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Nunca Más: Truth Commissions, Prevention, and Human Rights Culture

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9 Nunca Más: Truth Commissions, Prevention, and Human Rights Culture

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Truth commissions have become a common measure, and one increasingly expected, in the wake of authoritarian repression or domestic political conflict. The core functions of truth commissions, from which they derive their name, are discovering, disseminating, and preserving a truthful record of events, causes, patterns, and individual and institutional responsibilities surrounding specified human rights violations during a particular period of time. Around these core functions, however, a corona of high hopes and ambitious expectations has emerged. Prominent among these is a widespread conviction

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that telling the truth about past abuses leads or contributes to preventing similar abuses from occurring again. Truth commission mandates and reports universally insist that revealing the truth of an era of repression or violence will contribute to the prevention of similar abuses in the future. The same claim echoes throughout the surrounding literature on truth commissions. This hopeful conviction is not confined to formal truth commission practice but extends to the activity of truth recovery and dissemination in varied forms. The introduction to one book on alternative modes of truth telling – including artwork, gossip, music, and humor – says: “The words ‘nunca más,’ never again, used throughout Latin America and elsewhere express a simple ambition: to use truth and memory about the violent and authoritarian past to prevent its return.” It is not at all clear, however, how the process and output of a truth commission in particular can contribute directly to prevention of human rights abuses. Enthusiasm for truth commissions is increasingly being met with skepticism, including skepticism about the impact of such commissions in preventing future violence, repression, and abuse.


has recently written of the “sterility of calls to remember” in the face of continuing atrocities and genocides. Questions about whether and how truth commissions contribute to future peace sharpen as truth recovery begins to be seen as a possible feature of post-conflict justice generally.

Truth commissions (and the practical and scholarly literature surrounding them) developed as a response to post-authoritarian settings. Truth commissions assumed a prominent place among a set of measures aimed at establishing the rule of law, respect for rights, and civic and social trust after severe abuses of state power and domestic violence. Along with criminal prosecutions, vetting, reparations, and institutional reforms, truth commissions emerged as one aspect of “transitional justice”; for many, truth commissions are emblematic of transitions from state repression and domestic rights abuses to democracy. Yet all of these “transitional” measures are being “progressively transferred from their ‘place of origin’ in post-authoritarian setting, to post-conflict contexts and even to settings in which conflict is ongoing or to those in which there has been no transition to speak of,” in the words of Pablo de Greiff, special rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence, in his first report to the United Nations Human Rights Council. Transitional measures are thus increasingly being seen more broadly as parts of post-conflict justice.

At the same time, there is new and rapid expansion of the centuries-old tradition of “just war theory” to encompass not only moral principles for just conduct in resorting to war (jus ad bellum) and moral principles for just conduct in making war (jus in bello) but also the less-developed area of moral principles for just conduct in the termination of and sequel to war (jus post bellum). There is some considerable convergence, and increasing pressure toward convergence, between the demands of transitional and post-conflict justice. Norms of individual criminal responsibility, compensation and reparations, and institutional reform and rehabilitation play roles in both approaches. Truth-telling, however, is one core transitional measure that has

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not usually been transposed into the broader post-conflict context. Recent thinking on *jus post bellum* affirms the establishment of a peaceful and just community as the guiding ideal of post-war practice. Thus, from the standpoint of principles of *jus post bellum*, it becomes significant to make a case that a truth recovery process, of which a truth commission is the clearest institutional example, can be seen as contributing to the establishment and stability of a just peace. A just peace encompasses both the cessation of hostilities through a just termination of conflict, and the creation of societal conditions for the future enjoyment of human rights. The role of truth commissions in prevention of future abuses, then, matters both for its role in transitions to a rights-respecting democratic order and for securing the conditions of a just and lasting peace.

Truth commissions, at least in their domestic uses, can obviously contribute to future prevention of violence and abuse instrumentally, through implementation of the recommendations that truth commissions are invariably tasked to make in their reports. A truth commission’s recommendations can have a particular salience and persuasiveness when supported directly on the basis of its documentation of abuses of power, failures of leadership, and ineffective or malignant institutions. A truth commission has the potential to seize the transitional moment to command attention and to utilize public interest in the commission’s findings to make the case for societal change and institutional reform. This potential instrumental contribution to prevention, however, depends upon the implementation of the measures a truth commission recommends. Truth commissions are, in and of themselves, powerless to implement what they recommend or to ensure that their recommendations are carried out.

My focus here is instead on a more direct, if partial and dependent, way a truth commission itself might contribute to prevention through what it is and does, and not only through what it recommends. This direct contribution might be especially relevant in generalizing the role of truth recovery to a wider post-conflict context, where the aims might be expected to go beyond domestic reforms, but it applies at least as well to the common domestic focus

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of truth commissions. I do not offer a general account of truth commissions and their varied aims. Instead, I focus only on the preventive aspiration of truth commissions and offer a particular argument that supports a modest version of the claim that truth commissions contribute to the prevention of future human rights abuses. I will defend the idea that truth commissions, by the nature of their processes and products, contribute in specific ways to the prevention of future violations by promoting a culture of human rights, both in their individual operation and as a part of an international trend.

My claim is that truth commissions are one concerted and powerful pedagogical practice of a human rights culture. They express, enact, and demonstrate that culture in order to promote it in a fairly direct way: by teaching and interpreting human rights language, explaining and publicizing human rights standards, and cultivating awareness of the reality, danger, and avoidability of human rights violations, with the intent to influence understanding and behavior. In Part I, I argue that what truth commissions characteristically do or can do in their own proceedings contributes to entrenching the language and evaluative scheme of human rights, altering perceptions of the past and creating motivation for avoiding and confronting human rights violations in the future. In Part II, I consider the relevance to my view of some of the growing mass of recent empirical research that puts claims about truth commission effects to the test of qualitative and quantitative analysis.

9.1. PROMOTING A CULTURE OF HUMAN RIGHTS

In this section, I explore the way in which the characteristic processes and products of truth commissions inherently embody and demonstrate, for local and global audiences, the language and values of a culture of human rights. The idea of "human rights culture" is used very widely, and, it seems,

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Nunca Más

without explanation or precise definition. Much as Elise Boulding speaks of “cultures – those complexes of historical identity, values, know-how, and ways of behaving,” I will use here a broad and simple idea of “culture” that involves sharing mutually intelligible language, values, and interpretations and norms of behavior, with implications for how we act and how we understand and judge ourselves and others. A culture of human rights would be an environment in which people are articulate in the language and requirements of human rights as a moral framework. So promoting a culture of human rights requires teaching a shared language of human rights that affirms certain values and that fosters broad areas of agreement on the interpretation and acceptability of certain kinds of behavior. A culture of human rights would cultivate alertness to the possibility and prevalence of rights abuses, priming people to recognize violations and overcoming tendencies to denial and disbelief. A culture of human rights would also be one that disposes individuals to see certain possibilities of action (personally and collectively) as required and prohibited; to be moved in judgment and feeling to do and support what is required; and to refrain from and condemn what is prohibited.

I believe then that four features are plausibly associated with a culture of human rights: a distinct evaluative language and standards; epistemic priming to recognize and acknowledge abuses; inhibition and deterrence of behavior that violates standards; and preparation to act, with protest, resistance, and intervention, in the face of imminent or manifest violations. I do not argue but rather assume that these features are features of a human rights culture. My argument takes this form: if these are features of a moral and political environment we could call a culture of human rights, then there are correspondingly specific ways that a truth commission’s process, findings, and recommendations can express and promote a culture of human rights.

9.1.1. Articulating Human Rights Language and Exemplifying Standards

First, a culture of human rights is one in which the language of human rights is familiar and is used to identify minimally acceptable and grossly unacceptable conduct in terms of human rights standards and human rights abuses.

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Elise Boulding, *Cultures of Peace: The Hidden Side of History* (Syracuse: Syracuse University Press, 2000), 84. My view is compatible with the understanding that transnational human rights culture stands in complex relation to local cultures and situations with which it engages. Sally Engle Merry sees human rights as a cultural practice, “producing new cultural understandings and actions” (228–229) that require investigation. See her *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago, 2006) on this process with respect to violence against women as a human rights issue.
Forms of violence against human beings are labeled in terms of unambiguous criminal categories, such as torture, illegal detention, sexual slavery, or genocide. The correct application of human rights language involves understanding that certain acts or policies are clearly and categorically wrong independent of the political context in which they occur and the social or political standing of those to whom or by whom they are done. A truth commission in its very proceedings articulates and animates the language of human rights, demonstrating its meaning in application, conveying the categorical nature and the human importance of its requirements, and in the process framing and interpreting past and future actions in human rights terms.

A human rights culture prepares people to speak and correctly apply the language of human rights both prospectively and retrospectively to their own and others' actions, as well as to actions and policies of governments, institutions, and political groups. Prospectively, individuals understand when certain acts are framed in human rights categories that these acts are categorically prohibited as individual behavior and as public policy. In targeting acts for investigation under the category of human rights violations and rendering judgments that acts already committed are correctly labeled as such, truth commissions also perform a sort of translation into the past with implications for the future. A truth commission's conclusions resolve unclarity or ambiguity in retrospect about the unacceptable and criminally punishable nature of certain actions in the past. Truth commissions consistently redescribe past actions and policies within their mandates in the language of human rights abuses. Evasive or defensive labeling of actions and policies, misleading euphemisms, or justifying discourses about public order and political necessity are replaced by the clear vocabulary of actions categorically prohibited under human rights and humanitarian standards. Even when individual actions are done in the service of country or honorable values, or done out of solidarity, conformity, or obedience, those actions are pointedly redescribed in the language of gross abuses and so reframed as the crimes of disappearance, torture, illegal detention, kidnapping, extrajudicial execution, sexual slavery, systematic sexual violence, or genocide.

This powerful reframing function of truth commissions can only be fully effective, however, when a truth commission is committed to investigating offenses on all sides of a conflict or political struggle, for this underscores the categorical unacceptability of certain kinds of actions regardless of particular actors, victims, motives, or circumstances. Equally important, a truth commission should avoid moral equivalence by attending to differences in severity, extent, and systematic character among the violations it investigates, according these violations due and proportionate weight and censure. When a
truth commission examines all actors and offenses, and properly discriminates among them in kind, extent, and severity, a truth commission models the underlying principle of just discrimination among individuals (and groups) who bear different amounts or kinds of responsibility or who are responsible for different kinds of offenses. In this way, a truth commission models a principle of fairness (and in its formal version, of the rule of law) that is also a part of a culture of human rights. Judgments of wrongful conduct should be congruent with the standards that define acceptable conduct, regardless of the actors to whom the standards are applied; judgments of wrong and responsibility should be consistent across like cases, and should discriminate among unlike cases.

Truth commissions operate in the wake of circumstances in which the rule of law has broken down or in which the appearance of law has been preserved while nonarbitrary or impartial applications of law (or of the restraints imposed by law) have been abandoned in favor of political opportunity or expediency. A truth commission’s even-handed investigation of human rights abuses can reassert the value of equality under laws and fundamental norms, including equality of worth of victims of violations, equality of accountability of those perpetrating abuses, and equal protection of citizens. The nature of the continuing controversy over whether truth commissions should publicly identify perpetrators who are known so that they are made accountable, or should refrain from public identification in the absence of proof under the more rigorous conditions of a criminal proceeding, reflects an understanding that while a truth commission is not a judicial proceeding, expectations of fair consideration and equal protection (of both victims and perpetrators) bear on the legitimacy of a truth commission’s judgments.\(^\text{12}\)

The use of public hearings of victims’ testimonies, now common procedure for truth commissions after South Africa’s striking precedent, allows truth commissions to translate the legalistic terminology of human rights violations into vivid terms of human pain, anguish, and irreparable loss. Abstract categories are interpreted through powerful and disturbing personal narratives that make the human and social costs of violence and repression concrete. The pictures truth commissions present of individual suffering of victims and families, of widespread terror and complicity, of failure or corruption of central institutions, and of massive numbers of victims of heinous crimes, demonstrate

\(^{12}\) See Priscilla Hayner’s chapter, “Naming Names of Perpetrators” in Unspeakable Truths, 2nd ed. See also Colleen Murphy, A Moral Theory of Political Reconciliation (New York: Cambridge University Press, 2010) and Pablo de Greiff, “Truth Telling and the Rule of Law” for discussion of the importance of the rule of law in political reconciliation.
conclusively not only what human rights abuses are, but why human rights matter. When victims testify in detail to having been tortured or raped, or about their fruitless searches for spouses and children disappeared, including details about the actions and demeanor of those who carried out these acts, or the scorn of officials who ignored, taunted, or insulted them, it becomes more difficult to retreat to euphemism or justification. The contribution of truth commissions to investing the discourse of human rights with meaning is direct and often dramatic. 13

The potential power of the voice of the actual victim to cut through various kinds of dodges, excuses, justifications, and denials with a concrete first-person story of shocking violence, cruelty, or indignity has made South Africa's innovative public victim testimonies a current standard for other commissions. However, recruiting victims' testimonies to the project of human rights pedagogy introduces its own moral and political tensions. The testifying victim must not be seen primarily as dramatic material for effectively staging the work of a truth commission or as a means to a truth commission's end of reaching an audience, amassing evidence, and enhancing the credibility of its authoritative account of repression or conflict. A truth commission needs to consider its responsibility in inviting victims to testify. Victims seek relief of various kinds in testifying to a truth commission: relief from a tormenting lack of information about the fate of loved ones; relief from suffering in silence and living with disrespect and denial; relief in the form of material compensation and legal and social services, as well as personal and political recognition. It is increasingly recognized that truth commissions need to protect victims from retraumatization, retaliation, and exploitation in coming forward to testify. It is important to consider every way that a truth commission can be designed to manage expectations responsibly and to meet victim expectations to the greatest extent possible. That, too, is a pedagogy of the equal moral worth and dignity of individuals within a human rights culture.14


9.1.2. Reconstructing the Epistemic Environment

Second, a human rights culture is a social environment that cultivates general awareness of the reality, prevalence, causes, and conditions of grave human rights violations. A human rights culture pulls against all too common human tendencies to disbelief and denial about gross abuses and extreme violence. Instead, it encourages a historically informed understanding that many kinds of societies fail to respect and protect the basic rights of every human being, usually with the quiet acquiescence or more active complicity of large portions of the public, and that wholesale failures that degenerate into persecution and violence have always punctuated human history. A human rights culture prepares people to understand that “it can happen here” and equips them to recognize the signs of escalating danger and imminent abuses, to interpret correctly evidence that serious abuses are in fact occurring, and to question the denials and evasions of officials. This is necessary in part because extreme forms of violence are often shrouded in secrecy or cloaked in euphemism, denied by public authorities, or supported and justified by selective information, disinformation, and propaganda.

It is also necessary because human beings find it difficult to entertain and to come to terms with the reality of extreme and shocking forms of violence. Describing atrocities as “unspeakable,” “unthinkable,” or “unimaginable” is not always hyperbole. In Lawrence Langer’s work on Holocaust testimony, one survivor, Julia S., says “You’re not supposed to see this; it doesn’t go with life.” There is ample evidence that human beings can and will resist acknowledging disturbing or terrifying truths about violence and degradation; these truths can challenge and overwhelm our senses of compassion and obligation. At an even deeper level, we may simply be unprepared to believe that such things are true if they contradict reassuring beliefs about human behavior and society. Michael Ignatieff has famously said, “All that a truth commission can achieve is to reduce the number of lies that circulate unchallenged.” But this view underappreciates the deeply contextual and holistic nature of belief. What it is reasonable for even sincere and alert persons to believe is happening, has happened, or can happen is a function of what they already believe is possible or likely. A truth commission must contribute to an epistemic

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17 Psychologists point to “just-world thinking” that reassures us that the world is just and that people get what they deserve, thus warding off the possibility that victimization is random
environment in which the likelihood and salience of certain kinds and patterns of events has decisively shifted.

A truth commission not only brings forth findings concerning specific human rights abuses within its mandate, but in doing so it initiates a process of epistemic restructuring that is essential to the reception and retention of the kinds of truths, in particular, that a commission reveals or confirms. A truth commission needs to do more than tell individual truths that challenge individual lies. It needs to shift the senses of plausibility and probability of its audience enough to make the truths it has told more credible to a broad public than the lies it has challenged. A truth commission can and must tell not only discrete truths about violations and responsibility, but enough of the larger story to make it reasonable to believe what is in fact true and to search for a more comprehensive picture that fits the facts revealed. Truth commission reports have implications for how abuses might have been prevented, but truth commission findings can also shift the balance of probabilities concerning what reasonable people should believe about what human beings are capable of doing and what they should expect under conditions that invite abuses.

In narrower focus, a truth commission documents the reality of pervasive and shocking offenses in a particular place and time period, at the same time making them comprehensible as a function of conditions in that place at that time. It sheds light on the conditions under which individuals felt safe or justified in committing these acts, the ways that authorities permitted them and covered them up, and the degree to which society tolerated or ignored them, especially when particular stigmatized or marginalized groups were targeted, or when those targeted were presumptively maligned ("They must have done something"). As the testimonies of victims are crucial to animating and rendering concrete the reasons that human rights abuses matter, the testimonies of perpetrators, still rare in truth commissions, may be particularly effective in demonstrating how human rights abuses happen, including how ordinary people under certain conditions can perform disturbing or horrendous acts. A truth commission can reveal how political, social, and institutional factors interacted to allow this to happen. It confronts disbelief rooted in the simple conviction that "it can't happen here" or "our soldiers wouldn't do that" or "we live in a civilized society." A truth commission in response says to its


own society and to the world at large: it did happen here; our government (or soldiers, police officers, or neighbors) did do this; the society we live in is, at least in part, the one the truth commission has described. When a truth commission holds up a mirror to its society, it begins to lift the burden of proof from victims, to confirm but also situate the behavior of perpetrators, and potentially to encourage a broader public to recognize their own forms of complicity and responsibility.

In addition to reshaping perceptions of the past, there is also potential for the future. On broader and narrower planes, truth commission findings can lower the threshold of resistance to recognizing the imminence or presence of abuses, especially if findings are disseminated and incorporated into public dialogue, media coverage, school education, and professional training, both within affected societies and more widely in human rights education. Being prepared to believe in the reality or likelihood of human rights abuses when the evidence is present, and knowing what the evidence looks like, is necessary for preventive action. A truth commission can contribute to this preparation.

9.1.3. Inhibiting and Deterring Rights-Violating Behavior

Third, a culture of human rights informs individuals' prospective and shared understanding of conduct that violates the human rights of others. In this way, it carries potential to inhibit or deter abuses. The entrenchment of a vocabulary of criminal abuses might lead human rights norms to become internalized by individuals, incorporated into individuals' normative understanding of moral, social, and legal boundaries, so as to create some prior restraint or inhibition in participating in human rights abuses. Or, as the prospect of sanctions, formal and informal, is made more salient or is perceived to be more probable, individuals' rational calculation about engaging in certain behavior might be changed.

When South Africa's Truth and Reconciliation Commission (TRC) was charged with examining the perspectives of perpetrators as well as victims, the TRC took account of the role played by perceptions of the political struggle and self-perceptions both of those engaged in defense of the ruling power or in violent resistance to it. The TRC report noted that "in a situation regarded as war, violent actions were undertaken with pride rather than with distress and embarrassment." A culture of human rights undertakes to shift those internalized attitudes and understandings, furnishing a counterweight to the

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situational pressures and peer cultures that predictably allow individuals, especially those in positions of public authority or those under the orders of those more powerful, to see their abusive conduct as right or even heroic, or to justify it in terms of professionalism or political necessity. Chilean activist Sola Sierra says, "Remembering helps the people of a country avoid committing the same crimes, calling things by their name; a criminal is a criminal." If one is the criminal, however, one needs to see oneself under that description, instead of seeing oneself as a good soldier, a policeman just doing the job, a freedom fighter, or a patriot.

Skepticism about the effectiveness of prior awareness of moral and legal boundaries is entirely reasonable. It would be unwise to think that a truth commission could have significant effects directly on the moral predispositions and the conduct of individuals simply by underscoring the moral boundaries of acceptable action. The reality of situational pressures that can overwhelm personal conviction or inclination is widely recognized in studies of organized violence. Yet it is not unreasonable to believe that consistent societal messages, reinforced by formal and informal sanctions, and reiterated through social institutions, such as media, education, law, and professional training, can shift perceptions and conduct over time. Many societies have shifted understandings concerning the acceptability or inevitability of racial discrimination or domestic violence, for example, by educating individuals and transforming their perceptions of acceptable conduct. As important, when societies create informal social sanctions and introduce changes in institutional and legal requirements, they circulate and reinforce new expectations of accountability for actions that were once tolerated or accepted. What had once gone without saying is remarked; what was once taken as someone's right or duty is now understood as subject to negative attention, social disapproval, or legal sanction. The discourse of human rights, embodied and implemented in varied practices, carries that message, and a truth commission is a highly concerted

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pedagogy of that discourse. Truth commissions articulate and define core human rights categories, especially in terms of “gross violations,” and make clear that while human rights violations can be explained to some extent by social, political, and institutional conditions, they are the acts of individuals who can and might be held accountable for what they have done, potentially with very public consequences.

There is also the possibility of deterrence, by creating the understanding that anyone who participates in human rights abuses may be exposed at least to nonlegal but public accountability, and possibly to moral reproach, administrative penalties, or legal sanctions. Violators face the prospect of being found morally or politically responsible for grave wrongs in the eyes of others, even where liability to criminal prosecution is foreclosed or unlikely. Lawrence Weschler says, “When the torturer assures his victim, ‘No one will ever know,’ he is at once trying to break the victim’s spirit and to bolster his own. He needs to be certain that no one will ever know; otherwise the entire premise of his own participation in the encounter would quickly come into question.” 22 Deterrent effects are perhaps more likely to be cumulative, arising from the trend toward establishing truth commissions, rather than issuing just from a particular truth commission. As officially organized truth-telling becomes an international norm and a standard procedure in the aftermath of a period of conflict or repression, individuals, especially those in positions of authority, are faced with greater odds that their conduct might come under eventual public scrutiny. What they do might be exposed to their families, friends, and communities and might enter an enduring public and historical record as a shameful or criminal activity. The more widely known and practiced organized truth recovery projects are, the more likely it becomes that victims and human rights advocates will insist on a public truth process in the wake of violence. In this way, the odds of protective secrecy and deniability can be shifted in the minds of potential perpetrators. I hasten to add that deterrence claims for any kind of sanction, including criminal punishment, are notoriously difficult to verify conclusively. 23 Yet many seem to believe that the establishment of norms and institutions, nationally and internationally, that increase the likelihood of criminal prosecution of human rights crimes might be a deterrent. The likelihood of being exposed in a truth recovery process, however, is far greater, even if its consequences might be less dire.


9.1.4. Preparation for Resistance

Fourth, a culture of human rights would seek to motivate individuals to act affirmatively in situations of impending or actual human rights emergencies or in the face of persistent patterns of abuse. Awareness of the reality and seriousness of violations is not enough. Victoria Barnett notes in her study of bystanders during the Holocaust that knowledge that atrocities are occurring may prompt disbelief, indifference, passivity, and a sense of powerlessness instead of protest or resistance. This suggests that a culture of human rights must include not only heightened awareness of offenses and threats but also clear models of effective citizen protest, mobilization, and resistance and an understanding of institutional mechanisms or platforms to challenge the actions of offending authorities and to recruit the support of domestic or international actors. Truth commissions tend to provide detailed documentation of horrific abuses. Truth commissions could, however, undertake to illustrate admirable and effective forms of action, organization, and resistance that were or could have been adopted, and possibilities of activating domestic institutions or seeking international assistance in preventing, publicizing, or stopping illegitimate activity.

Ron Dudai has recently argued that investigating, documenting, disseminating, commemorating, and celebrating narratives of rescue, and honoring rescuers, belongs to a "thickened" conception of transitional justice. Investigation and preservation of accounts of rescue activity, Dudai proposes, can serve both reconciliatory and denunciatory aims in a post-conflict setting. On the reconciliatory side, rescuer narratives challenge group stereotypes, individualizing guilt and pulling against fixed and binary group identities. The acts of rescuers, deviant in the setting of system crimes that require widespread acceptance, motivated ignorance, or complicity, also pull beyond victim-perpetrator dichotomies in the direction of a more nuanced picture of individual choices. For that same reason, Dudai argues, commemoration of rescuers has denunciatory impact, highlighting the difference between those, such as rescuers, who took action to stop or mitigate atrocities, and those who did not take an active role in atrocities but also did not take oppositional action. In this way, rescue commemoration brings bystanders and beneficiaries, uncomfortably but instructively, into public view, showing "that silence in the face of genocide and atrocities is not an inevitable position."

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Dudai is promoting projects of recognizing “rescues for humanity” (in parallel to the category of crimes against humanity) as distinct measures among others for post-conflict and transitional justice. His principal model is Yad Vashem, the Israeli Holocaust Remembrance Authority, “the most extensive, developed, and influential project of its kind ... a unique enterprise in the global landscape of commemoration,” with its careful verification of acts of humanitarian rescue during the Holocaust, and its public honors conferred on rescuers as the “righteous among nations.”27 While Dudai makes a persuasive case for such independent and ongoing measures in the aftermath of repression or conflict, his argument bears also on one task that a truth commission might assume, within its limited time frame and narrower scope, as an important part of its contribution to a pedagogy of human rights. Truth commissions need not be restricted specifically to investigating humanitarian rescue behavior, or only to individual acts of moral courage in providing rescue or aid, although Dudai is right that these serve as moral instruction in a striking and memorable way. Truth commissions can document attempts to intervene, both by individuals and by important institutions, in ways that made or might have made a difference in reducing or preventing gross abuses of human rights. Such examples serve to illustrate not only that individual passivity is not inevitable, but that some kinds of political action and mobilization by individuals, groups, and institutions (or by individuals and groups within institutions) is possible and can make a difference.

Bronwyn Leeuw suggests that truth commissions, rather than narrowing the scope of their investigations, might expand them to “encompass the themes of complicity and resistance.”28 South Africa’s TRC’s sectoral hearings ventured into this territory by examining the failures of major institutions and professions to oppose apartheid, but an emphasis on oppositional action might teach the same lesson as well or better.29 Peru’s Truth and Reconciliation Commission (whose final report is entitled Hatun Willakuy, a Quechua phrase that can be translated into English as a “great story” of both tragedy and resistance) also examined social and professional sectors and human rights organizations to assess and recognize positive contributions as well as failures.

Dudai notes that magnifying widespread complicity and bystanding might enhance broader support for reparations efforts and other collective forms of acknowledgment, such as public apology. Truth commissions are standardly

29 On the mixed results of South Africa’s sectoral hearings, see Audrey R. Chapman, “Truth Recovery through the TRC’s Institutional Hearings Process,” in Truth and Reconciliation in South Africa.
charged with recommending reparations but cannot implement the programs they recommend. Mobilizing public sentiment in support of such programs, within a truth commission's narrow scope of operation, is a worthy function to assume and is not really a completely new demand. It is, after all, one particular aspect of the truth commission's task of making society aware of the realities and causes of conflict, and failures to act on conscience or to mobilize politically for resistance are in many situations among those causes of the occurrence and severity of human rights abuses.

9.2. DO TRUTH COMMISSIONS ACTUALLY PROMOTE HUMAN RIGHTS CULTURE?

I have suggested that truth commissions have a rather direct relationship to four features associated with a culture of human rights, so that truth commissions might make an immediate and specific, but partial and modest, contribution to promoting a human rights culture, and in so doing to contribute incrementally to preventing future abuses. First, the discourse of truth commissions teaches, concretely applies, and vividly illustrates the meaning and categorical import of the language of human rights, decisively reframing past behavior in the process. Second, truth commissions work on transforming the epistemic environment, locally and globally. The findings of truth commissions, individually and collectively, contribute to a heightened and historically informed awareness of the reality, extremity, and prevalence of serious human rights abuses, countering human tendencies to disbelief and denial. With respect to the particular era a truth commission is charged to investigate, a commission must seek to create a presumption in favor of the story it documents so that the burden of proof is decisively shifted onto those who continue to minimize or deny the specific abuses the truth commission has investigated. Third, the proliferation of truth commissions globally and their increasingly public processes attempt to create inhibiting and deterrent effects for those who might engage in behavior that violates human rights standards. The fourth function is a largely untapped potential of truth commissions: they might offer instruction and inspiration on the means and importance of active citizen protest, resistance, and pursuit of justice. If a truth commission does this, it explicitly undertakes a preventive pedagogy. While attempts at direct preparation for resistance to massive or systemic abuses is clearly a task for ongoing human rights and peacebuilding education, through public information, formal education, and professional training, a truth commission has the opportunity to put forward vivid and moving examples of concrete resistance to evil and cruelty and to prompt thinking about the choices individuals do and can make and the consequences that follow.
The first two functions have to do with the public articulation, amplification, and entrenchment of human rights language, norms, and awareness; the latter two functions have to do with possible impacts on future individual behavior. The first function, entrenching human rights language and teaching and animating human rights standards, is the most immediate and certain contribution of truth commissions. Were this the only reliable contribution they could make to human rights culture, it would not be a small one; teaching what human rights are and what they mean for people’s lives is foundational to any environment we might call a culture of human rights. The second function, remodeling the epistemic environment and shifting burdens of proof and credibility, is also a fairly direct contribution, but it clearly depends on the strength, dissemination, circulation, and reception of a truth commission’s work and findings. Both of these functions clearly depend on a constellation of factors that affect how a truth commission conducts and circulates its work; these factors include its legitimacy, its design and terms of reference, its publicity, its resources, and the social authority, political endorsement, and dissemination of its findings. Inhibiting or deterring effects of truth commissions, the third function, are hardly automatic. These effects would seem to depend globally on the trend toward public accountability through truth commissions, and locally to the consequences of exposure to or in a particular truth commission process. The fourth contribution is largely exemplary; the long-range impact of demonstrating possibilities of effective actions against human rights abuses is likely to be carried by human rights and peace-building education that lies beyond a truth commission process. It seems that both of the latter two functions – inhibiting or deterring human rights-violating behavior and modeling and supporting human rights intervention – can only be realized by effective practices of human rights protection, enforcement, and education that go well beyond anything a truth commission itself can do. All of these potential contributions of a truth commission require political will, public and authoritative actions, popular attention, structural and financial support, and broad civil and institutional engagement.

Transitional measures other than truth commissions, such as criminal prosecution, vetting, reparations, and memorialization, might supply some of what is needed to support and amplify the contributions a truth commission might make.30 The institutional reforms recommended by truth commissions include ones that address societal structures, including judicial, police,
security, political, and electoral systems. These reforms also contribute directly to a climate of transparency, accountability, due process, fair procedures, and the rule of law that are hallmarks of a human rights culture. Yet truth commissions have emerged, evolved, and proliferated because they have found a unique niche in the transitional context. They address multiple parties in transitional societies, giving voice to victims, visiting some kinds of accountability on individuals and institutions that committed abuses, and holding a mirror to society at large, forcing questions of motivated ignorance, complicity, and collective responsibility at various levels. They outline agendas for institutional reform in a particularly salient way, by providing concrete evidence of why those reforms are urgently needed in light of abuses that have actually happened. That truth commissions cannot achieve their full or best impact unilaterally is not to say that they do not have an impact. That their efficacy depends on other measures, and on political action and institutional support, is not to say that their impact is not a direct and important one, given favorable conditions for a commission’s operation and the dissemination of its findings.

Recent empirical work is nonetheless cautious and divided about the kinds of impact truth commissions can have. Eric Brahm’s study of the impact of truth commissions on human rights reform and prevention is equivocal. He finds in several case studies that truth commissions have prompted human rights reforms, but in large scale statistical overview, he finds that human rights situations overall have declined following truth commissions. Brahm concludes: “While the foundations for human rights improvement, however limited, may be laid by truth commissions, it is often a long time, if ever, before prospective gains are realized in practice.” In a wider-ranging study involving ninety-one transitions to democracy from authoritarian rule in seventy-four countries, researchers Tricia Olsen, Leigh Payne, and Andrew Reiter find that use of truth commissions in the absence of other transitional measures shows a uniquely negative relationship with measures of human rights protection and democracy post-transition, while trials and amnesties used alone show no effect on these measures. While these investigators acknowledge that a finer-grained study of variations among truth commissions may be necessary to explain or refine their negative findings about the efficacy of truth commissions, they support a holistic conception of transitional justice that requires an integrated process involving multiple measures. Based on their findings, they advocate the use of transitional justice measures in combination, and in particular for the combination of trials, truth commissions, and amnesties, for which they find


a positive impact on both democracy and human rights. Kathryn Sikkink, on the other hand, argues that “not only punishment matters but that truth telling matters as well.” Her data, collected using somewhat different measures from those of the previous study, show that truth commissions as well as criminal trials are associated with a decrease in repression. Sikkink’s explanation is that this effect of truth commissions is due to information and the communication of norms, as my own account suggests. She argues for the impact of “deterrence and socialization” in both criminal trials and truth commissions through the diffusion of new norms by individuals and organizations.

Empirical study of transitional justice outcomes is fairly recent, and findings are still in progress and under debate. It is evident that the idea of “promoting a human rights culture” is complex. It encompasses articulating, publicizing, familiarizing, and entrenching human rights norms, but also institutionalizing practices that effectively protect individuals’ human rights and enforce human rights standards. There are likely complex disjunctures and forms of positive and negative feedback among these processes (and many other external factors) that complicate their impact on individual thought and behavior. There is little doubt that human rights talk has become a globally shared idiom; but whether practices organized by human rights discourse are protecting human beings on the ground, and if so how well they are doing so, is contested and likely to remain so for a while. In her 2011 book, Sikkink says that she and Leigh Payne are working to merge their databases and to converge on measures to better explore “how transitional justice leads to human rights improvements, and especially, through what processes or mechanisms” trials and truth commissions might increase observance of human rights. Emilie Hafner-Burton and James Ron, in an overview and analysis of qualitative and quantitative research into whether international human rights policies and instruments actually have a positive impact, also find mixed results. They trace a deep divide between “case study optimism,” especially with respect to human rights developments in Latin America and Eastern Europe, compared with “statistical skepticism” of large-scale cumulative studies from the late 1990s about human rights efficacy in protecting personal integrity rights worldwide. Hafner-Burton and Ron reveal complications in settling this

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debate, ranging from problems in the collection of data and the reliability of sources, to slippage between measures of democracy and measures of human rights observance, and between assessment of structures and measures of individual behavior.

Two further questions loom. One is the question of the relevant time frame for measuring the shift(s) in question. There was a half-century hiatus between the birth of international criminal justice at Nuremberg and the establishment of a statute for the International Criminal Court. The first influential truth recovery projects occurred in Latin America in the 1980s and 1990s; it is unclear what time frame reasonably applies to assessing the impact of individual truth commissions and to the truth commission trend as a whole. It was arguably not until South Africa’s innovative TRC in the late 1990s captured a global audience that some distinctive features and potentials of a truth commission became widely appreciated, and some features, such as public testimonies by victims, became models for other truth commission operations. Truth commissions as institutions with a distinctive medley of functions are but a few decades old, and their organization and practice is still evolving. In addition, the outcome measures commonly used in social scientific studies are not ones created in anticipation of the uses to which they are now put; dedicated measures will take time to construct and to put to use. This is a practical question.

A second question is a moral one. To the extent that transitional institutions are increasingly understood and experienced as an expression of justice, then it seems that states are obligated to victims and to their societies to provide at least that much justice in the inevitably imperfect and challenging post-conflict context. In the case of truth commissions, the justice in question involves the victim’s right to the truth, the state’s obligation to seek it, and the reaffirmation of the victim’s dignity through establishing the truth and through respectful recognition of her or his choice to speak it. If that

37 Gunnar Theissen, in his close study of how South Africa’s TRC affected group attitudes, concludes that despite mixed short-term impact, truth commissions are not “fruitless endeavors of public pedagogy” because of the pressure on attitudes of the truth commission’s narrative over time. See Gunnar Theissen, “Object of Trust and Hatred: Public Attitudes toward the TRC,” in Truth and Reconciliation in South Africa. In the same volume, Hugo van der Merwe and Audrey R. Chapman’s concluding skeptical overview, “Did the TRC Deliver?” acknowledges that “the commission’s rhetoric and processes effectively embodied the human rights paradigm,” p. 279.

is justice, it ought to be done and be seen to be done, just as those guilty of grave harms should stand accountable for those harms (whether it is before a criminal court or in some other fashion), lest the injustice of impunity for gross abuses stand. This does not mean that the fulfilment of demands of justice is a moral absolute, or that no countervailing obligations or values might have to be weighed in balance with these justice demands. But it does mean that if one can defend the obligations of transitional or post-conflict societies as requirements of justice, these demands have a claim to be honored that is not simply grounded on whether other aims or outcomes, including freedom, security, stability, democracy, or peace are served in the short, or even in the longer, term. 39

A culture of human rights is a culture of respect for human beings as such and for universal norms of behavior that are held to embody and express the most fundamental forms of respect for human beings. Even were it true that other legal, political, and economic practices, distinct from practices focused on human rights, really secure (or are necessary to secure) the personal integrity rights of individuals, it would still be important to enact the dignity and respect that human rights language and practices embody. It is likely that human rights discourse and its allied practices have achieved as much global currency as they unquestionably have in part (although only in part) because they capture a moral vision and provide a language for moral claims that human beings in many and disparate situations need for their protests against mistreatment, oppression, and violence. Truth commissions in particular are among the devices that signal the adoption of positive political values. A 2006 United Nations Study on the Right to the Truth concludes that this right is “closely linked to the rule of law and the principles of transparency, accountability and good governance in a democratic society.” 40 In other words, a truth commission publicly expresses and enacts not only certain forms of justice but
other values of political communities that respect the dignity, autonomy, and security of their citizens.41

9.3. CONCLUSION

It should in the end not be surprising that building and sustaining a culture of human rights requires that the language, standards, and consequences of human rights norms be established visibly and redundantly throughout societies, in their political discourse, legal systems, public institutions, media, and education. Establishing a human rights culture also requires the implementation and enforcement of human rights standards, locally and internationally. I have suggested that what a truth commission does, and how it does it, can make a real and visible, even if partial, cumulative, and modest contribution to the project of preventing human rights crimes, domestically and internationally, even as it serves other important ends.

It is important to stress in conclusion that claims for preventive power are not the only repeated claims about what truth commissions can do, and that prevention is not the only achievement or impact of truth commissions that matters. Establishing a credible and authoritative record of events, no small accomplishment, is the core mission of a truth commission, whatever else it does or does not do. Truth commissions are also universally claimed to restore or reaffirm the dignity of victims through public recognition, voice, and moral validation. Truth commissions are often said to achieve such valuable results as creating forms of accountability, blocking future denial of human rights crimes, combating impunity, providing a new national narrative or a shared collective memory for a society refashioning itself, or contributing to political reconciliation. In a full assessment of the value of truth commissions, many aims, and not just preventive aims, need to be considered. Yet if truth commissions are especially suited to conducting a case-based and cumulative pedagogy of human rights, they belong among the instruments of both transitional justice and jus post bellum that aim at the restoration or creation of a just and rights-respecting peace in the aftermath of repression or conflict.

41 See Pablo de Greiff, “Truth-telling and the Rule of Law,” and Colleen Murphy, A Moral Theory of Political Reconciliation, on the links between rule of law and autonomy, reciprocity, and civic or political trust.