Alexandra Lebedeva

Justice and Politics
On the Depoliticization of Justice Claims in the Work of Truth Commissions
Abstract


Truth commissions have become a widespread and normalized institutions for addressing past human rights violations. One of the central ideas behind the concept of truth commissions is that it is necessary to establish the truth about the past and allow victims to speak publicly about the violations to which they have been exposed. Truth and truth-telling are presumed to contribute to justice in the aftermath of large-scale human rights violations. The aim of this study is to critically analyze the concept of truth commissions by looking at three normative assumptions that underlie their establishment and their work. The three normative assumptions are problematized with the help of three research questions concerning a tenable understanding of justice in the aftermath of large-scale human rights violations, the role of truth for justice, and the impacts of truth-telling, respectively.

The main argument of the study presents a challenge to truth commissions’ proclaimed aim of contributing to justice. Drawing on Jacques Derrida’s and Paul Ricœur’s perspectives on justice, I argue that taking political and moral responsibility for the committed atrocities is the most tenable option. From this perspective, using truth commissions as institutions of restorative justice may be counterproductive. This study asserts that their focus on truth and truth-telling leads to a depoliticization of past violence and, hence, insufficient responsibility being taken for the atrocities. The concept of depoliticization is developed with the help of Michel Foucault’s analysis of the relationship between truth and power and Hannah Arendt’s notion of the political and its relation to truth. I argue that even though the decision to establish a truth commission is a political one, it aims at redirecting the problem of responsibility for human rights violations from the political domain to the quasi-judicial, resulting in the evasion of not only legal but also moral and political responsibility. The philosophical arguments of the study are contextualized through an examination of Morocco’s Equity and Reconciliation Commission.

*Keywords:* Arendt, Derrida, depoliticization, Foucault, human rights, justice, Morocco’s Equity and Reconciliation Commission, restorative justice, Ricœur, testimony, transitional justice, truth, truth commissions

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Introduction

Large-scale human rights violations vary in their degree of violence, its duration, and the actors involved. Violations may take the form of genocide and ethnic cleansing, or long-lasting political repression, discrimination, and other forms of oppression. The world has witnessed these different forms of violence, for example, during the genocide of the Tutsi minority in Rwanda, the genocide of Bosnian Muslims during the Bosnian War, and the apartheid regime in South Africa. The twentieth century has been referred to as “a century of genocide”.\(^1\) Despite the particularity of these different contexts, they have something in common, namely, their extreme degree of violence. The responses to these human rights violations have been different. In the case of Rwanda and Bosnia, two \textit{ad hoc} military tribunals were established: the International Criminal Tribunal for Rwanda (1994) and the International Criminal Tribunal for the Former Yugoslavia (1993). In South Africa’s case, the legacy of the apartheid regime was addressed by other means, namely through South Africa’s Truth and Reconciliation Commission (1995).

The events of the twenty-first century have proven to follow the trajectory of extreme violence and gross human rights violations in different parts of the world. This justifies the necessity to continue a critical examination of these different responses to large-scale human rights violations, both legal and quasi-legal. The extreme degree of violence demands a reflection that stretches beyond normality and requires consideration of the problems that occur after large-scale human rights violations. These problems include legal, political, and moral problems.

Some of the legal problems concern foundational principles of criminal law, such as the prohibition of the imposition of *ex post facto* laws and retroactive prosecution when the committed crimes have not been outlawed. Others are of a more practical character and include, for example, insufficient evidence and the high cost of investigations and trials.

Political problems arise from the involvement of political actors (mainly but not only states) in the organization and exercise of violence. In these cases, states lack legitimacy and, due to their compromised status, are not perceived as capable to guarantee an impartial and fair response to human rights violations. Furthermore, the promotion of peace and social coexistence often demands political compromises at the expense of accountability for the violations.

Moral problems, finally, are intertwined with both legal and political problems. They include the problem of addressing mass compliance, the question of individual and collective responsibility, and uncritical obedience to laws and orders.

Legal, political, and moral problems all touch upon the question of justice, but differently so. In this study, the question of justice is central. In my analysis I bring the legal, political, and moral domains together to demonstrate the shortcomings of legal and quasi-judicial perspectives on justice on the one hand, and justice’s necessary interconnectedness with the moral and political domains on the other.

These different problems must be taken into consideration both when responding to past crimes and in any critical examination of these responses. However, the circumstances of extreme violence should not result in either a cynical attitude or mere pragmatism or compromises. It is necessary to acknowledge that circumstances in the aftermath of large-scale human rights violations are characterized by moral dilemmas. The most urgent dilemma concerns, on the one hand, the demand for the legal accountability of those responsible, and on the other hand, the necessity to break the circle of violence and revenge and find a way to hold society together. As with any genuine moral dilemma, this dilemma is not resolvable. A critical examination of the different practices and institutions that are established to provide a response to large-scale human rights violations, and the norms that guide these practices and institutions, should not therefore aim at resolving this moral di-
lemma. On the contrary, such a critical examination should aim at identifying and problematizing attempts to solve moral dilemmas, which in the context of this study lead to *inter alia* pragmatism and compromises.

**Aim and Research Questions**

The present study is an ethical endeavour, and it engages particularly with a critical analysis of truth commissions as a response to large-scale human rights violations. An overall aim of the study is to analyse the concept of truth commissions, which consists of several underlying normative assumptions. These normative assumptions have initially been formulated as hypotheses. After examining previous research and the United Nations regulations within the field of transitional justice and truth commissions, the hypotheses have been confirmed and taken as a point of departure for a critical analysis of the concept of truth commissions and their underlying normative assumptions. Consequently, I argue that the establishment and work of truth commissions are characterized by three normative assumptions, concerning the understanding of justice, the role of truth, and truth-telling. Therefore, the study is guided by three main research questions. The first one is as follows: What is a tenable understanding of justice in the aftermath of large-scale human rights violations? Drawing on Jacques Derrida’s deconstruction of justice and Paul Ricœur’s hermeneutical phenomenology of justice, I seek to challenge the dominant legalistic paradigm of justice and scrutinize the rationale of restorative justice. Furthermore, I suggest that justice as responsibility constitutes a tenable understanding of justice in the aftermath of large-scale human rights violations and has a strong critical potential.

The second question stems from the very concept of truth commissions and the role of truth as a prerequisite for justice. It is as follows: What are the impacts of giving truth a central place? This question links together the question of justice with two different perspectives on truth and its relation to power and politics. I develop these perspectives drawing on the philosophical thought of Michel Foucault and Hannah Arendt. Relationships between truth and power and between truth and politics demonstrate the consequences of giving truth the central role while dealing with human rights atrocities by means of truth commissions.
The third question concerns the centrality of truth-telling practices in the form of testimony as it takes place in truth commissions. It is as follows: What implications does truth-telling have on justice? I examine this question from four different perspectives, represented by Derrida, Ricœur, Arendt, and Foucault. These perspectives allow me to critically assess the practice of truth-telling in the work of truth commissions and demonstrate testimony’s political and ethical dimensions.

My choice of these four philosophers as my interlocutors is based on the belief that their works have much to offer an analysis of contemporary practices of responses to large-scale human rights violations. More specifically, they suggest different kinds of critiques and critical approaches towards well-established and normalized political practices that, despite often-good intentions, risk producing the opposite effect – contributing to injustice. The works of Derrida, Ricœur, Arendt, and Foucault cause us to reconsider our philosophical and political legacy and reflect not only on the concrete examples of political violence in other societies but also on our own political condition of democratic deficit. Philosophical ideas that were formulated in the twentieth century allow us to see that the legacy of the two world wars, the Nazi genocide, and colonialism still demand our ongoing reflection and examination.

Ethics is a normative discipline that is concerned with how things ought to be. Apart from that, ethics is also a critical discipline and therefore, in my view, an ethical reflection should necessarily derive from how things are: not in order to provide a complete description of reality, but in order to provide a critical examination of contemporary legal and political practices and the norms that guide them. Thus, this study has the ambition of being both theoretically and empirically informed.

I see a number of strong reasons for combining philosophical analysis with empirical contextualization. Firstly, it makes it possible to concretize the moral problems and dilemmas named above and the arguments put forward. Secondly, it makes apparent that striking similarities exist between different contexts of human rights violations and political violence committed by the states. Consequently, it allows me to both be truthful to the context and make valid claims about the potential risks in other contexts. In picking a context that has not been studied so broadly as, say, South Africa’s Truth and Reconciliation Commission (1995–2002), the study also contributes to the academic representation of those low-profile cases. The study is empirically informed through
the contextualization of the experiences of Morocco’s Equity and Reconciliation Commission (2004–05).

The experiences of Morocco are valuable to study for different reasons, including Morocco’s uniqueness in the region and the recognized success of its Equity and Reconciliation Commission. I will return to this assessment of Morocco’s truth commission in Chapter 2. One of the main reasons, however, concerns the condition of political continuity, i.e., the experience of transitional justice where no transition has taken place. The condition of political continuity allows me to demonstrate the implications of transitional justice discourse even in a non-transitional case.

The study of truth commissions as one possible response to large-scale human rights violations is valuable in several respects. The value can better be understood by first defining a truth commission. The most well-known definition is presented by Priscilla B. Hayner (2011) in *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*:

A truth commission (1) is focused on past, rather than ongoing, events; (2) investigates a pattern of events that took place over a period of time; (3) engages directly and broadly with the affected population, gathering information on their experiences; (4) is a temporary body, with the aim of concluding with a final report; and (5) is officially authorized or empowered by the state under review.

Hayner’s definition demonstrates that truth commissions differ from courts due to their focus on patterns of violations and not single violations. It also shows that truth commissions engage directly with victims and other affected groups, usually through the giving of testimony at public and group hearings. Hence, truth commissions are not judicial but quasi-judicial institutions. This means that truth commissions are characterized by some judicial elements. They follow, for example, a similar procedure as courts of law. They do not adjudicate, but their mandates include, as a rule, the investigation of patterns of violations, their background and causes. On the basis of their findings, individual

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legal actions may be initiated. As quasi-judicial institutions, truth commissions seek to overcome those legal problems that occur in the aftermath of large-scale human rights violations, including the rule against retroactivity, the large scope of violence, and insufficient evidence.

This raises the question, however, of whether these problems are actually overcome and what the consequences of such responses to human rights violations are. In the hearings of truth commissions, profoundly moral questions about individual and collective responsibility and mass compliance remain unanswered. Hence, even though truth commissions challenge the prevailing paradigm of legalistic justice, their rationale, and more specifically the way justice is understood in their work, should be scrutinized. For this purpose, the centrality of truth and truth-telling should be examined.

It is important to emphasize that this study has a strong theoretical focus, which means that it deals with truth commissions as a concept, along with the normative assumptions that constitute that concept. In other words, I do not aim to draw conclusions based on an empirical analysis of different cases demonstrating the variety of truth commissions and their contexts, and generalize my conclusions thusly. The function of my study of the experiences of Morocco’s Equity and Reconciliation Commission is to contextualize my philosophical argument. As John W. De Gruchy puts it in relation to his study of reconciliation and South Africa’s Truth and Reconciliation Commission, “reference to the TRC gives contextual continuity and concreteness to the discussion through the book”.

My study is grounded on the observation that truth commissions are widely spread, normalized practices that constitute an alternative to retributive justice. The UN High Commissioner for Human Rights notes that “there seems to be a trend towards establishing truth commissions in post-conflict societies”. It also acknowledges that despite the trend, truth commissions do not replace the need for prosecutions. In some cases, truth commissions are complemented by trials, or at least, the establishment of truth commissions does not preclude initiating legal

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5 Around fifty truth commissions and commissions of inquiry have operated since 1973.
action and demanding legal accountability. Nevertheless, the restorative justice represented by truth commissions and the retributive justice represented by trials have different rationales and purposes. While retributive justice aims at punishing the convict, restorative justice aims at including both victims and perpetrators in a process of restoring relations with the purpose of living together in the same community.\(^8\)

Examining truth commissions as a concept does not imply that there is only one understanding of their roles and functions. In fact, the formulation and implementation of their mandates differ in different contexts. What unites the majority of truth commissions, however, is their task of investigating and reporting on past human rights violations. This task is fulfilled through collecting and analysing documented information about violations and through holding hearings with victims of and witnesses to these violations.

Drawing on previous research on truth commissions and the UN regulations on transitional justice and truth commissions,\(^9\) I suggest that truth commissions are based on three normative assumptions about justice, truth, and truth-telling. Hence, the subject of my analysis is the concept of truth commissions as a collection of these normative assumptions. Let me present them here.

Firstly, the justification for truth commissions derives from the idea that in the aftermath of large-scale human rights violations, restorative justice should be given priority over retributive justice. This means that the focus of justice endeavours should lie on the restoration of relations and not on legal prosecution. The arguments in support of truth commissions include both realist arguments that point to the practical impossibility of prosecution, and moral arguments that seek to expand the concept of justice beyond the legalist perspective.


In UN guidelines, transitional justice is commonly presented as including the following components: prosecutions, truth-seeking mechanisms, reparations, and institutional reforms. These are not presented as mutually exclusive but rather are referred to as the components of a transitional justice toolbox. Furthermore, the UN High Commissioner for Human Rights states:

While truth commissions do not replace the need for prosecutions, they do offer some form of accounting for the past, and have thus been of particular interest in situations where prosecutions for massive crimes are impossible or unlikely – owing to either a lack of capacity of the judicial system or a de facto or de jure amnesty.

The justification for truth commissions presented here derives from the practical impossibility of prosecutions. Moreover, it is argued that the needs arising out of the circumstances of mass human rights violations cannot be satisfied by courts. These are the needs of victims and communities. In a comprehensive study on truth commissions, Hayner contrasts truth commissions as aiming at addressing these needs with trials as aiming at justice. It must be emphasized that Hayner equates justice with prosecutions and legal accountability. This reductive approach gives rise to a dichotomy between truth and justice which in practice has been expressed as a tension between truth commissions and trials. Naomi Roht-Arriaza points out that due to the increased popularity of truth commissions, the dichotomy between truth and justice seems to be resolving in favour of a more inclusive approach, where truth and justice are recognized as complementary.

Apart from appealing to realist arguments about the practical impossibility of prosecutions, proponents of restorative justice also suggest that truth commissions can be morally justified. André Du Toit presents two principles which, according to him, should provide a coherent alternative to retributive notions of justice requiring criminal prosecutions and punishments. Based on the experience of South Africa’s Truth and Reconciliation Commission, Du Toit suggests that its constitutive moral conceptions of “truth and reconciliation” can be explicated in terms of truth as acknowledgment and justice as recognition.\(^{15}\) He adds that transitional circumstances of justice demand a special conception of justice, which does not just sacrifice retributive justice due to practical impossibility but can also be justified on its own merits.\(^{16}\)

Further, Martha Minow argues that truth commissions assist in explicating the truth about the past and help victims and society, in general, to move forwards. She contends that trials as a response to injustice have their own internal limitations. The focus of trials on perpetrators and the question of guilt or innocence does not allow for capturing the multiple causes of mass violence. Minow concludes that truth commissions may be a better alternative to trials, as they provide public acknowledgement of human rights violations and contribute to the restoration of the dignity of victims.\(^{17}\) In a study assessing truth commissions, Eric Brahm also confirms that trials appear to be less effective in dealing with systematic injustices and collective offences.\(^{18}\)

Amy Gutman and Dennis Thompson argue that truth commissions as institutions of restorative justice can help restore public recognition of the humanity of victims. They state that the practice of truth commissions of giving a voice to victims who can testify about human rights violations constitutes an important element of the justification for such


commissions. Restorative justice challenges the legalist perspective on justice and suggests an expanded vision of justice that corrects imbalances and restores broken relationships with healing, harmony, and reconciliation.

Thus, the first normative assumption behind the establishment of truth commissions implies giving priority to restorative justice over retributive. The justification for truth commissions consists of realist claims about the practical impossibility of prosecutions in the aftermath of large-scale human rights violations as well as moral arguments about the importance of considering the needs of victims, their recognition through public acknowledgement of the violations, and the restoration of their dignity and humanity. The focus on victims is a feature that distinguishes restorative justice from retributive justice and the establishment of truth commissions is mainly justified by this focus on victims’ needs and bringing their voices before the public. The critique of trials as incapable of addressing systematic and collective violence is also brought to the fore.

Before moving to the second normative assumption, it is necessary to note that the majority of proponents of restorative justice have been significantly influenced by the experience of South Africa’s Truth and Reconciliation Commission. This case has become paradigmatic and the South African commission is often used to exemplify institutions of restorative justice.

Let us now turn to the second normative assumption: that truth is a prerequisite for justice and for dealing with past human rights violations. Even though the truth is recognized as necessary for dealing with past atrocities both by means of retributive and restorative justice, in the context of truth commissions, truth takes a central place. In the article “Truth as Justice: Investigatory Commissions in Latin America”, Naomi Roht-Arriza and Margaret Popkin recognize that the emphasis

21 For example, Martha Minow, Elizabeth Kiss, but also later studies on restorative and retributive justice by Leeuw Bronwyn: Judging State-Sponsored Violence, Imagining Political Change. Cambridge University Press, Cambridge 2011.
on truth depends on the character of the violations that truth commissions address.\textsuperscript{22} The contexts of the early truth commissions in Latin America and Eastern Europe where the concept of the truth commission began to take form, involved kidnappings, enforced disappearances, surveillance, and arbitrary detentions, not open killings.\textsuperscript{23} Even though many people knew that human rights violations were occurring, the violations were committed in secret and denied by governments. The concealed character of the violations gave rise to an increased desire to know the truth, not only among both individual victims and their families but also among communities, which has led to the conceptualization and legalization of the right to truth. The right of victims and society to know the truth about past human rights violations has been recognized on the international level.\textsuperscript{24} Truth commissions are considered to have a significant role to play in implementing this right by helping “society understand and acknowledge a contested or denied history, and in doing so bringing the voices and stories of victims, often hidden from public view, to the public at large”.\textsuperscript{25}

Truths about human rights violations are presented by truth commissions in final reports that arise out of investigatory work. These reports present an official account of the patterns of past human rights violations and their main causes. Given the goals and mandates of truth commissions, it is particularly the submission of a comprehensive account about past violations that constitutes one of the criteria on which truth commissions are evaluated.\textsuperscript{26} Brahm problematizes the assessment of the impact of truth commissions, arguing that “on a basic level, truth

\textsuperscript{24} Secretary-General of the UN: \textit{United Nations Approach to Transitional Justice}. Guidance Note of the Secretary-General, 2010, 8.
commissions are often viewed as a success simply by virtue of completing their work,”²⁷ that is, submitting a final report about past human rights violations – presenting the truth about the past. Such a criterion sets rather low expectations for the work of truth commissions. What is important here, however, is the very centrality of the truth presented in the final reports.

Previous research has frequently emphasized a distinction between knowledge and acknowledgement. This distinction was initially presented by Thomas Nagel at the conference on transitional justice organized by the Apsen Institute,²⁸ and it has been applied by Roht-Arriaza and Du Toit, both already mentioned above. Roht-Arriaza maintains that in both Latin America and Eastern Europe, the fact of committed human rights violations was known, but a gap existed between knowledge and acknowledgment by states of these violations. As mentioned earlier, according to Du Toit, one of the principles that constitutes the moral justification for truth commission is the emphasis on truth as acknowledgment. Like Roht-Arriaza, Du Toit states that in the context of transitional justice, what is at stake is not a lack of knowledge but a refusal to acknowledge committed atrocities.

Du Toit further claims that truth commissions are “a double choice for truth” rather than justice, including both retributive and social justice. According to him, by giving priority to gross human rights violations over systematic injustices (like the unequal distribution of resources, such as land, or discrimination in the labour market), truth commissions prioritize truth over social justice. By prioritizing hearings over prosecution, truth commissions again choose truth for victims over retributive justice.²⁹ Although different truth commissions have profoundly different mandates and ambitions, it is apparent that truth about past human rights violations, on the one hand, and retributive justice, on the other hand, represent two different strategies for addressing in-

justices. Du Toit suggests that truth commissions represent an alternative way of linking truth and justice: a way that puts victims first by organizing victim-centred public hearings, where victims can tell their stories from their own perspectives and are recognized as legitimate sources of truth.\textsuperscript{30} This last point brings us to the last normative assumption, about the impacts of public testimony.

The focus on victims and accompanying assumptions about the impacts of public testimony are both related to the third normative assumption. It implies that public testimony as a form of truth-telling is connected to the purpose of justice and presupposes it to have a positive impact for victims and society in general.

On the question of public hearings, the UN High Commissioner for Human Rights states:

\begin{quote}
By giving victims and survivors a chance to tell their story before a public audience… a commission can formally and publicly acknowledge past wrongs, allow victims the chance to be heard, reduce the likelihood of continued denial of the truth and make its work transparent. Public hearings help to engage the public as audience…\textsuperscript{31}
\end{quote}

The quotation above demonstrates the presumed positive impacts of public testimony for the audience and society in general. Public hearings are meant to have a pedagogical function of informing the public about past abuses and stimulating discussions about the past. The UN High Commissioner further states that public hearings are an effective way to bring the work of the commissions before the public. Therefore, hearings should be considered by all truth commissions.\textsuperscript{32} Hence, although (as earlier noted) South Africa’s experience of public hearings is often taken as exemplary, public hearings have also been encouraged in other contexts. Public hearings have been held, for example, in Peru (2001-03), Liberia (2006-09), and Sierra Leone (2002-04), and in Morocco, the context for this study.

Impacts of public hearings at the individual level are also discussed. As already noted in the discussion of the first normative assumption, victims and their needs are given the most attention. Truth commissions as institutions of restorative justice are presumed to contribute to the restoration of human dignity and to the acknowledgement of victims and their suffering. Furthermore, the psychological effects of public testimony are often foregrounded. While the UN High Commissioner for Human Rights recognizes that retelling the story can be a healing process for some victims but a devastating experience for others, it is often argued that public testimony contributes to healing and reconciliation.33

Proponents of restorative justice have developed different arguments for the positive effects of public testimony. Minow suggests that by telling the truth about the past violations, victims can begin to heal from the trauma.34 She draws on psychologist Judith Herman’s theory of trauma and recovery, where Herman argues that truth-telling and mourning help individuals to recover after atrocities.35 Yet the positive effects of testimony have also been questioned, mainly based on the lack of comprehensive empirical data. David Mendeloff, for example, presents an analysis of three groups of assumptions about the effects of truth-telling for peacebuilding.36 One of the groups is particularly devoted to the overstated importance of truth-telling, which is also noted by Hayner.37 Mendeloff shows that the advocates of truth-telling make several claims about its peace-promoting effects, including the guaranteeing of justice, promotion of social and psychological healing, fostering of reconciliation, and deterring of future crimes.38 Mendeloff’s focus is on peacebuilding, but the presumed effects of truth-telling are of importance from a justice perspective as well. While

37 Hayner, Priscilla B.: *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 4-5.
38 Mendeloff, David, op. cit., 356.
Mendeloff’s critique concerns a lack of comprehensive empirical studies to support the claims that are made, the present study challenges the assumption on a normative level and problematizes its implications for responses to the violations, as well as for the taking of responsibility for the violations.

Although the normative assumptions presented above do not constitute a complete description of the concept of truth commissions, the research questions of this study, about justice in the aftermath of large-scale human rights violations, the role of truth for justice, and the impacts of truth-telling, touch upon each of the assumptions. The assumptions will be dealt with separately in relation to each question, but it is necessary to point out that they are certainly interconnected and at times even overlapping. An analysis of these normative assumptions is necessary for a critical examination of truth commissions as institutions pursuing the aim of justice.

The main argument of this study concerns a challenge to the proclaimed aim of truth commissions to contribute to justice. It argues that a risk exists that truth commissions may counteract and hinder the pursuit of justice, through such commissions’ strong emphasis on truth and the way the impacts of truth-telling are understood within them. This study asserts that the focus on truth and truth-telling leads to the depoliticization of past human rights violations and, hence, inadequate responsibility being assigned for the atrocities.

I will argue here that even though the decision to establish a truth commission is a political one, it is nonetheless aimed at redirecting the problem of responsibility for human rights violations from the political domain to the quasi-legal domain, resulting in the evasion of not only legal but also moral and political responsibility. But before turning to the analysis of truth commissions from the perspective of justice and its relations with truth and truth-telling, it is necessary to situate truth commissions in a broader context of transitional justice as a field and restorative justice as one of the alternatives for justice within transitional justice. Such situating is important as it allows me to identify two entanglements that have significant consequences for the understanding of justice in truth commissions. The first concerns the impact of transition on justice; the second concerns restorative justice and the rationale for restorative justice as an alternative to retributive justice.
Previous Research on Transitional Justice

First of all, previous research in the field of transitional justice is characterized by a high level of interdisciplinarity. I begin with a more general review represented in political science and peace and conflicts studies, and then turn my attention to an analysis of the philosophical foundations and theoretical conceptualizations within the field of transitional justice. The abovementioned two entanglements are discussed: firstly, the interrelation between the question of transition and the question of justice, and secondly, the rationales for retributive and restorative justice, with a specific focus on the ambiguities of restorative justice.

The field of transitional justice is comparatively novel and can be said to sit at the intersections of international law, political science, and ethics. It has not primarily been a product of philosophical development; rather, it has emerged as a legal and political response to concrete contexts of large-scale human rights violations. Originally, the term “transitional justice” was coined by human rights scholar Ruti Teitel as a way to conceptualize the legal challenges of new regimes addressing past crimes.\(^{39}\) A challenge that crystallized after World War II and the Nazi crimes concerned one of the central principles of criminal law: the principle which prohibits the imposition of \textit{ex post facto} laws and retroactive prosecutions. The trials that addressed the Nazi crimes brought the limits of criminal justice to the fore. The most well-known critique raised against the Nuremberg and Tokyo trials concerned the allegations about the violation of this core principle of criminal justice. The Allied’ victory justice was deemed political.

Since the end of World War II, extensive developments have taken place in human rights law, including the adoption of both the Universal Declaration on Human Rights (1948) and such international conventions as the Convention on the Prevention and Punishment of the Crime of Genocide (1951) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). The establishment of the International Criminal Court (2002) has also played a significant role in the acknowledgment of grave violations of human rights as crimes. Despite developments in the law, however, including

the development of norms and institutions, the problem of addressing past human rights violations remains. This study addresses that problem from the perspective of justice, scrutinizing questions about how justice is and should be understood in the aftermath of large-scale human rights violations.

At the end of the Cold War, the emergence of truth commissions took place, followed by their broad expansion. This period was characterized by the downfall of military dictatorships in Latin America and the decline of communist regimes in Central and Eastern Europe. The main purpose of truth commissions has been to provide an account of past grievances by collecting the testimonies of victims and promoting reconciliation between former antagonists. Hence, the conceptual development of transitional justice can be characterized by the expansion and inclusion of quasi-judicial and political mechanisms.

During the period of this new development, two questions became interrelated: the question of justice and the question of transition. This is the first observed entanglement. The question of justice and the question of transition correspond to the two main purposes of transitional justice: accountability for past human rights violations and political transformation.

Previous research on transitional justice presents different positions on whether transitional justice constitutes a conceptually distinct type of justice and how this conceptual distinctness can be understood. While the question of justice has been answered differently, depending whether the type of justice is retributive or restorative, the question of transition has been presumed to have one answer – a liberal democracy.

Transition and Justice

One of the special features of transitional justice consists of the observation that the question of transition has had an impact on the understanding of justice. Transitional justice is characterized by a specific understanding of transition as a transition from authoritative to more

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democratic rule, and liberal democracy is perceived as an endpoint of the transition. On the one hand, responses to human rights violations demand political reforms in order to guarantee non-recurrence of the violations. On the other hand, the presumed idea of the endpoint of political transitions constrains responses to human rights violations by forcing and naturalizing political compromises.42

Thomas Obel Hansen argues that scholarship about transitional justice has been dominated by studies of those cases where transition in the form of regime change takes place. Thus, it has contributed to a problematic assumption about the nature of transitions and the normative frameworks utilized.43 Hansen himself makes distinctions between several different contexts in which transitional justice processes take place. Based on case studies in a variety of contexts, he distinguishes between transitional justice in liberal or non-liberal transitions and transitional justice in non-transitions.44 His main point is that even though the orthodox case of transitional justice is that of political liberal transition, other cases may still be judged based on the overall positive goals of transitional justice.45 Hansen maintains that it is problematic that cases where there has been no change to the political regime have mostly been neglected46 in the transitional justice literature.47

Since the publication of Hansen’s article, new scholarship has emerged that pays more attention to these non-transitional cases, including transitional justice processes in both consolidated democracies and deeply conflicted societies. For example, Onur Bakiner distinguishes between transitional and non-transitional truth commissions. Non-transitional truth commissions, according to Bakiner, represent the third generation of truth commissions, in which initiatives to address past human rights violations are taken by the existing political regime. In the early 2000s, many consolidated democracies, such as Canada,

44 Ibid.
45 Hansen, Thomas Obel, op. cit., 4, 47.
47 Hansen, Thomas Obel, op. cit., 42.
South Korea, Panama, Uruguay, and the Solomon Islands, established truth commissions. Morocco’s truth commission also belongs to this third generation, which includes truth commissions established under a monarchical authoritative regimes.\textsuperscript{48} Thus, another contribution of the present study is its analysis of a context in which no radical political change took place. The Moroccan context has been described as one of change within political continuity. But it also demonstrates the impact of “transition” even in those cases where no transition took place.

Despite the shift in scholarly focus, Hansen’s conclusions remain relevant to discuss, particularly his description of the overall positive goals of transitional justice, including preventing the recurrence of abuses, creating a more just society, and attending to the needs of victims.\textsuperscript{49} While I share Hansen’s view that the creation of a more just society is not only a question of liberalization and democratization but also a question of how economic, social and political resources are distributed, his formulation of the third goal (victims’ needs) is problematic and even symptomatic for the field of transitional justice. I argue that the discussion of victims as subjects with needs and not as subjects with rights and justice claims demonstrates how responses to human rights violations may be weakened.

In the doctoral thesis “Theorizing ‘Transitional Justice’”, David Anton Hoogenboom argues that a preconceived notion of the meaning of justice limits its potential to respond to the needs of victims, and therefore justice, to remain relevant, must remain open to re-interpretation. Hoogenboom suggests that the very notion of transition has shaped how justice is theorized, and that the fundamental problem of the field lies in the fact that justice is in the service of transition. Transition, which is implicitly understood as a transition to liberal democracy, imposes limitations for how justice is understood.\textsuperscript{50}

According to Hoogenboom, the evolvement of transitional justice was influenced by the third wave of democratization at the end of the Cold War, when the majority of transitional justice processes included

transitions towards more liberal forms of government. The effectiveness of these processes was defined by their ability to promote liberal democracy and human rights, where civil and political rights received priority over social, cultural and economic rights. Drawing on Michel Foucault, among others, Hoogenboom demonstrates how the discourse of human rights operates as a disciplinary discourse by setting specific standards of behaviour. Transitional justice mechanisms thus perpetuated this disciplinary discourse.

Hoogenboom’s critique of transitional justice concerns the way justice has been shaped by the idea of transition to liberal democracy, which has also been accompanied by the imposition of free market capitalism and neoliberalism. Drawing on Derrida, he opposes any conclusive definition of justice and argues for the radical openness of justice. Moreover, his criticism is directed towards the priority given to civil and political rights and the failure of transitional justice to respond to calls for greater economic and social justice. As a result of prioritizing political and civil rights violations over economic, social, and cultural rights, certain voices dominate while others remain marginalized.

In considering both Hansen’s and Hoogenboom’s insights about the presumed answer to the question of transition, I find it necessary to clarify why this presumption constitutes a problem. Historically, the imposition of democracy from the outside has been embedded in a power imbalance, where more powerful states sought to spread their values in other societies. This power imbalance re-establishes in the post-independence period the relation of dependency between former colonies and former metropoles as givers of foreign aid.

These democratization processes were also closely intertwined with the neoliberal ideology. A clear example of this connection is the infamous structural adjustment programs: economic policies developed in the 1980s by the World Bank and the International Monetary Fund as conditions for loans for states transitioning towards liberal democracies. These conditions included, for example, the privatization of the state sector and the promotion of a market economy, and had a strong neoliberal agenda. The policies resulted in increased socio-economic

inequalities — a problem that is seldom addressed within the field of transitional justice. Neoliberal reforms, however, extend beyond mere economic reforms and policies. As Wendy Brown suggests, neoliberalism should in fact be understood as a political rationality that results in the depoliticization of social relations and conflicts. Furthermore, it enforces economic rationality with the calculation of costs and benefits as the main value not only in the economic sphere, but also in both the political domain and individual conduct.

Hoogenboom, like Hansen, gives attention to the needs of victims, including socio-economic conditions. He concludes that human rights become a conduit for power rather than a check on power. Concerning this critique, I argue again that victims have legitimate claims towards the state as a result of their violated human rights. The discourse on needs, particularly in relation to socio-economic rights, risks shifting the focus from justice to development and charity, diminishing the status of human rights as rights. Nevertheless, Hoogenboom’s analysis of the operation of human rights as a disciplinary discourse and the transformation of human rights into ideology is significant.

Furthermore, Hoogenboom maintains that the normative consensus around liberal democracy must be destabilized and the idea of transition subjected to scrutiny. The academic field of transitional justice must be challenged, not least because of the close link between the practitioners of transitional justice and researchers. The normative assumptions examined in this study are limited to the assumptions that underlie the concept of truth commissions. These assumptions have also been influenced by the transitional discourse and the entanglement between transition and justice. This entanglement has several perplexing consequences, including the remaining legalism of transitional justice, characteristic even for quasi-judicial institutions such as truth commissions.

Before proceeding to the second entanglement, some other works on the conceptual distinctness of transitional justice must be considered,

57 Hoogenboom, David Anton, op. cit., 9.
58 Pablo de Greiff, Juan E. Méndez, and José Zalaquett, for example, have long practical experience of working in transitional societies and internationally, and at the same time have contributed significantly to academic research in the field.
including Colleen Murphy’s position on the conceptual distinctness of transitional justice and Paige Arthur’s historical analysis of the emergence of the field itself and its impact on human rights. Murphy’s and Arthur’s perspectives are important since they deal with transitional justice on a conceptual level and present two different perspectives on its conceptual distinctness.

In *The Conceptual Foundation of Transitional Justice* (2017), Murphy addresses the question of transition and its meaning for justice. She argues that transitional justice is conceptually distinct from retributive, corrective, and distributive justice and puts the pursuit of societal transformation at the centre of the argument. Murphy describes her entry point to the field of transitional justice as a “moral evaluation of the choices transitional communities make in dealing with wrongdoing” \(^{59}\) from the perspective of justice.

Murphy argues that expectations about transitional justice processes are not descriptive, but normative, and according to her, they are unclear. \(^{60}\) The present study departs from a similar concern about a lack of understanding of what justice means in the aftermath of large-scale human rights violations. Murphy seeks to articulate “a positive theory of transitional justice” that goes beyond either perceiving transitional justice as a compromise or equating transitional justice with the familiar types of justice, including retributive, corrective, and distributive. \(^{61}\) An adequate theory of transitional justice, according to Murphy, should take into account the fact that the demands of justice are fulfilled in degrees. Furthermore, such an account should not undermine the distinction between different types of justice. Finally, the account must be framed as a response to a distinct practical need, thus be a normative action-guiding account. \(^{62}\)

In Murphy’s account, transitional justice as a just pursuit towards societal transformation is morally distinct from other types of justice. Its moral distinctiveness is conditioned by circumstances of injustice,

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the large scope of violence, and the moral needs of both concrete individual victims and communities. Here, Murphy’s perspective on retributive justice is of interest, since she treats it in a strictly individual manner – as a violation against separate individuals and not against a legal order. She states that retributive (and corrective) theories are oriented around and concerned with responding to the needs that arise when an individual violates a norm. In my view, however, the violation of a legal norm introduces a societal dimension of violation and orients retributive justice rather towards the legal order than towards separate individuals. Even though it is a separate individual who is prosecuted, the prosecution itself is grounded on the state’s monopoly over violence and its authority.

Murphy herself refers to Pablo de Greiff, who is sceptical towards working out a special theory of transitional justice due to the risk that the distinction among kinds of justice would collapse. This is a serious problem which can be observed in several accounts of restorative justice. Combining different elements within the same theory of justice increases the risk that the theory will lose the critical potential it should offer. This does not imply that corrective, retributive, and distributive justice constitute an exhaustive system of theories of justice. What is important, however, is that the meaning of justice be clearly articulated. This study argues for an understanding of justice as a responsibility bearing critical potential.

Unlike Murphy, this study aims to critically analyse the concept of truth commissions and the normative assumptions underlying their establishment and work. Hence, the study does not aim at working out a normative guideline for evaluating transitional justice mechanisms and processes. Murphy’s analysis is, however, important for this study, since she articulates the problematic limitations of restorative and retributive justice, which in my view constitutes the second entanglement between these two types of justice.

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Moreover, like Hansen and Hoogenboom, Murphy offers an important critique of the presumed normative aim of democratic transitions: she argues that not all societies experiencing transition share this normative aim.\(^{66}\) Furthermore, she poses a critical question about what democratization entails and demonstrates how the UN conceptualizes democratization as including, for example, a free market.\(^{67}\) This demonstrates the necessity, pointed out by Brown, of treating neoliberalism as a political rationality. An inadequate conceptualization of transition as a short-term process with a predetermined end, Murphy concludes, conceals the complex power dynamics of these political changes.\(^{68}\) The present study questions the finality implied in transitional justice, in relation to both the question of transition and the questions of justice.

In the article “How “Transitions” Reshaped Human Rights: A Conceptual History of Transitional Justice”, Paige Arthur presents an intellectual history of transitional justice. She traces the development of transitional justice as an academic field. Arthur treats transitional justice as a field that has developed within the human rights movement, where the focus has moved from present human rights abuses to past human rights violations, and, as a consequence, towards assigning responsibility for these crimes.\(^{69}\)

Despite taking a different approach, Arthur reaches a similar conclusion to Murphy, namely, that transitional justice has a distinctive conceptual content. This content includes, among other things, “transition to democracy” as a normative lens.\(^{70}\) According to Arthur, the field of transitional justice has emerged on the international level and is characterized by new human rights activity in “transition”. She makes a similar observation about the character of the transition. Liberal democracy has been taken to be a goal for new transitions that has influenced the actors involved and their legitimacy.\(^{71}\)

To sum up, the first entanglement discussed in this section concerns the conjunction of two questions: the question of transition and the


\(^{67}\) Here, Murphy refers to the UN: United Nations Peacekeeping Operations: Principles and Guidelines, 2008.

\(^{68}\) Murphy, Colleen, op. cit., 29-30.


\(^{71}\) Op. cit., 337.
question of justice. As a result of this conjunction, the problem of an appropriate response to human rights violations (a question of justice) becomes subjugated to the question of political transition.\textsuperscript{72} Furthermore, political transitions are normatively biased and are presumed to move towards the ideal of liberal democracy. This in turn imposes the logic of compromise, not only in the question of transition but also in the question of justice, when prosecutions are sacrificed for the sake of peaceful co-existence.

On the descriptive level, however, no consensus exists about the endpoint of transitions. Some societies do not experience transition at all, while others may even be moving towards other forms of government, not necessarily liberal ones.\textsuperscript{73} A normative bias of transition is a manifestation of power in a globally unjust world, which not only aims for liberalization and democratization but is also accompanied by neoliberal rationality that reinforces socio-economic inequality and risks undermining democratization itself. It conditions the prioritization of civil and political rights at the expense of social, cultural, and economic rights. Social and economic rights are often conceptualized in terms of victims’ needs and state development, which weakens their status as rights.\textsuperscript{74}

Apart from the entanglement between the question of justice and the question of transition, another entanglement can be observed. It concerns the idea of restorative justice and its rationale. Truth commissions are institutions of restorative justice, and it is, therefore, necessary to reflect upon what restorative justice means and how it is related to retributive justice.

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Lauren Marie Balasco suggests that the human rights agenda of transitional justice is subsumed not only to the process of democratization but that human security has been the major concern of transitional justice, adding an additional dimension to those constraints that are imposed on the question of justice. Balasco, Lauren Marie: “The Transitions of Transitional Justice: Mapping the Waves from Promise to Practice”, in Journal of Human Rights, Vol.12, No.2, 2013, 198-216.

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Retributive and Restorative Justice

Within the arena of transitional justice, the debate over the meaning of justice has been dominated by two positions: the first represented by retributivists, who argue that criminal prosecutions constitute the most appropriate response to human rights violations; the second represented by the supporters of restorative justice, who claim that other forms, including reparations and truth commissions, are better suited for use in societies that have experienced large-scale human rights violations. Theories of restorative and retributive justice are not homogenous, however, and multiple positions also exist within each branch. In this section, these positions are discussed in general terms, and the central rationale behind each one is described. More attention is given to the rationale for restorative justice and its ambiguities, which constitute the second observed entanglement.

To begin with retributive justice, however, its proponents are convinced that punishment is the most appropriate response to human rights violations. Thus, trials and criminal prosecutions are essential. Trials and criminal prosecutions aim at identifying perpetrators, investigating and providing evidence for their crimes, and hence serve to individualize responsibility. Therefore, proponents of retributive justice claim that in the context of collective violence, the use of criminal prosecutions offers a better chance of avoiding the stigmatization of ethnic or religious groups and embracing collective guilt.75

The principle of accountability, i.e., legal liability for one’s deeds, is central to retributive justice. However, accountability can only be guaranteed when there are well-trained investigators, lawyers, and judges, as well as rules of procedure for investigations, interrogations, inquiries, and the collection of other evidence. The rules of procedure regulate inter alia the establishment of forensic truth: how it is exposed and ascertained.76

In *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, Roth-Arriaza claims:

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75 Minow, Martha: *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*, 40.
76 Loudiy, Fadoua: *Transitional Justice and Human Rights in Morocco: Negotiating the Years of Lead*, 39.
Only trials could provide for the confrontation of evidence and witnesses that would create an unimpeachable factual record. Moreover, only trials could adequately individualize responsibility, holding the guilty parties liable without stigmatizing entire ethnic or religious groups.\textsuperscript{77}

Roth-Arriaza refers here to the genocide in Rwanda and ethnically based conflict when the abuses, being well-organized, were not committed under rigid state control.

It has been also suggested that retributive justice serves other functions apart from accountability, namely, pedagogical purpose and deterrence. Deterrence and guarantee of non-recurrence are one of the main goals of transitional justice and a main part of its rationale.\textsuperscript{78} Nonetheless, the link between deterrence and non-recurrence has been challenged. Fadoua Loudiy states that trials serve a pedagogical purpose, as they stimulate public discussion and open the door to a conversation about the moral and political foundations of the nation. She refers to trials as “spaces” and public hearing as “events” where past, public memory, and national identity are negotiated.\textsuperscript{79} In my view, however, criminal trials are neither negotiations nor deliberations, but rather are rule-governed hearings that rely on predetermined roles and positions charged with power. Any mobilization of civil society, establishment of forums for discussions of national identity, education initiatives, independent journalism, etc. do not follow from the hearings, but often take place in parallel with them and are driven by different actors.

Undoubtedly, victims and survivors may perceive retribution as the most just consequence for actions that society recognizes as unlawful. It may be satisfying for a victim to know that a perpetrator who has committed a crime against him or her is punished. Juan E. Mendez, a

\textsuperscript{79} Loudiy, Fadoua: \textit{Transitional Justice and Human Rights in Morocco: Negotiating the Years of Lead}, 36.
proponent of retributive justice, suggests that it may even have a healing effect, as a form of therapy.\textsuperscript{80}

A practical problem arises when police authorities and judiciary lack the capacity and legitimacy to implement and guarantee a fair trial. Financial, bureaucratic, and logistical obstacles to a fair trial can exist, especially in a post-violence situation. The mandates of transitional justice institutions often cover long periods of mass atrocities, committed in different places, under different circumstances, by different actors. In situations of arbitrary detentions and enforced disappearance, it is difficult to investigate the number of victims and their fate. In the case of mass murders, the bodies may be secretly buried, making it more difficult to identify victims and the circumstances of their deaths. These are only some examples of the practical difficulties that investigations may face.

In cases of state-organized violence that are accompanied by arbitrary detentions and the abuse of authority, retributive justice may also be perceived as a farce. On the other hand, if the rule of law principle is taken seriously and respected, trials may lead to a strengthening of civic trust in the judicial system.

Retributive justice in the context of collective violence has received significant criticism. Murphy argues that, while retributive justice may work in stable liberal democracies, in other circumstances, retributivism cannot justify punishment for perpetrators of human rights violations. She brings up the problem of \textit{ex post facto} punishment: its legality and the issue of a lack of trust in the state’s ability to punish perpetrators. Another important argument she raises concerns the idea of equality, which, according to her, is not re-asserted by retributive justice. She means that the punishment of individual perpetrators fails to address the structural aspect of wrongdoing, and, hence, the moral equality between victims and perpetrators is not reasserted. Even if an individual perpetrator is punished, structural inequality remains.\textsuperscript{81}

In \textit{Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence}, Martha Minow summarizes three arguments

\textsuperscript{81} Murphy, Colleen: \textit{The Conceptual Foundations of Transitional Justice}, 20-22.
against retributive justice, including the problem of retroactivity, politicization, and selectivity. Her arguments are anchored in a concrete example of retributive justice that is often invoked in this context: the Nuremberg trials, but she notes that a critique of retributive justice is also relevant to the then-ongoing trials in Bosnia and Rwanda. She summarizes the politicization problem as follows:

Rather than standing as independent institutions removed from political pressure and calculations, the tribunals’ very construction and deployment allegedly enacted politics, undermining the ideal of impartiality and universal norms.

The politicization of trials constitutes a problem for impartiality and the rule of law. Minow goes on to note that trials are profoundly dependent upon political actors, their resources, and decisions. The creation of a tribunal has a significant symbolic value and can be perceived as a political response, rather than a legal one. Minow’s discussion of the problem of politicization demonstrates an understanding of politics as realpolitik. The critique is of interest since it puts politics (or the process of politicization) into a conflict with impartiality and rule of law. The problem of politicization and depoliticization is one of the central concerns of this study, although in relation to truth commissions and not tribunals. Depoliticization is problematized here as a strategy to escape responsibility for past human rights violations that is deployed by states with the help of truth commissions.

Legal responses to large-scale human rights violations are considered by many to be insufficient. On a moral level, Loudiy claims, retributive justice precludes an analysis of the moral complexities of atrocities, in which the dividing line between a victim and a perpetrator may blur. It may reinforce the identities of former enemies and the conflicts between them.

83 Minow, Martha, op. cit., 30-31.
84 Loudiy, Fadoua: Transitional Justice and Human Rights in Morocco: Negotiating the Years of Lead, 39.
Restorative justice, by contrast, seeks to establish relations between victims and perpetrators. As mentioned before, restorative justice focuses on victims and the reintegration of perpetrators.\(^85\) Hence, it is considered a more inclusive approach. It is based on the idea that both perpetrators and victims are members of the same community and therefore both groups must be included in transitional justice processes. The way justice is done has implications for both parties; consequently, the outcome of any justice served must involve all, as Loudiy points out.\(^86\)

As the focus shifts from perpetrators to victims, victims’ needs assume a central place in restorative justice. Restorative justice includes monetary compensation and apologies (in person or in symbolic gestures from state representatives). Restorative justice also introduces not just an individual but also a relational dimension. Having originated in small-scale individual contexts (e.g., within smaller communities, tribes, villages), the goal of restorative justice is to create a forum where perpetrators and victims can meet. The approach is relational and dialogic rather than procedural. Elizabeth Kiss suggests that transitional justice should stay focused on three key relationships: that between victims and perpetrators, that between perpetrators and the community, and that between victims and the community.\(^87\) In Kiss’ account, the state is not recognized as a party in any relationships, although in the majority of contexts, the state is a perpetrator of human rights violations.

Murphy, as mentioned above, provides a significant critique of restorative justice. She argues against the equating of transitional justice with restorative justice. According to Murphy, the idea of restorative justice is still underdeveloped. For example, disagreements exist about the permissibility of punishment and the role of forgiveness.\(^88\)

Forgiveness and the restoration of relations are core pillars of restorative justice. Minow sees vengeance and forgiveness as two points

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\(^{86}\) Loudiy, Fadoua: Transitional Justice and Human Rights in Morocco: Negotiating the Years of Lead, 39.


\(^{88}\) Murphy, Colleen: The Conceptual Foundations of Transitional Justice, 22-23.
along the spectrum of responses to large-scale human rights violations. She suggests that retributive justice should be understood as “vengeance curbed by the intervention of someone other than the victim”.\textsuperscript{89} Forgiveness, on the other hand, allows former enemies to reconnect and recognize one another’s common humanity. Minow distinguishes between forgiveness “in theory” and “in practice”, and argues that while in theory, forgiveness cannot replace justice or punishment, in practice forgiveness often produces exemptions from punishment. Despite this critical remark, she concludes that forgiveness has an empowering potential, since it puts the power to forgive into the hands of victims instead of making it a right to be claimed. Forgiveness is an enabling capacity, which allows victims to partially reclaim dignity, according to Minow.

In her chapter on reparations, another important element of restorative justice, Minow states that restorative justice seeks to “repair the injustice, to make up for it, and to effect corrective changes in the record, in the relationship and future behaviour”.\textsuperscript{90} It is the repair of social connection and peace that are the core concern, not punishing the perpetrators. Despite such a broad description of what restorative justice is about, she writes that the core idea behind reparations stems from compensatory justice. Thus, she understands reparations narrowly, as monetary compensations. This narrow understanding has been criticized by Margaret Urban Walker, who argues for a broader notion of reparation.\textsuperscript{91}

Walker offers an account of restorative justice that, she suggests, represents an alternative to corrective and compensatory justice.\textsuperscript{92} Her account treats reparations as not strictly monetary. Unlike corrective justice, which seeks to correct and compensate harm as a result of a violation, restorative justice, in Walker’s view, aims at establishing relationships. Hence, she puts the violation of acceptable human relationships at the core of the restorative justice agenda. Walker introduces the term “moral baseline”, meaning an acceptable standard of conduct towards others based on respect for human dignity and moral equality.

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\textsuperscript{89} Minow, Martha: \textit{Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence}, 12.
\textsuperscript{90} Op. cit., 91.
She formulates six central restorative justice values, which vary from reparation of harm, accountability, and responsibility-taking to building and strengthening the capacities of individuals and communities to do justice actively. All six values serve the ultimate aim of “restoring relationships”. In a later article, Walker also suggests conceptualizing truth-telling as a kind of reparation, based on the internationally recognized “right to the truth”.

The central ideas behind restorative justice presented above show that no single view exists on what constitutes the rationale of restorative justice or how its main goal can be achieved. How can relations in the aftermath of large-scale human rights violations be repaired: through forgiveness and official apology, though monetary compensations, through public truth-telling, or by some other means? Following Murphy, we might argue that restorative justice is still underdeveloped and is characterized by several ambiguities.

On the one hand, the critique against restorative justice should rather be redirected against corrective justice; however, since monetary compensations still play a significant role in restorative justice, the critique is valid even in relation to restorative justice. Furthermore, while monetary compensations represent a concrete practical measure, other elements of restorative justice, including the goal of restoring relationships, restoration of trust, and human dignity, are rather abstract.

The entanglement presented in this section concerns the rationale for restorative justice and its abstract aims. It articulates the core idea of restorative justice as the restoration of relations in order to prevent escalation of violence and recurrence of human rights violations. This core idea may trace back to the origins of restorative justice in small-scale conflicts, where the idea of a relationship is comprehensible. On a larger scale, however, and in the aftermath of mass violence, the idea of the restoration of a relationship loses its actual meaning. Furthermore, in cases of state violence, where human rights violations are perpetrated by the state, the idea of a relationship becomes obscure. Some

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scholars write about a relationship of trust between the state and its people that should be re-established. In this study, I argue that taking political and moral responsibility for the committed atrocities is the most tenable option. From this perspective, truth commissions as institutions of transitional justice, and more specifically restorative justice, may be counterproductive.

Truth commissions have been the subject of important scholarship within peace and conflict studies and human rights studies. Although overlapping to some extent with these areas of inquiry, the emphasis of this study is different. First and foremost, this study examines the normative assumptions underlying the concept of truth commissions. On the one hand, these underlying norms originate from a specific understanding of justice and truth, which are not always as transparent as they are meant to be. On the other hand, these norms have a significant bearing on communities and their transformation in the aftermath of large-scale human rights violations.

Previous research on truth commissions is dominated by studies of specific contexts and by evaluations of the impact of truth commissions on democratization and the rule of law. Many scholars point out elevated expectations for the role and impact of truth commissions; thus their concern is to show the limits of these institutions based on empirical materials. The concern of this study is different: it touches more upon the normative than the descriptive level. The descriptive level is studied by means of the contextualization of Morocco’s experiences.

The present study acknowledges that all contexts are profoundly contingent and specific, and, therefore, it is untenable, in my view, to develop a universal normative framework for truth commissions or a

96 For example, Martha Minow, Priscilla Hayner, Onur Bakiner, etc.
normative guideline for actions. The contingency of every single case should be taken seriously and give rise to different kinds of critique. Nevertheless, some features of human rights violations, such as the systematic character of violence and mass compliance, are common across different contexts. Past-related considerations, including the nature and conditions of past human rights violations, should be given priority over transition-related problems. In my critical analysis of the concept of truth commissions from the perspective of justice, these two features of large-scale human rights violations are considered the special circumstances of injustice.

Outline of the Study

In this introductory chapter, I have presented the problem this study will address as well as the study’s purpose and research questions. This chapter also examines previous research and the main discourses within the field of transitional justice. Based on this examination, I have identified and problematized two entanglements: firstly, between the question of justice and the question of transition, and secondly, restorative justice and its conceptual ambiguity.

Chapter 1 is devoted to theoretical and methodological considerations. Four thinkers are presented, together with a consideration of the critical potential of their different philosophical traditions: deconstruction, hermeneutical phenomenology, genealogy, and political phenomenology. A discussion of the study’s method and material follows.

Chapter 2 proceeds to the contextualization of Morocco’s Equity and Reconciliation Commission, presenting some historical background of human rights violations in Morocco. This background is followed by a presentation of the process of the truth commission’s establishment and its mandate. The chapter concludes with a review of previous research on Morocco’s truth commission and the position I take in relation to this research.

Chapter 3 examines Jacques Derrida’s and Paul Ricœur’s perspectives on justice for the purpose of developing critical approaches to the understanding of justice in the aftermath of large-scale human rights violations. These perspectives allow me to demonstrate several problematic areas within transitional justice, including a reductionist view of justice as legality, its predetermined character as a result of transition
discourse and its consequences for human rights claims, and the shift from the paradigm of crime to the paradigm of tort. The most important consequence concerns the depoliticization of human rights claims in the work of truth commissions.

Chapter 4 explores the relationship between truth, politics, and power, drawing on the work of Michel Foucault and Hannah Arendt. The purpose of this chapter is to analyse the meaning of truth and how truth relates to power and politics. The chapter also questions the view of truth commissions as powerless and political through a clarification of what power and politics mean and the limits of these meanings. Foucault’s and Arendt’s perspectives provide a critique of positivistic and absolute understanding of truth as correctness, which is incompatible with the political domain. The analysis of truth from the perspective of power demonstrates how truth risks becoming a prolongation and manifestation of power instead of having a critical function. The analysis of truth from the perspective of politics demonstrates how truth commissions may undermine the political significance of discovered truths about past human rights violations by depoliticizing these violations.

Chapter 5 analyses the concept of testimony. The purpose of this chapter is to present a critical assessment of testimony and the practice of testimony in truth commissions. To this end, the definition of testimony, its different dimensions, and its use are presented and discussed. The chapter identifies three problematic assumptions and relations that are actualized in the practice of testimony, including the presumed healing effects of testimony, the link between testimony and reparations, and the rhetoric of giving a voice by means of public testimony and testimonial literature. The chapter also identifies two poles within testimonial studies: one that emphasizes the political dimension of testimony, and one that points at the aporetic unrepresentability of suffering. The second pole is represented by Derrida’s deconstruction, which also supports the critique of testimony’s narrow ends. However, Derrida seems to underestimate the political dimension of testimony, which is developed further in Chapter 6.

Chapter 6 analyses the ethical and political dimensions of testimony, drawing on Foucault’s concept of parrhēsia, Arendt’s perspective on storytelling and testimony, and Ricœur’s hermeneutic of testimony. These perspectives allow me to elaborate on testimony’s ethical and political potential without adopting a reductionist and pragmatic position on testimony’s narrow ends. Furthermore, they provide critical
tools for assessing the impacts of testimony in the work of truth commissions.

Chapter 7 proceeds to an empirical contextualization and analysis of Morocco’s truth commissions. The purpose of this chapter is to dig into the Moroccan context and contextualize the arguments presented in Chapters 3–6. The chapter begins with an analysis of the ERC report, focusing on how justice is understood in the report and what role is ascribed to testimonies and public hearings. Although the work of the ERC and its role for justice is the primary focus of the chapter, it also includes an analysis of two novels: Talk of Darkness, by Fatna El Bouih, and Tazmamart, by Aziz BineBine. The analysis of these novels enhances the critique of the ERC.

Finally, Chapter 8 is devoted to the key arguments of the study and offers a final analysis of the research questions. The first research question, about the understanding of justice, is linked to the first normative assumption about the priority given to restorative justice over retributive justice. The second research question is linked to the second normative assumption about the perception on truth as a prerequisite for justice. The third research question deals with the final normative assumption about the implications of truth-telling on justice. This chapter also offers a critical reflection on the theoretical framework of the study.
1. Theoretical and Methodological Considerations

This chapter pursues two aims: firstly, it introduces a theoretical framework for the study; secondly, it presents and critically discusses the study’s methodological considerations and material. In the first part of the chapter, four thinkers and their philosophical traditions are discussed: Jacques Derrida and deconstruction, Paul Ricœur and hermeneutical phenomenology, Michel Foucault and genealogy, and Hannah Arendt and political phenomenology. In the discussion of these four thinkers, the main question concerns the critical potential that each thinker has to offer. Thus, in the first part of this chapter, I articulate how the chosen thinkers provide the necessary resources for a critical examination of truth commissions.

In the second part of the chapter, the methods of the study and its methodological assumptions are presented and discussed. The methods have been influenced by the traditions just mentioned and are informed by their epistemological and ontological positions. The study is concerned with the implications of the centrality given to truth and truth-telling for justice while dealing with past human rights violations. In the introductory chapter, above, three normative assumptions were presented which constitute the starting point for my analysis of the concept of truth commissions. The study answers three research questions with the help of philosophical analysis and a critical examination of the concept of truth commissions by digging into Morocco’s experiences of transitional justice (empirical contextualization).

1.1 Theoretical Considerations

Before presenting the four thinkers, I would like to clarify what critique and critical examination imply in this study. In the Introduction I argued that ethics is a critical discipline, where moral norms and conventions
constitute the subject of the critique. In this study, different kinds of critique are introduced and discussed, and in the final chapter I present my reflection on the critical potential of the thoughts presented by Derrida, Ricoeur, Foucault, and Arendt.

In my view, a critical examination of moral norms and conventions should be related to existing political and legal practices and institutions, since the latter represent an expression of these norms and their shifts. Hence, an ethical perspective on political and legal practices and institutions implies the identification of those moral values that guide these practices and institutions, or the lack of such. My critique in this study is directed against the attempts of truth commissions to solve unresolvable moral dilemmas in the name of justice in the aftermath of large-scale human rights violations. In the sections below, I articulate how my chosen thinkers provide the resources necessary for a critical examination of truth commissions.

1.1.1 Derrida and Deconstruction

Jacques Derrida (1930–2004) is recognized as the founder of deconstruction. The presentation of Derrida’s philosophical contribution is a perplexing endeavour. It poses a double risk: on the one hand, representing deconstruction as an overly abstract and highly theoretical concept; on the other hand, simplifying it. In this study, the problem at hand concerns a specific political institution – a truth commission – and therefore it is necessary to consider deconstruction as a critique of contemporary political institutions.

Derrida himself claimed that he had never succeeded in relating deconstruction directly to existing political codes and programs. Nevertheless, he addressed urgent political questions by deconstructing, for

99 In line with Carl-Henric Grenholm’s position on ethics, presented inter alia in Etisk teori: Kritik av moralen, Studentlitteratur, Lund 2014, 18-19.
example, the notions of terrorism and tolerance, democracy and sovereignty. Derrida’s concept of autoimmunity makes it possible to show the internal threats against democracy and its core principles, which work to immunize themselves against their own “immunity”. The critical potential of the norm of unconditional hospitality, introduced by Derrida, has been demonstrated in the analysis of contemporary European refugee politics. It is necessary to add that Derrida also commented on the work of South Africa’s Truth and Reconciliation Commission and employed the distinction between unconditional forgiveness and reconciliation to generate a critique against the pragmatic use of reconciliation as a political strategy. To sum up, Derrida’s deconstruction, as well as later interpretations of his works, have proven relevancy for a critique of the most traditional values and institutions.

Deconstruction aims at scrutinizing concepts and discourses to demonstrate their ideological foundations. The philosophical work, Derrida argues, is never ideologically neutral. At the centre of a deconstructive analysis is a re-examination of familiar self-evident concepts and normative assumptions. Hence, Derrida’s critique aims at illuminating and shaking up the way these concepts and assumptions may be used unreflexively. As John D. Caputo puts it, in Deconstruction in a Nutshell:

103 The concept of autoimmunity is treated in more detail in Chapter 3, but here it can be clarified that Derrida borrows the term from biology and genetics in order to describe the process in which a living organism protects itself against its self-protection by destroying its own immune system. Derrida suggests that the logic of autoimmunization is applicable in other domains outside of biology. The main point is that the biggest threat comes from “within” – an entity immunizes itself against its “own” immunity. In Borradori, Giovanna: Philosophy in a Time of Terror. Dialogues with Jürgen Habermas and Jacques Derrida. The University of Chicago Press, Chicago 2003, 94, 187n.
The very meaning and mission of deconstruction is to show that things—texts, institutions, traditions, societies, beliefs, and practices of whatever size or sort you need—do not have definable meanings and determinable missions.¹⁰⁷

To grasp how deconstructive approaches work, some central concepts must be clarified. The first time Derrida used the term “deconstruction” was in a speech at the John Hopkins University entitled “Structure, Sign and Play in the Discourse of the Human Science”, which was later included in a collection of his essays, Writing and Difference. Derrida uses deconstruction to criticize the language and heritage of social science and to raise questions about the responsibility for the discourse:

Here it is a question of a critical relation to the language of the social science and a critical responsibility of the discourse itself. It is a question of explicitly and systematically posing the problem of the status of a discourse which borrows from a heritage the resources necessary for the deconstruction of that heritage itself.¹⁰⁸

In “Letter to a Japanese Friend”, Derrida writes: “What deconstruction is not? everything of course! What is deconstruction? nothing of course!”¹⁰⁹ In this work, Derrida explains how the term “deconstruction” may be translated into Japanese through negation: that is, defining what deconstruction is not.¹¹⁰ Firstly, Derrida claims that deconstruction does not suggest putting a complex structure into simple elements. This is one way that deconstruction is mistakenly simplified. Secondly, deconstruction is not a methodological instrumentality and cannot be considered as an act or an operation. Derrida claims that this does not mean that deconstruction is something passive, but rather that it takes place as an event: “it is an event that does not await the deliberation, consciousness, or organization of a subject”.¹¹¹ The process of deconstruction begins with the very act of reading, and then continues by writing and producing a new text.

¹¹¹ Op. cit., 274
Even though deconstruction does not imply breaking down complex structures into simpler elements, it still seeks to destabilize the basic philosophical structures that constitute the foundation of philosophical thought. Derrida finds destabilizing necessary because the foundation itself is made up of identified oppositions and conceptual pairs: for example, eternity and temporality, material and spiritual, or universality and particularity. The conceptual constructions are rigid and lead to the marginalization of everything that does not fit inside them. Further, the conceptual pairs are characterized by hierarchical order.\textsuperscript{112} Hence, deconstruction purports to reveal and subvert the hierarchical orders within the conceptual oppositions and the suppression that goes beyond established conceptual constructions.

Derrida invents his own “non-concepts” that cannot be defined in terms of traditional oppositional predicates. The notion of \textit{différance} is an example of such a non-concept. \textit{Différance} originates from the double meaning of the French verb “différer”: to differ and to defer (or postpone).\textit{Différance} therefore not only marks difference, i.e., the capacity of different signs to produce and constitute differences in the meaning of words and sentences, but also bears a temporal dimension of the future to come (\textit{à venir}). Hence, the recognition of difference cannot be temporally present, but is deferred.\textsuperscript{113}

Iterability is another central concept of deconstruction. It implies the capacity for something to repeat itself in a different context. Words and sentences of language are repeated in different circumstances, but due to the iterability of language, they are still comprehensible. Language, thus, is characterized by both iterability and \textit{différance}. As Susanne Lindroos-Hovinheimo observes, \textit{différance} is playful. It reveals that differences in language do not constitute a rigid structure, but rather are in constant play, and this ongoing play of differences prevents any stable and given meaning. The meaning is dynamic and defined by time and place.\textsuperscript{114}

Derrida maintains that the juridical and political systems of international law and institutions are grounded in the Western philosophical heritage of the Enlightenment. Therefore, this fact provides the reasons

\begin{itemize}
  \item \textsuperscript{112} Borradori, Giovanna: \textit{Philosophy in a Time of Terror. Dialogues with Jürgen Habermas and Jacques Derrida}, 13.
  \item \textsuperscript{113} Lindroos-Hovinheimo, Susanna: \textit{Justice and the Ethics of Legal Interpretation}. Routledge, London 2012, 42-43.
  \item \textsuperscript{114} Op. cit., 47.
\end{itemize}

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why philosophers (including moral philosophers) should engage in the critical examination of existing systems. In Philosophy in a Time of Terror: Dialogues with Jürgen Habermas and Jacques Derrida, Giovanna Borradori suggests that one of the forms of such engagement is a social critique, which is grounded in the understanding of philosophy as historically bound.\footnote{Borradori, Giovanna: Philosophy in a Time of Terror. Dialogues with Jürgen Habermas and Jacques Derrida, 4-5.}

Derrida’s deconstruction offers a critique of the Western tradition that attributed to some principles a universal status, for the advantage of some and the disadvantage of others. The critique of these principles is a precondition for embracing the ideals of Enlightenment: that is, a demand for justice and individual’s independence from authority.\footnote{Op. cit., 13-14.}

Finally, deconstruction has been accused of being nihilistic. In response to a question about deconstruction as a strategy of nihilism, Derrida states: “Deconstruction is not an enclosure in nothingness, but an openness towards the other”.\footnote{Kearney, Richard: Dialogues with Contemporary Continental Thinkers: the Phenomenological Heritage, with Jacque Derrida, 124.} This idea of responsibility to the call of the Other adds another dimension to Derrida’s approach to ethics and politics. The deconstruction of falsely neutral and potentially hegemonic orders is guided by this responsibility before alterity and difference. Derrida writes:

\begin{quote}
I mean that deconstruction is, in itself, a positive response to alterity which necessarily calls, summons and motivates it. Deconstruction is therefore vocation – a response to a call. The other, as the other than self, the other that opposes self-identity, is not something that can be detected and disclosed within a philosophical space and with the aid of a philosophical lamp.\footnote{Op. cit., 168.}
\end{quote}

In this sense, deconstruction is profoundly affirmative and always presupposes affirmation of the Other. Deconstruction is directed towards “justice to come” by scrutinizing every attempt to define pragmatic solutions as justice. The idea of justice to come is an opening to the Other. Derrida’s understanding of justice as deconstruction and its implications for the understanding of justice in the aftermath of large-scale human rights violations is discussed in Chapter 3, and his perspective on
testimony is analysed in Chapter 5, where it contributes with a critique of testimony’s narrow instrumental use. But for now, let us turn to Paul Ricœur and hermeneutical phenomenology.

1.1.2 Ricœur and Hermeneutical Phenomenology

Hermeneutical phenomenology, one of the major phenomenological traditions, focuses on the meaning which arises from interpretation. Unlike transcendental phenomenology (developed by Edmund Husserl), hermeneutical phenomenology rejects transcendental reductions or bracketing as the main method of understanding phenomena. Instead of bracketing out the temporal and historical contexts of our experiences, hermeneutical phenomenology acknowledges the subject’s historicity and situatedness. Hermeneutical phenomenology assumes that it is impossible for the subject to go beyond its pre-understandings and treats these pre-understandings as necessary for the interpretation of meaning.¹¹⁹

Paul Ricœur (1913–2005) is most well-known for the development of hermeneutics, where a method of reading and interpreting texts about the experience of suffering, vulnerability, and fragility is of importance. Ricœur did not treat hermeneutics and phenomenology as two mutually exclusive alternatives but argued for phenomenology’s renewal with the help of hermeneutics.¹²⁰ Hence, Ricœur’s philosophy is grounded in the connection between text and experience.

Ricœur’s philosophical contribution is no less challenging than Derrida’s deconstruction to present. One of the challenges lies in the acknowledged discontinuity of his thought, his shifts of perspective and methodological detours.¹²¹ Ricœur addressed multiple philosophical and ethical problems, but, again, what is of interest here is the potential

¹²¹ In his doctoral thesis, Bengt Kristensson Ugglä provides a thorough analysis of Ricœur’s philosophical project to identify inner connections in Ricœur’s thought, both methodologically and thematically. See: Kristensson Ugglä, Bengt: ”Kommunikation på bristningsgränsen. En studie i Paul Ricœur’s projekt”. Brutus Östlings Bokförlag, Stockholm 1994.
of Ricœur’s hermeneutical phenomenology for offering a critique of existing political practices and institutions and their grounding normative assumptions.

Hermeneutics is frequently thought of as an interpretation of meanings or the meaning of meaning. Ricœur, however, suggests that hermeneutics should be understood as a critique. Ricœur defines hermeneutics as “the art of deciphering indirect meanings”. Ricœur’s development of hermeneutics moves beyond the original application of hermeneutics for Biblical interpretations. Ricœur argued that polysemy is a fundamental feature of all languages and hermeneutics is not limited to the science of biblical exegesis. He thus transfers hermeneutics to the new field of social sciences.

Ricœur introduces distanciation and a “matter of the text” as two critical dimensions of hermeneutics. He suggests that the function of distanciation is a condition of understanding. A text, he maintains, is autonomous in four respects: the meaning, the intention of the author, the initial situation of discourse and the original addressee:

When text is autonomous with respect to the subjective intention of its author, the essential question is not to recover, behind the text, the lost intention, but to unfold, in front of the text, the “world” which it opens up and discloses.

Distanciation is a positive component of being for the text and the autonomy of the text in respect to the author’s intention and the cultural and social conditions of the production of texts and with respect to the original addressee. Firstly, distanciation allows for multiple interpretations of texts; secondly, it results in self-understanding. Ricœur mentions an opposition between distanciation and belonging. He means that

124 Kearney, Richard: Dialogues with Contemporary Continental Thinkers: the Phenomenological Heritage, with Jacque Derrida, 98.
125 Ricœur, Paul: Hermeneutics and the Human Sciences, 106.
distanciation is a fundamental characteristic of the text: the text as communication in and through distance.\textsuperscript{128} The theme of dialectic is central for understanding what text is and what distanciation means. The text cannot be reduced to writing only but includes dialectical movement between speaking and writing, between understanding and explanation. The dialectical movement occurs also between the whole text and its parts.\textsuperscript{129} To make maximum sense of the text, it is necessary to make sense of both.

Another critical dimension lies in Ricœur’s focus on the “matter of the text” and not mere linguistic structures. According to Ricœur, the task of hermeneutics is not to reveal the intention behind the text, but to explore the “matter of the text”: what the text mediates and what kind of world is opened up by the text. For Ricœur, the text is much more than a particular case of intersubjective communication; it represents a paradigm of distanciation in communication.\textsuperscript{130} He writes:

The power of the text to open a dimension of reality implies in principle a recourse against any given reality and thereby the possibility of a critique of the real.\textsuperscript{131}

Ricœur’s theory of interpretation is based on the key hypothesis of hermeneutic philosophy that interpretation is an open process that no single vision can conclude. There is always the possibility to propose a new interpretation.

Ricœur’s hermeneutics proposes a double motivation: a willingness to suspect and a willingness to listen. As a result, two types of hermeneutics are developed: a hermeneutics of suspicion and a hermeneutics of affirmation. The hermeneutics of suspicion aims at disclosing and criticizing false consciousness, departing from the assumption that things do not mean what they appear to mean. As Richard Kearney puts it, hermeneutical doubt reminds us again and again that consciousness is a relation of concealing and revealing which calls for interpretation.\textsuperscript{132} It makes it possible to demystify the established orders and decipher the

\textsuperscript{128} Ricœur, Paul: *Hermeneutics and the Human Sciences*, 93.
\textsuperscript{129} Op. cit., 94.
\textsuperscript{130} Op. cit., 93
\textsuperscript{131} Op. cit., 53-54.
concealed strategies of domination, desire, and will. The understanding of these concealed strategies originates from the three “masters of suspicion”: Freud and his disclosure of unconscious desire, Nietzsche’s genealogy of will-to-power, and Marx’s critique of false consciousness.

The hermeneutics of suspicion, according to Ricœur, is a necessary step before the hermeneutics of affirmation, which recognizes the irreducible plurality of meanings. Thus, in addition to having a critical task, hermeneutics serves as an affirmation of a surplus of meaning and the inevitable conflict of interpretations. Ricœur addresses this question in his “little ethics”, where he develops an account of the ethical aim of “a good life with and for others in just institutions”.133

Ricœur’s redirection of phenomenology in the direction of hermeneutics implies that subjective experiences of individuals or groups are revealed and understood through interpretations, not through transcendental reductions and bracketing. The interpretation of narratives presented by individuals and groups allows us to perceive phenomena as they appear to an individual or a group. Narratives, therefore, are central for grasping the essence of phenomena. Understanding does not begin with a pure reflective consciousness but is accomplished through the interpretation of the “signs” that are outside one’s consciousness. Thus, a hermeneutical renewal of phenomenology exposes phenomenology to “a radical awareness of the limits and obstacles of consciousness”.134

Ricœur challenges Martin Heidegger’s view of Being (Dasein) and argues that the meaning of Being can only be accessed through an endless process of interpretations that are located outside the self.135 The question of the self constitutes one of the central critical targets in Ricœur’s thought. He radically challenges the idea of an autonomous subject that is transparent to itself. In Time and Narrative and Oneself as Another, Ricœur presents an account of how the self is constructed. He means that we construct ourselves through interaction with others, social institutions, traditions, and cultures. According to Ricœur, we become our true selves only in relation to others.

The self is contingent and constructed by collective social memory: what is remembered and what is forgotten. Remembering and forgetting occur both on a societal and an individual level. As separate individuals,

135 Ricœur, Paul, op. cit., 308-12.
we choose to remember certain things and experiences while hiding and repressing others. Here, Ricœur’s earlier engagement with psychoanalysis and structuralism becomes apparent, particularly the idea of hidden structures located both in the unconsciousness and in language structures. By bringing together the critique from both psychoanalysis and structuralism, Ricœur adopts the idea of the layers of meaning that need to be interpreted. Hermeneutics, then, is a method for discovering the layers of meanings that are both apparent and hidden in our language.\(^{136}\)

Ricœur presents the hermeneutical method as a primarily critical endeavour. Along with Jürgen Habermas, he argues that the role of philosophy is to provide a critical examination of the public discourse, and for him, this critique should be done from the perspective of recognition and respect.\(^{137}\) Public discourse, Ricœur maintains, must be oriented towards justice. Hence, justice constitutes a critical moral criterion for law and for political and social institutions. This perspective is presented and discussed in Chapter 3.

Ricœur’s view of the self and its moral implications are developed in the “little ethics” presented in *Oneself as Another*. It is this particular inclusion of the Other through the process of communication that is constitutive for the moral self. Based on the insight that our relations go beyond face-to-face relations, he develops his notion of justice in the realm of the political, arising from relations to the distant others. For Ricœur, it is justice, not solicitude that should guide social and political institutions.\(^{138}\)

To sum up, Ricœur’s hermeneutical phenomenology provides us with a double critique. Firstly, it challenges the idea of the autonomous transparent self and suggests that the self is constituted in the process of communication with others. Hence, Ricœur is critical towards earlier accounts of hermeneutics developed by Wilhelm Dilthey and Friedrich Schleiermacher.\(^{139}\) Secondly, Ricœur’s phenomenology challenges the idea that temporal and historical contexts can be bracketed. Here, Ricœur directs his critique against transcendental reductions within

\(^{136}\) Ricœur, Paul: *Hermeneutics and the Human Sciences*, 48.


\(^{138}\) Ricœur, Paul: *Oneself as Another*, 180-82.

\(^{139}\) Ricœur, Paul: *Hermeneutics and the Human Sciences*, 5-13.
phenomenology. The process of understanding demands both a self-understanding that is exposed to new experiences through an interrogation with others and the interpretation of an external world.

1.1.3 Foucault and Genealogy

The work of Michel Foucault (1926-84) has been divided (although this is disputed) into different phases, including early, middle, and late Foucault, corresponding to epistemic, political, and ethical Foucault. His methodology is characterized by shifts between archaeology and genealogy and the development of new critical concepts, such as governmentality, biopolitics, and self-care. Hence, although it would be a mistake to describe Foucault’s thought as genealogical tout court, nevertheless, the concepts of governmentality and biopolitics can be treated as two trajectories of his genealogical phase. This phase also marks a political turn in Foucault and consists of the analysis of the institutional production of discourse.

This study will examine Foucault’s perspective on truth and truth-telling, but I will begin by looking at Foucault’s concept of power and politics and their relationship with the truth. Foucault provides a novel broader concept of power that aims at developing strategies for emancipation from domination by revealing oppressive power structures. His rigorous analysis of the concrete historical practices of power manifestation represents a “history of the present”, or genealogy. In what follows, Foucault’s genealogical project is discussed from the perspective of its critical potential and how critique is understood from a Foucauldian perspective.

In the essay “What Is Enlightenment?”, Foucault re-poses the question that Kant addressed in 1784. Foucault turns back to Kant’s definition of Aufklärung as an “exit” or a “way out”, the process that releases us from the state of immaturity. For Kant, this release occurs through the use of reason. For Foucault, the release is different. As Judith Butler notes, part of Foucault’s essay rehearses the Kantian position, but But-

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ler finds that by re-posing Kant’s question, Foucault, in a way, is looking for a “way out” of Kant. Yet Foucault’s move has also been interpreted as a further development of Kant’s critical tradition. Colin Koopman claims that Foucault’s philosophical and historical projects should be understood as critical in the tradition of Kant. Butler and Koopman thus offer two different interpretations of Foucault’s relation to Kant. While according to Butler, Foucault breaks with the Kantian claim that critique belongs to the regime of reason, Koopman’s perspective suggests that Foucault’s critical philosophy is characterized by duality, belonging both to the Kantian tradition and developing his own new approach of critical problematization. These two perspectives are not mutually exclusive, but they give rise to two slightly different ways to understand critique in Foucault’s thought. Butler argues for critique as a practice and Koopman presents problematization as a specific method of genealogical critique.

Initially, Foucault stresses the mutual relation between critique as a handbook of reason in the Enlightenment and the Enlightenment as the age of the critique. He describes critique as an attitude or an *ethos*:

And by “attitude”, I mean a mode of relating to contemporary reality; a voluntary choice made by certain people; in the end, a way of thinking and feeling; a way, too, of acting and behaving that at one and the same time marks a relation of belonging and presents itself as a task.

Later in the text, Foucault clarifies that this type of attitude as a type of philosophical interrogation is rooted in the Enlightenment. The permanent reactivation of this attitude implies a permanent critique of our historical era. The understanding of critique as an attitude demonstrates Foucault’s transformative renewal of the Kantian critical project. Ac-

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according to Koopman, this transformation is exercised through the historical critique of the conditions of possibility of the practices whose critique Foucault’s inquires perform.145

Foucault is critical of the equation of reason with progress and emancipation, and he introduces a new understanding of power and domination. His studies are not purely philosophical but rather present a combination of historical and philosophical analyses of certain practices that are characterized by the exercise of power and which have not traditionally been associated with power and domination. These practices include, for example, the emergence of the human sciences, psychiatry, medicine, and criminology.

In *Genealogy as Critique*, Koopman suggests a tenable distinction between Foucault’s critical methods and his critical concepts. According to Koopman, critical methods include genealogy, archaeology, and problematization, and critical concepts include, e.g., discipline and biopower. The distinction is necessary to show that critical concepts detached from methods may lose their critical grip, while the critical methods can be redeployed in relation to new contexts and problems.146 Even though the present study is not a genealogical one, this is nevertheless important for the further analysis of Foucault’s genealogy of truth-telling.

The main feature of the genealogical approach is the aspiration to scrutinize the history of our present political, social, and cultural conditions. It is highly motivated by contemporary concerns and a need to deal with the question of how our current situation originated. The critique concerns the present but is exercised through the analysis of the historical conditions that resulted in the development of present practices and phenomena.

In contrast to textual examinations (as in the cases of Derrida and Ricœur), genealogy implies an empirical examination of historical practices. As mentioned earlier, problematization allows us to get closer to how genealogy constitutes a genuinely critical endeavour. In an interview published as “Polemics, Politics and Problematizations”, Foucault answers the question about the “history of problematics” in the following way:

Actually, for a domain of action, a behavior, to enter the field of thought, it is necessary for a certain number of factors to have made it uncertain, to have made it lose its familiarity, or to have provoked a certain number of difficulties around it. These elements result from social, economic, or political processes. But here, their only role is that of instigation. They can exist and perform their action for a very long time, before there is effective problematization by thought.\textsuperscript{147}

The problematization by thought destabilizes facts, makes them uncertain, and challenges the social, economic, and political processes that lie behind them. It reveals those invisible forces and opens up the possibility for transformation and radical change.

Foucault points out that problematization is different from both the history of ideas as a form of representation and the history of mentalities as an analysis of attitudes. Its process aims at answering the questions of how and why certain behaviours, phenomena, or processes have become a problem. Foucault exemplifies with his analysis of madness, delinquency, and sexuality. He writes:

\begin{quote}
What I tried to do from the beginning was to analyze the process of "problematization" - which means: how and why certain things (behavior, phenomena, processes) became a problem. Why, for example, certain forms of behavior were characterized and classified as "madness" while other similar forms were completely neglected at a given historical moment; the same thing for crime and delinquency, the same question of problematization for sexuality.\textsuperscript{148}
\end{quote}

Problematization shifts the focus from the critique of its object to the critique of those conditions that “defined” the problem. In the present study, truth commissions represent political institutions that address large-scale human rights violations and, in a way, define the problem. Concerning the critical analysis of truth commissions, it is particularly the genealogy of truth-telling that is of interest and is presented in Chapter 6. As Andreas Folkers notes, Foucault develops not only genealogy


as a critique but also a genealogy of critique. In the genealogy of truth-telling, Foucault shows the origins of critique, tracing it back to the practice of parrhèsia. While parrhèsia in ancient Greece was a genuinely critical practice directed towards those in power, Foucault’s previous works on power and knowledge demonstrate how truth and truth-telling can transform from a critique of power into a form of power manifestation.

Truth commissions in this sense are examples par excellence. The centrality of truth and truth-telling can be interpreted as a critical practice directed towards a state-perpetrator. But as the analysis of testimony in truth commissions shows, truth-telling loses its critical impetus when it becomes institutionalized, and in this respect, Foucault’s genealogy of critique is important for grasping the interconnectedness between the will to truth and the will to power.

Furthermore, genealogy implies bringing to the surface the linkages between discourses that are employed to rationalize and justify certain practices and institutions that are presented as inevitable solutions. Thus, the object of the critique is not these practices and institutions, but, again, the conditions that enabled defining the problems and coming up with the solutions to these problems. Genealogy seeks to uncover the system of thought and rationality that led to, for example, the development of the notion of prison as the most effective and rational means of punishing crimes in a society. We need to understand how these conditions of possibility were composed in order to begin the difficult labour of transforming these practices, institutions, and normative assumptions.

Foucault claims that genealogy as a form of historically informed critique does not presuppose judgment based on a universal moral framework. Critique constitutes a prolegomenon to judgment, but not judgment itself. Folkers writes:

Genealogy does not ask “what is” just to proclaim “what should be”. It poses another question: how did that what is come into being, and how can it become otherwise.

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Hence, one critical potential of genealogy lies in its capacity to illuminate complex and contingent historical conditions of the emergence and stability of practices, institutions, and norms, and disclose the possibilities for changing these conditions. Genealogy, then, calls for reconstruction and transformation.

1.1.4 Arendt and Political Phenomenology

Hannah Arendt (1906–75) engages with a variety of questions. At their core is the question of politics as a distinct domain of human activity. Her philosophical thought is motivated by the critique of a modernity characterized by the loss of the public sphere of action and speech in favour of the private world and the private pursuit of economic interest. The loss of the world, to put it in Arendt’s terms, is not only the loss of the political but also the loss of the moral; that is, the inadequacy of traditional values for making a moral judgment. Arendt’s critique of modernity is directed towards the rise of the social realm, which threatens “to engulf once common insights into the active essence of human life”. Chapter 4, below, scrutinizes Arendt’s understanding of power and the political. This section investigates the critical potential of her political phenomenology for the analysis of contemporary political practices and orders.

In her introduction to two models of public participation (political activism and social critique), already mentioned in relation to Derrida’s deconstruction, Borradori takes Arendt and her philosophical work as a model for social and political commitment through social critique. Borradori argues that Arendt’s philosophy was historically bound and represented a new model for philosophical commitment in political questions. As Borradori notes, Arendt understood her philosophical responsibility to be a critique of modernity through an evaluation of the intellectual and philosophical challenges posed by twentieth-century European history – first and foremost, totalitarianism. Arendt’s primary concern was to provide an analysis of the perplexing events of the twentieth century, including such separate events as the Eichmann trial,

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153 The second model is called political activism and is represented by Bertrand Russell.
the Vietnam War, and the Hungarian revolution. Her phenomenology of the political domain is rooted in political experiences, including her personal experiences.

Since the aim of this section is to assess the critical potential of Arendt’s thought, her philosophical premises must be clarified. Arendt herself defined her philosophical background within the German philosophical tradition associated with Husserl, Heidegger, and Jaspers.155 Arendt’s engagement with Kant’s philosophy, and particularly his critique of judgment, displays the link that she establishes between her concept of the political and thinking through the notion of “enlarged mentality”. These concepts are examined in Chapters 4 and 6.

In The Human Condition, Arendt’s key argument concerns an idea of the world as worldless, which is not a factual claim but an existential judgment about the loss of the public realm due to the rise of the social. Arendt rejects the idea of human nature and the essence of a human being. Instead, she argues that it is necessary to investigate conditions of human life and how individuals appear to each other.156 Therefore, she develops a phenomenological analysis of three conditions: work, labour, and action. Arendt’s understanding of being with and among others, i.e., the human condition of plurality, is foundational for her perspective on politics. According to Margaret Canovan, Arendt’s special understanding of the political as a space created between people, particularly, demonstrates the spatial quality of politics.157

By developing a novel understanding of politics, Arendt raises critique against the social sciences and the epistemological role they give to their concepts and categories. Her main critique regards the gulf between tradition and political experience. At the centre of her philosophical endeavour Arendt puts the human experience: how these experiences appear to us and how we then think and speak about what appears in the subsequent reflection. This, according to Lewis P. Hinchman and

Sandra K. Hinchman, constitutes a root principle of phenomenological investigation.\textsuperscript{158}

Arendt’s understanding of the political is unusual and stands in opposition to the common understanding within the social and political sciences. According to Arendt, the social sciences reduce individuals to behaving animals and members of a mass society, while she emphasizes the uniqueness and unpredictability of individual action and humans as political animals. Arendt objects to the whole attempt to generalize explanations in politics, which necessarily results in ignoring the specificity and uniqueness of the events and actors involved. Her political thought is exercised in an individual, reflective manner without aspiration to elaborate a systematic analysis of the political sphere, according to Canovan.\textsuperscript{159}

Canovan suggests that the two dimensions of Arendt’s political thought consist precisely in the fact that her work is political and that it can sooner be described as a thought, not a theory.\textsuperscript{160} Firstly, Arendt seeks to redirect our attention from society to politics: to people in the public sphere and the events that bring people together (e.g., revolutions). Secondly, her work is a series of exercises in political thought. As Arendt puts it herself in the introduction to the collection of essays in *Between Past and Future*, the essays are “eight exercises in political thought”.\textsuperscript{161} According to Arendt, thinking is not a prerogative of professional philosophers but rather presents an inner dialogue that one has with oneself. The notion of two-in-one as a necessary precondition for such a dialogue demonstrates morality’s critical level: an ability to be critical towards dominant norms and rules (including the norms of a positive law).

Arendt also turns to the philosophy of antiquity and the political experiences of citizens of ancient Greece. By examining the etymology of central antique concepts, she seeks to find a more precise language for depicting the phenomena of truth and politics. Hence, Arendt’s turn to these concepts depends upon her view that the tradition of political


\textsuperscript{159} Canovan, Margaret: *The Political Thought of Hanna Arendt*, 3-4.


thought in the West has obscured the true nature of politics.\textsuperscript{162} Her use of concepts and linguistic distinctions constitutes an original vocabulary used as a means for achieving conceptual clarity. It does not mean that her usage is completely coherent. Arendt does not aspire to provide a consistent theory, but rather, as Canovan puts it, she uses history as a “means of finding an Archimedean point outside the present to which she can appeal against the modern world and its assumptions”.\textsuperscript{163} In other words, the history of Greek and Roman antiquity constitutes a court of appeal against present events.

Finally, the philosophical works of Hannah Arendt illuminate some contemporary issues and developments. She aims to show what a political philosopher can say about contemporary political experiences. At the same time, her interpretation of events based on the experiences of classical antiquity leave many puzzled. Her concept of the political has been described as elitist, elevated, and alienated from the world of actual affairs. As Canovan concludes, Arendt’s ideal model of politics is too romantic to be helpful for scrutinizing real political experiences. Nevertheless, Canovan also maintains that Arendt’s general conception of the human condition does help us to see aspects of politics that tend to be unjustifiably neglected.\textsuperscript{164} The Arendtian perspective on the human condition, and her critique of the rise of the social as constituting a threat to the public realm, are significant critical reflections. Their significance lies in the critique they offer of the aspiration to depoliticize profoundly political questions and controversies. This critique is necessary for the analysis of contemporary political institutions and practices, which reduce their own potential to become arenas for public deliberation by downplaying the politicism of the problems they deal with.

To sum up, my selection of an eclectic group of philosophical perspectives for this study is both a challenge and a resource. I will not attempt to synthesize the positions of these different philosophers, but rather to show how each thinker suggests some important ethical and political insights concerning the understanding of justice, the impact of

\textsuperscript{163} Canovan, Margaret: The Political Thought of Hanna Arendt, 10.
\textsuperscript{164} Canovan, Margaret, op. cit., 126.
the centrality of truth, and the implications of truth-telling for this understanding. Their perspectives are analysed in light of the contemporary political practice of dealing with large-scale human rights violations through truth commissions. As stated earlier, their perspectives also inform the methods of this study in different ways. In the next part, the methodological considerations of the study and material are presented and discussed.

1.2 Methodological Considerations

This study started with a general question about how justice can be understood in the aftermath of large-scale human rights violations – that is, in contexts of extreme violence where common standards of legal justice have demonstrated their apparent shortcomings. These contexts demand responses on legal, political, and moral levels. The extreme character of the violence is combined with a high level of normalization of violence. Consequently, large-scale human rights violations are not bounded by the relation between a victim and a perpetrator, but rather affect society as a whole, including its moral norms and values.

The general question about the understanding of justice has been narrowed to focus on the specific field of transitional justice and one of its institutions: truth commissions. The field of transitional justice, as noted in the introduction, has primarily emerged as a result of practical development, dealing mainly with instruments and methods for responding to human rights violations committed by prior regimes. Nevertheless, transitional justice has also experienced some theoretical development, mainly concerning the conceptual distinctness of transitional justice and the impact of transition for justice.

To put it another way, the general question has been narrowed by considering truth commissions as responses to large-scale human rights violations and their claims to contribute to justice. Hence, the aim of this study has been formulated as a critical analysis of the concept of truth commission. The study engages with an examination and critical reflection of the underlying normative assumptions that lie behind the establishment and work of truth commissions and thus sheds new light on the concept of truth commissions and restorative justice. The evolution and rapid development of the concept of truth commissions stems from an assumption made by many scholars that truth and public truth-
telling are necessary elements in dealing with large-scale human rights violations.

The methodological approach taken by the study can be divided into three steps. The first step consisted of the identification and examination of three hypotheses. These hypotheses emerged through the study of previous research on transitional justice and truth commissions as well as text analysis of the UN regulations on transitional justice and its mechanisms. When the hypotheses were confirmed through a review of previous research and the UN regulations, they were treated as the underlying normative assumptions.

The second methodological step is to scrutinize and challenge these normative assumptions from an ethical perspective with the help of my research questions. This examination has taken place in dialogue with my chosen thinkers: Derrida, Ricœur, Foucault, and Arendt. Finally, the third step is the empirical contextualization of my philosophical arguments through the analysis of Morocco’s Equity and Reconciliation Commission. Below, I first clarify how each normative assumption has been examined, and then present the empirical contextualization.

The first normative assumption goes as follows: the justification of truth commissions derives from the idea that in the aftermath of large-scale human rights violations, restorative justice should be given priority over retributive justice. In order to examine this assumption, I pose the first research question about a tenable understanding of justice in the aftermath of large-scale human rights violations. The question stretches beyond the frames of transitional justice into a more profound philosophical discussion of what constitutes the moral foundation of justice. Here I turn to two thinkers who have developed different perspectives on justice and its legal, political, and moral dimensions. In my close reading, interpretation, and analysis of Derrida’s and Ricœur’s works, I search for and identify critical tools for examining the first normative assumption. Their two perspectives can be treated as an answer to my original general question about how justice can be understood. However, in order to relate these perspectives to truth commissions, the next step is necessary, namely, addressing the centrality of truth in the work of truth commissions.

The second normative assumption goes as follows: truth is perceived as a prerequisite for justice and dealing with past human rights violations. In order to examine this assumption, I pose my second research question, about the impacts of giving truth a central place. The answer
to the second question begins in a dialogue with Foucault and Arendt. My close reading, interpretation, and analysis of their perspectives on truth, politics, and power helps me identify analytical tools for examining the role of truth and the implications of placing the truth at the centre of dealing with past atrocities. Although neither Foucault nor Arendt discusses the relationship between justice and truth, instead focusing on the relationship between truth and power and truth and politics, their perspectives constitute a foundation for my analysis of the relationship between justice and truth by illuminating a power perspective and the place of justice in the realm of politics.

The third normative assumption concerns the presumed positive impact of truth-telling and goes as follows: public truth-telling contributes to victims’ healing and the restoration of their human dignity through the public acknowledgment of suffering. As I did with the first two assumptions, I challenge the third assumption using my third research question, about the effects of truth-telling. My critical assessment of testimony as a form of truth-telling consists of an analysis of the concept of testimony, its different dimensions, and its use in truth commissions. The analysis examines several different perspectives on testimony, allowing me to trace different rationalizations for the use of testimonies. In other words, the focus lies on strategies for justifying the use of testimonies, how these strategies interconnect different discourses and paradigms, and what consequences these connections have for understandings of human rights violations and justice. Here, I turn to Derrida’s deconstruction of testimony and the aporetic unrepresentability of suffering by means of testimony. Derrida’s deconstruction allows me to discover and problematize the pragmatic and reductionist use of testimony in the work of truth commissions.

I next turn to an analysis of the political and ethical dimensions of testimony. Testimony lies at the heart of the work of truth commissions, and thus has a strong critical potential that must be examined and explained. The goal of my analysis is thus to demonstrate testimony’s critical potential. The analysis derives from three perspectives that are differently related to the concept of testimony: Foucault’s notion of parrhēsia, Arendt’s notion of storytelling, and Ricœur’s hermeneutics of testimony. I deploy these three perspectives as analytical tools to demonstrate the ethical and political dimensions of testimony and intensify the critique of the use of testimony in truth commissions.
To sum up, the normative assumptions identified in step one have constituted three points of departure for the study and given rise to three research questions: about a tenable understanding of justice, about the central role given to truth as a prerequisite for justice, and about the implications of truth-telling for the victims and society as a whole. These questions are addressed through the analysis of different philosophical perspectives presented by Derrida, Ricœur, Foucault, and Ar- endt, respectively. None of these four thinkers discuss the problem of justice, truth, and truth-telling in relation to truth commissions or transitional justice. My reading and interpretation of their work have been guided by the contemporary political and quasi-judicial practices and problems that emerge in the aftermath of large-scale human rights violations. Placing their arguments into this novel context provides the arguments with new life, but may also challenge their plausibility and relevancy. Most importantly, however, these philosophical perspectives allow me to identify and scrutinize different strategies, shifts between paradigms, and discourses that allow unacceptable political practices to be accepted. As a result, they contribute to an in-depth discussion on the problem of justice and its relation to truth and truth-telling, politics and power.

I noted in the introduction to this chapter that the methodological considerations of this study were influenced and informed by the philosophical perspectives themselves, their epistemological and ontological positions. Let me now explain this a little further. This study derives from social constructivism and the idea that norms are socially constructed and hence are contextual and contingent. Consequently, the overall method is guided by this premise and treats the contextualization of a particular experience as a tenable option.

The study should be understood in the same vein as the kind of philosophical engagement that takes place via social critique, as again suggested by Borradori. Consequently, the philosophical perspectives on justice, truth, and truth-telling are studied here for the purpose of illuminating real-life problems and are historically bounded. While some problems, as this study shows, concern the striving for compromise and pragmatic solutions embedded in transitional justice, other problems concern the reductionist view of testimony and its narrow instrumental

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165 Borradori, Giovanna: Philosophy in a Time of Terror. Dialogues with Jürgen Habermas and Jacques Derrida, 4-5.
use. Overall, it may be argued that these different problems represent problems for justice, where justice is already predefined. Hence, taking a cue from deconstruction, it is necessary to scrutinize these predefinitions and the attempts to define pragmatic solutions as justice.

My chosen thinkers and their philosophical traditions have also informed the way this study seeks to challenge the dominant discourse on truth commissions and their justification: how justice is understood when a decision to establish a truth commission in order to deal with past atrocities is made. Even though this study is not a genealogy of truth commissions, it nevertheless traces and identifies the conditions that serve as a rationalization of truth commissions’ work. These conditions include, among others, the two entanglements presented in the Introduction: the impacts of transitional discourse on justice and the ambiguities of restorative justice. Furthermore, demonstrating the linkages between discourses and shifts between paradigms constitutes a significant part of my critique of truth commissions. In this respect, empirical contextualization is of particular importance: i.e., putting the problem addressed by the study into historical and political contexts.

Hermeneutical phenomenology, in particular, aims at revealing concealed structures of domination through the work of interpretation. Following the circular movement between pre-understandings, interpretation, and new understanding, multiple readings present an interpretation of textual exegesis and the moment between the understanding initiated by the reader and the proposals of meaning offered by the text.\(^\text{166}\)

Although this study emphasizes theory, it also views empirical contextualization as a tenable way of developing and nuancing philosophical arguments. This represents the third step of my methodological approach. To begin, there are different ways to develop and specify philosophical arguments. One way is to construct hypothetical situations and thought experiments. The most well-known examples are perhaps John Rawls’ “veil of ignorance”,\(^\text{167}\) the prisoner’s dilemma, or the trolley problem. In this study, philosophical arguments are developed differently: they are specified with the help of real-life context, i.e., the

experiences of Morocco’s ERC. The study is thus grounded in the critical examination of concrete forms of political institutions and political practices.

Following this line of reasoning, empirical contextualization in this study is practiced primarily through text analysis, but not only. I engage first in a text analysis of the ERC’s Final Report as well as two novels of former prisoners and victims of the state violence in Morocco. The report and the novels represent two different types of material and I discuss the particularity of working with these different texts below. I then complement the text analysis with a study of the historical and political background, including fieldwork undertaken in Morocco in spring 2019.

The text analysis is based on the hermeneutical assumption that any interpretation of the texts is one interpretation among many. In the interpretation of the Final Report, the necessary sensitivity is attained through the background material, including previous research on Morocco’s history, political situation, and the ERC as well as notes from conversations in the field in Rabat. Although the ERC’s report constitutes the main source for the analysis of the Commission’s perspective on justice and truth-telling, two novels are also identified as a valuable source that enriches these perspectives.

The textual analyses of my empirical contextualization include a reading and re-reading of the relevant volumes of the Final Report. The aim of the analysis is to clarify how justice is presented and defined in the report and what role is ascribed to truth and truth-telling. My selection of the volumes and specific parts of the report for analysis is rooted in the study aim to critically analyse truth commissions as a response to human rights violations. My empirical contextualization of Morocco’s truth commission begins in Chapter 2 and the analysis of the Final Report and the novels is presented in Chapter 7.

Returning to the discussion of the analysed material, the analysis of the literary texts clearly differs from the analysis of the report, both in terms of content and of form. The main difference concerns the character of the texts and the questions addressed to them. In contrast to the ERC materials, the novels do not present a conceptualization of justice, truth, or truth-telling. My reading and interpretation of the novels is guided by my aspiration to examine the assumption that has been developed in the analysis of testimony and its use, namely, that literature has the potential to overcome the acknowledged gap between truth
commission hearings and their reports. Hence, my analysis of the novels is necessary to discover whether the novels in fact provide the necessary resources for overcoming this gap. I treat them as a literary form of testimony, which on the one hand may enhance the critique of the ERC, and on the other hand should itself be subject to critical examination.

This critical examination derives from the question of whether testimonoio as a literary form of testimony makes it possible to overcome the gap and the reductionist views on testimony in the work of truth commissions. The literature that I engage with is not fiction but may be classified as testimonial literature: on the borderline between autobiography and fiction. It goes beyond the scope of this study, and my disciplinary affiliation, to offer a complete analysis of the genre and the literary techniques that are deployed in the novels. But I should note that literature is recognized as a significant source for ethical reflections and analysis.\footnote{See, for example, Namli, Elena: Kamp med Förr nuthet: Rysk Kritik av Västerländsk Rationalism. Artos & Norma, Skellefteå 2009; Andersson, Helen: “Traces of a Half-Forgotten Dog: Suffering and Animal Humanity in Hélène Cixous’ Algerian Scenes”, in \textit{Literature & Theology}, Oxford University Press, Glasgow 2017, Vol. 31, No. 4, 420-431; Hjorth, Elisabeth: \textit{Förtvivlade Läsningar, Litteratur som Motstånd och Läsning som Etik}. Glänta produktion, Göteborg 2015.} My analysis thus concentrates on “the matter of the texts” and literature’s ethical resources for overcoming the reductionism of testimony, and hence is also related to my critical examination of the ERC based on Morocco’s historical and political backgrounds and the materials of the Commission.

Further, I should explain for the sake of clarity that the main goal of my fieldwork in Rabat was to visit the National Archive in order to gain access to ERC materials and testimonies given at ERC hearings. These have not yet been digitised and are not accessible from Sweden. Access to the archive in Rabat was previously limited due to legal restrictions, although researchers were allowed access to the preserved source material. During my visit, however, it transpired that the materials of the ERC had been recently moved to the National Archive from the Archive of National Human Rights Commission, but had yet not been inventoried, which presented a significant obstacle for getting access to the sources. As a result, during my visit to Rabat, I conducted conversations with a number of experts. One was Professor Abdelhay Moudden, one
of the ERC commissioners. Others were experts from the National Human Rights Commission, including Mourad Errarhib, Director of Cooperation and International Relations; Khalid Ramli, CNDH officer from the Department of Foreign Affairs and Cooperation; Sabri Mohammed, the head of Protection and Assistance for Victims Department, who was also involved in the ERC’s design of reparation programmes; and Jamaâ Baida, the Director of the National Archive.

The purpose of these conversations was to gain deeper insight into the working process of the ERC, its establishment, and its operation, including Morocco’s specific approaches to reparations and gender. These two approaches have been pointed out as a sign of the success of Morocco’s truth commission. The ERC’s gender approach is described in the Final Report, and I will return to it in Chapter 7. Overall, however, the analysed material, including the Final Report on the one hand and the novel *Talk of Darkness* by Fatna El Bouih on the other – provide two different, complementary perspectives on the gender dimension of human rights violations. In this respect they also provide a complement to the philosophical works examined in the study, which lack a gender perspective. Thus, the gender approach of the ERC is an example of how empirical contextualization not only illustrates and concretizes philosophical arguments, but also challenges and enriches them.

Returning to the conversations in Rabat, the majority of my conversants were state employees with long experience of human rights work within the frame of the existing political regime. Our conversations were dominated by an open discussion about how justice could be understood in the context of Morocco’s truth commission and what constitutes the pillars of this understanding. The conversations took place in English. It is important to acknowledge that language certainly constituted a serious obstacle during my visit, and had I been fluent in French or Arabic, the number and character of my conversations could have been different. It might also have made possible interviews and text analyses of materials not translated into English.

In dealing with empirical contextualization, it is necessary to reflect upon the question of how one can engage in a critical examination of complex societal processes without reducing and oversimplifying their meaning and the real-life circumstances. The first step is to acknowledge the imminent risk of these problems. The second step is to treat reduction as an inevitable but also necessary measure, which is guided by the purpose of the study and research questions. Lastly, I
must emphasized again that the present study is a study in ethics and therefore it aims at a critical examination of moral norms and conventions, not of a specific society in its entirety. The subject of this study is the concept of truth commissions and the three normative assumptions that underlie them.
2. Contextualization of Morocco’s Truth Commission

The previous chapter presented some theoretical and methodological considerations for undertaking a critical analysis of the concept of truth commissions. This study departs from the perception of truth commissions as a widespread and normalized practice that constitutes an alternative to retributive justice. The aim of the study is to analyse the concept of truth commissions as a response to large-scale human rights violations by scrutinizing the underlying normative assumptions behind their establishment and work. As an ethical endeavour, the study examines moral values and norms that are specified through the identification of three normative assumptions concerning the understanding of justice, truth, and truth-telling. The first assumption concerns the justification for truth commissions and derives from the idea that in the aftermath of large-scale human rights violations, restorative justice should take priority over retributive justice. The second assumption is about truth, which is perceived to be a prerequisite for justice and dealing with the past. The third assumption concerns the presumed effects of truth-telling in form of testimony, including the healing and empowerment of former victims and positive effects for society as a whole.

The aim of this chapter is to introduce the empirical context of the study. I contend that the contextualization of truth commissions is a tenable approach that allows me to concretize discovered problems. Moreover, contextualizing the philosophical arguments of the study with real-life experiences both enriches and problematizes those arguments, as it has been exemplified in the previous chapter.

Needless to say, the contexts of truth commissions differ significantly, and I maintain that this plurality must be embraced by widening the range of analysed experiences. For the purpose of analysis in this study, the context of Morocco’s Equity and Reconciliation Commission (the ERC) has been chosen. The choice is partly owing to the commission’s uniqueness in the Middle East and North Africa. Morocco was
the first Arab Islamic society to establish a truth commission. Its experiences show that political factors played a primary role, while religious factors were of secondary importance. In contrast to, for example, South Africa’s Truth and Reconciliation Commission, the ERC has not drawn on religious sources or arguments in its discussion of justice and reconciliation.¹⁶⁹

Lastly, I find it necessary to address the gap that exists in current research on transitional justice in general and truth commissions specifically. As Eric Wiebelhaus-Brahm rightly points out, it is problematic that most of the literature and previous research is dominated by a few high-profile truth commission cases.¹⁷⁰ There is a clear need to broaden our perspective on truth commissions and challenge the dominant discourse.¹⁷¹ This can be done by analysing other truth commissions than those which have been portrayed as effective, i.e., the high-profile commissions.

Following Hansen’s critique of transitional justice as dominated by studies of cases where the transition occurs in the form of a regime change, while other cases are neglected, Morocco’s truth commission constitutes an example of non-transitional justice: that is, transitional justice within political continuity. Therefore, contextualizing the study by using Morocco’s experience also contributes to examining the role of transition discourse even in those cases when no transition takes place.

This chapter begins with a historical background of the pre-independence period between 1912 and 1956 and the human rights violations that were committed in Morocco between 1956 and 1999. After that, I proceed with the contextualization of Morocco’s Equity and Reconciliation Commission: the process of its establishment, and mandate. The last part of the chapter presents the previous research on the ERC and my positioning in relation to this research.

¹⁶⁹ Shari’a is only referred to in relation to inheritance principles (Equity and Reconciliation Commission: Final Report, Volume 2) and Family Code (Equity and Reconciliation Commission: Final Report, Volume 4).


¹⁷¹ By the dominant discourse I mean, for example, ideas about the role of law, the role of truth, and the lack of consideration of the specificity of local contexts.
2.1 From Protectorate to Independence

A presentation of the historical background of Morocco’s truth commissions must begin with the historical background of the human rights violations that were committed between 1956 and 1999, the period covered by the investigation of the ERC. The beginning of this period corresponds with the year Morocco received its independence from France. The end of the period corresponds with the year when the present king, Mohammad VI, came to power and ordered the establishment of the Independent Arbitration Panel, a forerunner of the ERC. The boundaries of this period have been criticized due to the continuation of repressions even after 1999. I have chosen to widen the period by taking into consideration the pre-independence period in order to highlight the significant impact of the colonial period.

The analysis of the historical background demonstrates the complexity of the post-independence political struggle, which involved many different actors. It is beyond the scope of this study to present a comprehensive analysis of the struggle for independence in Morocco and the post-independence period. Based on the aim and research questions of the study, this limit seems justifiable and the contextualization relies on the use of previous research in sociology, anthropology, and North African history.

Between 1912 and 1956, Morocco was under French occupation. Specifically, Morocco was a protectorate, a form of colonization that implied that Morocco maintained some autonomy and de jure Morocco remained a sovereign state. The protectorate was established under the Treaty of Fez, concluded between France and Morocco on March 30, 1912.\(^\text{172}\) France shared territory with Spain, which also had a protectorate in the northern part of Morocco during the same period; this is now the territory of Western Sahara.

According to Susan Gilsen Miller, a historian of modern North Africa, despite the fact that Morocco was not a colony, the French sought to gain more and more control there, partly due to economic interests,

partly in order to be able to suppress riots. The strategy for colonization introduced and implemented by the first resident general, Hubert Lyautey, consisted of introducing an effective technocratic bureaucracy with the façade of indirect rule. In *Making Morocco: Colonial Intervention and the Politics of Identity*, sociologist Jonathan Wyrtzen clarifies that according to the Treaty of Fez, the purpose of the protectorate was “to establish a stable regime founded on internal order and general security that [would] permit the introduction of reforms and will assure the economic development of the country” while preserving the national sovereignty of the sultan. Thus, the protectorate was justified in two ways: firstly, as being necessary for the protection of Morocco; and secondly, as facilitating economic reforms.

Just a few years after the installation of the protectorate, the first wars for independence began. They were mainly fought by the Berbers, who lived in the Central Middle Atlas Mountain and in the Rif Mountains. Due to the resistance to colonization in the rural areas of the Rif and the Atlas Mountains, the resident general Lyautey enforced “pacification” of those areas by military means and by appointing officers who were able to negotiate with the local leaders. However, Layutey did not succeed in conquering all parts of Morocco and instead focused on possessing only “le Maroc utile”: that is, the economic, military, and strategically important areas.

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176 The Berbers are indigenous people in North Africa, who inhabited Morocco before the Arab invasion of the seventh century and the subsequent de-Berberization of North Africa.
The French introduced a centralized state that controlled every sphere apart from “Islamic Affairs”. Moroccans were systematically excluded from participating in or leading the state institutions. Makhzen and other traditional structures of authority were replaced by the rule and principles of French technocratic bureaucracy.

Later, in the 1930s, a policy of ethnic differentiation between Arabs and Berbers was introduced. The “Berber Dahir” (decree) of May 16, 1930 gave the Berber customary legal system the same status as shari’a, catalyzing mass protests in many Moroccan cities (Salé, Rabat, Fez, and Tangier). The protestors perceived the decree as a threat to Morocco’s religious unity and thus a breach of the Treaty of Fez, which, among other things, guaranteed the sultan’s spiritual authority. As Wyrtzen states, the “Berber crisis” catalyzed the birth of the urban nationalist movement.

Miller notes that the Berbers’ position on the Dahir is still unknown, but in Moroccan society, the “Berber Dahir” represents a foundational event in unfolding the story of Moroccan nationalism as “a myth of origin”. Such a foundational event remains an object for reinterpretation. Recent interpretations, as Miller observes, stress that the “Berber Dahir” resulted in the semblance of a unified national movement prepared to struggle against the colonial authority, while older readings were more focused on the individual protagonists as symbols of the movement.

In the 1950s, the riots and protests against the French protectorate intensified. In response, Layutey outlawed two of the leading opposition movements: the Istiqlal party and the Moroccan Communist Party.

179 Makhzen is an ambiguous term. In Moroccan Arabic, makhzen means “storehouse” and in relation to the political sphere, it means the sultan (or the king) and the central government, state institutions, and officials. Legally, it includes the rules and norms established in the constitution, laws, and dahirs issued by the king. Since makhzen is often used in relation to law enforcement authorities, the norms concern the regulation of detention, placing into custody, arrest, and prosecution. The rule of makhzen, however, spreads beyond the legal norms and entails a system of institutions, including the judicial police, the military, the secret police, the penal system, and the prosecutor. Fadoua, Loudiy: Transitional Justice and Human Rights in Morocco: Negotiating the Years of Lead. Routledge, New York 2014, 76.
180 Miller, Susan Gilsen, op. cit., 121.
182 Miller, Susan Gilsen, op. cit., 129
In addition, the popular Sultan Mohammad V was forced into exile in 1954. Hence, one of the demands of the liberation movement was the return of the sultan to Morocco. Due to the increased level of violence and aggression, the French authorities bowed to the opposition movement and returned the exiled king. After his return, Mohammad V successfully negotiated Morocco’s independence. As a result, he became a symbol of the Moroccan national struggle for independence.

During the first years after independence, Mohammad V offered several government posts to representatives from Istiqlal and the Democratic Party for Independence (Parti Démocratique de L’Indépendance, the PDI). This move towards a more pluralistic form of government, however, was accompanied by a challenging of Istiqlal dominance and subsequently led to the division of Istiqlal into different fractions, weakening its power. Wyrtzen suggests that through pluralization and delayed democratic reforms, the king succeeded in, if not eliminating, at least significantly destabilizing the existing political parties and movements.

In 1960, Mohammad V dismissed his previously appointed ministers and appointed himself as head of government and Crown Prince Hassan as defense minister. When Hassan II came to power in 1961 after his father’s unexpected death, he continued to implement repressive politics against political opponents from Istiqlal, the National Union of Popular Forces (Union Nationale des Forces Populaires, the UNFP) and the PDI in order to re-establish the sovereignty of the monarchy.

The period of Hassan II’s reign, 1961–1999, was filled with protests and riots which had their roots in the national struggle for independence. Even though, during that struggle, the parties (the Istiqlal and

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185 Wyrtzen, Jonathan, op. cit., 282-83.

186 Among the most violent protests were the Casablanca riot in 1965, protests in Western Sahara, and armed conflicts with Polisario; in the Rif region, there have been waves of oppression due to the separatist protests.
The Union Nationales des Forces Populaires, the UNFP—a political party that was established by one of the fractions within Istiqlal together with the labour movement, headed by Mehdi Ben Barka. Mehdi Ben Barka was one of the most prominent figures in the anti-colonial nationalist movement.

The coup attempt and the subsequent imprisonment of coup participants in Tazmamart are depicted in one of the novels analyzed in Chapter 7.

Slyomovics, Susan: The Performance of Human Rights in Morocco, 58.

187 The Union Nationales des Forces Populaires, the UNFP—a political party that was established by one of the fractions within Istiqlal together with the labour movement, headed by Mehdi Ben Barka. Mehdi Ben Barka was one of the most prominent figures in the anti-colonial nationalist movement.

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189 Slyomovics, Susan: The Performance of Human Rights in Morocco, 58.

190 Ibid.

Despite constitutional reforms that sought to regulate the relationship between the branches of power, including the establishment of a bicameral parliament and a requirement of a two-thirds majority vote in the House of Representatives to adopt a new law, power remained concentrated in the hands of the king, as the ERC acknowledged.\footnote{Equity and Reconciliation Commission: Final Report, Volume 1 “Truth, Equity and Reconciliation”, 2005, 43-46. Available at: http://www.cndh.org.ma/sites/default/files/ier_final_report_volume_1.pdf.}

By the beginning of the 1950s, according to the ERC, two resistance and opposition groups had emerged. The first group demanded comprehensive political change: specifically, amending the constitution, securing the separation of powers, and guaranteeing fair elections. The second group was distinct from the first in its focus on human rights as a strategic priority preceding major constitutional changes. Representatives of the second group included newly established human rights organizations and victims’ associations. A movement of families and relatives of political detainees emerged and developed significantly after the 1970s. The ERC states that a new political discourse appeared, one based on the priority of human rights demands over demands for political participation and representation. This discourse helped establish a shared belief in the possibility of achieving gradual reforms in the political sphere.\footnote{Equity and Reconciliation Commission: Final Report, Volume 1 “Truth, Equity and Reconciliation”, 2005, 47-49.}

Today, Morocco is one of the rare examples of a post-colonial monarchy in the Middle East and North Africa region, where the monarchy has succeeded in retaining power in the post-independence period after 1956.\footnote{De Georger, Thomas: “Martyrdom in North Africa Following the Arab Spring and the Process of Transitional Justice.”, in by Chandra Lekha Sriram (ed.): Transitional Justice in the Middle East and North Africa. Hurst & Company, London 2017, 130.} Harsh political repressions proved to be an effective way of maintaining power by silencing political opponents. Furthermore, as I suggest, the particular framing of the subsequent response to these human rights violations made it possible to downplay political demands and minimize any substantial critique of power.

As suggested by Abdeslam M. Maghraoui, the Moroccan monarchy managed to depoliticize its citizenry through the violent suppression of political opponents. In his analysis of the history of depoliticization, Maghraoui argues that the process of depoliticization began with the
establishment of the sanctity of the king as both the “Supreme Representative of the Nation” and the “Commander of the Faithful” in 1972 and continued with the prohibition of critical debates about royal messages to parliament and the people.\textsuperscript{195} Prior to the creation of the ERC, to speak about the past was to be political, and to be political was equated with being against the monarchy and the King.

In another analysis of Mohammad’s VI political authority, Maghraoui argues that the most important institutional and ideological component of Hassan II legacy is the makhzenian system.\textsuperscript{196} Maghraoui finds that the Moroccan governmental system in the post-independence period was characterized by duality. On the one hand, the king exercised absolute rule, and in accordance with the constitution, he was the supreme arbitrator, legislator, and guarantor of political legitimacy. On the other hand, the colonial legacy provided the king with a bureaucratic institutional system of government. Maghraoui puts it as follows: “Suddenly endowed with the power of a modern bureaucracy, he was accountable to no one but God and commanded total obedience.”\textsuperscript{197}

Let me summarize the relevancy of this historical background for the further analysis of the ERC. As has been shown, the consideration of the colonial legacy is essential for the examination of Moroccan human rights violations: their performance and their causes. Colonial rule provided Morocco with an institutional system of government that allowed for a consolidation of power in the hands of the monarch and a distribution of responsibility among institutions and authorities, such that it became impossible to trace who was responsible for violations.

The common colonial policy of divide and rule in relation to Arabs and Berbers resulted in the rise of the nationalist movement in support of the unification of Morocco. The “Berber” question was one among a number of issues that gave impetus to various forms of resistance against first the French, and later the king. This resistance was reinforced by ideological controversies and claims of social justice, complaints against the corrupted government, and the marginalization of rural areas, which lack basic infrastructure. In contrast to Maghraoui,

who claims that the monarchy succeeded in the depoliticization of its citizens, I argue that this depoliticization has taken place not through repressive politics, but through the work of the truth commission, where the context of political conflicts has been downplayed. In my interpretation, the ERC sought to avoid making any political judgment about past events and to transform historical and political controversies into an impartial investigation of human rights violations where the main goal was to compensate individual victims.

2.2 The Context of Equity and Reconciliation Commission

The Moroccan response to large-scale human rights violations illustrates and exemplifies the problem of the depoliticization of the political conflicts that underlie human rights violations. This depoliticization, I argue, was carried out through the work of the ERC, which, due to the contradictory nature of how events from the past could be understood and judged, excused itself from taking the risk of making contradictory judgments about “party struggles”. According to its report, the ERC left that task to historians and researchers and was instead able, and here I quote, “to insist on the creation of the relaxed atmosphere for a transparent and free reading of the historical events”.

Despite its depoliticization of human rights violations by evading an analysis of their historical and political roots, the establishment of the ERC is often described as a political process, and more specifically as a compromise between the monarchy and the left-wing opposition under the circumstances of political continuity. Below, the establishment of the ERC and its mandate is presented.

2.2.1 The Establishment of the ERC

Many scholars have noted that the Moroccan case is unique, not only since the ERC was the first truth commission in the region but also since

its creation was largely a result of mobilization on the street. Hence, the international model of the truth commission\textsuperscript{199} was imported first when Moroccan civil society demanded it.\textsuperscript{200} Maryam Montague claims that Morocco’s ERC represents a new type of truth commission,\textsuperscript{201} and in order to understand the rationale for the ERC, some historical background is necessary.\textsuperscript{202} The novelty of the ERC lies in its special circumstance of existing within political continuity. The commission may have been initiated from below, but it was established from above, without any significant change in the political regime.

After Mohammed VI came to power, he initiated several political reforms. One was the establishment in 1999 of an Independent Arbitration Panel, whose mandate included investigating reports of human rights violations and determining compensation for the families of the missing. Different explanations have been suggested for why Mohammed VI changed his father’s policy, shifting from a repressive towards a more democratic and liberal rule. Partly it was a reaction to western criticism of the human rights situation in Morocco, since Morocco’s economy is highly reliant on western aid and trade agreements. At the same time, Morocco’s human rights organizations were also becoming more effective at pressuring the state to investigate human rights violations.\textsuperscript{203}

The Independent Arbitration Panel received criticism for a lack of transparency: specifically, that its criteria for indemnification were unclear and inequitable. The main issue, however, was the imposed obli-

\textsuperscript{199} By “international model”, I mean a common understanding of truth commissions as temporary quasi-judicial bodies that investigate patterns of violence, their causes, and their consequences.


\textsuperscript{201} A similar observation is made by Onur Bakiner, who distinguishes between three generations of truth commissions and locates Morocco’s truth commission in the third generation, as discussed in the Introduction.


gation for victims to withdraw their complaints in return for compensation. Later, human rights groups organized a major national conference that brought together a wide range of international experts, official and unofficial actors. The main subject of the discussions was the establishment of a truth commission for Morocco.

The Equity and Reconciliation Commission was established in 2004. It was an ad hoc commission with a temporal mandate. It consisted of seventeen members, including former political prisoners, human rights advocates, and academics. Eleven of the seventeen commissioners have been members of the Moroccan human rights association. The commissioners were predominantly jurists and a third of them were university teachers. They included only one woman, Latifa Jbabdi. The chair of the commission was Driss Benzekri, a former political prisoner and human rights advocate.

2.2.2 The Mandate of the ERC

The mandate of the ERC was to investigate forty-three years of events, from independence in 1956 to the establishment of the Independent Arbitration Panel in 1999. The commission operated from April 2004 to November 2005. The task of the commission consisted of three parts: firstly, to establish the truth about the past crimes; secondly, to decide and allocate compensations and reparations to the victims; thirdly, to prepare a report in which it analysed the human rights violations that had occurred and made recommendations for future reforms. The ERC was assigned to investigate gross human rights violations of a systematic or massive nature, including enforced disappearances, enforced

206 Ibid.
207 Vairel, Frédéric: op. cit., 235.
208 Latifa Jbabdi’s testimony is included in the last chapter in Talk of Darkness, one of the novels analysed in Chapter 7.
209 Hayner, Priscilla, op. cit., 43.
210 Decree No. 1.04.42 of 10 April 2004, approving the Commission’s statutes. Available in French at www.ier.ma/article.php3?id_article5221&var_recherche5Journal+Officiel+N%B0+5203
exile, arbitrary detention, torture, sexual violence, and violations of the right to life as a result of the excessive use of force.\textsuperscript{211} The commission sought to understand the contexts of these violations by means of victim testimonies, field research, and archival examination.

Many scholars have pointed out that the commission’s mandate was constrained in several respects. The time constraint represented one of the most significant problems. The ERC was assigned to investigate forty-three years of human rights violations in a space of less than two years. Its mandate was extended twice, resulting in 23 months of work.\textsuperscript{212} Another important time-related constraint was the directive to investigate violations committed up until 1999, the year of the foundation of the Independent Arbitration Panel.\textsuperscript{213} This implied that no investigation of the violations committed after 1999 were included in the mandate.

Although in principle, the commission had a mandate to investigate all forms of gross human rights violations, in practice its scope was limited to the investigation of arbitrary detention and enforced disappearances. Extrajudicial executions, torture, and iniquitous trials were left without consideration.\textsuperscript{214} The content of testimony was also constrained. As Frédéric Vairel makes clear, religion was not invoked, nor was the king. Several criteria were established to choose persons who would testify, including the nature and importance of the violation, their region and political leanings, their moral capacity to testify, and the “capacity to make people feel their pain”.\textsuperscript{215}

Furthermore, during the hearings, each witness was allotted only twenty minutes to give testimony, while no commentary, interruption, or other reactions from the audience were allowed. The commission was concerned that witnesses not use their time on the stand to promote

\textsuperscript{213} Hayner, Priscilla: Unsayable Truths. Transitional Justice and the Challenge of Truth Commissions, 43.
\textsuperscript{214} Vairel, Frédéric, op. cit., 236.
their political or unionist stands.\textsuperscript{216} The abuses that took place in Western Sahara were also not addressed, due to the political sensitivity of the conflict. Sahrawis\textsuperscript{217} were not allowed to testify publicly in the same way as people were in other parts of Morocco. The public hearing in Western Sahara, for instance, was, cancelled on short notice for security reasons.\textsuperscript{218}

The commission also faced certain legal and political obstacles to its work. Instead of complementing the truth commission with legal prosecutions, legal justice was replaced by uncovering the truth and promises of reconciliation.\textsuperscript{219} Hence, there were no legal consequences for the investigated crimes.

Pierre Hazan insists that the absence of penal sanctions limited the ERC’s ability to be effective in establishing the truth about past human rights violations and creating a positive environment for democratic reforms. According to him, the ERC represents a crystal-clear case in which there was no threat of sanctions against those who refused to cooperate.\textsuperscript{220} In Morocco, perpetrators neither cooperated with nor were named in the hearings of the commission. Hazan identifies three main effects of this absence of the sanctions: firstly, it made difficult any cooperation between the ERC and the armed forces, the security services, and the police; secondly, it made the commission too careful in revealing the structural nature of the political repressions; thirdly, it divided the human rights community in Morocco.\textsuperscript{221}

The ERC presented the results of its work in a report submitted to Mohammad VI in November 2005. The report consisted of five volumes that covered historical clarification, the question of reparations,

\textsuperscript{217} The Sahrawis are an ethnic group that inhabit the Western Sahara.
and proposals for institutional reforms. 222 The report is the main subject of my text analysis, which is presented in Chapter 7.

2.3 Previous Research on the ERC

The ERC has been studied as a unique example of transitional justice experience in the Middle East and North Africa. Previous researchers on the impact of the ERC can be divided into two groups: those who see it as a success story, and those who see it as an artificial attempt at addressing the past for the sole purpose of increasing the legitimacy of the existing political regime, and particularly the legitimacy of the king. Priscilla Hayner, for example, represents the former group of scholars. In her comparative analysis of truth commissions, Hayner names the ERC as one of the strongest cases, along with truth commissions in South Africa, Guatemala, Peru, and East Timor.223 However, her description of the ERC’s work does not provide any evaluative criteria or other arguments for its success. Recalling Brahm’s critique presented in the Introduction,224 truth commissions are sometimes evaluated as successful simply for submitting a report, which is problematic. Another conceivable criterion for success is the induced liberalization of the political regime. Treating the ERC as a strong case undoubtedly contributes to the discourse of truth commissions and normalization of these practices of dealing with the past.

Most of the scholars who are critical of the ERC focus on the question of democratization. Morocco has experienced several reforms towards a western-styled liberal democracy and a market economy model.225 Any focus on democratization is, however, remarkable, since no significant political transition has taken place. The peculiarity of

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223 Hayner, Priscilla: Unspeakable Truths. Transitional Justice and the Challenge of Truth Commissions, 42.
Morocco’s case consists in what is referred to as transition within political continuity. The ERC has addressed the political and ideological aspects of past crimes in a very limited manner, with no analysis of the diversity of victims, who come from various opposition groups (including nationalists, socialists, secular human rights activists, Islamists, militia groups fighting for the independence of Western Sahara). Hazan presents a critical analysis of the ERC’s impact, focusing primarily on the democratization of the Moroccan society. He contributes with a more nuanced examination of the diversity of the affected victims and the societal divisions surrounding the commission’s work, and specifically the absence of sanctions against the perpetrators.²²⁶

Thierry Desrues and Eduardo Moyano offer an analysis that is focused on the problem of governability in Morocco, but also addresses the structure of civil society and its diversity. They distinguish between two types of transition that have taken place since Mohammad VI came to power: a political and an economic transition.²²⁷ The liberalization of the Moroccan economy did not necessarily entail either political liberalization or democratization. Furthermore, special attention should be paid to the fact that the political transition was accompanied by economic reforms, including a structural adjustment program. I agree with Desrues and Moyano about the fact that liberalization of the economy does not entail political liberation, and I seek to show, as well, that the implemented economic reforms had an impact on the current understanding of human rights.

Susan Waltz argues that transitional justice must be linked to the modern concept of human rights. She suggests that transitional justice processes should be assessed based on their effect on human rights practices.²²⁸ To make such an assessment, she claims, it is necessary to identify the rights that are likely to be affected by transitional justice processes. Waltz draws on the example of Morocco, amongst others, to

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illustrate the challenges in linking transitional justice to its impact on human rights.\textsuperscript{229}

Waltz asks two critical questions: firstly, which rights, and secondly, whose rights need to be clarified. Her analysis identifies four classes of human rights: fundamental human rights, due process rights, dignity rights, and restorative rights. Each class of rights is developed by accounts of the nature of abuses, the population affected, and potential remedies.\textsuperscript{230} Human rights-based assessment allows Waltz to identify the most urgent problems that should be addressed (for example, reform of the security sector). Furthermore, and contrary to other scholars, she claims that transitional justice can have an impact on human rights in the absence of any significant political transitions or democratization processes.\textsuperscript{231} I seek to challenge Waltz’s assessment by showing that truth commissions are not neutral policy instruments or political devices for addressing human rights violations, but normatively laden institutions. Despite Waltz’s important insights about the necessity of discriminating between different categories of rights, each of which may or may not be addressed by truth commissions, her perspective on human rights tends to reduce human rights to legal rights, disregarding their political and moral content.

Lastly, Fadoua Loudiy approaches Morocco’s experience through the lens of the philosophy of communication and rhetorical hermeneutics. In *Transitional Justice and Human Rights in Morocco*, Loudiy problematizes the discourse of transitional justice based on the example of Morocco. By applying Ricœur’s theory of narrative and focusing on the role of storytelling, connecting memory and rhetoric, Loudiy challenges the traditional association of transitional justice mechanisms with democratization processes.\textsuperscript{232} According to Loudiy, the rhetoric of transition provides authoritarian states with an opportunity to increase their international legitimacy by adopting “transitional justice” practices. Such rhetoric creates, as she further argues, an image of a country that has dealt with its past human rights violations and is on its way

\textsuperscript{230} Op. cit., 44.
\textsuperscript{232} Loudiy, Fadoua: *Transitional Justice and Human Rights in Morocco*, 129.
towards democratization. She also notes the difficulty of assessing political transition.\textsuperscript{233} In addition to transition, Loudiy also focuses on the question of justice and how it can be understood in the context of addressing past human rights violations, and introduces the concept of “symbolic justice” as a horizon that guides ongoing societal transformations.\textsuperscript{234}

In the context of previous research on Morocco’s truth commission, this study’s ethical perspective contributes with a critical analysis of the established and normalized discourse of truth commissions and their normative foundations, including the assumption that truth and truth-telling are prerequisites for justice. The purpose and research questions of this study concern the concept of truth commissions, where the experiences of Morocco are studied for the purpose of empirical contextualization. Put another way, truth commissions are here dealt with on a conceptual rather than empirical level. The ethical perspective of the study implies an examination of the central elements of the concept of truth commissions: justice, truth, and truth-telling. Firstly, the study critically examines how justice is understood from the perspective of justice as responsibility. This allows me to critically assess a reductionist view on justice as legal accountability and the shifts within restorative justice from equality to solicitude, justice to care.

Secondly, the study critically examines truth from the perspective of truth as a regime of power, demonstrating how truth risks becoming a prolongation and manifestation of power. Furthermore, the role of truth is examined from the perspective of the institutionalization of truth, which undermines the political significance of the discovered truths. One of the main consequences of the centrality of truth is the process of depoliticization, where the causes of human rights violations are rationalized as unpolitical through their individualization and even objectification. The centrality of truth in the process of responding to large-scale human rights violations intensifies depoliticization.

Thirdly, the study critically examines truth-telling from the perspective of the aporetic unrepresentability of violence, which allows me to demonstrate and discuss the narrow instrumental uses of testimony as a form of truth-telling in the work of truth commissions. In addition,

truth-telling in truth commissions is assessed from three different perspectives: testimony’s critical potential in relation to power, testimony’s constitutive role for the realm of the political, and testimony’s potential to impose political and moral responsibility.

The next chapter analyses Derrida’s and Ricœur’s perspectives on justice with the aim of developing critical approaches to the understanding of justice in the aftermath of large-scale human rights violations.
3. Justice and its Promise

The first research question of this dissertation concerns a tenable understanding of justice in the aftermath of large-scale human rights violations. This question is related to the first normative assumption behind the establishment and work of truth commissions, namely, the assumption that restorative justice should be given priority over retributive justice. In contrast to the idea of the conceptual distinctness of transitional justice due to the circumstance of transition, as defended by Colleen Murphy, I argue that the distinctness of justice in the aftermath of large-scale human rights violations is conditioned by the circumstances of extreme violence, exercised systematically, and its dependence on mass compliance. These special circumstances of injustice require a special understanding of justice, its potentials, and limitations.

The purpose of this chapter is to analyse the critical potential of two perspectives on justice presented by Jacques Derrida and Paul Ricœur and thus respond to the first research question and problematize the first normative assumption. These two perspectives, I suggest, open a path to a critical analysis of truth commissions as institutions of restorative justice.

Before presenting Derrida’s and Ricœur’s positions, let me comment on the distinctions between different types of justice within political philosophy and transitional justice. Deriving from Aristotle’s distinction in *The Nichomachean Ethics*, two main types of justice are distinguished: distributive justice and rectificatory justice. Distributive justice is manifested through the distribution of wealth and other social goods. Rectificatory justice is manifested through rectifying voluntary and involuntary transactions.235 Voluntary transactions, according to Aristotle, include ordinary civil law contracts and deals. Involuntary

transactions are subdivided into those including some form of clandestine act and others involving force. In other words, involuntary transactions represent some form of violation.

To understand the difference between distributive and rectificatory justice, Aristotle suggests that a geometrical proportion be applied for just distribution and an arithmetical proportion for rectificatory justice.\textsuperscript{236} Distributive justice following a geometrical proportion means that justice aims at equality. Rectificatory justice, on the other hand, calls for an arithmetical proportion since it is closely connected to the transaction that requires justice to be done, whether voluntary or involuntary. As Aristotle puts it:

\begin{quote}
…it makes no difference whether a good man has defrauded a bad man or a bad man a good one, nor whether it is a good or a bad man that has committed adultery; the law looks only to the distinctive character of the injury, and treats the parties as equal, if one is in the wrong and the other is being wronged, and if one inflicted injury and the other has received it.\textsuperscript{237}
\end{quote}

Hence, rectificatory justice aims at compensation in the case of voluntary transactions and punishment in the case of involuntary transactions, such as crimes and violations, while distributive justice aims at equality. Aristotle points out that it is the task of the law to decide about compensation or punishment and to treat parties equally. To sum up, based on Aristotle’s distinction, justice can either be aimed at equality (in the case of distributive justice), at compensation (in the case of restorative justice as a category of rectificatory justice), or punishment (in the case of retributive justice as a category of rectificatory justice).

As discussed in the Introduction, transitional justice pursues two main purposes: firstly, accountability for past human rights violations (the question of justice), and secondly, political transformation (the question of transition). Therefore, the Aristotelian division between rectificatory and distributive justice becomes blurred in the discourse of transitional justice. It focuses mainly on rectificatory justice and its two subcategories of compensatory (restorative) and retributive justice. Furthermore, the common rhetoric within transitional justice about the restoration of relationships and the recognition of victims through public

\textsuperscript{236} Aristotle. \textit{The Nichomachean Ethics, Book V: Justice}, 115.
speaking obscures and obfuscates the understanding of justice in the aftermath of large-scale human rights violations.

Distributive justice is seldom mentioned in relation to transitional justice. It does not provide the same immediate redress to injustices that restorative and retributive justice do. However, the socio-economic conditions, political structures, and institutional arrangements that distributive justice deals with are among the main causes of political violence.

From my perspective, a consideration of both distributive and rectificatory justice is necessary for circumstances of extreme violence. Rectificatory justice as a backward-looking perspective focuses on the imposition of punishment and compensation for the harm. Distributive justice deals with the distribution and allocation of social goods, including wealth, political power, and other resources. Both perspectives are important for understanding the causes of violations: their political and socio-economic background.

In situations of political violence, human rights violations should not be treated as accidental, since they often represent a strategy for oppression and marginalization. They are human rights violations nonetheless, and accountability should not be explained away by invoking the necessity for peaceful co-existence or the lack of legal capacity to investigate and prosecute past crimes. Diminishing their meaning as rights violations, in particular, constitutes a serious threat to human rights. Even though the circumstances of transition in terms of comprehensive political change should be taken seriously, the term “transitional” in transitional justice contributes to this conceptual ambiguity. The ambiguity, in my view, concerns mainly the conceptualization of restorative justice as an alternative to retributive justice, with the simultaneous ambition to include elements of distributive justice. Importantly, it results in the shirking not only of legal accountability but also political and moral responsibility for human rights violations.

The two perspectives on justice that are examined in this chapter deal with retributive and distributive justice in different ways. Retributive justice is primarily associated with legal accountability and the work of the judiciary. Distributive justice belongs to the quasi-legal and political realm. Keeping these different types of justice separate is important for demonstrating how the shift between the paradigms of justice takes place. For a long time, transitional justice has been characterized by the dichotomy between first justice and peace, later justice and truth and
truth and reconciliation.\textsuperscript{238} With the rise of restorative justice, the opposition between human rights claims and peaceful co-existence claims has been declared resolved. However, the combination of different perspectives on justice and particularly the presentation of restorative justice as a compromise conceals huge risks. Namely, it conceals the risk of the state shirking the responsibility for the violations, something that is most apparent in the practice of using truth commissions as alternatives to retributive justice, as will be shown in this study.

Affirming the necessity of framing a response to human rights violations in terms of justice, the context of extreme violence should be considered. I ought to mention that both Ricœur and Derrida have reflected on the problem of justice under unique circumstances of extreme injustice,\textsuperscript{239} which also motivates my choice of these two thinkers. While Derrida presents a radical critique of justice and the risks of reducing the meaning of justice to legality, Ricœur touches upon both distributive and retributive justice. Ricœur’s position raises legal, political, and moral dimensions of justice, where political and moral responsibility are of central importance.

Derrida’s and Ricœur’s perspectives on justice do not provide explicit resources for clarifying and critically assessing the conceptual ambiguity of transitional justice and the risks it implies. To be clear, I do not intend to claim that they provide a comprehensive theory of retributive or distributive justice. Instead, these two types of justice are interrelated in their accounts on justice. This interrelatedness has its foundation in the understanding of justice as responsibility towards the Other.

Furthermore, my analysis in this study is limited to the restorative paradigm of transitional justice, to which truth commissions belong. In transitional justice, restorative justice is often presented as complementary to retributive justice. Even though restorative and retributive justice are not mutually exclusive, in my view, they have a radically different rationale. Retributive justice concerns the way a state should deal with

\textsuperscript{238} Hayner, Priscilla B.: \textit{Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions}, 91-92.
violations of criminal law. In the context of large-scale human rights violations, however, there is a problematic coincidence between state-perpetrator and state-prosecutor. This raises questions about responsibility, legitimacy, and the very adequacy of retributive justice in these contexts.

The rationale for restorative justice is different, and it lies specifically in restoration. Restoration is understood broadly, as a compensation for damage caused, as reparations, as the restoration of relationship between victims and perpetrators, as the restoration of human dignity, and as the restoration of the relation of trust between state and society. Most attention is given to victims and societal transformations, which, in my view, shifts the focus away from human rights violations as violations of the societal order and diminishes the status of human rights as rights. Human rights violations should give rise to justice claims where responsibility for the violations must be central. How can this responsibility be understood if we move beyond prosecutions and legal accountability? Are truth commissions a tenable alternative to retributive justice? I argue that if one adopts the understanding of justice as responsibility, as I suggest one should, then not only are truth commissions inadequate alternatives, but they also contribute to the increased risk of shirking moral and political responsibility by depoliticizing human rights violations.

Even though I argue against a legalistic view of justice, due to its reductionism, I find it necessary to consider the role of the judiciary in line with Derrida’s and Ricœur’s positions. Both Derrida and Ricœur consider the role of the judiciary and how the legal understanding of justice may guide the ethical and political understanding of justice. Despite their common point of departure, their reflections move in different directions. While Derrida argues that the legality of justice allows the deconstruction of law, Ricœur contends that judicial systems and trials, in particular, are the places “where words win out over violence”, and that this peaceful resolution of conflicts should serve as a model for just institutions.

According to Ricœur, the judiciary is an example of non-violent conflict resolution, where conflict is acknowledged and mediated by a third impartial party symbolized by the figure of a judge. Such an account of conflict resolution by means of legal justice may be accused of being

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either legally positivistic or naïve. The works of the legal positivist Hans Kelsen\textsuperscript{241} offer a thorough account of the international justice system as a mechanism of peaceful conflict resolution. Writing before the establishment of the International Court of Justice or the International Criminal Court, Kelsen develops the idea that international peace can be achieved through the establishment of an international judicial body with compulsory jurisdiction.\textsuperscript{242} A legal positivist account implies an idea that moral considerations do not belong to the legal sphere and that is precisely what both Derrida and Ricœur argue against. Their views on justice and legal justice, in particular, imply a necessary interaction between law, politics, and ethics. Furthermore (and in contrast to Ricœur), Derrida’s deconstruction of justice and his critique of law’s violent foundation precludes the notion of judges as impartial third parties and courts as sites of a non-violent conflict resolution. Violence is constantly present in law and is reinforced by law.

One explanation for the different directions on justice taken by Derrida and Ricœur lies in the specific contexts they were writing in. Derrida presented his two lectures about the authority of law against the background of the Holocaust and the Final Solution. Ricœur’s reflections on justice, meanwhile, were presented at the *Institut des Hautes Etudes pour la Justice* and the *Ecole Nationale de la Magistrature*, where he gave lectures to the public prosecutors and judges, i.e., people directly involved in the process of adjudication. According to Ricœur, the place of law in the triadic relationship between law, politics, and ethics, had been undervalued, and he formulated his task as “doing justice to justice”.\textsuperscript{243}

Before proceeding to my analysis of Derrida’s and Ricœur’s perspectives on justice, let me underline that legal justice should not be equated with retributive justice. Legal justice is a broader concept and includes both retributive justice (the paradigm of crimes) and compensatory justice (the paradigm of torts). Neither Ricœur nor Derrida makes such a distinction, but I tend to interpret their accounts as focusing on retributive justice, due to the contexts just mentioned. Compensatory justice, however, must still be kept in mind, since it is specifically the

\begin{footnotesize}
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\item See Peace through Law, Pure Theory of the Law.
\item Ricœur, Paul: *The Just*, Preface, ix.
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shift between the paradigm of crime to the paradigm of tort that is problematic in restorative justice in general and in truth commissions’ work specifically.

The chapter proceeds as follows. First, I offer an analysis of Derrida’s deconstruction of justice and Ricœur’s hermeneutical phenomenology of justice. Second, I lay out the implications of these perspectives on justice for the critical analysis of truth commissions as an institution of restorative justice.

3.1 Justice Beyond Law

Derrida developed and practiced deconstructive analysis as a way of reading philosophical and literary texts. With the help of deconstruction, Derrida criticizes Western philosophical tradition and its metaphysics. As noted in Chapter 1, deconstruction aims at a re-examination of familiar, self-evident concepts, including the concept of law and the concept of justice.

In my analysis, I interact with several texts by Derrida. At the core of my reading is a lecture that Derrida delivered on two different occasions. The first part of the lecture, entitled “Force of Law: The ‘Mystical Foundation of Authority’” (referred to below as “Force of Law”) was delivered at the colloquium “Deconstruction and the Possibility of Justice”, held at Cardozo Law School in 1989. The second part of the lecture was delivered later, at the colloquium “Nazism and the ‘Final Solution’: Probing the Limits of Representation”, held at the University of California in 1990. Both parts of the lecture were published in Cardozo Law Review in 1990. In addition to “Force of Law”, I also read Derrida’s book on Marx’s heritage and the future of Marxist tradition, entitled Specters of Marx: The State of the Debt, the Work of Mourning and the New International (1994; referred to below as Specters of Marx) and a dialogue entitled “Hospitality, Justice and Responsibility”, conducted in 1998. My review of these texts allows me to track the way Derrida argues and develops his arguments. Moreover, the texts demonstrate the consistency in Derrida’s perspective on justice.

As I have already observed, Derrida does not provide a theory of justice, but a deconstruction of justice, based on the tensions between law and justice. The primary purpose of “Force of Law” is to show what
deconstruction actually implies, and thus demonstrate its critical potential. Deconstruction’s political turn, moving beyond the critique of Western metaphysics, allows for the development of a critique against existing legal systems and political institutions as inevitably grounded in violence. For the purpose of this study, Derrida’s deconstruction of justice is invoked as a critique of legal justice and its violent foundations. I suggest that the critique is also valid in relation to quasi-judicial institutions, namely, truth commissions.

3.1.1 Justice and *Droit*

In “Force of Law”, Derrida presents the complexity of the relationship between justice and law. Derrida refuses to give any definition of justice; instead, he warns against defining justice due to the risk of doing injustice. Justice is neither a thing nor a regime nor an ideal. It is not present and it cannot be achieved, which already problematizes the language we use in relation to justice. Instead, Derrida speaks about addressing justice and experiencing it.

Derrida has been accused of being nihilistic and relativistic due to his focus on the question of what does not constitute justice. Justice in Derrida’s sense is a promise, an unpredictable and undecidable future that can be influenced and changed. Derrida does not use deconstruction to engage in debates about particular rights or laws, but rather to deal with central matters of law and justice from an external and critical perspective.

Taking the critique of nihilism seriously, I argue, in line with John D. Caputo, that the key to understanding what Derrida means by “justice” is to understand that he is developing neither a determinable ideal nor a universal model, an identifiable paradigm to be applied. Derrida

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244 For example, Nancy Fraser maintains that through understanding violence as implicated in any possible legal institutions, Derrida gives up the possibility of ending violence, in Fraser, Nancy: “The Force of Law: Metaphysical or Political”, in *Cardozo Law Review*, Vol. 13, No. 4, 1991, 1325-1333.

provides us with necessary standpoints for developing a critical assessment of many phenomena otherwise taken for granted, by challenging their origins and how they undergo normalization.  

The problem of the conditions of justice is at the core of Derrida’s deconstruction. He claims that it is impossible to speak about justice directly by thematizing or objectivizing it, by saying that “this is just”, without immediately betraying justice. The only way to address the problem of justice is obliquely. Derrida’s oblique way of addressing the problem of justice is through deconstruction, where justice is contrasted with droit. The French word “droit”, which is often translated as “law”, actually has several meanings, including law, right, and duty, which in turn demonstrate different nuances of the law and its nature.

Drawing on Blaise Pascal and Michel de Montaigne, Derrida also introduces the expression “mystical foundation of authority”. The idea of law as authority and law’s “mystical” foundations underlie this expression. Derrida cites Montaigne:

And so laws keep up their good standing, not because they are just, but because they are laws: that is the mystical foundation of their authority, they have no other…Anyone who obeys them because they are just is not obeying them the way he ought to.

Here is a clear distinction between just and lawful, between justice and law. Derrida uses the term “droit” in order to describe law and lawfulness, and refers to justice in terms of positive law and legality that enables the law to reinforce itself by executive bodies and judicial systems. As soon as the law claims to be just, justice is reduced to legal adjudications and justice loses its openness and its radical potential for an imminent critique.

The mystique behind the authority of law, Derrida argues, consists of “a performative force”:

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246 In Human Rights as Ethics, Politics and Law, Elena Namli shows how Derrida’s examination of the concept of justice can be applied to human rights.


248 Ibid.

249 Ibid.

The very emergence of justice and law, the founding and justifying moment that institutes law implies a performative force, which is always an interpretative force: this time not in the sense of law in the service of force, its docile instrument, servile and thus exterior to the dominant power but rather in the sense of law that would maintain a more internal, more complex relation with what one calls force, power or violence.\textsuperscript{251}

How can this quotation be interpreted? Law, Derrida claims, conceals two authoritative structures. These two structures can be identified as a structure of domination and a structure of intrinsic legitimization. Seyla Benhabib suggests defining these structures in the following way: law as a force and law as normativity.\textsuperscript{252} Law as a force, or the structure of domination, entails that law may both hide and reflect the relation of domination in the economic, social and political spheres. Oppression and injustices are often justified by invoking law and a necessity to keep legal order. One of the most evident examples, perhaps, is the Jim Crow laws legitimizing racial segregation in the USA. But domination may also be exercised by other types of legislation, including the regulation of access to and allocation of social goods.

The law as normativity means that law also contains an intrinsic structure for its own legitimation. Derrida seeks to emphasize that the principal issue is this intrinsic force in the law which is not apparent but is always at work. The intrinsic force of law, which Derrida equates to power and violence, is an interpretative force. Each time, the law is enforced by means of a norm application or legal decision, an interpretative force is initiated, which is again equated with power and violence. As Susanna Lindroos-Hovinheimo points out, Derrida says that this violence is in itself neither just nor unjust. He speaks of the mystical silence about the founding moment of law.\textsuperscript{253} Despite this silence and its actual groundlessness, the force of law is re-established again and again by its performativity, this being an inherent element of the concept of law. As a result, a law may be unjust without providing an unjust order or being insufficient or inadequate.

\textsuperscript{253} Lindroos-Hovinheimo, Susanna: Justice and the Ethics of Legal Interpretation, 127.
Performativity is a characteristic of a speech act whereby a successful performance of an act depends on the utterance of a specific phrase or words. A performatory utterance is not merely a description of a state of affairs, but an act in itself. In this way, when a practice or a custom is proclaimed to be a law, it results in a concept that legitimizes itself. In *Specters of Marx*, Derrida points out that Shakespeare’s Hamlet complains that law stems from vengeance.\(^{254}\) In other words, those disputes that were solved by means of vengeance have become regulated by means of law in order to establish a monopoly over violence.

According to Derrida, the emergence of law is not accompanied by a discussion of whether the founding force is just or unjust.\(^{255}\) The origins of the foundation of law and its authority by definition rest on anything but themselves. The legitimizing discourse, where discourse is already influenced by the law itself, is unnecessary:

Here the discourse comes up against its limit: in itself, in its performative power itself. It is what I here propose to call the mystical. Here a silence is walled up in the violent structure of the founding act. Walled up, walled in because silence is not exterior to language.\(^{256}\)

In this passage, Derrida claims that the mystical silence is caught in the violent structures of law’s origins. As a result, the justification discourse of the foundation of law becomes unnecessary. The emergence and existence of law is unquestionable. The mystical silent foundation of law is characterized by force, which lies in the foundation of law and its ability to create and recreate the structures that maintain its authority. Hence, the authority of law does not require any legitimization; authority is already given in law itself.

Derrida continues:

Since the origin of authority, the foundation or ground, the position of the law can’t by definition rest on anything but themselves, they are themselves a violence without ground. Which is not to say that they are


\(^{256}\) Derrida, Jacques: op. cit., 943.
in themselves unjust, in the sense of “illegal”. They are neither legal nor illegal in their founding moment.257

The idea of law as a fiction, which has perpetuated itself over time to the extent that its origin has been forgotten, seems reasonable to me. Law emerges as a result of a continual practice or custom in a given time and place. Today, however, when the majority of states and their legal systems are already based on the founding law – that is, a constitution – the question of law’s mystical foundation becomes less relevant in regard to particular constitutions or laws. What does become relevant is the political process of legitimization. Derrida’s position on the dual authoritative structures seems to overlook it.

On the one hand, drawing on the first authoritative structure of law as force, a critique of law is both possible and necessary. Such a critique must be raised against the existing political and socio-economic structures of domination and oppression. On the other hand, drawing on the second authoritative structure of law as normativity, a critique of law amounts to a recognition of the risks of “a naïve legal positivism: the view that there is no justice over and apart from the rights and remedies available on the existing legal systems”,258 as Douglas Litowitz puts it. And it is particularly this second form of critique that Derrida focuses on. While Nancy Fraser argues that it is the first critique, what she calls “a political critique of the ‘force of law’”,259 that should be embraced, Benhabib seeks to broaden the dual structure of law as force and law as normativity and incorporate the third element of the authority of law as a political process of legitimization.260

Deconstruction, which reveals the oppressive and unjust structures in the law, makes possible a critique and re-interpretation of laws. But this process must be related to contemporary structures and systems of oppression. Hence, the primary project of deconstruction, as Litowitz argues, is its emancipatory agenda and inclusion of those who are not granted standing in the legal system and hence contribute to widening

Derrida has always been sensitive to the questions of oppression and injustice, marginalization and exclusion. John D. Caputo describes Derrida’s work as an attack “against the triumphalism of the ‘new world order’” and a call for justice as a response to the suffering of those excluded. Without making a normative claim, Derrida still challenges the system of power which manifests itself through the legal system.

What are the implications of the mystical foundation of law for justice? Derrida claims that the very structure of law permits its deconstruction by tracing the history of the law and legal concepts. He maintains that law and legal order have a positive structure that is transformable and interpretable. As a result, Derrida continues, the structure of law allows for tracing its historical constitution and transformation, revealing its groundless foundations. To deconstruct the law does not mean to destroy it, but to open up the law for revision.

If the law can be deconstructed, according to Derrida, justice is not deconstructible, because it is not constructed and it is always to come. Due to the law’s claim of justice, its infinite deconstruction is necessary for the transformation and the critique of law. In a dialogue on hospitality, justice, and responsibility, Derrida says:

You can’t simply call for justice without trying to embody justice in the law. So justice is not simply outside the law, it is something which transcends the law, but which at the same time, requires the law.

To sum up, the relationship between justice and law is two-fold. On the one hand, justice cannot be reduced to law and legal justice. On the other hand, the relationship is characterized by mutual reinforcement between justice and law, where law without justice is tyrannical, but justice without the law is forceless.

Derrida states that deconstruction can be practiced in two ways: firstly, it can be practiced through meticulous interpretations and genealogies, being thus a more historical way of reading, and secondly, it can be practiced through the analysis of ahistorical logico-formal paradoxes. The latter way touches upon the distinction between justice and law, their heteronomy and reciprocal implication. The distinction, as Derrida points out, is not a true logically regulated distinction. It is complicated by the law’s claim “to exercise itself in the name of justice and that justice is required to establish itself in the name of a law that must be “enforced”. Deconstruction is always situated between these two poles and demands an experience of aporia.

Derrida examines three aporias, which demonstrate the unstable relationship between law and justice. Aporia means a non-road, a state of impasse, and “experience of aporia” is something that does not allow passing. Derrida gives three examples of aporia. The first aporia concerns “épokhè and rule” or the aporia of responsibility. On the one hand, justice demands a responsible and free decision, but on the other hand, a just decision must follow a law or a rule and hence subjugate its autonomy to the calculable order. Derrida speaks of a judge’s decision that must not only follow a rule of law but also invent a new fresh judgment by reinventing and interpreting the existing law. It must be both regulated and without regulation.

The second aporia concerns “the ghost of the undecidable”. The condition of undecidability, which is often associated with deconstruction, implies that to be free and just, a decision must go through the ordeal of undecidability by following a rule and reinventing it. Otherwise, a decision is a mere calculation, in which case it might be legal, but not just. The ghost of undecidability is always present in every decision.

267 Ibid.
268 Ibid.
270 Ibid.
Lastly, the third aporia concerns “the urgency that obstructs the horizon of knowledge”.\textsuperscript{271} The horizon, as Derrida writes, is “both the opening and the limit that define an infinite progress or a period of waiting”.\textsuperscript{272} Justice does not wait; it demands an immediate just decision. At the same time, it is never present but is always to come – à venir.\textsuperscript{273}

Justice, Derrida concludes, is then an experience of the impossible.\textsuperscript{274} The experience of \textit{aporia} means that the horizon of justice is impossible to reach. As Derrida puts it:

Every time that something comes to pass or turns out well, every time that we placidly apply a good rule to a particular case, to a correctly subsumed example, according to a determinant judgment, we can be sure that law (\textit{droit}) may find itself accounted for, but certainly not justice.\textsuperscript{275}

Experience is possible, Derrida argues, but achieving the purpose of the experience is not. An experience of the impossible is a condition of justice:

I think that there is no justice without this experience, however impossible it may be, of aporia. Justice is an experience of the impossible. A will, a desire, a demand for justice whose structure wouldn’t be an experience of \textit{aporia} would have no chance to be what it is, namely, a call for justice.\textsuperscript{276}

Justice is an experience of the impossible because it is incalculable. The element of calculation in terms of applying a rule to a particular case is an element of the law, but not of justice. On the contrary, justice requires a decision that is not made beforehand: an unpredictable decision. Furthermore, it requires an undecidable decision. In the dialogue on hospitality, justice, and responsibility, Derrida asserts:

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\textsuperscript{272} Ibid.
\textsuperscript{273} Op. cit., 969.
\textsuperscript{276} Ibid.
If you don’t experience some undecidability, then the decision would simply be the application of a programme, the consequence of a premise or of a matrix. So a decision has to go through some impossibility in order for it to be a decision. If we knew what to do, if I knew in terms of knowledge what I have to do before the decision, then the decision would not be a decision.\(^{277}\)

Apart from unpredictability and undecidability of decision, justice has another distinct feature: singularity. As Elisabet Langman shows in her doctoral thesis, according to Derrida, the law always presupposes general applicability; meanwhile, justice always demands a concrete address and a unique response.\(^{278}\) The singularity of justice in contrast to the generality of law demands a unique decision. Derrida states an important and urgent question:

> How are we to reconcile the act of justice that must always concern singularity, individuals, irreplaceable groups and lives, the other or myself as other, in a unique situation, with rule, norm, value or the imperative of justice which necessarily have a general form, even if this generality prescribes a singular application in each case?\(^{279}\)

The concept of decision takes a central place in Derrida’s political and ethical thought.\(^{280}\) Decision-making requires taking into account both law and conditions of justice,\(^{281}\) hence it interactively bridges law and justice. Derrida’s concept of decision is based on his critique of the conventional understanding of decision in the legal context when a judge applies the law and passes a judgment. Even though in Derrida’s interpretation, a decision is made outside the domain of legal order or rational calculation, a decision is necessary for justice.

As has been noted, law and the legal system, in general, are constructed and therefore can be deconstructed. Justice, on the contrary, is

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\(^{281}\) That is unpredictability, singularity, responsibility towards the past and towards the other.
not a construct, but a fundamental category of experience. It cannot, therefore, be deconstructed. Justice is never present but is always to come. Derrida writes:

Justice remains, is yet, to come, à venir, it has an, it is à-venir, the very dimension of events irreducibly to come. … justice, insofar as it is not only a juridical or political concept, opens up for l’avenir the transformation, the recasting or refounding of law and politics.  

Derrida’s perspective on justice implies insecurity about the future. The insecurity in turn gives rise to a heightened sense of responsibility and a commitment to the future.  

### 3.1.2 Droit and Gewalt

In the second part of “Force of Law: the “Mystical Foundation of Authority”, Derrida presents his reading of Walter Benjamin’s Zur Kritik der Gewalt (1921), or Critique of Violence. This part of “Force of Law” represents the second type of deconstruction, “an exercise in deconstructive reading”. The majority of scholarly engagement with Derrida’s perspective on justice focuses on the first lecture and the relationship between justice and law. The second lecture, on the relationship between law and violence, I would suggest brings in the dimension of the autoimmunity of justice. Martin Hägglund describes the relationship between law and justice as autoimmune, implying that the system of laws constitutes an immune protection for justice, and justice itself attacks the law that protects it. The element of violence that is constitutive for law and legal order points precisely at this dimension of autoimmunity. Hence, I proceed with the analysis of the relationship between law and violence as suggested by Derrida.

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284 Derrida, Jacques: op. cit., 977.
The term *Gewalt*, when translated as “violence”, loses its multifaceted meanings, which apart from violence include power, force, and control. These multiple meanings reveal a combination of something originative and constructive with something forcible and coercive. As Derrida notes, Benjamin distinguishes between just and divine violence that destroys the law and mythical violence that installs and conserves the law. The duality of violence present in law leads Derrida to his reading of Benjamin’s *Zur Kritik der Gewalt*. Derrida describes some questions that guided his reading, which can all be summarized in the following question: what would Benjamin have thought about the “Final Solution”?

The context for Derrida’s reading and interpretation of *Zur Kritik der Gewalt* is important. His reading of *Zur Kritik der Gewalt* as, on the one hand, a reflection on a crisis in modern, liberal, parliamentary democracy and the concept of *droit*, and, on the other, a search for an answer regarding Benjamin’s evaluation of the Final Solution, clearly shows his position. The impotence of democracy in enabling representation creates the risk of radical extermination: there is a potential risk that the law will lead to injustice. Consequently, democracy, its values and principles should be reinterpreted in light of this risk.

The reinterpretation requires examining more closely Derrida’s reading of Benjamin’s critique of violence. Derrida explains the meaning of two concepts that constitute the title of Benjamin’s essay, namely, the concept of critique and the concept of violence. He explains:

“critique” doesn't simply mean negative evaluation, legitimate rejection or condemnation of violence, but judgment, evaluation, examination that provides itself with the means to judge violence. The concept of “critique,” insofar as it implies decision in the form of judgment and question with regard to the right to judge, thus has an essential relation, in itself, to the sphere of law or right.\(^{288}\)

This concept of critique originates from the Kantian tradition, in which critique is understood as an evaluation and an examination. The critique

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of *Gewalt* seeks to examine the concept of *Gewalt*, its different meanings, and types, and what consequences it implies for the legal, political, and moral domains.

The concept of violence belongs to the sphere of law, politics, and morals. Derrida suggests that violence is neither natural nor physical. *Gewalt* gives rise to an evaluative critique of the sphere of law, justice, and moral relations. *Zur Kritik der Gewalt* is reconfigured in Derrida’s text into a critique of law (*droit*). In “Force of Law”, he discloses the relationship between violence, law, and justice and explains the mythical foundations of law. Derrida’s deconstruction results in a critique of *droit* understood as law, legality, or legal order, and a critique of *Gewalt* understood as a founding and preserving violence. The disclosure challenges not only transitional justice and its embedded direction towards liberal democracy, but also the principles of the modern democratic state.\(^{289}\)

Returning to the relationship between violence and law, the law prohibits violence. It prohibits violence not because it condemns violence against an individual, but because violence threatens the legal order itself. The interest of law, then, is to keep a monopoly on violence. The interest in keeping this monopoly, Derrida maintains, does not follow any given just and legal ends, only those of the law itself.\(^{290}\)

As noted earlier, Benjamin suggests a distinction between founding violence and violence that conserves. Founding violence is violence that institutes and positions law: law-making violence. Conserving violence is violence that maintains, confirms, and ensures the enforceability of law: law-preserving violence.\(^{291}\) This distinction or this double nature of violence in relation to law reveals the origin and nature of legal order. The legal order is founded on violent grounds and is maintained with the help of a monopoly on violence. Hence, the commission of a crime is treated as a violation of the legal order, not a violation of the right of another person to life, health, integrity etc. By establishing courts, law enforcement authorities such as the police, and prosecutors, a state seeks to protect the legal order for the sake of order, not for the sake of any separate individual against another.

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\(^{289}\) The principles that I have in mind and that are implicitly challenged in the text are rule of law and separation of powers.


However, the distinction between founding violence and conserving violence, between positioning and conservation, is not rigorous. Foundational violence contains the violence of conservation. Derrida claims:

A foundation is a promise… And even if a promise is not kept in fact, iterability inscribes the promises as guard in the most irruptive instant of foundation. Thus it inscribes the possibility of repetition at the heart of the originary.\(^{292}\)

Iterability, one of the central concepts of deconstruction, implies the capacity to repeat in different contexts. The repetition of violence must lie in the structure of the foundational violence of the law. If foundational violence gives rise to a new law and a new legal order, as a consequence of a revolution or coup d’etat, it also implicates violence that seeks to preserve this new order. The presence of both foundational and conservational violence shows that even if explicit state violence is suspended or ceased, the law and its structures preserve violence.

A foundation, then, is a call for self-conservation. Derrida calls the relationship between foundation and conservation “\(\textit{différentielle contamination} \)” and cites Benjamin’s remark that there is “something rotten in law”.\(^{293}\) Laws of war and capital punishment are some examples of this intermixture of founding and conserving violence, which results in the contamination of the law. There is something self-destructive in the legal system: its contamination by both founding and law-preserving violence. Derrida concludes that this contamination is at the very heart of the law.\(^{294}\) The contamination of the law also allows its deconstruction. It precludes tracing and identifying the moment of law’s emergence, where there is a pure position of law and a pure position of violence.

Derrida discusses thoroughly the examples offered by Benjamin, such as the death penalty, militarism (in the form of obligatory military service), and the extension of police authority by the police themselves. These examples show law is founded in violence not only in tyrannical


\(^{294}\) Derrida, Jacques: op. cit., 997.
authoritarian states, but also in other states, and reveal the problems of parliamentary democracies: the essence of *droit*.

### 3.2 Justice and its Ethical Foundations

I now move to an analysis of Paul Ricœur’s perspective on justice. Ricœur offers insights into both distributive and retributive justice and thus, in my view, provides resources for a critical analysis of the institutional structures of justice. Ricœur’s focus on the role of just institutions facilitates a move from a philosophical discussion of justice to the contextualization of justice in the work of truth commissions. This in turn contributes to the development of critical tools for examining truth commissions as institutions of restorative justice.

In seeking to reconstruct Ricœur’s perspective on justice, I interact with his four major works on the subject. First, I turn to *Oneself as Another* (1992) and, more specifically, Ricœur’s “little ethics” that constitutes the ground for his ethical thought. Next, I look at *The Just* (2000) and *Reflection on the Just* (2007), two collections of studies in political and legal philosophy to review Ricœur’s understanding of justice, where the main focus is the political domain as the domain of justice. Finally, I also examine Ricœur’s work on recognition, *The Course of Recognition* (2005).

#### 3.2.1 The Just and the Political

To begin, Ricœur’s notion of justice is a reflection on the limits of retributive justice, which can and should be traced to the political domain. As a result, there is a shift in his perspective from retributive to distributive justice. This shift is not accidental but demonstrates Ricœur’s central preoccupation with the idea of justice as responsibility and recognition. According to Ricœur, it is not violence that is foundational for legal and political systems, but the will of people to live together and
pursue common goals. This position stems from Ricœur’s understanding of ethics and the ethical intention which he presents in his “little ethics” – “aiming at good life with and for others, in just institutions”. 295

In *Oneself as Another*, Ricœur presents his perspective on ethics and morality. It is evident that his perspective originated from an Aristotelian tradition. He states:

...I reserve the term “ethics” for the *aim* of an accomplished life and the term “morality” for the articulation of this aim in *norms* characterized at once by the claim to universality and by an effect of constraint. 296

Hence, Ricœur understands ethics as a desire to live a good life directed by the purpose of self-development – *telos*. Morality is understood as a set of moral rules and norms that guide our moral judgments and actions.

Following Aristotle, Ricœur claims that justice is the complete virtue, since it is oriented neither towards ourselves nor our friends, but rather belongs to a public realm and concerns our relation towards the distant others. It is the others who benefit from the virtue of justice. Ricœur distinguishes between two distinct senses of the notion of the Other: firstly, the other of interpersonal relations, and secondly, the distant other or “anyone” (*socius*). 297 Interpersonal relations are represented by friendship, while the relation to the distinct other is the core of the idea of justice. These two types of relationship correspond to the duality of the self as both an ethical subject and a citizen that is a member of the political community. According to Bernard P. Dauenhauer, Ricœur holds that the domain of ethics and politics overlap without coinciding. 298 One point of overlap is precisely the position of the ethical subject.

Ricœur’s idea of justice has a distinct spatial and temporal dimension. The temporal dimension is linked to the perception of time and the role of narrative in making the past relevant and meaningful for the future. The spatial dimension implies an architecture of justice, utilizing

295 Ricœur, Paul: *Oneself as Another*, 172.
a distance metaphor. Christopher Watkin notes that the question of justice for Ricœur in terms of space is posed in two distinct ways. Firstly, space can be understood as a theatre of justice with a specific focus on legal justice (courts), and secondly, space can be understood as society as a whole with the focus on distributive justice.\(^{299}\)

Ricœur states:

…there exists a place within society – however violent society may remain owing to its origin or to custom – where words do win out over violence. Yes, the parties to a trial do not necessarily leave the courtroom pacified. For that, they would have to be reconciled, they would have to have covered the path of mutual recognition to its end.\(^{300}\)

Here, Ricœur refers to courts as the place of legal justice, which he treats as an example of non-violent conflict resolution. Despite the fact that only one party “wins” in the court, both parties and the conflict itself are recognized. Nevertheless, legal justice on its own is insufficient. Ricœur argues for the relevancy of ethics for both law and politics. His analysis of judicial bodies as special institutions of justice is meant to elucidate the role of the institution as mediator: an independent and impartial third party.

The necessity of the third party for justice relations was previously introduced by Emmanuel Lévinas who contends that while face-to-face relations belong to the domain of ethics, justice demands the introduction of a third party and belongs to the political domain. For Lévinas, the establishment of “the third” is necessary to approach the asymmetry of the relationship between me and the Other. Ricœur agrees with Lévinas and argues that the relationship with distant others should be managed in the political domain.

Based on Ricœur’s perspective on ethics and morality, he argues for an institutional account of justice, which is not only procedural but aspires to take into consideration the idea of the good and the political aspect of the human condition – living together with others.

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\(^{300}\) Ricœur, Paul: The Just, Preface, ix.
Ricœur argues for the primacy of ethics, understood as the aim to live a good life, over moral norms. He proposes that moral norms constitute a limited actualization of ethical aims.\(^{301}\) Hence, Ricœur suggests a definition of ethical intention that aims not only at the good life but also at the good life with and for others in just institutions. Realizing the good life is only possible \textit{with} and \textit{for} others. Living with others refers to the condition of human plurality: the fact that we live in this world together with other people. With some people we are involved in close relations; these are our friends and family. Aiming at a good life with these people demands that we take care of each other; in other words, it demands solicitude. Other people remain distinct others for us, but since we live and we want to live together, this demands that we treat them in a just way. If the essence of face-to-face relation is solicitude, the essence of justice is equality, Ricœur maintains.

The discrepancy between solicitude and equality must be emphasized. While attention is mainly paid to equality as the foundational principle of distributive justice, it is necessary to be vigilant towards shifts from equality to solicitude, from justice claims to demands of care. Identifying equality as the essence of justice, Ricœur makes a move from retributive justice to distributive, from the sphere of law to the sphere of politics. His formulation of ethical intention gives rise to the necessity of creating structures and institutions that allow equal distribution. These structures are institutions, including both legal and political organizations, bodies, and systems.

According to Ricœur, institutions should engage with the distribution not only of goods but also of roles, tasks, benefits, and obligations.\(^{302}\) Judicial institutions are a distinct case, in the sense that as public institutions, their primary function is to adjudicate concrete conflicts between private individuals and organizations and between individuals and a state. Conflicts always involve the presence of two protagonists: an accused and a prosecutor, a defendant and a plaintiff. The protagonists of the conflict turn to the court for a decision. During a trial, a concrete interpretation and application of equal distance should take place. To put it differently, courts and tribunals pass a judgment in favour of one of the parties, but they do so by guaranteeing their impartiality, by their choice of the applicable law and its interpretation, by

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301. Ricœur, Paul: \textit{Oneself as Another}, 170.
allowing both parties to present their perspectives and arguments, and by their interpretation of the circumstances of the case. In *The Just*, Ricœur speaks about the equitation of justice with impartiality. But while this equitation is not enough to understand the meaning of justice, it motivates further analysis of the juridical realm.³⁰³

The ethical intention of living a good life with and for others cannot be grounded solely in teleological striving. Ricœur acknowledges that capable human beings are also capable of committing evil, where evil is understood in terms of concrete practices of injustices and misrecognition. Therefore, in “little ethics”, Ricœur argues for the necessity of obligatory norms. Due to the risk of the abuse of power, hierarchical structures, and violence, a just distribution is compulsory. In his discussion of justice, Ricœur turns to John Rawls, whose theory of justice, according to Ricœur, provides conditions for the exercise of justice and thus is a purely procedural theory.³⁰⁴ Ricœur claims that the procedural theory of justice developed by Rawls should primarily be treated as a critique of utilitarianism, and Rawls’ second principle (the difference principle) is central for arranging just institutions which consider the well-being of the whole population, including the least favoured.

Ricœur confirms the primacy of living together with others over the constraints that are imposed by institutions. Here, he follows Hannah Arendt’s distinction between power and domination, and in contrast to Michel Foucault, Ricœur does not treat institutions as relations of domination.³⁰⁵ Power springing from acting in concert is more fundamental than domination, even in politics.³⁰⁶

Nevertheless, Ricœur does address the question of domination by turning to Michael Walzer and his theory of justice. He discusses the main thesis of Walzer’s *Spheres of Justice*: that the aim of political egalitarianism is a society free from domination, and to pursue political egalitarianism it is necessary to differentiate between different spheres of justice, where a less favoured status in one spheres does not result in a less favoured status in other spheres. Social goods are plural, irreducible to one another, and convertible, meaning that social goods such as wealth has also value in another sphere of justice – political power.³⁰⁷

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³⁰³ Ricœur, Paul: *The Just*, Preface, xi-xii.
³⁰⁵ Arendt’s and Foucault’s understandings of power are presented in the next chapter.
³⁰⁶ Ricœur, Paul: *Oneself as Another*, 194-95.
³⁰⁷ Ricœur, Paul: *The Just*, 87.
Due to this convertibility, Walzer argues for complex equality, where the aim of distributive justice is not the equal distribution of goods but liberation from domination. Social goods, Walzer claims, cannot legitimately serve as means of domination.

In respect to Walzer’s spheres of justice and perspective on political power, Ricœur points out a political paradox: “namely that politics seems both to constitute one sphere of justice among others and to envelop all the other spheres”. Being both a shared good and “the guardian of the frontiers”, political power goes beyond the framework of distributive justice and poses the question of its own self-constitution and self-limitation. The political paradox can be understood through the conceptual distinction between the political and politics. The political demands equality and inclusion of everyone in its sphere; this is done through politics as a set of institutions, arrangements, and activities that enables participation in the political. Consequently, institutions should be formed in such a way that they guarantee and facilitate the realization of the political.

As suggested by Gonçalo Marcelo, any reflection on justice cannot escape an assessment of the political sphere and the way members of the community are included or excluded from political decision-making. The question of how political power is constituted and limited is closely connected with the legitimacy of the state as a political institution and the status of legal justice. Hence, in the contexts of addressing past violence that has been carried out by the state, these questions form an overall background and are implicitly mediated along with trials and public hearings of truth commissions.

So far, I have shown that, according to Ricœur, firstly, justice should be oriented towards the will to live a good life together with others, and secondly, this will should be transformed into a duty of imposing compulsory norms that regulate institutions. Ricœur finds Rawls’ procedural account of justice as fairness significant as a response to the risk of sacrificing the interests of the minorities, which a utilitarian account conceals. Likewise, the equitation of justice with impartiality is not sufficient; justice cannot be equated with fairness. Here, Ricœur seems to

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308 Ricœur, Paul: The Just, 81.
share the core of Walzer’s theory of justice as liberation from domination, where the autonomy of the political sphere is necessary.

Lastly, Ricœur writes that justice must be oriented by practical wisdom. Here, Ricœur’s move can be interpreted as a move from the idea of distributive justice to the circumstances of legal justice, and more specifically, the situation of a trial. Even though his main point concerns judgment not as a legal decision, but rather a political and moral one, it is still mainly associated with the legal domain.

The orientation of justice towards practical wisdom originates from the unavoidable conflicts which occur in the application of universal norms to particular cases. Practical wisdom then offers a guideline for how universal norms should be related to these cases. Ricœur contends that to determine what justice demands in a particular concrete situation, one must transit from universal norms to practical wisdom. In this transition, Ricœur’s dialectical perspective is set into motion. The dialectic between the universal and the particular should lie behind the moral judgment in every unique situation. Ricœur describes the necessity of making a moral judgment as a tragic dimension of action – a unique decision taken in a situation of uncertainty and serious conflict.  

311 He states:

If we do not pass through conflicts that shake a practice guided by the principles of morality, we would succumb to the seductions of a moral situationism that would cast us, defenseless, into the realm of the arbitrary.  

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Ricœur contends that justice only attains concrete plenitude at the stage of the application of the norm in the exercise of judgment in concrete situations. 313 Ricœur calls *phronesis* “the middle zone”, where the judgment is formed based on the arguments presented, their interpretation, and their application in a concrete case.

Watkin observes that Ricœur denies any absolute idea of justice and suggests that justice must be adjusted to the specificity of each case. Such an adjustment implies a multiplicity of interpretations. Here, courts as institutions of legal justice serve again as a model of impartiality by establishing an equal distance between the parties and leaving

311 Ricœur, Paul: *The Just*, Preface, xxi.
312 Ricœur, Paul: *Oneself as Another*, 240-41.
313 Ricœur, Paul: *The Just*, Preface, xxii.
the judgment open for an appeal – open for interpretation. This should serve as a model for other public institutions outside the legal domain.

Mediation in institutions is an expression of common action. Institutions are the result of the process of institutionalizing power and are understood as acting in concert - a common action. Institutions presuppose a common will and recognition of those who are involved in the institution’s work, being awarded duties and responsibilities, and hence being recognized as agents. On the one hand, institutions contribute to social cohesion and the maintenance of the public realm. On the other hand, they also contribute to the preservation of unjust structures and thus must be critically examined.

This duality becomes apparent in relation to institutions of legal justice. As Ricœur claims, on the one hand, the institutions of legal justice contribute to preventing situations of violence by breaking “the initial tie between vengeance and justice”. On the other hand, the institutionalization of justice results in an institutionalized form of violence. Even though it is not personal vengeance that lies behind the violence, it is violence nonetheless.

To return to the notions of the just and the political, Ricœur adopts Arendt’s distinction between power and domination, which is discussed in more detail in the next chapter. The power that originates from people acting together should be directed against domination. The role of institutions, therefore, is to guarantee that the line between domination and the power of common action is maintained.

3.2.2 Mutual Recognition and Responsibility

The concepts of recognition and responsibility constitute an important element of Ricœur’s perspective on justice. For Ricœur, our moral responsibility stems from the Other, but in contrast to Lévinas and Derrida, Ricœur seeks to approach the Other with the help of mediation or communication.

In The Course of Recognition (2007), Ricœur argues that justice is characterized by a struggle for recognition. This is a struggle that takes

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315 Ricœur, Paul: The Just, 223.
place in institutions, e.g. in courts of law and political institutions. Institutions as mediators make it possible to transform the struggle from violence to longing for social peace. Ricœur compares the peaceful experience of recognition in institutions with the idea of agape as a peaceful relationship. According to him, personal recognition takes place through affection in love relation, while the recognition of others as equal subjects of rights takes place in justice relations. Justice for Ricœur, however, continues to imply a struggle or a dispute, but one which should be solved by peaceful non-violent means with the aim of establishing social peace.316

Ricœur distinguishes between reciprocal and mutual recognition. He argues that in the Western philosophical tradition, reciprocal recognition has dominated, but he suggests going beyond reciprocity towards mutuality. In his analysis of the different meanings of recognition, he finds that the French reconnaissance carries a strong meaning of gratitude. Furthermore, Ricœur attends to the shift from the active to the passive voice: from “recognize” to “being recognized”. This demonstrates that recognition concerns persons: oneself, the other, and oneself by others.317

If the relation between the self and the Other is understood as a relation of reciprocity, it implies a calculation of debit or credit. Derrida, for example, maintains in Specters of Marx that the very possibility of a gift depends on the absence of such a calculation, where neither the giver nor the receiver of the gift understand or recognize themselves as such.318 If, as Ricœur suggests, we understand relations in terms of mutuality, this makes it possible to overcome the impossibility of the gift by emphasizing the mutual or shared interest of both parties.

Ricœur seeks to show that there is a demand for mutual recognition. He states that “this mutual recognition either remains an unfulfilled dream or requires procedures and institutions that elevate recognition to the political plane”.319

318 Derrida, Jacques: Specters of Marx, the State of the Debt, the Work of Mourning, and the New International, 26, 32.
319 Ricœur, Paul: The Course of Recognition, 19.
In *The Just*, Ricœur also discusses the concept of responsibility, drawing on Lévinas and the ethics of the Other. Ricœur writes:

More precisely, if we follow Emmanuel Levinas, it is from others rather than from our inner conscience or heart of hearts that the moral injunction is said to proceed. By becoming the source of morality, other people are promoted to the rank of the object of concern, in respect of the fragility and vulnerability of the very source of injunction.

Lévinas’ ethics of the Other forms Ricœur’s idea of oneself-as-another as a communicative metaphor. Through communication with others the self is created. Putting oneself in the position of the Other or concrete Others demands a narrative. Ricœur contends that we constitute ourselves through narration, where we not only install ourselves in the shared world, but also relate to others’ narratives, which may constitute a part of our own narrative.

As stated above, to live well we cannot live in solitude; we need others. Ricœur refers to Arendt and the interesse as in-between, meaning that only with and among others we can reach the fulfilment of the good life. Humans as *zoon politikon* need other humans to fulfil their potential. Our interaction with others should be mediated by political and social institutions, e.g. institutions of law. This mediation should be governed by our overall responsibility towards the Other. Ricœur’s perspective stems from Lévinas but develops further in the direction of recognition. In my interpretation, the concepts of responsibility and recognition serve an ethical foundation for justice. The role of political and social institutions, then, is to guarantee the recognition of the most vulnerable individuals and groups.

Ricœur’s understanding of ethics as the wish to live a good life with and for others demonstrates the interrelation between ethics and politics. Hille Haker compares Ricœur’s notion of recognition with Arendt’s idea of the political and concludes that Ricœur’s notion provides an ethical underpinning for the political. While Arendt rejects the significance of moral norms as a set of mores and grounds her notion of

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320 Ricœur, Paul: *The Just*, 29.
322 Ricœur, Paul: *Oneself as Another*, 194, 196-197.
the political in the human condition of plurality, Ricœur argues that the political and ethics cannot be separated. Plurality is not only a descriptive human condition, denoting the fact that we live together with other people, but also a normative condition, i.e., a desirable and necessary condition for the development of capable subjects and living a good life.

This idea of justice is grounded in Ricœur’s view of human beings as capable. The idea of capacity implies a capacity to act and speak, to give an account of oneself and take responsibility for one’s acts. Hence, both capacity and imputability, \(^{324}\) being able to take responsibility for our actions and being held accountable by others, are constitutive for human beings, for our moral agency. In other words, the just is an aspect of the good that is related to the Other.

To be just, institutional structures must develop the capacity to hear and respond to the demand of the Other. They must remain open and oriented to the Other and her suffering. Suffering in this context constitutes an inequality between myself and the Other that should be compensated. In *Oneself as Another*, Ricœur writes:

> The other is now a suffering being, that being whose empty place has continually been indicated in our philosophy of action, whenever we depicted men and women as acting and suffering. Suffering is not defined solely by physical pain, nor even by mental pain, but by the reduction, even the destruction, of the capacity for acting, of being-able-to-act, experiences as a violation of self-integrity.\(^{325}\)

The suffering of the Other not only implies the moral injunction of responsibility, but also gives us knowledge and reminds us of our shared vulnerability. As Ricœur puts it: “For from suffering other there comes a giving that is no longer drawn from the power of acting and existing but precisely from weakness itself.”\(^{326}\) Only by admitting our shared fragility and mortality is equality between oneself and the Other re-established.\(^{327}\)

To sum up, Ricœur’s hermeneutical phenomenology elucidates a connection between the experience of suffering and the interpretation

\(^{324}\) Ricœur defines imputability as “our ability to recognize ourselves as accountable for our acts in the sense of being their actual others” in Ricœur, Paul: *Reflections on the Just*. University of Chicago Press, Chicago 2007.

\(^{325}\) Ricœur, Paul: *Oneself as Another*, 190.


of the ethical foundations of justice. Our sense of justice is based on our individual experience and compassion for the suffering of others. It is neither institutions nor legal systems that give us a sense of justice or injustice. But our common sensibility for justice and injustices leads to the understanding that institutional structures as a common endeavour are necessary for preventing injustices and the suffering of others. Nevertheless, these very structures must be critically examined due to the risk of preserving unjust structures and contributing to domination.

3.3 Conclusion

The purpose of this chapter has been to analyse two perspectives on justice presented by Derrida and Ricœur, respectively, and their critical potential for an analysis of truth commissions as institutions of restorative justice. A conceptualization of justice as transitional contributes to conceptual ambiguities both in the understanding of justice and in its predetermined character. This ambiguity stems from the entanglement discussed in the Introduction between the question of justice (accountability for past human rights violations) and the question of transition (political transformation). Since human rights violations are often politically motivated and committed systematically, these two processes are and should be interconnected. Nevertheless, as this study will show, their interconnection may have the opposite effect of depoliticizing violations and diminishing the meaning of human rights as rights by adopting a logic of compromise, which is common in the processes of political transformation. This becomes particularly clear in the paradigm of restorative justice and the work of truth commissions. On the one hand, restorative justice provides an alternative to retributive justice, but on the other hand, it also includes some elements of distributive justice.

Another important aspect of the predetermined character of transitional justice is the perception of liberal democracy as the final destination. As a result, transitional justice processes are directed towards addressing human rights violations and political reforms in a certain way. Restorative justice, with its strong rhetoric of the restoration of relationships and trust between former protagonists, constitutes a compromise that is both political and moral. This compromise first and foremost implies a lack of responsibility for human rights violations and thus cannot
be accepted. Responsibility in this context should not be limited to prosecutions and legal accountability, but also includes political and moral responsibility.

It seems to me that a consideration of the circumstances of injustice demands a special understanding of justice. These special circumstances should not be confused with the circumstances of transition and political change. The circumstances of large-scale human rights violations include the systematic character of the violations and their dependence on mass compliance, both active and passive. The large numbers of violations, the grey zone that emerges between perpetrators and victims, and the limited capacity of the judiciary are among the most common arguments for restorative justice. However, the basic problem common to both restorative and retributive justice is the definition of human rights violations (or crimes) as a deviance from common norms, while in the context of large-scale human rights violations, the problem is rather one of obedience and not deviance. Furthermore, the arguments for restorative justice shift the focus away from the profoundly critical questions of why large-scale human rights violation became possible. To deal with these questions, responsibility and recognition should constitute justice’s inevitable foundation. This raises issues of collective and individual responsibility, conditions and causes of compliance, and the actual acknowledgment of responsibility.

The two perspectives on justice I have examined in this chapter cannot be easily filed within the system of different types of justice. Neither Derrida nor Ricœur develops a theory of retributive or distributive justice. In both thinkers, we find a critique of retributive justice and of the reduction of justice to legality. In Ricœur’s perspective, the elements of different distributive justice theories are present. Despite the lack of a distinct theory of justice in either Derrida’s or Ricœur’s thought, both offer important critical insights about the meaning of justice that derive from the understanding of justice as responsibility.

Derrida’s deconstruction demonstrates the impossibility of justice and the continual tension between justice and the law. Derrida offers a critique of positive law and of a reductionist view of justice as legality, a view that robs justice of its openness and transformative potential. Justice, argues Derrida, must remain open and is always to come. While

Derrida’s perspective constitutes a starting point for critique of law and legal order, what implications might it have for a critical analysis of truth commissions?

Truth commissions are quasi-judicial institutions, and, in a sense, they can be understood as a response to the limitations of legal justice. This does not undermine the fact, however, that human rights discourse is still characterized by overwhelming juridification. On the one hand, criminal investigations and prosecutions are presumed to be the most desirable alternative for responding to human rights violations, and truth commissions the second-best choice. On the other hand, truth commissions themselves work within the domain of legal justice, but there is a shift from retributive to compensatory justice, or from the paradigm of crime to the paradigm of torts, when reparation programs constitute the main response to violations.

Furthermore, truth commissions follow rules of procedure for collecting evidence and holding hearings, which can be compared to trials. The mere procedural dimension of trials and hearings is in itself fraught with the risk of injustice, when justice claims are silenced or excluded through the very attempt to address the injustice. Here, we must reclaim the political dimension of Derrida’s deconstruction, namely, its emancipatory agenda and inclusion. In the context of the authoritative structures of law identified by Derrida, truth commissions represent one structure of domination. Their claims to justice make them simultaneously suspect as agents of injustice.

Due to the widespread practice of reparations and compensations, justice is often equated with the rectification of harms incurred by victims and their families. Therefore, even though truth commissions are not engaged in the process of legal adjudication, the shift towards the tort paradigm implies that decisions are made. Decisions are understood here in their conventional meaning, not Derrida’s deconstruction. The fact that these decisions represent pure calculations based on different criteria is not surprising. Although every single case is decided individually, there is no “ghost of the undecidable”, to put it in Derrida’s words. The problem at hand concerns the equating of reparations with justice, which is comparable to the equating of justice with the rights and remedies available in the legal system. It dispels the image of a broader understanding of justice within truth commissions.
Derrida’s concept of decision is embedded in three *aporias*, discussed above. He presents two radical positions: decision as a calculation and decision as “madness”. Derrida argues that undecidability remains as an “essential ghost” in every event of decision.329 The situation that exists after large-scale violations of human rights, the situation of crisis and madness *par excellence*, entails moral dilemmas. These dilemmas concern the responsibility for the violations and the appropriate response. Truly political moments always involve uncertainty. Decisions about different ways of solving these dilemmas do not meet the criteria of undecidability. This raises a question about the tenability of restorative and retributive justice and the necessity to find an intermediate way.

For Derrida, the undecidability of concrete cases constitutes a moment of madness, where a just decision is impossible and at the same time urgent. He claims that to make a unique decision, we must address the Other on the Other’s terms. When the terms of the Other are exclusion and oppression – that is, the Other is in a powerless position – then addressing the Other on the Other’s terms demands that we (who address the Other) leave our position of power. Hence, this demand has implications for the subject who is responsible for decision-making.

Fraser offers a critique of the lack of an intermediate position in Derrida’s concept of decision and suggests that such an intermediate position can be found in the Aristotelian conception of *phronesis*.330 This concept of practical wisdom is deployed by Ricœur, as discussed above. Ricœur suggests a less radical manner of negotiating the conflict between general rule and singular case: without the demand of leaving the position of power, but through the exercise of judgment. Judgment is neither calculation nor madness, but an intermediate position that implies interpretation and finding new solutions. This process belongs to the realms of politics.

While for Derrida, the concept of decision is important, Ricœur’s account of justice gives a central place to institutions. As already noted, Ricœur’s account contains elements of distributive justice, including Rawls’ procedural account of justice as fairness and Walzer’s ideas of

complex equality and justice as liberation from domination. At the same time, Ricœur reflects on the situation of the trial and those features of legal justice that can tenably be interpreted in light of political institutions. He concludes that institutions should act as third-party mediators and be impartial in their exercise of justice. The role of the mediator signifies at least two things: firstly, an openness to different and rival positions, and secondly, the aspiration to reach a peaceful solution, a consensus.

Derrida’s deconstruction challenges consensus-oriented theories of justice. As Sokoloff concludes, Derrida’s decision makes politics ethical and lively.\(^{331}\) It challenges the existing legal order by revealing its limitations and hegemonic violence. Law and the justification for law are dependent on the law’s inner repetitive violence, which only a decision may minimize. Furthermore, Derrida warns against the finality of justice and argues for its radical openness. Justice is unpredictable and undecidable. Therefore, the ideals of liberal democracy cannot be taken for granted and, importantly, should not be exported. As a result, democratization from the outside is not only limited but also counterproductive for the development of a substantial democracy with active political participation and inclusion. Democratization through transitional justice can at times be veiled. For example, democratization and the accompanying enforcement of neoliberal politics may be articulated in loan conditions from the International Monetary Fund and World Bank (as in the case of structural adjustment programs). But it is also present in the discourse of transitional justice and the leading NGOs (e.g., the International Centre for Transitional Justice), and in academic discourse.\(^{332}\)

As mentioned above, the central characteristic of Ricœur’s perspective on justice is its institutional structure, where institutions are understood as an expression of the will to live together with other people and as a guarantee of impartiality in distributing social goods and resolving conflicts. Ricœur’s focus on institutions can be seen as a broadening of the distributive model. But in contrast to, for example, the work of feminist philosopher Iris Marion Young, Ricœur’s perspective on justice is


less informed by relations of domination and oppression. It remains quite abstract, specifically concerning nonmaterial social goods. Young offers an important critique of distributive theories of justice as too abstract and disconnected from real social practices and relations. She claims that those theories of distributive justice that overextend the concept of distribution to nonmaterial social goods (for example, rights and duties, opportunities, self-respect, and respect) contribute to a perception of these goods as static, overlooking their dynamic nature as social relations and processes. Hence, Young’s critique of the distributive paradigm of justice also applies to Ricœur’s perspective. Furthermore, the central role given by Ricœur to political institutions as mediators undermines the conflicts in societies before and after large-scale human rights violations.

Nevertheless, the relationship between the just and the political is important for Ricœur. As already mentioned, the establishment of truth commissions is often motivated by the incapacity of legal justice to deal with past crimes. Drawing on Ricœur’s perspective, it might be argued that it is the incapacity of political institutions, rather than legal institutions that is an actual cause. Ricœur believes it is the incapacity of political institutions to mediate conflict in a non-violent manner that results in violations, which are transferred to the legal domain. In a court of law, a sentence is passed, regarding the guilt of the suspect, but the question of responsibility remains unanswered. This takes us back to the problematic combination of two different processes within transitional justice: a political transformation and an accountability for human rights violations. This combination may have different consequences. One of them is the subjugation of one process by another: in other words, subjugating the process of dealing with human rights violation to the prioritized process of political transformation, peaceful co-existence, and stability.

Truth commissions make claims to justice that are supported by another claim – a claim to truth. Truth is perceived as a prerequisite of justice, and this constitutes the second normative assumption behind the establishment and work of truth commissions. How these truth claims can be understood and examined? The next chapter examines truth and

its relationship with power and politics, drawing on the ideas and philosophical perspectives of Michel Foucault and Hannah Arendt.
4. Truth, Politics and Power

The second research question of this dissertation concerns the implications of the centrality given to truth by truth commissions in their pursuit of justice. The centrality of truth is motivated by the context of large-scale human rights violations in which widespread, deliberate lies are produced by state perpetrators. Kidnappings and enforced disappearances are widely used as a strategy for spreading terror. This strategy attacks both those who are directly exposed to the violations and their family members, who look in vain for information about the kidnapped and detained. The fates of prisoners remain unknown for many years and the truth about the past – the fates of the kidnapped and forcefully disappeared, imprisoned, and detained – becomes shattering. As a result, one of the central tasks of truth commissions is to investigate and gather information about the past by means of truth-seeking and truth-telling.

Truth is recognized as a prerequisite of justice; this is one of the normative foundations of truth commissions, as presented in the Introduction. Consequently, truth commissions make two claims: a claim to contribute to justice and a claim to establish the truth about the past. The purpose of this chapter is to examine two perspectives on truth presented in the work of Michel Foucault and Hannah Arendt, respectively. Through this examination, I seek to problematize the role of truth as it is deployed in the work of truth commissions. While the discourse of transitional justice is formed by the idea that truth challenges those responsible for violations (as a rule, state), drawing on Foucault, I argue that truth may become a prolongation of power.

Furthermore, it is necessary to admit that the context of large-scale human rights violations is often characterized by organized lies that enable mass terror and mass compliance. This raises a question about how the disclosure of truth impacts the political realm. More specifically, I will argue, drawing on Arendt, that the process of truth-seeking in truth commissions may undermine the political significance of the truths that
are discovered, and as a result contribute to the depoliticization of human rights violations. The works of both Foucault and Arendt offer critical perspectives for problematizing truth in the work of truth commissions. Their perspectives correspond to particular conceptions of power and the realm of the political, which decisively shape their analysis of the concept of truth.

The first part of this chapter introduces Foucault’s and Arendt’s distinct vocabularies related to truth and sets the two thinkers in dialogue with one another. The second part covers Foucault’s and Arendt’s understanding of truth in relation to power (Foucault) and politics (Arendt). Finally, the implications of both perspectives are summarized.

4.1 Power and Politics in Foucault and Arendt

The contexts for Arendt’s and Foucault’s work differ both from each other and from the context of this study. Nevertheless, the context of this study, namely, the situations that arise in the aftermath of large-scale human rights violations, provokes questions that have been inspired by both thinkers, including a questioning of the normative assumptions of truth commissions and the practices of transitional justice. Below, I discuss Foucault’s and Arendt’s thinking and suggest a way of rethinking their main concepts and arguments in connection to contemporary situations in which different societies consider responding to large-scale human rights violations by means of truth commissions.

To establish a dialogue between Foucault and Arendt, it is necessary to sort out their specific concepts and how they use them. Both Arendt and Foucault develop their own terminologies and introduce neologisms that can be challenging to bring into dialogue with one another. For this study, the critical terminology includes Foucault’s concept of power and its different forms and operations, including political power, and Arendt’s concept of the political and her understanding of power.

My analysis draws on several texts by Foucault and Arendt, as well as commentary on their thought. For Foucault, one of the central texts is the essay collection *Power/Knowledge* (1972-77). I also cite his collection of lectures, *Society Must be Defended* (1975-76), and the essay “Politics and Ethics” (1984), the lecture “Truth and Juridical Forms” (1973), and the essay “The Subject and Power” (1982). For Arendt, I

### 4.1.1 Domination and Mutual Action

Although Foucault and Arendt conceptualize power in different ways, both begin with a critique of the same form of power, namely, sovereign power. Both are critical of an exclusive understanding of power as a possession. Foucault accepts sovereign power as one of the manifestations of power; for Arendt, however, sovereign power does not constitute power, but domination or violence. Both Arendt and Foucault underline that power is not of a possessive, but a relational character. Nevertheless, their understandings of the relation are utterly different: for Foucault, power is a relation of domination, for Arendt, power is a relation of mutual action. How can these different concepts of power be understood?

Dealing with Foucault’s concept of power requires serious endeavour. He never formulated an overreaching theory of power, but nonetheless raised several important philosophical and political questions about the modern concept of power. A discussion of Foucault’s ideas on power in their entirety lies beyond the scope of this study. Instead, I will look at Foucault’s general concept of power and focus on those questions that are relevant for understanding truth as one of the power regimes and its rationality and institutionalization.

It should be noted that Foucault’s concept of power underwent changes over the course of his career. In his earlier works, Foucault engages in a genealogical analysis of disciplinary power; later, he is occupied with the question of subject-formation and ethics understood as care of the self. The main purpose of his critique is to disclose the actual functions of power and power’s relational character.

As already mentioned, Foucault’s and Arendt’s accounts of power developed as a critique of an understanding of power as sovereign power, or an obedience model. A sovereign power denotes the concentration of power in the hands of a sovereign, or later, in the state and law. For Foucault, power is always a relation between individuals, embedded in norms and institutions. It circulates and functions in the form
of a chain of net-like organizations.\textsuperscript{335} In elaborating this novel perspective on power, Foucault famously claimed: “We need to cut off the King’s head: in political theory that has still to be done.”\textsuperscript{336} Foucault’s claim should be understood as a critique of political philosophy, which, according to him was predominantly occupied with the problem of sovereignty and treated the concept of power as solely sovereign power. This understanding of power implies a negative dimension of power as restrictive and repressive.

Foucault does not deny the existence of sovereign power as a monopoly over physical force or state sovereignty, but he seeks to challenge this exclusive understanding of power. He finds it to be insufficient and seeks to elucidate new mechanisms by which power manifests itself. Unlike sovereign power, modern forms of power operate by virtue of their invisibility. They are concealed in the activities of social institutions and the production of knowledge, which are not directly associated with power. Thus, Foucault broadens the domain of power.

Sovereign power is also relational, but it involves only one type of relationship – that between the sovereign and the subordinated. Foucault contends that other types of relations, between individuals, within institutions and groups, are also bounded by power. On the one hand, power imposes limitations and constraints. While some constraints are evident, others are subtle and elusive and the disclosure of the latter is Foucault’s core project. On the other hand, Foucault contends in addition to being restrictive, imposed constraints can be enabling. Hence, Foucault defines power as a positive concept: that is, having an ability to produce things and knowledge, to produce positive discourse. This is what makes people stay within structures and established orders:

What makes power hold good, what makes it accepted, is simply the fact that it doesn't only weigh on us as a force that says no, but that it traverses and produces things, it induces pleasure, forms knowledge, produces discourse. It needs to be considered as a productive network which runs through the whole social body, much more than as a negative instance whose function is repression.\textsuperscript{337}

\textsuperscript{336} Op. cit., 121.
As an alternative to the limited understanding of power as sovereign power, Foucault introduces two technologies of power: disciplinary power and biopolitics.\footnote{According to Koopman, these two technologies of power should be treated as Foucault’s critical concepts, as presented in Chapter 1.} The main difference between these two lies in the realm of their operation: disciplinary power operates on the level of the individual body, and biopolitics operates on the level of the population.\footnote{Foucault, Michel: \textit{Society Must be Defended: Lectures at the Collège de France, 1975-76}. Penguin, London 2004, 245.}

Following Foucault’s thought, the scope of the manifestation of power goes beyond state-centred and economic powers. Foucault argues that power is ubiquitous and operates on the micro-physical level of our everyday practices. Nancy Fraser praises Foucault’s positive conception of power and claims that it has the general but unmistakable implication of a call for “a politics of everyday life”.\footnote{Fraser, Nancy: \textit{Unruly Practices: Power, Discourse, and Gender in Contemporary Social Theory}. Polity, Oxford 1989, 18.} The insight that power is organized in a chain or net gives rise to the aspiration to scrutinize the mechanisms behind power: to make the chain or net-like organization transparent and comprehensible.

This aspiration arises from the fear that one’s freedom is constrained by these powers. Foucault acknowledges this risk, but he does not provide any guidance for how to resist power or which power to resist. Here, Fraser and others offer a stark critique of Foucault. Fraser claims that Foucault’s concept of power lacks a normative framework.\footnote{Ibid.} She further argues that by rejecting a liberal normative framework that distinguishes between the legitimate and illegitimate exercise of power, Foucault not only offers a normative neutral account of power, but even more, he sometimes presupposes liberal norms.\footnote{Op. cit., 18-19.}

The normative ambiguity of Foucault’s conceptualization of power does not allow us to identify a position from which power can be resisted. Even if we understand why a certain form of power is unjust and should be opposed, the idea of power as situated and circulated everywhere in our everyday social interactions and practices does not assist us in finding the stance from which we should act.

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338 According to Koopman, these two technologies of power should be treated as Foucault's critical concepts, as presented in Chapter 1.
341 Ibid.
What unites Foucault’s and Arendt’s accounts of power is that both treat freedom as a goal. Foucault rejects any static understanding of power, based on a normative stance, which in turn presupposes the rejection of any static understanding of freedom. One way of interpreting power resistance according to Foucault, despite the critique summarized above, is to admit that liberation from the constraints of power requires an analysis of power in its multiplicity, and such an analysis should pave the way to multiple strategies of liberation.

While Foucault’s perspective on power offers a vague empowerment potential, Arendt’s idea of power, as already mentioned in Chapter 3, demonstrates this potential by strictly distinguishing power from violence, force, and domination and by presenting power as another type of relation, namely, as the relation of acting in concert. For Arendt, the concept of power is directly linked to an active subject. Power corresponds to the human ability to act in concert. Acting in concert is understood as action where individuals have common goals and shared principles. By recognizing each other as equal and distinct actors, individuals can act in agreement. This view of power is also relational, but relation here is characterized by cooperation between individuals who seek to act together in the public realm.

Arendt distinguishes power from authority, force, violence, coercion, and domination. While all traditionally associated with power, these forms are actually opposite to power, since according to Arendt’s understanding, power is a manifestation of freedom. Like Foucault, Arendt is critical of a command-obedience model of power. Her critique is directed against the legal realm, where power is embodied in the rule of law principle. This critique calls to mind Derrida’s critique in the “Force of Law”. However, unlike Derrida, Arendt is not concerned with challenging the status of law. Her main point involves the idea that the uncritical obeying and following of legal rules and orders leads to an escape from politics, which may have disastrous consequences. By distinguishing power from the rule of law, Arendt dismisses law’s authoritative structure of domination as demonstrated by Derrida.

In On Violence, Arendt provides her definition of power:

*Power corresponds to the human ability not just to act but to act in concert. Power is never the property of an individual; it belongs to a group*

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and remains in existence only so long as the group keeps together. When we say of somebody that he is “in power” we actually refer to his being empowered by a certain number of people to act in their name. The moment the group, from which the power originated to begin with (potestas in populo, without a people or group there is no power), disappears, “his power” also vanishes.\(^3\)\(^4\)\(^4\)

Potestas in populo, or power to the people, implies that power means empowerment. Arendt’s notion of power shows how a group acting together has the potential to change its situation. Anya Topolski claims that Arendt’s notion of power is ideal for bottom-up, horizontal political movements, since it challenges the verticality and singularity of politics today. It inspires political critique, disobedience, and resistance.\(^3\)\(^4\)\(^5\)

Power, arising from acting in concert, is exercised in the public realm or what Arendt refers to as “the space of appearance”: a space where we appear to others and others appear to us. Arendt argues: “Power is what keeps the public realm, the potential space of appearance between acting and speaking men, in existence.”\(^3\)\(^4\)\(^6\) Here, Arendt, similarly to Foucault, points towards power’s positive dimension of making people stay together and preserving the public realm. On the one hand, power is understood as a capacity and its character is revealed as one of potential. It is neither unchangeable nor reliable. It occurs when people act together and it vanishes when they disperse.\(^3\)\(^4\)\(^7\) On the other hand, this capacity or potentiality of power is also a prerequisite for the very existence of the public realm.

Acting together implies various forms of organization and public deliberation, where different perspectives are presented, as a way of keeping the interplay of plurality alive. By distinguishing power from other phenomena that are traditionally confused with power, Arendt defends the idea of power as empowerment through the organization. Arendtian power entails an active subject, or rather a group of active subjects, who are capable of resisting domination and oppression.

Arendt’s distinction between power and violence seeks mainly to show power’s non-instrumental character. She denies the idea of power


\(^{346}\) Arendt, Hannah: *The Human Condition*, 200.

\(^{347}\) Ibid.
as a means. At the same time, power as a precondition of people acting together is directed at struggling against these other forms. Even in cases of total domination, when force and violence are used to destroy, to isolate, there is always a potential to change these tyrannical structures. In this sense, Arendt’s concept of power should be understood as a call for action, but not through revolution, which always implies violence. Arendt’s alternative is the revival of the political realm.

According to Arendt, power is also relational, but it is a spontaneous and temporal relation that occurs between people who gather and act in concert, guided by a common purpose and shared principles. Arendt’s power, understood as empowerment, precludes a power analysis, particularly the analysis of systematic and institutional violence. The discrepancy between power and violence is important for Arendt and she succeeds in demonstrating violence’s instrumentality. Her main argument is that violence must be excluded from the political domain. However, this position risks undermining those forms of violence that are embedded in power structures – i.e., political violence. In On Violence, Arendt focuses on students’ movements; specifically, she condemns the Black Power movement as violent, at the expense of scrutinizing the state and legal violence that lay behind segregation, discrimination, and racism in the United States in the 1960s. Even though her perspective challenges overestimations of the power of the state and shows that such power can be resisted, Arendt does not provide us with resources for critically examining the political and structural violence exercised by state power and unjust laws. This problem is not accidental but can be traced back to Arendt’s concept of the political, which is the subject of the next section.

4.1.2 Depoliticization and Politicization

Arendt’s understanding of power is inseparable from her specific idea of the political. Even though the critique of modernity provided by Foucault and Arendt can be understood as their critique against the technocratic state, or in Arendt’s term “the loss of politics”, their views on politics differ significantly. The core distinction lies in their perspectives on the separation between the public and private realm. For Arendt, separation is necessary to guarantee a genuine political action that is spontaneous and free from bureaucratic structures. For Foucault, such
a separation is unthinkable, and he engages with the analysis of the politics of everyday life.

Foucault’s and Arendt’s accounts, while having some common foundations, focus on two prima facie opposite problems. Arendt is concerned with the depoliticization of the public realm, while Foucault problematizes the politicization of everyday life. As Neve Gordon puts it: “In a sense, Foucault politicizes phenomena that had been previously considered to be natural, i.e., ‘beyond politics’.”

Arendt’s conceptualization of the political springs from her distinction between public, private, and social realms. She contends that the social realm is a relatively modern phenomenon. In Greek philosophy, the distinction between private and public spheres corresponded to a distinction between the household and political realm. The private sphere was limited to family households and was characterized by the condition of necessity, i.e., the necessity to organize the family’s daily life and economy. The public realm was the sphere of politics. Arendt maintains that politics has nothing to do with necessity: “In fact, it begins where the realm of material necessities and physical brute force end.” In contrast to the private realm, freedom was exclusively situated in the political realm. Freedom, in turn, was grounded in the notion of equality.

The boundaries between the private and public realms disappear with the emergence and the rise of the social realm. Arendt describes the social as a prolongation of collective housekeeping. The necessity of regulating relationships expands from family to society and as a result, the extension imposes expectations of certain behaviours, rules, and conventions. The rules seek to “normalize” society’s members, which according to Arendt, precludes any spontaneous action.

Like Foucault, Arendt points out an increasing control of people’s behaviour and the role of norms for identifying certain behaviours as normal or abnormal in any particular society. Foucault demonstrates a new dimension of modern power as biopolitics. In the first volume of

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351 Arendt, Hannah: *The Human Condition*, 32.
The History of Sexuality, (1976), he shows how biopolitics targets individuals at the level of bodies and the control of life. This form of power is decentralized and present in all kinds of relations.\textsuperscript{353}

Arendt’s main concern is what she calls the “substitution of behaviour for action”. This substitution has political consequences, since it leads to bureaucratization and the rule of nobody.\textsuperscript{354} The most extreme consequence of such bureaucratization is the extermination of groups that deviate from the norm. However, Arendt’s concern goes beyond the totalitarian states of the twentieth century. She anticipates that contemporary democracies run the same risk of the rule of nobody. The devastating consequences of such a rule include racist and discriminatory politics and a lack of political responsibility for decisions.

Despite this similarity in Arendt’s and Foucault’s thinking, it is important to consider Arendt’s particular understanding of the public realm, where both politics and power are situated. The term “public” connotes two things, which are different but closely interrelated. First, “public” implies that everything that appears in public can be seen and heard in the presence of others.\textsuperscript{355} The second meaning of “public” implies the public realm as the common world. Arendt describes the common world as an in-between space: that is, in between separate individuals and in between different generations. The virtue of the public realm consists in enabling the presence of multiple perspectives about the common world. Arendt puts it in the following way: “Being seen and being heard by others derive their significance from the fact that everybody sees and hears from a different position. This is the meaning of public life”.\textsuperscript{356}

Arendt’s appeal to the ancient Greek understanding of politics as situated in the polis was conditioned by two experiences of the twentieth century: the rise of totalitarian governments and the invention and development of modern means of destruction, i.e., the atomic bomb.

\textsuperscript{353} In Remnants of Auschwitz, Giorgio Agamben develops Foucault’s analysis of biopolitics and the paradox embedded in this concept, namely, that the power whose aim is essentially to make life instead exerts an unconditional power of death. Agamben’s inquiry into the legacy of the Holocaust as the biopolitics of racism shows Foucault’s and Arendt’s common concern.

\textsuperscript{354} Arendt, Hannah, op. cit., 45.


According to Arendt, these events constituted the modern political experience and therefore raised a question about the meaning of politics in our time, or indeed “if politics still has any meaning at all”.\textsuperscript{357} Such a meaning is determined by the mistrust of politics based on prejudice and judgment about these past events. Due to this mistrust, the political realm has atrophied.\textsuperscript{358} The majority of people are disinterested in engaging in political life. The atrophy of the political realm leads to the automatization and bureaucratization of the modern state, which always runs the risk of concealing unjust practices.

To counteract this process, which Arendt saw as fatal for modernity, she presents and discusses the foundational conditions and goals of politics. First and foremost, politics is based on the condition of human plurality. Arendt claims that all human activities are conditioned by the fact that men live together. The political aspect of human life is actualized in the presence of others. Plurality implies that all human beings are different and interrelated. Everyone is capable of bringing a new perspective, which is necessary for understanding the common world. Arendt argues that speech and action reveal the unique distinctness of every human being.\textsuperscript{359}

Equality, Arendt claims, should not be misunderstood as equality before the law (the Greek \textit{isonomia}). Being equal means having the same claim to political activity, which in the \textit{polis} primarily took the form of speaking, and thus constituted the equal right to speak.\textsuperscript{360} Etienne Balibar suggests “equaliberty” as a translation of Greek \textit{isonomia}. The notion of equaliberty, like the ancient \textit{isonomia}, indicates the necessarily intertwined nature of equality and freedom. As Balibar argues, it is impossible to deny freedom without also denying equality, and vice versa.\textsuperscript{361} He interprets \textit{isonomia} as an institution whereby individuals reciprocally grant each other rights in the public sphere – the right to speak, to begin with.\textsuperscript{362} Hence, the equal right to speak is conceptualized

\textsuperscript{357} Arendt, Hannah: \textit{The Human Condition}, 108-109.
\textsuperscript{358} Arendt, Hannah: \textit{The Promise of Politics}, 153.
\textsuperscript{359} Arendt, Hannah: \textit{The Human Condition}, 176.
\textsuperscript{360} Arendt, Hannah: \textit{The Promise of Politics}, 118.
as a “universal right to politics”, which is exercised reciprocally and by mutual recognition. It provides a ground for demanding the inclusion of excluded and marginalized groups who are deprived of their rights.

Ayten Gündoğdu contends that speech as a way of achieving equality in Arendt’s thought should not be confused with freedom of speech. Gündoğdu claims that Arendt’s reference to isonomia should be understood in the context of statelessness. Equal right to speak in relation to excluded groups should be understood not only as their right to freedom of speech as such but as guaranteeing them an equal share in the political community by recognizing the meaningfulness of their speech.

To grasp Arendt’s understanding of politics, it is also necessary to consider that she viewed freedom as the meaning of politics, and politics itself as primarily an end and not means. For Arendt, the meaning of political action lies in action itself and it is revealed in the course of action. Action pursues different goals, since it aims at engaging with others who also have their own goals. Acting together requires reconsidering these different goals based on common experiences. Recalling the meaning of politics in ancient Greece, Arendt states:

> Here the meaning of politics, in distinction to its end, is that men in their freedom can interact with one another without compulsion, force, and rule over one another, as equals among equals, commanding and obeying one another only in emergencies – that is, in times of war – but otherwise managing all their affairs by speaking with and persuading one another.

The Greek notion of politics is closely tied to the spatial construction of the public realm. Interaction in the form of speech and the exchange of opinions takes place in the presence of others. The public space, however, does not become political per se, but rather should be secured within a city, that is, bound to a concrete place. The space becomes political when it is purposefully built for free individuals to meet and

interact.\textsuperscript{367} Arendt shows that in ancient Greece, sharing opinions through public speech was connected with danger and risk, and it required some courage to enter the public realm.\textsuperscript{368}

The purpose of speech comes from an acknowledgment of human plurality and the plurality of perspectives. To comprehend the objective world it is necessary to share one’s perspectives and take into consideration the opinions and perspectives of others. The purpose is not to reach a consensus but instead to bring to the fore that multiplicity of opinions which makes the world more comprehensible.\textsuperscript{369}

Arendt contrasts the modern conception of politics with the one she presents. She argues that the modern conception implies that a state is a function of society. Its function includes securing society’s freedom against internal and external enemies. The idea of citizen participation in government is justified as a necessary limitation and control of the state, which has the means of force at its disposal.\textsuperscript{370} Even though it is precisely the experiences of brute force of the twentieth century that led to such a conception of politics, Arendt seeks to reinforce the meaning of politics as engaging in an exchange of opinions and perspectives. She claims that political action cannot be equated with violence and that such an equation may be fatal.\textsuperscript{371}

In her conceptualization of politics, Arendt introduces conditions of plurality and natality. As Lisa Jane Disch points out, the term “condition” itself is problematic.\textsuperscript{372} Arendt refutes the appeal to “human nature” as an entity that is impossible to study and turns to a discussion of the conditions of human existence.\textsuperscript{373} Disch problematizes Arendt’s inconsistent use of the term “condition”: both as a descriptive and as a normative notion. On some occasions, Arendt refers to the condition as a present state of things, and on other occasions, condition implies a requirement that must be met, i.e., “an enabling condition”. Disch argues that Arendt’s ambiguous use of the term “condition” results in

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\textsuperscript{367} Arendt, Hannah: \textit{The Promise of Politics}, 123.
\textsuperscript{368} Op. cit., 122
\textsuperscript{370} Op. cit., 143.
\textsuperscript{373} Arendt, Hannah: \textit{The Human Condition}, 11.
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problematic premises, as the fact of human plurality is sufficient to secure equality and human natality is sufficient to guarantee everyone equal access to power. The ambiguous use of “condition”, Disch concludes, is inherently conservative, since it takes for granted the political achievements of democratic politics, namely, equality and access to power.

Another serious problem, along with Arendt’s implicit “elitist” assumptions, concerns her strict opposition between the “public” (political) and the “social” realms. Arendt contends that politics begins where material necessities and physical force end. The problem of necessity, in other words, belongs to the social realm. She again presupposes the solution to the problem of necessity and the end of physical force as a prerequisite to politics, while these solutions per se are and should be treated as political struggles. The genuineness of political action springs from the necessity to struggle against injustices of both political and economic characters, directed towards individuals and groups. Here we might recall again the critique against the distinction between violence and power. The distinction between the public, private, and social realms is interconnected with the separation between power and violence. The distinctions entail a risk of dismissing certain forms of injustice that are located in the social and private realms.

The critique of Arendt’s peculiar conceptualization of politics should be taken seriously. Following Disch, and Jeffrey Isaac’s interpretation of Arendt’s work, which Disch cites, I agree that despite Arendt’s perceived elitism, greater weight should be given to the “pariah theme” in her thought. The experience of European Jews, Romas, and Slavs of being deprived of their human rights, including the right to speak and to participate in the political life, is the main source for Arendt’s preoccupation with the meaning of politics and how those marginalized pariah groups can regain visibility and a voice in their societies. By securing their rights, particularly the right to speech, the human condition of plurality is re-established. On the one hand, human plurality can be interpreted as a descriptive condition; on the other hand, respect for plurality cannot be taken for granted.

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375 Ibid.
376 Arendt, Hannah: The Promise of Politics, 119.
Arendt’s distinction between public, social, and private realms is conditioned by her concern about the rise of the social and the blurring of boundaries between the realms. It is not only the loss of the public realm that bothers her but also the destruction of the private realm. As mentioned earlier, this distinction is entirely foreign to Foucault. He argues instead that all aspects of life are becoming politicized, and this is controlled through disciplinary power and biopolitics. While Foucault is critical towards these processes, for Arendt it is particularly the process of politicization – the transferring of social and private issues into political ones by bringing them into the public realm – that keeps politics alive.\textsuperscript{378}

Let me now recall Foucault’s perspective on politics. As suggested earlier, Arendt’s and Foucault’s accounts on politics focus on two \textit{prima facie} opposite problems: the problem of depoliticization of the public realm and the problem of politicization of everyday life. A closer examination shows that these two problems have common roots but are addressed from different directions. Arendt’s gaze is directed towards the public realm, which is threatened by the rise of the social, and Foucault’s towards the private realm, which is threatened by the rise of the political.

As noted above, Foucault’s account of power lacks a normative framework, and it also poses the question about how politics should be understood in his thought. Wendy Brown observes that many of the themes that preoccupied Foucault and are of obvious relevance to politics, including truth, the body, rationality, and the subject, are addressed in strikingly unpolitical fashion.\textsuperscript{379} She constructs an account of Foucault’s conception of politics as genealogical politics: a discursive space for political thought, judgment, and interventions.\textsuperscript{380} Brown demonstrates how genealogy constitutes a critical endeavour which both disrupts and re-figures conventional categories within politics. She argues that Foucault’s link between “ politicization” and “totalization” neither implies an opposition to politics by Foucault, nor that does he perceive his intellectual endeavour as politically neutral.\textsuperscript{381} Rather, Foucault aims

\textsuperscript{378} Gündoğdu, Ayten: \textit{Rightlessness in an Age of Rights: Hannah Arendt and the Contemporary Struggles of Migrants}, 58.
\textsuperscript{380} Op. cit., 47.
\textsuperscript{381} Op. cit., 34, 40.
to question politics, and hence he opens a new political space that was previously closed. Foucault claims:

I have especially wanted to question politics, and to bring to light in the political field, as in the field of historical and philosophical interrogation, some problems that had not been recognized there before. I mean that the question I am trying to ask are not determined by a pre-established political outlook and do not tend towards the realization of some definite political project.382

What does Foucault mean by “political”? Barry Hindess maintains that “political” has two contrasting connotations in Foucault’s work: political in the sense of governmental and political as anti-governmental.383 The distinction is based on Foucault’s idea of liberation, which in itself has a political connotation. On the one hand, Foucault focuses on liberation from political rationality as a mode of relationship between the ruler and the ruled. On the other hand, he claims that the political problem of our day is not to try to liberate individuals from the state, but to liberate us both from the state and from the type of individualization which is linked to the state.384 Foucault is critical towards both the individualizing and totalizing effects of the modern state, which brings us back to the division between private and public realms. I suggest that thus Foucault’s account of the politics gets closer to Arendt and shows that the prima facie opposite problems are not, in fact, opposite.

Hindess shows that the metaphor of the polis has inspired most modern conceptions of politics and is also present in Foucault’s conception of politics.385 Polis relates to the idea that to be able to participate in the collective decision-making, i.e., in the affairs of the polis, individuals must be autonomous. Therefore, the totalizing effects of the state should be opposed. Members of the polis must have an independent base in a

385 Hindess, Barry, op. cit., 56.
non-public life which enables them to participate as autonomous persons.\textsuperscript{386} The autonomy and private realm are necessary, following Arendt’s thought, to give a personal perspective on the shared world.

Foucault’s overall project can be formulated as follows: we need to free ourselves from the illusion of freedom as developed during the Enlightenment. Foucault elaborates an account of emancipation from particular systems of domination, although absolute emancipation from domination is impossible. While for Arendt power and domination are mutually exclusive, Foucault rejects this distinction. As Jakub Franek points out, Arendt’s understanding of power as a relation entails a mutual relation. Meanwhile, Foucault insists that power always includes an element of domination.\textsuperscript{387}

Foucault explains that the purpose of his problematization was to scrutinize certain fields that have not been identified as political problems. He describes this as analyzing politics from behind. For example, the questions of the relationship between sanity and insanity, crime, illness, and sexuality, are all perceived by Foucault to be political problems. What makes these problems political? Following Foucault, it seems plausible to argue that certain questions become political problems when they are charged with power. And power is political because it is governed by a set of relations and techniques. Foucault’s idea of politics lies in his critique of institutions that seek to control and regulate people and their behaviour. From Arendt’s perspective, the questions that Foucault identifies as political problems are not political until they are brought to the public realm. Hence, her account suggests that these questions must be politicized: transferred from the private to the public realm.

Arendt’s and Foucault’s conceptions of politics can both be described as utopian. As Hindess rightly claims, Foucault should not pretend to avoid utopianism, since there can be no political critique that does not exhibit utopianism.\textsuperscript{388} An understanding of politics and the political should not be reduced to the set of governmental institutions and their distinct activity. Politics is a matter of public life, where both state

\textsuperscript{388} Hindess, Barry, op. cit., 61.
institutions, civil society, and society, in general, must be able to participate. Such a radical conception of politics is a prerequisite for resisting the totalizing and individualizing effects of the modern state.

Before turning to the next section, which is devoted to the question of truth and its relation to power and politics, I should make a few initial remarks about depoliticization and how it may be understood. Based on Foucault’s and Arendt’s accounts, depoliticization may take different directions. Drawing on Arendt’s concern about “the loss of the political”, depoliticization may be understood as the atrophy of the political realm and the disinterest of the members of the community in participating in public affairs. It takes place, Arendt argues, due to the bureaucratization and automatization of the modern state and the invasion of the social realm into the political, guided by necessity and not the ideal of freedom and equality. This form of depoliticization concerns the members of the community and displays an absence of political activity and interest in politics.

Foucault’s perspective allows us to conceptualize depoliticization differently: through discursive rationalizations of practices and problems as unpolitical. More specifically, this rationalization may include individualization and objectification: that is, presenting certain problems as individual and not collective, as objective and not constructed and hence embedded in the net of power. In the next part of the chapter, I seek to specify how depoliticization is related to truth interlinked with power and politics, and how the discourse of truth intensifies depoliticization.

4.2 Truth in Foucault and Arendt

In this section, I juxtapose two relations: the relation between truth and power and the relation between truth and politics. The first relation is presented via Foucault’s notion of the truth regime and his problematization of this relationship. The second relation is presented via Arendt’s perspective on factual truth and opinion. The perspectives presented by these two thinkers seem to emerge from a common understanding of truth. However, to engage in a critical assessment of the prerequisite of truth for justice (as assumed in the work of truth commissions), Foucault’s power analysis should be combined with Arendt’s normative view on the role of truth and opinion in the political realm. It will also
become apparent that Foucault’s and Arendt’s understanding of truth is necessarily bound up with the act of truth-telling, which is discussed in Chapter 6. For now, however, let us recall the origins of their thinking about truth.

To begin, Maria Tamboukou notes Heidegger’s shadow over Foucault and Arendt regarding their understanding of truth as unconcealment or uncovering. The Greek notion of *aletheia* is conceptualized as unhiddenness. In *The Essence of Truth: On Plato’s Cave Allegory and Theaetetus*, Heidegger conceptualizes truth by means of a historical reflection on the way truth was understood in Greek philosophy. Heidegger is preoccupied with the discrepancy between the original meaning and the contemporary meaning of truth. The original meaning implies an understanding of truth as unhiddenness. The contemporary meaning, on the other hand, implies truth as correspondence. Heidegger suggests that turning to the Greeks’ understanding of truth is necessary to identify the essence of truth and trace the transition from truth as unhiddenness to truth as correspondence. The understanding of truth as unhiddenness also exposes truth’s privative character, meaning that truth stops possessing something hidden. As Heidegger puts it, “truth means what something no longer has.”

Tamboukou ties the Heideggerian conceptualization of truth to Foucault’s genealogical investigation of the notion of *parrhêsia* and Arendt’s preoccupation with the relationship between truth, politics, and philosophy. I suggest that already in Foucault’s notion of truth regimes, the understanding of truth as unhiddenness is present. I explore this notion below.

### 4.2.1 Truth and Power

Foucault’s work on the relations between truth and power is devoted to an analysis of the status of scientific truths and knowledge. The history

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392 Tambokou, Maria, op. cit., 851.
of power-knowledge relations is tied to the occurrence of modern positive forms of power, which influence individuals and societies in general. In his writings, Foucault introduces two triads that are important for the present discussion. First, there is a triangular relationship between power, knowledge, and truth. Second, there is a triangular relationship between power, right, and truth. How can these triads be understood?

The triad of power, knowledge, and truth implies that the modern form of power, exercised by institutions, is engaged in the production of knowledge. In this production process, different techniques and methods are used to ensure the objectivity of statements that describe or explain reality. Knowledge consists of statements that are linked together coherently and logically. Hence, the production of new knowledge must take place in accordance with existing rules and standards. Knowledge, then, not only determines what a true statement is but is also a strategic instrument whose effect is domination. Reference to scientific knowledge, which has the highest status, is used to control people. For example, medical knowledge is used to restrict how individuals should behave, what they should abstain from, etc.

The positive nature of Foucault’s power implies that knowledge is necessary to maintain life and hold society together, but the status of knowledge and the process of establishing new knowledge must still be examined. To carry out this type of examination, Foucault introduces the concept of the “regime of truth” as a historical modification that results in the establishment of a new order of knowledge and discourse that functions as true. In the interview collection *Power/Knowledge* (1972–77), Foucault contends:

> Truth is a thing of this world: it is produced only by virtue of multiple forms of constraint. And it induces regular effects of power. Each society has its regime of truth, its “general politics” of truth.

It is not the modification itself or its content that interests Foucault, but rather the rules that govern this change. The rules form a discourse, a historically contingent social system that produces meaning and

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knowledge.\textsuperscript{395} The rules govern what can be said and in what form, what is accepted as true or false, and the status of those who are charged with saying what counts as truth.\textsuperscript{396} Importantly, Foucault’s definition of the regime of truth and discourse contains several significant propositions: first, that the effects of truth regimes and discourses are distinctly material, since they form the object of what they speak; and secondly, that truth regimes regulate not only what is said, but also by whom, that is, a subject.

Foucault was predominantly interested in the knowledge produced by institutions. He maintains that regimes of truth are socially constructed and reflect the history and culture of the societal context. Truth then becomes a product of the power dynamics of the institutions that constitute society. The institutions may vary from the church and the judiciary to prisons and mental hospitals. These institutions exercise their power \textit{inter alia} by producing truth. Again, Foucault seeks to show that the analysis of the production of truth cannot be reduced to the analysis of the production of scientific truth. But it is necessary to challenge those institutions that are not openly engaged in the production of truth.

Foucault observes that every society is forced to produce truth:

\begin{quote}
We are forced to produce the truth of power that our society demands, of which it has need, in order to function: we \textit{must} speak the truth; we are constrained or condemned to confess or to discover the truth. Power never ceases its interrogation, its inquisition, its registration of truth: it institutionalises, professionalises and rewards its pursuit.\textsuperscript{397}
\end{quote}

This observation shows that truth and pursuit for the truth have become an inalienable part of contemporary societies. Societies are founded on true statements and demands to discover and establish new truths. However, within the societies themselves, truth becomes an instrument for power manifestation. Governmental authorities refer to experts to strengthen the arguments for their decisions. Courts invite experts to

\textsuperscript{395} Foucault, Michel: \textit{Archaeology of Knowledge and the Discourse on Language}. Pantheon books, New York 1982, 135-140.
\textsuperscript{396} Foucault, Michel: \textit{Power/Knowledge: Selected Interviews & Other Writings 1972-1977}, 112-13, 131.
\textsuperscript{397} Op. cit., 93.
complement or clarify the evidence before passing a judgment. Foucault highlights “the will to truth” in our societies that results in the politics of truth being the means of institutional truths.

The politics of truth is tied to the ideal of impartiality: that is, that public authorities (including courts and judges) are neutral and take an impartial and impersonal point of view in their work. Iris Marion Young, in her prominent work *Justice and the Politics of Difference*, argues against the ideal of impartiality, influenced by Foucault’s critique. She believes that the ideal of impartiality expresses an aspiration to reduce differences to unity.398 Young’s argument concerns the logic of identity and the ideological function of the ideal of impartiality, which undermines the heterogeneous public. According to Young, the ideological function of impartiality, which is connected to the production of knowledge and the status of truth, reinforces depoliticization and creates new forms of domination. 399

In her analysis of tolerance, Brown raises a similar argument about tolerance (as an expression of impartiality) and depoliticization. She argues that while the embrace of tolerance in contemporary liberal democracies aims on the surface at neutralizing different identities for the sake of freedom and equality, it is grounded in hierarchical norms and positions where those who are to be tolerated are marked as inferior, deviant, and marginal. Brown claims that tolerance involves the depoliticization of, among other things, the historical roots of the subordinated positions. 400

The second triad mentioned at the beginning of this section, namely, the triad of power, right, and truth, is connected to Foucault’s genealogy of the special form of truth represented by judicial truth. Foucault’s question about this triad is: “What rules of rights are implemented by the relations of power in the production of discourse of truth?”401 The triangle relation can be understood through the limits of power, where power is limited firstly by law, and secondly by truth, which is both the product of power and reproduces power. Here, the circularity and dynamics of power relations become apparent. It is misleading, according

398 Young, Iris Marion: *Justice and the Politics of Difference*, 97.
to Foucault, to imagine that truth can be absolute. Some truths are more questionable than others. The truth about the violent past is among the most questionable truth, since it concerns the different perspectives of the protagonist of the conflict. Hence, the critical examination of these truths and the process of their formations becomes urgent. The questioning of these truths itself becomes a manifestation of power and the will to power.

In the essay “Truth and Juridical Forms”, Foucault focuses on political power, which is impossible without possession of special knowledge. He claims that since Plato, the West has been dominated by the great myth that truth never belongs to political power and political power is blind. He continues: “If there is knowledge, it must renounce power. When knowledge and science are found in their pure truth, there can be no longer any political power.”

This perspective reappears in Arendt’s thinking on the relation between truth and politics. But before moving to Arendt, let us recall how Foucault tries to dispel what he called “a great Western myth”.

The Foucauldian perspective on the relation between truth and power clearly shows that power is not absent from right and truth, but it is interwoven with it. Foucault begins with an analysis of how legal disputes were resolved in ancient Greece and claims that the main achievement of Greek democracy was the right to bear witness. A powerless witness could oppose power with truth. Critically, in this analysis Foucault shows the emergence of legal investigation as a model for establishing truth, which is closely connected to political power. First, duels and contests between individuals are abandoned and rules of settlement are introduced. These rules are accepted by all the parties that are involved in the litigation. Second, the figure of a prosecutor appears as a representative of the state, which is closely connected with the emergence of the concept of an infraction as an offence committed not against another individual, but against the state. Foucault concludes that the procedure of legal inquiry demonstrates the relation between truth and political power.

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Juridical truth is a result of positive power, and therefore it is also used as an instrument of domination, where one opposing force wins and dominates over the other. Truth is used as an instrument of objectification. Such objectification is possible when subjects accept truth passively and do not question it. This is perfectly exemplified by the procedure of inquiry in the judicial realm, when the parties in the settlement accept the rules of the establishment of truth. Alexandre Macmillan points out that Foucault’s work on *parrhèsia* can be considered as an alternative to the juridical model. Unlike the Cartesian method as the subjugation of imperious and universal laws of truth, *parrhèsia* concerns the autonomous and free subject’s relation to the truth and the responsibility that accompanies the truth claim.405

*Parrhèsia* as a radical form of critique is examined later in Chapter 6, which is devoted to political and ethical dimensions of truth-telling. The discrepancy between truth and truth-telling is important for Foucault and in his genealogy of *parrhèsia* he makes special note that the problem he addresses is the activity of truth-telling. Arendt, meanwhile, does not discriminate between truth and truth-telling and uses both interchangeably. Her perspective on truth is examined next.

### 4.2.2 Truth and Politics

Unlike Foucault, Arendt does not engage in an analysis of the techniques of the production of truth. However, her analysis of the relationship between truth and opinion, organized lies, and politics contributes to the further development of the analysis of truth. In a letter to a friend, the American writer Mary McCarthy, Arendt states:

> In other words, my point would be that what the whole furor is about are *facts*, and neither theories nor ideas. The hostility against me is a hostility against someone who tells the truth on a factual level, and not against someone who has ideas which are in conflict with those commonly held.406

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In this letter, Arendt seeks to answer criticism she has received about the inconsistencies of the impact of ideology which she discussed in *The Origins of Totalitarianism* and later dismissed in her analysis of Adolf Eichmann. She finishes the letter with the affirmation that in the report on the Eichmann trial, except for the Epilogue, she was presenting facts and conclusions, and not ideas.

In the essay “Truth and Politics”, Arendt claims on numerous occasions that truth and politics are incompatible with each other, and that truthfulness has never been counted as a political virtue.\(^{407}\) These claims have led some to interpret Arendt’s perspective on truth as antagonistic to politics. Furthermore, in the same essay, some contradictory positions can be noticed which make her position more perplexing. For example, she describes truth as both tyrannical and fragile. To sort out Arendt’s position and demonstrate her important insights on the relationship between truth and politics, it is necessary to start by clarifying her different understandings of truth.

First of all, Arendt does not provide any definition of truth but suggests treating the term as it is commonly understood.\(^{408}\) Her analysis combines references to multiple philosophical positions and concrete historical events that demonstrate the relationship between truth and politics. In “Truth and Politics”, she distinguishes between factual and rational truths.\(^{409}\) Rational truths consist of scientific, mathematical, and philosophical truths. Factual truths concern historical events and other people. While rational truths are not located in the political domain, factual truths are part of the political domain, and therefore the relationship between factual truths and politics gives rise to discussions. As noted earlier, Arendt describes factual truths as vulnerable and fragile. Even though rational truths may also be questioned, the chances that factual truths will “survive the onslaught of power” is very low.\(^{410}\) In other words, factual or historical truths are always a subject of controversy. Different interpretations exist of past events, their causes and consequences. The example to which Arendt frequently returns is that of Trotsky’s role in the Russian Revolution and the fact that his name is not mentioned in any of the Soviet Russian history books: “When

Trotsky learned that he had never played a role in the Russian Revolution, he must have known that his death warrant had been signed.”411 Factual truths are often abused and manipulated for ideological purposes, in order to gain control over a historical representation. The vulnerability of factual truths is even greater when they concern violent experiences, such as wars, revolutions, and human rights atrocities.

Another important feature that distinguishes rational from factual truths concerns their opposites: the opposites of rational truth are errors (in science) and opinions (in philosophy), while the opposites of factual truths, according to Arendt, are deliberate falsehoods and plain lies.412 Later, she engages in an analysis of the conflict between rational truths and politics, recalling Plato and the difference between the life of the philosopher and the life of the citizen. At the core of the conflict is the opposition between truth and opinion. She writes:

Hence, the opposite to truth was mere opinion, which was equated with illusion, and it was this degrading of opinion that gave the conflict its political poignancy; for opinion, and not truth, belongs among the indispensable prerequisites of all power.413

Here, Arendt gets closer to the central problem that she seeks to attack – the understanding of truth as an absolute truth that is a claim to absolute representation. She writes:

By the same token, every claim in the sphere of human affairs to an absolute truth, whose validity needs no support from the side of opinion, strikes at the very roots of all politics and all governments.414

Absolute truth in the realm of human affairs, i.e., in the political domain, is in conflict with the very essence of the political. Despite Arendt’s focus here on the relationship between rational truths (philosophy) and politics, she also confirms that the clash between factual truths and politics has similar traits. Hence the incompatibility between truth and politics relates to the specific context when a claim to absolute truth is made.

Opinion or *doxa* (“as it seems to me”) should be based on facts, but the modes of asserting the validity of factual truths and opinions are different. According to Arendt, in the case of factual truths, the mode of asserting validity has nothing to do with persuasion. She describes it in the following way: “…once perceived as true and pronounced to be so, they have in common that they are beyond the agreement, dispute, opinion, or consent.”

Therefore, factual truths with a claim to absolute truth conflict with politics. They are asserted by employing coercion, and opinions are asserted by employing persuasion. From the standpoint of politics, absolute truth is tyrannical and precludes any debate, while opinion can be debated and seeks to represent different viewpoints, even of those who are absent.

Factual truths must remain open for new interpretation but at the same time, there is always a risk, as Arendt notes, of blurring the dividing line between facts and opinions and of transforming unwelcome factual truths into the matter of opinion. The political realm should be informed by the facts, and the process of reinterpreting historical facts must be anchored in the idea of representative thinking. Here, Arendt turns to Kant’s *Critique of Judgment* and refers to the concept of enlarged mentality that, by virtue of taking into account the perspectives of others, allows us to make a more valid judgment. The validity of opinion, consequently, depends upon an ongoing process of persuasion and argument with other members of the political community. The idea of truth as representative thinking conflicts with the idea of truth as absolute representation. Hence, those political actors, including institutions that make a truth claim should be suspect for claiming absolute truth and at the same time omitting to make a judgment.

Moreover, Arendt urges that certain truths not be treated as self-evident. As an example, she takes equality and the statement that “all men are created equal.” This is not a self-evident truth but rather a statement that is needed for agreement and consent in the political domain. The agreement implies an agreement between people and not “above

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them” as an imposed ideal. The validity of these norms is thus dependent upon agreement and representative thinking. In contrast to earlier discussions on rational and factual truths, here Arendt shifts her attention towards another type of truth. She does not clarify it herself, but it might be interpreted as her idea of moral principles and norms and their embeddedness in the political realm.

Interestingly, concerning morality, Arendt expresses a quite negative attitude, equating moral norms with a system of mores and customs that in her view serves no critical function and can easily be changed. Her comment on a double moral collapse in Nazi Germany is an expression of this position. A first moral collapse occurred when the Nazis came to power, as their crimes relied on mass compliance. A second moral collapse occurred when ordinary Germans were able to return to their everyday life without reflecting on what had happened and how it could have become possible.

At the same time, Arendt’s conceptualization of thinking as a human faculty that can prevent evildoing suggests an inherent critical level of morality – our human ability to make a judgment on what is morally right and morally wrong based on the inner dialogue we have with ourselves. Considering the contexts of large-scale human rights violations, therefore, which also served as a context for Arendt’s thought although in a different time and different places, the most profound question, in my view, is not what happened but why, or how it could become possible.

This question is connected to another insight that Arendt offers in “Truth and Politics”. It concerns the fact that in both Nazi Germany and the Soviet Union, the existence of concentration and extermination camps was a publicly known “state secret”. This again can hypothetically be observed even in other contexts. While this observation should not undermine the individual’s right to know the truth about one’s detention or a family member’s fate, the centrality of truth about violations on the societal level can be questioned.

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In the context of large-scale human rights violations, Arendt’s insights about a new type of lie, the modern political lie, are also of interest. Initially, Arendt notes, lying is a relatively harmless tool in the arsenal of political action, since lies are used as substitutes for more violent measures.\(^{422}\) However, according to Arendt, lies represent the first step to murder. In other words, when political actors resort to lies, they are also ready to use more radical means to achieve their purposes, including violence and the threat of violence.

According to Arendt, several features characterize this new type of lie. Firstly, unlike traditional political lies, modern lies are much well-organized. Secondly, modern political lies are grounded in a necessary self-deception. Arendt argues:

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\text{…if the modern political lies are so big that they require a complete rearrangement of the whole factual texture – the making of another reality, as it were, into which they will fit without seam, crack, or fissure, exactly as the facts fitted into their own original context…} \phantom{^\text{423}}
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Arendt claims that deliberate and organized lies are political actions. For Arendt, the human ability to lie is closely connected with the human ability to act.\(^{424}\) Nevertheless, she maintains that disclosure of facts may be used by political organizations and factual matters may strengthen political claims under certain circumstances. However, when the teller of factual truth enters the political realm to protect or promote his or her interest, the truth-teller compromises his or her truthfulness, impartiality, and independence.\(^{425}\) Arendt thinks that the combination of professional truth-teller and political interests always arouses suspicion. Therefore, to guarantee the “truthfulness” of factual truth and its validity, it is more advantageous to keep politics and truth apart and preserve the non-political nature of truth. She states:

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\text{Truthfulness has never been counted among the political virtues, because it has little indeed to contribute to that change of the world and of circumstances which is among the most legitimate political activities.}
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\(^{422}\) Arendt, Hannah: *Between Past and Future: Eight Exercises in Political Thought*, 224.  
\(^{425}\) Arendt, Hannah, op. cit., 245-46.
Only where a community has embarked upon organized lying on principle, and not only with respect to particulars, can truthfulness as such, unsupported by the distorting forces of power and interest, become a political factor of the first order.\footnote{Arendt, Hannah: Between Past and Future: Eight Exercises in Political Thought, 246-47.}

In other words, truth-telling can be treated as a political action and be compatible with the realm of politics, but only in circumstances of organized lying, when it becomes a courageous act directed towards those in power. Otherwise, the value of truth can be undermined by the institutionalization of truth-telling, detaching truths from the political domain.

4.3 Conclusion

Thus far in this chapter, I have examined two perspectives on truth by juxtaposing the relation between truth and power presented by Foucault with the relation between truth and politics presented by Arendt. These perspectives, I suggest, allow me to problematize the role of truth in the work of truth commissions by demonstrating how the discourse on truth contributes to a depoliticization of human rights violations. Following Foucault and Arendt, this process of depoliticization may take different directions. In the last part of this chapter, I develop my argument about the implications of these two directions further.

Initially, a Foucauldian perspective on truth (originating from the Heideggerian notion of truth as unhiddenness) implies that truth is never limited to establishing a factual truth or knowledge. The verb “establish” fails to capture what the process of truth-seeking should entail. The process of truth-telling is never finished, and it aims at understanding the complexities of the mechanisms and techniques of truth production. Concerning Foucault’s and Arendt’s thinking on truth and truth-telling, Tambokou contends that the quest for meaning and understanding is a process of uncovering the veil that both covers and hides the
material conditions and fierce power relations through which “dominant truths” and master narratives are constituted and established.\textsuperscript{427} Arendt’s view of factual truth as tyrannical and coercive, together with her description of the mode of asserting of validity of truth claims, resembles Foucault’s perspective on truth as an instrument of power. Hence, both thinkers attend to the performative nature of truth and the necessity of scrutinizing truth claims in the political realm. Foucault’s work provides the tools for such an examination by orienting the questions that should be asked about the production of truth: what is said, by whom, how it relates to the material condition, and what rules determine whether a statement is judged as true or false. Furthermore, Foucault provides a critique of juridical forms of truth and suggests \textit{parrhèsia} as an alternative.

For Arendt, on the other hand, the distinctions between rational and factual truth, organized lies, and opinions are important. She formulates her view on truth in the last sentence of “Truth and Politics”. “Conceptually,” she writes, “we may call truth what we cannot change; metaphorically, it is the ground on which we stand and the sky that stretches above us.”\textsuperscript{428} Arendt’s distinction between factual truths and opinions contributes to my analysis of the role of truth in truth commissions. Opinions are the representation of viewpoints that must be shared for the maintenance of the public realm, while factual truths preclude any debate or deliberation. When the truth is perceived as something to be “established”, the very essence of truth as unhiddenness is lost.

Returning to the context of this study, truth commissions, as institutions directly involved in the production of truth about past human rights violations, are motivated by the demand to know what happened and why, as well as by the demand of being able to share one’s truth. The contexts in truth commissions’ work differ, and it would be an overgeneralization to claim that all witnesses and survivors demand to be heard. Hence, this study seeks to challenge the assumption that truth is a prerequisite for justice and investigate the implications of the centrality given to truth in the work of truth commissions.


\textsuperscript{428} Arendt, Hannah: \textit{Between Past and Future: Eight Exercises in Political Thought}, 259.
Foucault’s work on power and truth regimes offers a critical perspective that can be applied to a particular historical practice. The two triads that he presents give rise to two different lines of inquiry. The triad of power, knowledge, and truth is concerned with the rules of the production of knowledge and hence sets in motion an examination of the academic discourse of transitional justice and the implied direction of transition towards a liberal democracy. Drawing on Foucault, I argue that the origin of this discourse is not only historically contingent but also specifies standards and rules for the production of truth, based on a consensus that transition to liberal democracy is the final goal.

Furthermore, the fundamental questions about the conditions and rules of truth production suggest that any analysis of a truth commission should begin with an examination of its foundation as it relates to the historical background of violence. Since truth commissions investigate patterns of crimes, the selection of patterns and how they are presented is important: this includes what is included and what is left out, who organizes hearings and who gives witness. Analysing the context of truth commissions using these questions generates a more nuanced picture of what is at stake and how power relations are constituted and changed.

Foucault’s second triad, the triad of truth, right, and power, touches upon what he calls “the will to truth” and the ideal of impartiality. Truth commissions are explicitly engaged in the production of truth and can be understood as an expression of the ideology of truth. Yet, the primary purpose of truth as revealing crimes and raising a critique against the state-perpetrator may be contaminated by the existing or newly enforced domination of the victims of state-violence. The establishment of truth commissions creates an illusion of change where the participants are illusorily able to be taken seriously and demand responsibility.

Most importantly, Foucault warns us that power does not cease and is omnipresent. Exposing violence and domination that has taken place in the past may contribute to liberation from these oppressive structures, but it may also conceal the establishment of new ones. The idea of challenging power (more specifically, former political leaders) through truth, which dominates the discourse of transitional justice, is questionable. Foucault’s thinking would suggest that in the work of truth commissions, one truth regime is transformed into another.
Foucault’s perspective on truth and power suggests that truth discourse involves a particular mode of depoliticization. Truth commissions are characterized by the idea that justice and reconciliation are non-political, and the result is that they seek to avoid the political controversies that lie behind violations. The ideal of impartiality may contribute to the depoliticization of the historical roots of violence, oppression, and domination. Depoliticization takes place through the individualization of violations: that is, through shifting the focus from the political roots of violence to individual harms.

The language that is deployed, of suffering and reconciliation with one’s past or history, results in the naturalization of political conflict and of human rights violations as a strategy in this conflict. Depoliticization in this context means that the political conflicts underlying the violations are toned down and, as a result, any comprehension of the historical, political, and socio-economic background to the conflict is obstructed. In other words, the sources of political problems are depoliticized. Depoliticization also contributes to the lack of comprehension of the power perspective. As Brown puts it: “depoliticization always eschews power and history in the representation of its subject”.429 To sum up, truth discourse seeks to reduce political conflict to individual violations, which has consequences for justice claims and responses to these claims. A justice project is replaced by a therapeutic and memory project dealing with individual and collective traumas.

Arendt presents another form of depoliticization. Her concern with the public sphere and the atrophy of the political realm leads her to see depoliticization as a characteristic of society where members of the community are alienated from public life. Based on Arendt’s perspective on truth, it may be argued that the process of truth-seeking and truth-telling – the raison d’être of truth commissions – may undermine the political domain and the value of truth itself.

The factual truths that truth commissions aim to investigate are the expression of a longing for the positivistic disclosure of facts. Arendt’s perspective on the tyrannical nature of truth concerns particularly the lack of deliberation and exchange of opinion as inherently political actions. Such an account should not lead to a relativistic position that rejects any value of truth. Arendt’s position implies a critique of truth’s

claims to absolute representation and affirmation of the fragility of truth. The most tenable way to handle fragile truth is through ongoing deliberation and renegotiation of truth.

Another important insight offered by Arendt concerns the role of truth in societies that have been exposed to well-organized political lies. In *The Origins of Totalitarianism*, she writes:

> The ideal subject of totalitarian rule is not the convinced Nazi or the dedicated communist, but people for whom the distinction between fact and fiction (i.e., the reality of experience) and the distinction between true and false (i.e., the standards of thought), no longer exist.\(^{430}\)

Outside of the particular contexts that are the subject of Arendt’s analysis, her insight can be also interpreted in relation to contemporary contexts of large-scale human rights violations and the mass compliance which accompanies these violations. The question, again, is not whether people know the truth about violations or not, but why they do not care. And this is a profoundly moral question that lies beyond the scope of a truth commission’s work.

Furthermore, if one presumes that people have lost their capacity to distinguish between fact and fiction, truth and falsehood, owing to state propaganda, the question remains if such institutions as truth commissions contribute to the reawakening of the political realm or if they may undermine the political significance of the truths they discover. Truth commissions may answer the “what” question: what happened? But they cannot answer why or how it happened: how political terror was enabled by mass compliance.

Lastly, Arendt warns that a political actor’s engagement with truth may compromise their truthfulness, impartiality, and independence. She thinks that an actor’s engagement with truth-telling can be perceived as guided and motivated by political purposes. In the case of truth commissions, it may be argued that their impartiality and independence are often questioned particularly due to their political character. While their contribution to the establishment of truth about the past is necessary, their political character is still perceived as undesirable. The political character of truth commissions, however, does not always

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consist of their contribution to the revival of the public domain, but ra-
ther on their dependence on the ruling government. It demonstrates an
understanding of politics as realpolitik and of power as sovereign
power, which have been criticized by both Foucault and Arendt.
5. Testimony and Public Hearings

The overall aim of this dissertation is to examine the concept of truth commissions and the normative assumptions behind their establishment and work. So far, I have examined two perspectives on justice developed by Derrida and Ricœur and analysed the relation between truth, politics, and power based on Foucault’s and Arendt’s thinking. Now I turn to the question of truth-telling and the third normative assumption behind truth commissions, which concerns the presumed positive effects of public truth-telling, including the healing of victims and the restoration of their human dignity through the public acknowledgement of their suffering. This assumption is tied to the central role given to the victims and their needs in restorative justice.

In this chapter, truth-telling is presented as testimony, which is understood as an oral and/or written statement from the first-person perspective based on an experience of direct or indirect violence. The purpose of the chapter is to scrutinize different dimensions of testimony and relate them to the use of testimony in truth commissions. Looking at testimony along a broad spectrum allows me to raise a critique of the reductionist view of testimony in the work of truth commissions.

Many scholars have observed that testimony and public hearings lie at the heart of the work of truth commissions and of their potential contribution. However, even though testimony took a central role beginning with the very first truth commissions in Uganda (1974) and Latin America (e.g., 1983-84 in Argentina, 1990–91 in Chile), public hearings only gained popularity with the South African Truth and Reconciliation Commission (1995-2002). Since then, public hearings have been

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held in other cases, including the context studied here, that of the Moroccan Equity and Reconciliation Commission.

Between 2004 and 2005, the Moroccan ERC held seven public hearings in six regions. At the hearings, selected victims were presented, including, for example, representatives of the Berber minority, women activists, and family members of the victims (who were categorized by the commission as indirect victims). The ERC described the purpose of the hearings as double: on the one hand, to give a voice to victims and hence restore their dignity; on the other to educate society and raise awareness about the violations. The public hearings were aired on television. The first two hearings were broadcast live. Later hearings were recorded and aired on national television. Both group and public hearings were documented, and the materials of the ERC were submitted to the Advisory Council on Human Rights and subsequently to the National Archive of Morocco. Access to the National Archive, however, is very limited and obstructed by bureaucratic restrictions.

In my attempt to examine the third normative assumption, about the positive impacts of truth-telling in the aftermath of large-scale human rights violations, Morocco’s experience provides valuable material for contextualizing and unpacking the multifaceted concept of testimony. On the one hand, the ERC held public hearings with oral testimonies that were presented to the audience and recorded. On the other hand, the richness of testimonial literature and film production in Morocco

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432 For example, in Peru, Liberia, Sierra Leone, as already mentioned in the Introduction.
433 In Figuige, Khenifra, El-hiussaimi, Marrakech, Rabat, El Rachidia.
436 Some fragments of the hearings are available at https://wiki.remixthecommons.org/index.php/Videos:_Public_Hearings.
437 Now – The National Human Rights Council (the CNDH).
438 As already mentioned in Chapter 1, the imposed constraints concern the confidentiality of individual applications. According to Moroccan legislation, approval of the applicant is necessary to get access to the act. Access for researchers is officially open, but it is up to the director of the Archive to give the necessary permission. My own attempt to approach the National Archive in Rabat failed with the explanation that the archive had been recently transported from the archive of the ERC to the National Archive and was not yet organized. The bureaucratic constraints on access to the ERC’s archive have also been described by Susan Slyomovics (see for example, The Performance of Human Rights in Morocco, 2005).
demonstrate another form of bearing witness, which is also included in the concept of testimony. In the next section, I clarify the concept of testimony and its different uses.

5.1 Comprehending Testimony

Testimony is commonly understood as a piece of evidence presented in the court for the support of parties’ claims in a trial. A witness who testifies takes an oath to tell the truth and is subjected to questioning and cross-examination. For the purpose of this study, testimony will be understood as an oral and/or written statement from the first-person perspective about an experience of direct or indirect violence, as stated in the beginning of this chapter.

Testimony is a multifaceted concept, characterized not only by different forms (written and oral), but also by different dimensions and uses. It has been studied in many fields, including literature studies, law, and psychology, with focus on its linguistic, cultural, legal, and psychological dimensions. The moral dimension of testimony is a subject of this study. I suggest that this moral dimension is twofold. Firstly, it implies conditions of witnessing, for instance who is invited and recognized as a legitimate witness, which can be defined as procedural fairness. Secondly, the moral dimension implies that narratives about human rights violations impose certain moral demands upon us in the form of responsibility towards witnesses and their experiences. It also raises the question of how these violations became possible. In the aftermath of large-scale human rights violations, these questions become vital for society’s response to the violations and its capacity to reflect upon the underlying moral collapse that led to the violations.

The different dimensions of testimony can be traced to testimony’s different uses. These can be roughly divided into two types: its judicial use in courts of law, and its historical use. As Shoshana Felman contends, the most traditional use in the legal context implies that testimony is called for when the facts of the situation upon which justice must pronounce its verdict are not clear. Testimony, hence, is a supporting element of evidence. Even though testimony plays a complementary

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and thus secondary role in the legal context, many scholars have argued that we are living in an era of testimony, which shows testimony’s important role apart from its legal use.\textsuperscript{440}

According to Felman, testimony’s historical use represents a broader field in terms of form and content. Here, testimony does not serve the function of supporting evidence but is a mode of representation of past events from the first-person perspective. As a result, testimonies can be found in academic research, literature, and different forms of art. The case of truth commissions blurs the boundaries between the judicial and the historical uses, as elements of each are present. On the one hand, testimonies are given in rule-governed circumstances, where the form and content of the testimony is regulated by the commissioners, and it often has as its aim to complete the evidence. In Morocco’s case, for example, oral testimonies in group hearings served as an additional source of information for reparation applications.

On the other hand, owing to their public character, testimonies in public hearings also aim at spreading knowledge and documenting past human rights atrocities and their contexts. In Morocco, Mohammad VI decided to make public the Final Report of the ERC. The report, however, does not retell the testimonies. Rather, it includes a short historical clarification of the crimes, considerations regarding reparations, and suggested institutional reforms. The gap between the testimonies given in the public hearings and the report of the ERC demonstrates a “bifurcated event” in the work of the commission, between the hearings and the report, with the report composed based on information previously in hand rather than testimony presented at the hearings. The term “bifurcated event” is borrowed from Mark Sander’s analysis of testimony given to South Africa’s Truth and Reconciliation Commission. Sanders observes:

Although it relies a great deal on testimony of numerous individual perpetrators and victims, the report of the Truth Commission draws less on

\textsuperscript{440} In \textit{Dimensions of the Holocaust}, Elie Wiesel writes: “If the Greeks invented tragedy, the Romans the epistle and the Renaissance the sonnet, our generation invented a new literature, that of testimony”. Leora Bilsky traces the significance of testimonies in the international criminal justice. See, for example, Bilsky, Leora: “The Eichmann Trial towards a Jurisprudence of Eyewitness Testimony of Atrocities”, in \textit{Journal of International Criminal Justice}, Vol. 12, 2014, 27-57.
testimony from the hearings than on statements taken down beforehand…The commission, situated between the hearings and its report, between listening and watching, and reading, is thus a bifurcated event.441

Bifurcation means that testimonies presented at truth commissions hearings are not continuously represented in final reports as they were told. They are processed, selected, revised, and mediated by the members of truth commissions and different working groups. As a result of their work, a new mode of representing violations occurs, which shows the patterns of violations, various contexts, and statistical data. Hence, the establishment of truth commissions gives rise to bifurcation of the modes of representation of large-scale human rights violations.

In the case of Morocco, what was handed over to Mohammad VI was not a collection of testimonies, but five volumes of the ERC’s final report. The report draws upon the individual testimonies of victims in a very general manner. Unlike the report of the South Africa’s TRC or the famous report of Argentina’s CONADEP, “Nunca Mas”, the ERC uses no concrete examples or citations from testimonies, making the gap even more obvious. If the report of the ERC gives no space to witnesses’ stories, this raises the question of whether these two modes of representation are reconcilable and whether the gap can be bridged. Sanders, for example, argues that literature is able to negotiate the bifurcation between the commission’s report and hearings. Drawing on Antjie Krog’s Country of My Skull, he maintains that literature gets closer to the basic structures of hearings and can mediate South Africa’s story.442 Furthermore, bifurcation raises an urgent question about the responsibility for the testimonies presented in the ERC, namely, what happens when the story is told publicly.

The bifurcation and the resulting two modes of representation can be understood through Jean-François Lyotard’s concept of the differend. In The Differend: Phrases in Dispute, Lyotard introduces the concept and defines it in the following way:

I would like to call a differend [différend] the case where the plaintiff is divested of the means to argue and becomes for that reason a victim. If

442 Ibid.
the addressor, the addressee, and the sense of the testimony are neutralized, everything takes place as if there were no damages (No.9). A case of differend between two parties takes place where the ‘regulation’ of the conflict that opposes them is done in the idiom of one of the parties while the wrong suffered by the other is not signified in that idiom.443

The concept of the differend implies the existence of different systems of representation. According to Young, Lyotard uses the differend to describe a situation of injustice that arises when the prevailing discourse does not allow the expression of a wrong.444 Thus, the existence of different systems of representation determines the way situations of injustice are understood and interpreted. Furthermore, the concept of the differend implies that a hegemonic order is constituted where one system is used to silence and render invisible the other. Young uses the concept particularly to argue for storytelling as a bridge between “the mute experience of being wronged and political argument about justice.”445 Young develops an idea of deliberative democracy in which the conditions of deliberations are not taken for granted but must always be alert to which issues and voices appear in the public realm and which that remain muted. The case of the truth commission is different from the situation of public deliberation. It is aimed at addressing past injustices and therefore can be perceived as a channel for those experiences of injustice. Hence, it may be argued that injustices are recognized insofar as they are given a possibility to become public. The question remains, however, as to whether testimonies constitute a justice claim and whether the gap between the testimonies and their representation in the report may repeat the injustice when victims’ voices are lost.

The problem of representability may also be related to two poles within testimonial studies. According to Anne Cubilié and Carl Good, testimonial studies seem to be rigidly divided between two poles: one emphasizing the political aspect of testimony (mainly within subaltern studies and human rights discourse) and the other emphasizing the apo-

444 Ibid.
unrepresentability of traumatic experience (mainly within Holocaust studies and the psychoanalytic branch of trauma studies).\textsuperscript{446} Cubilié and Good are also critical toward the tendency of some disciplines and institutions to limit testimony by using it for narrow ends. They explain that testimony then risks becoming overly institutionalized and complacent. The narrow notion of testimony is conditioned by the application of a set of rules governing the production of testimony, by imposing predetermined political functions, and by treating testimony as an unmediated representation of historical experience.\textsuperscript{447} In the work of truth commissions, there is just such a tendency to limit the use of testimony to narrow ends. Their practice constitutes an example \textit{par excellence} of a narrow perspective on testimony and its problematic institutionalization. The practice is governed by rules and the representation of experience is mediated, as has been argued, in relation to bifurcated events and gaps between hearings and reports. Furthermore, specific functions are ascribed to testimony, including both political and pragmatic ones.

The two poles of testimonial studies have different problems. Firstly, the \textit{aporetic} unrepresentability perspective may turn testimony into an abstract theoretical problem and hence impede the analysis of testimony’s political potential. Secondly, the pole emphasizing the political aspect of testimony may take for granted the representative potential of testimony without questioning the structural and institutional settings that enable testimony.

In my view, both poles are important for developing a critical perspective on testimony and for unfolding the critical potential of the testimony itself. The discrepancy between a critical perspective on testimony and a critical potential of testimony demands a brief clarification of what “critical” signifies here. Initially, critique should be distinguished from criticism. Here, I follow the distinction applied by Wendy Brown in \textit{Is Critique Secular}? According to her, criticism implies negation or condemnation of certain phenomena or practices, declaring them to be false and elusive, while the purpose of critique is to apprehend reality and explain why this real order is not given but must be


\textsuperscript{447} Ibid.
demystified. Thus, critique seeks to reveal and explain the mystification. Brown interprets the distinction introduced by Karl Marx concerning religion, where he linked religion and religious illusions to the historical conditions of unfreedom and domination. For the purpose of this study, critique of testimony departs from the idea that testimony is a radically open concept and the effects of testimony are not given.

In the context of truth commissions, as already noted, the boundaries between the legal and historical use of testimony are blurred. Nonetheless, a strong link between testimonies and reparations demonstrates the adaptation of the legal paradigm, where testimony serves an evidential function. Furthermore, the healing effect of testimony is widely assumed, which simultaneously diminishes and enlarges the perspective on human rights violations and proper responses to them. Even though the institutionalization of testimony has been linked with the political aspect of testimony, the narrow use of testimony in truth commissions demonstrates a tendency towards depoliticization of atrocities and as a result, depoliticization of justice claims. In the next section, two relations are scrutinized: the relation between testimony and healing effects and the relation between testimony and reparations. The section concludes with an analysis of the capacity of literary narrative to overcome the identified problems and testimony’s representative potential.

5.2 Beyond Healing and Reparations

Testimonies about human rights violations have the potential to constitute a claim for justice, but due to their institutionalization, they tend to be used for narrow ends. Sanders notes that the majority of scholars working on the problem of testimony in the context of truth commission point to the inadequacy of commission procedures for allowing stories to be told, or the way they facilitate only certain kinds of stories. The institutional frameworks of truth commissions, their mandates, and the backgrounds of the commissioners are some of the factors that shape stories in a particular way. A critique that I seek to develop concerns

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the assumptions about the healing effects of testimony, the reduction of testimony to evidence in the applications for reparations, and the resulting depoliticization of justice claims. While an urgent focus is placed on individual victims, the massive and systematic character of violations and the use of violations as a strategy for the elimination of political opponents are disregarded.

5.2.1 Testimony and Healing

As mentioned earlier, Felman distinguishes between testimony’s judicial and historical uses and she connects the historical dimension of testimony as a mode of representation with the political dimension of oppression and the ethical dimension of resistance which proceeds from and is inscribed within the testimony. Besides the historical dimension, she also introduces a clinical dimension of testimony as a medium of healing. The clinical dimension of testimony is actualized due to the traumatic experience to which testimony bears witness. Hence, testimony is both a medium of historical transmission and a process of working through a traumatic experience, according to Felman.

The idea of working through the past in relation to political violence has psychoanalytical roots. Sigmund Freud developed the concept of *durcharbeiten* (working through) as a therapeutic alternative to earlier applied hypnosis. Unlike hypnosis, working through adopts a strategy of resistance instead of repressing memories. In *Remembering, Repeating and Working Through* (1914), Freud states that psychoanalysis and the technique of working through aim at studying “whatever is present for the time being on the surface of the patient’s mind.” Furthermore, working through aims at recognizing the resistance against remembering traumatic events using interpretation and making this resistance conscious to the patient. Freud continues: “Descriptively speaking, it [technique of psychoanalysis] is to fill in the gaps in memory; dynamically speaking, it is to overcome resistance to repression.”

450 Felman, Shoshana and Dori, Laub: *Testimony: the Crisis of Witnessing in Literature, Psychoanalysis and History*, 9, 12.
452 Ibid.
In her analysis of testimony, Felman, like many other scholars in Holocaust studies, draws on both literature studies and psychoanalysis. The clinical dimension of testimony implies that testimony has a healing effect for the speaking subject, who is “sent back” to the past and gets an opportunity to speak out about traumatic events. The forgotten events that have been repressed become conscious of the subject. The resistance of the subject to remembering becomes conscious, which in turn may contribute to future healing.

It is not surprising that Felman and other Holocaust scholars approach the problem of testimony from a psychoanalytical perspective. After the Holocaust, many survivors repressed what they had been exposed to in the concentration camps. As a result, psychoanalysis was adopted as a technique to treat patients who had repressed their memories, in order to bring the process of unconscious resistance against re-membering to the surface and treat the psychological distress. But as Freud writes, making the resistance process conscious does not treat the patient, although it demonstrates the patient’s changed attitude towards the condition:

We have only made it clear to ourselves that the patient’s state of being ill cannot cease with the beginning of his analysis, and that we must treat his illness, not as an event of the past, but as a present-day force.453

The treatment may be accompanied by problems, including a deterioration of the patient’s psychological condition. Without going into more detail about the psychoanalytic method developed by Freud, two things must be noted, based on a reading of his essay. Firstly, working through concerns forgotten memories which, if unconsciously repressed, may be the cause of the distress. Hence, it does not concern any memories but those repressed by the survivors. Secondly, working through implies not only remembering the past and overcoming the resistance to remembering, but also subsequent treatment. This second point, it seems to me, is sometimes underestimated. Herman’s theory of trauma and recovery in the aftermath of both individual and collective violence is focused on the relationship between a survivor and a professional

The negative impact of public testimonies, which has partly been addressed by some psychologists, proves that institutional arrangements such as truth commissions are not equipped with the type of competence necessary not only to reveal the trauma but also to treat it. Truth commissions usually lack resources and expertise for providing effective treatment.

Hence, the assumption about the healing effects of testimony in truth commissions’ settings must be challenged. My challenge is different from that of those who work in psychology. It particularly concerns the effects of a discourse about the healing power of testimony – what I call the healing discourse – for the understanding of human rights violations. The notion of the healing effects of testimony is connected to the restorative concept of justice. Minow asserts that the idea of the restorative power of narrative has played a central role in the establishment of truth and reconciliation commissions. Truth commissions serve as a public platform where victims can recount their experiences of suffering. The presumed healing effect of testimony indicates an understanding of human rights violation as trauma. In my view, such an understanding is problematic. Human rights violations do indeed constitute trauma but reducing them to trauma also reduces responsibility for the violations to psychological treatment. Let me elaborate on this issue in more detail.

While in some cases, the process of testifying may be a devastating experience filled with humiliation and victimization, in others it may contribute to a feeling of inclusion and empowerment. The restorative power of testimonies assumes that public speaking about suffering has a healing effect. Without taking a stance on the question of testimony’s effects on the mental health of survivors, I find the shift from the question of justice to the question of mental health problematic. Large-scale human rights violations should not be reduced to trauma. It is necessary to emphasize again that human rights violations do constitute traumatic experiences. The shift in focus from justice to mental health, however, demonstrates that human rights violations are understood as suffering.

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and not as wrongdoing. While suffering is an experience to which victims are exposed, wrongdoing is an action exercised by an identifiable subject. If human rights violations are understood solely as suffering, then the wrongdoing subject is absent. In the context of long-lasting state-sponsored violence, the mystification of the subject and the violence committed is a common phenomenon.\textsuperscript{457} Hence, this understanding may obstruct moral and political responsibility for the atrocities.

The healing discourse not only diminishes, however, but also enlarges perspectives on human rights violations and makes them more abstract. The idea of human rights violations as trauma on the societal level becomes too abstract to deal with and launches a discourse of reconciliation as an alternative to justice. In its report, the ERC states:

\begin{quote}
In harmony with their reconciliation with their past, Moroccans chose to reach a peaceful, just and equitable settlement of the past of violations by adopting restorative justice rather than adversarial justice, and historical truth rather than judicial truth, because the arena for this sort of justice is not the law courts but the public space, whose horizon stretches to include all spaces of social, cultural and political action.\textsuperscript{458}
\end{quote}

Reconciliation here is understood as a process that takes place not between a perpetrator and a victim, but between victims and their past and history. The idea of reconciliation is transferred from the individual to the national level. The paradigm of justice is transferred into the paradigm of health. As a result, the perpetrator is disguised, and the imposition of responsibility is aggravated. Minow notes: “Justice reappears in the idea that its pursuit is to heal victims of violence and to reconcile opposing groups.”\textsuperscript{459}

At one of my meetings in Rabat, representatives of Morocco’s National Human Rights Council (the CNDH) stated that the fact that the Moroccan state had paid reparations to the victims of repression should

\textsuperscript{457} In the essay “What Does Coming to Terms with the Past Mean?”, Theodor Adorno gives an example of a euphemism, “Kristallnacht”, which is used to describe the pogroms in 1938 and which precludes a full comprehension of the events and is a strategy for repressing the past. In Morocco, the period of mass repressions is called “the years of lead” (in French “les années de plomb” and “les années noires”) and “makhzen” symbolizes an omnipresent evil – the subject of atrocities.

\textsuperscript{458} Equity and Reconciliation Commission: Final Report, Volume 1 “Truth, Equity and Reconciliation”, 93.

\textsuperscript{459} Minow, Martha: \textit{Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence}, 63.
be interpreted as an acknowledgment of the state’s responsibility.\textsuperscript{460} Let us now move to the analysis of the relationship between testimony and reparations.

5.2.2 Testimony and Reparations

In \textit{Between Vengeance and Forgiveness}, Minow describes narrative’s power as restorative, which is connected to the way she understands restorative justice. According to Minow, the pursuit of restorative justice is jeopardized if there are no changes in the material circumstances of the victims.\textsuperscript{461} Her understanding goes beyond a narrow view of restorative justice as economic compensation to also include the restoration of social relations and connections. Nevertheless, she concludes that the core idea behind reparation is compensatory justice:

\begin{quote}
The core idea behind reparations stems from the compensatory theory of justice. Injuries can and must be compensated. Wrongdoers should pay victims for losses.\textsuperscript{462}
\end{quote}

The link between truth-telling and reparations has been recognized not only on the theoretical level but also in the work of truth commissions. The ERC, for example, has on numerous occasions emphasized the link between the right to know the truth and the right to reparation.\textsuperscript{463} It has been acknowledged that truth-seeking and truth-telling, to be meaningful, must be accompanied by reparations, which brings us to the second problematic relation between testimony and reparations.\textsuperscript{464}

Compensatory justice is a common model for resolving disputes between private actors (both individuals and companies). It represents a

\textsuperscript{460} Meeting at CNDH with Mourad Errarhib, Director, Cooperation and International Relations, Khalid Ramli, CNDH officer working at the Department of Foreign Affairs and Cooperation and Sabri Mohammed, head of Protection and Assistance for Victims Department, March 28, 2019, Rabat, Morocco.

\textsuperscript{461} Minow, Martha: \textit{Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence}, 82.

\textsuperscript{462} Op. cit., 104.

\textsuperscript{463} Equity and Reconciliation Commission: Final Report, Volume 1 “Truth, Equity and Reconciliation”, 54.

\textsuperscript{464} Reparations are understood and conceptualized differently, stretching from material compensations and restitutions to the repair of relations by means of apology. In this chapter, I focus on economic compensation paid to individual victims.
legal model of responsibility or a model of tort. Whether a legal paradigm of compensation is adequate in relation to violations that stretch beyond private actors and torts has been questioned. Pablo de Greif argues against a legal approach to reparations, taking reparation in its narrow sense as economic compensation. De Greif’s main argument concerns the problem of imposing the ideal resolution of individual cases, in which compensation is decided based on the proportion to harm, upon the situation of collective violations. He argues against massive reparations programs, which disregard the specific circumstances of mass violence, including their systematic character and normalization of this violence.\textsuperscript{465} Without going into detail about de Greiff’s broader view on reparations,\textsuperscript{466} I agree that the problem of imposing a legal paradigm of compensatory justice must be addressed. Despite the aspiration to support truth-telling by compensating the incurred harm, the violation itself is perceived through the legal prism. It becomes an individual human rights violation abstracted from the political struggle and power dynamics. Even if we accept the idea that a state acknowledges responsibility by launching reparation programs, as stated by the CNDH’s representatives in Morocco, the collective political struggles are still transformed into individual harm.

As a result, the individualization of human rights violations that was encouraged by the discourse of healing is developed further by downplaying the political and social conflicts behind the oppression. This constitutes one of the directions of depoliticization of human rights violations, according to the Foucauldian perspective discussed in the previous chapter. Applying the norms of civil litigation to these crimes also downplays the dreadfulness of the violations. At its worst, it may make it possible to equate torture and enforced disappearance with the breach of a civil contract. Here, I do not mean to argue for retributive justice as the most appropriate response to large-scale human rights violations. Considering the special circumstances of these injustices, namely, the systematic character of violence and the fact of mass compliance, retributive justice’s limited focus on perpetrators imposes boundaries on


\textsuperscript{466} He proposes that reparation programs should be guided by three goals: recognition, civic trust and social solidarity in De Greiff, Pablo. “Justice and Reparations”, in Pablo de Greiff (ed.). The Handbook of Reparations. Oxford University Press, New York 2006, 452.
the analysis of structural violence and moral collapse in society. Furthermore, criminal law, in fact, also includes provisions for compensations. What I challenge is the centrality of economic compensations at the expense of other changes in the aftermath of state-sponsored violence.

Notwithstanding the critique presented above, I should reiterate that reparations here are discussed in a narrow sense, as economic compensation. Broader perspectives on reparation suggest other means (restitution, apology etc.) which may be used to complement economic compensation and supplement the legalistic paradigm with the elements of distributive justice. It is not reparations per se that are under consideration here, but the relationship between testimony and reparation.

As has been shown before, the context of truth commissions actualizes the clinical dimension of testimony, to borrow Felman’s category. The link between truth-telling and reparation, moreover, corresponds to testimony’s legal use. It concerns the use of testimony as supportive evidence in the assessment of reparation applications. If the clinical dimension of testimony leads to a reduction of responsibility to psychological treatment and an absence of responsible subjects, the legal use of testimony leads to a reduction of responsibility to reparations and the commodification of testimonies.

Reparations for injuries incurred by victims are meaningful as an implicit acknowledgment of responsibility on behalf of the state (as in Morocco’s case of state-sponsored violence). Reparations also constitute a substantial material improvement for separate individuals who have been exposed to enforced disappearance, arbitrary detention, and torture. Nevertheless, some harm cannot be measured in monetary terms at all. To be sure, some harm, including disability or the loss of employment, can and should be compensated economically. Individual reparations, however, should be accompanied by reforms in access to public services and social goods, resettlement, and land reforms. Such reforms often exceed the mandates of truth commissions and require the political will of the state. Individual economic compensations, in contrast, seem to be less demanding in terms of the distribution of resources. On the one hand, compensation payments may signify the end of the struggle for justice and thus bring a feeling of satisfaction to individual victims. On the other hand, they may also contribute to political alienation if individual claims are satisfied without any profound accompanying socio-economic and political change. This constitutes another direction
of depoliticization in accordance with the Arendtian perspective discussed in Chapter 4.

Furthermore, when testimony becomes the means for receiving reparation, there is a risk that survivors’ stories will become commodified. Commodification implies the reduction of all human interaction to economic transactions. Arjun Appadurai defines “the commodity situation” of anything as a situation in which the exchangeability of that thing becomes its defining feature.467 The notion of commodity, as Michael Walzer shows, is connected with the process of translation when what we value is represented in a monetary form. Economic compensations for human rights violations represent, hence, the value of human rights and what they protect. Walzer states: “But often enough money fails to represent value; the translations are made, but as with good poetry, something is lost in the process.”468 What is lost in the process of reparations for human rights violations is their moral and political dimensions – an understanding and interpretation of human rights in light of their capacity to fight against injustices.469

In the present context, stories become commodities that can be exchanged for economic reparation when exchangeability becomes their defining feature. By this I do not mean to deny victims’ right to compensation, but rather question the way testimony is understood when stories are defined by exchangeability. In her dissertation on the dual relationship between human rights and racism, Madelene Persson notes that there is a risk that human rights will become commodified; instead of being treated as political principles, human rights are treated like commodities at the market that are available only to privileged groups.470 Following her logic, I argue that testimony’s critical potential is significantly reduced when exchangeability becomes its defining feature, when a justice claim is limited to economic compensation.

469 Namli, Elena: Human Rights as Ethics, Politics and Law.
In the Moroccan context, the discrepancy between the two terms *ifada* and *shahada* demonstrates testimony’s different forms and as a result, different meanings. In Arabic, *ifada* means a statement for indemnification, and this term has been used by the ERC in reference to applications for reparations. *Shahada* means testimony, like the French *témoignage* and Spanish *testimonio*.471 According to Slyomovics, the ERC has deliberately chosen the term *ifada* to describe witness stories put into petitions, instead of the term *shahada*, which means witnessing or testimony. *Shahada* was associated with testimonial literature, former victims’ newspaper articles, and letters during the “years of lead”.472 These testimonies did not pursue indemnification but rather revealed experiences that had been hidden from the public realm. Hence, by substituting testimony (*shahada*) with application for compensation (*ifada*), the political dimensions of oppression and resistance are obscured.

The critical perspective on testimony presented so far concerns particularly the context of truth commissions. The two relations between testimony and healing and testimony and reparations preclude imposing moral and political responsibility for violations. Instead of constituting justice claims, testimonies come to represent either a kind of trauma therapy or evidence for reparation applications. While Minow argues that the possibility to apply for reparations may motivate truth-telling and survivors’ interest in participating in truth commissions’ hearings,473 I tend to think that the link between truth-telling and reparations undermines the ethical and political potential of testimonies through the individualization of human rights violations and commodification of testimonies about these violations.

In contrast to the individual dimension actualized by the healing discourse and reparations, a concept of *testimonio* invokes a distinct collective dimension of injustices and their representation by literary means. As will be shown in the next section, testimony in the form of testimonial literature is assumed to give a voice to the voiceless and

thus transform the hegemonic order. Even though literary narration can only partly be related to the truth commission context, the discourse of giving voice to the voiceless is common to both modes. Below, I look at the assumption that testimonio has the potential to overcome the problems that have been identified in the truth commissions’ narrow use of testimony.

5.2.3 Testimony and Giving a Voice to the Voiceless

Sanders and Slyomovics suggest that literature contains resources for exposing oppression and injustice. The tradition of written testimony originates from the Spanish term testimonio, which refers to a special literary genre, namely, testimonial literature. In Latin American culture, testimonio refers to a type of narrative that exposes oppression and injustice and struggles against these conditions. Through literary narration, individual experiences are brought before the public, denoting both the individuality of these experiences and their belonging to the community where the violations took place. The urgency of bearing witness lies at the heart of testimonio.474

Despite a close connection to Latin American culture, the practice of testimonio is not limited to the specific context of its origin. It is a widespread phenomenon and examples of testimonio can be found in other cultures.475 In different contexts, testimonial narratives often serve a similar function of being an alternative to official narratives. Hence, they are often associated with giving a voice to the voiceless. The discourse of “giving a voice” is also a common discourse in the rhetoric of truth commissions, even though it takes a different form there.

This aspect of “voice” can certainly be interpreted differently, depending on whether testimony is oral and actually has a vocal dimen-

475 Alexander Solzhenitsyn is a prominent example of a Russian author of testimonial literature. The Moroccan context includes also many examples of testimonial literature (shahada) and filmmaking that I will turn to in Chapter 7.
sion or if the term “voice” is used metaphorically. John Beverley, a literature scholar within subaltern studies, explains the “subaltern” dimension of testimonio:

It has to do with how people who are marginalized, repressed, and exploited (...) use something like testimonio for their purposes: that is, as a weapon, a way of fighting back. (...) To recall Marx’s well-known distinction, testimonio aspires not only to interpret the world but also to change it.476

Beverley affirms the epistemological authority of the witness, implying that the narrator is the only person who has lived and experienced injustice. Following Antonio Gramsci, Beverly argues that the subalternity of the witness presupposes a hegemonic relation and the transformation of this relation may take place through witnessing. Beverly maintains that testimony is meant to represent the collective experience of a social class or group. He argues:

…it is not the intention of this voice simply to display its subalternity. It speaks to us as an “I” that nevertheless stands for a multitude. It affirms not only a singular experience of truth in the face of grand designers of power, but truth itself as singularity.477

Beverly emphasizes the connection between the problem of the politics of testimony and the problem of democracy. He argues that individual voices constitute a common ground – “a commonality in singularity”, which can be used for political action.478 Thus, he not only argues for the collective representability of individual testimonies but also embraces the significance of the multiplicity of individual voices.

One important point that Beverley makes concerns the relational structure of testimonio. Relationality comes from the intention of the testimonio not only to display its subalternity but also to speak to us. According to Beverley, the relation between the witness and interlocutor or reader constitutes a basis for dismantling hegemony. It must be noted that Beverley, as a literature studies scholar, aims primarily at studying testimony as a special genre that challenges the literary canons.

478 Ibid.
Testimonio as a literary genre, however, despite its representational contribution, also marks the loss of orality and the transformation of voice into writing, with subsequent translations into other languages. The transformation may be accompanied by a misappropriation and misuse of the testimony. Apart from that, the very notion of subalternity encompasses the position in the hierarchy of power where the subject is deprived of any possibility to raise its voice. Thus, the stories that are brought before the public, published, translated, and spread can give a fallacious picture. In the meantime, subalternity does not vanish but is re-established again in written form. The hierarchical structures are mirrored and reaffirmed in the narratives that are published. Hence, we must challenge the assumption that if witnesses and survivors of large-scale human rights violations write about these injustices, their subalternity is overcome.

Such a challenge begins by asking whose voices are heard and whose remain excluded from the public realm. Beverly’s literary reference is the testimony of Rigoberta Menchú, a Guatemalan activist speaking for the Quiché indigenous community. Her novel I, Rigoberta Menchú was a global bestseller. Menchú received the Nobel Peace Prize and is now widely known as a human rights activist and feminist. Despite Menchú’s experience, writing and publishing texts remains available only to a limited group of people who master written language, are educated, and have an opportunity to write. In Chapter 7, I show that the same critique may be raised against the report of Morocco’s truth commissions and testimonial literature. While their voices and stories are meaningful and important, they are still not representative of those who do not share the privilege of being read or heard.

Returning now to the question of testimonio’s potential to overcome the problems that have been identified in the truth commissions’ understanding of testimony, it can be argued that testimonial literature and other forms of testimonial narrative bring critical issues to light. At first sight, the problem of differend seems to be overcome by literary narratives, where the narrator has control over the system of representation and their own language and means of expression. The narrator is not

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479 The famous Menchú-Stoll controversy which arose after David Stoll published Rigoberta Menchú and the Story of All Poor Guatemalans (1999), where he questioned the representativity of Mechú’s testimonio of the Mayan communities and her credibility as a witness.
directly exposed to the effects of the hegemonic regime, as in trials or public hearings. The political dimension of oppression and the ethical dimension of resistance are articulated through personal stories of resistance, experiences of incarceration, and torture. Despite testimonio’s ambition to represent collective experiences, narratives are the products of individual writing and should be treated as such. Their representative capacity must be questioned. The written form of testimonio also limits its relational character, which according to Beverly comes from an intention to “speak to us”. While testimonio may challenge the literary canon, the challenge risks remaining solely in academic circles, as in the case of controversy around Rigoberta Menchú’s testimony. The problem of representability also reveals that the problem of the difference remains when the narrator is not trusted.

Let me now summarize the critique of testimony presented in this section. This critique has partly been raised against the narrow ends and reductionist view of testimony in the work of truth commissions. Firstly, I have argued that by linking testimony with healing effects, human rights violations are treated as suffering and not wrongdoings, which in turn results in the reduction of responsibility.

Secondly, the relationship between testimony and reparations demonstrates the way that testimony’s critical potential can be reduced. This link constitutes a regime of truth that imposes limits and boundaries by determining what circumstances and facts are deemed of importance. It is reasonable to argue that such forms of testimony, like ifada in the Moroccan context, fail to offer any substantial critique of power or to contribute with a plurality of perspectives. The tendency towards juridification even in quasi-judicial processes also becomes apparent when testimony is reduced to evidence.

While the healing and legal paradigms of testimony contribute to depoliticization in the approach taken by truth commissions to address past violations and to the depoliticization of justice claims, the subaltern dimension of testimony supports the idea that testimony (or testimonio as a literary genre) contributes to political representation. Here, the main concern has to do with the constitution of the collective testimonial subject. What happens with testimony when it is meant to represent collective experience? In order to address this question and further develop my critical perspective on testimony, I need to move on to a presentation of the aporetic unrepresentability of injustices.
5.3 *Aporetic* Unrepresentability: the Essence of Testimony

Earlier I presented two poles within testimonial studies. *Aporetic* unrepresentability constitutes the second pole, which serves as a counter against the narrow instrumental use of testimony. As already mentioned, *aporetic* unrepresentability takes us back to the experience of the Holocaust and the philosophical perspectives on testimony that were developed as a response to that particular historical event. The position of *aporetic* unrepresentability has been developed within psychoanalysis as a reaction to Holocaust survivors’ repression of memories and mental resistance to remembering what they were exposed to in the concentration camps. In other words, these experiences were unrepresentable. Why this unrepresentability is *aporetic*, and how it is relevant for the critical analysis of testimony in truth commissions, are the questions examined in this section.

As noted above, the context of this study is different from that of Holocaust studies. This study is concerned with testimonies about human rights violations presented by victims in hearings held by Morocco’s truth commission. The majority of these victims represented different opposition groups and hence, the state-sponsored violence was a strategy to eliminate political opponents. Even though the majority of victims survived and could bear witness themselves, the question of representability is important, since not all survivors did give public testimony and only selected witnesses were invited to the public hearings.

Below, I embark on an analysis of what the *aporetic* condition of testimony implies, based on Derrida’s deconstruction of testimony. My analysis departs from my reading of Derrida’s “Poetics and Politics of Witnessing” in *Sovereignties in Question: The Poetics of Paul Celan* (2005); *Demeure: Fiction and Testimony* (1998); and “History of the Lie: Prolegomena” in *Without Alibi* (2002). Derrida shows that the essence of testimony does not and cannot lie in its evidential function, but rather lies in its built-in uncertainty: “the only condition for bearing the witness, its only condition of possibility as condition of its impossibility
– paradoxical and *aporetic*. In other words, testimony ceases to be testimony when it can be guaranteed and becomes a demonstrable truth.

According to Derrida, the Latin etymology of the word “testimony” suggests a discrepancy between two categories: *testis*, one who testifies in the position of the third party, and *superstes*, one who testifies in the sense of surviving. Giorgio Agamben’s analysis of testimony and witnessing also refers to this discrepancy, famously deployed by Primo Levi to explicate “the essential lacuna” of testimonies. Levi claims:

> There is another lacuna in every testimony: witnesses are by definition survivors and so all, to some degree, enjoyed a privilege…No one has told the destiny of the common prisoner, since it was not materially possible for him to survive…

And then continues:

> I must repeat: we, the survivors, are not the true witness…We survivors are not only an exiguous but also an anomalous minority: we are those who by their prevarications or abilities or good luck did not touch the bottom. Those who did so, those who saw the Gordon, have not returned to tell about it or have returned mute, but they are the Muslims, the submerged, the complete witness, the one whose disposition would have a general significance. They are the rule, we are the exception…

Consequently, in addition to *testis* and *superstes*, a third category of witness emerges, namely, a true witness. This long passage from Levi depicts the *aporia* of testimony: the dead cannot witness due to their death and survivors cannot witness due to their survival. What are the implications of this *aporetic* condition? Does it mean that survivors cannot or even should not testify about their own experiences or the experiences of those who did not survive? In my interpretation, the *aporia*, as already discussed earlier in Chapter 3 in relation to Derrida’s deconstruction of justice, should not be seen as obstructing the practice

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483 Ibid.
of testimony and its analysis. Aporetic thinking both recognizes the impossibility of bearing witness and demands thinking about testimony anew. The aporetic condition introduces a new perspective on testimony, raising the question of the responsibility of those survivors who are in the position of witnessing. Therefore, I share Felman’s view that the responsibility towards the dead consists of remembering and protecting the dead from being misappropriated.\textsuperscript{484} I return to the problem of misappropriation and misuse of testimony later in the chapter. Meanwhile, I proceed with Derrida’s analysis of testimony.

To begin, the chapter “Poetics and Politics of Witnessing” in \textit{Sovereignties in Question: The Poetics of Paul Celan} can be read as an analysis of Celan’s poem, “Ashglory”. Derrida interprets the poem and touches upon several issues that are central to an understanding testimony. As he claims at the beginning of the chapter, his hypothesis is that “all responsible witnessing engages a poetic experience of language”.\textsuperscript{485} This hypothesis gives rise to two central questions: what makes witnessing responsible and what a poetic experience of language means.

\subsection{5.3.1 Responsible Witnessing}

Responsible witnessing implies being able to answer and respond for oneself. Derrida contends: “It is on this condition that the witness can respond, can answer for himself, be responsible for his testimony as well as for the oath by which he commits himself to it and guarantees it.”\textsuperscript{486} According to Derrida, witnessing should not be confused with proving or confirmation of knowledge, but is always an act of faith. And herein lies the performatve character of testimony. To bear witness or to give testimony is an act or an experience which by its nature implies that the speaking subject makes a promise to witness about what he or she has seen, heard, or experienced. Even in the case of perjury, Derrida argues, the speaking subject is aware of the truth that he or she

\textsuperscript{486} Op. cit., 80.
betrays.\textsuperscript{487} In \textit{Truth and Truthfulness}, Bernard Williams discriminates between two virtues of truth: accuracy and sincerity, where accuracy aims at finding out the truth and sincerity aims at telling it.\textsuperscript{488} Hence, responsible witnessing demands that a witness possess special knowledge (the virtue of accuracy) and be willing to share it (the virtue of sincerity). Whether a witness tells the truth or not is in this sense unimportant, since the witness herself is aware of the truth.

Felman refers to testimony as a discursive practice. She argues: “To testify – to vow to tell, to promise and produce one’s own speech as material evidence for truth – is to accomplish a speech act, rather than simply formulate a statement.”\textsuperscript{489} As a speech act, testimony in the moment of witnessing reveals our relationship to the events and the audience.

Consequently, performativity as a constitutive element of testimony also demonstrates testimony’s relational character. If a witness makes a promise and asks the recipient to believe her, this makes a demand of the recipient or addressee of the testimony to believe and to exercise the act of faith. Derrida contends that the only possible response to the “performativity” of testimony is another “performative” act - saying “I believe you”\textsuperscript{490}

Derrida describes responsible witnessing as being present. He writes: “In bearing witness, self-presence, the classic condition of responsibility, must be coextensive with presence of other things, with having been present to other things and the presence of the other, for instance, to the addressee of the testimony.”\textsuperscript{491} Being present can be interpreted as being aware, responsible for what one testifies about, what one has perceived, experienced and remembered, how it is presented and to whom.

\textsuperscript{489}Felman, Shoshana and Dori, Laub: \textit{Testimony: the Crisis of Witnessing in Literature, Psychoanalysis and History}, 5.
\textsuperscript{490}Derrida, Jacques, op. cit., 83.
5.3.2 Poetic Experience of Language

The poetic experience of language concerns the singularity and irreplaceability of individual experience and as a result, the singularity and uniqueness of individual testimony, which takes us to the last phrase in Celan’s poem, “No-one bears witness for the witness.” Derrida returns to and interprets this phrase on several occasions. He distinguishes between descriptive and prescriptive content, and it is the prescriptive implication that interests us here. A prohibiting prescription implies that no one should bear witness for the witness or “No one can, for it must not be done”. Derrida explicates: “…all bearing witness must always appear as ‘poetic’ (a singular act, concerning a singular event and engaging a unique, and thus inventive, relationship to language)”.

The singularity of the event means, according to Irina Sandomirskaja, that Derrida rejects the possibility of the collective experience and the memory of it. No one should bear witness for the witness since testimony is characterized by the radical uniqueness of the experience. It is always based on first-hand experience, which is transformed into testimony by the act of bearing witness, by superstes. By pointing out the singularity of the act of witnessing, the uniqueness of the event, and how it is presented by the witness through language, Derrida again warns us about the complexity of testimony that should not be reduced to an understanding of testimony as a source of information or knowledge.

In Demeure, Derrida argues that testimony is always autobiographical:

In essence a testimony is always autobiographical: it tells, in the first person, the shareable and unshareable secret of what happened to me, to me, to me alone, the absolute secret of what I was in a position to live, to see, hear, touch, sense, feel.

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How does Derrida understand autobiography and autobiographical? His conceptualization of autobiography cannot be fully discussed here. Nevertheless, to clarify the *aporia* of testimony, it is necessary to mention that his use of autobiography is not conventional. He deconstructs autobiography and claims that autobiography in its conventional sense is impossible since it presupposes the existence of a certain “I”, a narrating ego, where in fact the “I” is created in the process of writing. Autobiography represents a life story that is written by the subject from their perspective – a perspective that cannot be attested to by anybody else except the narrating subject.

The singularity and uniqueness of testimony challenge the idea of testimony as representation and the idea of a collective testimonial subject. The condition of testimony is that the witnessing subject is irreplaceable and also cannot replace others who may share similar experiences.

The poetic experience of language reproduces these unique experiences with the help of metaphors and other literal means. The singularity of the witness’s experience still demands the translatability of the experience and its perception by means of language and speech act. Translatability is accompanied by the transformation of personal experience into a public realm. These processes require the generalizability of language and its linguistic code. The generalizability of language and its iterability condition the transformation of testimony to the public realm, making testimony accessible and comprehensible to others. Here, to emphasize the value of publicity, Derrida distinguishes between “to testify” and “to bear a witness”, where “to testify” means to attest and “to bear a witness” means to render public.497

5.3.3 Conditions of Public Witnessing

Following Derrida, public witnessing necessarily raises the question of language. As he argues, linguistic competence implies that both the witness and their addressees are capable of sufficient mastery of the language to understand the content and be able to contest the content.498

Witnessing presupposes a shared linguistic competence. Truth commission hearings actualize the problem of language and shared linguistic competence in a very concrete manner. As the experience of the ERC shows, testimonies given in Moroccan Arabic and Amazigh do not meet the requirement of shared linguistic competence. As a result, testimonies given in a minority language (such as Amazigh in Morocco) often follow the same pattern: repeating a prewritten text that is read aloud.499 Such testimonies lose their singularity, exemplarity, and irreplaceability by following a prewritten narrative. The problem, however, does not lie in the inclusion of minority languages in the hearings, but in the inability of the institutional setting of the truth commission to adequately adopt alternative forms for hearing and witnessing and their failure to translate testimonies into admissible forms of representation. Hence, those who have been exposed to human rights violations and lack the linguistic competence to express their justice claims are again exposed to injustice – the injustice of exclusion.

Another problem that Derrida touches upon is the technical reproducibility of testimony. Derrida claims: “The technical reproducibility is excluded from testimony, which always calls for the presence of the live voice in the first person.”500 Derrida describes the condition of testimony as instant. He states: “For to testify is always on the one hand to do it at present – the witness must be present at the stand himself, without technical interposition”.501 But the very condition of “instant” is destroyed by testimony itself. Derrida thinks that the problem does not lie in the use of cameras, videos, or other techniques, but the iterability of language.

The loss of orality is also accompanied by an inescapable loss of performativity. Here, as Sanders notes, bifurcation becomes an inevitable consequence. Even though testimony is a performative act, it loses its “instant” moment, and subsequently its performativity, when it is written, recorded, and preserved. On the one hand, this loss of orality

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499 From a talk with a former commissioner Abdelhay Mouddenin in Rabat, Morocco, April, 2018. Similar observations have been made of other truth commissions, for example, the Solomon Islands Truth and Reconciliation Commission which has been examined by Karen Bronéus, see Bronéus, Karen: *Truth and Reconciliation Commission Processes: Learning from the Solomon Islands*. Rowman & Littlefield Publishers, London 2019.

500 Derrida, Jacques: *Demeure: Fiction and Testimony*, 42.

contributes to the preservation of the narrative, its interpretation, and openness for the future. On the other hand, the transformation of testimony from private to public, from oral to written, immediately imposes the danger of a misappropriation and misrepresentation of survivors’ stories. Loss of control over testimony – its representation, interpretation, and dissemination – leads to the very state of powerlessness which the testimony was originally supposed to overcome. Hence, Derrida concludes that another condition of testimony is that the singular must be universalizable. The aporia of testimony represents a double loss and amounts to the irreconcilable conflict between the unique singular experience and the necessity of transmitting it to the audience by means of language.

Returning to the questions I stated at the beginning of this section – why the unrepresentability of testimony is aporetic and how this is relevant for the analysis of testimony in truth commissions – these can now be related to the critique of testimony developed in the previous section. Derrida states clearly that testimony is not part of evidence. While proving demands certainty and rational demonstration, bearing witness is based on believing and an act of faith. In a way, testimony relies on a pact between two parties, where one party makes a promise to tell the truth, as it appeared to her, and the other(s) are asked to place themselves in the order of believing. Testimony, thus, cannot be guaranteed without the risk of losing its value. The built-in uncertainty of testimony implies that bearing witness always runs the risk of perjury. By demonstrating the paradoxical nature of witnessing and testimony, Derrida warns of the perversity that allows us to disregard its complexity, according to Sandomirskaja.

Nevertheless, Derrida’s discussion of shared linguistic competence and the universalization of singular testimony through language and new technologies also shows that he understands testimony and witnessing as inherently relational. Bearing witness is never done in solitude, but always demands a second party – the addressee. Derrida suggests that this relationship demands a commitment from both parties.

502 Derrida, Jacques: Demeure: Fiction and Testimony, 41.
The witness commits to telling the truth and the addressee commits to believing the witness.

In truth commission hearings, the risk of disregarding the complexity of testimony is high. The understanding of justice and truth as things established in courts of law through the consideration of evidence and judgment diminish and pervert the meaning of testimony. To borrow Agamben’s words, there has been some conceptual confusion and contamination of categories that have spread far beyond the legal domain. Understanding testimony as evidence and a source of knowledge reduces the problem of bearing true witness to the correspondence of an individual’s testimony with other sources. The relational nature of testimony is overlooked.

Derrida offers a significant critique of the legal use of testimony and the strong link between testimony and reparations that is established in the work of truth commissions. This link undermines the essence of testimony as an act of faith. The aporetic perspective presented by Derrida allows us to further develop a critical perspective on testimony. The critique actualizes the moral dimension of testimony which is the subject of this study. As noted earlier, this moral dimension is twofold, including both the condition of witnessing and the responsibility it imposes. Firstly, by stating that the only condition for bearing a witness is its impossibility, Derrida forces us to reject the idea of testimony as evidence and to regard it as an act of faith. No rules can guarantee the validity of testimony, and if they could, testimony would stop being testimony and become instead a demonstrable truth. The impossibility of witnessing does not preclude giving a promise of responsible witnessing. Nevertheless, the problem at hand is rather the necessity to rethink and re-evaluate the role given to testimony in the work of truth commissions. In a way, Derrida’s radical critique of testimony may be interpreted as a rejection of testimony’s importance: testimony is neither representative nor able to be confirmed. In the context of human rights violations, the idea of testimony as an act of faith may seem unreasonable, even absurd. Nevertheless, Derrida’s clarification of testimony’s essence makes it possible to demonstrate the contradictory and at times misleading motivation for public testimony in truth commissions.

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Secondly, there is also a moral responsibility connected with testimony’s performative and relational character. Now is the moment to emphasize that testimony is not a statement but an act. Testimony is a performative act that should be responded to with another performative act, establishing a special relationship of responsibility between the witness and the audience. On the one hand, testimony demands responsible witnessing, and on the other hand, it demands responsible listening. Responsible listening requires handling the aporetic condition of testimony by recognizing the uniqueness and singularity of the witness’s experience and the irreplaceability of the witness. The risk of perjury is always present and cannot be eliminated by additional evidence supporting or disproving the oral testimony. Hence, this risk should either be accepted or not. If not, then witnesses, both testis and superstes, should not be exposed to the situation of being mistrusted. As Minow rightly notes, the clandestine nature of abuses by repressive governments doubles the pain of those who are met with disbelief.506

Sandomirskaja notes that Derrida’s essay on the politics and poetics of witnessing was written as a response to claims of Holocaust revisionism and Holocaust deniers.507 Holocaust survivors and their testimonies have been doubted and mistrusted. Derrida affirms that testimony includes both politics and poetics. Testimonies cannot be treated as a reliable source of information, even though the very situation of witnessing and participating in this performative act demands belief. This uncertainty should be accepted between the parties. Only by embracing the double performativity of testimony, of both promise and belief, does witnessing become relational.

Derrida also denies the possibility of a collective experience and collective memory, and this raises a critique against the collective testimonial subject. Testimony as an autobiographical act concerns singular and unique events and experiences. Radical singularity is a necessary trait of the concept of testimony and it derives from an alliance between secret and testimony. Derrida writes: “I can only testify, in the strict sense of the word, from the instant when no one can, in my place, testify

to what I do. What I testify to is, at that very instant, my secret; it remains reserved for me.”\textsuperscript{508} Hence, testimony’s secret remains secret even when told publicly.

But Derrida also remarks that testimony is sometimes silent: “It has to engage something of the body, which has no right to speak.”\textsuperscript{509} The problem with the assumption about collective representation still remains when singular stories (either privileged or not) are meant to bear witness for the witnesses. While a testis testifies about what they have seen and witnessed, a superstes testifies about their own experience. Both enjoy the privilege of not being the true (complete) witness who testifies by not surviving.

5.4 Conclusion

In this chapter, I have offered a critical analysis of testimony and its different dimensions, and sought to relate these to the use of testimony in truth commissions. My analysis departed from a critique of a reductionist view of testimony that can be identified in both the legal and historical use of testimony as well as its clinical dimension.

I formulated some critical questions at the beginning of the chapter. First of all, I argued that the gap in the modes of representation in the hearings of truth commissions and their reports marks a “bifurcated event” in the work of truth commissions. The gap between the stories told at the hearings and the texts of the reports not only affects how history is represented, but also has significant consequences for justice.

These consequences are demonstrated by the healing and legal paradigms of testimony used in truth commissions. As argued above, the legal use of testimony assumes that testimony constitutes a piece of evidence or a demonstrable truth that may confirm or refute a claim. This legal use is not limited to courts of law, but can also be observed in other circumstances, including truth commissions. Both the healing discourse and the legal paradigm of testimony also disregard Levi’s idea of the true witness. Testis and superstes may receive reparations; their

\textsuperscript{508} Derrida, Jacques: \textit{Demeure: Fiction and Testimony}, 30.
\textsuperscript{509} Derrida, Jacques: “Poetics and Politics of Witnessing” in \textit{Sovereignties in Question: the Poetics of Paul Celan}, 77.
trauma if not healed, may at least be treated. But the idea of healing and reparations for the true witness is absurd, which may lead to disregarding the responsibility that survivors have towards the true witnesses.

The idea that the function of testimony is to confirm concrete historical events fails to recognize testimony’s relational and performative character. Testimony is only possible when there are two parties: the one who testifies and the one who listens. As I have already pointed out, the focus in truth commissions predominantly lies on the witness and not on the recipient of the testimony. Recipients can vary from the concrete audience at the hearing to the commissioners themselves, to the head of state and state authorities to the whole community when testimonies are broadcast on television. Placing emphasis on the recipient of the testimony may lead to an analysis of the potential of testimony for those who were not exposed to violence, but who passively or actively contributed to the committed atrocities. Such urgent moral questions about mass compliance and bystanders should be actualized.

Truth commissions’ focus on the centrality of victims and their needs is often presented as an argument in favour of restorative justice and against retributive justice, which focuses on perpetrators. The dichotomy between these two paradigms of justice contributes to a perception of human rights violations that follows a traditional view of crime with a perpetrator and a victim. It precludes a more inclusive perspective on the nature of the violations and their moral and political dimensions. Although restorative justice implies a restoration of relations between the former protagonists, described in some cases (including Morocco) in terms of a “relation of trust”, it diminishes the need for political inclusion and participation. How to address the problem of bystanders and mass compliance, apart from making a simple acknowledgement, also remains quite vague. One way to overcome this vagueness might be to analyse patterns of complicity, their causes and demonstrations, for instance by including government employees, judges, and journalists. Locating individual experiences within a larger societal and political context is important, but this should also be complemented by an acknowledgment of both individual and collective responsibility for violations.

Many scholars have argued for the necessity of re-establishing a moral framework in society, meaning that the wrongness of the violations should be acknowledged to victims, as it is crucial for the healing
This necessity, however, extends to society at large. Victims who have been exposed to torture, arbitrary detentions, and enforced disappearance are aware of the dreadfulness of these acts. The moral problem here concerns not only affirming the violations to victims, but also admitting the moral wrongness of those who allowed the violations to happen and examining the conditions and structures that facilitated the moral collapse. In other words, injustices should be treated as a violent past of the whole society.

Next, in the context of truth commissions, the legal use of testimony is exercised by conceiving testimony as a ground for reparation. When it comes to reparations, the discrepancy between *ifada* and *shahada* in the Moroccan context may be interpreted as a strategy for establishing only certain forms of testimony as admissible, in order to limit their critical content. Testimonies plugged into an application form that asks about incurred harms do not allow for a radical questioning of the violations. The same critique can be raised against the healing discourse, which also reduces violations to a matter of the victims’ suffering.

The focus on the healing effects of testimony is problematic. Despite the traumatic character of the violations and the probable healing effect of testimonies for those who testify, the reduction of violations to psychological trauma leads to a reductionist response: that trauma and suffering should be healed and treated. There is a risk, I argue, that this understanding and an overstatement of the healing power of testimony will preclude treating violations as wrongdoings committed by a subject. This in turn precludes any assumption of not only legal but also moral and political responsibility for the atrocities.

Instead of treating testimony as healing therapy and a means of reconciliation, testimony’s critical potential should be acknowledged and articulated. Taking testimony seriously results in asking vital questions about whose voice is legitimate and legitimate enough, what happens when private testimonies go public, and what responsibility testimony imposes upon the recipient. As a result of the healing discourse and the strong link that has been made between testimonies and reparations, there is a risk that testimonies about human rights violations may contribute to an understanding of human rights as commodities. Human

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510 See, for example, Martha Minow (Facing History after Genocide and Mass Violence) and Maria Eriksson (Reconciliation and the search for a shared moral landscape: an exploration based upon a study of Northern Ireland and South Africa).
rights violations must undoubtedly impose a responsibility upon the state perpetrator to rectify the harm. Nevertheless, the very experience of state-sponsored violence warns us against seeing the state as the only guarantor of human rights. Any call for responsibility for human rights violations should be addressed towards society in general.

The clinical dimension and the legal use of testimony concern individual givers of testimony. Although while witnessing, individuals may experience an affinity with others’ stories, the healing discourse and the link between testimony and reparation reinforce the individuality of each story and its subject and, thus, precludes politicization of witnesses’ experiences. Admittedly, testimonies, despite their individual character, can also be used as a means of politicizing injustices. As Young argues, the political functions of storytelling consist of facilitating an understanding of the experience of others and constitute the social knowledge that enlarges thought. The situation of testimony, however, should not be equated to public deliberation; it should rather be understood as a starting point for democratic debate. Testimony may contribute to re-establishing the political community through open discussions about the causes and patterns of political violence. For that to be possible, testimonies must ensure a critique of political power and allow a plurality of perspectives.

The capacity of literature and more specifically of testimonio to bridge the gap which arises between the testimony given at hearings and the final reports, has also been challenged. However, literary narratives about violations do illustrate the gap. Truth commissions’ reports are inevitably limited and fragmented. Despite their claims to be comprehensive, it seems impossible to provide a complete historical account of past events. Truth commissions’ work is constrained by time and economic limitations, their mandates, and the real powers. In some cases, truth commissions may represent the whole society and a public realm, while in other cases they may be deemed quite unimportant, superfluous, or counterfeit.

By acknowledging the limitations of truth commissions’ work in relation to bifurcation, it becomes possible to suggest that the gap may be bridged by making deliberation processes more transparent and by including different perspectives on the causes of violations. In the case of

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511 Young, Iris Marion: Inclusion and Democracy, 71-77.
South Africa’s TRC, the gap was partly bridged by the adopted discrepancy between forensic and explanatory truths. The Moroccan ERC has chosen to define the truth as historical “rather than judicial truth”.  

Another important question concerns the addressee of the reports that are submitted by truth commissions. Who is going to read the text and how it is going to be used? The report of the ERC was primarily addressed to Mohammad VI. And in contrast to other examples of truth commission’s reports, its communicative potential was limited.

Testimony’s communicative potential lies in the fact that the translatability of its experiences and their transformation into the public realm is required. Derrida notes the value of publicity and states that to bear a witness means to render public. Testimonies should be treated as a mode of communication rather than proof or a source of knowledge. Following Derrida, testimony can never be authorized from a meta-position; there is no meta-level in testimony from which to judge its authenticity. Even a confession is not proof. What makes an utterance a testimony is not its content (its “what”), but the speaking subject and the recipient and their relation to this content.

As a form of communication, testimony imposes moral and political responsibility on the interlocutors. What is the meaning of this moral and political responsibility? The idea of having responsibility towards witnesses and their stories is based on the “essential lacuna” of testimonies and the discrepancy between testis, superstes, and a true witness. A true witness, who is disappeared and buried in an unknown place, has no voice to witness the enforced disappearance. The superstes still lacks an epistemological privilege, and the acknowledgment of this lack should guide an understanding of the imposed responsibility.

Responsibility implies remembering true witnesses and protecting them from misappropriation. The problem of the misuse and misappropriation of testimony risks sometimes being obscured by its presumed positive impact. The presumption that marginalized, subaltern groups and individuals receive a role and a voice in transitional justice tends to neglect the insight that there is insufficient control over the representation and interpretation of their testimonies. Whether spoken or written, testimony is exposed to interpretations beyond the power of those who

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were meant to be empowered by the opportunity to witness. If witnessing at truth commission hearings is not accompanied by any substantial political or socio-economic reforms to guarantee the inclusion and participation of formerly excluded groups in political discussions and debates, hegemonic relations are not dismantled.

To sum up, the responsibility that is imposed upon the recipients of the testimony consists partly of allowing the critical voices of the victims of human rights violations to continue to be heard, even beyond the institutional settings of truth commissions. It further consists of taking these stories seriously as justice claims which not only demand to be heard, but also demand structural change.

The effects of testimony in truth commission public hearings have been assessed differently. Some scholars, like Minow, nuance and acknowledge the shortcomings of testimony, but still argue for a restorative power of truth-telling. Although I share Minow’s observation that truth commissions have been a reaction to the limits of legal and bureaucratic processes,\(^{513}\) I challenge, firstly, the restorative power of truth-telling in the work of truth commissions, and secondly, the capacity of truth commissions to dismantle hegemonic relations.

One of the critiques raised against the political dimensions and narrow ends of testimony boils down to the predetermined political function of testimony. While the predetermined political function of testimony and public hearings as a form of legitimization of a new regime or newly established state is problematic, the political impact of testimony should be understood more broadly, including different ways in which testimony as a presentation of personal experience of human rights violations may influence the political domain of society, its organization, institutions, and practices. In the next chapter, I develop an account of testimony’s political and ethical dimensions, focusing on testimony as a critique of power, the urgency of a plurality of perspectives, and testimony’s call for responsibility.

\(^{513}\) Minow, Martha: *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*, 144.
The previous chapter raised a critique of testimony in the work of truth commissions. Several assumptions about the role of testimony were examined and criticized for diminishing the concept of testimony and, as a result, limiting responsibility for human rights violations. It was also noted that a critical perspective on testimony should not undermine its critical potential. The critical potential of testimony is the subject of this chapter. Here, I will draw attention to three perspectives which can be differently related to testimony and will allow me to clarify testimony’s political and ethical dimensions.

Firstly, I analyse Foucault’s notion of *parrhêsia* with a focus on testimony’s critical role. Secondly, I confront Arendt’s notion of storytelling with her critique against the testimonies given at the Eichmann trial, making it possible to distinguish between a story told in a hearing and a story as political action. Thirdly, I examine Ricœur’s hermeneutics of testimony together with his problematization of Holocaust representation in narrative theory. This problematization confirms the bifurcation that occurs between the testimonies presented at truth commission hearings and the way truth commissions document and preserve their findings. Moreover, Ricœur’s perspective emphasizes the moral responsibility that the previous chapter began to address, but which needs further analysis.

With the exception of Ricœur, clearly none of these perspectives deal directly with the problem of testimony. This poses a question about the compatibility of these different notions. My purpose here is not to define *parrhêsia*, storytelling, and narrative *per se*, but rather to show how these selected perspectives allow for a more nuanced understanding of testimony’s political and ethical dimensions. I argue that these perspectives enlarge testimony’s potential without adopting a pragmatic and reductionist position on testimony’s narrow ends. My choice of the term
truth-telling is motivated by its use in the discourse of transitional justice and truth commissions. Testimony is one of the modes of truth-telling, which can also be understood as a story, following Arendt, or as a narrative, following Ricoeur. The differences between the concepts of parrhēsia, story (storytelling), and narrative, and their relation to testimony, are unfolded in terms of the content of philosophical positions and not through an analysis of separate categories. Let us first turn to Foucault’s notion of parrhēsia, which describes testimony’s critical function.

6.1 Parrhēsia as Emancipatory Practice in Foucault

In this section, I apply Michel Foucault’s perspective on truth-telling to an analysis of testimony in the work of truth commissions, with three novel results. Firstly, I argue, Foucault’s perspective makes it possible to shift from perceiving the speaking subject as a victim to perceiving them as a politically active subject. This process of active subjectivation reduces the risk of further victimization and opens the floor for an emancipatory critique. Secondly, truth-telling is linked not only to the interest and needs of the speaking subject (as in the healing discourse and reparations), but primarily to a concern for the whole society, which actualizes testimony’s political and ethical dimensions. Thirdly, I maintain that the institutionalization of truth-telling in the form of truth commissions results in the loss of truth-telling’s core function – the radical critique of power. Paradoxically, the stark emphasis on truth-telling created by the establishment of truth commissions actually undermines the significance of truth and truth-telling for the political realm. I unfold each of these arguments below.

To begin, the critical potential of testimony is conceptualized here through Foucault’s analysis of parrhēsia, a form of free speech developed in ancient Greece from the end of the fifth century B.C. Foucault’s engagement with the question of truth-telling is a part of his turn to the philosophy of ancient Greece, which has also been described as his ethical turn. Parrhēsia, like other concepts, has a genealogy that precludes any simple explanation of what parrhēsia is but allows for tracing the emergence and the transformation of the concept. Foucault devoted several lecture series to the genealogy of parrhēsia, including two series at the Collège de France entitled The Government of Self and Others.
(1982–83) and The Courage of Truth (1983–84), and one at the University of California at Berkley entitled Discourse and Truth: The Problematization of Parrhésia (1983). The six Berkeley lectures were also recorded and compiled in the book Fearless Speech (1983). It is beyond the scope of this study to examine parrhésia in its entirety and the focus of this study lies on the political meaning of parrhésia.514

Unlike his earlier studies of knowledge, truth, and power, Foucault’s interest in parrhésia is directed towards acts of truth (actes de vérité). He examines truth-telling through close readings of, mainly, Euripides’ drama Ion and Plato’s Republic. His genealogy of parrhésia shows that despite its origin in ancient Greece, parrhésia remained a central phenomenon even in later Greco-Roman culture. Below, I suggest that Foucault’s analysis of parrhésia allows us to critically assess the practice of truth-telling and its political and ethical dimensions in the aftermath of large-scale human rights violations.

In Fearless Speech, Foucault begins by remarking that he intends to deal not with the problem of truth, but rather with the problem of the truth-teller and truth-telling as a practice. In his lectures, he goes on to discuss the subject of truth-telling, the subject’s relation to the truth, and the relation between the interlocutors, as well as the consequences of parrhésia. Foucault’s analysis of parrhésia points out the necessary and constitutive tension between free speech and democracy. Moreover, it demonstrates the relevancy of truth and truth-telling for the political realm, where the value of truth and truth-telling has been called into doubt – “a great Western myth”, as discussed in Chapter 4.

The Greek notion of parrhésia, free speech, is neither about the status nor content of truth nor about the authority of the speaking subject. It concerns the subject’s decision to put themself at risk by telling the truth. Foucault defines parrhésia in the following way:

Parrhésia is a verbal activity in which a speaker expresses his personal relationship to truth, and risks his life because he recognizes truth-telling as a duty to improve or help other people (as well as himself). In

514 In Foucault’s genealogy of truth-telling, three meanings of parrhésia can be distinguished: a philosophical, political, and an ethical parrhésia. Political parrhésia was an essential characteristic of Athenian democracy, a guideline for democracy, and an ethical attitude characteristic of a good citizen. Parrhésia appeared in the agora and later shifted from the agora to the relationship between the sovereign and the public. Foucault, Michel. Fearless Speech. Semiotext (e), Los Angeles 2001.
parrhêsia, the speaker uses his freedom and chooses frankness instead of persuasion, truth instead of falsehood or silence, the risk of death instead of life and security, criticism instead of flattery, and moral duty instead of self-interest and moral apathy.\footnote{Foucault, Michel: \textit{Fearless Speech}. Semiotext (e), Los Angeles 2001, 19-20.}

Foucault articulates his definition of \textit{parrhêsia} through some essential elements that characterize both an act of truth-telling and its subject. These elements are frankness, truth, criticism, danger, and duty. The first element of \textit{parrhêsia} is frankness, that is, the idea that the \textit{parrhêsiast} tells everything that they have in mind, without concealing any information. The second element is truth, including the act of saying everything (\textit{pan rema}) or “telling all”.\footnote{Foucault, Michel: \textit{The Courage of Truth, Lectures at the Collège de France 1983-84}. Palgrave Macmillan, New York 2011, 9.} Foucault reminds us that there are two connotations of \textit{parrhêsia}: a negative and a positive. The negative connotation means saying everything without qualification for the purpose of humiliating, i.e., a pejorative meaning. However, according to Foucault, \textit{parrhêsia} should be treated in a positive sense as telling the truth: “To my mind, the \textit{parrhêsiast} says what is true because he knows that it is true; and he knows that it is true because it is really true.”\footnote{Foucault, Michel: \textit{Fearless Speech}, 14.}

\textit{Parrhêsia} is not only a frank truth-telling, but also presupposes a certain relational context. It includes an element of danger that primarily involves risk-taking and an unequal power relation between the interlocutors. By telling the truth, the \textit{parrhêsiast} takes a risk that he or she could have avoided if not telling the truth. The \textit{parrhêsiast} is in a subordinate, less powerful position vis-à-vis the interlocutor(s) to whom the truth is told. Foucault states:

\begin{quote}
\text{Parrhêsia is a form of criticism, either towards another or towards oneself, but always in a situation where the speaker of confessor is in a position of inferiority with respect to the interlocutor. The parrhêsiast is always less powerful than the one with whom he or she speaks.}\footnote{Foucault, Michel: “Discourse and Truth: The Problematization of Parrhesia”, Lectures at University of California at Berkeley 1983. Available at: https://foucault.info/parrhesia/foucault.DT6.conclusion.en/}
\end{quote}

Accordingly, the element of danger in \textit{parrhêsia} reveals two types of relationships: primarily, a special relationship that the \textit{parrhêsiast} has
toward themself (the readiness to risk a life) and, secondary, a relationship to the other (a subordinated position towards the interlocutor).

Moving to the next element of parrhêsia, which is critique, Foucault claimed: “in parrhêsia the danger always comes from the fact that the said truth is capable of hurting or angering the interlocutor.”\(^{519}\) Criticism is a function of parrhêsia: “the function of parrhêsia is not to demonstrate the truth to someone else, but [rather it] has the function of criticism: criticism of the interlocutor or of the speaker himself.”\(^{520}\) Consequently, parrhêsia does not take the form of advice or confession. However, its criticism may be addressed towards both the interlocutor and the speaker themself. Foucault gives some examples of situations when parrhêsia is used: “…when a philosopher criticizes a tyrant, when a citizen criticizes the majority, when a pupil criticizes his teacher, then such speakers may be using parrhêsia.”\(^{521}\) In the case of political parrhêsia, its criticism aims at unmasking repressive practices and abuses of power.

The last element of parrhêsia is a “moral duty”, i.e., a situation when the parrhêsiant is free to keep silent, but feels a duty to tell the truth.\(^ {522}\) The presence of this last element explains why Foucault does not consider confession or avowal to be parrhêsia:

A criminal who is forced by his judges to confess his crime does not use parrhêsia. But if he voluntarily confesses his crime to someone else out of a sense of moral obligation, then he performs a parrhêsiastic act.\(^ {523}\)

In The Courage of Truth, Foucault claims that parrhêsia originally developed as a political notion. He states that parrhêsia was an essential characteristic of Athenian democracy: “parrhêsia was a guideline for democracy as well as an ethical and personal attitude characteristic of the good citizen.”\(^ {524}\) Parrhêsia appeared first in public assemblies, where the parrhêsiant addressed the public, and then moved to the

\(^{519}\) Foucault, Michel: Fearless Speech, 17.
\(^{520}\) Ibid.
\(^{523}\) Ibid.
\(^{524}\) Foucault, Michel: The Courage of Truth, Lectures at the Collège de France 1983-84, 8
king’s court, where the parrhēsiast addressed the sovereign. Foucault describes the mode of action of political parrhēsia as speaking truth to the audience in the name of the audience’s common good. What is important here is the status of the citizen and the right to speak. Foucault pays attention to the link between the right to speak, the right to criticize, and the exercise of power. If a citizen cannot use parrhēsia, he or she cannot oppose a ruler’s power, and without the right to criticize, the power of the sovereign is limitless:

For power without limitation is directly related to madness. The man who exercises power is wise only insofar as there exists someone who can use parrhēsia to criticize him, thereby putting some limit to his power, to his command.⁵²⁵

Parrhēsia as a political notion comprises questions about the status of the truth-teller: who has the right, the moral duty, and the courage to speak the truth. The parrhēsiast in this case is a valuable source of truth and that is why the public or a sovereign agrees to receive criticism. Hence, the parrhēsiastic game takes the form of a parrhēsiastic contract that is not institutionalized, but purely moral:

…the sovereign, the one who has power but lacks the truth, addresses himself to the one who has the truth but lacks power, and tells him: if you tell me the truth, no matter what this truth turns out to be, you won't be punished; and those who are responsible for any injustices will be punished, but not those who speak the truth about such injustices.⁵²⁶

In political parrhēsia, all the elements of parrhēsia are present: frankness, truth, criticism, danger, and moral duty. In addition, parrhēsia is presented as having only a positive sense.⁵²⁷ The positive sense of parrhēsia, i.e., telling the truth, is linked to two basic democratic principles in ancient Greece: isegoria (the equal right of speech) and isonomia (the equal participation of all citizens in the exercise of power).⁵²⁸ Parrhēsia as a practice of public speaking introduces, according to Chris Barker, a way of influencing without dominating other speakers. Barker argues: “The parrhēsiast’s truth overlaps with truths spoken by

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⁵²⁵ Foucault, Michel: Fearless Speech, 29.
other voices, but does so without silencing them – and without sharing their aims.” Barker concludes that Foucault aspires to theorize a pluralistic public sphere with substantive political disagreements, thus contributing to the agonistic project of contemporary democratic theory.

I share Barker’s view that the practice of *parrhêsia* does not foster agreement, and in this way it challenges not only consensus-based perspectives on democracy, but also the discourse of political reconciliation with the past in the work of truth commissions. Nevertheless, I should note that Foucault himself maintained that even though the value of *parrhêsia* lies in its agonistic structure, it should not be treated as an art of debating where one interlocutor seeks to win over the other. The *parrhêsia* game, as has been mentioned above, presupposes that one interlocutor speaks the truth and the other interlocutor does not reply, at least directly, but listens.

However, a consideration of the negative meaning of *parrhêsia*, i.e., telling all, raises several problems. Political *parrhêsia* was criticized in Greek philosophy for being harmful to the city and dangerous for the *parrhêsia*. According to Foucault, the pejorative sense of *parrhêsia* may impose a danger for democracy:

Democracy is founded by a *politeia*, a constitution, where the *demos*, the people, exercise power, and where everyone is equal in front of the law. Such a constitution, however, is condemned to give equal place to all forms of *parrhêsia*, even the worst. Because *parrhêsia* is given even to the worst citizens, the overwhelming influence of bad, immoral, or ignorant speakers may lead the citizenry into tyranny, or may otherwise endanger the city. Hence *parrhêsia* may be dangerous for democracy itself.

The distinction between the negative and positive meanings of *parrhêsia* is important since it actualizes the very paradox of democracy, where on the one hand, free speech is constitutive for democracy,
but on the other hand, it may also fundamentally challenge democracy by allowing profoundly anti-democratic speech to take place. The populistic rhetoric of right-wing extremists may serve as an example of this paradox, which in my view should be treated not as an expression of free speech, but as a threat towards democracy itself. Populists challenge the established power structures by appealing to truth claims; whistle-blowers expose the abuse of power and thus criticize it. But how can we, according to Foucault, distinguish between “good” and “bad” *parrhêsia*?

It is necessary to note, that, unlike *isegoria* and *isonomia*, *parrhêsia* was not defined in the Athenian constitution, and that itself depended partly on the difficulty in differentiating between “good” and “bad” *parrhêsiast*. The mechanism of bad *parrhêsia*, according to Foucault, consists of eliminating the distinctive difference of truth-telling in the game of democracy.\(^534\) In his presentation of the critique of democratic *parrhêsia* in Greek philosophical and political thought, Foucault points out the following:

> And if the democratic institutions are unable to make room for truth-telling and get *parrhêsia* to function as it should, it is because these democratic institutions lack something. And I will try to show you that this something is what could be called “ethical differentiation”.\(^535\)

The problem of ethical differentiation arises when *parrhêsiastic* freedom is given to everybody and anybody: to those who pursue their own interests and to those who care about the common good. In contrast to *isegoria*, *parrhêsia* cannot be equally distributed. But if those who express their private opinions or flatter the interlocutor do not expose themselves to any significant risks, those who do speak about questions and problems that concern the whole society can find themselves in a dangerous position. Then *parrhêsia* transforms from a right, a freedom, or a privilege, into a dangerous affair that calls for courage. Foucault maintains that courage is the only possible proof of the sincerity of the *parrhêsiast*.\(^536\)


\(^{536}\) Foucault, Michel: *Fearless Speech*, 15.
Furthermore, the ethical differentiation can be connected partly to the speaking subject’s relationship to what is said and partly to the intention of care for oneself and others. In other words, the truth-teller should be convinced that what they say is true and tell it as an expression of concern for the common good. However, *parrhēsia* as a political practice does not permit of making this distinction, meaning that its duality, and the risk of pejorative and abusive truth-telling, is always present and must be handled by democratic means. It also shows the significance of moral norms and judgments for the political realm.

The meaning of truth-telling in Foucault can be interpreted based on two central defining elements of *parrhēsia*. Firstly, truth-telling is understood as a moral duty to speak. How can the origin of this duty be understood? It emerges from the speaking subject’s concern for others. The *parrhēsiast* possesses some insight that is crucial to bring to the fore and share with others. In a way, the *parrhēsiast* would do better to keep silent for the sake of their own safety, but out of concern for the others and their own moral integrity, the truth must come out.

Secondly, truth-telling has a critical function. The content of speech challenges the existing relation of domination; hence, speaking truth to power can be treated as a strategy of liberation from domination. Due to the ubiquitous nature of Foucauldian power, the relation of domination is impossible to evade. Nevertheless, the relationship is never static but is described by Foucault as a *parrhēsiastic* game. Truth-telling *per se* neither results in the transformation of material relations nor precludes the reinforcement of new power relations. The change in positions according to a *parrhēsiastic* game faces again the problem of normative ambiguity: the impossibility of discerning between the desirable and undesirable order of power.

What insights does an ancient Greek practice of truth-telling bring to the analysis of testimony in the context of truth commissions? Foucault’s genealogy of *parrhēsia* touches upon its political dimension, but takes a central place in his understanding of ethics. Even though Foucault’s use of morality and ethics is not consistent and at times he uses these two terms interchangeably, he considers ethics to constitute societal norms and rules and hence to be one of the forms of power relations. *Parrhēsia*, according to Foucault, enables subjectivation, which he defines as a process of subject’s constitution. Through subjectivation, we can confront those norms that are enforced upon us by questioning the origin of the norm and its connection with the other orders of power.
Subjectivation can only be realized by adopting a critical and reflexive position. This does not in turn preclude the force of those social norms that are imposed upon us. In *Giving an Account of Oneself*, Butler develops Foucault’s idea of subjectivation:

There is no making of oneself (*poiesis*) outside of a mode of subjectivation (*assujettisement*) and, hence, no self-making outside of the norms that orchestrates the possible forms that a subject may take.\(^{537}\)

In contrast to his earlier works on disciplinary power, Foucault here recognizes the subject’s possibility to resist domination by the practice of critique. Domination cannot be overcome entirely, since there is a price for telling the truth, as Butler rightly claims. That price is the acceptance and confirmation of the specific modes of rationality and a criterion of truth.\(^{538}\) When a *parrhēsiast* opts to raise criticism against those in power, they bind themselves to the rules of truth production. Butler goes on to claim that the price of truth-telling is the suspension of a critical relation to the truth regime.\(^{539}\) The truth that the *parrhēsiast* tells is subjugated to the criterion of truth and the *parrhēsiast* must conform to that criterion; otherwise, *parrhēsia* itself becomes impossible. Paying the price is inevitable, although the price gets higher and appears more visibly in the context of certain institutions, such as truth commissions.

Subjectivation through truth-telling implies that the subject is accepted both by themselves and others as a subject who tells the truth. In the context of truth commissions, victims who testify at a hearing may experience mistrust and lack the status of self-accounting actors. Being deprived of freedom and exposed to severe political terror, including enforced disappearance and arbitrary detention, victims of human rights violations were literally removed from public life. As a result, their suffering consists of being deprived of a voice and being forgotten. The human rights violations addressed by truth commissions, including Morocco’s ERC, are characteristically of this form.

While the question of truth demands an analysis of truth production, the question of truth-telling demands an analysis of the subject who is


\(^{538}\) Op. cit., 121.

not only subjugated to a certain discourse but also has a capacity to influence it. The subject tells the truth, which is not objectively discovered, but rather carries a disruption of the established discourse. The act of truth-telling confirms the possible and absolutely necessary space between established norms and practices and the subject’s moral deliberation and judgment to either accept them or resist. It also shows the double presence of social normativity, modes of rationality, and the subject’s freedom to act. The double presence implies that despite the disciplinary power of social norms that each of us are exposed to, a space remains for objection and protest. For Foucault, this protest constitutes the process of ethical subject formation – its subjectivation. In “The Subject and Power”, he writes:

This form of power...imposes a law of truth on him which he must recognize and which others have to recognize in him. It is a form of power which makes individual subjects.\(^{540}\)

Consequently, the value of truth and truth-telling lies not in being a condition of remedies (e.g. reparations); rather, truth and truth-telling are politically and ethically valuable in their own right. The truth about human rights violations and the act of truth-telling demand an active subject who, despite the risks and dangers, chooses to exercise their moral duty. This implies that perpetrators who testify in order to receive amnesty do not exercise parrhêsia.

Truth-telling as a critique of power constitutes one of the central democratic practices. Foucault writes: “For there to be democracy there must be parrhêsia; for there to be parrhêsia there must be democracy.”\(^{541}\) Thus “fundamental circularity”, as Linda Zerilli suggests, leads us to realize that even though constitutional rights and democracy may guarantee free speech, the actual truth-telling may still be missing. This circumstance should not, she continues, lead us to a deep distrust of democracy, but at best it should lead us to the pursuit of truth.\(^{542}\)

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It is necessary to underline that *parrhêsia* is a practice that is not governed by any rules or institutional arrangements. As a practice, *parrhêsia* must be exercised and can never be assured by either institutions or laws. It arises from the subject’s moral duty and their readiness to risk speaking truth to power. A critical and reflexive attitude towards established norms, institutions, and political power should not be reduced to the specific institutional form of witnessing. The institutional form already creates and enforces a regime of power that imposes limitations on participating subjects and the conditions of participation. Truth commissions as an example of such an institution establish the truth regime by deciding who questions whom, what testimonies are representative, in what language, what forms are allowed, and what the consequence of telling or not telling the truth are. In *The Courage of Truth*, Foucault writes: “True discourse is powerless due to the institutional framework in which it emerges and tries to assert its truth.”

Foucault has democratic institutions in mind, but I believe that his conclusion can be extended to truth commissions. The study of *parrhêsia* importantly suggests why we should tell the truth and what importance truth holds for individuals and communities. Hence, I argue that the institutionalization of truth-telling undermines the significance of truth and truth-telling for the political realm. Its focus on individual truth-tellers disregards the ability and willingness of the community to listen and take the truth seriously.

Following Foucault, testimony given in public hearings has limited potential to introduce a *radical* critique of power. Consequently, even though the hearings of truth commissions are characterized by a power imbalance, frank and fearless speech, the power imbalance is not questioned but may be re-established and legitimated. In contrast with negative *parrhêsia*, when the subject pretends to be a *parrhêsiaist*, in truth commission public hearings, the risk exists that a subject will have a positive *parrhêsiastic* intention, and seek to tell the truth, but the settings and conditions of the act will be deceptive and pejorative. In other words, the subject will not be recognized as a *parrhêsiaist* by their interlocutors.

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To sum up, Foucault’s reading and analysis of *parrhēsia* allow for the conceptualization of truth-telling as a profoundly critical practice. This raises the question of the significance of truth and truth-telling for the political realm and the formation of the ethical subject. However, the value of truth-telling depends upon the reception of the speech and the recognition of the speaking subject. The theme of recognition and the idea of justice as stemming from the call of the Other apparently presupposes the notion of the Other, which was not explicitly developed by Foucault.\(^{545}\) The next two sections work together to unfold testimony’s political and ethical dimensions and, hence, its implications for justice. Their complementarity consists in their different treatments of the addressee of testimony. The addressee is not necessarily (although they may be) in the position of power, as in *parrhēsia*; rather, the addressee is the community to which testimony is addressed. The speaking subject is not understood as being in the inferior position. The sections are devoted to the discussion of Arendt’s and Ricœur’s perspectives. These two perspectives elaborate on two distinct conceptual pairs: storytelling and testimony in Arendt’s thought and narrative and testimony in Ricœur. I will now look at truth-telling through the lens of Arendt’s concept of storytelling and her analysis of the testimonies given at the Eichmann and Frankfurt trials.

### 6.2 Storytelling and the Banality of Testimony in Arendt

As presented above, the notion of *parrhēsia* in Foucault’s work is linked to the practice of truth-telling. In Arendt’s thought, however, the theme of truth-telling is more subtle. She does not distinguish between truth and truth-telling. In “Truth and Politics”, Arendt returns to the notion of storytelling and its significance for dealing with unbearable experiences. She states: “To the extent that the teller of factual truth is also a storyteller, he brings about that ‘reconciliation with reality’…”\(^{546}\) Hence Arendt’s idea of storytelling and its meaning for the public realm


\(^{546}\) Arendt, Hannah: *Between Past and Future: Eight Exercises in Political Thought*, 257.
is, although obliquely so, crucial for the analysis of testimony and public hearings. Drawing on Arendt’s aesthetic foundation of the political, Kimberley F. Curtis, claims that Arendt’s theatrical account of public life and her theatrical account of action have significant potential for elucidating ethical power and the emancipatory moment of the political life. The “theatre” metaphor has also been deployed to describe the hearings in trials and truth commissions, demonstrating the performative nature of testimonies. The questions that arise are, perhaps, firstly whether the theatre of truth commission hearings can tenably be interpreted as a theatre of the political – a space of appearance – and secondly whether testimonies can be understood as stories and hence profoundly political action.

The majority of prominent Arendt scholars have emphasized and explored the central place of speech in her political philosophy. Yet a reading of Arendt’s most controversial book on the Eichmann trial reveals a different perspective on testimony and witnessing. Arendt employs an ironic and at times ruthless tone when she dismisses the significance of testimony brought not only by Adolf Eichmann but by the survivors as well. She maintains: “…one thought foolishly: Everyone, everyone should have his day in court. Only to find out, in the endless sessions that followed, how difficult it was to tell the story…” Many scholars have pointed to the Eichmann trial as a point of emergence for the “eras of testimony”. Unlike the Nuremberg trials, where the evidence consisted mainly of written documents, the Eichmann trial opened the floor for witness accounts. Since then, using testimony as a medium of past human rights abuses has become an increasingly common practice.

548 For example, Felman, Shoshana: The Juridical Unconscious: Trials and Traumas in the Twentieth Century.
549 For example, Seyla Benhabib, Julia Kristeva, Lisa Disch etc.
551 For example, Annette Wieviorka, Elizabeth Jelin, Kay Schaffer, Sidonie Smith and Leora Bilsky.
On the one hand, Arendt gives speech and storytelling a central place in political life by acknowledging the primacy of speech in the constitution of political action. On the other hand, in her analysis of Eichmann’s trial in Jerusalem and the Frankfurt trials, a different perspective on witnessing human rights atrocities comes to the fore. Here, Arendt presents a more sceptical view and condemns testimonies about atrocities. This perspective brings her closer to a position of the aporetic unrepresentability of atrocities, as she claims that some horrors are speechless. In what follows, I bring these two insights together to show that despite efforts to bring the plurality of perspectives to the public realm, the risk of committing more harm is overwhelming, since some horrors are “speechless” and should remain so. Let me first turn to Arendt’s understanding of speech and storytelling.

In The Human Condition, Arendt begins her chapter on action with the following statement: “Human plurality, the basic condition of both action and speech, has the twofold character of equality and distinction.” On the one hand, the condition implies a multiplicity of humans, but on the other hand, the particularity of each human is of significance. Particularity manifests itself in the public realm by the disclosure of “who”. Arendt states:

The disclosure of “who” in contradistinction to “what” somebody is – his qualities, gifts, talents and shortcomings, which he may display or hide – is implicit in everything he says and does…it is more likely that the “who”, which appears so clearly and unmistakably to others, remains hidden from the person himself…

By means of speech, we reveal ourselves and disclose who we are. What is the “who” and what is the “what” of Arendt’s speaking subject? The “who of the subject cannot be revealed by a wilful act, but it is exposed to others through the practice of storytelling. Each time the speaking subject tries to put into words “who” he or she is by means of character traits or description of qualities, it is not the “who” but the “what” that is revealed. Furthermore, the content of storytelling should be concerned with the matters of the shared world, which lie between people:

553 Arendt, Hannah: The Human Condition, 175.
These interests constitute, in the world’s most literal significance, something which *inter-est*, which lies between people and therefore can relate and bind them together. Most action and speech is concerned with this in-between, which varies with each group of people, so that most words and deeds are about worldly objective reality in addition to being a disclosure of the acting and speaking agent.\(^{556}\)

All new stories, Arendt goes on to say, fall into the existing web of human relationships, which constitute the continuity and togetherness between people – “inter-est”. Hence, on the one hand, storytelling is a mode of giving an account of oneself (having a revelatory function); on the other hand, it is not a subjective mode but concerns the shared world. The disclosure of the subject constitutes an integral part of the objective world.

The forms of stories vary: a story may take the form of a document or a monument. But at the centre of each story is its subject, or “a hero”. The hero of the story, Arendt argues, does not correspond to its author. She states that even though every agent inserts themself into the shared world through speech, the story was already begun by someone else.\(^{557}\) Storytelling is understood not only as an act of speech but in a more general sense. Arendt suggests that storytelling is an alternative to the model of impartiality since it involves the plurality of perspectives.

To Arendt, storytelling includes everything from causal anecdotes to novels, short stories, essays, and other narratives. Lisa J. Disch claims that Arendt’s conception of storytelling has redefined conventional understandings of objectivity and impartiality. Arendt proposes a concept of “situated impartiality”, meaning that impartiality involves telling the story from the plurality of perspectives that constitute it as a public phenomenon. The political position of “situated impartiality” entails that in order to think politically and philosophically you need a position from whence to speak.\(^{558}\)

Arendt considers speech to be the act that actualizes the human condition of plurality. It is through speech that we reinforce “the fact that we are men, not Man”;\(^ {559}\) it is through speech that we recognize each other, since speech takes place when we are with other people, “in sheer

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\(^{556}\) Arendt, Hannah: *The Human Condition*, 182.


\(^{558}\) Disch, Lisa Jane: *Hannah Arendt and the Limits of Philosophy*, 218.

\(^{559}\) Arendt, Hannah, op. cit., 4.
human togetherness”. The act of speech is further developed into the account of stories and descriptions of the speaker. Initially, Arendt claims that it is intangible to differentiate between who the speaker and doer (actor) are: “The moment we want to say who somebody is, our very vocabulary leads us astray into saying what he is; we get entangled in a description of qualities he necessarily shares with others like him…”. And according to Arendt, it is the action of speech that discloses “who” the speaker is, by telling a unique life story and being a “hero” in the story.

Much like Foucault, Arendt speaks of courage as a virtue of the hero of the story. While Foucault describes courage as a necessary characteristic of the parrhēsiast, Arendt presents it as an indispensable quality of the hero, who is willing to act and to speak, to begin a story of their own. Courage lies in a willingness to speak and act, not primarily in a readiness to put oneself at risk.560

Action in the form of words and deeds reveals another human condition, apart from plurality: human distinctness.561 Arendt claims: “With words and deeds we insert ourselves into the human world, and this insertion is like a second birth, in which we confirm and take upon ourselves the naked fact of our original physical appearance.”562 While our biological birth introduces us to the conditions of necessity, our second birth introduces us to the realm of human interaction, which is based on the conditions of plurality. This takes us back to Arendt’s notion of natality as a capacity to initiate and begin something new:

If action as beginning corresponds to the fact of birth, if it is the actualization of the human condition of natality, then speech corresponds to the fact of distinctness and is the actualization of the human condition of plurality, that is, of living as a distinct and unique being among equals.563

In Hannah Arendt and Human Rights: The Predicament of Common Responsibility, Peg Birmingham shows the significance of the inseparability between physical birth and linguistic natality and argues that

560 Arendt, Hannah: The Human Condition, 186.
natality should not be reduced to a physical-biological event. The birth of the “who” is the birth of the political self who is unique and distinct. The speech of the subject is unexpected, and it marks the performativity of the public space. Birmingham points out that the public spaces in Arendt’s thought are larger than the set of laws and institutions. They are performatively created through enactive speech, unexpected and unpredictable words.

Speech in Arendt’s thought has an inherent interpersonal dimension. It is only through speech that action becomes relevant and comprehensible for others. Arendt does not treat speech as a means of communication or information. Although she admits that speech is useful for these purposes, she suggests distinguishing between language that is used for particular purposes and speech as an action having an end in itself. The revelatory function of speech and action is only realized in the public realm together with other people. With the loss of human togetherness, that is, when people are only for or against other people, speech becomes a means towards an end. It is used to deceive, to dazzle, and to spread propaganda.

Arendt’s conception of storytelling and her theory of political action should be interpreted against her historical background and her own experience of totalitarianism and exclusion as a Jew – in other words, the experience of belonging to an excluded group whose members were deprived of their right to appear publicly and to count for something. Topolski observes that Arendt, in her aspiration to restore the political, evinces a very Judaic notion of justice, which is rooted in a longing for the inclusion of those who have been excluded, oppressed, and marginalized.

How can the excluded and marginalized be included? Above, in Chapter 4, I discussed Balibar’s and Gündoğdu’s interpretations of Arendt’s absolute “right to have rights”. These scholars suggest that Arendt’s concept of the “right to have rights” should be interpreted as a right to claim rights that include an equal right to speak. Isonomia, the Greek term for equality of participation in the exercise of power, means

566 Arendt, Hannah: The Human Condition, 179.
568 Topolski, Anya: Arendt, Levinas and a Politics of Relationality, 60.
precisely that each individual should have the same claim to political activity through speaking. As suggested by Balibar and Gündoğdu, *isonomia* or *equaliberty* represents a universal right to politics, meaning that everyone should be guaranteed the right to be a member of the political community by means of speech. This implies that everyone should be guaranteed the right to participate in public deliberations and thus be included in the political community.

The right must be reciprocal to guarantee a mutual recognition of meaningfulness of speech. Here, an important difference between Arendt’s conception of storytelling and Foucault’s conception of *parrhèsia* becomes clear. *Parrhèsia* is relational action, but it does not presuppose the same level of reciprocity. The difference does not lie only on the conceptual level, but also demonstrates how the proclamation of the right to free speech underestimates the necessity of the recognition of meaningfulness of speech, where the first step is listening. The right to free speech does not imply a respective duty to listen. Taking right as a legitimate claim against the state, it amounts to a negative duty: that is, restraining from infringing the freedom to speak. But the duty does not contain a duty to listen to what the right holder has to say.

Thus far I have presented the centrality of speech and storytelling for the political realm. Initially, Arendt’s position might be interpreted as a support for testimonies and public hearings as a public space of appearance. Rina Kashyap, for example, points out that truth commissions are premised on the idea that through storytelling, truth will be accessed, which will make reconciliation possible. In a way, storytelling as an act of speech has been interpreted as the *raison d’être* of truth commissions. Now the time has come to consider Arendt’s critical insight about this specific type of speech and storytelling, namely, testimony about the human rights atrocities.

As I have already noted, Arendt’s position on testimony contains a condemnation of witnessing. Contrary to Derrida’s claim that Arendt

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was not interested in the history of testimony and the distinction between witnessing and proof.\(^{571}\) I suggest that in her analysis of the Eichmann trial and Frankfurt trials, she distinctly articulates a view on testimony. It is puzzling, however, how to reconcile this view with her overall understanding of speech and storytelling. Let me start by presenting her critique.

In *Eichmann in Jerusalem*, Arendt is critical of Eichmann’s ability to speak and, as a result, to testify. She claims that Eichmann’s use of clichés, his “empty talk”, is a result of his inability to think – “to think from the standpoint of somebody else”.\(^{572}\) Based on Arendt’s concept of the banality of evil, this connection between the inability to think, evil-doing, and the inability to speak reveals her view on the meaning of moral judgment for the political realm and how she openly disregards moral norms and ethical codes. Arendt understands morality as stemming from an inner dialogue that one and each of us should have with ourselves.

In addition to Eichmann’s testimony, which is crucial to her conclusions about his inability to think, Arendt also comments on the testimonies of witnesses and survivors. Her critique here concerns the difficulty for the witness of distinguishing “between things that had happened to the storyteller more than sixteen, and sometimes twenty, years ago, and what he had read and heard and imagined in the meantime.”\(^{573}\) There were too many testimonies, they were too long, and at times they were an expression of the propaganda of the Israeli state against Palestine. Arendt concludes that witnessing “needed a purity of soul, an unmirrored, unreflected innocence of heart and mind that only the righteous possess”\(^{574}\) (emphasize added).

Arendt does not dismiss witness or survivors’ testimonies utterly. At the end of her chapter on witnesses, she recognizes the value of the testimonies or stories that demonstrate the resistance of the Polish underground and those Germans who helped to hide and rescue the Jews: in other words, the stories that stand out from the general picture of mass compliance and the omnipotence of totalitarian states. Arendt writes:

The holes of oblivion do not exist. Nothing human is that perfect, and there are simply too many people in the world to make oblivion possible. One man will always be left alive to tell the story.\textsuperscript{575}

Arendt goes on to claim that such stories would be of great practical usefulness for Germany:

Politically speaking, [the lesson] is that under conditions of terror most people will comply but \textit{some people will not}, just as the lesson of the countries to which the Final Solution was proposed is that “it could happen” in most places \textit{but it did not happen everywhere}.\textsuperscript{576}

Consequently, Arendt does not reject the value of testimonies as such, but she does distinguish between stories of suffering and stories of resistance. She argues against looking at a tragedy through the prism of the victims’ narratives of suffering, as Deborah Nelson puts it.\textsuperscript{577} In the essay “Some Questions of Moral Philosophy”, Arendt describes the Nazi crimes as “speechless horrors” that can neither be punished nor forgiven. The speechlessness of these horrors did not, however, stop people from trying to put them into words or to translate their speechlessness into expressions of emotion. According to Arendt, all these attempts (including the testimonies at the Eichmann trial) are inadequate. Arendt sounds quite brutal when she claims that the stories are too sentimental and are “overcharged with emotions, often of a not a very high calibre”.\textsuperscript{578} Despite the brutality, I interpret Arendt’s purpose here as to warn against the normalization of the horrors, where the border between “the speechless horrors” and “not horrible but often disguising experiences”\textsuperscript{579} disappears.

The speechless horrors do not withstand “the bright light of the constant presence of others in the public scene”.\textsuperscript{580} Arendt argues that pain and love constitute truly intimate experiences. She writes:

\textsuperscript{576} Ibid.
\textsuperscript{579} Ibid.
\textsuperscript{580} Arendt, Hannah: \textit{The Human Condition}, 51.
...the experience of great bodily pain, is at the same time the most private and least communicable at all. Not only is it perhaps the only experience which we are unable to transform into a shape fit for public appearance, it actually deprives us of our feeling for reality to such an extent that we can forget it more quickly and easily than anything else…. Pain, in other words, truly a borderline experience between life as “being among men” (inter homines esse) and death, is so subjective and removed from the world of things and men that it cannot assume an appearance at all.581

As mentioned earlier, here, Arendt gets closer to the aporetic unrepresentability position, presented in this study by Derrida, saying that the stories about human rights atrocities are impossible to tell. However, her explanation for this unrepresentability differs from Derrida’s in several respects. Charles Barbour explores the differences between Derrida and Arendt in relation to the question of witnessing. He identifies three themes that allow us to grasp these differences and better understand both positions.582 Among these themes, I will focus most on the last one, which concerns the origins of moral responsibility in Arendt’s thought. But let me start by presenting the other two, as they are all interrelated.

Firstly, unlike Derrida, who treats trust and the act of faith as constitutive for all human relations and our sociality, for Arendt, it is the exchange of opinions and actions that constitute the human association.583 As discussed in the present section, for Arendt, speech and storytelling are both revelatory and interpersonal. Secondly, Arendt’s strict distinction between the private and public spheres implies that she identifies certain experiences, including bodily pain and love, as belonging to the private domain.584 She claims that these experiences are unable to transfer into the public world of appearance. This claim reminds us of Derrida’s insistence that testimony cannot be reduced to proof, since there is always something, some secret that remains hidden from the gaze of others. Arendt, however, is not concerned with the secret that always remains, but rather with the problem that some experiences cannot be presented publicly without exposing the speaking subject to suffering and humiliation and without normalizing the atrocious experiences.

583 Ibid.
The last theme has to do with the problem of responsibility and judgment, and I will focus on it in more detail, specifically in relation to Arendt’s theory of judgment. For Derrida, moral responsibility originates from our encounter with the Other, while for Arendt, responsibility stems from the inner dialogue we have with ourselves. Arendt’s biggest worry is that unspeakable, outrageous crimes may be reconciled with the social reality when they are judged based on moral and legal norms. If the question of legal norms is quite obvious and their inadequacy is based on the prohibition of retrospective application of the law, the question of moral norms is more complex. It is necessary to emphasize again that Arendt treated morality as a set of customs and conventions, which according to her could change overnight. In her particular context, these norms concern the exclusion and persecution of national minorities, the normalization of Nazi ideology, and the resulting mass compliance in perpetrating the physical extermination of these minorities. Nevertheless, Arendt admits that even when the majority complies, there is always somebody who resists. That resistance is conditioned not by moral norms in society, but by the inner capacity of the individual to think and conduct a dialogue with themselves, to be two-in-one. The condition of being two-in-one is decisive for our ability to be critical of norms (both legal and moral) and to think and make reflective judgments.

Judgment, for Arendt, was one of the most controversial subjects. Arendt did not live to finish the third part of The Life of the Mind (1977), which was devoted to the faculty of judgment, and hence she left some unanswered questions about how we are to understand judgment. For the purpose of reconstructing her theory of political judgment, I turn to her other works: essays collected in Between Past and Future, Responsibility and Judgement, and Lectures on Kant’s Political Philosophy, where Arendt deals with the question of judgment.

On the one hand, Arendt affirms that the faculty of judgment is the most political of mental abilities. She says that the faculty to judge entails judging particulars without subsuming them under general rules. Judging differs from thinking: while thinking is abstract and deals with

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things that are absent, judging deals always with something concrete that is present. On the other hand, judging can only be done retrospectively, by taking a distance from the past events. Judgment requires us to leave the public realm of action and assume the role of spectator or historian. This opposition can be summarized in the following dichotomy: judgment from the perspective of an actor and judgment from the perspective of a spectator.

In her Lectures on Kant's Political Philosophy and Between Past and Future, Arendt turns to Kant’s critique of aesthetic judgment. She claims that the faculty of judgment implies not only theoretical but also political activity. In her reading of the Critique of Judgment, Arendt uses the notion of enlarged mentality to demonstrate judgment’s political nature. She says:

The power of judgement rests on a potential agreement with others, and the thinking process which is active in judging something is not, like the thought process of pure reasoning, a dialogue between me and myself…

Here the process of judgment implies an active engagement in a public realm: that is, taking the stance of actor, not a spectator. The duality of judgment, hence, indicates a line between vita activa and vita contemplativa: between the public realm and the state of being together with oneself. On the one hand, judgment is a mental faculty of forming an opinion, or in Arendt’s words “the ability to say, “this is wrong”, “this is beautiful” etc.” On the other hand, for Arendt judgment is intimately connected with political action, as it transforms individual thinking into action and the public realm.

To sum up, witnessing is a mode of speaking and storytelling. It is characterized by performativity and the necessary presence of the audience. By means of testimony, personal stories enter the public realm and become known by others, allowing the audience to enlarge one’s mentality, to paraphrase Arendt. These perspectives are necessary for

587 Arendt, Hannah: Responsibility and Judgement, 188-89.
590 Arendt, Hannah: Responsibility and Judgement, 189.
the constitution of the political. Arendt’s conception of storytelling is grounded on the significance of the particular for the political realm.

From Arendt’s perspective, however, witnessing demands purity of soul and righteousness – something which we perhaps cannot demand, since the build-in uncertainty of testimony precludes us from knowing whether testimony is trustworthy or not. Yet she welcomes those testimonies that can demonstrate exceptions – examples of resistance – and hence initiate a reflection over why some people comply and others resist. It is unthinkable for such reflection to take place in the public realm (for example, in a truth commission hearing) – it requires being alone with oneself. Consequently, Arendt’s perspective can be understood as a demand to expand the spectrum of stories that are told. According to Arendt, the testimonies given at Eichmann’s trial did not contribute to a new understanding through multiple perspectives and experiences. Despite their significance for the witnesses, they illustrated a narrative that was already predetermined.

The demand for a broader spectrum of perspectives, however, cannot be imposed on witnesses from above: either the situations of resistance and non-compliance arise or not, and witnesses cannot be forced to search for the exceptions among the perpetrators. However, it does suggest some critique of the way truth commissions work, namely, by collecting and making public those stories that confirm what has already been known. These stories contribute with a disclosure of the scope of the crimes, their patterns, and their historical and political backgrounds. But from an ethical perspective, their contribution can be questioned. Recalling the two questions that Arendt poses in The Origins of Totalitarianism – what happened and why – the first question can be answered, but the second remains unanswered.

Finally, it now becomes possible to conclude that public hearings of truth commissions risk obscuring the public space that stretches beyond their institutional framework. The predetermined character of the speeches that are given minimizes the chances for the new and unpredictable to appear. In “Lying in Politics”, Arendt states:

There always comes the point beyond which lying becomes counter-productive. This point is reached when the audience to which the lies
are addressed is forced to disregard altogether the distinguishing line between truth and falsehood in order to be able to survive.\footnote{Arendt, Hannah: \textit{Crises of the Republic}, 7.}

The same can be said about truth and truth-telling as a practice of truth commissions. They may also become counterproductive when the realm of the political as a space characterized by the plurality of perspectives and the exchange of opinions is replaced by a set of rules and institutions with predetermined political functions. Such counter-practice in the pursuit of positivism, significantly limits the plurality of perspectives, including testimony about different types of experiences.

I will now look at one last perspective on testimony and narrative, that of Paul Ricœur. Ricœur’s perspective, with its particular focus on moral and political responsibility, will allow me to lay the foundation for an analysis of the implications of truth-telling for justice in the aftermath of large-scale human rights violations.

6.3 Hermeneutics of Testimony and Ethics of Responsibility in Ricœur

The two perspectives discussed above represent the political and ethical dimensions of testimony: testimony’s critical potential in relation to power, and testimony’s constitutive role for the realm of the political. As I have argued, truth commission hearings do not enable the realization of either dimension. Moreover, truth commissions may even obstruct the radical critique and the plurality of perspectives that testimony might offer. In this section, I examine Ricœur’s account of testimony, which is based on a hermeneutical analysis. Ricœur’s account of testimony is also connected to his conception of justice, presented in Chapter 3, through its emphasis on the ethics of responsibility and his understanding of ethics and the political.

Let us begin by recalling Ricœur’s own testimony at the \textit{Cour de justice de la République} in a case about HIV-contaminated blood which had been used for blood transfusions.\footnote{Ricœur, Paul: \textit{Reflections on the Just}. University of Chicago Press, Chicago 2007, 249.} Ricœur was invited to testify in

\footnote{\textcopyright{} The author(s), 2023.}
his capacity as a philosopher to give his account of the statement of France’s former Minister of Social Affairs and National Solidarity that she was “responsible, but not guilty”. In the Epilogue to Reflections on the Just, Ricœur presents a corrected version of the text that he presented at the trial. The main problem he addresses in the text concerns the way responsibility is understood and placed in the legal domain. He maintains it should belong to the political domain. Even taking into consideration the particularity of the case and its circumstances, I still find Ricœur’s core idea, that justice as responsibility extends beyond the problem of legal justice, to be a necessary starting point for an analysis of testimony’s political and ethical dimensions. Developing Ricœur’s argument further, I would assert that while the incapacity of legal justice to deal with large-scale human rights violations is used as a point of support for restorative justice and truth commissions, it is rather the incapacity of political institutions that results in the task being transferred to quasi-judicial institutions. As a result, the state-perpetrator frees itself not only from legal but also moral and political responsibility.

Ricœur finishes his Epilogue by arguing for a civic space or court that is open to civil society. If such a space could be created, he writes, “it would be not only exceptional but inaugural, civic, that is to say, beyond the bifurcation of the political and the criminal.” In such civic institutions, victims of crimes must be allowed to express their “cry of indignation – not fair, unjust” and make their justice claims. By moving forwards to Ricœur’s analysis of testimony, his perspective allows me to clarify the connection between victim testimony, responsibility, and the question of moral and political judgment.

To begin, Ricœur’s conception of testimony underwent a transformation between his early reflections on the legal origins of testimony and his later analysis of testimony within history and memory. In the article “Testimony and Attestation”, Jean Greisch claims that Ricœur

593 Ricœur, Paul: Reflections on the Just, 249.
595 Ibid.
596 The evolution has been thoroughly examined by Esteban Lythgoe in the article “Ricœur’s Concept of Testimony”. Björn Wikström also notes the shift in Ricœur’s perspective on testimony.
was a “thinker of testimony” along with Lévinas and Heidegger. The problem of testimony is also present in Ricœur’s earlier work on the religious meaning of testimony, where he argues for a hermeneutical method of solving the paradox of testimony. This paradox, which will be discussed later in more detail, consists of the built-in duality of testimony as both a representation of a concrete historical event and the bearer of more profound meaning than a mere example.

Ricœur carries out his analysis of religious meaning by means of a semantic analysis of the everyday understanding of testimony as a legal practice. Later, his interest shifts towards testimony’s meaning for history and its ethical implications, with the Holocaust and the problem of its representation as a backdrop. Both these entry points into the problem of testimony are important for understanding Ricœur’s fundamental ontological perspective and for a more narrow analysis of testimony’s political and ethical dimensions. They make it possible to say more about how responsibility imposed by testimony should be understood.

In *Essays on Biblical Interpretation* (1972), Ricœur analyses several common understandings, distinctions, and paradoxes of testimony. As mentioned above, he applies semantic analysis, hermeneutics, and the exegesis of testimony in the New Testament. This study brings to the fore some of Ricœur’s important observations that can help clarify testimony’s political and ethical dimensions.

The theme of narrative also takes a central place in Ricœur’s later work. In *Time and Narrative* (1983–85), Ricœur develops the concepts of narrative, metaphor, and textuality. For this study and more specifically this chapter, I have chosen to focus on his reflection on the challenge of Holocaust representation and narrow his narrative theory down to the problem of testimony and witnessing as narration about human rights violations. Horror, according to Ricœur, attaches to events that


598 Ricœur’s ontological perspective derives from the acknowledgment that reality is concealed from us by multiple layers that can be discovered only by means of interpretation. He argues against absolute knowledge and for a philosophy of interpretation.

599 Ricœur presented his first contribution on the theme of testimony, “The Hermeneutics of Testimony”, as part of Enrico Castelli’s symposium on testimony in 1972, which was later translated and included in *Essays on Biblical Interpretation*. 
must never be forgotten. In this way, the testimonies of victims impose a moral responsibility to remember the horror. Before I proceed with my discussion of Ricœur’s perspective, I need to mention that, unlike Foucault and Arendt, Ricœur was primarily interested in written texts and their interpretation. Narrative, for him, corresponds with written forms rather than oral. According to Ricœur, written texts, unlike oral statements, can always be interpreted and re-interpreted, and hence written words in a way call for interpretation.

Let me first present those findings that are of importance in Ricœur’s analysis of the problem of testimony. In Essays on Biblical Interpretation, he writes that testimony is an experience that should be distinguished from the concept of example and the concept of symbol. This distinction depends on the founding discrepancy between event and meaning. Ricœur claims:

If interpretation is possible, it is because it is always possible, by means of this gap, to mediate the relation of meaning and event by another meaning which plays the role of interpretation with regard to their very relation.

Hence, a gap exists between event and meaning. On the one hand, testimony presents a report or a narrative about a concrete historical event and serves a function of attestation. On the other hand, by virtue of its narrativity, testimony necessarily implies an interpretation of the event and its meaning. Like a symbol, the meaning of testimony is opaque and can never cease giving new interpretations of this meaning. The paradox of testimony, as Ricœur suggests, lies in its historical embeddedness and concrete singularity on the one hand, and in an experience of the absolute in testimony on the other. In other words, testimony cannot be reduced to the notion of example. Unlike example, testimony rather attests to the violation of norms and rules. As Ricœur maintains:

This attestation could not be reduced to the illustration of these norms that the unjustifiable has places in confusion; the avowal of evil waits

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for our regeneration more than the examples of sublimity. It waits for words and especially actions which would be absolute actions in the sense that the root of the unjustifiable will be there manifestly and visible uprooted.\textsuperscript{604}

The quote shows that it is our encounter with evil and unjustifiable events\textsuperscript{605} that gives rise to the experience of the absolute. Hence, testimony about injustices is not only meant to illustrate what has happened, but also carries an imperative for future actions – to uproot the root of unjustifiable. This imperative for future actions implies making a judgment and a decision, which Ricœur considers to be necessary for testimony as such.

In his semantic analysis of the meaning of testimony, Ricœur approaches the juridical context of testimony. According to Esteban Lythgoe, Ricœur rejects the idea that testimony is a historical or religious concept and proposes instead that there is an underlying ordinary notion of testimony in every specific application of testimony in different areas.\textsuperscript{606} The ordinary notion of testimony is related to its legal origin, which has consequences not only for the juridical domain but also for the historical and religious use of testimony. Therefore, even though truth commissions are quasi-juridical bodies, some of Ricœur’s points can productively be discussed in relation to truth commissions. Initially, Ricœur observes that testimonies are given in special circumstances, namely, situations of trial. As a consequence, Ricœur continues:

The action of testifying has an intimate relation to an institution – the judiciary; a place – that court; a social function – a lawyer, the judge; an action – to plead, that is to be plaintiff or defendant in a trial.\textsuperscript{607}


\textsuperscript{605} The concept of “the unjustifiable” in the cited texts refers to Jean Nabert’s concept which he introduces in the \textit{Essay on Evil} (Essai sur le mal) in 1955, and which Ricœur interprets as something that “cannot be measured by the mere violation of those norms to which the moral conscience equates itself” (from Ricœur, Paul: “Emmanuel Levinas: Thinker of Testimony”, in \textit{Figuring the Sacred: Religion, Narrative, and Imagination}. Fortress Press, Minneapolis 1995).


\textsuperscript{607} Ricœur, Paul, op. cit., 124.
Testimony here serves the function of evidence – of being an attestation of certain events. As both Ricœur and Derrida agree, testimony cannot and should not be reduced to proof and should be treated as an act. Nevertheless, taking into consideration the situation of trial, testimony implies a few other things. Among them is the idea of a dispute between parties who plead against each other. Testimony is used to strengthen the claim of one of the parties and to undermine the conflicting claim. The duality of the event which can be differently preserved, interpreted, and narrated in the trial demands a decision. And in the situation of trial, that decision is “the decision of justice”. Ricœur contends that the demand of judgment is not exclusive to the juridical realm, but it does constitute a constitutive element of any testimony. Otherwise, testimony would not be testimony but a mere recording of facts. Lythgoe calls this a “vocative quality” of testimony that mobilizes us to make changes and confront the unjustifiable.608 Ricœur writes:

Even in the case of the so-called “testimony of the senses”, this counts as “testimony” only if it is used to support a judgement which goes beyond the mere recording of facts.609

In other words, testimony gives rise to judgment: not only legal judgment, but also moral and political judgment. This judgment can be understood through the call of testimony for interpretation. Testimony’s dual nature, as related both to a concrete historical singularity and to witnesses’ presentation about the events, creates a space for interpretation – a hermeneutical space. According to Ricœur, hermeneutics can resolve the philosophical problem, the paradox of testimony. Similarly to the analysis of justice in the legal sense, the analysis of testimony in the circumstances of the trial also initiates a moral reflection. Testimony, according to Ricœur, calls for interpretation and judgment.

The circumstances of truth commissions differ from the circumstances of the trial. Firstly, the parties in truth commission hearings are not clearly identified. In the aftermath of large-scale human rights violations, a discourse of grey zone is often actualized. The complexity of

long-lasting state-sponsored violence precludes any transparent identification of victims and perpetrators, as truth commission proponents claim. Although this is a fair claim, it has an apparent advantage for the perpetrators and not victims. The figure of the perpetrator becomes invisible and can even be mystified. In Morocco, the notion of makhzen, meaning the elite, the state and its actors, is frequently used in reference to military and secret police who committed human rights violations. As a result, the state that is the perpetrator is presented as an omnipotent and alien power against which it is impossible to resist.

Nevertheless, the condition of a dispute as constitutive for testimony can be interpreted as testimony’s relevance for the resolution of the dispute, and not in a structural sense (i.e., as demanding the presence of two protagonists). The criteria of relevancy impose necessary restrictions on testimonies, which are inevitably laden with power dynamics, the process of selection, and the legitimization of certain voices and neglect of others.

Secondly, based on the above-mentioned complexity, juridical judgment becomes impossible. The proponents of truth commissions (and restorative justice in general) argue for shifting focus from prosecutions and legal accountability towards the needs of victims, and question how victim suffering can be compensated. The crimes committed are then interpreted as suffering and not as wrongdoing.

Despite the impossibility of juridical judgment, political and moral judgment are both possible and desirable. What can be questioned is whether political and moral judgment in the work of truth commissions can be a result of testimony and public hearings, or if, as Arendt notes in relation to the Eichmann trial, there is always already a prejudgment. Unexpectedly, the context of trial encompasses a higher degree of uncertainty of judgment than the context of truth commissions. In other words, there is a risk that testimony in truth commission hearings will follow a pre-existing judgment about the committed violations. Here, Ricœur’s focus on written texts makes it possible to connect judgment with the hermeneutical analysis and never-ending interpretation of the texts.

The matter of testimony and judgment takes us to back the discussion above of Ricœur’s “little ethics” and more precisely the notion of practical wisdom. In relation to testimony, the gap between the historical

610 Ricœur, Paul: Oneself as Another, 240-41.
event and its meaning, its exemplary and its symbolic dimensions, should be managed through moral judgment. In the aftermath of large-scale human rights violations, testimonies about these violations are open to interpretation, but despite this openness, the violations should also be judged as morally unjustifiable acts. This understanding of testimony imposes a moral responsibility, not only to remember but also to take an active stance against the crimes. Furthermore, it urges us not to reduce the meaning of testimony to a report about a concrete historical event, but to take seriously its moral impact.

From the hermeneutics of testimony, Ricœur moves to the role of testimony within historiography. As Björn Vikström notes, this shift in Ricœur’s thought is grounded in an acknowledgment that history is often written by the victors, while the defeated are either forgotten or demonized. This gives rise, Ricœur claims, to a moral responsibility to keep the narratives about suffering alive. Ricœur formulates this moral responsibility in terms of a debt to the historical past: how the past should be remembered and represented. His conception of narrative takes a central place in this discussion, and therefore I want now to move to a discussion of Ricœur’s narrative theory, with specific focus on narratives about horrible events.

In On Paul Ricœur: The Owl of Minerva, Richard Kearney summarizes the four central tasks of narrative suggested by Ricœur’s critical hermeneutics: first, to realize our debt to the historical past; second, to respect the rival claims of memory and forgetfulness; third, to cultivate a notion of self-identity; and finally, to persuade and evaluate action. The tasks demonstrate the connectedness between narrative and the ethics of responsibility. How does this responsibility emerge and why?

According to Ricœur, narratives reveal something that has been concealed or suppressed. Through narrative, the injustices of the past are reconstructed and retold as events that happened. Hence, our moral responsibility begins with acknowledging these events but it also extends further in relation to the people exposed to the violations. In “The Memory and Suffering”, Ricœur formulated this moral responsibility in the following way:

We must remember because remembering is a moral duty. We owe a debt to the victims. And the tiniest way of paying our debt is to tell and retell what happened at Auschwitz...By remembering and telling, we not only prevent forgetfulness from killing the victims twice; we also prevent their life stories from becoming banal ... and the events from appearing as necessary.613

As Kearney puts it: “We remind ourselves, for example, that gas ovens and gulags did exist, that Nagasaki and Cambodia were bombed, that political crimes and injustices have been inflicted on innocent people over the centuries.”614 The narratives about injustices, as is made evident in the passage from Ricœur, prevent the injustices from being reduced in their meaning, neutralized, or explained away by pragmatic, realist arguments. Ricœur argues that the horrible events are “uniquely unique”, and it is particularly horror that “isolates events, making them incomparable, incomparably unique, uniquely unique.”615 Here, as Kearney notes, Ricœur’s position is different from other postmodern thinkers who argue that these real historical events are “irrepresentable”.616 Ricœur’s response, according to Kearney, is that the more narrative singularizes historical memories, the more we strive to understand them; and the more we understand them, the better able we are, in the long run, to explain them (rather than simply suffer them as emotional trauma).617

The necessity of testimonies, despite their problematic representability, is obvious. Ricœur’s perspective add the insight that testimonies should not strive after collective representability, but they nevertheless impose a collective moral responsibility to remember suffering and prevent crimes from reoccurring.618

615 Ricœur, Paul: Time and Narrative, Volume 3, 188.
616 Kearney names Jean Baudrillard and Jean-Francois Lyotard and accuses their post-modern cult of irrepresentability of getting closer to the claims of revisionist historians who rejected the Holocaust and the existence of gas chambers, in Kearney, Richard: On Paul Ricœur: The Owl of Minerva, 103.
617 Kearney, Richard, op. cit., 103.
618 Ricœur, Paul, op. cit., 188-89.
The collective aspect of responsibility refers to the narrative’s third task: to cultivate a notion of self-identity. As Ricœur puts it, there are such things as “epoch-making events”, i.e., events that a historical community holds to be significant. These events reinforce a sense of identity for both the community and its members. Ricœur thinks that these events may give rise to strong feelings of regret or compassion or may call for forgiveness.\(^{619}\) Hence, the narratives about these events provide people with a sense of belonging and identity. In commenting on this power of narrative to provide people with a sense of identity and cohesion, Ricœur recalls Arendt’s understanding of speech and action as the disclosure of “who” one is and weaving this into in the web of relationships.\(^{620}\)

The fourth task of narrative, to persuade and evaluate action, demonstrates the final “destination” of narrative as imposing a moral responsibility to act. Hence, a narrative does not only generate empathy as a way of identifying with other fellow humans but also demands an active response.

Let us move on to the problem of representation. In *Time and Narrative*, Ricœur suggests that there are two distinct modes of representation of atrocity. He puts it this way:

Either one counts the cadavers or one tells the story of the victim. Between these two options lies a historical explanation, one that is difficult (if not impossible) to write, conforming to the rules of singular causal imputation.\(^{621}\)

Since the Eichmann trial, as Renana Keydar argues, Ricœur’s distinction between storytelling and body counting has collapsed.\(^{622}\) The same can be said about truth commissions. Truth commissions blur the boundaries between these two modes. Nevertheless, the distinction makes it possible to put a finger on that highly problematic gap between the reports of truth commissions, which can roughly be categorized as

\(^{619}\) Ricœur, Paul: *Time and Narrative*, Volume 3, 187.
\(^{621}\) Ricœur, Paul: *Time and Narrative*, Volume 3, 189.
body counting, and their hearings. Therefore, let us take a closer look at the distinction.

The distinction takes us back to Ricœur’s initial analysis of testimony and its paradox. The documentation of atrocities corresponds to the reduction of testimonies to examples and reports about historical events. In the context of truth commissions, this documentation includes a variety of documents, such as applications for reparations, individual testimonies in group and public hearings, and other findings of the commission. In Morocco’s case, one of the recommendations issued by the ERC was for the establishment of the National Archive, where these documents can be preserved. As of spring 2019, the ERC’s archive had been moved from Morocco’s Human Rights Council’s Archive to the National Archive, but the documents are still not publicly accessible. Despite this democratic problem of limited access to the archives of a state body, it may be justified to reflect on the problem of the archive that Ricœur brings up.

Ricœur observes that documents in the historical context often serve a function of proof and at the same time a critical function. With the help of documents (including testimonies), an ideological intention to conceal or distort the facts can be revealed. But criticism directed against former representation should, in the same manner, be directed towards the documents themselves and “the conditions of historical production and its concealed or unconscious intentions”. Ricœur thinks that the original idea about the critical potential of historical documents has turned into an illusion about documents. He states:

The data in a data bank are suddenly crowned with a halo of the same authority as the document cleansed by positivist criticism. The illusion is even more dangerous in this case. As soon as the idea of a debt to the dead, to people of flesh and blood to whom something really happened in the past, stops giving documentary research its highest end, history loses its meaning.

Here, Ricœur refers to meaning as something that is lost and can be discovered in the narrative, when victims tell their stories. On the one hand, Ricœur’s perspective can be interpreted as an argument for a narrative (literary) representation of victims’ stories. On the other hand, his

623 Ricœur, Paul: Time and Narrative, Volume 3, 118.
624 Ibid.
perspective again raises an important question about the possibility of representability of the experiences of large-scale human rights violations and a critique against the epistemological naiveté of positivism. Following his earlier idea that the paradox of testimony can only be resolved by hermeneutics, it can be argued, with Derrida,\textsuperscript{625} that the archives of truth commissions can never be closed in either a literal or a figurative meaning. The documents of the truth commission should remain open for interpretation.

For Ricœur, the hermeneutical process is a profoundly critical endeavour, one which seeks to expose the concealed meanings hidden in the texts and relate them to political, cultural, and historical processes, practices, and institutions. Victims’ testimonies are stories that victims tell the public about the violations they have been exposed to. They are also documented and preserved in the archive and hence constitute written texts that can be interpreted in relation to the particular context of their production: the speaker and their audience, the perception of the event, its representation, and its reception.

Moral responsibility, nevertheless, stretches beyond interpretation and towards action. It moves forward towards the necessity of judgment as a recognition of both individual and collective responsibility. Inlicted suffering is a result of human wrongdoing and despite the complexity and impossibility of legal accountability, moral and political responsibility must be acknowledged.

6.4 Conclusion

In this chapter, I set out to analyse the critical potential of testimony by focusing on testimony’s political and ethical dimensions. This particular chapter, like the dissertation in general, is based on the eclectic use of various perspectives from different thinkers: here, Foucault, Arendt, and Ricœur. Although, as noted in Chapter 1, I have sought neither to synthesize nor compare their perspectives, my analysis of their ideas clearly shows some nexuses that might be developed even further. First and foremost, however, the analysis shows that all three thinkers have

something of importance to say about testimony and its ethical and political dimensions, as I summarize below.

Before proceeding with my clarification of testimony’s political and ethical dimensions, I must acknowledge that the perspectives analysed here not only allow us to develop the critical potential of testimony, but also generate a critique of testimony in the work of truth commissions. As Franka Winter rightly notes, despite the growing popularity of public hearings and testimony, these practices have provoked surprisingly little criticism. Critics have addressed problems of procedural fairness, security issues, and the problem of selection.626 As mentioned in the previous chapter, Sanders shares this view and also observes that the majority of scholars have addressed procedural problems and the facilitation of certain kinds of stories.627 What is at stake in this study is the impact of testimony as a form of truth-telling for the understanding of justice in the context of truth commissions’ work. The ambition of this study is to go beyond the problematization of the political, social, and cultural circumstances of truth production and the specific context in which testimony is given, and to challenge the hegemonic perspective on testimony and common assumptions about its role for justice.

In Chapter 5, I argued that truth commissions and public hearings contribute to the depoliticization of justice claims through the idea of testimony’s healings effects and a strong link between testimonies and reparations. In this chapter, I have shown what actual political potential testimonies may have by embracing a radical critique of power and including the plurality of perspectives. Winter argues that “as long as testimony is not accompanied by an opening of more powerful genres of speech to subaltern people, it undermines its very own democratic standards.”628 I want to go further and claim that the establishment of truth commissions and the organization of public hearings severely obstruct the very possibility of realizing testimony’s potential.

This potential is obstructed in several ways. Firstly, the establishment of specific institutions meant to investigate and present the truth

628 Winter, Franka, op. cit., 104.
about past violations undermines the significance of truth and truth-telling for the political realm. Due to its temporal nature, the work of truth commissions is bounded by time constraints, implying a finality to its work. The institutionalization of truth-telling is also embedded in the power structure, including the status of truth commissions, their relationship with state authorities, and discursive practices. In case of Morocco, where no change of political regime occurred, the ERC serves a function of legitimization sooner than a critique of power. It creates a deceptive image of openness and the state’s commitment to taking responsibility for the past crimes.

Secondly, the establishment of truth commissions is characterized by the prejudgment which limits testimony’s performativity, its unpredictable and unexpected content. In societies that have been exposed to long-lasting organized lying, as Arendt notes, there always comes a moment when lying becomes counterproductive due to society’s indifference. The same indifference may occur towards truth-telling as presented in institutions specially created for this purpose. The predetermined function of truth commissions shapes the testimonies that are presented but also undermines the democratic value of testimonies.

Thirdly, the justification strategies of truth commissions, including the discourse on the inability of legal justice to deal with large-scale human rights violations, raise several problems. As stated earlier, in line with Ricœur, I tend to think that it is the incapacity rather of the political institutions than the legal ones that facilitates the establishment of truth commissions. As a consequence, the state perpetrator avoids not only legal accountability but also a political and moral responsibility. The grey zone between victims and perpetrators, and the putting of victims and their needs at the centre of justice endeavours, despite good intentions, may lead to making the perpetrator both omnipresent and invisible in terms of responsibility. It may also result in treating human rights violations as suffering and not wrongdoing, disregarding the political and moral responsibility of the state, the community, and the individual members of its community.

Let me now, drawing on my analysis in this chapter, clarify what is the political and what is the ethical dimension of testimony. To begin with the political dimension, both oral and written testimony make possible the transforming of individual experiences in the public realm. If a written testimony can tenably be understood as a statement (even if it seeks to invoke a response), oral testimony is a performative act and
should rather be understood in terms of a dialogue than as a one-sided statement. Reciprocity is critical for testimony to be meaningful.

As an expression of individual experience, testimony makes it possible to critique political power that has either actively or passively contributed to the human rights violations. The purpose of the critique is liberation from domination through empowerment and recognition via active participation in the political transition. In this way, justice claims are brought to the fore. Among possible claims, one remains the most significant: the responsibility claim. The state-perpetrator must acknowledge its responsibility and make every effort to determine various degrees of individual and collective responsibility. It should commit itself to reforms that would preclude the recurrence of the violations presented in the hearings. An important part of this acknowledgment is the recognition of the political struggle that constitutes the background of human rights violations: the recognition that these violations were not sporadic but part of a strategy for the elimination of political opponents. The political struggle that is always asymmetrical and is fought on unfair conditions must be transformed into a political struggle on democratic terms, where the battlefield is not a secret detention centre, but democratic institutions; where the means are not torture and persecution, but public deliberation.

Moving on to the ethical dimension of testimony, this also arises from the responsibility claim, but the difference is to whom the claim is addressed: not the state, but the whole community. As Rieger suggests, the social bond should be re-established and this can be done particularly by means of testimony. Testimony imposes a moral and hermeneutical responsibility to engage with critical self-reflection and contributes to a feeling of collective identity. Critical self-reflection should be directed at one’s individual engagement (passive or active) in human rights violations. This reflection presupposes a space between established norms and individual moral judgment and deliberation. It also presupposes a capacity to think and be critical towards legal and moral norms. Although Foucault and Arendt have separate individuals in mind, individual subjectivation and thinking still demands engagement with others. Rieger aims at both individuals and communities as collectives and hence can be interpreted as offering support for such processes as the public hearings of truth commissions, where testimonies serve as a symbol for discontinuity, by exposing the moral collapse that accompanies large-scale human rights violations.
Finally, the discrepancy between the political and ethical dimensions of testimony is not a strict distinction. Despite the clarification of these two separated dimensions just presented, the necessary connection between the political and ethics should be maintained. Many questions about large-scale human rights violations, including complicity and resistance, collective and individual responsibility, critique of political power, and well-established norms demonstrate this connection. Hence, moral judgment and considerations should guide the political realm. The political, understood as a public space based on the plurality of perspectives and the equality of each member of the community, is re-established by participation in public deliberations. Through this participation, moral considerations are enriched with the perspective of the Other.
7. Breaking the Veil of Silence

The purpose of this chapter is to dig into the Moroccan context and contextualize the arguments that have been presented thus far. The chapter begins with a textual analysis of the report of the Equity and Reconciliation Commission based on the following questions: how justice is understood in the report and what role is ascribed to testimonies and public hearings. This is followed by an analysis of testimony’s use and its implications for the understanding of justice in the aftermath of large-scale human rights violations. Although the primary focus of the study is the work of the ERC and its role for justice, I also use an analysis of two novels, *Talk of Darkness* by Fatna El Bouih and *Tazmamart* by Aziz BineBine, to develop my critique of the ERC further.

7.1 The Report of the ERC

This section is devoted to an analysis of the Final Report of the ERC, which constitutes an official narrative of past human rights violations in Morocco. The report is the result of an investigation carried out by the truth commission. The investigation is based on different activities organized by the commission, including public hearings with victims who testified about the human rights violations, group hearings, and dialogue sessions with victims as well as representatives of civil society, politicians, and scholars. The report is about 700 pages in Arabic and has also been translated into French, Spanish, and English. It includes five parts: Volume 1, “Truth, Equity and Reconciliation”; Volume 2, “Truth and Responsibility for the Violations”; Volume 3, “Justice and Reparations for Victims”; Volume 4, “The Components of Reform and Reconciliation”; and Volume 5, “The Organization of the Work and Activities of the Commission”.

Dealing with this text, especially in translation, requires a reflection on the problem of language. Due to my language limitations, I have
analysed the English version. Bearing in mind that translation is always necessarily an interpretation of the text, reading the report in English instead of Arabic may have altered my understanding of key concepts and categories that are embedded in the language. This necessarily constitutes an obstacle that must be acknowledged. Nevertheless, the commission’s own localization of Morocco’s experience in a broader international context of transitional justice and human rights facilitates comprehension of its perspective on justice and testimony.

Furthermore, the text of the report is neither literary nor philosophical. It can be perceived as overly formalist and empty. It is possible to doubt whether the text constitutes a valuable resource for answering questions about the understanding of justice and the role of truth and truth-telling for this understanding. While it would be wrong to claim that an evaluation of the ERC’s work is possible based solely on the analysis of its Final Report, an analysis of which questions are covered and which are omitted is valuable for disclosing the normative assumptions behind the establishment of the commission and its work. Thus, an analysis of the report may provide useful insights. Let us turn to an examination of how justice is presented in the report.

7.1.1 Justice and Responsibility

In Chapter 3, a legalistic understanding of justice was problematized based on Derrida’s deconstruction of justice. Derrida does not deal with any concrete manifestation of justice or any particular law but challenges the central matter of justice and its (im)possibility. Challenging taken-for-granted norms, namely, the idea of justice as achievable and as mainly belonging to the legal realm, which seems to be the case when it comes to truth commissions and their understanding of justice, allows us critically examine these norms, their nature and role. I must emphasize that truth commissions are not legal institutions but are defined as quasi-judicial mechanisms. Nevertheless, the transition from retributive justice to restorative justice demonstrates the transition from the paradigm of crime to the paradigm of torts due to the centrality of reparations. In other words, truth commissions can still be interpreted as belonging to the legal realm.

The report of the ERC offers us several notions of justice. Firstly, the report often refers to justice as transitional justice, and it looks to
previous experiences of dealing with the past that is categorized as transitional justice. Secondly, the report also understands justice in a strictly legal and institutional sense, as in a “system of justice”, “ministry of justice”, or “criminal justice”. Thirdly, the report establishes a link between justice for victims and reparations. And finally, the ERC also uses justice in a broader sense, when it refers to “social justice” and “principles of justice and equity”. While the first two perspectives on justice are quite explicit and clear, the other two perspectives demand further interpretation.

The link between justice for victims and reparations imposes a paradigm of restorative justice. Following the logic of restorative justice, reparations are considered to make restoration for the harm committed. In the Final Report, the ERC states clearly:

In harmony with their reconciliation with their past, Moroccans chose to reach a peaceful, just and equitable settlement of the past of violations by adopting restorative justice rather than adversarial justice, and historical truth rather than judicial truth, because the arena for this sort of justice is not the law courts but the public space, whose horizon stretches to include all spaces of social, cultural and political action.629

Restorative justice is actualized in relation to one of the aims of the commission’s work: the restoration of trust between the state and the people. But the most prominent way of implementing restorative justice is through economic compensations, not responsibility-taking. In Volume 3 of the Final Report, “Justice and Reparations for Victims”, the ERC describes reparations as having three goals linked to justice: firstly, recognition of the victims as citizens with rights, where trust between citizens and state institutions is emphasized; secondly, contributing to the development of social solidarity; and thirdly, the reparation program must be linked to the effort to uncover the truth.630

The first goal describes trust as being restored by the recognition of victims as citizens with rights. The notion of the restoration of trust

stems from a broader perspective on reparation, one which encompasses not only economic compensation but also the restoration of relationships. Margaret Urban Walker argues against a legalistic view of reparation and develops an account of restorative justice as aiming at “restoring relationships”. Her account is demanding: it requires, amongst other things, not only reparation of the harm but also responsibility-taking and strengthening the capacity of individuals and communities to actively make justice claims.\textsuperscript{631}

Recalling Derrida’s deconstruction of testimony, we may say that the act of faith is central to understanding the essence of a testimony. As argued in Chapter 5, testimony is a performative and profoundly relational act, and it demands that a witness makes a promise to tell the truth and asks the recipient to believe them; conversely, a demand is made of the recipient to believe and to exercise the act of faith. In the context of the ERC, trust does not mean the trustworthiness of witnesses, the problem addressed by Derrida. Here, we are dealing in a sense with the reverse logic: establishing trust by the process of witnessing. On the one hand, the fact of organizing public hearings and creating the opportunity to speak out publicly about human rights violations is meant to demonstrate the commitment of the recipient (and in the case of the ERC, the recipient is the state) to the act of faith. On the other hand, the idea of trust between the victims and the state focuses mainly on economic compensation. In the aftermath of state-sponsored violence, it seems to me that the demands of trust should be higher. It should imply the guarantee of non-recurrence, which cannot be achieved through economic compensation, but only through political reforms that aim firstly at tracing and identifying various degrees of responsibility for the violations, secondly at the inclusion of excluded people and groups in public deliberations and decision-making processes. Trust between the state and the society seems impossible to establish without responsibility-taking, be it legal, political, or moral responsibility.

The last goal of reparations is also of particular interest since here the ERC seems to mean that the need of victims to uncover the truth is satisfied when this uncovering is linked with economic compensations. In other words, the focus should not lie only on the economic aspect but should also be linked to the victims’ right to truth. In the section devoted

to the commission’s philosophy and approach to reparation, the ERC states that reparation is a set of procedures that the state should make to strengthen justice. The ERC adds that reparations serve as an official acknowledgment of the responsibility of the state for the crimes.632

The question of responsibility lies at the core of both Derrida’s and Ricœur’s perspectives on justice. Responsibility in their understanding derives from the call of the Other. As discussed in Chapter 3, Derrida writes about the “incalculability of the gift”, meaning that justice cannot be achieved through either compensation or punishment. He criticizes the reduction of justice to legal accountability, but points to the paradox of the gift. On the one hand, understanding justice as a gift implies that it can never appear as such, and when perceived as a gift it is destroyed. On the other hand, responsibility towards the Other demands a decision, which must be singular and unpredictable. In other words, the decision cannot be based on a mechanical application of a rule or a calculation but should consider the particularity of each case and be based on moral judgment.

For Ricœur, responsibility also stems from the Other, but he seeks to approach the Other with the help of mediation. Lévinas’ ethics of responsibility lies at the heart of Ricœur’s understanding of ethics formulated as a communicative metaphor – oneself-as-another. The metaphor implies that through communication with the other(s), the self is constructed as a moral and political subject. Ricœur pays special attention to the meaning of suffering and treating the Other as a suffering being. The suffering of the Other implies that our actions should be oriented around the aspiration to compensate for that suffering. Compensation for suffering should not be oversimplified here but should be understood through the lens of Ricœur’s perspective on justice and how just institutions must be organized to facilitate liberation from domination and guarantee inclusion in political decision-making.

In my understanding, both Derrida and Ricœur write about moral and political responsibility, not legal accountability. First and foremost, their accounts raise a critique against the juridification of justice, which manifests itself even in quasi-judicial institutions such as truth commis-

sions. In the passage from the ERC report quoted earlier, the commission identified the arena of justice not in the court of law but in the public spaces. Following Ricœur, who claimed, in the Epilogue to *Reflections on the Just*, that questions of responsibility, which belong to the political domain, are often mistakenly transferred to the court of law, one may wonder if truth commissions are the right response to this mistake and if they are situated in the proper domain. Obviously, truth commissions are political institutions, they are public, and to a certain extent, they allow public deliberations. But as I claimed in Chapter 6, the establishment of truth commissions does not demonstrate the incapacity of legal justice to deal with large-scale human rights violations, but rather the incapacity of existing political institutions, which transfer this task to quasi-judicial institutions. The transfer, as Morocco’s case clearly shows, is not the result of independence or autonomy concerns.

Furthermore, the critique of juridification should not result in a view of human rights violations as suffering, allocating them to the non-legal realm. The consequences of this allocation, as discussed in Chapter 5, are the shirking of not only legal but also political and moral responsibility for the violations. Returning to the ERC report, this necessitates a consideration of what an explicit acknowledgment of state responsibility means. In the report, the ERC states:

> The analysis of data and information culled from different sources concerning the grave violations falling within its remit, as well as the investigations carried out, enabled the Commission to uncover the responsibility of the different security apparatuses for those violations in most of the cases submitted to it. Indeed, in many cases it was proved to the Commission that there was joint responsibility, and in some cases solidary responsibility among numerous apparatuses. To facilitate the analysis of the political and legal responsibility arising from the actions and the interventions of those apparatuses, it is worth remembering the legal systems regulating them.634

This lengthy passage points out the collective responsibility of state authorities (“joint” or “solidary”). Furthermore, it contains a distinction

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633 Ricœur, Paul: *Reflections on the Just*, 256.
between the political and legal responsibility of the security apparatuses. The ERC does not itself engage in an analysis of these forms of responsibility, but it urges consideration of the legal system that was in place at the time of the violations, which can be interpreted as a legal positivist legitimation of the violations committed within the law frame that was valid during the years of the violations. Later in the same volume, the ERC claims that it was impossible to determine degree of responsibility due to the number of security apparatuses\textsuperscript{635} and that the commission adopted the principle of affirming the truth publicly as a strategic choice to express the responsibility of the state rather than the responsibility of individuals.\textsuperscript{636} The meaning of a “large number” is not clear, but the crucial point is that the ERC rejects any individual responsibility and imposes responsibility on the state.

Apart from general statements about state responsibility, the ERC also analyses some concrete events and acknowledges, for example, the responsibility of the state for the arbitrary detention of some of those who participated in the Skhirat coup attempt and were detained in Tazmamart Centre.\textsuperscript{637} However, the specification of state responsibility actually amounts to economic compensation. The ERC writes:

\begin{quote}
The state acknowledged the responsibility of its apparatuses for the violation, and after their release began to pay initial monthly sums to the surviving victims.\textsuperscript{638}
\end{quote}

Based on the way the ERC deploys the concept of responsibility, it may be argued that an explicit acknowledgment of state responsibility implies the assigning of responsibility of state bodies, mostly security apparatuses, and the overlooking of individual responsibility. The degree of collective responsibility is not specified, which is motivated by the large number of participants and the lack of any documentation for ascribing individual responsibility to state officials. As a result, no perpetrator is identified.

\begin{itemize}
\item \textsuperscript{635} Equity and Reconciliation Commission: Final Report, Volume 1 “Truth, Equity and Reconciliation”, 74.
\item \textsuperscript{636} Op. cit., 95.
\item \textsuperscript{637} Equity and Reconciliation Commission: Final Report, Volume 3 “Justice and Reparation for Victims”, 75.
\item \textsuperscript{638} Op. cit., 109.
\end{itemize}
Moreover, during the ERC hearings, victims and witnesses were not allowed to name suspected perpetrators, with reference to the rule of law principle and the presumption of innocence. This motivation is valid, but it also raises a question about the desirable participation of the perpetrators in the hearings, something that could have allowed for following rule of law principles while at the same time identifying individual perpetrators. The ERC adopted the perspective of state responsibility as a collective responsibility, which implies economic compensation for the harm. This form of responsibility is accompanied by careful calculations, examinations of grounds, and specification of the circumstances of the incurred harm, its grade, and its effects. It is a legal form of responsibility common within the system of tort.

Paradoxically, the arguments against retributive justice, and the incapacity of judicial systems to deal with large-scale human rights violations, do not result in a total repudiation of legal justice. Instead, the system of criminal justice is replaced by a system of tort without formal legal liability. Firstly, the state acknowledges its responsibility, which can be interpreted as a political move. Secondly, as a responsible collective actor, the state makes financial compensation to the victims. While in the system of torts, harm is understood to be committed against an individual, within retributive justice, harm is understood to be committed against the social contract between members of the same community. Hence, the harm is a violation not against a single individual but against the order of society, where the state takes upon itself the responsibility to prosecute those who violate that order. The specificity of the context of large human rights violations and the way that truth commissions address these violations are founded on the problematic coincidence of the state being both the perpetrator as well as responsible for prosecuting the perpetrator. For the sake of simplicity, the state should prosecute itself. Instead, as the case of Morocco, where the ERC operated within a framework of political continuity, the state opts for the system of torts rather than recognizing the crimes as violations of the foundational order in the society, which should be treated using criminal justice.

Furthermore, the establishment of truth commissions is accompanied by a rhetoric of “giving a voice” to the voiceless and centring attention on victims and their needs, which motivates the increasing popularity of testimony and public hearings. There is a risk, I maintain, that pow-
erful emotional testimonies that are presented publicly may give an illusory impression that the victim actually has a voice. In what follows, I seek to examine what role is ascribed to testimonies and public hearings in the report of the ERC.

7.1.2 Testimony and Public Hearings

Between 2004 and 2005, the ERC held seven public hearings in six regions: Figuige, Khenifra, El-houssaim, Marrakech, Rabat, and El Rachidia. During my conversation with Abdelhay Moudden, one of the former commissioners of the ERC, he explained that during its investigatory work, the ERC discovered that the testimonials had a repetitive narrative and therefore they decided to limit the number of victims who would represent the experiences of different specific groups, such as women and the Berbers. Moudden added that the repetitive narratives arose partly due to language problems. Many of the victims who belonged to the Berber group spoke neither Arabic nor French, but Amazigh. Another difficulty was the novelty of the form and their difficulty in formulating their stories publicly, since people who lived in the Rif and Atlas mountains had very little if any contact with the state authorities.639 Recalling Lyotard’s *differend*, a concept discussed in more detail in Chapter 5, different modes and systems of representation constitute an injustice in themselves by preserving hegemonic order and not allowing the expression of the wrong. Victims who are deprived of the means of making justice claims – in the case of Morocco, the indigenous rural population – are exposed to secondary injustice.

The ERC formulated the purpose of public hearings as the restoration of the dignity of the victims whose rights had been violated, moral reinstatement, preservation of group memory by sharing their pain and suffering, and alleviation of the psychological after-effects. Apart from these purposes that were directed towards the victims, the ERC also said that public hearings played an educational role with regard to the responsible parties, public opinion, society, and future generations. Public

639 Notes from the conversation with Abdelhay Moudden, April 1, 2018, Rabat.
hearings were thus supposed to play a significant role in the process of achieving justice and reconciliation.\textsuperscript{640}

The significance of public hearings can be understood in two ways. Firstly, they represented the first time victims could talk about their experiences from an official public platform. This was in contrast to previous initiatives, such as hearings organized by civil society organizations, or the formats of testimonial and prison literature, films, and theatre performances, which did not constitute official public platforms. Secondly, public hearings involved audiences – people who listened to the victims’ testimonies.\textsuperscript{641} The very first public hearings were broadcast live. Sabri Mohammed, head of the Protection and Assistance for Victims Department, emphasized that the timing of the hearings was crucial: they were broadcast at 8.30 p.m., when many Moroccans watch the news.\textsuperscript{642} Moudden added details to the picture of the first hearings, saying that because they were being broadcast live, the broadcaster limited the duration of the hearings to two hours, but the members of the ERC decided not to stop the testimonials when time was up. As a result, that was the first and the last time a public hearing was broadcast live.\textsuperscript{643} To gain control over what was presented at the hearing, all the subsequent hearings were recorded\textsuperscript{644} and parts of them are available on the Internet.\textsuperscript{645} The hearings were aired on television, but they were not broadcast live.

The organization of public hearings for an educative purpose meant that different forms of activities were used. For example, dialogue sessions with victims were used in a complementary role to the public hearings themselves.\textsuperscript{646} Dialogue sessions and field visits were characterized by direct contact between the ERC and victims to determine the circumstances of the violations and gather complete information for pe-

\textsuperscript{640} Equity and Reconciliation Commission: Final Report, Volume 1 “Truth, Equity and Reconciliation”, 96.
\textsuperscript{641} Ibid.
\textsuperscript{642} Notes from the conversation with Sabri Mohammad, March 28, 2018, Rabat.
\textsuperscript{643} Notes from the conversation with Abdelhay Moudden, April 1, 2018, Rabat.
\textsuperscript{644} Notes from the conversation with Abdelhay Moudden, April 1, 2018, Rabat.
\textsuperscript{645} See for example, Les séances d’auditions publiques- Rabat 02, <https://wiki.re-mixthecommons.org/index.php/Justice_transitionnelle:_1%27expérience_Marocaine>
\textsuperscript{646} Equity and Reconciliation Commission: Final Report, Volume 1 “Truth, Equity and Reconciliation”, 97.
titions. Public hearings, in contrast, more closely resembled staged performances, where the situation of speaking was negotiated and prepared beforehand.

As stated in the report, some additional dialogue sessions were also organized to discuss the political, intellectual, and historical contexts for the human rights violations that Morocco had witnessed since its independence. These sessions were jointly led with representatives of civil society, trade unions, political organizations, and academics.647

Of note so far is the discrepancy between the different forms of public events organized by the ERC. Amongst these events, I suggest that the field visits, dialogue sessions, and public hearings should be discussed in more detail, asking who participated in the events, what aims they pursued, and what role was ascribed to testimonies. In the case of field visits and dialogue sessions with victims, the participants included victims, third-party claimants, their families, and ERC staff. The purpose was to complement the information that had been provided in the reparation petitions in order to decide upon sufficient grounds for the petition and the appropriate reparations.648 Hence, testimonies served the function of cross-checking and completing details and were directly related to the right to reparation.

Another type of dialogue session was organized for discussions on political, intellectual, and historical contexts of human rights violations. These sessions included various representatives of civil society, trade unions, political organizations, and academics, as mentioned above. The participation of victims is not stipulated; however, it may certainly be the case that some of the representatives were also former victims of the repressions due to their political stances. The purpose of these sessions was to make possible an open dialogue about the past and the future in Morocco, touching upon questions of democratic transition and reconciliation. The testimonies that were presented during the public hearings were discussed in these dialogues and it was acknowledged that public hearings constituted the important historical moment. The focus lay on the public hearings and their significance. It is the fact that public hearings took place that was emphasized rather than the testimonies per se. The ERC commissioners and the other participants in these

648 Ibid.
dialogue sessions engaged in “readings of the public hearings”. In other words, testimonies that were presented at the public hearings provided material that was further worked through in the dialogue sessions. This demonstrates the process of bifurcation that occurs in the work of truth commissions, when the voices of witnesses undergo examination, categorization, sorting out, and as a result, vanish from the results of the commission’s work.

The public hearings themselves included the ERC commissioners, representatives from different groups of victims, and the audience. The audience included human rights representatives, representatives of cultural, political, and trade union organizations, public authorities, elected bodies, media representatives, members of the press, and foreign and local guests. The victims who participated in the public hearings were chosen by means of a rough categorization based on historical periods, events, and major trials. The victims were allowed share their stories with the audience in the manner and language that they preferred.

Based on what is stated in the ERC report about the organization of the public hearings, where the representation of different groups was prioritized over giving a voice to all victims, it may be concluded that the educational role of the hearings was prioritized. In its report, the ERC emphasizes the pedagogical dimension of the public hearings and describes them as one of the main features of the political landscape:

It was without doubt a courageous event, and out of the ordinary for the political history of Morocco, as the country opened up its wounds and made the pages of its history available for review and self-criticism.

While the purposes of the public hearings are clearly articulated in the report – allowing the voices of victims to be heard, listening to their testimonies, and sending a pedagogical message – the role of testimo-

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651 Ibid.
nies is ambiguous. In addition to the specified purposes, which are explicit and concrete, the ERC also suggests that “the public hearing gave priority to restoring dignity to victims whose right had been violated, morally reinstating them, preserving the collective memory, sharing the sufferings, and alleviating the psychological repercussions of their sufferings”.

I argue that this purpose contradicts the representative character of the hearings, where a sample of victims was represented. Following Derrida and his interpretation of Celan’s poem, “Ashglory”, in Chapter 5 I asserted the radical singularity of testimony. A prescriptive interpretation of Celan’s phrase “No-one bears witness for the witness” implies that no one can and no one should bear witness for the witness. The singularity of individual experience and individual witnessing about this unique experience perishes when a sample of victims is taken to represent the experiences of other victims. Why is this a problem?

Firstly, the link established by the ERC itself between witnessing and restoring dignity is broken when the majority of victims are not themselves bearing witness but are merely represented at the hearings. Following the ERC’s own logic, their dignity is not restored. Secondly, such representation presupposes the formation of a collective testimonial subject, something that is impossible to accomplish in a just way, by removing privileges and considering the subalternity of those unrepresented.

In its report, the ERC states that the first public hearings represented the beginning of the establishment of a “national narrative”. Consequently, the role of testimonies can be interpreted as constituting the national narrative of the past violations. It is necessary to emphasize that the ERC did not claim that a national narrative was established in the public hearings only that its formation began.

The oral testimonies were one of the sources used by the ERC to clarify the circumstances of the violations. In the report, testimonies are often referred to as a source of information, a complement to other

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forms of evidence. Meanwhile, “their limited and fragmented nature” is also acknowledged and problematized. The ERC writes:

The oral testimonies, as one of the sources used by the Commission, helped to clarify the circumstances surrounding the facts linked to the events object of its investigations. However, in some cases, their limited and fragmentary nature was apparent, when the same events were talked about in different and sometimes contradictory ways by those who had experienced them. This meant that they were only partially helpful in uncovering the truth in specific cases. This obstacle was overcome by cross-checking the data found in these testimonies with information derived from other sources, especially official documents and registers.656

The contradictory nature of testimony is specifically linked to the contradictory accounts about the political struggle after Morocco’s independence. In describing the historical context of human rights violations, the ERC takes a neutral stance, meaning that it perceived an analysis of the political struggle as beyond its mandate and the task of historians and researchers. The ERC adds that testimonies about different events, e.g., incidents in the Rif and the Atlas region, were presented to researchers.657

As previously stated, in addition to the public hearings, other forms of hearings were organized: specifically, closed individual and group hearings. Women’s testimonies were often presented in the group or closed hearings, and according to the commission, they constituted “the most powerful moment”.658 Women’s testimonies constitute the only instance in the report of the ERC, when oral testimony is quoted directly, depicting the special exposure of female victims and their physical and psychological injuries. The ERC problematizes the double suffering to which women were exposed due to the stigma and system of social punishment. The language of the section about the impact of the violation of women, and more specifically about their psychological and physical injuries, differs from the rest of the report. Not only are there direct quotations from dreadful stories about the violations, but also, more figurative language is used. For example:

This violation represented a moment of sudden and deep change in the life of women, and the study conducted on gender and political violence concludes by “considering that it turned their lives upside down”. It was not simply an upset but an earthquake that shook their beings, changed the course of their lives, shattered their dreams, and left a life-long scar on their minds and their emotions.\textsuperscript{659}

The use of direct quotes, the detailed description of violations, and the figurative language about the impact of the violations to which women were exposed all demonstrate, in my view, the ERC’s aspiration to bring special attention to women’s suffering. In the next section, the problematization of gendered suffering is presented.

To conclude, this analysis of public hearings and testimony in the ERC report demonstrates that the ERC’s activities had a plurality that should not be disregarded. While the focus of this study lies on public hearings, the purpose and content of the commission’s other activities show that public hearings sought to shift human rights violations from a justice paradigm to the paradigm of suffering and healing. The educative aim of the hearings is given priority. When it comes to testimony, it has already been shown that the role of the hearings is ambiguous, but they are predominantly referred to in the report as evidence or a source of information. Below, I offer an analysis of the ERC’s uses of testimony and show how these different uses reduce the meaning of human rights violations to trauma and harm that should be compensated.

7.2 Testimony and its Use

As I argued in Chapter 5, a depoliticization of previous human rights violations occurs when the violations are individualized, both through a discourse of testimony as healing and by binding truth-telling together with reparations. Consequently, this depoliticization concerns not only the representation of previous violations but also the depoliticization of justice claims and a shirking of the responsibility for the violations. In Chapter 5, which is devoted to testimony and public hearings, I also

\textsuperscript{659} Equity and Reconciliation Commission: Final Report, Volume 1 “Truth, Equity and Reconciliation”, 82-83.
presented two arguments critiquing the use of testimony in truth commissions.

Firstly, I argued that the discourse of testimony as healing – what I call the healing discourse, which consists of the idea that public speaking about suffering contributes to “working through” the past – reduces the meaning of human rights violations to a trauma that must be treated. The justice paradigm is then shifted towards the paradigm of mental health. The clinical use of testimony has served as a justificatory strategy for the establishment of truth commissions in which victims and their suffering take the central place, in contrast to retributive justice, where the perpetrator is in focus. My critique concerns particularly this reductionism and is not a rejection of traumatic effects of human rights violations. The reductionism results in obstructed moral and political responsibility, where the imposed harm is perceived as suffering in the absence of a subject who committed the violations. I developed this critique in Chapter 6, in regards to the potential of testimony to impose political and moral responsibility.

Secondly, I argued that the link between testimony and reparations (understood here as solely economic compensation), also results in a reductionist view on testimony. This reductionism concerns the evidentiary function actualized in the legal use of testimony, following Felman’s typology.\textsuperscript{660} It is problematic to address the circumstances of large-scale human rights violations by employing compensatory justice, since in doing so, the massive character of violations, their systematic character and normalization are disregarded. The individual harm is compensated, but the political struggle and power dynamics are downplayed. Furthermore, when a testimony becomes a ground for receiving reparations, there is a risk of a commodification of the survivors’ stories. Such commodification leads to a limited understanding of human rights as legal rights, disregarding the capacity of human rights to fight against injustices. The commodification of testimonies occurs when testimonies’ exchangeability (their compliance with the criteria for economic compensations) becomes their defining feature.\textsuperscript{661}

Returning to the context of Morocco’s truth commission, I will focus here on three areas: the conceptualization of suffering in the report of

\textsuperscript{660} As a reminder, Felman distinguishes between legal and historical uses of testimony, as well as the clinical dimension of testimony.

\textsuperscript{661} I discuss commodification in more detail in Chapter 5.
the ERC, the commission’s approach towards reparations, and, finally, the issue of reconciliation. An analysis of these areas demonstrates their internal connection, which is important for a critical analysis of the understanding of justice. Despite the ERC’s explicit acknowledgment of the state’s responsibility for the violations in the report, this responsibility is neither specified on the level of state institutions (makhzen) nor on the individual level. Acknowledgment of the state’s responsibility results in an obligation by the state to satisfy reparation petitions. The conceptualizations of suffering and reconciliation in the ERC’s report also demonstrate the state’s aspiration to shirk responsibility. The concept of suffering must be contrasted against the concept of wrongdoing. While suffering denotes a passive experience of the suffering subject, the concept of wrongdoing presupposes an active subject who commits the violation. Furthermore, the ERC’s report suggests that reconciliation should take place between the Moroccan people and their history and not between the victims and the state perpetrator. Below I develop an analysis of each of these areas to explicate the problems presented above.

7.2.1 Suffering and Psychologization

Looking closely at the report of the ERC, a discourse of suffering can be identified. The report’s perspective on suffering can be interpreted in various ways and the discourse manifests itself in the report in different ways, establishing connections with the aims of the public hearings, national reconciliation, and reparations. Some of these connections can be understood through the healing discourse, but not all. The connection between suffering and reparation should be understood through the legal use of testimony: that is, when testimony functions as evidence.

The ERC’s report demonstrates the paradox of the healing discourse as a perspective that both diminishes and magnifies human rights violations. On the one hand, it may be observed that human rights claims are reduced by the insinuation that public speaking has positive psychological effects. On the other hand, human rights violations are abstracted by shifting the healing and suffering discourse to the societal level and conceptualizing it in terms of reconciliation as an alternative to justice. In other words, the conceptualization of suffering demon-
strates how a depoliticization of justice claims manifests itself in Morocco. In what follows, I examine and problematize the way the healing discourse is developed in the report of the ERC.

If we recall, the ERC states that the public hearings pursued two aims: firstly, restoring the dignity of the victims, and secondly, an educational role. Let us look at the first aim and its formulation in more detail. The ERC writes:

In the context of supporting the process of reconciliation, the Commission organized seven public hearings in six regions of the kingdom of samples of victims, in order to restore the dignity of the victims whose rights had been violated, to reinstate them morally, to preserve the group memory, to share their pain and their suffering, and to alleviate the psychological after-effects (emphasis added).662

Even though the healing discourse is not given a central place in the report, the ERC acknowledges the positive effects of public speaking throughout the report. Apart from contending the actual positive effects for one’s mental health, due to the institutional incapacity to deal with psychological trauma, the healing discourse has also consequences for the understanding of human rights violations. This is the primary concern of the study. The psychologization663 of the response to human rights violations by applying psychological theories and praxes to the field of politics can be observed in the work of truth commissions. The assumption that speaking in public about suffering will have positive effects stems from psychoanalytic theory and one of its methods for treating mental disorders. In Chapter 5, I argued that the clinical dimension of testimony was developed extensively in the post-Holocaust era in relation to the repressed memories of Holocaust survivors, and psychoanalysis was applied for “working through”664 these memories. Public speaking may also deteriorate patient’s condition and it necessarily

664 Freud’s concept of durcharbeiten.
demands treatment. Therefore, I share Herman’s view\textsuperscript{665} that institutional settings such as truth commissions are not equipped with the proper competence to deal with psychological traumas.

Moving forward, psychologization may be observed as a common trend (being a part of therapeutic culture) in various fields, and it goes beyond the scope of this study to provide a comprehensive account of this phenomenon. However, in relation to human rights violations, two questions must be discussed. The first question concerns the underlying causes of the psychologization of human rights violations. The second question concerns the effects of psychologization for an understanding of human rights violations and justice.

Firstly, following Foucault and his understanding of biopolitics, I suggest that psychologization may be understood as one of the manifestations of power, where the question of human rights violations is transferred from the sphere of law and politics to the sphere of mental health. This shift, I argue, serves a strategy of making the parties responsible for the violations invisible. In the Moroccan case, the perpetrators were literally absent, since they did not participate in the ERC’s hearings and it was forbidden to name them. Too, euphemizing the period of large-scale human rights violations by referring to it as “the black years” or “the gloomy years” (“les années sombres”) contributes to this shift. Hence, the main underlying causes of psychologization are the incapacity and (/or) the reluctance of the state to take full responsibility for the violations.

Secondly, the effects of psychologization are necessarily linked to its underlying causes. One such effect concerns the individualization of human rights violations. As I argued in Chapter 6, human rights violations should be treated individually, but doing so downplays their political dimension. The political dimension of human rights consists in their capacity to function as political principles in the struggle against oppression and domination. Individualization as an effect of psychologization leads to the loss of the political as a fundamentally collective activity. Hence, the depoliticization of justice claims in Morocco’s truth commission does not constitute a total disregard of the historical context of political struggle in the aftermath of Morocco’s independence. However, the depoliticization of justice claims does occur through the

\textsuperscript{665} Herman, Judith: \textit{Trauma and Recovery}, 32, 207-11.
strong emphasis on mental and physical suffering that requires compensation.

Furthermore, the ERC’s gender perspective on the violations, presented in Volume 1, “The Distinctive Character of the Violations to which Women were Subjected”, indicates that special attention was given to the different ways women were exposed to violence. For example, the ERC paid special attention to how women were tortured:

In addition to the various forms of torture mentioned above, the women’s suffering was more acute in that during the period prior to prosecution, they were subject to special forms of torture. This is due to the fact that women are tortured by men without any consideration for the dignity of the victim. Sometimes women are forced to stand naked in front of their torturers with all the accompanying danger of rape and the threat of it both as an apprehension and as a reality.

Women’s suffering is increased when they are deprived of toilet facilities during menstruation as a means of intensifying the torture.666

The ERC considered both physical and psychological as well as economic and social injuries. Women are often represented in their family roles, for example as mothers who, in case of detention, experience suffering caused by the separation from their children.667 Most commonly, women are represented as wives and mothers to the political detainees who were disappeared, which diminishes their own political agency. In the ERC’s report, the discourse on suffering is gendered by raising important aspects of social and family structures in Moroccan society and women’s different experiences as a result of these structures. Women’s corporal vulnerability is also brought to the fore with the focus on menstruation, periods of pregnancy, and the risk of being exposed to sexual violence. Nevertheless, the gendered picture of suffering in the report results in a narrow perspective on women’s political agency and autonomy and the continued objectification and victimization of women as sexual objects. This victimization is intensified by the impossibility of making a claim against the perpetrator and the absence of responsible subjects.

I ought to add that the report does discuss the role of women in combating human rights violations, but even there, women are presented as family members to the political detainees. The report describes how women’s political agency is actualized and exercised through their struggle for the rights of their husbands and sons. The commission gives an account of three levels of women’s engagement in combating for the rights: the movement of families of political detainees, the movement of families of the abducted and those of unknown fate, and the private level of “maintaining the cohesion of their families, and ensuring a minimum of provision for their families, in circumstances and conditions of the utmost severity.”\textsuperscript{668} Thus, even though the ERC recognizes that women were exposed to violations due to their political stances, there is a tendency to depoliticize women as political actors in their own right.

As has been pointed out in previous research on the gender dimension of truth commissions’ work, truth commissions often disregard the plurality of victims as representing a certain group. Gendered expectations about women are characterized by privileging rape stories at the expense of all other experiences of women survivors.\textsuperscript{669} Gendered narratives are often reduced to narratives about gendered violence. In the case of Morocco, they are complemented by stories of women’s resistance and struggle for the rights of their missing male family members. Any representation of women’s experiences of being political detainees themselves is almost absent in the report.

To sum up my arguments so far, I contend that truth commissions in general and the ERC in particular are inappropriate institutions for dealing with psychological trauma as a result of human rights violations. In so contending, I do not seek to undermine the dreadfulfulness of the crimes, particularly for the mental condition of survivors. I do wish to underline my doubts about the appropriateness of the institutions for treating their distress. Thus, it is problematic that the assumed healing effect of public speaking is used to legitimize truth commissions and, more specifically, public hearings. Psychologization is exercised at the expense of demanding responsibility for the violations.


Furthermore, I have chosen to focus on gendered suffering due to its centrality in the ERC report, which can also be interpreted as a strategy for depoliticization, directed towards women, whose political agency is undermined. The plurality of experiences is disregarded, supporting the idea that the work of truth commissions has a predetermined character.

### 7.2.2 Reparations: A Moroccan Approach

Suffering can be understood not only as a mental condition (as discussed above), but also as a physical condition, consisting of pain, injuries, and deteriorated health conditions. The recognition of suffering is linked to the aspiration to give compensation for injuries. The ERC adopted a special approach to reparations, seeking to compensate both individuals and communities.

In the introduction to Volume 1 of its report, the ERC claims that it has contributed to the normative status of the Moroccan experience of transitional justice through strategic initiatives, goals, and a work plan. One of the normative stances developed by the ERC was its “own philosophy and a comprehensive approach in dealing with reparations.”

The ERC considered reparations to be at the core of bringing justice to victims, and reparations programs were supposed to be more than just added value.

The ERC explains that the general concept of reparation for injuries is presented as a group of measures and procedures aimed at making reparation to victims for the harm they have incurred from human rights violations. These measures are not limited to financial compensations, but may take different forms, including recovery of despoiled rights, reinsertion, restoration of dignity or confiscated rights, and restitution.

In the report, the ERC describes its approach as a holistic approach to reparations for injuries. How was this holistic approach understood

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670 In the report, the discourse on suffering is also linked to reparations and reconciliation, but I have chosen to treat these two questions as two additional questions, which illustrate the use of testimony in the ERC.


Guided by its holistic approach to reparation for injuries, the Commission sought to link this with its other tasks in the fields of uncovering the truth, establishing justice and promoting the components of reconciliation.673

While the truth was a necessary condition for receiving a reparation, reparations were also considered necessary for establishing justice, for reinstatement for the victims, and even for non-repetition of the violations.

Secondly, the holistic approach should be interpreted as an idea that reparation for injuries should possess both symbolic and material dimensions. Reparations should affect individuals, groups, and regions.674 This generous approach towards the concept of reparation, including various forms of individual and collective reparations, overshadows the urgent problem of the subject who should have the authority to make decisions about applications for reparations. Clearly, the ERC adopted the paradigm of torts, according to which a plaintiff (in this case, a victim) brings a petition against a defendant (in this case, the Moroccan state). Such a framework requires an independent instance to decide the case: that is, to arbitrate between plaintiff and defendant. However, in Morocco’s case, the independence of the ERC is in question. In its report, the ERC refers to international bodies that have jurisdiction to decide upon reparation cases. Amongst others, it names the Human Rights Committee, the Committee against Torture, and the Inter-American Court of Human Rights. The ERC makes important reference to the significant case of Velasquez Rodriguez v Honduras that was brought to the Inter-American Court of Human Rights. The case established a principle of international law that every violation of an international obligation which results in harm creates a duty to make adequate reparation and that it is the competence of the international court to determine the

674 Ibid.
amount of reparation. While the ERC’s reference to the case as a precedent for the individual right to reparations and the corresponding duty of states elucidates the very nature of the right to reparation, it also demonstrates the persistent need of an independent authority to decide the cases.

The ERC emphasizes the relationship between truth and reparations. How can this relationship be understood? According to what has been presented above, the truth about violations is considered to be a broader goal of reparations. In Morocco, victims who submitted petitions for reparation were also required to state the reasons for compensation and the circumstances of the violations and strengthen their positions with valid information. Thus, on the one hand, petitions served a truth-seeking function and contributed to the documentation of the events between 1956 and 1999. On the other hand, the petitions were exposed to the criteria for judging their credibility, which means that truth was a necessary condition for receiving reparations.

The concept of reparation is also linked to the idea of justice as reinstatement for the victims. The ERC report states:

In other words, reparation for injuries means affirming justice towards society, those responsible for the violations, and the victims, which means that compensation procedures are included as part of that justice.

By making the reparation schemes and criteria transparent, the ERC focuses mainly on the procedural aspect of justice.

The holistic approach towards the right to reparations is problematic. The relation between truth and the right to reparations puts victims into a position where their eligibility for reparations depends on the credibility of their stories. Their stories are formulated in petitions, for which the Arabic word is ifada, meaning a statement for indemnification. As it has already been noted, Slyomovics argues that the ERC deliberately chose the term ifada for this purpose over the term shahada, which means witnessing or testimony. Shahada was associated with former

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victims’ testimonies given in literature, newspaper articles, and letters.678 These testimonies did not pursue indemnification, but they did seek to reveal experiences hidden behind a veil of silence. The unspeakable experiences of detention and torture were presented in a form that is impossible to deal with by applying the law and paying compensations.

7.2.3 Reconciliation with the Past

The last part of my analysis of the ERC report deals with the way the ERC conceptualizes reconciliation. As stated earlier, they do so in a way that contributes to making the perpetrator, and the role of the Moroccan state as perpetrator, invisible. Reconciliation, says the ERC, is not meant to occur between the victims and the perpetrators, but between the victims and their past.679 The focus on reconciliation in the report, which manifests itself in everything from the name of the commission itself – the Equity and Reconciliation Commission – to the text’s extensive articulation of the question of reconciliation, demonstrates how the healing discourse both widens the perspective on human rights violations and abstracts the responsibility.

The discourse on individual suffering, which was examined earlier in this chapter, shows the problematic effects of psychologization for the response to human rights violations. The conceptualization of reconciliation transfers suffering to the societal level and depicts suffering as societal trauma. As I argued in Chapter 5, the paradigm of justice is replaced by the paradigm of reconciliation, something I believe to be not only the case in Morocco but also common in other examples of transitional justice initiatives. I will now turn to a closer examination of how reconciliation is understood in the ERC report and what consequences it may have for the understanding of justice in the aftermath of large-scale human rights violations.


The ERC defines its aim as the restoration of trust between the state and society by establishing reconciliation between the victims and their past. The process of reconciliation is set in the context of the changes that began in the 1990s, consisting of legislative reforms, political and institutional development, including, amongst other things, the creation of the Advisory Council on Human Rights. These developments marked the beginning of the process of reconciliation between Moroccans and their past, which the ERC sees as a constant process. The purpose of the ERC’s work was to direct this process and broaden its scope.

One of the prerequisites of reconciliation was the creation of a common memory and the strengthening of a shared identity. The Commission writes that the uncovering of truth about past violations will contribute to “the reordering of the common memory and manifestation of the enrootment of the elements of reconciliation in its social and cultural sense”. Here again, reconciliation is disconnected from political controversies. The ERC’s approach to the question of reconciliation demonstrates an aspiration to shift the focus from political conflicts (both ideological and socio-economic) to the unification discourse. The Moroccan nation is presented as split. Moroccans are encouraged to reconcile with their history in order to build a unified nation with a strong feeling of belonging and citizenship.

The Commission asserts the importance of public hearings for this process:

Thus the first and second sessions, organized in Rabat...paved the way for the establishment of “a national narrative” about suffering and pain of the past, thus creating additional gateways for Moroccans to be reconciled with their past with themselves.

What does it mean to be a gateway for reconciliation? As discussed in Chapter 6, according to Ricœur, a narrative’s tasks include realizing the debt to the historical past, respecting the rival claim of memory and forgetfulness, cultivating a notion of self-identity, and persuading and evaluating actions. Based on this understanding of the narrative’s func-

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tions, it may be argued that public hearings and the testimonies presented there contribute to the development of a shared identity as a form of self-identity. The plurality of experiences mirrors the plurality of identities in the Moroccan society, based on ethnic, linguistic, cultural, religious, socio-economic, and political diversity. The unification discourse, whilst being an important question in societies that have experienced large-scale human rights violations, in Morocco’s context seems to overshadow the question of responsibility.

The ERC’s approach precludes the imposition of any form of forgiveness or individual reconciliation between the victims and those presumed to be responsible for the violations.\textsuperscript{684} The Commission writes about psychological and social support given to the victims, and therapeutic moments of dialogue sessions.\textsuperscript{685} I find it highly problematic that reconciliation and the establishment of a “national narrative” concern suffering and not human rights violations, victims and not the state-perpetrator.

 Nevertheless, it is necessary to add that in the report, in the section devoted to the basic elements of reconciliation, the ERC also names four public academic conferences that it held to address the following questions: “the study and criticism of the literature of political detention”, “the problem of state violence from the theoretical legal, political and historical points of view”, “the concept of truth in its philosophical, humanitarian and legal aspects”, and “trials of a political character witnessed in Morocco”.\textsuperscript{686} One might argue that the ERC actually engages with profoundly critical questions and the plurality of its different activities should be taken into consideration. Necessarily, there is a discrepancy between these urgent questions and their very limited treatment in the report. This in turn demonstrates the gap between two forms of ERC activities: public hearings and academic conferences. At the public hearings (as well as during the field visits and dialogue sessions), where victims take a central place, testimonies were cast in the discourse of suffering and healing, unification and reconciliation. At the academic conferences, where human rights activists, intellectuals, and academic researchers participated, as it appears in the description of the

\textsuperscript{684} Equity and Reconciliation Commission: Final Report, Volume 1 “Truth, Equity and Reconciliation”, 94.  
\textsuperscript{686} Ibid.
discussed questions, the most critical issues were touched upon. I do not seek to undermine the value and significance of academic discussions as well as the necessary distribution of different activities pursuing different aims. This distribution results, however, in the exclusion of victims from important discussions and in their continued victimization, which can be understood through the notion of the bifurcation event. The institutional framework of truth commissions does not allow for overcoming this gap and demonstrates instead its own incapacity for any substantial critical examination of the violent past, its causes, and the responsibility for these crimes. Can this gap be overcome with the help of testimonial literature? In the next section, I present my reading of two novels from Morocco.

7.3 Testimonio: Reading Shahada

In Chapter 1, I stated that my contextualization of this study with the help of Morocco’s experiences would also include the analysis of the two novels. The genre of both can be classified as testimonial literature or testimonio. This is a special type of narration that exposes oppression and injustices. As I have also mentioned, it goes beyond the scope of this study to provide a complete analysis of this genre and the literary means deployed in the two novels. Instead, my reading is guided by the overall aim of my study and by the hypothesis that the novels may provide resources for overcoming the reductionist perspective on testimony which I have identified in the report of Morocco’s truth commission.

In accordance with Sanders, I have argued that a bifurcation event takes place between the hearings of truth commissions and their final reports. Thus bifurcation results in the relative lack or complete absence of witnesses’ testimonies in the reports. Based on the analysis of South Africa’s Truth and Reconciliation Commission, Sanders maintains that literature gets closer to the basic structures of hearings and can mediate the story of human rights violations. In the context of this study, my access to the materials of the ERC has been limited, and therefore it is problematic to draw any conclusions as to whether the analysed novels get closer to the basic structures of hearings. Nevertheless, my analysis of the novels does allow me to consider what resources they contain for the exposure of oppression and injustice.
7.3.1 Talk of Darkness

The novel Talk of Darkness was written by Fatna El Bouih in Arabic and translated into English by Mustapha Kamal and Susan Slyomovics. Slyomovics is an anthropologist whose previous research on Morocco and the ERC also constituted a valuable source for this study. The book begins with the translator’s introduction, where we find some important facts about El Bouih’s background. She was born in 1955 in Benahmed, a village in Settat Province in Morocco. At the age of sixteen, El Bouih left her village and began her education at Lycée Chaouki, where she became active in the National Union of High School Students in 1971. The post-independent period of political turbulence in Morocco together with her personal experience of student activism formed El Bouih’s leftist ideological stance. Due to her participation in student strikes and membership in the Marxist group known as “March 23” (named to commemorate the Casablanca uprising[^687]), El Bouih was arrested for the first time in 1974 and again in 1977. During the second arrest, El Bouih together with other women activists, was kidnapped and forcibly detained in one of the most infamous Casablanca prisons, Derb Moulay Cheri.[^688] In the novel, El Bouih presents a memoir of disappearance, torture, and imprisonment. The book consists of twenty-two chapters, of which the last two chapters are testimonies by two other women activists: Widad Bouab and Latifa Jbabdi, who were imprisoned at the same time as El Bouih.

The translator’s introduction is followed by El Bouih’s own Chronology, which starts with the period 1912–1956, the period of the French protectorate in Morocco, and stretches until 2004–2005, the period of the ERC’s activity. Taking a closer look at the events that are included in the Chronology, one can identify some that refer to Morocco’s history in general, including the year of Moroccan independence from France and the reigns of different kings, others that refer to the emergence and development of Moroccan Communist Party and

[^687]: The Casablanca uprising took place in March of 1965. It started as a peaceful demonstration of students who demanded the right to public higher education, but the protests were joined by other groups, including groups of workers and the unemployed, and escalated into a violent protest. The protests were violently suppressed by the military and sparked a wave of illegal arrests and arbitrary detentions.

[^688]: El Bouih, Fatna: Talk of Darkness. Center for Middle Eastern Studies at the University of Texas, Austin 2008, ix-xv.
Marxist movements, and finally those that are directly related to El Bouih’s personal story, starting with the year of her birth and proceeding with the years of her detention, her trial, her transfers from one to another prison, and her post-imprisonment life, when she worked as a high school teacher in Casablanca. The interweaving of her own story with Morocco’s history can be interpreted in various ways. It removes the boundaries between the public and the private spheres, and it also places a single individual into a historical context which may explain their engagement and political activism as well as show the result of that activism: namely, the establishment of the ERC.

The chapters themselves are written in chronological order, starting with the scene of El Bouih’s kidnapping. She writes:

Thus begins a tale of kidnapping that would last five years, a tale reminiscent of chapters in *A Thousand and One Nights*, whose heroine my father never imagined would be his beloved daughter.  

Subsequent chapters present different phases and circumstances of her imprisonment, including her transfers among different prisons (Meknes, Laalou, and Kenitra Civil Prison), the time she spent awaiting trial, and the trial itself. But in addition to these concrete events, which disclose the arbitrary character of the penitentiary and the judiciary systems, the novel also presents a strong depiction of physical pain under torture. El Bouih and other women activists were exposed to insults, tortures, and threats of a particularly gendered character. Among the most distinct expressions of gendered violence was the way women prisoners were regendered. El Bouih writes:

They gave me a number and a man’s name: “From now on, your name is Rashid. You cannot move or speak unless you hear your name, which is Rashid.” That was the beginning of the destruction of my identity. My kidnapping, my arbitrary imprisonment, and now the erasure of my femininity by treating me like a man.  

The same witness is borne by Widad Bouab, who was renamed Hamid, and by Latifa Jbabdi who was called Said, Twil, or the Doukkali. Bouab retells the guards’ dialogue: “Did you see those young women who

want to enter the world of politics and take on men’s work? Help me pick men’s names for them.”

Despite this rejection of their femininity by giving them male names, the prisoners were also insulted as women, called “whore” or “the daughter of a whore”, threatened with rape, and subjected to sexual innuendoes.

El Bouih’s, Bouab’s, and Jbabdi’s explanation of their regendering is linked to the male guard’s rejection of women’s political agency. This also had implications for the status of women activists as nonpolitical prisoners, which gave rise to a hunger strike in which they demanded the rights of political prisoners. The strike resulted in the death of one of the prisoners, Saida Menebhi. Her death had a significant effect both on her comrades and on the families of the prisoners. Recalling the discourse of gendered suffering in the report of the ERC, El Bouih’s novel provides important insights into the experiences of female political detainees and hence reclaim their political agency.

The description of the horrible circumstances of her imprisonment, both the physical and the psychological suffering, is also accompanied by a depiction of solidarity among the prisoners, their active and passive resistance. El Bouih writes: “Prison was also a place of struggle for us. We waged a hunger strike that lasted twenty days.”

She then describes the first day of the strike as “immobility and struggle at the same time.” As a result of their hunger strike, although the women were not officially recognized as political prisoners, they were treated as such and thus had an opportunity to continue their university education and take exams from inside the prison.

In the chapter following her depiction of the hunger strike, El Bouih makes a curious move by writing about herself in the third form: “Her status as a political prisoner allows her to enjoy light in her cell beyond the regular hours allotted to other prisoners.” Here, she distances herself from the physical pain and psychological struggle by recalling her childhood memories. The borderline between reality and illusion, between waking and dreaming, is erased. The distancing also shows the implications of imprisonment and the way prisoners were treated for El Bouih’s identity: both her female identity and her identity as a political

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691 El Bouih, Fatna: Talk of Darkness, 80.
prisoner. At the very beginning she reveals the name of one of her torturers and quotes him: “Here you never see the sky. If you raise your blindfold, I erase you. If you speak, I cut out your tongues. Take her away to be educated.”  

The theme of the erasure of identity, of losing one’s female self, is present through the whole novel.

El Bouih finishes the novel in a manner reminiscent of diary notes, ending the chapters with indications of time and place. At the very end, the testimonies of two other female political prisoners, Widad Bouab and Latifa Jbabdi who were arrested along with El Bouih, are presented. Their testimonies were reprinted from El Bouih’s memoir from 2001. I should note again that Latifa Jbabdi was the only women commissioner on the ERC. El Bouih’s own testimony ends with a photo of her release from prison in 1982.

7.3.2 Tazmamart

*Tazmamart* written by Aziz BineBine, a former army officer. He was involved in the attempted *coup d'état* of 1971, referred to as the Shkirat *coup d’état*, and spent eighteen years imprisoned in Tazmamart Centre, a secret detention camp that became a symbol of “the years of lead”. The novel was translated into English by Lulu Norman.

In the preface to the novel, BineBine states: “I’m a survivor of the years of lead, a storyteller, a dealer in suffering. I have only my misfortunes to place in your hearts. I am no victim, brothers, save your tears.”  

Later on in the novel, we learn that BineBine gave himself a special role in the prison, that of a storyteller.

After eighteen years of imprisonment, he poses an important question about life after imprisonment and getting back to the society, environment, and his changed family, but also about how this imprisonment can be compensated for. He rejects the possibility of compensation and forgiveness: “There is nothing to compensate, nothing to forgive. You must just forget. Ban regret and bitterness from your heart. Live again.”  

Still, his detailed depiction of his own imprisonment and the experiences of the other inmates returns him to Cell 13 inside the walls

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of Tazmamart. Even though it becomes apparent that there is no compensating for the physical and moral harm to which the prisoners were exposed, his plea to forget becomes ever more difficult to answer.

The novel begins with a short background of Aziz BineBine, the author, who was an army officer at the Royal Military Academy. He describes how he together with other officers and cadets from the military school in Ahermoumou were inadvertently involved in the failed *coup d’état* organized by General Mohamed Medbouh and Colonel M’hamed Ababou in 1971. The coup attempt took place at the Shkirat palace, the king’s summer residence, where he celebrated his birthday. An assassination attempt was made on King Hassan II. In the wake of the unsuccessful coup, some generals and superior officers were presumed guilty merely for being at Shkirat. They were executed, including Medbouh and Ababou. Other officers were sentenced to imprisonment, and some of them were transferred to Tazmamart, a military prison built in the desert. BineBine was sentenced to ten years of imprisonment and was among the officers sent to Tazmamart.

Apart from army officers, aviation officers who participated or were presumed to participate in a second failed *coup d’état*, the “air coup” of 1972, were also sent to Tazmamart. Hence, there were two groups of prisoners: infantry and aviation. All the prisoners were isolated from each other and placed in separate cells. BineBine describes his cell in the following way:

> My cave was a shadowy concrete cube, two meters by three; even the dim light of day barely impinged on the darkness. At the back was a block of cement by way of a bench. In the corner, near the door, was a squat toilet…The cell doors lined a central corridor that ran the length of the block.

BineBine describes the conditions of imprisonment in detail, as well as the way he reflected upon his own situation, the decisions he had to make, and the survival strategies he adopted. One such strategy was his decision to become “the impromptu storyteller” and timekeeper. This role meant that he told stories based on literature he himself had

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698 BineBine, Aziz: Tazmamart, 23.
read, ranging from French literature to the Russian authors of the nineteenth century to the Americans of the early twentieth, recombining their stories and inventing new ones. His erudition manifests itself in the novel when he makes references to various authors and compares the other prisoners to characters from novels. One reference he makes is to Lebedev, a character in Dostoevsky’s *The Idiot*:

In Tazmamart, I had my own Lebedev, in other words the incarnation of the blackest, most devious and most complex part of the conscience of the Moroccan people and so, in microcosm, of our prison.\(^{702}\)

Taking on the role of storyteller was one of BineBine’s survival strategies in Tazmamart and this is also the role he takes on after his release. He writes:

Tazmamart was most of all about men…I want to pay homage to those men, the ones who are not here to tell their suffering, their joy, their hopes and regrets. I want to relate as honestly as possible how they lived and how they died, report it as I lived it, as I felt it, for their families and for everyone who feels on their own cheek the slap that someone else receives.\(^{703}\)

The novel, which is not strictly divided into separate chapters, presents personal stories about other inmates whom BineBine knew intimately, including their backgrounds, their roles in the prison, and the circumstances of their deaths. The stories are almost like short biographies of the prisoners, full of personal details, character traits, and relationships, which contrast with the anonymity of the guards. On rare occasions, the names of the guards are mentioned along with the degree of violence they exercised. But BineBine also mentions the guards’ regret about, for example, an incident where they forced the inmates to return their old clothes and blankets in exchange for new ones. He concludes that Tazmamart left indelible marks not only on its inmates but also on the guards, who were convinced that the place was haunted: “Tazmamart’s purpose had been achieved: a myth had been born that would reverberate in the imagination”\(^{704}\). This secret detention centre built in the Atlas

\(^{702}\) BineBine, Aziz: *Tazmamart*, 117.


Mountains became a symbol of political repressions in Morocco, along with Derb Moulay Cheri in Casablanca. The existence of Tazmamart was denied by the Moroccan authorities for a long time until Christine Daure-Serfaty, the wife of Abraham Serfaty, one of the political prisoners, discovered the existence of the prison and succeeded in persuading the public abroad that it existed. Later, a French journalist Gilles Perrault wrote the book *Notre ami le roi* (*Our Friend the King*), where he described the conditions in the prison.

After that, the situation of political detainees and the kidnapped soldiers received much international attention.

BineBine’s novel contributes to the demystification of Tazmamart as a symbol of political terror, although he himself writes about Tazmamart as a subject on two occasions. The first time, he says: “Eventually he died, killed by Tazmamart.”

The second time, he writes: “I thought I’d become jaded, hardened by Tazmamart.” For the rest of the novel, Tazmamart remains a place, a scenery of inhumane treatment.

Alongside the stories of the inmates, one of the central themes of BineBine’s novel is his own spiritual condition. The theme manifests itself in his discovery of survival resources in the form of prayer and the interpretation of different signs and dreams that allow him to predict the future. For example, if he dreamed of drinking Coca-Cola, this symbolized illness to come. BineBine also describes a sparrow that comes to his cell, whose song changed when something was about to happen in the prison, like a transfer to another block or the arrival of new prisoners.

Animals, birds and insects in the novel are described as they were present in the prison: “Tazmamart was home to animals, too.” Some of them were dangerous, like snakes and scorpions; others brought news, like the sparrow; and others, like a ewe and a dog, showed both humanity and the cruelty of the guards.

Finally, the last ten pages of the novel describe a period of waiting, when the prisoners realized that something was about to happen and that they would be released.

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7.3.3 Lost in Representation

The two novels described above differ in many respects and although my aim is not to compare them, it is important to note that *Talk of Darkness* was written by a woman political detainee and *Tazmamart* was written by a man and former army officer. Political detainees and the ex-military members who were involved in two failed coups in 1971 and 1972, respectively, constituted two main groups of victims during the “years of lead”. El Bouih’s and BineBine’s experiences before, during, and after their imprisonments are different. Their most prominent common feature, however, is their aspiration to go beyond the presentation of individual experiences and to tell the stories of other inmates. Both El Bouih and BineBine perceive it as their moral responsibility to pay homage to those inmates.

One of the features of testimonio is specifically the idea that it describes not only individual experiences, but also individuals belonging to a community or a group. Hence, a political dimension is articulated through personal experiences of incarceration, resistance, and torture. In El Bouih’s case, a sense of belonging with and to other women political activists is clearly present. In BineBine’s case, the belonging concerns other inmates who also happened to be imprisoned in Tazmamart. If in El Bouih’s case the belonging arises from a common political struggle against the regime, in BineBine’s case it arises from a common experience of injustice, of arbitrary detention and imprisonment. Some of the inmates were not even known to BineBine, but the injustice of their imprisonment and the inhumane conditions in which they were held constitute the common position from which BineBine tells his story.

The publication of testimony brings individual experiences to the public, describing the circumstances and conditions of imprisonment. The reader gets a detailed picture of both the physical environment of the prisons and the psychological condition of the prisoners. The language is both figurative and very explicit about the size of the cells, the daily routine, and the prisoners’ physical condition. The novels are not fictional but are based on memory. Putting memory into words makes it possible to organize fragmented and incomplete memories, to put different pieces together and give them a structure and coherence.

Unlike other forms of testimony, testimonial literature does not carry the burden of providing an objective and truthful picture. Despite the
intention to mediate the most complete picture of what happened, the novels cannot but provide a reader with a possibility of multiple interpretations. These texts cannot be summarized or give provable answers without losing the essence of being a work of literature. Nevertheless, testimonial literature is a special genre that challenges the boundaries between factual and fictional, memorable and imagined. On the one hand, literature provides authors with resources that allow them to re-think and reorganize memories and present them consistently and comprehensibly. The narrator has also control over their language and their system of representation. On the other hand, in testimonial literature, testimony undergoes a transformation and loses its performative character and its direct and identifiable audience.

The loss of orality is accompanied by a loss of control over the produced text and its use, and thus by the risk of misappropriation. In relation to testimonial literature, it is the subaltern dimension that must be challenged. The novels at hand represent important and meaningful texts, which bring critical issues to light. Nevertheless, they are not representative for those who do not share the privilege of being heard and read. As testis, the authors testify in the position of the third party. The true witness cannot present their witness; their stories can only be retold by others. With the loss of orality, its “instant moment” and its performativity, control over representation is also lost. The problem of the differend seems thus to be overcome, but testimonial literature may give a fallacious picture of giving voice to the voiceless if the subaltern remain deprived of any possibility to raise their voices. Then subalternity does not vanish but is re-established again in the written form.

Testimonial literature transforms the process of writing into a critical practice, driven by the duo of amnesia and denial. Testimonial writings engage with the themes of prisoners’ vulnerability and their different forms of resistance, both passive and recklessly boundless. Their writings do provide an alternative to the official narrative provided by the ERC, but what kind of alternative is it?

The analysed novels are two first-hand testimonial writings – testimony, something conspicuously absent from the report of the ERC. Although the novels are based on individual stories, they aspire to expose a collective experience of injustices. The fact that witnesses’ voices are absent from the ERC Final Report constitutes a problem, but this problem cannot be fully overcome by testimonial literature. My analysis of first-hand testimonial literature allows me to bring to the surface what
is absent and demonstrate the discrepancy between different modes of representation. In my view, however, what should be questioned is not only the way testimonies are represented in final reports, but also the *raison d'être* of truth commissions as such and presumptions about the effects of testimony.

### 7.4 Conclusion

The aim of this chapter was to contextualize the arguments presented in the previous chapters by critically assessing Morocco’s experiences. The chapter focused on an analysis of the ERC Final Report in order to scrutinize how the ERC understood justice and what role it ascribed to testimonies and public hearings. The analysis identified and examined three problem areas: firstly, the conceptualization of suffering understood through the healing discourse; secondly, Morocco’s approach to reparations through a reductionist perspective on testimony; and thirdly, the conceptualization of reconciliation as a strategy for shirking responsibility for human rights violations.

In the final pages of this chapter, I will pick up some threads from previous research on the ERC presented in Chapter 2 and its findings. Desrues and Maoyano emphasize that two types of transition have taken place in Morocco since Mohammad VI came to power: a political transition and an economic one. The liberalization reforms as a result of structural adjustments programs enforced by the World Bank were conditioned by human rights requirements. Nevertheless, the establishment of the ERC is often presented as an initiative from below that came from Morocco’s civil society, as Montague argues. The ERC itself describes two forms of resistance in Morocco prior to its establishment: one demanding comprehensive political change, including amendments to the constitution, guarantees of fair elections, and the securing of separation of powers, and the other focusing on human rights protection as a strategic priority preceding major constitutional changes. The second form of resistance was presented by human rights organizations, associations of victims, and movements of families of political detainees. The establishment of the ERC should be understood as a successful initiative of this second form of resistance.
Previous research has often drawn attention to Morocco’s political continuity and the fact that the ERC was established without any significant political changes. During my visit to Morocco, the members of Morocco’s National Human Rights Council (the CNDH) presented the establishment of the truth commission as possible only due to the political will of the king. This necessarily provokes questions about the ERC’s independence and its actual effects. Its submission of the Final Report directly to the king, the lack of victims’ voices in the report, and the lack of any substantial political changes subsequent to the report all demonstrate that that political will was more directed at reinforcing the legitimacy of the king than at dealing with the violent past.

Above I began to develop the argument that the very establishment of truth commissions and in this particular context, the establishment of the ERC, contributes to the depoliticization of justice claims. The institutionalization of justice claims and truth-telling (testimony) results in the loss of truth-telling’s core function – the radical critique of power. The critique that was initially presented by the first form of resistance mentioned above demanded significant political change. Here, I suggest that there is a connection between economic liberalization and the idea that there is a possibility of human rights promotion, protections, and guarantees without significant political reforms. Human rights requirements, which accompanied structural adjustment programs, were imposed from above. These external requirements transformed political mobilization in Morocco into the establishment of a national human rights institution, adopting human rights language and prioritizing “human rights demands over the demands of political participation and representation”711 as the ERC puts it. This can be interpreted as a superficial and insignificant attempt to introduce human rights on the policy level. The quote from the ERC’s report clearly shows the reductionist view of human rights, when the question of political participation and representation is not treated as a human rights problem per se.

Hence, I contend that by establishing truth commissions, justice claims are transferred from the realm of the political to realm of the quasi-judicial. This depoliticization in Morocco has taken different forms. Firstly, depoliticization took place in the work of the ERC when it downplayed the political struggle after Morocco’s independence and

its meaning. Secondly, depoliticization takes place through the individualization of justice claims as a result of psychologization discourse and by the imposition of the system of tort on human rights violations. Human rights violations are treated as a harm that can be compensated. Moral and physical injuries caused by human rights violations should indeed be compensated, but justice claims should demand more than that. The questions of responsibility for the violations, political participation, representation, and recognition should lie at the core of these claims.

One might argue that the ERC held different types of discussions about the political reforms in Morocco. The commission also introduced collective reparations for marginalized regions in order to overcome the unequal distribution of resources between urban and rural areas. The actual payment of compensations, which has been criticized, is a demand that should be addressed to the state rather than the ERC, as the latter was an ad hoc institution with a limited mandate. Therefore, my critique is not only addressed against the ERC and its achievements or failures, but rather against the concept of a truth commission in general. Amongst other things, this implies that by the establishment of a special institution to investigate past human rights violations, by identifying patterns of violence, acknowledging the violence for victims by organizing public hearings, and paying reparations, victims’ dignity can be restored and justice done. An individual’s dignity is restored, I argue, neither when they speak out publicly about their suffering and thereby expose themselves to potential humiliation and secondary traumatization, nor when they receive economic compensation for an incurred harm, but rather when they are recognized as a significant subject, whose opinions are listened to and counted as meaningful for common democratic processes. Responses to human rights violations from a justice perspective demand an understanding of justice as moral and political responsibility and not as procedural fairness.
This study began with a reflection on the legal, political, and moral problems that occur in the aftermath of large-scale human rights violations. The most urgent moral dilemma, as stated in the Introduction, concerns on the one hand the demand for legal accountability for those responsible, and on the other the necessity to break the circle of violence and hold society together. To put it another way, the moral dilemma consists of the impossibility of justice and a simultaneous urgent demand for justice. This dilemma has constituted the point of departure for my analysis of how justice can be understood and required a reconsideration of the concept of justice that moves beyond legal accountability to considering justice’s political and moral dimensions.

The analysis that has been developed here focuses on one specific practice of responding to large-scale human rights violations, namely, the work of truth commissions. The study sees truth commissions as an attempt to resolve the moral dilemma by making a claim to justice through the pursuit of truth. Therefore, based on this claim, truth commissions must be critically examined. Following Derrida, truth commissions’ claim to justice makes them immediately suspect of reductionist and predetermined ideas of justice that may conceal injustices. By virtue of being a response to large-scale human rights violations, the concept of truth commissions has constituted my study subject.

The aim of the study has been to analyse the concept of truth commissions, which rests on three underlying normative assumptions. I have argued that these assumptions constitute the truth commission rationale. Firstly, the justification of truth commissions derives from the idea that in the aftermath of large-scale human rights violations, restorative justice should be given priority over retributive justice. This means that the focus of justice endeavours should be the restoration of relations and not legal prosecution and punishment. Secondly, truth is perceived as a prerequisite for justice and for dealing with past human rights violations. This normative assumption concerns the central role
given to truth and the impacts it has on justice. Thirdly, truth-telling in the form of testimony is ascribed several functions, including healing effects, restoration of dignity, and acknowledgement of victims and their suffering. Based on analyses of testimony’s use in the work of truth commissions, testimony’s functions have been specified. They include healing discourse and an evidential function. The rhetoric of giving a voice to the voiceless, which is common for both truth commissions and testimonio, aims at the political representation of victims. In what follows, I present an analysis of each of the three normative assumptions, problematizing each with the help of my research questions. Finally, I present my reflections on the theoretical framework of the study and my perspective on ethics as critique.

8.1 The Understanding of Justice

My first research question is: what is a tenable understanding of justice in the aftermath of large-scale human rights violations? As I noted in the Introduction, a tenable understanding of justice should take into consideration the special circumstances of injustices. During the study, two dimensions of large-scale human rights violations have been pointed out as significant: the systematic character of the violations and their reliance on mass compliance. Mass compliance may imply both a passive ignorance and an active implementation of orders within the judiciary, military, and executive powers.

The circumstances of the context studied here are characterized by the extreme form of violence exercised by the state and its authority in relation to different groups who constituted a threat to the regime. Such violence usually takes place over decades and the moment of its complete termination is impossible to define. Taking into consideration the circumstances of human rights violations implies inter alia that the causes of state violence must be clarified and acknowledged.

Another important implication of considering the special circumstances of injustices concerns the concept of violation. The conception of crime as deviance is common to both retributive and restorative justice. I share Leebaw’s view that the particularity of the contexts of large-scale human rights violations lies in the normalization of vio-
lence, and human rights violations being sooner obedience than deviance.\textsuperscript{712} The extreme degree of violence that stretches beyond normality is normalized both among those who uncritically obey laws and orders and among the rest of society who accept the violations. As a consequence, it raises a question of individual and collective responsibility.

This study shows that truth commissions as institutions of restorative justice fail to take these special circumstances into consideration and prevent addressing the complexity of the grey zone of mass compliance and different degrees of responsibility. This failure is conditioned by the central place given to truth while responding to the large-scale human rights violations.

Furthermore, the special circumstances, including the systematic character of violence and mass compliance, must be distinguished from the circumstance of transition, i.e., a political transformation that takes place. In the majority of cases of transitional justice, the political transformation does take place and therefore demands political compromises and pragmatic solutions relating to accountability for the crimes and society’s needs. This constitutes one of the major problems, since compromises and pragmatic solutions are implemented in the name of justice. The discourse of transitional justice adopts this view by entangling together two questions: a question of justice and a question of transition. The problematic subjugation of the question of justice to the question of transition has also been demonstrated in this study by examining the context of Morocco and its truth commission, despite the fact that in Morocco no radical political transformation took place. The localization of Morocco’s experience within the field of transitional justice resulted in the prioritization of political reconciliation at the expense of responsibility-taking for human rights violations and profound democratic reforms.

The question of transition takes us back to the idea of transitional justice’s conceptual distinctiveness, where the transitional dimension is perceived as a special circumstance of justice. There are good reasons to reflect on the consequences of such a perspective. Firstly, based on the context studied here, it becomes clear that theactualization of transitional justice discourse in non-transitional cases does not imply any significant political reforms, but may be abused for the legitimization

of the ruling power. In Morocco, it created an image of democratic reforms and liberalization as a part of Morocco’s political transformation. This image was predominantly projected towards external parties, including international organizations for economic cooperation (the World Bank and the International Monetary Fund), but also the European Union as an important trading partner.713

Secondly, the assumed endpoint of transition implies not only political liberalization but also economic liberalization in accordance with neoliberal values, including the establishment of free markets, privatization, and shortcutting of the public sector. Neoliberal reforms risk reinforcing socio-economic inequalities in post-conflict societies. The problem of inequality is a subject of distributive justice, which is often neglected in the context of political violence. Furthermore, neoliberal rationality enforces economic rationality in the political domain and contributes to the depoliticization of social relations and conflicts.

As I have argued in Chapter 3, restorative justice can be understood as a combination of compensatory justice and distributive justice. Even though different positions exist within restorative justice, the aims of restorative justice are broader than mere economic compensation. The rationale for restorative justice consists mainly of the idea of the restoration of relations. In the next section, I summarize my critique of restorative justice. After that, I argue for an understanding of justice as responsibility.

As has already been discussed, the field of transitional justice offers two alternative approaches to justice: restorative and retributive justice. These two approaches have different rationales: in the case of retributive justice, giving priority to prosecutions and punishment; in the case of restorative justice, restoration of relations and compensation. The shortcomings of criminal prosecutions and trials are often used as an argument in favour of restorative justice, where the legal obstacles are thought to be overcome. The common opposition between the demand for accountability for human rights violations and the argument for peaceful coexistence is presented as resolved in restorative justice. Omitting prosecutions and trials, institutions of restorative justice do

not face the problem of *ex post facto* laws and other legal problems related to the requirements of due process. The establishment of truth commissions, which is often accompanied by *de facto* amnesties, is presented as an inevitable solution to the legal problems named above. They are rationalized and justified by referring to the legal incapacity to prosecute all who were involved in collective violence.

My critique against restorative justice consists of two parts. Firstly, I argue that restorative justice is characterized by conceptual ambiguity in relation to its goals, which can be interpreted as a strategy for making perpetrators invisible, leading to a shirking of the responsibility for human rights violations. Secondly, I suggest that the shift from the paradigm of crime to the paradigm of torts in relation to human rights violations results in the diminishing of the status of human rights as rights. Let me elaborate on these two arguments.

The goals of restorative justice include restoration of relations, putting the victims and their needs at the centre, and providing compensation for incurred harm. In Chapter 3, I argued that restorative justice is characterized by certain ambiguities due to its aspiration to combine the elements of compensatory justice and distributive justice. While the idea of compensatory justice is clear – it is exercised through the payment of monetary compensation to victims and their families – the goal of restorative justice, namely, restoring relations, is rather unclear. In different contexts, relations themselves are understood differently, for example, as relations between victims and perpetrators or between society and the state. Nevertheless, it is not the plurality of relations that constitutes the main problem, but the meaning of restoration. What does restoration mean, whether restoration of relations, restoration of trust, or restoration of human dignity? A common use of restoration implies bringing back to a former position or condition. In the context of human rights violations, the former position or condition can be interpreted as a state of peace, co-existence, or an absence of violence.

In Morocco’s case, one of the goals of the ERC was restoring relations of trust between the Moroccan people and the state and the reconciliation of Moroccans with their past. These abstract goals, in my understanding, aim at broadening the scope of restorative justice, moving beyond monetary compensations and prior legalism. At the same time, their meaning remains obscure. When concepts of forgiveness and reconciliation are transferred from an interpersonal level to a political level, they lose their original meaning. The banal use of reconciliation
as a political concept, as De Gruchy maintains, implies taking for granted an existing social order. As a result, it may be interpreted as a strategy of shifting the focus from the state-perpetrator to the Moroccan people as collective victims of their own violent history. Accordingly, the strategy is a prolongation of violence that is addressed by the truth commission. The image of state-perpetrator as an omnipotent and alien power is preserved.

Apart from these ambiguous aims, another problem arises from the way human rights violations are perceived. Recalling Aristotle’s distinction between different types of justice, compensatory and retributive justice are both categories of rectificatory justice, which in the case of compensatory justice aims at compensation of the incurred harm and in the case of retributive justice aims at punishment. They also correspond to two paradigms of legal justice: a paradigm of crime and a paradigm of tort. In the work of truth commissions, a shift between these two paradigms takes place, and as I have argued above, this shift has implications for the response to human rights violations and for the status of human rights as rights. Specifically, the shift of paradigms weakens the status of human rights as rights, since the different paradigms imply different relations between the parties. In the tort paradigm, the harm or involuntary action is committed between private individuals or between private individuals and legal persons. In the crime paradigm, the harm is committed primarily against a legal order of the state and not a separate individual, even though individual victims necessarily are exposed to the offence. But as Foucault notes, it is the emergence of the concept of offence and the appearance of the figure of prosecutor as a representative of the state that characterized the development of democracy in ancient Greece. The emergence of the concept of offence has also established a link between truth and political power by accepting the testimony of victims independently of their status as a proof in a legal dispute.

The idea of a violation as a harm incurred to an individual downplays the social and political dimension of law and the state’s role in not only reinforcing the law but also providing political legitimization for the law and legal order. The process of political legitimization constitutes the third element suggested by Benhabib for the broadening of Derrida’s dual authoritative structures of the law (law as force and law as

Therefore, when a state violates the law and commits human rights violations against its own people, the violations should be treated not only as an incurred harm, but primarily as a violation of the legal order. The state breaches the contract which gives the state its legitimacy and authority. Therefore, there is a strong demand for a political legitimization of law. This demand stretches towards the establishment of such political institutions as truth commissions.

The violations of human rights impose an additional dimension on the paradigm of torts and the paradigm of crimes due to their legal, moral, and political meaning. Human rights may give rise to different kinds of relations, but primarily they involve an individual who has a legitimate claim towards a state that has a duty to promote, protect and enforce human rights due to international obligations. Contrary to the paradigm of tort, where adversarial principle implies the equal status of parties in a process, criminal litigations are always bounded by the power imbalance. The peculiar thing about human rights violations is the fact that a state is both the guarantor of human rights and their most common violator, meaning that the power imbalance is reinforced. The contexts of transitional justice are particularly characterized by the impossibility of sustaining the opposition within the criminal law’s binary system (perpetrator-victim). Hence, the problematic coincidence between the state-perpetrator and the state-prosecutor is a widespread problem that has given rise to the legal developments of human rights mechanisms that receive complaints from individuals whose rights have been violated. Examples include the European Court of Human Rights and the Inter-American Court of Human Rights. These independent institutions investigate individual cases and have complementary jurisdictions. Their judgments concern, as a rule, decisions about compensations for individuals whom states are obliged to pay. No criminal liability is provided.

Moreover, these mechanisms overlook the systematic character of human rights violations and the political meanings of human rights as political principles which should be actualized in the struggle against structural injustices. The systematic character of human rights violations is a problem that demands a political solution in terms of an

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acknowledgement of the real causes of violations and of inclusion. Restorative justice based on the ideas of restoration of relations, societal transformation, and restoration of trust does not provide a sufficient response to this special circumstance of injustice. Even though mandates of truth commissions usually include the investigation of patterns of violations, their subsequent depoliticization of human rights violations precludes a serious engagement with the problem of structural violence or any concrete political reforms aiming at the underlying causes of violations. Such reforms might include the redistribution of socio-economic resources and the inclusion of previously excluded groups in the process of decision-making.

Turning now to the second special circumstance of injustice – mass compliance – a question of individual and collective responsibility is actualized. In its Final Report, the ERC acknowledges only a collective responsibility of the state without determining the degree of responsibility of separate authorities or individuals, which is motivated by a large number of security apparatuses. This question of individual and collective responsibility has been dealt with differently. In the essay “Personal Responsibility under Dictatorship”, Arendt rejects the idea of collective guilt and explains that it is a maneuver of “this fear of passing judgment, of naming names, fixing blame.” She distinguishes between personal and political responsibility, ascribing political responsibility only to heads of state or other state officials. But when it comes to personal responsibility, Arendt switches terminology towards “personal guilt” rather than “personal responsibility”. According to her, it is morally wrong to feel personally guilty without having done anything. Karl Jaspers disagrees with Arendt and maintains that the members of a community all bear responsibility owing to their membership in the community. The distinction between guilt and responsibility is an important one and I agree with both Jaspers and Ricoeur that even though collective guilt is unjust, individual and collective responsibility is just and gives rise to political and moral judgments.

In this study, it has been acknowledged that the problem of mass compliance, individual and collective responsibility must be dealt with

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717 Ibid.
in the aftermath of large-scale human rights violations in order to prevent recurrence. Obviously, it is not a task of either tribunals or truth commissions to decide upon these issues. But what we can observe is that restorative justice’s focus on victims and their needs, and the embrace of “grey zone” ambiguity, gives an apparent advantage to perpetrators. Therefore, despite the fact that a focus on victims is crucial and the boundaries between victims and perpetrators are at times perplexing, in my view, institutions of restorative justice demand a higher degree of justification. The experiences of Morocco show that the ERC addressed neither mass compliance nor various degrees of responsibility.

Moving forwards, this study identified an understanding of justice as responsibility as the most tenable understanding for a critical analysis, based on Derrida’s and Ricœur’s perspectives on justice. The understanding of justice as responsibility includes not only the responsibility of the state but also the responsibility of members of society. In the next section, I develop this idea further.

Understanding justice as responsibility makes it possible firstly to identify and problematize strategies deployed for shirking responsibility, and secondly to demonstrate the institutional incapacity of truth commissions to deal with profoundly moral questions about mass compliance, individual and collective responsibility. These questions imply that responsibility should not be limited to state responsibility, but considering the circumstances of injustice, responsibility should also include the responsibility of the members of the society in which large-scale human rights violations became possible.

In Responsibility for Justice, the last book written by Iris Marion Young, she discusses our responsibilities to address “structural” injustices in which we are implicated but not to blame. She develops a model of responsibility which is called “social connection”. Young’s main concern is socio-economic injustice, but she also touches upon the problem of historical injustices and generational responsibility.719 Despite certain points of connection with Young, not least in relation to the previously mentioned discrepancy between responsibility and guilt, the understanding of justice as responsibility in this study derives from another sort of injustice: large-scale human rights violations committed

by the state against its own people. Furthermore, there is a difference between “responsibility for justice” (emphasis added) and justice as responsibility. In my view of justice as responsibility, I seek to stress two things. On the one hand, I emphasize the duality of responsibility, divided between two theatres of justice, the state with its institutions and society in general. On the other hand, I aim to demonstrate how responsibility constitutes a moral foundation for justice, which allows me to critically analyse the concept of truth commissions.

Recalling again what Arendt wrote about the collapse of moral order of ordinary Germans, she argues that it took place twice: firstly, during the Holocaust, in the organization and work of concentration camps, and secondly, with the sudden return to normality in German society without reflecting upon the complexity of mass compliance. A similar view can be found in Adorno’s reflection upon the same problem: the suppression of the past without critical self-reflection upon the Nazi crimes. Adorno adds that the rapid economic recovery that took place in Germany and the enforcement of democracy by the Allies have contributed to the development of strong political institutions, but for ordinary people, the Nazi experience has not been worked through. In my view, there are strong reasons to dwell upon this second collapse, suppression of the past and the risks it involves in contexts apart from the Holocaust and Nazi Germany, when different institutional settings are presented as mechanisms of dealing with the past and thus replace both political and moral responsibility.

Chapter 3 of this study presented Derrida’s critique of pragmatism. Justice as a promise implies its unpredictability and insecurity about the future, which at the same time demands a commitment to the future: taking responsibility for the past and the present. In my understanding, Derrida’s aporetic thinking aims primarily at warning us about the impossibility of negotiating away and compromising about committed violence, which is always present. The effort to respond to the large-scale human rights violations can never be finalized.

Responsibility as a moral foundation of justice requires clarifying in what ways the state and members of society are responsible. Following Derrida’s and Ricœur’s perspectives on justice, moral responsibility

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stems from the encounter with the Other. This is a ground for individual responsibility. Not all of the members of the community where large-scale human right violations took place are necessarily involved in carrying out a particular violation. Hence, they are not guilty of that crime. This notwithstanding, I assert that consideration of their responsibility for the conditions or circumstances of injustices is a necessary prerequisite for dealing with past human rights violations. Framing individual moral and political responsibility in this way also contributes to the actualization of individual political agency. This means that moral responsibility does not only consist in the responsibility to remember, but as Ricœur suggests, it also implies the responsibility to take an active stance towards past violence and its circumstances. The suffering of the Other constitutes a moral injunction of responsibility that should be shared by all members of society. By taking responsibility and making a judgment, we constitute ourselves as moral selves.

Furthermore, the actualization of individual political agency means adopting a critical attitude towards the current political situation, its institutions and practices. This also means a critical attitude towards legal orders and various forms of legal enforcement by means of legal adjudications and orders. Contrary to the ERC’s aspiration to describe the goals of transitional justice processes as a restoration of trust between the state and the Moroccan people, I argue that in the aftermath of large-scale human rights violations, trust is a desirable but an impossible goal. In the circumstances of injustice, when orders and laws are uncritically obeyed, it is more appropriate to put a critique of power at the centre of responses to human rights violations. In other words, being responsible means being critical and requires making judgment.

Moving on to state responsibility, legal accountability constitutes only one response to human rights violations. Justice, in other words, should not be reduced to legal adjudication. Contrary to Ricœur and in accordance with Derrida’s position, I consider it necessary to recognize the violent structures of legal systems and the reductionism of legal justice in order to make possible a political and moral critique of law. Courts of law are not impartial mediators where words win over violence but may actually function to preserve unjust authoritative structures.

Acknowledging crimes and making efforts to trace the responsibility of concrete authorities and individuals are prerequisites of the state’s
political responsibility. When the ERC acknowledges the state’s responsibility but explains away individual responsibility due to “the large number of security apparatuses”, it provokes serious concerns about how relations of trust may be restored between the state and its people. A transparent account of political systems, including the authority of different law enforcement bodies, the way responsibility was distributed, and what legal procedures were used, also contributes to a demystification of state violence. Beyond every secret detention centre and beyond every authority, there are individual perpetrators who must be prosecuted and take political responsibility by leaving their power positions.

The question of justice as responsibility belongs to the political domain. Responsibility as a relation between oneself and the Other is a response to the call of the Other. In the context of this study, the call of the Other should be understood as the justice claims of victims of political violence. In the work of truth commissions as institutions of restorative justice, justice claims tend to be replaced by a “needs” discourse and therapeutic language. This replacement of justice claims by a rhetoric of care and solicitude, identified in various accounts of restorative justice, has implications for the status of human rights as rights and human rights violations. Importantly, there is a global tendency to frame human rights in terms of development, which is dependent on the goodwill of those in power, both politically and economically. Without acknowledging that human rights are legitimate claims and not a question of international aid and charity, there is a risk of preserving and aggravating the power imbalance.

Justice claims and specifically human rights claims in relation to past injustices should be understood as legitimate claims addressed against the state, not only as a state-perpetrator, but as a guarantor of legal order. Here, the shift between the paradigm of crime and the paradigm of torts is important to pay attention to. In situations of human rights violations, the state is always a primary actor who bears responsibility by virtue of being the guarantor of legal order. At the same time, when the state-guarantor coincides with the state-perpetrator, a problem arises regarding the state’s compromised legitimacy. As was noted earlier, this problem is often presented as an argument against retributive justice

721 General Assembly. 70/1. Transforming our world: the 2030 Agenda for Sustainable Development, September, 25, 2015. A/RES/70/1
and in favour of restorative justice, where restoration takes the form of monetary compensation for the incurred harm. The role of the state thus alters: it is neither a guarantor of legal order nor an accused party in a legal process but rather a defendant. Following the logic of the system of torts, the burden of proof lies on a plaintiff, who in our context, is a victim of a human rights violation. In other words, as a victim of state violence, the victim is forced to file a claim and prove her eligibility for compensation from the state that has committed a violation. In my view, this shift in paradigms creates a double form of injustice for individual victims and diminishes the meaning of human rights violations.

If one adopts the understanding of justice as responsibility, as I suggest one should, then truth commissions are not only an inadequate alternative to retributive justice, but they also contribute to an increased risk of shirking moral and political responsibility by depoliticizing human rights claims. Depoliticization is deployed as a strategy for shirking responsibility and implies shifting the focus away from the historical and political controversies and depoliticizing the causes of human rights violations by individualizing them. Truth commissions, I suggest, play an important role in these processes. They become an instrument of depoliticization by replacing political conflicts and transforming just responses into therapeutic and memorial projects, as happened in Morocco.

8.2 The Role of Truth

My second research question concerns the implication of giving truth a central place in dealing with past human rights violations. This question aims to problematize the second normative assumption about truth as a prerequisite for justice and dealing with the past atrocities.

Of central importance for my analysis of this question have been Foucault’s understanding of power and truth and Arendt’s analysis of the relation between truth and politics, both presented in Chapter 4. The main argument of that chapter was connected with the process of depoliticization, its different directions, and the role of truth and truth-telling for this process. In Chapter 4, I argued that the primary focus of truth commissions on truth risks intensifying the depoliticization of human rights violations and diminishing human rights claims.
Recalling Foucault’s conceptualization of power, its keystone consists of the rejection of a purely negative one-dimensional understanding of power as coercion and repression. Foucault develops a conception of power as a netlike structure where separate individuals are not only subjected to power but also involved in the reinforcing of power structures. Power is not possessed or exercised solely through a set of controlling institutions but also operates on a micro level. Foucault’s understanding of power is inseparable from his understanding of discourse and knowledge production, where truth is both a product and means of power.

Truth commissions in general and the ERC in particular are often characterized as powerless institutions, due to their mandate to investigate but not prosecute crimes. Such a view expresses a one-dimensional understanding of power as sovereign power (juridical and negative), where power relations are equated with a relation of force and a capacity to influence. These relations imply a fundamental gap between those who exercise power and those who undergo it. However, the power relations that exist in the work of truth commissions should not be reduced to this negative understanding of power, independently of whether truth commissions possess this type of power or not. Owing to their pursuit of truth, truth commissions represent manifestations of positive power relations that produce a narrative about past human rights violations.

Another common perception of truth commissions is that they are not only powerless but also political. Trials (e.g., the Nuremberg trial) have also been described as being political. In both cases, the political character of truth commissions and trials has been opposed to the ideal of impartiality and the rule of law. Firstly, this demonstrates a narrow understanding of politics, where politics is equated with political power to influence and with dependency on this power. Hence, truth commissions are presumed to be political due to their dependency on the ruling power and due to the limitations imposed as a result of this dependency. Secondly, this perception brings to the surface an incompatibility between politics and the ideal of impartiality which also underlies the process of depoliticization. Below, I problematize the normative assumption about truth as a prerequisite for justice and suggest that in responding to large-scale human rights violations by the use of truth commissions, the main functions of truth – to critique the given order and raise a plurality of perspectives – are lost.
The normative assumption behind the establishment of truth commissions concerns a necessary link between truth and justice, meaning that justice demands the disclosure of the truth about committed human rights violations. This assumption presupposes an understanding of truth and an understanding of justice that are closely connected with the ideal of impartiality. In the philosophical perspectives analysed in the preceding chapters, I identified different accounts of impartiality. Following Ricœur, judicial bodies represent independent and impartial third parties that should be used as a model for the institutions of justice. The model of impartiality implies establishing an equal distance between the parties in a dispute. In Foucault, we find a stark critique of this model, due to the impossibility of neutral positions towards the parties ascribed to the third party and the impossibility of an impartial decision where the third party is not influenced by previous relations and experiences.

Nevertheless, it is necessary to discriminate between normative and descriptive levels. Yet Ricœur suggests treating trials and judges as a model for political institutions, which seems to be incompatible with his own perspectives on politics, judgment, and the role of narrative. Ricœur is influenced by Arendt’s conceptualization of the political domain. Arendt herself is critical of the ideal of impartiality, particularly based on her conception of storytelling and “situated impartiality”. The plurality of perspectives presented through stories constitutes the foundation of the political domain, which does not allow for reducing difference to unity.

Furthermore, the embracement of the ideal of impartiality impacts and shapes the narratives of past human rights violations. In the case of the ERC, the narrative of political violence has been framed by the analysis of the historical, legal, institutional, and societal contexts. This analysis is dominated by the analysis of previous legal provisions, which despite its significance, does not scrutinize the political context of past human rights violations.

In the context of human rights violations, the legal recognition and wide use of the right to truth is an expression of the relationship between truth and justice. The investigation of truth aims at contributing to justice. At the same time, it has been recognized that the right to truth is laden with certain risks, including the principles of due process and the rule of law. In Morocco, it was forbidden to name perpetrators at hearings, as this would contradict with the presumption of innocence and
fair trial. The procedure of the ERC did not provide for the presence of the accused or the possibility to make a response to the charges.

Apart from the contradiction of the right to truth with other legal principles, the conceptualization of the right to truth has also consequences for the political realm. It promotes a narrow positivist perspective on truth as something that can be proven with the help of evidence. Drawing a connection between truth and appropriate sanctions (e.g. reparations) or using truth as evidence for subsequent recommendations to prosecution both represent this positivistic use. Truth has an important role for legal justice, at the same time as justice is reduced to its legal meaning. In the previous research on transitional justice, reviewed in the Introduction, an equation of justice and truth, truth and justice, can also be noted, which severely limits the understanding of both these concepts.

As mentioned above, the positivist use of truth has consequences for the political realm. The individual right to truth of victims and their families contributes to the individualization of truth about human rights violations and hence may preclude any significant investigations into the historical, political, and social background of the violations. Not only does a process of overjuridification reduce justice to legality and legal accountability, but the legalization of truth may also be observed in both trials and truth commissions. Unexpectedly, the understanding of truth primarily as acknowledgment, and the action of giving victims the central place in the pursuit of justice, result in this legalization and individualization of truth.

The idea of truth as acknowledgement departs from the importance for individual victims and their families of receiving a public acknowledgement of violations. The positivist disclosure of facts about past human rights violations may, however, have limited effects in societies that have been exposed to well-organized political lies, where the distinct line between truths, deliberate lies and state propaganda has been blurred.

The therapeutic language of transitional justice and the healing discourse that were discussed in relation to testimony in Chapter 5 also support the assumption that truth is a prerequisite of justice, but for a different reason. Having its origins in psychoanalysis, the demand to know the truth about the past as a necessary step in working through past trauma leads to the perception of human rights violations as trauma and frames responses to trauma in terms of healing.
Truth commissions as institutions define the way they understand justice and frame their responses to the past human rights violations as investigation and acknowledgment. When the political and historical contexts of violations are downplayed, i.e., when human rights violations are depoliticized, this also undermines the role of truth and its critical function of speaking truth to power and including the plurality of perspectives.

To sum up, justice and truth are interrelated in several ways. Firstly, they are related through the ideal of impartiality, which is in conflict with the understanding of the political as a domain where the plurality of perspectives should be included. Secondly, the right to truth is another expression of the relation between truth and justice, one which has both legal and political implications. Thirdly, the healing discourse and the therapeutic language of transitional justice demand that the truth be known in order to work through the violent past.

It is important to admit that the capacity of truth commissions to uncover truth or truths is limited and this limitation may have different causes. In this study, the acknowledgement of these limitations is not disputable but constitutes a presumption. The question at hand is whether truth should be put at the centre of responses to past human rights violations and what are the implications of such a central role for truth.

Having first analysed the use of testimony in the work of truth commissions, and their strong focus on truth and truth telling, and then problematized the relationship between truth and justice, I will now consider whether one can think of justice without truth. In other words, is it more just and truthful not to centre truth in responses to past human rights violations? Answering this question requires taking into consideration at least two perspectives: the perspective of individual victims and the perspective of the society as a whole.

The question of truth, especially in relation to the violent historical past, is an urgent one. On the one hand, there is a demand on behalf of victims and their family members to know the truth about people who were disappeared. This demand has been conceptualized and legalized as a right to truth, which was discussed earlier. One family in Morocco describes the experience of not knowing the fate of Omar El Ouassouli and continuing to wait for any information about him as a prolongation
of the violence that has been imposed on the family – a state of permanent mourning. The two novels I analysed in this study also paint a picture of the character of the violations that took place: enforced detentions, arbitrary transfers among prisons, and even total isolation in the case of prisoners at Tazmamart. All these violations created a demand on behalf of victims and their family members to know the truth – a demand that was not satisfied by the ERC. Only a very limited number of cases were resolved. According to the official data, the ERC was able to clarify the situation of just 742 people.

On the other hand, truth and more specifically “official truth” always gives rise to suspicion. Truth can be accused of being ideologically manipulated, power guided, pursuing certain interests, and self-serving. These allegations are quite common in relation to truth commissions and their reports, in accordance with the “great Western myth” about the incompatibility between truth and politics. Alternatives to the official truth in the form of testimony or testimonial literature, for example, are subjective, relative, and again ideologically guided, incomplete, and fragmentary. Therefore, this provokes questions about how to deal with these controversial truths and about the roles of and rationales for truth commissions.

The rationale for truth commissions is based on their mandate to investigate human rights violations and provide an account of past crimes. Human rights violations are often characterized by deliberate lies deployed by states in order to conceal the crimes. Arendt describes modern political lies as well-organized lies accompanied by self-deception. The problem she points out is that in Nazi Germany people stopped bothering whether the information they received was true or false. Hence, while on the individual level, pursuing the truth is an urgent matter, on the societal level, it is sooner this apathy and indifference towards deliberate and organized lies that constitutes the more serious problem.

Furthermore, if we accept that Arendt’s concern can even be noticed in the context of truth commission work, meaning that the majority of

people are aware of ongoing human rights violations – such as the existence of secret detention centres and a wide-spread practice of kidnappings – but do not bother about it until it happens to them personally, the results of truth commissions’ investigative work may be met with the same indifference as deliberate lies. Moreover, the institutionalization of truth through the practice of truth-telling after the period of organized lies may undermine the value of truth itself and even reinforce the indifference, both moral and political.

Even though truth commissions investigate individual cases, their main goal is to investigate patterns of crimes based on the information they gather. The result is the production of an institutional truth, which is influenced by the rules regulating truth production and the commissioners who gather the information, process it, and transform into the report text. It has been noted that the production of truth is accompanied by certain expectations about the narratives that play out in public hearings and their predetermined character. Arendt raises the problem of the predetermined character of testimonies presented at the Eichmann and Frankfurt trials. According to her, the stories of resistance and disobedience would have been more morally important, as they would demonstrate that even when almost everyone obeys unjust law and orders, there is always someone who resists.

One example of the predetermined character of testimony in the Moroccan context is the ERC’s gendered presentations of women’s testimony. There is a discrepancy between the way women’s suffering and gendered violence are presented in the ERC’s report and how the experiences of Fatna El Bouih are depicted in her novel, Talk of Darkness. The predetermined character of truth commissions’ work and the narratives they produce speaks to the limitations imposed on truth and truth-telling both explicitly and implicitly regarding what can be said and by whom. The representational character of testimonies in the public hearings of the ERC as well as the settings of the hearings, including their regional distribution, time limits, and the prohibition on naming perpetrators, demonstrate other types of limitations.

One of the truth regimes used by the ERC can be understood through its pursuit of impartiality by omitting to pass political judgment about past political controversies. The critique of politicization has earlier been directed both towards tribunals and towards truth commissions. As argued earlier, the establishment of a truth commission or tribunal is always a political decision, meaning that it is guided by realpolitik.
The critique that has been developed in this study is different: it concerns the process of depoliticization that takes place in the work of truth commissions, which I argue is reinforced by the ideal of impartiality. In Morocco, the ideal of impartiality aims at reducing political controversies and conflicts to a “violent past” that Moroccan people should reconcile with.

Depoliticization may be understood differently, and I suggest that it may take different directions. With the help of Foucault and Arendt, I have identified two such directions. Firstly, depoliticization can be understood as a form of rationalizing certain practices that aim at diminishing the political character of human rights violations. This is done through the individualization of violations and their objectification. Depoliticization should not be treated as an inevitable process. Politics and political power do not vanish, but power structures are concealed through the veil of impartiality and neutrality.

The second direction of depoliticization derives from Arendt’s thought. It implies that the process of truth-seeking in truth commissions may undermine the political significance of the truths that are discovered and the value of truth itself. What role does truth play for the political realm? Can it revitalize a previously atrophied political domain or aggravate its atrophied condition?

According to Arendt, depoliticization consists of an escape from politics and avoiding shouldering political responsibility and making a political judgment. Following Arendt, mass human rights violations are the result of this escape from politics through uncritical obedience to legal rules and orders. Arendt links political alienation together with the critique of bureaucratization and the rule of nobody, where a lack of political responsibility for decisions and actions carries with it a risk of concealing unjust practices. Depoliticization reinforces passivity and alienation from the common affairs of society.

As has been pointed out by Abdeslam Maghraoui, Morocco’s colonial legacy provided its king with a bureaucratic institutional system which made it possible to distribute responsibility for human rights violations among institutions in such a way that it was impossible to trace who was responsible. The ERC has identified responsibility as a collective responsibility of the state and avoided the identification of individual responsibility.
In addition to the two directions of depoliticization drawn from Foucault and Arendt, it is also possible to develop some strategies for combating depoliticization and providing alternatives. The process of politicization implies transferring social and private issues into political ones by bringing them into the public realm and the realm of deliberation. For the context studied here, the process of politicization implies investigating the historical, political, socio-economic, and cultural backgrounds of past injustices. Hence, one alternative is to attempt to politicize past violence by investigating the institutional structures and systematic character of violence. In other words, if we treat depoliticization as a strategy for shirking responsibility, it is necessary to disclose what kind of power structures that lie behind.

Furthermore, it must be acknowledged that in addition to the demand for truth, there should be a stronger demand for political judgment as an alternative to impartiality. In order to make a political judgment, diverse perspectives on a common problem must be included. Politics should not be associated merely with pursuing separate interests and exclusion, but instead with an aspiration to inclusion and embracing the plurality of perspectives by means of democratic deliberations.

To return to the question of the role of truth, in my view, the meaning of truth lies in its capacity to reveal something that political power tries to conceal and thus to be critique of past and current injustices. Truth may then have an important critical function in the processes of responding to past human rights violations, where critique is directed against the former repressive regime. In the majority of transitional cases, the critique is directed against the former regimes, but in cases where no regime change takes place, critique may gain a different political significance as a critique of the current political order. Meanwhile, truth commissions that might potentially offer such a critique serve instead to legitimize the ruling government by providing a deceptive picture of openness and inclusion.

Here again, the argument about truth provokes a question about whom the truth is directed to. When an authoritative government, the oppressed, and the majority of people know about human rights violations, the acknowledgement of violations by a truth commission has a limited effect. The most urgent problem, from my perspective, is not that people do not know the truth; the most urgent moral problem is why they do not care about the truth and the actual injustices. Political alienation and passivity give rise to this indifference. If truth is not
acknowledged, the political domain opens the floor for different accounts that can be negotiated, denounced, condemned, embraced, and accepted. This implies in turn, that the process of dealing with the past cannot and should not have any final aim. The idea of truth as unhiddenness implies that truth should not be limited to the established facts. There must always be space for the unexpected. The process of truth-seeking should be aimed at revealing those mechanisms and techniques that are used to produce truth and the conditions of its production.

8.3. The Implications of Public Testimony

My third research question concerns the implications of truth-telling for justice and challenges the normative assumption about the presumed positive effects of public truth-telling, including the healing of victims and the restoration of their human dignity through the public acknowledgement of their suffering. In this study, I have presented and discussed a variety of different perspectives on the concept of testimony. I related a general idea about the legal, historical, and clinical uses of testimony to the specific use of testimony in the work of truth commissions, where several problematic relations and shifts were identified. Studying the context of Morocco’s truth commission also allowed me to concretise the use of testimony through a further problematization of the perspectives on the role given to testimonies and public hearings. Following the same logic as with the previous two research questions, the aim of the third question is to challenge the third normative assumption, which concerns the presumed positive effects of public testimony for victims and society in general.

As I argued in Chapter 5, the legal and clinical use of testimony contributes to the individualization of human rights violations by means of the presumed healing effects of public witnessing and the payment of reparations based on submitted testimonies (in support of petitions). In the ERC Final Report, the discourse of suffering is identified as a form of healing discourse, which not only individualizes and depoliticizes the violations, but also makes the perpetrator invisible. The concept of suffering as a passive state to which a victim is exposed should be contrasted with the concept of wrongdoings, where an active subject, who actually commits the violation, comes forward. This has implications for the question of responsibility and how the discourse of suffering has
been used to shirk responsibility. It is problematic that the assumed healing effect of public speaking is used to legitimize truth commissions and public hearings.

The adaptation of therapeutic language in transitional justice became prominent first in the work of South Africa’s Truth and Reconciliation Commission, and later on in other contexts where restorative justice was given priority over retributive justice. The healing discourse has also a symbolic meaning, where the illness or disorder which is meant to be healed is in fact an oppressive state that commits human rights violations against its own people. When the diagnosis is correctly made and the disease is identified, it becomes apparent that it is first and foremost the oppressive state that must be “healed” through fundamental democratic reforms.

A strong link between testimonies and reparations also leads to an individualization of human rights violations and a restriction of responsibility to the responsibility to pay reparations. As a result, there is a risk that testimonies become commodified and the political dimension of human rights is lost. The very understanding of human rights as political principles is aggravated. This is a common problem for human rights discourse in general due to its overwhelming overjuridification. Lastly, the Moroccan context has demonstrated an interesting discrepancy between ifada (petition for reparation) and shahada (testimony) which gave nuance to the different uses of testimony in Morocco. This demonstrates the misleading use of different meanings of testimonies.

So far, the effects of the clinical and legal use of testimonies have been mentioned. Now I will address the problem of representation. This problem can be subdivided into two questions: firstly, how testimonies are represented in the work of truth commissions and, secondly, the possibility of collective representation by means of individual testimonies. The first question can be understood using Lyotard’s concept of the differend, which implies the existence of different forms of representation. Hegemonic forms of representation exclude and silence voices and experiences on various grounds, including sex, class, race, ethnicity and religion. The example used by Lyotard to explain the concept of the differend demonstrates how exclusion takes place in the situation of the trial, where one party is deprived of the means to argue and make a justice claim according to the hegemonic rules of shaping speech, including neutralization of testimony. As a result, the wrong
suffered is understood through these rules and the procedure of regulating the conflict and those who actually have control over the system of representation. In other words, exclusion does not take place explicitly, but is exercised through the regulating norms. The result is testimonial injustice, a term coined by Miranda Fricker.

In the book *Epistemic Injustice: Power and Ethics of Knowing*, Fricker articulates the concept of epistemic injustice as a feminist concept, depicting epistemic exclusion, silencing, and other forms of subordination. Epistemic injustice is a form of injustice committed against a subject by disqualifying the subject from possessing certain knowledge as a result of a prejudice against one of the subject’s identities. While Fricker identifies the lack of trust and a deficit of credibility that the speaker experiences as the main cause of injustice, an analysis of the work of truth commission work shows that there is a discrepancy between an aspiration to give the voiceless a voice and an actual experience of having a voice. This discrepancy does not depend on a lack of trust in victims’ testimonies, but on the deceptive image of truth-telling as an empowering activity.

The institutionalization of truth-telling by means of truth commissions undermines the political and ethical dimensions of testimony, including its potential to offer a radical critique of power, to constitute the realm of the political through the plurality of perspectives, and to give rise to political and moral responsibility. This institutionalization paints a deceptive picture of openness and reciprocity between witnesses and audience. Hence, it is reasonable to ask: if a witness is given a voice, is someone listening? Much attention has been given to speaking and witnessing, and less to what this actually demands from the recipient of testimony and whether what is said is heard at all. In the essay “Poetics and Politics of Witnessing”, Derrida contends that the essence of testimony consists of the witness giving a promise to the recipient of testimony to tell the truth and the recipient making the reverse promise, to believe, or exercise the act of faith. And as I have argued in Chapter 5, testimony should not only demand responsible witnessing but also responsible listening. The experience of speaking and not being heard or not being believed necessarily exposes victims to more violence and injustice.

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The relational structure of testimony is observed by all four thinkers I examine here: Derrida, Foucault, Arendt, and Ricœur. Derrida raises the importance of the transformation of testimony into the public realm and the value of publicity. This in turn is conditioned by the generalizability of language and its iterability. Nevertheless, the transformation into public realm demands a shared linguistic competence, something that is actualized in the work of truth commissions in a very concrete manner.

For Arendt, the importance of relationality can be understood through her concept of the “right to have rights” or rather its subsequent interpretation by Balibar and Gündoğdu. Both point to isonomia as a claim to political activity through speaking: a right to participate in public deliberation. Gündoğdu notes that this right is reciprocal and therefore it demands a mutual recognition of the meaningfulness of speech. The same can be said about testimony, whose meaningfulness should also be acknowledged, and the first step towards this is listening.

In her book *Ethical Loneliness: The Injustice of Not Being Heard*, Jill Stauffer expresses her wish to be able to write a book on speaking and hearing about traumatic experiences of mass violations without addressing trials or truth commissions. She is convinced that neither trials nor truth commissions are capable of addressing traumatic experiences without exposing former victims to violence. My point is different, since I wish to problematize the deployment of healing discourse in the work of truth commissions as way to legitimize their establishment. Thus, for me, it is not only the doubtful capacity of truth commissions to deal with traumatic experiences that poses a problem, but also the way that justice claims are reduced to individual trauma.

How can one judge if testimonies given at the hearings of truth commissions are heard? This study has departed from the identified gap between testimonies given at ERC hearings and the way they are represented, or rather underrepresented in the commission’s Final Report. The bifurcation event that takes place between hearings and the writing of the report is a result of the institutional setting of truth commissions, its formal mandate, and its consideration of the recipient of its report (in Morocco’s case, the king). The absence of witnesses’ voices in the

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ERC report makes one doubt that the testimonies it heard have had any serious political and moral impact.

Let us now turn to the second question about the possibility of the formation of a collective subject. In the Moroccan context, this question appears relevant partly in relation to the public hearings where sample witnesses were selected from different groups, partly in relation to the testimonial literature. Testimonial literature, according to Sanders, may help to overcome the gap which emerges as a result of bifurcation.\textsuperscript{726} Previously several problems have been identified in connection to this idea: the subaltern dimension, the representative potential of literature and the constitution of the collective testimonial subject.

As far as the two novels analysed in this study, I would argue that they constitute a valuable source for enhancing a critique of the ERC, not least when it comes to the commission’s problematic representation of gendered suffering in its Final Report. Nevertheless, despite their ethical and aesthetic values, the novels cannot replace justice claims in the aftermath of large-scale human rights violations. The establishment of the ERC has been recognized as an important impetus for different artistic forms of retelling the history of political violence in Morocco, including memoirs, theatre performances, and films. While prior to the establishment of the truth commission, they were perceived as controversial, today there is free access to these different forms of art. The controversy around them has changed and become more neutralized.

The novels portray the psychological and physical dimensions of human rights violations, giving detailed descriptions of torture, imprisonment conditions, and relations between guards and inmates. Considering the result of my analysis of the ERC’s work, where the main problem concerns the failure of the state to take responsibility for human rights violations, testimonial literature and other forms of bearing a witness may also be misappropriated for the purpose of evading responsibility by transferring moral and political functions to literature.

Even though testimonial literature allows a witness to use their own means to argue and make a justice claim, in contrast to, for example, a trial situation, the loss of orality carries many risks of misappropriation and misuse. The subalternity that testimony is meant to overcome is re-established in writing and leads to a state of powerlessness. The loss of

\textsuperscript{726} Sanders, Mark: Ambiguities of Witnessing. Law and Literature in the Time of a Truth Commission, 148.
orality also implies the loss of performativity which is characteristic for testimony according to Derrida.

To sum up, as Morocco’s experiences show, truth commissions contribute to the legitimation of power. Among the conditions enabling this legitimation is the entanglement between the question of justice and the question of transition which was introduced in the Introduction. Previous research has shown that the question of justice is subjugated to the question of transition which in turn has a predefined endpoint. Morocco is an illustrative example. Its context is different from orthodox cases of transitions where political regime is changed as a result of revolution or civil war. In the case of Morocco, no substantial political transformation has taken place, which makes it an interesting case to study as it broadens the scope of research.

Despite political continuity, Morocco’s experiences are perceived as experiences of transitional justice. The establishment of the ERC, as has been pointed out by Loudiy, instead of promoting a critique of power based on the past political violence, served as an instrument for legitimizing the rule of the current king. Its establishment was presented as a political reform initiated by Mohammad VI. In my conversations in Rabat, the will of the king was portrayed as a necessary condition that made the establishment of the truth commission possible.

Thus, the ERC became an instrument of political legitimizing particularly due to the enforcement of transitional justice discourse and the location of the ERC within this field. Transitional justice discourse anticipates political transformation and due to the perceived nature of transitions, i.e., from authoritative rule to liberal democracy, the actualization of the discourse carries with it assumed changes in terms of civil and political rights, governmental reforms in accordance with the principle of checks and balances, and a liberalization of the market.

The political and ethical dimensions of testimony show the potential of testimony, not least in times of transitions and democratization. Following Foucault, the practice of parrhēsia is a necessary practice in a democratic society, where a pluralistic public sphere makes it possible for substantive political disagreements to be negotiated. Parrhēsia as a

\[727\] Loudiy, Fadoua: Transitional Justice and Human Rights in Morocco: Negotiating the Years of Lead, 129.
radical critique of power also enables subjectivation, which can be understood as a critical level of morality: a critical and reflexive position that makes it possible to question imposed norms and orders of power.

Arendt’s analysis of storytelling depicts the potential of testimonies to be an alternative to the model of impartiality through the embrace of the plurality of perspectives. To counter the ideal of impartiality, a political judgment must be made: that is, a judgment about particulars. Judgment, which according to Arendt is the most political of human faculties, demands active engagement in the political and taking responsibility for one’s decisions and actions.

Testimony and storytelling have been identified as a means of politicizing injustices, specifically by many feminist theorists (e.g., Young and Fricker), who focus on the importance of personal experiences and structural injustices. Testimonies include concrete experiences that should constitute shared social knowledge. The institutionalization of testimonies, however, undermines their significance and can even corrupt the whole practice.

Finally, the paradox of testimony, as presented by Ricœur, is important for understanding testimony’s ethical potential. Testimony about human rights violations should not be reduced to an example, as it bears in itself a more profound meaning that is relevant for the whole society. Such testimony contains an imperative for future action and hence imposes moral responsibility on its receivers. Ricœur writes about “collective ethical responsibility” which returns us to the discrepancy between guilt and responsibility and reminds us again about our responsibility towards the Other by virtue of being a member of a community, by virtue of our common humanity.

8.4 Ethics as Critique: Final Reflections

To conclude this chapter, I present some reflections on the theories and methods chosen for this study. The aim of the study was to critically analyse the concept of truth commissions as a response to large-scale human rights violations. The analysis was carried out by engaging with three research questions about the understanding of justice and the role of truth and truth-telling for this understanding. The endeavour was a critical one, deriving from an understanding of ethics as a critical disci-
pline where critique is performed in relation to moral norms and conventions. The four philosophers that I engage with in my analysis belong to different philosophical traditions, and reflection was required on how each of them understands ethics and what implications their understandings have for my own perspective.

The critique developed in this study concerns an existing political practice of dealing with past crimes: namely, the practice of truth commissions. The methodological approach of the study was divided into three steps, where the first step consisted of the identification and examination of three hypotheses about justice, truth, and truth-telling. After these hypotheses were confirmed, they were treated as three normative assumptions about the establishment and work of truth commissions.

Each of these normative assumptions was then problematized and challenged with the help of my research questions and my chosen theoretical perspectives. Finally, the third step consisted of an empirical contextualization of my philosophical arguments through an analysis of Morocco’s Equity and Reconciliation Commission and its experiences. This empirical contextualization drew on previous research on both Morocco’s historical and political background and the ERC, a short period of field study in Morocco, the Final Report of the ERC and two novels by former victims of human rights violations committed by the Moroccan state.

As was acknowledged in Chapter 1, my study of the Moroccan context was made more difficult due to language issues. However, the existing body of previous research, the ERC report, and the novels constituted sufficient material to contextualize the problematic assumptions with the experiences of Morocco’s truth commission. Had the archives of the ERC been more accessible this would have changed the character of the study, giving it a stronger focus on victims’ testimonies and their analysis.

The understanding of justice I developed in the study with the help of Derrida and Ricœur constituted the ground for my critique of the ERC. My main critique concerns particularly the problematic shirking of responsibility that is facilitated by the ERC. While state responsibility is officially acknowledged, various strategies are deployed in order to shift the focus from the state’s responsibility to other questions. An understanding of justice as responsibility is one possible interpretation and reworking of Derrida’s and Ricœur’s perspectives on justice. To be
faithful to Derrida, his deconstruction of justice does not provide any concept of justice but is a radical critique of justice as legality and law’s violent structures. Deconstruction is justice, meaning that only by deconstruction may we approach the horizon of the impossibility of justice. Deconstruction of justice is not an ideal, since ideal demands clarifying what it represents, but a suspicion of claims of justice and of attempts to present compromises and pragmatic solutions as justice. This suspicion is guided by a concern for the Other. Even though the present study does not represent a deconstruction of the concept of the truth commission, it has still been driven by the necessity of questioning the self-righteous positions embedded in the discourse of transitional justice and the normative assumptions of truth commissions. The radical openness of justice towards the unforeseeable and undefinable is a precondition of the possibility of transformation, which demands continuous examination of normalized practices. Derrida’s future present tense of justice – justice à venir – implies that our present condition is not inevitable and can be transformed. Therefore, despite its impossibility, we need to keep justice as a promise and not let it be subjugated to transitional discourse.

Ricœur’s hermeneutics begins with a hermeneutics of suspicion and continues with a hermeneutics of affirmation. For Ricœur, hermeneutics is a method of critique as it aims at revealing concealed meanings in relation to the interpreted text, its intention, and the world that is opened by the text. The interpretations of the texts offered here are only one possible interpretation among many. They were driven by the aim of the study and the research questions as well as the aspiration to reveal and bring to the surface the concealed strategies of domination. Different strategies for shirking responsibility and shifts between different paradigms were identified through a critical reading of the material, but without bracketing of those meanings that are located in the texts. Ricœur’s phenomenological development of hermeneutics confirms the impossibility of bracketing interpretations of phenomena without taking into consideration the historical, political, social, and cultural conditions.

Justice is put at the centre of the ethical endeavour and the two perspectives presented by Derrida and Ricœur move beyond retributive and restorative, distributive and rectificatory justice, by discovering new layers and mechanisms of injustice which tend to be ignored in other theories. These include the injustice of silencing, the injustice of
not being able to make a justice claim, or the illusion of making a justice claim. These perspectives do not define or develop a complete concept or conception of justice. Even though Ricœur’s perspective on justice can be understood as a conception of justice based on the ethical intention of “aiming at good life with and for others in just institutions”, its multifaceted character precludes identifying it as a comprehensive theory of justice. Derrida’s and Ricœur’s perspectives send us in the direction of the experiences of injustice – a point of departure for thinking about justice.

Considering the context of the study, i.e., the extreme degree of violence involved, the idea of peaceful co-existence raises serious concerns about whether it is possible to live together after large-scale human rights violations. Can the founding and preserving violence of any legal order, in democratic and authoritarian states alike, be negotiated? The very possibility of violence reoccurring provides solid reasons to question efforts suggesting that “never again” is possible. This study was guided by the experiences of injustice rather than an attempt to develop an ideal theory of justice. The situations in the aftermath of large-scale human rights violations represent contexts where extreme violence has become normalized, but at the same time these situations do also represent a juncture – a break with the past and therefore an opening towards something different.

Apart from identifying justice as responsibility for the purposes developing my critical analysis, the next questions are derived from the specific practice within transitional justice that gives truth and truth-telling a central role. This moves analysis into a critical discussion of truth and truth-telling and the implications of the centrality of both for justice. For this purpose, Foucauldian and Arendtian perspectives were developed in order to work out tools for a critical examination of truth commissions. Neither Foucault nor Arendt treat the concept of truth as a prerequisite of justice. As a result, further development of the relevance of their positions for the analysis was required. This has been done mainly through the concept of depoliticization and the different directions of depoliticization based on their thought. Depoliticization then constitutes a problem for justice.

Foucault’s conceptualization of power through discourse and knowledge production makes it possible to identify the questions that dominate and those that are kept subordinate to these discourses. His critique of political philosophy due to the limited understanding of
power as sovereign power is also supported by Arendt’s critique of the social sciences and their ambition to find universal categories and explanations that do not fit real political experiences. In her own analysis, Arendt does engage with the political developments that took place during her lifetime but at the same time she follows Heidegger’s position on the necessity to turn to the ancient Greek and original etymologies of such central categories as truth and politics. As a result, the original meaning of politics through the Greek *polis* may raise critical questions about who were included and excluded from the *polis*, revealing certain taken-for-granted norms. These taken-for-granted norms included the separation of the public and private realm and Arendt’s inconsistent use of the human condition of plurality and equality both as a normative and a descriptive condition.

As a result of this analysis, it has become clear that bringing to the surface the linkages between different discourses and identifying different types of rationalization and legitimization of certain practices and institutions is a tenable approach. Apart from the analysis of those practices and institutions that are presented as inevitable solutions, a Foucault-inspired genealogical analysis should aim at the examination of the conditions that enabled defining the problem and its solution. In this respect, a broader perspective on transitional justice and the entanglements of the discourse aimed at identifying these conditions is called for, focusing rather on answering the question of how the idea of truth commission came into being than how truth commissions should be formed and organized. Here, it is necessary to emphasize that the present study has not aimed to work out guidelines for the work of truth commissions or any criteria that truth commissions should follow. Rather, the study aimed at relating the concrete experience of Morocco’s truth commission to the discourse of transitional justice.

As I argued in Chapter 1, critique is not only necessary for an academic endeavour but also constitutes a fundamental democratic practice. The problem of justice brings together political and moral questions: that is, how a society should be organized and what norms should guide our common life. Critique in this context not only aims at revealing and demonstrating concealed injustices, but also constitutes a ground for a refusal to accept unjust practices and orders and a ground to transform them. The process of immanent critique should be guided by power imbalance, concern for the Other and directed against attempts to present pragmatic solutions and compromises as inevitable in
the name of justice. Truth commissions are an example of such an attempt.

Finally, in Chapter 1, I identified and discussed how my chosen thinkers provide the resources necessary for a critical examination of truth commissions. Their different approaches to the critique of contemporary political institutions and practices enable a social critique understood in the same vein as Borradori’s distinction. These different forms of critique can be linked with each thinker’s respective tradition – deconstruction and aporetic thinking, hermeneutic phenomenology, genealogy and problematization, and political phenomenology.

Throughout the study, it has been a challenge to discriminate between the descriptive and normative levels of their thought. Partly, this depended on the fact that they themselves do not explicitly make such a distinction. Moreover, they claim not to take any normative position themselves, which at times has revealed that some assumptions are taken for granted and not clearly articulated or reflected upon. In Ricœur’s case, we meet a mixture of different normative stances, starting with an Aristotelian virtue ethics and broadening the conception of justice with elements of deontological ethics. Nevertheless, a common question that arises after analysing some of their work is whether critique is possible without taking a normative position. Can we provide critique of the given social and political orders, and self-righteous views without adopting a normative ethical theory?

The present study has shown that such critique is possible. This critique does not depart from the idea of what characterizes morally good action or a morally righteous person. Instead, it starts from the situation of injustice and the plurality of injustice manifestation. The critique of the study aims at tracing the origins of injustice, its enabling conditions, strategies for concealing injustices, and attempts to present pragmatic solutions as justice. It makes it possible to bring to the surface the shifts and linkages between different discourses, the rationalizations and justifications by which different political and legal practices and institutions are presented as inevitable solutions.

The discourse of transitional justice and the concept of truth commissions have been shown to be permeated by such pragmatic solutions, shifts, rationalizations, and justifications. In the aftermath of large-scale human rights violations, societies and the world community face many challenges of a legal, political, and moral character. The attempts that are made to overcome violence and bring peace and justice, despite
their often sincerely positive intentions, must be critically examined, and it is the task of moral philosophers to engage in such examinations.
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