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THE GLOBAL FORUM

Panaceas After Pandemonium? 
Truth Commissions in the Wake of 
Protracted Conflicts

Jorge Heine and Joseph F. Turcotte

The third wave of democratization has meant the end of autocratic rule and oppressive state-sponsored practices in many countries around the world. Yet the transition from authoritarianism and state-sponsored terror to more open and participatory societies has its own imperatives. After autocratic rule and protracted conflicts, it is necessary to heal the wounds caused by years, sometimes decades, of mistrust, fear, and violence. Systematic violations of human rights, in the form of oppression, physical and psychological violence, and death, leave lasting individual and collective wounds. Transitional (or restorative) justice is designed to address and (hopefully) mitigate such legacies left by the previous regime. In doing so, it draws on a variety of instruments: criminal prosecutions, special tribunals, amnesties, apologies, memorials, lustrations, and truth commissions (TCs), among others. The end of the Cold War also gave a new impetus to international criminal justice. Special tribunals for the former Yugoslavia, for Rwanda, and for Sierra Leone were established, as was, most prominently, the International Criminal Court, originated in the 1999 Rome Treaty and based in The Hague. For many, this portends a major shift in international relations, one in which the traditional, Westphalian, and sovereignty-centered international system gives way to another, based on more porous units, in which individual and human rights have more sway and human rights abuses trigger a more proactive international reaction.

In turn, these developments have given rise to a whole new field of study: transitional justice. This is an interdisciplinary field in which political science, law, sociology, history, anthropology, psychology, theology, and other disciplines converge. Not surprisingly, since transitional justice emerges as a result of the developments described above, it is, much like democratization and political transitions, also marked by contingency and paradox. Transitions are fluid and political action and the uses of the law find themselves under a different set of rules than under ordinary circumstances. Grasping the transformative opportunities presented by the conjuncture becomes a key test of political leadership.
Truth commissions have emerged as a popular tool of transitional justice, especially in cases where a delicate balance between the extant remnants of the previous regime coexist with the new dispensation. TCs have come to the fore because of their flexibility, their open-endedness, and their ability to act as a bridge of sorts between an evil past and a democratic present, thus laying the foundations for a future society at peace with itself. At first, transitional justice was mainly concerned with transitions from authoritarian to democratic rule. However, after the large number of internal conflicts that arose in the post–Cold War era, it has also been applied within the wider panoply of nation- and peacebuilding instruments following the end of a war or conflict. This has been especially true for Africa. Some transitional justice tools, like TCs, have shown to be so prevalent and useful for a variety of reasons that they are now deployed in advanced Western democracies, like Canada, to investigate historical human rights abuses as well as to investigate the conditions that led to the breakdown of democracy, as happened with the TC set up in Honduras after the June 2009–January 2010 crisis.

Especially in Latin America and Africa, TCs as well as truth and reconciliation commissions have been deployed to come to terms with past injustices while rebuilding trust in government and among social groups, although they have also been deployed in Asia, Europe, and North America. While they share a number of common features, TCs must reflect local specificities to address the crimes of the past amidst the fluid, uncertain, and challenging conditions that are the hallmark of democratic transitions.

The Truth Commission Process
The lure of TCs derives from their presumed ability to allow transitional societies to come to terms with the crimes of the past without “upsetting the applecart,” that is, without derailing the whole process and putting the country back in the situation ex ante. TCs do this by means of a carefully calibrated balancing act: one to be struck between the remnants of the former regime and the interests and priorities of the current one; between the interests of the individual and those of the public; and between a due process that is fair to all parties involved and not hamstringing that process with too many legalistic requirements that render it inoperative. In our imperfect world, such balance is often attainable only by affording certain, hopefully limited, guarantees to the outgoing regime. The pragmatic processes ingrained in TCs should not be regarded merely as political compromises. Instead, the balanced nature of a TC process is better understood as a holistic tool for reconstructing the social and political makeup of societies scarred by conflict. This entails moving forward toward democratization by recreating and reconstructing the moral basis for reconciliation.
The move toward TCs as holistic tools for transitional justice and democratic reconstruction became prevalent after South Africa’s experience in the late 1990s. In what has become a model for other TCs, South Africa’s Truth and Reconciliation Commission was forged according to what may be considered the most optimistic results of transitional justice: “healing rather than hurting, moral learning, community participation and community caring, respectful dialogue, forgiveness, responsibility, apology and making amends.” The mandate for the South African Truth and Reconciliation Commission therefore was quite broad. To investigate more than three decades of human rights violations and their effects, three different committees were established: the Human Rights Violations Committee, Reparation and Rehabilitation Committee, and Amnesty Committee. In contrast to other TCs, such as the one in Chile during the early 1990s with a more limited scope and mandate, the South African Truth and Reconciliation Commission cast a wide and inclusive net in terms of who could speak and present at hearings to create a national dialogue and narrative to address and heal the wounds of apartheid rule.

The public nature of these hearings and their extensive media coverage triggered a national conversation about this evil past. Again, here, the public’s right to know had to be balanced with an individual’s (or family’s or community’s) right to privacy. Hearings and testimony must therefore strike responsible compromises between public and private interests and concerns. As in other circumstances where the rights and liberties of individuals and groups have been compromised, attempts at reconciliation must not endanger or revictimize those already harmed. In turn, those who have performed these violations may be forced to testify against their will. The power of subpoena is thus a key instrument for TCs seeking to solve still unresolved (and often unreported) human rights violations. Whether subpoena powers are included within the mandate of any given TC depends on the particularities of specific cases and the scope of the investigations. For instance, in Sierra Leone, where some 9,000 statements were collected, these powers were absent, while in South Africa, with over 21,000 statements, subpoena powers were present.

The power to provide or withhold amnesty for those giving testimony or found to have committed unlawful acts or human rights injustices is similarly contested. The South African Truth and Reconciliation Commission has been criticized for insufficiently prosecuting the “authors of violence and has displayed a high degree of complaisance toward some, including amnesty for very serious crimes.” In this case, negotiations about amnesty were considered according to the broad reconciliation that the commission was seeking to create; secret negotiations took place and were settled to secure a stable transition toward democracy and peace. From this instrumentalist perspective, the products of the commission—such as the desire
to reconcile past injustices to construct a secure and stable future—take precedence over the micro-level concerns of individual criminalization and justice. Again, the public and private interests operate jointly in an uneasy compromise that may not leave all parties fully satisfied.

The Product of Truth Commissions
The need for such uneasy compromises makes the final product that is ultimately achieved so important. The public report of the findings of a TC is the most common form of concluding the formal aspects of the activities of a commission and disseminating this truth to the public. Recent research finds that public reports are a key component of the publicness, along with the holding of public hearings and the identification of perpetrators of a TC, and that TCs with high levels of publicness contribute more to the democratization process than those that do not.10

Public apologies are sometimes another product of TCs and other instances of transitional justice more generally. As Jean Axelrad Cahan notes, “Such apologies by national leaders may be helpful in post-conflict or post-trauma reconciliation; but it is difficult to determine whether such apologies express broad and deep processes of repentance and forgiveness within a society more generally.”11 Public apologies may be effective in cases where they demonstrate recognition of and forgiveness for the past injustices as well as a commitment to ensure that they are not repeated. Formal instances of individual or collective retribution and reparations may also be effective for acknowledging wrongdoing along with a commitment to moving forward. These public acts also offer the potential for forms of “lengthened justice,” wherein survivors neglected during the formal TC process are empowered with legal and normative rights to have their own histories heard and addressed.12

The public products of TCs are designed to contribute to a national conversation wherein past wrongs are addressed, considered, and acknowledged. The goal is to heal the traumas inflicted at the individual and collective levels so that the prospects of peace, reconciliation, and stability are strengthened. National conversations are a key aspect of TCs. They enable discursive spaces for the airing of grievances. In some cases, this national conversation is embedded within the process of the TC itself and the process is therefore also the product. For example, with its many public hearings, the South African Truth and Reconciliation Commission generated a national conversation around the significance of democratization and the movement away from apartheid-era injustices and horrors. Media coverage of these hearings contributes to this deliberative dialogue, allowing historically and structurally traumatized and disadvantaged groups to enter the conversation itself—finally having their voices heard and acknowled-
The Utility of Truth Commissions

The product and process of TCs, in their various forms, are means to an end, which ultimately is the reconstitution of the state in a more democratic, viable, and equal form. The reconciliation between various political, social, or ethnic groups in conflict (whose differences may have led to the rise of the authoritarian regime, or to civil war, as the case may be) is one objective of TCs. Yet reconciliation is a necessary, but insufficient, condition for building a better future. TCs must also justify and legitimize the moral basis for the incoming regime. This they do by dealing with the past and abuses in systematic and officially sanctioned ways. Additionally, the stories told during the TC process help establish and enforce a new national identity based on a rejection of the past and an embracing of a more positive future. The officially sanctioned nature of TCs helps attach this national identity to the reconstituted institutions of the state, further enmeshing democratic ideals into the fabric of the state and society. Needless to say, these benefits do not accrue in all situations equally (or at all), and the utility of a TC is dependent on how well it is established in accordance with local specificities.

TCs thus contribute both to a form of national catharsis and to nation building. This catharsis is, of course, a contested area in the field of TC studies. While participating in the process unleashed by a TC may prove cathartic for certain individuals, it is difficult to ascertain whether this is actually therapeutic and beneficial and, more generally, how broadly these cathartic feelings are felt and experienced. In fact, an overemphasis on the cathartic aspect of TCs may frustrate and result in re-victimization at hearings if testimony is not patiently and sensitively received and handled. The cathartic effects of TCs cannot be assumed. The product of a TC and its success, if any, will be measured by the ways in which the process and product have served to heal divisions, address injustice, and prevent recurrence of the ills that gave rise to them in the first place.

That said, both the theory and praxis of TCs has evolved over time. Within the field of transitional justice, the original, often largely legal and philosophical, approaches have given way to more sociological ones. Moral argumentation has been replaced by public opinion polls and quantitative analysis aimed at measuring the real impact of various transitional justice tools on the respective polity, with some findings being quite counterintuitive (though not uncontested). Scholarship has also evolved in other fas-
cinating ways. In the 1990s, the conventional wisdom held that much of the appeal of TCs lie in their moderate, centrist approach to transitional justice, a middle road of sorts between the extremes of blanket amnesty for human rights violators (à la Uruguay) and special prosecutions (à la Argentina). Chile’s somewhat timid (though effective) truth and reconciliation commission was in some ways Exhibit A of this approach, which contributed to it becoming a source of inspiration for South Africa under Nelson Mandela. South Africa, in turn, took the Chilean model much further, setting what some consider the gold standard in TCs, as discussed above.

In the 2000s, however, that notion came under critical scrutiny. To start with, Chile itself had to set up a second commission, this time to look into human rights violations against torture victims (the first commission dealt only with fatalities). More significantly, the proposition that special prosecutions of violators were too extreme a solution to the problem of dealing with an evil past was also questioned. The work of Kathryn Sikkink, who coined the concept of a “justice cascade,” by which she means the effect of the full panoply of transitional justice tools and how the use of one may lead to that of another, stands out in this regard.19 Her pioneering work, in which she shows that the special courts set up to prosecute the members of the Argentine junta for their behavior during the “dirty war” (1976–1983), did not weaken democracy but in fact strengthened it, putting the more radical Argentine approach to transitional justice (now enjoying a renaissance of sorts) back in vogue.

Limitations and Conclusions
Some observers contend that both catharsis and reconciliation are individual processes that cannot be extrapolated to society as a whole. Critics of TCs also argue that the hearings and testimonials that these processes depend on are ultimately forms of witch-hunting, where blame is assigned through legitimized forums of blaming, naming, and shaming via accusation and finger pointing. Meanwhile, other critics make the point that the negotiated parameters of TCs often mean that processes and product are ultimately limited in the ways they can contribute to reconstruction and reconciliation. For this school of thought, TCs amount to a state-sponsored form of whitewashing of the past in favor of tenuously moving forward without adequately addressing the crimes that have been perpetrated on individuals as well as society. The overlapping roles of practitioners, theorists, and commentators involved in the theory and praxis of TCs exacerbates these concerns, making it difficult to come up with objective evaluations of TC performance. Further concerns can be levied if and when the structural inequalities associated with previous regimes are overlooked—such as entrenched forms of socioeconomic and political economic inequities and opportunities—by a focus on the
physical and sexual human rights violations of the previous regime. TCs must take these concerns into account as they contend with the specific idiosyncrasies of their societies and their mandate.

TCs are far from being panaceas for dealing with the aftermath of authoritarianism, protracted conflicts, or both. The abuses that TCs seek to document and address are often of such an order of magnitude that their attempts at learning from the past and forging a brighter future may result in uneven outcomes or unforeseen consequences. TCs, then, should be understood as necessarily incomplete attempts to come to terms with human rights violations in the context of an imperfect world. Human rights abuses, sexual assaults, systemic forms of racism, disappearances, and murders leave individual and collective traumas that take generations to resolve—if they ever are. Yet TCs, if used in conjunction with a wide variety of additional transitional justice instruments, remain a key tool of transitional justice.

Notes

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