

TRUTH COMMISSIONS AND INTERNATIONAL LAW

This book examines how truth commissions construct authoritative accounts of conflict, and how they account for the plurality of accounts across affected communities. Vázquez Guevara examines three of the earliest and most influential truth commissions: Argentina (1983–1984), Chile (1990–1991), and El Salvador (1992–1993), and examines how relevant cultural objects support or counter the official account for each. In doing so, she argues that these truth commissions drew on international law to authorize their accounts of violent conflict, and that this had the consequence of privileging an internationally authorized truth over other truths, whilst simultaneously strengthening the authority of international law over the post-conflict state. By demonstrating how truth commissions turn to international law for authority, the book shows how this produces an official account of past violence and promises of future community, which fundamentally affects how communities live together in the aftermath of violent conflict.

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TRUTH COMMISSIONS AND INTERNATIONAL LAW

Jurisdiction, Representation, Authority

Valeria Vázquez Guevara

The University of Hong Kong



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a mamá, Claudia
a papá, Raúl
a mi hermano, Abraham
por la profundidad de su amor

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Preface

Since the 1990s, Truth Commissions have expanded the scope of their investigations and increased their presence around the world.¹ Truth Commissions are now being established to investigate not only state violence during a dictatorship or armed conflict, but also the legacies of colonialism and slavery, and other forms of violence against society. In the United States, in the wake of the 2020 killing of George Floyd, there have been calls to establish a nationwide “Truth, Racial Healing, and Transformation Commission.”² Across the Atlantic, in January 2021, a report commissioned by French president Emmanuel Macron recommended “the creation of a mixed French-Algerian ‘truth and memory commission’” to address “issues of memories” during Algeria’s independence war against French rule.³ In Australia, in the same year, the State of Victoria authorized the Yoorrook Justice Commission,⁴ a “truth-telling process” to inquire into “contemporary and historical injustices committed against Aboriginal Victorians since colonization.”⁵ In the Philippines,

¹ I explain this in greater detail in Chapter 1. For an overview of Truth Commissions, see generally, Jeremy Sarkin, “Introduction,” in *The Global Impact and Legacy of Truth Commissions*, Jeremy Sarkin (ed) (Intersentia, 2019).

² United States Congress, Rep. Lee, Barbara [D-CA-13], *H.Con.Res.19 – Urging the Establishment of a United States Commission on Truth, Racial Healing, and Transformation* (25 February 2021).

³ Benjamin Stora, *Les Questions Mémoires Portant sur la Colonisation et la Guerre d’Algérie* (Présidence de la République, 2021).

⁴ Victoria State Government, *Letters Patent for the Royal Commission to be known as Yoo-rrook Justice Commission, Register of Patents Book No 47 Page 174* (12 May 2021).

⁵ Victoria State Government, Premier of Victoria, “Media Release: Historic Truth-Telling Commissioners Appointed” (14 May 2021). www.premier.vic.gov.au/historic-truth-telling-commissioners-appointed.

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in the wake of the International Criminal Court's arrest of former president Rodrigo Duterte for his purported war on drugs,⁶ politicians and groups of victims are advocating for a Truth Commission to "expose why it happened, who enabled it, and how we make sure it never happens again."⁷ In Bangladesh, following the 2024 social uprising that brought down Prime Minister Sheikh Hasina, the Yunus interim government announced that it would create a Truth and Reconciliation Commission to "build national unity" to address a long history of state violence.⁸ In Syria, in 2025, interim president Ahmed al-Sharaa announced the establishment of a National Transitional Justice Commission to "expos[e] the truth about the grave violations committed" during Bashar al-Assad's presidency.⁹ Meanwhile, with the Israeli government's ongoing systematic violence against Palestinians, especially

⁶ International Criminal Court, "Press Release: Situation in the Philippines: Rodrigo Roa Duterte in ICC Custody" (12 March 2025). www.icc-cpi.int/news/situation-philippines-rodrigo-roa-duterte-icc-custody.

⁷ Thanks to Alex Dela Cruz for bringing this to my attention. Carlo Caoile, "'Truth Commission' needed following Rodrigo Duterte's ICC arrest – Kristina Conti," *Bilyonaryo News Channel* (12 April 2025). <https://bnc.ph/truth-commission-needed-following-rodrigo-dutertes-icc-arrest-kristina-conti/news/>; Delon Porcalla, "With Time Running Out, Truth Commission on EJKs Proposed," *The Philippine Star* (23 January 2025). www.philstar.com/headlines/2025/01/23/2416221/time-running-out-truth-commission-ejks-proposed.

⁸ Mubashar Hasan, "Yunus Should Prioritize Probe into Enforced Disappearances Under Hasina's Rule," *The Diplomat* (24 August 2024). <https://thediplomat.com/2024/08/yunus-should-prioritize-probe-into-enforced-disappearances-under-hasinas-rule/>. The new government headed by Yunus did establish a commission of inquiry. See Julhas Alam, "Bangladesh's Government led by Yunus signs UN Convention Involving Enforced Disappearance," *AP* (29 August 2024). <https://apnews.com/article/hasina-yunus-bangladesh-enforced-disappearance-convention-418b7048c649bc541e64d33869876c84>; Staff Correspondent, "Truth and Reconciliation Commission to Be Formed: Asif Nazrul," *Prothom Alo* (10 May 2025). <https://en.prothomalo.com/bangladesh/politics/uojx4w46tp>.

⁹ Two commissions were announced, a National Transitional Justice Commission and a Commission for Missing Persons. The former works as a Truth Commission. Reuters, "Syria Forms Transitional Justice, Missing Persons Commissions," *Reuters* (18 May 2025). www.reuters.com/world/middle-east/syria-forms-transitional-justice-missing-persons-commissions-2025-05-18/; AFP Damascus, "Syria Announces Commissions for Missing Persons, Transitional Justice," *France24* (17 May 2025). www.france24.com/en/live-news/20250517-syria-announces-commissions-for-missing-persons-transitional-justice.

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since October 2023 under Benjamin Netanyahu, the possibility of a Truth Commission is being raised again.¹⁰

Truth Commissions, it would seem, have never been more popular. Perhaps that is because, in their endeavor to deliver truth as justice, Truth Commissions present themselves as grounded in, and responsive to, national constituencies. And yet ‘the international’ continues to loom large. Soon after Syria announced its plan to establish a Truth Commission in 2025, prominent international human rights and transitional justice organizations – Amnesty International, the International Center for Transitional Justice, Human Rights Watch – reacted by issuing their own statements.¹¹ While they welcomed Syria’s announcement, their concern was to emphasize the international standards that had to be observed in any truth-telling process.¹² In its press release, the

¹⁰ For a recent discussion see as example, Ahmed Moor, “The Palestine-Israel Nightmare Won’t End Until We Accept These Basic Truths,” *The Guardian* (8 July 2024). www.theguardian.com/world/article/2024/jul/08/palestine-israel-gaza-war-end. For a recent initiative featuring Ruti Teitel (the most renowned transitional justice scholar) and Pablo de Greiff (inaugural UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence), see Minerva Center for the Rule of Law under Extreme Conditions at the University of Haifa and the Clinical Legal Education Center (CLEC) at the Hebrew University of Jerusalem, “International Webinar: Transitional Justice for Israel-Palestine in Comparative Perspective” (5 June 2025). www.allmep.org/all-events/transitional-justice-for-israel-palestine-in-comparative-perspective-june-5-2025-international-webinar-the-minerva-center-for-the-rule-of-law-under-extreme-conditions-at-the-univ/. For older pieces see, Zinaida Miller, “Settling with History: A Hybrid Commission of Inquiry for Israel/Palestine,” *Harvard Human Rights Journal*, vol 20 (2007); Adrienne Katherine Wing, “A Truth and Reconciliation Commission for Palestine/Israel: Healing Spirit Injuries?” *Transnational Law & Contemporary Problems* vol 17, no 1 (2008).

¹¹ Amnesty International, “Press Release. Syria: New Government Must Prioritize Justice and Truth Measures to Prevent Further Abuse” (16 May 2025). www.amnesty.org/en/latest/news/2025/05/syria-new-government-must-prioritize-justice-and-truth-measures-to-prevent-further-abuse/; Alice Autin/Human Rights Watch, “Syria’s Transitional Justice Commission: A Missed Opportunity for Victim-Led Justice” (19 May 2025). www.hrw.org/news/2025/05/19/syrias-transitional-justice-commission-missed-opportunity-victim-led-justice; International Center for Transitional Justice, “Press Release: ICTJ Welcomes Establishment of Syria’s New National Commissions for Transitional Justice and the Missing” (22 May 2025). www.ictj.org/latest-news/ictj-welcomes-establishment-syria-s-new-national-commissions-transitional-justice-and-the-missing.

¹² Amnesty International, “Press Release”; Alice Autin/Human Rights Watch, “Syria’s Transitional Justice Commission”; International Center for Transitional Justice, “Press Release.”

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International Center for Transitional Justice made sure to highlight its role in the Syrian initiative (having “worked closely with Syrian partners to lay the groundwork for a national justice and reconciliation process”);¹³ while Human Rights Watch stressed the importance of working with international organizations (urging Syria to “build on successful examples of collaboration between UN mechanisms and victims’ groups”).¹⁴ That Syria’s truth-telling initiative would have an international dimension is not exceptional. Historically, international law and its institutions has provided a means to make visible different forms of violence and to mobilize solidarity against it.¹⁵ But international law and its institutions has also had the effect of mobilizing and privileging certain understandings of what ‘truth-telling’ involves, including how it should be conducted and the kinds of truths that should be privileged. These are typically packaged in the institutional form of the ‘Truth Commission’.

The influence of the international can be seen in the Yoorrook Justice Commission, at work on the country of the Wurundjeri Peoples of the Kulin Nations, in Australia, my home for most of the writing of this book.¹⁶ The Yoorrook Justice Commission was established as part of the

¹³ International Center for Transitional Justice, “Press Release: ICTJ Welcomes Establishment.”

¹⁴ Autin, “Syria’s Transitional Justice Commission.”

¹⁵ See as examples the events discussed in Mohammed Bedjaoui, *Towards a New International Economic Order* (Holmes & Meier, 1979); Jochen von Bernstorff and Philipp Dann (eds) *The Battle for International Law: South-North Perspectives on the Decolonization Era* (Oxford University Press, 2019); Nicolás Perrone, “Solidarity & the Charter of Economic Rights and Duties of States,” *Progressive International* (29 March 2023). <https://progressive.international/blueprint/0e48f7d6-6897-46c8-9e7e-05b26b027cbf-perrone-past-and-future-new-international-economic-orders-is-solidarity-their-keystone/en>; Claerwen O’Hara and Valeria Vázquez Guevara, “Salvador Allende, Populism and an International Law of Solidarity,” *NUS Centre for International Law Dialogues* (19 December 2023). <https://cil.nus.edu.sg/blogs/salvador-allende-populism-and-an-international-law-of-solidarity/>. Most recently, South Africa’s genocide case against Israel at the International Court of Justice (2023, ongoing), International Court of Justice, “Latest Developments: Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel).” www.icj-cij.org/case/192.

¹⁶ This place is called Naarm, which is one place in the country of the Wurundjeri Peoples of the Kulin Nations. Its settler-colonial name is City of Melbourne.

PREFACE

Victorian Government's response to the First Peoples' Assembly of Victoria's call "for a truth and justice process."¹⁷ Along with substantial involvement of the First Peoples' Assembly of Victoria,¹⁸ there has also been close engagement with international Truth Commission models. This has provoked different reactions. Some have celebrated the establishment of the Commission by drawing comparisons with other 'successful' Truth Commissions, notably South Africa's Truth and Reconciliation Commission (1995–2003), and Canada's Truth and Reconciliation Commission (2008–2015).¹⁹ Others, however, have raised concerns about international influence over the Yoorrook Justice Commission process. One especially influential voice has been First Nations' leader, Cobble Cobble woman and professor of law, Megan Davis.²⁰ For Davis, the recent global push for, and celebration of, Indigenous truth-telling processes in the form of Truth Commissions has not led to meaningful justice outcomes.²¹ She cautions against modelling these processes after

¹⁷ Yoorrook Justice Commission. yoorrookjusticecommission.org.au.

¹⁸ Victoria State Government, Premier of Victoria, "Media Release: Historic Truth-Telling Commissioners Appointed."

¹⁹ See for example, Lorena Allam, "Victoria to Set Up Australia's First Truth and Justice Commission to Recognise Wrongs Against Aboriginal People," *The Guardian* (11 July 2020). [www.theguardian.com/australia-news/2020/jul/11/victoria-to-se...tralias-first-truth-telling-commission-led-by-first-peoples-assembly](http://www.theguardian.com/australia-news/2020/jul/11/victoria-to-set-up-australias-first-truth-telling-commission-led-by-first-peoples-assembly); Harry Hobbs, "Drawing History into the Present: Victoria Takes Up the Challenge of Truth-Telling," *Inside Story* (16 March 2021). [insidestory.org.au/drawing-history-into-the-pr](http://insidestory.org.au/drawing-history-into-the-present/)esent/; Michael Fowler and Ashleigh McMillan, "Deep Sadness, Deep Joy': Victoria's Truth-Telling Commissioners Announced," *The Age* (14 May 2021). [www.theage.com.au/national/victoria/deep-sadness-deep-joy-victoria-s-truth-telling-commissioners-a](http://www.theage.com.au/national/victoria/deep-sadness-deep-joy-victoria-s-truth-telling-commissioners-announced-20210514-p57rvw.html)nnounced-20210514-p57rvw.html.

²⁰ Professor Megan Davis is a constitutional lawyer, and one of the designers and drafters of the *Uluru Statement from the Heart*. The *Uluru Statement* is a constitutional dialogue and reform process coming from, and led by, First Nations peoples from across the Australian continent. It seeks to achieve meaningful voice in political institutions, treaty-making with the Australian state (Makarrata), and truth-telling as a deeply First Nations-centered process, not as something "that has to be done by a truth and reconciliation commission." See Contact Magazine, "Voice, Treaty, Truth: Q&A with Professor Megan Davis," *Contact Magazine* (2020). [https://stories.uq.edu.au/co](https://stories.uq.edu.au/contact-magazine/2020/voice-treaty-truth/)ntact-magazine/2020/voice-treaty-truth/; Megan Davis and George Williams, *Everything You Need to Know about the Uluru Statement from the Heart* (NewSouth Publishing, 2021).

²¹ Megan Davis, "The Truth about Truth-Telling," *The Monthly* (2 December 2021). www.themonthly.com.au/issue/2021/december/1638277200/megan-davis/truth-about-

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other internationally acclaimed Truth Commissions, endorsed and promoted by transitional justice actors.²²

In the case of the Yoorrook Justice Commission, two additional actors were involved in its design (alongside the First Peoples' Assembly of Victoria and the Victorian Government). These were the New York-based International Center for Transitional Justice, and the Washington-based George Mason University Mary Hoch Centre for Reconciliation.²³ As the Victorian Government explained, the formation of the Yoorrook Justice Commission had “incorporated advice from [these] international experts on best-practice in truth telling.”²⁴ In particular, the International Center for Transitional Justice was directly involved in short-listing and nominating the Yoorrook Commissioners,²⁵ using a selection process that “aligned with international best practice in truth-telling.”²⁶ Not much else has been said, officially, about the participation of these transitional justice actors, and it is too early to know the extent of their influence, or the influence of their Truth Commission models, over the Yoorrook Justice Commission and its resulting account of the truth. Despite this – or perhaps because of this – Davis' words remain hard to ignore: “Beware the ally spruiking truth.”²⁷

The purpose of this book is to take the warning seriously. It does so by asking how Truth Commissions produce an authoritative account of past violence and promises of future community; and it asks this as a question of law. This is all the more important when it appears that law is absent from the work of a Truth Commission. This question, and the answer that

truth-telling. Davis specifically discussed critiques to the Canadian Truth Commission which focused on the violence suffered by First Nations children at the Indian Residential Schools program.

²² Ibid.

²³ Victoria State Government, First Peoples-State Relations, “Outcomes: Establishing a Truth and Justice Process” (1 November 2021). www.firstpeoplesrelations.vic.gov.au/advancing-victorian-treaty-process-annual-report-2020-21/outcomes-establishing-truth-and-justice.

²⁴ Ibid.

²⁵ Victoria State Government, Premier of Victoria, “Media Release: Historic Truth-Telling Commissioners Appointed.”

²⁶ Victoria State Government, First Peoples-State Relations, “Outcomes: Establishing a Truth and Justice Process.”

²⁷ Davis, “The Truth about Truth-Telling.”

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the book offers – an answer that finds (international) law to be central to the work of Truth Commissions – is not just an intellectual concern for me. It is also deeply personal. The Salvadoran post-conflict state, where I spent my childhood, was profoundly shaped by the post-Cold War expansion of international law and its institutions across the Global South. I was born in San Salvador on November 22, 1989, during the final days of the Salvadoran civil war. Eleven days before, the Farabundo Martí National Liberation Front (FMLN) guerrillas had successfully launched their final offensive to seize the capital city of San Salvador. This precipitated a process that led to the signing of the Chapultepec Peace Agreement, which established the UN-led Truth Commission. It is in the shadow of this Truth Commission that I studied law and undertook the graduate research that has culminated in this book, which is why it cannot be entirely separated from my heritage in El Salvador or experiences growing up in Spain and living and working in Australia.

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Beyond the intellectual and professional training involved in writing one's first monograph, the process has also been personally formative. Through the more than five years that it took to research and write this book, I discovered something that the Irish poet Seamus Heaney once observed: "getting started, keeping going, getting started again – in art and in life, it seems . . . is the essential rhythm not only of achievement but of survival." Undertaking a major research project like this can certainly be experienced as an exercise in "getting started, keeping going," again and again and again. Yet, I received the gift of not going through this alone, but accompanied by a community who made it a real pleasure.

This book first took the form of a PhD thesis at Melbourne Law School (MLS). At MLS I found a wonderfully collegial and supportive academic environment. Sundhya Pahuja and Shaun McVeigh played a crucial role in making MLS an intellectual community. So many great things can be said about the joint supervision of Sundhya and Shaun, but I would just like to thank them for their sustained intellectual care, the laughs during supervision, the freedom to explore and ask questions, and their generous but necessarily tough feedback. I thank Sundhya for her characteristic human touch, genuine spirit of service to others, and for paving the way for her students and mentees. As a supervisor and mentor, Sundhya has shown me that one can be a brilliant scholar while remaining kind and generous. I thank Shaun for listening with such care and wisdom. As a supervisor, and through his scholarship, Shaun has shown me that slow and discrete scholarship can be an intellectually and personally enriching lifelong journey worth embarking on. My gratitude also goes to my thesis examiners, Vasuki Nesiah and Sarah Ramshaw, whose careful and

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EXPLANATORY NOTE ON THE COVER

The cover image is a photograph by Steve Cagan, who has generously granted permission to reproduce it. Steve and Beth Cagan documented the lives of Salvadorans in the UNHCR refugee camps in Honduras during the civil war in the 1980s. The cover image portrays a group of Salvadoran girls learning the artisan tradition of embroidery while living at the camps. Steve and Beth's ethnographic work is one of the few records bearing witness to the everyday lives, and courage to live life against all odds, of the Salvadoran refugees during the war. This work can be found in their books, *El Salvador: La Tierra Prometida* (Ediciones Arcoiris, 1993) and *This Promised Land, El Salvador* (Rutgers University Press, 1991). For Steve's photographic work, see: www.stvecagan.com and <https://stevecagan.smugmug.com/El-Salvador>.

Note on the Text

All translations from Spanish into English are mine unless otherwise stated. I provide the original text and its source in each footnote. In the case of proper names I provide, where necessary, a translation in brackets alongside the original.

As a native Spanish speaker I have also consulted the original texts in Spanish of some key texts translated into English, which have not been translated by myself. I have indicated in the respective footnote whenever my interpretation of the original text in Spanish differs from the English translation.