

Defining Truth Commission

Makoto Usami*

Professor of Philosophy and Public Policy, Graduate School of Global Environmental Studies, Kyoto University, Japan.

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*For Correspondence

Makoto Usami, Professor of Philosophy and Public Policy, Graduate School of Global Environmental Studies, Kyoto University, Japan.

E-mail: usami.makoto.2r@kyoto-u.ac.jp

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ABSTRACT

In the past three decades, truth commission, which is one of major policy measures intended to struggle with past human rights violations in transitional and post-conflict societies, has attracted wide interest among social scientists and moral, legal, and political philosophers. Despite the immense and still growing literature on the subject, there has been no agreed definition of truth commission. To remedy this problem, the present paper tries to provide a new definition. I begin with the examination of a frequently cited definition given by Priscilla Hayner and identify its virtues and limitations. Next, I turn to the scrutiny of Mark Freeman's formulation and argue that it is too restrictive to cover some of the investigatory bodies many researchers consider as truth commissions. Based on these considerations, I propose the third definition that covers the cases which are widely taken as truth commissions and excludes those which are not. I also divide the history of truth-seeking bodies into three periods and sketch them chronologically.

INTRODUCTION

The past four decades witnessed some forty truth commissions established in transitional and post-conflict societies around the world. Truth commission, which is one of major policy measures intended to struggle with past human rights violations, has attracted wide interest among social scientists as well as moral, legal, and political philosophers. Despite the immense and still growing literature on the subject, there has been surprisingly no agreed definition of truth commission. It is true that many observers agree that a truth commission investigates and reports massive violence occurring in a period of political oppression or armed conflict. But they diverge on some of its features and functions. To develop rigorous empirical research and moral discussion on this type of transitional justice policy, we need a clear and workable definition that covers the cases widely taken as truth commissions.

To meet this challenge, the present paper endeavors to provide a new definition of truth commission. I begin with the examination of a definition given by Priscilla Hayner^[1], the leading author on the topic. Next, I turn to the scrutiny of Mark Freeman's elaborate formulation^[2], which is based on his critical assessment of Hayner's one. I argue that these definitions fail to cover the cases many researchers consider as truth commissions and to exclude the cases they do not. By considering the virtues and limitations of the two definitions, I offer the third one. Then, I place a comprehensive list of investigatory bodies covered by this definition and sketch three distinct periods in the history of truth commissions. The paper concludes by noting a precise definition is essential to the further development of truth commission studies.

HAYNER'S DEFINITION EXAMINED

A definition of truth commission provided by Hayner has been frequently cited since the first edition of her celebrated book was published in 2001. Thus her definition seems to be a useful point of departure in discussing this concept. In the second edition, she defines truth commission as follows ^[1]:

A truth commission (1) is focused on past, rather than ongoing, events; (2) investigates a pattern of events that took place over a

period of time; (3) engages directly and broadly with the affected population, gathering information on their experiences; (4) is a temporary body, with the aim of concluding with a final report; (5) is officially authorized or empowered by the state under review.

Some of the features identified by Hayner are helpful in grasping truth commissions. For one thing, these commissions characteristically investigate patterns of past events rather than specific events. In this way, they are distinguished from event-specified investigative bodies, an example of which is the Bloody Sunday Inquiry set up in Britain in 1998 to examine the case of thirteen citizens killed by British soldiers in Northern Ireland in 1972. Also, a truth commission's inquiry is largely centered on experiences of survivors and victims' families even when the commission also pays much attention to perpetrators in deciding whether it grants individual pardon to them. In this respect, truth commissions stand in stark contrast to criminal trials, which focus on offenders. Furthermore, the temporariness of truth commissions she mentions is also significant in differentiating them from standing human rights watchdog agencies, whether national or international.

However, it seems that Hayner's definition misses some notable elements of truth commissions on one hand, and characterizes these institutions too narrowly on the other hand. First, as Freeman points out ^[2], truth commissions primarily cover acts of physical violence including killings, tortures, forced disappearances, and rapes. In other words, the principal task of the commissions is to investigate violations of physical integrity rights. Although some commissions also examined other forms of abuses, such as unjust dismissal (e.g., Germany and Nigeria) and seizure of property without compensation (e.g., Ghana and Sierra Leone), the examination of these forms was their secondary mission. The second overlooked attribute is to investigate atrocities that occurred during a period of abusive political regime or armed conflict ^[2]. This feature is crucial in distinguishing truth commissions from what I call historical commissions. A well-known example of historical commissions is the Commission on Wartime Relocation and Internment of Civilians established in the United States in 1982 to investigate cases of the internment and forcible relocation of Japanese Americans during World War II. The third omission from Hayner's definition concerns the relative independence from the government ^[2]. While mandates of truth commissions are provided by the president's decree or a parliamentary statute in many cases, they generally carry out investigations in a more or less autonomous way. The degree of autonomy of each commission obviously depends on a variety of factors including its financial conditions and legal arrangements.

FREEMAN'S DEFINITION AND BEYOND

By supplementing elements previously mentioned and others, Freeman offers a narrower definition ^[2]:

A truth commission is an *ad hoc*, autonomous, and victim-centered commission of inquiry set up in and authorized by a state for the primary purposes of (1) investigating and reporting on the principal causes and consequences of broad and relatively recent patterns of severe violence or repression that occurred in the state during determinate periods of abusive rule or conflict, and (2) making recommendations for their redress and future prevention.

His definition improves Hayner's in some respects but does not in others, as I will argue.

One of the features mentioned by both Hayner and Freeman is that a truth commission is created by the state. However, such characterization is too restrictive to cover several cases that have been long recognized as truth commissions. Remarkable cases that are not covered by Hayner's or Freeman's definition include two commissions established by African National Congress in South Africa in 1992 and 1993, both of which aimed to search human rights abuses conducted by ANC soldiers. These commissions, which appear on a list of truth commissions in the first edition of Hayner's book ^[1], are significant partly because they illustrate the capability of anti-governmental organization to examine its own wrongdoings and because they had impacts on Truth and Reconciliation Commission established by the post-apartheid government in 1995. Another notable case is the Salvadoran commission instituted as a part of the 1990 peace agreement between the government and leftist guerrillas. The United Nations, which brokered the peace accord, actively got involved in the whole process of organizing and operating the commission. The Salvadoran commission, while appearing on both Hayner's and Freeman's lists of truth commissions, cannot be said to be mainly set up by the state. To put these and other notable cases into the range of the truth commission study, investigatory bodies established by international organizations and political parties as well as those constituted on the basis of peace agreements should be included among truth commissions.

Freeman adds several other elements to Hayner's definition ^[2], which characterize truth commissions too narrowly. First, he asserts that truth commissions primarily focus on acts occurring in recent periods of abusive rule or armed conflict. But his assertion does not apply to some cases, in which the period covered by a commission had ended more than ten years before it was established. The Uruguayan commission created in 2000 inquired into disappearances committed from 1973 to 1985; Panama's commission instituted in 2001 examined serious human rights violations conducted between 1968 and 1989. Even more remarkable is the Mauritian commission whose mandate was to examine slavery and indentured labor from the colonization of the island in 1638 up to the present. The second strand excessively added by Freeman is to investigate the causes of patterns of violence or repression. If a truth-seeking commission reported the major consequences of state-sanctioned brutalities but was not mandated to explicate their causes, should we say that the commission is not a truth commission even if it has the other attributes identified by Freeman? There is no good reason to think that a truth commission necessarily seeks to inquire into causes of abuses.

Based on these considerations, I offer the following definition:

A truth commission is a temporary, independent commission of inquiry established for the primary purposes of (1) investigating and reporting broad patterns of violations of physical integrity rights that occurred in the society under review, (2) covering a determinate period of the past oppressive regime or armed conflict, (3) gathering information on sufferings of the affected population, and (4) making policy recommendations for redress and future prevention.

My definition, like Hayner's and Freeman's, distinguishes truth commissions from several different types of investigatory bodies including historical and event-specified commissions and standing watchdog institutions. The definition, unlike theirs, also covers not merely truth-seeking bodies set up by governments but also those created by international organizations, political parties, and various types of associations. Moreover, it is able to avoid weaknesses of Hayner's formulation by noting that a truth commission focuses on physical violence, covers a period of oppression or conflict, and keeps relative independence from the government. Last, the definition is immune to narrowness found in Freeman's one in that it can cover commissions which do not explore causes of state-sanctioned violence.

HISTORICAL DEVELOPMENT

The cases of official investigative bodies covered by my proposed definition are presented in **Table 1**, which sketches the history of truth commissions. The history seems to fall into three stages: the hatching, growth, and maturity periods. Although I am aware that it is inevitably somewhat arbitrary to draw a clear line at a specific temporal point, the three-periods picture will help grasp the past development of truth-seeking bodies.

In the hatching period, which started in mid-1970s and ended around 1990, the purposes, processes, and products of

Table 1. Official Truth Commissions.

Country	Date of operation	Name of truth commission	Establisher
Uganda	1974–1975	Commission of Inquiry into the Disappearance of People in Uganda since the 25th January, 1971	President
Bolivia	1982–1984 (disbanded)	Comisión Nacional de Investigación de Desaparecidos [National Commission of Inquiry into Disappearances]	President
Argentina	1983–1984	Comisión Nacional sobre la Desaparición de Personas [National Commission on the Disappearance of Persons]	President
Uruguay	1985	Comisión Investigadora sobre la Situación de Personas Desaparecidas y Hechos que la Motivaron [Investigative Commission on the Situation of Disappeared People and Its Causes]	Parliament
Uganda	1986–1995	Commission of Inquiry into Violations of Human Rights	President
Nepal	1990–1991	Commission of Inquiry to Locate the Persons Disappeared during the Panchayet Period	Prime Minister
Chile	1990–1991	Comisión Nacional de Verdad y Reconciliación (Comisión Rettig) [National Commission for Truth and Reconciliation (Rettig Commission)]	President
Chad	1991–1992	Commission d'Enquête sur les Crimes et Détournements Commis par l'Ex-Président Habré, ses co-Auteurs et/ou Complices [Commission of Inquiry on the Crimes and Misappropriations Committed by the Ex-President Habré, His Accomplices and/or Accessories]	President
South Africa	1992	Commission of Enquiry into Complaints by former African National Congress Prisoners and Detainees (Skweyiya Commission)	African National Congress

South Africa	1993	Commission of Enquiry into Certain Allegations of Cruelty and Human Rights Abuse against African National Congress Prisoners and Detainees by African National Congress Members (Motsuenyane Commission)	African National Congress
El Salvador	1992–1993	Comisión de la Verdad para El Salvador [Commission on the Truth for El Salvador]	UN-brokered peace accord
Germany	1992–1994	Enquete Kommission Aufarbeitung von Geschichte und Folgen der SED-Diktatur in Deutschland [Commission of Inquiry for the Assessment of History and Consequences of the SED Dictatorship in Germany]	Parliament
Sri Lanka	1994–1997	Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons	President
Haiti	1995–1996	Commission Nationale de Vérité et Justice [National Commission for Truth and Justice]	President
Burundi	1995–1996	International Commission of Inquiry	UN Security Council
South Africa	1995–2000	Truth and Reconciliation Commission	Parliament
Ecuador	1996–1997 (disbanded)	Comisión de la Verdad y Justicia [Truth and Justice Commission]	Ministry of Government and Police
Guatemala	1997–1999	Comisión para el Esclarecimiento Histórico [Commission for Historical Clarification]	UN-brokered peace accord
Nigeria	1999–2001	Judicial Commission of Inquiry for the Investigation of Human Rights Violations	President
Uruguay	2000–2003	Comisión para la Paz [Peace Commission]	President
Panama	2001–2002	Comisión de la Verdad de Panamá [Truth Commission of Panama]	President
Peru	2001–2003	Comisión de la Verdad y Reconciliación [Truth and Reconciliation Commission]	President
Federal Republic of Yugoslavia (later Serbia and Montenegro)	2001–2003 (disbanded)	Komisije Za Instinu I Pomirenje [Truth and Reconciliation Commission]	President
Grenada	2001–2006	Truth and Reconciliation Commission	Governor-General
Sierra Leone	2002–2004	Truth and Reconciliation Commission	Peace accord followed by statute
Timor-Leste	2002–2005	Comissão de Acolhimento, Verdade e Reconciliação de Timor Leste [Commission for Reception, Truth and Reconciliation in Timor-Leste]	UN Transitional Administration for East Timor
Ghana	2003–2004	National Reconciliation Commission	Parliament
Chile	2003–2005	Comisión Nacional sobre Prisión Política y Tortura (Comisión Valech) [National Commission on Political Imprisonment and Torture (Valech Commission)]	President
Algeria	2003–2005	Commission d'Enquête ad hoc chargée de la question des disparus [Ad Hoc Commission of Inquiry in Charge of the Question of Disappearances]	President

Democratic Republic of Congo (DRC)	2003–2007	Commission Vérité et Réconciliation [Truth and Reconciliation Commission]	Peace accord followed by statute
Morocco	2004–2005	Instance Équité et Réconciliation [Equity and Reconciliation Commission]	Monarch
Paraguay	2004–2008	Comisión de la Verdad y Justicia [Truth and Justice Commission]	Parliament
Indonesia and Timor-Leste	2005–2008	Commission of Truth and Friendship (CTF)	International agreement
Republic of Korea	2005–2009	Truth and Reconciliation Commission of Korea	Parliament
Liberia	2006–2009	Truth and Reconciliation Commission	Peace accord followed by statute
Ecuador	2007–2009	Comisión de la Verdad para impedir la impunidad [Truth Commission to Impede Impunity]	President
Mauritius	2009–2011	Commission Justice et Vérité [Justice and Truth Commission]	Parliament
Togo	2009–2012	Commission Vérité, Justice et Réconciliation [Truth, Justice, and Reconciliation Commission]	President
Sri Lanka	2010–2011	Lessons Learnt and Reconciliation Commission	President
Solomon Islands	2010–2012	Truth and Reconciliation Commission	Parliament
Kenya	2010–2013	Truth, Justice, and Reconciliation Commission	Parliament
Nepal	2015–2017 (expected)	Truth and Reconciliation Commission	Parliament

truth commissions had obvious limitations. First, the subject of investigation by some commissions was largely narrowed down to forced disappearances, as their names indicate (e.g., Bolivia and Argentina). Second, many commissions held bounded institutional powers in those days. They did not have the subpoena power, the search and seizure power, or the power to hold public hearings. Third, the impacts that some commissions had on the transitional process were evidently limited. The 1986 Ugandan commission continued its investigation for nine years, with intervening stoppages due to a lack of budget. When the commission finally submitted its report to the government in 1994, it received scant attention from government officials and the general public. Argentine and Chilean commissions were substantial cases in terms of budget size and number of staff, the impacts they had on the following political transitions, and the international attentions they received.

In the growth period lasting in 1990s, an increasing number of truth commissions launched their operations. The first feature of this new generation is the extended subject of investigation. The vast majority of truth commissions set up in this period covered not only disappearances but killings, tortures, and other forms of violence, although the Sri Lankan commissions exceptionally focused on disappearances and involuntary removals. The second aspect is the expansion of institutional powers and resources. Truth commissions in Chad, Haiti, South Africa, and Nigeria possessed the subpoena power, and those in South Africa and Nigeria had even the search and seizure power. While most commissions have worked under considerable limits of the budget and staff size, the South African TRC and, to a lesser degree, the Guatemalan Commission for Historical Clarification enjoyed large budget and numerous staff. The third trait is that some commissions succeeded in making individual facts of past abuses public. Public hearings were held to collect testimony of survivors and other witnesses (e.g., Germany, South Africa, and Nigeria); individual perpetrators were named in final reports (e.g., Chad, El Salvador, South Africa, and Nigeria).

The most notable case in the growth period, and in the whole history of truth commissions more broadly, is admittedly the South African TRC. With a budget of approximately \$18 million per year, staff of some three hundred, and the subpoena power as well as the search and seizure power, the commission exceeded its predecessors in its size and power. It took testimony from 21,300 survivors and other witnesses, 2,200 of whom appeared in public hearings held in sixty three places around the country. The commission released a comprehensive five-volume report in 1998 and additional two volumes in 2002. In contrast to such a remarkable case, there was a case of failed projects, such as the 1996 Ecuadorean commission disbanded just five months after its establishment.

In the maturity period since 2000, the influence of the South African TRC has been spreading. First, the idea of reconciliation was established as one of major objectives of truth commissions, as illustrated by the fact that a large number of commission names include “reconciliation” or its equivalence in other languages (e.g., Peru, Sierra Leone, Timor-Leste, Ghana, DRC, Morocco, Liberia, Solomon Islands, and Kenya). Second, one can say that the idea of public hearing became a norm, as shown by many

cases of hearings (e.g., Peru, Timor-Leste, Ghana, Sierra Leone, and Morocco). Third, some recent investigative bodies held the subpoena power (e.g., Sierra Leone and Liberia) and even the search and seizure power (e.g., Timor-Leste, Ghana, and DRC). Besides the influence of South African case, there have been developments in investigations and reports. For instance, sexual violence against women and human rights abuses against children received special attention in some reports (e.g., Timor-Leste and Sierra Leone). On the other hand, a case of failure is still found in the maturity period, as illustrated by the 2001 commission in the former Federal Republic of Yugoslavia, which was disbanded in 2003 without completing a final report.

CONCLUSION

In previous sections, I have tried to respond to the long-standing situation of the literature on truth commissions, in which there has been no agreed definition of the concept. To remedy this persistent problem, I examined Hayner's and Freeman's formulations and identified their virtues and limitations. Based on my examination of the two definitions, I offered the third one and showed that it shares strengths with its two predecessors and avoids their weaknesses. Moreover, I divided the history of truth commissions into three stages and sketched them chronologically. For us to develop further social-scientific and philosophical studies on truth commissions, we need a precise definition of the concept. I hope that my proposed definition of truth commission, as well as chronological depiction of its history, will contribute to the further development of the study on this challenging topic.

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