The Construction of a Human Right

THE CASE OF THE RIGHT TO TRUTH FOR THE FAMILIES OF "DESAPARECIDOS": WHEN HUMAN CLAIMS BECOME RIGHTS

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"Un innegabile bisogno di diritti, e di diritto, si manifesta ovunque, sfida ogni forma di repressione, innerva la stessa politica"[1]

[1] Rodotà, Stefano. 2012. *Il diritto di avere diritti*. Roma, Bari: Laterza. p.2.

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Preface

The first time I came across the political and juridical transition of Argentina, I was fascinated by the tenacity of the mothers and wives of disappeared persons who asked for truth before state institutions: both in and out of courts, they claimed their will to learn the fate of their loved ones who had been abducted by the Military under the previous dictatorship. Ten years after the draft of the International Convention for the Protection of All Persons from Enforced Disappearance, I wonder how this deep need for truth happened to become a right and, in particular, a human right. This transformation involves two important aspects: the first is the shift from the field of politics, where the claim for truth is debated, to that of legality, where it is enshrined as a right; the second is the use of rhetorical and argumentative strategies that enable legal activists to create a new human right, which claims to fulfill a vital, natural, and universal need of the human being. In other words, I will deal with the process that attributes legal qualification to moral aspirations.

Classical theories on human rights fail to tell such a dynamic and evolutionary dimension of rights, which, as products of a given society at a precise historical moment, arise from human claims and do not pre-exist to them. The right to truth, which was born in the post-dictatorial Argentina, is the result of a specific historical-political context: as such, it provides a revealing example of the social construction of human rights.

In order to analyze this process, I divided the work into three parts. The first will present the theoretical framework, namely the literature on human rights and their double possible interpretation: either according to a theoretical-philosophical approach, or to a practical-sociological perspective. The second part will provide an analysis of the historical and political context that led to the birth of the right to truth in Argentina. In particular, I will focus on an original institution, the Truth Trials, or *Juicios por la Verdad*, which paved the way for the recognition of this right as an autonomous entitlement, for the first time. Finally, I will analyze in detail a legal text that I consider emblematic for understanding how the rhetoric and the typical arguments of human rights activists promoted the emergence of the right to truth. To enrich this last phase, I will also refer to some interviews of lawyers and activists of that time who testified to their involvement in activities at the borders between the fields of politics and law.

I. Human Rights: From the Idealistic Conception to the Social Construction

1. Human Rights Everywhere

Today everyone talks about human rights. In Italy, activists, legal experts and media, mention human rights when they deal with abortion, civil unions or the use of the veil by Muslim women. In countries in conflict, the human rights talk gives causes for concern with regard to more blatant claims, such as the protection of life and dignity. In Argentina in the Nineties, the human rights discourse emerged in connection to the request of the relatives of missing persons to know the fate of their loved ones. In short, today the expression "human rights" is a common refrain and an easy tool to legitimize an action or to claim another's duty. Mary Ann Glendon underlines that the legal concept of right has penetrated the American – but more generally Western – common and political speech so much that, ultimately, not only legal experts but also laymen tend "to speak of what is more important to [them] in terms of rights, and to frame nearly every social controversy as a clash of rights" (1991: 4). Norberto Bobbio (1992) and Lawrence Friedman (2011) go even further, by claiming that we live in the "age of human rights". But where do human rights come from and what are they? In this chapter, I will briefly retrace the origins of human rights, then focus on their present meaning. The aim is to deconstruct their moral and philosophical dimension and to place them in the social context in which they arise and develop. In particular, I will focus on contexts of transition, where human rights are likely to be violated, claimed, and, later, positivized. This study will form the background for the analysis of the right to truth, which, indeed, was born in a situation of transition from dictatorship to democracy.

2. From the Enlightenment to the present day

The history of human rights is quite debated. Even though the expression spread in the legal domain only after the Second World War, its underlying philosophy, which is based on the idea that men are entitled to natural rights as human beings, has ancient origins. Some scholars find the philanthropic and aspirational roots of the concept within the Stoic thinking (Beck 2006; Douzinas 2007), while others identify a few affinities with the Roman idea of *ius humanum* (Cascione 2016). However, all agree on attributing the greatest contribution to the development of human rights to Natural Law thinkers of the Enlightenment. Hobbes, Locke and Rousseau based their speculations on the idea that the mere quality of human being entails inalienable rights, which, therefore, belong to every individual. Yet, those theories, which claimed alleged universal values, were adopted by

single national legislations of Western countries, while, eventually, the condition of the holder of fundamental rights coincided with that of citizen. The draft of the "Declaration of the Rights of Man *and of Citizen*" in 1789 is emblematic in this sense. The discourse over rights did not challenge the role of the state; rather, it strengthened it, since the state was the ultimate source of rights (Moyn 2010). Only the humanitarian tragedies of the Twentieth Century pushed toward a "more universal" recognition of human rights, and, from the Fifties on, the number of international treaties increased exponentially. Human rights, by claiming the universality and the "absoluteness" (Glendon 1991) of their moral basis, have fascinated a plurality of social actors and have transformed into something more than a category of particularly strong individual rights: they have become a moral paradigm, an ideology (Ignatieff 2003), a "utopia" (Moyn 2010).

Nowadays, the development of inter and trans-national law tools and networks has permitted to the human rights discourse to grow even beyond national borders. Transnational activism as well as international legislation and jurisprudence have fostered universal – or alleged as such – morality, policy, and law, which develop in parallel to state action and contribute to the growth of a "world society" (Teubner in Verschraegen 2013: 74). The focus on the individual, rather than on the citizen, has developed along with the handover of human rights protection from state institutions to transnational actors. Today, local and global movements interact beyond state consultation or despite its willingness: most of the recent human rights mobilizations developed precisely to fight state powers. As I will explain below, human rights have achieved a further and specific meaning with regard to situations of transition from dictatorship to democracy, and from conflict to peace. In these contexts, the discourse about human rights has been used by opponents, victims, legal and political activists, as a paradigm that is able to delegitimize a policy or a government. Based on a cosmopolitan vision of the human condition (Beck 2006: 2), it has fostered a transnational action, which "sanction[s] institutions, social hierarchies and inequalities with the imprimatur of reason and nature (nowadays universalism and human rights)" (Douzinas 2007: 159). Such paradigm, by claiming worldwide shared values, obtains international support, and becomes part of an adversarial refrain against despotic regimes. As such, the human rights discourse has turned into a policy itself (Arthur 2009).

3. Looking for a Common Concept

Defining human rights is a hard task. Prevailing conceptions tend to underline either their aspirational and abstract character or their institutional side, which they achieve through the

recognition from state authorities. Looking for a common concept entails an attempt to square the circle: to reconcile morality with legality. Vincenzo Ferrari (1989: 173-174) emphases two inherent features of human rights: they are absolute and convincing. Absolute since they belong to human beings regardless of any personal condition nor specific socio-political context; i.e. they are universal. And convincing, as they promote models of action that rarely find theoretical contestation: the human rights discourse does not need to recur to sanctions nor promises to persuade, since it is based on broadly shared moral values. Beyond their ethical dimension, human rights entail a juridical aspect, without which they would remain mere wish. Some scholars (Douzinas 2007: 166; Sousa Santos 2009:3) recognise their double dimension by identifying them as both legal entitlements and moral demands, while Gregorio Peces-Barba (1993) defines them as a "legalised morality", an expression that reconciles both reductionist theories of Positivism and of Natural Law. The idea of human dignity can find institutional protection only once "positivized" within the juridical system. This process implies the intervention of state or extra-state political power to recognise fundamental rights formally, and to enforce them practically. Without recognition neither within texts of law nor within social practice, moral claims remain "crippled rights" (Podgórecki 1989: 132).

Faced with a complex theoretical concept of human rights, which swings from the field of morality to that of legality, and eventually to that of politics, it is worth understanding human rights from a practical point of view, by focusing on the way they arise and they work within society. The sociological approach tends to abandon the naturalistic conception of human rights and to emphasise the social process of their construction. This approach does not forget the idealistic dimension of human rights, but scales them down by placing them into the geographical and socio-political context.

4. From the Natural to the Social Conception

The idea that fundamental rights are rooted in human nature, a quality that transcends and pre-exists to states, has fostered the draft of international human rights charters. Yet, this jusnaturalistic concept is strictly connected to the cultural and philosophical framework of modern society, where the individual and his possibility of action cover pivotal roles. Human rights are primarily individual rights (Friedman 2011: 156). Since the Enlightenment, the protagonists of philosophical scenarios have been individuals as natural creatures, and as lone and equal right-bearers. As conceived by these theories, the Law has to protect the individual from undue

interference from the state and other enemies. That is why the first rights to be guaranteed were civil and political freedoms (Marshall 1963).

In the last decades, sociologists have questioned the theoretical link between human nature and human rights: by looking at the ways through which activists mobilize at the local level, they revealed the institutional character of human rights. Even though arising from human needs, which, potentially, belong to all human beings, human rights are embedded within the social context where they develop (Madsen and Verschraegen 2013). Rights do not belong to the individual dimension without previously being acknowledged at the social level. They are the specific product of a particular society. Rather than pre-existing in "Nature", they are social constructions. The same right can develop in different countries but with inevitably different meanings (Glendon 1991: 11). As the cultural relativist critique claims, human rights narratives are historically and culturally bounded (Dworkin 1977; Friedman 2011). Their institutional character predominates, in the sense that rights have to be socially recognised in order to exist, either under the shape of mere claims or as legal entitlements. They are the product of the victory of the *homo societatis* over the *homo biologicus* (Cassese 2005: 230). According to Émile Durkheim, the idea of individual rights comes from the development of an organic model of society, where the individual covers a pivotal role, so much that scholars talk about a "secular humanism" (Verschraegen 2013: 63). Gregorio Peces-Barba (1993) identifies a double philosophical conception in the human rights discourse: he acknowledges the individualistic theory that founds their birth, but he also recognises that the enforcement of human rights requires a contractualistic foundation. Enforcing rights means facing politics and power in the process of selecting the specific rights, their beneficiaries, and their guarantors. Scholars, by looking at the configuration of modern rights, namely their construction in reaction to state power, have identified their institutional, rather than natural, origins. All the more so since Nature has lost its appeal as legal basis for universal human rights, in reason of the development of nationalistic and race theories during the Twentieth Century (Vincent 2010). Not to mention the multiplicity of theories that, from Hobbes and Locke on, try to understand the universal human nature, but fail to find a common concept, thus demonstrating the flexibility of such nature (Podgórecki 1989:134-135).

Human rights activists still base their legal reasoning on the persuasive jusnaturalistic rhetoric that accords to human rights natural and universal qualities, even though the objects of their campaigns tend to be particularistic. Indeed, in their mobilization for the enforcement of rights, activists are motivated by very specific circumstances of distress, while they struggle for the

protection of a right for a specific group of people, whose recognition could threaten the protection of other counterposed rights. Thus, their particularistic vision tends to conflict with the universal understanding of human rights at the theoretical level, and with other's equally legitimate rights at the practical level. Nevertheless, the rhetoric of human rights seems to not recognize conflicts of rights and subjective legal positions, while preferring to adopt a Manichean vision that counterposes violated and violators and that does not entail the overlap of these two roles (Wilson 2009: 209). It identifies in a neat way those who are "entitled to" specific human rights and those who obstruct them. The narrative of human rights shows them as universal but the recognition of a specific right to a certain person or group implies balancing a particularistic demand with other opposed individual and collective positions. Assertive human rights speeches risk promoting exaggerated expectations and limiting dialogue with counterparties (Glendon 1991: 14).

The "natural" and the "universal" arguments fail, since, if human nature is the legal basis for rights claims, these claims could not be but in favour of everybody. Nevertheless, human rights discourse recurs to the semantic of Natural Law to accord to human beings a natural dignity, from which rights automatically derive. By asserting that rights should be recognised because the nature of every human being requires so and because it is a "moral self-evidence" (Moyn 2010: 9), human rights activists insist not to fight for a specific group or interest, but for everybody. In their perspective, rights are not created with a political aim; rather, they are "discovered" in the human nature. However, there is inconsistency between what human rights claim to be – natural and universal – and what they finally are – particularistic and contradictory.

Finally, if we look at the plethora of human rights that have been legally recognised, or at least claimed, until today, the contradiction of their discourse jumps out: the plurality of ways of understanding human dignity, which reflects not just into the variety of human rights but also in the multiplicity of their interpretations, cannot fit with one single and universal conception of human nature. The uniqueness of the concept of human dignity, upon which human rights are based, is biased by the number of ways of interpreting it and by the contingency of human rights. The rise and the institutionalization of certain of them instead of others can be explained in terms of a particular morality that prevails over another through dynamics of power. In other words, "if humanity is one alone, why are there so many different principles concerning human dignity and a just society, all of them presumably unique, yet often contradictory among themselves?" (Sousa Santos 2009: 3).

5. From the Political to the Legal Dimension

Richard Ashby Wilson (2007: 350), while trying to define human rights, suggests distinguishing between their aspirational and their positivized function. Either we can understand them as "talk", thus as moral and political claims of a specific social group; or, we can deal with human rights by considering only those that have achieved the status of legal norm, within national legislations or international treaties. The passage from the former to the latter step is the process of legalization, or positivization: it is the translation of a social request into an enforceable right. Adam Podgórecki (1989: 135) identifies different phases of this mechanism. First, human rights grow from social, political or economic inequality, thus from concrete needs that are neglected by institutions. Then, they are claimed in support to specific categories of people and in reason of pressing requests. Gradually, these requests are translated into concrete and official claims toward institutions, and they adopt suitable formal requirements. Finally, the receiving subjects of such claims evaluate them according to the needs, and particularly the will, of other pivotal social actors, and transform them into enforceable norms. Yet, this process still belongs to the field of "ought", which only social consciousness (Friedman 2011: 119) and social practice is able to transform into that of "is". Other scholars suggest a comparison between the elaboration of rights and the mechanisms of dispute theory: human rights movements, through the action of "naming, blaming, and claiming", ask for the recognition of specific requests in support to a social group (Ferrari 1989: 172).

The process of positivization involves a shift not only from "talks" to "norms", but also from the domain of politics to that of legality. These two fields are separate spheres with separate languages: the former focuses on what is "good" for the citizens; the latter on what is "legal", thus on what they are allowed to do. These different languages reflect a different approach to the same object: the sphere of politics implies a value judgement over the object, such as a right, while the legal one does not take a value position on it. Law only assesses whether a person is entitled to that right. Rights, although resulting from the translation of a political request into legal terms, belong to a non-evaluative field, which adopts a neutral and apolitical language. Scholars argue that this process involves a level of depoliticization (Wilson 1997), a phenomenon through which issues that are political in nature, as long as they are socially claimed, transform into legal and technical requests, thus abandoning their ideological and particularistic origin. Within the strategies of depoliticization, we can identify the practice of appealing to the human rights discourse. The struggle for the legalization of victims' claims often recurs to the narrative of human rights in order to achieve through the legal discourse what could not be gained through political debate. Since human rights

movements declare to fight for "universal moral claims" (Ignatieff 2003: 292), their struggle appears to be devoid of ideological justification: by adopting the language of Natural Law, they back out of the political debate, while they show themselves as supporters of shared and undeniable values. Yet, every mobilisation, even though adopting the cosmopolitan semantics of human rights, is not detached from politics, since it pursues a particularistic cause, that of a specific group in opposition to the rest of the population. The claim is partisan in its nature. If the aim of such mobilisation can be perceived as moral, its implementation cannot avoid dealing with the concrete social and political context. Depoliticizing a conflict, or, in the words of Carl von Clausewitz, making "politics by other means" (in Wilson, 2007: 355), implies using the narrative of human rights to promote a political position, while remaining within the legal discussion. The progressing claim for human rights before national and international courts is a way to "legalize the political struggle", as long as the political and particularistic aspect of the claim has left room for the legal one, which recurs to the moral and universalistic arguments of Natural Law. The human rights discourse turns into a "moral way for conducting politics" (Douzinas 2007: 12).

6. Human Rights and Transitional Justice

Transitional justice is "the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes" (Teitel 2003: 69). This idea of justice entails different instruments to satisfy a plurality of actors, among which victims, criminals, and government, and to answer to a multiplicity of demands: punishment, peace, reconciliation, truth, reparation, and so forth. Some of its tools had existed long before the elaboration of the concept of transitional justice, while others, such as truth and reconciliation commissions or international and hybrid tribunals, are new and are rooted precisely on today's idea of transitional justice. A further division can be settled between those measures, such as national or international trials, that fulfil interests of retributive justice and those, among which amnesties, commissions and reparation programmes, that promote a different kind of justice, either restorative, distributive, or procedural. However you classify them, today these instruments of justice find legitimation through their appeal to noble and universal norms: human rights and democracy (Arthur 2009: 334). These values represent the moral framework within which governmental actions, international operations, and social mobilizations are claimed legitimate. In the moment of radical political change, the intervention of national, transnational, or international actors is justified in the name of human rights. If, until the Seventies, their role was basically limited

to the reaction to single violations, from the Eighties on, their intervention has grown, becoming a fundamental instrument to hold to account a political, institutional, or even economic system (Zalaquett in Arthur 2009: 336). The lens through which scholars tend to look at a transition – being it from dictatorship to democracy, from military to civil rule, or from communism to capitalism – is that of transitional justice and human rights. The transformation is no longer explained in Marxist terms as a class struggle against domination, nor in the evolutionary language of "modernization" (Arthur 2009). The protection and the implementation of human rights (and democracy) have become the keystone of transition. As such, human rights discourse has shaped itself as the normative answer to political changes.

The idealistic dimension of human rights, which I tried to deconstruct by enlightening their socio-political side rather than their natural one, still plays a relevant role within the discourse of transitional justice. The possibility to "rebuild" a country that has been wrecked by mass abuses requires great aspirational motivation. However, the same wishful willingness risks threatening the transition itself, if it is not tempered by a deep analysis of the local and extremely particularistic needs of those who are involved in the transition. In this sense, transitions, and human rights within transitions, are political: they are the result of a debate that moves from specific needs of opposing actors. The standardized idealistic model of human rights cannot work in the same way for every country and every victim, if not in broad theoretical terms. The right to justice, to reparation, or to truth, take on a proper and different meaning in every country in transition, since the conceptions of justice, reparation, and truth, are so strictly linked to the socio-political and cultural context of a country – the example of the right to truth in Argentina will be clarifying – that they cannot find a universal interpretation and application. Nor they can find a legal foundation on a Natural Law basis. In conclusion, if, on the one hand, the universalistic and persuasive human rights discourse has the ability to push local claims towards the neutral legal debate, also at a transnational level, on the other, it fails when it comes to the application of single human rights, since this process requires a modulation to the local context due to the political dimension of human rights.

II. The Development of the Right to Truth in Argentina and Beyond

1. Introduction

The study of human rights only from a moral and philosophical point of view – as if they were innate prerequisites of human beings – is reductive, since it does not develop their flexible and dynamic character. This approach, while underlining the strong aspirational dimension of human rights, risks losing the sociological perspective, the one emphasising the process of their creation through the mobilization of different actors on the social stage. To prove such a dynamic mechanism, I will focus on the development of the right to truth, namely the right of the families of forcedly disappeared persons "to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person" (Art.24.2 International Convention for the Protection of All Persons from Enforced Disappearance). The first political ferments that brought the birth of this right can be found in Argentina in the Eighties, after the fall of the Military Dictatorship, where the victims of the previous regime started questioning the responsibility of state institutions in the perpetration of human rights violations, and asking for the discovery of the practice of mass disappearances. In this fragile context of transition from dictatorship to democracy, the right to truth developed through the mobilization of many associations of victims, human rights activists, and lawyers. They wanted to know what had happened to the *desaparecidos*, who was responsible for their abduction, whether any of them was still alive, and, finally, where their corpses lay. This explicit request to know the truth about the previous illegal state of mass violations and, in particular, about the destiny of each disappeared person, developed in parallel to other claims: those for justice and punishment, for symbolic and material reparation, and for the restitution of the missing corpses. In this search, the victims appealed to the existence of a human right to truth both as a way to get concrete information about their missing relatives and as a strategy to oppose political decisions of the post-dictatorship governments.

2. The Political and Historical Context

The history of Argentina of the last Century is sadly famous for the experience of the violent Military Dictatorship and the so-called *Guerra Sucia*. General Jorge Videla took the political control of Argentina on 24 March 1976 through a coup d'état, and established a military regime, with the aim of restructuring the Country through discipline and terror. The *Junta* promoted the *Proceso de*

Reorganización Nacional, a radical project that led toward the centralization of the executive, the legislative, and, to a certain extent, the juridical powers in the hands of the Military, in the complete denial of rule of law, basic human rights, and democracy. In the name of the fight against subversives, the *Junta* recurred to torture and the practice of mass disappearances. Scholars, while talking about this policy, refer to a "law within a law, for a state within a state" (Snyder 1983: 512). The CONADEP, the special commission that President Alfonsín created after the fall of the regime, testified the abduction of more than 8,960 persons, while human rights associations claimed that the number of victims reached even 30,000 (Brysk 1994). Every person, whose acts, words, or relationships were judged dangerous, risked to be kidnapped and tortured. Young male factory workers, employees and students were the main target, but vulnerable categories, such as children, invalid people, and especially pregnant women, were not spared. Terror ruled in the whole Argentina: the Military set 340 illegal detention centres where the captured were humiliated and tortured. Only the tiniest percentage of them came back. Coherently with the practice of human rights violations and mass disappearances, which reached its peak in 1976-1977, state institutions adopted a policy of denial of responsibility. From the dismissal of complaints, to the publication of the *Final Document on the War Against subversion and Terror* (1983), to the latest attempt to adopt a self-amnesty law (1983), the *Junta* either rejected the accusations or justified its deeds as the unavoidable price to defeat the subversives.

Silence and ambivalence did not end with the fall of the dictatorship, after the Malvinas defeat in 1982. The new-elected presidents, Raúl Alfonsín from 1983 and his successor Carlos Menem from 1989, adopted an ambiguous policy with regard to the past. The necessity to re-establish peace, security and rule of law, added to the threats from the Military, led the former President to downplay the claims for justice, truth and reparation from the victims, while developing the "Theory of the Two Demons" (Mallinder 2009). This juridical scheme represented a political compromise, since it affirmed that both the Military and the opponents were equally responsible for the violations of human rights that occurred in the previous decade. Besides this highly prudent official stance, Alfonsín adopted two amnesty laws, the *Ley de Punto Final* (1986) and the *Ley de Obediencia Debida* (1987), the latter covering the highest crimes that the low-level members of the Military, the Police, or the Government had committed during the "Dirty War". President Menem, following the policy of his predecessor, enacted a series of pardon decrees with a similar scope but directed towards both wings. Such political positions aimed at "closing the open wounds of Argentine society" (Menem 1989, in Mallinder 2009: 73), but they did not satisfy the claims for truth and

justice from the victims: most of those responsible for the abductions were still free, under the excuse of having obeyed to a superior order, as the *Obediencia Debida* Law admitted.

Before mass human rights violations from the military regime, and the denial of justice during both the dictatorship and the following democratic period, the victims did not keep silent. Some of them grouped into human rights associations, which were supported by lawyers and activists. The most famous is *Madres de Plaza de Mayo*. Originally composed of fourteen mothers of disappeared sons, they demonstrated in March 1977 before the *Casa Rosada*, the Presidential Palace, for the first time, asking for the restitution of their sons. The *Madres*, a group of humble victims with no political agenda, invaded the public space as a reaction to the invasion of the Military in their private and intimate world, that of the house and of family relationships. Soon after, their number grew, while other associations, among which *Abuelas de Plaza de Mayo*, joined their mission. In the following years, the movement of victims became stronger: from being considered a group of "*locas*" (crazy), they achieved relevant social positions, which enabled them to claim for their denied rights before national and international institutions. In 1994, the sons of the *desaparecidos* grouped into the *Hijos*, in support to the common will to obtain truth and justice. The number of human rights associations grew very fast, grouping lawyers, victims and supporters, and achieving international visibility. They pressed the government to abolish the amnesties and to reopen the trials through several means: from demonstrations, which still go on every Thursday, since almost thirty years now, to public pillory of the criminals, to, finally, the *Juicios por la Verdad*.

3. Mobilization in Court: The Juicios por la Verdad

3.1 The Events

In the context of great dissatisfaction toward political and judicial institutions and of activism from below, the *Juicios por la Verdad* took place. They were unusual trials, celebrated by criminal judges in traditional courts and urged by the relatives of the missing, with the aim of answering impelling questions about the *desaparecidos*: the families asked for "the what, how, when, where, why, and who of each human rights violation" (Verbitsky 2000: 34). Victims, aware of the impossibility to punish the criminals due to the amnesty laws, did not ask the judges to sentence those responsible, rather to establish the events. In other words, victims did not claim for justice, as we understand it in a traditional way, but for truth. The plaintiffs founded their claim on the previous reports of the Inter-American Commission on Human Rights (1985/1986, 29/92) and on the judgements of the Inter-American Court, which, starting from the Eighties, had recognised such right

in its early stages. The former had attributed it to both the families of the victims and the whole society and had stated the duty of every government to arrange all the necessary measures to properly investigate human rights violations of the previous regime. This duty persisted even when legitimate juridical circumstances prevented the prosecution of the criminals (1988, *Velásquez-Rodríguez*, 181). The Court and other international institutions confirmed this position in the following years (e.g. ICHR 2000, *Bámaca Velásquez*).

Some scholars (Schapiro 2002; Andriotti Romanin 2011; Garibian 2012; Naftali 2014) have reconstructed the evolution of the *Juicios* from the Nineties on. In 1995, Emilio Mignone was the first who, supported by the *Centro de Estudio Legales y Sociales* (CELS), tried that strategy, since the amnesty had led to the closure of his case. He appealed to the *Cámara Federal de Apelaciones en lo Criminal y lo Correcional de la Capital Federal*, asking for the discovery of the facts that had led to the disappearance of his daughter, who had been once identified at the ESMA, an illegal detention centre in 1976. The Court, in turn, addressed to the Military, asking for the clarification of the events that occurred at the centre, the collection of testimonies, and the opening of the archives, but the Military denied their cooperation and the Court closed the case. Nevertheless, a similar request of truth discovery followed: Carmen Aguilar de Lapacó addressed to the same Court in search for her daughter who was supposed to have spent some time at the *Club Atlético*, another illegal prison. Again, in August 1998, the Court rejected the claim. Thus, Lapacó, who was sponsored by several human rights organisations, appealed to the Inter-American Court, which held the claim. Meanwhile, the Argentinian Federal Court accorded the right to truth through the recourse to administrative procedure (*habeas data*) to plaintiff Facundo Urteaga. This first openness from the Courts, added to the favourable position of the National Congress, led toward the spread of the practice of the *Juicios* in the whole Country from the end of the Nineties (Andriotti Romanin 2011). In 1998, the *Asemblea Permanente por los Derechos Humanos* (APDH) and some families of the missing urged the *Cámara Federal* of La Plata to discover the destiny of the disappeared and the circumstances of the abductions. In the following years, this Court, urged by APDH, reopened more than 1800 suits. In the same wake, other victims addressed to the *Cámara Federal* in Bahia Blanca. The trial procedure was highly differentiated: some courts based their enquiry over the documents that had been previously collected, while others, such as that of La Plata, promoted public hearings weekly, consulted the survivors, the families, and local human rights associations. The majority of the trials concluded with a verdict that identified the corpses.

The arguments that lawyers used during the trials with relation to the claim for truth came from different fields. As I will show through the analysis of the words that the *amici curiae* pronounced before the courts, anthropological and philosophical reasonings proved the human and universal need for truth, with relation to disappeared relatives, and founded its legal recognition. These arguments found further support in the jurisprudence of the Inter-American Court, especially in the 1988 *Velásquez-Rodríguez* case, but the plaintiffs took an even more radical position: they claimed that the right to truth was an autonomous and justiciable right that limitations to prosecution, namely the amnesties, could not prevent. Truth, rather than being the means to achieve justice, was meant to be the end of their demands.

3.2 Controversial Effects and Traits

The *Juicios* were original institutions that found no precedent in the history of Argentina, nor abroad. Scholars situate them "between truth commissions and classic criminal proceedings, symbolic reparation and retribution" (Garibian 2014: 4), since they shared the goals of the former and the structure of the latter. Indeed, similarly to truth commissions, they aimed merely at establishing events and restoring victims, rather than granting retributive justice, but they followed the procedural rules of traditional criminal trials: they took place in criminal Federal Courts – mostly those of La Plata and Buenos Aires – and they envisaged investigations, witnesses, public participation, and the possibility to subpoena the suspected people as witnesses[2]. Only a few studies analysed these unusual institutions, probably in reason of their low effectiveness: at the beginning of the Twenty-first Century, legal developments at the national and international level, among which the abrogation of the amnesty laws and the reopening of the trials, including those of Mignone and Lapacó, led toward the decrease of Truth Trials, while they remained almost unknown abroad. Nevertheless, we find their legacy in the implementation of the discourse about the right to truth and its institutionalisation at the international level.

Some scholars analysed the procedural aspects of the *Juicios* and their complex implications with the following traditional criminal trials (Maculan 2012; Andriotti Romanin 2013; Naftali 2014). Indeed, these para-legal institutions raised many doubts with relation to the guarantees of the defendant. The courts could subpoena the Military members who, eventually, covered an ambiguous and risky position, between that of witness and defendant, and risked self-incrimination.

[2] In 2000 the National Court of Cassation declared that the Military had the right not to incriminate themselves: they could not testify under oath and their depositions could not be used in a separate trial.

Furthermore, with the reopening of the traditional proceedings, the issue of *ne bis in idem* and the authority of the *res judicata* were at stake, while judges did not know whether they could use the evidence of the *Juicios.* The difficulty in collecting proofs, finding institutional support, and organizing the trials marked their weakness (Schapiro 2002: 399).

The position of the judges raised some doubts as well. They covered a role that was declaratory and inquisitorial, rather than punitive and adversarial, since they were asked to shed light on the factual truth about past disappearances through jurisdictional procedures. The judge was called to reconstruct a narrative about the past through the collected proofs, and to consider a scope of time, space, and evidence that went beyond his traditional range of investigation and that challenged the principle of rule of law (Andriotti Romanin 2013). Basically, he was requested to perform as an historian or as a witness, rather than as a judge (Garibian 2014), while "the borders between *judicial truth* and *historical truth* [were] blurred and undefined" (Maculan 2012: 115).

Even the position of some victims, namely those children who had been kidnapped and changed in their identity, was at stake. Their original families claimed for truth, but this right conflicted with the right to privacy of those sons who refused to undergo a DNA test, to discover their biological identity, and possibly to betray their alleged parents (Garibian 2012).

Besides these contested issues, the *Juicios* had some positive impact. They represented a chance for social participation and free expression for the victims, while they managed to strengthen social cohesion through the elaboration of a common narrative about the past. They performed as "rituals for memory" (Mora 2005), since they helped reconstructing the history from the point of view of the victims, and they collected a great amount of data over single cases. The mobilization for truth from victims, human rights associations, and legal experts, complemented by its juridical recognition, led toward the institutionalization of truth as a common value and as an obligation of state institutions (Schapiro 2002: 400). Scholars (Andriotti Romanin 2013) have studied the role of these trials within the Argentinian transition, and their contribution to the victims as tools of justice in broad terms: the chance to ask for truth before criminal courts gave back to justice and institutions an "ethical dimension" (2013: 12). Furthermore, it represented a canalisation of the sorrow and of the desire for revenge. Beyond the individual sphere, knowing the truth about the past was the basis for strengthening democracy.

It is important, for the purposes of the present research, to focus on the problematic and ambivalent nature of the truth requests during the *Juicios*. *Memoria Abierta* (2010) and CELS (2011) shed light on the double function of the demands for truth. If, on the one hand, they expressed a

sincere need to know the facts related to the disappearance of their relatives and the whereabouts of their death, on the other, their use was a strategy to challenge the impunity granted by the amnesty laws. Indeed, through the Truth Trials, the victims collected documents and testimonies that could be a precious evidence in potential future proceedings. This legal strategy raises questions about the function of the right to truth. Patricia Naftali (2014, 2015a, 2015b) emphasizes the ambivalence of such right as conceived by the associations and the victims in Argentina, as the speeches of the applicants before the courts testify. On the one hand, mentioning this right appeared to be a "neutral" discourse in political terms, inasmuch it claimed a legitimate, since natural, right of the victims, that to acknowledge past atrocities. A right that has the moral potential of human rights and that, once recognized by positive international law, perfectly fits within the human rights category. As originally conceived in the narratives of the claimants, this right is justified by its alleged universality and its cogency. No silence could be "humanely" admitted before the desire of the families to know why the missing disappeared and where his corpse lies at present. As the Third Chapter will show, the arguments and the words of the activists referred to the reasoning and the language of human rights discourse. Yet, such right, as set in the Argentinian context, inevitably raised doubts in relation to the right to full investigation, and to the punishment in the event of a crime, since the recognition of the right to truth could lead to another claim, that for punitive justice. Indeed, some applicants questioned the legality of the amnesty laws that impeded the proceedings and demanded, in parallel to the right to know the fate of the missing, the accomplishment of the state duty to investigate and punish. Other claimants, instead, included within the scope of the right to truth the identity of those responsible, a circumstance that would jeopardize the guarantees of the defendants. Others, still, did not directly express any claim for justice, but strongly suggested renovating the system of warranties and of reparation for the victims of the dictatorship. According to the most progressive thesis, the right to truth would not belong only to the relatives of the disappeared, but to the whole society, which would be satisfied by the spread of a public and collective historical truth about the totalitarian past. A truth that would demonstrate a clear stance by public institutions on the previous regime and that would prove more than ever to be political (Naftali 2014: 78-80). Finally, the behavior of the associations of victims, from the Eighties on, confirmed their keen interest in seeking for the repeal of the amnesty laws and the reopening of traditional criminal trials. The report of *Memoria Abierta* (2010), which collects the opinions of victims, lawyers and judges of the *Juicios*, testifies the willingness of the plaintiffs to take any useful strategy to please the need of the victims to get justice. It also shows the creativity

of the process of facts finding by the jurisdictional power, which overcomes the natural connection between trial, judgment, and punishment. The right to truth, as claimed by the Argentinian victims, seems to have developed as a residual right to that of justice, in the sense that it emerged precisely because of the lack of any chance of criminal justice. Achieving truth was the second best option (Naftali 2014).

4. The Right to Truth Beyond Argentina

The first clear expression of the right to truth, with relation to the need of the family of a disappeared person to discover his fate, can be found in the already mentioned reports and judgements of the Inter-American Commission and Court of Human Rights. Before such evolution, the acknowledgement of the events that concerned the abduction was not irrelevant, but it was not significant *per se*. The discovery of the facts was considered as a necessary preliminary part of the trial, but logically, temporally, and instrumentally placed before the punitive phase. Knowing what happened, and thus satisfying the need for truth of victims, was justified by the intention to identify and punish the criminals. The Inter-American jurisprudence helped the right to truth developing beyond the scope of the right to justice and achieving an autonomous meaning. Its implementation and its recognition in international treaties would not be achieved without the firm mobilization of the Argentinian victims and the launch of the *Juicios*. The case that brought the Inter-American Commission to explicitly recognise the right to truth, and to force the Argentinian Government to grant it, came from one of the victims who had claimed for mere discovery before the judges (IACHR 2000, *Lapacó v. Argentina*). As stated in the achieved settlement between the State and the petitioners, "the Argentine Government accepts and guarantees the right to the truth, which involves the exhaustion of all means to obtain information on the whereabouts of the disappeared persons. It is an obligation of means, not of results, which is valid as long as the results are not achieved, not subject to prescription. This right is specifically recognized in relation to the disappearance of Alejandra Lapacó" (*Ibid.* ¶17). The right to truth, with relation to the crime of abduction, was finally recognised worthy of protection as such.

The impact of the *Juicios* expanded beyond the Argentinian experience. As for their method, a similar investigation took place in Buenos Aires with regard to the slaughter of Armenian people in Turkey[3]. The judges, urged by descendants of Armenian victims, adopted a purely declarative

[3] Juzgado Federal de Buenos Aires, Judge Norberto Oyarbide*, Resolución declarativa de los sucesos históricos conocidos como el genocidio del pueblo armenio – años 1915-1923*. (Apr., 1, 2011).

resolution, which identified the crimes as genocide, stated that, as such, they could not benefit from any statute of limitations, and assessed the right to truth of the victims. Such right would set the legal basis for the investigation of the Argentinian Court (Fronza 2012). Some scholars (Maculan 2012, Garibian 2014) find in the *Juicios* a source of inspiration to further trials, such as those conducted by Judge Baltasar Garzón in Spain with regard to the forced disappearances that had occurred under Franco's regime[4]. Again, by appealing to the right to truth of the victims, the judge aimed at reopening criminal proceedings.

However, the impact of the *Juicios* is evident not so much with regard to the chosen procedure – a criminal trial with a declarative aim –; rather precisely to the basis of such trials: the existence of the right to truth. By looking at experiences of both criminal and alternative, mainly restorative, justice, it is clear that truth has achieved an essential role at the local and at the international level. Partly influenced by the jurisprudence of the Inter-American Court – itself the result of local juridical mobilization – the European Court of Human Rights, since the Nineties, has underlined the state duty to conduct an effective official investigation with regard to human rights violations from public agents, especially in case of use of lethal force (ECHR 1998, *Kaya v. Turkey*). The right to truth, if not explicitly stated, was nevertheless recognised as strictly linked to the right to life and to an effective remedy in case of murder (Antkowiak 2002). In the following years, the Court broadened the conception of such right, and started questioning the possibility to recur to the right to truth in case of torture, serious human rights violations, and breach of international humanitarian law (2012 *El-Masri v. Macedonia*; 2013 *Janowiec v. Russia*). The state duty to investigate, as an obligation of means, has been the object also of several recommendations of the UN Human Rights Committee, which has recognised the right to truth, with specific reference to the crime of abduction, as part of the effective remedy. The organs of the United Nations have welcomed the doctrinal proposals of international organizations, first of which ICTJ and ICRC, which strove for the institutionalisation of this right. The formal recognition emerged from the enactment of reports and recommendations, but especially from the adoption in December 2006 of the aforementioned International Convention for the Protection of All Persons from Enforced Disappearance, whose Article 24.2 finally sets on paper the right to truth for the families of missing persons.

The discourse over the right to truth did not only develop in relation to jurisdictional procedures, but also to alternative ways of justice, such as those that are common in contexts of

[4] Juzgado Central de Instrucción no. 5, Audiencia Nacional de Madrid, Judge Baltasar Garzón, Diligencias Previas Proc. Abreviado 399/2006 V. (Oct., 16, 2008). And Sumario (Proc. Ordinario) 53/2008 E. (Nov., 18, 2008).

political transition. The remarkable rise of truth and reconciliation commissions all around the world founds its basis precisely on the struggle for truth with regard to a past of mass human rights violations. Courts and truth commissions share the willingness to retrace past atrocities. However, such process of discovery tends to evolve into two different ways, since the scope of the truth at which the two institutions aim does not coincide. If, on the one hand, jurisdictional truth is the one that relates with mere facts and that emerges from juridical enquiry and the mechanism of evidence, the truth at which the commissions seek – yet highly differentiated from a commission to another – aims at something further, which, depending on the social, political, and cultural context of the involved country, goes from the acknowledgement of the causes of mass violence, to the reconstruction of a common memory, to the elaboration of the victims' emotional experience… Differently from criminal trials, which base their discovery on those facts that can be proved in courtrooms through a contradictory procedure, commissions benefit from wide margins of evaluation, since they do not apply the standards of due process, nor do they use cross-examinations. Their investigation is not limited to a single case; rather, it is linked to a situation of widespread violence that might have covered even long periods (ICTJ 2013: 11). Understanding the socio-legal context of mass violations is functional, in this case, not to punish criminals, but to provide compensation and rehabilitation to victims. The word "truth", with relation to its discovery within trials and within commissions, has achieved a broader interpretation, mostly from an individual and factual perspective to a collective and narrative one. The South-African Truth and Reconciliation Commission, which was active in the same years of the *Juicios* and which influenced the mandate of the following commissions in South-American and East-Asian countries, distinguished four categories of truth. Factual and forensic truth focuses both on the individual findings and on general causes and patterns. Personal and narrative truth involves victims and perpetrators by sharing conflicting points of view; while interaction and debate create social truth. Finally, healing and restorative truth aims at acknowledging the victims' sorrow and at restoring their dignity (TRC 1993: 111-114).

Interestingly, the right to truth, which was born in the Argentinian context as a close claim to that of justice, has then developed in a different direction around the world. Scholars and promoters of transitional justice associate the concept of the right to truth, as internationally recognized, to the theme of reconciliation, social peace and, possibly, forgiveness. Truth and – indeed – reconciliation commissions draw inspiration from a model of social harmony that did not belong to the rhetoric of the Argentinian activists. The emergence of truth procedures, which aim at truth

discovery for both individual and collective needs, find justification in this new model. Yet, the logic of reconciliation, even though based on the discovery of past crimes, does not reflect the origin of the right to truth. The Argentinian victims claimed for truth mostly in order to satisfy a personal will to reconstruct the destiny of disappeared persons and to collect evidence for further trials. The idea of reconciliation with the opposing party was far from the aim of the victims; while the procedure they selected to trace past crimes, namely the appeal to criminal courts, reflected such a specific approach toward truth. Differently from other countries, the institution who was requested to shed light on the past was a criminal court, not an informal commission, nor a historian, nor the victims and the criminals through public debates. Also in Argentina there had been a truth commission, the CONADEP, before the *Juicios*, but even its intervention had not envisaged public sessions, nor a deep involvement of victims and criminals. Its mission was mostly investigative: even though it was not responsible for the 1,400 denunciations it collected, it was asked to transmit all the data to an *ad hoc* criminal commission. The coveted truth of Argentina, through the intervention of state institutions, as in the case of the CONADEP, or despite state denial, as in the case of the *Juicios*, was very close to criminal truth, which is factual and individual. Ultimately, the greatest paradox concerning the right to truth is the following. The original promoters of this right aimed at eroding the effectiveness of the amnesty laws, thus at compensating the lack of criminal justice; while, today, scholars raise it to a core value of another kind of justice, the restorative and dialogical one, the same justice that is able to legitimize the adoption of amnesties in the name of reconciliation. In other words, throughout history, activists and politicians have used the rhetoric of the right to truth both to legitimize and to delegitimize the lack of judicial proceedings (Naftali 2014:14).

III. The Right to Truth: A Human Claim into Legal Terms

1. Introduction

The present chapter will focus on the process through which a social demand develops into a human right, through the example of the right to truth in Argentina in the Nineties. How it happened that the claim for truth from the families of the *desaparecidos*, which basically had no legal ground, achieved a juridical recognition (so much to be later enlisted within an international treaty)?

The construction of the right to truth, as that of every human right, involved a plurality of social actors. From the Government, who approved the amnesties, to the soldiers, some of whom publicly confessed their past crimes, to the victims and their associations, who tenaciously asked for the discovery of the atrocious past: all of them contributed to the surfacing of the right to truth. The biggest input to its recognition came from legal experts: lawyers and judges. These two subjects played a key role in developing the legal concept of right to truth, through a heated dialectic that accompanied the *Juicios* in the Nineties. Lawyers, by using the rhetoric of human rights, paved the way for its recognition not only within the Argentinian borders, but also at the international level. The legal strategy to which they recurred related with the transformation of a social and political issue, the will for truth, into a legal issue, the right to truth. All this happened coherently with the distinctive policy of human rights activists, who seek to "channel moral indignation into legally enforceable mechanisms at the national and international level" (Wilson 2007: 351).

This chapter will first focus on the role that lawyers played during the campaign for the right to truth; then, it will analyse in detail one of the key legal texts of the movement, through which victims and lawyers claimed the existence and the protection of this right. Both sections will be enriched by the contributions of some lawyers who took part to the *Juicios* and who granted interviews to *Memoria Abierta*, the institution that groups all Argentinian human right non-governmental organisations and that aims at keeping alive the memory over state terrorism under the latest dictatorship.

2. The Legal Activism

The construction of the right to truth is strictly related with the activism of those lawyers and victims in Argentina, who, although coming from different social, political, and cultural backgrounds, found themselves on the same side: that of the oppressed by the military dictatorship and disregarded by the following governments. Since the Sixties, many lawyers had helped the families of the missing with juridical assistance, through a political and personal battle. This activity had

involved lawyers as legal experts and, at the same time, as supporters of a certain category of clients, namely the very or alleged opponents to the regime. When choosing to offer legal advices to political prisoners, lawyers could not help getting politically involved as well. In this sense, lawyers established a first face contact between the field of politics and that of law. In carrying out their professional legal activity, they risked the same consequences of political opponents: threats, torture, forced disappearance, and murder. Nevertheless, the legal intervention did not end soon. The political campaign and the legal reasoning developed a mutually enforcing relationship, which strengthened soon after the fall of the dictatorship through the activity of denunciation, and of regularization of the juridical state of disappeared people, rebels and prisoners. The action of lawyers was supported at the international level by a developed network of human rights associations and institutions, among which the Inter-American Commission on Human Rights, which had visited the Country in 1979. Its strict report about the human rights situation in Argentina had legitimised and fostered the claims of the victims, paved the way for further mobilization at the local and international level, and given birth to a multiplicity of human rights associations in the Country.

Activists adopted different legal strategies to bypass political impediments to justice, truth, and reparation, and they became fundamental actors in the fight against impunity through their unusual "politicization": they did not publicly contest the scope of the amnesties, but they aimed at eroding their scope through other legal tools. *Memoria Abierta* (2010) analysed the strategies that lawyers enacted after the fall of the dictatorship to support the victims. Among them, there is the elaboration of original juridical concepts, such as the right to truth, that could help the victims dealing with the lack of institutional justice and truth, and which gave birth to the *Juicios por la Verdad*. This technique was only one of the ways to fight impunity and, thus, to restore justice. In parallel to the claim for truth in court, lawyers fought for the declaration of unconstitutionality of the amnesty laws, for the reopening of traditional trials, and for the "restitution of identity" to disappeared children. Their roadmap was complex and it included different strategies, which were strictly connected to each other, in the name of a main purpose: justice.

As scholars observe, the claim for new rights can be perceived as a tool of political mobilization, even in lack of any recognition of such rights from courts: "what counts is not whether the court order actually leads to a redistribution of values, but rather the impact of the judicial decision on cognition" (Scheingold 2011: 131). In this sense, rights are relevant as means of political action, rather than as ends in themselves. Their resonance in the political sphere might matter more than their effective juridical appreciation. In the case of Argentina, the recognition of the right to truth

was instrumental to the guarantee of the right to justice. The claim for the former was a contingent resource, primarily but not exclusively, for the realization of the latter (Scheingold 2011: 148). Legal activists were conscious of the double nature of their action: on the one hand, the demand for justice was sincere and it rooted in the right to grieve; on the other, it was a strategy to collect data, to restrict the application of the amnesty laws, and to pave the way for future trials. Even in the memorials from the claimants of the *Juicios*, where they demanded the satisfaction only of the right to truth, it is clear their disapproval for the amnesty laws. While confirming the compatibility of the claims for truth of the families with the state of impunity, lawyers pointed out the unconstitutionality of these laws (1995 *ESMA* case).

Talking about the right to truth meant something more than asking for its guarantee. The mere act of addressing the judges, even in lack of a positive feedback, and of keeping on talking about the unconfessed crimes of the Military, kept alive the attention on the issue of the *desaparecidos*, and amplified the visibility of the campaign. The words of Marta Vedio[5] testify the coherence between the effects of the mobilisation for truth and the original aims of the activists:

> *Y nosotros sabíamos de alguna manera que esa investigación tenía que erosionar la impunidad* […] *y de hecho, bueno, así ocurrió, no? Una vez que se empezó a hablar nuevamente, que se empezaron a poner arriba de la mesa pruebas contundentes, jurídicamente contundentes, de lo que había ocurrido, de los delitos que se habían cometido, o de los autores de esos delitos, de la organización que necesitaron montar para cometerlos, bueno, en definitiva se volvió a mostrar el terrorismo de Estado tal como era y se le dijo a la sociedad: Miren esto!*[6] (Vedio, in *Memoria Abierta* 2010: 133).

3. The Legal Rhetoric

In order to understand how the desire to know the truth over the past developed into a right, I will take into consideration the discourse of lawyers and human rights associations who contributed to its juridical elaboration. Human Rights Watch/Americas and the Center for Justice and International Law worked as *amici curiae* in support of Emilio Mignone, in the case n.461 before the Camara Federal en lo Criminal y Correccional de la Capital Federal, called *"Hechos denunciados como ocurridos en el ámbito de la Escuela Superior de Mecánica de la Armada (E.S.M.A.)"*[7]. In that occasion, human rights associations, on the basis of international jurisprudence, elaborated the founding discourse over the right to truth. The first part of their reasoning is the more traditionally juridical one, as it assesses a hierarchical relation between international sources, first of which the

[5] Marta Vedio took part to the *Juicios por la Verdad* in La Plata as representative of APDH.

[6] "And somehow we knew that this research would erode impunity [...] and indeed, well, that happened, didn't it? Once we started talking again, we started putting on the table the strong evidence, legally conclusive, of what had happened, of the crimes that had been committed, of the perpetrators, of the organization they needed to commit them, well, ultimately all this turned to show the state terrorism as it was and to tell society: Look at this!" (the present and the following are free translations from the author).

[7] The memorial is available at https://cejil.org/sites/default/files/amicus-esma_0.pdf.

Inter-American Convention on Human Rights and the jurisprudence of its corresponding Court, and national legislation, as granted by the 1994 Constitutional Reform. Then, after reminding the states' double obligation not to invade the private sphere of liberties and to intervene to grant these liberties, the *amici curiae* recall the *Velásquez-Rodríguez* case of the Inter-American Court of Human Rights, which had condemned Honduras "to prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible, attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation" (ICHR 1988, *Velásquez-Rodríguez*, ¶166).

The discovery of the circumstances of the breach and its effects is the premise of the obligation to condemn and to repair. Acknowledging truth is the first step of both mechanisms of prevention and of reparation of the damage. Thus, the state has a duty to conduct proper investigations and to inform the victims about their outcomes. In the case of forced disappearances, the relatives of the missing persons are the victims. According to the lawyers, the enquiring phase cannot be limited to ensuring access to official documents, but it develops as a rigorous, complete, and in good faith documentation and corroboration of the facts. As for forced disappearances, this obligation is even the more needed, since it refers to a permanent criminal offense: "the duty to investigate facts of this type continues as long as there is uncertainty about the fate of the person who has disappeared" (*Ibid.* ¶181). Such obligation seems to fall under the responsibility of the state, regardless of its compliance to any other international duty, included the one to condemn and to punish violators.

The right of the victims to know the truth can be deduced, *a contrario*, from the state obligation to investigate. It is interesting to note that this right arose from a state duty, which is shaped on reasons of public order and national security, rather than on the requests of the victims. In its first appearance within juridical debates, truth was primarily a founding value of democracy and rule of law, rather than a subjective right, as it becomes in the discourse of the *amici curiae*, who claim that the holders of such right are both the families of the victims and the whole society. As for the first category, they assert that the relatives of missing persons are direct victims of the violation as well, as long as they live in a condition of uncertainty with regard to the destiny and the whereabouts of the missing, and they cannot bury them properly. The arguments and the language lawyers use in this passage come from a rhetoric that has nothing to do with the juridical field, but which, nevertheless, is able to found a legal request. The argument according to which the lack of information about one's own relative leads to an intolerable state of uncertainty, arises from psychological considerations. One of the possible strategies to legitimize a new right is to refer to

common emotions and, thus, to create empathy between decision-makers and victims. For this reason, within the memorial, there are several words that pertain to the field of feelings, that find no legal significance, and that leverage on the emotional involvement of the judges. Indeed, why do lawyers use "*seres queridos*" (beloved beings) instead of "family members"? What is in legal terms a "*sepultura digna*" (respectable burial)? How can the mere, and not furtherly qualified according to juridical categories, "*sufrimiento de los familiares*" (sufferance of the relatives) found a crime of torture or of cruel, inhuman and degrading treatment, as lawyers claim? All these expressions, which refer to emotional (*seres queridos, sufrimiento*), anthropological and value (*sepultura digna*) assessments, which can hardly be faced in courtrooms, require a previous identification within the legal framework. In the same way, the *amici curiae* quote a previous opinion of the UN Human Rights Committee to emphasize the fact that it is the sorrow of the families to accord them the status of victims and to found their legal claim for truth.

The Committee understands the anguish and stress caused to the mother by the disappearance of her daughter and by the continuing uncertainty concerning her fate and whereabouts. The author has the right to know what has happened to her daughter. In these respects, she too is a victim of the violations of the Covenant suffered by her daughter (1981 *Quinteros v. Uruguay*).

In recognizing the existence of a right to truth to the benefit of the whole Argentinian society, the claimants appeal to common values, such as democracy, rule of law, and transparency, and, above all, they recall the sufferance of the victims. Instead of talking about legal damage and legal values, they deal with other categories that belong to the sphere of emotions and morality. In this way, they urge the sensitivity of the judges as human beings, with their own feelings and moral code, rather than as legal decision-makers. This strategy helps them introducing concepts and rights that find no legal precedent and that, therefore, look for a higher degree of legitimation, which is to be found outside the legal field. These aims can explain the use of non-legal terms within their memorial. Instead of talking about legal offence and damage, they qualify the lack of information as painful (*dolorosa*) and harmful to democratic health (*nocivo aún para la salud democrática*). These expressions find no legal meaning. The use of the world "impotence" (*impotencia*), which refers to the Argentinian society, is highly emblematic as well, since it deals with a juridical concept, criminal impunity, but under the psychological and emotional framework. Thus, it calls into question other judging criteria, which are not those that traditionally belong to (legal) judges. The technique of human rights activists is based on the shift from the fields of morality, politics and emotions to the juridical one. Such passage is required whenever there is a legal vacuum, as in the case of the right to truth: even though truth can be understood as a pivotal moral value, it still does not find a

place within legal codes in 1995. In order to promote such shift at the hands of the judges, notwithstanding their lack of any legislative function, the *amici curiae* recur to provocations, as the following:

> *¿Cabe abstenerse de implementar esta obligación jurídica de investigar, por el hecho de que no existe una legislación procesal expresamente destinada a señalarle a los jueces qué tienen que hacer para reconstruir los hechos? Pensamos que no, y pedimos a esta Excma. Cámara que, en lo posible, recurra a la aplicación por analogía de los recursos procesales con los que cuenta* [...]*, pero ajustando estos mecanismos al objetivo de esta actuación, que no es ni contenciosa ni punitiva*[8] (1995 *ESMA*).

However, not only lawyers, but judges as well happen to resort to the same rhetoric of human rights activism. It is no coincidence that in the memorial in question, the *amici curiae* make reference to the case *Aloeboetoe et al.* of 1993. In that occasion, the Inter-American Court, in lack of valuable juridical sources, had appealed to jusnaturalistic ideas to solve a case. The position of the judges appears highly surprising: in the sphere of law, there is no room for political or philosophical considerations, especially in court, the emblem of the legal field. Judges, unlike legislators, do not have a creative function of rights and duties; rather, they are called to interpret the law coherently with the legal reasoning and through a language that is devoid of extra-legal connotations. Conversely, the Court, in order to support the demand for compensation of moral damages for the parents of murdered children, had recognised the sorrow of the victims not with respect to their personal conditions but in reason of the following general consideration: "it is essentially human for all persons to feel pain at the torment of their child" (ICHR 1933, *Aloeboetoe et al.*, ¶76). Beyond the words that make reference to the field of emotions, there are two expressions among those pronounced by the Court, and quoted by the *amici curiae*, that are particularly strong and unusual in the juridical field: "essentially human" and "all persons". They belong to the rhetoric of Natural Law, since they presume the existence of a condition of "humanity" that is shared by all human beings and that is based on common feelings, as the pain felt in case of mistreatment of one's own child. Natural Law recognises the existence of intrinsic rights, which are based on a natural, and thus universal, human condition. This assumption has a strongly aspirational character but it does not rely on traditional juridical arguments. Human rights activists, and even the Court, base a juridical claim – the right to reparation – on a natural condition, or alleged as such – the human quality. According to the *amici curiae*, the right to reparation in case of disappearance is not possible with regard to the primary victim, namely the missing, while it is possible for his relatives, and it

[8] "Should we refrain from implementing this legal obligation to investigate, by the fact that there is no procedural legislation that explicitly aims at telling the judges what to do to retrace the facts? We think not, and ask the Hon. Chamber, where possible, to seek the application by analogy of the procedural resources it accounts [...], but adjusting these mechanisms to the objective of this action, which is neither adversarial nor punitive".

principally consists in "*poner fin al estado de incertitumbre e ignorancia en que se encuentran*"[9] (1995 *ESMA*). Discovering and telling the truth about the disappearances, and publicly acknowledging them, is part, first of all, of the right to a fair trial, since the discovery is the first step of criminal procedure. Furthermore, these actions pertain to the right to an effective remedy for the families. Even though having a moral rather than material relevance, truth discovery can be even more significant for them than economic compensation: beyond satisfying their legitimate will to know the destiny and the whereabouts of their missing, establishing events, and thus responsibilities, helps the families freeing themselves from the stigma of culprits. As the *amici curiae* affirm, society tends to blame the victims as deserving such fate in reason of whatever suspicious conduct they might have had. Legal activists base their claim on the analysis of social behaviours and transform social necessities and demands into legal claims of both the individual and the community. Indeed, as Alicia Oliveira[10] claims, there is a strict connection between the juridical and the human field, the latter being the sphere of actions, thoughts, and feelings that men experience during their life. Among them, there is the sorrow for the death of a beloved person and the desire to know his destiny.

La gente cree que lo jurídico no tiene que ver con lo humano, pero eso es absurdo. ¿Si la Ley no es para el hombre para quién es? Entonces, si no tiene criterios antropológicos ¿para qué se crea?[11] (Oliveira, in *Memoria Abierta* 2010: 127).

The juridical field, that of rights recognised by norms, is functional to the protection of the human sphere. The criteria to be followed in the design of rights and duties come from anthropological studies, since they identify basic human needs and behaviours. Law cannot develop in denial of them. Otherwise, this would lead to a paradoxical situation where justice, punitive justice, by following its own purpose, loses relation with the interests of those who claim for the intervention of such justice. According to the activists, the trial has not only the function to identify the criminals and to sanction them, but it also covers a relevant role for the victims. A role in seeking for revenge through public intervention, but also in establishing events. Thus, truth is not just functional to the judgement, but also important as such, for the satisfaction of the victims. In other words, "el derecho a la verdad es independiente de la sanción, existe por sí mismo"[12] (Vedio, in *Memoria Abierta* 2010: 133).

[9] "Putting an end to the state of uncertainty and ignorance in which they find themselves".

[10] Alicia Oliveira is a member of CELS; she worked as ombudsman in Buenos Aires in the Nineties, and as leader of the Human Rights National Department of the Chancellery in 2003-2004.

[11] "People think that the juridical has nothing to do with the human, but this is absurd. If the Law is not for men, for whom is it? Thus, if we do not follow anthropological criteria, for what do we create it?"

[12] "The right to truth is independent from punishment, it exists by itself".

In support to the right to truth, activists underline the strict connection between this right and the one, never emerged before in the juridical discourse, to grieve. Even though in the case in question the argument of the right to grieve was used only in a very subtle way, the lawyers who testified to *Memoria Abierta* expressed their concern for this natural emotional pressure. According to them, it is a fundamental cultural right (Guembe, in *Memoria Abierta* 2010), that anthropological studies clearly identify as a basic human need. The words of Alicia Oliveira, which she attributes to the victims, clearly express the link between justice, included punitive justice, and its source: a sincere human demand.

Me negaron mi derecho al duelo. Yo tengo derecho a tener el duelo. Lloro porque soy un hombre. Los hombres ejercemos el derecho al duelo. Yo quiero mi derecho al duelo. […] *Y digo: Lo que nos han negado con negarnos nuestro derecho al duelo, es negarnos nuestra propia humanidad. Nosotros estamos reclamando la verdad sobre eso*[13] (Oliveira, in *Memoria Abierta* 2010: 127).

Even though the claim for the right to grieve is purely functional to support the corresponding right to truth, since the bereavement is not possible in lack of truth, the logical reasoning that legitimises both rights develops from the same jusnaturalistic rhetoric. Knowing about the death of one's own relative is essential to his bereavement, a practice that is intrinsic in human nature. Denying it would mean denying humanity. The language used by the victims, by Oliveira, and by human rights associations in general, originates from the language of Natural Law, the law that founds human rights by attributing them a human, and thus universal, character. The persuasive although sneaky discourse of the lawyers leverages on the sensibility of the judges by appealing to common emotions, such as the affliction before death, and by claiming not specific and individual positions, but rather widespread situations that affect every human being. The worlds "*humano*", "*hombre*", and "*humanidad*" are functional to a conception of human nature that joins all individuals.

Finally, the testimonies of the lawyers reveal not only the willingness to identify and legally protect the right to truth, but also the need to place it within the system of criminal law. Relegating it to the field of administrative law would mean attributing it a lower protection. In fact, the activity of the CONADEP had collected huge evidence, which, nevertheless, could not be used in court, except after further validation. On the contrary, the *Juicios* allowed collecting evidence that was valid for subsequent trials and that has a higher institutional value. Who, better than a judge, could pronounce an as much authoritative, respected, and credible truth? Judicial power emerges as the

[13] "They denied my right to grieve. I have a right to grieve. I cry because I am human. Human beings exercise their right to grieve. I claim my right to grieve. […] And I say: What they denied us, through the denial of our right to grieve, is our own humanity. We are claiming for truth about it".

legitimate, the ultimate and most influential guarantor of the dignity of the victims, even towards government violations (Vedio, in *Memoria Abierta* 2009: 128). A judicial decision, even unfavorable, shows that an issue that was private has achieved public relevance, since the court, at least, has recognized the claim as existent. In the words of the *amici curiae*,

> *Solamente el Poder Judicial representado por esta Excma. Cámara cuenta con el grado de credibilidad necesaria para establecer, finalmente, la verdad de lo ocurrido con cientos de personas que fueron desaparecidas por agentes del Estado en Argentina*[14] (*ESMA* 1995).

Furthermore, the use of legal language helps transforming mere claims into "rights", even though in the form of denied rights. Such language encapsulates a discourse about entitlements and duties (Scheingold 2011: 136), which is addressed to courts as mediators of the dialogue between citizens and representatives. The technique of choosing the judicial way to claim for new rights, to supplement legislative and administrative procedures, has been widely used in different fields (Sax 1970): activists prefer using the naïve language of rights, especially of human rights, rather that the stronger and riskier political language.

[14] "Only the Judicial Power, represented by this Hon. Court, has the degree of credibility needed to finally establish the truth of what happened to hundreds of people who disappeared at the hands of state agents in Argentina".

Conclusions

I started the present research by claiming that today human rights are everywhere. They have become the mindset through which, not only legal experts, but also layer people think and talk about individual, or, more rarely, collective, human needs. Personal concerns are likely to be framed as rights, or, even, as human rights, namely those rights that belong to the human being as such, and that are, thus, universal.

The rhetoric of human rights, which is settled in Natural Law philosophy, is particularly successful in countries "in transition" from dictatorship or conflict to democracy and peace. In the aftermath of a period of mass violence, victims, lawyers, and activists in general, are likely to lay claim to a high level of protection for subjective positions, which were not guaranteed in the previous period. In other words, they demand rights, since rights legally recognize and defend personal demands and positions. And, first of all, they seek human rights, as they correspond to basic human needs. It is interesting to focus on the strategy that lawyers use to found these claims. As previously noted, they often recur to the human rights discourse, both in terms of rhetoric and arguments. So it happened in Argentina in the Nineties, where legal experts observed the need felt by the families of missing persons to discover their destiny, and they reconfigured it under the shape of right to truth. A right that had never existed before beyond the frame of the right to justice.

The activists highlighted a social problem, caused by the impossibility of the families to know the whereabouts of the missing, and designed it no longer as a will, but as a pre-established and undeniable human right, as if it had always existed. They shaped an original legal artifact, the right to truth, through an innovative procedure, the *Juicios por la Verdad*. The analysis of the memorial that the two main human rights organizations proposed to the Federal Chamber of the Capital and of the statements of some lawyers shows the process of creation of a new human right through the use of Natural Law semantic. The activists spoke about the right to truth as a human, natural and universal right, that belongs to all relative of missing people. This strategy helps founding a right that has not enough political support and that, thus, needs further legitimation. They use the human rights discourse as legal means, in the sense that they address directly to a court by claiming for the recognition of a pre-existing and "natural" right, but they look for a political aim, namely the constitution of it, even though they bypass the legislative process. Lawyers recur to the human rights discourse when they struggle transferring important concerns into the words of politics. Indeed, there is no better legitimation to a right than founding it on a condition that is "essentially human" (ICHR 1993, *Aloeboetoe et al.*). Such language appears neutral, pre-political, and naïve, in the sense

that it does not refer to a particular socio-political context to legitimize the need for a specific right. This rhetorical strategy, which is devoid of particularistic connotations, tends to be successful, since it legitimizes a specific right by appealing to an alleged universal human condition. But what makes the human condition universal is the philosophical and rhetorical mindset that founds human rights activism. Lawrence Friedman would talk about the "overwhelming global culture" of human rights (2011: 126).

As discovered by looking at the Argentinian experience, the evolution of a right has a strict relation with the socio-legal context where it grows. The right to truth, as every human right, is highly politicized. It cannot transcend the cultural, social and political conditions of a specific context, namely that of Argentina in the Nineties. Rather, it is the result of such peculiar situation: it was born in a context of transition, of mass disappearances and of denied justice. These three conditions, together with a strong activism of the victims and a winning legal strategy of the lawyers, brought to the creation of the right to truth as right that belongs to the families of the abducted. In other contexts, the expression "right to truth" has been used to support a plurality of aims, as the one to build a common memory, to know the responsibility of every past crime, or to reconcile victims and criminals. Yet, the right to truth as conceived by the Argentinian victims is something different, very close to the right to full investigation and strictly linked to the crime of abduction. The specificity of this crime requires the discovery of events not only for a purpose of truth ascertainment, but also, and primarily, for the aim of justice. Indeed, the crime of abduction is based on a "non-fact" (Garibian 2012: 31), namely the lack of the victim, thus on a concealed truth. Therefore, justice, for the families of the missing, entails the opposite process: the disclosure of such truth. Knowing what happened to the bodies is a way to stop the crime, first of all. As long as facts remain unknown, the crime persists, while the families keep on missing their relative.

Another element that contributed to the development of the right to truth in that moment and place, and under that original form, was the ambiguous policy of post-dictatorship governments. The amnesties, the legal pardons, the denial of state responsibility, and the Theory of the Two Demons, contributed to the elaboration of new and unconventional paths to look for justice, where the right to truth developed as the second best alternative to a missing criminal justice.

To conclude, the right to truth, as the right of the families of the missing to know the whereabouts of their loved ones, grew as the specific social product of the Argentinian legal activists of the Nineties, who managed in this operation, by recurring to the seductive, although abstract and general, rhetoric of human rights.

Bibliography

Andriotti Romanin, Enrique. 2013. "Decir la verdad, hacer justicia: los juicios por la Verdad en Argentina." *European Review of Latin American and Caribbean Studies* 94:5–23.

Andriotti Romanin, Enrique. 2011. "La Verdad como Justicia: Acción, Movilización y Creación de Oportunidades en el Juicio por la Verdad de Mar del Plata, Argentina." *Asian Journal of Latin American Studies* 24(4):1–19.

Antkowiak, Thomas M. 2002. "Truth as Right and Remedy in International Human Rights Experience." *Michigan Journal of International Law* 23:977–1013.

Beck, Ulrich. 2006. *Cosmopolitan Vision*. Cambridge, Malden: Polity Press.

Bobbio, Norberto. 1992. *L'età dei diritti*. Torino: Einaudi.

Brysk, Alison. 1994. "The Politics of Measurement: The Contested Count of the Disappeared in Argentina." *Human Rights Quarterly* 16(4):676–92.

Cascione, Cosimo. 2016. *Ius Humanum: la 'generazione' antica dei diritti umani?.* Lesson at Università degli Studi di Milano (May, 23, 2016).

Cassese, Antonio. 2005. *I Diritti umani oggi*. Bari: Laterza.

CELS and ICTJ. 2011. *Hacer justicia. Neuvos debates sobre el juzgamiento de crímenes de lesa humanidad en la Argentina*. Buenos Aires: Siglo XXI.

CONADEP. 1984. *Nunca Más: Informe de La Comisión Nacional Sobre La Desaparicion de Personas*. Buenos Aires: Eudeba.

Douzinas, Costas. 2007. *Human Rights and Empire. The Political Philosophy of Cosmopolitanism*. Abington, New York: Routledge. Cavendish. Taylor & Francis Group.

Dworkin, Ronald. 1977. *Taking Rights Seriously*. Cambridge, Massachusetts: Harvard University Press.

Eur.Ct.H.R. 2000. No.22535/93. *Kaya v. Turkey.* (Mar., 28, 2000).

Eur.Ct.H.R. 2012. No.55508/07. *Janowiec and Others v. Russia*. (Apr., 16, 2012).

Eur.Ct.H.R. 2012. No.39630/09. *El-Masri v. Macedonia*. (Dec., 13, 2012).

Ferrari, Vincenzo. 1989. "Sociologia dei diritti umani: riflessioni conclusive." Pp. 165–82 in *Sociologia dei diritti umani*, edited by R. Treves and V. Ferrari. Milan: FrancoAngeli.

Friedman, Lawrence M. 2011. *The Human Rights Culture. A Study in History and Context*. New Orleans: Quid Pro Books.

Fronza, Emanuela. 2012. *Il Negazionismo come reato*. Milano: Giuffrè.

Garibian, Sévane. 2014. "Ghosts Also Die." *Journal of International Criminal Justice* 12 no.3:515–38.

Garibian, Sévane. 2012. "Chercher les morts parmi les vivants. Donner corps aux disparus de la dictature argentine par le droit." Pp. 29–41 in *Cadavres Impensables, Cadavres Impensés. Approches Méthodologiques du Traitement des Corps dans les Violences de Masse et les Génocides*.

Glendon, Mary A. 1991. *Rights Talk. The Impoverishment of Political Discourse*. New York: The Free Press.

Goodale, Mark. 2007. "Locating Rights, Envisioning Law Between the Global and the Local." Pp. 1–38 in *The Practice of Human Rights. Tracking Law Between the Global and the Local*, edited by M. Goodale and S. E. Merry. Cambridge, New York et al.: Cambridge University Press.

HRW/Americas and CEJIL. 1995. *Memorial en derecho Amicus Curiae presentado por Human Rights Watch/Americas y el Centro por la Justicia y el Derecho Internacional a la Exma. Cámara Federal en lo Criminal y Correccional de la Capital Federal en el asunto Mignone, Emilio F., s/presentación en causa Nro. 761, "Hechos denunciados como occurridosen el ámbito de la escuela superior de mecánica de la armada (E.S.M.A.).* Available at https://cejil.org/sites/default/files/amicus-esma_0.pdf.

ICTJ. 2013. *Truth Seeking. Elements of Creating an Effective Truth Commission*. edited by E. González and H. Varney. Brasilia, New York: Amnesty Commission of the Ministry of Justice of Brazil.

Ignatieff, Michael. 2003. *Human Rights as Politics and Idolatry*. Third. edited by A. Gutmann. Princeton: Princeton University Press.

Inter-Am.Comm.H.R. Informe No. 21/00. Case 12.059. *Carmen Aguilar de Lapacó v. Argentina*, (Feb., 29, 2000).

Inter-Am.Ct.H.R. (Ser.C.) No.15 (1993). *Aloeboetoe y otros, Reparaciones*. (Sep., 10 1993).

Inter-Am.Ct.H.R. (Ser.C) No.4 (1998). *Velásquez-Rodríguez v. Honduras*. (Jul., 29, 1988).

Inter-Am.Ct.H.R. (Ser.C) No.70 (2000). *Bámaca-Velásquez v. Guatemala*. (Nov., 25, 2000).

Junta Militar. 1983. *Documento final sobre la guerra contra la subversión y el terrorismo*.

Juzgado Central de Instrucción no. 5, Audiencia Nacional de Madrid, Judge Baltasar Garzón, Diligencias Previas Proc. Abreviado 399/2006 V. (Oct., 16, 2008). And Sumario (Proc. Ordinario) 53/2008 E. (Nov., 18, 2008).

Juzgado Criminal Y Correccional Federal N. 5 de Buenos Aires, Judge N. Oyarbide. *Resolución declarativa de los sucesos históricos conocidos como el genocidio del pueblo armenio – años 1915-1923*. (Apr., 01, 2011).

Maculan, Elena. 2012. "Prosecuting International Crimes at National Level: Lessons from the Argentine 'Truth-Finding Trials.'" *Utrecht Law Review* 8(1):106–21.

Madsen, Mikael R. et al. 2013. *Making Human Rights Intelligible. Towards a Sociology of Human Rights*. Oñati International Institute for the Sociology of Law. edited by M. R. Madsen and G. Verschraegen. Oxford, Portland: Hart Publishing.

Mallinder, Louise. 2009. "The Ongoing Quest for Truth and Justice: Enacting and Annulling Argentina's Amnesty Laws." *Beyond Legalism: Amnesties, Transition and Conflict Transformation.* 5.

Marshall, Thomas H. 1950. *Citizenship and Social Class, and Other Essays*. Torino: Cambridge University Press.

Memoria Abierta. 2010. *Abogados, derecho y politica*. Buenos Aires.

Mora, Belén N. 2005. *Juicios por la Verdad Hístorica, Rituales de la Memoria. La Reaparición de una Trama en Mar del Plata*. Universidad de Buenos Aires.

Moyn, Samuel. 2010. *The Last Utopia. Human Rights in History*. Cambridge, London: The Belknap Press of Harvard University Press.

Naftali, Patricia. 2014. "«Toute la vérité, rien que la vérité»? Les mobilisations du <<droit à la vérité>> dans les affaires Mignone et Lapacó en Argentine." *Recherches et travaux du REDS à la Fondation Maison des Sciences de l'Homme* 30:73–93.

Naftali, Patricia. 2015a. "Le «droit à la vérité» à l'épreuve de ses mobilisations en Amérique Latine. Entre ressource et contrainte." *Revue interdisciplinaire d'étude juridique* 2(73):139–65.

Naftali, Patricia. 2015b. "The Politics of Truth and Complementarity: On Legal Fetishism and the Rhetoric of Transitional Justice. Introduction: Truth vs. Justice: An Obsolete Debate? The Complementarity between Criminal Justice and Truth and Reconciliation." *Revue Québéquoise de Droit International* off series(December):101–28.

OHCHR. Communication No. 107/1981. *María del Carmen Almeida de Quinteros et al. v. Uruguay*. (Jul., 21, 1983).

Peces-Barba Martínez, Gregorio. 1989. "Sul fondamento dei diritti umani. Un problema della morale e del diritto." Pp. 101–16 in *Sociologia dei diritti umani*, edited by R. Treves and V. Ferrari. Milan: FrancoAngeli.

Peces-Barba, Gregorio. 1993. *Teoria dei diritti fondamentali*. edited by V. Ferrari. Milano: Giuffrè.

Podgórecki, Adam. 1989. "Verso una sociologia dei diritti dell'uomo." Pp. 131–46 in *Sociologia dei diritti umani*, edited by R. Treves and V. Ferrari. Milan: FrancoAngeli.

Presidente de la Nación Argentina. 1983. Ley 22.924. *Pacificación Nacional.* Argentina.

Sax, Joseph L. 1970. *Defending the Environment: A Strategy for Citizen Action*. New York: Knopf.

Schapiro, Hernán I. 2001-2002 "Surgimiento de los <<Juicios por la Verdad>> en la Argentina de los Noventa." *El Vuelo de Icaro* 2-3:359–401.

Scheingold, Stuart A. 2011. *The Politics of Rights. Lawyers, Public Policy, and Political Change*. second. Michigan: The University of Michigan Press.

Senado y Cámara de Diputados de la Nación Argentina. 1987. Ley 23.521. *Obediencia Debida.*

Senado y Cámara de Diputados de la Nación Argentina. 1986. Ley 23.492*. Punto Final.*

Snyder, Frederick E. 1983. "State of Siege and Rule of Law in Argentina: The Politics and Rhetoric of Vindication." *Inter-American Law Review* 503–12.

Sousa Santos, Boaventura De. 2009. "If God Were a Human Rights Activist: Human Rights and the Challenge of Political Theologies." *Law, Social Justice & Global Development Journal* 1(March):1–42.

Teitel, Ruti. 2003. "Transitional Justice Genealogy." *Harvard Human Rights Journal* 16:69–94.

Treves, Renato et al. 1989. *Sociologia dei diritti umani*. Edited by R. Treves and V. Ferrari. Milan: FrancoAngeli.

TRC of South Africa. 1998. *Report*.

UNGA. A/RES/61/177. *International Convention for the Protection of All the Persons from Enforced Disappearance*. (Dec., 20, 2006).

Verbitsky, Horacio and Ricardo G. Lavedra. 2000. "El camino de la verdad." *Los puentes de la memoria. Causas por la verdad. La justicia no se rinde* 34–37.

Verschraengen, Gert. 2013. "Differentiation and Inclusion: A Neglected Sociological Approach to Fundamental Rights." Pp. 61–80 in *Making Human Rights Intelligible. Towards a Sociology of Human Rights*, edited by M. R. Madsen and G. Verschraengen. Oxford, Portland: Hart Publishing.

Vincent, Andrew. 2010. *The Politics of Human Rights*. Oxford, New York: Oxford University Press.

Wilson, Richard A. 2007. “The Tyrannosaurus Lex: The Anthropology of Human Rights and Transnational Law.” Pp. 342–69 in *The Practice of Human Rights. Tracking Law Between the Global and the Local*, edited by M. Goodale and S. E. Merry. Cambridge, New York et al.: Cambridge University Press.

Wilson, Richard A. 2009. “Representing Human Rights Violations: Social Contexts and Subjectivities.” Pp. 209–28 in *Human Rights. An Anthropological Reader*, edited by M. Goodale. Malden, Oxford, Chichester: Wiley-Blackwell.

Wilson, Richard A. et al. 1997. *Human Rights, Culture & Context. Anthropological Perspectives*. edited by R. A. Wilson. London, Sterling: Pluto Press.