



**IILJ International Legal Theory Colloquium Spring 2009:
Virtues, Vices, Human Behavior and Democracy in International Law**

Benedict Kingsbury and Joseph Weiler
NYU Law School

Pollack Colloquium Room, Furman Hall 9th Floor, 245 Sullivan Street
Thursdays 4pm-5.50pm

[student seminar also meets separately, Tuesdays 4pm-5.50pm]

Note: speakers' topics listed are indicative of areas, not final titles, and may change

- January 15** - Derek Jinks, University of Texas Law School
Topic: *Humanization and Individualization in the Enforcement of International Humanitarian Law*
- January 22** - Anne van Aaken, University of St Gallen Law School, Switzerland
Topic: *International Investment Law and Rationalist Contract Theory*
- January 29** - Craig Calhoun, NYU Institute for Public Knowledge & President, SSRC
Topic: *The Idea of Emergency: Humanitarian Action and Global (Dis)Order*
- February 5** - Paolo Carozza, Notre Dame Law School and Chair, IACmHR
Topic: *Global Values, Local Virtues – Human Rights, Democratic Self-Governance and International Justice*
- February 12** - **Leigh Payne, Oxford University Sociology (Latin American Societies)**
Topic: *Performances of Power: Paramilitary Confessions in Colombia*
- Chapter 1 and Conclusion of Leigh Payne's recent book titled: *Unsettling Accounts: Neither Truth nor Reconciliation in Confessions of State Violence*
- February 26** - William Miller, University of Michigan Law School
Topic: *Messengers and Intermediaries: Insights from Ancient Law*
- March 5** - Moshe Halbertal, NYU Law School and Hebrew University
Topic: *Pre-Conditions for Forgiveness*
- March 12** - Joseph Weiler, NYU Law School
Topic: *Europe Against Itself: On the Distinction between Values and Virtues (and Vices) in the Construction and Development of European Integration*
- March 26** - Armin von Bogdandy, NYU Law School, Director MPI Heidelberg
Topic: *Problems of International Public Authority*
- April 2** - Pierre Rosanvallon, Collège de France
Topic: *The Metamorphoses of Democratic Legitimacy*
- Tuesday, April 7**- (SPECIAL SESSION, 4:00 pm to 5:50 pm)
Faculty Club, D'Agostino Hall, 110 West 3rd Street
Alexander Somek, University of Iowa
Topic: *Democracy-Enhancing International Law: The Argument for Transnational Effect*
- April 16** - Conference in Honor of Professor Andreas Lowenfeld
(For more information, go to www.iilj.org – all welcome!)
- April 23** - tbc
Topic: *Virtues, Vices, Human Behavior and Democracy in International Law*

Program and papers available at: <http://iilj.org/courses/2009IILJColloquium.asp>

Performances of Power: Paramilitary Confessions in Colombia*

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As if awaiting the arrival of a celebrity, hundreds of fans of the former head of the Central Bolivar wing gathered very early on Tuesday morning outside the prosecutors' building in Medellín. They planned to greet "Macaco," at his "version libre" scheduled to begin at 9:35a.m. They brought noisemakers, drums, and posters to celebrate his social works projects – according to them – in eight of the country's departments. ...Macaco presented himself at the windows of the prosecutors' building on various occasions during the middle of the day, waving his hand in greeting. The crowds[of supporters] erupted in jubilation.¹

Macaco, the individual hailed by the crowd, had entered the prosecutor's office to present his confession to past political violence in Colombia. He had agreed to participate in the Justice and Peace Law offered to members of the AUC (United Self-Defense Forces of Colombia), the largest paramilitary force in the country. In exchange for demobilizing and confessing to past violence, Macaco and the other paramilitary leaders would receive a dramatically reduced sentence. As the title of the law indicates, it aimed to simultaneously end paramilitary violence while guaranteeing justice for victims of that violence. As the excerpt from the Macaco hearing above illustrates, paramilitaries may have paradoxically maintained, rather than lost, their power over justice and peace through the confessional process.

The Colombian case, thus, adds an important element to analysis of perpetrators' confessions that I began in *Unsettling Accounts*. It explores the aspects of the confessional performances (script, actor, acting, timing, staging, and audience) that contribute to enhancing, rather than diminishing, perpetrators' power over how the past is remembered and its meaning for contemporary political life.

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Unsettling Accounts: The Argument

Unsettling Accounts agrees with the view promoted by the South African Truth and Reconciliation Commission that perpetrators' confessions play an important role in the democratic process. As the title of the book suggests, however, confessions do not settle accounts with the past. On the contrary, they unsettle those accounts by breaking the silence over the past, exposing society to disturbing images of past violence, and producing justifications, rather than truth, of that past violence. Those who witness perpetrators' confessions, particularly victims, survivors and the human rights community, do not share perpetrators' understanding of the past. As a result, deep conflict surfaces. Against the argument made by some scholars of deliberative democracy, however, *Unsettling Accounts* does not support "gag orders" to avoid confessions that disrupt the democratic process. Instead of seeing confessions as threats to democracy, it considers them catalysts to democratic practice. Broad sectors of society begin to participate in a dialogue about the past and its meaning for contemporary political life. Participation in the political process, the freedom to express contentious views, and public debate of competing views of the past put democracy into practice.

While contributing to democratic practice, these confessions do not necessarily contribute to reconciliation or democratic outcomes. Expectations by some advocates that these confessions will acknowledge the past violence, heal victims, and reconcile differences are usually unfulfilled. *Unsettling Accounts* shows that perpetrators often present a heroic version of their past, justifying rather than condemning past violence. With such polarized views of the past, reconciliation is an unlikely outcome. "Contentious coexistence," and not reconciliation, results as different groups compete over how the past is remembered and its value for contemporary political life. The outcome is not that "the better argument carries the day," but rather that "public debates set in motion a series of processes that reshape the political environment in which they occur."² *Unsettling Accounts* contends, in short, that the process of confession puts various versions of the past into competition, allows victims to challenge perpetrators' versions of the past, and holds perpetrators accountable (although not always in a court of law) for their past acts. The process of confession, in other words, reduces the power of perpetrators to control how the past is understood and what it means for the future. Reducing the power of perpetrators depends on the confessional performance: not only on what they say (the confessional script), but the role that groups in society play in responding to that text (audiences), how perpetrators present themselves (actors and acting), the political moment (timing), and the institutional or societal process that generates the confession (stage). When perpetrators present their past acts as heroic sacrifices to the nation, for example, victims and survivors seize the opportunity to challenge that version, presenting their past acts (e.g., rape or disappearance) as neither heroic nor patriotic. Confessions catalyze a debate in society over what was done in the past, the justifications used to defend those acts, and how the present and future will deal with that past.

Unsettling Accounts recognizes that perpetrators use confessions to reinforce their power in society. Audiences of victims and human rights advocates, however, have the capacity to contest the justifications, euphemisms, lies, silences, denials, and heroism inherent in perpetrators' confessions. They can, therefore, challenge perpetrators' power over "essential questions of public life."³ Focusing on the contexts in which audiences successfully challenge perpetrators'

versions of the past ignores the barriers to doing so. Colombia provides an example of such a context. The Justice and Peace Law confessional process has so far failed to catalyze a dialogic process that allows victims and human rights groups to contest perpetrators' versions of the past. It thus allows for an exploration of the limits of unsettling accounts.

The Colombian case, like the others included in *Unsettling Accounts*, involve not just a confessional text, or script, but an entire performance. In the Colombian case, each element of perpetrators' confessions reinforces their power. Arguably the most important aspect of these performances of power is the Justice and Peace Law itself, or the institutional staging of perpetrators' confessions. The Justice and Peace Law sets the stage for the other elements of the performance: perpetrators' confessional texts, their self-presentations, timing, and audiences' response to them. The kind of contention that emerges in this political drama has not effectively challenged perpetrators' confessions.

“A mockery of the basic principles of human rights and accountability?” The Justice and Peace Law

Since its origins, the Justice and Peace Law has faced challenges from human rights groups and judicial scholars and advocates. In one of the most critical indictments of the Law, Human Rights Watch-Americas division chief, José Miguel Vivanco claimed that it “made a mockery of the basic principles of human rights and accountability.”⁴ The institutional stage in which perpetrators have made their confessions in Colombia arguably enhances their power, and reduces their accountability for past violence.

The use of the term *versiones libres*, and not “truth” or “confession,” hints at differences between the Colombian process and other transitional justice mechanisms. The term refers to procedures in Colombian criminal trials in which criminal defendants make a declaration at the beginning of an investigation.⁵ It suggests, therefore, that paramilitaries will be held criminally responsible for their past acts. The literal translation -- voluntary versions or accounts -- fits the Justice and Peace Law process since paramilitary leaders willingly offer their own account of past violence in exchange for a reduced prison sentence. Perpetrators make their confessions to special prosecutors assigned to determine their compliance with the Justice and Peace Law.

The Justice and Peace process has faced legal and political challenges since its initiation. Paramilitaries would argue that the evolution of the Law has undermined their power. The process originated as an effort to disarm, demobilize, and reintegrate paramilitary forces. Private negotiations between the government and paramilitary groups began in June 2003 on a farm in Santa Fe de Ralito (the Ralito agreements).⁶ The paramilitary leaders attempted to negotiate a blanket amnesty. They appear to have settled for “alternative penalties” to avoid extradition to the United States. The alternative penalties involved perpetrators' admissions of criminal acts (*versiones libres*) and reparations for victims in the form of illegally acquired resources. Instead of a 40-year prison sentence, or more, they would serve a total of eight years in jail.

Paramilitary leaders have lost three of the promises of that initial negotiation as a result of challenges to the Law. First, they expected to receive a reduction of the eight-year sentence due to the “time served” in negotiating the peace agreement. Such a reduction would have led to a two-year sentence.⁷ Second, the paramilitary leaders anticipated that they would serve their sentence in a country estate, under house arrest, rather than in a maximum security prison.⁸ Third, paramilitary leaders expected that their compliance with the Law protected them from extradition to the United States to stand trial for drug trafficking. Paramilitary leaders negotiated their demobilization under conditions that they subsequently lost.

The Ralito agreement, Colombians later learned, may have followed previous preliminary negotiations between the government and the paramilitaries. Allegedly, paramilitary leaders sat down in secret sessions with officials in the Andrés Pastrana government during 2001 and 2002 to hammer out a demobilization-amnesty-reinsertion agreement. Paramilitaries contend that they agreed to protection from the government in exchange for their support for the election and reelection of politicians sympathetic to them.

Challenges to the Law in the Constitutional Court, however, undermined many of the protections paramilitary leaders had anticipated. The Colombian Constitutional Court identified the aim of the 2005 Justice and Peace Law (975) as a mechanism “to facilitate the peace process and the individual and collective reintegration into civil society members of armed groups operating at the margins of the law while also guaranteeing the rights of victims to truth, justice and reparation.”⁹ Law 975 “establishes an alternative system of criminal justice, which entails the suspension of a criminal sentence and its replacement with an alternative punishment. Benefits are granted commensurate with the individual’s contribution to attaining peace, justice, and reparations to the victims, as well as her or his resocialization.”¹⁰

The Court ruled against several of the aspects of the law that tended toward paramilitary impunity. It struck down the “time served” provision, and instead stated that the eight-year period would begin from the end of the confessional process itself. It clarified that reparations would be paid by paramilitaries from both illegally and legally acquired assets.¹¹

Human rights advocates challenged the “alternative punishment” provision as too lenient given the atrocities committed by paramilitaries. The Colombian Commission of Jurists documents an estimated 13,000 murders by paramilitaries between 1996 and 2004. Additional kidnapping, torture, extortion and other crimes remain undocumented. Approximately 1 million internally displaced people in Colombia attribute their situation to paramilitary violence.¹² Both at the international level -- Human Rights Watch, the Office of the United Nations High Commissioner for Human Rights, the Inter-American Commission of Human Rights -- and local human rights organizations criticized the law. They considered it “inconsistent with international standards on truth, justice and reparation” by providing “alternative punishment.”¹³ They rejected the government’s reliance on national security threats posed by the paramilitaries as a justification for reduced sentences. Noting that even in the maximum security Itagüí prison paramilitary leaders had laptop computers with internet access, weekly personal visits, and satellite television, one human rights advocate condemned the law as “Uribe’s gift to the leaders of paramilitarism.”¹⁴

The Court further stipulated that paramilitaries would receive “alternative punishment” only if they complied fully with Law 975 by providing full disclosure, paying reparations to victims, and ending violence. Those paramilitaries found lying or hiding information will forfeit the Justice and Peace provisions and instead face criminal prosecution in ordinary courts. Paramilitary leaders would face 40-60-year sentences for their crimes in ordinary criminal courts, and not Law 975’s eight-year “alternative punishment.” Similarly, if evidence linked paramilitaries to on-going violence or if they failed to make reparations, they would also lose their privileges under Law 975 and face criminal prosecutions. The legitimacy of the process thus hinges not only on paramilitary confessions themselves, but on the quality of the post-confession investigations, a process that remains in its initial stages.

Paramilitary leaders also lost protection from extradition. In 2008 the Colombian government backtracked on its original agreement and extradited fourteen paramilitary leaders to the United States to stand trial for narco-trafficking offences. Such a decision, however, upset human rights organizations in Colombia. They did not consider extradition the solution since U.S. courts would not be concerned about either the involvement of paramilitary forces in crimes against humanity or Colombian victims’ right to truth and justice.¹⁵ Even if Colombian perpetrators faced prosecution for crimes against humanity in the United States under the Alien Tort Statute, they would face only civil claims, rather than justice for crimes against humanity. Some critics had suggested, moreover, that paramilitaries would receive a maximum penalty of ten years for drug trafficking and most would enter pleas for reduced sentences in exchange for information.

Reduced prison sentences in U.S. courts for drug trafficking have not occurred as anticipated. One extradited paramilitary leader, Ramiro “Cuco” Vanoy Ramírez, received a 24-year sentence in October 2008. Shortly after his sentencing, however, Ramírez announced his decision to withdraw from cooperation with the Justice and Peace process to protect his family. Other leaders have continued to participate in the process despite their extradition.¹⁶

Another challenge to the law is the number of paramilitaries who will be charged. Of the estimated 30,000 members of Colombia’s United Self-Defense Force (AUC), 3,000 (or 10 percent) submitted to the process at the time of the demobilization.¹⁷ These constitute the top and middle leadership of the paramilitary structure. The remaining 27,000 constitute lower level leaders and troops. Of those, 8,000 have protection from prosecution as a result of a 1997 peace agreement and Law 782 of 2002. The other 19,000 do not have protection under prior agreements or laws and remain in a “juridical limbo.”¹⁸

One significant victory over the paramilitaries, however, is the role that victims have played in the process. Gustavo Gallón Giraldo and other local parties challenged the Law in terms of victims’ rights. The Law, reinforced by the Constitutional Court ruling, stipulated that victims would participate at every stage of the process. Victims and their representatives have complained about the constraints on their access at the *versiones libres*. The prosecutor’s office complies with the Law by providing victims’ access to the confessions in an adjacent room and via closed-circuit television. Gallón et al. counter the view that these confessions could endanger minors and victims if they shared the same space as perpetrators by arguing that decisions about

access should be made on a case-by-case basis, and not across the board. The public prosecutor's office denied live radio, television or internet coverage of the confessions further limiting access to those victims without the economic and physical means to travel to the hearings. As a result, of the more than 143,000 registered victims, only 11,000 (8%) have attended the hearings.¹⁹ Because the prosecutor's office only allowed entrance to individuals who appeared in the official registry as victims of the specific perpetrator confessing, moreover, victims who could not identify a specific perpetrator had no access to *versiones libres*. Gallón et al. called for equality before the law and freedom of expression. Gallón et al. demanded direct transmission by radio, internet and television, unlimited and unconditional participation by victims in the hearings, and a greater presence for legal representatives for victims in the hearings. Without direct access to paramilitary's statements, victims and their legal representatives could not receive information, verify or challenge it, or secure effective remedy.

The decision to limit access to the confessions at the first preliminary stage intended to strike a balance between due process for perpetrators and victims' right to know. The limitations also protect the investigation by the prosecutor's office in verifying the information provided by the paramilitary leaders, including false incriminations of others. The fuller set of victims and Colombian society would participate in the subsequent investigation stage. Thus, the decision read, "It is very probable that when the prosecutors and judges have finished their investigative work and made a judgment" that the information will be widely distributed to the Colombian public.²⁰

Victims have also challenged the reparations agreements in terms of its enforcement. To date, victims have seen very little of the distribution of paramilitaries' assets. Only 5,000 acres of land have been surrendered, while the paramilitaries continue to hold hundreds of thousands of acres. Only three cars, 152 heads of cattle, and two horses have been given up for redistribution to an estimated 70,000 victims.²¹ The slowness of the process has led to skepticism that victims will ever see reparations paid.²²

The Justice and Peace Law process, in short, did not entirely capitulate to perpetrators' demands. They lost important promises through challenges to the Law at the local and international level. Limitations on public access to the confessions, paramilitaries' control over information, and societal response to paramilitaries continued to provide them with power over the process. That power is reflected in the excerpt from Macaco's confessional process at the beginning of this paper. He was greeted at his *version libre* with cheers from supporters, and not jeers from those harmed by him. He, thus, controlled the stage, a process observed in other paramilitaries' hearings. This appearance of paramilitaries' power over the process has led to criticism of the law as "a mockery" of accountability.

"An irreversible mission of peace:" Paramilitaries as powerful political actors

Macaco presented himself, as other paramilitaries have in their *versiones libres*, as crucial political actors in the peace process. To convince their audiences, paramilitaries distanced themselves from a criminal past, emphasizing instead their "service" to the country in fighting

the guerrillas. They demobilized once the government had proved capable of fighting guerrillas without their help. They now claim to serve the country through the peace process.

Salvatore Mancuso, for example, explained his leadership of AUC as an unfortunate obligation that resulted from the country's internal war: "I'm a man of business, head of a family, thrown into that terrible mouth of war. ... History will recognize the goodness and greatness of our cause. We are defenders of a free Colombia and its institutions." In "compensation for our sacrifice for the fatherland," he contended that he and the other commanders "cannot receive jail." Instead, he felt he had an obligation to the new process underway in Colombia: "I come here in an irreversible mission of peace."²³

Distancing themselves from their violent past involved replacing their weapons with the tools of the peace trade. Salvatore Mancuso appeared in public in expensive suits and not the camouflage uniforms generally associated with paramilitary leaders. A report from his maximum-security prison depicted him reading Gandhi and self-help books, communicating with his lawyers on his BlackBerry, sitting in an ergonomic chair, and listening to vallenato music on his iPod.²⁴ His version libre involved a powerpoint presentation from his laptop, systematically documenting all of the regions where he had been active. He did not look or act the part of a convicted killer of a demobilized and delegitimized paramilitary group. He could have passed for a modern businessman or politician. Mancuso's elite background (son of an Italian businessman, a civil engineering degree, studies at the University of Pittsburgh) further confounded his identity. He attempted to construct a coherent image of his past and present that other paramilitary leaders also adopted: individuals dedicated to their country in times of war and in times of peace.

The image only somewhat paralleled findings in popular opinion polls in Colombia. The LAPOP poll found that Colombians perceived guerrilla-violence to be greater than paramilitary violence. The perception of threat from the guerrillas declined between 2004 and 2007, however, while it rose with regard to paramilitaries.²⁵ In other words, at the same time that the government began negotiating the demobilization of paramilitaries under the Justice and Peace Law, the perception of their threat grew.

This perception may have resulted from reports of continued violence after the demobilization process. Mancuso attributed the violence to attacks on demobilized forces by guerrilla and criminal rings. He argued that the paramilitary leaders had warned the government in 2006 that this kind of violence would occur if the government failed to protect the demobilized forces. When the violence against the demobilized paramilitaries occurred, Mancuso claimed that they had no choice except to join gangs to protect themselves.²⁶ Violence resulted from the government's failure to secure peace in the demobilized zones, not the paramilitaries' failure to comply with the peace process.

Mancuso's explanation did not match independent reports. A United Nations report issued in 2005 revealed that the AUC had carried out hundreds of murders after signing the cease fire agreement.²⁷ *Semana* newsmagazine published transcripts of cell phone calls from jailed paramilitaries that showed their capacity to run a war and drug business from prison.²⁸ A seized laptop belonging to paramilitary leader Jorge 40 revealed that the paramilitary forces had paid

unemployed peasants to pose as paramilitaries and demobilize, while the actual paramilitaries continued to operate freely. The Colombian NGO Indepaz revealed that 43 new paramilitary groups had formed after the demobilization. It identified former mid-level leaders as the heads of these new organizations. This mounting evidence suggested that the paramilitary forces had not disbanded, but merely reorganized.²⁹ Some, including the government, contend that these groups cannot be considered paramilitaries, since they are not directly involved in conflicts with guerrillas. They constitute, instead, criminal gangs engaged in drug trafficking, intimidation and violence in numerous populations.³⁰

These reports pointed to paramilitaries' continued power to disrupt the peace process. It is not inconceivable, however, that the paramilitaries needed these kinds of reports. They had limited leverage over the process as peacemakers. Maintaining military force, however, made their role in the peace process crucial. They could credibly threaten to unleash violence anew in opposition to the process. Whether strategic or not, perpetrators' buttressed their political power by appearing to comply with the peace process and simultaneously hinting at their capacity to disrupt that process. The on-going violence acted as a form of retribution against the government's failure to uphold the Ralito agreements, particularly extradition to the United States.

“Where there is hatred, let me sow love:” Paramilitary Power Scripts

The rhetorical devices perpetrators used further reinforced the dual image of peacemakers and potential peace-breakers. On the side of peace, perpetrators frequently recited scripture in their versiones libres. The appeal to religion further placed an obligation on Colombians, as Christians, to forgive and reconcile the past. Fredy Rendón began his hearing with a quote from St. Francis:

Lord, make me an instrument of your peace.
Where there is hatred, let me sow love;
Where there is injury, pardon.

The words represented the universal experience of war, not the specific Colombian experience. They rendered war and its harm normal. Rendón's use of the quote emphasized the Christian duty to forgive and not the responsibility to repent and atone for past wrongs.

Some paramilitary leaders did attempt to express remorse for their acts. Juan Francisco Prada Marquez, for example, broke down in an emotional crisis at the moment that he attempted to use the word “victim” in his hearing. The Prosecutor suspended the hearing to allow him to recompose himself.³¹ Mancuso also sobbed in one of his sessions as he asked for forgiveness for his crimes. Victims tended to view these emotional aberrations as manipulative and “crocodile tears.” Iván Cepeda stated simply “This peace process is fictitious.”³² Miryam Areiza, whose father was killed by Mancuso, stated “He seemed proud of what they'd done, not remorseful.” He had, after all, referred to her father as a “guerrilla fighter” to justify his acts of war. For Areiza he was a “mere peasant, murdered indiscriminately by a criminal band.”³³

The use of religious texts coexisted with caudillo imagery. Fredy Rendón's 300 supporters did not necessarily respond to his call for Christian forgiveness, but instead the protection he offered. They even referred to him as a caudillo, using the name "El Líder." He responded to this popular support by appearing at a sixth floor window of the prosecutors' building and moving his hips to the rhythms. When he departed, his supporters showered his car with blue and yellow confetti in honor and respect. A reporter described Mancuso's confession as "an old-fashioned speech using the flowery language of Colombia's caudillo politicians," peppered with references to God, Colombia's independence hero Simon Bolivar and Nobel laureate Gabriel Garcia Marquez.³⁴ The caudillo image had the potential of casting paramilitaries' acts not as base criminality, but rather a ruthless form of protection, loyalty, and honor.

The protection that paramilitary leaders offered their supporters came partly in the form of community assistance. One of his supporters praised Macaco for his substantial financial contribution to the community. The funds he provided to the Foundation of Science and Technology for Community Development had made important projects possible.³⁵ Other supporters showed up for more immediate and personal needs. One individual admitted that he had received 30,000 pesos and free transportation to attend the rally. Another offered to stay additional days if the organizers provided a 10,000-peso supplement.³⁶ Macaco's patronage had mobilized so much support for him that the authorities had to move the crowd to a remote location to avoid disrupting the process. Undaunted by their removal, Macaco's supporters organized a mass in his honor.

The service that the paramilitaries identified in their versiones libres involved fighting the anti-guerrilla war. The war analogy had the potential of distinguishing their acts from common crimes. Perpetrators, thus, avoided the term "victim" in describing those they had harmed. Jorge 40, for example, admitted to an "act of war," and "the fallen" when he confessed to his past violence.³⁷ Such rhetorical devices incensed the victims of atrocity who shouted "assassin" and "psychopath" from their remote location.³⁸ Melvis Manosalva expressed her frustration with Jorge 40's war defense. She had personally witnessed Jorge 40 murder her husband, José Osorio Mejía. Rejecting his claim that the murder constituted an act of war, she asked, "When will Jorge 40 return my husband and my daughters to me? What happened to all of those lost years? Tell me that."³⁹

"My closest friends:" Paramilitary Audiences

Massive demonstrations of support for paramilitary leaders at their hearings suggest that the Justice and Peace process has enhanced, rather than reduced, their power over the process. Evidence exists that the paramilitaries organized and paid for the public demonstrations of support. But comments from supporters suggest that many sincerely believed that paramilitaries contributed to individual, community, and national security. Efforts by individuals to malign paramilitaries for "buying" support tended to backfire. Prosecutor Zeneida López asked Giraldo Serna directly about the indigenous people gathered to support him in his versión libre. He responded that he considered them "my closest friends." While this sounded implausible, a leader of the group of supporters backed him up. He issued a statement confirming that the group had organized on their own volition and not due to pressure as alleged.⁴⁰ Similarly in

2004 hundreds of people turned out in support of three paramilitary leaders (Salvatore Mancuso, Ramón Isaza, and Iván Roberto Duque) during their hearing before Congress. They wore “We are builders of peace” t-shirts, carried banners in support of the peace process, and shouted “Viva la paz.” One participant confirmed the impression that the paramilitaries had orchestrated this display of popular support: “They got us together, they organized us.” But another participant reflected instead the view that the hearings would end the violence: “We want to support the president’s peace talks. It’s a good process.”⁴¹

Public opinion polls support the view that Colombians desired an end to violence through negotiations. Violence appears annually as the number one problem the country faces. Colombians support a negotiated settlement to that violence over other alternatives.⁴² A very high percentage of Colombians (70 percent) proved willing to reconcile even during the conflict. They do not feel particularly optimistic about the results of those negotiation and reconciliation efforts, however. More than half of the population believe it is not likely at all and 42 percent project that it will take at least fourteen years.⁴³

Pessimism about the prospects for peace, at least with regard to the paramilitaries, may result from their power in society. Paramilitary leaders possess patronage power. Along with violence, they provide employment, scarce funds and other resources, social services, and physical protection to impoverished individuals, families, and communities. This dependence on them generates social support.⁴⁴ Paramilitary leaders seem confident that the Colombian people support them. Leader Ernesto Baez, for example, called for a public referendum to decide what to do with paramilitaries, hinting that his forces would fare much better in a popular process than one determined by elected representatives in Congress or judges in courtrooms.

Recognizing the power that paramilitaries possess in certain areas of the country also complicates audiences’ attitudes toward paramilitaries. Some individuals, due to poverty, unemployment, and insecurity, sought protection from paramilitary forces. Journalist Hollman Morris interviewed a paramilitary fighter who he called “Robinson.” Robinson had not willingly joined a paramilitary force, but instead sought employment. Once he realized that he had been recruited for violence and not farm work, he was already in too deep. He believed that if he left the group they would kill him. His name and face disguised, Robinson recounted on Hollman’s television broadcast the atrocities he committed as part of a paramilitary force: killing, eating the meat of the dead, and drinking blood. His confession represents a fear in Colombian society that opposing the paramilitaries will bring reprisal.⁴⁵ That fear enhances their power over the peace process.

Dependence on paramilitaries for information further heightened their power. Paramilitaries alone possessed knowledge of what happened to the victims and where their bodies might be found. Some paramilitary leaders seemed to trade in knowledge currency. José Gregorio Mangones Lugo (alias Carlos Tijeras), for example, the leader of the “William Rivas” front of the AUC, offered to provide information if he could meet with his troops: “I have to ask some of my troops to provide this information. I haven’t had the opportunity in the last 25 months to get together with them. . . I’m here, as I said in the beginning, to put myself out for the country, I’m here with my troops, and we can get, we can produce information about the mass graves.”⁴⁶ Ramón Isaza failed to provide any information claiming to suffer from Alzheimer’s. He

suggested that victims come forward with pictures or stories to help him remember. When in October 2008 some of his victims did so, Isaza turned on them. He attacked them as guerrilla supporters, thereby justifying the killing of their family members. Isaza did not, however, take personal responsibility for the murder, but rather blamed it on his deceased son. Neither the victims nor the prosecutor's office could corroborate Isaza's information or find the body. The interaction confirmed a view that the confessional process rendered little useful information and potentially heightens personal risks.⁴⁷

Paramilitaries have not always effectively intimidated their victims, however. Protesters have turned out at various hearings. When the three paramilitary leaders had their hearing in Congress, their supporters confronted protesters. A law professor held a sign with the image of Senator Manuel Cepeda, killed by paramilitaries, and shouted tearfully "No more laws of forgiveness and forgetting." Others carried coffins and photographs of dead and disappeared family members and friends. One shouted "Mancuso, fascist, you narco-terrorist." The police in full riot gear dispersed the protesters, but left the paramilitary leaders' festive supporters alone.⁴⁸ Iván Cepeda, the son of an assassinated senator, has often acted as a spokesperson for victims against state crimes and the Justice and Peace Law that whitewashes them. He has condemned the process, stating, "This cannot be a carnival where they come with their vallenato bands; this law is a farse. We hope for the truth and that these people pay for what they did."⁴⁹

The institutional process, at least in the current initial phase, poses limits on how effectively victims can challenge paramilitaries' confessions. As mentioned above, victims often travel long distances to attend the hearings.⁵⁰ Once they arrive they cannot directly interrogate, cross-examine, or otherwise challenge the information paramilitary leaders present. They can submit questions for the prosecutor to pose to perpetrators and listen to their responses on closed-circuit television. With irony, one AUC leader referred to the victims in the remote location as his "invisible friends," since they could see him, but he could not see them.⁵¹

International human rights groups have enjoyed relative protection to challenge paramilitaries' power over the peace process. At the Congressional hearing of three top paramilitary leaders, Human Rights Watch protested the process as allowing the AUC to "whitewash its image and improve its position in peace talks." Vivanco continued, "This is a very dangerous game and awful precedent. What this kind of circus does is raise the expectations for these individuals to strengthen their position by manipulating the public, with some sort of family-values speech."

A single view of paramilitary violence, or even a concerted opposition, has failed to evolve from the audiences to these confessions. An important group resembles victims in other countries who demand transparency in the process, accountability for perpetrators, and justice for victims. Judging from public opinion polls, this group seems to represent the majority within Colombian society. Nearly 69 percent demanded justice. Of those, 46 percent demanded ordinary criminal sanctions, while 23 percent demanded stiffer penalties. A majority (63.3 percent) demanded that the rank and file face penalties along with their leaders. An overwhelming 79 percent recognized the value of truth-telling about the past.⁵²

Against this majority opinion, a strong and vocal group demands amnesty for paramilitaries in recognition of their heroic and social service to the nation. Still another group prefers oblivion

and an erasure of the past. One analyst depicts this group as the most powerful force within Colombian society today. Ignoring the public opinion polls, he questions the value of a justice and peace process where truth about the past is unwanted.

What the analyst may have uncovered is the necessarily powerful forces behind efforts to silence the truth about the paramilitaries. This group is not pro-paramilitary, but pro-government. To limit the impact on the government, paramilitaries' confessions must be limited. Thus when Mancuso linked government officials to the paramilitaries, this group denounced him as a "compulsive liar," preferring their own version of the past to his.⁵³

A fourth group searches for some form of accountability while recognizing the severe constraints posed by Colombian politics and society. Carlos Franco, a former guerrilla commander and a human rights official, contends that "We invented our own model after studying others around the world. It's not a perfect solution but we are trying to advance as pragmatically as we can."⁵⁴ Alfredo Rangel, a security analyst, has argued that "We won't get all the truth and there won't be full justice, but some truth, some justice and some reparation ought to be enough."⁵⁵ Reparations may provide the safest and most effective form of accountability. In the view of some victims, this may be the most justice they will see. The survivor of a massacre that killed her entire family reflected, "All I ask for is justice and that they make reparations for what they did to me, because they left me abandoned and without anything."⁵⁶ This group "doubts the government's readiness to hold the paramilitaries feet to the fire,"⁵⁷ and seems to accept that limited truth, limited justice, and limited peace may be the most likely outcome.

The divisions within the audiences to confessions limit the capacity to reduce paramilitaries' power. Audiences have not proved capable of producing an effective counter-narrative to paramilitaries' accounts. Recent events suggest, however, that certain confessions and public access to them could produce a dynamic debate in society that could reduce the power of perpetrators' over the process.

"This country needs to know the whole truth:" Timing and Power

When paramilitary leaders first began to name the politicians linked to them the Vice President of Colombia, Francisco Santos, responded confidently: "Scrutiny is fine for us. This country needs to know the whole truth."⁵⁸ It is unlikely that he understood then that the scrutiny he invited would end up hurting him. Paramilitaries subsequently mentioned him as one of the government officials they had supported. They also named his cousin, the Uribe government's Minister of Defense, Juan Manuel Santos, in a plot with the paramilitaries to destabilize the previous government of Ernesto Samper. President Uribe's cousin, Senator Mario Uribe, and about 60 other politicians close to the Uribe government also faced the "scrutiny" Santos had once advocated.

Paramilitaries, whether consciously or not, timed the release of this information strategically. In their early statements, paramilitaries merely hinted at their connections to the government. In 1996, for example, AUC leader Carlos Castaño admitted that "the army really formed us and trained us to combat the guerrillas."⁵⁹ Another paramilitary leader, Ramón Isaza, further

connected the paramilitaries to the government when he stated that “I organized 16 ranchers, I took them to the battalion to get 16 seven and eight gauge rifles.”⁶⁰ These comments suggested that the paramilitaries could provide more information if they needed to do so to protect themselves and their power.

The practice continued under the Justice and Peace Law process. Paramilitaries initially controlled the flow of information by blaming particular acts on deceased individuals or those already identified in previous reports.⁶¹ Gustavo Gallón, of the Colombian Commission of Jurists, did not entirely lament this process used by Mancuso and others: “Even though Mancuso’s declaration leaves a lot to fill out the truth, it nonetheless narrates the complicity and the multiple links that existed between the ‘paras’ and the security forces.”⁶²

As the Uribe government began to distance itself from the paramilitaries, particularly with the threat of extradition to the United States, the paramilitary leaders had less to lose and more to gain from revealing close relationships with government officials in the executive and legislative branches. Indeed, the only leverage the paramilitary leaders seemed to have was information embarrassing to the Uribe government. Mancuso began to recount details of secret pacts with the government. One in 2001 involved 11 members of congress, two governors, and five mayors to forge a “social contract” to protect private property. The seizing of Jorge 40’s laptop further confirmed these links. Mancuso suggested that the paramilitaries delivered the presidency to Uribe in 2002, by mobilizing electoral support for him in the areas they controlled.

The Uribe government’s proposal to shift the jurisdiction of courts seemed to be linked to the “parapolíticos” scandal. The Supreme Court had historically investigated and tried cases involving members of Congress and the top echelons of the executive branch. Uribe proposed to shift that role to local courts in Bogotá and limiting the Supreme Court’s role to appeals. José Miguel Vivanco, the director of Human Rights Watch – Americas, criticized the move: “Uribe is brazenly trying to take the power to investigate congressmen away from the one institution that has done the most to uncover and break paramilitary influence in the congress. This proposal serves no real purpose, other than to help members of Uribe’s coalition get off the hook.”⁶³ Vivanco doubted that lower court judges possessed the “protection, experience, and visibility” to act independently and successfully investigate these cases, when the Supreme Court has a “proven track record” of doing so. Not all observers concur with Vivanco’s assertions, however. Some argue that the shift has been in discussion since before the parapolíticos scandal as a mechanism to strengthen both the lower courts and the Supreme Court. They further contend that individuals attempting to avoid the Supreme Court always had the opportunity to resign their position and face prosecution in the lower courts.⁶⁴

Paramilitaries possess information that could damage the government. How and when they use it to enhance their own power is the issue. As one reporter wrote, “Mancuso answers some compromising questions with only a smile, revealing, perhaps, that many uneasy truths have escaped his public confession.”⁶⁵ Congressman Gustavo Petro, referring to the paramilitary leaders’ Congressional hearing, reflected on “the great power paramilitaries and narcotraffickers have over Congress.”⁶⁶ Even after extradition to the United States, or maybe because of it, paramilitaries have named names in the Uribe government. Indeed, some suspect that paramilitaries may turn state witnesses in the United States to inform on narco-trafficking in

exchange for a reduced prison sentence. By naming top government officials the paramilitaries can damage Colombia's reputation in the United States and potentially threaten U.S. aid.

The release of other kinds of information has also provoked a shift in audiences' responses to paramilitaries' confessions. In October 2008, for example, audiences responded with public and collective outrage to the confession made by paramilitary leader Jorge Iván Laverde Zapata (alias El Iguano). He assumed public responsibility for building an incinerator and burning at least 100 bodies to hide paramilitaries' killings. In his words, "If [the bodies] had been found, it would have created a scandal, affecting our image."⁶⁷ He attempted to justify the murders and incineration, accusing those they killed of guerrilla warfare, delinquency, extortion, or rape. He added that the list of victims came from judicial authorities. He further implicated the local police by explaining that the paramilitaries paid the police to keep out of certain zones of operations. Paramilitary power in those zones were further enhanced, he contended, by supporting sympathetic politicians in office.⁶⁸ El Iguano's confession exposed the paramilitaries' acts and the politicians' complicity in them: violence without justification that needed to be hidden from public scrutiny.⁶⁹ The outrage extended beyond victims' of paramilitary violence to include a broad sector of Colombian society. This society may continue to fear guerrilla violence more than paramilitary violence. Public exposure to paramilitaries' random (rather than targeted) use of violence, the sadistic nature of the violence, and the complicity of the government and military in it has chipped away at some of the paramilitaries' power.

Paramilitary leaders used their release of information about links to the Uribe government to weaken the government and increase their own power. They only partially succeeded. Their control over information has harmed the government. It has not, however, protected them from facing extradition to the United States to stand trial as they might have hoped. More importantly for the democratic process, however, the paramilitaries' power play has revealed uncomfortable truths about the past: the government's complicity in the very acts the peace process was supposed to reveal and condemn. By undermining the government's capacity to suppress information and debate, paramilitaries have begun to produce the unsettling accounts that could catalyze democratic processes of participation, expression, and contestation over the past.⁷⁰

Conclusion

Some aspects of the Colombian Justice and Peace process, and particularly its *versiones libres*, resemble confessional processes involving perpetrators of state violence elsewhere. These confessions very rarely, if ever, achieve their anticipated role of bringing truth and reconciliation to societies emerging from authoritarian rule. Perpetrators rarely express remorse for their past, but instead they tend to justify and glorify those acts as heroic sacrifices. Perpetrators present themselves as valiant soldiers, and not depraved criminal elements. These confessions are timed in such a way that victims perceive them as instrumental: perpetrators only confess in exchange for amnesty or reduced sentences. Institutional stages, moreover, give power over to perpetrators by allowing them to promote their version of the past as "truth" or "fact." Some audiences to these confessions support perpetrators' and their past actions, refusing to condemn the past.

Despite these shared traits, the Colombian process points to a different sort of problem for perpetrators' confessions as a mechanism for political transitions. Particularly, in sharp contrast with the confessions analyzed in *Unsettling Accounts*, audiences of victims and human rights advocates in Colombia could not catalyze a dialogue about paramilitaries' confessions. Contentious coexistence has not yet emerged in this confessional process, limiting rather than enhancing democratic practices of participation, expression, and contestation. In the absence of this debate, Colombian paramilitaries have retained power over how the past is remembered through their confessional performances: their scripts (threats), acting (military and social protection), audiences (popular support), staging (limited engagement with victims), and timing (strategic release of damaging information).

The Justice and Peace Law could be viewed, therefore, as a test case for advocates of gag rules who consider amnesties an effective mechanism for promoting peace and democracy.⁷¹ By limiting the debate surrounding perpetrators' accounts and reducing prison sentences, the Colombian process should guarantee the protection from democratic spoilers and the derailing of the democratic process. The preliminary evidence that I have presented here, however, does not support that theoretical approach. The Colombian government, despite the closed process, could not entirely keep paramilitaries' versions of the past out of discussion. The limited access to paramilitaries' accounts meant that they remained largely unchallenged. Neither human rights victims and advocates nor the media could generate debate over the past. Colombia did not benefit from the democratic processes of participation, expression, and contestation that emerged in other confessional arrangements analyzed in *Unsettling Accounts*.

All is not necessarily lost in the Colombia Justice and Peace process, however. Victims and human rights advocates continue to press for greater transparency in the process. The media sometimes produces the kinds of unsettling accounts that do catalyze debate about the past and its implications for contemporary political life. Because of the large role of the state in imposing gag orders, however, timing may provide the most crucial element in generating that debate over the past. If the paramilitaries succeed in generating unsettling accounts about links to the Uribe government, the government may be forced by popular demand or legal arrangement to open up the debate that it has effectively suppressed until now. If the media continues to present unfiltered confessions, a dialogue may emerge. Groups in Colombia have attempted to expose the truth about paramilitary violence through other mechanisms that have begun to generate dialogue.⁷²

Colombia, in sum, reinforces some of the analysis provided in *Unsettling Accounts* with regard to the limitations on truth and reconciliation through perpetrators' confessions. It also bolsters the criticism of gag orders as a method of resolving past violence. These gag orders tend to enhance perpetrators' control over how the past is remembered. Rather than undermine the argument about the democratic value of contentious debate over the past, the Colombian case provides the evidence of the danger of failing to do so.

Notes

¹ Como si se tratase de una celebridad, centenares de fanaticos del ex jefe del bloque Central Bolivar llegaron desde muy temprano este martes a las afueras del edificio de la Fiscalia en Medellin. Lo hicieron antes que “Macaco” – quien comenzo su version libre a las 9:35a.m. – porque querian recibirlo con pitos, tambores y consignas a favor de sus obras sociales – segun ellos – en ocho departamentos del pais. ...

Y para los fanaticos de ‘Macaco’ que no lo conocian, este salio en varias oportunidades por una ventana del edificio de la Fiscalia al medio dia y extendio la mano para saludarlos. Todos gritaron en jubilo. [full cite]

² David Art, *The Politics of the Past in Germany and Austria* (Cambridge: Cambridge University Press, 2006), 14.

³ Martin Abregú quoted in *Pagina/12*, 18 March 1995 and reprinted in Feitlowitz, *A Lexicon of Terror*, 224 and Payne, *Unsettling Accounts*, 73.

⁴ “Court Fixes Flaws in Demobilization Law,” *Human Rights Watch*, May 19, 2006.

⁵ The term does not have an equivalent in the U.S. penal process. The closest equivalent would be a plea or a deposition, but neither term fit the Colombian process.

⁶ “La presente ley regula lo concerniente a la investigación, procesamiento, sanción y beneficios judiciales de las personas vinculadas a grupos armados organizados al margen de la ley, como autores o partícipes de hechos delictivos cometidos durante y con ocasión de la pertenencia a esos grupos, que hubieren decidido desmovilizarse y contribuir decisivamente a la reconciliación nacional.” (CCC, 2)

⁷ The law also stipulated controls on public office, or lustration, as well as penalties for carrying weapons.

⁸ Garry Leech, “The Best-Laid Plans of Presidents and War Criminals,” *Colombia Journal*, May 17, 2007 (accessed October 8, 2008 – get full cite)

⁹ ...“facilitar los procesos de paz y la reincorporación individual o colectiva a la vida civil de miembros de grupos armados al margen de la ley, garantizando los derechos de las víctimas a la verdad, la justicia y la reparación.

Se entiende por grupo armado organizado al margen de la ley, el grupo de guerrilla o de autodefensas, o una parte significativa e integral de los mismos como bloques, frentes u otras modalidades de esas mismas organizaciones, de las que trate la Ley 782 de 2002.”

(CCC, 1-2)

¹⁰ Gumbre & Olea 2006: 127.

¹¹ In a separate ruling, the Colombian Supreme Court rejected a special “political status” for paramilitary leaders, requiring the government to move 59 paramilitary leaders from a country estate to the Itagüí maximum-security prison.

¹² Figures from Colombian Commission of Jurists, “A Metaphorical Justice and Peace,” June 21, 2005 and Comision de Seguimiento a la Política Pública Sobre el Desplazamiento Forzado, “Proceso Nacional de Verificación de los Derechos de the Población Desplazadas: Primer Informe a la Corte Constitucional,” January 28, 2008; UN High Commissioner for Refugees Office in Colombia, 2007: Year of the Displaced Person. Reprinted in

¹³ “Court Fixes Flaws in Demobilization Law,” *Human Rights Watch*, May 19, 2006. Also reported in Human Rights Watch, “Breaking the Grip,” October 2008 (www.hrw.org accessed November 20, 2008)

¹⁴ Simon Romero, “From Jail, Colombian Warlord Ponders Long Years of Conflict,” *New York Times*, July 28, 2007

¹⁵ Others in Colombia have remained confident that even with the extradition they will receive the desired truth about past human rights violations and justice for the perpetrators. Apparently efforts are underway in the United States to use the Alien Torts Claims Act to bring at least one paramilitary leader – Macaco – to justice for violating international law. If he is investigated in the United States, Macaco will have to reveal the truth about his operations. If he is found guilty he will have to pay to his victims some of the millions he has publicly offered to the state for reparations. Even those who have faith in the U.S. system to bring truth and justice for past human rights violations in Colombia lament the failure of the Colombian courts to bring justice to Colombian citizens. Directoria Academica Fundacion Ideas para la Paz, “‘Macaco’ podría ser castigado,” *El Tiempo*, April 13, 2008 (www.eltiempo.com).

¹⁶ “Cuco Vanoy suspends cooperation with Colombian justice,” *Colombia Reports*, October 17, 2008. www.colombiareports.com (accessed 4 February 2009).

¹⁷ These numbers are accurate as of July 14, 2008. See “Número de casos tramitados bajo la ley 975 de 2005,” Fundación Ideas por la Paz (accessed November 24, 2008).

¹⁸ Private communication with Maria Victoria Llorente, Fundación Ideas para la Paz, 29 December 2008.

¹⁹ See “Participación de las víctimas,” and “Registro de víctimas,” Fundación Ideas para la Paz, July 1, 2008 (accessed November 24, 2008).

²⁰ “Es muy probable que se de cuando fiscales y jueces hayan cumplido con su trabajo investigativo y de enjuiciamiento.” El Consejo de Estado sobre la constitucionalidad de la resolución 387 de 2007 y el decreto reglamentario 315 de 2007.

²¹ [Check numbers]

²² A reparations law and law for victims is currently under discussion and heated debate in Colombia.

²³ Juan Forero, “At Colombia’s Congress, Paramilitary Chiefs Talk Peace,” *New York Times*, July 29, 2004.

²⁴ Simon Romero, “From Jail, Colombian Warlord Ponders Long Years of Conflict,” *New York Times*, July 28, 2007.

²⁵ When asked who was behind the violence those responding “just paramilitaries” went from 18.6 in 2005 to 21.1 in 2006 and 23.8 in 2007. In contrast “just guerrilla” responses went from 48.2 to 43.0 to 38.4 during the same period. The same pattern occurred when the survey asked the degree of responsibility for the violence: in 2005 65 percent attributed the violence to guerrillas and 35 percent to paramilitaries. This dropped to 54 and 32 percent in 2006 and 54 to 40 percent in 2007. As the perception of guerrilla responsibility slightly diminished over the three year period, the perception of paramilitary responsibility grew somewhat. Juan Carlos Rodríguez-Rage and Mitchell A. Seligson, “Cultural Política de la Democracia en Colombia,” Bogotá: LAPOP, January 2007, 243-244. [check specific questions & full citation]

²⁶ “Colombian demobilized ‘para’ chief Mancuso says militias rearming,” *BBC Monitoring Latin America*, April 9, 2008. Taken from “Mancuso acknowledges paramilitaries, Rearmament,” *El Espectador*, April 5, 2008.

²⁷ Garry Leech, “The Best-Laid Plans of Presidents and War Criminals,” *Colombia Journal*, May 17, 2007.

²⁸ Simon Romero, “Death-Squad Scandal Circles Closer to Colombia’s President,” *New York Times*, May 16, 2007.

²⁹ Garry Leech, “The Best-Laid Plans of Presidents and War Criminals,” *Colombia Journal*, May 17, 2007.

³⁰ Mauricio Romero Vidal and Angelica Arias Ortiz, “‘Bandas Criminales’, Seguridad Democrática y corrupción,” *Nuevo Arco Iris*, December 14, 2008, 40-51 (www.nuevoarcoiris.org.co accessed February 4, 2009)

³¹ Roberto Llanos Rodado, “Con llanto empezó del jefe paramilitario Juancho Prada en Barranquilla,” *El Tiempo*, February 15, 2007.

³² Simon Romero, “From Jail, Colombian Warlord Ponders Long Years of Conflict,” *New York Times*, July 28, 2007.

³³ Sibylla Brodzinsky, “Colombian militia leader confesses to massacre,” *The Guardian*, January 18, 2007.

³⁴ Juan Forero, “At Colombia’s Congress, Paramilitary Chiefs Talk Peace,” *New York Times*, July 29, 2004.

³⁵ Funcación de Ciencia y Tecnología para el Desarrollo Integral de las Comunidades del Magdalena Medio.

³⁶ In his own words, he said he would stay on under the condition “Que mañana también me den las 10 mil lucas.” Mauricio Builes, “Hoy conocimos a ‘Macaco,’” *Semana.com*, December 6, 2007.

³⁷ “Un acto de guerra” and “bajas.”

³⁸ “asesino” “psicopata.”

³⁹ “Cuando ‘Jorge 40’ me va a devolver a mi marido, a mis hijas? Que paso con todos estos años perdidos? Digamelo señor periodista.” “El ‘para’ admitió massacre de 42 pescadores en Nueva Venecia: ‘Jorge 40’ desató la ira de las víctimas,” *El Heraldo*, July 5, 2007.

⁴⁰ “amigos íntimos.” Edwin Robles Manigua, “‘No mande a matar a Otero, ni a Morelli, ni a Maduro:’ Giraldo,” *Hoy: Diario del Magdalena*, June 9, 2007.

⁴¹ Juan Forero, “At Colombia’s Congress, Paramilitary Chiefs Talk Peace,” *New York Times*, July 29, 2004.

⁴² See Juan Carlos Rodríguez-Rage and Mitchell A. Seligson, “Cultura Política de la democracia en Colombia,” Bogotá: LAPAP, January 2007.

⁴³ International Center for Transitional Justice, “Percepciones y opiniones de los colombianos sobre justicia, verdad, reparación, y reconciliación,” www.ictj.org, 22 December 2006 (accessed November 20, 2008)

⁴⁴ To illustrate the control that paramilitaries retained even over their victims at the hearings, a journalist I interviewed recounted an encounter she observed. In the minutes before the process began, two widows approached the perpetrator. Referring to him as “Don,” a sign of respect, they asked him if they could speak with him about a personal matter. He told them “Yes, of course, my little daughters.” They wondered if he remembered killing their husbands. He said that he did remember and recounted all of the details of the brutal killing. He added that he understood that his actions had caused them pain. They thanked him for providing those details. And the official process began.

⁴⁵ Hollman Morris, “Confesiones de ex-paramilitar,” *Contravía* [date]

⁴⁶ “Yo tengo que hacer unas consultas con mis subalternos para precisar sobre eso, porque no he tenido la oportunidad en 25 meses de reunirme con mis subalternos...Estoy aquí y como dije al principio le estoy poniendo la

cara al país, estoy aquí porque me voy a reunir con algunos de los subalternos y si vamos hacer, vamos a entregar información sobre fosas comunes.” Eddwin Robles, “Carlos Tijeras’ dijo no conocer a ningún político del Magdalena,” *Hoy: Diario del Magdalena*, August 17, 2007.

⁴⁷ “Ex jefe paramilitar Ramón Isaza terminó interrogando a sus víctimas en audiencia de 'Justicia y Paz,’” *El Tiempo*, October 19, 2008 (accessed at eltiempo.com on October 19, 2008).

⁴⁸ Juan Forero, “At Colombia’s Congress, Paramilitary Chiefs Talk Peace,” *New York Times*, July 29, 2004.

⁴⁹ “Esto no puede ser un carnaval donde vienen con conjuntos vallenatos, esta ley es una farsa. Esperamos que se conozca la verdad y que esta gente pague por lo que hizo.”

⁵⁰ The German company Agencia de Cooperación Técnica Alemana GTZ provided funds to have satellite transmission of the versions libres to remote locations so that victims who could not make the trip to the prosecutors’ office could still attend the sessions.

⁵¹ Despite these impediments, victims turn up for the hearings. The opening up of the process to questions from the victims gallery in the version libre of Hernán Giraldo Serna meant that the remote room filled. On the first day, when questions were not allowed, only five people participated. “Confirmado crimen del ambientalista Julio Henríquez,” *Hoy: Diario del Magdalena*, June 8, 2007. Check out this information; not clear.

⁵² International Center for Transitional Justice, “Percepciones y opiniones de los colombianos sobre justicia, verdad, reparación y reconciliación,” 22 December 2006 (www.ictj.org accessed on November 20, 2008).

⁵³ In her words, “cuán creíbles resultan los testimonios de los jefes paramilitares a la luz de una sociedad que todavía no sabe si quiere saber toda la verdad de lo que sucedió con el paramilitarismo o si quiere saber solo la puntica.” She goes on to point out that Colombian society remains somewhat complicit in the hiding of the truth by turning Mancuso, the one leader who used his version libre to name names that implicated the military, police, and politicians in paramilitary activity, into a “mentiroso compulsivo.” María Jimena Duzan, “Opinion: Las verdades de Mancuso,” *Semana.com* [day/month] 2008.

⁵⁴ David Adams, “Colombia shaken as paramilitary leaders testify,” *St. Petersburg Times*, June 18, 2007 (accessed through tampabay.com)

⁵⁵ David Adams, “Colombia shaken as paramilitary leaders testify,” *St. Petersburg Times*, June 18, 2007 (accessed through tampabay.com)

⁵⁶ “Solo pido justicia y que reparen todo lo que me han hecho, porque me dejaron sin nada y relegada. “Hernán Giraldo reconoció los rostros de 11 desaparecidos: ‘Todo lo que olía a subversión ordene que lo sacaran,’” *El Heraldo*, July 6, 2007.

⁵⁷ David Adams, “Colombia shaken as paramilitary leaders testify,” *St. Petersburg Times*, June 18, 2007 (accessed through tampabay.com)

⁵⁸ Simon Romero, “Colombian Government is Ensnared in a Paramilitary Scandal,” *New York Times*, January 21, 2007.

⁵⁹ “El ejército realmente nos formó, nos capacitó para combatir a la guerrilla.” Juan Diego Restrepo, “Salvatore Mancuso tiene razón,” www.semana.com/noticias-opinion-on-line, 29 September 2008 (accessed October 8, 2008)

⁶⁰ “Organice a 16 ganaderos, los lleve al batallón y allá nos consiguieron 16 escopetas de 7 y 8 tiros.” Juan Diego Restrepo, “Salvatore Mancuso tiene razón,” www.semana.com/noticias-opinion-on-line, 29 September 2008 (accessed October 8, 2008).

⁶¹ As Edwin Uribe of the human rights group Redepaz stated naming dead government officials as implicated in the paramilitary violence “could be a strategy to prevent corroboration.” Sibylla Brodzinsky, “Colombian militia leader confesses to massacre,” *The Guardian*, January 18, 2007.

⁶² Indira A.R. Lakshmanan, “Salvatore Mancuso, former Colombian death squad leader, recounts squad’s mayhem.” *The Boston Globe*, January 18, 2007 reprinted in the *International Herald Tribune* (www.iht.com accessed October 8, 2008)

⁶³ “Colombia: Proposal Threatens ‘Parapolitics’ Investigations,” *Human Rights Watch*, August 4, 2008 [cite]

⁶⁴ See “La ‘Sedición Paramilitar’: Principales Momentos y Posturas del Debate,” *Buletines de Paz* (Fundación Ideas para la Paz), julio de 2003 – agosto de 2007 and “La Radiografía de la Parapolítica Legislativa.”

⁶⁵ Simon Romero, “Ex-warlord is a frightening reminder of Colombia’s conflict,” *International Herald Tribune*, July 28, 2007.

⁶⁶ Juan Forero, “At Colombia’s Congress, Paramilitary Chiefs Talk Peace,” *New York Times*, July 29, 2004.

⁶⁷ “Si llegaban a encontrarlos se hubiera formado un escándalo afectando nuestra imagen.” “Aterrador relato de ‘El Iguano,’” *El Universal*, October 7, 2008 (www.eluniversal.com.co/noticias/20081007 accessed October 14, 2008)

⁶⁸ “En hornos de barro, ‘paras’ incineraron a más de 100 víctimas,” *La Opinión*, October 3, 2008 (www.laopinion.com.co/judicial accessed on October 14, 2008)

⁶⁹ “En hornos de barro, ‘paras’ incineraron a mas de 100 victims,” *La Opinion*, October 3, 2008 (www.laopinion.com.co/judicial accessed on October 14, 2008)

⁷⁰ A 30 second video arrived anonymously in the prosecutor’s office in October 2008 that showed a paramilitary armed with a machete. Despite cries and pleas for clemency, the paramilitary cut off one of his hands. He demands that the individual put out his other hand or he would cut off his head. The victim does so, and runs away without his hands. Despite an on-going confessional process, this confession finally began to unsettle Colombian audiences because of the “very extreme degree of coldness and cruelty that criminals have achieved” (“tan estremecedoramente el grado de frialdad y sevicia que pueden alcanzar los criminales”). “El pais del horror,” *Semana*, [date] (www.semana.com accessed on October 14, 2008)

⁷¹ See Stephen Holmes, “Gag Rules or the Politics of Omission,” in *Passions and Constraint: On the Theory of Liberal Democracy*, edited by Stephen Holmes, 202-35 (Chicago: University of Chicago Press, 1995) and Jack Snyder and Leslie Vinjamuri, Trials and Errors: Principle and Pragmatism in Strategies of International Justice,” *International Security*, 28.3 (2003/04) 5-44.

⁷² In particular the National Commission of Reparation and Reconciliation’s Historical Memory project recently published its findings on the massacre in Trujillo involving paramilitaries. This has led to arrests of military leaders and to a national dialogue. The Fundación Ideas para la Paz and *Semana* news magazine have created an internet site to give voice to victims of paramilitary violence silenced in the current process. See www.verdadabierta.com.