanian prosecutors began investigating the possibility of legal action against Communist perpetrators. Their action was based on charges of genocide put forth by

¹⁵⁵ Lavinia Stan argued that "The Commission led to no reforms meant to strengthen the legal system, although the evidence it amassed did not represent inconsequential truth".¹⁵⁵ However, this view stems from confusion about the purpose, functions, goals, and mandate common to the great majority of truth commissions. On this matter, for example, Charles Villa-Vicencio argues that what can be expected from truth telling projects is to break the silence on past gross violations of human rights; counter the denial of such violations, provide an official acknowledgement of the nature and extent of human suffering; provide the basis for the emergence of a common memory that takes into account diverse experiences; help create a culture of accountability; provide a safe space within which victims can share their experiences without the restraints of a courtroom; provide important symbolic forms of memorialization and reparation".¹⁵⁵

IICCMER. This charge, however, was hardly going to generate positive results, considering that in Romania, the penal code's definition refers to genocide as "the destruction in its entirety or only partially of a collectivity or of a national, ethnic, racial, and religious groups."¹⁵⁶ Building a legal case on the ambiguous formulation of "collectivity" potentially undermines the initiative itself. "It seems more like a convenient ruse intended to display supposed willingness toward prosecution without having to actually pursue legal accountability. Though charging for genocide was an untenable approach, it was still rather surprising that the charges of homicide or crimes against humanity¹⁵⁷ were not employed, either. After all, the statute of limitations for homicide had been eliminated from the Penal Code (Law 27/2013) via a legal act endorsed by the Constitutional Court.¹⁵⁸

The Final Report identified many features of guilt that had never before been scrutinized in relation to the Communist experience. It offered a framework for shedding light on what Karl Jaspers called "moral and metaphysical guilt" or the individual's failure to live up to his or hers moral duties and the destruction of the solidarity of the social fabric.¹⁵⁹ In accordance with the Presidential Commission's mandate, the Final Report detailed multiple levels of the regime's systemic reproduction, which deepened and expanded the party-state's roots within society. It

¹⁵⁶ Cristian Vasile gave me this translation and explanation of the case. March, 2018

¹⁵⁷ For the decision of the Constitutional Court see <http://www.hotnews.ro/stiri-esential-16190595-ultima-ora-curtea-constitutionala-respins-exceptia-neconstitutionalitate-privind-inlaturarea-prescriptiei-pentru-infractiunile-omor.htm> (last accessed 4 January 2014). For the changes in the Penal Code see http://www.iiccr.ro/ro/presa/comunicate/comunicate_de_presa_2012/crimele_comunismului_pot_fi_in_continuare_judecate/ (last accessed 5 January 2014).

¹⁵⁸ Karl Jaspers, *The Question of Moral Guilt* (New York, NY: Fordham University Press, 2001)

showed how under state socialism, individuals agreed to work for and collaborate with the secret police, joined the party/government nomenklatura, and persecuted those who challenged the regime. Moreover, the report caused unrest by extending responsibility beyond the Communist Party and the secret police. It does not vest responsibility solely at the top with the Party leaders (especially Ceausescu and his family), but instead names specific individuals, eliminating the image of the regime as a system so impersonal that blame is to be shared equally by all and, consequently, by none. Judges issued sentences that sent dissidents to jail, allowed house searches and provided legal cover for countless human rights abuses.

The Final Report also provided evidence for several crucial evaluations of the Communist regime that were radically different from those generated by the masses of historical literature produced before the publishing of the Report.¹⁶⁰ One of the most important achievements of the Presidential Commission's Final report is its denunciation of the country's totalitarian experience as national Stalinist, characterized by organic forms of nationalism and Marxist-Leninist tenets. Furthermore, it shows that the regime was Stalinist from the beginning to the end and that there was continuity between the first and second stages of Romanian Communism.

¹⁶⁰ The Report revealed new dimensions of the Romanian resistance to Communism. Contrary to the narrative promoted by the Far Right and Far Left that members of the Iron Guard represented the core resistance against fascism in Romania, the actual resistance was made up of former military officers, teachers, and people belonging to democratic parties.

Conclusion

Chile's Rettig Commission was established with a mandate that reflected President Aylwin's goals, as well as those of an internationally renowned human rights lawyer, José Zalaquett. The wording of the mandate and the designation of the commissioners embodied the balancing approach to truth, justice, and reconciliation. The main task of the commission was to establish an undeniable basis of factuality concerning death and forced disappearance under the military regime. It was not asked to produce an account of the underlying causes for violence and violations, as such an effort would deepen the divisions over social memory. Instead the commission was motivated by the responsibility to make political and institutional recommendations in order to prevent the recurrence of the political radicalization and institutional breakdown of 1973, which had provoked the military coup. The commission did deliver on those promises, as it established the facts concerning death and disappearance, presented an account of the immediate causes of the military coup (i.e., the political and institutional crisis of 1973), and proposed institutional reform. It suggested a reparations program as the mechanism for the recognition of victimhood and the reintegration of victim's families into society. The government endorsed the final report and adopted most of its policy recommendations. Despite the government's effort to portray the commission as a platform for national reconciliation, the military and the right wing sectors largely chose to ignore the facts and discredit the report. Thus, the commission did not serve reconciliation in the way

understood by its creators. Finally, it did not generate civil society mobilization, to the contrary, the Rettig Commission was conceived as the last step for some influential actors (such as the Catholic Church), and the subsequent process of dissolution aggravated the irrelevance of the human rights issue until Pinochet's London arrest in 1998.

In contrast, the Romanian Truth Commission brought human rights activists and intellectuals on the political scene at a historical moment when none of the traditional actors state institutions had the will or legitimacy to steer the democratic transition. The mandate granted the commissioners discretion over the kind of truth they would produce and the way in which their conclusions would be incorporated into political practice. The lack of political restrictions, the designation of commissioners from the human rights community and social sciences, and the experiences of prior truth commissions (i.e., the German "Enquete Commission") all contributed to a comprehensive, even ambitious, notion of truth that combined volumes of historical, anthropological, and sociological analysis with an elaborate investigation of several categories of guilt and genocide. The Romanian commission did not single out ideological polarization and institutional breakdown as causes of the conflict, like the Chilean one. Instead, it took a wider view of the shortcomings of the totalitarian regime that perpetuated crimes, poverty, exclusion and marginalization. This analysis guided the ambitious recommendations chapter. In the end, this tremendous civil society initiative was endorsed and defended by civil society actors. As a result of IICCMER's efforts, the Parliament passed Law No. 198

on “21 December as the Day of Remembrance for the Victims of Communism in Romania”.

Successive governments, however, were unwilling to take the lessons from history and convert them into policy. It could be argued that the Romanian truth commission can be considered a moral triumph, yet a politically it is still an unfinished project 12 years after it completed its work. There was a great deal of rhetorical support, but the Romanian commission still remains mostly the project of civil society actors.

The commission creation process is the key juncture that explains the variation across commissions, as described in this chapter. Yet, alternative explanations of variation need to be taken into consideration. It can be argued that the difference between the commissions results from the balance of power during their respective political transitions. After all, Chile’s transitional justice model had to take into consideration the ongoing influence of Pinochetistas, while the Romanian truth commission enjoyed the lack of organized opposition in its early months. I show that the nature of the transition does not determine a commission’s mandate, composition, operation, and outcomes. The cases of Chile and Romania offer insights into why this is the case: the balance of power before and during the commission process can influence the commission’s work and findings only indirectly. Whether the commission establishment process is tightly controlled or highly inclusive is not determined directly by the balance of power. While establishing the commission, the balance of power influences who can possibly sit at the table (i.e., who is likely to author the commission’s mandate) but does not determine who ends up making key

decisions, or whether the decision making procedure is participatory. For example, as explained above, President Aylwin had to renegotiate the composition of the Chilean commission once his initial plan was frustrated; the composition reflected one of many possible outcomes rather than the necessary outcome of a negotiated transition. Therefore, the balance of power may have an indirect effect on a commission's mandate and composition, but this effect is not deterministic, that is, one type of political transition does not necessarily produce one type of commission.

It can also be argued that the Romanian commission was more comprehensive because it drew upon the conceptual and methodological innovations of commission experiences throughout the 90s and 2000s. The transformation of what it means to create a truth commission is undeniable, and most of the more comprehensive commissions were established in the mid-1990's and 2000's. However, there were relatively more comprehensive commissions in the early 1990's (e.g., the commission in Germany), and relatively more circumscribed commissions in the late 1990s (the commission in Nigeria). The timing of a commission does have an effect, but just like with the nature of a political transition, that effect is nondeterministic and exerts itself indirectly, that is, through the commission process.

CHAPTER 5

TRUTH COMMISSIONS' MEMORIALIZATION: CHILE AND ROMANIA

Transitional justice measures, and truth commissions in particular try to raise awareness around histories of violence and violations in the context of rebuilding state institutions and national identity. Truth commissions' explanations for the underlying causes of past violence violations exhibit considerably variation. No doubt, some of the differences owe to the context in which violations happened, as well as the nature of the violations themselves. Yet, one often observes divergent historical narratives describing comparable historical contexts.

Chapter 4 presents a detailed description of the pre-commission, commission, and post-commission processes in Chile and Romania, revealing the plethora of interactions between politicians, state bureaucracies, civil society actors, and commission members.

This chapter offers a comparative analysis of the history of the Chilean and Romanian truth commissions to understand the conditions under which truth-finding panels are likely to produce more comprehensive and inclusionary accounts. It explores what the respective commissions include and exclude when it comes to explaining the causes and consequences of political violence. Chapter 3 identifies a number of narrative strategies (resolving, avoidance, giving voice, and modify) that

all truth commissions use, although to varying degrees. This chapter seeks to explain how the commissions use those strategies and to what effect.

The commission creation process simultaneously enables and constrains the commission through the mandate and the appointment of commissioners, which in turn shapes the forensic investigation and the historical explanation. The composition of the commission is of special significance in making sense of the historical explanation, since the commissioners' professional background, ideology, values, and experience have direct influence on the content and exclusions of the narrative.

An exclusionary commission creation process results in a constrained mandate and a list of commissioners that reflects limited and politically convenient goals. As the example of Chile suggests, such a commission is likely to lead to a relatively narrow historical narrative that avoids politically divisive issues and ignores the opportunity to produce a comprehensive account of the underlying causes of political violence and violations. In contrast, the participation of multiple social and political actors in the commission creation process, as in Romania, is likely to enable the agency of those commissioners interested in creating a rich and broad account of national history. Consequently, such a commission will tend to intervene in social memory struggles more actively, settling on controversial topics and incorporating more voices and perspectives.

A word of caution: I do not claim that participatory commission processes produce historical narratives that are completely free from avoidance and exclusions. Even the most comprehensive and inclusionary historical narrative cannot entirely escape avoiding a stance on some historical controversies or leaving some alternative

explanations unaddressed. Nonetheless, there are fewer avoidances and exclusions in the historical narrative following a participatory commission creation process than a narrative resulting from an exclusionary process.

In the following section, I discuss the content, inclusions and exclusions of the historical narrative in the Rettig commission's final report and situate this narrative in the field of social memory struggles in Chile. Then I offer a point of comparison by analyzing the Romanian truth commission's historical narrative and its role in that country's social memory debates. The concluding section invites scholars and practitioners to rethink the silences and exclusions of truth commissions in general. Even if political constraints set limits on how truth commissions make sense of the past, commissions would serve their goals of preserving historical memory and preventing future violence better by producing more comprehensive historical narratives that connect the proximal and underlying causes of violent conflict, paying attention to individual and collective agency without reducing historical actors to victims and perpetrators.

The Historical Record of Chile's Rettig Commission

It was Chile's Concertación government initiated the truth commission to discover and expose information on forced disappearances and killings and to put an end to the forced exclusion of experiences and memories that refuted the military government's

self-justifying narrative. Throughout the military regime, state propaganda and influential media groups had portrayed the military coup as a heroic and selfless act of salvation against Marxism and denied allegations of extrajudicial killing, disappearance, and torture. The human rights movement had devoted enormous time, resources, and energy to documenting and denouncing the violations in the face of threats, but the judiciary refused to investigate the human rights cases, and the mainstream media, in close collaboration with the military government, marginalized the movement. Neither the judiciary nor the mainstream media changed their postures in the early years of the democratic transition. The hope for revival under democracy depended on alternative fact-finding and truth-telling projects, such as the Rettig commission.

The commissioners adopted a unanimous decision rule to confirm the veracity of forensic data and historical explanation. Reflective of the Chilean society at large, each commissioner had a particular understanding on the onset of the coup, its justifiability, the historical role of the leftist Unidad Popular government (1970-1973) and the ways in which the Right and the Christian democratic Party handled the political impasse of 1973. The extent of divergence within the commission presents a puzzle: How did they reach an agreement while coming to grips with such a divisive legacy?

The commission's chief strategy was to leave those aspects of history in which they "agreed to disagree." As the final report states, "the commission has refrained from taking a stand on whether the use of force on September 11, 1973, and immediately thereafter was legitimate, both by those who sought to overthrow the

government of President Salvador Allende and by those who sought to defend it.”¹⁶¹ However, the commissioners were well aware that complete silence on the historical context would undermine the task of learning from past mistakes in order not to repeat them, “ the Commission believes it must take into account the situation of the country leading up to September 11, 1973. That situation led to a break in our institutional life and a deep division between Chileans, which made it more likely that human rights would be violated. One of this Commission’s assigned tasks is to propose preventive measures, that is, to suggest what it should be done so as to prevent the recurrence of the kinds of infractions we have investigated.”¹⁶²

The chapter entitled “Political Context” (chapter 1) is devoted to explaining the causes of the military coup and describing the political and institutional context in which human rights violations took place. The historical narrative largely reflects the contending positions of commissioners José Zalaquett and Gonzalo Vial. Zalaquett brought the sensitivities of a human rights advocate to the table. The accurate documentation of human rights violations, the elucidation of institutional responsibilities, the categorical exclusion of violence from political ethics and practice, and the reconstruction of the nation through respect of human rights and the rule of law. His pragmatic approach to transitional justice facilitated negotiations with various political agendas, including a conservative one.

Gonzalo Vial, an influential historian who many volumes covered Chile’s entire colonial and postcolonial periods, had opposed the socialist project and its supposed violent implications since the 1960s. He saw in the democratically elected

¹⁶¹ *Report of the Chilean national Commission on truth and Reconciliation* (1993), 31

¹⁶² *Report of the Chilean national Commission on truth and Reconciliation* (1993), 3

socialist Unidad Popular government an insidious plot to destroy the traditional pillars of Chilean society and impose communist tyranny, by force if necessary. He is also rumored to have edited the White Book of the Change of Government in Chile to justify the military coup.¹⁶³ The book, published month after the coup by the secretariat-general of the military government, claimed to reveal a conspiracy of the extreme Left, called “plan Z,” to turn Chile into a dictatorship of the proletariat. Vial also served in the military government as the minister of education. Thus, his views not only reflected, but also actually shaped, the conservative worldview. Nonetheless, his self-distancing attitude toward the military regime with respect to the latter human rights record, qualified him for the truth commission.

The commission’s historical narrative should be read as a consensus played out between these two positions: categorical condemnation of the human rights violations (the human rights sensitivity advocated by Zalaquett), combined with a right wing historiography emphasizing the political polarization of the Allende years, while passing no condemnatory judgment on the military coup itself (Vial’s position).

The chapter in its original consists of nineteen pages, with the first six pages devoted to the onset of the military coup, and the rest describing the institutional

¹⁶³ Vial views on the justifiability of the military coup are not limited to this highly propagandistic work with no identifiable authors. In his account of the history of Chile, he writes: “Finally, all these evils deepened in the thousand days of the Unidad Popular, whose regime and supporters encouraged violence, shattering the country towards a shattering crisis. The divisions of civic life threatened to reproduce themselves within the Armed Forces, which finally chose to hear the voice of the vast majority of the country that wished the end of the Allende regime. In that sense, September 11, 1973 was not any barracks conspiracy or military coup, but rather constituted a military uprising in the face of the crisis that was threatening the very soul of Chileanhood.” Gonzalo Vial Correa, *Historia de Chile, 1891-1973*, vol. 2 (Santiago de Chile: Editorial Santillana del Pacífico, 1981), 315; translation is mine.

framework of the military regime. There is a strong historical argument coming out of the short explanation of the coup onset, which can be called the “political polarization thesis.”¹⁶⁴ Accordingly, the immediate causes leading up to the coup were of a political and ideological nature. While the text acknowledges the deeper social economic causes as subject matter for a broader explanation, it focuses on the “clashes of doctrines and attitudes in the realm of politics and ideology, as these have an immediate bearing on the issue of human rights.”¹⁶⁵ With its focus on the immediate causes, the chapter depicts the Unidad Popular government as a period of increasing polarization along political-ideological lines that led many actors on both sides to affirm violence as a legitimate instrument to achieve political ends. The parties to the conflict are identified as “government and opposition.” Some sectors of the government and its allies advocated the “armed path” to bring about socialist transformation, while the opposition political parties based their strategy on rendering the country “ungovernable,” through violent means if necessary.¹⁶⁶

In one of the rare moves toward historical explanation, the text sets out the broader context that caused the “destruction and deterioration of numerous points of consensus...and shared assumptions concerning social and political coexistence, which served to safeguard respect for human rights.”¹⁶⁷ Chief among them was the regional polarization of the Cold War, which was aggravated after the Cuban Revolution. The consequence was a disposition towards ideological inflexibility that

¹⁶⁴ *Report of the Chilean national Commission on truth and Reconciliation* (1993), 3; translation is mine

¹⁶⁵ *Report of the Chilean national Commission on truth and Reconciliation* (1993), 47

¹⁶⁶ *Report of the Chilean national Commission on truth and Reconciliation* (1993), 51

¹⁶⁷ *Report of the Chilean national Commission on truth and Reconciliation* (1993), 47.

ruled out political negotiation even the parties to the conflict lacked the power and legitimacy to impose their political projects. Eventually, adherence to democratic procedures began to falter.

As the democratic breakdown was imminent, other causes accelerated the crisis. First, the sense of defeat and threat on the part of the policy elites led the government of the United States to direct efforts to undermine the Unidad Popular government. Second, the domestic economic crisis of 1972-1973, resulting in the middle class disenchantment with the government, destabilize the political system even more. Third, land expropriations (tomas) and other radical measures by the government and its allies triggered “circumstances that could seem to justify fears”¹⁶⁸ among some sectors. Finally, some media organizations acted irresponsibly by vilifying their political enemies. The text describes these processes in general terms. It does not give an example of U.S efforts to undermine Allende’s government, and it does not name those irresponsible press organizations. Despite its decision to avoid judgment on politically divisive issues, the memory framework that shapes the report’s analysis is deeply political, but only selectively so. The text explains the social and political trauma that led to the coup with a narrative of political polarization, economic crisis, and bad governance under Allende’s presidency. The periods before and after the Unidad Popular government are spared political, institutional, and macroeconomic analysis.

The report pictures the armed forces as an apolitical organization that historically respected civilian democratic rule. However, the climate of ideological

¹⁶⁸ *Report of the Chilean national Commission on truth and Reconciliation* (1993), 69.

polarization drew the military into political conflict, as they considered themselves the ultimate bastion of democratic rule in Chile. The commission's reconstruction of history puts emphasis on how the crisis "drew them away" from their tradition of discipline, respect for civilian rule, and political neutrality.¹⁶⁹ Nonetheless, the report admits that "the subsequent events to which we now turn leave no doubt that there was also an ideological tendency within the armed forces and security forces,"¹⁷⁰ again without specifying the actors representing those tendencies.

The contradiction that runs through the context chapter is that while it condemns the parties to the political conflict for creating an environment of violence, the commissioners declare themselves unfit to condemn or praise the actual use of violence to overthrow a democratic government. The truth commission's strategy is to remain agnostic about the legitimacy of the choice of using military force to overthrow a military government and concentrating condemnatory judgment on the human rights violations during and after the coup: "whether having recourse to weapons was justified or not, there are clear norms forbidding certain kinds of behavior in the waging of hostilities, both in international and internal conflicts," such as killing or torturing prisoners and violating fair trial standards.¹⁷¹ In other words, the final report condemns the political-ideological environment that may have led to violence, fails to condemn the actual decision to use violent means to appropriate political power, but then again condemns the consequence of the decision, that is, death and disappearance.

¹⁶⁹ *Report of the Chilean national Commission on truth and Reconciliation* (1993), 73.

¹⁷⁰ *Report of the Chilean national Commission on truth and Reconciliation* (1993), 73.

¹⁷¹ *Report of the Chilean national Commission on truth and Reconciliation* (1993), 51.

The definitional ambiguity notwithstanding, “from practical and political points of view...the mandate made sense. It deferred to sensibilities of the military and the Right, and it recognized that technical distinctions regarding the transcendent value of life would not register with the larger Chilean public.

The context chapter has a clear message. The Chilean society should absolutely not repeat the experience of grave human rights violations. The mechanism for prevention is twofold: one, avoiding the mistakes of radical sociopolitical transformation and polarization, embodied in the Unidad Popular project, and two, respecting democratic procedures and the rule of law. Thus, it affirms a strictly procedural notion of democracy, excluding substantive notions of social justice and radical change for fear of political mobilization, polarization, and ultimately violence.

While Gonzalo Vial was the principal author of the context chapter, it is a mistake to hold him solely responsible for its strengths and weaknesses. The final report was adopted unanimously, and other commissioners have defended its historical approach in subsequent publications and academic conferences, which point to a high degree of consensus.¹⁷²

In chapter 3 I argue that truth commissions narratives are constituted as much by what is excluded from the text as by what appears in it. Therefore, the Chilean truth commission’s context chapter should be situated in the broader field of social memory struggles in the 1990s. The Pinochetista social memory, which glorified the military coup and the military regimes’ policies while trivializing the human rights

¹⁷² For example, Zalaquett reiterates the basic argument of the context chapter when interviewed by Greg Grandin: “The Rettig Report is the history of doctrinary justification of ethically unacceptable means in political action.” Grandin, “The Instruction of Great Catastrophe,” 56 n. 40.

violations, had considerable support from conservative politicians, the business class, the media and a significant portion of society. The socialist/communist reconstruction of the same past saw in the military coup the bloody destruction of a democratic revolution that had inspired the Chilean public for the first peaceful road to socialism. Those leftist groups that were excluded from the governing center-left coalition, such as the Communist Party and victim's organizations closely affiliated with them, headed this memory camp. And finally, the socialist, social democrats, and Christian democrats who came together under the Concertación banner saw themselves as the defenders of the center-left position, having left behind the radical aspirations and political errors of the 1960s and 1970s. The centrist social memory condemns the military regime's human rights violations, but also distances itself from the Unidad Popular's dream of revolutionary change. Instead, the need to uphold democracy, the rule of law, and a market economy with minimal state intervention take priority as the most important lessons from history.

Right wing circles and the military were the first to criticize the truth commission on the grounds of limited contextualization. For the Pinochetistas understanding of the events, "context" meant the radicalization of socioeconomic grievances and the polarization of politics under the reformist Christian Democratic government of Eduardo Frei-Montalva (1964-1970), followed by the destruction of democracy at the hands of radical Marxists (1970-1973). It was against the backdrop of this history that the coup, receiving widespread endorsement from right wing and Christian democratic politicians and congress took place.

The Concertación politicians left the terrain of context related disagreements to their political rivals and instead focused on the human rights question before, during, and after the truth commission process. They insisted on the legitimacy of the periodization of the commission mandate and did not argue with the right-wing opposition over the legacy of the 1960s and the 1970s. The history of the Concertación plays a crucial role in explaining this decision. All relevant actors knew all too well that the Christian Democrats had initially supported the coup that explicitly tried to eliminate the political Left. Influential Christian Democrats adopted an oppositional stance against the military government only after they realized that Pinochet was consolidating power and that human rights violations had reached intolerable levels. In light of this divisive political history, the only way that the new political coalition of Christian Democrats and leftists could hold together was if the troubling past was somehow forgotten and democracy and human rights were affirmed repeatedly as the unifying principles of the Concertación.¹⁷³ The coup onset and the initial response to the military rule, therefore, stood out as inappropriate topics to discuss publicly, while the human rights issue served the double function of delegitimizing the right wing opposition and providing cohesion for the ruling coalition. Hence the commission's limited mandate.

The commission entirely ruled out discussion of the underlying socioeconomic, historiographical, and cultural factors that made political violence and violations possible in Chile. Chilean historians and academics, particularly those

¹⁷³ This is how José Miguel Insulza, member of the socialist party and minister of interior of the Concertación, explained the delicate balance of power with the Concertación immediately after the return to democracy and during the early 1990s.

on the left, have discussed class conflict at the root of political violence at length. Accordingly, the coup coalition consisted of those sectors (including the Christian Democrats) that defended their class interest against the socialist experiment under way. It was no surprise that they welcomed the military regime that destroyed Chile's democracy, disbanded leftist organizations, and crushed popular sectors in a wave of repression and neoliberal restructuring. Thus, human rights abuses cannot be understood in isolation from the economic and political project carried out by Pinochet, the business sectors, and the U.S trained neoclassical economists (popularly known as the "Chicago Boys").

The Marxist inspired historical narrative stands in sharp contrast with the truth commission's view of the military regime as a rupture in Chile's history of democratic development. While the dictatorship was particularly long and violent, leftist historians claim that it was not an exception in Chile's long history of repression against the labor movement and other forms of social protest. Pinochet was just a more radical and uninterrupted phase of this pattern of repression and the truth commission excludes this alternative plausible explanation of the nature of political conflict and violence in Chile.

Why did the commission ignore this alternative historiography? The tightly controlled commission creation process was premised on achieving numeric balance between human rights defenders and the representatives of the political Right. The public figures who could problematize the nation's long historical trajectory of violence and make a strong statement against the political choices of the military

regime were excluded.¹⁷⁴The extra-parliamentary Left, represented by the Communist Party and major victim's organizations, had suffer the most from human rights violations and they were also deeply disappointed with the early transitional experience in which the essentials of the neoliberal economy, installed by Pinochet, were completely maintained by the Concertación. However, they were too weak to count as major actors, and the truth commission allowed their participation only as victims, not as mandate setters or commissioners. Therefore, the Marxist conception of history was at the margins of the social memory politics. It reminded the public of what the hegemonic discourses were concealing, but this conception was by no means a major determinant of the truth and justice processes in Chile.¹⁷⁵

The Historical Record of Romania's Truth Commission

In sharp contrast, the truth commission in Romania produced a broad social history to contextualize political violence and violations. From the beginning, the commissioners were aware that their narration of history would shape public debates

¹⁷⁴ Contrast the Rettig commission failure to recognize the victim's political agency during the Unidad Popular experience with this statement by Soledad Sierra, a leading figure of the AFDD: "We loved (our disappeared relatives) because they were free in their thinking and just in their decisions. We loved them because they were leaders of popular political parties, because they were union leaders." Sandrine Lefranc, "Aquello que no se conmemora: Democracias sin un pasado compartido" *Revista de Ciencia Política* 23, no. 2 (2003): 231-240; translation mine.

¹⁷⁵ Several Left leaning historians published a document called *The Historian's Manifesto* in January 1999, which does not mention the truth commission but heavily criticizes Gonzalo Vial's interpretation of Chile's political history. Sergio Grez and Gabriel Salazar, comps., *Manifesto de historiadores* (Santiago de Chile: LOM, 1999)

on collective identity, memory, and justice. In a sense, the commissioners were aware that in a country like Romania, the struggle against forgetting is a powerful form of doing justice. The Communist regime founded its legitimacy on ideology or what historian Martin Malia called “ideocratic partocracies”¹⁷⁶, and it instrumentalized this faith in its attempt to encompass the entire society. Subsequently, the main instrument the commission used to master the past was the deconstruction of the ideological certainty established by the Communist past. If de-communization was to serve as a foundation for a new beginning, it had to generate a better understanding of human motivations, highlight the institutional underpinnings of the old regime, and explain the mechanics of submission manufactured under the communist ideology.

In 2013 Romanian prosecutors began investigating the possibility of legal actions against perpetrators of human rights violations during the communist regime. The then president of the IICCMER, Andrei Muraru, announced that the institutions would pursue legal action against thirty-five perpetrators accused of violating human rights. When the first case was brought forward against Alexandru Visinescu, the IICCMER charged the accused of “genocide”. However, this charge made the prosecution of the accused more difficult as the case centered exclusively on the individual as an incarnation of evil and not on his function as an instrument of the regime. In an interview with Adrian Cioflanca he remarked that the trial failed to realize that “ the perpetrator is a character that needs to prove something. In this reading, the perpetrator is a sadist and a fanatic.” In contrast, the Final Report sought

¹⁷⁶ Historian Martin Malia characterized the Soviet regime as an ideocratic partocracy because all life was subordinated to the political imperatives of an omnipresent party that also acted as a secular theocracy.

to contextualize such crimes in order to examine the bigger picture, founding its argument on institutional affiliations and actions, grounds of belief, and other contingencies that affected personal motivations or occupational responsibilities.

The composition of the commission played a crucial role in that decision: most commissioners were young historians, social scientists, or political activists who had devoted themselves to understanding and transforming the social reality. Furthermore, the commissioners also appointed foreign scholars as advisers and fieldwork researchers. The staff introduced a rich array of methodological approaches, ranging from ethnographic studies to quantitative statistical techniques.

The Romanian truth commission's estimation of victims caused controversies among informed observers and commissioners alike. After the report was issued, several scholars and analysts complained about the wide range in the number of victims. At the time of its writing, the commission was incapable of providing an accurate estimate because the commission did not have full access to the archives and reports from the Ministry of Internal Affairs. Therefore, the report decided to bring together all schools of thought and provide a broad range for the number of victims. Thus, the commission decided to include all the divergent views in its final report. Minimalists among the commission members claimed that there were 500,000 victims, whereas maximalists insisted on 2,000,000. The difference in the estimates of victims reflects an important distinction between the Romanian and Chilean truth commissions. The gap between the minimalist and maximalist estimation of victims in Romanian reflects the intention to recognize, for the first time, those individuals and groups that had been marginalized because of the socioeconomic policies

between 1948 and 1989. The enormous mismatch between numbers also points to the inability of totalitarian governments to keep records. Part of this failure owes to the fact of what one historian called “the revolving doors of Gulag”¹⁷⁷ where there were multiple sentences for the same individual in the span of several years.

The findings debunk the totalitarian communist propaganda, much like other truth commissions. The final report condemns “the communist system in Romania, from its foundation, on the basis of dictate, during the years 1944 to 1947, to its collapse in December 1989 as illegitimate and criminal”¹⁷⁸ and guilty of systematic human rights abuses.

In an attempt to resolve competing versions of the past, the report characterizes the country’s communist totalitarian experience as national Stalinist and a hybrid of organic nationalism with Marxist-Leninist tenets. The Report’s introduction clearly states,

Tributary to Soviet interests, consistent with its original Stalinist legacy, even after its break with Moscow, the communist regime in Romania was antinational despite its incessant professions of national faith...behind the ideology of the unitary and homogenous socialist nation lay hidden the obsessions of Leninist monolitism combined with those of a revitalized extreme right endorsed by the Party leaders.

The final report also modifies between various memory narratives that had dominated public discourse through the 1990s and 2000s. One of the master

¹⁷⁷ Golfo Alexopoulos, “Amnesty 1945: The Revolving Door of Stalin’s Gulag,” *Slavic Review* 64, no. 2 (Summer 2005), pp. 274-306

¹⁷⁸ Final Report, page 147

narratives after 1989 stated that Romanian communism was not part of the nation's history because it was imposed on them by Soviet (i.e., foreign) power. This us vs. them discourse identifies a decade characterized as the "High Stalinist" period (roughly 1947-1953) and blames the "Muscovites", while the Ceasescu period is seen as one of patriotic emancipation and self-determination. As explained above, the final report radically demystifies this historical narrative by establishing a continuity between the first and second stages of Romanian Communism.

In addition, the final report rejects the narrative promoted both by the far Right and the far Left that members of the Iron Guard represented the core resistance against fascism in Romania, while stressing that the actual resistance was made up of former military officers, teachers, and people belonging to democratic parties, including some social democrats.

Unlike its Chilean counterpart, the Romanian truth commission combines forensic investigation with several volumes devoted to putting violence and violations in context. Chapter 1 of the Final Report looks at the evolution of the Romanian Communist Party from 1944 to 1989. The Final Report analyzed the Communist system after 1945 and its destruction of the pluralist system and civil society. This analysis of the communist regime examines in detail the methods and tactics used to gain control of politics and government—a combination of terror against political opponents and political propaganda constructed around the slogan of popular democracy. Then, it examines the nature, scope and effects of ideology in a totalitarian communist regime between 1945-1989, laying the ground for the condemnation of the regime in moral, intellectual, political and social terms.

Crucially, this chapter presents the thesis of its criminal nature rooted in illegality and illegitimacy. It argues that the twin pillars of the regime that sustained its total control and authority were the secret police (Securitate) and state propaganda. This argument is further supported by the recognition of a fundamental continuity between the Soviet-era phase up to 1964 and nationalist communism initiated by Gheorghiu-Dej¹⁷⁹ in 1964, which continued until 1989. The report also maintains that despite its claim to national independence from the Soviet Union, the nationalist-communist regime never renounced its totalitarian practice, and that nationalist ideology in no way altered the nature of the regime, but on the contrary, enhanced and assured the authority of the Romanian Communist Party and its leadership. Overall, the report focuses on the role of the Party elites, carefully looking into their bibliographies, in order to explain the reasons and context of their rise and fall.

Chapter 2 is an in-depth analysis of the communist repression, referred to as genocide, and of the prison system, or gulag. The notion of genocide is vast in scope. It includes the destruction of Romania's social system through collectivization, the economic collapse brought about by the pace of industrialization, the degradation of the educational system, and the many environmental disasters resulting from industrialization, not to mention the widespread religious persecution, the deportations, the destruction of moral values, and the mistreatment of diaspora Romanians. The chapter examines every aspect of the communist repression machine from the legislative framework to torture, and it personalizes the repression by identifying decision-makers and enforcement officers as well as victims.. It describes

¹⁷⁹ Gheorghiu-Dej (1901-1965) was the first General Secretary of the Romanian Communist Party from 1947 to 1965.

forty-one different methods of torture used by Securitate interrogators in the prisons and camps as part of the “re-education” process. Annexes to the chapter include detailed lists of political detainees, prison centers, deportation centers, investigation centers, labor camps, psychiatric wards, and mass graves. Case studies of the most notorious political prisons (Sighet, Aiud, Pitesti, Gherla) and labor camps (the Danube–Black Sea canal) provide a detailed account of the internal functioning of the communist prison system.

Chapter 3 considers the effect of Party policies on Romania’s society, economy, and culture by looking into economic policy, the use of ideology, demographic, educational, and minority policies, and other instruments of control. The approach is general (discussing policies) and personal (identifying individuals directly involved in the implementation of these measures). The analysis is also supported by constant references to the legal framework, with the authors arguing that the constitutional foundation was developed to sustain the role of the single party and enhance its ability to control the economy, society, and culture.

The report follows the creation of the planned economy through the stages of nationalization (1945–50), forced industrialization by way of five-year plans, and the collectivization of agriculture (1949–50). The report argues that educational reform was perhaps the Party’s most important means of achieving control and it criticizes the educational policy for brainwashing several generations of the Romanian people and truncating the country intellectually. Political and social discrimination were actively pursued in the educational system. Party control was also extended to the religious establishment through repression of subversive elements in the Orthodox

Church and of churches with foreign supreme authorities. Chapter 3 concludes that the Party controlled every aspect of life, with Romanian society under constant surveillance, molded and tamed into submission by a repressive and educational mechanism.

The final report states that discrimination, poverty, and social exclusion were closely correlated with victimization during its totalitarian experience. In an interview with Anca Sincan, she stated that the commission makes connections between its human rights investigation and historical narrative: “ The Romanian truth commission firmly placed the national traumatic experience from 1945-1989 as a period where ideological fanaticism and blindness was both the cause and consequence of the violence and repression. Furthermore, the emphasis on socioeconomic inequality, poverty, ethno-cultural exclusion, and marginalization gives coherence to the final report, as the interaction of all these factors inform the report’s main findings, narrative on the causes of repression, and the recommendations agenda.

The Romanian truth commission could not be further from its Chilean counterpart in its willingness to condemn and name those responsible for crimes committed during the illegitimate regime. The commissioners provide irrefutable evidence that Ceausescu himself gave orders to get rid of the leaders responsible for the protests in the Jiu Valley in 1977 and in Brasov in 1987. Another prominent figure named in the report was Ion Iliescu, who served as president of Romania from 1989 to 1996. The report found undeniable evidence of his involvement in the repression of student protests carried out by the regime between 1958 and

1960.¹⁸⁰ Additionally, perhaps in one of its most important achievements, the truth commission achieved the access and opening of the archives of the former regime and to the files of the “Securitate”, Romania’s secret police. Cristian Vasile, the scientific secretary of the commission, pointed out that the democratization of the local archives was “a powerful blow against the barons of Romanian historiography.” These barons were mainly high members of the historiographical establishment (members of the Romanian Academy and/or its Institutes of History), who had made their name during the communist period. After 1989, they hardly altered their nation-centric approach and often whitewashed their involvement in the regime’s reproduction.

The controversy regarding the treatment of former party and secret collaborators is among the most passionate and potentially disruptive in the former communist countries. The Romanian truth commission made the decision to name the most important individuals guilty of crimes against humanity. In doing so, it did not stigmatize any group or collective institutions and engaged in a truth-telling process essential for understanding the nature of responsibility for crimes and suffering. In doing so, it revitalized the principle of accountability, which is fundamental for democracy’s survival. On December 18, 2006, President Basescu delivered a speech to a joint session of the Romanian parliament where he accepted the conclusions and recommendations of the final report and he stated that: “If we now turn to the past, we do in order to face a future in which contempt for the individual will no longer go unpunished...But I think that we have a more important motive: the right to condemn

¹⁸⁰ Raport Final, p. 194

gives us the obligation to make institutions of the rule of law function within a democratic society. We cannot be allowed to compromise these institutions.”¹⁸¹

The Romanian truth commission also represented a bold intervention into public discourse on the nation’s past. One of the widely circulating memory narratives reduced the role of the Romanian state in the extermination of the Jews during the Holocaust.¹⁸² As in the case of other European countries, the myth of “Judeo-Bolshevism” embraced and disseminated by the Far Right was directly linked to widespread manufactured propaganda about the alleged overwhelming Jewish support for the Soviet occupiers during the period between June 1940 and June 1941. As a result, this narrative minimized the genocidal actions of Ion Antonescu’s fascist regime against Jewish and Roma populations. Dealing with both the Communist and fascist past (and, implicitly, Romania’s responsibility for the Holocaust) necessarily becomes a force for communal cohesion because by doing so, the commissioners reject any apologetic historiographical narrative. In short, the commissioners reject this syndrome of voluntary amnesia by condemning the denial of communism’s crimes as unacceptable as the denial of those of fascism.

The politically motivated attacks against the Romanian truth commission were at least as much about the present as about the past. The collapse of Communism had pushed all major former collaborators and apparatchiks of the regime into the new

¹⁸¹ Speech given by the President of Romania, Traian Basescu, on the occasion of the Presentation of the Report by the Presidential Commission for the Analysis of the Communist Dictatorship in Romania (The Parliament of Romania, December 18, 2006), www.presidency.ro.

¹⁸² This phenomenon is explained in the chapter “Distortions, Negationism, and Minimization of the Holocaust in postwar Romania,” of the Final Report of the International Commission on the Holocaust in Romania.

post-communist political system. The aftermath of the 1989 Romanian revolution from below was accompanied by a re-grouping of the nomenklatura, which succeeded in establishing themselves in influential positions.

The Final Report states that “During the first years in power, Ceausescu’s successors defended their hegemonic positions through manipulation, corruption, and coercion. Based on these observations we can conclude that the phenomenon of continuity was a serious obstacle on the path to establishing a genuine democratic political community.”¹⁸³ Those highlighted by the Final Report, attacked the truth commission as a monstrous sham and being politically motivated. This criticism came from several political parties with lineages linked to the communist regime, including the PRM, PSD, and Conservative Party which denounced the report as a “political” document expressing the point of view of the President and not the views of the Romanian parliament.

The Chilean truth commission presents the Pinochet dictatorship (quite problematically, as I discussed above) as a break in the nation’s democratic and civic traditions to argue that the transition’s challenge is to recover these traditions. The Romanian truth commission, by contrast, claims to advocate an unprecedented political and social project: to overcome decades of a totalitarian legacy of lies, cooptation, corruption, discrimination, and violence. The totalitarian regime instituted in Romania between March 6, 1945, and December 22, 1989, was of the Soviet type. Crucially, it was about a tyranny seeking to legitimize itself through ideology, therefore its political and economic elements were inseparable. If transitional justice

¹⁸³ Raport Final, pp. 620-622, translation by Vladimir Tismaneanu

was to serve as a foundation for a new beginning in Romania, it had to generate a better understanding of human motivations, highlight the institutional underpinnings of the old regime, and explain the mechanics of submission manufactured under the communist ideology. To understand any form of totalitarianism, is to understand the whole of totalitarianism as a movement and In a way, the Romanian truth commission advocated for a “new social” contract which required the acknowledgement of serious human rights violations as the consequence of a long history of ideological fanaticism. Thus, the commission reconfigures the link between the past and the present in the interstices of immanence (i.e., the social embeddedness of the narrative of a “new beginning”) and transcendence (i.e., redefining the “new beginning” with the language of human rights and social justice).

The truth commission has produced one of the most comprehensive social histories of Romania. The attentiveness to long-term sociocultural and political developments, the through analysis of all relevant individual and institutional actors, the incorporation of a host of factors (such as ethnic identity, gender, educational resources, and geographical variation), and the breadth of methodological approaches to explore these factors combine to make the Romanian truth commission unmatched among truth commissions.

Conclusion

This chapter shows that the commission creation process has implications for cross-national variation in how truth commissions reconstruct the past. The inclusions and exclusions of a truth commission narrative are best understood in terms of how the mandate and the composition shape the commission's agency. Chile's Rettig commission, established under a high degree of government control in the interest of reconciliation between rival political positions, produced a limited account of the underlying causes of political violence and violations, blaming the national tragedy on the political radicalization and polarization of the 1960s and early 1970s. It avoided taking a stance on the legitimacy of the 1973 coup. The stress on political and institutional failure informed the recommendations as well. Ultimately, the Rettig commission's strengths lies in its impeccable documentation of facts, but its narrative exclusions, reflecting the priorities and expectations of the transitional elite, have limited its capacity to take part in public debates over the meaning of the past.

By contrast, the participatory commission creation process in Romania allowed the commissioners to exercise agency in the area of historical explanation. Although the Romanian truth commission is not free of exclusions, it contains one of the most comprehensive truth commission narratives. It broadens the scope of historical investigation to the patterns, main institutions, methods, and personalities responsible that made possible the crimes and abuses of the Communist regime. The final report not only emphasizes political-institutional reform but it also was establish

to pass moral judgment on the communist dictatorship and invite reckoning with the past through the uncomfortable acknowledgement of its crimes against humanity and other forms of repression. In the end, the Romanian truth commission aimed for greater social impact, but politically it proved more difficult to integrate into policy than its Chilean counterpart- in line with the argument presented in the previous chapter.

The Chilean commission's narrative strategy reflects a deeper concern with how truth commissions make sense of history. Reducing historical explanation to the immediate causes of violence may be considered a clever avoidance strategy, but even the least comprehensive commission narratives receive criticism for politicizing history from hostile audiences as well as sympathetic ones. The Chilean commission's preference for avoiding divisive issues did not overcome the Pinochetistas' perception of the commission as part of a campaign to discredit the military. Comprehensive narratives face similar charges, but at least they leave behind a document that can be discussed, defended, attacked, or improved-an intervention into collective memory to be precise.

The exclusions of truth commission narratives bring into question the construction of victimhood in transitional justice discourse. Even the least comprehensive accounts, such as the one produced by the Chilean truth commission, tend to prioritize innocent victimhood at the expense of acknowledging the ideas, goals, interests, and actions of those affected by violations. Commissioners do not want to appear to be endorsing particular political ideologies and projects and realize that the public is more likely to condemn abuses if they downplay those aspects of the

victim's lives that might reignite the divisions over memory. Keeping in mind the politically motivated attacks truth commissions face, this approach is prudent perhaps, but ultimately it relies on a moralization of the human rights norms, which otherwise identifies a violation regardless of the prior political and moral acts of the affected. In terms of historiography, it amounts to excluding experiences that would have otherwise provided key insights into national tragedy and, in many cases, reducing the complexity of political conflict and violence into artificially neat categories of victim and perpetrator, where they overlap and apply to the same people or social group. Instead, acknowledging shades of grey, not only in various forms of conformity and complicity, but also in acts of protests resistance and refusal, would greatly strengthen truth commission's claim to provide an evenhanded and comprehensive account of the past in light of human rights abuses.

CONCLUSION

Thirty years ago nobody could have anticipated that a slightly modified inquiry commission, now called truth commission, would have become among the most widely used political-institutional mechanisms to come to terms with the legacies of violent and divisive periods. They have outlined the transitional justice paradigm, as consolidated democracies and non-transitional regimes began to opt for truth commissions, too. Calls for subnational, national and even international truth commissions to investigate an ever expanding list of past violations and injustices are found everywhere. In many countries, the supporters and opponents of a past truth commission still argue bitterly about its achievements and shortcomings years after the release of its final report.

What do truth commissions mean for contemporaries societies? Truth commissions are not simply tools of incoming governments to be used against the previous regime or some kind of distraction from criminal justice. Their achievements and shortcomings arise from a much more complex set of reasons. They open a contentious social space for reflection on the past. While some truth commissions

may reflect the interests and expectations of influential actors, others have delegitimized and surprised decision makers, including the politicians who established them. They defend their operational autonomy from political interests almost without exception, but their ability to influence politics and society depends on the endorsement and continued support of precisely those actors who may find their findings and recommendations inconvenient or even dangerous. Furthermore, contradiction is built into truth commissions as agents of change, as it is revealed in the interplay of autonomy and dependence, efficacy and weakness, great expectations and limited achievements.

Naturally, this dissertation on truth commission impact invites the question: what does a successful truth commission look like? Before trying to answer this question, I want to proceed with caution and modesty when thinking and writing about coming to terms with the past. Ultimately, all efforts to remedy past violations are intrinsically limited by their inability to recuperate irreparable loss of life, human dignity, and hope. An institutionalized truth-finding project simply cannot substitute nor fully satisfy those who were the victims of violence and evil. Coming to terms with the past is not a success story, but rather a solemn working and reworking of a lost past. In Adorno's brilliant formulation, it is a constant working through (*Aufarbeitung*) rather than mastering over (*Bewältigung*) the past.¹⁸⁴

¹⁸⁴ Adorno's famous 1959 essay, titled "What Does Coming to Terms with the Past Mean," begins with the observation that West Germany had achieved the miraculous transition to democracy at the cost of citizen's emotional detachment and alienation from politics. Adorno's terminology is instructive in grasping the subtleties of the general notion of *coming to terms with the past*. He prefers the German word *Aufarbeitung* (working through) over *Bewältigung* (mastering over) throughout the essay. The former connotes an active work of engagement with the

In addition, truth commissions' success cannot be assessed in isolation from the multiple interests and values that create, maintain, and validate them. For some, truth telling carries the promise for redress and redemption, a hope that the lost past moments, struggles, and dignity is once again recovered. And even if redress and redemption are metaphysical, truth, justice and recognition are concrete goals worth pursuing for those who survived life-shattering experiences. Shared experiences of victimhood unite people, but the potential for disagreement over priorities, goals, and strategies cannot be ignored.

For the perpetrators and beneficiaries of past violence, a truth project is an unwelcomed interference of a comfortable present. Remembering is a moral and legal threat unless there are strict limits to what can be remembered, how, and with what consequences. The fact remains that denial has overshadowed repentance as the agent of reconciliation. There are also those who have experienced power and powerlessness at the extremes, which highlights that the presence of victim-perpetrators disturbs simplistic moral formulas in the presence of mass suffering.

In other words, truth commissions (and transitional justice in general) are deeply political. Although many political leaders and human rights advocates associate them with consensus, reconciliation, and nation building, truth commissions do not embody some kind of supra-political "common good" that benefits all citizens. Some individual and institutional actors, in particular the perpetrators and their allies,

*past, without necessarily reaching an end point where working through is no longer necessary, whereas the latter signifies the possibility that mastery over the past, once and for all, is achievable. Theodor W. Adorno, "What Does Coming to terms with the Past Mean?" in *Bitburg in Moral and Political Perspective*, ed. Geoffrey H. Hartman (Bloomington: Indiana University Press, 1986), 114-129*

see their interests undermined. Many others, especially victims excluded from the commission process itself, feel that the commission could have done more for them. Some civil society actors promote a commission as their own, whereas others see in the same commission a failure to incorporate diverse voices, narratives, and viewpoints. In other words, a truth commission, like any other political action, produces winners and losers, which cuts across the simplistic victim-perpetrator divide. Evaluating success and failure depends critically on a truth commission's goals, the decision-making process and power dynamics that set those goals, and the extent to which a truth commission not only satisfies the given set of goals, but also activates social struggles that challenge the constraints imposed by the politics of truth commissions.

In light of these observations, it is clear that truth commissions should not be solely evaluated based on political outcomes (which tend to be positive, although modest, for the victims and those concerned with human rights and the rule of law). The promotion of a pluralistic and participatory space for reckoning with past wrongs should be a guiding principle as well. Given that an enormous variety of social and political actors creates and participates in truth commissions with numerous and often contradictory expectations in mind, the question becomes: should institutionalized truth and memory projects accommodate all agents of memory? To this normative question, my answer is a qualified yes. Yes, a project that seeks to uncover facts and construct a truthful and shared historical memory should create a safe space in which all members of society can participate in narrating, questioning, and revising accounts

of past violence and violations. Broad based participation should be the normative foundation for truth commissions.

Yet, it is a qualified yes. A post-conflict society is not a situation in which individuals undisturbed by history negotiate moral differences. In the wake of mass conflict, some voices are quite loud in their denial of past wrongs, others too quiet in their refusal to even take part in this process, and many others who need a genuine dialogue cannot say a word because of a history of victimhood, stigma, and marginalization. A truth commission should be guided by an ethics of equal participation in the face of powerful political, military, and judicial actors who seek to impose forced amnesia and impunity on society. Otherwise, a truth project only reproduces the illegitimate power relations that cause a society to resort to the commission in the first place.

I suggest an ethics of equal participation where policies with a justice and recognition orientation should take into account the power asymmetries involved if such an acknowledgement is meant to overcome, rather than reinforce, historical injustices. For truth commissions, enabling equal participation requires an all inclusive process that brings together individual and social groups willing to take part but also pay attention to the participation of those groups that have been most negatively affected and marginalized in the process of political violence and violations. A commission should be opened to everyone, including perpetrators, but

avoid capture by powerful interests.¹⁸⁵ It should be victim-centered yet resists the possibility of reducing people's agency to disempowering narratives of victimhood.

A commission legitimacy can be enhanced an all inclusive creation process that brings together politicians from all major political groups, human rights organizations, victim's associations, other interested civil society groups, representatives of the armed forces, and so on. It is important to make sure that all those actors willing and capable of participating can do so without dominating the process. I do not propose a specific procedure for doing so, since context-specific decision-making rules are more appropriate than one-size-fits-all approaches. Nonetheless, the guiding principle should be abroad-based and equal participation in which no veto player is strong enough to subvert the overall outcome.

A commission should welcome everyone who would like to share information. Yet, the commissioners and the staff need to be mindful of the power asymmetries within society, as many persons suffer from exclusion and vulnerability that might ultimately prevent them from participating in a commission. As a guiding principle, a commission should try to accommodate those who are least likely to participate as a result of socioeconomic, political, ethnic, racial, generational, gendered exclusion. Victim's relatives and victim-survivors, especially those in the periphery of the nation's geographic, political, and cultural centers, require special effort on the part of the commission to come forward and testify.

¹⁸⁵ The tensions between truth commission's striving for an accurate historical record and an inclusive process are explored in Bronwyn Leebaw, "The Irreconcilable Goals of Transitional Justice," *Human Rights Quarterly* 30, no. 1 (2008): 95-118.

The participation of presumed perpetrators in the truth commission process has long preoccupied scholars and practitioners. Evidence in the literature suggests that powerful institutions in alliance with perpetrators often seek to undermine a commission by stripping it of key powers, such as the authority to subpoena, name perpetrators, and pass information to the judiciary. Even when they are provided with the material incentives (such as reduced sentences), perpetrators do not testify in large numbers. Instead of exposing themselves as violators of human rights, they choose to take the relatively low risk of not testifying today and being called to court later. Since most perpetrators go unpunished, the gamble pays off to them. Repentant perpetrators remain an exception. Therefore, truth commissions should approach presumed perpetrators, but not at any cost. The option of offering incentives, such as reduced sentences and amnesties, should reflect the spirit of equal participation. In other words, given the uneven playing field for victims, their individual consent should be the legitimate basis for incentivizing specific perpetrators.

The discussion above suggests that there are political and ontological limits to institutionalized truth telling that militate against the search for success stories.

The single most important factor that explains a commission's long-term political and social impact is the presence or absence of the political will of a supportive government and/active civil society groups not only during but also after the commission process. Lasting impact depends as much on governmental endorsement as on the continuous support by domestic and transnational civil society actors—predominantly human rights and victim's NGOs but also development agencies. However, the attention span of international actors is often quite short. The expected

budgets and mobilization plans cover at best the successful completion of a commission. This undermines the potential for long-term change and wastes the time and a resource spent on the commission-Haiti is a case in point.

Actors with economic and political resources who want to see the positive results from a truth commission should plan for sustained support in the immediate post-commission period. Even if the commissioners and the staff may not be able to fully anticipate the level of civil society mobilization around their work, it is crucial that they secure logistical and financial support for post-commission activities (such as outreach, dissemination of the final report, and educational campaigns). Publishing and disseminating the final report, exerting pressure on policy-makers and public officials to implement the recommendations, drawing a list of compensation recipients, and generating society-wide awareness of the human rights issue are among the many tasks that require ongoing commitment in terms of funding, political will, and activism. This is a lesson drawn from the Romanian experience, where after President Basescu created a presidential advisory commission to implement the commission's proposals, it became simply an issue of money as the country was hit by an economic recession that effectively impeded the funding for the Museum of Communism in the city of Bucharest. The common feeling among the commissioners that I was able to talk to from the Romanian truth commission stated that in the end the truth commission lacked legislative backing and had minimum financial support, with its members even working pro bono. In fact, it was funded out of the presidential administration's budget, and its total expense did not exceed 40,000 USD. Its

members received no stipend, only reimbursement for travel, lodging, and telephone expenses.

Commissions supported by a variety of sources, such as the domestic government, foreign governments, international donors, national and international NGOs, have a better chance of completing their job, getting their recommendations implemented into policy, and shaping social debates in the long run. A diverse portfolio allows a commission to survive crises, such as election of an anti commission government and sudden changes in human rights policy. Furthermore, supportive actors should definitively include domestic human rights groups. Now matter how well intentioned and generous a group of foreign donors may be, they cannot assure the successful implementation of post-commission reforms if they lose their connection with local human rights activists-a lesson drawn from the experiences of El Salvador and Haiti.

Second, politicians, NGOs, donors, and commissioners have an obligation to fully inform citizens, and especially affected individuals, about why a commission is set up, what it can achieve, and what lies outside its mandate. There is often confusion about the official status of a truth commission, especially when a government is interested in obscuring its own failure to provide retributive and restorative justice. This leads people to project their expectations from the government onto the commission. For example, many victims expressed dissatisfaction at commission's failure to disburse reparations in Peru, Sierra Leone, and Timor-Leste, although this is of course the government's job. Likewise, a truth commissions should not have the last word on how reconciliation can be best

achieved. The goal of a truth commission is the opening of dialogue, not its closure-as the Chilean political elite had to discover in the latter part of the 1990s.

An honest attitude towards the mandate and powers of a truth commission should be extended to the expected results as well. Evidence shows that victims and perpetrators do not reconcile in the short term, although the goal of reconciliation seems to dominate the political discourse of transitional justice. Likewise, there is no evidence to suggest that truth commissions by themselves have improved the quality of democracy and human rights conduct dramatically. Their findings and recommendations, when taken seriously, can guide reforms efforts and prosecutions, and the product of a truth commission can work toward the transformation of social values and norms in the long run, but the magnitude of these effects should be analyzed, not taken for granted. A well researched and comprehensive truth commission can even prompt a candid dialogue about the persistence of socioeconomic, ethnic, racial, political, and gender injustices (as in Romania and Guatemala), but, again, a commission contributes to change as an enabler not an enactor.

Third, discovering and publicizing the facts about human rights, violations are the primary tasks of truth commissions. A highly accurate historical record provides background information for courts, accomplishes a minimum degree of closure for the aggrieved and forces society to face up to the enormity of others' suffering. However, the striving for forensic truth should not lead the commissioners to downplay the need to set political violence and violations in political and historical

context. Acknowledgement of past wrongs, a demand voiced by the victims, requires an explanation of why conflict and violence took place at a massive scale.

The historical record of truth commissions is bound to be partial, just as with any other historical interpretation. Yet, a truth commission can construct a comprehensive account of national history by researching the facts and integrating a variety of different perspectives and narrative strategies. Truth commissions have come into existence precisely because violations go hand in hand with official propaganda and the forced silencing of alternative voices. In line with a goal for equal participation, it is a commission's responsibility to give voice to those groups and people that had been excluded from public discourse. Future truth commission projects would benefit from an inclusive, truthful, and accurate historical explanation as this can be the lasting contribution of a commission.

Fourth, truth commissions address national tragedy with the hope of national reconstruction. While their commitment to national introspection has its merits, commissions should not limit themselves to the nation in their human rights investigation and conclusions. The regional geopolitical context and cross-border collaboration between perpetrators should be examined to explain the causes, patterns, and consequences of political violence. For example, in Eastern Europe there has been a proliferation of "Gauck" type agencies for housing secret files, as well as of institutes of national memory dealing with the traumatic legacies of either the Communist period or the entire totalitarian experience (i.e., fascism or Nazi occupation). What a "Gauck"-type agency did was make information accessible "to large but specified categories of actors who are entitled by law to receive such

information, parts of which can be used as reasons for sanctioning by public or private sector recipients.¹⁸⁶ Often, these institutions were created in dialogue with similar organizations in other countries. Thus, truth commissions can take the form of a nascent form of cosmopolitanism. Anticommunist regimes committed the majority of human rights violations in the 1960s and 1970s in the Southern Cone and in the 1980s in Central America, and it is widely known that these regimes coordinated their repression efforts. The end of the Cold War ushered a period of instability and state decline in much of Central Asia and sub-Saharan Africa, which shows that civil wars and international civil wars of the 1990s were not strictly a national phenomena. Yet, most commissions have remained nation-centered in their analyses.

Truth commissions can experiment with a post-national imagination not only with their investigations but with their fundamental value orientations, too. They already negotiate the boundaries of national belonging through their commitment to the cosmopolitan human rights norm, but this cosmopolitan effort is at the service of national reconstruction projects. Why not assert that the local information on past violations points to a global, and not merely national tragedy? Even if the specific details of human suffering may be embodied in local histories, its moral import as a human rights violations, historical injustice, and manifestation of social inequality transcends the national context. I am not suggesting that truth commissions should try to forge regional conceptions of belonging, but they can nonetheless leave the door

¹⁸⁶ Claus Offe and Ulrike Poppe, "Transitional Justice in the German Democratic Republic and in Unified Germany," in Lukas H. Meyer, ed., *Justice in Time: Responding to Historical Injustice* (Baden-Baden: Nomos Verlagsgesellschaft, 1994), p. 264

open for alternative imaginations by highlighting subnational, regional, international, and transnational implications of their findings, conclusions, and recommendations.

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