



Article

# Investigating what happened: On truth commissions in processes of transition

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## Abstract

Periods of intense political conflict, violence and state terrorism leave a legacy that transitional regimes must address. This legacy involves divided societies, victims of abuses, perpetrators who may live with impunity (when amnesties have been implemented) or may face different forms of justice and punishment, and movements and organizations that demand state action to address the past through a variety of possible policies. Based on the cases of investigative commissions (so-called truth commissions) in Argentina and Brazil, the article discusses the historically specific and contextual nature of these victim-centered institutions.

## Keywords

Political conflict, truth commissions, violence

After periods of intense political conflict, violence and state terrorism, transitional regimes are faced with a legacy of divided societies, victims of abuses, perpetrators who may live with impunity (when amnesties have been implemented) or may face different forms of justice and punishment, and movements and organizations that demand state action to address the past through a variety of possible policies. Investigative commissions are among the tools used to cope with societal and political demands regarding past violence.<sup>1</sup>

Since the 1980s, countries experiencing transitions from dictatorial rule and/or the end of civil wars have incorporated into their socio-political processes a discussion of how to deal with the recent painful and violent past. In an international context in which the human rights paradigm has increasingly gained salience (Keck and Sikkink, 1998), governments and civil society organizations and movements began to explicitly face that past,

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introducing demands and policies that addressed diverse institutional features of the past and responding to various affected groups. Trials of perpetrators (in cases in which amnesties were not granted or were repealed), economic and symbolic reparations to survivors and relatives of victims, administrative policies of vetting and lustration, memory policies of various types (memorial ceremonies and sites, museums, monuments, commemorative dates and so on) and the establishment of investigative commissions have proliferated, accompanied by growing interest on the part of social scientists and cultural analysts.

Much has changed in this field during the last three decades. It is increasingly 'normal' for states and political actors not to silence or hide the violent past but rather to implement policies that try to settle accounts with it, promoting different forms of truth, justice and memory. There have been innovations in institutions and practices that have traveled from one location to another, involving important processes of political learning (De Greiff, 2008; Hayner, 2001; Sikkink, 2011). Governments and political actors adapt and adopt these institutions and practices in their own particular ways, considering the specific conditions and scenarios of political confrontation that they experience. In the meantime, led by activists in some countries and their international allies, a significant change in international protection covenants has emerged and is gradually gaining international legitimacy. New conventions, courts and agreements have been established – the International Convention for the Protection of All Persons from Enforced Disappearance, the International Criminal Court and the recognition of rape as a Crime against Humanity represent just a few. The development of such international instruments shows the degree to which human rights violations during conflicts are becoming a global issue that transcends nations and states.

Investigative commissions to uncover what has actually happened – generically known as 'truth commissions' – are among these institutions and practices. It is therefore important to study the link between these commissions and the other instruments and mechanisms that societies have developed to cope with their violent recent past. However, because these events function in a specific place and time, such studies cannot be conducted without a historical and context-sensitive perspective, insofar as there has been a historical transformation of these mechanisms as they travel and are adapted to particular situations.

To discuss these issues and to show the historical developments of this type of commission, I focus on two of them: CONADEP (the National Commission on the Disappeared), which was established in Argentina in 1983, immediately after the installment of an elected president, and the Brazilian Truth Commission, which was established in 2012, decades after the demise of a dictatorship and after the accumulation of experiences of truth commissions throughout the world. Almost 30 years separate these commissions; that period was marked by the emergence and growth of international, national and local concerns that arise after periods of acute political violence – be they anchored in dictatorial regimes or in civil wars. The path through this period shows the transformations and contextual elements present in the implementation of such mechanisms.

## **Two cases: Argentina and Brazil<sup>2</sup>**

After seven years of dictatorship in Argentina, elections were held in October 1983, and in December of that year, an elected civilian government was installed. During the

repressive dictatorial regime, resistance, opposition and denunciation were in the hands of a new human rights movement (Jelin, 1995). In response to the initial demands that focused on the thousands of missing persons and the search for information about their fate, the movement pioneered the quest for justice and punishment of the perpetrators. Slogans clearly expressed these demands: *Aparición con vida* (Return those who have disappeared alive), *Castigo a los culpables* (Punish the perpetrators), *Ni olvido ni perdón* (Neither forget nor forgive). The movement, which included victims' relatives, progressive intellectuals and politicians, and some religious leaders, was accompanied by a sizeable part of society.

During the last months of the dictatorial regime, a heated debate regarding how to deal with its legacies took place. The movement's focal demand of the new government was that it institutionally address human rights violations that occurred in the context of state terrorism and clandestine repression without offering amnesties, pacts with the military or impunity. Protests against amnesty for perpetrators, demands for information on the whereabouts of the disappeared, fights against impunity through political or judicial trials of perpetrators and other demands were in place. The newly elected president, Dr Raul Alfonsín, was committed to tackling the human rights issue, and within a week of taking office, he formed CONADEP (the National Commission on the Disappeared). At the same time, the prosecution of the highest-ranking military men responsible for the politics of repression was proposed; however, it was left in the hands of the military justice apparatus. After the military failed to indict the members of the military junta, they were tried in civilian courts in 1985.

The president appointed public figures from intellectual, political and religious backgrounds to participate in CONADEP. Its mandate was to investigate the disappearances of people between 1976 and 1983 and to uncover the facts involved in each case, including the possible location of the bodies. After a period of clandestine detentions and kidnappings, which also involved the kidnapping of children and babies born in captivity, there was an urgent need to learn what had happened and perhaps to find some disappeared people still alive. CONADEP's mandate was limited to investigating disappearances and did not consider other forms of repression. Although there had previously been similar organizations, the Argentine CONADEP established the model for commissions and other developments in the way democratic governments respond to their violent recent pasts (Sikkink, 2008).

CONADEP worked for nine months. The gathering of information was based almost totally on the testimony of victims' relatives and of survivors and on field visits to clandestine detention sites and cemeteries because there were no written documents and the commission did not receive any cooperation or information from the armed forces. Its final report documented the disappearance of 8960 persons, and the list of clandestine torture centers included 365 sites.

The commission presented its report to the president. A book version of the report was published under the title *Nunca más* (Never again). Forty thousand copies were sold the day of its release, and since then, the book has been printed and reprinted, becoming one of the best-selling books in Argentina's history.<sup>3</sup> As part of the political negotiations and decisions of the time, the report did not list the names of the repressors, a fact that was criticized immediately as a concession to the military.

The files, the report and the book had a life of their own in the following decades. The files of the commission soon became the principal source of documentation for the prosecution and trial of the members of the military junta in 1985, showing the link between 'truth' and 'justice'. In fact, over the years and in various places, testimony collected by commissions has been accepted as evidence in courts.

The report established a legitimate state-sponsored narrative of the horrors of dictatorship. Victims and relatives had their voices heard in a legitimate institutional setting. Their claims could not be silenced or dismissed. Societal actors could make use of the report's 'truths' in political and cultural scenarios. Years later, the book was introduced in school curricula and innumerable artistic and literary initiatives were inspired by it.

This widespread effect, however, does not mean that there was or is a single unique way to understand the horrors of dictatorship. There were constant confrontations and conflicts over interpretations and meanings between progressive civilian forces and the military and their allies as well as among progressive forces. The claim that the prologue of the book equates state violence with the violence of armed guerrilla groups – the so-called 'theory of the two demons' – became the subject of much debate and struggle over the years. In 2006, when the 30th anniversary of the military coup was commemorated, a new official edition of the book included a new prologue that revised and to a certain extent contradicted the interpretation of the political violence offered in the original one.<sup>4</sup> The content of the report – the description of the horrors that the victims experienced and of the clandestine detention centers – was not changed and was never denied. New names and new places were added to the lists over the years, contributing to the files that are housed in the *Archivo Nacional de la Memoria* (National Memory Archive). The emblematic role of the CONADEP report, as something that should not be repeated, has been constant and highly present in the Argentine public sphere.<sup>5</sup>

The story of Brazil was and is very different. There was no initial official investigation of the dictatorial regime in Brazil (1964–1985). In fact, after civilian rule was instated, neither the Brazilian state nor the general public took a major interest in the human rights violations that had occurred during the dictatorship. In 1985, a team of investigators linked to the Archbishop of Sao Paulo and the World Council of Churches produced a report, *Brasil: Nunca mais* (Brazil: Never again), based on secretly obtained photocopies of official court papers documenting the torture inflicted on political prisoners (Weschler, 1990). The book documented thousands of victims and included details of torture episodes. It concluded that the military regime used torture in its judicial system to elicit confessions. The book had an impact on public opinion and prompted demands for an end to state repression and the institutional use of torture, even under constitutional governments, as a customary police practice.

In spite of the publicity of this non-governmental report, no official action took place until years (or decades) later. In 1995, a Special Commission on Political Deaths and Disappearances (CEMDP) was established. It was the first time that the state accepted responsibility for the acts of the military regime. This commission was charged with offering economic reparations to the families of victims and searching for and identifying the bodies of the victims. In 2007, CEMDP published a book about its workings that became the first state-sponsored report on atrocities during dictatorship. According to the commission's web page,<sup>6</sup> since the commission was established, it has received 480

requests and approved 362. Additionally, in 2001, the Ministry of Justice established an Amnesty Commission to promote reparations and recognition for people who were affected by 'acts of exception' during dictatorship, including torture, arbitrary imprisonment and banishment involving thousands of people. It is the responsibility of victims and their relatives to appeal to either commission, and they have to document and prove their claims to receive apologies and symbolic and economic reparations.

This series of official and unofficial reports and institutional practices that developed in Brazil over more than 30 years are the antecedents of the *Comissão Nacional da Verdade* (the National Truth Commission). The commission was proposed as part of the National Human Rights Program in 2009. It was installed in 2012 and presented its report at the end of 2014, 50 years after the start of the military regime. Its mandate was to examine and clarify the serious human rights violations committed by public officials with the support of the state during the period 1946–1988; however, its investigations focused on the period of the military dictatorship starting in 1964. The commission anchored its work on 'the right to memory and historical truth' to clarify the facts, causes, responsibilities and authorship of serious human rights violations, thus guaranteeing the right to truth to the victims, families and society at large.

In its efforts, the commission used all the available data and archives collected in previous investigations, searched for and requested documents from state offices and the armed forces, and asked the United States government to declassify documents related to Brazil. It also worked in collaboration with neighboring countries to uncover the regional coordination of repression (*Plan Condor*). It received testimony from witnesses and organized public hearings and gatherings to convey the interim results of its investigations. In addition to its voluminous report (three volumes, comprising more than 4000 pages), the commission's efforts encouraged the creation of truth commissions at state and municipal levels and in numerous institutions – universities, unions and civic associations of all sorts. This multiplication of commissions led to the interest and commitment of a sizeable section of the Brazilian population.

Brazil 'was remarkable mostly for its lateness' (Sikkink and Marchesi, 2015). The recommendations of the commission go beyond what its mandate indicated, pushing aside the 1979 amnesty law to prosecute those responsible for crimes against humanity, which under international law are not subject to amnesty or statutes of limitations. It lists the names of repressors and those responsible for the violations and calls explicitly for prosecutions.

Initial reactions to the commission report were mixed: they were highly favorable on the part of the international and national human rights community and very critical from the perspective of the military and their allies. What is highly significant about this case is its timing, which was far from ideal: since the launching of the report, Brazil has suffered a major economic and political crisis. Under such circumstances, the government's priorities have shifted, and the recommendations of the report have not been on the public agenda. The report offers an official recognition of the suffering of victims and a historical record of what happened, but it is not possible to predict whether the commission's recommendations regarding prosecutions of perpetrators will be followed. The long-term effects of the commission are yet unknown, given the long and protracted process of handling violations and other forms of discrimination

and violence in Brazil. One key test of the truth commission's impact will be whether, beyond providing public acknowledgment of victims and a record for collective memory, it can spur the Brazilian state to hold offenders accountable. Virtually every other country in the region has either overturned or circumvented its amnesty laws to allow prosecutions to proceed, making it difficult to believe that Brazil will not ultimately follow suit.

## **On truth, memory and justice**

Truth commissions are established at different junctures of the political process of transition. They may occur early or late in the process. They are always part of political negotiations and confrontations in each society; they are also part of an evolving international climate. Since the 1970s, the human rights paradigm has become a dominant framework in national and international scenarios. This has meant the creation and expansion of an international epistemic community, networks of non-governmental organizations and increasing international legislation and covenants (Keck and Sikkink, 1998). Even today, however, there are international forums in which the human rights paradigm is disputed, and countries that do not follow that paradigm claim that it is a Western imposition.

What can be said more generally about truth commissions, beyond each individual case? What inferences can be drawn from the contrasting cases of Argentina and Brazil?

First, investigative commissions have long been part of democratic political institutions. Established by parliaments and the executive branch of government, these ad hoc institutions were in charge of investigating and uncovering what happened during specific periods or events, prompted by political or social demands for knowledge as a step toward governmental action, such as prosecutions of past crimes and the deterrence of future ones. It is in this tradition that the so-called truth commissions should be understood: as instances that help to clarify political crimes and violations as part of an ongoing process of dealing with a violent past. They work under conditions where political conflict and confrontation are enduring and strong, mostly between those who want to unveil past violations and suffering and those who justify state violence by interpreting past practices of repression through alternative frameworks, such as 'saving the nation' from various evil forces (Jelin, 2010a; Stern, 2004).

Truth commissions are one of many possible instruments to apply during times of transition. They are not the only path; nor are they a panacea or a tool that can always heal wounds or assure peace and reconciliation in the future. The long array of claims that can be made by observers and analysts may overstate the accomplishments of truth commissions and are often expressed by actors who are far removed from the conflict scenarios that newly elected political regimes face. There can always be someone with unrealistic expectations based on some cure-all panacea (or myth).<sup>7</sup> However, this is not the case among political, religious and civil leaders who participate in the formation of truth commissions, and it was not the case in one of the earliest and most successful commissions (that of Argentina in 1984) or in those established decades later (such as the Brazilian commission established in 2012). It is also important to understand the historical context and process in which commissions work. There was no reference to truth in the Argentine case; there was no reference to reconciliation in either Argentina or Brazil.

As with most public policy initiatives, it is important to differentiate the rhetoric used to justify the establishment of a commission and its explicit and implicit aims. Rhetoric may reflect the language of the time or it may express the expectations of some stakeholders, which may be very high. In fact, even the early studies of commissions (Hayner, 2001) claimed that despite what the rhetoric may say, there is no necessary link between commissions and reconciliation, nor does testimony always imply catharsis and healing. As Hayner confesses: 'Unfortunately, many comfortable assumptions have been restated over and over again in untested assertions by otherwise astute and careful writers, thinkers, and political leaders. (I am not entirely free of this myself, I should say, in some of my early writing on this topic)' (Hayner, 2001: 6). Furthermore, in many cases, commissions went far beyond their mandates in their investigations and in their recommendations.

Second, 'truth' enters the scene insofar as the task is to unveil what happened when most of the repressive activities were clandestine and/or arbitrary. This is a difficult endeavor involving different levels and qualities of knowledge: first are the personal and family-based demands to know where their relatives were abducted, whether they were killed, and if so, how and where. There is also a societal demand for truth: the need to document the existence of clandestine detention places, of mass graves, of massacres of various sorts. Insofar as there are no official registers, the testimony of survivors becomes the main means of knowing what took place. This is the 'truth' component of such commissions and the basis for the recognition of the 'right to truth' that is incorporated into international humanitarian law.<sup>8</sup> Nonetheless, anybody involved in the process knows that there is no way to know the 'complete' truth. At the very least, there are events and experiences that cannot be accessed: no one has returned from a gas chamber, just as no one has returned from the 'death flights' in Argentina, to tell their experience or even to silence their own trauma. This black hole in personal experience, this historical lapse, signals the absolute limits of the possibility of 'complete' truth-telling. We must recall here Primo Levi, who took up the 'duty to remember' as a 'delegated' or 'third party' narrator because the witness-participant could not bear testimony. Referring to the figure of the 'Muslim', the person who lost their humanity before their physical death,<sup>9</sup> he writes:

... we, the survivors, are not the real witnesses. ... The demolition is finished, the task complete, there is no one to have told it, just like there is no one that returned to tell about his death. Even if the drowned had had paper and pen, they would not have written their testimony, because their true death had begun before their bodies perished. Weeks and months before life left their bodies, they had already lost the power to observe, to remember, to cherish, to express themselves. We speak for them. It has been delegated to us. (Levi, 1989: 72-73)

Third, how can we gauge the significance of truth commissions for the people involved? These commissions may be especially important for victims. Commissions are 'victim-centered' and may constitute the most important forum in which victims are reinstated as citizens with a voice and can receive the attention of legitimate authorities after having been denied the possibility of denouncing and demanding for many years. Seldom does legitimizing the voice of victims appear among the aims of commissions, yet its importance cannot be belittled. As the experience of the Peruvian Truth Commission vividly shows, the act of bearing testimony in an official scenario is experienced as an official recognition of suffering and loss, a kind of symbolic reparation in its own right.

Fourth, the link between each case and each country or society, on the one hand, and the international scene, on the other, is highly dynamic. The UN Human Rights Declaration (1948) was established as an international response to the crimes of Nazism. It established a framework for international concerns, and it became a functioning framework in the mid-1970s, when the dictatorships in Chile and Uruguay attracted international attention. Since then, the international scene has incorporated numerous regulatory mechanisms. These mechanisms did not descend from heaven: they are the result of the will and the insistence of political actors who push for international recognition, for the creation of institutional bodies and for policies of redress. Activists from one country network with others; initiatives reach the international arena and then result in new agreements and regulations. In turn, these initiatives impact national action frameworks. Furthermore, this international action is linked to growing global activism related to these issues; such action is anchored in international organizations such as Amnesty International and Human Rights Watch and in internationally recognized activists and thinkers, whose role has been to bring the world's attention to violations and the urgency of redress.<sup>10</sup>

Finally, a word regarding reconciliation. Many commissions have included that word in their title, beginning with the Chilean one established in 1990. The word is polysemic. It may have a religious origin and content, as in the South African Truth Commission. It may imply finding ways for victims to live side by side with perpetrators, a difficult yet not impossible task, as Theidon showed for highland Peru (Theidon, 2012). Is this tolerance or reconciliation? Is reconciliation synonymous with 'peace', as the name of the Uruguayan Peace Commission established in 2000 implies? Is reconciliation a short-term aim after specific instances of violence or a long-term goal in societies that suffer a history of structural discrimination and racism, as the Peruvian Commission understood? From an analytical point of view and beyond the ethnographic evidence of the multiple meanings for multiple actors, it seems important to stay with the pragmatic goals of truth commissions<sup>11</sup> and leave the roads toward the future open, with a broad and open-ended human aspiration expressed in two words: *Nunca más*.

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## Notes

1. This article is inspired by the article 'Spreading the truth: How truth commissions address human rights abuses in the world society' by Saskia Nauernber, published in *International Sociology*, Vol. 30(6), 2015. It is based on existing studies of commissions in Latin America, on in-depth personal and scholarly experience with the Argentine transition and on a continuous personal and scholarly engagement with processes in Peru, Chile, Uruguay and Brazil (Jelin, 2003, 2010b, among others).
2. I have conducted research on Argentina since the 1970s. It includes interviews with key participants, analysis of documents and media coverage, as well as secondary sources provided by scholarly publications. For Brazil, the information was gathered through analysis of reports and documents as well as information accessed through Internet, including the official report ([www.cnv.gov.br](http://www.cnv.gov.br)), media coverage and the web pages of truth commissions established by institutions, local governments and civil society organizations.



3. Crenzel (2008) describes and analyzes in detail the formation of the CONADEP, the way it worked, the content and the trajectory of the *Nunca más* report over the next three decades, showing its uses and the controversies around its meanings.
4. In 2016, on the occasion of the 40th anniversary of the military coup, the newly installed government issued a new edition of the book, eliminating the 2006 prologue and restoring the 1984 one.
5. In a paradoxical way, the *Nunca más* slogan and logo were appropriated by right wing and conservative groups in their attempts to block demands for the legalization of abortion by equating aborted fetuses with the disappeared (Gudiño Bessone, 2012).
6. At: <http://cemdp.sdh.gov.br> (accessed 24 April 2016).
7. In another logic, 'some leaders may have concluded that they can secure benefits – often in the form of greater legitimacy – from forming truth commissions, without implementing meaningful reforms that threaten those in power' (Sikkink and Marchesi, 2015).
8. Based on the ruling of the Inter-American Court of Human Rights, Argentina carried out 'truth trials' during the period when amnesty laws were in place. With no capacity to punish, the courts still had to carry out trials to reveal the facts related to human rights violations (Andriotti Romanin, 2013).
9. In the language of Auschwitz, the 'Muslim' (*der Muselmann*) was the prisoner who had abandoned all hope and the will to live: 'a walking corpse, a bundle of physiological functions already in agony', as J Amery describes it (cited in Agamben, 2000: 41). As Agamben remarks, this situation is located at the limits between the human and the non-human (Agamben, 2000).
10. I have left the global geopolitical scenario out of this article. Truth commissions and other institutions in the so-called 'transitional justice' field have been applied in peripheral countries and not in the central Western powers, with the exception of the truth commission established in Canada in 2008 to address the Indian Residential School legacy. To what extent does this disequilibrium reflect the distribution of power in the world?
11. For example, those mentioned by Sikkink and Marchesi (2015): 'They take testimony, make testimonies publicly available, encourage wide participation, issue a final report, make the report publicly available, publish the names of perpetrators, and call for prosecutions.'

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## Résumé

Les périodes d'intense conflit politique, de violences et de terrorisme d'État laissent un héritage que les régimes de transition doivent aborder : des sociétés divisées, des victimes d'abus, des coupables d'exactions qui vivent dans l'impunité (lorsque des amnisties ont été accordées) ou qui font l'objet de différentes formes de poursuites et de sanctions, et des mouvements ou organisations qui réclament l'action des pouvoirs publics pour affronter le passé moyennant diverses politiques possibles. À partir des cas des commissions d'enquête (connues comme les Commissions de la Vérité) en Argentine et au Brésil, l'article traite de la nature historiquement particulière et contextuelle de ces institutions centrées sur les victimes.

## Mots-clés

Commissions de la vérité, conflit politique, violence

## Resumen

Los periodos de intenso conflicto político, violencia y terrorismo de estado dejan un legado que los regímenes de transición deben abordar. Los legados implican sociedades divididas, víctimas de abusos, autores de estos abusos que pueden vivir con impunidad (cuando se han aplicado amnistías) o pueden enfrentarse a diferentes formas de justicia y castigo y movimientos y organizaciones que demandan la acción del estado para hacer frente al pasado a través de una variedad de políticas públicas posibles. Tomando como base los casos de las comisiones de investigación (denominadas Comisiones de la Verdad) en Argentina y Brasil, este artículo analiza la naturaleza históricamente específica y contextual de estas instituciones centradas en las víctimas.

## Palabras clave

Comisiones de la verdad, conflicto político, violencia