Transitional Justice as a Modern Oedipus: The Emergence of a Right to Truth

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Abstract

This article offers a critical reflection on the emergence of a "right to truth" in international law and transitional justice. Analyzing the right to truth as invoked in the paradigmatic case of Argentina in light of Sophocles's *King Oedipus*, this article challenges the assumption common among human rights scholars that truth, law, and democratization necessarily go hand in hand. Although the right to truth empowered new actors and gave voice and recognition to relatives of victims of disappearance, it also posed dangers for important values associated with the rule of law and democratic deliberation. I argue that under the banner of scientific truth, important distinctions between legal and political discourse are erased, and a narrow scientific truth about DNA is taken as a substitute for political and historical investigation, thus undermining the democratic debate.

"If there is an Oedipus complex, it operates not at the individual level but at the collective level; not in connection with desire and the unconscious but in connection with power and knowledge."
Michel Foucault, Truth and Juridical Forms

I. Prologue: The Herrera Siblings

In May 2012, the Buenos Aires police raided the home of Marcela and Felipe Herrera de Noble, adopted siblings, to search and seize their personal belongings, including underwear and toothbrushes, in order to conduct DNA testing. While such searches are not unheard of in criminal proceedings, what was unusual here is that the siblings were not criminal suspects. Rather, it was their mother, Ernestina Herrera de Noble, heiress to the country's largest media empire, who was suspected of having illegally adopted the children during the military dictatorship of the seventies and eighties, when approximately 500 children were born to leftist dissidents in secret detention camps throughout Argentina and handed over to sympathizers of the regime. The children, now in their thirties, were not interested in knowing their biological origin, especially if

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the disclosure could incriminate their mother.[1] Thus, they refused to give DNA samples, which led the court to issue a search warrant of their home. In December 2010, the siblings had been ordered to report to the National Genetic Data Bank for testing "with or without their consent."[2] This injunction was the result of a new law passed in Argentina in 2009, which amended the criminal code to allow courts to obtain DNA samples from those who are suspected children of the "disappeared," a group that includes about 30,000 people who were kidnapped by the government during the military dictatorship. The new law was the result of lobbying by an NGO called "Grandmothers of the Plaza de Mayo" that has dedicated itself to finding the children of the disappeared.[3] Eventually, the siblings agreed to the test, but their DNA did not match the DNA of the two women who claimed to be their biological grandmothers. A court ordered another test with all 400 samples held by the genetic databank, but even when no match was found, it was not the end of the story, as more individuals came forward with new DNA samples.[4]

"Our identity is ours. It's a private thing and I don't think it's up to the state or the Grandmothers to come and tell us what is ours," Marcela told the Associated Press.[5]

What is the legal basis for these intrusive searches by the police? Whose rights should prevail—the siblings' right to privacy or the grandmothers' need to learn the truth about their missing grandchildren? Should the Argentine government's efforts to bring to justice those responsible for crimes committed during the military dictatorship (including abduction of children) prevail over privacy and personal autonomy?[6] Should the courts recognize a "right to truth" and if so, to whom should this right belong—the individual family members of the disappeared, or society as a whole, represented by government? How does the legal recognition of a right to truth affect political discourse

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[1] Elizabeth B. Ludwin King, A Conflict of Interests: Privacy, Truth, and Compulsory DNA Testing for Argentina's Children of the Disappeared, 44 Cornell Int'l L.J. 536 (2011).

[2] Id. at 537.

[3] Id. at 540-46.

[4] Francisco Goldman, Children of the Dirty War, New Yorker, Mar. 19, 2012, at 54, 64-65.

[5] Cited in Argentine Media Heirs Submit to "Dirty War" DNA Tests, BBC News, June 7, 2010 (http://www.bbc.co.uk/news/10254236).

[6] For a discussion of the difficulties balancing the conflicting interests created by this type of situation, see Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 08/11/2009, "Gualtieri Rugnone de Prieto, Emma Elidia y otros s/ sustracción de menores de 10 años," La Ley [L.L.] (2009-E-374), ¶ 10 (Arg.) [hereinafter Prieto Case]. In that case, Guillermo Gabriel Prieto was suspected of being the son of a disappeared woman. His allegedly adoptive parents refused to submit to a DNA test, and upon his reaching adulthood, Guillermo Prieto himself appealed to the Argentine Supreme Court against a court-ordered raid of his home and gathering of his personal belongings as a way to gather DNA samples. After pointing to the various conflicting interests and rights in the case, the majority of the Supreme Court decided that the raid and search order were legal, on the grounds that the public interest in determining the truth in the case overcame Prieto's right not to know his biological identity. The conflict was deemed by the court to be lessened by the fact that the procedure did not require any physically invasive procedure on Prieto's body, but rather on the DNA he had shed on objects.

and democratic deliberation in Argentina about its dictatorial past, many years after the transition to democracy?

This article considers the case of the Herrera siblings as part of the broader recognition of a legal right to the truth in international law. It offers a comparative reading of the ancient story of King Oedipus with the modern story of Argentina's children of the disappeared. The goal of this reading is to develop a critical reflection on the development of the right to the truth. Although this right helped overcome an organized lie about forced disappearances by empowering new actors and giving voice and recognition to victims' relatives, it also posed dangers for important values associated with the rule of law and democratic deliberation. This essay challenges the assumption common among human rights scholars that truth, law, and democratization necessarily go hand in hand. I argue that under the banner of scientific truth, important distinctions between legal and political discourse are erased, and a narrow scientific truth about DNA is taken as a substitute for political and historical investigation, thus undermining the democratic debate.

The tragedy of Oedipus is one of the rare sites in which the interaction of truth and law is critically evaluated. As a close reading reveals, the story offers an archetype of a legal investigation initially focused on uncovering the limited truth about the perpetrator of a crime that is transformed into an all-encompassing search for the truth about personal identity. A close reading also helps identify an individualization of the truth—initially sought in the interest of the city as a whole, the truth becomes an individual matter, one that concerns Oedipus and his family. We witness a similar transformation in contemporary international law and transitional justice practices, which have moved from understanding the truth as a public good to recognizing an individual human right to the truth that belongs to the victim and his/her family. This development is part of a larger shift in the field of transitional justice toward individual criminal accountability, legalization of the truth and greater victims' participation. The fact that the story of Oedipus is built as a tragedy can help us retell the history of the emergence of a victim's right to the truth as a cautionary narrative, a warning for the future direction of transitional justice.

In what follows, I offer a close reading of *King Oedipus*, focusing on the search for truth and its transformations. I then move back to Argentina to compare the story of Oedipus with the legal struggle of the Mothers and Grandmothers to find the truth about the "disappeared," and to bring an end to impunity for complicity in the "dirty war." I conclude by asking what new insights the comparison can bring to our understanding of the history and development of the field of transitional justice.

II. The "Right to the Truth" and the Turn to Oedipus

The proceedings in Argentina should be understood in the context of an emerging "right to the truth" in international law. Initially formulated as both a right of individual victims

and a collective interest of societies with a past of state-sponsored violence,[7] the right to know the truth about human rights violations has emerged in the past three decades in various sites of international law. During the 1990s the clarification of the truth unfolded as an overriding objective of truth commissions, in particular under the South African model of amnesty conditioned upon confession. By moving away from punishment, the focus of the legal investigation was no longer the right of the defendant to due process, but rather the right of the victims to know the truth. And in contrast to the limited truth produced by criminal trials, the truth commissions were expected to produce a report that would clarify the history of the prior regime as a whole.[8] In the last decade, the notion of a right to truth is no longer confined to national transitional justice practices and has been increasingly recognized by international human rights tribunals at the insistence of various victims' organizations.[9] The European Court of Human Rights, the African Commission on Human and Peoples' Rights and the Inter-American Commission on Human Rights have all recognized in one form or another family members' right to know the truth about the fate of victims disappeared, tortured or otherwise abused by the government, and the state's duty to investigate such human rights violations, in some cases even when prosecution is not likely to result from the investigation.[10] A similar development can be identified in international criminal law, now the preferred mechanism for addressing gross human rights violations. Since the nineties, and especially with the establishment of special tribunals for the former Yugoslavia and Rwanda, didactic objectives—among them the clarification of historical truth—have come to be considered legitimate goals for international law.[11] And more importantly, the search for truth has been recognized as an

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[7] According to the Inter-American Commission on Human Rights, "[t]he right to know the truth with respect to the facts that gave rise to the serious human rights violations . . . constitutes an obligation that the State must satisfy with respect to the victims' relatives and society in general." Ignacio Ellacria v. El Salvador, Case 10.488, Inter-Am. Comm'n H.R., Report No. 136/99 ¶ 221 (1999). But compare to Bámaca Velásquez v. Guatemala, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 70 (Nov. 25, 2000), in which the court recognized only the individual, not the collective, dimension of the right to truth. The court explained that "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." Id. at ¶ 197. For further discussion, see Sevane Garibian, Ghosts Also Die: Resisting Disappearance through the "Right to the Truth" and the Juicios par la Verdad in Argentina, 12 J. Int'l Crim. Just. 515 (2014).

[8] Yet even the Truth and Reconciliation Commission (TRC), initially conceived as an alternative to legal discourse, is far from having produced a complex historical narrative of Apartheid, and this is because of its narrow mandate to investigate gross human rights violations. Bronwyn Leebaw, Judging State-Sponsored Violence, Imagining Political Change 58-90 (2011); Richard A. Wilson, The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State 33-61 (2001).

[9] Such an internationalization of transitional justice practices is not limited to the right to truth, but concerns the entirety of the field. See Ruti G. Teitel, Globalizing Transitional Justice: Contemporary Essays (2014).

[10] For a survey of these bodies' jurisprudence concerning the right to the truth, see Thomas M. Antkowiak, Truth as Right and Remedy in International Human Rights Experience, 23 Mich. J. Int'l L. 977 (2002); Yasmin Naqvi, The Right to Truth in International Law: Fact or Fiction?, 88 I.R.R.C. 245 (2006).

[11] Note however that Richard Wilson identifies a rise and fall in didactic objectives, and sees the Milošević trial as a turning point. Richard A. Wilson, Writing History in International Criminal Trials (2011).

independent purpose of international criminal trials. This process is connected to the changing status of the individual victims in international criminal law[12] and their growing centrality in the proceedings (both as witnesses and participants) since the establishment of the permanent International Criminal Court in The Hague.[13] Moreover, we see a cross-reference by the ICC to the jurisprudence of human rights tribunals in this respect. Recent decisions by the ICC affirm the right to truth as a victims' right, by referring to the jurisprudence of the Inter-American human rights system.[14]

A. Why Oedipus?

A few scholars have examined these developments from a historical and socio-legal perspective, explaining the crucial role played by NGOs and lawyers operating in transnational networks.[15] Yet that literature generally takes a triumphant tone, and sees the increased legalization of the truth, the privileging of criminal trials, and the individuation of the truth as a human right belonging to victims and their families, as a progressive and positive development that signals increased recognition of human rights norms.[16] The critical literature on international law, on the other hand, presents all human rights discourse as dangerous for politics, and does not focus on the specificities of the right to truth.[17] I therefore came to look for a source or prism that would allow me to address the

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[12] While at Nuremberg the prosecution based its case on perpetrators' documents and excluded victims' testimonies for fear of their unreliability, the Eichmann trial gave victims a central role. Leora Bilsky, Transformative Justice: Israeli Identity on Trial (2004); Leora Bilsky, The Eichmann Trial: Towards a Jurisprudence of Eyewitness Testimony of Atrocities, 12 J. Int'l Crim. Just. 27 (2014). However, at the time it was criticized for being a political trial promoting a Jewish narrative. See Hannah Arendt, Eichmann in Jerusalem: A Report on the Banality of Evil 5 (2006). This understanding has later changed with the jurisprudence of international criminal law where victims' rights have been recognized alongside defendants' rights. See T. Markus Funk, Victims' Rights and Advocacy at the International Criminal Court (2010).

[13] See Sigall Horovitz, The Role of Victims in International Criminal Procedure: The Interface of Civil Law and Common Law Legal Systems 166 (Linda Carter ed., 2013); Christoph Safferling, The Role of Victims in the Criminal Process: A Paradigm Shift in National German and International Law?, 11 Int'l Crim. L. Rev. 183 (2011); Christine van den Wyngaert, Victims Before International Criminal Courts: Some Views and Concerns of an ICC Trial Judge, 44 Case W. Res. J. Int'l L. 475 (2011).

[14] See Prosecutor v. Katanga, Case No. ICC-01/04-01/07-474, Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case, ¶¶ 31-36 (May 13, 2008); Prosecutor v. Lubanga, Case No. ICC-01/04-01/06-2173, Observations from the Legal Representatives of the Victims in Response to the Documents Filed by the Prosecution and the Defense in Support of Their Appeals Against the Decision of Trial Chamber I of 14 July 2009, ¶ 4 (Oct. 23, 2009).

[15] Kathryn Sikkink, The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics 96-125 (2011); Naomi Roht-Arriaza, The Pinochet Effect: Transnational Justice in the Age of Human Rights 97-117 (2006); Patricia Naftali, The Subtext of New Human Rights Claims: A Socio-Legal Journey into the "Right to Truth," in Diverse Engagement: Drawing in the Margins 118 (Matthew French et al. eds., 2010).

[16] Kathryn Sikkink, for instance, praises the Argentine "truth trials" that will be discussed further below for "beneficially combin[ing]" truth commissions and prosecutions. Sikkink, supra note 15, at 87.

[17] David Kennedy, The International Human Rights Movement: Part of the Problem?, 15 Harv. Hum. Rts. J. 101 (2002); Wendy Brown, The Most We Can Hope For . . . : Human Rights and the Politics of Fatalism,

complexity and ambivalence of the right to the truth, a prism that would acknowledge the need to use the law to reveal the truth in the face of a regime's organized lie, but would also warn against the dangers for political discourse and rule of law values of allowing the "right to truth" to trump other rights. More generally I wanted to convey the sense of tragedy that accompanies a transitional justice process that aims to enhance democracy and the rule of law by revealing the truth about the crimes of the prior regime, but ends up narrowing a society's discretion to carve its own way by adopting an absolutist interpretation of the "right to truth."[18]

I turn to the story of Oedipus—not the popular myth, but the literary text, the tragedy of *King Oedipus* by Sophocles—in order to offer a critical reading of the emergence of the right to truth in the field of transitional justice.

Why turn to the story of Oedipus? At first impression, the story resonates in its similarity to the Argentine case of the stolen children of the disappeared. We begin with an unprosecuted crime and a family member who pushes the case forward in order to identify the guilty criminal. However, during the search, a change occurs and what began as a quest for a legal truth turns into a search about personal identity. But here the similarity ends. While in the Greek story, King Oedipus strives for the truth about his ancestors until his tragic end, in the Argentine story, some of the children of the disappeared do not want to know who their biological parents were, while the grandmothers are the ones to push for the truth.[19] Thus, in the modern context the main arena for the struggle is a court of law.

But Oedipus is linked to the field of transitional justice in deeper ways as well. The story of Oedipus was reformulated by Freud as the basis for the science of psychoanalysis. Therapeutic language has now been adopted in the field of transitional justice.[20] In *Oedipus*, the engine driving the story is the plague. Similarly, the discourse of transitional justice is framed in terms of a plague or disease—here the authoritarian

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103 S. Atl. Q. 451 (2004) (arguing that the human rights movement's apolitical discourse has a depoliticizing effect on justice struggles).

[18] I further discuss the political dangers of an absolute right to truth in Leora Bilsky, Truth and Judgment in Arendt's Writing (unpublished manuscript). Ruti Teitel identifies a similar tendency in the development of what she terms "a right to accountability." Ruti G. Teitel, Transitional Justice and Judicial Activism: A Right to Accountability? (forthcoming 2015).

[19] We can also compare the mothers of the Plaza de Mayo who search for the truth at all costs to Jocasta, who does not want to know who her son is, and when the truth is revealed it is so unbearable for her that she chooses to take her own life.

[20] For a discussion of how the South African TRC sought to promote "therapeutic justice," which "emphasizes the importance of addressing the trauma resulting from past abuses, which, if left unchecked, might fuel ongoing cycles of violence and mistrust," see Leebaw, supra note 8, at 12. For a review of the rise of an approach to transitional justice based on the psychology of emotions, see Leslie Vinjamuri & Jack Snyder, Advocacy and Scholarship in the Study of International War Crime Tribunals and Transitional Justice, 7 Ann. Rev. Pol. Sci. 345, 357-59 (2004).

regime.[21] And just as psychoanalysis strives to bring the unconscious into the conscious, the field of transitional justice is based on the assumption that the revelation of the truth about past violence will remove the disease, both at an individual and societal level.[22] In other words, the basic assumption is that truth is healing on the individual level, and that truth is essential to help society recover from its dictatorial disease and become a healthy democracy. Yet empirical studies of transitional justice challenge the assumption of catharsis through truth, showing that it is not clear at all that the truth helps the community or the victims. For example, in a quantitative study of transitional justice measures adopted in 161 countries between 1970 and 2007, international relations scholars have found that truth commissions, when not combined with other transitional justice measures, tend to have a negative effect on democracy and human rights.[23] Moreover, a study of victims who testified at the International Criminal Tribunal for the Former Yugoslavia found that the experience of testifying was often negative when not outright traumatic, and that it often bore negative social consequences.[24] By going back to the original literary story of Oedipus and drawing attention to its tragic end, I seek to challenge some of the assumptions about the right to the truth and its relations to democracy.

Oedipus is a particularly appropriate text through which to challenge these assumptions as it can be read as a work about democracy. In his 1973 lecture "Truth and Juridical Forms," Michel Foucault suggests that Sophocles's play *King Oedipus* reflects a legal revolution that took place in ancient Athens—the creation of a legal investigation based on the testimony of an eyewitness. He argues that such a legal investigation based on the search for the factual truth about a past event is intimately connected to the emergence of democracy. According to Foucault,

> *Oedipus the King* is a kind of compendium of the history of Greek law . . . [It] offers us a summary of one of the great conquests of Athenian democracy: the story of the process through which the people took possession of the right to judge, of the right to tell the truth, to set the truth against their own masters, to judge those who governed them.[25]

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[21] E.g., Martha Minow, Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence 61-66 (1998); id. at 61 ("If the affirmative case for truth commissions rests on the goal of healing, then the working hypothesis is that testimony of victims and perpetrators, offered publicly to a truth commission, affords opportunities for individuals and the nation as a whole to heal."). For criticism of the unconditional endorsement of forgiveness and healing as objectives of transitional justice, see Thomas Brudholm, Resentment's Virtue: Jean Améry and the Refusal to Forgive (2008).

[22] Eric Stover quotes former U.S. Secretary of State Madeleine Albright's statement in reference to Bosnia that "[t]ruth is the cornerstone of the rule of law . . . and it is only truth that can cleanse the ethnic and religious hatreds and begin the healing process." Eric Stover, The Witnesses: War Crimes and the Promise of Justice in The Hague 14-15 (2005).

[23] Leigh A. Payne et al., Transitional Justice in Balance: Comparing Processes, Weighing Efficacy 6 (2010).

[24] Stover, supra note 22; see also Karen Brouneus, The Trauma of Truth Telling: Effects of Witnessing in the Rwandan Gacaca Courts on Psychological Health, 54 J. Conflict Resol. 408 (2010) (showing that *gacaca* witnesses suffer from higher levels of depression and PTSD than do non-witnesses).

[25] Michel Foucault, Truth and Juridical Forms, in Power: The Essential Works of Michel Foucault 1954-1984, vol. 3, at 1, 33 (James D. Faubion ed., 1994) (1973).

The story, in his interpretation, is a dramatization of the long process over the course of the fifth century in Athens that helped establish what Foucault sees as the founding myth of the West "according to which truth never belongs to political power."[26]

We can find a similar belief that truth can overcome political tyranny in the request of the mothers and grandmothers of the Plaza de Mayo that the military in Argentina reveal the truth about the fate of their children. I therefore suggest that the story of Oedipus can help shed light on the modern struggle to democratize Argentina. However, I would like to go further than Foucault and argue that the story does more than demonstrate the politics of truth and its implications for the legal investigation. In addition, I shall argue, the story points to the danger that a certain conceptualization of the truth can pose to the democratic process.

In the following I suggest viewing transitional justice, the area of international law preoccupied with legal responses to a legacy of mass violence and transitioning into democracy, as a modern Oedipus—as a field that began its quest to find the truth as part of a more general commitment to the goal of ending the era of impunity and prosecuting those responsible for horrendous crimes, but finished with a right to the truth that becomes an independent objective in itself, and takes primacy over other purposes of the criminal trial. This in turn leads to a juridification of political discourse and the replacement of political judgment with an absolutist notion of human rights.

B. The Story of Oedipus

In this section I return to King Oedipus and retell the story with a focus on the way it presents the relations between truth, law and politics. In particular I would like to point to the transformation of the truth in the Oedipus story from a limited quest to discover a legal truth about a crime, to an all-encompassing search for the truth about identity. My interest is therefore not in the issue of incest and the family drama that was the focus of psychoanalytic writings, but in the more collective level: the formation of a legal investigation based on the search for truth.

> There once was a king, whose kingdom suffered from a severe and incurable plague.
> Disease infects fruit blossoms in our land,
> disease infects our herds of grazing cattle,
> makes women in labour lose their children.[27]

The townspeople turn to the king for help. The king understands that the plague is related to an ancient sin or crime that had not been investigated: the murder of the previous king, Laius. Laius's murder at the intersection of three roads has never been investigated, and no one has been prosecuted. King Oedipus undertakes to investigate the crime, bring the truth to light and the culprits to justice, all in the hope of ending the plague.

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[26] Id. at 32 ("With Plato there began a great Western myth: that there is an antinomy between knowledge and power. If there is knowledge, it must renounce power. Where knowledge and science are found in their pure truth, there can no longer be any political power.").

[27] Sophocles, Oedipus the King, lines 29-31 (Ian Johnston trans., 2007).

The trigger for the search for the truth is therefore an uninvestigated crime, and the purpose of establishing the truth is to find the culprits and prosecute them. The king undertakes this investigation in his public capacity as a leader, for the good of the community. Indeed, when he sets out on this inquiry, he emphasizes that he is not acting out of personal interest (although he is now married to Queen Jocasta, Laius's widow), but on behalf of the city.

However, during this quest for truth a fundamental change occurs in the purpose of the search. The journey that began as a search for legal truth about the identity of the murderer gradually becomes a search for self-identity (of the investigator). This truth about the identity of a person is very different from the legal/factual truth required to clarify who did what to whom at some point in the past.

The turning point can be identified in Oedipus's encounter with the Prophet Teiresias, who reveals the truth to Oedipus in an explicit, unambiguous way: "[Y]ou yourself are the very man you're looking for."[28] But this truth is not accepted by Oedipus, who sees it as a lie and plot of Creon. So Teiresias changes the question, from a question about the identity of the murderer, to a question about Oedipus's own identity:

> you have your eyesight, and you do not see
> how miserable you are, or where you live,
> or who it is who shares your household.
> Do you know the family you come from?[29]

To Oedipus's question, "Who was my father?" Teiresias answers, "Today will be both, the day of your birth and of your death."[30]

That is, according to the prophet truth can be so powerful as to forge a new identity, as in birth. Yet it is precisely this new identity that is so dangerous that it has the power to kill the one who searches for it (put differently, the truth about identity threatens to erase the prior identity of the individual, an act that can be compared to a symbolic birth/death).

At this point we notice another change in the nature of the search for the truth. Whereas in the beginning the search for the truth had been subordinated to a public purpose, of finding the culprit in order to stop the epidemic, it gradually becomes Oedipus's individual search for the personal truth about his identity—a personal truth that might actually have negative consequences for his family and community. Indeed, during the play Oedipus is warned by various people against persevering in his search, as they realize that the truth could be devastating for Oedipus's family, community, and even for himself. Thus, Oedipus the King must choose between his public and private roles.

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[28] Id. at lines 434-35.

[29] Id. at lines 496-99.

[30] Sophocles, Oedipus Rex, lines 528-29 (George Theodoridis trans., 2005) (http://bacchicstage.wordpress.com/sophocles/oedipus-rex).

TEIRESIAS
Alas, alas! How dreadful it can be
to have wisdom when it brings no benefit
to the man possessing it. This I knew,
but it had slipped my mind. Otherwise,
I would not have journeyed here.[31]

That is, Teiresias raises doubts about the benefits of seeking the truth for its own sake, when the search is not subject to any broader purpose.

JOCASTA, Oedipus's wife
In the name of the gods, no! If you have
some concern for your own life, then stop!
Do not keep investigating this.
I will suffer—that will be enough.[32]

JOCASTA
Listen to me, I beg you. Do not do this.

OEDIPUS
I will not be convinced if I should not learn
the whole truth of what these facts amount to.

JOCASTA
But I care about your own well being—
what I tell you is for your benefit.

OEDIPUS
What you're telling me for my own good
just brings me more distress.

JOCASTA
Oh, you unhappy man!
May you never find out who you really are![33]

We notice that the truth itself has changed, from being a tool to further an external purpose—ending the plague—it has become an end in itself, overtaking all other purposes. It must be undertaken even at the cost of pain to a loved one, even at the price of the truth-seeker's own interest.

From this exchange with Jocasta we discover that Oedipus's search for the truth is no longer driven by the desire to discover who murdered Laius, for Oedipus has put together Jocasta's description of the murder at the intersection of three roads with his own memory of that day and concludes that he is the murderer. Indeed, to his wife Jocasta Oedipus admits openly his guilt:

With these hands of mine,
these killer's hands, I now contaminate
the dead man's bed. Am I not depraved?[34]

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[31] Id. at lines 374-78.

[32] Id. at lines 1268-71.

[33] Id. at lines 1276-84.

[34] Id. at lines 984-86.

And yet, Oedipus rejects his experiential knowledge as too subjective. Instead, he seeks the objective truth by initiating a legal inquiry. A legal truth should be corroborated by the testimony of eyewitnesses, therefore Oedipus waits for the arrival of the only surviving eyewitness to the murder. That is, he seeks legal affirmation and public procedure.[35]

From this point onwards, halfway through the play, the search for the truth is driven by a different purpose: discovering Oedipus's own identity, and the identity of his biological parents. After the messenger from Corinth tells him he was Polybus's adopted son, Oedipus ceases to take into account anyone's welfare, including his own. This is now a search for truth itself, detached from any cost-benefit consideration. We cease to hear about the plague, and the truth about Oedipus's identity takes center stage. During this search Oedipus himself is gradually changing. No longer a king concerned with the welfare of his family and community, he becomes a man obsessed with his own origins:

> Then let it break,
> whatever it is. As for myself,
> no matter how base born my family,
> I wish to know the seed from where I came.[36]

It is interesting to note that the concept of identity expressed by Oedipus here is positivist—it is entirely dependent on the identity of his biological parents, and is seen as fixed and unchanging since birth.

In response to the shepherd who gave him to his adoptive parents and who is trying to discourage him from seeking the truth, Oedipus insists on hearing the truth:

> SERVANT
> Alas, what I'm about to say now . . .
> it's horrible.
>
> OEDIPUS
> And I'm about to hear it. But nonetheless I have to know this.[37]

And in the tragic end, Jocasta, wife and mother of Oedipus, commits suicide, while he blinds himself in both eyes and goes into exile. The search for the truth was successful. The perpetrator was found guilty and was also punished by the King, as initially promised.

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[35] According to Foucault the story of Oedipus King represents the birth of a new legal investigation, based on discovery of the truth about a past event on the basis of the recollection of eyewitnesses. This new form of legal inquiry also points to a democratization of knowledge, as the testimony of a shepherd or even a slave can bring a king down. As he explains,

> To solve the problem . . . a criminal issue—who killed King Laius?—there appears a new figure, absent from the old Homeric procedure, the shepherd. Though a man of no importance . . . the shepherd saw what he saw, and because in his discourse he bears the evidence of what he saw, he can challenge and overthrow the pride of the king.

Foucault, supra note 25, at 33.

[36] Sophocles, supra note 30, at lines 1073-76.

[37] Id. at lines 1398-1400.

But the king and criminal, judge and culprit turn out to be one and the same person. This punishment raises questions about the nature of the truth that we set out to discover. If the eyes represent the scientific truth or objectivity that underlies the legal investigation, the gouging of the eyes indicates denial of this truth and turning inward to a different kind of truth, one that can no longer enable the separation between investigator and investigated, between the judge and the accused.[38] The play concludes with the choir characterizing Oedipus as a victim of knowledge: "Unhappy in your fate and in your mind which now knows all."[39]

III. Oedipus and the Right to Truth in Argentina

Contrary to Oedipus, the Herrera siblings in the Argentine story were not interested in knowing their biological origins, especially if such a discovery could incriminate their mother (for being involved in an illegal abduction and adoption). While Oedipus subscribed to a biological conception of identity, they offer an alternative vision of identity—one that can be called relational (nurture over nature).[40] In a public letter, they write:

> Like so many adopted children, we don't know our biological identities, but like any other person we've formed our own identities in the course of our lives. We've never seen any concrete proof that we are children of the disappeared . . . . The political use of our story seems unjust . . . . Thirty-four years ago our mother chose us to be her children. And we, every day, choose her to be our mother.[41]

In order to understand the unusual Argentine legislation that enabled the siblings' genetic testing, it is necessary to briefly recount the historical context of the end of the military dictatorship and the transition to democracy in Argentina.

The military dictatorship of the Juntas in Argentina was known for its repression through torture and forced disappearances, with an estimated 30,000 persons disappeared between the years 1976-83. The military regime collapsed in 1983 and the country transitioned to democracy under President Raul Alfonsin. In 1984 and 1985 Argentina held criminal trials of nine senior Junta members and five were convicted. However, when more junior officers began to be targeted for prosecution, the military expressed its discontent with the process and attempted a coup. President Alfonsin responded by granting amnesty to officers through the Full Stop Law of 1986 and the Law of Due

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[38] The gouging of the eyes is particularly ironic, as it undermines the very source of legitimacy of the "eyewitness" upon which the new legal investigation is founded. Thus, if Foucault is right to point to the story of Oedipus as reflecting a legal revolution—a juridical inquiry based on eyewitnesses—it is also a story that raises doubts about the dominance of the "eye" and the unyielding search for the truth.

[39] Id. at line 1347.

[40] See Jennifer Nedelsky, Law's Relations: A Relational Theory of Self, Autonomy, and Law (2012).

[41] This letter was published in, inter alia, *Página 12*, one of the country's largest newspapers. Solicitada de los hijos de Ernestina Herrera de Noble, Página 12, Apr. 22, 2010 (http://www.pagina12.com.ar/diario/ultimas/subnotas/20-46419-2010-04-22.html) (quoted in Goldman, supra note 4, at 63).

Obedience of 1987. In 1990, his successor President Carlos Menem pardoned those who were convicted and were still in prison.[42]

In response to these laws and practices of immunity, human rights organizations took to the courts. They displayed remarkable creativity in using the law, whether in domestic or foreign courts or international bodies, to bring an end to impunity. While a number of strategies were deployed by these organizations, one constant was the invocation of the right of the families of the victims to know the truth about the disappeared.

With the election of Nestor Kirchner as president in 2003, the possibilities of pursuing the truth through the courts were broadened. Elected amidst a sharp economic crisis, Kirchner endorsed the "Memory, Truth and Justice" agenda of human rights organizations in order to provide his government legitimacy.[43] In August 2003, he led Congress to annul the impunity laws, making them void *ab initio*.[44]

A number of scholars have described how in the 1990s coalitions of local and international NGOs as well as local, foreign and regional courts and politicians, drove what Naomi-Roht Arriaza has called "wedges" into the Full Stop and Due Obedience laws, exploiting loopholes and exerting pressure on the Argentine government until these laws were set aside and declared unconstitutional by the president and the Supreme Court.[45] What is interesting for our purposes is that in the struggle to defy collective amnesia, the coalition of civil society, courts and politicians has legalized the truth to an unprecedented extent, destroying on its way important individual legal rights as well as endangering political debate.

One of the many ways the Grandmothers of the Plaza de Mayo challenged Argentina's amnesty laws was to hold military officers responsible for the kidnapping and identity change of the children of the disappeared. According to the organization, over 400 children had been kidnapped by the military, either from their homes or after they were born in detention, their identities changed, and handed over to families of sympathizers with the regime. They argued that because the crimes of kidnapping minors and changing their identities were not covered by the amnesty laws, they were not blocked from pursuing justice for these crimes. At the center of these trials stood the truth about identity—and this was depicted in scientific-genetic terms.[46]

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[42] Par Engstrom & Gabriel Pereira, From Amnesty to Accountability: The Ebb and Flow in the Search for Justice in Argentina, in Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives 97, 103-07 (Francesca Lessa & Leigh A. Payne eds., 2012).

[43] Kirchner also reversed the country's extradition policy, allowing Argentines to be extradited for prosecution abroad, and ratified the UN Convention on Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. Id. at 114-15.

[44] Id. at 115.

[45] Roht-Arriaza, supra note 15; see also Kathryn Sikkink & Carrie Booth Walling, Argentina's Contribution to Global Trends in Transitional Justice, in Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice 301, 301-24 (Naomi Roht-Arriaza & Javier Mariezcurrena eds., 2006).

[46] Francesca Lessa, Memory and Transitional Justice in Argentina and Uruguay: Against Impunity 50-76 (2013).

The case of General Videla, the first president during military rule, shows the dilemmas that the new wave of trials created for the Argentine legal system. Videla was convicted in 1985 along with other generals in the Junta trials, and was pardoned in 1990 by President Carlos Menem in a wave of pardons for convicted human rights violators.[47] At the end of the 1990s, new evidence emerged linking General Videla to systematic efforts at kidnapping children of the disappeared.[48] In July 1998, Argentine Judge Marquevich ordered his arrest for child kidnapping, and issued charges against other top army officers.

The inconsistency between the possibility of trying child kidnapping but not other human rights violations such as torture and murder contributed to the campaign to have the amnesty laws ultimately declared null. As explained by Kathryn Sikkink:

> [U]sing the case of a kidnapped child of a disappeared, [The Center for Legal and Social Studies] argued that amnesty laws put the Argentine judicial system in the untenable position of being able to find people criminally responsible for kidnapping a child and falsely changing her identity (more minor crimes) but not for the more serious original crime of murder and disappearance of the parents that later gave rise to the crime of kidnapping.[49]

This campaign was successful and in June 2005 the Supreme Court found the amnesty laws unlawful.[50]

What began as a search for the "factual truth" about the fate of the disappeared, under the legal theory that in order to determine whether the amnesty laws applied a court should first determine the truth about the alleged crime, turned into a search for loopholes in the amnesty laws to prosecute illegal adoptions of the children of the disappeared, and ended in nullifying the amnesty laws and reopening criminal prosecutions because of the paradoxical position in which such a path put the judicial system vis-à-vis the original crime. The truth itself changed its meaning in the process from legal truth about the guilty criminals, to historical truth about the disappeared, and finally to genetic truth about the identity of the individual child. During this process the victims' families became central players and courts reformulated the truth as a human right belonging to the individual victim.

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[47] Louise Mallinder, The Ongoing Quest for Truth and Justice: Enacting and Annulling Argentina's Amnesty Laws 79 (Queen's Univ. Belfast Inst. of Criminology and Criminal Justice, Working Paper 5, 2009).

[48] In particular, evidence of a maternity clinic in a military base, to which women were transferred from other parts of the country, was seen to imply high-level coordination. Moreover, Judge Garzón in Spain who had investigated Pinochet, opened a specific investigation into baby-snatching. Roht-Arriaza, supra note 15, at 110.

[49] Sikkink & Walling, supra note 45, at 316-17.

[50] See Corte Suprema de Justicia de la Nación, 14/6/2005, "Simón, Julio Héctor y otros s/ privación ilegítima de la libertad," La Ley [L.L.] (2005-S-1767) (Arg.). Maculan explains that this decision was grounded on the Inter-American jurisprudence, applying the same arguments used by the IACHR to declare the invalidity of the Peruvian amnesty law. These laws were considered a violation of the international obligation to prosecute and punish serious violations of human rights protected under the Inter-American convention. Elena Maculan, Prosecuting International Crimes at National Level: Lessons from the Argentine "Truth-Finding Trials," 8 Utrecht L. Rev. 106 (2012).

The invocation of the "right to truth," its classification as a private right of the families of the victims, and in particular its de-politicization in relation to "innocent victims" such as the children of the disappeared, helped mobilize the judicial system, and ultimately the political system as a whole. However, it did not come without a price. Indeed, the issue of stolen children did not only lead to new prosecutions. In 2009, as the result of lobbying by the Grandmothers of the Plaza de Mayo, legislation was passed to allow the courts to obtain DNA samples from suspected children of the disappeared even against their consent.[51] This law has been invoked by the Grandmothers and others to ask courts to issue injunctions requiring suspected stolen children to submit to DNA testing, including the Noble Herrera siblings. Other children who are not interested in knowing their origins have fled the country, to find themselves the subject of extradition proceedings. In the process of trying to establish the "truth" of their identity against their will, their basic rights to privacy and dignity have been infringed, as well as their right not to know their biological origins.[52]

Ironically, a campaign that was carried in the name of restoring the rule of law ended up undermining basic guarantees of the rule of law and limiting the political space for deliberation. As a result of the proceedings surrounding stolen children, criminal justice became a participant in human rights violations. The search for the truth, conceptualized as an absolute, autonomous human right, gradually released all restrictions intended to ensure basic civil liberties—statutes of limitations, the prohibition of double jeopardy, the non-retroactivity of penal law, and consent requirements to infringe on privacy. This process was not accompanied by public deliberation about the different values being sacrificed on the way, and there was no political judgment about the balance society as a whole might like to strike between these values.

What we see in the case of Argentina is a pathological situation in which an organized lie by the prior regime turned truth telling, or the search for the truth, into an act of political opposition.[53] Eventually the legal system was enlisted in this struggle. The truth became a human right of the individual victim (and later of the victim even against his will). As a result, it profoundly transformed the law, which abandoned, in the name of the search for the truth, temporal and spatial limitations on the legal investigation. Subsequently, politics itself was transformed. Instead of the political community engaging in reflective judgment in order to find a new balance between punishment for past crimes, reparation of the victims, and the establishment of democratic institutions, politics was reshaped as bio-

[51] King, supra note 1.

[52] See Prieto Case, supra note 6; Noa Vaisman, Shedding Our Selves: Perspectivism, the Bounded Subject and the Nature-Culture Divide, in Biosocial Becomings: Integrating Social and Biological Anthropology 106, 108-11 (Tim Ingold & Gisli Palsson eds., 2013).

[53] Hannah Arendt, Truth and Politics, in The Portable Hannah Arendt 545 (Peter Baher ed., 2000).

politics, founded upon the search for genetic and scientific truth, with the expectation that this sort of truth would bring certainty and define a democratic identity for the collective.[54]

IV. Reflection

We can take the measure of the transformations in the field of transitional justice by comparing the current Argentine situation with writing on transitional justice at the end of the 1990s and beginning of the 2000s. During that period, the scholarly field of transitional justice recognized an inherent tension between adherence to formal legal process and substantive justice when addressing state-sponsored violence perpetrated under color of law. Indeed, this very tension is what was understood to be distinctive about transitional justice: how can societies affirm and establish the rule of law all the while radically transforming the legal system according to new rules?[55] It is with respect to criminal justice that this tension was felt to be most acute.[56] Authors in the field therefore advocated a break with strict legalism and the need for political judgment by the local communities. Hence, this period saw the development of theories of restorative justice to replace the strict emphasis on criminal law and retributive justice. It also saw the development of truth commissions as alternatives to criminal trials. Indeed, when victims' families in South Africa opposed the Truth and Reconciliation Commission (TRC) on the ground that the amnesties granted by the TRC to perpetrators in exchange for confessions of wrongdoing infringed their "right to justice," the court balanced their rights against the public good of the larger community and rejected their claims pointing to the democratic and deliberative process that brought about the TRC.[57] In contrast, the rise of the truth as an independent and absolute human right belonging to the victims and their families denies these transitional dilemmas, and leads to an impoverished debate on the relationship between law and politics.

I am not claiming that we should uphold the "rule of law" above all other considerations, or that there is no justification for diverging from some rule of law

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[54] For criticism of the essentialism entailed by this approach, see Ari Gandsman, "Do You Know Who You Are?": Radical Existential Doubt and Scientific Certainty in the Search for the Kidnapped Children of the Disappeared in Argentina, 37 Ethos 441 (2009); Ari Gandsman, "A Prick of a Needle Can Do No Harm": Compulsory Extraction of Blood in the Search for the Children of Argentina's Disappeared, 14 J. Latin Am. & Caribbean Anthro. 162 (2009).

[55] "Law is caught between the past and the future, between backward-looking and forward-looking, between retrospective and prospective, between the individual and the collective. Accordingly, transitional justice is that justice associated with this context and political circumstances." Ruti G. Teitel, Transitional Justice 6 (2001).

[56] In her now classic statement of the field, Ruti Teitel argued that "[c]riminal proceedings are well suited to affirm the core liberal message of the primacy of individual rights and responsibilities." However, she pointed out that paradoxically, these trials also raise the problem of retroactive application of criminal law, and could therefore backfire for seeming overly political. This explained in her view why transitional societies often compromised on the demand for criminal justice and limited the scope of criminal trials. Id. at 30.

[57] See Azanian Peoples Org. (AZAPO) v. President of the Republic of South Africa, 1996 (4) SA 672 (S. Afr.).

requirements in the context of transitional justice. Neither do I think that there is any simple equation between the human rights violations of the former military regime, and the violations of some rights that occur in the process of bringing to justice those responsible. Rather, I point to the developments in Argentina as an extreme manifestation of a broader change in the last decade in the field of transitional justice and international law, identified by Leebaw as a reemergence of legalism through human rights discourse.[58] In this new constellation, criminal trials are privileged over other mechanisms,[59] the legal process is internationalized (or globalized), and also privatized as accountability and truth are reformulated as rights belonging to individual victims and their families.[60]

The danger in this process is that it denies the need to make difficult political judgments and restricts democratic deliberation. We see a growing tendency of international tribunals to invoke the right to truth to reject any kind of amnesty, and any form of legal inquiry that does not include criminal prosecutions.[61] Thus, my criticism is not against any divergence from the "rule of law" as such, but against the restriction of public spaces for deliberation and judgment in the name of an absolute human right to the truth.

A decade after the Junta trials, Jaime Malamud-Goti, presidential advisor to Alfonsin and one of the architects of the trials, came to regret using criminal trials to address Argentina's violent past. In his view, by focusing the blame on the military and obscuring the responsibility of civil society for complicity, criminal trials reproduced the friend/enemy logic of the dirty war, and therefore reinforced authoritarianism.[62] The binary structure of criminal law strengthened the opposition between victim and perpetrator, thus undermining the possibility of addressing the grey zone of complicity of civil society.[63]

One remarkable feature of the Oedipus tragedy is that the opposition between victim and perpetrator, judge and defendant, investigator and investigated, cannot be sustained—as Oedipus occupies both positions of the dichotomy. He is the murderer of his father, but also the child who is the victim. He is the king and judge in a murder case,

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[58] Leebaw, supra note 8, at 34-41.

[59] Karen Engle, Self-Critique, (Anti) Politics and Criminalization: Reflections on the History and Trajectory of the Human Rights Movement, in New Approaches to International Law 41, 41-73 (José María Beneyto & David Kennedy eds., 2013).

[60] Teitel, supra note 18.

[61] Id.; see also Vargas-Areco v. Paraguay, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 155, ¶ 155 (Sept. 26, 2006); La Cantuta v. Peru, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 162 (Nov. 29, 2006); Goiburú v. Paraguay, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 153, ¶ 92 (Sept. 22, 2006); Gomes Lund ("Guerrilha do Araguaia") v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 219, ¶ 174 (Nov. 24, 2010).

[62] Jaime Malamud-Goti, Game Without End: State Terror and the Politics of Justice (1996).

[63] See generally Leebaw, supra note 8 (arguing that the legalism of international criminal law and the restorative justice paradigm of truth commissions both prevent transitional justice measures from addressing the gray zone between perpetrators and victims).

but also turns out to be the culprit. This structure can account for the tragic sense that the story imparts. But it also prevents us from taking the easy route offered by dichotomous thinking, of dividing the world into good and evil, victim and torturer, friend and foe. The criminal law with its binary thinking offers a clear-cut narrative dividing the world into innocent and guilty. However, it is precisely this feature of criminal law that makes it too crude a tool for transitional justice, bypassing the dilemmas and complexity of the grey zone of complicity, of victims who become victimizers, and the spectrum of degrees of responsibility. It avoids the more difficult challenge that transitional justice poses, of engaging in political judgment about complex situations in which victim and victimizer cannot always be distinguished in clear ways. Against the triumphant genre of criminal law, the Oedipus story adopts the genre of tragedy that can better highlight ambiguities and dilemmas. At its center stands one who is both murderer and victim. This structure prevents Oedipus from placing all the blame on others, and calls instead for self-reckoning. The story recognizes that in judging we are being judged. And this is precisely the situation of transitional justice—when societies are called to judge themselves.

The case of the Herrera siblings highlights the same dilemma in a different way. Initially, the campaign of the Mothers and Grandmothers sought to avoid the political discourse of friend and foe characteristic of the military regime—by focusing on innocent, a-political victims. After years of military dictatorship during which the regime and civil society had blamed the victims for their own persecution—talk of torture and disappearance was routinely dismissed with statements that the victim "must have done something"[64]—the human rights organizations found it necessary to uphold the innocent victim and to downplay victims' agency and political background.[65] Indeed, one can think of no one more innocent than a child who was kidnapped and given for adoption. The abducted grandchildren were portrayed as the pure victims of the previous regime that murdered their parents and gave them for adoption to supporters of the army. However, from the point of view of the Herrera siblings, the story is not so clear-cut. On the one hand, their mother was allegedly complicit with the regime that murdered their parents. On the other hand, this is the only mother they know, and this is the mother who raised them and is part and parcel of their own identity as adults. It is this ambiguous position vis-à-vis their mother, like the ambiguous position occupied by Oedipus, that allows them to have a more complex understanding of guilt and innocence. However, the re-casting of the case in terms of genetics did not leave space for such ambivalence.

Literature can remind us of what gets lost in the triumph of legal-scientific appropriation of the truth. Victoria Donda, the daughter of two activists who were kidnapped and murdered by the Argentine government, forcefully articulates in her memoir an ambivalent position vis-à-vis genetic examination. She was born during her mother's captivity and given to a conservative family who supported the regime and raised her

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[64] Malamud-Goti, supra note 62, at 24-25.

[65] Gandsman, supra note 54, at 453: Naftali, supra note 15, at 120-21.

under the name Analia. When she finds out the truth about her past she refuses to see the choice as a binary one, between her biological and adoptive families. Instead she adopts a more inclusive definition of family, one that includes both nature and nurture.[66] For her, the most difficult moment is the realization that by taking a DNA test, she might be incriminating her adoptive father (who was at that time on the list of men whose extradition for alleged crimes of torture and murder had been requested by Spanish judge Baltasar Garzón).[67] In her words, she was faced with the unbearable reality that someone she loved "belonged to the enemy."[68] However, for Victoria (unlike the Herrera siblings) the decision whether to take a DNA test was entirely her own, as the discovery of her origins took place in 2003 before the new legislation. As a result, she begins a process of judgment, of making moral distinctions between degrees of moral culpability. Victoria writes: "To me, there is a clear difference between the legal responsibilities of the people who turned my life into a lie and how I feel toward their actions."[69] In this act of moral balancing, her biological uncle, who betrayed her parents, tipped the authorities and took part in their subsequent torture and murder, as well as in her abduction, is more culpable than her adoptive father who worked at the Navy Mechanical School (ESMA; the largest of the detention and torture camps that operated in Argentina during the "dirty war"), but also gave her a home and raised her with love. She writes: "[T]he measuring stick I use to calculate that difference isn't hard to understand: it has to do with cruelty, intent, and cynicism . . . . The difference, whether it bothers people or not, is that I love Garciela and Raul. It's not a love free of conflict, but it's love nonetheless."[70]

Victoria describes the moment of discovery in words that seem to be taken directly from the tragedy of *King Oedipus*: "July 2003 . . . when my real parents would be born and die in a single stroke, and the story of my real family would open before me."[71] Yet unlike Oedipus, she rejects the need to choose between her two identities. In fact, the solution for her is to find continuity between her past and present through her political identity as a leftist activist (and later a member of parliament).[72]

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[66] Victoria Donda, My Name is Victoria: The Extraordinary Story of One Woman's Struggle to Reclaim her True Identity 165-66 (Magda Bolin trans., 2011).

[67] "The worst of all this was the realization that finding out their identity was entirely up to me. Only a DNA test could determine . . . but if I wanted to go that route I would first have to file a petition to recover my true identity. This might mean being responsible for putting not only Raul, but possible [sic] also Garciela, behind bars." Id. at 152.

[68] Id. at 149.

[69] Id. at 103.

[70] Id.

[71] Id. at 137.

[72] "Unlike so many other recovered grandchildren, when I learned the truth about my parents, their ideas and the reasons for their death, I didn't have to question an ideology I had been nursed on since the cradle . . . . I had developed my own, choosing my influences . . . . When I found out who my parents were I couldn't help but be proud of them." Id. at 93.

Victoria Donda ends her memoir with a reconciliation of her two identities, overcoming the friend/enemy logic:

> I feel able to reconcile myself with everything that brought me here—good and bad, truth and lies. I'm just as much a product of the dictatorship as I am of the affection I received from Raul and Garciela, and I recognize myself as much in them as I do in Cori and El Cabo, whom I love as much as it's possible to love someone you never met. I'm no less the niece of the former head of intelligence at the ESMA, who was there when his brother and sister-in-law were murdered, than I am that teenage girl . . . . All of which means, above all, that I'm no less Analia than I am Victoria.[73]

This is an understanding of identity that refuses the binary worldview that is often imposed by criminal law, and it also resists reduction of identity to genetic truth.

For me, the most interesting moment in this memoir that is defined by an unrelenting search for the truth, is the silence or lacuna that lurks in its midst. With regard to the question of the culpability of her adoptive father, Victoria writes:

> Our conversations, his clarifications, and my comments will remain between the two of us until the day I die. He still has to answer in court for his role in the ESMA death squads and my abduction. But he answered all my questions and told me what I felt he owed me by way of explanation.[74]

In other words, by keeping the truth to herself and by re-erecting the boundary between private and public, Victoria tries to separate two types of truth: the legal truth, and the personal truth about identity, that have been too often conflated.[75] Put differently, she attempts to reestablish the boundaries of law, in order to carve out a space for politics, morality, and family. In this, her story differs greatly from the general situation in Argentina, where the legalization of the truth and its reconceptualization as an absolute human right of the victim have collapsed the boundaries of the law. The weight of this truth was so heavy that all procedural limits placed by law on the pursuit of truth seemed to be unimportant, mere technicalities to be overcome, undermining the very foundation of the rule of law—namely the recognition that legal constraints on power are essential for the functioning of democracy.[76]

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[73] Id. at 196.

[74] Id. at 154.

[75] Cf. Prieto Case, supra note 6. The minority (Justices Lorenzetti and Zaffroni) in the Supreme Court judgment in that case was willing to recognize that the right to identity can be balanced, as one's identity is defined through affective relationships and not just by biology. The solution they offer is to allow the DNA test, but to reveal the information only to the biological family: "[I]t is not necessary that the other victims (children of the disappeared) carry all the emotional and juridical consequences of the establishment of a new formal or juridical identity, it would be enough that the biological family be informed of the identity." Id. at 71 (translation taken from Noa Vaisman, The Legal Subject and Human Rights: Shed-DNA and the Identification of the "Living Disappeared in Argentina" (unpublished manuscript)). It seems to me that this solution attempts to strike a line between private and public, personal identity and legal inquiry, similar to the attempt described by Victoria Donda.

[76] Again, I do not claim that divergence from legal constraints is never acceptable, but rather that some act of balancing is needed. For example, how should we treat statutes of limitations? It has been recognized in the transitional justice literature that it can take a long time to overcome impunity, and hence, that one should not see a statute of limitations as an absolute constraint. However, in order to overcome a statute of

It is against this tendency that Jaime Malamud-Goti wrote his book *Game Without End* as a warning.[77] The military regime had sought to justify its oppression by depicting the opposition as presenting a grave danger to security. It is this "good" of security in the name of which the rule of law had to be sacrificed. In the struggle against this organized lie, the right of the victims was conceptualized as a "right to truth"—as absolute and universal, and hence, a "good" in the name of which the rule of law should be sacrificed again. The story of the Herrera siblings reminds us that no matter how important the good is, this undertaking to limit power under law is fundamental to establishing a democratic regime. Thus, while contemporary writings on international law celebrate the rise of the right to truth, and the victory of criminal law over an era of impunity, a great work of literature helps us see the ambiguities in the process, and suggests that tragedy might be a better form to capture the full complexities of the transitional process.

limitations in relation to the inquiry into the disappearances, the crime was reconceptualized as continuing, and hence the legal clock of the "statute of limitations" would not begin until after the legal investigation and criminal prosecution. But this legal solution leads one to the opposite problem—is there no temporal limit at all? What about the values embodied by time limitations—such as allowing one to continue with her life, and the difficulty of having a legal defense after many decades have passed? By moving from one extreme (strict statute of limitations) to the other extreme (no statute of limitations on the crime of forced disappearances) we lose sight of the need for political judgment. I thank Pnina Lahav for raising this point.

[77] See Malamud-Goti, supra note 62.