

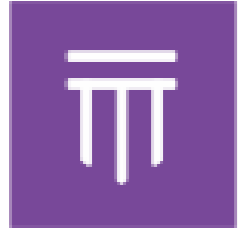
Brno, 6 October 2021

International transitional justice: Truth and reconciliation commission (TRCs)



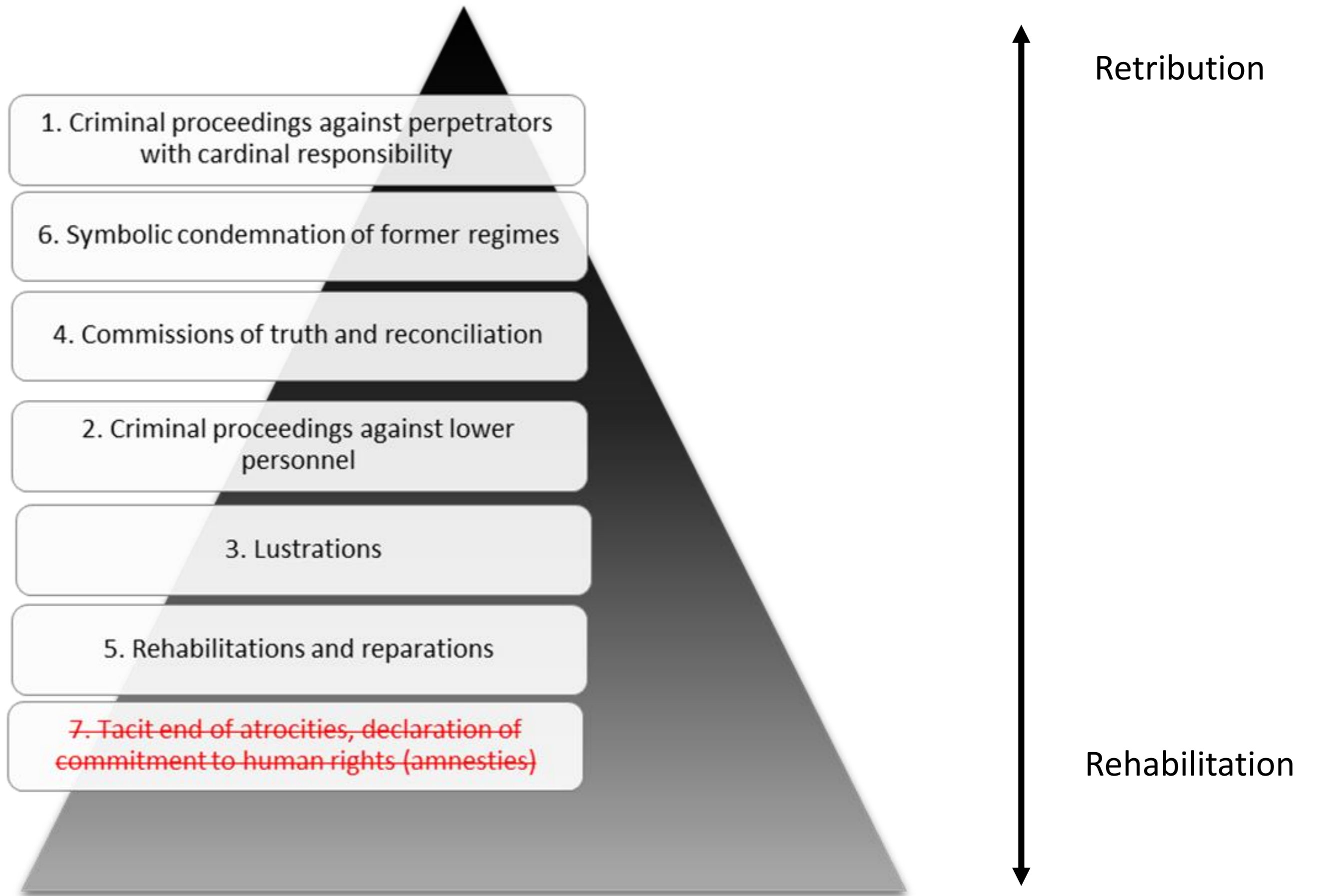
JUSTIN
Judicial Studies Institute
Masaryk University

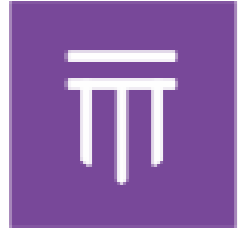
Katarína Šipulová



Transitional Justice Mechanism

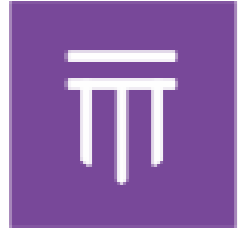
Transitional Justice
Brian Grodsky (2009)



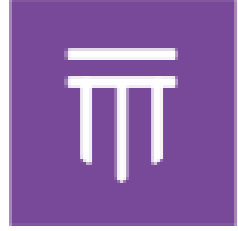


What are TRCs?

- Alternative mechanisms of transitional justice
- Typical for Latin America
 - CEE
 - Africa

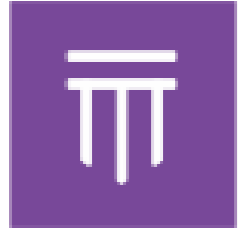


Core elements?



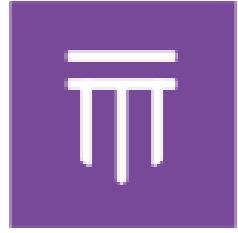
Core elements?

- They address the past
- Offer complex picture of HR violations
- Temporal character
- Financing = sponsor



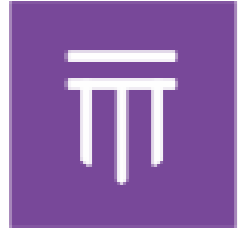
TRCs

- 1974-2006
 - 35 different TRCs
 - First one: El Salvador 1974
 - Uruguay, Philippines, Chad, Zimbabwe, Ethiopia, Uganda, South Africa, Rwanda, Sierra Leone



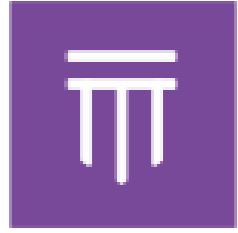
Advantages

- Reconciliation
- Large scope of targeted perpetrators
- Goal: historical documentation of facts instead of „mere“ prosecution
- Faster (does that mean more effective?)
- More space / focus on victims
- General focus
- Uncover deeper cleavages and incentives leading to HR violations



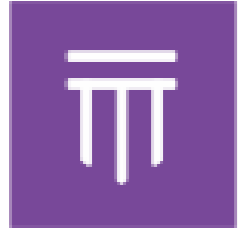
Disadvantages

- Impunity of perpetrators
- Costs + cost/benefit effect
- Disproportionality of punishments
- Dependency on the guarantor (government)
- Refusal of justice (amnesties)
- Lack of considerations of wider political circumstances
- Politicization



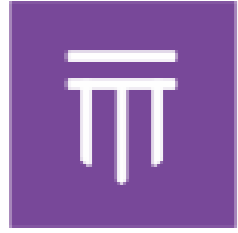
Disadvantages -> Risks?

- **Politicization**
- **What is the truth?**
- **National reconciliation?**
 - Creation of deeper resentment
 - Exacerbation of old issues that have been dug up anew
 - Implicated persons might argue against revisiting the past
 - Risk of follow-up violence (Zimbabwe, Rwanda)



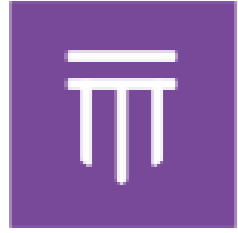
Disadvantages -> Risks?

- **What is the truth?**
 - When and to whom to submit the report?
 - Mandate? Political – referendum?
 - Reporting on the role of international actors?
 - Timing?
 - Under whose name?
 - Logistic issues



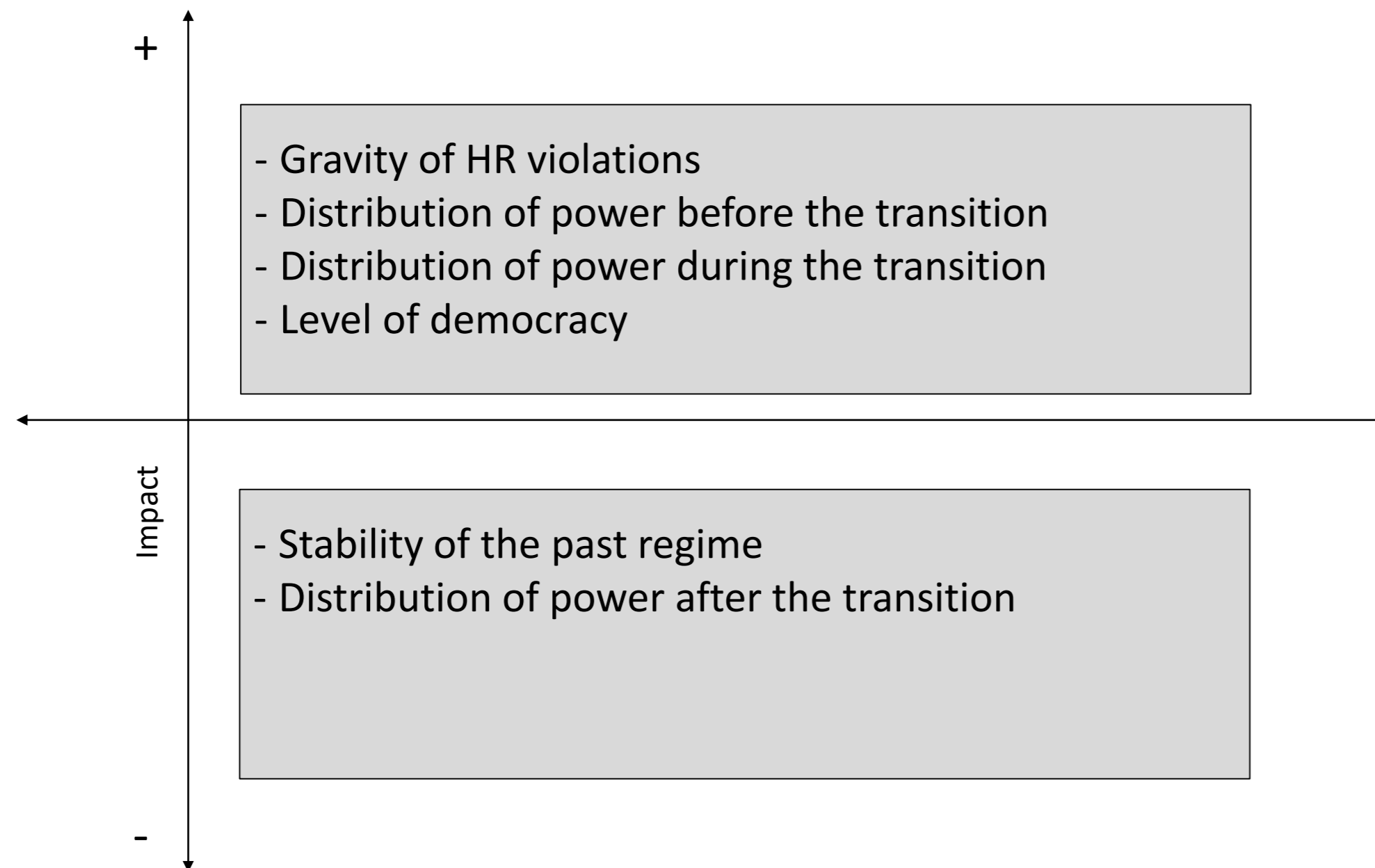
Disadvantages -> Risks?

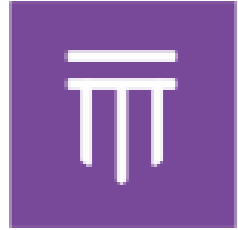
- **Stuffing and budget**
 - Proportionality
 - How many clerks
 - Expenses
 - Funding from whom?
- **Public or private?**
 - Confidentiality v fairness
- **Naming the names**



TRCs – motives behind introduction

- Sikking & Walling (2005), Chapman & Ball: part of transition
- Not exclusive to democracies





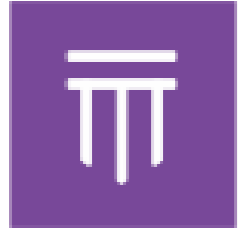
South Africa

- Apartheid
- Nelson Mandela (1994)

Let us stretch out our hands to those who have beaten us and say to them that we are all South Africans...Now is the time to heal the old wounds and to build a new South Africa.

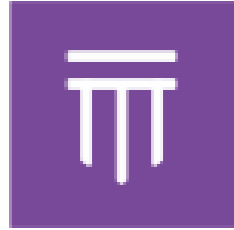
- Reconciliation without forgetting
- Museum of apartheid in Johannesburg
- Model for future TRCs?





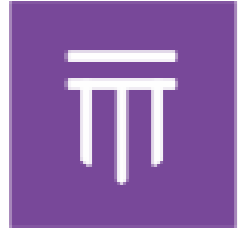
South Africa - background

- Apartheid – race segregation policy of the National party between 1948-1994
- Roots in colonial era – official policy since 1948, splitting the inhabitants into 4 racial groups
 - National
 - White
 - Colour
 - Asian
- Leading to reconceptualization of South Africa as a country not created by a single nation
- 1970s: ban on non-white political representation
- Education, health, access to beaches, services, settlement in cities, electoral rights
- Legal?
- Popular revolt in 1950 -> more restrictions
- Engineers of apartheid: South Africans



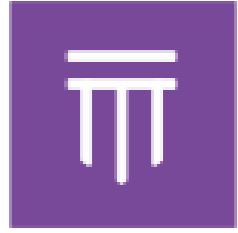
South Africa - background

- Promotion of National Unity and Reconciliation Act, no. 34 of 1995 – establishes TRC in Cape Town
- Court-like restorative mechanism
- Founder: Nelson Mandela
- Chairman: Desmond Tutu
- Mandate
 - To bear witness to, record, and grant amnesty to perpetrators of crimes related to HR violations from **1 March 1960 to 6 December 1993**
 - To offer reparation + rehabilitation to victims
- Composed of 3 committees
 - The HR Violations Committee (HR abuses between 1960-1993)
 - The Reparation and Rehabilitation Committee (restoration of victims' dignity)
 - The Amnesty Committee – decisions on applications of individuals who applied for amnesty
- Cape Town, St George Cathedral



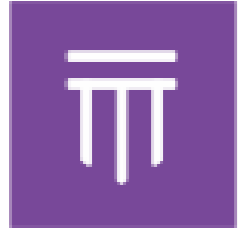
South Africa - background

- Focuses on storytelling
- Victims are given enough space to tell their truth
- Apartheid context, clarification of history
 - Previous president de Klerk denied apartheid as well as the accountability of the National Party
- Not all politicians agreed to cooperate and participate on the TRC
- Some victims refused to face their HR violations perpetrators



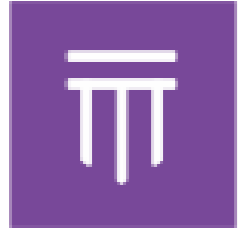
South Africa - amnesties

- The most controversial part
 - Requests and applications from many prominent political actors
 - Symbolic act of forgiveness
-
- In effect between 1996-1998, finished its activity with 85 volume report to Nelson Mandela, 29 October 1998



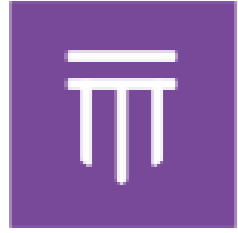
South Africa - criticism

- Would judicial trials and prosecutions be more effective?
- Retribution – Reconciliation: only one element
- Translations of witness accounts
- Not all population supports the amnesties
- Lack of understanding what the TRC's mandate was
- Case of Steve Biko
 - Activist, apartheid fighter, murdered by the security forces
- Case of former president Botha



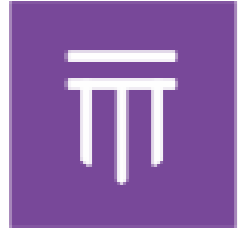
Universal jurisdiction - Spain

- Transition and democratization?
- Proceedings after Franco's death: 1975-1976 – non-confrontational character
- End of 1970s:
 - Economic model of 1950s drained by civil war
 - Liberalization, opening of markets, Europeanization, value and geographic return to Europe
 - Regime exhausted also ideologically
- Transition: transformation
- Milder regime than in Greece and Portugal
- Key transition actors: Frankist institutional networks
- Juan Carlos



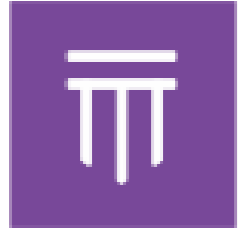
Universal jurisdiction - Spain

- Juan Carlos – abolishment of the Tribunal for public order
- 1976 king amnesty for all persons imprisoned for political crimes and terrorism
- 1977 Parliament approves general amnesty: political crimes of both parties
 - Support of the Communist party
 - Memories endanger transition
- National amnesia
 - Policy of forgetting (oblivion)
 - Pacto de olvido
 - Long time span
 - Integration
 - Supported by 61 % of population
- Instead of TJ, democratization hoko = European communities + Cold War



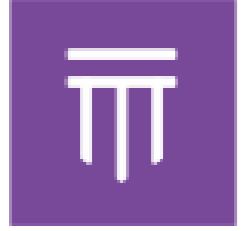
Universal jurisdiction - Spain

- 30 years later....
 - 2007 Historical memory act
 - 16 October 2008 Balrasar Garzon orders investigation of frankist crimes
 - Systematic murders and forced disappereances
- 68 pages long report of the Supreme Court
 - Crimes against humanity
 - Statute of limitations
 - International law



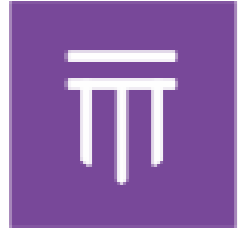
Universal jurisdiction - Spain

- Baltasar Garzon
 - First famous by an attempt to try members of the previous Chile junta on the count of crimes of genocide, terrorism and torture during the 1976-1983 dictatorship, including Pinochet
 - Issued arrest warrant on Pinochet, based on the factual findings of the Chilean TRC
 - Other examples of the use of universal jurisdiction:
 - Bin Ladin
 - Berlusconi
 - Henry Kissinger



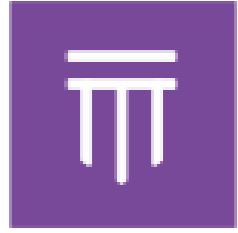
Assessing the Effectiveness of TRCs

- How?



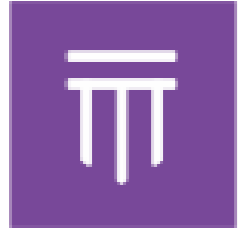
Assessing the Effectiveness of TRCs

- Publication of the final report is not enough
 - Bolivia, Philippines
- Influence of the government
 - Haiti, Uganda
- What is the aim of TRC: interpretation or documentation?



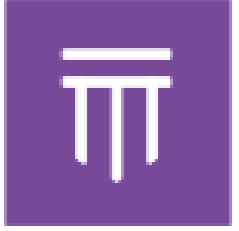
Assessing the Effectiveness of TRCs

- How?
- Crocker: 8 goals of reckoning with the past
 1. Investigation and establishment of truth
 - *Emotional truth?*
 - *One truth or many?*
 2. Creation of a public platform for victims
 3. Accountability and Punishment
 4. Rule of Law compliance
 - Kangaroo truth commission
 5. Compensation to Victims
 6. Institutional reform
 7. Reconciliation (and reintegration of former enemies)
 8. Public deliberation
- Plus civic society
- Plus international society



Assessing the Effectiveness of TRCs

- How?
- Gibson: under some conditions, TRC can contribute to societal transformation.
- Effectiveness is dependent upon 2 crucial factors
 - 1) attention of its constituents
 - 2) perception of legitimacy among the mass public



Assessing the Effectiveness of TRCs

- Gibson 2009

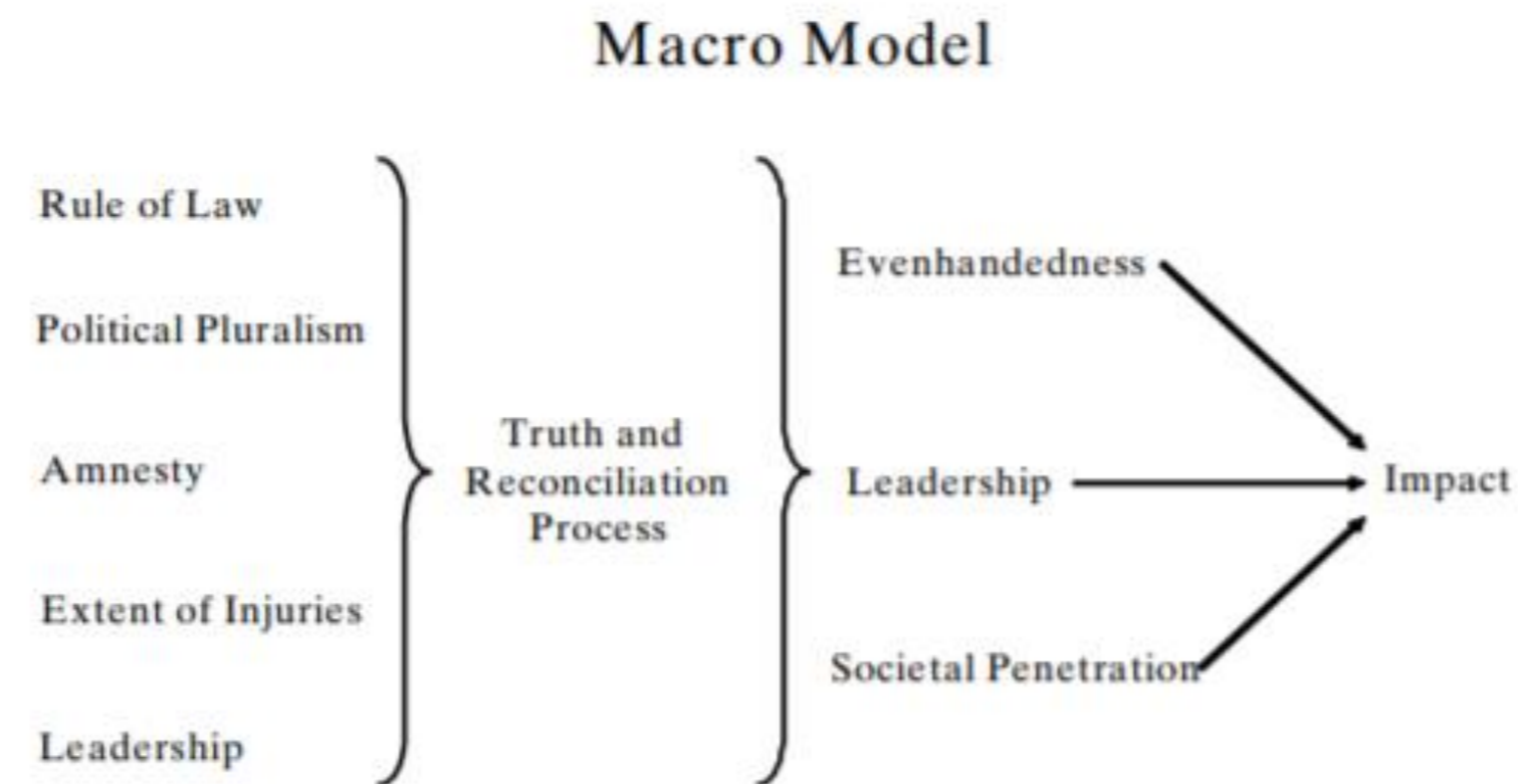
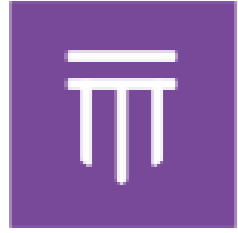
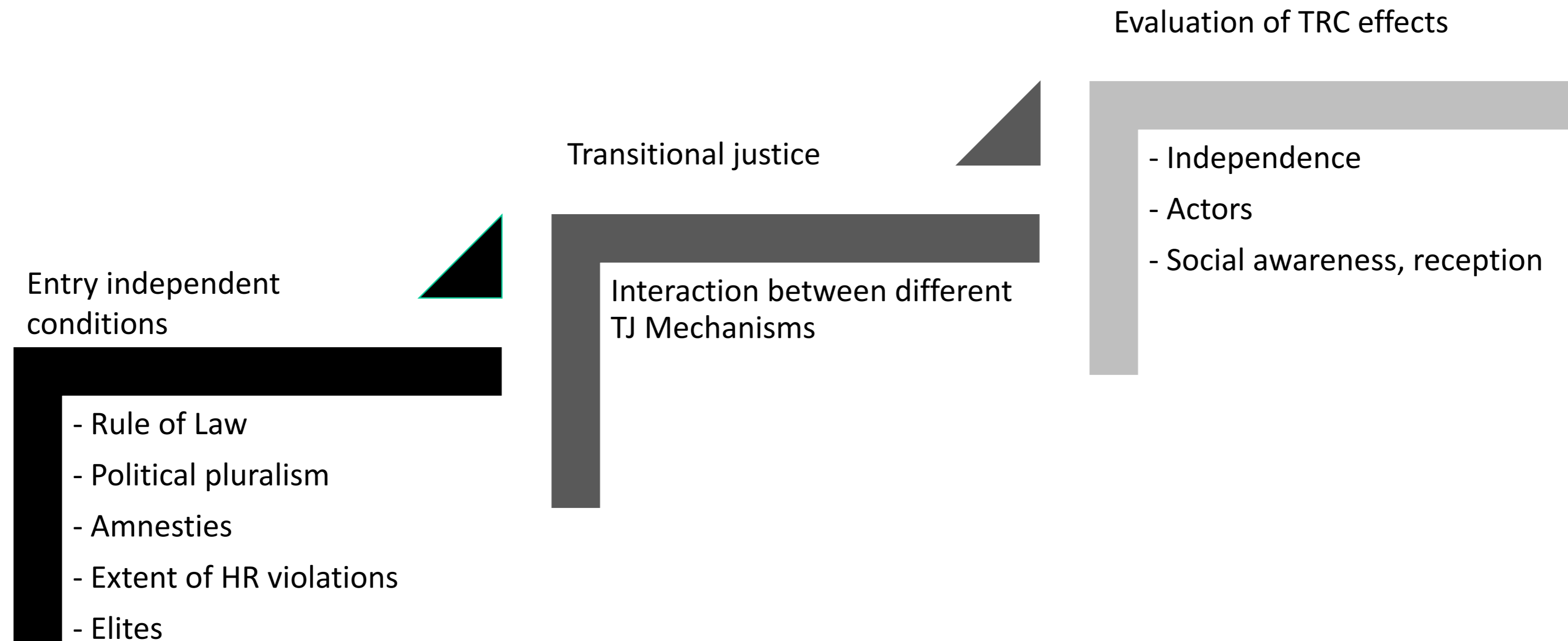
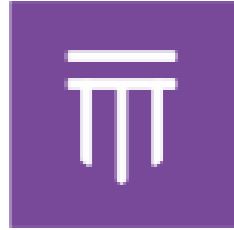


Figure 1: A Macro-Level Model of the Influence of the Truth and Reconciliation Process

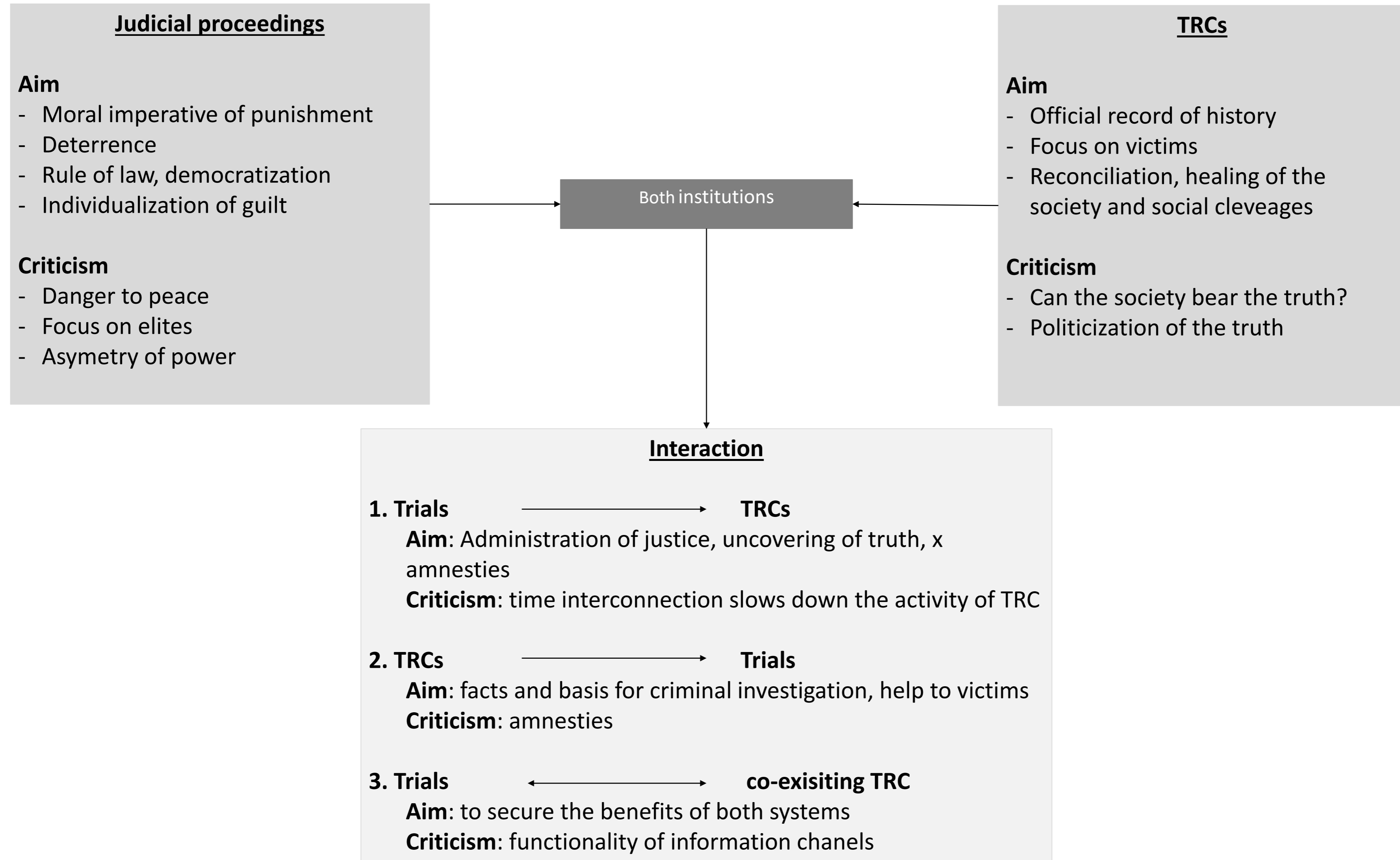


Assessing the Effectiveness of TRCs





Interaction between criminal trials and TRCs



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Thank you for your
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