

THE JUSTIFICATION OF THE TRUTH AS A HUMAN RIGHT

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1. Introduction*

We can say that with regard to all human or fundamental rights there is a positive and a metapositive justification. The first justification is tied to the express or implied judicial recognition of a right, either by means of a law or by means of a judicial resolution. The second justification arises from the people themselves and is consequent to judicial requirement. The ‘right to the truth’ has been formulated as a human right in international positive law as well as in national positive law in certain countries, however, not much has been said about its metapositive justification. Therefore, in the following pages, an effort will be made to present at least the basic elements of this justification. Normally, the suprapositive justification and formulation of a right, such as a human right, is framed in such a way that makes it necessary to develop the positive justification and formulation. From human beings with the intention of examining the justice of the positive formulation once the metapositive justification is raised.

2. A particular conception of human rights

One basic definition of human rights describes ‘*the rights of an individual as a person*’. This seemingly puzzling definition constitutes an important starting point in every analysis of human rights and requires a prior definition of the notion of ‘human being’. This definition, also in a basic manner, could be as follows: *a complex reality that is prone to perfection*. By ‘*complex*’ what is meant is a concurrence of a series of dimensions including at least: individual, social, material, and spiritual. ‘*Prone to perfection*’ means, in the first place, an imperfect being. In the second place it means that this situation of imperfection can be overcome and degrees of human perfection can be acquired by means of satisfying those human needs and requirements. A basic

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definition of ‘good’ is: *that which perfects the being*. This is based on the idea that a ‘human good’ is something that satisfies a human necessity and permits human perfection. Consequently, the bigger the human good, the more human needs and requirements are satisfied leading to greater degrees of human perfection and, in general, to the greater realization of human nature.

In this context it is possible to define, human rights as: the components of human good that are recognized and guaranteed by the Law. ‘Recognized’ here does not mean ‘having been created by the Law’, but rather that its original source lies elsewhere, i.e. in human nature, from which it is possible to conclude strictly human needs and requirements. The realization of the human being -by means of its perfection- is a binding and thus legal reality with the Law forming part of it in order to, by means of deontic formulations, establish its concrete judicial scope and meaning.

What ‘guaranteed’ means is that the Law creates a series of formal mechanisms and materials in order to make sure that a person obtains the highest possible percentage of human good, due to the fact that the Law has recognized the person as being the ultimate goal, with the other realities – the state, society, Law itself – only as a means to an end. Reaching a point where there is the maximum possible realization of the human being is equivalent to arriving at a situation where there is the highest possible acquisition of human good and the consequent achievement of the highest possible degree of human perfection.

This argumentative logic requires that in order to recognize a right as a human right we must first present strong arguments to: first identify a need as a human one and, more precisely, a need as an essential one in terms of human essence; second define this quality of ‘good’ as human; and last recognize that this good is the objective of the law that intends it to be categorized as a human right. For the purpose of what is presented here, arguments have to be made that are not only valid but are also strong and which permit the linking of the *human right to know the truth* with a human necessity and with a human good. We shall proceed immediately to formulating those arguments.

3. The justification of The Truth as a human right

A political community can be subjected to a series of exceptionally important events that also pose an exceptional risk of social or political instability. Internal or external threats to a country’s sovereignty or its institutions could occur that require an urgent and forceful response on the part of the public authorities; or internal ideological and/or military confrontations could occur that put at serious risk even the very existence of the state. In all these cases either of the following two situations could result. The first is that the fundamental state institutions remain intact and the government remains in power, even if in a minimal sense. The second is that the public authority disappears and is replaced by a *de facto* authority. In either case the public or *de facto* authority can decide to act according to international or national legal requirements, which are normally linked to legal standards concerning human rights; or it may decide to act outside and against the essential requirements of humanity. It is in this last situation where serious violations of human rights or international humanitarian

law normally occur and when the public authority acts outside of its national and international obligations, ultimately replacing the individual with itself.

3.1 The personal world of human beings

The actions of an out of control military can affect a person or a group of people. Such actions might be executed as a consequence of the repression of civilians carried out by the armed forces or police; as a consequence of the destructive or debilitating actions of a victorious military or political group; or as a consequence of repressive politics carried out by real or supposed enemies of the State and its institutions. In all these possibilities the victims of a forceful action are controlled and subjected to inhuman treatment, causing serious harm to their physical or mental health and possibly even to their very being.

In this context there can be two scenarios with respect to the victims. The first is that they are able to recover their liberty but without being able to count on effective procedural mechanisms to uncover the identity of those responsible for their misfortune for the purpose of bringing about appropriate sanctions and/or reparations. This situation of ignorance and impunity generates mental and/or physical vulnerability within the victims, accompanied by anguish and suffering. The second scenario is that the victims neither recover their liberty nor can society be sure about what has happened to them. These are missing people whose whereabouts, or whether they are even alive or not, cannot be verified by any authority. This situation generates horrible suffering accompanied by a wave of anguish and desperation on the part of those linked to the missing people, normally the intimate family circle (the spouse, children, parents, and siblings). The profound pain provoked by the disappearance of loved ones is deepened by the lack of reliable information about the events surrounding their disappearance and especially about their current whereabouts. This painful and insufferable situation causes an inevitable (postponement of one's personal realization.). Normal daily life is put on hold and is transformed into a self-absorbed introversion in the face of the disappearance of and lack of news about the victims.

In this second situation it is important to differentiate between an assumption of normalcy as in the case of a desired and voluntary distancing by the missing person from the family circle and even that person's death, and the above situation provoked by a repressive action, by the state for example. Here essentially (is the singularity): the suffering that in other circumstances would have been a natural occurrence and accepted as inevitable has been converted into something especially painful because of the uncertainty and doubt caused by the actions of the state. In this way, suffering is not caused by the mere absence of loved ones but, rather, by their forced absence and ignorance of their fate. It is the State which has become the real obstacle to the full realization of family members who suffer the undesired and uninformed absence of their loved ones.

In both situations this kind of suffering becomes an impediment to the peace and tranquility of family members (human being,) and (for the most part,) a serious obstacle to their full realization. The very essence of a person requires that this

situation should not be produced, but if it is, then it should be resolved as soon as possible. This requirement is manifested as an *essential* need of a person whose satisfaction is dependent on the achievement or loss of degrees of human perfection and realization. This *essential* need or requirement is satisfied in the first place by having knowledge of the circumstances of the events, particularly determining those responsible for the serious violations of human rights, and second by finding out the whereabouts of the missing people in order to get them back, whether that be alive or not (with or without life). The truth about the events becomes in this way a human good which satisfies the aforementioned human need, permitting the achievement of a higher degree of human perfection and realization.

3.2. The social environment of human beings

The discourse until now has been formulated from the perspective of the individual suffering the disappearance of a loved one. However, the same discourse can be applied to the perspective of the political community. When considering this perspective one has to take two factors into account. First of all that the manifested violations of human rights on the part of the state authorities, whether they are systematic or not, are normally the consequence of a profound social confrontation. One of the belligerent groups is in the possession of and exercising the powers of the state, either because at the moment of confrontation they already were in power or they emerged victorious from the confrontation, took control of the state apparatus, and from that position executed acts of repression which violated the human rights of the vanquished group.

Second, after a period of confrontation there emerges a need for social reconciliation in order to make a peaceful coexistence possible. A fundamental element in the effort to achieve a real and effective reconciliation is to know the circumstances surrounding the different actions of the part of the state that violated human rights, particularly with reference to missing people. Without acceptable knowledge of those circumstances it is practically impossible to have a real and durable reconciliation between the opposed groups.

A situation of profound and fractionalizing social confrontation results in an environment which is not favorable to the realization of a person, because either: the situation will cause the people themselves to impede or make it extremely difficult to execute the human good that permits the human perfection of the members of that community; or the situation will encourage gross violations of human rights on the part of the state and some individuals. The existence of a social and political organization that permits the fraternal and peaceful co-existence of different social groups regardless of their ideology is a human need in its social dimension. When a situation of breakdown in the constitutional public order occurs, or when the social differences have been of such a magnitude as to cause military confrontation between the State and social groups or between social groups themselves, which precedes the dark and anarchic stage when crimes against humanity happen, they will only be overcome by the most complete and exact recognition of events. Therefore, this

recognition becomes a human good that permits the satisfaction of an essential need or requirement of the social dimension of a person.

It is possible to formulate reasons that from both, the individual and social dimension of a human being, fully support the notion that the truth about serious and systematic violations of human rights is a human good whose attainment allows a person to achieve a higher degree of human perfection. Consequently, there are strong reasons to affirm that the Law, a system/structure that favors full human realization, should recognize and guarantee as much as possible the attainment of the truth about events. This should be the basis for the recognition and legality of the right to the truth.

4. By way of conclusion: the formulation of the right to the truth

Important steps have been taken towards recognizing and guaranteeing a right that permits the victims and their families to find out the truth about the violations of the human rights they have suffered. In all of these domains it is possible to notice in such a way that adheres to the full exercise of human rights, situations –unfortunately frequent– that encompass the transition from political, social, and military confrontation to social reconciliation and peaceful coexistence.

Despite the different extents of legal recognition that this right has reached, it is possible to say that the search for the truth of the events has been presented as an instrument to achieve, on one hand, the satisfaction of an individual's grievances and, on the other hand, the successful fight against impunity¹. Only by admitting that a human being is a valuable entity in itself can it be considered peremptory and justifiable to investigate and uncover those who have subjected, or intended to subject, another human being to the kind of treatment that negates this value. Consequently, on the basis of this superior value embodied by a human being, judicial mechanisms are created which permit the discovery of actions violating human rights, with the objective of sanctioning the perpetrators and their promoters.

It is precisely this humanistic foundation that underlies the international juridical formulation, and that makes it possible to preach the metapositive justification of the right to the truth in line with what has previously been argued. Therefore, on the basis of this definition of human rights and of the international juridical recognition of the right to know, it can be affirmed that the right to the truth about events occurring during a specific time of social, political, and military confrontation constitutes the human good of satisfying a specific human need of self-perfection². The Law, an artefact created to serve mankind's aim of achieving its ultimate objective, i.e. the full realization of its personality, is derived from the human essence. In Law we discover that the (metapositive) mandate of human perfection (human happiness), which all of us naturally aspire to, has a particular realization in situations of exceptionality in

¹ Felipe GÓMEZ ISA: El fenómeno de la impunidad: Luces y sombras en América Latina. *Pensamiento Iberoamericano*, 2008/2. 165.

² Cruz GONZÁLEZ–AYESTA: *La verdad como bien según Tomás de Aquino*. Navarra, EUNSA, 2006. 340.

the life of a political community, normally in the context of so-called “transitions to democracy”³.

This mandate is particularized to satisfy the specific *essential* requirement (necessity) of knowing in the most complete way possible what has happened to the victims of human rights violations. The requirement is *essential* because it is derived directly from human nature (essence)⁴. In other words, individuals who suffer pain, anguish or desperation as a result of ignorance about the fate of their relatives are unable to form part of the social/political community they perceive to be belligerent/criminal and therefore any kind of reconciliation is prevented.

Stated positively, the appeal for knowledge about the circumstances surrounding serious violations of human rights, particularly concerning the identity of the perpetrators and the fate of missing loved ones, not only allows for a dignified existence for the victims and/or their families (on account of the termination or at least mitigation of pain and anguish), but also favors the creation of peaceful coexistence resulting from national reconciliation⁵. The prevention of human rights violations from being repeated in the future⁶, as a manifestation of the duty not to forget⁷ is also a determining factor in the coexistence of human beings.

Therefore, recognition of what has happened becomes a human good and its attainment allows a greater degree of human perfection. It is necessary to provide a human being with the optimal conditions to obtain the highest possible degree of realization⁸. This human good, which is recognized and guaranteed by the Law, becomes the *human right to truth* that commissions a set of actions and governmental duties aimed at discovering what has happened to certain members of the community and is consistent with the obligation to treat human beings in accordance with their dignity.

³ Juan E. MÉNDEZ: Derecho a la verdad frente a las graves violaciones a los derechos humanos. In: Martín ABREGÚ – Christian COURTIS (compilers): *La aplicación de los tratados sobre derechos humanos por los Tribunales locales*. Buenos Aires, Editores del Puerto, 1997. 518.

⁴ GONZÁLEZ-AYESTA op.cit. 347.

⁵ José ZALAQUETT: Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints. In: Neil J. KRITZ (ed.): *Transitional Justice*. Washington, United States Institute of Peace Press, 1995. 3–31.

⁶ Rodrigo UPRIMMY YEPES – María Paula SAFFON SANÍN: Derecho a la verdad: alcances y límites de la verdad judicial. In: Camila DE GAMBOA TAPIAS (publ.): *Justicia transicional: teoría y praxis*. Universidad del Rosario, 2006. 345.

⁷ GÓMEZ ISA op.cit. 168.

⁸ Luis CASTILLO CÓRDOVA: *Los derechos constitucionales. Elementos para una teoría general*. Lima, Palestra publishers, 200. 27–37.