

Reconciliation in Latin America: A Fine Balance

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EVEN THE MOST KNOWLEDGEABLE ANALYSTS of Peru's recent past were surprised by the findings of the country's Truth and Reconciliation Commission. Unveiled in August 2003, the report (issued by the presidentially appointed Commission) maintained that over a period of two decades (1980-2000), some sixty-nine thousand Peruvians were killed, over half of them by the virulent Shining Path insurgency.¹ Moreover, roughly seventy-five percent of the victims of Peru's civil conflict were of indigenous descent. The degree of the country's trauma—and the stark reality of such a huge gulf in Peruvian society—was dramatically revealed.

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In Latin America, the Peruvian commission continued a cycle of truth-telling exercises—some governmental, some not—that began with the Argentine commission CONADEP (National Commission on the Disappeared), that was set up in 1983, and produced the first "*Nunca Más*" (Never Again) report.² Societies that endured military dictatorships, civil conflicts, or widespread political violence have sought to come to terms with such torment, establish an incontrovertible historical record, reach closure, and—depending on political constraints and what circumstances will allow—pursue prosecution of those responsible for crimes. Such undertakings are now widely viewed as central to the broader task of constructing durable and high-quality democracies.³ Reconciliation essentially means peaceful co-existence and respect for difference—central tenets and pillars of democratic governance.

POLITICS OF RECONCILIATION

Since these commissions have in most cases been created in the context of a fragile peace, establishing truth has proved far easier than pursuing justice, or even providing

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reparations to the victims. Indeed, truth and reconciliation commissions, though highly valuable, are instruments to achieve wider political objectives. The prospects for healing the wounds, prosecuting those responsible, and preventing further abuses are always politically conditioned. Justice for the perpetrators is only one of many tasks that must be undertaken.

To be sure, not all of the tasks can be pursued simultaneously or, at all; tough choices must be made. And particular choices often depend upon the distinctive configuration of political forces, context, and timing. Curiously, the Argentine experience was not only pioneering in its truth-telling function, but the political context also proved to be the most propitious for serious prosecution of former junta members responsible for the estimated thirty thousand individuals, who disappeared during that country's "dirty war," from 1976 to 1982.

The fact that the Argentine military was defeated and humiliated in the Falklands/Malvinas war with Great Britain in 1982 meant that the armed forces ceased to be a significant national political force. This allowed the groundwork to be prepared for the trial and prosecution of nine former junta members. To be sure, many Argentine human rights groups, chiefly made up of victims' family members, strenuously objected to subsequent laws that obstructed or limited the prosecution effort and pressed for a more complete justice. But viewed in a comparative perspective, both in Latin America and worldwide, the Argentina experience is unique in its ability to attain, what Human Rights Watch considered "partial justice."⁴

Remarkably, nearly two decades after the publication of the CONADEP report, human rights questions continue to dominate Argentina's political discussion. To the surprise of many observers, President Néstor Kirchner, elected in May 2003, has given highest priority to the issue, getting Congress to annul previous amnesty laws and, of enormous symbolic importance, converting Buenos Aires' Naval Engineering Academy (ESMA)—where nearly five thousand Argentines were murdered—into a museum dedicated to the memory of the victims of state atrocities. Kirchner, considered practically a hero among human rights groups, is the first head of state in Argentina to publicly accept responsibility for the crimes committed during the country's military rule. Despite huge strains and pressures on Argentina's democratic order in recent years, the society has admirably maintained its prevailing constitutional framework, in part due to the enduring memory of a trauma that shaped an entire generation—and an overwhelming desire to avoid, at all costs, a return to the past.

The human rights issue has also been kept politically relevant and active by an increasingly crucial ingredient: the role of international actors. Though the decisions in European capitals (especially those taken by Spanish judge Baltazar Garzón) helped draw attention to the Argentina situation, it is in Chile where the impact of such



Picture Courtesy of Antonia Thompson

A Chilean mural. The faceless figures refer to “los deaparecidos,” the disappeared prisoners from Pinochet’s rule. (Fall 2003)

“global justice”—the application of international standards in national contexts—has been most monumental. In 1998, Garzón ordered the detention of former Chilean dictator Augusto Pinochet, then in London for medical reasons. In 1991, Chile’s Truth and Reconciliation Commission (known as the Rettig Commission, after its president Raul Rettig) reported that Pinochet, who led a bloody coup against democratically elected president Salvador Allende in 1973, had been responsible for some three thousand deaths during his sixteen year rule.⁵

CHILE: SMALL STEPS FORWARD

Though the Chilean commission had performed an extraordinarily useful role in revealing the pattern of repression and the deaths that occurred during Pinochet’s rule, the prospects for punishing those guilty of these crimes were bleak. Since the transition from military to civilian, constitutional government in Chile took place through a protracted negotiation—not total collapse as in Argentina—it was politically more difficult to contemplate a serious prosecution of military officials.⁶ During the transition, the outgoing military regime, still in a position of immense political power, had put in place a variety of institutional barriers that precluded their prosecution. Amnesty agreements are not incompatible with reconciliation, provided they are a product of genuine negotiation and are not imposed or forced, as Chile’s was. If we consider the

victim's right to forgive their victimizers to be a basic principle of reconciliation, we must also recognize their right not to be forced to forgive as an equally basic principle.⁷

Advocates sought to get around the strong institutional, and political constraints by pursuing select, illustrative crimes that took place outside of Chile (such as the 1976 assassination in Washington of Orlando Letelier, Allende's foreign minister). In addition, certain crimes were found to be outside the purview of the 1978 amnesty law passed under Pinochet; "disappearances," for example, were deemed an ongoing crime and thus could be prosecuted. Still, the inability (or unwillingness) to punish those responsible for atrocities left Chilean society fundamentally divided. It was, at best, an uneasy and grudging stability that prevailed.

Pinochet's detention in London, however, set in motion a series of decisions taken by Chilean courts and bolstered by public opinion that activated the country's judicial system and led to the trials of former military officials. The timing was also critical. Nearly a decade after the return to constitutional democratic government, Chileans probably felt increasingly secure and confident that proceeding on such a course would not jeopardize the country's political stability and would in fact contribute to strengthening the rule of law. Democracy had deepened, there had been a generational shift, and the army was politically weaker. Most important, time had passed, Chile was politically more prepared for the "justice" part of the equation, and Garzón's decision triggered a salutary process that is likely to make Chilean democracy even more robust. At the end of 2003, some three hundred former military officials were in Chile's prisons for human rights crimes (though Pinochet himself, for health reasons, was not).

Even more encouraging, in August 2003 Chilean President Ricardo Lagos announced his government's first major initiative to address the crimes committed under the military dictatorship.⁸ While stopping short of annulling the amnesty laws, the proposals undeniably marked a positive step for truth and justice in Chile. The three main issues that Lagos addressed included: (1) measures to improve the effectiveness and speed of court investigations of past human rights violations; (2) proposals to improve and extend symbolic and economic reparation for victims and their relatives; and, (3) institutional and legal reforms to safeguard human rights in the future. President Lagos also refused to enforce the amnesty decree, arguing that the interpretation of the decree is a matter for the judiciary and thereby upholding the government's commitment to an independent judiciary free from executive pressures.

There is a growing realization that, while there are compelling reasons for the government not to overplay its hand in prosecuting past violations, the short-term benefits of this strategy for reconciliation must be balanced against longer-term considerations. Although non-prosecution may be the most politically expedient course, that option will not best contribute to the building of a democratic culture. Indeed,

one of the strongest arguments against non-prosecution is that there is an indisputable benefit in allowing key democratic institutions, such as the judiciary, to function independently. Respect for the rule of law is fundamental to a democracy, and a judiciary that is unencumbered by executive interference is essential to establishing such respect in a society. It can also be argued that, in many Latin American countries, failure to address the violent legacy of the past has, in part, helped feed the cynicism and distrust towards the political system and the values it professes to uphold.⁹

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PERU'S SOCIAL CHASM

In contrast to the Argentine and Chilean truth commission reports, which investigated the military dictatorships in those countries, the Peruvian effort examined the human rights abuses committed under democratically elected governments in the 1980s and 1990s. Of course, the regime led by Alberto Fujimori in the latter decade was rather authoritarian in practice, particularly following the "self-coup" that took place in 1992. Still, the exceptional phenomenon of the ruthless Shining Path sets the Peruvian case apart from the others in Latin America. Peru's legacy is distinguished as much by government indifference as by actual government complicity in carrying out the crimes. (Human Rights Watch reports effectively captured the phenomenon during this period with titles such as "A Certain Passivity"¹⁰ and "Abdicating Democratic Authority."¹¹)

After the collapse of the Fujimori regime in November 2000 and during the transitional government of President Valentín Paniagua, a commission was established to investigate the crimes committed in the previous two decades. However, its task proved difficult and delicate as the country's traditional political parties, dominant during the 1980s, refused to accept the charges of indifference and complicity leveled by the commission. To date, there has been disappointingly scant reflection and self-criticism by the country's political class and society about what they might have done to prevent the tragic deaths of sixty-nine thousand Peruvians.

The Peruvian experience is distinctive in two other fundamental ways that make comparisons with South Africa perhaps more instructive than with other Latin Ameri-

can efforts. First, the commission employed public hearings throughout the country—the first and only use of this technique thus far in Latin America. The commission received seventeen thousand testimonies which were poignant and of immense pedagogical value and impact. Second, like South Africa under apartheid, Peru exhibited features of a sharply segregated society, with the indigenous population marginal at best to the country's economic and political system. Peru's commission highlighted this ethnic dimension, which is a proxy for the profound cleavages that, if uncorrected, will continue to provide fertile ground for such tragedies. As Peruvian novelist Mario Vargas Llosa wrote in 1983, after heading a commission to investigate a massacre of eight journalists in a poor Andean community, "Democracy will not be strong in our countries while it remains the privilege of one sector and an incomprehensible abstraction for everyone else."¹²

HEALING THE WOUNDS IN CENTRAL AMERICA

Peru's pattern of political violence and abuse differed substantially from that found in Central America, where civil wars raged for decades—at enormous human cost—until settlements were reached in the 1990s. Such conflicts were often proxies for the ideological battles that were part of the Cold War, and the tensions between the Soviet Union and the United States. Political agreements in Nicaragua (1990), El Salvador (1992), and Guatemala (1996) provided the starting point for genuine reconciliation; however, history weighs heavily, progress has been slow, and the obstacles remain formidable. In all three countries, the United Nations (and, in Nicaragua, the Organization of American States) played a positive role in facilitating the accords, providing assistance and advice, and trying to ensure that the terms of the agreements were met.

The end of the Cold War and the political agreements that followed were accompanied by considerable downsizing of the countries' armed forces, especially in Nicaragua and El Salvador. Still, given the political dynamics that marked all three situations, it was very difficult to imagine serious prosecution of those responsible for deaths (in El Salvador, an estimated seventy-five thousand were killed, and in Guatemala, two hundred thousand). The truth commissions in El Salvador and Guatemala sought mainly to disclose the nature and scale of the conflicts in those countries, and to recommend measures, including a host of institutional reforms, that would best insure that such tragedies were not repeated.¹³ To be sure, the amnesty laws protecting both state officials and guerilla fighters in El Salvador and Guatemala were strongly opposed by human rights groups and victims' family members. But many Salvadorans and Guatemalans seemed resigned to such laws, perhaps regarding them as inevitable, a necessary price to pay to foster political harmony, achieve closure, and move forward.

The Guatemalan case, where a majority of the population is of indigenous descent, remains the most tragic and most poignant in the region. It can be credibly argued that, given the preponderance of native Indian killings, what happened to this population most closely approximates genocide. It has also witnessed considerable backsliding in recent years, as the spirit of the accords in building peace and social reconciliation has appeared increasingly remote and tenuous. Governments have lacked the will and capacity to take appropriate measures to get rampant crime under control, in accordance with human rights guarantees. With the election of a new government in late 2003, many observers hoped that the marked deterioration in the security and governance conditions in Guatemala could begin to be reversed.

A CHANGING INTERNATIONAL CONTEXT

One thing is certain: with the change in the international context surrounding human rights, and with increased access to information through media like the internet, the politically easier formulas—such as forgive and forget—will be harder to justify. Nor will choosing to prosecute human rights crimes carry with it the same risks that existed in the earlier commissions. The growing sense that impunity is undesirable, both from an ethical and a pragmatic perspective, means that political actors of all stripes may now be more prepared to pursue retributive justice. Finally, governments can increasingly and rightly claim that they are powerless in this regard: one has only to consider the case of General Pinochet, or the extradition agreement signed between the United States and Colombia, to see that this is true. Mechanisms such as the Inter-American Court of Human Rights, the International Criminal Court at the Hague, and the UN Human Rights Committee also contribute to “internationalizing” such atrocities, making it easier to balance the demands of human rights groups, victims and their families with domestic political constraints.¹⁴

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WHAT NEXT IN LATIN AMERICA?

Looking ahead, few observers doubt that there will be additional surprises in countries that have already had truth-telling commissions. There will also be considerable pressure, both within countries and abroad, for the creation of such commissions, at the most appropriate time. Colombia, for example, is the only country in the Western Hemisphere with an ongoing civil conflict, and there has already been substantial reflection and serious attention given to the question of how best to pursue—either simultaneously or in sequence—the twin aims of peace and justice. Colombian President Alvaro Uribe is seeking to reach an accord with the country's paramilitary forces,

though the proposal he presented to Congress in 2003 to deal with punishing such forces (and also those of the leftist insurgencies) provoked strong reactions centered around possible amnesties for those guilty of crimes.¹⁵

Colombia will continue to wrestle with such complicated questions and thorny political decisions related to tradeoffs between the pursuit of justice on the one hand, and assuring an end to the conflict on the other. In Colombia particularly, the international community—including the United Nations, the United States government, the European countries, highly active independent human rights groups, and most recently the OAS, with an observation mission on the ground—will surely have an important influence in shaping the terms of agreements on peace and justice in coming years. But if the previous experiences in Latin America are any guide, there will be an insistent public demand in Colombia to establish, at a minimum, a full and thorough accounting of the crimes committed by all sides during the recent period. Given that in Colombia, as in Peru, non-state actors have committed massive violations, the nature of the reconciliation process and the political pressures that Colombian society will face are likely to differ appreciably from the experiences of Argentina, Chile, and Guatemala.

If it is difficult to anticipate the terms and characteristics of a Colombian commission or truth-telling exercise, it is perhaps even tougher to predict what is likely to ensue in Cuba, the hemisphere's only remaining dictatorship. The nature of an eventual Cuban transition—there is, after all, a biological imperative—is the subject of considerable conjecture. Still, human rights advocates and specialists agree that to heal Cuba's deep wounds and reconcile the country over time, it will be important to undertake a process to pursue two goals: first, establish a clear historical record of the abuses committed, and, second, seek ways to punish at least some of those guilty of the worst crimes. A report published in 2003 attempted to develop some guidelines for how the complex questions posed by the Cuban case might be dealt with.¹⁶ Yet, just as the most relevant case for the Peruvian experience may have been in South Africa, in working out a formula for reconciliation in Cuba it might be most instructive to look at the record of Eastern Europe and the former Soviet Union.¹⁷

Still, based on Latin America's varied and rich experience in this area, it is reasonable to expect that the essential contours of the reconciliation process will be politically conditioned. That is, politics will ultimately define the limits and possibilities for undertaking the multiple and challenging tasks of healing, truth-telling, justice, and reparations. In addition, it is reasonable to expect the unexpected; rarely do reconciliation processes work out as experts predict. Politics, after all, are full of surprises. But what the Argentine case clearly shows is that there is a relentless, permanent public demand for truth and justice that is never fully satisfied. Such an appetite results in stronger

democratic institutions, practice, and culture—and helps insure that the dictatorships, armed conflict and political violence that have recently plagued Latin America remain shameful vestiges of the past. 

NOTES

1. See *Hatun Willakuy: Versión Abreviada del Informe Final de la Comisión de la Verdad y Reconciliación* (Perú: Comisión de la Verdad y Reconciliación, febrero de 2004), 17-2.

2. CONADEP report, *Nunca Más (Never Again)* (Argentina: Editorial Universitaria de Buenos Aires, 1984). Available online at <http://www.nuncamas.org/english/library/neveragain/neveragain_001.htm>.

3. On this, see Priscilla Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York: Routledge, 2001); Neil Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* (Washington, DC: USIP, 1995); *Reconciliation After Violent Conflict: A Handbook* (Sweden: International IDEA, 2003); and Jorge Domínguez and Michael Shifter, eds., *Constructing Democratic Governance in Latin America* (Washington, DC: Johns Hopkins, 2003).

4. "Truth and Partial Justice in Argentina," *Human Rights Watch*, 1 April 1991.

5. *Final Report of the National Truth and Reconciliation Commission* (March 1991).

6. José Zalaquett, "Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints," in *State Crimes: Punishment and Pardon*; (Queenstown, MD: The Aspen Institute, 1989): 23-69.

7. Patricia Tappatá de Valdez, "Comisiones de la Verdad: un instrumento de las transiciones a la democracia," *CPA Estudios/Working Papers* (junio de 2003). Available online at <<http://www.uned.es/dcpa/estudios.html>>.

8. "Discreet Path to Justice? Chile, Thirty Years after the Military Coup," *Human Rights Watch Briefing*, September 2003.

9. *Reconciliation After Violent Conflict: A Handbook*; (Sweden: International IDEA, 2003): 98.

10. "A Certain Passivity: Failing to Curb Human Rights Abuses in Peru," *Human Rights Watch*, December 1987.

11. "Abdicating Democratic Authority: Human Rights in Peru," *Human Rights Watch*, October 1984.

12. Mario Vargas Llosa, "Inquest in the Andes," *New York Times Magazine*, 31 July 1983, 18-23.

13. *Informe finales de: Comisión de la Verdad para El Salvador* (1993); *Comisión para el Esclarecimiento Histórico* (Guatemala, 1991).

14. See John Coatsworth, "Internationalizing Human Rights: A Look at the Americas," *ReVista: Harvard Review of Latin America* (Fall 2003).

15. See for instance "Colombia's Checkbook Impunity," *Human Rights Watch Background Briefing*, 22 September 2003.

16. Marifeli Pérez-Stable et al, *Cuban National Reconciliation: Task Force on Memory, Truth, and Justice*; (Miami: Florida International University, 2003).

17. Tina Rosenberg, "Confronting the Painful Past," in Martin Meredith's *Coming to Terms: South Africa's Search for Truth* (New York: Public Affairs, 1999); and, *The Haunted Land: Facing Europe's Ghosts After Communism* (New York: Random House, 1996).

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