TRUTH COMMISSIONS: A COMPARATIVE ASSESSMENT

An Interdisciplinary Discussion Held at Harvard Law School in May 1996

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HUMAN RIGHTS PROGRAM
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The **Harvard Law School Human Rights Program**, founded in 1984, fosters coursework; the participation of students in human rights activities through practical involvement as well as scholarly research and writing; and assistance to the world-wide human rights community. The Program forges cooperative links with a range of human rights workers, scholars and organizations from all parts of the world, through its student summer internships with nongovernmental organizations, its visiting fellows (scholars and activists) who spend from two to twelve months with the Program, its visiting speakers, its applied research, and its clinical work. HRP also plans and directs discussions and conferences on human rights issues, and publishes the related reports and analyses. A brochure describing HRP's activities, as well as a newsletter on the Program's current involvements, are available on request.

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The **World Peace Foundation** was created in 1910 by the imagination and fortune of Edwin Ginn, the Boston publisher, to encourage international peace and co-operation. The Foundation seeks to advance the cause of world peace though study, analysis, and the advocacy of wise action. As an operating, not a grant-giving, foundation, it provides financial support only for projects which it has initiated itself.

Edwin Ginn shared the hope of many of his contemporaries that permanent peace could be achieved. That dream was denied by the outbreak of World War I, but the Foundation has continued to attempt to overcome obstacles to international peace and co-operation, drawing for its funding on the endowment bequeathed by the founder. In its early years, the Foundation focused its attention on building the peace-keeping capacity of the League of Nations, and then on the development of world order through the United Nations.

The Foundation is now focusing most of its energies and resources on the Prevention of Intercommunal Conflict and Humanitarian Crises. This focus proceeds from the assumption that large-scale human suffering, wherever it occurs, is a serious and continuing threat to the peace of the world, both engendering and resulting from ethnic, religious, and other intrastate and cross-border conflicts. The Foundation is examining how the forces of world order may most effectively engage in preventive diplomacy, create early warning systems leading to early preventive action, achieve regional conflict avoidance, and eradicate the underlying causes of intergroup enmity and warfare.

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Preface

This venture grew out of cooperative planning by the two sponsoring organizations: the Harvard Law School Human Rights Program and the World Peace Foundation. Our purpose was to bring together for a discussion a small number of people who had given sustained thought from different perspectives to the issues surrounding truth commissions. The eighteen participants noted in the Annex came from eight countries, most of which had used or might in the future contemplate using truth commissions. Most participants were familiar through their professional concerns with these commissions. A few were significantly involved in their organization or operations.

The format and process for this meeting at Harvard Law School in May 1996 followed the pattern of prior meetings arranged by the Human Rights Program. Edited readings on this subject were prepared by Henry Steiner and distributed to all participants. No formal papers were presented. The participants engaged in a roundtable discussion about issues that were outlined in advance of the meeting. Three interactive sessions of three hours each explored these issues. Henry Steiner then edited the transcript of these sessions and prepared this publication, with the exceptional assistance of Noel Calhoun, a Ph.D. candidate in the Department of Government at Harvard.

Each participant had the opportunity to review and correct a draft of this publication, to be certain that its text accurately reflected the views expressed during the discussions. The text considerably shortens the original transcript and occasionally revises the order of remarks, in order to present a readable and cogent exchange of ideas.

The World Peace Foundation took responsibility for raising the necessary funds for this meeting. The sponsors are grateful to the Carnegie Commission on Preventing Deadly Conflict and the Carnegie Corporation for their generous support of the meeting and of this publication. We are also grateful to Professor Dennis Thompson, one of the participants, for his insightful contributions to the planning and processes of this meeting.

Robert Rotberg
President
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Introduction

Henry J. Steiner

The cause of the Irish problem, suggested William Gladstone, is that the Irish never forget, while the English never remember. Is there then a golden mean, some "proper" degree of collective memory appropriate for bearing in mind the cruelties and lessons of a troubled past, while not so consuming as to stifle the possibilities of reconciliation and growth? How might one imprint such a memory on a people's or state's conscience? What kinds of institutions or processes would be appropriate? What purposes might be served by a detailed recording of gross abuses, not only for the collectivity but also for the individuals involved as victims or perpetrators?

These are among the major themes informing the discussion of truth commissions among eighteen participants that follows this introduction. My purpose is to provide a framework for the discussion by sketching some issues and features of these commissions.

In a brief fifteen years, "truth commission" has become a familiar conception and institution for a state emerging from a period of gross human rights abuses and debating how to deal with its recent past. The term serves as the generic designation of a type of governmental organ that is intended to construct a record of this tragic history, and that has borne different titles in the many countries over several continents that have resorted to it. These commissions offer one among many ways of responding to years of barbarism run rampant, of horrific human rights violations that occurred while countries were caught up in racial, ethnic, class, and ideological conflict over justice and power. They may be alternative or complementary to other national responses, including the poles of amnesty and criminal prosecution.

The contemporary surge of truth commissions, and hence in scholarly writing about them,[1] started in Argentina after the country's defeat in the Falkland Islands war and the military's related retreat from political power. Other prominent examples of commissions that have effectively completed their work include Chile and El Salvador. In some countries such as Uruguay, commissions did not achieve a great deal. In others such as Uganda, hampered by a lack of political will and funds, they have been unable to complete their mission and issue a report. Among the commissions functioning today, the most discussed and—given the degree of reconstruction that will be necessary— potentially the most significant for a country's future operates in South

Africa. The work of hearing testimony continues actively in Sri Lanka. The Guatemalan government and guerrilla leaders recently reached a settlement to that bloody conflict and agreed on a truth commission of such limited competence that it immediately became controversial.

The truth commission has been a protean organ, not only in the many institutional forms it has assumed, but also in its varying membership, in the diverse functions that it serves, and in its range of powers, methods, and processes. Each country—as time progressed from the early 1980's to the present, with ever more precedents as guides—has given its commission a distinctive architecture. The mandates imposed on commissions by executive or legislative measures could be spread over many points along a spectrum moving from strong to weak powers and functions.

Although the general purposes and methods of truth commissions properly figure in a critical discussion of what they have achieved, what rapidly becomes apparent is that concrete examples drawn from different countries must inform abstract description. No architect of these institutions has proceeded by deduction from general principles. The effect of specific historical contexts on the kind of commission created is inconcealable. Consider, for example, one important explanation for the variations among commissions' mandates. When the military continues to hold considerable power as part of a negotiated move toward civilian rule (as in Chile where it retained its commander, the former political leader), severe constraints influence what a truth commission may be empowered to do, or the possibility of prosecution of military personnel. The Argentinean transition following a military disgrace enjoyed greater, though still limited, possibilities.

Commissions are official organs that are generally but not always staffed by citizens. They are organized for a time certain and for the specific purpose of examining through one or another method serious violations of personal integrity. Frequently, victims of gross violations testify before them, and alleged or confessed violators may testify as well. Invariably, the commissions receive or gather evidence of violations committed by state actors, and in some instances also of violations by nonstate actors such as insurgent groups. The investigative capacity given commissions has ranged from extensive staffs armed with legal powers, to reliance principally on voluntary testimony that may or may not be verified. Hearings have been both private and public. The reports of proceedings—including graphic evidence of abuses, sometimes the naming of victims and less frequently of perpetrators,

summaries and conclusions, on occasion recommended changes in state institutions or structures—ultimately become public documents.

Even with respect to publication, the variations have been significant. The Argentinean *Nunca Mas* report was widely distributed and became a best seller. Chile's president publicly apologized for the state conduct revealed in that commission's report, which was sent to each named victim's family. In Brazil the full report had limited circulation, while a summary was given mass distribution. The German experiment in truth telling that followed unification followed a unique path (through a special authority) in opening East Germany's secret police files so that victims of abuse could determine their informers' names.

The historical analogies to today's truth commissions range from international commissions of inquiry to many forms of national investigative bodies. Nonetheless, in major respects we witness today an institution that is distinctive: the number of countries utilizing it within so brief a period, its popular appeal and powerful political effects, and the ambitious scope of its work. These are not carefully bounded initiatives focusing on discrete events, or on discrete aspects of a polity that have limited political significance. To the contrary, truth commissions have addressed state conduct that raises the most politically and morally sensitive issues facing the country as a whole.

Commission's reports have implicated high reaches of state authority in raw and systematic violations of law that claimed victims into the many tens of thousands. This slaughter, rape, torture, imprisonment, and disappearance of victims occurred in the setting of consuming conflicts, sometimes decades long, over a country's basic nature and structure: ethnic hierarchy or equality, military or democratic rule, dictation or participation, repression or expression, mass murder or the rule of law, concentration of wealth and power within a given elite or broader distribution. These were events so pervasive and traumatic in their effects as to place their stamp prominently on the entire history of a period.

How can we understand the striking recourse to truth commissions in recent years? Surely part of the answer lies in these institutions' relationship to the human rights movement that took root a half century ago. Two considerations seem relevant.

First, governments have created these commissions principally at the time of a state's transition toward more participatory government expressing ideals of democracy, power bounded by law, formal legal equality, and social justice. Even when the moment of political change

has been non-violent—as in Chile where the structural and substantive features of the change were discussed between an opposition and a government, or in South Africa where those features were submitted to the people for its approval—the term "transition" may understate how radically the successor regime has departed from its predecessor with respect to moral principle and political ideology.

Realization of (or at least the aspiration toward) fundamental change appears to be an almost constant companion to the use of truth commissions. A repressive regime succeeding as repressive a government that it has ousted from power is unlikely to explore prior misdeeds that may be ideally suited to its own malign purposes. The movement toward democratic rule and associated human rights in the years since the Argentinean experiment has become more common in a world informed by the powerful ideals of the international human rights movement. Hence truth commissions have become more likely.

Second, the rules and principles drawn on by commissions in determining what is relevant testimony, in reaching conclusions about criminal conduct, or in making recommendations may be found directly in the international human rights movement. Or they may be found in a state's own internal law, a law that was violated by those holding power in the prior period. Even when the latter is the case, the impact on the national proceedings of such international norms (on murder, torture, disappearances, repression, ethnic discrimination, and so on) seems evident. South Africa offers a striking illustration of the powerful effect on a state of the international system's norms and pressures. Indeed, the term "human rights" has figured as part of some commissions' titles.

This broader environment of basic human rights in which truth commissions have operated has lifted their work above purely national contexts, and to some extent transformed them into institutions serving the larger purpose of vindicating basic rights everywhere. Partly for this reason, the states employing this institution have drawn considerable international attention. The reports issuing from the commissions have come to figure among the standard documents of the global human rights movement. The national and international are here complexly intertwined.

Any assessment of truth commissions must involve comparisons between them and other approaches toward dealing with a tragic period of national history. At one extreme, a state may grant amnesty to those who committed defined crimes—say, crimes with a political ob-

jective—during a prior regime. At another, it may criminally prosecute (as did Argentina) a limited number of leading figures who are viewed as ultimately responsible. Despite recent and massive efforts in Ethiopia and Rwanda, in no instance has a new government succeeded in prosecuting a large number of political figures and military or police personnel involved in serious abuses. Surely the most dramatic and widely known of contemporary efforts to prosecute involves the International Criminal Tribunal in the Hague with respect to the conflicts in the former Yugoslavia and Rwanda.

Except where barred by amnesty provisions, victims' civil suits for compensatory damages first become possible as the repression lifts. The new government may develop a public program of systematic compensation or restitution. It may make public apology without fresh investigative proceedings—as, for example, the Czech and German governments have done in a recent joint declaration bearing on stated abuses during and after World War II. The so-called process of lustration (purification) may by law dismiss people from or make them ineligible for government or other positions because of their involvement in the criticized conduct of the prior regime.

Truth commissions can stand apart from all these approaches to dealing with the past, or they may be closely linked to one among them, perhaps to amnesty or to prosecution. In South Africa, for example, confession before a commission may lead to a grant of amnesty. Abundant and often perplexing choice confronts a successor government, although a choice that may be significantly constrained by political, military, or other considerations.

Some possibilities and purposes of truth commissions are distinctive to them; others characterize several of the alternative or complementary processes that have been noted. Consider these possible goals or aspirations that bear on the choices that a state makes: reconciliation among different groups as the polity seeks partial closure of its past in order to move beyond it, vindication of victims as their stories are officially and publicly heard and recorded, the satisfaction of a larger sense of justice through official acknowledgment and condemnation of what has occurred, forgiveness by victims of the perpetrators of crimes who have confessed to their actions, creation of a moral framework for a different kind of society, and traditional aims of the criminal law such as retribution and general deterrence.

The discussion below is rich in analysis of and proposals about truth commissions, both in general and in specific national and inter-

national contexts. Rather than anticipate, let alone summarize the diverse views of the discussants, this introduction concludes by noting the major issues that engage them.

1) Why should a state deal in some official way with its past? If it selects the path of truth commissions, what assurance can it have that major goals such as reconciliation among groups or catharsis for victims will be realized? For example, will the findings of a truth commission promote reconciliation without companion policies like compensation? Can the goal of deterrence of massive violations of human rights be realized through selective prosecutions of leaders, or through the narratives of truth commissions? (Consider in this respect the title, *Nunca Mas*, used for several reports of commissions.)

2) What criteria and conditions should lead a state to resort to a truth commission rather than to alternative ways of dealing with the past like prosecution or lustration?

3) Should commissions restrict themselves to recording facts developed through voluntary testimony or through investigative procedures? Should they also engage in broader causal analysis, as by advancing historical explanations of the sources of a conflict? Should a report include recommendations of structural and substantive changes in government with the purpose of avoiding mass recidivism?

4) Can such questions be answered in general, or will answers necessarily depend on the particular close context for decision?

5) At what stage of a conflict can truth commissions best fulfill their functions? Do commissions offer more risk than promise if instituted, for example, during the pendency of a violent conflict, or before a political settlement has been achieved?

6) What powers should a commission be granted, such as subpoenas to summon witnesses or obtain documents?

7) What formal processes should govern a commission? To what extent should criteria of due process in criminal prosecutions inform these commissions as well?

8) Can truth commissions of the kind that have developed over recent years serve useful purposes not only for intrastate conflicts but also in regional disputes that cross state lines or implicate several countries, as in the Middle East or Northern Ireland?

Part One:
Basic Purposes and Justifications

***Henry Steiner** (Chair)*

The term "truth commission" itself spurs many thoughts. At one level, it has an Orwellian ring. At another, we are drawn into debate over the many meanings, over the very concept, of truth—into what a commentator has called the "post-modernist black hole." A recent article on the subject was entitled "South Africa Looks for Truth." I thought of the words or concepts that different observers might substitute for "truth"—historical facts, reconciliation, healing, acknowledgment, justice, respect, convenient memory, unifying narrative.

This first session is devoted to a discussion of basic purposes and justifications of truth commissions, with references to such historical experiences as the participants find useful. No doubt that discussion will explore the ambiguities in the very nature of our subject.

I have asked Bryan Hehir and Lawrence Weschler to launch our discussion with some general observations.

Bryan Hehir

I would like to consider truth commissions in the context of international relations, questioning whether and how they contribute to the institutionalization of human rights.

Human rights legislation in international relations has moved through three stages. The first stage entailed the founding of the United Nations and the development of the International Bill of Rights. For the first time, treaties established states' international responsibility, legal and political, for human rights violations committed by them within their own territory against their own citizens. However, there was little follow-through in the actual conduct of international relations, as opposed to theorizing about international law.

In the second stage of the 1970s, human rights were institutionalized, as states incorporated more of the responsibilities defined for them in UN documents. Although the many failures can be criticized, at least some states attempted to connect their policies with international norms.

We are now in a third stage, the post-Cold War period, in which the institutionalization of human rights faces new opportunities and complexities. The challenge remains how to institutionalize human

rights effectively, despite the anarchical setting of international politics.

We can examine truth commissions in relation to the institutionalization of human rights norms and practices from two perspectives: within states and from the perspective of the international system. The relevant literature stresses the first perspective by examining the role of truth commissions within a domestic political and social context. For example, truth commissions affect human rights within states by extending the concern for their protection beyond the period of a state of emergency that often accompanies massive violations. Frequently, human rights violations slip off the agenda as a situation normalizes. Truth commissions prevent this slippage by making demands on people's memories and by examining the psychology of violations. They provide a "specification beyond the barricades" and help institutionalize a historical record.

On the other hand, truth commissions can go only so far in these respects, particularly in relation to the international system's effort to establish universal standards that can be enforced against states. Commissions face two kinds of limitations: constitutional and prudential. Their constitutive documents generally authorize processes related to the writing of a report, and nothing else. Moreover, political leaders may prudentially limit their effects, as by choosing to reveal the truth but not to prosecute human rights violators because of concern for dire political consequences. In such respects, truth commissions flag the important dilemmas concerning the enforcement of human rights in general.

Lawrence Weschler

Over the ten years that I've been covering this issue, the complexion of my thinking has changed every six months or so. Sometimes the change is so radical that I don't recognize my former self.

I would like to put forward a few touchstones to guide us in our discussions—comments of four authors whose work resonates with me. First, Milan Kundera wrote in *The Book of Laughter and Forgetting*:

> The bloody massacre in Bangladesh quickly covered over the memory of the Russian invasion of Czechoslovakia, the assassination of Allende drowned out the groans of Bangladesh, the war in the Sinai Desert made people forget about Allende, the Cambodian massacre made people forget about Sinai. And so on and so forth, until ultimately everyone lets everything be forgotten.[2]

Truth commissions constitute a protest action against this tendency. Memory, however, is not that simple. We get the feeling that some places in the world could use a bit of forgetting.

In Poland, in the years after World War II, people began to ask how many Poles had actually perished in the war. They debated whether five-and-a-half million or six million people had died. Some concluded that since they could never know exactly, they should just forget the issue and move on. The poet Zbigniew Herbert grappled with this debate in a poem entitled *Mr. Cogito on the Need for Precision*, in which he concludes, "and yet in these matters/accuracy is essential/we must not be wrong/even by a single one//we are despite everything / the guardians of our brothers//ignorance about those who have disappeared/undermines the reality of the world."[3] These are wonderful lines. As a country democratizes, citizens look forward to enjoying the rule of law and free assembly, but they want them to be real, not founded on mass willed ignorance.

On the one hand, then, people strive for the greatest possible truth about the past. On the other, I think of a short piece written in 1970 by the poet W.S. Merwin, *Unchopping a Tree*.[4] He describes the step-by-step process of how one would put back together a tree that has fallen such that its leaves, twigs, nests and so on have all broken off. All "must be gathered and attached once again to their respective places across an endless painstaking process." At last the scaffolding for reconstruction must be removed.

> Finally, the moment arrives when the last sustaining piece is removed and the tree stands again on its own . . . . You cannot believe it will hold. How long will it stand there now? . . . You are afraid the motion of the clouds will be enough to push it over. What more can you do? What more can you do? There is nothing more you can do. Others are waiting. Everything is going to have to be put back.

What is spectacular to me in that passage is both the vivid imagination and the preposterousness of the project. A line in the last paragraph speaks of "the first breeze that touches . . . the dead leaves" They are still dead. Imagine the tremendous labor involved in putting a dead tree back together. The author here is depicting action which does not tend to life, action that does not move forward.

Finally, I want to draw on an essay written in 1945 by Maurice Merleau-Ponty about the legacy of World War II, translated as *The War Has Taken Place*.[5] Merleau-Ponty writes about the paradox in trying to

remember history, as by recording it. But meanings change, and efforts to preserve history, to hold events and persons to where they were at a given moment, may in the end serve less to preserve than to mark passage and change. For example, we preserve the books and clothes of a loved one who has died. But, "Once they were wearable and now they are out of style and shabby. To keep them any longer would not make the dead person live on. Quite the opposite—they date his death all the more cruelly."

The challenge is to combine Herbert and Merleau-Ponty. We must not forget, but we must remember in a living way. Truth commissions must be future oriented; they must make space for living.

Manouri Muttetuwegama

I want to express the depth of my response to these contributions. I have heard thousands of cases from petitioners on the government commission on which I serve that investigates disappearances in Sri Lanka. People who had nowhere to tell their story for several years have begun to shed their constraints. When they realize they have your ear, they express their experiences vividly. They want to be able to remember in a living way, as Lawrence Weschler said.

We have had seventeen years of repression and violence between Sinhalese and Tamils. The young people of today do not understand what has happened. When I tell them or the media about the massacres that have been carried out, they assume the massacres happened in the northern part of the country in connection with the war between the state and the Tamil Tigers. I insist that these things happened in the south as well, among the Sinhalese factions. This does not comport with their understanding of their own side's behavior.

José Zalaquett

The political changes of recent years have brought new issues into the human rights agenda. One of them concerns how to deal with past evil deeds. The main question is: must this be done? It must be done not because of a fixation with the past as such, but because the past can influence society's present and future.

Following a major breakdown of the rule of law and basic civic values, a society must reconstruct its moral underpinnings. Truth commissions can be a part, perhaps the cornerstone, of such a process of

moral reconstruction. I believe that they are most important when crimes affecting values that are crucial to the character of the state have been denied or remain unacknowledged. Governments usually deny deeds that can never be justified, such as killings in custody, disappearances, and torture. Such secret crimes must be unveiled.

I would like to draw the distinction between revealing the truth about secret crimes and interpreting the political processes that led to such situations. Interpreting and justifying are two different things. One may attempt to explain how a society reached the point where the likelihood of major crimes was greatly increased. But that doesn't justify the crimes. The distinction between fact and interpretation has become very important in the working of truth commissions. They should concentrate largely on facts, which may be proved, whereas differences about historical interpretation will always exist.

Charles Maier

How inclusive or emblematic can one truth be? Can a single narrative work? José Zalaquett suggests that when a person disappears, is killed in custody or tortured, that fact does not need interpretation. If that is true, then just being able to summon a truth commission presupposes a great deal of consensus building.

What exactly happens when people come before a truth commission with a fact they want acknowledged. Is there an historical sifting of the fact? Does the fact speak for itself? Couldn't the government defend its actions by claiming that it was forced to act in a certain way or that it had a vastly different perception of events?

José Zalaquett

In times of extreme emergencies, governments may defend certain actions. There are, however, absolute norms whose transgressions can never be justified, such as the murder of a person in custody or torture. Truth commissions must concentrate first on examining the violation of these values. In such cases, the facts speak for themselves. Some people will have denied these facts so as to avoid facing the moral contradiction of supporting a government that commits them. But if facts are disclosed in a serious, credible manner, they can no longer be denied nor can they be justified.

Henry Steiner

Comparing truth commissions with nongovernmental human rights organizations (NGOs) like Amnesty International may be helpful. A principal task of these NGOs consists of investigating and reporting violations of basic rights, and deciding whether violations can be attributed to a government. Such work is indispensable to the advocacy by NGOs before other governments or intergovernmental bodies for the purpose of bringing pressure against a delinquent state.

NGOs have tended to shy away from advancing explanations of what political, economic, ideological, or other factors led to systemic human rights violations. In attempting such causal analysis, they would run the risk of eroding the legitimacy that comes from their holding to a self-declared role of reporter of facts rather than political analyst or social theorist. NGOs have long tried to maintain a status that is distinct from political actors and that even transcends politics, thereby enhancing their credibility. The changes that they have sought in the countries examined by them have generally been restricted to bringing about the end of the reported violations.

Perhaps truth commissions should have this same attitude, holding to the role of truth-tellers in the flat sense of doing their best to record who did what to whom and when, period. Were they characteristically to engage in social analysis, by identifying structural phenomena underlying violations, and by proposing deep changes in a society's socio-economic organization, they risk being viewed as but another voice in a world of disputed opinions and theories about justice, development, whatever. Their reports might lose distinctiveness and a sense of objectivity by being absorbed into the broad play of political ideas and historical debate.

In the past, human rights organizations criticized states primarily for violating people's physical integrity. As José Zalaquett suggested of the human rights movement in general, NGOs have gone beyond that traditional focus. Often their attention reaches more ambitiously to basic aspects of culture and political structure—for example, gender roles and democratic government. Their criticism of violations of norms about gender quality or political participation makes relevant broader economic, cultural, and religious features of a society. Human rights NGOs have thereby become in some sense, and to a limited degree, agents of transformation of the violator state rather than solely emergency firemen intent on arresting a blaze.

Should truth commissions assume this ambitious role, advancing broader criticisms of past conduct that specify or imply fundamental cultural and political change?

Fateh Azzam

I think it is very important for these commissions to focus on factual details in order to avoid getting stuck in an interpretive framework. We Palestinians and Israelis exacerbate our conflict by arguing in terms of interpreting history. This involves the denial of factual truth.

A truth commission provides an opportunity to reclaim the moral high ground by telling what actually took place. It is not an either/or proposition. It does not place an absolutist human rights approach in competition with politics. Rather, human rights have added a moral dimension and an imperative to political decision-making. For example, politics is not just a question of power relationships or economic issues. Exercising physical authority does not give governments a right to interpret history. Unfortunately, I do not think the present peace process has much to do with truth.

I seek to confront the denial of reality that exists on both sides of the political fence. We must go back as far as 1948 and earlier and examine the factual truth of what happened. Some Israeli historians are doing that. The Palestinians must also understand that in the process of national liberation, the means of injuring the enemy are not unlimited under international law. Not everything can be justified in the pursuit of national liberation. Acknowledgment of this fact on our part would contribute to a process of reconciliation.

Yael Tamir

I think that the likelihood of establishing a truth commission to examine the violations of human rights that occurred during the Israeli-Palestinian conflict is rather slim, for this case presents unique difficulties. In most cases the establishment of a truth commission becomes feasible following a sharp discontinuity of the political regime. The ability of the commission to function is grounded in this discontinuity, which allows the new regime to openly reject what its predecessor did. Israel has not experienced such discontinuity, and its leadership is unlikely to disavow acts done by previous governments. Most of all, Israel is unlikely to disavow the rationale for such acts—that is, assuring its security. Many violations of human rights have occurred during the

conflict, but I doubt whether a truth commission would be an effective tool for examining them and leading to reconciliation.

Kanan Makiya

Given the history of the human rights movement described by Bryan Hehir, I do not think that truth commissions are likely to contribute greatly to the institutionalization of human rights. Instead why not think of them as a way of reclaiming the moral high ground for politics. The process of unveiling the truth is very political—in the best sense of that word. This process can help reclaim a public space around which a fractured sense of political community can once again be reconstructed. Such a goal is very different from the human rights movement's demand for complete truth, a demand in which every story must rightfully be told and every life accounted for. A truth commission therefor can make a contribution to the reconstruction of political community in shattered countries. Though constrained as a political instrument, a truth commission, when artfully constructed, can contribute to moral regeneration and a unified community.

André du Toit

The South African truth commission has a democratic nature. The process of defining the truth commission's objectives has itself been part of public debate. In addition, South Africa has learned from the experiences of other countries.

South Africa's experience was uniquely marked by the prolonged process of discussion preceding the commission's establishment. Rather than a presidential commission, it was Parliament that set up the commission after a series of public hearings. The commission's objectives shifted as different actors and constituencies became involved in the process. Although amnesty to the perpetrators was initially the central objective, at later stages the victims became the focal point. As religious leaders and churches became increasingly involved in the commission's work, the influence of religious style and symbolism supplanted political and human rights concerns.

The most important definition of truth for the commission is acknowledgment. The people who came forward to testify at the public hearings of the Human Rights Violations Committee made this clear. They did not so much disclose new information as they seized the opportunity to tell their own stories.

This dynamic raises the question—what kind of overall narrative will come out of this process? If the process is politicized, we will see a contest over who controls the interpretation. Even though the commission may create an environment in which people can have their experiences acknowledged, it is not clear that a single narrative of reconciliation—a nation-building narrative—will emerge.

Lawrence Weschler

Let me create a little mind-game. Imagine that I was trying to take control of the Chilean reconstruction process, and I wanted a particular narrative to emerge. I might say, "Well, it really doesn't matter what testimony the truth commission hears. What is important is who writes the report at the end. The content of those two volumes will matter historically. I'll just get myself on that committee and lead it to do what I want."

Would that be smart? Which is more important in South Africa—the actual hearings that take place or the written report to be produced at the end? Is that a silly question?

José Zalaquett

Not at all. It touches on what Henry Steiner earlier asked, how far should a commission go beyond the facts to try to explain a situation? The Chilean commission focused largely on facts. Aware of the difficulty of achieving a broad consensus, it limited itself to trying to show that the crisis leading to violations was facilitated by the extreme polarization of political life in Chile. It revealed how opponents came to dehumanize each other, a process leaving only one short step to denial that an opponent is entitled to rights.

Of course, references to legal and institutional context are also necessary. The truth commission must go beyond offering excerpts from the oral testimony it has heard. It must also analyze evidence, present facts in a coherent framework while avoiding the most contentious aspects of historical interpretation, and arrive at substantiated conclusions.

The commission's composition is very important. Of eight members of the Chilean commission, four had supported General Augusto Pinochet's regime. Although not approving of the killings, they felt that the military takeover was necessary to put an end to the Allende government. It would have been impossible for a single person to domi-

nate the drafting of the report. The fact that the commissioners were representative of broad sectors of the community made their findings more credible.

André du Toit

One of the main differences between the South African and Chilean commissions is that in South Africa the hearings are public. Open hearings cannot be controlled as much as the final report. Thus the process itself takes on an added importance.

What then will be the role of the final report? Perhaps it will be significantly edited and thereby controlled by the commission, despite the open hearings. If, however, the final report faithfully represents the diverse narratives presented at the hearings, then the process will have shaped the final report.

Bryan Hehir

I can understand the stress placed on process, independent of the report. One reason to invite individuals to tell their stories to a truth commission is simply to give them voice in the political process. Often the people who were violated had no protection. For the first time in their lives, they are allowed to speak in a public forum recognized as part of a political process.

Robert Rotberg

We now have before us the three "C's" of human rights. The first "C" is "cleansing." Lawrence Weschler has already asked whether every disappearance and death must be acknowledged. Must everything be accounted for? I purposely pose this question in the extreme. Can we really be sure that we have heard everyone and listened to everything, so that the final reports present a complete listing?

The second "C" is building the "community," which is what Kanan Makiya has stressed. In South Africa, the truth commission has also emphasized the reconstruction of civic culture out of the ruins of apartheid. The first "C" is expressive, perhaps instrumental; the second is clearly instrumental.

The third "C" is the "consolidation" of a democracy. Consolidation is more difficult than democratic transition. Is it essential to have a truth commission-like process in order to facilitate the consolidation

of democracy? I think commissions might play an important role in making it possible for a people to move forward as a cleansed, community-minded nation.

Dennis Thompson

We have been assuming that the examination of individual cases can help us attain factual truth. In reality, the most easily acceptable factual truths are collective facts, as José Zalaquett suggested. For example, we can all acknowledge that apartheid existed or that a state of emergency was imposed. It follows also that we should question the assumption that victims' stories are only individual. By telling these stories in the right way, victims can illuminate the larger context.

I would like to reconstruct Thomas Nagel's distinction between knowledge and acknowledgment that is often mentioned in these discussions.[6] Generally, we assume that knowledge precedes public acknowledgment. I think that assumption is mistaken. It may not be possible to establish the factual truth as knowledge. Public acknowledgment, which is what truth commissions promote, would in that case remain unattainable.

Instead, a commission should say to the victim, "We have heard your story and take it seriously. It falls within the range of plausibility. We recognize your story not just as something you believe, but as something that society must understand and consider as part of its history. We are not sure that your story is true. We do not know how it fits in with other stories. However, we now acknowledge its plausibility in a way that we never did before." Saying so does not entail affirming that each story is factually true. It does not become part of the country's legal history.

José Zalaquett

Nagel's distinction applies mostly to secret crimes. It also implies that for moral reconstruction, the perpetrators must acknowledge their wrongs. Indeed, most major religious and ethical traditions stress such acknowledgment as a condition to forgiveness by the society, as well as to atonement and a resolution not to engage again in such conduct. One example of acknowledgment was the 1995 admission by General Balza, Argentina's army commander-in-chief, that during the period of army rule the army had perpetrated crimes that could never be justified.

When victims' allegations cannot be proven, their suffering must still be acknowledged. In Chile we could account for every fatality but could not reach judgment on which individuals among the tens of thousands of potential claimants had been tortured, for in most cases there were no witnesses or visible traces years after the events. We accounted for torture as a phenomenon, describing its magnitude, the methods of its operations, its effects, and so on.

Lawrence Weschler

Perhaps you could say a bit more about what happened in Argentina with Balza, as well as what did *not* happen in Chile. How would you describe the mood in Chile and Argentina following this apology? Balza admits the military's wrongs, whereas Pinochet does not.

José Zalaquett

In the first place, Balza was not one of the supreme commanders during the repression in Argentina. He was a mid-level official who was not directly involved. He became the commander-in-chief of the armed forces twelve years after the change of government. Then he came forth publicly and apologized. In Chile, Pinochet was the commander-in-chief of the entire operation. Six years after the change of government, he is still in charge. The situations are quite different. Except for the army, Chilean society has acknowledged the past abuses.

Bryan Hehir

I think that truth commissions function at three levels. The first level entails catharsis. In my experience in counseling, I have seen how people who have been through terrible personal trauma must talk about it to achieve catharsis. For this reason, hearing about every case is important. This catharsis is more complete if perpetrators acknowledge their crimes, but such acknowledgment is not absolutely necessary.

The second level involves the process of moral reconstruction. What was the moral narrative? Society must pass judgment on what has been heard. It must establish a moral account of the historical record.

The third level verges on the political—what is done with the process of truth telling? A number of options are available. A society may choose to "forget" or ignore the truth when a judgment of political prudence suggests that the process of dealing with the past would di-

vide the country and lead to a coup. I think one could honor this judgment, especially if the society has made a moral statement and had undergone a cathartic process.

I think that each of these levels has an intrinsic value. Each is valuable, regardless of whether other levels follow.

Elizabeth Kiss

I also want to address the question of how political the process of truth-telling really is. I too conceive of three levels, and they are similar to Bryan Hehir's distinctions.

The first level involves the commission's official imprimatur. It is not just that someone is interested in listening to the experience, but that the listener has official status. Chileans who came to tell their story to the truth commission were moved by the Chilean flag that was prominently displayed on the table. Furthermore, the official who listened to their story was actually interested in what they had to say.

The second level consists of the official acknowledgment of responsibility and the overcoming of denial.

Finally, truth commissions, unlike NGOs, must address the question of institutional change. As Henry Steiner suggested, NGOs may focus only on the facts as a way of maintaining their credibility. I think a truth commission must confront the question of how the atrocities occurred and how they can be prevented in the future.

Brinton Lykes

In thinking about the process of catharsis and story-telling, we must consider the issue of interpretation. What constitutes the truth? The literature in psychology contains considerable debate about the process of recovery, as well as about what is possible at the individual level. The telling of the story itself, as important as that might be for catharsis, is really not what one needs in terms of the listening process. We must recognize the interpretive nature of the relationship that is established between the victim telling a story and the official listener.

There are multiple needs in these contexts of transitions. A truth commission need not seek to satisfy all these needs alone. Other resources must be mobilized through NGOs or churches. What other organizational forms are available?

Tina Rosenberg

I am struck by how many comments outline the parallels between truth commissions and the therapeutic process of dealing with victims of post-traumatic stress disorder. The similarities are striking. People need to tell their story, but this is not all. Two other levels are important. People need to tell their stories to someone who is listening to them seriously and validating them. This is official acknowledgment.

More importantly, victims must be able to reintegrate that narrative into their whole life story. It must not be a separate and shattering incident. This has obvious importance for the victims of human rights abuses who recount their stories. Indeed, if the whole nation is suffering from post-traumatic stress disorder, this process would be appropriate for the whole nation.

Lawrence Weschler

Furthermore, as the victims put their own lives together, they also pull the whole country together.

I detect three overlapping metaphors in our discussion—the realms of law, art, and therapy. The most effective truth commissions carry an element of the theatric, by being broadcast to the public on television, for example. Artfulness of presentation makes the commission more effective. The public responds like an audience of a Greek tragedy. Many therapists compare their work to making art. People must organize their lives in an artful way that lends them a cathartic life experience at the end.

Brinton Lykes

I think there is a real danger in using the analogy of post-traumatic stress disorder and in moving too quickly from the individual's process to the collectivity. This depoliticizes the kinds of issues that we are talking about. The therapeutic process as Lawrence Weschler described it is not necessarily what is most important at the collective level. To unhinge this dynamic from the political process is to lose track of the process's multiple dimensions.

Lawrence Weschler

I would like to respond by saying something about the dynamics of torture. Over and over again the torturer says to the victim, "Go ahead

and scream. Nobody will hear you; nobody will ever know what's going on in this room." The torturer says this for two reasons: to demoralize the victim and to give himself confidence. Otherwise he couldn't do such things. Even the torturer must go home to face his children. One of the truth commission's functions is to illuminate this situation, so that future generations will not find such behavior acceptable.

In my book on Uruguay, I talked about depriving the military of its strut.[7] After the truth commissions do their work, some of these Latin American militaries no longer have their arrogant strut.

This brings me back to the notion of catharsis. In the therapeutic model, people deal with the past by talking and talking and talking about it until one day they grow bored with it. At some point, people will decide to move on in their lives. I think of the American expression, "Get a life." This is a fundamental political moment, to get a life. But before reaching this point, several things must happen. Commissions can help people move forward.

Kanan Makiya

I want to make a distinction between two kinds of truth commissions. In the first kind, the purpose is to establish blame. In a second kind—which I believe would be more appropriate in the Iraqi case—the truth commission tries to establish what happened. For example, Iraqi Arabs and Iraqi Kurds would try to establish what happened to Kurds. The political meaning is different. The purpose would not be to blame someone else, but to determine what one's own community has done.

Consider the Israeli-Palestinian peace process, a very important political process coming from the top down. Try to imagine the effect of a political demand arising from both Palestinians and Israelis for a joint Israeli and Palestinian truth commission, which would hopefully have the official parties' blessing. Through this second kind of truth commission, the parties could lay the foundation for a real peace by jointly acknowledging their past.

André du Toit

In the South African context, as in other contexts which we discussed here, the truth-telling opportunities are largely structured around the victims of gross violations of human rights. This encourages a process of catharsis and therapy.

However, not all potential witnesses would agree with these metaphors. Some say, "We're not victims, we're survivors. The commission frames our story in a way we cannot accept." This raises the vexed question of victimology. If people refuse to tell their stories for this reason, their absence will affect the narrative that finally appears.

Who actually comes forward to tell their stories? In South Africa, we were struck by the disproportionate number of women. Also, they did not tell about themselves, but about their husbands or sons or other men in their lives. Women tell stories about men who were victimized. Some men have come forward, of course, but so far hardly any women have testified about themselves as victims.

Dennis Thompson

I am not sure I understand the distinction between survivor and victim. Could you give an example how their stories would differ?

André du Toit

The actual content of the stories need not be different, but the stories are framed differently and have different political implications. In South Africa, public hearings are a forum where victims can be heard. The commission emphasizes its role as a care-giver. This is done very well with the inclusion of religious styles and symbolism. The Christian notion of forgiveness is prominent. The commission tells the victim, "You had this terrible experience. You may tell us about it. We acknowledge that your story is consistent with other crimes. Is there anything you want to ask of the commission? What can the commission do for your case?"

The survivors do not relate to this situation. They respond by saying, "We have had these experiences, but we do not want to present ourselves as victims in need of healing. We do not necessarily agree with the message of forgiveness. What political purpose does the story serve when it is framed in this way?"

Tina Rosenberg

André du Toit's comments are very intriguing, but I can think of some structural reasons why women are coming forward to tell stories about men. I would like to ask whether you think these reasons are plausible.

First, people are conscious of wanting to tell the most important stories, which tend to involve murder. The people killed were dispro-

portionately men and their closest remaining relatives are usually women. Second, if a woman were a victim herself, the crime might include rape. Many women are reluctant to come forward in public and talk about being raped. Third, the people who come forward are often those who are searching for answers about what happened. They want to know how their loved ones died, for example. A victim knows what happened to him; he is not looking for information about another case.

André du Toit

These reasons certainly contribute to the phenomenon. One problem we face in South Africa is establishing which violations should be investigated, since apartheid involved so many gross violations of human rights. We lack consensus on where the focus should be.

Manouri Muttetuwegama

In my country, we are increasingly worried that after the investigation is completed, the report will be filed away for thirty years and rediscovered by a researcher only after we are dead. This is a real danger, given that the attacks and disappearances have been the work of people on both sides of the conflict. The commission's work is heavily politicized—against its wishes and intentions.

Robert Rotberg

I want to pick up on Manouri Muttetuwegama's concern about what will happen to the commission's findings. Will they be shelved? To play the devil's advocate, as far as the "acknowledgment process" is concerned, I am not sure that it matters. Regardless of the report's fate, the survivors and victims benefit from the official acknowledgment.

But I am most concerned about what happens in the process of moral reconstruction and the establishment of the rule of law. Here publication is important. The successor government wants to be perceived as superior; it wants a new foundation. Thus, if the commission's findings in Sri Lanka are never publicized, much less is accomplished.

José Zalaquett

We should bear in mind that truth commissions are not a simple recipe for every transitional situation. They are only a part of a more complex policy to address the past—sometimes including compensation, pros-

ecutions, and institutional change. They are most useful where broad sectors of society do not believe or acknowledge critical facts.

Commissions should not decide whether certain political acts like launching a *coup d'etat* or taking up arms against a government are justified or not. They should concentrate on specific violations. In Chile, half the country may still believe that the 1973 military coup was necessary to prevent a civil war, and historians may agree or disagree. We, the commissioners, did not address the issue and agreed to disagree. In some circumstances, revolution or even emergency rule may be justified, even though such rule is used in ninety per-cent of the cases as a pretext for repression rather than as a reasonable response to a true emergency.

Let us bear in mind that truth commissions stress deeds like extrajudicial killings that can never be justified. Alternative means of dealing with past abuses are available in some cases. Sometimes abusers can be prosecuted, but the number of violations in a case like Rwanda makes fair trials impossible. It is important that truth commissions do not attempt to prosecute. They must not trespass that fine line between an ethical commission and a kangaroo court. The moment that they start apportioning individual blame, they violate the basic principles of the rule of law.

The commission's purpose is political in the broad sense that it helps to lay foundations for a new political system or to reconstruct a broken one. Such foundational moments recall John Rawls' notion of an original position.[8] That is not an actual historical moment but a conceptual one when people come together and ask themselves, "Why are we together? What values do we believe in? What is the best arrangement for justice?" In such foundational moments, which may involve "refounding" a broken political order, nations must strive for establishing or reestablishing commonly shared values.

But truth commissions are not magic wands. Often they are used inappropriately. Haiti provides an example. A commission was set up as a rash measure and to the present it has not succeeded.

Henry Steiner

Both José Zalaquett and Kanan Makiya's remarks stir my concern of how far victims' hopes for truth commissions may exceed what the commissions can provide. Suppose a victim appears before a commission. What would he want from it? I suppose that, at a minimum, he

would want someone responsible for what was done to him to acknowledge his pain, to recognize that what was done was wrong, and to apologize.

Were I the victim, I might want something more, recognition by the perpetrator of my equal human dignity, a dignity that has been violated. I am not certain that truth commissions can offer this saisfaction; it is reaching further than what we have thus far stressed.

A third want might entail mutual empathetic understanding between victim and violator of each other's fears, political ideals, and aspirations for the nation — to be sure, understanding of rather than agreement over. This is going beyond what truth commissions, given their methods and purposes, can offer or even strive towards. People must be prepared to live with these fundamental differences, neither receiving sympathetic understanding from nor showing it toward political or ideological opponents.

José Zalaquett

Of Henry Steiner's three points, the first two seem to meld together. Recognizing that something done to another person was wrong implicitly recognizes that it was wrong because some rights of that person inhering in human dignity were violated. What is essential is the acknowledgment that absolute values should never have been violated. If the military were never to acknowledge that killing prisoners is wrong, future generations of men in uniform would absorb the wrong doctrine.

I agree with Henry that people need not sympathize with their opponents' political views. Nor do they need to have a common view of the future. But they must hold a common view about fundamental civic values, about the rules of the game in a democratic society.

Henry Steiner

I don't think that the first two points I made can be conflated. International human rights wins a great victory if it gets people to agree on basic ground rules, what you call the rules of the game: no disappearances, genocide, or rape. This is the anti-disaster or anti-catastrophe element of the human rights movement stemming directly from Nuremberg, which would lead a perpetrator to acknowledge that what was done was wrong. That was my first point.

But the movement has an equally vital utopian element—my second point. It expresses the ideal that people should transcend their particular identities by seeing each other, seeing the stranger, as possessing equal worth and dignity. That is the core of universalization, and universalization lies at the core of the human rights movement. I think that the empathy toward others that makes this second stage possible goes beyond acknowledging that given conduct was morally and legally wrong. It entails recognition of a common humanity.

I suspect that a lot of people can agree on the first without agreeing on the second. They may consciously abstain from the proscribed conduct and in this sense honor the basic anti-disaster rules, while continuing to hate and to express denigrating views about the inferior "others," whoever they may be.

José Zalaquett

I agree with you. I meant that people use human rights norms to evaluate their behavior. These norms derive from an acknowledgment of common humanity—all men and women are equal in dignity and rights. In that sense I think that the two come together.

Elizabeth Kiss

Several people, especially José Zalaquett, have been urging us to acknowledge truth commissions' limited scope. Others have been raising the issue of mutual acknowledgment in a much broader context.

José has stressed that commissions are only useful in cases of atrocities, in particular of *denied* atrocities. Yet in order to construct a political community in a divided society, we must acknowledge that wrongs have been committed on all sides. In my work on Eastern Europe, this is a constant theme. Every ethnic community in Eastern Europe considers itself a historical victim and is unwilling to acknowledge that its community has also oppressed or excluded others.

I do not know whether truth commissions can address such broader issues of mutual acknowledgment. I am skeptical. Difficult cultural and political challenges remain.

Kanan Makiya

Is there not a more important kind of recognition that victims deserve? A commission must recognize the reasons why certain crimes were

inflicted on certain individuals. This is at the foundation of the victims' own sense of identity. Their identity must be bound up in the national history.

Charles Maier

Perhaps I am skeptical about Kanan Makiya's observation due to inexperience. It is one thing to say the truth commission should give the victim *qua* individual a chance to participate in this therapeutic, dramaturgical recovery system. But should the truth commission also be a constitutive moment in the country's history? I certainly believe that a person's victimhood should be recognized and repaired, but should the victim's status as victim be a constitutive pillar of a new political order? I'm uncertain about that. Maybe the book has to be closed at some point.

Kanan Makiya

What else is there to hold the community together? Everyone has done something to somebody else. Victims and perpetrators are never purely marked and radically distinct in the extreme situations that you pointed to.

We cannot all agree on religion or anything else as a common framework for understanding. Increasingly, all we have is our diversity. By accepting to live together as diverse peoples, we can establish a sense of community. It is not much, but it is better than nothing.

Charles Maier

You do not think anything else is available? There is no shared vision of what a future Iraq or a future South Slav place in the world might be like?

Kanan Makiya

Our world seems to be throwing those ideals out the window. We cannot apply nineteenth-century universalist ideas to the world today. Should we establish commonality on the basis of rights or on the recognition of pain? Pain is stronger; it is more concrete—you can touch it. Rights are an abstraction which can be easily discarded. You cannot trash pain, however; it is too real.

Charles Maier

So you will have to renew it continually. I worry about that.

Yael Tamir

I want to object strongly to what Kanan Makiya just said and agree with Charles Maier. I think it is dangerous to try to build reconciliation on victimization and suffering. Israel has gone through stages of victimization, and now we realize that we are victimizing the Palestinians. In both respects, we have too much memory, victimization, and suffering, which form the basis for backward-looking politics. People try to determine who was victimized more than others. This kind of inquiry only heightens the tensions created by past actions. Nobody wants to forget anything because the basis of rights is grounded in the degree of suffering.

In the Israeli-Palestinian situation, this has been cynically misused, as seen in the glorification of Yad Vashem, the perpetuation of suffering and victimization. How does this contribute to the creation of a new reality?

I am uneasy about this psychological perspective because the catharsis of one person is the suffering of another. How does this work in cases where everybody has done something wrong to somebody else? Again, the Israeli nation has experienced both the trauma of surviving the Holocaust and the trauma of acknowledging its capability of heaping suffering upon others.

Kanan Makiya

The point is to acknowledge what I did myself. Otherwise I end up blaming the other, and that takes us nowhere. For example, the Palestinians must acknowledge what they did and the Israelis must admit their wrongs. You are right in saying that it does not always work.

Fateh Azzam

We are really talking about steps in the truth commission process. We must look at the facts and acknowledge the truth of what happened. We must develop a sense of justice to make reconstruction possible. I fully agree with that idea. Being tired of war is not enough.

It is difficult to create a perception of justice, whether it be political justice or personal justice. If people believe that justice has been

served—even though it may be incomplete—moral reconstruction will occur. In the Palestinian-Israeli case, we might agree to disagree as José Zalaquett has suggested.

We must begin with mutual acknowledgment. I am not sure Israeli society has sufficiently recognized that it has been a perpetrator as well as a victim. The beginning of this peace process does not involve a truth commission, but it will result in a new perception. For example, I know I will never get back my house in Haifa. Yet if I perceive that my experience is recognized and perhaps receive compensation, then justice will have been served. Given the sixty-year historical reality of this conflict, it is a positive beginning.

Yael Tamir

I agree with you. Our society must go through that stage. We have yet to realize that something wrong has been done. We think that because we have suffered so much, we have a right to do what we do. A truth commission can work only when people realize that something is wrong.

Robert Rotberg

Surely a distinction has to be made between prosecution and truth commissions. We prevent crimes by prosecuting before the War Crimes Tribunal for the former Yugoslavia. A truth commission in Bosnia will accomplish something very important, if it is ever set up; however, it will not help with the primary agenda of prosecution.

Lawrence Weschler

The distinction is not always so clear. The two paths may come close together. In the case of several indictments before the War Crimes Tribunal in the Hague, the accused will never come to trial. The tribunal will hold a so-called Rule 69 Proceeding, in which a process analogous to a grand jury proceeding will unfold and people will testify about what the accused has done. The proceedings will be publicly televised. This may be the only punishment meted out. The proceedings will act, in effect, like a truth commission.

Will such proceedings have an effect on the military's "strut?" I think it might, to some extent. People will hear about the military's chain of command.

Robert Rotberg

I think it is better not to conflate a truth commission's work with indictments, grand jury proceedings, or evidentiary proceedings.

José Zalaquett

I agree. Sometimes violations in a society are so widespread that they amount to a breakdown of legal or political order. The system of justice is overwhelmed, as in Rwanda where a conservative estimate suggests that 100,000 people might be liable for prosecution. The method of individual trials is futile when we deal with massive past abuses. Still, in many cases of transition to democracy, holding some exemplary trials may play a useful role even if full justice is impossible. Such trials remind people of the moral values at stake. Of course a few exemplary trials can never substitute for telling the full truth.

Amnesties and other measures of clemency are possible, provided that the truth is known and that crimes against humanity are excluded from an amnesty. Even if it is not possible to prosecute such crimes, one should at least avoid establishing the bad precedent of an amnesty.

Even when a legal system continues to function, trials may not be appropriate. Recall the vindictiveness of the local trials in Europe after World War II. The Sandinistas, who put some 7,000 people on trial after their 1979 victory, offer a more recent illustration. Only a victor in a war can carry out such a volume of trials.

André du Toit

I do not necessarily agree that trials are the preferred solution, even in situations where the legal system can handle the prosecutions, which is certainly not the case in Rwanda. We need to question what kind of proceeding is being assumed. Criminal prosecutions involve an adversarial system. Consider, for example, whether cross-examination of witnesses, including victims, is appropriate in the context of a truth commission. Trials focus on the perpetrators, whereas truth commissions may choose to focus on the victims. Perhaps we assume in trials that the focus on the perpetrator is compatible with the victim's interests. We assume, then, that the victim desires punishment of the perpetrator. If that means the victim must be cross-examined, he is willing to accept it.

I do not believe all victims think this way. Many are more interested in the restoration of their human and civic dignity. This may be

difficult to attain in the adversarial context of trials.

Dennis Thompson

I want to reinforce José Zalaquett's point by showing that trials may not be appropriate even in cases where the legal system is intact. Consider the United States moving citizens of Japanese descent to internment camps during World War II. Although our legal system was intact and indeed these cases went to the Supreme Court, we did not resolve the problem for nearly fifty years. Then a national commission—not judicial in nature—reexamined the issue. This was not a truth commission because it aimed, in a typically American fashion, to decide who should get compensation. In fact, though, it acted as a truth commission. It inquired into who had been wronged and how they should be compensated. That seems appropriate, if very late. It suggests that commissions may be an appropriate means of dealing with a range of problems.

Abram Chayes

I think truth commissions and trials are merely different tools for dealing with past injustices. Some people consider truth commissions a lesser alternative because they do not result in punishment.

A legal trial has a very limited function. As a coercive instrument, it depends on the state's ability to mobilize coercive power. During a transition to democracy or peace, the state often lacks the will or means to mobilize this coercive power. The only time war criminals were put on trial was after World War II. This is unsurprising. After the war, the Allied victors had sufficient coercive power to form the tribunal.

We should also remember that a trial recognizes only one version of events. A commission can examine and validate more than one version of events.

Dennis Thompson

I would like to return to earlier comments and add another reason to be worried about the therapeutic and the dramaturgical functions of these processes. Not only do these functions ignore politics, but they can also result in moral mistreatment of the people who testify. If victims or survivors heard us talking about therapy and its contribution to a better society, they would feel they were being treated only as a means.

Many victims do not recognize therapy as their purpose in going before a truth commission. Many of them ask for justice. They have a very different idea of what the commission's purpose should be. We are not treating them as moral agents unless they accept the purposes that they ascribe to the commission.

Who should participate in deciding what the commission's purposes should be? If the victims or their representatives are going to help set the terms of the commission, I would feel more comfortable talking about therapeutic functions. If the UN or the national government is charged with establishing the commission and adopts a therapeutic approach, then I would have serious objections.

These questions will figure in our next session's discussion: who decides what these commissions do, and to whom are they accountable?

Part Two:
Institutional Design and Processes of Truth Commissions

***Dennis Thompson** (Chair)*

At this session we will examine the institutional design of truth commissions. What considerations determine and what considerations ought to determine how they are organized and how they function? What kind of report or product should commissions produce? We start with introductory comments by Tina Rosenberg.

Tina Rosenberg

My opinions about truth commissions have been shaped by my comparative examination of their use in Latin America and Eastern Europe. I see different purposes for truth commissions in different places. These purposes may bear very directly on the commission's design, such as whether every human rights violation must be accounted for.

I have developed a typology which differentiates between criminal regimes and regimes of criminals. Let me describe what I think the difference is in the context of these two regional experiences. Then we can think about how this difference affects the organization of truth commissions.

Although there are great differences between Romania and Poland, or Chile and Guatemala, each region contains important similarities. Latin America and Eastern Europe contrast sharply with one another. A crucial difference is the type of crime committed in each regime. Latin America's military dictatorships committed violent crimes that violated existing law. The crimes were directed toward a relatively small portion of the population. They were severe: murders, tortures, disappearances.

Eastern Europe experienced brutal violence in the 1950s, but much less since then. Furthermore, the type of victimization under communism was very different. It was spread across most of the population, probably close to 100%. The victimization was qualitatively different from Latin America. People were subjected to telephones taps, violations of postal secrecy, restrictions on travel and petty bureaucratic hassles. It was a system of coercion and corruption rather than violence.

These differences have several implications. Legally speaking, it is easier to deal with the torture and murder committed by violent regimes. These acts were clearly criminal at the time they were committed. In the communist regimes, it was legal to tap citizens' telephones, and democratic societies do not approve of *ex post facto* justice. In communist regimes, large organizations committed crimes; it is therefore difficult to attribute guilt to an individual. Although Latin American crimes also included large groups of people who believed in an ideology, it was easier to point to individual perpetrators.

The most important distinction between the criminal regimes of communist Europe and the regimes of criminals in military Latin America is the type of societal complicity. Under communist regimes, practically everyone was a victim of the government in some way and simultaneously a perpetrator in others' victimization. The lines of complicity are unclear; they run through individuals rather than between them. Indeed, people do not think in terms of victims and perpetrators. They consider that their behavior was normal. For example, the teacher who taught that history was a glorious march of the proletariat does not think she did anything wrong. She does not believe she committed a crime for which she should be prosecuted.

This "normal" behavior of the entire citizenry allowed the communist regimes to survive. Although varying levels of complicity existed, practically no one who grew up in a communist regime could say that he did not contribute to the regime's maintenance. Manouri Muttetuwegama and Kanan Makiya have already alluded to the problem of attributing responsibility. People cannot talk about what "they" did under communism, but rather about what "we" did. In such circumstances, a truth commission faces extreme difficulties in dissecting past behavior.

Nonetheless, these commissions can make a valuable contribution to the societies of post-communist Europe, even if the crimes there were not a secret. They can encourage people to understand their individual responsibility under such a system; they can help people to re-examine the choices they made and the ones they could have made. People cannot blame just Erich Honecker or Wojciech Jaruzelski. A truth commission can assist in this examination of individual responsibility, which is vital for building a democratic political culture. Ultimately, this is the obligation that truth commission owe to the future.

In my view, one of the most successful attempts at accomplishing the goals of a truth commission is the German model. Called the

Enquete Commission, it was established by the Bundestag and outfitted with sixteen members and a staff of eleven experts. The commission collected 759 academic papers, which, in the spirit of German thoroughness, it published in a fifteen-volume compilation. These papers examined all aspects of the East German regime. The German model has been one of the most successful attempts at accomplishing the goals of a truth commission.

More importantly, the German government opened the Stasi (secret police) files to the victims. Germany is the only country where victims of the secret police can read about what happened to them. The files are maintained by an independent body called the Gauck Authority. Opening the files had a tremendous impact because the spies and Stasi collaborators knew that their victims were going to find out about them, so they decided to open up. They came forward as a means of damage control.

The Germans' national debate has been a painful but ultimately healthy one. How did moral people with good intentions get turned to immoral ends? What was collaboration? What was resistance? What was heroism? They have been able to have this debate because the former spies have approached the friends, colleagues, and even the spouses of those on whom they spied. Together they discuss collaboration and victimization.

Germany has experienced an outburst of these conversations. In fact, it has become rather absurd in that one can make quite a good living by holding these conversations on television. Although the process has its faults, I think that it has sparked an important debate that truth commissions seek to foster.

Geoffrey Hawthorn

No truth commission can set its task as revealing the "whole truth," which is unattainable for a host of reasons. Which aspects of the truth are then worth looking for? Absent some clear purpose, the truth commission becomes a random fishing expedition.

The distinction that Tina Rosenberg draws between criminal regimes and regimes of criminals may help us clarify a truth commission's objectives. Recording every fact is important when dealing with regimes of criminals. Individual responsibility may be at issue there. But even if every fact about a criminal regime is accessible, it may not be important for a commission to be that thorough.

Dennis Thompson

Given the diffuse sense of responsibility in these societies, how can one decide who should sit on a truth commission? Who should judge? In the cases that Tina Rosenberg described, most citizens were implicated to some extent.

Tina Rosenberg

I think the answer to this question, unlike many others, is fairly straightforward. The model for choosing judges elsewhere works in Eastern Europe as well. The commission should include a spectrum of people—from Vaclav Havel to Erich Honecker, as well as everyone in between. Although the UN was necessary to staff the truth commission in El Salvador for reasons related to its civil war, similar conditions do not prevail in Eastern Europe. I think a national rather than outside body better serves the purpose, if it can be formed.

José Zalaquett

In my opinion, commissions should be state organizations but not government organizations. In other words, they should be autonomous and representative of different sectors of society. The process of forming a truth commission may involve the president, parliament, or a broad societal process, as it did in South Africa. Perhaps because of its size and diversity, South Africa has included the entire society in its debate. Unfortunately, it took two years for the commission to start functioning. Chile's commission began its work a month after the transition.

I agree with Tina Rosenberg's assessment that the commission's members should be people from the national community, except in extremely difficult circumstances, as when there are continuing dangerous divisions. Members should be chosen from a pool of impartial people of integrity and should not be dependent on the government; they should rely on their own consciences. Members should represent a cross-section of the community, including if possible all sides of the previous conflict. This will make the commission more credible. Such a commission may not have been possible in El Salvador, but the UN-sponsored commission experienced many difficulties.

If there is a trade-off between representativeness and quality, one should opt for quality. If the commission produces a good report, no one is going to remember its degree of representativeness. If it is bad, representativeness will not redeem it.

Elizabeth Kiss

Would it be possible to create an unbiased international truth commission, composed of people from outside the country? Such a commission could play a constructive role in situations where the conflict has been exacerbated by particular incidents about which the two sides have different views. The Sarajevo marketplace bombing of February 1994 is a case in point. The Bosnian Muslims claimed that the Serbs had done it; the Serbs claimed that the shell had come from the Bosnian Muslim side. The UN conducted an investigation and set up something like a truth commission, which in such circumstances can play a constructive role if it is possible to ensure that a commission is seen as an impartial body. This was not an ongoing commission investigating many years of conflict, but a committee examining a particular incident.

Yael Tamir

In the example of Sarajevo, it was important to determine who actually did the killing, yet I do not think that this process serves any of the broader social purposes that we have discussed. I wonder how many people on the side found to be responsible really accepted the commission's decision.

Lawrence Weschler

The UN was by no means an impartial international force when it acted in the former Yugoslavia. Commanders on the ground had an interest in finding one side or the other culpable. In fact, the UN has a terrible track record. I would not look to it for truth. It is basically the Security Council—five major powers that do what they want.

Yael Tamir

I understand the need to construct a commission that is indeed representative. I wonder, however, whether it is possible to engage right-wing activists in such activities. In Israel, human rights issues are partisan issues, and human rights activists are never on the right.

José Zalaquett

The right wing representatives must merely be decent people; they do not have to be human rights activists.

Lawrence Weschler

I agree with Tina Rosenberg that the non-political character of the Germans' Gauck Authority, in charge of opening the files, was very important. It was also vital that the files be opened to the victims, not to the general public. Events in Czechoslovakia took a very different turn. The files were opened selectively, and some trickled out through leaks that often served political purposes. The victims weren't afforded access to them. The result was disaster. Poland experienced similar problems. These files are absolutely toxic; they must be handled with great care. Counter-intuitively, the greatest amount of public scrutiny is not necessarily the best way to get at the truth.

Charles Maier

Over time I have become more impressed with Gauck. Initially, he experienced some of the difficulties of a zealot, and I think that some of the Czech-style difficulties were at first present in East Germany. Files were leaked to the press, and political careers were ruined for what in the end were unclear charges of offenses. I do think that the victim's right to see his file is very important.

I detect a particular "criminal regime" quality about East Germany and Czechoslovakia under communist rule. This has to do with the role of secrecy. Secrecy was absolutely corrosive; people were coerced to inform on their neighbors as a condition of their employment. The challenge in Eastern Europe is for people to admit to this fact. In the communist countries, perpetrators do not stand up to admit that they committed murder; rather, they must confess that they were secret informers.

Elizabeth Kiss

I would like to ask Tina Rosenberg to explain what kind of mandate she would envision for Eastern European truth commissions, especially since the official truth commissions have been relatively ineffective compared to the opening of the files. Opening files may be more relevant in some Eastern European countries than in others. Is there a regional model that you find generally applicable?

Tina Rosenberg

This is a very complicated question because nearly everyone in the entire country could come forward and testify about something. The

scale is unmanageable. Yet, I think victims must have a chance to speak and be heard. Obviously truth commissions cannot account for every human rights violations, but they can attempt to hear a representative sampling. Their reports can describe the kinds of crimes that occurred and estimate how many people fell into each category.

The issue of naming names is unlikely to be relevant in this kind of truth commission. Rather, it would describe how the system worked, and especially how it affected ordinary people. Of course, this may lead us into the realm of interpretation that was much discussed in our first session.

José Zalaquett

I have trouble with the methods used in some Eastern European countries.

In the European cases, the totalitarian political systems were such that except for a few examples it is difficult to draw clear moral lines. One can say that when everybody is involved, nobody is involved. But ethics requires us to discern. On what ground? Morally speaking, we can't demand heroic behavior; mere lack of heroism can't be punished. The majority of people do not act heroically. When opened files reveal that some people were registered as collaborators, it is often hard to pass judgment on them, given their situations. Therefore, it is difficult in such systems to place individual blame, and naming only some individuals would be unfair and unsatisfactory.

Another problem concerns the quality of the files. It is problematic to rely on a system that violates human rights for information that serves as the basis for assigning ethical blame. We are dealing with tainted evidence.

Third, individual blame should be found through a fair hearing, if at all. But when files are opened to public scrutiny, individual reputations are tarnished without due process.

These problems must be weighed against some of the gains that Tina Rosenberg describes. I am not saying that the East European approaches lacked value, but am just highlighting some complications inherent in those solutions.

Tina Rosenberg

In this regard, it is helpful to compare the German and Czech procedures. The Czech process of lustration was extremely problematic in that individuals could know only that they were labeled as bad or good.

They could not know what was in the files. This took power away from the citizens. The state told them once again that it had control over their lives. Peoples' "ratings" by the interior ministry were public knowledge.

The fact that German files were opened helped to solve the problem of the files' unreliability. Victims could help confirm whether or not the person accused of informing could actually have done what he was accused of. It is a self-checking mechanism, which does not exist in the Czech version. Furthermore, in Germany the victim can choose whether or not he wants to publicize the information about who informed on him. That is not public information.

Yael Tamir

As Tina Rosenberg describes it, I understand that a dialogue about the past sprang up in Germany. I was wondering whether Germany also experienced violent retribution or "quick justice"? In the Middle East, when people are named as collaborators, they are likely to end up in a very unpleasant situation, to put it mildly.

Tina Rosenberg

Since informers and their victims are not divided along ethnic lines, the probability of retribution was less than in the Palestinian and Israeli situation. In fact, I have not heard of any instances of violence.

Charles Maier

Nevertheless, I view the situation less optimistically. The Manfred Stolpe case, for instance, displays great ambiguity. He was named as an informer, but denied that he was really acting in that capacity. Was he an informer or not? Stolpe certainly did not reveal that he acted as an informer. Members of the media and the Gauck Commission leaked the information.

Many of the relationships between the Stasi and informers were ambiguous. Rather than refusing a relationship with the Stasi altogether and suffering grave consequences, an informer might decide to give the police only innocuous information. This creates a very grey area—more ambiguous than Tina Rosenberg's presentation allows. While we clearly recognize the differences between Havel and those who willingly collaborated, few people acted like Havel.

Tina Rosenberg

We disagree on the issue of the Stolpe case; I think it was wonderful. Stolpe was the premier of Brandenburg State, and he had been the head of the Lutheran churches in East Germany. Then he was accused of having been an informer for the Stasi. Stolpe maintained that while he had talked to the Stasi, he did it only to help the church.

At the request of the parliament of Brandenburg, the Gauck Commission put together a sixty-one-page report about Stolpe's activities . The report did not draw any conclusions as to whether or not Stolpe was an informant. It merely listed the kinds of conversations that he had with the Stasi. The report sparked a huge public debate in Germany over what constituted collaboration. I believe that the debate was extremely healthy; it was exactly the kind of debate a society should have about the old regime. The public was informed, and no one suggested that the information had been falsified.

André du Toit

The South African case encompasses both a criminal regime and a regime of criminals, thus complicating the typology that Tina Rosenberg suggested. What is the role of a truth commission in this context? Apartheid was a criminal regime in which everyone could become a collaborator and/or victim, directly or indirectly—and sometimes both. Meanwhile, the South African commission focuses on gross violations of human rights, such as murder and torture. The commission thus illustrates the extent to which South Africa was also a regime of criminals. The commission resembles a Latin American one in its concerns; it has neglected the general problem of apartheid.

Many people have great difficulty with that focus. I do not know how to respond. On the one hand, we cannot ignore the killings and torture. On the other hand, the larger picture of systemic apartheid, in which all of us were implicated, is being sidelined in the process.

Robert Rotberg

Isn't the German case unique in having such extensive files? Sri Lanka does not have files; no one is keeping records. In South Africa, the files were burned.

Lawrence Weschler

You would be surprised at where you can find files. The Brazilians kept virtual minutes of torture sessions; they were regular Iberian inquisitions.

Dennis Thompson

Robert Rotberg raises the interesting question of what should be done in cases where files do not exist or they are untrustworthy. What else can be done to collect information? One possibility is to have people testify. Under what conditions? In what other ways might one get usable information?

Manouri Muttetuwegama

In Sri Lanka, many members of the police force are quite afraid to come forward and give evidence. I would like to ask about the South African truth commission's provision that perpetrators who confess their human rights abuses receive an amnesty in return.

André du Toit

The South African truth commission has several functions. One aspect of the truth commission is that victims tell their stories and are acknowledged. We have to consider what happens when the victims name the names of perpetrators. Currently, members of the security forces who have been implicated in this way have claimed that it is a violation of due process.

A second part of the process deals with amnesty in return for disclosure. A perpetrator who applies for amnesty is required to provide full disclosure of the human rights violations involved. If the commission finds that the abuse occurred in service of a political objective, it can then release the perpetrator from all risk of prosecution for the offense which has been disclosed.

The South African amnesty provision differs from the Chilean one in several respects. The South African security forces do not enjoy a general immunity from prosecution. Only individuals can attain an amnesty conditional on application and disclosure. If indemnities are granted, the names and relevant particulars have to be publicized.

Lawrence Weschler

How did this amnesty provision come about? At one point, it seemed that a general amnesty was on the horizon and would indeed be one of the conditions for the transition. Then the general amnesty was reneged.

André du Toit

This was a long process. As new actors became involved in the process, the overall objectives were changed. In 1992, when the constitutional negotiations had stalled, an implicit understanding developed between the generals and security forces, on the one hand, and some African National Congress (ANC) leaders, on the other. A bilateral general amnesty was on the table. At the end of 1993, during the final rounds of negotiations over the interim constitution, the security forces and the National Party pressed very hard for a bilateral general amnesty.

The constitutional solution, however, was a further compromise. It called for an amnesty, but left the procedures open. The resulting amnesty as provided by the truth commission differed from a bilateral general amnesty in two ways. First, the commission shifted attention toward the victims. Second, amnesty was given only on condition of disclosure. Some representatives of the security forces have contested this as a betrayal of the amnesty deal that they continue to read into the provisions of the interim constitution.

Robert Rotberg

André du Toit mentioned disclosure twice. Must a perpetrator make a full disclosure? Archbishop Desmond Tutu often speaks of full disclosure. And does the commission have discretion to decide whether or not to believe what perpetrators disclose? Can it decide not to give amnesty?

André du Toit

As I understand the amnesty procedure, a perpetrator receives indemnity only for what he discloses. So if he were involved in a number of cases and discloses only one, he is protected against prosecution only for that one case.

Amnesty is conditional on disclosure, but not automatic. A perpetrator receives amnesty only if the human rights violations were per-

formed for political objectives. The commission must decide whether the violation constituted a political act. The legislation sets out more specific criteria, but these still have to be interpreted. People who define "political objectives" quite broadly believe that amnesty is virtually automatic, but a narrower interpretation is also available. The commission's own interpretation of these criteria has not yet been established.

Robert Rotberg

José Zalaquett emphasizes that a truth commission should be based on consensus. I am concerned about its independence and impartiality. How can it be independent when it is funded by a government?

José Zalaquett

A commission should be funded by the state, not the government. Countries will differ about particular arrangements. In Chile, all eight commissioners acted as volunteers, and only the staff was paid. Commissioners in South Africa draw a salary. It is important that the government secures the necessary funds before the commission begins its work. It should not reserve the right to suspend funding.

I am not convinced that a country needs a broad consensus before proceeding with a truth commission. That occurred in South Africa, but Latin America's experience has been different. Consensus was gradually developed as the work of the commission became respected and the commission revealed its findings.

Tina Rosenberg

I would like to ask José Zalaquett two questions about the Latin America context. What is the relationship between a truth commission and criminal trials of human rights violators? Do you feel that the South African model of exchanging truth for justice might have been a possibility in Chile?

José Zalaquett

In Latin America the new democratic governments did not have access to secret police files. Nonetheless in countries like Chile a lot of useful evidence—autopsy reports, travel records and so on—became available. Transcripts of judicial proceedings contained much useful

information, such as the number of people who came forward to report disappearances. Even when the evidence is not strong enough for a criminal conviction, it may be solid enough so that decent people can conclude that a missing person was a victim.

In Chile, an organization supported by a coalition of churches gathered information on human rights abuses. Such church support also existed in Brazil, though not in Argentina and Uruguay. The church becomes particularly important when most civil organizations have been banned or outlawed, as occurred in many Latin American countries.

The Chilean commission gathered a lot of evidence about perpetrators that it sent to the courts under seal rather than publish. But prosecution of crimes committed during the first five years of military rule were not possible in Chile, due to an amnesty law passed in 1978. Only the murder of Orlando Letelier in Washington, D.C. was exempted from this amnesty; the perpetrators of that crime are serving time in prison. Other crimes committed after 1978 have been prosecuted.

In South Africa, the commission was created by law and was given powers to deal with amnesties. In Chile a presidential decree created the commission, because President Patricio Aylwin didn't have the votes in Congress to approve it. Therefore it had lesser powers.

Dennis Thompson

Is it only the absence of institutional possibilities or cultural settings that makes it undesirable to adopt a policy of granting amnesty in exchange for confession? Under normal circumstances, this would not seem the right way to do justice in any case. Those who are prepared to confess are not necessarily those who are the most guilty. Why should we accept that confession is the best way to achieve justice?

Lawrence Weschler

Some people in South Africa do not accept it. Some victims are trying to halt the process of disclosure because it deprived them of the right to enter a criminal or civil charge against the perpetrators. [Ed: The Constitutional Court later found against this claim, allowing the truth commission to proceed.] They have a point. The perpetrators committed violations of international human rights law. The commission's goal is social reconciliation, but the victims claim a right to prosecution or compensation.

Tina Rosenberg

In thinking about some past remarks regarding the trade-off between truth and justice, I have concluded that a blanket statement is impossible. In some countries, both justice and full truth may be available. That is the best solution if it is possible.

In the context of South Africa, I sympathize with the truth commission's position. This is an issue of democracy. The people filing suit to prevent the amnesties are the families of extremely prominent murdered people, such as Steve Biko and Griffiths Mxenge. They are among the few people who might reasonably expect to get justice. But their opportunity for justice might deprive millions of people of the possibility of truth. The trade-off is clear. Justice might be rendered in a few highly publicized cases. Or many people might have the opportunity to know of their loved ones' fate. I prefer more truth for more people.

André du Toit

In the South African case, the trade-offs are very complex. In the particular context of our democratic transition, we had to negotiate the issues of truth and justice. At first, many people did not understand the particular purposes of the truth commission. People would ask, "Do we really want to open up all these wounds? Do we really want to talk about that? And what, then, is the point of doing this only to give amnesty to murderers and torturers."

Confronted with these political atrocities, people would prefer justice, other things being equal. However, when we raise the question in the context of our transition with its many risks, many people respond differently. Some who had been activists in the political struggle against apartheid refuse to appear before the truth commission to tell their stories because they associate the process with amnesty.

But many others do come forward. When they are asked how they would like to see their cases resolved, they express a preference for prosecution and punishment. Yet they knowingly participate in a process that does not afford them that option. I detect a double voice. At a personal level, people prefer justice, but politically speaking, they prefer democracy and truth. Participation in the truth commission is a complex political act.

Furthermore, one should not consider the truth commission in isolation. It is only one of a panoply of restitutive policies and actions

undertaken. For example, prosecutions are taking place. The commission provides an opportunity to gain protection against prosecution and civil claims only during a limited period of time. Those who do not receive indemnity will remain liable to criminal prosecution.

Robert Rotberg

I am puzzled as to why many of the participants perceive that such a strong trade-off between truth and justice is necessary. Many individual victims insist on criminal prosecutions as well as civil suits. Meanwhile, Archbishop Tutu replies that the country must focus on healing the lives of people and the nation. He seems to focus on the nation's survival. Surely we need both a truth commission and justice. Ideally, the South African government should pursue many individual criminal cases where the evidence is strong.

André du Toit

Archbishop Tutu, as well as many other commission members, interprets the truth commission's role in terms of justice, truth, and reconciliation. When I participated in the earlier preparations for the commission, we discussed reconciliation in a more political sense. A religious terminology has become more prevalent. Reconciliation now means something akin to forgiveness. While criminal prosecution is clearly an alternative to political reconciliation, it is not so clearly related to spiritual forgiveness.

The religious framework has resulted in a shifting of the alternatives. Some observers have commented that this new framework is useful. People must be able to open their wounds, yet accept the fact that this will not result in punishment of the perpetrators. The religious theme of forgiveness helps people make sense of this situation.

Dennis Thompson

Earlier, I wanted to object to the legalistic tone of our discussion of truth commissions. But now that I detect a drift toward theological rhetoric in the South African case, I am beginning to find legalism more appealing. Indeed, theology and law are not the only alternatives. As Elizabeth Kiss earlier mentioned, the political institutional dimension is crucial. How can we design a truth commission that does not get bogged down in legal procedures or the therapy of forgiveness?

Tina Rosenberg

Forgiveness and legalism are not the only ways of getting lost; it is crucial to keep the question of power relations in mind. In Chile, the government was reluctant to test its strength vis-a-vis the military by holding trials. It could not compel people who were involved in disappearances to come forward and tell what had happened to the disappeared. The families of the disappeared in Chile may never know what happened to their loved ones. The South African model might have given them a greater chance of getting that information.

Manouri Muttetuwegama

The testimony of police and military officers is vital because it can tell us so much about the vertical structure of command. Civilians can tell us only about their local police sergeant or army private. The vertical structures become transparent only when people within the system come forward.

Elizabeth Kiss

Truth commissions may have great difficulty achieving the institutional reforms that they recommend. For example, in El Salvador, the truth commission called on the Supreme Court to resign, and it refused. Later, though, parliament refused to reappoint the judges. We might count this as an indirect effect of a truth commission's institutional recommendations.

I have a question about the South African case. Does the amnesty imply anything about whether the perpetrators may keep their jobs? Did the issue of lustration come up in the discussions?

André du Toit

While the issue was certainly raised, the commission does not have any power to make recommendations about the perpetrators' future employment. The employers or organization concerned must make that decision.

Dennis Thompson

Let's turn to a slightly different question. No one here thinks that truth commissions are the answer to *all* the problems of transition regimes.

No one has suggested that they are even a necessary ingredient. Given certain contextual circumstances and appropriate institutional design, truth commissions can contribute to reconciliation and can facilitate the process of transition from an unjust regime.

Is it possible that truth commissions could do some harm by working against the aims of reconciliation and justice? To attempt to answer that question, I suggest that we think about what conclusions a truth commission might issue and how these would be used. How have truth commissions reported their conclusions? Might they have done a better job?

Charles Maier

Truth commissions confront some serious obstacles in writing reports of their conclusions. For example, they do not seem very successful at exploring the issues of organization and responsibility. As a historian, I grapple with this issue frequently in thinking about the collaborationist regimes in World War II or communist regimes. Historical accuracy is difficult to ascertain, but moral judgment is even more vexing. What was possible? We do not ask people to be heroes or saints, but we do want to know what they could have chosen.

When people act within the framework of a disciplined organization, such as a police force, army or bureaucracy, their options are constrained. The border guards in East Germany were put on trial for carrying out their superiors' orders. Trials make an effort to explore the issue of individual responsibility. Do truth commissions do this? Also, can truth commissions be an ongoing body?

Dennis Thompson

Charles Maier's point shows us the appropriate limitations of a truth commission's report. The report should not imply that a trial was held. It might admit that it cannot settle questions of organizational responsibility. The commission's procedures and methods of investigation set clear limits. Furthermore, truth commissions usually function for a specific period of time; they are not ongoing. But it would be good if they could recommend some way of continuing their work.

José Zalaquett

In Chile a body was created which continued the commission's work for five additional years.

I have other suggestions for drawing up a final report. The report should indicate how the repression functioned—the institutional context, the secret police's structure and methods, and so on. It should concentrate on the victims and pronounce them to be victims of the state or a particular organization. The report should not establish the perpetrators' legal responsibilities, for that is the task of the criminal process. Instead, it establishes the responsibility of the state. We might call it moral, historical, or political responsibility, a responsibility that, unlike legal responsibility, expresses a certain collective guilt.

Compare our saying that the German people supported Hitler or that the Italian people failed to reject Mussolini. Such judgments are not intended to inflict collective punishment, but rather to call on the institutions or populations named to acknowledge their past deed and to make amends. In this way truth commissions have helped to establish the state's moral responsibility.

We must consider how the organizational machinery of repression functioned. Merely listing 3,000 cases is utterly meaningless without explaining the institutional context. People need to know about the secret police force's structure and methods. But a truth commission is not the appropriate place to try to explain the whole chain of historical factors that caused human rights abuses. That would be a very controversial undertaking.

A truth commission aims at the future; it does not just relive the past. For that reason the commission in both Chile and South Africa was called a "Truth and Reconciliation" commission. The truth was meant to facilitate the process of achieving national unity; the commission should make recommendations for the future. The Chilean report included about 100 pages of specific recommendations: reparations, symbolic changes, institutional and legal reforms, and educational measures.

Maggie Beirne

I would like to underline the importance of institutional change. The demands for institutional change must come from various parts of the community, not just from the NGO sector. Organizations like my own have drawn up detailed plans of action to bring about changes in the protection of human rights, but that does not carry sufficient weight. A truth commission, however, has the potential to be quite influential in this regard. It carries significant authority, and its very establishment helps to begin a more meaningful societal debate.

Fateh Azzam

In the human rights community, we constantly debate our effectiveness. Do we succeed in defending human rights? I do not doubt that the movement has had an impact over the last thirty or forty years, but we have difficulty specifying the substance of the impact. Truth commissions run into similar problems.

I want to ask whether or not the timing of a truth commission's formation has any effect on its ability to fulfill its role.

Yael Tamir

I do not have an answer to the question of timing. I am becoming more and more skeptical about the relationship between the acknowledgment of the past and victims' empowerment, on the one hand, and true reconciliation, on the other. Do truth commissions lead to the institutionalization of a democratic system which respects human rights? Can anyone offer an example of this type of progression?

Kanan Makiya

It seems that truth commissions are deeply connected with the question of new directions, of beginnings. At this vital juncture, people need to find a way of looking at the past and remembering it. History is rewritten. Truth commissions aid in this process. A truth commission is successful if it has a deep effect on people's understanding of who they are.

Dennis Thompson

You are suggesting that the future-oriented part of the report must be connected to the part that deals with the past. Institutional reform can be undertaken only when the specific problems of the past are fully and openly discussed. Yael Tamir and Geoffrey Hawthorn expressed more skepticism about this link between past and future. The past might even impede the building of the future. Dwelling too much on the past could stand in the way of changing society in the future.

Robert Rotberg

Did the report on Chile transform that society?

José Zalaquett

Actually, I think it did. For example, the main newspaper in Chile used to write about "alleged disappearances." Now it openly and explicitly refers to "disappeared persons." This is an important step. Many people wanted to believe that nothing had happened, so they would not have to confront their consciences. It is also significant that the report was commended unanimously by the Chilean Parliament. This degree of unity has resulted in a perceptible change. Without the report, Chile's citizens would get the message that it is acceptable to kill people in some circumstances. We had to erase that from our slate of common values.

Robert Rotberg

In terms of timing, you seem to be suggesting that a truth commission should be established relatively early in the transition. Furthermore, the commission's report must be published.

José Zalaquett

The report should be widely disseminated. Though the actual report may be a lengthy document based on exhaustive research, abridged versions will be read widely. A popular version might be 100 pages rather than 1,000 pages. Television and radio syntheses, as well as community discussions, play a valuable role. However, they must all refer to an authoritative version of the report.

The distribution of the report should be accompanied by a proper civic ceremony. President Aylwin did this particularly well by constituting the commission in front of television cameras and receiving the report on television nine months later. Three weeks thereafter he used television to address the public and ask forgiveness. Proper ritual is crucial.

Three Latin America countries gave their truth commissions nine months to complete their reports: Argentina, Chile, and El Salvador. Since the mandate of the South African commission is much larger, it will work for two years.

Maggie Beirne

The issue of timing is particularly relevant to Northern Ireland. The experiences spoken of at this meeting suggest that truth commissions

are often formed during periods of political transition. In Northern Ireland, however, we are still debating whether we are in a period of transition, or whether we even ought to be in one. We have not had a regime change. The ideas expressed at this meeting have begun to make me reflect as to whether or not a truth commission might have a role in bringing about a state of transition. Certainly the very discussion about constituting a truth commission could encourage important social debate about the necessity of change.

Henry Steiner

A truth commission may help to calm the political and social situation during a transition, when its role may be most significant. I wonder, though, what influence such a commission could have in circumstances such as the former Yugoslavia. Even prosecutions will not address the deepest issues. Consider the International Criminal Tribunal sitting in the Hague. Even if it is highly successful in its work, in the sense of convicting fifteen or twenty defendants including people of high position and responsibility for crimes, will the millions of Bosnians and other who bear the permanent scars of this conflict feel that, say, justice has been achieved—particularly if their situations continue to be desperate?

South Africa faces the challenge of a massive reorganization of economic wealth and political power. People's rising expectations must be dealt with. Truth commissions can play a vital role in helping this process of institutional change to get started. The task of dealing with the past should not, however, impede these goals of political reform and economic transformation. If the goals are not achieved, the beneficial effects of a truth commission will be fleeting.

André du Toit

I would like to think more about the role of a truth commission in conjunction with other pressing objectives facing democratizing countries. We have asked what the truth commission in Chile actually achieved and how we might measure these achievements. I have a problem with asking the question in this way. The burden of proof should be reversed.

In South Africa we face many urgent political tasks, such as land redistribution and affirmative action. What if we were to attempt these tasks without the truth commission? Could we just ignore past atroci-

ties? Many people think we could; they would shift the focus toward political and economic development. Without a commission, though, I suggest that our political culture would contain fundamental problems. Perpetrators of horrendous human rights abuses would remain in their official positions with impunity. Moral reconstruction is an element of the broader social and political reconstruction; yet, moral reconstruction should not bear the burden of producing the political or economic changes.

Lawrence Weschler

These issues may intersect in other ways. For example, if South Africa did not have a truth commission, the issue of past atrocities might come up in the course of land redistribution. People might demand compensation for land that was brutally confiscated. In South Africa today, the truth commission is charged with handling these issues. This frees other aspects of the reform from this terrible burden. Yet, doing so is problematic in that it allows people to shirk their own moral responsibility to evaluate their own participation in abuses. They can delegate this responsibility to Archbishop Tutu. [Ed: A Land Claims Court and a Commission for Restitution of Land Rights were later constituted.]

Tina Rosenberg

I want to ask whether or not names should be named in a report. This question is extremely controversial; I remain confused about which alternative is best. In Chile, a lot of people thought names should have been named.

Dennis Thompson

Argentina and Chile did not name names—for good reasons. El Salvador did, although nothing happened to the people who were named. Apparently, the truth commission in Chad also named names.

José Zalaquett

In Chile, it was a matter of principle not to name names. Although an official commission does not have the judicial power to mete out punishment, it has the moral power to pass judgment. A truth commission's procedures do not entail full due process; people do not have to come forward and testify. Passing a moral indictment of individuals with-

out due process would not send the right message to future generations. Instead, we sealed all the information on perpetrators and sent it to the courts.

André du Toit

In South Africa, the perpetrators who seek amnesty are required to disclose their own activities. The truth commission is not offering a moral indictment. The lack of due process is not problematic in these cases. Often, however, the victims name perpetrators in the public hearings. Of course, this does not have the same effect as the truth commission's inclusion of names in its official report.

The commission cautions prospective witnesses that their testimony is not privileged, i.e., they can be charged with libel if they name names, though the precise legal status of such testimony remains unclear. Some perpetrators who have been named in the course of testimony have sought an injunction. They want to receive advance warning that they will be named so that they can respond appropriately.

Tina Rosenberg

El Salvador had a so-called ad hoc commission, in addition to its truth commission. It consisted of three citizens, all Salvadoran nationals, who investigated and interviewed military officers. The commission then drew up a list of approximately 100 officers whom it recommended for dismissal or demotion. The list included the defense minister.

This commission obviously named names, but only after talking to all parties to the conflict. I realize that the Chilean military chose not to cooperate with the truth commission, but did you ask them to talk?

José Zalaquett

The military responded to all communications sent by the commission, but in a perfunctory way that didn't provide any substance. After the report's publication, the police chief quietly dismissed several people mentioned in it. The army, however, preferred a phased process of dismissal and retirement of personnel involved in secret police duties. The government accepted this method, fearing the danger of having all these trained killers suddenly on the streets. That is, massive dismissals might have been very righteous but could have created practical complications.

I would not say that the ad hoc commission in El Salvador was wrong in proposing that certain people be dismissed. But partly for the reasons that I earlier expressed, I believe that the other Salvadoran commission, the truth commission, was wrong to name individual culprits. It investigated only a small subset of the ten thousand cases, and named only two of the five guerrilla commanders. As El Salvador became a hornet's nest, the president quickly moved towards an amnesty law, for which he took the blame. But we should recall the truth commission's contribution to the problem. Getting things right or being righteous—that is the dilemma.

Manouri Muttetuwegama

In Sri Lanka, our mandate gives us permission to name names. Let me illustrate why I think that doing so is important.

One police sergeant who worked in an area rife with political rivalry denied his participation in abuses. He was stabbed fifty-two times on a train. If people are not permitted to name names, they may take measures in their own hands. Naming names is part of the evidence available to us. The real question is what to do with the names. If sufficient evidence accumulates, we refer it to the attorney general. This helps to normalize the legal system.

Kanan Makiya

You do not seem to think that a South African-style exchange of disclosure for amnesty would work in Sri Lanka. Can you explain why not?

Manouri Muttetuwegama

Our commission focuses on the needs of the victims. It is a people's commission; ordinary people come before us. They may tell us about the officer in charge of a particular police station or the sergeant at a particular camp. They cannot tell us about the chain of command or tacit orders from above.

It would be quite useful if we could offer military or police officers immunity in exchange for information about the vertical structures. If these structures remain in place, how can democracy ever work?

Henry Steiner

How can a truth commission best affect these basic structures of the state? Does its condemnation of military abuses help to prevent the

military from committing similar abuses in the future? Have commissions contributed to the establishment of, say, civilian control of the military?

Lawrence Weschler

Some outside analysts evaluate the Argentine experience extremely negatively. They say that the truth commission's wonderful work was subsequently squandered in a series of amnesties. They are especially critical of President Carlos Menem's policies. Yet at the same time, Menem has been quietly cutting the military budget. I would argue that the truth commission's report made this strange political combination possible. While Menem tells people to ignore the report, he simultaneously slashes the military budget.

Kanan Makiya

I am struck by certain differences among the states being discussed. The Sri Lankan case seems unique in that the state is investigating itself, along with other political groups. The South African and Chilean cases involve new regimes investigating the crimes of the old regime.

Elizabeth Kiss

The new Sri Lankan president heads a successor government, but it is not a dramatically different regime. Was it particularly important in this case that the truth commission investigate abuses committed by both the government and the opposition?

Manouri Muttetuwegama

This certainly enhanced its credibility in the eyes of the people. We must keep in mind that the proportion of government and opposition crimes investigated will be very unequal.

José Zalaquett

In El Salvador, the truth commission investigated both abuses by the government and the opposition without there having been a change in regime. As in Sri Lanka, the opposing political forces came to realize that they could not wholly defeat each other. In some countries, official commissions have been established to investigate particular incidents by the same government that may bear responsibility. The

commission set up in Israel after the massacres in Lebanon in 1982 comes to mind.

Dennis Thompson

If you were giving advice to a commission about writing its report, what would you tell it *not* to include?

José Zalaquett

I would encourage the commissioners to write the report in very flat language. For example, the commission should report that 200 people were killed, not that a brutal massacre took place. People should formulate their own emotional responses. The facts speak loudly by themselves.

Charles Maier

In the United States, we tend to ascribe systemic human rights abuses to mega-causes, such as racism and poverty. A commission might be able to make recommendations for institutional change. Should it not recommend changes in, say, the police force's command structure? Is that appropriate?

José Zalaquett

A report must examine the circumstances that facilitated the commission of atrocities, such as the lack of accountability in the secret police, or emergency rule by decree. The report can make recommendations by pointing to the immediate context of the atrocities, but not to the remote context. This is not the place for an historical analysis of class struggles. The report can recommend police accountability or an independent judiciary; these institutions are vital for effective rule of law. Without a critique of this sort, the report is simply a catalogue of facts. People could conclude that the victims were just hit by a meteor!

Part Three:
The Relevance of Truth Commissions to Different Types of Conflicts

***Robert Rotberg** (Chair)*

Let us begin by asking whether intra-state conflicts could benefit from truth commissions. I have asked Maggie Beirne and André du Toit to start this session's discussion by speaking about their countries and the role that truth commissions have played or might play there. We will turn later to the distinct issues presented by the Israeli-Palestinian dispute. Fateh Azzam and Yael Tamir will introduce that topic.

André du Toit

First, I want to stress the importance of understanding truth commissions contextually. Second, we must remember to have realistic expectations of these commissions. We cannot expect them to do too much. They are designed to produce only limited results.

The South African commission's mandate is to examine the gross violations of human rights committed in the political context of our recent past. The mandate covers the years 1960 to December 1993. In fact, the exact cut-off date has not been defined to everyone's satisfaction. The time period covered by the mandate was dominated by the major political conflict over apartheid. The main protagonists were the former regime with its apartheid sympathizers and security forces, on the one hand, and anti-apartheid organizations such as the African National Congress (ANC) on the other.

However, the commission covers not only these conflicts but also the "inter-organizational" political violence of the period, e.g., between the ANC and the Inkatha Freedom Party, that became increasingly prominent over the last eight years. In many ways, these conflicts overlap and feed on one another, but their trajectories and dynamics have been very different.

The violent conflict between the apartheid regime and the liberation movements has now run its course. Negotiations were initiated in 1989. Eventually a negotiated settlement resulted in free elections, a democratically constituted Parliament, and a new, recently approved constitution. In this context, a truth commission became necessary and feasible as leaders from both sides were able to discuss issues and reach

political compromises. It took a long time, eighteen months, to set up the commission. The timing of the commission's formation and the broader political context shape it in basic ways.

At the same time, the continuing post-apartheid political violence has grown worse in terms of both the absolute numbers of deaths and the nature of the atrocities. People worry that it will escalate into a civil war, and political pressure to end this conflict is strengthening. People now want the truth commission also to examine the ongoing conflict in KwaZulu/Natal.

I think that the truth commission can feasibly handle the task of examining the remaining issues of the earlier conflict between the apartheid regime and the ANC. I do not, however, think that it can adequately delve into the problems of the ongoing conflict among African communities. The broader conflict must be addressed first, and supporting structures at the local and regional levels must be in place. In South Africa we called this framework the "peace structures." Between 1990 and 1994 we set up an elaborate system of these bodies throughout the country. Although not all of them functioned equally well, they developed unique methods of conflict mediation. They addressed ongoing, unresolved conflicts and established their credibility with the different constituencies involved.

The truth commission's role differs from these "peace structures." It is not adequately prepared to act as a mediator of an ongoing conflict. In examining the KwaZulu/Natal conflict, the commission would find itself supporting one side or the other. Once it is perceived as a partisan actor, it cannot play a mediating role. It would probably itself become a target of political violence. Perhaps I am being too pessimistic, but experience so far has taught that truth commissions are best prepared to cope with conflicts that have already been resolved politically.

Insofar as it addresses past conflicts, the truth commission in South Africa is a high risk operation. Many people feel that the political risks are too great. The transition has not been consolidated yet, and the basis for cooperation between the former political enemies is too fragile. People fear that the new democracy cannot cope with a renewed outbreak of political violence in the context of the truth commission. Conversely, it is also possible that public opinion would consolidate behind the truth commission if it becomes the target of violent attacks. But it is not suited to intervene in any ongoing communal conflicts.

Maggie Beirne

In Northern Ireland, Britain, and Ireland, our discussion of truth commissions has been quite limited. At a major conference during last year's cease-fire, we tried to develop a human rights agenda for change. I want to read to you a brief excerpt which addresses how we hope to deal with the past:

> The right to truth about past abuses must be secured, as truth is the essence of justice and of history. The acknowledgment of the truth is an ethical and political necessity, and is a fundamental requirement in the healing process. There is a key educational element in the search for truth, that people are establishing together what human rights violations are, accepting that they occurred and having those responsible recognize this also. The right to truth must be equal to all, but it cannot be selective. However, implicit in the right to truth is the right to change, and the need to allow perpetrators of human rights violations on all sides to reform and to be rehabilitated into society.

We face two key problems. First, André du Toit has noted the importance of radical political change. Northern Ireland has not experienced a change of regime. People do not recognize that this would be an appropriate time to look back and discuss what has happened in the past, and see what changes now need to be made.

Second, we face problems that were not faced in many of the other country examples that have been discussed in this meeting, particularly in examining the actual extent of abuses and attributing responsibility. Approximately 3,500 people have been killed over the twenty-five year period of our conflict. Of those, over 3,000 deaths were caused by paramilitary activity—2,000 by the Irish Republican Army and 1,000 by other paramilitary forces. The security forces are responsible for about 300 deaths. This means that one in ten of the deaths resulted from acts of government agencies. This is a very high number, but is clearly a very different proportion of the total number of deaths to be investigated than is the case in many other countries here discussed.

These killings by the security forces must be addressed by government, if it is to be held accountable for its actions. Our organization has a mandate which restricts us to concentrating on human rights abuses by governments. Nonetheless, it would appear strange to the general public if we pushed for an investigation of the 300 deaths, and had no comment to make on the 3,000-plus others.

On the other hand, if we were to focus on all of the deaths, would we not be letting the government off lightly? José Zalaquett, among others, has said that truth commissions are an effective way of dealing with the fact that many abuses are denied. The vast majority of deaths by paramilitaries in Northern Ireland have been acknowledged, and many of them have been investigated and have led to prosecutions in the courts. The deaths which are denied are largely, if not solely, those which took place at the hands of government agents.

Lawrence Weschler

As you were both describing these situations, I was reminded of the line from the Kafka story, "The Messiah will come only when he is no longer necessary."[9] Maybe the truth commission does not play a role in the transition from conflict to peace. Rather it appears as the capstone of the transition. Truth commissions can make only limited contributions. We should remember the story of the man who goes to a rabbi and says, "Rabbi, I have this terrible problem. I've looked at it from every angle but I just can't solve it." To which the rabbi replies, "Maybe it's not your problem."

Robert Rotberg

Over the past ten years, 20,000 people have been killed in KwaZulu/Natal. This number is higher than the total number of deaths being investigated by the current South African truth commission. Do you think that it would be wrong to include this issue in the current truth commission's mandate? Should South Africa think of setting up a new truth commission at a later point to deal with this conflict?

Kanan Makiya

I think the commission should at least explain why the KwaZulu/Natal killings are not included in its mandate. This would expose the nature of that conflict.

Charles Maier

I agree with André du Toit that we cannot insert a truth commission into a raging conflict and expect it to serve as an impartial referee.

Abram Chayes

The question of a commission's role in the middle of a conflict suggests the importance of the community's deciding what the commission's functions should be. If its purpose is to provide mediation or conciliation, then it will probably not succeed. Mediation theory teaches us that one cannot take sides. A truth commission's purpose is to take sides on the basis of an objective evaluation.

I think it is implausible for a commission to make a complete and impartial analysis in the middle of an ongoing conflict, even if it could get both sides' stories and all the facts. Indeed, most of our efforts involve trying to collect all the facts after an event has occurred.

While not denying that there might be some cases—such as the former Yugoslavia—in which the search for war crimes evidence takes place during the conflict, I would argue that the search for criminal evidence must be separate from the efforts for mediation and conciliation.

Henry Steiner

I would like to return to the question of the circumstances in which a truth commission operates most effectively. We have recognized the difficulty of its being effective in the middle of a conflict. The Sri Lankan case, however, appears to be an exception. The conflict continues, yet the commission is operating and even pursuing the radical right in the south of the country. Is this commission's work a prelude to prosecution? Or is it intended as a prelude to repentance and reconciliation? Why is the government taking such action at this stage?

Manouri Muttetuwegama

We are not termed a "truth commission." We are mandated to investigate "involuntary removals and disappearances." In addition, Sri Lanka has several presidential commissions that investigate specific events, such as the assassinations of our country's leaders and bombings. These investigations yield the truth about such incidents, and the investigators' work is not hindered by the ongoing conflict. However, many people have accused the presidential commissions of bias.

Maggie Beirne

We have had similar government inquiries in Northern Ireland. One of the most prominent was the inquiry into the killing of fourteen ci-

vilians, the so-called Bloody Sunday of January 1972. This commission's report was considered a complete whitewash. Since then, two senior police officers have been investigated for giving shoot-to-kill orders. The results of these investigations have not been released to the public. A great deal of secrecy surrounds these reports, so public exposure of the facts is lacking.

José Zalaquett

In the stage of a society's recovery and reconstruction after an abusive regime, truth commissions help to create a consensus concerning events about which the community is deeply divided. Their role depends on the country's political situation. In cases where a clear victor emerges, no truth commission is established. The winners simply prosecute the losers. Truth commissions have been established in situations where there is no clear victor. International fact-finding organizations usually operate in the earlier stage when the abusive regime holds power.

The purpose of truth is to lay the groundwork for a shared understanding of the recent crisis and how to overcome it. If both parties negotiate an agreement, publicly declare their wrongdoings, and pledge to refrain from such actions in the future, then there is no need for a truth commission.

Geoffrey Hawthorn

The pursuit of truth could run against the interests of a constructive politics. In Northern Ireland, the British state has concealed facts, though it is not responsible for the majority of deaths. The Irish Republican Army (IRA) has not concealed its responsibility for many deaths. If one truly set the record straight by revealing all the acts for which the British state and the IRA were responsible, such revelations could have fatal political consequences. Moreover, the relationship between the IRA and Sinn Fein would come under close scrutiny, and revelations that might emerge from that scrutiny could impede negotiations for a settlement.

Nonetheless, we need a truth commission to establish British responsibility for certain actions. What events have the British concealed and distorted in Northern Ireland?

Tina Rosenberg

We should distinguish between truths that cause social danger and truths that cause mere political embarrassment or inconvenience. In

the former Yugoslavia, no one wants the pursuit of truth to fuel ethnic tensions and start another cycle of violence. Yet in many situations, people feel that they have been the victims of abuses, but no justice has been done. In such cases, the truth is healthy. The revelations should come out in the open where people can discuss the issues and deal with them. The opening of the files in Germany is a good example of this truth. It has caused a tremendously boisterous, yet healthy debate. The Germans are constructively analyzing the history of their collaboration.

Geoffrey Hawthorn

In Germany, the offending regime is no longer in power. The new regime has instigated a process of settling accounts with a discontinuous past. That is not the case in Northern Ireland. As André du Toit indicated, the conflict between the Inkatha Freedom Party and the ANC is ongoing. Can truth commissions play a role there?

Charles Maier

I see the force of this argument. In an analogous situation, it will be hard to bring Slobodan Milosevic to the tribunal in The Hague if he is a major interlocutor for negotiating the end to the conflict in the ex-Yugoslavia. Does that also mean that Sinn Fein cannot participate in the peace process in Northern Ireland?

I would like to suggest an example which may not be entirely analogous, but useful nonetheless. Think of the terrorist groups active in Italy or in West Germany in the late 1970s. It took tremendous psychic energy to hold these groups together and sustain their urge to kill. Sometimes these people begin to doubt their convictions and start to crack at the edges. When they are faced with their actions, they may begin to reflect upon what they have done and their will to commit terror will unravel. Is it not possible that exposing some truth can lead to a process of inner decomposition or reconsideration within the offending group?

Yael Tamir

I think that a truth commission will be most effective only when individuals have an open mind about the past and when society is ready to reflect on all that it has done. We may now be reaching that stage in Israel. Just a few weeks ago [in April 1996], a Palestinian who was responsible for a number of terrorist acts was allowed to enter Gaza for a

meeting of the Palestinian National Council. In fact, this Palestinian has said publicly, "Yes, I committed these actions, and I regret it. The struggle is now over, or at least has entered a new stage."

A truth commission could be effective in this case. People are now looking in the mirror and reflecting on the appropriateness of their actions.

Geoffrey Hawthorn

The truth may be exposed in many different ways. For example, the NGOs' work in South Africa was a weapon in a political struggle. The NGOs were not about to inform the South African government of any ANC atrocities; they were engaged in a political struggle. That does not bother me. All of us use facts to promote political struggles. NGOs can also take more neutral positions.

A truth commission is supposed to be a nonpartisan body with an official designation. It is not designed to support one side or another in the conflict. Thus, a commission cannot be formed until the community is ready to accept whatever official statement will result from the commission's investigation.

Brinton Lykes

Even that is perhaps not enough. I am skeptical of the argument that we should applaud any country that claims it is ready to accept the findings of an impartial body. The case of El Salvador is instructive. Although it had a truth commission, the government subsequently denied many of the commission's findings. In the process now starting in Guatemala, the commission is not even invoking the language of truth. The government has termed it a "historical clarification commission." No one thinks that this commission will uncover the real truth.

Henry Steiner

I have some comments on Geoffrey Hawthorn's and others' thoughts about the character of a truth commission as neutral and nonpartisan. I wonder about the relation between these characterizations and a commission's apolitical or political character.

Of course the commission should aim at reporting wrongs, whoever committed them. In this vital sense, it must be neutral and nonpartisan. But does the commission thereby stand above politics, like

many countries' images of courts? When intergovernmental or non-governmental organization engage in this kind of fact-finding work, they're generally guided by basic norms of the international human rights movement that concern personal security. What they report on, what facts they deem relevant to those reports, are necessarily selected in the light of these governing norms like prohibitions of disappearances or torture. But such norms, let alone others like the right to a free press that may figure in an investigation, may not be equally accepted by all parties. Does this mean that the commission is taking sides by taking the side of human rights?

Again, the commission's findings usually assign wrongdoing to and therefore adversely affect one side of the conflict more than the other. Indeed, often a mandate will restrict a commission to examining conduct of state officials. In most situations where truth commissions have been organized, I imagine that their proponents had a very good idea about what the bulk of the findings would reveal, and hence which institutions or groups would be hurt by them. Surely this was predictable in contexts like Argentina, Chile, and El Salvador. So whatever the degree of objectivity in fact-finding, a commission's report inevitably is meant to have and will have political consequences. In this sense it inescapably forms a vital part of a political process of evaluation and reconstruction.

Dennis Thompson

I was provoked by Henry Steiner's comment that truth commissions cannot be objective. I think it is a mistake to say so, for it has dangerous consequences. It leads people to believe that all attempts at making distinctions among relative degrees of complicity are futile. We should distinguish between the decision to establish a truth commission and the criteria that the commission uses in its proceedings.

As Geoffrey Hawthorn said, the decision to establish a commission can be quite political. That is, the decision should be based on the political will to bring about peace. But a truth commission becomes corrupt not if it fails to find the absolute truth, but if in its proceedings it excludes certain information for purely partisan purposes.

Henry Steiner

Let me be clear about the way in which I here use the word "truth." My remarks understand truth in the flat sense of who did what to

whom. I am not asking more complex questions about, say, the causes of such conduct. Within this framework, I agree that a truth commission can achieve objectivity in fact- finding.

I meant to stress two considerations. First, any investigative body will choose to report only some facts, those that assume significance in the light of the norms applied by that body. Those norms, as is the case with respect to many human rights rules, may be viewed as contentious—in themselves, in the priority that they claim over other considerations, or in their refusal to admit justifications for certain conduct. So the very normative base of the proceedings may be seen as expressing a particular moral and political position.

Second, a commission's finding of violations of those norms may condemn and thereby hurt one party more than the other, and this may be fairly obvious in advance. That is what I meant when I said that the work of truth commissions, whatever the degree of attempted neutrality in its constitution and membership, or objectivity in its process, has political foundations in its governing norms and is meant to influence the political dynamics of reconstruction.

André du Toit

Can we really speak of an objective, impartial, apolitical concern with the truth itself? I believe it is unrealistic to expect that.

The pursuit of truth in order to promote national reconciliation is possible only under certain contextual and political conditions. In South Africa, atrocities committed by the apartheid state in the liberation struggle were denied. The negotiated political settlement has made the truth commission possible. It is different with the ongoing political violence. Inkatha accuses the ANC of waging a war against it. It alleges that hundreds of its leaders have been killed. The state and media deny this allegation.

We face the problem of establishing the truth of these claims in a non-partisan way which would facilitate reconciliation. Efficient and effective fact-finding missions may be possible, but under present conditions, whatever the commission reports will be partisan. A political settlement is needed before the truth commission can serve its purpose.

Tina Rosenberg

It seems that we agree on a few points. I would like to try to work out a scale. First, truth commissions seem to be useful when crimes have

been covered up or denied. They are probably less useful when groups such as the IRA would admit to carrying out crimes, but insist that these were justified. Second, this has little to do with whether a conflict is international or domestic. The key question is whether or not crimes are being denied. Third, truth commissions' reports should shy away from adjectives and characterizations, so as to avoid appearing to take sides.

Robert Rotberg

Let us turn to the question of whether or not truth commissions are useful in other types of conflicts, as in the Middle East.

Yael Tamir

Should Israel and Palestine establish a truth commission? First, it is important to remember that the conflict in the Middle East involves neither criminal regimes nor regimes of criminals. Rather, decent regimes violate human rights in the course of their national struggle. Perhaps the most adequate comparison is with the treatment by the United States of people of Japanese descent during World War II, or with Britain's treatment of IRA members.

What is the justification for a truth commission in such circumstances? I can think of three kinds of justifications, which I have ordered from the most to the least convincing.

The first presupposes that we have a moral obligation to know and remember the wrongs that have occurred. If we ignore the injustice that has been done or forget it, we become in some sense accomplice to it. This implies that we have an obligation to know what has happened, regardless of the social effects that this knowledge might produce. A truth commission contributes to our ability to reach this goal and is therefore welcome. It signals that no harm will go unnoticed and that those who bear responsibility will not go unpunished.

The second justification is instrumental. It is grounded in the psychological needs of the victims and their relatives: the need to talk about their harsh experiences and to have their suffering publicly acknowledged, the need of family members to understand and therefore to share to the best of their ability the suffering of their dear ones. I am skeptical about the ability of truth commissions to serve this goal. I also have a deeper doubt about the psychological assumptions—for example, whether victims are better off if they are allowed to recount their experiences. There is some evidence that Holocaust survivors who

suppressed their memories had a better chance of reconstructing their lives.

But perhaps the reliving of past suffering, even if not instrumental for the well being of individuals, has a welcome public dimension. This is the third type of justification of truth commissions. Like the second type, it too is instrumental, but grounded in social rather than individualistic considerations. For example, Lawrence Weschler suggested that if people have the opportunity to express publicly their suffering and have it acknowledged, they will eventually reach a sense of resolution and move on. But Jews have been dwelling on their suffering for 2,000 years, and that dwelling never led to a resolution. In fact, it has reinforced their collective sense of misery and paranoia.

Truth commissions are also seen as instrumental in promoting reconciliation. I find this claim doubtful. In my experiences in Israeli-Palestinian workshops, I have found that an attempt to expose the facts is not particularly useful. It is often better to assume that injustices have been committed by both sides, and then focus on how to solve the conflict. If parties start competing about who has committed the worse atrocities, they will solve nothing.

The most convincing justifications are then of the first kind, for the arguments for commissions that rest on instrumental justifications are very contingent on detailed contexts. I believe that a truth commission is unlikely to be helpful in the Israeli-Palestinian case. But even if it could be helpful, it is unlikely to be constructed for four reasons.

First, Israeli Jews identify with the army in which most of them serve, and are unlikely to support an investigation into its wrongdoing. Moreover, the army is one of the main sources of political leadership; generals move into top echelons of political parties. Investigation of wrongs by the military units will reflect badly on them, and hence is unlikely to gain their support.

Second, justifications of many of the most severe abuses of human rights, mainly expulsions of Palestinians and land confiscations, are grounded in the Zionist ethos and enjoy wide support among Israeli Jews. The conditions are not yet ripe for investigations that would force Israelis to acknowledge the moral price of implementing their national aspirations.

Third, the social benefits of such an investigation are unclear, for in Israel the issues of human rights are sectarian issues identified with one political camp. Investigation would be seen as serving a partisan political goal.

Fourth, there is a troubling asymmetry in the Israeli-Palestinian conflict. Israel would have to investigate itself and take responsibility for abuses since 1948, while Palestinians would have to investigate atrocities committed in the pre-state years by non-official groups.

To summarize, if the peace process is to move forward, it cannot proceed on the basis of an investigation of the past. Rather, we must disassociate ourselves from the past and build a future based on an abstract acknowledgment of the injustice done by both sides, an injustice grounded in the fact that we share the same small piece of land for which both sides make claims of right. We must therefore reach an agreement regardless of past injustices. Peace cannot be grounded in competition over past suffering.

Fateh Azzam

Basically I agree with Yael Tamir's assessment of the situation and the potential for a truth commission. At the same time, I cannot help but note the urgency of dealing with issues of past injustices.

What should emerge from this strange animal called the peace process? I have some disagreement with Yael. Unless we acknowledge what happened in the past, it will continue to come up. Israelis and Palestinians must redefine their relationship, but not necessarily deny it. We must acknowledge one another in a way that lays a proper foundation for our future. This will take a very long time. The Palestinians need to hear some acknowledgement in order for them to admit that co-existence is possible.

For these reasons, I had thought a truth commission might be a useful exercise. But further reflection has made me realize how much the outcome of the peace process depends on politics and political desires. Our societies need to accept one another, and this has not yet happened. Perhaps it is a question of timing.

Charles Maier

I am reminded of Americans' reaction to the Japanese failure to acknowledge responsibility for their role in World War II. Why do we get so agitated by their unwillingness to take historical responsibility? A historian does not demand that an aggressor acknowledge his sins. A historian collects the information that labels a certain party the aggressor.

We have discussed two forms of acknowledgement. In one form, acknowledgement entails one party appreciating the pain another has

experienced. In the second form, acknowledgement is an identification of one version of the facts as authoritative. If I were an Israeli, I would find it much easier to acknowledge the first form. I could appreciate the pain of Fateh Azzam's family, who are refugees from Haifa. But I might not agree with his version of why his family left Haifa — the second form. When discussing the therapeutic purposes of acknowledgement, we should distinguish between these two sorts. We may be able to get only one sort, not the other.

Society will have to adjudicate the past in one area—how it teaches history to its children. Palestinian and Israeli histories should not be entirely incompatible. We cannot avoid truth commission-like activity in this area. It would be nice if children in Gaza learned a history comparable to the one taught in Tel Aviv.

Lawrence Weschler

Yael Tamir started with an important premise—that the Middle Eastern regimes are neither criminal regimes nor regimes of criminals. If everybody in the Middle East could agree with that statement, peace might be more easily attainable. Then perhaps Israelis and Palestinians would not need a truth commission that would arrive at an exhaustive, fifteen-volume account of everything that ever happened. Rather they need to get together and write a fifth-grade history textbook. In the language of fifth graders it would point to the different interpretations of what happened. It would relate the facts and explain the various interpretations. Are we at a stage where this could happen? Could you write a textbook to suit everybody?

Charles Maier

A fifth-grade history textbook might be a truth commission for the next generation. What could it yield? As a historian, I have given up thinking that victim and perpetrator could ever tell the same story. Yet, national systems of education do require textbooks to have a synthetic narrative. As I said before, I prefer trials to truth commissions because trials ultimately end in a judgment of guilt or innocence. The verdict plays a synthetic role.

I like to use a musical analogy. A harmonic history is oversimplified, but contrapuntal history is possible. Voices move along side by side in some relation to one other.

Maggie Beirne

A small museum in Northern Ireland illustrates one way of dealing with competing narratives. The museum tells a common history up until 1968. Then it splits. One side of the corridor depicts a nationalist view of events; the other side depicts a unionist view. I do not know how many people actually view both sides!

Yael Tamir

I do not know about Palestinian society, but Israeli society is going through a process of change. We do not inquire into the fate of particular victims or cases, but we are trying to clarify our history.

If the moral argument is important, then we must examine every case; however, if reconciliation is the goal, we should reflect on the national narrative. I am not convinced that a truth commission is the proper way of approaching reconciliation. I do not agree that each side must tell the same story. If that is what we must aspire to, then the goal is far, far away.

Fateh Azzam

I agree with Yael Tamir that each side must be confident in telling its own narrative, but neither side should exclude the other's narrative. We must admit that other narratives exist and that they clash with our own. This is a part of the acknowledgement function that truth commissions achieve.

I also agree with some prior comments that it is not necessary to examine every single case, or to name names. In some cases, Palestinians have won compensation in the Israeli courts for illegally confiscated land. Most Palestinians refuse such compensation. They want the Israeli government to recognize that it has done something wrong.

Naming names would be impossible because the entire political structures of Israel and Palestine would be implicated. We should remember that Menachem Begin was on Britain's most-wanted list even when he was the Israeli prime minister. Yitzhak Rabin declared quite publicly that he had transferred more Arabs out of the occupied territories than anyone else.

The Middle East peace process is a catch-22. We must wait for the political process to come to fruition before we can deal with the deep-seated moral and historical problems of acknowledgment, which will set our politics on a moral basis of respect for human rights. At the

same time, the political process is sorely lacking a moral basis.

In an earlier session, Henry Steiner asked whether, given the dimension of the genocide in Bosnia, the conviction even of fifteen people by the international tribunal would satisfy people's sorrow in the face of tragedy. Though it may not, it is an accurate reflection of the political process that eventually stopped the violence in Bosnia. The Dayton peace plan partitioned the country and confirmed the results of ethnic cleansing. This is a very good example of an immoral approach to peacemaking. Perhaps that is a harsh statement, but I feel the Middle East peace process has similar problems. Though Oslo is not as problematic as Dayton, I do not think our peace process is based on a moral reconstruction that creates the potential for coexistence.

Charles Maier

Although Fateh Azzam criticizes the Bosnian peace accords for accepting a partition, every international settlement since World War II has involved a partition: Korea, Germany, Palestine, and Cyprus. This has been the characteristic way of minimizing violence since the last big war. The Bosnian peace agreement even provides an opportunity for the refugees to return to their homes, though this provision is being honored in the breach. If we do not have the capacity to organize the repatriation of refugees, then how is it possible to organize a truth commission? Consensus is sorely lacking.

I am not sure whether the Middle East peace process will allow the refugees to return. I wonder whether the capacity to overcome physical segregation must precede or accompany the process of mutual acknowledgment and truth-telling.

Robert Rotberg

Let me return to the question whether a truth commission is unworkable in cases of international conflict. We seem to think it unworkable in both the Middle East and Bosnia.

Tina Rosenberg

I do not think that the distinction between international and domestic conflicts is the most important. Bosnia should have a truth commission because people need to understand the gravity of the crimes committed. Truth commissions might be useful in international situations generally when the abuses have been committed overwhelmingly by

one side. For example, I would like to see an Indonesian truth commission study the invasion and occupation of East Timor. Or one could look at the Japanese in China, South Africa in Mozambique, or the United States in Central America.

Henry Steiner

It seems to me that the argument for a truth commission grows stronger in those intrastate or international conflicts where the conflicting parties continue to inhabit the same territory. As Yael Tamir emphasized, Jews and Arabs are inseparably joined in one small part of the world. This proximity, this political intimacy, holds both threat and promise. The two peoples must learn to live together, or continue their agony. But no one would have thought of establishing a truth commission after the Vietnam War. The principal contribution of the truth commission may be to enable onetime enemies to live together better—not ideally, but better. In many close relationships like couples, extended families, or even faculties, people are bound together in a setting where they need some degree and method of working through the past, something different from prosecutions and verdicts, to help them to live and work together.

Assuming this result is achieved, I think that each group will continue in important respects to have its own history. The curriculum for Jewish children will give serious attention to the Holocaust and its significance for Israel's creation; Arab children will study the golden age of Islam and the refugees of 1948.

José Zalaquett

Truth commissions can be useful in cases where a national community has been divided and polarized. Though the Yugoslav war started out as a domestic conflict, it has not been resolved by trying to sew together the divided national community. Rather, the parties to the conflict are trying to find a way to live side-by-side as sovereign states. I cannot imagine how the international community could form an impartial commission that both sides would recognize as valuable.

Charles Maier

When Tina Rosenberg says that a truth commission would be important in Bosnia, I agree in some sense. Yet the people who committed the crimes must be willing to listen. The fact of territorial separation

may make people less willing to listen. The Japanese do not listen to many things that are said about them. We Americans probably do not listen to a lot of things. We certainly did not want to hear what we had done in My-Lai [Vietnam].

Tina Rosenberg

Even if many people did not listen to the debates about My-Lai, it was important to hold a trial. I think this is an example of how truth commissions can work, even if not everybody is receptive. I am presupposing some receptivity. I am presupposing the existence of sufficient will on the part of the Indonesian people and government.

Manouri Muttetuwegama

In Sri Lanka, we must first accept that reconciliation is necessary. People must work this out on an interpersonal level. A solution perceived to be imposed from above will never be accepted. Unfortunately, the situation in the north does not yet permit social reconciliation.

Robert Rotberg

What further research should be done on the question of truth commissions? If we were to hold another meeting, what should we discuss?

Fateh Azzam

We need to examine different models of truth and acknowledgment processes. Many examples were raised today, like dialogues or apologies.

José Zalaquett

The learning about this process is proceeding gradually. In the relationship between practice and theory, practice leads the way. While theory lags behind, we need it to illuminate the past.

Two issues seem important. First, I am impressed by the extraordinary degree of cross-consultation that has taken place. In recent years, people have advocated the development of South-South relationships. South Africans and Chileans have discussed the issue of truth commissions many times; we have shared our ideas and experiences. South Africa invited eleven countries to its first conference on truth commis-

sions. In the future, we should examine truth commissions in a broader context. We could look at the relationship between truth commissions and conflict resolution, for example. Issues of community and institution building, forgiveness, and justice are also relevant.

Dennis Thompson

I would be inclined to focus this question more narrowly than José Zalaquett suggests. As we began this discussion, I was skeptical about truth commissions. Even after having heard them subjected to the familiar academic skepticism—which can destroy any institution or idea—I have become convinced that in certain circumstances, truth commissions really do serve a useful purpose.

I now think it would be a good idea to have conferences like this one in countries where a truth commission might be needed in the near future. Citizens and leaders could discuss the need for a truth commission or other similar institution. If it were concluded that such a commission was needed, participants could discuss appropriate preparations and procedures. This would assist the government in setting up a commission in a timely fashion.

Even if a commission is not needed, participants would still learn a lot. A semi-public conference would be even more useful. Such a conference would provide a forum for discussing moral reconstruction and reconciliation. Having a discussion about establishing a truth commission might be even more valuable than the truth commission itself.

Endnotes

1. Two recent and very useful edited works collect some of the valuable writings on this subject. See Neil J. Kritz (ed.), *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* (Washington, D.C., United States Institute of Peace, 3 vols., 1995); and Naomi Roht-Arriaza (ed.), *Impunity and Human Rights in International Law and Practice* (New York, Oxford University Press, 1995).

2. (New York, Knopf, 1980), p. 7 (trans. Michael and Henry Heim).

3. *Report from the Besieged City and other poems* (New York, Ecco Press, 1985), pgs. 64, 67 (trans. John Carpenter and Bogdana Carpenter).

4. *The Miner's Pale Children* (New York, Atheneum, 1970), pp. 85-88.

5. *Sense and Non-Sense* (Evanston, Northwestern Univ. Press, 1964), pp. 139-52, specifically p. 150 (trans. Hubert and Patricia Dreyfus).

6. Nagel, *State Crimes: Punishment or Pardon?* (Papers and Report of Conference organized by Justice and Society Program of Aspen Institute, Aspen, Aspen Institute, 1989).

7. *A Miracle, A Universe: Settling Accounts with Torturers* (New York, Pantheon, 1990), p. 246.

8. *A Theory of Justice* (Cambridge, Harvard University Press, 1971), Ch. III.

9. From "The Coming of the Messiah," in Franz Kafka, *Parables and Paradoxes* (New York, Schocken,1946) (trans. Clement Greenberg).

Annex:
The Participants

Fateh Azzam does research on human rights in the Arab world and is a member of several human rights boards, including the Palestinian Commission for Citizens' Rights (Jerusalem). He is a former Director of al-Haq, a leading Palestinian human rights organization, and has published books and articles in Arabic and English on international human rights, including problems in the Arab world and Israeli practices.

Maggie Beirne is Research and Policy Officer at the Committee on the Administration of Justice, a cross-community organization in Northern Ireland working for the protection and promotion of human rights. She was formerly a staff member at the international secretariat of Amnesty International.

Abram Chayes is Felix Frankfurter Professor of Law, Emeritus, at Harvard Law School. He has specialized in international law. His most recent work (with co-author Antonia Chayes) is *The New Sovereignty: Compliance with International Regulatory Agreements* (1996). His current research involves conflict management in Eastern Europe and the former Soviet Union.

André du Toit teaches political ethics and intellectual history at the University of Cape Town. He was closely involved with preparatory discussions and planning for the Truth and Reconciliation Commission in South Africa. His publications include *Political Violence and the Struggle in South Africa* (1996), and *Afrikaner Political Thought* (1983).

Geoffrey Hawthorn is a Reader in Sociology and Politics at the University of Cambridge. He is the author of works including *Plausible Worlds: Possibility and Understanding in History and the Social Sciences* (1991).

J. Bryan Hehir is the Professor of Practice in Religion and Society at the Harvard Divinity School. He is a member of the Executive Committee of the Harvard University Center for International Affairs.

Elizabeth Kiss is Director of the Kenan Ethics Program and Associate Professor of the Practice of Political Science and Philosophy at Duke University. Her research interests include human rights and ethnic politics, and the politics of rights in Eastern and Central Europe.

M. Brinton Lykes is Associate Professor of Psychology at Boston College. Her research interests include cultural psychology, mental health and human rights. She has done extensive work on conflict resolution in Central America, and is co-editor of *Gender and Personality* (1985) and of *Myths about the Powerless: Contesting Social Inequalities* (1996).

Charles Maier is Krupp Foundation Professor of European Studies and Director of the Minda De Gunzberg Center for European Studies at Harvard University. His writing has pursued questions of the relationship between history and memory, and most recently, the collapse of East Germany and its aftermath. His books include *The Unmasterable Past: History, Holocaust, and German National Identity* (1988).

Kanan Makiya is a human rights activist, particularly with respect to the problems of Iraq. He is the author of *Cruelty and Silence: War, Tyranny, Uprising and the Arab World* (1993), and *Republic of Fear: The Politics of Modern Iraq* (1989).

Manouri Muttetuwegama is a lawyer and human rights activist who is now Chairman of the Presidential Commission on Disappearance in the southern provinces of Sri Lanka.

Tina Rosenberg is a member of the *New York Times* editorial board. She is the author of *Children of Cain: Violence and the Violent in Latin America* (1991), and *The Haunted Land: Facing Europe's Ghosts after Communism* (1995).

Robert Rotberg is president of the World Peace Foundation and Coordinator of the Southern African Programs of the Harvard Institute for International Development. He was Professor of Political Science and History at M.I.T., vice-president of Tufts University and President of Lafayette College. He is the author of *Vigilance and Vengeance* (1996), *From Massacres to Genocide* (1996), and a number of books on African politics.

Henry Steiner is Jeremiah Smith, Jr. Professor of Law at Harvard Law School. He is the founding Director of that school's Human Rights Program, and chair of the University Committee on Human Rights Studies. His most recent publication is a coursebook (with co-author Philip Alston), *International Human Rights in Context: Law, Politics, Morals* (1996).

Yael Tamir is a Senior Lecturer in Philosophy in Tel-Aviv University. She is a founding member of the Israeli movement, Peace Now, and a human rights activist. Her interests include political theory, nationalism, rights, and democratic theory. Her writing includes the books *Liberal Nationalism* (1995), and *Democratic Education in a Multicultural Society* (1985).

Dennis Thompson is Vice Provost of Harvard University and Alfred North Whitehead Professor of Political Philosophy in the Department of Government and Kennedy School at Harvard University. He is the founding Director of the University Program in Ethics and the Professions, and the author of *Political Ethics and Public Office* (1987), and *Ethics in Congress: From Individual to Institutional Corruption* (1995).

Lawrence Weschler is a staff writer at the *New Yorker* magazine. Much of his writing for the *New Yorker* has involved human rights concerns, such as his coverage of Poland from Solidarity through the fall of Communism, and of democratic transitions in Brazil and Uruguay. Two books, *The Passion of Poland* (1984) and *A Miracle, A Universe: Settling Accounts with Torturers* (1990), grew out of such writing.

José Zalaquett is Professor of Law and of Ethics and Government at the University of Chile, and a human rights activist. He was a member of the Chilean Commission for Truth and Reconciliation and a former chair of the international executive committee of Amnesty International. He has written extensively on human rights issues.