

THE RIGHT TO TRUTH: CASE LAW, PUBLIC DISCOURSE AND ITS FOUNDATIONAL ROLE IN TRANSITIONAL JUSTICE

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Abstract: This article examines the right to truth in transitional justice, focusing especially on its collective dimension. Drawing on international human rights law and jurisprudence of the Inter-American Court of Human Rights and the European Court of Human Rights, the article analyses its implications and evolution. The article also analyzes its impact on public discourses and “shared narratives” of historical violence. It further explores the relationship between this right and the other rights of transitional justice, considering if the right to truth could be looked upon as foundational in relation to the other rights of transitional justice. Truth commissions are used as the main instrument to evaluate this hypothesis.

Keywords: Transitional justice, Right to truth, Historical narratives, Truth commissions, Reconciliation, Democracy

1. INTRODUCTION

Justice after war or a regime where gross violations of human rights have taken place is always complex, elusive and, at worst, impossible. But, whatever the specific conditions, there must be some reckoning; “dealing with the past is not an option” (De Greiff, 2019).

Our article focuses on one of the rights of transitional justice, the right to truth. The article begins with a precise legal definition of the right to truth and its theoretical developments in the jurisprudence of the IACtHR and the ECtHR, emphasizing the collective aspect of this right. Although the case law of these two courts reflects different emphases, they are examined together because their jurisprudence reveals a complementarity that has crucially contributed to the consolidation of this right. In addition, we argue that this collective satisfaction of the right to truth can have a “performative”, operational effect, in two senses. On the one hand, the truth about the violent past can be performative in the sense of creating some shared, collective narrative about human rights violations, that we consider necessary for a transition (or post-transition) towards a more decent, inclusive and democratic society, and that shapes the moral agreements of a society to avoid repetition. We also consider the long-term consequences of the failure to deal with such historic abuses. On the other hand, we

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explore if the right to truth can be the driving force or catalyst of the other rights of transitional justice. This is the main hypothesis, namely, that the establishment of the factual truth about the past can create the structural conditions and social dynamics – in contrast to the past dynamics of crime and impunity – that facilitate or make more likely the other pillars of transitional justice, so that this right might be foundational for the other rights of transitional justice.

This seems reasonable, since, as Sampedro Arrubla puts it, only through the right to truth can society access justice and a stable and lasting peace be built (2015). Du Toit, for his part, describes truth commissions as “*historical founding projects* in the transitional context of introducing and consolidating a new democratic dispensation and/or a culture of rights and accountability” that could be compared to constitution making (2000, pp. 124-125). Hence, the central research question that we are posing is the following: in which sense can the right to truth, particularly its societal aspect, be the basis of transitional justice?

Methodologically, the article begins with a doctrinal legal analysis of the right to truth. Secondly, it examines the existing literature on transitional justice and its impact on public discourse, democracy and human rights, drawing on a number of case studies. Finally, we assess our main hypothesis through a review of the existing scholarship on truth commissions, which constitute one of the primary truth-seeking instruments in transitional justice.

2. REFLECTING ON THE RIGHT TO TRUTH

The right to truth after violence and abuse is an individual and collective component of transitional justice (ICTJ, 2013, p. 1). It is not only a right but also a duty for the state and society, directed first to victims but also to the general public. This right became formally recognized as one of the pillars of transitional justice by the 1997 Set of Principles to Combat Impunity. It had been an “emerging right” (Méndez & Mariezcurrena, 2003, p. 241) in transitional justice since the ‘80s and ‘90s, mainly because of the practice of “enforced disappearances” by military regimes in Latin America. Over time, it expanded to apply not only to disappearances but also to other violations of human rights. Even though it hasn’t been established as a universally binding legal obligation, it is increasingly recognized as an autonomous and independent right (Ferrer Mac-Gregor 2016, p. 136). In a landmark article in 2006 Yasmin Naqvi described it as something approaching a customary right or a general principle of law (pp. 267.272). The later developments provide evidence that, in broad terms, the right to truth has evolved into an international law norm (Szoke-Burke, 2015, p. 539)². Post-conflict states like Bosnia-Herzegovina, Argentina (Brunner & Stahl,

² The ongoing debate over whether the “right to truth” can be considered customary law is not the object of this article; see Panepinto, A. (2017). The right to the truth in international law: The significance of Strasbourg’s contributions. *Legal Studies*, 37(4), 739-764; Groome, D. (2011). The Right to Truth in the Fight against Impunity. *Berkeley Journal of International Law* 29(1), 175-199.

2016, p. 10) and Colombia have recognized it as an autonomous right in their domestic legal frameworks.

The 1997 Principles on Impunity stated that “[e]very people has the inalienable right to know the truth about past events and about the circumstances and reasons which led, through consistent patterns of gross violations of human rights, to the perpetration of aberrant crimes” (Joinet, 1997, Principle 1). The first moral duty of the State in connection with the right to truth, then, is the elucidation of the facts of the abuses and the restoration of the dignity of victims. This requires not only public knowledge but *acknowledgment*. This acknowledgment “brings back victims into the fold of society, by recognizing their suffering, providing a form of distributive or social justice, and giving out non-conventional resources such as social awareness, collective memory, solidarity, and the overcoming of low self-esteem” (Barahona de Brito, 2001, p. 25). The second aspect, closely linked to the former, is a duty toward society in relation to its traumatic past, even more so when there have been violations on a large scale. Both sides of this right should contribute to the transition toward a new legal and social framework.

2.1. The right to truth of individual victims

From an individual point of view, the Study on the Right to Truth, the abundant case law of the IACtHR and ECtHR and national courts have developed a very rich doctrine on the right of victims and their families. The right to truth is the right of families to know the fate of victims, the location of their remains (*Velásquez Rodríguez v. Honduras*, 1988, para. 181), to “the elucidation of the wrongful acts and the corresponding responsibilities from the State’s competent organs, through investigation and prosecution” (*Blanco Romero et al. v. Venezuela*, 2005, para. 62). It is a legal obligation of States to investigate the abuses, even when they have been committed by a previous administration (UN Human Rights Committee, 1994, para. 12.3). This right to truth, though, was initially considered not autonomous, but “subsumed in the right of the victim or his next of kin to obtain clarification [...] through the investigation and prosecution established in Articles 8 and 25 of the Convention” (IACtHR, *Bámaca Velásquez v. Guatemala*, 2002, para. 201). This duty to investigate, which underpins the right to truth, includes the investigation of violations, the identification and punishment of those responsible and the adequate compensation to victims (IACtHR, *Velásquez Rodríguez v. Honduras*, 1988, para. 174). Other rulings by the Inter-American Court consider the failure to establish the truth a violation of Article 5(1) (*Moiwana Community*, 2005, para. 103). However, there has been an evolution of the Inter-American Court case law, coming close to recognition of the right to truth as an autonomous right (*Gomes Lund and others (“Guerrilha do Araguaia”) v. Brazil*, 2010, para. 200). Some scholars conclude that this development reveals that “the right to truth is now recognized as an autonomous and independent right” (Ferrer Mac-Gregor, 2016, p. 136), but this question remains contested (Van Noorloos, 2021, p. 877).

The ECtHR considers this right a positive obligation of the State, that must provide “information concerning the fate and whereabouts of a family member”, in fulfilment of article 8 of the ECHR (Groome, 2011, 182). The lack of information about a missing person on the part of the State is considered “inhuman treatment” (ECtHR, *Cyprus v. Turkey*, 2001, para. 157), since victims have a right to the truth regarding enforced disappearances (United Nations, 2006, art. 24(2)); this applies also to the circumstances, causes and conditions of all kinds of human rights violations (OHCHR, 2006, n.38). It is, in sum, a right that States must respect and ensure, and a measure of reparation they are obligated to comply with (Ferrer Mac-Gregor, 2016, p. 124). It has been described by UN soft law instruments as a non-derogable right and not subject to limitations (OHCHR, 2006, n.60)³, except when, for example, the identity of victims is involved. When the full disclosure of the truth is not possible, these difficulties must be counterbalanced so that the right to truth is effectively protected (ECtHR, *Al Nashiri v. Poland*, 2014, para. 494).

2.2. “Society is entitled to know the truth about serious human rights violations”⁴

While the importance of the *individual aspect* of this right to truth has been recognized, less attention has been devoted to its *collective aspect*, that becomes central when there have been *mass violations* (instead of a limited number of incidents). Largescale, massive abuses demand “a broader inquiry into the reasons and causes for such violence” than single violations, that entail individual and case specific remedies (Naqvi, 2006, p. 260). When the number of victims involved in the violations is sizeable, that means that there have been large, extensive and wide-ranging deficiencies on different levels, something approximate to a pervasive “culture of violence” and impunity that allows the crimes. In such situations the deepest values have been so affected that the State must articulate more comprehensive truth-seeking efforts to reckon with the past (Rodríguez Rodríguez, 2022, p. 379), reform institutions and encourage a societal assessment of the moral and social failures that surrounded the violence.

The progress of research and judicial rulings affecting violations of human rights during the ‘90s motivated the development of a legal and theoretical framework on the collective right to truth that could be described as follows. Already in 1985 the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recognized that societies can be *collective* victims when they have been deprived of their fundamental rights (UN General Assembly, 1985, para. 1). The first of the Principles on Impunity presents this right in unequivocal terms as an inalienable, fundamental right, that is not simply the right of any individual or their relatives, but also a collective right (Joinet, 1997, para. 17). In turn, this right is linked to the “duty to remember” – the

³ Even though, according to the Working Group on Enforced or Involuntary Disappearances, only the right to truth of the relatives as to the fate and whereabouts of the disappeared person is absolute (United Nations, 2011, n.4.8).

⁴ OHCHR, 2006, n. 25.

“memorialization”⁵ that has become the fifth pillar of transitional justice (Salvioli, 2020, para. 21) – and it entails the need “to guard against the perversions of history that go under the names of revisionism or negationism” (Joinet, 1997, para. 17). Following these Principles, the 2005 Updated Set of Principles noted that the evolution of international jurisprudence in those years had reflected both the individual *and* collective dimension of this right (Orentlicher, 2005, para. 17). As a matter of fact, the Orentlicher principles also affirm the inalienable right of *every people* as “a vital safeguard against the recurrence of violence” (Principle 2) and the duty to preserve memory through archives and other evidence concerning violations (Principle 3). It also recommended truth commissions and/or commissions of inquiry to establish the facts about the violations (Principle 4).

In this same vein, the IACtHR has declared that, besides the right of victims and relatives to the truth, society as a whole has the right to know the truth about individual violations to prevent its future repetition (IACtHR, *Bámaca Velásquez v. Guatemala*, 2002, para. 76-77; IACtHR, *Molina Theissen v. Guatemala*, 2004, para. 82; IACtHR, *19 Tradesmen v. Colombia*, 2004, para. 263). A similar reasoning supports the ruling of the ECtHR in *El Masri v. The Former Yugoslav Republic of Macedonia* (para. 191). In this latest ruling, the Court summarized the third-party submissions of the Office of the High Commissioner for Human Rights (OHCHR), according to which the right to the truth inures to the benefit of the direct victims of the violation, as well as to their relatives and to society at large (ECtHR, *El-Masri v. The Former Yugoslav Republic of Macedonia*, 2012, para. 175), thereby explicitly identifying the whole of society as a bearer of this right in case of human rights violations.

Therefore, the truth-seeking process should include both individual violations but also what could be described as “structural truths”, meaning the “societal factors”, the “systemic or structural causes and circumstances” of the violence (Szoke-Burke, 2015, p. 533), that are part of the “full and complete truth” (OHCHR, 2006, n. 3) regarding the crimes. This structural truth alludes to the “patterns of coordinated action” (IACtHR, *Valle Jaramillo et al. v. Colombia*, 2008, para. 102) that characterize the violations. This broader sense would be what the South African TRC called “factual” or “forensic truth” concerning contexts, causes, patterns (Boraine, 2000, p. 151) and institutional failures that allowed those crimes to happen (ECtHR, *Al Nashiri v. Poland*, 2014, para. 482). It is a right “to an accurate account of the suffering endured”, “to ascertain and establish the true facts”, not a metaphysical or philosophical truth. Thus, establishing the true facts becomes mandatory for victims and society, since the truth is considered a means to bolster society’s confidence in public institutions and the rule of law (Tulkens et al., 2012, para. 1-2.6). The Inter-American Court has declared that truth-seeking mechanisms, such as Truth Commissions, do not replace the duty of the State to establish individual or State responsibility for the crimes, but can help establish “historical truths” and “institutional,

⁵ This “right to memory” of gross human rights violations is gaining increasing importance in the field of transitional justice, after its establishment as a “fifth pillar” of transitional justice, and is going to be the subject of the 2026 study of the Working Group on Enforced or Involuntary Disappearances.

social and political responsibilities” (IACtHR, *Zambrano Vélez et al. v. Ecuador*, 2007, para. 128), clarify the facts, and preserve and build historical memory (IACtHR, *Rodríguez Vera et al. v. Colombia*, 2014, para. 88). Judicial proceedings and truth-seeking mechanisms complement each other, but have different meanings and scope (IACtHR, *García and Family Members v. Guatemala*, 2012, para. 176). A peculiar evolution is noteworthy in two IACtHR rulings. The court explained that “in cases of serious human rights violations, [...] the satisfaction of the collective dimension of the right to truth requires the procedural determination of the most complete historical truth possible (*Massacre of La Rochela v. Colombia*, 2008, para. 195). In 2009, another ruling declared that “in compliance with the obligation to guarantee the right to know the truth, States may establish Truth Commissions, which can contribute to build and safeguard historical memory, to clarify the events and to determine institutional, social and political responsibilities in certain periods of time of a society” (IACtHR, *Anzualdo Castro v. Peru*, 2009, para. 119).

We can sum up the obligations implied by the right to truth, particularly in its collective dimension, as the right to a thorough investigation of the abuses, and a dissemination of the facts of the violations. A number of rulings of the IACtHR have ordered the publicization and dissemination of the details of a case of human rights violations as part of the satisfaction – including very concrete measures of memorialization – (IACtHR, *Rodríguez Vera et al. v. Colombia*, 2014, para. 570-572; IACtHR, *Bulacio v. Argentina*, 2003, para. 107). Regarding the obligation of publicity, we can cite the *Cantoral Benavides v. Peru* ruling, where the IACtHR mandated the publication of the court sentence in the national gazette, and in a national paper (2001, para. 99). But unless this is explicitly stated, the obligation of the state seems limited to allowing public access to the content of the ruling (Rodríguez Rodríguez, 2022, p. 382).

As for the obligations of clarification implied in the right to truth, the main focus is the procedural obligation to investigate. This investigative duty is one of means, not of results, so that a “complete and accurate record” of the crimes is reached (ECtHR, *Avşar v. Turkey*, 2001, para. 394; *Brecknell v. The United Kingdom*, 2007, para. 66) through a “thorough, impartial and careful examination of the circumstances [of the violations]”, reasonably prompt and expeditious. There must be also a “sufficient element of public scrutiny of the investigation or its results to secure accountability” (ECtHR, *Association 21 Décembre v. Romania*, 2011, para. 133.135), that Panepinto considers related to the emerging right to access information of public interest (2017, 752). Such inquiries must be sufficiently “rigorous” and “dissuasive” to handle the legacy of violations (ECtHR, *Przemysk v. Poland*, 2013, para. 74). Therefore, the test of the effectiveness would be the accomplishment of a diligent investigation. Although the procedural obligations are formally grounded in Articles 2 and 3, they pursue objectives that closely align with the collective dimension of the right to truth (like preventing impunity). Moreover, there’s also an obligation of all the agents of the State to allow access to the information related to the violations (IACtHR, *Gudiel Álvarez (“Diario Militar”) vs. Guatemala*, 2012, para. 300; IACtHR, *Gomes Lund and others (“Guerrilha do Araguaia”) v. Brazil*, 2010, para.

201) and to preserve archives that document the abuses (Orentlicher, 2005, Principle 14; IACHR, 2014, n.28).

A crucial push toward a consolidation of the collective aspect of the right to the truth and the definition of its object was provided by the 2014 judgments *Al Nashiri v Poland* and *Husayn (Abu Zubaydah) v Poland* (Van Noorloos, 2021, p. 883), that involved a case of suspects of terrorism that were subjected to torture and denied basic rights as detainees. Drawing on the concept of “right to truth”, as expounded by the UN Special Rapporteur, the Court claims that a distinction must be made between a “private” and a “public” dimension. The latter demands the “clarification of the general context, the policies and institutional failures and decisions” that enabled the violations (ECtHR, *Al Nashiri v. Poland*, 2014, para. 482). For that reason,

“where allegations of serious human rights violations are involved in the investigation, the right to the truth regarding the relevant circumstances of the case does not belong solely to the victim of the crime and his or her family but also to other victims of similar violations and the general public, who have the right to know what has happened.

An adequate response by the authorities in investigating allegations of serious human rights violations may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of impunity⁶, collusion in or tolerance of unlawful acts” (ECtHR, *Al Nashiri v. Poland*, 2014, para. 495).

Hence, when gross or systematic human rights violations are alleged to have occurred, the right to know the truth belongs not exclusively to the immediate victim and his or her family, but also to society. Citing *El Masri*, the Court goes on to say that

“[o]nce it was recognized that in cases of gross or systematic violations there was a free standing right to truth belonging to society at large, then it would follow that any individual with a legitimate interest in the truth was entitled to invoke that right. If the right to know were to be confined to the individual who had suffered the violation or his representatives, then the exposure of grave and systematic international crimes would necessarily be dependent on the chance occurrence of there being an individual victim or relative who was able and willing to bring proceedings” (ECtHR, *Al Nahsiri v. Poland*, 2014, para. 482-483).

Further jurisprudence points in the same direction and links more explicitly the right to truth and the “emerging pillar” of memory. The Court mentioned the public interest with regard to “the crimes of the previous totalitarian regime”, stating that the obligation to investigate and prosecute human rights violations is helpful for a nation to learn from its history, combat impunity and protect the collective memory of the affected people, which is part of its heritage (ECtHR, *Janowiec and others v. Russia*, 2013, para 214.24).

On the other hand, the collective dimension of the right to the truth may also be interpreted as having a protective function with respect to the integrity of public debate about past violations, as we will see. In this sense, it may be interpreted as limiting “the number of lies that can be circulated unchallenged in public discourse” (Ignatieff, 1996,

⁶ A similar line of reasoning is present in *Aslakhanova and others v. Russia*, para. 231.

p. 113). The restrictions set by the ECtHR to certain narratives under Articles 10 and 17 (and not in terms of a right to truth) provide indirect support for this idea, since the Court has excluded from the protection of freedom of expression the denial of historically established facts (like the Holocaust) that undermine the dignity of victims and the foundations of democracy (e.g. *Garaudy v. France* (2003), *Lehideux and Isorni v. France* (1998), among others). From a broader normative perspective, this protective dimension may be related to the “duty to remember” and the “right to know [the truth]” as formulated by the Principles on Impunity (Joinet, 1997, para. 17), which seek to guard society against historical falsehoods that re-victimize and offend the dignity of victims.

In conclusion, the interest of society in knowing the truth “contributes an additional, distinct dimension to the right to truth” (Panepinto, 2017, p. 752), but the protection of this right remains insufficient, among other reasons on account of the fragmented approach of the jurisprudence, that has examined potential violations of the right to truth under different articles (Panepinto, 2017, p. 755). We could conclude that the case law doesn’t fully develop the collective aspect of the right to truth, especially when it comes to establishing positive State obligations – starting with the lack of clarity on who are right holders of the right to truth in a collective sense (Van Noorloos, 2021, p. 883). While the IACtHR and the ECtHR, from different standpoints, have expressly acknowledged that the right to truth underpins the duty to investigate and prosecute, the HRC viewed it more narrowly, associated mainly with the inhuman treatment of the next of kin (Sweeney, 2018, 384).

To sum up, the combined analysis of the case law of the IACtHR and the ECtHR brings to light the differences in the development of both systems. The scale and systematic nature of human rights violations in the Inter American system is the main reason why the IACtHR has played a leading role in the doctrinal development of this right, expanding it and linking the right to truth to other rights of TJ (like memorialization). The ECtHR, for its part, has further enriched the substantive concept of this right, reinforcing the collective dimension of this right even in single-incident violations, but in a more limited scope.

3. THE PERFORMATIVE ASPECT OF THE RIGHT TO TRUTH

The effect of (the right to) truth for transitional justice processes and for the consolidation of democracy can be described as “performative”. A potential objection to this performative potential lies with the fact that this right entails an obligation of means, not of results. However, the diligent investigation required by the right to truth must produce a sufficiently reliable, factual account of the violations. That’s what some judges of the ECtHR explained in their Joint Concurring Opinion when they defined the right to truth as “the right to an accurate account” of the violations, to “ascertain and establish the true facts” (Tulkens et al., 2012, para. 1-2.6). Hence, a minimum set of established facts that derive from the appropriate investigation should give rise to a tentative shared narrative of the traumatic events of the past. But why is this “shared truth” so capital for

a society that has gone through massive crimes? The problems of dealing with the past seem most complicated when it comes to reaching “the truth” or building a “national” or “collective” memory of a traumatic past⁷. Our point is that when investigations manage to describe the dynamics, patterns and structural violence of a “barbaric regime” (Bhargava, 2000, p. 45), the antecedents, context, underlying factors, and so on (UNTAET, 2001, Section 13.1), a fundamental transformation of public discourse takes place, towards greater respect for democratic values and human rights; and, secondly, the pressure for justice and accountability might push for trials, reparations, institutional reforms, and memorialization, something that is partly confirmed when the impact of truth commissions is assessed (Bakiner, 2014, p. 22) and that might warrant its consideration as foundational with regard to the other rights of transitional justice. Describing the main truth-seeking TJ instrument, which are truth commissions, Lawry-White holds that such commissions (especially when accompanied by reparations) “reopen the space in which victims can assert their place, and in this sense, [...] ‘de-victimize’ the victims”, recognizing them as bearers of rights formerly denied (2015, pp. 150-151) and reintegrating them in a moral sense to a democratic society from which they had been excluded.

We contend that this “minimum set of established facts” that satisfies the right to truth and develops into a reasonably solid and generally shared “historical truth” or “public truth” is capital for: a) a renewed understanding of the past; b) the realization of the other rights of transitional justice, reconciliation of the country and the viability of democracy, thereby supporting the claim that the right to truth may be in transitional justice.

3.1. A new understanding of the past

When we talk about the “effects” or “operational”, performative function of truth, of this “public truth”, we mean that factual truth can prompt a change in what Foucault called the “truth regime”. For Foucault, the “truth regime” is the set of public discourses that a society accepts and makes work as truthful (1994, p. 112). Leaving aside the infinite cycle of “weak” interpretations that, in the post-modernist view, is the best that we can aspire to (Escandell Lucas, 2026, pp. 45-46), we argue that “truth”, factual truth, can be “objective” to some extent, although having only an approximate value (Lerner, 2007, p. 128), and therefore can claim a degree of public credibility. If the factual truth about the past is, broadly speaking, acknowledged, then we have a new or emerging “regime of truth” whereby society is generally aware of the violations. It is a passage from the borders of the private knowledge of the truth to a situation where the truth establishes itself in the collective field and shapes the global picture of the violations (Rodríguez Rodríguez, 2022, p. 379). Denialist discourses are isolated and discredited, and society can move on from that past with a collective commitment of “*never again*” allowing such

⁷ The divisive nature of the past is mirrored, for example, in the mixed reactions within Chilean society to the death of former dictator Augusto Pinochet in 2006, ranging from joy and celebration to mourning and eulogy (Blanco-Rivera, 2009, 133).

crimes. Exposing the details of past crimes is equivalent to a moral condemnation that makes those behaviors less socially acceptable in the future, which might have a deterrent effect and prompt a collective reassessment of the kinds of behaviors morally permissible (Wiebelhaus-Brahm, 2010, p. 11).

But in which sense can *truthful* narratives about the violations promote a renewed, general understanding of the past? Some truth-seeking mechanisms have indeed been effective in that respect. For example, truth commissions “made it impossible to claim, for example, that the [Argentinian] military did not throw half-dead victims into the sea from helicopters. In Chile, it is no longer permissible to assert in public that the Pinochet regime did not dispatch thousands of entirely innocent people” (Ignatieff, 1996, p. 113). In South Africa, after the TRC, it became impossible to deny the practice of torture by the security forces, or the involvement of the state in ‘black-on-black violence’ (Truth and Reconciliation Commission of South Africa, 1998, p. 112). The frame of public discourse and public memory was completely transformed (Ignatieff, 1996, p. 113). The disclosure of the nature and extent of the violations can re-create or change the regime of truth. In Brazil, the work of the Truth Commission (2011-2014), even after many years since the end of military rule, started to challenge the military’s continued influence over the narrative of the past through an alternative and robust account of state violence (Torelly, 2018, p. 214). Deep-seated beliefs and attitudes towards indigenous minorities have been severely disrupted after the report of the Canadian Truth and Reconciliation Commission (Nagy, 2020, p. 237).

The case of Germany is illuminating, and is probably strong evidence of a positive, transformative effect of historical truth in the national conscience. The Nuremberg trials, seen by many as extremely flawed, were the first step toward the emergence of a realistic image of the intrinsic criminal character of the Nazi regime. Some hold that Nuremberg “effectively banished Nazi ideology from the domestic political sphere” and triggered a process of deep introspection that made Germany ripe for democracy (Moghalu, 2006, p. 39), preventing “myths and fantasies about the Second World War [from] developing in Germany the way they did about the First in the 1920s” (Robertson, 1999, pp. 215-216). Most scholars assert that this was only a first and partial step (García Pascual, 2025, p. 279), and that the consolidation of a stronger consensus came only later. According to Norbert Frei, the public perception of the Third Reich underwent a dramatic change from the early stages of the Federal Republic to the end of the century, shifting from the image of an “alien regime” with a few collaborators and numerous passive followers into a criminal regime that enjoyed widespread complicity and social anchoring (2002, p. 365). The cumulative impact of subsequent trials, public debates (like the *Historikerstreit* about the “uniqueness” of the Holocaust and the memory of Nazi Germany), memorial initiatives, literature, documentaries, public testimonies, and so on, contributed to the emergence of a more uncomfortable but historically rigorous understanding that became widely shared in the German society (Salvioli, 2020, n. 57), shaping a “public culture of collective remorse” (Olick, 2013, p. 13) (the so-called *Erinnerungskultur*) that gradually

took hold and that by the end of the century had become part of the national *Weltanschauung*⁸.

The discovery of truth can contribute, according to Pedro Nikken, former president of the Inter-American Court of Human Rights, to create a collective conscience as to the need to prevent the repetition of similar acts (Sierra Leone Truth & Reconciliation Commission, 2004, p. 79). A general understanding of the historic facts, channeled through a truth commission, for example, can produce a “sense of societal consensus”, a “national story” through the public process of sharing the testimony of victims (Teitel, 2000, p. 97). This “shared narrative” is, of course, never completely shared, especially when there’s disagreement over the most basic facts (Daly, 2008, p. 39). There will always be conflicting narratives of the past, none of which can be *the narrative*, excluding every other interpretation. Devin Pendas uses the example of the Nuremberg trials to point out at the complex interplay between competing versions of truth during trials, emphasizing that, especially when the previous regime still enjoys an important degree of popular support, not even the most compelling story is going to persuade large swathes of society (2006, pp. 11-12). In this regard, William Schabas asserts that the effect on German society of those trials was considerably less than the Frankfurt trials in the ‘60s, because it was an autochthonous court the one passing judgment, and not a foreign tribunal (2019). This fact invalidated the impressions many held in 1945-1946 about the Nuremberg trials as being a form of “victors’ justice”.

In any case, like we said, a minimum epistemological set of objective truths is both possible and necessary. This minimum epistemic consensus or common account about the violations, that becomes the keystone of the collective intention expressed in the “*Nie wieder*”, the “*Nunca más*”, is constructed mainly through legal measures, like trials, truth commissions, official stories and so forth (Teitel, 2000, pp. 84-86). Truth has a capacity to catalyze the social repudiation of human rights atrocities, sensitize the population to the human rights abuses and rebuild its moral and ethical values (Ferrara, 2019, p. 97) – and even encourage reconciliation. But without some collective agreement on what happened and why, reconciliation, in none of its several senses, seems possible (Crocker, 2009, p. 357). Some have posited that this reconciliation is the end product of a long and complex process, an equation where truth is the premise and justice the middle term (Lerner, 2007, p. 124).

Conversely, history provides numerous examples of the risks associated with the manipulation of the past⁹ or with the silence, the tacit agreement not to deal with a history of human rights violations. Spain chose the latter in the 1970s after the death of General Franco, a silence that became institutionalized by a blanket amnesty law and channeled

⁸ We could argue that the militant defense of democracy and human rights has become a cornerstone of the German political culture. Just to cite an example, after revelations of the existence among far-right circles of a “masterplan for remigration” of migrants and “non-assimilated” citizens of foreign descent, a massive wave of demonstrations swept across the country in reaction (Hensel & Jasser, 2024, 60).

⁹ Most famously, the case of Germany after the First World War with the so-called *Dolchstoßlegende*.

via what came to be known as “pact of forgetting”. This decision not to come to terms with the past for fear of provoking a return to civil strife (Garzón Vallejo, 2023, p. 64) had major consequences. Silence is also a form of memory politics, but one that denies fundamental rights to part of the polity and hence generates bitterness and animosity.

After the first exhumations and public debates resurfaced in the 2000s, the memory of the conflict and the dictatorship became one more battleground of the political fray and the rights of victims were increasingly politicized (García Amado, 2008, 61). The lack of a fundamental and shared narrative of the crimes of the period 1936-1975 keeps promoting the deep-seated animosities in the country¹⁰, along with revisionist accounts of the authoritarian past (Hepworth, 2023, p. 275) that deny the crimes and distort the historically proven facts. The social division concerning the past was clearly seen through the turbulent legislative process of the two “memory laws” passed in 2007 and 2022, that reminded the rigid divisions that fractured the country at the time of the civil war (Aguilar Fernández & Jimeno Aranguren, 2022, pp. 75-82; Delgado Cendagortagalarza, 2024, pp. 105-107); this is commonly referred to with the expression “the two Spains”. Even more concerning than the high polarization of the country is the ignorance of younger generations about the crimes committed during the Franco regime, that appears to be connected to the positive assessment of the regime by over 20% of youths between 18 and 24 (CIS, 2025, 5; Junquera, 2025).

In sum, one could argue that a considerable change might take place when structural truths are brought to the fore, albeit this is related to a wide range of circumstances. At the very least, we could say that a “transitional truth” grounded on provable facts has an impact on society and opens up public debates around the past; at best, it radically transforms the national vision of history and achieves a wide consensus, becoming part of the national legacy and translated into a shared commitment to human rights. In contrast, agreements to forget without confronting the past don’t seem sustainable (Aguilar Fernández & Ramírez Barat, 2018, p. 596), because, as Pablo de Greiff points out, the burden of the past is enduring; it does not go away simply through economic progress, however helpful that might be. It might work, but only for a while, because “there are things we cannot reasonably expect our fellow citizens to forget”. Massive violations leave in their wake a sense of isolation, social fragmentation and civic mistrust, effects that manifest themselves multi-generationally (2019) and that need to be tackled for a democracy to be sustainable. The right to truth, in conclusion, is a *protection* for democracy, a “safety net” that wards off revisionism and denialism. In the permanent competition of different narratives for hegemony, factual truth aspires to become the cornerstone of the commonly held values that undergird democracy.

This brings us to the institutional structures that promote this change, and to the relationship of the right to truth on the other rights of transitional justice.

¹⁰ Just to mention an example, the transfer of General Franco’s remains to a private site in 2019 was supported by 43% of Spaniards, and opposed by 32%, according to a survey (Carvajal, 2019).

4. TRUTH COMMISSIONS, THE RIGHT TO TRUTH AND THE OTHER RIGHTS OF TRANSITIONAL JUSTICE

Truth Commissions represent the most prominent and institutionalized framework of truth-seeking in transitional justice. That's why this section uses them as a primary case to assess the impact of the right to truth on other transitional justice mechanisms, and the hypothesis that this right could be foundational in relationship to the rest of rights of transitional justice. A detailed analysis of other truth-seeking mechanisms falls beyond the scope of this article.

Dozens of truth commissions that have been set up over the last four decades worldwide. The literature on their effects is still developing and doesn't provide enough statistical data, and the studies that have been done so far don't lead to unambiguous conclusions (Ferrara, 2019, p. 76), given the conceptual, methodological and epistemological challenges involved in assessing the results (Van der Merwe et al., 2009, pp. 5-6). It also remains difficult to measure the causal effects of truth commissions on social and political norms, especially since the majority of studies are conducted not long after the conclusion of the truth commission (Thoms et al., 2010, p. 336); authors like Ferrara suggest a timeframe of 20-30 years as the minimum amount of time necessary to examine the long-term impact of a TRC (2019, p. 78). Nevertheless, truth commissions appear to have positive effects on transitional justice, human rights and democracy, albeit if they are combined with prosecutions and other mechanisms (Bakiner, 2014, p. 10). More specifically, the hypothesis we are discussing here is whether the right to truth (mainly realized through truth commissions, but not exclusively) is foundational for the other rights of transitional justice. By "foundational" it should be understood a chronological, epistemological and moral role of truth both for transitional justice and democracy. It indicates that this right might be the cause or main influence that prompts the satisfaction of the other rights of transitional justice.

4.1. A foundational role of the right to truth in transitional justice?

According to Valencia Villa, there's a chronological precedence of the satisfaction of the right to truth, in the sense of being one of main conditions for transitional justice: "[t]he first step in the transitional process has been the construction of public truth and the recovery of historical memory regarding the tragic events of the past" (2008, pp. 84-85); this position was similarly shared by the Rettig Commission, whose founding statement declared that "only on the basis of truth" will it be possible to satisfy the demands of justice, achieve reconciliation, restore the dignity of victims and repair the harm (Supreme Decree No. 355, 1990). For his part, González Ibáñez contends that "only access to truth, and the determination of what occurred during a specific historical moment, allow for effective legal responses" (2022, p. 39). This seems epistemologically obvious, because, as Crocker asserts, "appropriate sanctions are impossible without reasonable certainty about the identity of perpetrators and the nature of their involvement.

Public acknowledgment must refer to specific occurrences, while reparations presuppose the accurate identification of victims and the kinds of harm they suffered”. That’s why he draws the conclusion that “without reasonably complete truth, none of the other goals of transitional justice [...] are likely to be realized” (2009, p. 357). Truth commissions have direct and indirect effects. They often set off a whole, general dynamic of *accountability*, with long-term reverberations that overcome partial and short-term failures, and that includes other transitional justice measures.

In moral terms, objective and impartial clarification serves the collective goal of reconciliation and democratization (Seuba Hernández, 2012, p. 66). If the memory of a nation is part of the ethical heritage of a democratic society, that embodies the effort of citizens to build civic and democratic social relationships (Vinyes, 2011, p.33; as cited in García Pascual, 2025, p. 292), this memory cannot pervaded by manipulation and gross falsehoods, lest resentment and division perpetuate themselves. Those sentiments might be the breeding ground for a relapse to violence and conflict. The reparative character of transitional justice is grounded in national reconciliation, the redress of injustice and, above all, the reconstruction of historical truth, which is achieved through the public acknowledgment of victims (Ferrajoli, 2016, p. 150).

A democratic society has a moral and legal duty to clarify the violations of the most basic rights of some of its members and acknowledge their sufferings in order to rebuild the bonds of civic trust that violence has severed. This is closely connected with the right to memory, that requires the assumption of collective responsibility, which in turn reinforces democratic stability. Thus, “memorialization policies are justified by the pernicious effects of silence or oblivion of the crimes both for victims and society” (García Pascual, 2025, p. 280.285). Knowledge and acknowledgment (of the facts) of the crimes can contribute to building a society that is more sensitive to human rights, as the aforementioned reaction to the “masterplan for remigration” in Germany indicates. Commenting on the South African TRC in retrospect, Bea Pérez notes that the commission sought the knowledge of the truth as a guarantee of non-recurrence while establishing a new democratic framework. The commission was designed as a forum for perpetrators, victims and society to discover a divided past and construct a shared narrative (2020, p. 161). Nations and democracies rest on shared narratives; but when gross misrepresentations of the history of a country hold sway, the field is ripe for social divisions, discontent, political bickering and confrontation.

This approach has solid empirical evidence to support it. Priscilla Hayner’s seminal work on truth commissions, *“Unspeakable Truths”*, posits that truth commissions are often a major factor in the satisfaction of the other rights of transitional justice, though their benefits are more limited than initially expected in the earlier days of transitional justice.

Starting with the link between truth commissions and criminal trials we should cite Professor Hayner, that observes that in many countries,

largely on the basis of the findings of these countries' truth commissions, the state has paid significant reparations to thousands of victims or families of those killed or disappeared. A number of significant prosecutions have followed from truth commissions. Important judicial reforms were put in place in El Salvador following the truth commission recommendations. In South Africa, very few people will now defend or try to justify the system of apartheid, or question the fact that egregious practices such as widespread torture were used to sustain apartheid (2010, p. 34).

In Peru, the Truth and Reconciliation Commission referred nearly fifty individuals for prosecution (González Cueva, 2006, p. 88), and, later on, its findings and conclusions were used in the trial of former president Fujimori (Ferrara, 2019, p. 90). In Argentina, according to Moreno Ocampo, the findings of the commission for disappeared persons (CONADEP), provided vital information to prepare solid cases in later trials¹¹ (Hayner, 2010, p. 139), that resulted in the conviction, among others, of five generals ("the first country where a successful relationship between the truth commission and the courts was established") (Ferrara, 2019, p. 89). A similar reinforcing impact in the realm of criminal justice was observed in many countries like Chile, Nigeria, among others (Bakiner, 2014, pp. 26-27; Olsen et al., 2010, p. 469). Transitional justice can get revisited even after many years, confirming Sikkink's idea of a "justice cascade"; Chile's transitional justice process is a point in case (Schabas, 2018; Sikkink & Walling, 2007, p. 442), because the country has had two truth commissions that contributed to the erosion of the effects of former amnesty laws. As José Zalaquett held in connection to that country, at times the political constraints and the balance of power are so delicate that the best that can be done is to seek the elucidation of the violations and forgo, temporarily, the justice side of the equation (1992, p. 1432).

In fact, "[t]he archives and reports of several truth commissions have been relied on, years later, in efforts to prosecute accused perpetrators in international (and sometimes domestic) courts. Suddenly, the usefulness of having a well-documented record of crimes becomes clear, even where domestic trials do not at first seem possible" (Hayner, 2010, p. 36). This applies to the Guatemalan case against a former president and other high-ranking military officers, the Pinochet case in Spain and the trial of former Chadian dictator Hissène Habré (Ferrara, 2019, p. 88). Truth-seeking mechanisms set down a historical record that can be debated openly in court, adding credibility to the evidence accepted in a criminal justice (Naqvi, 2006, p. 247). Truth commissions' focus on patterns, causes and consequences of the violence can go much further than trials in their inquiries, outlining the full responsibility of the state – including the military, the police and the judiciary (Hayner, 2010, 45) –. Historical truth exceeds the limits of criminal trials and must be entrusted to other mechanisms (Zalaquett, 1991, p. 99). The dataset created by Sikkink and Walling on truth commissions proves the close connection between truth commissions and prosecutions: the majority (two thirds) of the countries

¹¹ Since Argentina resumed in 2003 the trials for the human rights violations during the military regime, over 1,100 perpetrators had been condemned by 2023 (Ministerio de Justicia (s.f.). *Trials for Crimes Against Humanity in Argentina*).

that had truth commissions also held trials at some point, but not necessarily *after* the commission (2007, p. 430).

On the other hand, the effects of truth-seeking are not limited to pressure for justice but also seem to have a positive impact on reparations. The public knowledge of the truth provides the moral legitimation for the reparations (Ferrara, 2019, p. 85), making these two rights inseparable. A wide range of official and non-official commissions, inquiries and mechanisms have brought about large-scale compensations, like the ones paid to Japanese American victims of the relocation and internment policies of the U.S. government during the Second World War (Hinnershitz, 2021), or to victims of secret syphilis studies in Tuskegee (Alabama) (Reverby, 2020, p. 895). The official sanction of a truth commission remains extremely valuable, and its recommendations for reparations “provide a supportive and normalizing function, which ultimately recognize the need to move beyond truth to alleviate the ongoing consequences of mass atrocities for victims” (Moffett, 2019, p. 170). Not only does the truth reinforce reparation actions, but is in itself a key, basic form of reparation that has also therapeutical benefits (Gómez Isa, 2006, p. 41). On the contrary, transitional justice processes like Morocco’s show that reparations without truth are deemed insufficient. The initial reparation initiatives implemented by the Independent Arbitration Panel in the ‘90s were severely criticized for its poor record of truth-seeking. So much so, that while the regime tried to bring the process to a final closure (Alici & Falschebner, 2025, p. 4), civil society started to mobilize and put increasing pressure on the government to demand an independent truth commission and a broader definition of reparation (ICTJ, n.d.). Reparations without truth-seeking mechanisms and acknowledgment can be seen as an attempt to buy their silence and might let denial and revisionist accounts flourish (Magarrel, 2007, p. 2) – therefore being ineffective in a more holistic sense, which is a complete transformation of previous social relations of discrimination and mistreatment. The truth that is “revealed, documented and publicly disclosed by truth commissions lays the foundation upon which a social and political consensus can be built to implement a program of reparations” (Ferrara, 2019, p. 84).

As regards the so-called fifth pillar of transitional justice, which is the right to memory, it is immediately linked to the right to truth. So much so, that memory was considered for a long time subsumed in the right to truth (Nash Rojas, 2021, pp. 215-216). Epistemologically, the duty to *remember* presupposes that some measure of truth *is known* and must be remembered by society; that some brutally elementary data about history be preserved (Charney Berdichewky, 2019, p. 221). Indeed, the IACtHR explicitly linked the full knowledge of the truth about the criminal acts and memorialization measures as an act of reparation (*Rochac Hernández and others v. El Salvador*, 2014, para. 234). Knowledge and acknowledgment, linked to the right to truth, are the base for a construction of an individual and collective memory about the traumatic events (Nash Rojas, 2021, p. 224). In the memorialization field, truth commissions have had a significant impact in many countries. Countries like Rwanda (Viebach, 2023, p. 120) Argentina, Chile, South Africa and Morocco (Ivanisevic, 2009, p. 10) have turned the

sites of human rights abuses described in truth commissions' reports into memorials. Such places have become symbolic places of "living memory" where society can confront and process the violations with a view toward reconciliation and peaceful societal coexistence (Salvioli, 2020, n. 37). Progress in this field, though, has been slow in most other countries (Ivanisevic, 2009, p. 10).

Obviously, discourses of memory are fluid and changing (Gutiérrez-Rodríguez, 2025, p. 336) and can never be fixated once and for all. But, as the recent debates around (post)truth, alternative facts and politicized narratives show, a set of factual, proven truths is crucial for democracy in general, and more specifically, in connection with historical abuses, to avoid the mistakes of the past (non-recurrence) and prevent the emergence of denialist narratives. The facts concerning violations of human rights are, as Joinet said, part of the legacy of a country, and the measures aimed at establishing the truth must also serve to preserve collective memory (Orentlicher, 2005, Principle 3). Hence, once the duty to investigate and establish the factual truth about the violations has been granted, there is a duty to remember "through a set of institutions, norms and practices – including the commemoration of historical dates, the creation of memory museums, and the criminalization of historical denialism, among others". That includes the regulation of the production of narratives about the past in the public sphere (Charney Berdichevsky, 2019, p. 217). Victims and civil society are increasingly emphasizing the importance of memorials as a potential tool for debate, education and active participation in order to construct a balance between the multiplicity of perspectives of the past (Brett et al., 2008, p. 26), but they are often challenged by denialist accounts (Marchiaro, 2021, pp. 338-339). In some way, the right to memory seeks to break the past cycle of abuses (non-recurrence) and incorporate that past into the collective memory of a nation so that it doesn't remain simply *part of the past*, but part of the identity of a people; when it comes to atrocious crimes, "memory must be continually reaffirmed" (Merkel, 2008). But this "duty to remember" must be anchored in the right to truth.

Finally, since the non-recurrence of violence stands out as the forward-looking goal of the transitional justice process, any truth-seeking mechanism must identify the institutional shortcomings that allowed the violations. As a matter of fact, preventive measures and non-repetition "start with the revelation and acknowledgment of the atrocities of the past" (IACtHR, *Bámaca Velásquez v. Guatemala*, 2002, para. 77). In this regard, "a commission intimately familiar with the nature of abuses on an individual and systemic level will often be well placed to efficiently make recommendations for reform" (Szoke-Burke, 2015, p. 565). But non-recurrence of conflict is contingent upon a collective and shared memory of the horrors of the past (Ferrajoli, 2016, p. 151).

Overall, we can infer that truth commissions have wider repercussions on the other rights of transitional justice. It is opportune to delve into its effectiveness, and to discuss its potential foundational role in transitional justice, since these two aspects are intimately related.

4.2. Analyzing the effectiveness of truth commissions

However difficult it is to pinpoint causal and direct effects of truth commissions, in some cases they seem to have been instrumental in transforming social norms and cultivating a culture of nonviolence and respect for human rights. More specifically, the major benefits truth commissions can yield depends on the findings and recommendations of the final report being incorporated into policy:

If a government acknowledges the commission's final report, legislates reparations for victims and establishes watchdog institutions for human rights protection, then these reforms are likely to lead to progress in democratic governance and human rights conduct. Direct political impact crucially depends on political decisions makers' ability and willingness to implement commissions' recommendations (Bakiner, 2014, pp. 7.20).

While there's much debate about the effectiveness of truth commissions to promote democracy, respect for human rights (Dancy & Thoms, 2022, p. 559) and institutional reform, there is a general agreement about its chances of success being enhanced when the government publicly endorses the commission's work, the report is published and made widely available, and a reparation's program is implemented (Bakiner, 2014, p. 20). This also implies the creation of entities that monitor the implementation of the recommendations of the truth commissions and instigate further measures of redress (Wiebelhaus-Brahm, 2010, p. 11).

The empirical study of Onur Bakiner on 15 national truth commissions worldwide drew some important conclusions on the practical effects of these institutions. First, the commission's report was published in most of those countries and officially endorsed by the president in some of them. The governments dragged their feet to start a reparations program as recommended (but eventually did), but four countries ignored the recommendation altogether. Bakiner's study confirms the previously mentioned social pressure that very often builds up after the facts of the past are disclosed, something that later empirical research has confirmed (Dancy & Thoms, 2022, p. 579). To a varying degree, several truth commissions "have provided a platform for domestic and international human rights groups to make demands on the government and evaluate policy progress", with evidence of substantial civil society mobilization in 10 countries out of the 15, that pressured the government into publishing the report of the commission or implementing reparations (Bakiner, 2014, pp. 21-24). Kim and Sikkink observe a positive effect of trials and truth commissions globally because they have deterrent effects in other countries, but also because they become a normative factor that changes societal values (2010, p. 957) and therefore has a notable impact on the legal framework and social and political practices. The research of Olsen, Payne and Reiter holds that for truth commissions to be effective they need to be followed by prosecutions and amnesties. In fact, commissions could even exacerbate social problems when applied alone (2010, p. 1004). Other authors are more cautious and attribute the limited impact that some empirical studies suggest to the limited powers and time of functioning of truth

commissions, in particular in the field of judicial reforms. However, after a truth commission there seems to be more participation in democratic procedures and human rights protection, especially when the report of the commission is made public (Dancy & Thoms, 2022, pp. 564-565.575-576). These authors find that the most tangible impact of truth commissions is indirect, since they attract the attention of both civic society and state agents and encourage them to change behaviors – rather than changing institutions (2022, p. 579). On the other hand, access to archives and publicization of the truth reached by the commission seem essential to promote democratic goals like public deliberation (Crocker, 2000, p. 101). Some truth commissions, like the Moroccan, have provoked a “moral response” nationally and internationally, and meaningfully energized public discourses about the past – even “repoliticizing” part of its citizens (Loudiy, 2014, pp. 6-7). Nonetheless, this specific country seems to confirm the insufficient extent of reform that a truth commission may promote. The “justice cascade” in the country crystallized in a new Constitution that provided for greater human rights protection (Hadji, 2021, p. 46). Subsequent events prove that those guarantees have not delivered, though, and human rights are being only partially respected (Naguib, 2020, p. 415; Hassan, 2025, Kochenburger, 2022), as the violent crackdown on the recent wave of protests suggests (Amnesty International, 2025). In countries like Chile, the erosion of credibility of perpetrators seems to have created political conditions towards institutional reforms, making the country more democratic. Other countries, like South Africa, have had a more limited record of implementation of the institutional reforms (Wiebelhaus-Brahm, 2010, pp. 20.35). On the whole, even when the truth commissions have recommended vetting and reform of institutions, those measures have had a mixed record of success, due to the fact that they don’t often get to the ties between human rights violators and economic and political actors that back the culture of impunity (Roht-Arriaza, 2016, p. 32). More recent trends in transitional justice rightly point to the need for a wider renewal of civic and political culture and, especially, improvement of the economic conditions that trigger conflicts, suggesting that a more comprehensive social transformation of the underlying factors is needed (Sharp, 2018, p. 24) – what some call “transformative justice”. Again, the epistemological obstacles to assess the links between a truth commission and guarantees of non-recurrence is a major challenge. GNR is an understudied category (McGill, 2019, p. 42), while data and the required timespan prevent from reaching clear conclusions. It appears that the links between truth and institutional reform, channeled through a truth commission, is heavily country-dependent, warranting no generalization.

In conclusion, a corollary of what we’ve said so far is presented in the IACtHR ruling in *Goiburú and others v. Paraguay*: “issuing a judgment that determines the truth of the facts and all the underlying elements of the case, as well as the corresponding consequences, constitutes a way of contributing to the preservation of historical memory, providing reparation to the victims’ relatives and, at the same time, helping to prevent the recurrence of similar events” (2006, para. 53). There is a close relationship between the different rights and mechanisms of transitional justice. Clarifying past violations through truth commissions or otherwise is a form of justice and often contributes to criminal prosecutions. It is also a form of reparation to victims, albeit

limited, in both cases. In turn, truth furthers the preservation of historical memory – again, a way to do justice and repair – and changes the social, institutional and cultural conditions where the violations took place. But the research on truth commissions proves that scholars remain divided over their repercussions and benefits. It seems that their impact is highly dependent “on the willingness and ability of other stakeholders, such as politicians, domestic and international HROs, and courts, to follow through”. And, even though the right to truth may have, to some extent, chronological, epistemological and moral precedence over the other rights of transitional justice, no necessary causal link can be established between truth commissions and the other transitional justice mechanisms. The proceedings of truth commissions and their aftermath are subject to numerous variables, so that truth commissions have usually positive effects, but they cannot necessarily be regarded as catalysts for the whole transitional justice process. The peculiar circumstances of each conflict have given rise to different TJ processes whose development is conditioned by the situation of each country. Transitional justice instruments have been implemented in different order and often imperfectly. But even when the right to truth is satisfied, sometimes the other rights are not guaranteed.

At any rate, the claim that TRCs are agents of impunity that replace prosecutions seems overstated, and makes some forget the potential for synergy (Bakiner, 2021, pp. 75.77). A major obstacle to assessing the effectiveness and impact of truth commissions is the limited empirical evidence, the difficulty of examining the implementation of truth commission recommendations (Wiebelhaus-Brahm, 2010, p. 11), and the intricacies of such complex processes, that make it extremely risky to put forward causal inferences. Nevertheless, it is true that the countries that implement truth commissions and trials tend to have better human rights records than countries that use fewer transitional justice tools (Sikkink & Walling, 2007, p. 442). Some authors suggest that a longer time frame would be more to rigorously assess the impact of truth commissions. It can be affirmed that truth commissions, that we take as the primary example of the operationalization of the right to truth, have significantly encouraged criminal trials, reparations and memorialization, while their effects on institutional reform remain relatively weak.

5. CONCLUSIONS

We have sought to provide a coherent account of the right to truth in transitional justice. While this subject has been extensively studied, the added value of this article lies in its systematic analysis of the case law on the right to truth, its examination of the role of narratives about human rights violations in public discourse, and, above all, its exploration of the possible foundational role of the right to truth in relation to the other rights of transitional justice. Truth commissions have been used, specifically, to empirically assess this connection.

To begin with, we observe an evolution in the doctrine and jurisprudence on the right to truth. Subsumed under other obligations in IACtHR and ECtHR case law, this

right has become gradually more prominent in international law, but the existing case law is too limited to justify considering it an autonomous right. As we have explained, the evolution of the case law has recognized that the right to an impartial and diligent investigation of the abuses (an obligation of means, not of results), aimed at clarifying the identity of perpetrators, the fate of victims, the circumstances of the violations, and the structural and institutional shortcomings that facilitated those violations, is not only a right of victims and their relatives but also of society as a whole, that has a duty to know the whole truth about the human rights violations. This has implications not only in terms of truth-telling but also of memorialization, as the recent Special Rapporteur developed in its 2020 report.

On the other hand, our study can't categorically conclude a foundational or pivotal role of the right to truth in transitional justice. In some cases it *can be* pivotal and foundational; it might be the trigger for a reckoning with the past and the other rights of transitional justice. Nonetheless, it cannot be looked upon as a catalyst, whose satisfaction is necessarily followed by the implementation of the other transitional justice mechanisms. Conversely, we can positively confirm that the judicial truth supplied by criminal prosecutions is insufficient for a major revamp of social relations, institutions, and the rule of law that allows democracy to flourish. Especially when there have been large-scale human rights violations, a factual account of the crimes must be searched, established and shared, in order to acknowledge and reintegrate victims and create the conditions that prevent the recurrence of violations. Guaranteeing the right to truth should entail establishing a minimum set of factual truths, that provide, as it were, the basis of a shared narrative, a legacy of the historic violence that a society has gone through. Truth commissions like the South African TRC, with its truth-seeking results, have been a major contribution in the pacification and reconciliation (Bea Pérez, 2020, p. 172) of the country, creating an enduring legacy of social, collective rejection of discrimination and racism (Bea Pérez, 2020, p. 177), as well. The collective assimilation of the narratives produced by truth commissions seems to prompt a shift in the moral and political values of a country, something we have articulated with the concept of a change in the "regime of truth"; this has considerable effects on the public sphere in terms of non-recurrence of violence, democratization and societal coexistence. The more immediate impact of truth commissions can be located in the recognition of the past crimes, public apologies (particularly by state actors) and the social repudiation of the violent historical practices. This has been the case in many transitional justice processes, but not always (Ferrara, 2019, pp. 93-95).

Nonetheless, even if it can be held that the right to truth plays an epistemological, chronological and moral role in connection with the other rights of transitional justice, this "foundational" character cannot be understood as indicating a causal connection. As we have seen, this theoretical hypothesis, examined mainly through the effects of truth commissions, is confirmed only partially. Even though there's empirical evidence of a connection in some cases, truth commissions' outcomes are not univocal and depend on a complex set of factors in each specific country. While a major clarification

of both “structural truths” and single-incident truths can lead to prosecutions, reparations and institutional reform, even after many years after the first transitional justice measures, causal links cannot be established. A major limitation of this inquiry is the limited empirical data on truth commissions and the inherent difficulties in establishing causal links. There is some empirical support for the idea of a causal link between truth commissions and the other rights of transitional justice, but the complexities of establishing causality discourage categorical assertions (Wiebelhaus-Brahm, 2010, p. 26; Thoms et al., 2010, p. 330; Ferrara, 2019, p. 81). In general, though, the effects of truth commissions are positive when they are accompanied by other transitional justice mechanisms. The limits of this article, though, preclude a more in-depth analysis of the effects of truth commissions; the complexity of such a study would require an article of its own. Instead, as Ferrara suggests, TRCs should be seen as part of a broader political project, the beginning of a slow process toward a more human-rights based order (2019, p. 97).

On the contrary, we can also affirm that an absent or insufficient implementation of truth-seeking instruments and public acknowledgment of all the victims can perpetuate the societal divisions that were created by the violations, giving rise or promoting denialist accounts, politicization of the rights of victims and polarization. This translates into contested, controversial memorialization processes, like in Spain. The constant clashes around history and memory might be the result of the politically motivated exclusion of an important part of the truth, that seems all the more important when those misrepresentations affect a legacy of violence. The “fragments” of truth missing from the country’s history are those that would emerge from a substantial and effective realization of the right to truth.

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