

The Struggle of Life Against Death: Freedom of Expression in Postwar El  
Salvador

Lawrence Michael Ladutke

LLADUTKE@EMAIL.GC.CUNY.EDU

Ph.D. Program in Political Science

The Graduate School and University Center of the City University of New  
York

Prepared for delivery at the 1998 meeting of the Latin American Studies  
Association

The Palmer House Hilton Hotel, Chicago Illinois

September 24-26, 1998

Panel DEM07

“The root problem of human rights is that of the struggle of life against death.”

-Ignacio Ellacuría<sup>1</sup>

The following paper is a dissertation proposal currently under consideration by the Ph.D. Program in Political Science at the Graduate School and University Center of the City University of New York. The author wishes to thank his sponsor, Prof. Kenneth Paul Erickson, and reader, Prof. Adamantia Pollis, for their guidance and encouragement on this project. He also thanks his wife, Rachel Rubin Ladutke, for her emotional support as well as her comments on earlier drafts.

#### Abstract of Proposal:

One of the central questions concerning democratization is that of how to deal with the legacies of authoritarianism. Many scholars and politicians have argued in favor of accommodating authoritarian elites and protecting them with impunity so that they will not overthrow the newly established electoral democracies. Indeed, some have gone so far as to treat anything that offends these authoritarian elites, including freedom of expression about human rights violations and impunity, as a threat to democracy that must be restricted or prevented. They often justify this position by arguing that electoral democracy must be protected at all costs because its existence is necessary for the secure enjoyment of any human rights. Other scholars counter that it is necessary to reduce the undue influence of the authoritarian forces. These scholars also argue that unfettered political participation is essential in this regard and therefore aids in the consolidation of a deeper form of democracy.

This project will contribute to this debate by focusing on one particular form of participation, freedom of expression about human rights violations. It will elaborate upon Henry Shue’s human rights theories by examining whether or not empirical evidence from postwar El Salvador supports the hypothesis that freedom of expression about human rights violations fits Shue’s definition of a “basic right,” one that is essential for the enjoyment of all other rights. This hypothesis will be evaluated using case material to test some propositions about the consequences that should follow if authorities restrict freedom of expression about these issues, as well as propositions about the benefits which should accrue from exercising this right.

This dissertation draws from these theories to formulate a list of the main barriers to freedom of expression in democratizing nations. This list will center on the nonfulfillment of the following obligations and duties that correspond to the right to freedom of expression. First, the state must punish human rights violators and dismantle those structures which facilitate further violations. Second, the state is responsible for providing a basic education that enables all citizens to communicate effectively. Finally, the private sector, the state, the international community, and civic organizations all have an obligation to promote a thorough discussion of these issues publicly and in the mass media. Such a discussion must include the voices of individuals from those sectors of society whose rights are most likely to be violated.

This project will then use empirical data to test a second hypothesis, that the nonfulfillment of these obligations constitutes a major barrier to freedom of expression about human rights abuses in democratizing nations such as El Salvador, while the efforts of some state, political, and social forces to carry out these duties will help to lower this barrier. In sum, the empirical evaluation of the Salvadoran case will provide an important elaboration of Shue’s theory by exploring whether or not there is a “basic

right” to freedom of expression about these issues, and it will also identify the factors which may hamper such expression.

## INTRODUCTION

Since 1974, there has been a worldwide pattern of transitions from authoritarian regimes to democracy that has been labeled “the third wave of democratization” (Huntington 1993, 21). By the end of 1995, the number of formal democracies had risen to one hundred seventeen, up from the thirty-nine democracies that existed in 1974 (Diamond 1998, 229).<sup>2</sup> Latin America has certainly not been an exception to this trend. During the 1960s and the 1970s, most Latin American nations were ruled by authoritarian regimes that were often dominated by the military, either formally (as in Chile) or informally (as in El Salvador). By the mid 1990s, almost all of these regimes had been replaced by elected civilian governments. These governments, in turn, have been faced with the task of consolidating democracy while dealing with the legacies of their authoritarian predecessors.

Perhaps the most difficult type of legacy is that left by the widespread violation of human rights by many of these authoritarian states. During Argentina’s so-called *guerra sucia* (dirty war), for example, the military “disappeared” between nine thousand and forty-five thousand individuals, the overwhelming majority of whom were civilians (Guzman Bouvard 1994, p. 31).<sup>3</sup> From 1979 to 1991, roughly seventy-five thousand Salvadorans were killed during that nation’s civil war. Once again, the majority of these people were civilians who were targeted by the military and its allies (Commission on the Truth for El Salvador 1995, 311). Furthermore, authors such as Malamud-Goti have demonstrated that such policies of state terrorism have had a traumatic impact that reaches far beyond those who were actually murdered or tortured (Malamud-Goti 1996, 111).

While the Argentine and Bolivian governments have engaged in modest efforts to prosecute those most responsible for these violations, most Latin American states have not done so. In fact, many transitional governments, such as that of El Salvador, have enacted blanket amnesties to prevent such prosecutions. Whatever the decision a specific government has made, this legacy has continued to raise heated debates among Latin American politicians and activists. This controversy has been joined, in turn, by scholars throughout the world.<sup>4</sup> The debate has been further complicated by the human rights violations that have continued to occur. In nations such as Brazil and El Salvador, for example, social cleansing death squads have emerged, targeting accused criminals and other undesirables such as street children. These violations are often accompanied by attacks against those who defend the rights of the undesirables. The Salvadoran death squads have also targeted politically active former guerrillas, especially during the period leading up to the 1994 elections. Throughout the region, journalists have continued to be subject to threats, assaults, and even assassinations.

This project will contribute to this debate by exploring how impunity has affected one component of democracy, the right to freedom of expression about human rights violations and impunity. This is especially significant because, as discussed below, such expression may be an important mechanism for preventing further violations. This dissertation will also examine other potential barriers to expression about these issues.

Following authors such as Diamond and Booth, this project will not conceive of the existence of democracy as a binary variable. Rather, it will adopt the view that

democracy is a system composed of many important elements, such as competitive elections, civilian control over the military, the separation of powers, and the existence of the rule of law. As a result, a given regime may be classified as a “minimalist” or “electoral” democracy if it regularly holds competitive elections, but does not contain many of the other elements of democracy. In contrast, a regime could meet the definition of a “deeper” form of democracy if it fulfills all or most of these requirements. Also following the lead of these authors, this dissertation will interpret such “deepening” as evidence of consolidation of democracy in a given nation.<sup>5</sup> The key questions to be addressed are therefore: 1) What is the role, if any, of this category of freedom of expression in deepening democracy, especially in relation to other human rights? 2) What are the main obstacles to this category of freedom of expression? 3) How can these barriers be overcome?

## THEORETICAL AND SUBSTANTIVE FOCUS

**THE DEBATE OVER DEALING WITH AUTHORITARIAN LEGACIES.** One of the most common sets of arguments in favor of punishing human rights violations, including those committed under previous regimes, comes from the legal perspective. The first question that this approach addresses is: what does the law, especially international law, require governments to do in cases of grave violations of human rights? Neier, for example, cites the *International Covenant on Civil and Political Rights* and the Geneva Conventions as evidence that states must prosecute human rights violators (Neier 1995, 178).

The second question from the legal standpoint is: what have relevant courts decided in cases involving grave violations of human rights? One commonly cited case is that of *Velásquez Rodríguez*, a Honduran who was disappeared. In this case between the InterAmerican Commission on Human Rights and the Honduran government, the InterAmerican Court of Human Rights found that “states must prevent, investigate and punish any violation of the rights recognized by the Convention” (quoted in Orentlicher 1995, 396). Furthermore, this decision establishes the duty of successor governments to punish the crimes that were committed under previous governments (Orentlicher 1995, 397).

The main argument against this position is that it is unrealistic to expect the new democratic governments to be able to fulfill these obligations. This viewpoint holds that it is better to maintain a limited democracy than to risk a coup by human rights violators in response to attempts to hold them accountable. As one participant explains, “the preservation of the democratic system is a prerequisite of those very prosecutions and the loss of it is a necessary antecedent to massive violations of human rights” (Nino 1995, 418). In the case of Argentina, Huntington claims that the trials which followed the collapse of the dictatorship in 1983 contributed to three attempted coups and left the nation scarred with divisiveness (Huntington 1993, 220-1). One of the architects of these trials has come to similar conclusions (Malamud-Goti 1996, 11).<sup>6</sup>

Another argument for restricting the ability of new democracies to sanction human rights violators rests upon the claim that compromise is essential to democracy. While there is much truth to this statement, some authors have interpreted it in such a way as to include compromise over the foundations of democracy itself. This position often arises out of the scholarly approach that focuses on democratization as the result of pacts among elites, including those who participated in or supported the authoritarian regime.

In all cases except those in which the authoritarian state completely

disintegrates, for example, Huntington argues that “the exchange of guarantees” is of “central importance.” In these cases, Huntington expects the democratic forces to make most of the concessions, including those that concern the foundations of the new state; with a very narrowly focused concern for institution building, for example, he calls on democrats to be ready to concede on every issue except the “holding of free and fair elections” (Huntington 1993, 161-2). Given the lack of focus on civilian control over the military, there is a very real danger that this approach will lead to the acceptance of pseudodemocracies.<sup>7</sup> More recently, Domínguez has characterized the Christian Democrats’ public pledge not to challenge the Guatemalan military’s extremely high prerogatives as one of the “more successful constructions of reliable public opposition” (Domínguez 1997, 16). In the same volume, Lindenberg has called for more pacts to preserve transitional governments (Lindenberg 1997, 184).

This approach has often been associated with an anti-popular, anti-rights bias. Przeworski, for example, presents popular sovereignty as a threat to the inter-elite guarantees that he believes are necessary for democratization (Przeworski 1992, 122). In effect, the demos itself becomes the greatest threat to democracy. In a similar vein, some scholars have attempted to excuse human rights abuses by suggesting that some policies of widespread repression were justified. Huntington, for example, refers to the “serious internal security threat” that existed in Argentina during the dictatorship and asserts that the junta’s policies were therefore more justified than those of the Greek dictatorship of 1967 to 1974 (Huntington 1993, 221). This assumes, of course, that human rights abuses are justifiable.<sup>8</sup>

Another common argument against establishing justice by punishing those found guilty of human rights violations in fair trials is based upon the *realpolitik* approach. Advocates of this position concede that it would be best to prosecute violators *under ideal circumstances*, as in the case of the Nuremberg trials in post-war Germany. They point out, however, that most contemporary transitions are taking place under less than ideal circumstances. Citing Weber’s distinction between the ethics of conviction and the ethics of responsibility, Zalaquett<sup>9</sup> argues that “political leaders cannot afford to be moved only by their convictions, oblivious to real-life constraints, lest in the end the very ethical principles they wish to uphold suffer because of a political or military backlash” (Zalaquett 1995, 205). Huntington similarly invokes a *realpolitik* argument by claiming that prosecutions should take place only in those transitions which begin with the complete breakdown of the authoritarian regimes. For him, the decision whether or not to establish justice boils down to the question of the balance of political power (Huntington 1993, 231, 228). His theory is strangely lacking, however, in a discussion of how this type of power is created or altered.

This argument also leads its advocates to some anti-democratic, anti-rights consequences. Nino, for example, condemns the judicial and legislative branches for interfering with President Alfonsín’s realistic attempts to protect democracy by limiting the scope of prosecutions in Argentina. He similarly criticizes human rights organizations for undermining Alfonsín’s credibility by publicly criticizing him; doing so, he claims, weakened the democratic regime’s legitimacy and thus strengthened the position of the military (Nino 1995, 425, 429). According to this view, two central democratic mechanisms, the separation of powers and the right to freedom of expression, are actually threats to democracy. Furthermore, Nino does not consider the question of whether or not Alfonsín deserved legitimacy, nor the potentially negative consequences of lending support to a government that makes such controversial concessions as the full-stop and the due-obedience laws.<sup>10</sup>

Such anti-democratic defenses of democracy are not limited to academia,

however. Even some human rights organizations have argued in favor of withholding criticism of such decisions for the greater good of preserving the government. This position, in turn, has led them to criticize other human rights organizations, such as the Mothers of the Plaza de Mayo, as threats to democratization (Guzman Bouvard 1994, 130). This criticism took place in the context of frequent statements by the military and politicians referring to the Mothers as communists and *Las Locas* (the crazy women).<sup>11</sup>

This does not reflect the position of most human rights activists, however. Two of the largest and best-known NGOs (non-governmental organizations), Amnesty International and Human Rights Watch, have established positions against such amnesties and pardons (see AI 1995 and HRW 1995). When asked if an amnesty should be part of the peace process in her own nation of Guatemala, Nobel Peace Prize recipient Rigoberta Menchú Tum replied, “absolutely not” (Menchú Tum 1996, 9). Numerous Salvadoran NGOs have harshly criticized the amnesties issued by their government (see, for example, IDHUCA et al. 1993).

One scholarly response to the arguments against punishing human rights violators has been to point to cases where trials have not led to authoritarian reversal and may have actually contributed to preserving democracy. The most obvious cases are postwar Germany and Japan. These two transitions, however, enjoyed an important set of advantages that their counterparts in Latin America lack: the complete defeat of the totalitarian rulers and the occupying army’s guarantee that democracy would not be overthrown. Some scholars point to the Greek trials of the 1970s as a case in which prosecutions contributed to the consolidation of democracy without these benefits (Alivizatos and Diamandouros 1997). Similarly, Mayorga has pointed to the trial of Bolivian dictator García Meza in the late 1980s and early 1990s as the “first [completely] successful attempt in Latin America by a democratic system to ‘settle accounts’ with a legacy of military dictatorships” (Mayorga 1997, 83). Some authors have even pointed to Argentina, the very country cited by Huntington as proof of the folly of holding trials, as evidence that punishing human rights violators can have a positive impact by leading “to a radical transformation of the power of the Armed Forces as a political actor” (Acuña and Smulovitz 1996, 21). While McSherry does not share this optimism, she nevertheless credits the trials for the limited advances that have taken place in the democratization of that nation (McSherry 1997, 8).

A similar argument criticizes the pro-amnesty approach for assuming, *a priori*, that new democratic governments are weak. As Eduardo Galeano<sup>12</sup> puts it, “there is the belief that democracy is a fragile old lady in a wheelchair. If she moves too much she will collapse, and if you speak too loudly she will have a heart attack” (quoted in Weschler 1990, 169). In contrast to this belief, Former US Ambassador to El Salvador Robert White argues that democracy will not come about unless people begin to act in a manner consistent with democratic life. This, in turn, means taking risks (Discussion 1992, 132). In other words, the pro-amnesty position’s ideological assumption that democracy is weak and that the authoritarian forces’ power is too strong to challenge actually contributes to behavior that weakens democracy and increases the power of its opponents.

Another way of approaching the debate involves arguments that undermine the assumption that authoritarian forces could successfully retake power in response to prosecutions. Stanley does so through his study of the institutional culture of the Salvadoran Armed Forces (FAS). He found that US advisors backed away from pressing for trials during the 1980s because the Salvadoran high command warned, “any officer prosecuted would be able to name dozens of other officers guilty of equal or worse crimes” (Stanley 1996, 230). Clearly, such accusations would prevent

prosecutions if the main goal is preserving the FAS as fighting force. If the main goal is to contain the military and reduce its threat to democracy, however, this lack of cohesion provides civilian authorities with a crucial opportunity to cut legal deals with the little fish so that they can catch the big sharks.

While Stanley's findings provide us with important insights, it is impossible to prove what would have happened in if a blanket amnesties had not been passed. Buergenthal, however, provides an account of his experience on the Salvadoran Truth Commission. He found that human rights violators were willing to cooperate with investigations in the hope of gaining leniency (Buergenthal 1995, 304).<sup>13</sup> The South African case is also illustrative because that nation did not pass a blanket amnesty. Rather, it empowered its truth commission to grant pardons on a case-by-case basis, allowing for the prosecution of parties who did not fully disclose the details of the abuses in which they took part. This process has led to legal proceedings against high-ranking officials (Dugard 1997, 283). As Berat has argued, this has resulted in a "massive plea-bargaining arrangement" that "provides a strong incentive for individuals to seek amnesty" by providing information against other violators (Berat 1995, 279).

Given that the main argument in favor of amnesties is that they preserve democracy by avoiding confrontation with the human rights violators, many of those on the pro-justice side of the argument have questioned the quality of the democracy that results from this strategy. In other words, how democratic are these democracies? J. Samuel Valenzuela, for example, uses the analytical concept of "perverse institutionalization" to argue against excessive compromise. One of his main categories of this problem is "reserved domains of authority and policy making" that take away the authority of elected officials over certain issues while allowing unelected state actors, such as the military, to exercise undue influence (Valenzuela 1992, 62, 64). Clearly, amnesties do so by preventing civilian authorities from prosecuting criminals.

While the pro-amnesty side of the debate argues that such concessions are necessary to save democracy from a coup, others respond that the outcome of this strategy effectively amounts to a coup. In his study of transitions in the Southern Cone, for example, Stepan argues that a strategy of avoiding a coup by placating the military leads to a "white coup." This, in turn, results in an undemocratic system in which the military has de facto control (Stepan 1988, 101). Similarly, O'Donnell has presented this decision as a choice of "'sudden death' via a classic military coup . . . [or] 'slow death,' in which there is . . . 'civilian government with military sovereignty.'" He cites Uruguay under President Bordaberry as an example of this process (O'Donnell 1992, 16, 33).

Indeed, one of the pro-amnesty authors provides evidence to support this position. Nino argues against prosecution by pointing out that the Argentine military "still retained a monopoly on state coercion" (Nino 1995, 421). Compare this statement with the Weber's definition of the state: "a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory" (Weber 1946, 78). If we apply this definition to Nino's statement, it becomes clear that the Argentine military *was the state* at this time. If left unchallenged, it did not need to stage a coup because doing so would be a mere formality. Furthermore, Nino's argument does not tell us how to move beyond this impasse. For reasons such as these, McSherry has referred to the supposed "ethics of responsibility" as "shortsighted" and "counterproductive" (McSherry 1997, 227-8). By encouraging excessive concessions, a lack of "ethics of conviction" can lead to irresponsible compromises which harm the long-term prospects for democracy.

This leads to a related question: do concessions to the military foster stability, as the pro-amnesty position claims? McSherry goes beyond the simple explanation that the Argentine military revolted because it was provoked. She does so by studying the military's actual behavior, along with the ideology that motivated it. One important factor in her analysis is the National Security Doctrine, which narrowly identifies the nation's interests with those of the armed forces. As a result, the military comes to believe that it must destroy any attempts to limit its power, or to even disagree with it. Another important factor is the military's attitude toward compromise. Rather than viewing concessions as an example of goodwill that invites reciprocation, the Argentine armed forces saw them as examples of weakness to be exploited. As a result, Alfonsín's concessions actually encouraged even larger revolts (McSherry 1997, 286). Méndez makes a similar point in reference to the case of Haiti (Méndez 1997, 3).

Another important question is whether stability—when measured by the lack of an overt coup—necessarily implies that human rights are protected. The recent brutal murder of Auxiliary Archbishop Gerardí, head of the Guatemalan Catholic Church's project to document human rights abuses, has been seen by many as a clear indication that it does not. As a recent *NACLA* editorial proclaims, "his murder has made it painfully clear that even in the 1990s, similar projects will not be tolerated. In a very real sense, Monsignor Gerardí's death is the fruit of the impunity that has long reigned in Guatemala" (Rosen 1998, 5). It is worth noting that this horrific event took place in the context of an elected civilian regime, free from any immediate threat of a coup. As a result of Gerardí's high position within the Catholic Church, the world has noticed his death. Unfortunately, however, international observers often overlook the numerous human rights violations that continue to occur in electoral democracies.<sup>14</sup> This simplistic measure of democratic stability should therefore not be confused with genuine guarantees for human rights.

If electoral democracy by itself does not offer sufficient guarantees for human rights and meaningful stability, what does? One very important answer challenges the view that democracy results from inter-elite pacts: popular participation. In his study of Southern Cone transitions, for example, Stepan finds that democratization involved "a complex dialectic of 'regime concessions and societal conquest.'"<sup>15</sup> He argues that the "societal conquest" side of the dialectic was particularly important for two reasons. First, in its absence, the regime could take back whatever concessions it had made. Second, without pressure from society, the state might only concede to liberalization, instead of genuine democratization (Stepan 1988, xii, 45).

This approach also responds to one of the unanswered questions from Huntington's discussion of elite settlements: how is the balance of power between the military and the civilian government created or altered? McSherry's answer focuses on popular participation. She finds that "public outrage emboldened political party leaders and allowed, even obligated, them to reject pacts offered by the armed forces." While Przeworski sees such popular interference as a threat to democratic stability, McSherry views it as contributing positively to the advances that were made in Argentina (McSherry 1997, 113, 290).

#### FREEDOM OF EXPRESSION AND ITS IMPACT ON HUMAN RIGHTS VIOLATIONS.

This project will contribute to the debate over how to deal with human rights violators during transitions to democracy by assessing the role that one particular form of political participation, expression regarding human rights violations and impunity, plays in efforts to protect other human rights and consolidate democracy. If human rights violators are not punished by the state, society must develop other mechanisms to prevent them from engaging in future violations.<sup>16</sup> Freedom of expression has the



potential to play a central role here. While elections are very important in and of themselves, freedom of expression is a crucial supplement because it provides a mechanism for citizens (and even non-citizens) to communicate problems to state actors outside of the ballot box. Public expression also allows citizens to discuss and evaluate the performance of their elected representatives in regard to important issues, such as protecting their rights. This, in turn, increases their ability to hold representatives accountable for their actions. Public communication also helps individuals to form organizations and mobilize others around issues that affect them. Furthermore, freedom of expression provides an important link to the international community, which can then intervene in order to prevent further violations. Finally, several participants in the debate over amnesty laws have also suggested that public expression about human rights violations can serve as a (partial) substitute form of punishment.<sup>17</sup> Through freedom of expression, people protect their rights by exercising one of their rights. Such an approach is consistent with Ellacuría's claim that "rights are the result of a struggle, which the dominant sector wishes to use in its favor, but which the dominated sector should put in its service."<sup>18</sup>

It is important to emphasize that this project will not be dealing with all forms of expression. First, the focus of this study will be restricted to freedom of expression regarding the violation of civil and political rights, as well as the issue of impunity for those who violate these rights. It will not include the discussion of other human rights, such as social and economic rights, except to the extent that they have a direct bearing on civil and political rights.<sup>19</sup>

The second restriction is that this dissertation will focus on *public* forms of expression. While it would be very interesting to conduct surveys and focus groups to examine how people discuss these issues in their private lives, this would require time and resources that are unlikely to become available for this project. The public focus will also allow this project to concentrate on the forms of expression which will reach the most people, including state actors, the general population, and the international community. Examples of public forms of expression include speeches, sermons, press conferences, press releases, journalism, and publications. This category also includes other endeavors that have been treated as forms of free speech in US law, such as demonstrations and artistic projects. It does not include phenomena such as discussing these issues with friends and family, or personal communications between state actors.<sup>20</sup>

As we have seen, those who argue against punishing past human rights violators have often treated expression on these issues as a danger, as something to be discouraged in order to promote the greater good of stability. If we were to accept this position, then the problem of not punishing these criminals would be compounded by the fact that we would be effectively removing one of the mechanisms that may have the potential to compensate for a lack of punishment.

**A REVIEW OF RECENT STUDIES OF FREEDOM OF EXPRESSION IN LATIN AMERICA.** While those who are in favor of punishing human rights violators view expression about these issues much more positively, they have yet to conduct research which focuses on this phenomenon. There are, of course, several studies that touch upon this issue. Pedalty's *War Stories* (Pedalty 1995), for example, is mainly concerned with how US journalists produced news during the Salvadoran civil war. This work offers important insights into how the FAS treated reporters during the war, but it does not focus on the protection of human rights, or the postwar transition to democracy. It should be mentioned that Pedalty does offer a preliminary discussion of Salvadoran journalism. In a recent collection of essays on journalism in contemporary Latin

America, most of the pieces ignore or touch only minimally upon expression about human rights violations.<sup>21</sup>

In *Martyrdom and the Politics of Religion*, Peterson's account of the political culture of the progressive church in El Salvador does contain important information on how this subculture views freedom of expression. She does not, however, concentrate on the effects of that expression, nor does she focus on expression outside of this community. As in the case of *War Stories*, Peterson's work also lacks a focus on the postwar era.

Guzman Bouvard's *Revolutionizing Motherhood* looks at a very important human rights movement, the Argentine Mothers of the Plaza de Mayo. While this book does include material on public expression by the Mothers, it is also concerned with other issues related to the debate on social movements. How do social movements emerge, maintain themselves, and expand, for example? How do Latin American human rights movements fit into feminism? *Revolutionizing Motherhood* is also limited by Guzman Bouvard's focus on a single movement.

McSherry's account of impunity in Argentina contains important preliminary insights into freedom of expression in this context. She finds, for example, that the military's actions were "aimed at stifling an active and broad political spectrum conducive to public debate" and "had chilling effects on openness and political participation" (McSherry 1997, 199). Public expression is not the focus of her study, however. As a result, she does not provide detailed evidence of these "chilling effects."

**NORMATIVE FOUNDATIONS FOR EXAMINING HUMAN RIGHTS VIOLATIONS.** The normative framework in much of the literature on how to respond to human rights violations remains implicit. Some authors, for example, have assumed that democracy and stability take precedence over human rights. Explicit discussions of the foundations of human rights, however, have generally been limited to two normative approaches: those of legal positivism and religion. As we have seen, many participants have turned to international law to provide arguments in favor of prosecutions. While these arguments are very important, they cannot answer such questions as: what rights *should* be established and protected by international law? This leads to another weakness of the legalistic approach; laws are open to change and interpretation, and therefore cannot provide a permanent foundation for normative claims about human rights. The religious perspective is also important; it gives us insight, for example, into the values that motivate many of the most important defenders of human rights throughout Latin America and the world. In contrast to legal arguments, this framework is able to provide answers to questions about which rights should be protected. These answers, however, are contingent upon one's acceptance of a particular religion. This pitfall is complicated by the growing religious diversity in the region. As a result, the religious perspective is very vulnerable to relativist challenges.<sup>22</sup>

**AN ALTERNATIVE APPROACH: SHUE'S THEORY OF BASIC RIGHTS.** In an ideal world, each and every human right would be fully protected. In reality, authoritarian regimes have violated a wide range of rights, including the rights to life, to freedom of religion, to one's cultural heritage, and many others. Furthermore, many of these abuses have continued under elected governments. In this situation, is it possible to choose which rights deserve the most attention?

One way of addressing such difficult situations is by using the "basic rights" theory developed by Philosopher Henry Shue, Hutchinson Professor of Ethics and Public Life at Cornell.<sup>23</sup> Shue defines basic rights as the set of rights that are necessary

for the enjoyment of all other rights. He offers the right to physical security as an example; without this right, an individual's enjoyment of any other right, such as the right to life, would be a mere contingency, and therefore not a genuine right at all. Shue therefore argues that basic rights cannot be derogated under any circumstances if any other rights are to be protected.<sup>24</sup> He also emphasizes that this concept is meant to establish the minimal threshold of human rights, but not to suggest that non-basic rights are somehow less valuable (Shue 1980, 18-21, 26, 81, 178).

As its title indicates, Shue's main goal in *Basic Rights: Subsistence, Affluence, and US Foreign Policy* is to establish that the right to subsistence meets these criteria for basic rights and should therefore be promoted by US foreign policy. While he uses some civil and political rights to illustrate his concept, he also makes it very clear that he has not established the complete list of basic rights. He also emphasizes that "few rights could be basic in this sense" (Shue 1980, 78, 20). As a result, there is still important research that needs to be done about which rights fall into this category.

This dissertation will further develop Shue's theory by testing the hypothesis that the right to freedom of expression about human rights meets the criteria for inclusion in this category. This will not be done hypothetically, but rather through the use of empirical propositions that logically follow from the application of Shue's theory to this right.<sup>25</sup> This contribution becomes even more important in the context of the current transitions to democracy; as we have seen, some scholars and politicians have suggested that it is necessary to limit such expression in order to preserve democracy.

Another one of Shue's main goals to address the relationship between what are often known as "positive" and "negative" rights. According to this distinction, positive rights require action by some third party—usually, but not always the state—while negative rights merely require others—particularly the state—to refrain from violating them. This distinction is not relevant for Shue. He argues that many of the rights which Classical Liberalism classifies as negative, such as the right to physical security, actually involve "positive obligations and duties." Basic rights in particular require the fulfillment of three basic types of duties: to avoid depriving people of their right, to protect people from deprivation of their right, and to aid those who have been deprived of their right. Shue acknowledges that the first category of duties is negative; it merely requires everyone to refrain from abusive actions, such as threatening someone's physical security. He argues that the second and third categories require positive measures, however, such as the provision of security to those who cannot provide their own. While some of these duties may fall upon the state, members of society and the international community will be responsible for others (Shue 1980, 16, 52-3).

While freedom of expression may appear a completely "negative" right, Shue's theory would suggest that its protection also requires "positive" obligations. This project will identify a set of obligations and duties that are necessary for this category of freedom of expression to be effectively guaranteed in the context of the current wave of democratization in Latin America. This will be based upon an examination of the historical conditions that confront those who attempt to exercise this right. As indicated above, one of the most important factors will be the legacy of previous human rights violations. Another important contextual factor will be the effects of extreme economic inequality on freedom of expression about these issues. This, in turn, relates to another important issue, the relationship between civil/political rights and economic/social rights. The second major hypothesis of this dissertation will be that the main barriers to this category of freedom of expression are the result of the nonfulfillment of the obligations that correspond to this right. It also suggests that the improvements that have occurred result from the partial fulfillment of these obligations by some sectors of

the state, society, and the international community.

## RESEARCH OBJECTIVES AND HYPOTHESES

The objective of this project is to use empirical evidence to assess two main hypotheses concerning this category of freedom of expression during the process of democratization. The first hypothesis tests the assertion that this category of freedom of expression meets the criteria for a basic right, one which must be protected if any other rights are to be guaranteed. The second identifies and analyzes a set of positive actions that must be fulfilled for freedom of expression about these issues to be genuinely protected. It also asserts that the nonfulfillment of these obligations constitutes the main barrier to this category of freedom of expression during the current wave of democratization in the case that will be examined. It also assesses the degree to which some state, political, and social forces have taken steps to fulfill these obligations.

**FOCUSING ON POSTWAR EL SALVADOR.** In order to test these hypotheses, this dissertation will focus on the case of postwar El Salvador. While it would be ideal to focus on several cases, time and resource constraints make doing so very difficult. Given this situation, it is very important to choose an appropriate case for the primary focus.<sup>26</sup> While no single empirical case is ideal, postwar El Salvador contains many features that make it appropriate for this work. The first feature is the nation's authoritarian legacy. According to Stanley, "in per capita terms, Salvadoran state terror [during the civil war] was among the most severe in the hemisphere . . . The only Latin American nation that may have matched El Salvador in the number of state murders per capita is Guatemala" (Stanley 1996, 3). This legacy has had an important impact on human rights during the postwar period. The old structures of the death squads, for example, have been preserved and reorganized to operate in the new political context (See Joint Group for the Investigation of Politically Motivated Illegally Armed Groups 1995). Given these circumstances, it is crucial for Salvadorans and the international community to find effective measures for dealing with the nation's legacy of repression.

While this legacy represents a major obstacle to democratization in El Salvador, the nation also enjoys several advantages over most of its Latin American counterparts. The first set of advantages is found in the 1992 peace accords between the Salvadoran government and the FMLN (Farabundo Martí National Liberation Front). These accords contain provisions to demilitarize the nation, through troop reductions, the establishment of the Ad Hoc Commission to purge the Armed Forces (FAS) of its worst human rights violators, the creation or improvement of institutions intended to enhance civilian control over the military, and the elimination of military involvement in public security functions. The accords also establish a Truth Commission to investigate the most serious abuses that occurred during the war, make its findings public, and recommend further action. Finally, the accords establish the office of a national Counsel for the Defense of Human Rights. Taken together, these agreements go far beyond the traditional pacted transitions discussed above; rather than protecting the personal power and institutional interests of those responsible for massive human rights violations, these accords undermine the abusers' position. As a result, Jonas has argued that "there is a world of difference between a true negotiation . . . as in El Salvador . . . and a more limited 'pact' simply between civilian and military elites, as in Chile" (Jonas 1997, 5).

The second set of advantages that El Salvador enjoys derives from the role of the international community. The UN played an active role in mediating the end of the conflict and in drafting the peace accords. Even before the final accords were signed, ONUSAL, the UN Observer Mission to El Salvador, began monitoring the human rights situation throughout the nation. Once the conflict ended, the UN expanded its role to include monitoring compliance with the various provisions of the accords, including those that deal with human rights. In order to prevent intimidation, the Truth Commission was led and staffed by international figures. Several national governments, including those of the US and the nations that contributed troops to ONUSAL, paid special attention to the implementation of the peace accords. They were joined in this endeavor by international human rights NGOs, such as Human Rights Watch and Amnesty International.

While these advantages have been important for El Salvador, they have not had as much of a positive impact as the previous overview would suggest. First of all, there have been serious problems with the implementation of the human rights provisions contained in the peace accords. One important example concerns the Ad Hoc Commission, the institution that Cynthia J. Arnson of Americas Watch has said “will potentially have the most lasting impact on the future observance of human rights” (Arnson 1992, 90). Due to time constraints and lack of cooperation, this body was only able to review ten percent of the FAS’ officers. As a result, it was only able to order the removal of eighty-eight out of a total 2,223, or less than 3.5 percent. If we also consider the forty officers who were transferred, less than 5.25 percent of the officer corps was sanctioned in any manner (Spence, Vickers et al. 1994, 3, 5, 10). Given the extent of human rights abuses by the military during the war, this means that the majority of violators were not even investigated, let alone removed from positions of power.

Furthermore, Salvadoran President Cristiani failed to carry out even these modest sanctions within the proscribed time frame.<sup>27</sup> To make matters worse, many of those ordered to step down were allowed to remain on duty until they were already scheduled to retire (Spence, Vickers, et al. 1994, 15, 38n). As a result, this modest form of punishment—taking the privilege of military command away from those who have abused their power—was diluted to the point of not being any real punishment at all. In contrast, military hard-liners were able to remove forty percent of the officer corps during the early 1980s. This earlier purge effectively negated the reformist coup of 1979 (Stanley 1996, 224).

Other problems have also undermined the second set of advantages. The international community’s attention has been drawn away from El Salvador by other crises, such as the genocides in Bosnia and Rwanda. International interest in El Salvador has also decreased as time has passed since the signing of the accords, especially after the final ONUSAL contingent withdrew in 1996. The international community’s problems have not been limited to those involving the degree of its attention, however. There have also been important flaws in the quality of this attention. In 1992, for example, Human Rights Watch criticized ONUSAL for its reluctance to publicly criticize human rights violations by the Salvadoran state (HRW/A 1992, 3).

The case of El Salvador is also appropriate for this study because it allows us to examine this category freedom of expression in the context of impunity. Only two FAS officers have ever been convicted for human rights violations committed during the war. In 1991, Col. Benavides and Lt. Mendoza were sentenced to prison for their role in the 1989 UCA massacre. In 1992, the government passed an amnesty that excluded those already convicted of human rights violations and those against whom the Truth Commission would offer evidence.<sup>28</sup> Shortly after the Truth Commission issued its

report, however, the government rushed through another amnesty, which covered even these perpetrators. As a result, no charges were ever brought against Benavides's superiors, despite the evidence provided by the Truth Commission. While impunity has been slightly less airtight in El Salvador than in Uruguay, it has been more secure than in Greece, Argentina, and Bolivia, nations in which former members of the military high command have been tried, convicted, and (at least partially) punished for human rights violations.<sup>29</sup>

It is also important, of course, to justify why this project will focus on this particular period of Salvadoran history. Given the concern with democratic transitions, why not follow Huntington's lead and consider the October 1979 reformist coup to be the beginning of the Salvadoran transition? One answer is that many scholars who know El Salvador better than Huntington reject this position. Tulchin and Bland, for example, cite the extreme level of repression against popular mobilization during the early 1980s as evidence against this view (Tulchin and Bland 1992, 2). Various studies, including the Truth Commission report, have made it clear that the military continued to hold the reigns of power during the 1980s, despite the existence of an elected civilian government.<sup>30</sup> As a result, the Salvadoran regime was closer to a pseudodemocracy than to a limited democracy in this period. Bland therefore argues that the Salvadoran transition really began in April of 1990, with the implementation of the first human rights agreement between the government and the FMLN (Bland 1992, 164). Following this logic, this project will concentrate on the period in which serious attempts were made to eliminate the military's undue influence and thus protect the rights of its opponents. The signing of the final peace accords in 1992 marks the beginning of this period.

Another important reason for focusing on this period is that democracy is still far from consolidated in El Salvador. In a survey conducted three years after the end of the war, for example, five out of ten Salvadorans said that elections have not been very useful for democratizing the nation. Forty-five percent of respondents claimed that El Salvador is not a democracy (IUDOP 1996a, 189-90). The ongoing human rights violations are also evidence that democracy has not been consolidated.

**EVALUATING THE HYPOTHESES IN THIS CONTEXT.** Within this context, this project's first main research objective is to use empirical evidence from El Salvador to assess the hypothesis that this category of freedom of expression fulfills Shue's criteria for inclusion in the category of basic rights. This means that other rights, including basic rights such as the rights to life and to physical security, cannot be guaranteed if freedom of expression about these issues is not also protected as a right. This may sound like common sense to most readers. We have already seen, however, that many scholars and politicians have been willing to sacrifice freedom of expression in order to protect democracy from retribution by authoritarian elites in the hopes that avoiding a coup will be the best guarantee against further human rights violations. It is therefore necessary to examine whether or not the empirical evidence supports such claims. If freedom of expression about these issues is a basic right, then "any attempt to enjoy any other right by sacrificing the basic right would be quite literally self-defeating, cutting the ground from beneath itself" (Shue 1980, 19).

One way to evaluate this hypothesis is to examine the impact of public expression about human rights violations on the behavior of relevant actors. This group includes state elites, social elites, and members of the international community. How, for example, does freedom of expression shape the functioning of the various state institutions that may either harm or protect human rights? More specifically, how does freedom of expression influence the implementation of the peace accords' human rights provisions? How does public discussion of human rights abuses shape the

development of the new police force? What happens when there is relative silence in response to human rights violations? How does freedom of expression about these issues, or its absence, affect the efficacy of using electoral mechanisms to eliminate or reduce human rights violations? Is there evidence that the positive changes that have occurred would have come about without the political pressure created by public discussion of these issues? This project will examine the subhypothesis that, although expression about these issues may provoke hostile reactions from some of these actors, it is nonetheless vital for pressuring them to take positive steps toward implementing the peace accords, or to refrain from actions which undermine the accords.

This project's second main research objective is to investigate the nature of the constraints on freedom of expression in postwar El Salvador, as well as the factors that may help to overcome them. Obviously, the general human rights situation in El Salvador has improved significantly since the end of the war. The "military operations" which targeted large sectors of the civilian population, such as the El Mozote massacre of hundreds of civilians in 1981,<sup>31</sup> have ended with the war. While FMLN members have been targeted by death squads during the postwar era, the level of repression has not been high enough to drive this party out of the electoral arena. While it would have been unthinkable for an FMLN candidate to even survive a run for mayor of San Salvador during 1980s, Hector Silva won that election for the FMLN in 1997. In this context, it is important to ask to what degree public expression about human rights issues has contributed to the improvements that have taken place. This, in turn, should be related to the positive actions by some state, social, and political forces that may have contributed to this progress.

This does not mean, of course, that current levels of human rights abuses are acceptable. Any violation of the right to life is unacceptable. While these violations have not stopped the FMLN from running for office, there can be no doubt that they have silenced those individuals who were killed.

Shue's theory would suggest that the main barrier to the enjoyment of freedom of expression about these issues (or any other right) is the result of the nonfulfillment of positive duties and obligations that said right entails. These obligations take on added weight in the case of a basic right; such obligations arise out of the need to protect the basic right in order to protect rights in general.<sup>32</sup> This project will generate such a set of obligations from the literature on democratization and the historical context of contemporary transitions. It will then use empirical research to test the hypothesis that the main barriers to this category of freedom of expression in postwar El Salvador involve the inadequate fulfillment of these obligations.

The first obligation that this project will propose is the state's duty to punish those who commit human rights abuses, particularly violations of basic rights, such as the right to life. As we have seen, such punishment has been minimal in El Salvador. Not only have violators not been imprisoned, many have continued to hold positions of power. Furthermore, in direct violation of the peace accords, others have found new positions within the National Civil Police (PNC).<sup>33</sup> Similarly, civilians who financed the death squads remain free and probably continue to have access to large sums of money.<sup>34</sup> McSherry has already provided evidence that strategies aimed at appeasing such individuals do not work. Similarly, Mendez warns that "pressures do not go away after the military or other conservative forces get what they want. Moreover, there is a serious risk that by yielding, one contributes to the consolidation of an alternate power within the state" (Mendez 1997, 10).

This earlier research suggests that these individuals will seek to defend and enhance the power that they have retained. One way of doing so is by silencing those who would use freedom of expression to challenge them. This suggests the following subhypothesis: those individuals and groups who exercise their freedom to express pro-human rights and anti-impunity views will become one of the main targets of human rights abuses in such a context. This does not mean, of course, that no one else will be targeted. It does mean, however, that there will be a consistent pattern of targeting these people. We should investigate, for example, whether or not some of the FMLN candidates who were killed in late 1993 were discussing issues which others avoided. If such a pattern is found, it will provide evidence that freedom of expression about human rights abuses is not secured as a right.

The two remaining obligations that this project will examine are related to an important contextual factor: the extreme economic inequality found in most of Latin America. Various authors have claimed that either capitalism or its unrestrained variant, neoliberalism, promotes democratization. Huntington, for example, argues that capitalist development increases the relative size of the middle class and that this sector is likely to favor democracy (Huntington 1991, 66-7). Similarly, Berger claims that Pinochet's and Franco's "successful capitalism releases democratizing forces."<sup>35</sup> He also dismisses the effects of the inequality created under capitalism by arguing that such setbacks are only temporary because "Kuznet curves" prove that long-term growth inevitably leads to increased material equality (Berger 1991, xii, xv, 46-7). From a different angle, neoliberal Milton Friedman argues that the material inequality generated by unrestrained capitalism actually favors democracy by allowing millionaires to provide a material basis for dissent; rich people have given money to socialist causes, after all (Friedman 1982, 17).

Other authors, however, respond that the growing inequality in Latin America has had a negative impact on democracy and the enjoyment of civil and political rights. McSherry, for example, finds that Argentina's neoliberal policies have led to "major social dislocations and inequalities, a situation that made the democratic requisite of political equality seem increasingly remote" (McSherry 1997, 289). Similarly, Pinheiro has observed that his native Brazil is, "like other Latin American countries, a society based on exclusion—a democracy without citizenship" (Pinheiro 1996, 18). These critiques lead us to another issue, the relationship between economic/social rights and civil/political rights.

Unfortunately, there is not an effective right to a basic education in much of the developing world. The drastic cuts of social spending that are part of neoliberal policy have compounded the already dismal state of education levels in Latin America. In El Salvador, only about half of the nation's children actually attend school, while only a third of all children complete the ninth grade (Woodward 1997).

There are reasons why this project should investigate the impact that this situation has on freedom of expression about these issues. First, education can help people to express their views effectively. Second, the more privileged members of society are likely to discriminate against those who appear less educated, particularly by discounting their views. Finally, a basic education can help individuals to use media effectively. It is therefore necessary to evaluate the degree to which this factor inhibits expression by uneducated (or less-educated) individuals. This project will therefore evaluate the subhypothesis that the lack of access to education constitutes an important barrier to this category of freedom of expression in postwar El Salvador.

While the Salvadoran government obviously bears primary responsibility for this



problem, it does not bear sole responsibility. We should also consider the role of private educational institutions that charge higher tuition than most Salvadorans can afford. Nor should we forget those actors who place pressure on the state to cut social spending, such as the World Bank and corporations that demand lower taxes. Another important factor is the impact of child labor on education; although the government is responsible for prohibiting child labor, those who employ children<sup>36</sup> are also depriving them of an education.

We should also consider the positive steps that some NGOs have taken to help remedy this situation through “popular education.”<sup>37</sup> Indeed, some prominent human rights activists, such as Menchú, have emerged despite their lack of a formal education.<sup>38</sup> We should therefore evaluate the degree to which alternate forms of education have compensated for this deficiency.

One of the most important institutions for freedom of expression is the mass media; without an independent media, public expression loses much of its public character. Obviously, we should be very concerned about direct attacks on the press by the state. This does not mean, however, that we should accept the Classical Liberal position that freedom of the press simply requires that the state does not intervene. As Belejack points out, “Perhaps the most insidious threat to press freedom in Latin America is the increasing concentration of the media in the hands of a few powerful conglomerates, a trend that has been all but obscured by the long litany of physical and legal attacks” on journalists (Belejack 1998, 9).

El Salvador is no exception to this trend. During the war years, Pedalty found that “it would have been professional suicide” for Salvadoran journalists “to contradict their bosses.” He also found that “ARENA [Nationalist Republican Alliance] and the oligarchy it represents still own almost the entire means of mass communication”<sup>39</sup> (Pedalty 205, 217). This is especially troublesome if we consider this sector’s connection with the death squads and its support of human rights violations during the war.<sup>40</sup> This pattern provides most of the media with a strong incentive for limiting or distorting coverage of human rights issues. While Hemispheric Initiatives (HI) has noticed some improvement in the range of opinions presented by these media since the end of the war, it has also lamented the overwhelming financial barriers that the alternative media face (Spence et al. 1997, 13).<sup>41</sup> The media has also been affected by ARENA’s ability to massively outspend its opponents.<sup>42</sup> These circumstances suggest the subhypothesis that expression about human rights issues is limited by the pattern of ownership in the Salvadoran media.

While it is proper to expect the state to prevent monopolization of the media, it does not bear sole responsibility for protecting and promoting freedom of expression through the mass media. Indeed, given the state’s historical connection to human rights violations, it would be foolish to rely solely upon state action. In a situation in which many people lack the means to make themselves heard, it is reasonable for us to examine the role of various institutions that could amplify their voices. In this context, editors and journalists who engage in self-censorship are violating their moral obligation to aid these people, as are sponsors who withhold advertisements in order to influence coverage.

Other NGOs also have a role in helping to magnify the proverbial “voice of the voiceless”; as this reference to liberation theology suggests, the progressive church has historically played an important role in this regard. During the late 1970s and early 1980s, for example, Archbishop Romero used his weekly sermons on church radio to speak on behalf of victims of human rights violations. During the late 1980s and early

1990s, the church helped organize a National Debate for Peace, which stressed the importance of human rights issues during the negotiations to end the war (Montgomery 82, 95-6, 210).

We should also consider the international community's moral obligation to help overcome the limitations that have been created by the concentration of the Salvadoran media. One very important international actor is the Catholic Church. Following the Second Vatican Council, the Church became more tolerant of, and even supportive of, attempts to promote freedom of expression. This situation has changed significantly, however. While some sectors of the international Church, such as the Jesuit and Maryknoll orders, continue to advocate progressive change, the Vatican has developed a policy of undermining their institutional basis within the Church. Pope John Paul II, for example, has used his power to appoint Bishops to weaken the progressive church throughout Latin America.<sup>43</sup> This suggests the subhypothesis that freedom of expression on these issues by marginalized communities has been hampered by the Catholic hierarchy's assault on liberation theology.

The UN and other intergovernmental organizations also have an important role to play in shaping media coverage of human rights issues. How did the Salvadoran Truth Commission affect the discussion of human rights issues in the media? Did it have the positive impact of changing the tone from one of "allegations" of abuses to one of accepted fact?<sup>44</sup> We should also consider Human Rights Watch's charge that ONUSAL was reluctant to criticize state abuses during the early stages of its mission.<sup>45</sup>

It is also important to examine the role of international press networks. These groups have become especially relevant as the result of advances in technology which allow the rapid diffusion of information throughout Latin America. Three important alternative wire services are *Pulsar*, SALPRESS, and the Inter Press Service (IPS).<sup>46</sup>

Finally, we should not ignore the important role that some sectors of the state have begun to play in amplifying the voices of human rights victims. As Stanley argues, we should avoid thinking of states as monolithic actors and recognize that state decisions result from the interaction of competing sectors (Stanley 1996, 5, 29). This recognition, in turn, leads us to modify Stepan's "dialectic of 'regime concessions and societal conquest.'"<sup>47</sup> As we have seen, society itself contains many anti-democratic actors. It is also important to remember, however, that some sectors of the state may favor democratization. In fact, one of the most important goals of "societal conquests" is to establish such democratic footholds within the state. An important example would be the Office of the Counsel for the Defense of Human Rights, a state institution that was created by the peace accords. This was especially true during the tenure of Dr. Aviles as head of this agency.<sup>48</sup> We should therefore conceive of democratization as dialectic of conquests by democratic forces and concessions by authoritarian forces, without assuming that either group is totally identified with society or the state. This project will therefore test the subhypothesis that some sectors of the state have played an important role in amplifying the voices of human rights victims, while other sectors have impeded their expression. It will also be important to look at the intra-state conflicts which shape the democratic sectors' ability to aid victims, such as the pattern of death threats directed against Dr. Aviles.

**ALTERNATIVE EXPLANATIONS FOR SILENCE ON THESE ISSUES.** This project needs to deal with two alternative explanations of why more people are not publicly discussing these issues in El Salvador. Both of these counterarguments suggest that the real reason is that most people choose not to do so. The first alternative explanation is that the real barrier to freedom of expression is the cultural legacy of

fear. According to this view, it is unrealistic to expect people to exercise their right to freedom of expression after decades of state terrorism. It would also suggest that Salvadorans may need several generations before they feel comfortable discussing these issues in public.

It is important to acknowledge that there is some truth to this argument. Fear is obviously an important factor. Scholarly accounts have shown, however, that some people, such as the Mothers of the Plaza de Mayo, have spoken out under similar circumstances. Why, then, are others unable to do so? Perhaps more importantly, this explanation overlooks the relationship between ongoing violations and the legacy of fear. On the one hand, the legacy of fear affects the way in which current violations are perceived and gives them greater weight. In other words, the relative size and strength of the legacy is an important contextual variable that intervenes in the relationship between current abuses and freedom of expression. On the other hand, human rights violators commit new abuses in order to manipulate this fear. As we have seen, coup attempts and assassinations may lead to calls to restrict this category of freedom of expression in order to preserve democracy by placating the military. The fear that the past will repeat itself is likely to increase when current violations provide evidence that it is already doing so.

The second counterargument is that Salvadorans do not speak out against human rights violations because they lack motivation to do so. It is possible, for example, that the continuing abuses do not harm them directly. It is also plausible that many people continue to hold authoritarian attitudes.

Again, it is very important to acknowledge the element of truth contained in this argument. Members of ARENA, for example, may have little incentive to denounce the assassination of FMLN candidates, whom they may view mainly as competitors. Similarly, the fear and frustration that Salvadorans feel in the face of the postwar crime wave may lead many to believe that they have little reason to criticize Sombra Negra.<sup>49</sup> Indeed, a 1996 survey found 46 percent of all Salvadorans support vigilantism.<sup>50</sup>

This argument is flawed, however, because it looks at only one side of the relationship between attitudes and expression. It does not consider the other direction, that of expression shaping attitudes. It is plausible, for example, that an increase in denunciations of Sombra Negra, especially if accompanied by an in-depth discussion of the arguments against vigilantism, could change some people's minds about this issue. In other words, a large part of the problem may be that people are not hearing all of the sides of the arguments.

Both of these explanations can also be addressed empirically by focusing on those individuals and institutions that should be expected to speak out against certain violations. Why has the FMLN remained relatively quiet about the assassination of some of its members? For example, the party's leadership accepted the explanation that the murder of Eleno Hernán Castro was not political, despite evidence to the contrary (HRW/A 1994, 7). Why have many businessmen approved of the blanket amnesty, given the fact that it covers the right-wing kidnapping rings which targeted wealthy Salvadorans?<sup>51</sup> What are Salvadoran journalists writing about the attacks on members of their profession?

## RESEARCH DESIGN AND DATA COLLECTION PLANS

**MEASURING HUMAN RIGHTS VIOLATIONS.** It is necessary to clarify the criteria which will be used to evaluate the degree to which a human right is sufficiently

protected. The formal recognition of this right, while important, does not satisfy this condition. The first criteria is therefore that a genuine human right must be universal in practice as well as in theory. If a right can be exercised by some, but not by all, then it is properly classified as privilege.<sup>52</sup>

The second criterion concerns the security of the exercise of a given right. Obviously, an ongoing pattern of violations of a right will provide evidence that said right has not been sufficiently guaranteed. This does not mean, however, that any violation of a right will provide enough evidence that the enjoyment of said right is insecure. As Shue explains, this method of measuring rights is not equivalent to “the absurd standard that a right has been fulfilled only if it is impossible for anyone to be deprived of it or only if no one is ever deprived of it” (Shue 1980, 17). Individual human rights abuses can also be offset by corrective measures, such as punishment of the violators. It is therefore necessary to evaluate each violation within this context. Naturally, it will not be possible to examine the relationship between freedom of expression and every other right in a single dissertation. This project will therefore concentrate on several crucial rights, such as the rights to life, to physical security, and to due process.<sup>53</sup>

**EMPIRICAL PROPOSITIONS.** In order to assess the hypothesis that freedom of expression about human rights issues is a basic right, this project will examine the impact that such a pattern of violations of freedom of expression has on the violation of the other rights specified above. This hypothesis suggests a positive correlation. Similarly, public expression about these issues should have a positive impact on the status of other rights. For example, public discussion about death squads should have a disuasive impact on further activity by such clandestine groups.

In order to evaluate the nature of such a correlation, it will be necessary to situate this research in a comparative perspective. One way of doing so is to use a cross-time comparison. This project will draw upon a review of the history of freedom of expression about these issues in El Salvador, with emphasis on the civil war era.<sup>54</sup> It may also be useful to make limited comparisons of the situation to El Salvador with that of countries with better human rights records; what, for example, is the role of freedom of expression in protecting African Americans from police brutality?<sup>55</sup>

The second hypothesis suggests that the state’s inability or refusal to punish those who committed human rights violations during the authoritarian era undermines the right to freedom of expression about human rights abuses through the intervening variable of continuing human rights violations. It will therefore be necessary to link these ongoing violations to the policies of impunity. This project will look for evidence that connects current violations with the individuals or structures that committed human rights abuses during the war. It will then look for evidence that the current abuses have had a stifling effect on public expression about these issues. In addition to abuses such as assassinations and disappearances, we should also measure the impact of certain speech acts which may have a dissuasive impact on public expression of these issues. Such practices include threats and smear campaigns directed against those who promote human rights.<sup>56</sup> This part of the project will also assess the degree to which the elimination or reform of some of these repressive structures may have helped improve freedom of expression about human rights violations. Please note that this project cannot test the counterfactual claim that holding human rights violators accountable for their actions would have resulted in a coup. While there has been some evidence to suggest that this may not have been the case,<sup>57</sup> counterfactual claims are irrefutable.<sup>58</sup> The purpose of this portion of the project is to examine the consequences of impunity once it has been established and maintained.

This project's second major hypothesis also suggests that the lack of a basic education will have a negative impact on an individual's ability to take part in public discussions of human rights issues. While poorly educated individuals in developed nations would also have difficulty in expressing themselves, the impact of this factor is likely to have a much greater impact on a society such as El Salvador. One reason for this is the degree of this problem; the problem of illiteracy is much more widespread in El Salvador than it is in the US, for example. Another important consideration is the historical pattern of human rights violations being disproportionately directed against Salvadorans with little or no education.

This subhypothesis suggests, example, that poorly educated individuals will not have access to the same information as their better-educated counterparts. This can be evaluated, in part, through an examination of the quantity and quality of information that is available from various sources. These sources can then be grouped according to which groups are likely to have access to them. An illiterate shantytown resident, for example, will not be able to directly benefit from an intellectual journal, regardless of the quality of information which it contains.

This also suggests that individuals without a basic education will be at a distinct disadvantage in having their views picked up and disseminated by the mass media. One important measure will be how often the media quotes such individuals on human rights issues. An equally important concern, however, will be the manner in which such quotes are presented. For example, does the media's use of such quotes discredit their content by portraying the speakers as stupid *campesinos* ?

Finally, the second hypothesis suggests that the concentration of the mass media in the hands of those sectors of the population that have been associated with past human rights violations limits this category of freedom of expression. This does not mean that these issues will never be discussed. Rather, it is important to ask which parts of these issues receive more attention than others. How are the issues framed? How are the participants in the debate presented? Which participants are presented, and how often are they heard from? Why are some sectors not heard from as often as others? Are marginalized victims generally heard from only when other institutions such as the church offer to amplify their voices? Do reporters or columnists continue to engage in self-censorship out of fear of angering their bosses?

CONDUCTING RESEARCH IN THE US. Obviously, this project will benefit greatly from field research in El Salvador. Such fieldwork cannot begin until several months after this proposal has been approved, however. It will require making arrangements for travel, lodging, and access to data sources in El Salvador. It will also require time and effort to secure funding. Perhaps most importantly, this fieldwork will benefit from the research that can be conducted in the United States.

One important area of research in the US will be the review of the history of this category of freedom of expression in El Salvador prior to the signing of the peace accords in 1992. This will be drawn mainly from existing scholarly and NGO accounts. I have already done substantial reading on this subject. Further reading and the drafting of a chapter on this subject will help situate the project's primary research in cross-time perspective.

There are many important sources of primary documents that can be accessed in the US. One obvious category of primary materials is UN. Another important source will be the archives of human rights NGOs such as Amnesty International, Human Rights Watch, the Lawyers' Committee on Human Rights. My involvement in efforts to

establish a human rights center at the Graduate Center may be useful in facilitating such contacts. Sister Duffy of the Maryknolls' office in New York, for example, has expressed willingness to allow access to the order's archives. Professors Pollis and Peirera have offered to help gain access to the NACLA (North American Congress on Latin America) archive at the New School.

My location in New York City, as well as my connection to the CUNY Graduate School and University Center, provides an excellent opportunity to use many of these sources without significant travel costs. It may be necessary, however, to go to other US cities to access collections such as those of the Washington Office on Latin America(WOLA), the National Security Archive at George Washington University, and the Miami-based Inter American Press Association(IAPA).

Some important documents may be found in US public libraries. The UCA's *Estudios Centroamericanos* (ECA) and *Proceso*, for example, are both available at the main branch of the New York Public Library. These journals are secondary sources in the sense that they contain scholarly accounts of human rights issues in El Salvador. They are primary accounts, however, in the sense that they are examples of freedom expression about these issues. The *Guide to Central American Communication Media*<sup>59</sup> should also be available through local libraries.

Another important category of primary material is interviews. My location provides many opportunities for conducting these. Some UN personnel connected to ONUSAL may be in New York on business at the UN. I have already contacted Truth Commission staff member Priscilla Hayner, who has expressed willingness to help establish further contacts. Professors from the Graduate Center, especially those associated with the Ralph Bunche Institute, may also be a valuable resource for making contacts.

I also plan to interview members of human rights NGOs with US offices. They will be able to provide first-hand accounts of freedom of expression in El Salvador. Naturally, their observations of expression by Salvadorans will be quite valuable. It is also important, however, to ask about their own experiences when they have attempted to exercise their right to freedom of expression about human rights while in El Salvador. Once again, the Maryknoll office has offered to help with arranging interviews. I may also interview US scholars about their experiences conducting research in El Salvador.

This work in the US will help me to make the most effective use of my time in El Salvador. In-depth preliminary research will help to focus my efforts in El Salvador. Collecting documents in the US will increase the time that I will have to search for other data while in El Salvador. Finally, this research should enable me to identify further contacts in El Salvador.

CONDUCTING RESEARCH IN EL SALVADOR. Library research will also be important once I arrive in El Salvador. I am particularly interested in examining collections of media coverage. I would also like to gain access to the media's television and radio vaults in order to supplement the printed material found in libraries. I have established contact with two key figures at the UCA, IUDOP head José Miguel Cruz and IDHUCA director Benjamín Cuellar. Both professors have expressed a willingness to be of assistance. I may also make limited use of surveys conducted by the IUDOP, although they will not become a major focus of the project.

It will be important to work with Salvadoran human rights NGOs, such as the IDHUCA, the Human Rights Commission of El Salvador(nongovernmental), and Tetula

Legal. As in the case of their international counterparts, these organizations will be an important source of documents. I also hope to interview their members to gather information on the personal experiences of exercising the right to freedom of expression about human rights violations. These subjects will also be able to provide information on what has happened when others have done so.<sup>60</sup>

I will also seek interviews with former and current state actors. What are their attitudes toward human rights in general, and freedom of expression about human rights abuses in particular? What have they done to enhance or to hamper this category of freedom of expression? How has public discussion of human rights issues affected their behavior, especially in terms of the implementation of the peace accords?

People from other sectors of Salvadoran society should also be interviewed. This will include journalists and other members of the media profession. I will also seek interviews with leaders of the political parties. Given the business community's traditional role of supporting human rights violations, it will also be important to talk to representatives from that sector.

While it would be ideal to conduct research throughout the nation, this would require more time and funding than I will be able to arrange for a dissertation. Even though El Salvador is a small country, the poor condition of its infrastructure makes travel into the countryside very time consuming. Furthermore, such travel is dangerous because of widespread crime. This project will therefore focus on the area of metropolitan San Salvador, the nation's capital. This will still provide access to the main institutions which are necessary to carry out this research.

Finally, I may find that it is necessary to contact individuals from other parts of the world. For example, I may need to communicate with the two Latin American members of the Truth Commission, Belisario Betancur of Colombia and Reinaldo Figueredo Planchart of Venezuela. Other possibilities include figures such as Rodolfo Mattarollo, a UN consultant whom ARENA prevented from speaking and pressured ONUSAL into dismissing.<sup>61</sup> I hope that these figures will travel to the US at some point. Alternatively, they may be accessible by phone, e-mail, or standard mail.

**DEALING WITH POTENTIAL OBSTACLES.** One potential obstacle to carrying out this research is that of financing. In order to complete my degree, I will not be able to work full-time until I complete this dissertation.<sup>62</sup> While my wife has generously helped to support me while I have written this proposal, she is also working on a graduate degree of her own.<sup>63</sup> As a result of these factors, funding from grants or fellowships is very important for the completion of this research, especially the trip to El Salvador.

Another potential problem is noncooperation on the part of important individuals or institutions, especially those in El Salvador. There are at least two possible reasons for this. The first is hostility toward the project. It is quite possible, for example, that those individuals who oppose freedom of expression will see this project as a threat. One partial solution is to minimize their perception of this threat. Discretion and a low profile will reduce the chances that they will perceive me as a troublemaker. Another solution may be to convince these figures that they want me to hear their side of the story. I plan to discuss this issue further with scholars who have experience with similar circumstances.

The second potential source of noncooperation is the fear of reprisal for providing me with information. One way of dealing with this problem is by establishing reputable contacts who could introduce me to some important figures, such as

members of human rights NGOs. Another solution is to accommodate those sources who desire anonymity. Keeping a low profile may also help to reassure these individuals that I will not draw attention to them while conducting research. Once again, I will seek the advice of more experienced researchers.



## ENDNOTES

<sup>1</sup> “el problema radical de los derechos humanos es el de la lucha de la vida en contra de la muerte” (Ellacuría 1990, p. 593). This article was based on notes from one of Ellacuría’s lectures in May of 1989. It was published in *Estudios Centroamericanos* as a tribute after the Atlactl battalion assassinated him the following November.

<sup>2</sup> Larry Diamond is the coeditor of the *Journal of Democracy*. He has based the 1974 figure upon his own estimates. He drew the 1995 figure from reports by Freedom House (Diamond 1998, 229).

<sup>3</sup> The lower estimate comes from CONADEP, the National Commission on the Disappeared, a truth commission set up by the transitional government of President Alfonsín. The higher figure was given by Ramón Camps, who served as the chief of police in the Buenos Aires province during military rule. Human rights groups generally use the estimate of thirty thousand disappearances (Guzman Bouvard 1994, 31-32). A person is said to be “disappeared” when he or she is abducted by the state or its agents without any official acknowledgment of the detention. This violation is often accompanied by torture and the eventual murder of the victim. In some cases, the bodies are disposed clandestinely. In other cases, however, the violators dump the disfigured corpses in public places.

<sup>4</sup> This debate is not limited to Latin Americanists, of course. The issue of how to confront this painful legacy has also faced countries such as Greece, South Africa, and Eastern Europe.

<sup>5</sup> See Diamond 1998, Booth 1995, and Peeler 1995 for discussions of deepening democracy.

<sup>6</sup> It should be noted, however, that Malamud-Goti’s overall position is ambiguous. At some points, he indicates that the trials were a mistake. At others, however, he argues that trials are necessary to foster a rights-based democratic culture. In general, he appears to want things both ways. He argues, for example, that the trials harmed society by creating a black and white image in which only the military were responsible for the repression. A few pages later, however, he condemns those who called for prosecutions against the civilians who aided and abetted the dictatorship (Malamud-Goti 1996, 9, 7-8, 13).

<sup>7</sup> An example of a pseudodemocracy would be a regime in which civilian representatives are elected while policy decisions continue to be made by the military. See the discussion of Stepan and O’Donnell for further explanation of such cases.

<sup>8</sup> If we believe that human rights violations are indeed justifiable, then we should acknowledge that we also believe that these rights are not really rights. See the discussion of Shue below.

<sup>9</sup> Zalaquett served on the Chilean Commission for Truth and Reconciliation.

<sup>10</sup> The full stop law set a six-month deadline for filing any charges against human rights violators. In direct violation of the Nuremberg principle, the due obedience law excused any violator who could claim that he or she was merely following orders.

<sup>11</sup> See below for a discussion of such anti-rights expression.

<sup>12</sup> Galeano is a Uruguayan writer, known for his *Memory of Fire* trilogy.

<sup>13</sup> It is important to remember that the Truth Commission’s investigation took place

before the passage of the 1993 amnesty law, which covered even those individuals against whom the commission found evidence of involvement in major human rights abuses. These violators therefore still had an incentive to cooperate during the commission's investigation.

<sup>14</sup> See Sikkink's study of the international network of Latin American human rights organizations (Sikkink 1996) for more information about these difficulties.

<sup>15</sup> This concept requires further refinement, especially when applied to the case of El Salvador. See the discussion of the Counsel for the Defense of Human Rights below.

<sup>16</sup> It is possible, of course, to come up with solutions that, while tempting, are unacceptable because they themselves violate human rights. An example of such a solution would be "popular justice," a form of summary executions which violates the right to due process of law.

<sup>17</sup> See, for example, Weschler 1990, 217 and HRW/A 1993, 24.

<sup>18</sup> "Los derechos son resultado de una lucha, que la parte dominante quiere usar a su favor, pero que la parte dominada debe poner a su servicio" (Ellacuría 1990, 596).

<sup>19</sup> This is not meant to imply that the latter are any less important; it does mean, however, that both sets of rights are important enough to merit separate investigations.

<sup>20</sup> These communications may still be relevant to the study, of course. They can be used to demonstrate the state actors' various responses to public expression, for example. They are not, however, forms of public expression as defined in this proposal.

<sup>21</sup> Buckman's "Birth, Death, and Resurrection of Press Freedom in Chile" briefly deals with such expression during the Pinochet dictatorship. Unfortunately, he does not examine the impact of Chile's authoritarian legacy on the media during the transition to democracy. Buckman also makes several comments which suggest that he blames freedom of expression for bringing down one of Latin America's oldest democracies; he argues, for example, that "The media played a key role in heightening the tension that led ultimately to the [1973] coup" (Buckman 1996, 168).

<sup>22</sup> It may be possible, of course, for individuals from different religions to arrive at a common set of norms through dialogue about the value content of each other's subcultures. See An-Nàim 1992.

<sup>23</sup> Shue wrote *Basic Rights* while he was with the Center for Philosophy and Public Policy, an institution he helped establish at the University of Maryland. See the Cornell Department of Philosophy's web site for further information on Henry Shue's career ("Department of Philosophy – Henry Shue." 1998).

<sup>24</sup> This argument is premised on the assumption that we want some human rights to exist and be protected. It cannot convince human rights violators that there is a right to life, for example, as long as they believe that their victims do not have any rights. This argument is designed, however, to convince people who acknowledge the right to X that it is necessary to acknowledge some other rights in order to protect the right to X.

<sup>25</sup> See the sections entitled "Research Objectives and Hypotheses" and "Research Design and Data Collection Plans" for more details on these propositions.

<sup>26</sup> See the section entitled "Research Design and Data Collection Plans" for further discussion of how to compensate for the single-nation focus.

<sup>27</sup> Although all of the officers slated for removal had either stepped down or retired by

the end of Cristiani's term, this did not happen until well after the deadline mandated in the peace accords had passed. This allowed these human rights violators to maintain their command positions well into the period leading up to the crucial 1994 elections.

<sup>28</sup> This followed the 1987 amnesty enacted by the Duarte government.

<sup>29</sup> Argentine President Menem pardoned those officers who had been convicted. As a result, they only served a fraction of their original sentences. A loophole in the Argentine amnesties, however, allows the prosecution of those individuals who were involved in the illegal adoption rings that were associated with the disappearances. As a result, charges are currently pending against former junta leader General Videla for his involvement in these activities.

<sup>30</sup> See, for example, Montgomery 1995 and Stanley 1996.

<sup>31</sup> The Truth Commission found no evidence of a military confrontation at El Mozote. The victims were mostly women and children who were targeted simply for being in guerrilla-held territory. See Commission on Truth for El Salvador 1995, 347-51 for the findings on El Mozote.

<sup>32</sup> These moral obligations disappear, of course, if we do not assume that there are some rights which must be protected.

<sup>33</sup> See the Hemispheric Initiatives documents cited in the preliminary reference list of this proposal, particularly Spence, Dye, et al. 1994, for more information on violations of the peace accords. In regard to the provisions concerning the PNC, see Stanley 1993.

<sup>34</sup> Some of this money comes from personal wealth that has been inherited, earned through legitimate businesses, or amassed through corruption. As we have seen, however, the Joint Group has established that the death squads have also turned to organized crime to generate cash for politically motivated crimes.

<sup>35</sup> He does not, however, tell us exactly what these democratizing forces are.

<sup>36</sup> In cases such as subsistence farming and street vending, the offending party may be the children's own parents.

<sup>37</sup> See Hammond 1998 for an overview of popular education during the civil war.

<sup>38</sup> See Menchú's autobiography (Menchú 1984) for more information about how her involvement in church activities and labor organizing helped to overcome this obstacle.

<sup>39</sup> ARENA has held the presidency since Alfredo Cristiani was elected in 1989. The Truth Commission found solid evidence linking this party to the death squads. See especially the involvement of Roberto D'Aubuisson, the party's infamous founder and long-time leader, in the assassination of Archbishop Romero (Commission on the Truth for El Salvador. 1995, 354-61). ARENA candidate Armando Calderón Sol succeeded Cristiani in 1994.

<sup>40</sup> See the Truth Commission report, especially the section entitled "The death squad pattern," (Commission for the Truth in El Salvador 1995, 357-61) for an overview of this sector's connection with the death squads.

<sup>41</sup> In a 1997 report, for example, this organization found that "two newspapers, *Primera Plana* and *La Noticia*, closed their doors due to financial troubles, as did a news digest service, *Flor de Izote*." HI found that advertisers' unwillingness to support its critical coverage contributed to the demise of *Primer Plana* (Spence et al. 1997, 13).

<sup>42</sup> See Spence & Dye 1994 and Spence, Vickers, et al. 1994 for an overview of ARENA's media advantages during the 1994 elections, for example.

<sup>43</sup> See Löwy 1996 for a discussion of John Paul II's attack on progressive Catholicism.

<sup>44</sup> Chilean Commission for Truth and Reconciliation member José Zalaquett claims that its report had this impact on the media in his country.

<sup>45</sup> See above.

<sup>46</sup> See Belejack 1996 for more information on Pulsar. Although SALPRESS stands for Salvadoran Press Agency, it is a regional network. See Pedalty 1995, page 221 for information on SALPRESS and the IPS.

<sup>47</sup> See the section on the theoretical framework and substantive focus for a preliminary discussion of Stepan's dialectic.

<sup>48</sup> See IDHUCA 1995 for a comparison of Dr. Aviles with her predecessor, Dr. Milina Fonseca.

<sup>49</sup> Sombra Negra literally means "Black Shadow." It is the most infamous social cleansing death squad in postwar El Salvador.

<sup>50</sup> This question read as follows: "Tell me if you agree strongly, agree somewhat, disagree somewhat, or disagree strongly with the following: Since the government does not provide justice and security, the people have the right to take justice into their own hands." ("Diagme si está muy de acuerdo, algo de acuerdo, algo en desacuerdo o muy en desacuerdo con lo siguiente: Ya que el gobierno no proporciona justicia y seguridad, la gente tiene el derecho de buscar la justicia por la propia mano.") Although respondents were not offered the option of "neither agree nor disagree," this answer made up 4.5 percent of responses (IUDOP 1996b, 95).

<sup>51</sup> See Stanley 1996, 240 for information on these kidnapping rings.

<sup>52</sup> Shue and Ellacuría have both provided normative justifications for evaluating rights in this manner. Shue argues that, "A proclamation of a right is not a fulfillment of a right, anymore than an airplane schedule is a flight. A proclamation may or may not be an initial step toward the fulfillment of a right. It is frequently the substitute of the promise in place of the fulfillment" (Shue 1980, 15). Ellacuría warned against the "danger that . . . [human rights] theory and praxis have a tendency to take the form of an absolute and abstract normative framework, independent of any historical circumstance and, in the extreme case, as a hidden form of defending that which has already been acquired by the strongest or is obtainable by the strongest in the future." ("el peligro que su teoría y praxis propendan a tomar la forma de una normatividad absoluta y abstracta, independiente de toda circunstancia histórica y, en su caso extremo como una forma velada de defender lo ya adquirido por el más fuerte o adquirible en el futuro por los más fuertes.") (Ellacuría 1990, 590).

<sup>53</sup> The final project will justify the selection of each right through an explanation of why each one should belong in this set. Essentially, this will contain hypothetical arguments that each of these rights fulfills Shue's criteria of a basic right. There will be no attempt, however, to provide empirical evidence for these arguments.

<sup>54</sup> This review will be based primarily on existing literature.

<sup>55</sup> Better is a relative term, of course. Police brutality continues to be a serious problem in the US. See AIUSA 1996 for an overview of police brutality in New York City.

<sup>56</sup> Evaluating such statements will require sensitivity to the political, cultural, and historical context in which they are made. One form of evidence which this project will look for to support this subhypothesis will be a pattern showing that other forms of human rights abuses, such as assassinations and disappearances, follow such speech practices. Another important piece of information is the degree to which people have been intimidated by such statements during the postwar era. Perhaps the most important information will be how people have interpreted such statements and how they have modified their behavior in response to them.

<sup>57</sup> See the earlier discussion of Stanley, Buergenthal, Dugard, and Berat in the subsection entitled "The Debate Over Dealing With Authoritarian Legacies."

<sup>58</sup> Irrefutable propositions, in turn, are not the proper concern of social scientific analysis.

<sup>59</sup> This source is published by the Latin American Journalism Program at Florida International University. See Montgomery 1996, 38, 48 for more information.

<sup>60</sup> It may be possible to conduct some of these interviews in the US if representatives of these NGOs come to this country on business.

<sup>61</sup> See HRW/A 1992, 10 for more information on this incident.

<sup>62</sup> I should also mention that my work situation at CUNY is rather tenuous. Now that I have exhausted my Grad B Fellowship, Professor Ofuatey-Kodjoe has had to find ways of paying me on a piecemeal basis. I am still very interested, however, in continuing to work on the efforts to establish a human rights center in the Program.

<sup>63</sup> Rachel Rubin Ladutke is currently in her second year at the Theater Program at Hunter College. She plans to travel to Ireland during the summer of 1999 to take a course at Trinity College and to conduct research for her Masters Thesis on Irish women playwrights. (Yes, there are some! She has contacted several who have published and produced.)