Truth in transition

The role of truth commissions in political transition in Chile and El Salvador

David Gairdner

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Summary

Truth Commissions are increasingly being used as one mechanism in a broader strategy to consolidate democratic governance following a period of authoritarian rule. However, there has been little research on the impact of Commissions, including identifying the aspects of a transition process that they are able to address. Accordingly, this study offers a framework for understanding the role of Truth Commissions in political transition. It argues that Commissions have the potential to support the consolidation of a democratic polity when they contribute towards two essential tasks. First, Commissions must act to dismantle enclaves of authoritarian power that were transplanted from the past into the post-transition polity. The presence of these enclaves undermines the democratic qualities of the new polity and renders the transition process incomplete. Second, Commissions must simultaneously help to create new structures and values on which democratic governance can be built. The interaction between the Commissions and authoritarian enclaves takes place in specific sites of transition in a given society; Strategic Behaviour (the institutional matrix of constraints and opportunities that shape interaction between social actors), Social Epistemes (bodies of knowledge and ways of imagining relations within a political collective) and the Material Environment (economic structures). Enclaves not falling within the mandate of a Commission must be the subject of action from other initiatives.

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1 Introduction

The transition from authoritarian to democratic governance occurred in eleven Latin American countries between 1979 and 1993. In each case, former authoritarian regimes committed gross and systematic human rights violations, resulting in hundreds of thousands of deaths throughout the region. The violations were not the unfortunate or random acts of individual state employees acting beyond their authority. Rather, they formed one part of a conscious and systematic policy that used violence to achieve the objectives of the respective regimes. Once perceived as a threat to the state, opposition political leaders, social activists and entire sectors of the population were killed, intimidated or otherwise removed from the political scene.

The scale and brutality of the violence made resolving the states' legacy of human rights violations one of the central issue during transition. Groups in national society and the international community refused to simply bury the past and get on with the future, confronting new governments with a series of dilemmas. How should the persons responsible for committing past violations be punished? How do societies either reconstruct or create for the first time the institutions needed to protect and promote human rights? How is it possible to reconcile opposing groups in society after an extended period of conflict, building a common culture of tolerance and respect for democratic process? In this broader context, the issue of human rights became a point of entry for addressing larger questions of governance, relations between the state and civil society and "the ethical values that [society] needs to make its future livable" (O'Donnell and Schmitter, 1986: 30).

Finding a resolution to the states' legacy of human rights violations was not simply a matter of launching criminal investigations or implementing the appropriate institutional and social reforms. In most countries, former authoritarian actors played a decisive role in shaping the kind of political system that emerged during transition. They retained power during and after the process, placing significant political and institutional constraints on new governments and reform-minded actors in civil society. In particular, authoritarian actors sought a guarantee that the persons responsible for human rights violations committed while they were in power would not face criminal sanctions. The constraints were reinforced by the threat of a renewed intervention in politics if the transition process undermined the interests of authoritarian actors to an unacceptable degree.

Truth Commissions have been used in seven Latin American countries to strike a compromise between these two conflicting demands: the demand of "no prosecution" made by still-powerful authoritarian actors and those coming from national society and the international community to investigate past human rights

iolations and punish the persons responsible.[1] Reflecting the dynamics of power in transition, Truth Commissions are not judicial bodies. Their investigations, therefore, are not a formal legal accounting of the past, achieved through the due process of law, that results in criminal sanctions where guilt is established.

Rather, the definition of a Truth Commission includes four primary elements.[2] First, Truth Commissions are temporary bodies established to investigate gross and systematic human rights violations committed during a defined period of time in the past. These can include violations committed by both agents of the state and armed opposition groups. Second, while investigating individual cases or specific events, a Truth Commission is concerned with establishing a picture of the systematic pattern of violations used to intimidate certain sectors of the population. Third, Truth Commissions receive their mandate from an authoritative body, usually the executive and/or the legislative branch of government. In the recent cases of El Salvador and Guatemala, Commissions were established as one part of a larger peace process brokered and verified by the United Nations.[3] Fourth, Truth Commissions are autonomous bodies set apart from the existing institutions of state and the major parties to past conflicts. They derive their legitimacy from that differentiation and make a positive contribution to the transition process only to the extent that independence is perceived to exist. Taken as a whole, these elements distinguish a Truth Commission from other investigation processes such as those conducted by non-governmental organizations.

The purpose of a Truth Commission is to support the transition from an authoritarian to a democratic political system by bringing some form of resolution to a country's legacy of human rights violations. Towards this end, Margaret Popkin and Naomi Roht-Arriaza write that Truth Commissions have had four "overlapping goals: creating an authoritative record of what happened; providing a platform for the victims to tell their stories and obtain some form of redress; recommending legislative, structural or other changes to avoid a repetition of past abuses; and establishing who was responsible and providing a measure of accountability for the perpetrators [of past human rights violations]" (1995: 80). To these Priscilla Hayner adds that a "truth commission can also be used by the new political leaders to demonstrate or underscore a break with the

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1 Truth Commissions in the Americas include Argentina (1984), Bolivia (1984, the Commission did not produce a report), Uruguay (1985), Chile (1991), Honduras (1993), El Salvador (1993), Haiti (1995, the Commission's report has not been made public) and Guatemala (1997, the Commission presented its report on 25 February 1999. These are among the nineteen Truth Commissions have been convened world-wide between 1974 and 1998.

2 These four elements are taken from a review of the mandates of the Truth Commissions for Argentina, Chile, El Salvador, Guatemala and South Africa. The latter Commission was established in 1996 and is scheduled to present its report to the President of South Africa on 31 July 1998. Some of these elements are also included in the definition of a Truth Commission used by Hayner (1994: 604) and Popkin and Roht-Arriaza (1995: 79-83).

3 Hayner writes that the sanction of an official body vests a Commission "with some sort of authority, by way of its sponsor, that allows it greater access to information, greater security or protection to dig into sensitive issues, and a greater impact with its report [than investigations conducted by non-governmental organisations]" (Hayner, 1994: 604).

past record of human rights abuses [and] as a means to obtain or sustain political legitimacy" (Hayner, 1994: 604).

Questions remain about how achieving the four goals identified by Popkin and Roht-Arriaza supports the transition to a democratic polity. Only limited answers are found in the body of literature on Truth Commissions. While detailing the accomplishments and short-comings of Commissions in relation to their mandates, the literature offers little precision on the implications that these actions have for the overall transition process. In particular, it largely overlooks the interaction between Truth Commissions and the other forces in society that shape the emerging polity. Hayner acknowledges this problem, stating that "it is clear that truth commissions are not enough to move a country out of its past and towards a more secure future. We should take a close look at the interplay between a truth commission and other transitional initiatives, and how a truth commission might contribute to needed reforms" (1996: 28).

Using the case studies of Chile and El Salvador, this paper presents a framework for assessing the role of Truth Commissions in political transition. The central argument is that Commissions have the potential to support the transition from authoritarian to democratic governance where they contribute to two essential tasks facing society. First, Commissions must act to dismantle enclaves of authoritarian power in the transitional polity. These enclaves include a country's legacy of human rights violations and anti-democratic procedures, institutions, values and attitudes that are transplanted from the past. Second, Truth Commissions must simultaneously contribute to the creation of alternatives to authoritarian governance on which a democratic polity can be built and reproduced over time.

Identifying these two essential tasks allows for Truth Commissions to be situated within the overall transition process. The framework for assessing their role begins with the understanding that transition is a multi-dimensional process. Dynamic change occurs in both the formal political system as well as in the substantive dimensions of the economic, cultural and social foundations on which that system is built. In turn, the characteristics of the polity that emerges during transition are shaped by a complex dialectic of interaction between actors in society seeking to influence the outcome of the process. Truth Commissions enter into the dialectic of transition as one social force among many.

Building on this understanding of transition, the framework has three essential components. First, basic definitions of *political transition*, *democracy*, *democratic consolidation* and *authoritarian enclaves* are required. These are drawn from the large body of literature on political transition written during the past two decades. The definitions describe the dynamics of power during a period of transition, the characteristics of authoritarian enclaves and the implications that the presence of such enclaves has for an emerging polity.

Second, it is necessary to determine whether authoritarian enclaves existed in the countries that are being considered. The *mode of transition*, or the mechanisms and agreements between key political actors used to implement a transition process, is used as one indicator of their presence. Some scholars argue that there is a direct relationship between the mode of transition and the ability

of authoritarian actors to impose enclaves on the emerging political system. This occurs where such actors are not clearly defeated prior to transition and enter into the process with enough power to condition the terms under which changes will occur. The mode of transition, therefore, serves as a vehicle for protecting the interests of authoritarian actors and projecting their power into the future.

Third, the framework identifies the specific enclaves of authoritarian power that Truth Commissions are able to take action against. Commissions are not capable of addressing every aspect of a transition process nor can they solve all of the dilemmas facing societies undergoing change. Their agency is limited by the human rights focus of their mandates and by *de facto* power constraints that exist in the emerging polity. As such, assessing the role of Truth Commissions requires an understanding of which aspects of the process they can or can not influence.

Accordingly, this paper argues that transition occurs in specific sites in a society. The *sites of transition* exist in both the formal and substantive dimensions of the polity and are identifiable using John Gerard Ruggie's work on epochal change (1993). Each site of transition is inhabited by different social forces and it is precisely within their boundaries that the interaction between authoritarian enclaves and a Truth Commission potentially occurs. By then juxtaposing the sites of transition with the goals of a Truth Commission as described by Popkin and Roht-Arriaza, it is possible to identify which authoritarian enclaves a Truth Commission is able to take action against.

This paper, therefore, is able to come to a determination on the following questions: What social, political and economic structures supported the former regime, at the national and international levels? Which of these structures survived and were transplanted into the post-transition polity? In which sites of transition is change occurring? Which sites fall within the mandate of Truth Commissions and are subject to action by them? What possibility exists for Truth Commissions to dismantle the authoritarian enclaves existing in these sites and contribute to the creation of new structures on which a democratic polity can be built?

1.1 Two case studies

Empirical information to test the framework for assessing the role of Truth Commissions in political transition is drawn from two case studies: Chile and El Salvador. The two Commissions are considered classic examples of Commission processes for the design of their work. In the former country, the transition to civilian rule took place in 1990. President Patricio Alywin Azocar succeeded General Augusto Pinochet in elections that ended seventeen years of authoritarian rule. The Chilean National Commission on Truth and Reconciliation (*Comisión de la Verdad y Reconciliación*) was convened by President Aylwin on 25 April 1990.[4] The Truth and Reconciliation Commission was a strictly national body, mandated, funded and staffed entirely by Chileans without any direct external involvement. It was chaired by Chilean jurist Raul Rettig and was composed of

[4] The Commission received its mandate under Supreme Decree No. 355 of 1990.

eight members, including persons with a history of human rights advocacy as well as scholars and jurists considered to be close to the former military government. A staff of sixty researchers supported the investigation. The Commission presented its report on 9 February 1991 after nine months of investigation.

It is more precise to speak of two transitions in El Salvador. The first transition from military to civilian governance took place in 1984. While the military abandoned formal control of political office, it retained both *de jure* and *de facto* control over significant aspects of governance. Also, large sectors of the population continued to be excluded from participation in the political system. A second transition, therefore, was needed to resolve the country's twelve year old civil war. This took place in 1993 with the signing of the Capultepec Peace Accords between the government of El Savaldor and the Faribundo Marti National Liberation Front (*Frente Faribundo Marti de Liberación Nactiónal*-FMLN) on 16 January 1992.[5]

The peace process was brokered by the United Nations and its implementation was verified by the United Nations Observer Mission in El Salvador (ONUSAL).[6] Commenting on the extent of its role, Stephan Baranyi and Liisa North observe that "no previous UN peace-keeping operation involved as high a degree of intrusiveness into what has traditionally been considered the domestic matters of a sovereign state" (Baranyi and North, 1996: 3). International intervention was required as there were no institutions or actors in El Salvador with the capacity and perceived neutrality to mediate the negotiations and guarantee both the implementation of the peace agreements and the safety of the demobilized combatants and their supporters.[7] In the context of Cold War rivalry, international actors also played a role in supporting the two sides to the conflict. Their pressure and support was essential in moving the Salvadoran government and the FMLN towards negotiations.

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5 Chapultapec Peace Agreements, U.N. Doc. DPI/1208-92614 (1992) at 45-145

6 The negotiations were also supported by the "Four friends of the Peace Process": Colombia, Venezuela, Spain and Mexico. These countries "played a special role in assisting with the negotiations and helping overcome deadlocks" (Buergenthal, 1995: 292).

7 The dynamics of the conflict and the extreme polarisation of Salvadoran society made international intervention in the peace negotiations necessary. Barbara Walter writes that "unlike interstate wars, civil wars rarely end in negotiated settlements. Between 1940 and 1990, 55 percent of interstate wars were resolved at the bargaining table, whereas only 20 percent of civil wars reached a similar conclusion". Walter notes that internal wars usually end in a clear defeat for one side to the conflict. However, if a third party intervenes peace "negotiations almost always succeed". She continues that "adversaries often compromise on basic issues underlying their conflict and they frequently find mutually acceptable solutions to their problems. Negotiations fail because ... at a time when no legitimate government and no legal institutions exist to enforce a contract, they are asked to demobilize, disarm and disengage their military forces and prepare for peace". However, once they demobilize, former combatants are in a vulnerable position and have no way to defend themselves or enforce the contract reached in negotiations. Walter argues that in most situations of internal conflict, the combatants prefer defeat than negotiations under such insecure conditions. "Only when an outside enforcer steps in to guarantee the term [of a peace agreement] do commitments to disarm and share political power become believable. Only then does co-operation become possible" (1997: 335-336).

The Truth Commission for El Salvador (*Comisión de la Verdad para El Salvador*) was mandated under the terms of the Chapultapec Peace Accords. The Commission's report, From Madness to Hope (*De la Locura a la Esperanza*), was officially released by the Secretary General of the United Nations on 1 April 1993 (UN Doc. S7/25500). In contrast to its Chilean counterpart, the Truth Commission for El Salvador was exclusively an international process. The Commission was headed by three non-Salvadoran individuals appointed by the Secretary General of the United Nations after consultation with the two parties.[8] It was staffed entirely by non-Salvadorans and largely funded by international donor nations. Commissioner Thomas Buergenthal notes that "the [Salvadoran] Truth Commission marks the first time that the parties to an internal armed conflict ... conferred on an international commission composed of foreign nationals designated by the United Nations the power to investigate human rights violations ... and make binding recommendations" (1995: 294).

1.2 Structure and methodology

This paper develops a framework to assess the *potential* role of Truth Commissions in supporting the transition from authoritarian to democratic governance. As such, it does not evaluate the actual effectiveness of the Truth Commissions for Chile and El Salvador in achieving their stated goals. Rather, within the framework, information is drawn from these two case studies to demonstrate which aspects of a transition process Commissions are able to address and how they do it.

Chapter One presents a theoretical framework for considering the dynamic of interaction between the social forces that shape the political system that emerges during transition. On this basis, the role of Truth Commissions in transition can be demonstrated. The Chapter draws on the extensive body of literature written during the past two decades on the themes of "political" and "democratic" transition.

The primary source of empirical information for Chapters Two to Four are the reports of the Truth Commission for Chile and El Salvador. Supporting information is also drawn from journal articles and the reports of various human rights organisations. Chapter Three establishes that human rights violations committed by former authoritarian regimes in Chile and El Salvador were *gross and systematic*; violence was used as a deliberate state policy to achieve the objectives of the government. The state's responsibility for past violations created a political and legal imperative for new governments to account for the past and offer the victims, and society at large, some form of resolution. Truth Commissions were used as a compromise mechanism to achieve this result. In turn, national and international human rights law provided a moral and normative framework for their investigations.

Chapter Four considers the role of Truth Commissions in dismantling

[8] The Secretary General named former Colombian President Belisario Betancur, former Venezuelan Foreign Minister Reinaldo Figuerdo and former member of the Inter-american Court of Human Rights, Prof. Thomas Buergenthal.

enclaves of authoritarian power in three sites of transition: Material Environments (economic structures), Strategic Behaviour (the institutional matrix of constraints and opportunities that shape the interaction between social actors) and Social Epistemes (bodies of knowledge and ways of imagining relations within a political collective).

2 A theoretical framework for assessing the role of truth commissions in political transition

2.1 Definitions

Section 2.1 provides the definitions of *political transition*, *democracy* and *democratic consolidation* needed to describe the dynamics of power during a period of political transition. The definitions also outline the fundamental tasks facing a society moving from authoritarian to democratic governance.

2.1.1 The three phases of a political transition

Transition is the process of change from one form of political system or regime to another. In their early work, Guillermo O'Donnell and Philippe Schmitter wrote that "transitions are delimited, on the one side, by the launching of the process of dissolution of an authoritarian regime and, on the other, by the installation of some form of democracy, the return to some form of authoritarian rule or the emergence of a revolutionary alternative" (1986: 6). It is important to note that O'Donnell and Schmitter's definition has three possible outcomes, of which the creation of a democratic polity is only one option. A democratic transition begins "at the moment that authoritarian rulers announce their intention to extend significantly the sphere of protected individual and group rights and ends with the advent of a democratic regime" (ibid: 11).

O'Donnell and Schmitter's early definition clearly delimits the beginning and end points of a transition process. More current literature distinguishes between the actual phases that a transition may pass through within these limits. Writing in 1992, O'Donnell observes that democratisation actually implies two distinct transitions. "The first is the transition from the previous authoritarian regime to the installation of a democratic government. The second transition is from this government to the consolidation of democracy, or in other words, *to the effective functioning of a democratic regime* (O'Donnell's emphasis)" (1992: 18). Manuel Antonio Garretón divides a transition process into three distinct phases. "The first is *transition*, meaning the initial passage from an authoritarian or military regime to a basic set of democratic institutions. Transition ends with the *inauguration* of the new democratic government. Both transition and inauguration must be distinguished from [the third phase] of *consolidation*, the strengthening of the new regime over a period of time (Garretón's emphasis)" (1995: 146).[9]

While O'Donnell is more widely cited, this paper will use Garretón's definition as it is more precise. Distinguishing between the different phases, his

[9] Also see Garretón, 1994: 222.

model provides a conceptual framework for studying the interaction between the forces in society shaping the emerging polity at different moments in the process. It also physically situates Truth Commissions within the transition process, identifying which phases of transition they are intended to address.

Reflecting the overall dynamics of a political transition, Commissions can work simultaneously in three distinct time frames. In Chile and El Salvador, they were created by the inaugural regime at the beginning of the second transitional phase and mandated to investigate the legacy of human rights violations committed by the former regime. These are events occurring in the past. However, their resolution is a pre-condition of consolidating a democratic polity in the future, implying the creation of institutions, procedures and values in society "that prevent such atrocities from ever happening again" (Zalaquett, 1993: xxiii). In this regard, the central objective of Truth Commissions is to support efforts towards the third phase of democratic consolidation. (Zalaquett, 1993: xxiii; Alfonsin, 1993: 16; Hayner, 1996: 21; Popkin and Roht-Arriaza, 1995: 79; Pasqualucci, 1994: 231-234). This objective is clearly established in the mandates of the Chilean and Salvadoran Commissions (Rettig, 1993: 5-9 ; Salvadoran Commission, 1993: 189-192).

2.1.2 Defining democracy

Within the three possible outcomes of a transition process identified by O'Donnell and Schmitter, therefore, the stated purpose of a Truth Commission is to support the second option of creating a democratic political system. Considering the role of Commissions in transition, therefore, requires a definition of what kind of polity that they are intended to support.

This paper uses Robert Dahl's definition of polyarchy as a minimalist definition of democracy (1971: 7). Much of the current literature uses Dahl's concept of polyarchy as a point of departure, expanding on it to describe in more specific terms the qualities of a democratic polity (Diamond, Linz and Lipset, 1989: xvi-xviii; O'Donnell, 1992: 18; Valenzuela, 1992: 60). Paraphrasing Dahl, O'Donnell writes that "a polyarchy has seven essential attributes: (1) elected officials; (2) free and fair elections; (3) inclusive suffrage; (4) the right to run for office; (5) freedom of expression; (6) alternative information; and (7) associational autonomy" (1996: 35). It is important to note that the seven attributes of a polyarchy are an indivisible whole and that all citizens must have the unimpaired opportunity to enjoy the rights and obligations that they confer.

Scott Mainwaring describes the concept of polyarchy as "liberal, procedural and minimalist" (1992: 297). It is critiqued in the literature for the characteristics of a democratic polity that the concept fails to capture and for the ability of authoritarian regimes to co-exist with many, but not all, of its attributes. However, both Mainwaring and O'Donnell maintain that the seven attributes of a polyarchy "establish a crucial cutoff point" that distinguishes between a democratic government and both "unabashed authoritarian regimes [and] countries that hold elections but lack some of the characteristics that jointly define polyarchy" (O'Donnell, 1996: 36).

O'Donnell further argues that polyarchy's narrow focus on the procedural dimensions of a political system is necessary for methodological reasons, including the fact that "the distinction between political democracy on the one hand and socio-economic and cultural democratisation on the other is precisely what allows us to explore the various relationships between the two" (1992: 18).[10] On this point, he acknowledges that there is a "complex dialectic" of interaction between politics and other spheres of economic, social and cultural life that has significant implications for the democratic qualities of the polity that is being consolidated (ibid: 19-20).

Similarly, Carlos Villas writes that "although there is no linear correlation between the political system and socio-economic structures, the existence of some kind of congruence between one and the other has been stated since the very beginning of political science" (1996: 462). Villas argues that political systems have both formal and substantive dimensions. "The substantive dimension refers to the links between the political system, the socio-economic structure and cultural patterns, and expresses itself in the content of the demands that the political system is expected to process and in the way it processes them ..., the formal dimension refers to the procedures and institutions framing those relations, procedures and institutions agreed upon by every actor" (ibid: 461-462). The complex dialectic between the formal and substantive dimensions of a polity, therefore, has direct implications for the characteristics of the political system that is being consolidated.

Considering a polity in all of its formal and substantive dimensions is a maximalist approach to the study of democracy. Both Villas (1996: 464-465) and Garretón (1994: 232) argue that "social democratisation", or the extension of democracy to other realms of life, must occur before persons are able to enjoy the democratic rights that exist within the formal realm of politics. Most importantly, Villas maintains that "extreme poverty jeopardises the very concept of citizenship, in as much as such poverty excludes people from access to services and basic resources- jobs, health and education- which are considered preconditions for personal autonomy and meaningful political participation" (1996: 468). It is not possible, therefore, for persons to enjoy all of the rights and obligations conferred by a polyarchy in the formal political system without social democratisation in its substantive dimensions.

In the context of this paper, there are several reasons for recognising the relationship between the formal and substantive dimensions of a political system. Under the terms of their mandates Truth Commissions are primarily concerned with the formal dimensions of a polity (1995: 80). However, acknowledging that there is an interaction between the formal and substantive dimensions of a political system provides the conceptual framework for considering the possibility that a Commission's investigation will have implications in the emerging polity's substantive dimensions. In this regard, Chile and El Salvador are characterised by extreme social and economic inequalities. The situation is particularly difficult in

[10] Larry Diamond, Juan Linz and Seymour Martin Lipset make a similar methodological argument (1989 xvi).

the latter country where inequality has historically been the fundamental source of social conflict..[11] There is a direct relationship, therefore, between the work of Truth Commissions and transitional mechanisms working in the areas of economic and social reforms.

2.1.3 *Consolidating a democratic political system after transition*

Garretón and O'Donnell write that the *consolidation* of a democratic political system is one possible end point of a transition process. At a minimum, consolidation implies that all of the seven attributes of a polyarchy are established in the formal dimensions of the polity. In addition, Juan Linz and Alfred Stephan argue that consolidation is achieved only when "sufficient agreement has been reached about political procedures to produce an elected government, when a government comes to power that is the direct result of a free and popular vote, when this government has the de facto authority to generate new policies and when the executive, legislature and judicial power generated by the new democracy does not have to share power with other bodies de jure" (1996: 3).[12]

Within this definition, Linz and Stephan ascribe three attributes to a consolidated democracy. "Behaviourally ... no significant national, social, economic or political actors spend significant resources attempting to achieve their objectives by creating a non-democratic regime ... Attitudinally ... when a strong majority of public opinion holds the belief that democratic procedures and institutions are the most appropriate way to govern ... and when support for anti-democratic alternatives is quite small ... Constitutionally ... when government and non-government forces alike become subjected to, and habituated to the resolution of conflicts within the specific laws, procedures and institutions sanctioned by the new democratic process" (Linz and Stephan, 1996: 6). "In short" write Linz and Stephan, "with consolidation, democracy becomes routinized and deeply internalized in social, institutional and even psychological life, as well as in the calculations for achieving success" (ibid: 5).

Linz and Stephan are concerned with the formal dimensions of a political system. However, there is a recognition in the literature that consolidation also implies a transformation in a polity's substantive dimensions. Garretón writes that "in Latin America today, democratisation is related to a new phase of socio-economic development and modernisation as well as to profound political change" (1995: 147). Moreover, Garretón 1995: 147), Villas (1996: 464) and

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[11] The 1997 United Nations Human Development Report gives El Salvador a Human Development Index ranking of 115 out of a total 174 countries. Nicaragua (HDI 117) and Haiti (HDI 145) were the only countries in the Western Hemisphere with a lower ranking. Chile has an HDI ranking of 33, the best in Latin America after Costa Rica.

[12] O'Donnell argues that democratic and anti-democratic elements can co-exist within Linz and Stephan's definition (1996: 37-39). Similarly, Garretón writes that that a democracy can become consolidated "yet remain unable to cope with the problems that it is supposed to solve". These relate to "governance, citizenship and institutional frameworks for resolving demands and conflicts" (1995: 147).

Jorge Castañeda (1996: 47-48) maintain that extreme inequalities in a society are destabilising to a democratic system and threaten its viability over the long term.

Castañeda goes so far as to conclude that extreme economic inequalities and a democratic polity can not co-exist. He argues that the model of formal democracy being consolidated today in Latin America "is not compatible with the region's social structures, and particularly with the enormous gaps between rich and poor, black brown and white, town and country, industrial power houses and rural backwaters" (1996: 47). The arguments of Garretón, Villas and Castañeda are substantiated by a considerable body of literature demonstrating that current economic models used in the three countries tend to increase inequalities, effectively undermining the transition process and potentially leading to a new cycle of social conflict.[13]

2.1.4 *Perverse institutions, reserve domains and authoritarian enclaves*

Truth Commissions must work towards establishing the elements of a consolidated democracy if they are to make a positive contribution to the transition process. The definition of consolidation used by Linz and Stephan implies that non-democratic elements of the polity, in both their formal and substantive dimensions, must be all but eliminated during the transition process. Similarly, Chilean Commissioner Jose Zalaquett summarises the challenge confronting societies in transition as follows: "how can a country overcome a legacy of dictatorial rule and massive human rights violations if the new government is subjected to significant institutional and political constraints?" (1993: xxiii). As with Linz and Stephan's definition of democratic consolidation, Zalaquett is primarily with the dynamic of interaction between the forces and actors in society supporting and opposing the creation of a democratic political system. Within this dynamic, the literature identifies two fundamental tasks faced by the inaugural regime during the second phase of transition.

First, the inaugural regime must eliminate anti-democratic elements of the polity, including "institutions, procedures and expectations that are inconsistent with the minimal workings of a democratic regime" (Valenzuela, 1992: 70). Here O'Donnell writes that the inaugural regime must "neutralise those actors in society who are unconditionally authoritarian, either by isolating them politically or by turning them into fragmented sects that can not threaten the survival of the regime" (1992: 21). Second, the regime must simultaneously replace the anti-democratic elements of the transitional polity with new ones on which a democratic political system can be constructed (Garretón, 1995: 147; O'Donnell, 1992: 21-22; Valenzuela, 1992: 61-64).[14] Valenzuela describes these institutions as "virtuous" to the extent that "they permit the reproduction of the minimal procedures of democracy" over time (Valenzuela, 1992: 62).[15]

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[13] See de Soto and del Castillo (1994) , Boyce (1996) and Boyce (1995).

[14] Valenzuela refers to this process as replacing perverse institutions (anti-democratic) with virtuous institutions (democratic) (1992: 62).

[15] Also see Linz and Stephan (1996: 6-16), Karl and Schmitter (1991: 271), McSherry (1992: 463-465) and Mainwaring (1992: 297).

The literature broadly defines the success of the inaugural regime in terms of its ability to complete these two essential tasks (Linz and Stephan, 1996: 55; O'Donnell, 1992: 21-22; Garretón, 1995: 147). Failure to do so results in what Garretón defines as an "incomplete democracy, a regime that is basically democratic but riddled with inherited authoritarian enclaves: nondemocratic institutions, unresolved human rights problems, and social actors not fully willing to play by democratic rules" (1995: 147).[16] The literature provides a detailed description of the characteristics of these anti-democratic elements, referring to them as "perverse institutions" (Valenzuela, 1992: 61-65) or "reserve domains" (O'Donnell, 1992 : 20; Linz and Stephan, 1996: 67). This paper uses Garretón's definition as it refers to both formal and substantive aspects of a polity. The basic characteristic of an enclave is that it removes substantive areas of government authority and policy making from the purview of elected officials. The power is retained by authoritarian actors, who enter the transition process with the capability to either exercise direct control over important aspects of governance or to condition the actions of elected officials. It is expressed through the implicit or explicit threat of the use of force should the interests and prerogatives of these actors be threatened.

Garretón finds that post-authoritarian situations generally exhibit three different types of inherited enclaves. The first of these is the "institutional legacy, that is, the co-existence of democratic norms with constitutional or legislative elements that limit democratic practice. The second is the enclave of actors, consisting of groups, organisations principally in the military or linked to the military, that are not ... integrated into the democratic game, and who may even conspire against it. The third one, encountered more commonly in countries that have no previous experiences of democracy [such as the countries of Central America] ... is the generalized presence of anti-democratic values, mentalities and attitudes" (1994: 223).

The existence of authoritarian enclaves prevents the consolidation of a democratic polity as described by Linz and Stephan. Significant actors continue to pursue their objectives outside of the democratic process. These actors are not fully subjected to the rule of law or the procedural norms of democratic institutions. Consequently, the inaugural regime is forced to share aspects of power with anti-democratic actors and can not be said to have the *de facto* authority to fully govern. Under these conditions, even the minimalist definition of democracy as polyarchy can not exist (Linz and Stephan, 1996: 67; Garretón, 1995: 146-147; Valenzuela, 1992: 62). It is precisely enclaves of authoritarian power, therefore, that Truth Commissions must act against and attempt to dismantle.

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[16] Karl refers to "hybrid regimes" in Central America, noting an "uneven acquisition of the procedural requisites of democracy". Civilian control over the military has not been established, important sectors of the population remain politically and economically disenfranchised despite free and fair elections and "impunity is condemned, yet judiciaries remain weak, rights are violated and contracts broken" (1995: 80).

2.2 Typographies of modes of transition in Chile and El Salvador

Having identified the role of authoritarian enclaves in preventing democratic consolidation, it is necessary to now determine whether such enclaves existed in the two polities that are being studied. Two broad themes emerge in the literature. First, there is a direct relationship between the past and the present. Linz and Stephan write that "the characteristics of the previous non-democratic regime have profound implications for the transition paths available and the tasks faced [by inaugural regimes] as they begin their struggles to develop consolidated democracies" (1996: 55).[17] Second, the mode of transition "to a significant extent, determines which 'types of democracy' will emerge ... and whether or not they will be consolidated" (Karl and Schmitter, 1991: 270). These two arguments substantiate Garretón's description of authoritarian enclaves as a problem "inherited" from the former regime (1994: 222-223).

Terry Lynn Karl and Philippe Schmitter write that "transitions are produced by actors who chose strategies that lead to change from one regime to another". They continue that "polities undergoing regime change from autocracy do so by a variety of means ... these can be specified and clustered into a limited number of modes of transition" (1991: 269). Modes of transition are defined as the political mechanisms and agreements used to facilitate a regime change. Once again, the authors cited are concerned with the dynamic of interaction between forces in society supporting and opposing the creation of a democratic polity. In particular, the mode used reflects the power capabilities of the outgoing regime to negotiate critical features of the transition process, including its ability to impose authoritarian enclaves on the inaugural regime.

Accordingly, this paper uses the mode of transition employed to effect change in Chile and El Salvador as one indicator to determine whether enclaves of authoritarian power existed in their respective polities during transition. The literature offers various typographies to explain specific transitional situations and the modes associated with them. While a full review is beyond the scope of this paper, three such models can be drawn on to describe the process in Chile and the first transition in El Salvador (Linz and Stephan, 1996: 55- 74; O'Donnell, 1992: 24- 27; Karl and Schmitter, 1991; Valenzuela, 1992: 58- 81; Mainwaring, 1992: 322). The second transition in El Salvador does not fit easily into existing models. This is largely due to the unique circumstances found in negotiating a political settlement to an extended period of civil war. A fourth mode of transition is proposed, therefore, drawing on Ricardo Córdova Macías' concept of a "political regime transition" (1996: 26-28) and the work Karl (1995: 75-76).

[17] Also see Valenzuela, 1992: 73-74.

2.2.1 Mode one; defeat

The defeat mode of transition was not used in either Chile or El Salvador. However, it is worth considering to illustrate precisely what did not happen. Under this typography, the former regime is either defeated in an external war or collapses as the result of a combination of factors such as failed economic policies, conflict inside the regime and the agency of an effective opposition. The defeat mode has led to "transitions in which the former authoritarian rulers were unable to control the agenda of the issues to be negotiated with the opposition and the results thereof" (O'Donnell, 1992: 25). Authoritarian actors, therefore, are left with a limited ability to protect their interests through shaping either the transition process or the polices of the inaugural regime. O'Donnell argues that transition by regime collapse offers the best possibility for democratic consolidation (1992: 24). Opposition actors, including democrats, have the possibility to be dominant and determine the characteristics of the post-transition polity through their agency.

The defeat typography is often used to describe Germany and Japan after World War Two. Argentina (1983) is cited as the closest example of a Latin American defeat transition, the consequence of the military regime's failed economic policies and the humiliating loss of an external war with Great Britain over the Falkland/Malvinas Islands. However, Mainwaring notes that "in no recent transitions has an authoritarian government been so defeated that it was incapable of asserting influence over the transition" (1992: 301). Even in the case of Argentina, the military was able to protect some of its prerogatives and recovered aspects of its strength by the late-1980s (ibid: 301).

2.2.2 Mode two; pacted transitions

Pacted transitions occur "when elites agree upon a multilateral compromise between themselves" (Karl and Schmitter, 1991: 275). A series of pacts or accords are used to protect the interests of the major actors by establishing the policy orientation of the inaugural regime and delimiting the division of powers between those actors. Consequently, the pacts determine substantive aspects of the polity inherited by the inaugural regime, particularly regarding the dynamics of civil-military relations (Karl and Schmitter, 1991; O'Donnell, 1992: 26).

The basic distinguishing feature of a pacted transition is the existence of authoritarian enclaves in the post-transition polity. While the outgoing regime is weakened by the events leading to transition, it retains a high degree of power relative to democratic actors. The regime, therefore, is strong enough to dictate the terms under which it will relinquish power and exerts a high degree of control over the rhythm of transition and the issues to be negotiated. Consequently, it is able to impose enclaves on the inaugural regime with the objective of protecting the interests, prerogatives and power capabilities of anti-democratic actors into the future (O'Donnell, 1992: 26; Valenzuela, 1992: 74).

A pacted transition, therefore, does not represent a rupture with the past (Mainwaring, 1992: 322; Karl and Schmitter, 1991: 273). While temporary in nature, Karl and Schmitter argue that the pacts have the potential to become a

permanent part of the polity. "Informal accords between political parties and the armed forces can establish the initial parameters of civilian and military spheres in ways that deviate from formal constitutional norms. Thus, what at the time may appear to be temporary alliances during the uncertain transition may become persistent barriers to change" (1991: 273).

The pacted typography is often used to describe the situation in Chile. The outgoing regime of General Pinochet imposed three basic demands on the inaugural regime as a condition of permitting the transition to occur, all of which placed limitations on the sovereign authority of the civilian government. First was a pact of *institutional continuity* that allowed the military to retain significant autonomy from civilian oversight. Many of the prerogatives enjoyed by the military during the years of dictatorship were entrenched in the 1980 constitution and the institutional and procedural structure of the new polity. Pinochet also secured the continuity of the military leadership, allowing him to remain as chief of the Armed Forces until 1998 (Linz and Stephan, 1996: 206-209; Loveman, 1994: 121; Americas Watch, 1994; Valenzuela, 1993; 63-64; Zalaquett, 1993: xxvi).[18]

Second was a *pact of impunity* for past human rights violations. The Pinochet regime demanded a guarantee that members of the military would not be prosecuted for human rights violations committed between 1973 and 1978. That guarantee was institutionalised in the Amnesty Law of 1978, a statute that was upheld by the Chilean Supreme Court in 1990 and 1993 (Loveman, 1994: 118; Popkin and Roht-Arriaza, 1995: 110; Zalaquett, 1993: xxvi).[19]

Third was a pact of *economic continuity*. In reference to Chile, Casteñada notes that "the only way for nascent democratic regimes to last was if they guaranteed the economic and social polices that have been carried out by the dictatorships that had preceded them" (1996: 44). The return to democratic governance in Chile, therefore, was conditional on continuing the free market economic policies implemented by the Pinochet government. The presence of these three pacts resulted in a transfer that allowed the institution of the military and its civilian allies to retain significant power into the second phase of transition.

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[18] Pinochet was scheduled to step down as head of the Armed Forces in March, 1998, moving to a position in the Senate. However, a group of Senators is trying to prevent Pinochet from assuming his new position, charging that it would be a "dishonor to the democratic institutions [Pinochet] once betrayed". As a result, Pinochet has stated that he will not step down from his position with the military, setting the stage for a confrontation with the government (Haldelman, 1998).

[19] Legislative Decree 2191 of April 1978 grants amnesty for agents of the state from September 1973 to April 1978. This covers the period of martial law imposed after the coup when most human rights violations occurred. Shortly before the transition, General Pinochet told reporters that "the day they touch any of my men will be the end of the state of law". Pinochet said that the military "would not accept" the prosecution of its members (Boston Globe article as quoted by Huntington, 1995: 71).

2.2.3 *Mode three; extrication from rule by the hierarchical military*

A variation of the pacted transition model is extrication from rule by the hierarchical military (Linz and Stephan, 1996: 59; 66-68).[20] Linz and Stephan observe that the military is a "permanent part of the state apparatus, with enduring interests and permanent functions that transcend the interests of the government of the day" (ibid: 67). When the military holds formal political power, the actions of the "military as government" may threaten those interests. In this context, the "military as an institution" plays a role in pressuring the "military as a government" to withdraw from direct rule by holding "extrication elections" (ibid: 59).

Of all the possible modes of transition, Linz and Stephan argue that extrication offers the outgoing regime the greatest ability to impose authoritarian enclaves on the inaugural government. The regime is not defeated and may not even be significantly weakened by the events leading to transition. Rather, the transition to civilian governance is part of a strategy to protect the long-term interests, prerogatives and institutional integrity of the military. It chooses to formally leave office by entering into a power sharing agreement with a limited number of civilians who are either allies or share common interests. Under this scenario, the political system is not open or competitive and the inaugural government may have neither de facto nor de jure autonomy (Linz and Stephan, 1996: 67; Mainwaring, 1992: 321-324).

The transition by extrication mode describes the first regime change in El Salvador (1984). Linz and Stephan note that the ability of the military to impose enclaves declines with the severity of the crisis leading to extrication. In El Salvador, that crisis resulted from a combination of economic factors, international pressure, the inability of the military to defeat armed opposition groups and the erratic behaviour of the "military as government" (Linz and Stephan, 1996: 58). These factors combined to force the military from officially holding office. However, it retained the power capabilities necessary to impose significant enclaves on the post-transition polity. According to the report of the Truth Commission for El Salvador, during this period the military "ended up totally controlling the civilian authorities, frequently in collusion with some influential civilians. None of the three branches of the government -judicial, legislative or executive- was capable of restraining the military's overwhelming control of society" (1993: 172).

The prerogatives of the military and their civilian allies during the first transition were protected through the three essential pacts that also facilitated transition in Chile. Participation in the formal political system was limited to a few political parties acceptable to the military. Large sectors of the population, therefore, remained excluded from any meaningful participation. A significant change in the orientation of economic policy was not part of the transition agreement with the new civilian authorities and the pact of impunity was

[20] Mainwaring (1992:322-323) offers a similar typography, noting that the cost of governing becomes too high for the military. However, he argues that the military has limited power capabilities to shape the post-transitional polity.

established in the form of an amnesty law. The law was passed by the outgoing military regime in 1984 to prevent prosecution for violations committed during their tenure in office (Loveman, 1994: 118).

2.2.4 *Mode four; political regime transition*

The literature on modes of transition does not describe the second transition in El Salvador. This is largely due to the unique circumstances that shape a negotiated solution to an extended period of armed conflict. This paper, therefore, uses Córdova's concept of a "political regime transition" to describe the process in that country (1996: 27). Córdova argues that the political regime mode of transition does not focus on who has power, but rather on "the patterns that determine the means and channels of access to power, the margins of action of those already in power and the characteristics of the actors that are admitted to and excluded from this access to power" (ibid: 27). The objective, therefore, is to reform the formal political system to allow for the participation of important actors in society who were formerly excluded from it.

There are two features that distinguish Córdova's political regime transition from other modes. First, the transition from military to civilian rule had previously taken place in El Salvador. Although dominated by the military, the second transition was formally negotiated by an elected civilian government.[21] This dynamic created the preconditions for the second characteristic. A political regime transition does not imply an actual change in government nor is such a change an item for negotiation as in the case of the pacted or extrication modes (Córdova, 1996: 27-28). Rather, the regime that initiated the first transitional phase in El Salvador became the inaugural regime in its second phase. The transition was solely concerned with expanding the democratic qualities of the political system to ensure that formerly excluded groups had the possibility of winning power at some point in the future.

Political regime transition in El Salvador was the result of a political and military stalemate between the government and armed opposition groups. Córdova describes this crisis of hegemony "in which the principle actors had veto power or the means to neutralize the initiatives of the other, but lacked sufficient power to impose themselves or their programs on the rest of the political actors" (1996: 47). Similarly, Karl maintains that the stalemate was the result of "the conditional victory of old and new dominant groups as well as the conditional defeat of popular organizations" (1995: 76). By these descriptions, opposition groups had enough power to force the transition and to extract significant concessions from the government in relation to their ability to participate in the formal political system. The result was not a change in government, but the creation of a new space in the formal polity where the opposition could contest elected office.[22]

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[21] Buergenthal's account of the Truth Commission process in El Salvador indicates that the military was a significant force shaping the peace negotiations. Without its support, the process could not have proceeded (1995).

[22] The most important opposition group was the Faribundo Marti National Liberation Front (FMLN), a coalition of different armed revolutionary movments.

Without a change in the actual government, former authoritarian actors retained significant power to impose enclaves on the new political system in El Salvador. The inaugural regime also assumed the responsibility of accounting for past human rights violations that occurred while it was in power. On this point, Buergenthal observes that "it is important to recall that the very governmental institutions and individuals responsible for many of the most egregious acts of violence in El Salvador remained in places of power ... the situation would have been quite different had a transitional government assumed power after the signing of the peace negotiations or if a change had occurred in the leadership of the military and security forces as well as in the judiciary" (1995: 301).

Elements of the three essential pacts were also found in the Salvadoran transition agreements. First, despite political reforms under the peace agreements, the institutional structure of the pre-transition state remained largely intact. The government of El Salvador, therefore, can be said to have negotiated institutional continuity into the peace process.[23] Second, the basic economic policies of the Salvadoran state were not subject to negotiation during transition. Rather, the transition process appears to have entrenched those policies with the support of the international community. On this point, de Soto notes that during the peace negotiations "there was a second process underway. Sponsored by the International Monetary Fund and the World Bank, it called for implementing a rigorous economic stabilisation and structural adjustment program" (de Soto and del Castillo, 1994: 70). These reforms supported the economic policies of the former and at once inaugural government.

Third, the Salvadoran Congress passed an amnesty law presented by President Cristiani only four days after the Truth Commission submitted its report. The law prevents the persons identified by the Commission from being tried in the Salvadoran court system (Buergenthal, 1995: 319). It also strengthens two previous amnesty laws that were passed by the government in 1984 and 1992.[24] As such, the guarantee of "no prosecution" was also entrenched in the transitional polity.

2.3 John Gerard Ruggie and the Theory of Epochal Change

The modes of transition used in Chile and El Salvador allowed authoritarian actors to impose significant enclaves on the transitional polities of both countries. To assess the role of Truth Commissions in carrying out the two fundamental transitional tasks of dismantling these enclaves while supporting the creation of

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[23] This statement is made recognising that the opening of the political system creates the possibility for significant change in the future. Here Karl argues that "social forces [in El Salvador] have been profoundly transformed and the objective conditions make compromise more essential than before". These factors mean that a return to blatant authoritarian rule unlikely (1995: 73).

[24] These laws included the Partial Amnesty of 1987, Legislative Decree 805; the Law on the General Amnesty for the Consolidation of Peace, Decree No. 486 of 20 March 1992; and the Law of National Reconciliation, Legislative Decree 147 of 23 January 1997. The latter the 1993 law extinguished civil and criminal responsibility related to specific crimes investigated by the Truth Commission for El Salvador.

new democratic structures and values, it is necessary to determine which specific enclaves Commissions are capable of acting against. This is done using John Gerard Ruggie's work on epochal change (1993: 140-174).

Ruggie asks the question "whether the modern system of states may be yielding in some instances to post-modern forms of configuring political space" (1993: 144). In proposing a framework for studying the process of transformation in modes of human organisation, Ruggie reaches into the past to explore the origins of modernity. He argues that the state was "socially constructed" (ibid: 152). It was "invented by early modern Europeans" (ibid: 166), evolving out of the feudal system as the result of "changes in several domains of social life" (ibid: 168).

To identify the forces that shaped epochal change, Ruggie explores "the raw materials that people used and drew upon in constructing [modernity]". He finds that "developments in three dimensions of the European collective experience were particularly salient, and that these three dimensions are irreducible to one another: namely *material environments*, *strategic behaviour* and *social epistemology* (author's emphasis)" (Ruggie,1993: 152). These dimensions can be understood as *sites of transition* where dynamic change occurs in a society. The fact that they are irreducible to each other means that a change in any one site has the potential to provoke changes in the other two sites over time. Ruggie's concept of epochal change, therefore, is consistent with the notion of a "complex dialectic" between the formal and substantive dimensions of a polity that was described by O'Donnell and Villas in Section 2.1.2.

An evolution in the three dimensions of material environments, strategic behaviour and social epistemology provoked and/or responded to the appearance of new modes of differentiation in the realm of international relations. Differentiation refers to the forms of organisation that separate one human collective from another. Ruggie writes that the mode of differentiation "within any collectivity ... is nothing less than the central focus of the epochal study of rule" (1993: 168). He uses the concept to explore the spatial and political characteristics of the modern state, noting that the state "differentiated its subject collectivity into territorially defined, fixed and mutually exclusive enclaves of legitimate domain" (ibid: 151). These characteristics determine not only the state's internal modes of organisation, but also those in the "international collectivity" of relations between nation states (ibid: 168).

Ruggie's framework for epochal change is relevant to the study of Truth Commissions in Chile and El Salvador for four distinct reasons. First, his three sites of transition identify where change may be occurring in those societies. Second, identifying these sites allows this paper to determine in which aspects of the transition process a Truth Commission is capable of taking action. This can be done by juxtaposing the sites of transition with the mandate of a Truth Commission and their four goals as described by Popkin and Roht-Arriaza in Chapter One (1995: 80).

Third, sites of transition falling into the mandate of a Truth Commission are precisely where that Commission enters the dialectic of transition, interacting with the other forces that shape the emerging polity. In turn, a Commission itself

provides a space where interaction may occur, shaping the characteristics of the transition process according to its objectives and capabilities. By their agency, therefore, Commissions can become a transitional force in their own right. Fourth, any change resulting from the interaction between Truth Commissions and other transitional forces has the potential to reconfigure the modes of differentiation on which a society is organised. This reconfiguration may include the emergence of new democratic structures in both the formal and substantive dimensions of the polity.

2.3.1 *Unbundled territories: Human rights and the process of change in International Relations*

The "unbundling of territory" is not a specific site of transition. Rather, it is a *process* used by Ruggie to explain changes in the mode of differentiation that structure the international polity. As it relates to the emergence of international human rights norms, the unbundling of territory created the conditions for Truth Commissions to come into being. The process, therefore, must be discussed in order to understand both the characteristics of Commissions and the form of action that they can take against enclaves of authoritarian power.

Ruggie writes that "the terrain of unbundled territories ... is the place wherein the rearticulation of political space would be occurring today" (1993: 171). The defining characteristic of unbundled territories is the "negation" of sovereign jurisdiction (ibid: 165). Differentiation in modern international relations is based on the principle of reciprocal sovereignty, the mutual recognition among states that each will exercise exclusive jurisdiction within its territorial boundaries (ibid: 162). This state-centric view is best described by Realist theory, which is "deeply implicated in the project of modernity" (ibid: 146). Ruggie finds evidence of new modes of differentiation in the international polity that result from the emergence of non-state spaces where political, economic and social activity is occurring.[25] Aspects of the sovereign authority are being relocated to these spaces to be wielded by the international community or by non-state actors, in turn limiting or reconfiguring the authority remaining with the state (ibid: 171-174).

Ruggie argues that the evolution of new modes of differentiation is produced by the appearance of "a new set of spatial, metaphysical and doctrinal constructs through which the visualisation of the collective existence on the planet is shaped" (1993: 173). Human rights are one such construct. In their epistemic dimension, they provide a "unit of discourse" around which international actors can "cluster" (see Section 2.3.4). Their relevance is not determined by territoriality. Rather, the concept of rights speaks to fundamental human values that are commonly held by societies across the boundaries of the modern state. As a "system of understanding" or "a body of ideas that shapes the perception of knowledge", they find meaning across physical space and in

[25] Ruggie is concerned with the new political configuration of the European Union (ibid: 171) and the "non-territorial region of the world economy, a decentered yet integrated space-of-flows ... which exists alongside the space-of-places we call national economies" (ibid: 172).

dissimilar cultural contexts. As such, Neil Nevitte describes human rights as a "transnational issue" (1996: 84-86). Kathryn Sikkink also writes that human rights embody a set of internationally "shared values or principled ideas- ideas about what is right and wrong" (1993: 412).

Accordingly, Stephen Marks (1993), Jack Donnelly (1993; 1994), Jim George (1993), Sikkink (1993) and Nevitte (1996) all argue that human rights have "for the first time ... become a dimension of international affairs" (Marks, 1993: 295). The "formal evidence" that states accept the rules of human rights is their ratification of international treaties and conventions (ibid: 28). These instruments shape the limits of what national governments can openly do and establish minimum standards for compliance with the norms that they embody. Once states become signatories to a human rights instrument, they assume "an obligation to comply in good faith with the ... obligations which they have undertaken" (Pasqualucci, 1994: 329). Compliance implies full implementation of the terms of the instrument, including harmonising national law to make it consistent with international standards.

States also accept that they are accountable before the international community for their performance in meeting these obligations. The state, therefore, is no longer the sole guarantor of human rights within its territorial jurisdiction.[26] Accordingly, the understandings of sovereignty itself being modified "in relation to specific issues that are deemed of sufficient importance to the international community to limit the scope of sovereign authority" (Sikkink, 1993: 415).

Nevitte (1996), Sikkink (1993) and Laura MacDonald (1994) also note the appearance of "issue driven political formations pushing a variety of new causes into their respective national political agendas" (Nevitte, 1996: 85). These include non-governmental organisations that advocate for (is "for" needed?) the protection and promotion of human rights. Sikkink refers to these organisations as forming "principled issue networks" linked internationally through decentralised networks that are "bound together by shared values and by dense exchanges of information and services ... " (1993: 415). While the nation state is traditionally understood as the unitary actor in international relations, non-governmental organisations are emerging as legitimate actors in their own right, with the power to influence national political agendas (Nevitte, 1996: 84-85). Non-state actors work nationally and internationally to place human rights at the centre of the political agenda both before and during transition, particularly in disseminating information and advocating for state accountability. They were a central force in Chile and El Salvador creating political pressure that lead to the formation of Truth Commissions.

As noted, changing modes of differentiation in international relations created the basic conditions for Truth Commissions to come into being. First, the concept of human rights came to symbolise larger issues of governance in many

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[26] The Secretary General of the United Nations, Kofi Annan, describes this process by writing that "when State protection [becomes] State abuse, the international community, through the mechanisms of guarantee that it has in place, becomes the only recourse for the universal rights of the individual failed and abandoned by the State" (1997: 3).

Latin American countries before and during transition. Garretón writes that "what happened is that the systematic repression under these [past authoritarian regimes] implied a regression that at the center of society the problem of life in its elemental, almost biological dimensions of survival or physical integrity. This regression was challenged in the name of human rights" (1994: 222). The concept of rights, therefore, served as a conceptual framework for challenging authoritarian regimes and proposing new models of governance.

Second, international instruments provide the legal basis that compels inaugural regimes to investigate the human rights record of their authoritarian predecessors. The instruments also provide a conceptual and normative framework for convening a Commission, including shaping their mandates and methodology. Third, Truth Commissions constitute a space for non-governmental and international actors to enter the dialectic of transition occurring among national forces. The presence of these actors has the potential to alter the national balance of power, potentially enhancing the capabilities democratic actors while simultaneously placing limits on authoritarian actors. Here Ruggie's definition of an unbundled territory best describes the situation in El Salvador where the international community has played a central role in negotiating, verifying and financially supporting the transition process.

2.3.2 Site one: Material environments

From considering changes in the realm of international relations that allowed Truth Commissions to come into being, it is now possible to consider the specific sites in national society where transition may be occurring. The first site identified by Ruggie is *material environments*. Ruggie's definition of material environments includes the evolution of new economic structures and technology, climate change and human demographics. These relate to "human ecology, relations of production and relations of force (1993: 152). This paper narrows Ruggie's definition to focus on changes that specifically occur in the economy of a country.

Ruggie argues that "changes in the material world [at the end of the fourteenth century] were so profound that existing social arrangements were strained to the point of collapse" (ibid: 154).[27] Similarly, an evolution in the site of material environments was a central factor shaping political transition throughout Latin America. Economic inequalities and the concentration of power in the hands of a small elite were among the most significant historical causes of social conflict in the region. Changes in the international economy during the 1980s and 1990s further pressed the need for the creation of new political and economic models.

Enclaves of authoritarian power may exist in site of material environments where a pact of *economic continuity* was imposed by the former regime and its allies (see Section 2.2). However, Truth Commissions generally focus on issues

[27] Material factors provoking the transition to modernity include emerging economic structures, technology, climate change and human demographics. These relate to "human ecology, relations of production and relations of force (Ruggie, 1993: 152).

related to the protection and promotion of human rights. In particular, the mandates of the Commissions for Chile and El Salvador include no mention of economic issues. Therefore, while a Truth Commission may indirectly open political space for democratic decision making on economic policy, issues falling with the realm of material environments must be dealt with using other initiatives.

2.3.3 *Site two: Strategic behaviour*

Ruggie's definition of strategic behaviour includes the totality of the political, legal and economic structures that emerged in the middle ages to regulate human activity and establish territorially fixed units of exclusive political control. He describes these structures as "the matrix of constraints and opportunities within which social actors interact" (1993: 168). This paper narrows Ruggie's definition to focus on changes in the formal political system, particularly as these relate to the protection and promotion of human rights.

Truth Commissions have the potential to alter the matrix of constraints and opportunities in the transitional polity through their third goal of "recommend[ing] legislative, structural or other changes to avoid a repetition of past abuses" (Popkin and Roht-Arriaza, 1995: 80). This is particularly the case where the recommendations are binding on the inaugural regime or the parties to a peace agreement.[28] However, even when a Commission's recommendations are not binding, they can still "provide a pressure point around which civilian society and the international community can lobby for change in the future" (Hayner, 1994: 609). The fourth goal of "establishing who was responsible and providing a measure of accountability" is also relevant as it speaks to the effective functioning of state judicial and law enforcement institutions (Popkin and Roht-Arriaza, 1995: 80).

Most of the fifteen Truth Commissions studied by Hayner (1995: 609) and all four of the Commissions reviewed by Popkin and Roht-Arriaza (1995: 101-104)- Chile, El Salvador, Honduras and Guatemala- made recommendations to prevent a repetition of the human rights violations that they encountered. While differing in their emphasis, they included measures to strengthen democratic institutions, ensure adherence to international human rights treaties, reforms to the judicial and law enforcement institutions, measures to professionalise the military and subordinate it to civilian control and compensation to the victims and their families.

In fulfilling their third goal, Truth Commission interact with the authoritarian enclaves that may have been imposed on the transitional polity through the pact of *institutional continuity*. These include anti-democratic institutions, constitutional elements and procedures that were identified by Garretón in Section 2.2 (1994: 223). It is important to note that Truth Commissions are not implementing bodies. As such, they do not have the power to reform the institutions of state on their own accord. This is the responsibility

[28] Hayner notes that in most cases, the recommendations of Truth Commissions have not been binding on the government or the parties to a peace agreement (1994: 609).

of the inaugural regime, it successors and national political institutions. However, one measure of the success of a Truth Commission over the long term is the degree to which its recommendations are accepted and implemented.

2.3.4 *Site three: Social epistemes*

Epistemes are defined by the Oxford Dictionary as "systems of understanding" or "a body of ideas that shapes the perception of knowledge at a particular period". Ruggie refers to these in their collectivity as social epistemes, the basis on which societies imagine themselves, create symbols and identities "and conceive of appropriate orders of rule and exchange" (1993: 157). He writes that the decline of the medieval system of rule and the evolution of modernity "resulted in part from a transformation in social epistemology ... the mental equipment that people drew upon in imagining and symbolising forms of political community underwent fundamental change" (ibid: 157). Ruggie concludes that "material changes may have awakened both a need and a desire for this broad transformation in the prevailing social epistemes, which produced fundamentally new spatial forms [of human organisation]" (ibid: 160).

Benedict Anderson uses a similar concept to explain modern nationalism. Anderson defines the nation state as an "imagined political community" bound together by the ability of citizens to imagine their relationships with other citizens and with the nation. He writes that the "members of the smallest nation will never know most of their fellow citizens ... yet in their mind each lives in the image of their community". These communities "are to be distinguished ... by the style in which they are imagined". Anderson, therefore, also defines the modern state as an "invented" construct. The process of imagining relationships forms the basis of identity on which modes of political organisation are constructed (1991: 6).

Truth Commissions have the potential to support transition where they create new "bodies of knowledge" and ways of "imagining" social relations. This implies reconstructing the systems of values, symbols and identity that shape the interaction between civil society and the state and at the more personal level between individual members of society. Where this occurs, a Commission can act to dismantle the "culture of fear" that serves as the epistemic foundation of the former authoritarian regime (Corradi, 1992: 3). According to Corradi, Latin American dictatorships were "institutionalized systems that deliberately produced and spread fear" (ibid: 23). Fear resulted from the combined effect of the regime's repressive polices, the absence of institutional protection and efforts to impose authoritarian social, political and economic models. The Doctrine of National Security provided the ideology, symbols and other epistemic constructions that authoritarian regimes used to maintain their power and rationalise their actions (see Chapter 3).

The social groups in power feared that they might lose their privilege, sensing that their victory was temporary and that "the tables might someday be turned on them and the losers will take their revenge" (Garretón, 1992: 14). Dissenting groups in society feared the overwhelming power of the state. Their fear was reinforced by a feeling of vulnerability and weakness and a "sense of

having lost the opportunity for personal or collective realization. It combines fear of terror or repression with that of the future ... a situation that will be fraught with unknown dangers" (Garretón, 1992: 14). These fears feed on each other to the point where they become a "permanent and muffled undertone of public life" (Corradi., 1992: 4). The legacy of fear in the transitional polity "will affect not only the behaviour of individuals in their private lives but also their way of adapting to society, their confidence in others and in institutions, and their acceptance or rejection of politics" (ibid: 22-23).

There are two fundamental ways that a Truth Commission can act in the site of social epistemes. First, Commissions constitute an authoritative body that acts to reinforce and legitimise the values of basic human rights in governance, public discourse and "imagination". This constructs a basis on which new forms of social relations and alternatives to authoritarian rule can be imagined. Second, through their first goal, Commissions "create an authoritative account of the past" (Popkin and Roht- Arriaza, 1995: 79). Hayner argues that this record constitutes an "acknowledged truth" that is officially sanctioned by an authoritative body and becomes part of the collective memory of society (1994: 607). The recovery of the "truth" changes public discourse by clarifying a contested history and recognising acts of violence that are often denied by the outgoing regime. The second goal of "providing a platform for the victims to tell their stories" supports the process of creating an authoritative account by both providing information and legitimising the stories of the victims.

Table 1: Sites of transition and the interaction between Truth Commissions and authoritarian enclaves

Site of Transition	Site One: Material Environments	Site Two: Strategic Behaviour	Site Three: Social Epistemes
Authoritarian Enclave	Pact of economic continuity (leaves economic structure and policies of the former regime intact).	Pact of institutional continuity (anti-democratic institutions, constitutional elements and procedures that limit democratic practices). Pact of impunity (demand of "no prosecution").	"anti-democratic and authoritarian values, mentalities and attitudes [existing in the polity after a period of authoritarian rule]" (Garretón, 1994: 223). The "culture of fear" resulting from state sponsored violence.
Truth Commission Goal	Truth Commissions have no goal that directly addresses Site One. Enclaves in this site must be dismantled using other transitional initiatives.	Recommendations for legislative, structural or other changes that prevent future violations. Establishing accountability or the identity of the perpetrators.	Creating an authoritative account of the past. Providing a platform for the victims to tell their story and obtain some form of redress.

3 Responding to a legacy of gross and systematic human rights violations

Chapter Three reviews the essential attributes of the Truth Commissions for Chile and El Salvador. These attributes are considered in light of the four objectives of a Commission as defined by Popkin and Roht-Arriaza: creating an authoritative record of what happened; providing a platform for the victims to tell their story and obtain some form of redress; recommending legislative, structural, or other changes to avoid a repetition of past abuses; and establishing who was responsible and providing a measure of accountability for the perpetrators (1995: 79). The Chapter argues that the respective inaugural regimes were compelled to create Truth Commissions as a result of the political and legal imperatives arising from their responsibility for past gross and systematic human rights violations. In turn, the characteristics of the two Commissions were shaped by these imperatives.

3.1 General characteristics of the Truth Commissions for Chile and El Salvador

The Chilean National Commission for Truth and Reconciliation and the Truth Commission for El Salvador were investigatory bodies established by the respective inaugural regimes during the second phase of transition. The Commissions were mandated to investigate past violations of national and international human rights law that occurred within a fixed historical period[29] and to produce a report of their findings. These included violations committed by both agents of the state and armed opposition groups.[30] The two Commissions were temporary bodies with no permanent or enduring functions[31] and were dissolved after the presentation of their reports[32].

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[29] The Chilean Commission was mandated to investigate events occurring between September 11, 1973 and March 11, 1990. This period of time begins with the coup that brought the Pinochet regime to power and ends with the transition to a civilian government. The Salvadoran Commission investigated acts committed between the escalation of the civil conflict in 1980 and the signing of the peace accords in 1991.

[30] The Truth Commission for El Salvador noted that international law usually only applies to governments. However, the Commission determined that both sides in an armed conflict are bound by international humanitarian law. Also, as the FMLN assumed governmental powers in the territory that it controlled, it too "can be required to observe certain human rights obligations that are binding on states under international law. This would make them responsible for breaches of those obligations" (1993: 20). Similarly, the Chilean Commission was mandated to consider violations committed by armed opposition groups and "private citizens for political purposes" (Rettig, 1993: 6).

[31] Chilean Commission was given a maximum of twelve months to complete its work while the Salvadoran Commission was to submit a report after only six months of investigation. It subsequently took eight months to complete its work.

[32] Article 4d of the Chilean Commission's mandate specifies that "with the submission of its report the Commission will conclude its work and will be automatically dissolved". Article 13

Popkin and Roht Arriaza note that opting for an ad hoc investigatory body resolved a number of practical problems by providing the governments of Chile and El Salvador with a "shortcut to some of the difficulties inherent in using normal investigatory channels" (1995: 82). Reforming or creating a judiciary capable of undertaking an independent inquiry into the politically charged issue of human rights was a long term process unable to respond to the immediate demands of transition. Also, "the sheer magnitude of past violations, a dearth of evidence concerning the crimes that occurred years earlier, and the unwillingness of witness to testify in unreliable courts further complicated the task" (ibid: 82). Hayner adds that a criminal process usually focuses on the facts as they exist in a single case, making the court system unable to deal with broader issues related to politically motivated violence that affects society at large (1996: 22). These practical difficulties contributed to the decision of inaugural regimes in Chile and El Salvador to use a Truth Commission over other methods of investigation.

3.1.1 Creating an authoritative account of the past

To achieve their objective of investigating past violations and producing an authoritative historical account of what happened, the Truth Commissions for Chile and El Salvador were mandated as follows:

Table2: Creating an authoritative record of past violations

Chile	El Salvador
• To help clarify in a comprehensive manner the truth about the most serious violations committed in recent years. • To establish as complete a picture as possible of those grave events, as well as their antecedents and circumstances. Chilean Commission, Article 1	• The Commission shall have the task of investigating serious acts of violence that occurred since 1980 and whose impact on society demands that the public should know the truth. Salvadoran Commission, Article 2

Both Commissions placed an emphasis on creating a picture of the overall pattern of past human rights violations and the motivations of the persons and institutions that committed them. However, differences in the scale, patterns and dynamics of violence produced two distinct investigating methodologies. The Chilean Commission was instructed to "draw up as complete a picture as possible" through resolving each individual complaint of a serious violation that resulted in the death or disappearance of the victim (Rettig: 1993: 5). Its mandate specified that the Commission was to "restore the dignity of the victims in the public mind, allow their relatives and mourners to honor them fittingly, and in

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of the Salvadoran Commission's mandate states that "once the report has been handed over, the Commission's mandate shall be consider terminated and the Commission shall be dissolved".

some measure make it possible to make amends for the damage done" (ibid: 5). By using information from individual cases, the Commission demonstrated how each act of violence formed part of a conscious and deliberate policy to eliminate opponents of the Pinochet regime.

The Truth Commission for El Salvador interpreted its mandate as instructing the Commission to investigate "systematic patterns of violence used to intimidate certain sectors of society" (1993: 10). The larger scale of the violence and the constraints placed on the Commission by its mandate made investigating each individual case of a human rights violation impossible.[33] Instead, the Commissioners chose thirty-three well known cases that illustrated the general patterns and characteristics of past human rights violations. Most of the cases involved multiple violations occurring as the result of a single action, such as the massacre of peasants at El Mozote.[34] Other cases, such as the assassination of Archbishop Oscar Arnulfo Romero (1980) and six Jesuit priests (1989) received international attention and came to symbolise the brutality of the conflict

The ability of the Truth Commissions for Chile and El Salvador to create an authoritative record rested on several factors. First, both Commissions were officially sanctioned by an authoritative body. The former received its mandate from the Executive Branch of government[35] while the Salvadoran Commission was the product of a negotiated agreement between the government and the FMLN.[36] As noted in Chapter One, the Salvadoran Commission conducted its investigation under the authority and supervision of the United Nations and submitted its report simultaneously to the Secretary General of the UN, the Salvadoran government and the FMLN.

Second, while receiving an official sanction, the Commissions were at the same time differentiated from the institutions of state and actors central to the past conflict. Society in Chile and El Salvador was extremely polarised after extended periods of violent civil conflict. There was a fundamental absence of trust between the main actors in those conflicts and, more generally, between civil society and the state. Transition, therefore, required the creation of a new space for addressing human rights issues that was set apart from the existing institutions.

This independence was established by appointing credible figures to conduct the investigation. The Chilean Commission was made up of eight "respected individuals" taken from across the political sphere, including a former member of Pinochet's cabinet, who did not have military or security

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[33] Buergenthal notes that the Commission was restrained from conducting further investigations by its short six month mandate, the lack of financial resources and the desire of both parties to conclude the investigation quickly (1995: 296).

[34] Members of the Salvadoran military killed 500 unarmed civilians in the village of El Mozote on 10 December 1981. The Commission's investigation determined that "most of the victims were minors" (1993: 117).

[35] Supreme Decree No.355, April 25, 1990, issued jointly by the Executive Branch, the Ministry of Justice and the Under-Secretary of the Interior and signed by President Patricio Aylwin Azocar and the two respective Ministers.

[36] El Salvador Peace Agreement signed at Chapultepec, Mexico, on 16 January 1992 between the Government of El Salvador and the leadership of the FMLN.

responsibilities, and human rights activists. Reflecting the role of the United Nations, the moral authority and independence of the Salvadoran Commission was enhanced by appointing three international figures as Commissioners and prohibiting the use of Central Americans on the Commission's staff. Salvadoran nationals did not participate as the government and the FMLN could not come to an agreement "on any group of Salvadorans they would trust to discharge [the Commission's] responsibilities. A formula calling for a panel of distinguished foreigners ... proved less objectionable and was eventually accepted by the Parties" (Buergenthal, 1995: 296).

Third, an official state sanction also responds to the practical considerations of conducting a human rights investigation. The endorsement of an authoritative body enhanced the Commission's legal and political power, access to information, state protection to undertake their investigations and increased the likelihood that its conclusions and recommendations would be given serious consideration (Hayner: 1996: 21). These forms of support were particularly important where the persons conducting an investigation were physically threatened or where it was necessary to bring pressure against authoritarian actors (and institutional enclaves of authoritarian power such as the military) to obtain information. The authority of the Commissions to conduct their investigations was described in the two mandates as follows:

Table 3: Investigating powers of the Truth Commissions for Chile and El Salvador

Chile	El Salvador
• Carry out as much investigation as it may determine suitable for accomplishing its task, including requesting reports, documents, or evidence from government authorities and agencies Article 4c	• Gather, by the means it deems appropriate, any information it considers relevant. The Commission shall be completely free to use whatever sources of information it deems useful and reliable (Art. 8a); • Visit any establishment or place freely without giving prior notice (Art. 8c); • Carry out any other measures or inquiries which it considers useful to the performance of its mandate, including requesting reports, records, documents, from Parties or any other information from State authorities and departments (Art. 8d).[37]

3.1.2 Providing a platform for the victims to tell their stories

Both Commissions conducted what they described as "open" investigations, serving as a platform for persons to tell their stories (Rettig, 1993: 6; Salvadoran Commission, 1993: 12). The Commissioners received public and confidential submissions from the victims (where still alive), their families, witnesses with

[37] Buergenthal also notes that information was requested from the Government of the United States in its capacity as the most important international supporter of the Salvadoran government (1995: 301-303).

information on specific events and from non-governmental human rights organisations. According to the Salvadoran Commission, "the whole of Salvadoran society, institutions and individuals familiar with acts of violence were invited to make them known to the Commission, under the guarantee of confidentiality and discretion provided for in the agreements" (1993: 12). The Commissions were mandated accordingly:

Table 4: Serving as a platform for the victims to tell their story

Chile	El Salvador
In order to carry out its assigned task the Commission is to ... receive the evidence provided by alleged victims, their representatives, successors, or relatives ... Article 4a	... the Commission shall have the power to ... interview freely and in private, any individuals, groups or members of organizations or institutions. Article 8b

3.1.3 Making recommendations

The Truth Commissions for Chile and El Salvador were empowered to make recommendations "for legislative, structural or other changes to avoid a repetition of past abuses" (Popkin and Roht-Arriaza, 1995: 79). Their mandates instructed the Commissions to:

Table 5: Recommendations of the Truth Commissions

Chile	El Salvador
1c) To recommend such measures of reparation and reinstatement as it regards just; 2d) To recommend the legal and administrative measures which in its judgement should be adopted in order to prevent actions such as mentioned [in the report] from being committed. Article 1	4. The mandate of the Commission shall include recommending the legal, political or administrative measures which can be inferred from the results of the investigation. Such recommendations may include measures to prevent the repetition of such acts, and initiatives to promote national reconciliation. Article 4

While the Parties to the Salvadoran Peace Accords agreed that the Commission's recommendations were binding on all of the parties to the peace accords, a decision to implement the recommendations of the Chilean Commission was left to the discretion of the President:

Table 6: The legal status of Truth Commissions' recommendations

Chile	El Salvador
• The report will be presented to the President, who will then release it to the public, and will adopt the decisions or initiatives that he regards as appropriate Article 4d	• The Parties undertake to carry out the Commission's recommendations Article 10

3.1.4 Establishing accountability or the identity of the perpetrators

Ensalaco writes that the Commissions for Chile and El Salvador were "commissions for truth and reconciliation, but not ... for truth, reconciliation and justice" (1994: 657). His observation draws attention to the fact that Truth Commissions are not judicial bodies. Reflecting the "no prosecution" demand made by authoritarian actors during transition, neither the Salvadoran nor the Chilean Commission was mandated with judicial authority or purpose. It was not within their competence, therefore, to prosecute individuals or initiate criminal proceedings. Their respective mandates were specific on these limitations:

Table 7: Truth Commissions are not judicial bodies

Chile	El Salvador
In no case is the Commission to assume jurisdictional functions proper to the courts. Hence it will not have power to take a position on whether individuals are legally responsible for the events that it is considering. Article 2	The Commission shall not function in the manner of a judicial body Article 5

The Chilean and Salvadoran Commissions were instructed to refer any evidence of criminal wrong-doing to the proper judicial authority for further investigation.[38] Their mandates, therefore, established a relationship between the Truth Commission process and the judicial system. Technically, this left open the possibility that evidence gathered during their respective investigations could be used to support criminal proceedings within the formal court system at some point in the future.

[38] Article Two of the Chilean Commission's mandate states that "if while carrying out its function the Commission receives evidence about actions that appear criminal, it will immediately submit it to the appropriate court" Similarly, Article Six of the Salvadoran Commission reads "if the Commission determines that information it gathers has a judicial purpose, "it may refer the case to the Attorney-General of the Republic ... for handling through the judicial channel".

However, it is also important to note that both processes were accompanied by amnesty laws that effectively prohibited the criminal prosecution of persons responsible for past human rights violations.[39] These include violations that were either investigated by the two Commissions or cases that may otherwise come to light. In both countries, former authoritarian regimes enacted self-amnesty laws before transition; the state judged the actions of it own agents and absolved itself of future criminal responsibility.[40] The 1978 amnesty law enacted in Chile by the Pinochet regime was accepted by the new government as a condition of the transition process and remains in effect in 1998. The 1978 Chilean amnesty law does not prevent alleged human rights violations from being investigated. However, due process must be suspended by the court if it determines that the offense in question is covered under the terms of the law. In this context, the judicial system allows investigation without the possibility of penal sanctions.[41]

Past laws in El Salvador were also accepted and then strengthened by the inaugural regime with new laws that were enacted first as part of the initial peace process and then again after the Truth Commission presented its report. While the amnesties covered acts committed by all parties to the conflicts, the state was the main beneficiary as its agents committed the vast majority of the violations. The combined effect of the "no prosecution" demand made by authoritarian actors, the absence of judicial powers within the mandates of the two Truth Commissions and the presence of amnesty laws was to effectively take past human rights violations out of the realm of legal action. Even where evidence of criminal-wrong doing was gathered during the investigation process and presented the court system, the presence of an amnesty law undermined the ability of the courts to proceed with that case.

Lacking judicial powers, the Truth Commissions for Chile and El Salvador had two mechanisms that potentially allowed them to establish indirect accountability. The first was the presentation of an historical record that assigned institutional responsibility for past violations. Second, the Salvadoran Commission identified by name the individuals responsible for committing past violations. While public identification is not a criminal sanction, it can have a

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[39] A complete summary of the Amnesty Laws enacted in Chile and El Salvador was provided in Section 2.2.

[40] The legal status of self-amnesty under international law is questionable. Roht-Arriaza argues that "such amnesties are simply a version of judging one's own case (at least by implication as no judgment is allowed) and therefore would seem to be prohibited under general principles of law ... forbidding self-judging" (1995: 58).

[41] As of 1993 there were approximately 1,000 cases either pending before the court or suspended as result of the 1978 self-amnesty. The policy of the Chilean government has been to encourage investigations in the hope that a change in the political situation will allow for the conclusion of criminal prosecutions at a later date (Mera, 1995: 181). However, in an event that suggests the power of the military to impose the pact of impunity is weakening, the Chilean Court of Appeals recently agreed to hear a charge of Genocide brought against Augusto Pinochet by the Communist Party. It was the first time a court had accepted charges against Pinochet. (Diebel, Linda, "Clinging to Power", *Toronto Star*, 10 February 1998, p. A16).

negative effect on the reputation, career and political and economic prospects of the individual. In their report, the Commissioners argued that making the identity of the perpetrators public was central to their mandate: "the [government and the FMLN] made it quite clear that it was necessary that the complete truth be made known, and that is why the Commission was established. Now, the whole truth can not be told without naming names ... Not to name names would be to reinforce the very impunity that the Parties instructed the Commission to put to an end" (1993: 25).[42] The Chilean Commission declined to identify individuals, arguing that it had neither the mandate nor the resources to assure due process for individuals that might be named. The Commission, therefore, chose to leave the question of individual responsibility to the courts.

3.2 Responding to gross and systematic human rights violations

If Truth Commissions are bodies established to investigate past human rights violations, then what kind of violations cause inaugural regimes to set them up? Human rights violations are committed in every country in the world. Where effective mechanisms for the protection and promotion of rights exist, these violations are likely to be isolated acts that are few in number. However, in situations where effective mechanisms do not exist, or where violence is used by the state to achieve policy objectives, the number of violations may expand to affect the lives of large sectors of society. Truth Commissions in Chile and El Salvador were created under the latter situation. The Commissions were not simply a response to the fact that violations were committed, but rather that these violations were gross and systematic in nature.

Cecilia Medina defines *gross and systematic* human rights violations as "those violations, instrumental to the achievement of government polices, perpetrated in such a quantity and in such a manner as to create a situation in which the rights to life, personal integrity or the personal liberty of the population as a whole, or one or more sectors of the population, are continuously infringed or threatened" (1990: 440). Gross and systematic violations, therefore, are not random and disconnected acts committed by agents of the state acting beyond their authority. Rather, they form one part of a conscious state policy that uses violence to achieve the objectives of the government.[43]

In turn, a policy of violence is facilitated by a *de facto* or *de jure* policy of impunity that allows agents of the state to first commit the violations and then protects them from the due process of law. The official or quasi-official status of

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[42] The decision to "name names" was the most controversial aspect of the Commission's report. Buergenthal writes that the Salvadoran government launched an international campaign to prevent the release of the names. The Commissioners were "obligated to explain our position to government leaders in the United States, Europe and Latin America who were being lobbied by the Salvadorans" (1995: 307).

[43] Pasqualucci writes that the objective of governments that "engaged in [forced] disappearances and other such gross and systematic human rights violations was to sow intimidation, making society as a whole the victim of those violations (1994: 326).

the perpetrators shields them from sanctions, creating a culture of impunity in which acts of violent repression can be carried out without fear of repercussions. Gross and systematic human rights violations, therefore, occur in countries that are characterised "by an absence or lack of effective national mechanisms for the protection of human rights and the lack of co-operation on the part of the governments concerned" (Medina, 1990: 440).[44]

In this context, a transition from authoritarian rule necessarily involves efforts to establish and promote the rule of law, including holding the perpetrators of past violations responsible for their actions. A situation of continued lawlessness "serves to disempower ordinary citizens, making them fearful to think or speak out and breeding cynicism ...". As societies undergo transition, "one of the first opportunities to re-establish the primacy of the rule of law comes in the treatment of the former rulers, torturers and jailers" (Roht-Arriaza, 1995: 4). It was in this effort to deal with the past and establish the new principles on which governance would be based that Truth Commissions were convened in Chile and El Salvador.

3.2.1 State sponsored violence in Chile and El Salvador: The enemy is anyone not on the list of friends

Authoritarian regimes in Chile and El Salvador committed human rights violations that can be characterised as gross and systematic under Medina's definition. The institutions and resources of the state were organised to physically carry out the violence and national human rights mechanisms failed to protect the victims. In this environment, the Doctrine of National Security was the most significant epistemic construct shaping relations between the state and civil society in Chile and El Salvador during their respective periods of dictatorship. The Doctrine provided an ideological rationale to justify the interests and actions of authoritarian actors before national society and the international community. While its political expression was more coherent under the Pinochet regime in Chile (Rettig: 1995: 120-121), the Doctrine also served as a conceptual framework for counter-insurgency warfare conducted by the Salvadoran state against both the Faribundo Marti National Liberation Front (FMLN) and the government's other opponents in civil society (Salvadoran Commission, 1993: 13).[45]

The logic of the Doctrine of National Security was rooted in East-West competition that occurred during the Cold War. Ronald Steel writes that the polarisation of the international polity caused by the Cold War transformed the concept of "defence" by altering the political and geographic parameters of "national security". For the United States and the former Soviet Union, the effect was to expand those parameters. Steel argues that "unlike the term defence,

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[44] The Truth Commission for Honduras uses a similar definition. It found that "the fundamental defining characteristic of forced disappearances is that each individual case forms part of a deliberate and conscious policy. Further, this policy is adopted by the government at a level of authority [that has] the capacity not only to issue the order to disappear a person and assure its completion, but also to guarantee the impunity of those who execute the order" (1994: 3).

[45] The Salvadoran Commission refers to the "doctrine of national salvation" (1993: 13)

which connotes repelling an invading force, [the new understanding of national security] suggests not just resistance to aggression but an outward reach to anticipate and neutralize dangers that might still only be potential" (1997: 2). Steel continues that this definition drew a new security parameter that was determined "by the reach of national power ... a regional power will have a regional security parameter; a global power will be satisfied with nothing less than a global one" (ibid: 2).

The new enemy had two faces; a physically bound nation state and an ideology that existed in the non-physical realm of ideas. Countries were at once vulnerable to both a military assault and an ideological infiltration from which there was no traditional military defence. The concept of security, therefore, was "unhinged from its geographic moorings and became a function of power and an aspect of psychology" (ibid: 2). For the United States, "no place seemed to be really secure. Where there were not Soviet legions there were communist believers, or sympathizers, enemies within and enemies without" (ibid: 2). As a power with a global reach. the United States responded by adopting the Truman Doctrine, declaring that the national security of the U.S. was at stake anytime a "free" (anti-Communist) country was threatened with a communist take-over or by communist influence.

As minor powers, Latin American countries did not expand their security parameters outward to engage in bi-polar conflict at the international level. Rather, the Cold War tended to internalise those parameters with ideology and the psychological dimensions of insecurity playing a particularly important role.

The Cold War coincided with a surge of national level social activism throughout the region. Legally constituted social organisations and armed revolutionary movements appeared advocating sweeping changes to Latin America's closed political systems and the unequal economic distribution within countries. Traditional elites were unable to control popular dissent using legal means and turned instead to violent repression. Garretón writes that a high degree of polarisation existed between "the active and mobilised popular sectors... and the dominant sector who saw this situation as catastrophic, a zero-sum political crisis where everything was at stake". Perceiving their interests to be threatened, the military and its civilian allies attempted to "disarticulate the former society" by destroying the social structures that challenged them. "The touchstone of this reactive logic was repression whereby the regime relied on a powerful [state and military] apparatus that employed vast ... resources and unprecedented techniques of brutality" (ibid: 15).

Within this context, the Doctrine of National Security "provided an all encompassing ideological framework for military regimes" (Donnelly, 1993: 45). Its basic characteristic was that the Doctrine placed national level disputes into the context of bi-polar international conflict. [46] Demands for reforms arising from

[46] According to the Chilean Commission, "starting in the 1950s, Chile, like many countries in Latin America, witnessed the insertion of its domestic politics into the superpower struggle, which, given the impetus of contending interests and ideologies ... entailed polarisation of Chilean society ... the Cold War pitted Cuban-Soviet insurgency against North American counterinsurgency each with its own allies - throughout Latin America" (1993: 48).

national level circumstances were denounced by the elites as part of a larger international communist ideological and military conspiracy. In turn, the national actors advocating change were identified as the agents of that conspiracy. The principle enemy of the state, therefore, became large sectors of its own citizenry that did not conform to the dominant values and interests. Those persons and organizations became the targets of state repression by virtue of their dissent, creating an environment in which gross and systematic human rights violations could be justified by authoritarian actors in the name of defending the state from "communist subversion" (Donnelly, 1993: 44-45).

An additional factor contributing to gross and systematic human rights violations in Chile and El Salvador was the role of the military within a National Security state. The Doctrine viewed the state as the central institution in society. In turn, the military was the central institution of that state with the responsibility for protecting the nation's values and its "transcendent permanent interests" (Donnelly, 1993: 44-45). Brian Loveman argues that the military assumed the role of the "guarantor of the institutional order and, by implication adjudicator of the national common good, permanent interests and national security requirements" (1994: 110).

The notion of "guardianship" placed the military above elected politics and set limits on the scope of legal activity "premised on the notion that people needed to be protected from themselves and from any organisations [and ideologies, external influences or otherwise] which might subvert the existing political order" (ibid: 111).[47] In assuming this role, and in the absence of other institutions and forces in society capable of restraining their power, extreme acts of repression could be justified by invoking "national security" and the well-being of the state in the face of an international ideological enemy working through national actors.

3.2.2 *A legacy of gross and systematic human rights violations*

The human rights records of authoritarian regimes in El Salvador and Chile illustrates what happened when social conflict is managed through a National Security Doctrine perspective. Regarding the former country, violations were committed in the context of large-scale civil war. Over 80,000 persons died during the twelve year Salvadoran conflict. Beyond extra-judicial killings, the use of intimidation, arbitrary arrest and detention and other forms of violations were also pervasive. For example, Human Rights Watch reported that the Salvadoran army and security forces commonly used "asphyxiation, simulated drowning, drugging, application of electric shocks and sexual violence in the course of interrogating detainees." These practices often lead to the death of the victim (1990: 7). As a result, "terror and distrust reigned among the civilian population" (Salvadoran Commission, 1993: 27).

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[47] The Chilean Commission reported that "the justification for the military's use of force against non-conforming groups in society "was a distorted concept of national security, which as a supreme value was regarded as being above ethics. This amounted to the revival of what used to be called *raison d'etre*: once again ... the rights of the individual could be violated by reason of a general interest" (1993: 61).

Some of the best empirical information on human rights violations can be taken from the reports of the Truth Commissions themselves. Reflecting the scale of the violence, the Commission for El Salvador received over 22,000 complaints of human rights violations. It described this number as a "significant sample [but one] that does not cover every act of violence" (ibid: 43). Furthermore, the Commission's investigation clearly demonstrated that the state was the principle perpetrator of human rights in El Salvador. Only five percent of the complaints received by the Salvadoran Truth Commission were attributed to the FMLN.[48] In contrast, eighty-five percent of the complaints corresponded to either agents of the Salvadoran state or paramilitary groups associated with it (ibid: 43). On this basis, the Commission concluded that "repeated human rights violations had been committed by members of the armed forces [acting] under the protection of the State but outside of the rule of law" (ibid: 10). In addition, an unrelated *ad hoc* commission set up by the Salvadoran government in 1992 to investigate the human rights performance of the military charged 110 senior officers with serious human rights violations and called for their dismissal from the service. The list included the Minister of Defense, his Vice-minister and the Chief of the General Staff (Golden, 25 October 1992).[49]

The state's use of violence was systematic and responded to the Salvadoran regime's political objective of physically eliminating perceived enemies. The complaints made against the military "indicate[d] that this violence originated in a political mind set that viewed political opponents as subversives and enemies. Anyone who expressed views that differed from the government line ran the risk of being eliminated as if they were armed enemies in the field of battle ... any organisation in a position to promote opposing ideas that questioned official policy was automatically labelled as working for the guerrillas ... and branded as subversive" (1993: 43). In this polarised environment, the objective of the military and its civilian allies was to "fragment" opposition groups by means of a campaign of "arbitrary arrests, murders and selective and indiscriminate disappearances of leaders" (ibid: 27). The violence, therefore, became "a succession of indiscriminate attacks on the non-combatant civilian

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[48] Only 800 of the 22,000 complaints of human rights violations received by the Commission were made against the FMLN (1993: 44). Salvadoran Commissioner Thomas Buergenthal writes that "despite the massive wartime propaganda to the contrary, the government side had committed a substantially larger number of egregious acts than the FMLN. Moreover, some of these acts [such as the massacre of civilians in rural areas] had no comparable counterpart among the crimes committed by the FMLN". According to Buergenthal, FMLN violations included the extra-judicial killing of local government officials, forced recruitment, abductions and the placing of landmines in civilian areas (1995: 313-314). Examples of these violations are reported in the Salvadoran Commission's report (1993: 148-170).

[49] The *ad hoc* commission was established as part of the peace process to exclusively investigate the Salvadoran military. It presented its report only three months after the Truth Commission began its own investigation. While the report has never been made public, some the information on its findings leaked into the North American press (NYT, 25 October 1992). Buergenthal concludes that the *ad hoc* commission had a significant impact as "it was the first real signal that the days of business as usual, of military impunity and cover ups, might be over" (1995:304).

population and also collective summary executions, particularly against the rural population" (ibid: 27).

Consequently, the majority of the victims were unarmed civilians killed by agents of the Salvadoran state outside of combat situations. These persons were targets for repression as a result of their political affiliation or activism, real or suspected. Persons living in rural areas were particularly affected. During the 1980s, the Salvadoran military perpetrated numerous massacres of civilians with the intention of depriving the FMLN of its base of support in areas that it either controlled or sought to control. The civilian population "in disputed or [FMLN] controlled zones was automatically assumed to be the enemy" and, therefore, they became "legitimate targets for attack" (ibid: 13).

In Chile, Zalaquett describes the Pinochet dictatorship as "an intense period of political repression which resulted in political killings and disappearances, the imprisonment or exile of countless Chileans and the widespread use of torture" (1993: xxiv). The Chilean Commission received over 4,000 complaints and documented 2,279 cases of politically motivated extra-judicial killings and disappearances occurring between 1973 and 1990 (1995: 126). It also concluded that the incidence of other forms of violations such as arbitrary arrest and detention was widespread. In particular, the use of torture to obtain information during interrogations was "universal" and "systematic" (ibid: 136).[50] At least 20,000 people were also forced to leave the country for political reasons (ibid: 139).

As in El Salvador, the Chilean state was primarily responsible for human rights violations. The Commission concluded that only 30 of the almost 2,000 persons that died as a result of violations were members of the armed forces (ibid: 119).[51] This constitutes less than two percent of the total number of victims. The remaining persons were mostly civilians killed by members of the security forces or civilians acting with their support.

Chile did not suffer from a prolonged civil war on the same large scale as El Salvador. The regime of General Pinochet justified military rule by claiming that the country was in a situation of civil war. Repressive actions were explained with the argument that "counterinsurgency must confront guerrilla warfare with its own methods lest it place itself at a disadvantage ..." (Rettig, 1993: 61). However, the Commission determined that no such state of internal war existed, either at the time of the 1973 coup staged by Pinochet or at any point during the regime's term in power. There were no "effective" armed opposition groups and the army "faced no organized rebel troops" (Rettig, 1995: 119). In addition, there were few instances of armed conflict between the military and opposition groups. In the absence of civil war, human rights violations in Chile were committed more selectively and directly affected a smaller segment of the population than in El Salvador.

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[50] A Lutheran Bishop was told by Pinochet in 1974 that "you have to torture Marxists and Communists or else they won't sing" (Handelman, 1998).

[51] The reports of non-governmental human rights organisations make few or no references to violations committed by opposition groups (Amnesty International, 1985; 1988).

Despite the more selective nature of the violence, human rights violations in Chile were also systematic in nature, reflecting the expressly political intentions of the government (Rettig, 1995: 121-122). Acts of violence were planned and co-ordinated by a group of officers "acting in secret ... that had a remarkable ideological coherence and initiative and that had a decisive impact on the problem of human rights" (ibid: 121). Human rights violations, therefore, "responded to a pattern of prior planning and central organization [by the state] that reveals a resolve to exterminate certain categories of persons: those considered politically dangerous" (ibid: 132).

The Chilean Commission found that "the majority of the deaths [occurring during the period between 1973 and 1978] were the result of actions taken against officials of the deposed regime [of former President Salvador Allende]" (ibid: 128). Members of left of centre political parties continued to be targeted after 1978 as "these organisations were the most tangible enemy" (ibid: 141). "Destroying political parties meant physically eliminating the activists who made such an organisation possible. According to that logic, those who by their training and experience ... their position in the party, and their personal qualities of education, training, persistence, or physical courage were seen as dangerous [by the government] and beyond redemption, and had to be physically eliminated" (1993: 497). Social organisations that later appeared to oppose the dictatorship were also subjected to repression (Rettig: 1995: 141; Lowden, 1996: 1-9; Zalaquett, 1993: xxvii).

3.2.3 *Impunity and the failure of national human rights and judicial mechanisms*

As noted by Medina, gross and systematic human rights violations committed on the scale witnessed in Chile and El Salvador required a *de facto* or *de jure* policy of impunity (1990: 440), which is defined as "exemption from punishment or from injury as the consequence of an act".[52] According to the United Nations Rapporteur on Impunity, Louis Joinet, the term "covers all the measures and practices whereby, on the one hand, states fail in their obligations to investigate, try and sentence those responsible for violations of human rights and, on the other hand, impede the enjoyment by victims and their families to know the truth and have their rights restored" (IDOC, 1997: 3).

Countries where gross and systematic human rights violations occur with impunity are by definition "lawless societies" (Roht-Arriaza, 1995: 4). A situation of impunity implies that there are no effective sanctions under law to deter state institutions or their agents from committing violations. In this regard, the Secretary General of the United Nations, Kofi Annan, writes that "impunity ... represents one of the most serious hindrances to the curbing of human rights abuses. A country lacking a system guaranteeing a minimum of justice and respect for human dignity will inevitably risk jeopardising its development effort and increase the risk of falling prey to internal or external conflicts" (1997: 9).

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[52] Oxford Dictionary of Current English, Sixth Edition, p.542.

Impunity had three attributes within Medina's definition of gross and systematic violations as these were committed in Chile and El Salvador. First, there were few instances in either country where the persons responsible for human rights violations were brought to justice through the due process of law (Loveman, 1994; McSherry, 1992; Pascualucci, 1995; Roht-Arriaza, 1995: Mendez, 1997; IDOC, 1997). In Chile, only "in very exceptional cases, violations were not investigated by the courts and their authors were not legally punished" (Rettig, 1993: 126). Similarly, "civilian and military groups [in El Salvador] engaged in a systematic murder campaign with total impunity" (Salvadoran Commission, 1993: 27) that the Salvadoran Commission described as "institutionalised" in the structure of the state (1993: 10). As the conflict escalated during the 1980s, "certain elements of society found themselves immune from any governmental or political constraints and thus forged for themselves the most abject impunity .... within the military establishment and in contradiction with its real purpose and mandate, impunity vis-à-vis the civilian authorities became the rule" (ibid: 173).

Second, the use of violence to achieve government objectives required a *de facto* state policy of impunity. The Chilean Commission reported that "to undertake human rights violations, [agents of the state] had absolute certainty of impunity" (1995: 140). The report of the Salvador Commission also concluded that the military committed violations "under the protection of state bodies while outside the law" (1993: 10). Third, a situation of impunity was possible as a result of the absence of effective mechanisms for the protection and promotion of human rights. On this point, both Commissions concluded that while extensive guarantees existed under national law and international conventions to which the countries were signatories, the state failed to respect and enforce those guarantees.

They were particularly critical of the role of the judiciary and law enforcement agencies.[53] The Salvadoran Commission reported that "none of the three branches of Government - judicial, legislative or executive - was capable of restraining the military's overwhelming control of society. The judiciary was weakened as it fell victim to intimidation ... it never enjoyed genuine institutional independence [and] its ineffectiveness steadily increased until it became, through its inaction or its appalling submissiveness, a factor which contributed to the suffering by the country" (1993: 172). The Commission added that "the glaring deficiencies [of the judiciary] were a prime cause of the occurrence and systematic repetition of extremely grave human rights violations" (ibid: 175). These

[53] The failure of the judiciary to enforce human rights norms is a situation frequently identified by Truth Commissions. For example, the Commission for South Africa described its hearings on the judiciary and the legal profession as "the most important after those dealing with human rights abuses". Testimony heard by the South African Commission charged that "the judiciary upheld every aspect of apartheid ... they punished opponents of their system- for theirs it was- with the harshest array of cruelty, and yet even now they manage to preserve and propagate the absurdity that they were somehow above it all- impartial" ("Apartheid judges snub truth commission" in the *Guardian Weekly*, 2 November 1997, p.1).

deficiencies were determined to be so serious that the Commission called on the Supreme Court to resign (ibid: 175).[54]

The Chilean Commission came to a similar conclusion. Its investigation revealed that "the Judiciary did not react with sufficient energy regarding violations of human rights" (Rettig, 1995: 124). The Commissioners argued that the judiciary retained a degree of independence during the Pinochet regime that would have "allowed it to assume a more resolute attitude in the defence of human rights" (ibid: 125). However, they concluded that "while the court system continued to operate normally in almost all of the realms of national activity ... legal oversight was glaringly insufficient with respect to the personal rights that were being violated by the government to an unprecedented extent" (ibid: 118). In this context, "the attitude of the judiciary produced, in important measure, an intensification in the process of systematic human rights violations ... The Commission believes that if the courts had respected their constitutional mandate to act ... then death, disappearance and torture could have been prevented in many cases and, moreover, the perpetrators would have been put on notice that their actions were rejected by at least one of the powers of the state, which could eventually punish them" (ibid: 119-120).

3.3 Responding to a legacy of gross and systematic human rights violations: The responsibilities of the inaugural regimes

The Truth Commissions for Chile and El Salvador were established as a direct response to the political imperatives resulting from a situation of gross and systematic violations. The two inaugural regimes were confronted by widely held demands in national society and the international community that past violations be investigated, that the persons responsible be held accountable for their actions and that the state offer some form of remedy and compensation to the victims.[55] As memories of the violence were still fresh in people's minds, trying to simply bury the past during transition might have proven both ethically and politically unacceptable to the majority of the population. In this context, Truth Commissions were required to establish the credibility of the new governments by providing a forum to confront the state's legacy of violations and giving at least the appearance that action was being taken. This political imperative was reflected in the mandates of the Commissions for Chile and El Salvador:

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[54] Commission member Thomas Buergenthal later described the Salvadoran judiciary as "corrupt, inefficient, and incapable of rendering impartial judgments in so-called political cases" (1995: 308).

[55] Buergenthal writes that the FMLN had no confidence in the Salvadoran justice system. "In fact, one of the FMLN's main negotiating objectives was a thorough reform of the justice system. It considered such action a necessary to protect FMLN [members] against potential governments abuses once the FMLN laid down its arms" (1995: 296). Accordingly, a special body to investigate the past and propose such reforms was required.

Table 8: Commissions respond to the political imperatives of transition

Chile	El Salvador
Considering ... that the moral conscience of the nation demands that the truth of the grave events of human rights violations committed in our country ... be brought to light [and] that only on the foundation of the truth will it be possible to meet the basic demands of justice and create the conditions for true national reconciliation. (Preamble to the Chilean Commission, Rettig, 1993: 5)	"The commission shall take into account ... the need to establish confidence in the positive changes which the peace process is promoting ..." Salvadoran Commission, 1993: 189

The second imperative that compelled the inaugural regimes in Chile and El Salvador to establish Truth Commissions was legal; a result of the emergence of international human rights norms and the "unbundling of territory" as described by Ruggie in Section 2.3. Brian Walsh argues that the inaugural regimes were guided by the "doctrine of state responsibility [that is] widely recognised in customary international law". The doctrine asserts that "regardless of who leads the government [at a particular moment], the state has a duty to compensate victims for breaches of state obligations .... The state remains liable regardless of changes to its leadership" (1996: 114). Under law, therefore, the state is understood as a permanent and enduring entity that transcends the existence of any single government. It must assume responsibility for the actions of all of the governments that represent it over time, making the Chilean and Salvadoran states liable for the actions of past authoritarian regimes even though political transitions had occurred.

State obligations related to the protection and promotion of human rights were clearly defined under national and international law. Regarding the latter, rights become a dimension of the international polity when they are institutionalised in the form of legal instruments, such as the treaties, covenants and conventions found under the jurisdiction of the United Nations or the Organisation of American States. The instruments confirm that certain rights are so fundamental that they can not be suspended or subject to derogation, even during armed conflict or in emergency situations where the national security is deemed to be threatened. These "core rights" are related to the most fundamental dimensions of human survival and physical integrity. They are violated when states commit acts that result in extra-judicial killings, torture, disappearances and prolonged arbitrary arrest as occurred with systematic regularity in El Salvador and Chile (Mendez, 1997: 260; Buergenthal, 1995: 312; Pasqualucci, 1994: 329-333). Even where states do not ratify an instrument, their actions may be judged against its norms to the extent that these are interpreted as the minimum international standards guiding state practices.

All States Parties also have an obligation to comply in good faith with the terms of the instruments to which they are a signatory. Quoting Article 26 of the

Vienna Convention on the Law of Treaties, Pasqualucci argues "the doctrine of *pacta sunt servida* provides that every treaty in force is binding upon the parties to it and must be performed by them in good faith". In turn, the infrastructure created to service international instruments constitutes a network of formal channels through which complaints of human rights violations can be made and governments held accountable before international law and public opinion where these obligations are not met (Marks, 1993: 296-299).[56] Compliance further demands that signatory nations harmonise national laws, policies and practices to be consistent with their obligations as defined by the instrument (Pasqualucci 1994: 329). In this regard, international law works to shape national level legal regimes.

Beyond defining obligations, international human right instruments also provide clear directions to States Parties regarding the manner in which past violations must be resolved. Considering the doctrine of state responsibility and their obligations under international law, there is an emerging legal argument that states have a positive obligation to respond to situations of past gross and systematic violations (Mendez, 1997: 259; Pasqualucci, 1994: 29-330; Roht-Arriaza, 1990: 449). It is important to note that this positive obligation to prosecute past violations is proactive and distinct from the negative obligation to simply prevent them. In turn, any investigation into past violations must be conducted in good faith rather than as "rituals preordained to be ineffective" (Mendez, 1997: 260). Mendez further argues that trends in law and practice create four essential obligations on states that are parties to international agreements. In turn, these obligations create four corresponding rights (ibid: 261):

Table 9: State obligations and responsibilities under international law

State Obligations in International Law	Correlative Rights
• to investigate, prosecute and punish the perpetrators; • to disclose to the victims, their families, and society all that can be reliably established about these events; • to offer the victims adequate reparations; • to separate known perpetrators from law enforcement bodies and other positions of authority.	• the right of the victim to see justice done; • a right to know the truth; • an entitlement to compensation and also to non-monetary forms of restitution; • a right to new, reorganised and accountable institutions.

[56] The poor human rights performance of countries around the world indicates that a large distance continues to exist between formal obligations and actual compliance of governments with those obligations. In this regard, it could be argued that rights are universal in their rhetoric only. However, Marks argues that international norms still provide a broadly recognised minimum standard against which actions can be judged "to hold governments accountable [and] point out the gap between word and deed" (Marks, 1993: 296).

Particularly important is what Hayner, (1994), Pasqualucci (1994), Mendez (1997), Roht-Arriaza (1990; 1995) and Carver (1990) refer to as "the right to know the truth". All four scholars argue that inherent in the obligation to investigate human rights violations and punish the perpetrators is the right of the public to know the results of such a process. Citing Carver, Hayner observes that the "right to truth" is guaranteed in Article 19 of the Universal Declaration of Human Rights which confers the right "to know the truth" and to "seek, receive and impart information" (1994: 611). Similarly, Ensalaco writes that the normative basis for making information on violations public is found in Protocol One of the Geneva Conventions which defines the "rights of families to know the fate of their members". Ensalaco finds a similar precedent in the Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that obligates States Parties to "conduct a preliminary investigation" into alleged cases of abuse and make the information public (1994: 671).

3.3.1 *Providing the normative basis for Truth Commissions*

Beyond compelling inaugural regimes to establish Truth Commissions, State human rights obligations under international law provided the normative and ethical framework for the Commissions' work. Both bodies began their investigations by determining that Chile and El Salvador had signed international instruments before and during the period they were mandated to investigate. The terms of these instruments were judged to be in force and, therefore, defined state obligations that were binding on the former regimes during the respective periods of conflict:

Table 10: State human rights obligations under international law

Chilean Commission	Salvadoran Commission
"the norms set forth in the Universal Declaration of Rights and other relevant international documents [to which Chile is a signatory] were already part of Chile's legislation and its best civic tradition" (Rettig: p.27) the Chilean State is already incorporated into the international system for protecting human rights. That is the case because Chilean law makes international customary law automatically normative for us, and furthermore, because Chile has ratified most international conventions in this area, thus making them part of Chilean law ... all parties, therefore, were bound [by the terms of those conventions]" (ibid.: p.855).	"during the Salvadoran conflict, both parties were under an obligation to observe a number of rules of international law, including those stipulated in international human rights law and international humanitarian law ... the State of El Salvador was under obligation to adjust its domestic law to its obligations under international law" (Salvadoran Commission, 1993: p.20).

The existence of common international standards was particularly important when addressing conflicting claims to history and the legitimacy of the state's recourse to violent action against its own citizens. Neither the Chilean nor the Salvadoran military denied that they had committed some violations during the

past conflicts. However, both claimed that a state of war existed, requiring dramatic military action and the suspension of certain individual human rights in the name of national security. This attitude was reflected in the Chilean military's claim that it is "naïve to expect certain [human rights] norms to be observed in a situation of war or other disturbance" (Rettig, 1993: p.33).

However, as noted in Chapter Two, international law prohibits any suspension or derogation of certain fundamental rights, even in conflict situations. Accordingly, the Salvadoran Commission concluded that "it is important to classify the seriousness of each act of violence on the basis of rights which the ... instruments list as not being subject to derogation, in particular, rights directly related to the right to life and to physical integrity. As a result, neither the Salvadoran State nor persons acting on its behalf or in its place can claim that the existence of an armed conflict justified the commission of serious acts of violence in contravention of one or other of the international human rights treaties applicable" (1993: 22).

The Chilean Commission also reported that "a situation of internal war does not constitute the slightest justification or excuse for the violation of legal and ethical norms that are absolute ..." (Rettig, 1993: p.32). Referring to Chile's obligations under International Humanitarian Law, the Commission concluded these conventions also constituted part of "the essence of Chilean law" and that "such transgressions [as were committed by the Pinochet regime] are never justified" (ibid: 29). On this basis, both private citizens and the state could be held accountable for their actions.

3.3.2 *Defining violations*

From determining that the state was obligated to meet its international commitments, the common language of international norms was then used by the two Commissions as a basis for defining the forms of human rights violations falling within the scope of their mandates.[57] In Chile, the term "most serious violations" specified in Article One of the Commission's mandate was determined to include "the situations of those persons who disappeared after arrest, who were executed, or were tortured to death in which the moral responsibility of the state is compromised by acts of its agents or persons in [the state's] service". The Commission based this definition on Chile's obligations under the Universal Declaration of Human Rights (Rettig, 1993: 27) and international humanitarian law as embodied in the Geneva Conventions (ibid:29).[58]

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[57] Some basic sources of international human rights used by the Truth Commissions include the Universal Declaration of Human Rights, the International Convention on Civil and Political Rights, of which the United Nations Human Rights Committee is the authoritative interpreter, the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Geneva Conventions. Within the Inter-american human rights system, particularly relevant are the American Convention on Human Rights and the Inter-american Convention on the Forced Disappearance of Persons.

[58] It is important to note that the definition of "most serious violations" did not include those acts not resulting in the death of the victim, such as torture, arbitrary arrest and intimidation.

The Salvadoran Commission also concluded that the normative basis of its investigation would be "determined by the rules of international law [which] must be considered as providing the basis for the criteria applicable to the functions which the peace agreement entrusted to the Commission" (1993: 20). Its mandate instructed the Commission to investigate "serious acts of violence". While the mandate did not specify what principles of law the Commission should draw on in defining these acts, the Commissioners themselves concluded that the concept of "serious acts of violence does not exist in a normative vacuum and must be analyzed on the basis of certain relevant principles of law" (ibid: 20). They referred to Article 4 of the International Covenant on Civil and Political Rights which defines the fundamental rights not subject to derogation, such as the right to life and the right not to be subjected to torture or inhuman or degrading treatment (ibid: 21). The Commissioners also argued that the violation of these fundamental rights "may even constitute an international crime in situations where acts are of a consistent type or reflect a systematic practice whose purpose is the large scale violation of rights ..." (ibid: 21).

3.3.3 *The role of non-state actors in supporting Truth Commissions*

A final dimension of the "unbundling of territory" relevant to the Truth Commissions was the role of non-state actors. They worked in El Salvador and Chile to place the issue of human rights at the center of the public debate around political transition. Using national and international norms, non-state actors also contributed towards creating a political environment in which inaugural regimes were forced to confront the issue of rights, including supporting the evolution of an ethical environment in which the values associated with "human rights become the moral counterweight to the force of the military dictatorship"; a framework for "imagining" an alternative to authoritarian governance (Zalaquett, 1993: xxvi). In their turn, the Truth Commissions for Chile and El Salvador provided a political space for non-state actors to enter into the transition process.

For the purpose of this paper, non-state actors are defined as organisations and individuals that exist outside the state's formal structure. Non-governmental organisations (NGOs) influence the human rights policy of states by monitoring state performance and advocating for the protection and promotion of rights before public opinion and through the formal channels established by national and international mechanisms. NGOs also work at the international level to promote the development of international legal standards and specific instruments for enforcing state compliance with those standards. In this manner, non-state actors play a significant role in the evolution of international human rights norms, including the extension of those norms into the national context.[59]

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[59] One recent example is the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Landmines and Their Destruction. The International Campaign to Ban Landmines played a decisive role in stigmatising the weapons in

The extent to which human rights organisations are active in the international realm is demonstrated by a recent survey of 300 NGOs (Smith, 1997). The survey found that NGO activity around human rights has increased dramatically in the past two decades. A full seventy-five percent of the responding organisations were created after 1970 (ibid: 3). In addition, the large majority of these organisations are active at the international level. Ninety-three percent reported that they work to "promote the development of international [human rights] legal standards" while 84 percent "promoted the development of specific international mechanisms for enforcing human rights" (ibid: 4).[60] In addition, ninety percent of the responding organisations reported that they had contact with the various UN human rights bodies (ibid: 10). Finally, the survey also demonstrates the extent to which NGOs work collectively at the international level. Eighty percent reported that they worked closely with other NGOs in some form of network or coalition, indicating that there are "fairly extensive contacts between international human rights NGOs and other NGOs working at the local, national and international levels" (ibid: 14).

NGOs played important but distinct roles in both the respective transition and Truth Commission processes. In Chile, the Truth Commission was dominated by national actors and the role played by international actors was not decisive. Zalaquett argues that human rights was the central issue of political transition as a direct result of the work of NGOs. National organisations worked throughout the 1980s to define the issues and shape public opinion in a manner that stigmatised the state's arbitrary use of power. They "carefully documented every case which came to their attention and produced numerous and thorough reports on the overall human rights situation" (1993: xxvii). This information was used extensively by the Commission (ibid: xxvii). At the same time, international organisations kept the issue of violations in Chile before international public opinion (Zalaquett, 1993: xxvii; Lowden, 1996: 1-10).

In contrast, the role of the international community in El Salvador was critical to the overall peace process, including the Truth Commission which constituted one of its dimensions. Regarding the role of NGOs, Commission member Buergenthal observed that national NGOs were "surprisingly unprepared to assist the Commission [despite] their important and courageous work during the armed conflict". He described the information provided by these groups as "not particularly useful". However, international organisations such as Amnesty International and Americas Watch monitored the country from the beginning of the conflict, accumulating extensive information on the country over the years. NGO reports "provided useful background information and served as guideposts for Commission investigations" (1995: 302).[61]

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international public opinion and generating political will for the evolution and ratification of the Convention, winning the Nobel Peace Prize for its actions.

[60] The four major activities reported by NGOs were "education, standard setting, monitoring compliance with international standards and enforcement" (Smith, 1997: 9).

[61] Much of the information used by international organisations was originally gathered and investigated by national organisations.

The United Nations played a critical role in brokering and verifying the peace accords between the government and the FMLN. The participation of the UN was decisive in the absence of national actors or institutions capable of guaranteeing the implementation of the accords. As a neutral third party, the UN Observer Mission in El Salvador (ONUSAL) inserted itself between the former combatants to monitor the implementation of the agreement and the compliance of the respective parties. ONUSAL had a "pacifying effect on the country [during the implementation of the peace accords]. It kept the combatants and their supporters apart, it defused dangerous situations and gave both sides a sense of relative security" (Buergenthal, 1995: 323). In this regard, the UN presence was essential in creating the political and social climate for transition.

Buergenthal also notes that the presence of ONUSAL in El Salvador was essential to the practical functioning of the Commission. He concludes that the role of the UN mission in establishing the minimum social and political guarantees for both sides was essential to the Commission's ability to conduct an investigation. Also, ONUSAL provided logistical support "without which it would have been impossible for the Commission to establish itself without a significant loss of time" (ibid: 323).

4 Dismantling enclaves of authortiarian power; the role of truth commissions

From their basis in national and international human rights law, the Truth Commissions for Chile and El Salvador had the potential to act against some, but not all, of the enclaves of authoritarian power still present in the transition polity. The interaction between the Commissions and these enclaves had the potential to take place in three sites of transition identified by John Gerard Ruggie; the sites of Material Environments, Strategic Behaviour and Social Epistemes.

4.1 Truth Commissions and transition in material environments

As a result of their human rights focus, the Truth Commissions for Chile and El Salvador did not have the ability to dismantle enclaves of authoritarian power that existed within transitional economic structures. These include enclaves that may have been transferred into the transitional polity through the pact of economic continuity. The respective Commissions could indirectly open space in the formal political system, allowing for broader participation in decision making related to economic policy. However, their mandates make no reference to economic reforms. Enclaves existing in the realm of material environments, therefore, must to be the object of action by other transitional initiatives.

Given the inter-relationship between different aspects of transition, a failure to accomplish the two fundamental tasks of transition in the site of material environments undermines the process of democratic consolidation in the sites of social epistemes and strategic behaviour. On this point, Villas (1996: 462), Karl (1996: 77) and Garretón (1995: 147) warn that transition in Latin America has been limited to the formal dimensions of the political system, largely ignoring the polity's substantive aspects. The situation is particularly difficult in Central America, where the "socio-economic conditions that precipitated [conflict] remain virtually unchanged, and indeed in some respects are more pressing than three decades ago" (Villas, 1996: 464).

In El Salvador, Boyce (1995) and de Soto and del Castillo (1994) argue that the economic policies of the Salvadoran government, supported by the international community, conflict with the needs of the peace accords. The political and social reforms negotiated by the government and the FLMN called for large state expenditures to fund the reintegration of ex-combatants into society, land transfer programmes and poverty alleviation and infrastructure projects. These were key elements of the peace process "aimed at eliminating the causes that initially lead to the conflict" (De Soto and del Castillo, 1994: 70).[62]

[62] In particular, the transfer of land to ex-FMLN combatants was seen as crucial to their re-integration into Salvadoran society, effectively representing a "land-for-arms" exchange (de Soto and del Castillo, 1994: 70)

Many of the initiatives have been funded by international donors as part of their commitment to the overall peace process.

At the same time, the Salvadoran government has implemented "a rigorous economic stabilization and structural adjustment program" which was adopted in the mid-1980s and supported, if not required, during transition by the International Monetary Fund (ibid: 70). However, de Soto and del Castillo note that the current economic policies did not take into account the full costs of political transition, including both its social dimensions as well as rehabilitating the country's economic infrastructure. The policies dramatically reduced resources available to fund peace-related initiatives. Consequently, the Salvadoran government is now faced with a dilemma; "should it sacrifice economic stabilization to proceed with implementing the peace accords, or should it strictly carry out economic stabilization and structural adjustment programs, perhaps endangering peace?" (ibid: 71).

Accordingly, Boyce notes that economic policy has failed to exercise a "peace conditionality"; it has not been used to ensure the implementation of high-priority peace-related programmes or to mobilize domestic resources for that purpose. Rather, the priorities of the international community and the Salvadoran state have "often diverged from those of the peace accords" (Boyce, 1995: 2101). Similarly, de Soto and del Castillo maintain that costs associated with the peace agreements can not be avoided without compromising the entire process. They write that these two contradictory aspects of government and international policy "could be on a collision course" (1994: 70).

The site of material environments, therefore, demonstrates that Truth Commissions must be understood as only one aspect of a larger transition policy. Where economic reforms fail to meet the demands of transition, the entire process may be undermined. The activities of Commissions must be coordinated with other initiatives that support democratic consolidation in the dimensions of transition that are beyond a Commission's reach. A Truth Commission process can not be seen as a substitute for these other actions.

4.2 Truth Commissions and transition in the realm of strategic behaviour

The ability to commit gross and systematic human rights violations required that few institutional constraints be placed on the arbitrary use of state power in Chile and El Salvador. Rather, Chapter Two illustrated how the resources and institutions of the state were organised to implement the two governments' policies of violence. The matrix of constraints and opportunities, therefore, favoured actors with the coercive power to control the political system through the use of repression and fear.

Democratic consolidation demands that enclaves of authoritarian power existing in the institutions of state be dismantled during transition and replaced with democratic institutions. In this manner, transition reduces the possibility that state power can be used arbitrarily in the future. Where they accomplish these two goals, Truth Commissions serve as a first step towards establishing (or

re-establishing) the rule of law and mechanisms for the protection and promotion of human rights.

The Commissions for Chile and El Salvador had the potential to alter the matrix of constraints and opportunities through their third objective of making "recommendations for legislative, structural or other changes to avoid a repetition of past abuses" (Popkin and Roht-Arriaza, 1995: 79). The Chilean and Salvadoran Commissions differ in the emphasis of their recommendations. In part, this reflects the difference between a pacted transition and a negotiated settlement to civil war resulting in a political regime transition. Regarding the latter, the situation in El Salvador demanded that the relationship between the state, civil society and the armed forces be reconfigured. The presence of the United Nations gave the Salvadoran Commission additional political leverage to address these issues.[63] It made sweeping recommendations for demilitarising society according to the terms of the Peace Accords. The report was particularly concerned with consolidating the supremacy of civilian authority and subordinating the armed forces to democratic institutions and process.

Accordingly, the Salvadoran Commission based its recommendations on four principles; "democracy, which leaves the fundamental decisions as to the destiny of the country in the hands of the people and gives priority to dialogue and negotiation as basic political tools; Participation, which integrates minorities with majority ...; The rule of law, in which the primacy of respect of and for the law is the basis of a culture which guarantees equality ...; Respect for human rights, which are the *raison d'etre* of the above four principles and serves as the basis of a society organized to serve people, all of whom are vested with equal freedom and dignity" (1993: 174).

Restrained by the power of the armed forces and the absence of international forces capable of acting as a balance, the Chilean Commission was not able to present recommendations reformulating the relationship between the state and the different sectors of society. For example, while proposing some judicial reforms, the Commission did not recommend a complete overhaul of the civilian and military judicial systems as occurred in El Salvador. Regarding civil-military relations, they "could only call for a commitment from the armed forces to respect human rights in the performance of their duties" (Ensalaco, 1994: 668).

Reflecting the investigation's objective of resolving serious violations suffered by individuals, the Chilean Commission recommended a comprehensive system of reparations such as a pension and improved access to social services (education and health) for the immediate families of the victims (Rettig, 1993: 843-849). Its Salvadoran counterpart offered only limited financial and "moral" compensation to be funded by both the state and the international community. The details of the Salvadoran reparations were vague and subject to the limits of the country's "prevailing economic situation" (1993: 186-187). The Chilean Commission also proposed measures to "solemnly" restore the good name of the victims (Rettig, 1993: 839). Regarding national reconciliation, the Commission

[63] Popkin and Roht-Arriaza note that "UN pressure is effective as it is backed by the promise of foreign aid and the threat of withholding it" (1995: 104).

proposed such measures as the declaration of a National Human Rights Day and the creation of public parks honoring the memory of all of the dead (ibid: 839). The measures were symbolic, a recognition that all sectors of society had suffered in one form or another during the violence.

Despite important differences arising from the dissimilar contexts, there are several points of convergence in the two sets of recommendations. First, both Commissions approached the issue of dismantling authoritarian enclaves of an institutional character through the normative basis of international human rights instruments and international humanitarian law. At a minimum, these structural changes were intended to harmonise national regimes with the obligations of the respective countries under international instruments to which they were a State Party. In this manner, the Truth Commissions for El Salvador and Chile acted as a mechanism to transfer international norms into the national polity.

Second, there were numerous points of convergence in the two sets of recommendations. A summary of these points includes the following:

Table 11: Common recommendations

Common Recommendations
1. reforms to national law with the norms established within international human rights conventions and international humanitarian law to which the countries were States Parties. Both Commissions also recommended that the respective governments ratify all significant instruments to which they were not yet fully a State Party (Rettig, 1993: Salvadoran Commission, 1993: 183-184);
2. reforms to other aspects of the legal system to ensure the consolidation of the rule of law and respect for human rights (Rettig, 1993: 820; Salvadoran Commission, 1993: 181-184);
3. reform of the judiciary (Rettig, 1993: Salvadoran Commission, 1993: 189-190);
4. reforms to the armed forces to bring them under civilian control (Rettig, 1993: 875; Salvadoran Commission, 1993: 179-180);
5. reforms to the national police (Rettig, 1993: Salvadoran Commission, 1993: 183);
6. establishing a state human rights body (Rettig, 1993: 872; Salvadoran Commission, 1993: 182-183).

It must be added that the mandate of both Truth Commissions was limited to the act of making the recommendations. The Commissions were not implementing bodies and their recommendations were passed on to the appropriate government body for action. A measure of the long term effectiveness of a Truth Commission, therefore, is the degree to which its recommendations are accepted and implemented by the inaugural regime. In turn, implementation depends on the political will and power capabilities of the inaugural regimes and the resources available to them.

4.3 Truth Commissions and transition in the realm of social epistemes

Transition in the realm of social epistemes speaks to changes in the bodies of ideas and ways of imagining social relations that shape a political collectivity. While the epistemic foundations of the former regimes in Chile and El Salvador were based on the Doctrine of National Security and the culture of fear that the Doctrine produced, transition demanded the evolution of values and belief systems that supported the consolidation of a democratic polity; that the culture of fear be replaced with a culture of human rights and tolerance.

At the heart of epistemic change was the evolution of new ways of "imagining" relations between power and its subjects, between the state and civil society and between the different sectors of society that were formerly in conflict. At all three of these levels, Garretón argues that dismantling the culture of fear required finding a resolution to the mutual threat and insecurity felt by both those in power and the groups in society that were the subjects of repression (1992: 14-16). It was necessary, therefore, to liberate both the victors and the losers of past conflicts from their fears, allowing them to submit their interests to the democratic process and to engage in a tolerant civil discourse.

All four goals of a Truth Commission have the potential to contribute toward the creation of new epistemic foundations for societies in transition. For example, changes occurring within the realm of Strategic Behaviour can create "appropriate orders of rule and exchange" within the polity (Ruggie, 1993: 157). When gross and systematic violations are committed with impunity, social actors are unable "to predict the consequences of their behaviour because public authority is arbitrarily and brutally exercised" (Coradi, 1992: 4). However, clear orders in the new democratic polity provide a sense of security by removing arbitrary action from the repertoire of possible responses to dissenting voices. Social actors, therefore, are able to engage in the political discourse without the fear of become the target of violent repression.

Of more direct relevance to epistemic change, Truth Commissions can legitimise the culture, beliefs and values associated with human rights as the new framework for imagining social relations. Rights are the antithesis of arbitrary power and fear. Where effective, they guarantee the due process of law, the right to participate in the political life of the country, to dissent without fear of physical retribution and they broaden the concept of the "national security" to include the well-being of all persons in society. The manner in which relations of power in society are imagined, therefore, is reconfigured accordingly.

Truth Commissions also have the potential to transform the epistemic foundations of society through truth telling; the act of investigating human rights violations and producing an authoritative record of the past. Both the Salvadoran and Chilean Commissions were based on the premise that creating a version of the past that was commonly held in society was a first step towards reconciliation in society. They concluded that:

Table 12: Truth telling

Chile Commission	Salvadoran Commission
• "Only upon a foundation of truth will it be possible to meet the basic demands of justice and create the conditions for achieving true national reconciliation" • "That only the knowledge of the truth will restore the dignity of the victims ... and in some case make it possible to make amends for the damage done" (1993: 5);	• "[The Commission shall] clear up without delay those exceptionally important acts of violence whose characteristics and impact, and the social unrest to which they gave rise, urgently require that the complete truth be made known and that the resolve and means to establish the truth be strengthened" (1993: 189).

Popkin and Roht-Arriaza write that "an authoritative description and analysis prepared by respected national figures from across the political spectrum or well known foreign dignitaries will eventually be widely accepted and form the basis of the historical record" (1995: 114). Creating a credible version of past events is particularly important in polarised societies where interpretations of history are contested and potentially form the basis for future conflicts. In this context, "presentation of a full and unbiased record [is] important both to counter the deceptions of and justifications of the military and to move fairly recent and still potent events into the more distant category of 'history', establishing a line between the past and the present" (ibid: 93).

Hayner makes a similar argument in writing that the importance of a Commission's report is in "acknowledging the truth rather than finding it" (1994: 607). She describes the report, therefore, as an "acknowledged truth" that is particularly important where the state has formerly denied either that the violations occurred or the extent to which its agents were responsible. Quoting Mendez, Hayner notes that "knowledge that is officially sanctioned, and thereby made part of the public cognitive scene ... acquires a mysterious quality that is not there when it is merely the truth" (as quoted in Hayner, 1994: 607). In El Salvador, Buergenthal concludes that the impact of creating an acknowledged truth was to "strip away the any veneer of legitimacy which the former regime may have enjoyed" (1995: 321). With this information available in the public realm, it was possible to challenge the Doctrine of National Security by exposing the extent and illegal nature of the actions of former regimes.

Hayner also stresses the psychological importance of recognising a "truth" which was previously denied. She argues that the act can have the "cathartic effect" of bringing a form of closure to the past (ibid: 608). Preserving memory, therefore, can "be part of the formula for lasting peace" (Mendez, 1997: 257).

The themes of closure and reconciliation through truth telling were particularly relevant to the Chilean Commission's report. Commission members stressed that "national unity" and the ability to reconcile social polarisation depended, in large part, on developing a shared historical memory (Zalaquett, 1993: xxxii). They argued that "we must collectively acknowledge that all of this happened. Only from that moment on ... will some be moved to repentance and

others to forgiveness" (892). Similarly, Buergenthal writes that the release of the Salvadoran Commission's report had a significant psychological impact on the people of El Salvador. "The report told the truth in a country not used to hearing it ... The findings confirmed what many suspected, some knew and others refused to believe ... [however] few Salvadorans knew the whole story and many more could not separate the truth from the lies" (1995: 321). He argues that the report put an end to the counter-charges between former combatants and their allies, allowing the country to focus on the future rather than the past.

The process of acknowledging extends to the inaugural regime itself. In convening a Commission, the Chilean and Salvadoran states admitted the fact that past human rights violations occurred and that their agents held some degree of responsibility. The states also publicly admitted their complicity with the violence, recognised that these acts were wrong and that the state had an obligation to provide some form of resolution for their legacy. By officially declaring that past actions were wrong, the Commissions set a new moral standard against which the future actions of state can be judged.

However, for the process of acknowledging to be complete, the state must go beyond simply mandating a Commission to publicly accepting its report as an official version of what happened. Chile's President Aylwin took this action, presenting the findings of the Commission in a televised national address. As the head of state, Aylwin accepted the accuracy of the report and apologised for the crimes committed by its agents. The report was then widely disseminated and commended by a unanimous resolution of Congress. However, the military under General Pinochet publicly rejected the report. It did not dispute the individual findings of what happened, rather the military focused "mostly on the historical interpretation of the Allende administration and the role of the military government (Zalaquett, 1993: xxxii).

Unlike its Chilean counterpart, the Salvadoran government has never accepted the report of the Truth Commission as its own. Rather, both the government and the military publicly condemned the report as biased, politically motivated and inaccurate. The Salvadoran government, therefore, does not yet appear "to have gone through the internal process required to come to terms with the past" (Popkin and Roht-Arriaza, 1995: 101).

Beyond refusing to acknowledge past wrongs, authoritarian actors in both countries sought to obstruct the Commissions' investigations. As one example, neither the Truth and Reconciliation Commission for Chile (Rettig, 1993: 2) nor the Truth Commission for El Salvador had the legal authority to compel testimony from witness. Both subsequently complained about the of lack of co-operation from individuals and institutions alleged to have perpetrated past violations. The Salvadoran Commissioners wrote that "one thing must be squarely denounced: owing to the destruction or concealment of documents, or the failure to divulge the locations where numerous persons were imprisoned or bodies buried, the burden of proof frequently reverted to the Commission, the judiciary and citizens who found themselves forced to reconstruct events" (Salvadoran Commission: 1993: 13). Commissioner Buergenthal alleges that the Salvadoran military and government officials blocked access to important

documentation and destroyed or hid evidence (1995: 298-299). Regarding the testimony of officers that appeared before the Commission, Buergenthal concluded that "for the most part, they lied" (ibid: 303).

The resistance of former authoritarian actors to an interpretation of history that is critical of their actions is not surprising. However, it points to the problems inherent in trying to promote reconciliation and national unity on the basis of a shared understanding of history. More precisely, the logic of a Truth Commission presumes that it is possible to create such a history. Ignatieff argues that "the truth that matters to people is not the factual or narrative truth, but moral or interpretive truth" (1997: 2). The idea of "truth", therefore, is closely related to identity. What individuals or groups in society perceive to be true is relative to who they understand themselves to be. Reflecting the sense of identity and interests held by the military and their civilian allies, these groups were hostile to the Commission process in both countries. This suggests that the best a Commission can hope to do is isolate authoritarian actors in history by providing a credible alternative version.

Another way Truth Commissions can contribute to the creation of new epistemic foundations for society is through their second goal of "providing a platform for the victims to tell their story". Popkin and Roht-Arriaza conclude that "a major success of the Commissions is their role in listening to, and validating the stories and the human dignity of the victims. This suggests that it is the process of compiling the Commissions' report, as much as the final product, which is important" (1995: 114). The act of "telling their story" and validating the experiences of victims is often referred to as the cathartic effect of a Truth Commission process; the impact on the collective psyche of society when the truth about past events is revealed. Some scholars argue that this forms the basis on which a reconciliation between conflicting elements of society can occur (Popkin and Roht-Arriaza, 1995: 114; Hayner 1994: 600; Buergenthal, 1995: 321).

According to Salvadoran Commissioner Buergenthal, "many people who came before the Commission to tell what happened to them or their relatives and friends had not [publicly told their stories] before. For some, ten years or more had gone by in silence and pent up anger. Finally, someone listened, and there would be a record of what they endured" (1995: 321). Buergenthal notes that many witnesses were more interested in "being heard" than in seeking retribution against the persons responsible. After telling their stories, the witnesses could go home and "focus on the future less unencumbered by the past" (ibid: 321). Similar descriptions are made regarding the Chilean Commissions investigation process (Zalaquett, 1993; Ensalaco, 1994).

Finally, the importance of epistemic transition was reflected in the Commissions' recommendations. Both proposed measures to promote a culture of human rights in the transitional society. The Chilean Commission's report included a section entitled "Suggestions Aimed at Consolidating a Culture Truly Respectful of Human Rights" (Rettig, 1993: 878). The report argued that legal reforms are insufficient to guarantee that government officials and private citizens will respect human rights. "Such an assurance can only be achieved in a society

whose culture is truly inspired by unrestricted acknowledgment of the essential rights of human beings. Respect for such rights flows naturally out of such a culture as a part of everyday life and is manifested throughout the whole range of the nation's activities ... (ibid: 878). The report makes additional recommendations to the education system and other national programmes and institutions that would support the evolution of such a culture (ibid: 878-886).

5 Conclusion

It is difficult to imagine a society moving from an authoritarian regime to a functioning democratic polity without coming to terms with the painful events in its recent past. These happenings are too fresh in the collective memory of society to ignore without jeopardising the political legitimacy of the inaugural regime. A failure to dismantle the structures that permitted human rights violations also leaves authoritarian enclaves intact, allowing non-democratic actors to intrude in areas of governance that should be under civil jurisdiction. More diffuse and difficult to quantify but equally important, the way an inaugural regime deals with past violations sets the tone and principles for future governance. O'Donnell and Schmitter write that when a society buries the past by "refusing to confront and purge itself [it also] buries the very ethical values it needs to make the future liveable" (1995: 59). Accounting for the past, therefore, is a necessary part of the transition process, in the form of clarifying what happened, imposing some form of judgement and sanction on the persons responsible for human rights violations and establishing the rule of law.

Political transition is not an exact science. Based on Dahl's concept of polyarchy, the literature offers definitions that identify some of the qualities necessary to make a political system democratic. Particularly important are legal regimes and institutional structures for the protection and promotion of human rights that provide the minimum social and political guarantees for a democratic polity to function. However, there is little precision regarding how these qualities combine to create a democracy or the process through which a nation must pass to create and sustain them over time.

In the absence of a clear transition model, this paper has assessed the role of Truth Commissions in supporting democratisation by placing them in the larger "complex dialectic" of transition and identifying the sites of transition that Commissions are able to address. It makes three essential conclusions. First, Truth Commissions can not resolve the state's legacy of past human rights violations on their own accord. Commissions are a compromise mechanism used in a situation of incomplete transition. As such, their mandates and the scope of their agency are limited by the dynamics of power. Despite a Commission's potential contribution to democratic consolidation, there is a danger that "truth" will be used as a substitute for further actions rather than one of many initiatives designed to provide both a measure of justice and the institutional and political changes required to resolve the state's legacy of political violence. Perhaps most importantly, Truth Commissions can be used to take human rights violations out of the sphere of judicial action, particularly where they are accompanied by an amnesty law. It is important, therefore, to be clear regarding what Commissions are capable of accomplishing and what is beyond the reach of their agency.

Second, despite their limitations Truth Commissions have a significant potential to support the consolidation of a democratic polity. They contribute to the two essential tasks of transition in the sites of Strategic Behaviour (the

institutional matrix of constraints and opportunities) and Social Epistemes (bodies of knowledge and ways of imagining relations within a political collective). While these changes may not be immediately related to the problem of prosecution, their longer term impact on society can be just as significant as criminal prosecutions. Also, any change in the sites of Strategic Behaviour and Social Epistemes has significant and positive implications for the entire polity as transition in one area will have a ripple effect and influence other aspects of governance in the emerging political system.

Third, Truth Commissions are not implementing bodies. Inaugural regimes, therefore, must have the political will, power capabilities and the resources necessary to follow up any process that a Truth Commission begins. The regimes must also simultaneously enact initiatives in the sites of transition that Commissions are not able to address. In turn, inaugural regimes must be supported (or compelled) by the agency of an active civil society and, in some cases, of the international community. For example, compliance with the recommendations of a Truth Commission requires constant monitoring, not just short term political pressure. Their agency is particularly important where the regime may not be predisposed to change as in the case in El Salvador.

Based on these findings, two scenarios emerge related to the impact of Truth Commission investigations in Latin American. In the first, Commissions can establish an historical record and legal documentation that serves as the basis for criminal prosecution at a later date when the balance of forces in society is more favourable. Truth telling, therefore, serves as a step toward accountability. A Commission can also provide the basis for institutional and social reforms, including altering the dynamic of relations between the state and civil society. In the second scenario, the persons responsible for past violations can use a Commission process to respond to popular demands for an investigation while at the same time avoiding formal criminal proceedings. "Truth" becomes a poor alternative to "justice" that permits authoritarian actors to move into the future with their power intact. It "allows exactly the kind of false reconciliation with the past that [the Commission] was created to forestall" (Ignatieff, 1996) and is likely "doomed to be forgotten by the society that it purported to serve" (Mendez, 1997: 269).

Trying to bury the past is often ethically unacceptable to the majority of the population. Perceived injustice can remain alive in the collective conscience of a society for centuries. Where unresolved, societies are doomed to repeatedly fight the same battles. Transitional actors, therefore, must not only deal with their vital interests as defined by the dynamics of power, but also with ideals of what is perceived to be just. Faced with this challenge, Truth Commissions are an inadequate solution that leave unresolved many of the dilemmas related to resolving past human rights violations. Their limitations are not necessarily a problem of the Commissions themselves, but reflect the transitional situations in which they were conceived. However, despite their short comings, Commissions can play a critical role in fostering a environment where meaningful change can take place.

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Appendix*: Can truth bring reconciliation to Guatemala?

Guatemala's 36- year civil war came to an end in 1996 with the signing of a Peace Accord between the Government and the United Revolutionary Front guerrillas. Two years later, the fighting has stopped, but the memory of the conflict still lingers. Can a Truth Commission promote reconciliation between Guatemalans?

"It was an earthquake that shook the whole country; now Guatemalans know the truth about what happened in their country." In this manner, Norway's Ambassador to Guatemala, Arne Aasheim described the 3,600 page report of the Commission for Historical Clarification, which was presented on 25 February 1999.

The Commission was created under the 1996 Peace Accords between the Government and the United Revolutionary Front (URNG) guerrillas with a mandate to investigate human rights violations committed during Guatemala's 36-year civil war and to clarify why and how the violations happened. The conflict left over 200,000 persons dead, up to a million and a half persons displaced and an uncounted number of victims of human rights violations such as torture.

The Commission's findings were devastating for the Guatemalan State; 93 percent of the more than 42,000 cases of human rights violations that it documented were attributed to Guatemalan security forces and paramilitary groups associated with them. Only three percent of the violations were attributed to the URNG. The Commission could not determine who was responsible for the remaining four percent.

The CEH findings are supported by those of the Catholic Church's Project for the Recovery of the Historical Memory (REMHI), which presented its report in 1998. Of the more than 50,000 cases investigated, the REMHI attributed responsibility for 90.53 percent to agents of the Guatemalan State or paramilitary groups associated with them and 9.3 percent to the URNG.

Indigenous Mayans comprised 83 percent of the victims. The Commission found pervasive evidence of "massive and indiscriminate violence systematically directed against indigenous communities [by the Guatemalan State] independent of their actual involvement with the [URNG] and with clear indifference to their status as non-combatants". The evidence lead the Commission to a surprise conclusion: that the Guatemalan State committed acts of genocide in four regions of the country between 1981 and 1983, with the intention of eliminating Mayan ethnic groups, either by killing them or destroying their social cohesion.

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* Completed 1 October 1999.

Genocide is defined by international law as "acts committed with the intent to destroy, in whole or in part, a nation, ethnic, racial or religious group." The Commission found that the "only common denominator for all of the victims was that they belonged to a specific ethnic group." The violence against the Mayans was carefully planned by the highest levels of the Government and the military command with the express purpose of "eliminating ethnically based groups, either by killing them or destroying the basis of their culture and social cohesion."

The crowd milling around after the presentation of the Commission's report was hushed; people from all sides of the conflict were stunned by the severity of its findings. Since then, questions are emerging about the impact of the report for Guatemala's Peace Process. To assess the possibilities, it is necessary to understand its role and mandate.

A Truth Commission is not a judicial body with the power to prosecute the individuals responsible for past human violations. The weakness of the Commission's mandate reflected the dynamics of power in post-conflict Guatemala; the military retained its strength and was not willing to subject its members to criminal proceedings. According to one General, "we won the war, why should we surrender the victory?" The new civilian government had neither the power nor the will to challenge them.

However, during peace negotiations the military was forced to allow an investigation into the past, offering "truth" as a substitute for "justice". This truth-but-not-justice formula has been used in other countries, such as South Africa, El Salvador, Argentina and Chile that have used Truth Commissions to support a transition to democratic government after a period of conflict. What these countries have in common with Guatemala is a situation of incomplete transition that left enclaves of authoritarian power inside of the fledgling democratic system.

Rather that the prosecution of individuals, the Commission had a broader social purpose; to create an "accurate and unbiased account" of Guatemala's history acknowledged as fact by all of the Parties to the conflict. The Commissioners claimed that creating this record was a first step toward reconciliation between the former combatants and between the victims and the perpetrators of human rights violations. Truth ensures "that those affected by the armed conflict are listened to ... and no longer considered as victims, but as protagonists in the country's future." According to Commissioner Christian Tomuschat, "acknowledging responsibility also allows the perpetrators [of violations] to recover their human dignity, which was lost as a consequence of their actions."

The bible says that the process of reconciliation has two steps. The persons responsible for past human rights violations must acknowledge their actions, accept responsibility and ask the victims for forgiveness. The victims must then be willing to grant that forgiveness. None of these steps seems possible in Guatemala. The

Government of President Alvaro Arzú Irigoyen refused to apologise for past human rights violations. Instead, his government launched what one former senior Commission staff persons described as a "concerted campaign to discredit, undermine and play down the importance of the [Commission's] report." President Arzú told the international press in August 1999 that he does not believe, within the legal definition, that acts of genocide were committed.

The Government also refused to accept the report as an "official" version of Guatemala's history, instead calling it only one interpretation of a "complex and controversial situation." The symbolism of this position is important; by definition the Government gives equal weight to other versions of history and rejects the report as the basis for reconstructing Guatemala's historical memory.

Leading candidates in the 1999 election campaign have also refused to make compliance with the Commission's recommendations an issue. The FRG's Alfonso Portillo, who has close links with the military, explained his unwillingness to debate the report by saying "I prefer to focus on the future, not the past." The PAN's Vice-presidential candidate Arabella Castro stated that compliance "with recommendations such as exhuming bodies from clandestine graves and search for the disappeared will only open old wounds. As well, many of the families of the victims have said that they don't want their loved ones to be exhumed." Her statement is in direct contradiction to those of many victims' families.

For its part, the Guatemalan military obstructed the investigation. The extent of their deception was shown with the recent discovery of a 1984 army logbook that carefully records the fate 183 persons, 100 of whom were executed. According to Commissioner, Otilia Lux de Coti, who now lives in Norway, "we asked [the military] for reports on specific cases of people who had disappeared or were killed ... and were told that such documents did not exist. This shows us that they did not tell the truth."

Nor do other protagonists to the conflict appear ready to accept their responsibility. Efrín Rios Montt, President of Guatemala in 1982-83 when the genocide took place, said he had no knowledge of the killing, stating "my conscience is clean and I sleep well at night." On the other side, Nobel laureate, Rigoberta Menchú, stated "I am not sure that I can ever forgive [the military]." Only the URNG has declared "with profound pain and humbleness we ask forgiveness from the victims, their families and communities for any kind of excesses."

The rationale that truth-telling leads to reconciliation is a noble concept, but it may not yet apply to Guatemala. The argument assumes that it is possible to have one shared truth about what happened; that a nation can have one mind about the past; that truth is certain, not contestable and that when all is exposed, human beings have the capacity to ask for pardon or forgive. However, truth is relative to identity. People do not readily surrender the ideals on which they have based their entire lives.

Reconciliation, therefore may be something left to the next generation of Guatemalans.

So what is the impact of the Commission's report? Most importantly, it broke the silence. The State formerly used terror "to intimidate and silence [Guatemalan] society as a whole." Everyone knew what was happening, but few had the courage to speak up because they ran the risk of being killed. What was a public secret is now public knowledge; the subject of unafraid conversation. Each repetition of the facts has the power to embolden the formerly silenced majority. If nothing else, the report reduces the number of lies in circulation. According to one Guatemalan commentator, "the false versions of version of history told to us by the military has been put in their place; the cemetery of lies."

The report also redefines the values that shape relationships throughout Guatemalan society, replacing the old values associated with repression and dictatorship with new ones that speak to respect for human rights, the sanctity of human life and democratic participation. The report strips away the legitimacy of those on both sides who committed human rights violations, clearly stating that they acted "without respect for the rule of law or fundamental ethical or religious values." These are important steps in any process of democratic transition.

One immediate impact is that all three major parties in the 1999 election are being forced to explain the background of candidates alleged to have committed human rights violations. Several have been expelled from the PAN and FRG roster.

Finally, the Commission overcame its weak truth-instead-of-justice mandate by laying the foundation for future criminal prosecution. The Guatemalan Congress passed an act in 1996 granting immunity to those who fought during the war. However, the act does not cover crimes against humanity. The Commission's surprise conclusion that the State committed acts of genocide, therefore, leaves many former and present members of the military and the URNG open to criminal prosecution.

Whether prosecutions take place depends on reforms to make Guatemalan's judicial system more effective. However, the case pending against Chile's General Augusto Pinochet, who is held in London for human rights violations committed during his 15-year rule, and the International War Crimes Tribunal indictment against Yugoslav President Milosovic raise hopes for criminal action at the international level. As a result, high profile military actors such as Rios Montt are known to have cancelled international travel to countries where they might be detained, and national and international human rights groups are organising legal proceedings.

The truth, or a close approximation of it, is now in the hands of Guatemalan society. How that information is used depends on the courage of Guatemalans to confront their past. Nothing is guaranteed; there are still strong groups that oppose the Peace process. However, one lesson is clear for all to see; the destructiveness of armed

conflict and the equality of the victims from all sides in death. Perhaps this is the one "truth" that will allow Guatemalans to move into the future.