

Dealing with the Past: Truth and Justice Commissions

Remarks delivered at conference "The State, Justice and the Rule of Law in Cuba on the Centennial of the First Republican Constitution," hosted by St. Thomas University, Miami, May 11-12, 2001.

By Maria Werlau¹

The biggest challenge I faced for today was appropriately selecting what to focus on in only 20 minutes. There's a vast literature on this subject, much of which is particularly compelling for dealing with events taking place worldwide in our own lifetime.

I've been looking into the issue of truth and justice for several years now, starting more actively with the 1998 arrest in the U.K. of former Chilean dictator, General Augusto Pinochet. A project to "put a face" to Cuba's victims had been brewing in my head for several years and I had lobbied several Cuban groups in the United States for someone to undertake it, unsuccessfully, I regret. Aside from learning there is consensus that this needs to be done, nothing much ensued from my efforts.

I had lived in Chile for seven years from 1986 to 1993 –right through the later years of the Pinochet regime, the plebiscite, the elections and the transfer of power to the first democratically elected government after 17 years of military rule. I had become very inserted in the Chilean way of life, completing a Masters degree at the university and starting a business, and had developed many dear friends and close links to Chilean society. They come from all social, economic and political backgrounds, ranging from prominent members of the military government and its allies, to leaders of the opposition who'd been incarcerated, exiled or had lost family members in the post-Allende period, to poor workers whose homes were searched in the middle of the night by armed soldiers looking for terrorists and those from all walks of life who were fervent supporters of Pinochet for saving them from the chaotic Allende period and the Communist course his government had undertaken. I had visited during the Pinochet regime the Vicaría de la Solidaridad, headquartered in Santiago's cathedral. Through this vehicle, the Catholic Church had waged an energetic campaign on behalf of human rights in Chile and had given active support for the victims and families of the military government. I also saw Santiago's night life gradually come back as "toque de queda" was lifted in 1986 while witnessing anti-government demonstrations broken up with tear gas, lived thru a strike at the university, bought the Communist press on the street and read the books and reports on the

abuses committed by the military, shopped at malls where bombs placed by terrorists killed people and toured Santiago's voting facilities the day of the plebiscite, in awe of the exemplary display of civility these people gave the world. The experience profoundly marked me.

Through the gray areas and complexities of the Chilean situation, however, one thing was always clear to me: that there was a clear universal mobilization of world awareness and condemnation of the atrocities of the Chilean military government. Meanwhile, I realized, the victims of the Castro regime remained an unspoken, unknown, lot.

Pinochet's arrest in October of 1998 proved decisive. I knew that very day that I couldn't live with myself if I didn't do something to alert world conscience of the victims of the Cuban conflict. It triggered an active process that forged a partnership with two wonderful colleagues: Armando Lago - a dear friend and respected economist and human rights activist living outside of Washington DC, whom I had watched decide and begin to write a book documenting the victims of the Cuban Revolution; and Juan Carlos Espinosa, another esteemed colleague and our host today, who had agreed to co-author the work, which was to be based on a collection of all reported cases of deaths. The three of us agreed there was a great need to thoroughly and systematically record and document Cuba's dead or disappeared in a way that had never been accomplished and, thus, remained mostly hidden from world awareness. We developed a project to take the initial research for the book into the next level - that of substantiating the reported cases with testimony and evidence to put an actual face and story behind each case. For over two years now, Armando has been laying the groundwork for the project by compiling and cross-referencing all available listings and reported cases. As it is, it's already been a huge undertaking and much more remains to be done.

Presently, this venture is soon to be officially launched to take it to its next necessary stage. We are incorporating a not for profit entity named the *Free Society Project* to conduct this undertaking with the academic rigor and thoroughness it requires. The project itself is named *Truth Recovery Archive on Cuba* (T.R.A.C.) and we are about to complete an agreement with a major academic institution to house the research center and hire research specialists to begin work in earnest.

I have prepared for you a handout with a very summarized description of what is a meticulously developed plan. We are currently seeking and receiving pledges of financial support, ones that should materialize once tax exemption comes through, which, according to our legal counsel should be soon. We hope to obtain the support of the community to start off but also plan to solicit grants and other institutional support. Please look over some of the guidelines for some detail on criteria for classification of cases, etc.

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Let me give you some ideas of the number of victims we are dealing with; remember, however, that this is a work in process. The Pinochet regime has been documented officially as having killed or disappeared 3,197 people (2,095 extra-judicial executions and deaths under torture and 1,102 disappearances of people who've never been found). In comparison, according to our yet unfinished work, we have reports that the Castro regime has executed almost 5,000 people, mostly by firing squad and without due process. Almost 2,000 cases of individuals who've died as a result of extra-judicial killings have been documented, a number that includes, for example, political prisoners who've died due to lack of medical attention. In addition, around 10,000 Cubans are believed to have been killed in combat in international solidarity wars in Africa. If we add the estimated number of "balseros" who've perished at sea, we're already approaching 100,000 reported victims. Again, remember, this is work-in-progress; the numbers will grow as the investigation proceeds and when circumstances inside the island allow for a full investigation. We intend, also, to add the victims of Cuba's support for international subversion, which will probably total in the thousands in Central and South America alone. The deaths caused by Batista forces after May 10, 1952 and deaths resulting from anti-Castro actions will also be counted. We attempt to account for each human life lost, regardless of race, social or economic status, nationality or political affiliations or ideological beliefs.

What is the basis for this effort? In general:

1. To raise awareness –both inside Cuba and all over the world- of the magnitude of the Cuban tragedy, seeking international condemnation of and pressure on the violent regime still in power, and helping put a stop to this continued loss of life. Today, Fidel Castro and the leaders of Cuba's totalitarian government travel the world with impunity and wine and dine without shame with figures of international prominence. They must be held accountable.
2. To lay the foundation for what we hope will one day soon be a truth, justice and reconciliation process in Cuba. Because we are counting lives lost on all sides of the political spectrum, we hope to create awareness of the need to not repeat past mistakes and injustices.

For this panel I have been asked to address this second objective. So, let me focus briefly on several key issues.

In the last 25 years, there have been 20 processes worldwide generally known as Truth and Justice or Truth and Reconciliation Commissions all over the world. This trend began in the early 1980s in Argentina after the end of its military rule and extended to Uruguay, Chad, Brazil, Chile, El Salvador, Guatemala, Germany, North Ireland and so on. The South African TRC (Truth and Reconciliation Commission), which produced a final report in November of 1998 after two years of work, has

became a preferred model of sorts for what looks like a definitive movement of growing international awareness of the value, need, and use of this tool to face the challenges of transition from violent dictatorships to democracy, -which is itself, happily, a worldwide trend. This has generated a wealth of experience in facing the past, ample and lively intellectual debate regarding all its aspects – intellectual, psychological and practical- and vivid awareness of the huge challenges -individual and collective- that this process implies.

The Cuban process, I believe, is inevitable in the next decades, hopefully beginning sooner rather than later. Whether it's tomorrow, next year or 5-10-15 years from now, we will be faced with the need to confront what happened. Cuba, as a nation, will have the benefit of drawing from many actual processes worldwide to face its unique history and develop its own path.

There are several important issues that need to be considered in dealing with the past. This is just a cursory listing, but it attempts to summarize part of the challenging agenda of issues ahead of us.

First and foremost we must ask the question:

1. Should we know and remember or should we move on?

That debate takes place in every country. There are always those who call for burying the past and focusing on building the present and the future; they regard these processes as uncovering psychological wounds that are best left to heal on their own, as bringing us closer to the mindset of abuse we'd rather have distance from and even as derailing peace initiatives. But, despite some continued argument that embracing forgiveness without the burden of memory is the best alternative, there seems to be a definitive universal trend that indicates:

- I. That the truth is healing –at an individual and collective level it is psychologically restoring to victims, survivors and society as a whole.
- II. That knowledge and acknowledgement –officially of some sort- are required for the healing to begin. Mental health professionals can well attest to the fact that mourning without knowledge of the facts is more painful and prolonged. Closure eases the burden of grief and helps us move forward.

III. That constructive remembering helps a society control the future, thus promoting reconciliation. There appears to be no solid foundation for reconciliation without a search for the facts or "the truth" (although I confess that to me "the truth" seems elusive – especially in this context, I prefer to see it as "searching for, achieving and/or understanding "as much truth" as possible).

2. How do we remember?

The strategies adopted to deal with the past are necessarily shaped by the existing political and social context and should be creative while carefully thought out. Informal processes, such as the one conducted in Guatemala through the Catholic Church, have taken place. But there is growing

consensus of the imperative of remembering “officially,” that is, through some official body created by the government for this purpose that will create an official record. The implications and pragmatic realities that will need to be resolved are enormous. Following are just examples of what must be dealt with:

- What defines a victim? To give just one example, overemphasizing victims who lost their lives may underemphasize the high cost paid by their surviving family members, including violence they’ve suffered directly or indirectly. Or, should we include emotional suffering as a basis for compensation?
- What abuses will be taken into account? For example, South Africa’s TRC dealt with a broad category of “gross human rights violations” while the Chilean commission dealt only with disappearances.
- How do we get perpetrators to provide information? Should we exchange amnesty for truth?
- Who should be appointed to carry out the process? What powers shall they have? Will they be seen as credible and impartial? If seen as biased, how will that affect the process?

And all of these questions raise issues of methodology, delivery of justice, forgiveness, the successful managing of legitimate rage, addressing demands for justice and desire for revenge, and questions such as what are the political implications society, what institutions should be involved, if any (for example, should the Catholic Church play a role?), etc.

Another issue of great magnitude is:

3. How do we deal with the abusers, those who committed the crimes or gave the orders?

This involves considering from blanket amnesties to trials and actual convictions of perpetrators. Who gets blamed or punished - from foot soldiers to commanders- must be addressed. In East Germany, for example, the trials of border guards have provoked huge debates regarding what responsibility individuals following orders have and how should they be punished vis-à-vis the officials who directed the very system that stopped people from leaving. Societies must deal not only with the practical aspects of compensating victims, but also with moral questions of whether to trade justice for truth and how to deal with informers, accomplices and even neighbors who remained silent.

It’s important to point out that there is a definite trend in world conscience, in international law –both customary and written- as well as in the actual practice of the delivery of justice worldwide, to address past wrongs, provide reparation and bring perpetrators to justice. This permeates across a wide spectrum from the billion-dollar settlement of German companies to compensate victims of slave labor, to the freezing and return of funds stolen by government leaders and stashed away in Swiss banks, to the restoration to their rightful owners of stolen art work during WWII.

4. How do we legitimize the remembering process?

How do we provide reparation?

This brings up such issues as acknowledgement, apology, compensation, expectation on the victims and survivors to cooperate and to forgive or, rather, to demand justice, sensitivity to the victims and survivors from the commission members, the media, and society in general. The psychological, economic, and political implications are obvious.

5. How do we shape the future?

It’s important for these processes to include recommendations to protect human rights and ensure political and social reform that will provide assurance that past crimes will be avoided in the future and that society will be transformed. This can be done through education programs, human rights awareness campaigns, victim support systems, and the creation of forward-looking structures.

In conclusion, it seems that it is only through taking control of “memory and history” that societies can develop a constructive collective memory to deal positively and successfully with periods that follow trauma and violence. It’s crucial for society as a whole participate in an extensive preparation and consultative process to determine what strategy is best and carefully define the process to be undertaken.

For the Cuban people, all of this requires facing the reality that the work ahead is monumental. I believe that we ought to set the tone for this course of action and actively initiate it in when circumstances are right, recognizing that it’s an imperfect process and that there will always be limitations, dissatisfactions, disagreements, mishaps, and imperfections. Lastly, I believe that for this process to be healing and allow us to move forward, we should courageously confront its challenges head on and address its complexities with attention to accountability, fairness, integrity, and, hopefully, great doses of perspective, wisdom and compassion. Importantly, we should keep in mind that forgetting cannot be decreed. –END-

Saturday, May 12, 2001

Panel 5 - Looking Back, Looking Forward

10:45 am

CHAIR: Luis Montoto, Ideal Press

María Werlau, Free Society Project, "Dealing with the Past: Truth and Justice"

Christopher Sabatini, National Endowment for Democracy, "Promoting Democracy and the Rule of Law: The Role of Civil Society"

Matías Travieso-Díaz, Shaw Pittman, "Immigration and National Identity"