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Ghosts Also Die.
Resisting Disappearance through the ‘Right to the Truth’
and the *Juicios por la Verdad* in Argentina

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ABSTRACT

This paper attempts to provide a more complete understanding of the so-called right to the truth, deriving from court-made doctrine in the human rights field, and associated with an alternative form of legal proceeding in Argentina that has no equivalent anywhere else in the world: the trial for the truth (*juicio por la verdad*), a procedure *sui generis* created in the aftermath of the military dictatorship in response to both the politics of forgetting that prevailed in the 1990s and the continuing obstruction of criminal proceedings down to 2003 due to amnesty laws. Protecting the right to the truth fulfils three functions by turns: first, it makes possible conciliation of amnesty with the right to judicial protection; second, it constitutes the condition for real access to justice; third, it validates the reality of the crime. Each of these functions is associated with one of the three elements, which, together, comprise the struggle against impunity: investigation, sanction, and reparation. Situated between truth commissions and classic criminal proceedings, symbolic reparation and retribution, the Argentinian trials for the truth offer a new way of conceiving both the criminal-law judge’s mission and the relations among law, truth, history, and memory in the context of the rich debates about (post-)transitional justice.

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‘Le récit est leur tombe et le restera à jamais.’

Marc Nichanian¹

1. Introduction

On 1 April 2011, at the end of lengthy proceedings, an Argentinian federal judge stated that ‘The Turkish state perpetrated the crime of genocide against the Armenian people between 1915 and 1923.’ This statement constitutes the core of a decision that is the first of its kind in the world.² It resulted from a suit filed in Buenos Aires on 29 December 2000 by a descendant of victims of the genocide, Gregorio Hairabedian, who was joined, five years later, by institutions representing Argentina’s Armenian community. The court’s finding is unusual: the Armenian genocide, which is denied by Turkey, the Ottoman Empire’s successor

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The title is inspired by F. C. A. ‘Fritz’ Lang’s film *Hangmen Also Die* (1943). The author is grateful to G. M. Goshgarian for the translation of this paper initially written in French, as well as to Katia Villard for her careful editing.

¹ M. Nichanian, ‘Le droit et le fait: la campagne de 1994’, 26 *Lignes* (October 1995) 74-92, at 82.

² ‘*El Estado turco ha cometido el delito de genocidio contra el Pueblo Armenio, en el periodo comprendido entre los años 1915 y 1923*’. The full text of the decision, rendered by the Buenos Aires Federal Court No. 5 for Criminal and Correctional Matters (case No. 2.610/2001), may be found at <http://www.genocidios.org> (visited 11 March 2014). The translations from Spanish are the author’s, except regarding the Interamerican Court of Human Right’s case law (official translations).

state, had never before constituted, *as such*, the object of a court judgment.³ The Argentinian decision takes its place in an altogether singular situation and a framework *sui generis* that we need to take note of and attempt to understand.

Argentina, once a land of refuge for large numbers of Nazi criminals, has itself been ravaged by a dictatorial past responsible for the disappearance of at least thirty thousand people. It is the only country in the world to have tested out, beginning in the immediate wake of the military dictatorship, virtually every legal instrument ever brought to bear in cases of massive human rights violations. As soon as Raúl Alfonsín, who set Argentina's transition to democracy in motion, became president of the country as a result of free elections held in 1983 after seven years of military dictatorship, he set up a commission, the CONADEP or *Comisión Sabato*, charged with investigating the enforced disappearances perpetrated by the military regime.⁴ The same year, Argentina's parliament repealed a self-amnesty law that the government of General Reynaldo Bignone had enacted in the name of 'social reconciliation' and 'pacification of the country'.⁵ (The Supreme Court later ruled that repeal of the self-amnesty law was constitutional.)⁶ The year 1983 also saw President Alfonsín authorize legal prosecution of the generals who had comprised Argentina's first three military juntas.⁷ In 1985, CONADEP released its famous report, 'Never Again' (*Nunca Más*), which furnished a

³ A series of trials staged on the Allies' initiative in the Ottoman Empire from 1918 on did bear on the Armenian Genocide. Genocide was not, however, one of the counts in the indictment, for obvious reasons: the concept would only be created in 1944 by Raphael Lemkin on the basis of the persecutions against the Armenians and the Jews, as he explains in his recently published autobiography (D.-L. Frieze (ed.), *Totally Unofficial. The Autobiography of Raphael Lemkin* (New Haven, London: Yale University Press, 2013)). Shortly after the trials came to an end, the Kemalist regime, only recently put in place, abolished all the courts martial. In the meantime, most of the criminals had fled or been released from custody. On these trials, see esp. V. N. Dadrian and T. Akcam, *Judgment at Istanbul, The Armenian Genocide Trials* (New York, Oxford: Berghahn Books, 2011). Be it noted that the Treaty of Sèvres signed by Turkey and the Allies on 10 August 1920 stipulated that the culprits should be tried before a special international criminal court. The 24 July 1923 Treaty of Lausanne made this court superfluous before it could come into existence (for developments: S. Garibian, *Le concept de crime contre l'humanité au regard des principes fondateurs de l'Etat moderne. Naissance et consécration d'un concept* (Geneva, Paris, Brussels: Schulthess, LGDJ, Bruylant, 2009), at 95 ff. See also *infra*, note 76.

⁴ The Commission, created by Decree No. 187, 15 December 1983, was chaired by Argentinian writer Ernesto Sabato.

⁵ De facto Law No. 22.924, 23 March 1983. This self-amnesty was repealed by Law No. 23.040, 22 December 1983.

⁶ Corte Suprema de Justicia de la Nación (National Supreme Court of Justice; hereinafter CSJN), *Causa originariamente instruida por el Consejo Supremo de las Fuerzas Armadas en cumplimiento del decreto 158/1983 del Poder Ejecutivo Nacional*, Decision No. 309:1689, 30 December 1986. The decisions of the Argentinian Supreme Court are available at <http://www.csjn.gov.ar> (visited 11 March 2014).

⁷ Decree No. 158/83, 13 December 1983.

preliminary inventory of the dictatorship's crimes.⁸ On 22 April 1985, the historic trial of leading junta members opened.⁹ In 1986 and 1987, confronted by pressure from high-ranking officers and mutiny in the armed forces, Alfonsín promulgated two amnesty laws;¹⁰ the Supreme Court promptly confirmed the constitutionality of the second in an extremely controversial ruling.¹¹ In September 1990, the new president, Carlos Menem, signed the first pardons (*indultos*) for those condemned in 1985, while simultaneously inaugurating a policy of reparations payments for the dictatorship's victims. Today, in the wake of the legal revolution brought about by the parliament's 2003 repeal of the 1986-1987 amnesty laws¹² and the Supreme Court's 2005 ruling that those laws were unconstitutional,¹³ criminal proceedings against those accused of committing crimes under the dictatorship have been reopened.¹⁴

Crucially, between the 1986-1987 adoption of the amnesty laws and their recent repeal, Argentina witnessed the emergence and application of the right to the truth (*derecho a la verdad*). This is a new subjective right associated with an alternative form of legal proceeding that has no equivalent anywhere else in the world: the trial for the truth (*juicio por la verdad*), a procedure *sui generis* created in response to both the politics of forgetting that prevailed in the 1990s and the continuing obstruction of criminal proceedings down to 2003. This hybrid procedure was originally designed to circumvent obstacles maintained by the amnesty laws then still in force, which ruled out recourse to justice; the procedure provided the families of disappeared persons a means of demanding that the state investigate what had happened to them. Situated between truth commissions and classic criminal proceedings, symbolic

⁸ CONADEP, *Informe de la Comisión Nacional sobre la Desaparición de Personas (Nunca Más)* (8th edn., Buenos Aires: Eudeba, 2006).

⁹ Judgment rendered on 9 December 1985.

¹⁰ Respectively Law No. 23.492, known as *de Punto final* Law (promulgated on 24 December 1986), and Law No. 23.521, known as *de Obediencia debida* Law (promulgated on 8 June 1987). In retrospect, R. Alfonsín himself eventually felt the need to explain this choice, determined by the situation reigning at the time. See his *Memoria política. Transición a la democracia y derechos humanos* (3rd edn., Buenos Aires: Fondo de Cultura Económica, 2009), esp. at 49 ff.

¹¹ CSJN, *Camps, Ramon Juan Alberto y otros*, Decision No. 310:1162, 22 June 1987.

¹² Law No. 25.779 (promulgated on 2 September 2003).

¹³ CSJN, *Simón, Julio Héctor y otros*, Decision No. 328:2056, 14 June 2005.

¹⁴ For developments on this (post-)transitional period: S. Garibian, 'Vérité vs. Impunité. La justice (post-)transitionnelle en Argentine et le *human rights turn*', in K. Andrieu and G. Lauvau (eds), *Quelle justice pour les peuples en transition ? Pacifier, démocratiser, réconcilier* (Paris: Presses Universitaires de la Sorbonne, to be published in September 2014). For a critical analysis of the political and legal context, see esp. G. Maurino, 'A la búsqueda de un pasado en la democracia Argentina', in R. Gargarella (ed.), *Teoría y Crítica del Derecho Constitucional*, Vol. 2 (Buenos Aires: Abeledo-Perrot, 2008) 1031-1059.

reparation and retribution, the trial for the truth offered, at the time, a new way of conceiving the criminal-law judge's mission as simply declarative, rather than punitive. What was sought in this special framework was not judgment and condemnation of criminals accused of serious human rights violations, but, rather, via establishment and clarification of the facts, knowledge of their victims' fate, coupled with legal recognition of the factual truth.

The situation in Argentina is the more interesting and complex because, in 1994, a thoroughgoing reform of the Constitution has been carried out in a spirit of post-dictatorial 'democratic consolidation'.¹⁵ This reform has made it possible to incorporate directly into the Argentinian legal system, by way of Article 75(22) of the Constitution, the principal international instruments for protection of human rights, notably the 1948 Convention for the Prevention and Repression of the Crime of Genocide and the 1969 American Convention on Human Rights (ACHR). What is more, it has lent them constitutional force within the hierarchy of norms.¹⁶

It was precisely this special situation and framework, which made the unusual 1 April 2011 judgment possible. That judgment offers an opportunity not only to review the extraordinary benefits of the trial for the truth (unknown or disdained in Europe) forming its immediate context, but also to take a fresh look at the so-called right to the truth, on the basis of which it is possible to initiate court proceedings of this kind. Observing Argentinian *juicios por la verdad* can help us better understand how a kind of 'ethical imperative'¹⁷ has been transformed into a subjective right to the truth deriving from court-made doctrine in the human rights field. This transformation, however, calls for a comment: on the agenda today is less the question of the existence and effectiveness of the right to the truth than the more intricate question of its utility — that is to say, its function in the contexts in which it is invoked and the uses to which it is put by the legal system's actors.

¹⁵ J.-M. Blanquer, 'Consolidation démocratique ? Pour une approche constitutionnelle', 98 *Pouvoirs, l'Amérique latine* (2001) 37-47. See also H. Tigroudja, 'Le droit international dans les Etats d'Amérique latine: regards sur l'ordre juridique argentin', 1 *Revue internationale de droit compare* (2008) 89-119, esp. at 107 ff.

¹⁶ See esp. G. J. Bidart Campos, 'El artículo 75, inciso 22, de la Constitución y los derechos humanos', in M. Abregu and C. Courtis (eds), *La aplicación de los tratados sobre derechos humanos por los tribunales locales* (2nd edn., Buenos Aires: Editores del Puerto, 2004) 77-88.

¹⁷ L. Burgorgue-Larsen and A. Ubeda de Torres, *Les grandes décisions de la Cour Interaméricaine des droits de l'homme* (Brussels: Bruylant, 2008), at 740.

In any event, the right to the truth remains a kind of ‘pointer to the crime’ in so far as it authorizes a shift from law that effaces it (amnesty laws) to law that reveals it (trials for the truth). Protecting the right to the truth irrevocably guarantees the existence of a new space conceded to the victims’ families: the space of *resistance to disappearance*. Here the right to the truth fulfils three functions by turns. First, it makes possible conciliation of amnesty with the right to judicial protection (Part 2). Second, it constitutes the condition for real access to justice (Part 3). Third, it validates the reality of the crime (Part 4). Each of these functions is associated with one of the three elements, which, together, comprise the struggle against impunity: investigation, sanction, and reparation/prevention.¹⁸

2. The Right to the Truth as a Means of Conciliation of Amnesty with the Right to Judicial Protection

A. The Overall Legal Configuration of the 1990s: Facing Amnesty

On 3 March 1995, Adolfo Scilingo, a former Argentinian naval officer, publicly confessed to the crimes he had committed under the dictatorship, admitting his participation in ‘death flights’.¹⁹ His confession sent shock waves rippling through civil society. It also helped motivate the families of the disappeared, with the help of NGOs, to initiate legal proceedings in Argentina aimed at bringing the state to pursue its investigations so that these families could find out what had happened to victims whose fate was still a mystery²⁰ —

¹⁸ On the three components of the struggle against impunity, see L. Joinet (ed.), *Lutter contre l’impunité* (Paris: La Découverte, 2002).

¹⁹ *Vuelos de la muerte* were carried out in systematic fashion under the dictatorship: thousands of disappeared persons were drugged and then thrown alive from military airplanes into the Rio de la Plata. Scilingo’s confession, which he made to the Argentinian journalist Horacio Verbitsky, is at the centre of Verbitsky’s famous book *The Flight. Confessions of an Argentine Dirty Warrior* (E. Allen trans., New York: The New Press, 1996).

²⁰ Victims’ associations were nevertheless active in various ways even under the military regime; the many different actions they undertook had a shaping influence on the evolution of the national treatment of the Argentinian dictatorship’s crimes (see N. Tahir, ‘Les associations de victimes du régime autoritaire de 1976-1983 et le pouvoir politique en Argentine’, in R. Fregosi and R. Espana (eds), *Droits de l’homme et consolidation démocratique en Amérique du Sud* (Paris: L’Harmattan, 2009) 233-249). On the emblematic Mothers of the Plaza de Mayo, an association of mothers of disappeared persons that famously organized, beginning on 30 April 1977, weekly actions on Buenos Aires’ Plaza de Mayo, a square located opposite the Argentinian government’s *Casa Rosada*: J.-P. Bousquet, *Les Folles de la place de Mai* (Paris: Stock, 1982); M. Alfredo, *Les Mères ‘folles’ de la Place de Mai* (Paris: Renaudot & Cie, 1989); E. Gomez Mango, *La Place des Mères* (Paris: Editions Gallimard, 1999). See also M. Lefevre-Deotte, ‘L’effacement des traces, la mère, le politique’, *12 Revue Socio-Anthropologie* (2002) 121-132.

victims who had, that is, disappeared without a trace, who were ‘traceless,’²¹ *untraceable*.

Let us say a word about the overall legal constellation prevailing in Argentina at the time. To begin with, the 1986-1987 amnesty laws then still in force obstructed all recourse to the criminal courts: by officializing — *legalizing* — a fictive, institutional forgetting mandated by a state that had opted for amnesia, these laws made the crime legally non-existent and ruled out criminal proceedings of any kind.²² Secondly, the 1994 constitutional reform marked out a place of honour for international human rights law, which was enshrined in the Constitution, so that it could be applied directly by Argentinian courts.²³ Finally, at the international level, precisely, precedents established by the Interamerican Court for the Protection of Human Rights (the Court of San José, which played a pioneering role, in as much as it was the first to have occasion to rule on cases of enforced disappearance)²⁴ held a pivotal place in this period, the early 1990s. Profoundly marked by an internationally promoted policy of struggle against impunity (which was to lead, in 1998, to the adoption of the Statute of the International Criminal Court), the Court of San José displayed, as is often pointed out, a strong commitment to this struggle.²⁵

In 1988, in the very first litigation on which it had to pronounce, the Court of San José introduced two crucial innovations.²⁶ First, it affirmed the state’s obligation to investigate serious violations of human rights and prosecute offenders. This obligation is not expressly stipulated in either the 1948 American Declaration of the Rights and Duties of Man or the 1969 ACHR, although the Court’s ruling was based on a broad interpretation of Article 1(1) of the ACHR (according to which states party to the Convention pledge to respect the rights and

²¹ On the singular figure of the ‘*sans-traces*’, a wandering soul who nevertheless leaves countless traces *in* his or her family: M. Lefevre-Deotte, ‘La mort dissoute. Un cas: l’Argentine’, 9 *Quasimodo* (2006) 97-108, esp. at 99 ff.

²² This recalls Paul Ricoeur’s discussion of amnesty as ‘*oubli institutionnel*’ or ‘*oubli commandé*’ (*La mémoire, l’histoire, l’oubli* (Paris: Editions du Seuil, 2000), at 585 ff).

²³ *Supra*, note 16.

²⁴ Burgogue-Larsen and Ubeda de Torres, *supra* note 17, at 742.

²⁵ See e.g. L. Hennebel and H. Tigroudja (eds), *Le particularisme interaméricain des droits de l’homme* (Paris: Pedone, 2009) or E. Lambert Abdelgawad and K. Martin-Chenut (eds), *Réparer les violations graves et massives des droits de l’homme: la Cour interaméricaine, pionnière et modèle?* (Paris: Société de législation comparée, 2010).

²⁶ Merits, Judgment, *Velásquez Rodríguez vs. Honduras*, Interamerican Court of Human Rights (Inter-Am. Ct. H. R.), 29 July 1988 (Ser. C) No. 4, §§ 162 ff. The case law of the Court of San José is accessible online at <http://www.corteidh.or.cr> (visited 11 March 2014).

liberties guaranteed in it and to ensure their full and effective exercise).²⁷ Second, the Court recognized the right of the families and close associates of people who had disappeared to know the truth about what had happened to them. The Court thus formulated a powerful idea that would subsequently provide the legal grounds for the new right to the truth, which had not been established as such by the ACHR:

The duty to investigate facts of this type continues as long as there is uncertainty about the fate of the person who has disappeared. Even in the hypothetical case that those individually responsible for crimes of this type cannot be legally punished under certain circumstances, the State is obligated to use the means at its disposal to inform the relatives of the fate of the victims and, if they have been killed, the location of their remains.²⁸

The precedent thus laid down by the Interamerican Court constitutes a historical turning point. Alongside the legal statement of the principles that made it possible to interpret and apply the ACHR more effectively, case law now affirmed the central importance of clarifying the facts and seeking the truth. This position would be repeatedly confirmed in cases involving violent death, such as executions or homicides; enforced disappearances in which the victims' remains could not be found; and disappearances without presumption of death (child kidnappings, for example).²⁹ Certain authors, such as the Argentinian Juan E. Mendez, even argue that the precedent established by the Court of San José had already made it possible to establish a legal foundation for a right to the truth as one aspect of the 'full and effective reparation' obligatory in cases of serious human rights violations.³⁰

²⁷ Aforementioned *Velásquez Rodríguez* case, *supra* note 26, § 184. See also the interesting debate Orentlicher / Nino: D. F. Orentlicher, 'Settling Accounts: The Duty To Prosecute Human Rights Violations of a Prior Regime', 100 *The Yale Law Journal* (1991) 2537-2615; C. S. Nino, 'The Duty to Punish Past Abuses of Human Rights Put Into Context: The Case of Argentina', 100 *idem* (1991) 2619-2640, and D. F. Orentlicher, 'A Reply to Professor Nino', 100 *idem* (1991) 2641-2643.

²⁸ Aforementioned *Velásquez Rodríguez* case, *supra* note 26, § 181. The Spanish version of the Court's ruling states, in the same paragraph, that the right of the victim's family to know what happened and, where relevant, the location of his or her remains, constitutes a '*justa expectativa*' that the state has a duty to fulfil to the full extent of its abilities.

²⁹ For a fuller discussion: L. Hennebel, *La Convention américaine des droits de l'homme. Mécanismes de protection et étendue des droits et des libertés* (Bruxelles: Bruylant, 2007) 532-533.

³⁰ See esp. J. E. Mendez, 'Derecho a la verdad frente a las graves violaciones a los derechos humanos', in M. Abregu and C. Courtis (eds), *supra* note 16, at 517-540 and 'The Human Right to Truth: Lessons Learned from Latin America Experiences', in T. A. Borner (ed.), *Telling the Truths: Truth Telling and Peace Building in Post-conflict Societies* (Notre-Dame: University of Notre-Dame Press, 2006) 115-151.

B. *The First Two Argentinian Cases that Led to Trials for the Truth: Facing the Judge*

It was in the configuration just sketched that, in Argentina, the first two of the cases that led to trials for the truth were brought before the *Cámara en lo Criminal y Correccional Federal* (Buenos Aires Federal Court for Criminal and Correctional Matters) in 1995:³¹ the *Mónica Mignone* and *Alejandra Lapacó* cases.³² The petitioners' main objective was to overcome the legal barriers erected by the amnesty laws. More precisely, it was to propose conciliation between two requirements that were, on the face of it, irreconcilable. These two principles were, on the one hand, respect for acts of amnesty provided for by laws that had been adopted by a democratic state exercising its sovereign prerogatives and that had been declared valid by the Supreme Court; and, on the other hand, respect for the right to judicial protection, which is the guarantee for the mission of justice (especially access to a criminal court, the role of which both the victims' families and the NGOs considered symbolically far more important than that of civil or administrative courts).³³

The petitioners adopted a strategy of conciliation that consisted in invoking a new subjective right in support of their demand, the *right to the truth* — which had only just begun to emerge in the case law established by the Court of San José, was still undefined, and was absent from Argentinian law. They accordingly cited, first, international human rights law, the instruments of which (here, the ACHR) had been enshrined in the Constitution since 1994; and, second, the Federal Constitution, which, they said, the judiciary had to take as the institutional framework for its actions in order to protect fundamental rights. They further contended that the republican form of government, as defined by Article 33 of the Constitution, 'implied' the right to the truth.³⁴

The petitioners had two objectives. First, they sought to secure the court's protection

³¹ This is the court before which the 1985 trial of the military juntas took place. The same court heard other cases connected with human rights violations committed under the dictatorship. See *infra*, note 33.

³² Monica Mignone, a *desaparecida*, was the daughter of Emilio F. Mignone, President of the CELS (Centro de Estudios Legales y Sociales, an NGO that has since 1979 been active in promoting and protecting human rights in Argentina) (Case 761). Alejandra Lapacó, who had also disappeared, was the daughter of Carmen Aguiar de Lapacó, one of the Mothers of the Plaza de Mayo and a member of the CELS' leadership body (Case 450). On the strategic choice of those two *casos testigo* and for an overview of the cases: M. Abregu, 'La tutela judicial del derecho a la verdad en la Argentina', 24 *Revista IIDH* (1996) 11-41, at 16 ff.

³³ On the choice of the tribunal and its 'political weight': *Ibid.*, at 24 ff.

³⁴ *Ibid.*, at 18-19.

of the right to the truth, which they presented, along with the right to bereavement, as an inalienable human right. Second, they sought to ensure that evidence would be established making it possible to prove and to grasp the workings of the bureaucratic organization of state terrorism.³⁵ To justify this procedure, they argued that the right to the truth made it possible to reconcile amnesty with the right to judicial protection, since it was at the heart of a legal procedure the purpose of which differed from that of a classic criminal trial. The task of a criminal court in the framework of a *juicio por la verdad* was not, they argued, to judge the guilty, but to conduct an investigation for the purpose of establishing the truth — not as a necessary preliminary to determining proper punishment but, rather, as an end in itself.³⁶

This is an interesting strategy. It rested on the premise that the Federal Court would declare itself competent to hear the case; recognize the validity of Interamerican human rights case law (and thus the Interamerican Court's interpretation of the ACHR) as a source of law directly applicable within the national legal order;³⁷ admit the existence of a right to the truth as a human right that the families of people who had disappeared could legitimately cite in support of a demand that the state honour its international obligation to investigate and inform; and, finally, recognize 'discovery of the truth' (*averiguacion de la verdad*) as, in itself, the purpose of the trial.

The last point, precisely — discovery of the truth as a possible, immediate, unique objective of a criminal trial — was the most problematic, and explains the judges' 'vacillating' position.³⁸ Initially, the Federal Court granted both petitioners' demands. However, after the Army General Staff had refused to communicate any information whatsoever about the fate of detainees who had disappeared, arguing that the judicial organ was not competent to demand such information, the Court made an abrupt about-turn. The tendency to take 'a step forward and a step back' was, it has been said, the most distinctive feature of these trials in 1995.³⁹ Carmen Aguiar de Lapacó filed an extraordinary appeal with the Supreme Court. On 13

³⁵ *Ibid.*, at 23.

³⁶ *Ibid.*, at 25.

³⁷ On this subject, see the contributions of M. Pinto et al. in V. Abramovich, A. Bovino and C. Courtis (eds), Chapter II of *La aplicación de los tratados sobre derechos humanos en el ámbito local. La experiencia de una década* (Buenos Aires: Editores del Puerto, 2007) 119-214.

³⁸ A. Oliveira and M. J. Guembe, 'La verdad, derecho de la sociedad', in Abregu and Courtis (eds), *supra* note 16, at 556. For an overview of the judges' positions in both cases: Abregu, *supra* note 32, at 30 ff.

³⁹ M. Abregu, 'Derecho a la verdad vs impunidad', 27 *Revista IIDH* (1998) 117-119, at 119.

August 1998, it was rejected by a majority of the judges, affirming that the sole purpose of the investigations was to establish whether a punishable act had taken place and to discover its authors.⁴⁰

As the idea of the trial for the truth was developing within various jurisdictions in Argentina, which ignored the precedent laid down by the Supreme Court,⁴¹ Aguiar de Lapacó deposited a complaint with the Interamerican Commission on Human Rights, claiming that her right to the truth had been denied. The Commission arranged a friendly settlement, signed on 15 November 1999, by which the Argentinian state recognized and guaranteed the right to the truth. This implied, according to the agreement, mobilization of all available means that might contribute to the clarification of the fate of disappeared persons. It was further stipulated that the state's obligation was an obligation of means, not of results.

This event is of quite decisive importance. It has made it possible to systematize trials for the truth in Argentina, especially before the La Plata Federal Court, where, since 1999, more than two thousand disappearances have been examined in public court sessions held every Wednesday.⁴² Nevertheless, *conciliation*, as Louis Joinet would state the matter, can never be anything other than provisional.⁴³ In fact, since the year 2000, the parallel consecration and evolution of the right to the truth in Interamerican human rights case law have wrought a profound transformation in the very conception of this right. Under the influence of the judges of the Court of San José, the right to the truth would henceforth be

⁴⁰ CSJN, *Suárez Mason, Carlos Guillermo*, Decision No. 321:2031, 13 July 1998. See the dissenting opinions of judges Petracchi and Bossert (§§ 6, 7, 9, 10 and 12), judge Fayt (§§ 11 and 12), as well as judge Boggiano (§§ 7, 8, 10, 11, 14, 16 to 21). In the *Mignone* case the Federal Court closed the inquiry on 18 July 1995, rather confusedly.

⁴¹ In principle, decisions of the Argentinian Supreme Court apply only to the case under consideration. Be it noted that other families initiated parallel proceedings based on the guarantee of habeas data, although there did not exist, at the time, any law governing the exercise of this constitutional right to be informed. Two months after the *Lapacó* decision, the Supreme Court softens its position in the *Urteaga* case (CSJN, *Urteaga, Facundo Raúl*, Decision No. 321:2767, 15 October 1998): it established the possibility of recourse to justice on habeas data grounds, for the purpose of procuring information about criminal acts committed under the dictatorship. Actions of the kind were, however, sharply limited in scope. See Abregu, *supra* note 39.

⁴² For further information, see the La Plata 'Asamblea permanente por los derechos humanos' website, <http://apdhlaplata.org.ar/v1/category/juicio-por-la-verdad> (visited 11 March 2014). In the end, these procedures would be validated by the *Cámara Nacional de Casación Penal* (National Chamber of Criminal Appeal); see the decisions taken by the Sala IV in the cases of *Corres, Julián Oscar s/ recurso de queja* of 13 September 2000, and *Rivarola, Ricardo Horacio s/ recurso* of 21 October 2002; as well as the decisions taken by the Supreme Court, notably in the *Rivarola* case of 27 May 2004.

⁴³L. Joinet, *supra* note 18, at 32 and 67.

perceived, not as an instrument of conciliation between respect for amnesty laws and the right to judicial protection, but, rather, as a condition sine qua non for obtaining justice and realizing legal guarantees.

3. The Right to the Truth as a Condition for Real Access to Justice

A. *The Intrinsic Link Established by the Interamerican Court Between the Right to the Truth and Access to Justice*

In the year 2000, shortly after the agreement between the Interamerican Commission and the Argentinian government was concluded, and in step with the rapid growth of national case law in this domain, the Court of San José, in its turn, expressly recognized the right to the truth for the first time. It did so in the *Bámaca Velásquez* case:

Nevertheless, in the circumstances of the instant case, the right to the truth is subsumed in the right of the victim or his next of kin to obtain clarification of the facts relating to the violations and the corresponding responsibilities from the competent State organs, through the investigation and prosecution established in Articles 8 and 25 of the Convention. Therefore, this issue is resolved in accordance with the findings in the previous chapter, in relation to judicial guarantees and judicial protection.⁴⁴

This case law undeniably confers a new dimension on the right to the truth. However, contrary to the view defended by the Interamerican Commission since 1997, and contrary to the spirit of the Joinet report drawn up for the U.N.'s Human Rights Commission the same year,⁴⁵ the Court of San José recognizes only the individual, not the collective, dimension of the right to the truth (which, consequently, only victims and/or their families can invoke).⁴⁶ Moreover, the Court does not acknowledge the autonomous character of this right, treating it,

⁴⁴ Merits, Judgment, *Bámaca Velásquez vs. Guatemala*, Inter-Am. Ct. H. R., 25 November 2000 (Ser. C) No. 70, §§ 201-202. On this case law, see the commentaries by Burgorgue-Larsen and Ubeda de Torres, *supra* note 17, at 737-763.

⁴⁵ Report prepared by Louis Joinet for the Commission on Human Rights, *Question of the impunity of perpetrators of human rights violations (civil and political)*, U.N. Doc. E/CN.4/Sub.2/1997/20/Rev.1, 2 October 1997.

⁴⁶ Aforementioned *Bámaca Velásquez* case, *supra* note 44, § 197. See also the opinion of judges A. A. Cançado Trindade and H. Salgado Pesantes.

rather, as one derived from the right to judicial guarantees and protection (see Article 8 and Article 25 of the ACHR).⁴⁷ To admit its autonomy would be tantamount to creating, out of whole cloth, a right not granted by the ACHR, and thus to betraying, in some sense, the sovereign authority of the states party to the convention: the Court itself had earlier affirmed, in connection with the 1997 *Castillo Páez* case, that what the Commission calls the ‘right to the truth’ was a non-existent right in the American Convention, albeit one corresponding to an emergent concept in legal doctrine and case law.⁴⁸ For the Court, then, it was a question of broadening the content of already existing rights by way of a dynamic interpretation; the judges did not, however, wish to appear to be making a formal jurisdictional revision of the ACHR.⁴⁹ This mechanism is highly reminiscent of one utilized by the judges of the European Court of Human Rights whenever they invoke the theory of inherence in jurisdictional decisions bearing on the state’s positive obligations.⁵⁰

As juicios por la verdad multiplied in Argentina, initiated on the basis of the guarantee and protection of the right to the truth as a ‘conciliatory’ end in itself when there was no possibility of judging the culprits, the Court of San José reaffirmed its position: the right to the truth, it said, constituted the indispensable prerequisite for effective access to justice for victims and/or their families — indispensable, yet not, as such, sufficient to ensure the realization of the judicial guarantees, of which it was merely one component. The famous judgment rendered in the *Barrios Altos* case (2001), to the effect that the amnesty laws were incompatible with the state’s duty to investigate and prosecute as it followed from the ACHR, confirmed the intrinsic link established by the Interamerican Court between the right to the truth and access to justice.⁵¹

⁴⁷ As for the Interamerican Commission, it holds that the right to the truth ‘is emerging as a principle of international law under the dynamic interpretation of human treaties and, specifically, Article 1(1), 8, 25 and 13 of the American Convention’: Aforementioned *Bámaca Velásquez* case, *supra* note 44, § 197; Art. 13 of the ACHR protects freedom of thought and expression.

⁴⁸ Merits, Judgment, *Castillo Páez vs. Perú*, Inter-Am. Ct H. R., 3 November 1997 (Ser. C) No. 34, § 86.

⁴⁹ See esp. the separate opinion of judge A. A. Cançado Trindade in the aforementioned *Bámaca Velásquez* case, *supra* note 44 (§§ 30 and 32-34).

⁵⁰ See F. Sudre, ‘Les “obligations positives” dans la jurisprudence européenne des droits de l’homme’, *Revue trimestrielle des droits de l’homme* (1995) 363-384. See also Burgorgue-Larsen’s and Ubeda de Torres’s remarks, *supra* note 17, at 749 ff.

⁵¹ Merits, Judgment, *Barrios Altos vs. Perú*, Inter-Am. Ct H. R., 14 March 2001 (Ser. C) No. 75, §§ 41, 43, 44. The judges also refer (at § 48) to the definition of the right to the truth given at § 201 of the aforementioned judgment *Bámaca Velásquez vs. Guatemala*, *supra* note 44. See also judge A. A. Cançado Trindade’s concurring opinion (esp. § 4 of his opinion), and F. Guariglia’s remarks, ‘Los límites de la impunidad: la sentencia de la Corte interamericana de derechos humanos en el caso “Barrios Altos”’, *Nueva Doctrina Penal* (2001/A) 209-

The Court of San José would regularly confirm this intrinsic link between the right to the truth and access to justice on the one hand and, on the other, the incompatibility between these rights and amnesty laws.⁵² It would also point out that the ‘historical truth’ contained in the reports of the National Commissions for Truth and Reconciliation was no substitute for the state’s obligation to establish the truth by means of judicial procedures : ‘[in] this sense, Articles 1(1), 8 and 25 of the Convention protect truth as a whole....’⁵³ The Court thus drew a sharp distinction between historical and judicial truth and, implicitly, between the role of such Commissions and that of criminal trials — institutions, be it added, that form a remarkable hybrid in the *juicio por la verdad*. This distinction, underscored by the Court, grounds the very idea of the complementarity of both practices⁵⁴:

In effect, the establishment of a Truth Commission, depending on its objective, procedures, structure, and purpose of its mandate, can contribute to the construction and preservation of the historic memory, clarification of the facts, and determination of the institutional, social, and political responsibilities of specific historic periods in a society Nevertheless, the Court deems it appropriate to highlight that the activities and information that this Commission will eventually obtain do not substitute the obligation of the State to establish the truth and ensure the legal determination of individual responsibility by means of criminal legal procedure.⁵⁵

Such distinctions are the more interesting because they are still open to debate, and, of

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⁵² See esp. the following cases: Preliminary objections, Merits, Reparations and Costs, Judgment, *Almonacid Arellano y otros vs. Chile*, Inter-Am. Ct H. R., 26 September 2006 (Ser. C) No. 154; Merits, Reparations and Costs, Judgment, *La Cantuta vs. Perú*, Inter-Am. Ct H. R., 29 November 2006 (Ser. C) No. 162; Preliminary objections, Merits, Reparations and Costs, Judgment, *Gomes Lund y otros (Guerrilha do Araguaia) vs. Brasil*, Inter-Am. Ct H. R., 24 November 2010 (Ser. C) No. 219; and Merits and Reparations, Judgment, *Gelman vs. Uruguay*, Inter-Am. Ct H. R., 24 February 2011 (Ser. C) No. 221. For an explicit confirmation of the non-existence of an *autonomous* right to the truth, see Merits, Reparations and Costs, Judgment, *Blanco Romero y otros vs. Venezuela*, Inter-Am. Ct H. R., 28 November 2005 (Ser. C) No. 138, § 62; as well as Merits, Reparations and Costs, Judgment, *La Masacre de Pueblo Bello vs. Colombia*, Inter-Am. Ct H. R., 31 January 2006 (Ser. C) No. 40, § 219.

⁵³ Aforementioned *Almonacid Arellano* case, *supra* note 52, § 150.

⁵⁴ A complementarity that does not, however, exclude tensions or conflicts: see esp. W. A. Schabas and S. Darcy (eds), *Truth Commissions and Courts: the Tension between Criminal Justice and the Search for Truth* (Dordrecht: Kluwer Academic Publishers, 2004).

⁵⁵ Aforementioned *Gomes Lund* case, *supra* note 52, § 297.

course, neither obvious nor definitive – to say nothing about the fact, to return to the Commissions for Truth and Reconciliation referred to by the Interamerican judges, that their diversity is proportional to the diversity of the countries that have concrete experience of them.⁵⁶

B. *The Impact and the Limits of the Interamerican Court's Interpretation*

It was largely on the judgment rendered by the Court of San José in the *Barrios Altos* case that the Argentinian Supreme Court, in 2005, based its emblematic ruling in the *Simón* case, which led to the official resumption of criminal proceedings against those responsible for the military dictatorship's crimes.⁵⁷ According to the Supreme Court, the statutes known as the *Punto final* (1986) and the *Obediencia debida* (1987) laws were in direct conflict with international law because, like all other amnesty measures, they sought to make people 'forget' serious human rights violations. The Court ruled that these laws were incompatible with the international legal order and simultaneously confirmed the validity of Law No. 25.779 of 2003, by which parliament had declared the statutes in question null and void from the outset.⁵⁸

The opinion of the majority of the judges on the Argentinian Supreme Court in this

⁵⁶ See e.g., with regard to Latin America, A. Martin (ed.), *La mémoire et le pardon. Les commissions de la vérité et de la réconciliation en Amérique latine* (Paris: L'Harmattan, 2009); or, more generally, P. B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (2nd edn., London: Routledge, 2011).

⁵⁷ CSJN, *Simón, Julio Héctor y otros*, Decision No. 328:2056, 14 June 2005. For a critical study, in this context, of the value of Interamerican case law in the national legal order and its democratic authority: L. Filippini, 'Algunos problemas en la aplicación del derecho internacional de los derechos humanos en el fallo Simón de la Corte Suprema Argentina', in M. Reed Hurtado (ed.), *Judicialización de Crímenes de Sistema – Estudios de caso y análisis comparado* (Bogotá: Centro Internacional para la Justicia Transicional, 2008) 467-511; Maurino, *supra* note 14, at 1057 ff; M. F. Valle, 'Corte suprema, dictadura militar y un fallo para pensar', in R. Gargarella (ed.), *supra* note 14, at 1070. See also the debate Rosenkrantz / Filippini: C. F. Rosenkrantz, 'En contra de los "Préstamos" y de otros usos "no autoritativos" del derecho extranjero', 6/1 *Revista Jurídica de la Universidad de Palermo* (October 2005), available online at <http://www.palermo.edu/derecho> (visited 11 March 2014); L. Filippini, 'El derecho internacional de los derechos humanos no es un préstamo. Reflexiones sobre la crítica a los préstamos de Carlos F. Rosenkrantz', 8/1, *idem* (September 2007); C. F. Rosenkrantz, 'Advertencias a un internacionalista (o los problemas de Simón y Mazzeo)', *idem*.

⁵⁸ But see the dissident opinion of judge Fayt, esp. at §§ 11 ff, 43, and 79 of his opinion. For a fuller discussion: C. A. E. Bakker, 'A Full Stop to Amnesty in Argentina. The "Simón" Case', 3 *Journal of International Criminal Justice* (2005) 1106-1120; H. L. Folgueiro, 'Inconstitucionalidad de la Leyes de Punto Final y Obediencia Debida. Notas al fallo "Simón" de la Corte Suprema de Justicia de la Nación', in *Derecho a la Identidad y Persecución de Crímenes de Lesa Humanidad* (Bueno Aires: Abuelas de Plaza de Mayo, 2006), at 98 ff. Important critiques immediately pointed out this decision's formal defects: extremely long, fragmented, and poorly structured, it was, in fact, hard to understand even for legal actors.

case reflects, as does the case law of the Interamerican Court, the indissoluble bond between the search for the truth and penal sanctions for offenders. Both are central state obligations where serious human rights violations are concerned.⁵⁹ We have already seen the main ideas informing the Court's ruling. The first is that these two missions (investigation/sanction), incumbent upon a state based on the rule of law, are necessary, complementary components of the judicial guarantees and the right of access to justice. The second is that this twofold mission is irreconcilable with the existence of amnesty laws.

This constitutes a major innovation in Argentina. In the juridical context, guaranteeing the right to the truth by means of *juicios por la verdad* paved the way for classic criminal proceedings, which had now become possible. The abrogation of the 1986-1987 laws and the official reopening of legal proceedings did not, however, put an end to the trials for the truth then underway. This hybrid practice has long been pursued in La Plata, unfolding alongside criminal proceedings at the federal level and providing rich investigative material and important testimony. This work has resulted in reconstructions of the facts later used to prepare criminal trials. The contours and exact terms of the collaboration and dialogue between the judges have yet to be determined. They would appear to have their origins in a form of coexistence *sui generis* between the trial for the truth and criminal proceedings. It is cause for concern in many respects, especially with regard to the rights of the accused.

Finally, we may ask, in the light of two observations, whether the intrinsic connection established by the Court of San José between the right to the truth and Articles 8 and 25 of the ACHR is inalterable.⁶⁰ The first observation has to do with the development of the right to the truth in international texts and the *soft law* of the United Nations (a process in which Argentina plays an active role). Among the milestones in this process, are the 2005 update of Louis Joinet's report on impunity,⁶¹ the 20 December 2006 Convention on Enforced Disappearance,⁶² various resolutions of the Human Rights Council and the Human Rights

⁵⁹ See esp. the opinions of judges Boggiano (§ 25), Maqueda (§ 29) and Argibay (§ 14).

⁶⁰ See e.g. Burgorgue-Larsen and Ubeda de Torres, *supra* note 17, at 750-751.

⁶¹ *Report prepared by D. Orentlicher (updating of the Joinet Report), Updated set of principles for the protection and promotion of human rights through action to combat impunity*, U.N. Doc. E/CN.4/2005/102/Add.1, 8 Februar 2005.

⁶² The Convention, which took force on 23 December 2010, reaffirms the right to the truth in its Preamble and Art. 24(2), which assert the right of any victim to know the truth about the circumstances of an enforced disappearance, the progress and results of the investigation, and the fate of the disappeared person, as well as the

Commission,⁶³ and reports issued by the U.N. High Commissariat.⁶⁴ All are instruments that define the right to the truth more broadly, that is to say, as a right that is autonomous, mixed (in other words, both individual and collective), inalienable, and inviolable. All contend that protection of this right can only be ensured by multiple national and international mechanisms, judicial or not (criminal, civil, or administrative court proceedings/trials for the truth/commissions for truth and reconciliation/commissions of enquiry, and so on), and that states should be free to choose the means of realizing it. It should also be emphasized that, while the connection between the right to the truth and other human rights is confirmed in these texts, it is systematically conceived as a ‘close’ connection — not an ‘intrinsic’ connection — a circumstance that in no way alters the autonomous nature of the right to the truth.⁶⁵ In the wake of this evolution, the U.N. General Assembly, on 21 December 2010, proclaimed 24 March ‘International Day for the Right to the Truth concerning Gross Human Rights Violations and for the Dignity of Victims’.⁶⁶ Finally, on 29 September 2011, the Human Rights Council adopted a resolution,⁶⁷ in which it decided to appoint, for a period of three years, a Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence – the Special Rapporteur took up his functions on 1 May 2012.

As for the second observation, it bears on the way the right to the truth has developed at the national level, and is partly based on the unusual 1 April 2011 court decision that we

right to freely seek, receive and impart information to this end (it is further stipulated that ‘each State Party shall take appropriate measures in this regard’).

⁶³ Esp. Commission on Human Rights, Res. 2005/66, 20 April 2005 and Res. 9/11, 24 September 2008; Human Rights Council, Res. 12/12, 1 October 2009 and Res. 21/7, 10 October 2012.

⁶⁴ U.N.H.C.R., Rep. No. E/CN.4/2006/91, 8 February 2006; U.N.H.C.R., Rep. No. A/HRC/5/7, 7 June 2007; U.N.H.C.R., Rep. A/HRC/12/19, 21 August 2009; U.N.H.C.R., Rep. A/HRC/15/33, 28 July 2010.

⁶⁵ On the different elements of the right to the truth, see in particular the U.N.H.C.R., Rep. No. E/CN.4/2006/91, 8 February 2006, which is clear and complete (esp. §§ 4 ff, 24 and 28, 42 ff, and 59). See also Y. Naqvi, ‘The right to the truth in international law: fact or fiction?’, 862 *International Review of the Red Cross* (2006) 245-273, esp. at 254 ff; and L. Despouy, ‘Origines, virtudes y peripecias del derecho a la verdad’, in K. Derghougassian (ed.), *El derrumbe del negacionismo* (Buenos Aires: Planeta, 2009) 201-245.

⁶⁶ See the document No. A/65/451 issued on 1 December 2010 by the U.N. General Assembly. The date of 24 March is highly symbolic. According to the U.N. General Assembly, it was chosen with reference to 24 March 1980, when Archbishop Oscar Arnulfo Romero, a human rights activist, was assassinated in El Salvador. However, in Argentina, 24 March is also the official day of commemoration for victims of the dictatorship that was established by a military coup that took place on 24 March 1976 (see F. G. Lorenz, ‘¿De quién es el 24 de marzo? Las luchas por la memoria del golpe de 1976’, in E. Jelin (ed.), *Las Commemoraciones: las disputas en las fechas ‘in-felices’* (Madrid, Buenos Aires: Siglo XXI, 2002) 53-100.

⁶⁷ Human Rights Council, Res. 18/7, 13 October 2011.

began by citing.⁶⁸ The guarantee of the right to the truth seems, here, to have acquired a new function: that of affirming, authenticating, *validating* a criminal act in response to an irremediable situation of impunity inflicted on Argentinian citizens by another state. For lack of a better, the remedy (namely, symbolic reparation) resides in this judicial recognition of the reality of a crime ‘punishable for all time’ — the 1915 genocide — the imprescriptible character of which is overridden by the denialist policy of the state responsible for it.⁶⁹

4. The Right to the Truth as a Validation of the Factuality of the Crime

A. *The (Re)cognition of the Facts by Means of a Judicial Narrative*

Is it surprising that, in Argentina, the Armenian genocide has become a matter subject to legal judgment in the framework of a judicial procedure *sui generis* established in that country alone in reaction to policies intended to induce it to forget its own criminal past? On balance, the answer is no, when we consider everything that these two events (genocide in the Ottoman Empire, forced disappearances in Argentina) have in common, notwithstanding their specificities and the resulting differences between them.

Ultimately, a genocidal policy and a state policy of forced disappearances are both constructed on the basis of a twofold effacement. There is, to begin with, the effacement, at the heart of the criminal process, designed to eliminate any and all traces that might eventually serve as proof of the policy of extermination in progress — proof in the form of writing, speech, images, or bodies. It is a question of silencing, while ‘rooting out the evil’, the people or things that might testify, recount, reconstitute the past, or provide oral or visual

⁶⁸ In Argentina, the protection of the right to the truth as an autonomous, absolute and mixed right is also at the heart of judicial cases dealing with forced recovery of the identity of stolen children during the dictatorship: see S. Garibian, ‘Chercher les morts parmi les vivants. Donner corps aux disparus de la dictature argentine par le droit’, in E. Anstett and J.-M. Dreyfus (eds), *Cadavres impensables, cadavres impensés. Approches méthodologiques du traitement des corps dans les violences de masse et les génocides* (Paris: Editions Pétra, 2012) 29-41 (a Spanish translation has been published in 2013: S. Garibian, ‘Buscar a los muertos entre los vivos: dar cuerpo a los desaparecidos de la dictadura argentina por el derecho’, in E. Anstett, J.-M. Dreyfus and S. Garibian (eds), *Cadáveres impensables, cádáveres impensados. El tratamiento de los cuerpos en las violencias de masa y los genocidios* (Miño y Dávila, 2013) 29-39).

⁶⁹ For some interesting remarks on the imprescriptibility of the ‘*crimes de l’Histoire*’, see J.-F. Gareau, ‘Insoutenable imprescriptibilité à la lettre: note sur l’interaction du temps, du droit et du symbole dans la problématique de la réparation des crimes de l’Histoire’, in L. Boisson de Chazournes, J.-F. Queguiner and S. Villalpando (eds), *Crimes de l’Histoire et réparations: les réponses du droit et de la justice* (Bruxelles: Bruylant, 2004) 25-38.

evidence — a question of making every possibility of knowing the past, and thus of dealing with it, disappear. ‘*Le comble de la disparition, c’est sa propre disparition*’, the philosopher Jean-Louis Déotte has written.⁷⁰ For there is a *mise-en-abîme* of, and in, disappearance: it is thus that the state policies in question, by programming their own effacement, produce ghosts.⁷¹ More: by spectralizing their victims, they make the culprits disappear by the same stroke:⁷² no body, no crime; no crime, no victim; no victim, no culprit.

Later, after the criminal process has run its course, this effacement is pursued in a wide variety of forms, including denial and amnesty. Disappearance and denial go hand in hand, intrinsically fuelling and reinforcing each other. To make disappear is to deny (forced disappearance is necessarily followed ‘by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law’).⁷³ To deny is to make the *fact* itself disappear, to destroy it — *to kill death*.⁷⁴ On top of this comes, at a still later stage, amnesty, which can only serve the purpose of providing emergency social therapy in the name of utility, not truth.⁷⁵ Thus, by means of a legal fiction (which consists in acting *as if* there were no crime even while affirming that ‘something’ clearly happened), the slate is wiped clean, legally, in the name of national reconciliation and peace. In the Argentinian case, the 1986-1987 amnesty laws created this fiction. In the case of the Ottoman Empire, it owes its existence to a general amnesty covering all the crimes perpetrated between 1914 and 1922.⁷⁶ Never called into question, this amnesty is, moreover, inseparable from the denialist policy put in place by Kemalist Turkey in 1920. All Turkish governments since then have proven to be, down to the present day, its faithful heirs.

⁷⁰ J.-L. Déotte, ‘Les paradoxes de l’événement d’une disparition’, in C. Coquio (ed.), *L’Histoire trouée. Négation et témoignage* (Nantes: L’Atalante, 2003), at 557.

⁷¹ On the concept of the *ghost/phantom*: M. Torok and N. Abraham, *The Shell and the Kernel* (N. T. Rand trans., 2nd edn., Paris: Aubier-Montaigne, 1994).

⁷² See P. Tevanian, ‘Le génocide arménien et l’enjeu de sa qualification (réflexions sur l’affaire Veinstein)’, in A. Brossat and J.-L. Déotte (eds), *La mort dissoute. Disparition et spectralité* (Paris: L’Harmattan, 2002), at 42 ff.

⁷³ Art. 2 International Convention on Enforced Disappearance (adopted on 20 December 2006).

⁷⁴ See esp. Nichanian, *supra* note 1 and *The Historiographic Perversion* (G. Anidjar trans., Paris: Lignes, 2009); H. Piralian, *Génocide et Transmission* (Paris: L’Harmattan, 1994).

⁷⁵ Ricoeur, *supra* note 22, at 589.

⁷⁶ The general amnesty is provided for in an appendix of the Treaty of Lausanne (24 July 1923) signed between Kemalist Turkey and the Allies (*supra* note 3).

We have therefore to do with an effacement that puts its victims ‘outside-the-law’, safeguarding the culprits’ impunity and the state’s denial in the process.⁷⁷ From this point of view, disappearance defies the law.⁷⁸ And it is precisely impunity/denial — ‘*cet inachèvement indéfini et sans consolation d’une sale histoire qui se termine mal*’⁷⁹ — which is at the origin of the judgment in the *Hairabedian* case. The petitioner emphasizes this point in his last, November 2010 petition to the court, in which he characterizes his suit as the ultimate solution, devoid of hatred and revenge, in the face of the international community’s prostration and the ongoing denial of the events by the successive governments’ of Turkey, which ‘thus prevent the victims, their families, and their people from exercising any right that would allow them to find the road to truth and justice’.⁸⁰

Formally, this 1 April 2011 verdict about the Armenian genocide takes its place in the narrow framework of the *juicios por la verdad*, which, as we have seen, correspond precisely to an Argentinian procedure created in response to such effacement/impunity. Established in order to counter the attempt to ‘outlaw’ the victims, these trials guarantee and protect the right to the truth as, above all, resistance to disappearance.⁸¹ They bring disappearance to an end, as it were, by making victims, witnesses, and criminals reappear *in the right place* through a validation accomplished by narration.⁸² In affirming that ‘the Turkish state perpetrated the crime of genocide against the Armenian people between 1915 and 1923’, the judicial authority attests the who/what/against whom/when. By validating the factuality of what happened, the judge interrupts, *with his words*, the unsaid caused, cumulatively, by amnesty, state denial, and time (death of the perpetrators).⁸³

⁷⁷ ‘On peut dire alors que le vaincu absolu, c’est le hors-la-loi: le disparu. C’était bien là la thèse de Benjamin concernant les vaincus de l’histoire: ceux qui n’ont pas laissé de traces. Ceux-là dont les cadavres ne peuvent être exposés, pas plus que l’histoire de leur fin, ont bien mérité leur sort: ne pas en avoir’ (Déotte, *supra* note 70, at 557).

⁷⁸ See also Nichanian, *supra* note 1, at 88 and Garibian, *supra* note 68.

⁷⁹ V. Nahoum-Grappe, ‘Vertige de l’impunité ou l’impasse du rêve de justice’, in Boisson de Chazournes, Queguiner and Villalpando (eds), *supra* note 69, at 14.

⁸⁰ ‘... impidiendo de este modo el ejercicio de derecho alguno que permitiera a las víctimas, a sus familiares y a su pueblo encontrar caminos hacia la verdad y la justicia’ (*supra*, note 2).

⁸¹ ‘Il n’y a pas de résistance possible sans désignation de ce contre quoi on résiste’ (Nahoum-Grappe, *supra* note 79, at 16).

⁸² ‘La condition nécessaire à la prise de conscience individuelle et collective d’un crime est donc bien l’existence de son récit qui permet de le percevoir et de le qualifier dans sa différence d’avec les autres’ (*ibid.*, at 19).

⁸³ This ‘unsaid’ bears on those responsible for the crime. They are absent from the text of the law that recognizes the Armenian genocide in Argentina (a law adduced as reason 7.6 for the court’s decision in the *Hairabedian* case): Law No. 26.199, 13 December 2006, promulgated on 11 January 2001. The same ‘unsaid’ may be found

The strictly declarative mission of the criminal-law judge at the center of the mechanism of a trial for the truth with no punitive function is indeed a (re)cognition of the facts by means of a judicial narrative.⁸⁴ Just as the historian does, the judge constructs the ‘narrative of true events’⁸⁵ that gave rise to the facts of the case before him by working on the traces provided by testimony, the archive, and documentary evidence, in accordance with the rules and constraints of his profession.⁸⁶ A judge produces meaning. Unlike the historian, however, his interpretation here aims to produce a *qualification*⁸⁷ — not a ‘comprehensive description’⁸⁸ — that transforms a historical fact into a legal fact, the judicial truth of which is presumed from then on (this is the advantage of the binding force of the *res judicata*). A judge also produces law. While it is not his task to determine the historical truth, his activity can nevertheless contribute to ‘clarifying’ it. This activity acquires a special dimension with the *juicio por la verdad*, the sole purpose of which is to shed light on, authenticate, and designate what happened, outside the binary dialectic of guilty/not guilty.

It should be emphasized here that the first reason adduced for the judgment in the *Hairabedian* case evokes the various stages of the proceedings opened in the year 2000 and refers to the trial as ‘the trial that clarifies the historical truth’ (*el juicio esclarecedor de la verdad histórica*). The judge points out later in the same decision that he is neither the historian of, nor a witness to, the facts ‘of great historical significance’ (*de tamaño significación histórica*) in question in this case. Rather, he merely represents the jurisdictional authority that, by pronouncing on ‘truthfulness’ (*veracidad*), validates and invests with the force of law the results of an enquiry carried out for the purpose of clarifying facts; and he does so on the basis of ‘exhibits constituting indubitable evidence’ (*elementos probatorios*

in the French Law recognizing the same genocide (Loi 2001-70 du 29 janvier 2001, *Journal officiel de la République française* (30 January 2001)).

⁸⁴ On the concept of ‘judicial narrative’, see P. Moor, *Dynamique du système juridique. Une théorie générale du droit* (Geneva, Paris, Brussels: Schulthess, LGDJ, Bruylant, 2010), at 83 ff.

⁸⁵ P. Veyne, *Writing History* (M. Moore-Rivoluceri, trans., Middletown: Wesleyan University Press, 1984).

⁸⁶ See Ricoeur, *supra* note 22, esp. at 201 ff and 413 ff; C. Ginzburg, *The Judge and the Historian: Marginal Notes on a Late-Twentieth-Century Miscarriage of Justice* (A. Shugaar trans., 2nd edn., London, New York: Verso 2002); A. Prost, *Douze leçons sur l’histoire* (Paris: Seuil, 1996); and also to the special issues on the relationship between the work of the judge and that of the historian in 102 *Le Débat* (1998) (esp. Y. Thomas, ‘La vérité, le temps, le juge et l’historien’); as well as in 38 *Droit et Société* (1998) (esp. J.-C. Martin, ‘La démarche historique face à la vérité judiciaire. Juges et historiens’).

⁸⁷ O. Cayla, ‘La qualification. Ouverture: la qualification ou la vérité du droit’, 18 *Droits* (1993) 3-18.

⁸⁸ P. Veyne, *supra* note 85.

indubitables).⁸⁹ He adds that the sole purpose of this trial was to obtain ‘a declarative legal decision on the truthfulness of the facts submitted’ (*una resolución judicial declarativa de la veracidad de los hechos sometidos*) to the court’s judgment, facts the historical rigor of which is duly documented in the archives of the Powers of the period.⁹⁰ Under these circumstances, the judge’s task – he says – does not and cannot consist in carrying out an ‘exhaustive historical revision’ (*exhaustivo revisionismo histórico*) or in providing a scientific or anthropological demonstration with regard to all the episodes of the genocide: it stems, rather, from a new mechanism, a procedure that clarifies events that indubitably constituted crimes against humanity — more specifically, in this context, the crime of genocide.⁹¹

B. The Legal Qualification of a Denied Crime and the Acknowledgment of its Hidden Victims

The petitioner Gregorio Hairabedian in fact sought several objectives in his initial demand. He petitioned, first, for clarification of the facts with a view to learning the victims’ fate as well as the place(s) where their remains were to be found, a prerequisite for the process of mourning. Second, he demanded that Turkey be asked to provide any and all information that might facilitate pursuit of this objective, including access to its national archives and authorization to conduct investigations on Turkish soil for the purpose of ascertaining the location of human remains. Finally, he demanded that the United States, Great Britain, Germany, and the Vatican be requested to make their diplomatic archives bearing on the Armenian question available. His petition included a copy, certified by the United Nations, of the 1985 Whitaker Report on the Question of the Prevention and Punishment of the Crime of Genocide.⁹²

On 28 February 2001, the court issued a declaration of inadmissibility on the grounds that the case did not fall within its jurisdiction. On 22 June 2001, granting a motion by the

⁸⁹ Reason 7.5 of the judgment.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² *Report prepared by B. Whitaker, Revised and updated report on the question of the prevention and punishment of the crime of genocide*, United Nations Economic and Social Council Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 38d Sess., Item 4 of the provisional agenda, E/CN.4/Sub.2/1985/6, 2 July 1985.

prosecutor's office, it ruled to dismiss the case.⁹³ On 3 July 2001, Gregorio Hairabedian filed an appeal with the *Cámara Federal de Apelaciones* (Buenos Aires Federal Court of Appeals). The judges of the Appeals Court's Second Chamber revoked the ruling of inadmissibility on 10 October 2002,⁹⁴ arguing that it was in 'discordance' (*discordancia*) with the petitioner's submission. The judges pointed out that the petitioner sought, not to initiate criminal proceedings, but simply to obtain a means of investigating and clarifying the facts. That, the judges declared, was in conformity with his — and society's — right to the truth, and thus fell well outside the legal framework delimiting territorial competency in criminal matters. The prosecutor's office thereupon concluded that it had no further role to play and withdrew from the case.

The trial for the truth properly speaking accordingly opened on 23 October 2002, when Federal Court No. 5 for Criminal and Correctional Matters agreed to hear all the petitioner's claims.⁹⁵ The Court began by recalling the April 1984 decision of the Permanent Peoples' Tribunal on the Armenian genocide, while simultaneously pointing out that the Tribunal had a consultative function and that its sentence constituted an 'ethical statement' (*expresión ética*) (It did not suggest that this detracted from the value of the Tribunal's conclusions).⁹⁶ It then reaffirmed that what was involved was a *juicio por la verdad*, not criminal proceedings in the strict sense, since they lay outside the scope of Argentina's territorial jurisdiction as defined in the first Article of its penal code. The foundation for this trial for the truth, the Court asserted, was provided, notably, by Articles 75(22), 14, 33 and 43 of the Argentinian Constitution, together with the 1948 International Convention on the Crime of Genocide and the 1966 International Covenant on Civil and Political Rights (particularly Article 19(2) of this Covenant, which concerns the freedom of expression). Finally, the Court noted that the petitioner's demand should of course be heard within the framework of the Turkish legal system or, in view of Turkey's systematic denial of the facts, before the competent inter-

⁹³ Reason 2.1 of the judgment.

⁹⁴ Reason 2.2.

⁹⁵ The full text of the decision of 23 October 2002 is accessible online at http://www.genocidios.org/resoluciones_fundacion-luisa-hairabedian_area-juridica-631372852507.htm (visited 11 March 2014).

⁹⁶ The Permanent Peoples' Tribunal is an international tribunal of opinion independent of the State authorities. It was founded on 24 June 1979 in Bologna (Italy). Its verdict on the Armenian Genocide (reproduced in the Argentinian decision of 23 October 2002) was handed down during the 11th session at the Sorbonne (Paris) on 13-16 April.

national institutions; it nevertheless agreed to give it a hearing in order adequately to respond ‘to the petitioner’s just claim, so that the “right to truth” that he invokes does not become a simple ritual formula devoid of all meaning’.⁹⁷

The Court consequently ordered the Argentinian Ministry of Foreign Affairs to transmit international warrants (*exhortos*) to a number of states.⁹⁸ Of the states that responded, a large majority refused to communicate any documents whatsoever to the Ministry, on the grounds that they were under no obligation to cooperate in the matter because of the strictly non-criminal nature of the proceedings.⁹⁹ Germany, Belgium, and the Vatican further pointed out that the diplomatic archives and documents bearing on this question were available to the public and could be put at the petitioner’s disposal in situ. As for Armenia, it noted that the documentation in its possession contained no information about the petitioner’s family; it also transmitted a CD-Rom containing twelve thousand documents on the 1915 genocide. Finally, the United Nations sent, as requested, a certified copy of the Whitaker report.

In the end, a task force of historians and jurists organized by the petitioner himself assumed the task of painstakingly assembling the documents that the various governments had failed to provide, in the absence of the kind of legal framework that, in criminal matters, ensures international cooperation. Between 2004 and 2010, this task force conducted research in the United States, France, Germany,¹⁰⁰ Britain, the Vatican, Belgium, Armenia and Jerusalem for the purpose of amassing what became the ‘body of evidence’: a collection of original documentary proof in which each document was accompanied by a certified translation. The entire collection was ultimately submitted to Federal Court No. 5 as a supplement to the documents provided to the court by France, Armenia, the United Nations, and Argentina’s

⁹⁷ ‘... la justa pretensión del querellante, y para que el denominado “derecho a la verdad” no quede plasmado como una mera fórmula ritual vacía de contenido.’

⁹⁸ I.e. next to Turkey, Great Britain, the United-States, Germany, the Vatican and the United Nations: France, Belgium, Armenia, Greece, Syria, Lebanon, Egypt, Jordan, Iran and Palestine. Petitions are also sent to the International Committee of the Red Cross and to the Armenian Apostolic Church. The complete summary of the *exhortos internacionales*, their content and the answers received can be found at reason 3.1 of the judgment, http://www.genocidios.org/exhortos_fundacion-luisa-hairabedian_area-juridica-631371852507.htm (visited 11 March 2014).

⁹⁹ In particular Turkey, Great Britain, the United-States, Germany and France (which however sends a certified copy of the verdict of the Permanent People’s Tribunal).

¹⁰⁰ The German archives are particularly rich and interesting, considering that Germany was the Ottoman Empire’s ally. On this subject: V. N. Dadrian, *German Responsibility in the Armenian Genocide. A Review of the Historical Evidence of German Complicity* (Cambridge: Blue Crane Books, 1996); as well as Eric Friedler’s documentary film *Aghet* (2010).

Apostolic, Protestant, and Catholic Armenian Churches,¹⁰¹ together with written and oral witness testimony.¹⁰²

Thus the judicial narrative was to develop around three main axes: documentary evidence, the archive, and testimony.¹⁰³ This material was examined in the light of the usual evidentiary constraints. It is not insignificant that this corpus consisted of documents and witness accounts written down, collected, and examined *outside* Turkey's territorial limits: in all context of mass violence, the primary traces of the crimes are always destroyed by the perpetrator state. Be it recalled, in this connection, that the last two reports of the U.N. High Commissariat for Human Rights, about the right to the truth, focus exclusively on the protection of archives, documents, and witnesses in inquiries and/or criminal prosecutions of serious or flagrant violations of human rights.¹⁰⁴

In its decision of 1 April 2011, Federal Court No. 5 provides a historical contextualization of the facts.¹⁰⁵ It then elaborates a juridical discussion of the concept of genocide¹⁰⁶ before going on to attest the authenticity of the body of evidence, which, it affirms, makes it possible to verify the truth of the facts and appreciate the *dolus specialis* constitutive of the crime of genocide.¹⁰⁷ The final verdict 1) qualifies the events in question as genocide; 2) recognizes that the members of Gregorio Hairabedian's family have the status of victims; and

¹⁰¹ All the Churches provided the petitioner with detailed reports on the clergy murdered during the Armenian genocide. The Armenian Apostolic Church also informed him that it could not shed light on his family's fate because it had no pertinent documents.

¹⁰² The court was presented with the results of the historiographical work carried out by the Program of Oral History of the University of Buenos Aires (esp. the team of historians working on political exile under the direction of Alejandro M. Schneider and Juan Pablo Artinian: A. M. Schneider and J. P. Artinian (eds), *Las voces de los Sobrevivientes. Testimonios sobre el Genocidio Armenio* (Buenos Aires: Editorial El Colectivo, 2008) and with the testimony of seven witnesses (direct survivors of the Genocide, or survivors' children), who testified in 2009-2010.

¹⁰³ For a complete, detailed list, see reason 3 (documentary evidences, archives) and 4 (testimony) of the judgment.

¹⁰⁴ U.N.H.C.R., Rep. No. A/HRC/12/19, 21 August 2009; U.N.H.C.R., Rep. No. A/HRC/15/33, 28 July 2010. See also the Human Rights Council Res. 21/7, 10 October 2012, on the right to the truth, that requested the Office of the High Commissioner for Human Rights to 'invite ... Member States, United Nations organs, intergovernmental organizations, national human rights institutions and non-governmental organizations to provide information on good practices in the establishment, preservation and provision of access to national archives on human rights, and to make the information received publically available in an online database' (§ 11) – which was done in April 2013 (<http://www.ohchr.org/en/issues/truth/pages/truthIndex.aspx>, visited 11 March 2014).

¹⁰⁵ Reason 6 of the judgment.

¹⁰⁶ Reason 7.

¹⁰⁷ Reason 7.5.

3) makes this ‘declaratory resolution’ (*resolución declarative*) freely available for purposes of communication, publication, utilization to educational ends and/or presentation before national and supranational organizations and/or any other national or international body competent to publicize the verified facts as well as the demands of the Armenian people.

5. Concluding Remarks

Whether the guarantee of the right to the truth, which was initially created to make good a *lack*, is a means of conciliating amnesty with the right to judicial protection, a means of exerting an influence on real access to justice, or a means of validating the factuality of the crime, it constitutes, at all events, a defiance of, and resistance to, disappearance. The extraordinary contribution of the Argentinian practice of *juicios por la verdad* offers, at the very least, food for thought about alternative (non-punitive) modes of the often problematic treatment of mass crimes, in view of certain limits, or even aporias, of the national and/or international criminal justice applicable to them. This practice *sui generis* offers — as do the mechanisms of ‘restorative justice’ in general — a privileged place to the victims of such crimes; it allows them to take back a leading role in the proceedings, and, as they do, to question the roles of the judge and the state, along with, more globally, that of retributive criminal justice. In fact, just like the procedures of reparation for the ‘*crimes de l’Histoire*’ of which Robert Roth speaks, the trials for the truth may be deemed a return to the sources of criminal law, to an original identity in which public accusation and the preeminence of punishment over reparation seem like historical accidents.¹⁰⁸

End in itself, stage on the way to something else, or stop-gap, this unique alternative model of justice is constructed around the key mission of cognizing / recognizing the criminal act and its victims. It owes its singularity to the fact that it combines the advantages of the criminal trial (investigation and public, legal qualification of the facts by the judicial authorities)¹⁰⁹ and the Commissions for Truth and Reconciliation (‘positive symbolism’

¹⁰⁸ R. Roth, ‘Le juge et l’histoire’, in Boisson de Chazournes, Queguiner and Villalpando (eds), *supra* note 69, at 11.

¹⁰⁹ On the meaning, the specificity and the importance of legal qualification of the criminal facts by the judicial authorities, for the victims: M. Paradelle, ‘L’émérgence de la figure de la victime par la reconnaissance judiciaire du crime: le jugement pour déconstruire le *pseudo* de l’idéologie génocidaire’, in C. Sagarra and J. Ch. Lemaire (eds), *Génocide: les figures de la victime* (Bruxelles: La Pensée et les Hommes, 2012) 15-31.

centered on the reconstruction of a criminal past for the purpose of establishing social peace).¹¹⁰ Thus it represents a strange cross between these two institutions, yet, at the same time, does not pursue the repressive ends of the one and must not pay the ‘moral costs’ of the other.¹¹¹

Moreover, it poses, in acute fashion, the complex question of the memorial function of law, thus making it possible to (re)think the close and sometimes conflictual relations among law, truth, history, and memory in the context of the rich debates about the legal treatment of state crimes in post-conflict societies and (post-)transitional justice. It should be emphasized, in this connection, that the *derecho a la verdad* and the trials for the truth emerged, precisely, in the 1990s, a period that was also profoundly marked by a profusion of theoretical works as well as concrete accomplishment in the domain of the ‘struggle against impunity’,¹¹² international criminal law and transitional justice,¹¹³ memory/memorialization and the ‘duty to remember’,¹¹⁴ or the fight against genocide and crime against humanity denial¹¹⁵ — all elements closely bound up with the problematic of law as *another* social framework of collective memory.¹¹⁶

In sum, the judge’s declaration, in a trial for the truth, that *that happened* – like, moreover, that of tribunals of opinion or legislators who pass ‘memorial laws’ — constitutes a reply to the *that never was* pronounced by states that grant amnesty to criminals or deny

¹¹⁰ See Franck Haldemann’s work on ‘positive symbolism’ on the model of the South African Truth and Reconciliation Commission, in particular ‘Drawing the Line: Amnesty, Truth Commissions and Collective Denial’, in R. Letschert et al. (eds), *Victimological Approaches to International Crimes: Africa* (Cambridge, Antwerp, Portland: Intersentia, 2011) 265-287.

¹¹¹ *Ibid.*, at 285 ff, where the author explains the ‘moral cost’ due to three main critical aspects of the Commission: the sacrifice of justice provided by civil liability; the trade of amnesty for testimony; the demand for forgiveness.

¹¹² See the Joinet and Orentlicher Reports, *supra* notes 45 and 61.

¹¹³ See esp. M. Osiel, *Mass Atrocity, Collective Memory & the Law* (New Brunswick, New Jersey: Transaction Publishers, 1997).

¹¹⁴ See esp. D. Peschanski (ed.), *Mémoire et mémorialisation. Vol. 1: De l’absence à la représentation* (Paris: Hermann, 2013). On the ‘duty to remember’, see e.g. S. Ledoux, ‘Ecrire une histoire du “devoir de mémoire”’, 170 *Le Débat* (May–August 2012), at 175-185 and J.-P. Rioux, ‘Les avatars du ‘devoir de mémoire’, *idem*, 186-192.

¹¹⁵ For a comparative legal study: L. Hennebel and T. Hochmann (eds), *Genocide Denials and the Law* (New York: Oxford University Press, 2011). See also the European Framework Decision n° 2008/913/JAI, 28 November 2008, *Journal officiel de l’Union européenne*, No. L 328, and the European Commission’s latest Report on its implementation (27 January 2014).

¹¹⁶ In the sense of M. Halbwachs, *Les cadres sociaux de la mémoire* (Paris: Albin Michel, 1994) and M. Halbwachs, *On Collective Memory* (Lewis A. Coser trans., Chicago: University of Chicago Press, 1992).

crimes. In the process, it does what can be done to make good, by default, obliteration of the facts. In other words, recourse to the right to the truth seems to be, above all — quite independently of the questions and debates it sparks — the direct product of an initial situation of effacement; for better or for worse, it *fills a gap* in History. Let us recall, in closing, the approach of the philosophers and historians who conceive criminal trial as direct access to acknowledgement of the past by way of testimony and proof,¹¹⁷ or as a means of gaining access to the existence of men and women ignored by traditional historiography, for which, for a long time, the only individuals who existed were those whose history coincides with that of acts of state.¹¹⁸ As for the trial for the truth, by endowing the crime and its hidden victims with existence, it kills the ghosts of the disappeared, em-body-ing them through law.

¹¹⁷ Ricoeur, *supra* note 22.

¹¹⁸ C. Ginzburg, *Un seul témoin* (Paris: Bayard, 2007), at 7.