



PROJECT MUSE®

Rereading Cain and Abel: New Approaches to Enforced
Disappearances

Ariel Dulitzky

Human Rights Quarterly, Volume 44, Number 4, November 2022, pp.
659-703 (Article)

Published by Johns Hopkins University Press



➔ For additional information about this article

<https://muse.jhu.edu/article/868838>

Rereading Cain and Abel: New Approaches to Enforced Disappearances

Ariel Dulitzky

Here in this carload
I am Eve
with Abel my son
if you see my other son
Cain son of man
tell him that I'

I no longer remember if I was Abel or Cain²

Ariel E. Dulitzky is a Clinical Professor of Law, the Director of the Human Rights Clinic, and the Director of the Latin America Initiative at the University of Texas at Austin School of Law. He is a former member of the United Nations Working Group on Enforced or Involuntary Disappearances (2010-2017), and he was Assistant Executive Secretary of the Inter-American Commission on Human Rights (IACHR). A native of Argentina, Professor Dulitzky has dedicated his career to human rights—in both his scholarly research and his legal practice. His extensive expertise is derived from active involvement in the promotion and defense of rights, particularly in the Americas and in international human rights litigation.

Thanks for the help and comments made by Rabbi Lev Baesh, Michael Churgin, Gabriella Citroni, Jane Cohen, Jordan Cope, Manuela Cuvi, Sumaya Daghestani, Nathalie Davidson, Karen Engle, Willy Forbath, Charlotte Gilman, Jonathan Kaplan, Naomi Lindstrom, Casey Love, Isabel Mignone, Jeremy Sarkin, Nora Strejilevich, and Alex Weinreb. Many of their comments helped me to understand the richness and complexities of the Cain and Abel story and greatly improved this article. Ted Magee provided amazing editorial assistance to make my English closer to real English. Darby Duncan helped with the editing process. As always, the shortcomings and mistakes are mine, *Hineni*.

1. DAN PAGIS, *VARIABLE DIRECTIONS : THE SELECTED POETRY OF DAN PAGIS* (Stephen Mitchell trans., 1989).
2. Jorge Luis Borges, *Génesis, IV, 8*, in *LA ROSA PROFUNDA* (1975). (“Ya no recuerdo si fui Abel o Caín”). All translations, unless otherwise noted, are mine. In this article I use several quotes from Borges, given his (as well as my) attraction to the Cain and Abel story. I do not claim that Borges was thinking about enforced disappearances when he referred to the Bible. Nor do I make any judgment on his political views, including an initial support to the dictatorship or publicly condemning enforced disappearances years later. Alejandra Salinas, *Political Philosophy in Borges: Fallibility, Liberal Anarchism, and Civic Ethics*, 72 *REV. POL.* 299 (2010); Annick Louis, *El Autor Entre Dictadura y Democracia, Fama Nacional e Internacional. El Caso de Jorge Luis Borges*

ABSTRACT

The story of Cain and Abel, connected to enforced disappearances and the dictatorship has been used in Argentina by different stakeholders, many times for opposite purposes and with completely antithetical meanings. The Cain and Abel story is as complex as the story of enforced disappearances. Unpacking enforced disappearances while considering the biblical story allows for fresh readings of the binary approach to victims and perpetrators, challenges the conception of bystanders, and questions the traditional understanding of accountability limited to criminal responses. It also allows for thinking critically about memory, the effectiveness of the international response to enforced disappearances, and the inter-generational effect of disappearances.

I. INTRODUCTION

During the Argentine dictatorship (1976-1983) Agustín Feced, a police chief, declared that a “political subversive” could never be from Argentina “[he] should not even be considered our brother . . . this conflict between us cannot be likened to that between Cain and Abel.”³ Argentine Military Vicar Adolfo Tortolo justified the actions of the security forces in 1977 stating that “Abel was murdered for giving God the best. Cain’s malevolence was unable to tolerate his brother’s greatness of spirit and while Abel was sleeping the sleep of the just in God’s arms, Cain bears the burden of his crime and lives out his own death at every instant.”⁴ A mother of a forcibly disappeared person asserted that “not even the Bible mentions such a possibility [enforced disappearances] or its response to it . . . maybe the Cain-Abel case when God asks: Where is your brother?”⁵ During the dictatorship years, a group of protestors met several times in front of the Argentine Embassy in Washington, DC with a banner that read: “Cain, Cain, Where is your Brother Abel?”⁶ Author Gustavo Abrevaya wrote “Since Cain, someone denies his

(1973-1986), 14 *REVISTA LETRAL* 17 (2015); Eduardo Anguita & Daniel Cecchini, *Borges y la Dictadura: del Almuerzo con Videla a la Reunión con las Madres y la Condena a los Militares en Tiempos de Sangre y Plomo*, INFOBAE (July 13, 2019), <https://www.infobae.com/sociedad/2019/07/13/borges-y-la-dictadura-del-almuerzo-con-videla-a-la-reunion-con-las-madres-y-la-condena-a-los-militares-en-tiempos-de-sangre-y-plomo/>.

3. Cited in MARGUERITE, FEITLOWITZ, *A LEXICON OF TERROR: ARGENTINA AND THE LEGACIES OF TORTURE*, 27 (1998). For Agustín Feced’s participation in enforced disappearances cases and his efforts to evade justice (including faking his own death), see CARLOS DEL FRADE, *EL ROSARIO DE GALTIERI Y FECED* (2000), http://www.desaparecidos.org/nuncamas/web/investig/frade76/frade76_00.htm.
4. Cited in Stephan Ruderer, *Between Religion and Politics: The Military Clergy during the Late Twentieth-Century Dictatorships in Argentina and Chile*, 47 *J. LATIN AM. STUD.* 463, 479 (2015).
5. Cited in MATILDE MELLIBOVSKY, *CIRCLE OF LOVE OVER DEATH: TESTIMONIES OF THE MOTHERS OF THE PLAZA DE MAYO* 26-27 (María & Matthew Proser trans., 1st ed. 1997).
6. Gustavo Morello, *Secularización y Derechos Humanos: Actores Católicos entre la Dictadura Argentina (1976) y la Administración Carter (1977–1979)*, 47 *LATIN AM. RES. REV.* 62, 73 (2012).

crime. ... Cain shrugs his shoulders and affirms that he is not the guardian of his brother. There is the first crime, the first disappeared person, the first investigation and the first murderer who lies to the interrogator.”⁷ American Rabbi Marshall Meyer, in a sermon, told his congregation in Buenos Aires “The Cain of the Argentine present also responds, ‘I do not know, I do not know where the disappeared are.’”⁸

Why do multiple actors, perpetrators, and victims alike use the Cain and Abel story for different purposes and give it opposite meanings? The biblical story helps, in my view, to bring a richer discussion and better understanding of enforced disappearances which explains why, at least in Argentina, repressors, priests, rabbis, activists, and poets have all invoked it. As is well documented, the primary repressive tool used by the Argentine dictatorship was the systemic practice of enforced disappearances.⁹ However, can we liken the biblical story of Cain and Abel to the practice of enforced disappearances and the responses that the Argentinean society, state, and international community gave to them? Can we assimilate the Cain and Abel story to the use of a discourse demonizing the “internal enemy” that enabled the disappearances?¹⁰

Let us start by recalling the story of Cain and Abel (Genesis Ch.4):¹¹

(v 3) And in process of time it came to pass, that Cain brought of the fruit of the ground an offering unto HaShem. (v 4) And Abel, he also brought of the firstlings of his flock and of the fat thereof. And HaShem had respect unto Abel and to his offering; (v 5) but unto Cain and to his offering He had not respect. And Cain was very wroth, and his countenance fell. (v 6) And HaShem said unto Cain: “Why art thou wroth? and why is thy countenance fallen? (v 7) If thou doest well, shall it not be lifted up? and if thou doest not well, sin coucheth at the door; and unto thee is its desire, but thou mayest rule over it.” (v 8) And Cain spoke unto Abel his brother. And it came to pass, when they were in the field, that Cain rose up against Abel his brother, and slew him. (v 9) And HaShem said unto Cain: “Where is Abel thy brother?” And he said: “I know not; am I my brother’s keeper?” (v 10) And He said: “What hast thou done? the voice of thy brother’s blood crieth unto Me from the ground. (v 11) And now cursed art thou

-
7. Gustavo Abrevaya, *Un Juramento que Resultó ser Negro*, REVISTA KRANEAR (2021), <https://kranear.com.ar/2021/01/22/un-juramento-que-resulto-ser-negro/>. (“Desde Caín, alguien desmiente su crimen. . . . Caín se encoge de hombros y afirma que él no es el guardián de su hermano. Allí están el primer crimen, el primer desaparecido, la primera investigación y el primer asesino que miente al interrogador.”).
 8. Rabbi Marshall Meyer, *El informe de las Fuerzas Armadas es un Jilul Hashem (Profanación del Nombre de Dios)* in DANIEL GOLDMAN & HERNÁN DOBRY, *SER JUDÍO EN LOS AÑOS SETENTA: TESTIMONIOS DEL HORROR Y LA RESISTENCIA DURANTE LA ÚLTIMA DICTADURA* 170 (2014).
 9. See NUNCA MÁS: THE REPORT OF THE ARGENTINE NATIONAL COMMISSION ON THE DISAPPEARED (1986) [hereinafter NUNCA MÁS].
 10. David Pion-Berlin, *The National Security Doctrine, Military Threat Perception, and the “Dirty war” in Argentina*, 21 COMP. POL. STUD. 382 (1988).
 11. I will use the Jewish Virtual Library version of the Bible Electronic Edition, based on the 1917 Jewish Publication Society (JPS), <https://www.jewishvirtuallibrary.org/the-tanakh-full-text>.

from the ground, which hath opened her mouth to receive thy brother's blood from thy hand. (v 12) When thou tillest the ground, it shall not henceforth yield unto thee her strength; a fugitive and a wanderer shalt thou be in the earth." (v 13) And Cain said unto HaShem: "My punishment is greater than I can bear. (v 14) Behold, Thou hast driven me out this day from the face of the land; and from Thy face shall I be hid; and I shall be a fugitive and a wanderer in the earth; and it will come to pass, that whosoever findeth me will slay me." (v 15) And HaShem said unto him: "Therefore whosoever slayeth Cain, vengeance shall be taken on him sevenfold." And HaShem set a sign for Cain, lest any finding him should smite him. (v 16) And Cain went out from the presence of HaShem, and dwelt in the land of Nod, on the east of Eden. (v 17) And Cain knew his wife; and she conceived, and bore Enoch; and he builded a city, and called the name of the city after the name of his son Enoch.

The choice of this story may appear to some to be somewhat unusual. It is difficult to see the connection between that narrative, which takes place between two brothers, and enforced disappearances in Argentina. However, in the story of Cain and Abel we have some of the same basic contours of a disappearance and the struggle to find the proper response to it. In particular, the Torah depicts far more than a mere quarrel between brothers. The story of Cain and Abel holds profound lessons with regard to the enforced disappearances.

Elie Wiesel questioned why Cain and Abel hold such an important place in our collective memory. "Mean, ugly, immoral, oppressive—their story disturbs and frightens. It haunted mankind then and still does, working its way into our nightmares."¹² Rabbi Marshall Meyer, who was a human rights champion while living in Argentina during the dictatorship, spoke about his own nightmares provoked by the plight of the disappeared and their relatives.¹³ The indeterminate fate of a disappeared person keeps the relatives and society in general trapped "in a confused nightmare of anxious hope and denied sorrow."¹⁴ The bad dream is even scarier if "looking around the world, it appears that if all men are brothers, in the ruling model is Cain and Abel."¹⁵

The Torah story of Cain and Abel has haunted me personally and professionally. Alicia Irene "Moni" Naymark, age thirty-one, was kidnapped on November 10, 1977, in Buenos Aires by a group of armed men who identified themselves as members of state security forces.¹⁶ Since then, her

12. Elie Wiesel, *Cain and Abel in the Bible*, 14 BIBLE REV. 20 (1998).

13. Marshall Meyer, *Este es mi Testimonio: Tengo Pesadillas*, in MARIO SZNAJDER & LEONARDO SENKMAN, EL LEGADO DEL AUTORITARISMO: DERECHOS HUMANOS Y ANTISEMITISMO EN LA ARGENTINA CONTEMPORÁNEA 359-64 (1st ed. 1995).

14. JUDITH SCHALANSKY, AN INVENTORY OF LOSSES 14 (Jackie Smith trans., 2020).

15. Arthur Allen Leff, *Unspeakable Ethics, Unnatural Law*, DUKE L.J. 1229, 1249 (1979).

16. Alicia (Moni) Irene Naymark was born on November 2, 1945, in Concordia, Entre Ríos province, Argentina. On November 10, 1976, at thirty-one, Alicia was kidnapped from the apartment that she shared with her friend Silvia Beatriz Gallina in Buenos Aires

mother, my mother (Moni's cousin), myself, and many more have been asking, "Where are you, Moni?" And "Where are the other 30,000 who were disappeared by the Argentine state?" I have spent my life trying to find an adequate answer to those and similarly excruciating questions: what is the proper remedy for the disappearance? What is the appropriate punishment for those who perpetrated the crime? What are the rights of the relatives

City. At around 6:00 p.m., three armed men dressed in civilian clothes, who claimed to be members of the armed forces, announced themselves at the home of Moni and Silvia and demanded that they accompany them. The day after the kidnapping, a man who said he was an official of the Federal Police called Moni's mother and told her not to worry about Alicia's arrest since it had been confirmed that she had no connection with the activities they were investigating and that she would soon be released. From that moment on, nothing more was heard from her. She apparently was detained at the *Garage Azopardo* Clandestine Detention Center. Moni was a psychology student and was divorced.

Moni's case represents many of the advances and limitations in the fight against enforced disappearances in Argentina and internationally. The National Commission on Disappeared Persons included her case in its final report. Her mother received financial reparations for her disappearance. Her name is included in the Memory Park, Monument to the Victims of State Terrorism (*Parque de la Memoria—Monumento a las Víctimas del Terrorismo de Estado*). However, despite the impressive achievement in terms of justice in Argentina, Moni has not been considered a "victim" in any judicial case. Currently, Alicia's disappearance is not being judicially investigated.

Internationally, Amnesty International was one of the first international organizations to visit the country between November 6-15, 1976. In other words, Moni disappeared during that visit on November 11. The capacity for mobilization and reaction was so fast that the report of the visit gives an account of her disappearance. See REPORT OF AN AMNESTY INTERNATIONAL MISSION TO ARGENTINA 6-15 NOVEMBER 1976 (1977), <https://www.amnesty.org/en/documents/amr13/083/1977/en/>. Her disappearance was reported to the International Committee of the Red Cross, which transmitted it to the Government on September 5, 1978. On December 12, 1978, the United States Embassy in Buenos Aires, reported to the State Department cases of disappearances including that of Moni. The UN Working Group on Enforced or Involuntary Disappearances received the complaint regarding Moni's disappearance on March 5, 1979. The Inter-American Commission on Human Rights has a case registered for Moni's disappearance since 1977. However, there is no final decision of any kind in this file.

Moni's disappearance was also reflected in Israel and by Jewish Organizations. The Israeli Inter-Ministerial Commission for the Disappeared Jews in Argentina received Moni's mother's testimony and her case was mentioned in the FINAL REPORT OF COMMISSION (2000), <https://amilat.online/comision-israeli-por-lo-desaparecidos-judios-en-argentina/>. The Report prepared by the Argentine Delegation of Israelites Associations (the main Jewish political organization in Argentina) refers to Moni in its REPORT ON THE SITUATION OF THE DISAPPEARED JEWS DURING THE GENOCIDE PERPETRATED IN ARGENTINA 1976-1983 (INFORME SOBRE LA SITUACIÓN DE LOS DETENIDOS-DESAPARECIDOS JUDÍOS DURANTE EL GENOCIDIO PERPETRADO EN ARGENTINA 1976-1983) (2019), <https://www.daia.org.ar/wp-content/uploads/2019/02/Desaparecidos.pdf>.

The complaint processed before the Inter-American Commission on Human Rights regarding her disappearance was filed by Rabbi Morton Rosenthal, Director of the Department of Latin American Affairs of the Anti-Defamation League of B'nai B'rith. Rabbi Rosenthal was the leading voice in the US on the fate of the Argentine Jews who disappeared. On Rabbi Rosenthal's work see FEITLOWITZ, *supra* note 3, at 100-05. All documentation referring to Moni's situation mentioned in this article is in the author's possession.

of those who disappeared? I have studied (and tried to influence) how the international community responds to those questions.¹⁷ In this article, I explore the possibility of using the Torah story to understand enforced disappearances from a different perspective and hopefully influence efforts towards the development of a more meaningful, personal, familiar, legal, and ethical response to the voice of the disappeared.

This article presents the Cain and Abel story as a nightmare but also as a rich metaphor to think of more effective ways to deal with enforced disappearances. My aspiration is not to reinforce what is already known but to unsettle old and current assumptions and inspire new questions and approaches. I aim to give depth to the rereading of legal issues surrounding disappearances. State terrorism and the use of enforced disappearances in Argentina was done in the name of fighting for the protection of the Western and Christian civilization.¹⁸ Thus, recovering a religious and biblical story to interpret enforced disappearances, in part, challenges the religious logic and undertones of the dictatorship. I seek to provide a fresh reading of enforced disappearances using the lens of the Torah story. Cain and Abel became archetypes for the wicked oppressors and the righteous person.¹⁹ This idea is not novel given that the story has been used in other contexts.²⁰ This is not surprising because the problem of “how to deal with the sudden absence of a person at the same time as the presence of their legacy . . . have, over time, demanded answers and prompted actions.”²¹

-
17. For the response of the United Nations to the disappeared in Argentina, see IAIN GUEST, *BEHIND THE DISAPPEARANCES: ARGENTINA'S DIRTY WAR AGAINST HUMAN RIGHTS AND THE UNITED NATIONS* (1990). For the response of the Organization of American States, see Ariel E. Dulitzky, *Argentina, Desapariciones Forzadas y el Sistema Interamericano de Derechos Humanos: A Propósito del caso Julien-Grisonas*, *REVISTA PENSAMIENTO PENAL* (2020), https://www.pensamientopenal.com.ar/doctrina/49558-argentina-desapariciones-forzadas-y-sistema-interamericano-derechos-humanos-proposito?fbclid=IwAR1i54t5pAsbiGtTPefjqqyGqEaQ7p0v92HveElmENbLLEnYoCdj4jbn6_RU. For the responses of the Argentine Jewish Community, the International Jewish organizations and of Israel see the different chapters of SZNAJDER & SENKMAN, *supra* note 13.
 18. Dictator Jorge Rafael Videla, said in 1978 that “A terrorist is not just someone with a gun or a bomb, but also someone who spreads ideas that are contrary to Western and Christian civilization.” *cited in* J. PATRICE MCSHERRY, *PREDATORY STATES: OPERATION CONDOR AND COVERT WAR IN LATIN AMERICA 1* (2005).
 19. John Byron, *Cain and Abel in Second Temple Literature and Beyond*, in 152 *THE BOOK OF GENESIS: COMPOSITION, RECEPTION, AND INTERPRETATION* 347 (Craig Evans, Joel Lohr & David Petersen eds., 2012).
 20. For instance, racism: Nyasha Junior, *The Mark of Cain and White Violence*, 139 *J. BIBLICAL LIT.* 661 (2020), doi:10.1353/jbl.2020.0038; immigration: Abi Doukhan, *Cain and Abel: Re-Imagining the Immigration “Crisis,”* 11 *RELIGIONS* 112 (2020), <https://doi.org/10.3390/rel11030112>; violence in Latin America: TINA ROSENBERG, *CHILDREN OF CAIN: VIOLENCE AND THE VIOLENT IN LATIN AMERICA* (1991); or the death penalty: Hands Off Cain is an organization dedicated to the abolition of the death penalty worldwide. According to the organization, the name “Hands Off Cain” is inspired by Genesis standing for justice without vengeance. See <http://www.handsoffcain.info/chisiamo/obiettivi>.
 21. SCHALANSKY, *supra* note 14, at 13.

Concentrating on Argentina, my native country, makes sense, given the leading role that the country played in developing the systematic practice of enforced disappearances and the most creative and complete responses to such terror crime.²² Argentina also influenced the development of international law in this area.²³ In Argentina, the *Movimiento Judío por los Derechos Humanos* (Argentine Jewish Human Rights Movement), created at the end of the dictatorship, read human rights law in light of the scriptural teachings.²⁴

I do not pretend to argue that human rights works or doctrines should be informed or analyzed in light of religious teachings, Jewish or otherwise.²⁵ Nor do I propose to present a single or proper reading of the Cain and Abel story in light of Jewish interpretation.²⁶ In fact, a single Jewish interpretation does not exist.²⁷ Similarly the use of the Cain and Abel story, connected to enforced disappearances and the dictatorship has been used by different stakeholders, many times for opposite purposes and with completely antithetical meanings.

The article proceeds as follows. In the first section, it recalls the biblical story of Cain and Abel and explains the similarities and differences with the legal concept of enforced disappearances. The following section highlights how the story of Cain and Abel has been read, interpreted, completed, retold, and given different meanings by Judaism, Islam, and Christianity. Similarly, the concept of enforced disappearances has also traveled, been

-
22. Kathryn Sikkink, *From Pariah State to Global Protagonist: Argentina and the Struggle for International Human Rights*, 50 *LATIN AM. POL. & SOC'Y* 1 (2008).
 23. Dulitzky, *supra* note 17.
 24. See *El Movimiento Judío por los Derechos Humanos Aprobó su Declaración de Principios*, Marshall T. Meyer papers (n.d.), <https://repository.duke.edu/dc/meyermarshall/meypw04032>.
 25. This approach calls the question whether my own Jewish identity influences my human rights advocacy work and professional identity. For general discussions on Jewish identity and lawyering, See, e.g. the works of my colleagues at the University of Texas at Austin School of Law. Sanford V. Levinson, *Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity*, 14 *CARDOZO L. REV.* 1577 (1993); William E. Forbath, *Constitutionalism, Human Rights and the Genealogy of American Jewish Liberalism: A Comment*, in *THE LAW OF STRANGERS: JEWISH LAWYERING AND INTERNATIONAL LEGAL THOUGHT IN HISTORICAL PERSPECTIVE* 118 (James Loeffler & Moria Paz eds., 2019).
 26. In this article, I use some of the Jewish interpretations of Cain and Abel story. There are similarities and differences on how the story is retold and interpreted in the Quran (5:25-32); and in the New Testament (Luke 3:36; Hebrews 11:4; 12:24; John 3:12; Jude 1:11; Mathew 23:35). See e.g., Roberto Tottoli, *Cain and Abel*, in *ENCYCLOPAEDIA OF ISLAM THREE* (Kate Fleet, Gudrun Krämer, Denis Matringe, John Nawas & Everett Rowson eds., 2011), https://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-3/*-COM_24374; *EVE'S CHILDREN: THE BIBLICAL STORIES RETOLD AND INTERPRETED IN JEWISH AND CHRISTIAN TRADITIONS I* (Gerard P. Luttikhuisen ed., 2003); Robert McCorquodale, *Contemporary Human Rights and Christianity*, 154 *LAW & JUST. CHRISTIAN L. REV.* 18, 19 (2005) (making the case that based on the Cain and Abel story, Christians have an obligation to God to uphold the rights of others and God demands that these rights be upheld).
 27. See, e.g., S. DANIEL BRESLAUER, *JUDAISM AND HUMAN RIGHTS IN CONTEMPORARY THOUGHT: A BIBLIOGRAPHICAL SURVEY* 4 (1993).

adapted, and adopted across borders, political contexts, cultures, countries, and times. The question about Cain being “[his] brother’s keeper” highlights the irony in how the very individual or groups (i.e., Cain or security forces) who are meant to provide protection (i.e., to Abel or to Argentinians) are those harming them (through killing or kidnapping). However, a closer reading of the biblical story shows a more complex picture. In the first place, rather than a binary play between brothers, there are three actors: Cain, Abel, and God. While most interpretations revolve around the idea of Cain as his “brother’s keeper,” other interpretations assert that God is the keeper. Thus, it is God who bears responsibility for not protecting Abel. Cain questioning God for the divine responsibility is a reminder that those in charge, divine or otherwise, have a duty to protect and should take responsibility for harming humans or allowing people to be harmed and failing to protect them. The keeper question and the mark of Cain are a call for society to confront itself. As such, the next section of the article signals and explores how the Genesis story brings the role of the bystander in the case of enforced disappearances to the forefront. Next, the article expands on the insistence of brotherhood (repeated seven times in Genesis) to criticize the approach in enforced disappearances of depriving both victims and perpetrators of their agency and humanity. On the contrary, it is precisely the very need to oppress, repress, and harm another human being that makes Cain and the perpetrators human. The Cain and Abel story requires us to see the humanity of the brothers and understand that Cain and Abel are also our brothers. That violence occurred within our family, our community, and within a fraternal relationship. At its root, disappearances are a social and political problem and one which must therefore seek a political solution. It is not enough to exclusively approach it from a legal perspective.

The article goes deeper into the brotherhood and kinship aspect of the biblical story to call attention to how most of the advocacy around enforced disappearances is built around the plight of the relatives of those who disappeared. The following section refers to God’s punishment of Cain: making him a wanderer, neither fully alive nor fully dead. We cannot compare Cain to the disappeared person; however, there is this same ambiguity, not knowing if the disappeared person is alive or dead. There is also a possibility of understanding the disappeared as a wanderer, exposed like Cain to be killed, a person placed in a situation of “bare life” using the expression of Giorgio Agamben.²⁸ Another possibility of linking the biblical idea of the eternal wanderer to the disappeared is to think about the Thursday marches of the Mothers and Grandmothers of Plaza de Mayo, who, since 1977, have been demanding answers about the fate of their children. Finally, enforced

28. GIORGIO AGAMBEN, *HOMO SACER: SOVEREIGN POWER AND BARE LIFE* (Daniel Heller-Roazen trans., 1998).

disappearances constitute a continuous crime that remains insoluble until the whereabouts or fate of the disappeared person is established. Next, the article explains the connection between Genesis and the memory of the disappeared. Cain's mark is a reminder of the murder, the disappearance. God, by placing a mark on Cain, memorializes Abel, keeping him present on Cain's forehead. It marks Cain as a murderer, serves as a reminder to other human beings of what he did, and prevents them from killing him, presumably because he is already serving out a divinely imposed punishment. The Torah also says that Cain, carrying his mark, built cities. The inhabitants of those cities are permanently reminded of their origin. Similarly, memory reminds us how our society and cities were built based on the original violence, including enforced disappearances. Most interpretations represent Cain as evil and Abel as the expression of the innocent, righteous victim. Similarly, the predominant discourse presents the disappeared as innocent victims. However, there is an alternative interpretation alleging the possible contribution of Abel to Cain's anger. In no way does Abel's attitude provide any moral or legal justification for the crime committed, nor does it reduce Cain's culpability or punishment. It presents a more nuanced and human story. Equally, recognizing the historical context of political violence in Argentina does not in any way change the legal recognition of the disappeared as victims of human rights abuses, nor does it provide any political, legal, social, or moral justification for the enforced disappearances.

Next, the article explores the different ways in which the mark of Cain has been interpreted. It could be interpreted that God placed the mark as a "token of forgiveness" given Cain's sincere repentance when he acknowledged his sin and the possibility of redemption. In the case of enforced disappearance, a similar approach leads to the possibility of mitigating the penalty if the person who committed the disappearance contributes to bringing the disappeared person forward alive, makes it possible to clarify cases, or identify the perpetrators. The mark could also be a signal to society. Every person who sees the mark is reminded of what Cain did and what happened to Abel. It also brings attention to the question of what each person did while Cain was killing Abel. The article then connects the seven-fold punishment to the plight of the disappeared. God urges man not to kill Cain, threatening seven-fold vengeance. It could represent the fact that enforced disappearance can generate transgenerational sequelae. In the next section, the article examines how Cain is rapidly found, questioned, convicted, and punished by God, providing insights on how to react to perpetrators of enforced disappearances. It is not only that we need to pursue justice, but we should do it in a just manner. It presents some traditional discussions on the criminal punishment of enforced disappearances in light of the biblical story. The final section analyzes God's question *Ayeka* (Where are you?) and the response *Hineni* (Here I am), connecting them to the issue of enforced

disappearances. It underscores the multiple facets of the question “where?” and the multiple meanings of “here,” from the physical location, to the moral and personal, and to the institutional responsibility for dealing with enforced disappearances. The article includes some preliminary conclusions of reading enforced disappearances considering the Cain and Abel story.

II. CAIN AND ABEL AND ENFORCED DISAPPEARANCE

The story from Genesis resembles in many ways the practice of enforced disappearances, particularly as they took place in Argentina. According to international law, enforced disappearance consists of the

arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, 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.²⁹

Cain felt resentment and anger towards his brother Abel. However, the story is silent about what the discussion between the brothers was about.³⁰ In the case of enforced disappearances in Argentina, repressors considered the victims their enemies.³¹ In May 1976, just two months after the coup, General Ibérico Saint-Jean, then governor of Buenos Aires, said: “First we will kill all the subversives; then we will kill their collaborators; then . . . their sympathizers; then . . . those who remain indifferent; and, finally, we will kill those who are timid.”³² This motivation is legally inconsequential in the case of enforced disappearances. It is not included in its definition, and “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.”³³ Yet, it is very clear that in Argentina, the victims were clearly selected as part of a criminal plan designed by the military junta.

29. G.A. Res. 61/177, International Convention for the Protection of All Persons from Enforced Disappearance, art. 2 (Jan. 12, 2007).

30. Bereshit Rabba provides three different explanations: money, honor, or women. See Chaim Milikowsky, *Why Did Cain Kill Abel? How Did Cain Kill Abel? Methodological Reflections on the Retelling of the Cain and Abel Narrative in Bereshit Rabbah*, in FROM BIBLE TO MIDRASH: PORTRAYALS AND INTERPRETATIVE PRACTICES 79, 83 (Hanne Trautner-Kromann, ed., 2005).

31. EMILIO CRENZEL, LA HISTORIA POLÍTICA DEL NUNCA MÁS: LA MEMORIA DE LAS DESAPARICIONES EN LA ARGENTINA (2008).

32. *Avoiding the Worst in Argentina*, N.Y. TIMES (May 25, 1977), <http://www.nytimes/1977/05/25/archives/avoiding-the-worst-in-argentina.html>; David Streitfeld, *Haunted by the Past*, WASH. POST (Mar. 5, 1995), <https://www.washingtonpost.com/archive/entertainment/books/1995/03/05/haunted-by-the-past/0407ece5-37a>.

33. Res. 61/177, *supra* note 29, art. 1.2.

In response to his grievances, Cain decided to take Abel to a secret place (i.e., the fields).³⁴ In Argentina, the security forces kidnapped some 30,000 persons³⁵ and took them to hundreds of secret detention centers.³⁶ After killing Abel, Cain does not respond to the question of his brother's whereabouts. Similarly, in those dark years, the Argentinean state, and the perpetrators, have individually denied any knowledge of the detentions and of having any information on the fate of the thousands of disappeared persons. (i.e., denial of the fate or whereabouts of the disappeared person, namely a constitutive element of the crime of enforced disappearance).

From there on, we have struggled with the same questions: Where is your brother? Where are the disappeared? *Dónde Están?* The state, in the case of enforced disappearances, uses the same denial approach.³⁷ And we keep receiving the same response "I do not know." The relatives of the disappeared are tortured by the suffering, anguish, and uncertainty of not knowing what happened to their loved ones. As with Cain, we know that this denial is an arrogant lie.³⁸ Cain and the repressors know where Abel and the disappeared are. Cain sinks himself lower by adding falsehood to crime.³⁹ "If transgression is the henchman, denial is the right-hand man."⁴⁰

The Bible could be interpreted as a proponent for banning enforced disappearances. The protection of the sanctity of life (and the implicit rejec-

-
34. Rabak explains that Cain did not physically attack Abel at that time of the rejection of his offering "as he was afraid of the reaction of his father. He kept his fury under control until the two of them were alone together in the field." Rabbi David Kimchi, *Rabak on Genesis 4:8*, SEFARIA (1842), https://www.sefaria.org/Radak_on_Genesis.4.8.2?lang=bi&with=all&lang2=en; DAN ORNSTEIN, CAIN V. ABEL: A JEWISH COURTROOM DRAMA 28 (2020) (explaining that the reference to a field suggests a place far away from human settlement and Cain's attempt to commit the crime furtively avoiding his parent's active intervention). Compare the reference to a field in *Deut. 22, 25-27*. The Torah explicitly refers to the rape of a woman in a field where nobody can hear her cry cannot be heard to save her. Amos Israel-Vleeschhouwer, *Torture: Reading Améry, Rereading Jewish Law*, in JEAN AMÉRY, BEYOND THE MIND'S LIMITS 119, 124 (Yochoai Ataria, Amit Kravitz & Eli Pitcovski eds., 2019).
 35. The human rights movement has customarily invoked that 30,000 persons disappeared. CONADEP documented 8,900 cases. See Alison Brysk, *The Politics of Measurement: The Contested Count of the Disappeared in Argentina*, 16 HUMAN RIGHTS QUARTERLY 672 (1994). We accept the 30,000 figures as the symbolic estimation representing the magnitude of the problem. However, as Borges said even if the number of victims has been exaggerated, "a single case would suffice. Cain killed Abel only once," cited in EDUARDO BLAUSTEIN & MARTÍN ZUBIETA, DECÍAMOS AYER: LA PRENSA ARGENTINA BAJO EL PROCESO 360 (1998).
 36. INTER-AM. COMM'N H.R., REPORT ON THE SITUATION OF HUMAN RIGHTS IN ARGENTINA (1980).
 37. For instance, in the IACHR's file on Alicia "Moni" Naymark, there is a copy of the habeas corpus where the security forces reported that they did not have any information on her whereabouts. The Argentine Mission to the OAS also indicated that the authorities did not have any information on her detention nor on her fate or whereabouts. Copies of the documents file with author.
 38. Kenneth M. Craig, *Questions Outside Eden (Genesis 4.1-16): Yahweh, Cain and Their Rhetorical Interchange*, 24 J. STUDY OF OLD TESTAMENT 107, 122 (1999).
 39. ELIE WIESEL, MESSENGERS OF GOD: BIBLICAL PORTRAITS AND LEGENDS 59 (Marion Wiesel trans., 1976).
 40. Jonathan R. Cohen, *The Immorality of Denial*, 79 TUL. L. REV. 903, 925 (2005).

tion of disappearances) is so crucial that it appears at the very beginning of humankind, precisely in the Cain and Abel story.⁴¹ The Bible also calls to “let the oppressed go free” (Isaiah 58:6). Similarly, international human rights law bans enforced disappearances and recognizes a right not to be disappeared.⁴²

Of course, the Cain and Abel story is a nonlegal narrative;⁴³ however, I am using legal ideas to make larger moral and spiritual arguments.⁴⁴ In the spirit of Jewish tradition, I take the Bible seriously without taking it literally.⁴⁵ I am not making a strictly legal analysis of the biblical story when I connect it to an enforced disappearance. In fact, it appears that Cain and Abel go together to the field. There is no coercion or “deprivation of liberty” beforehand. Additionally, Cain is not a state agent or acting with the acquiescence of the state. Legally speaking, it would be murder rather than an enforced disappearance. The Bible appears to suggest that Adam and Eve knew what happened to Abel. “And Adam knew his wife again, and she bore a son, and she named him Seth, for God has given me other seed, instead of Abel, for Cain slew him” (Genesis 4:25).⁴⁶ Another difference between the biblical story and enforced disappearances is that the Bible appears to be relatively uninterested in Abel; he is named only in reference to his brother Cain. The entirety of the story is mainly about Cain and God, while Abel remains passive.⁴⁷ In Genesis 4:10, God does not say “Abel” but just refers to “your brother.”⁴⁸ In the case of the disappeared in Argentina, many of them were buried in cemeteries that identified them as nameless (“ningún nombre,” or “N.N.”).⁴⁹

41. PETER HASS, HUMAN RIGHTS AND THE WORLD'S MAJOR RELIGIONS: THE JEWISH TRADITION 55 (2005).

42. Res. 61/177, *supra* note 29, art. 1.

43. For some legal analysis of the biblical story, see Irene Merker Rosenberg & Yale L. Rosenberg, “Cain Rose Up Against His Brother Abel and Killed Him”: Murder or Manslaughter?, 30 GA. J. INT'L & COMP. L. 37 (2001); ORNSTEIN, *supra* note 34.

44. *Id.* at 170.

45. *Id.* at xxv.

46. The Midrash discusses how Adam and Eve buried Abel. See, e.g., Pirke de Rabbi Eliezer, ch. XXI, <https://www.sefaria.org/texts>. In fact, there are other interpretations that Abel's body was missing. See JOHN BYRON, CAIN AND ABEL IN TEXT AND TRADITION: JEWISH AND CHRISTIAN INTERPRETATIONS OF THE FIRST SIBLING RIVALRY 76-82 (2011). On the suffering of the relatives of the disappeared in Argentina due to the impossibility of mourning and giving proper burial to the disappeared, see Maitane Arnosó Martínez, et al., *Argentina (1976-1983): Impacto y Afrontamiento Psicosocial*, 14 UNIVERSITAS PSYCHOLOGICAL 833 (2015).

47. Joel N. Lohr, *Righteous Abel, Wicked Cain: Genesis 4:1-16 in the Masoretic Text, the Septuagint, and the New Testament*, 71 CATHOLIC BIB. Q. 485, 494-95 (2009).

48. Karolien Vermeulen, *Mind the Gap: Ambiguity in the Story of Cain and Abel*, 133 J. BIB. LIT. 29, 37 (2014).

49. Donna J. Guy, *The Shifting Meanings of Childhood and “N.N.”*, 35 LATIN AM. PERSPEC. 15 (2008).

III. THE TRAVELING OF THE CAIN AND ABEL STORY AND THE GLOBALIZATION OF ENFORCED DISAPPEARANCES

The story of Cain and Abel has been read, interpreted, completed, retold, and given different meanings by Judaism, Islam, and Christianity. Similarly, the concept of enforced disappearance has also traveled, been adapted, and adopted across borders, political contexts, cultures, countries, and times. While enforced disappearances as an international concern were born in the context of the dictatorships in the southern cone, particularly Argentina, today they are a global phenomenon⁵⁰ that exist in a multiplicity of scenarios.⁵¹ The narrative framework elaborated based on the Argentine and Latin American experiences grounded the evolution of the concept of enforced disappearance and became the yardstick for understanding disappearances.⁵²

The dictatorship perfected enforced disappearances.⁵³ The figure of the *Desaparecido* is a sad Argentine privilege.⁵⁴ As Cain and Abel's story became the paradigmatic example of a fight between brothers, the Argentinean experience, responses, legally, politically, and socially to enforced disappearance became the global ruling model.⁵⁵ So much so that there has been talk of the process of Argentinization of enforced disappearances,⁵⁶ leading some scholars to warn against the danger of over-using the term enforced disappearance, instead highlighting the need to distinguish between the Argentinean

50. DESAPARICIONES: USOS LOCALES, CIRCULACIONES GLOBALES (Gabriel Gatti ed., 2017).

51. Jonah S. Rubin, *Aproximación al Concepto de Desaparecido: Reflexiones Sobre El Salvador y España*, 25 *ALTERIDADES* 9 (2015).

52. Barbara A. Frey, *Los Desaparecidos: The Latin American Experience as a Narrative Framework for the International Norm against Forced Disappearances*, 5 *HISPANIC ISSUES ONLINE* 52, 69 (2009).

53. See THOMAS WRIGHT, *STATE TERRORISM IN LATIN AMERICA: CHILE, ARGENTINA, AND INTERNATIONAL HUMAN RIGHTS* 109 (2006); Sikkink, *supra* note 22, at 5; PILAR CALVEIRO, *PODER Y DESAPARICIÓN: LOS CAMPOS DE CONCENTRACIÓN EN ARGENTINA* 27 (1995).

54. See ALEJANDRO BAER & NATAN SZNAIDER, *MEMORY AND FORGETTING IN THE POST-HOLOCAUST ERA: THE ETHICS OF NEVER AGAIN*, at prologue (2017); Paul Heath Hoeffel & Juan Montalvo, *Missing or Dead in Argentina*, N.Y. TIMES (Oct. 21, 1979), <https://www.nytimes.com/1979/10/21/archives/missing-or-dead-in-argentina-since-the-military-took-over-the.html>.

Desaparecido is one of the more familiar terms of a new Argentine argot, a strange, forbidding vocabulary invented by an underworld of military and police personnel in their extralegal duties. The literal translation into English has a curiously passive sense to it: 'to be disappeared.' It disguises the ugly reality of clandestine abduction, torture, and execution affecting tens of thousands of Argentines in recent years.

55. Walescka Pino-Ojeda, *Ethics of Responsibility or Ethics of Principles? Trauma and Neoliberalism in Latin America: The "Periphery" Gone Global*, 14 *BORDERLANDS* 1, 2 (2015).

56. Sebastiaan Faber, *Raising the Specter of "Argentinization": The Temptation of Spanish Exceptionalism*, 11 *HISPANIC ISSUES ONLINE* 117 (2012), <https://conservancy.umn.edu/handle/11299/184377>.

“true” cases of disappearances, or the “original disappeared,”⁵⁷ from those in which the term corresponds to widespread misuse.⁵⁸

The international human rights regime and state terrorism in Argentina, including the perpetration and reaction to enforced disappearances, have influenced each other since 1976.⁵⁹ The Argentine human rights movement and the international protection regime were mutually contaminated.⁶⁰ The Argentine dictatorship chose enforced disappearances after international reactions to the executions of the Chilean dictatorship. The international regime paid more and better attention to the phenomenon of enforced disappearance considering the Argentine experience.⁶¹

The response to disappearances in Argentina has generated legal, cultural, and institutional precedents that influenced the development of global responses to this phenomenon.⁶² At the beginning of the dictatorship, relatives and human rights organizations in Argentina and those of Argentine exiles, with the cooperation of other international organizations, had to act creatively in two ways. First, they needed to convince the international community of the importance of developing effective institutional responses to the needs of disappeared persons and their families. Then, they began to develop a legal and normative response to this new phenomenon that distinguished itself from other traditional violations of human rights.⁶³ These two characteristics, the development, invention, and promotion of new le-

-
57. GABRIEL GATTI, *IDENTIDADES DESAPARECIDAS: PELEAS POR EL SENTIDO DE LOS MUNDOS DE LA DESAPARICIÓN FORZADA* (2011); *DESAPARICIONES: USOS LOCALES, CIRCULACIONES GLOBALES* 27 (Gabriel Gatti ed., 2017).
58. Gabriel Gatti, “*Lo nuestro, como en Argentina*”: *Humanitarian Reason and the Latin Americanization of Victimhood in Spain*, 25 J. LATIN AM. CULTURAL STUD. 147 (2016); Gabriel Gatti, *De un Continente al Otro: el Desaparecido Transnacional, la Cultura Humanitaria y las Víctimas Totales en Tiempos de Guerra Global*, 48 POLÍTICA Y SOCIEDAD 519 (2011).
59. WRIGHT, *supra* note 52, at xv.
60. In 1976 there was no permanent thematic special procedure. The United Nations had established an Ad Hoc Working Group in 1975 in response to the disappeared in Chile. They would then establish a rapporteur on the impact of foreign aid and economic assistance on respect for human rights in Chile (1977), the United Nations Trust Fund for Chile (1978), a special rapporteur on the issue of the fate of persons who have disappeared or whose whereabouts are unknown in Chile (1979) and a special rapporteur on Chile (1979). CARLOS MAURICIO LÓPEZ CÁRDENAS, *LAS DESAPARICIONES FORZADAS DE PERSONAS Y SU EVOLUCIÓN EN EL DERECHO INTERNACIONAL DE LOS DERECHOS HUMANOS*, 62–78 (2d ed. 2018).
61. Daniel Levy, *Recursive Cosmopolitanization: Argentina and the Global Human Rights Regime*, 61 BRIT. J. SOC’Y 579, 581 (2010).
62. HELEN DUFFY, *STRATEGIC HUMAN RIGHTS LITIGATION: UNDERSTANDING AND MAXIMIZING IMPACT* 173 (2018).
63. There is a renewed interest in the contributions of Jewish lawyers to the development of international law (and human rights law in particular). See *THE LAW OF STRANGERS: JEWISH LAWYERING AND INTERNATIONAL LEGAL THOUGHT IN HISTORICAL PERSPECTIVE*, (James Loeffler & Moria Paz eds., 2019); JAMES LOEFFLER, *ROOTED COSMOPOLITANS: JEWS AND HUMAN RIGHTS IN THE TWENTIETH CENTURY* (2018); NATHAN KURZ, *JEWISH INTERNATIONALISM AND HUMAN RIGHTS AFTER THE HOLOCAUST* (2020). Sadly, these works failed to make references to the contributions of Latin American Jewish lawyers and activists, to the discussions between Israel, the American Jewish organizations, and the Argentine Jewish community during the dictatorship about antisemitism and the proper response to the situation of Argentinean Jews, nor are there discussions of a truly Jewish human rights organization, the Argentinian *Movimiento Judío de Derechos Humanos* (Jewish Movement of Human Rights).

gal concepts are the marks of the Argentine human rights movement in the area of enforced disappearances that persist to this day. In parallel, it is not an exaggeration to argue that, since the restoration of democracy in 1983, Argentina has done more than any other country.⁶⁴

In sum, Cain and Abel, as well as the Argentine *desaparecidos* have traveled across borders and time. Both stories tell us something universal about violence and the responses to bloodshed.

IV. BROTHER'S KEEPER, THE BYSTANDER AND ENFORCED DISAPPEARANCES

The question about Cain being “[his] brother’s keeper” highlights the irony in how the very individuals or groups (i.e., Cain or Argentinian security forces) who are meant to provide protection (i.e., to Abel or to Argentinians) are those harming them (through killing or kidnapping).⁶⁵ However, a closer reading of the biblical story shows a more complex picture. In the first place, rather than a binary play between brothers, there are three actors: Cain, Abel, and God. While most interpretations circulate around the idea of Cain as his “brother’s keeper,” there are some limited but equally important interpretations that revisit the Hebrew meaning to assert that God is the keeper. Thus, it is God who bears responsibility for not protecting Abel.⁶⁶ For instance, Rabbi Shimon Bar Yochai claims that Cain responded to God’s question by saying, “You are God. You created me and it is Your task to watch him, not mine. If I ought not to have done what I did, you could have prevented me, but you did not.”⁶⁷

Cain questioning God for the divine responsibility is a reminder that those in charge, divine or otherwise, have a duty to protect and should take responsibility for harming humans or allowing people to be harmed and failing to protect them.⁶⁸ The keeper question and the mark of Cain are a call for society to confront itself. It is a reminder of what Cain did and what happened. What did society do? What did they know then versus what do they know now? What did they do to prevent and address it?

As such, the Genesis story brings the role of the bystander to the forefront. The Torah presents a God who hears the cry of the oppressed, the weak, and the exploited.⁶⁹ If one person is able to save another and does not save

64. See Sikkink, *supra* note 22.

65. In fact, the whole human rights system is built under the same premise. States are required to respect and guarantee the rights that are being violated by the same States. The definition of enforced disappearance requires this State element while at the same time asking the States to protect against enforced disappearances.

66. David J. Zucker, *My Punishment is too Great to Bear: Raising Cain*, 50 BIBLICAL THEOLOGY BULL. 7, 10 (2020).

67. Genesis Raba 22:9. See Rabbi Cassi Kail, *Cain and Abel*, SEFARIA (October 14, 2020), <https://www.sefaria.org/sheets/269812?lang=bi>.

68. DAVID NOVAK, COVENANTAL RIGHTS, A STUDY IN JEWISH POLITICAL THEORY 190-91 (2000).

69. Israel-Vleeschhouwer, *supra* note 34.

him, he transgresses the commandment “neither shalt thou stand idly by the blood of thy neighbour” (Leviticus 19:16) and “when thou buildest a new house, then thou shalt make a parapet for thy roof, that thou bring not blood upon thy house, if any man fall from thence” (Deuteronomy 22:8).⁷⁰ The Talmud interprets these verses as the obligation to save one whose life is in danger (Sanhedrin 73a).

This general obligation of the bystander is not built upon any special relationship based on a legal contract between the bystander and the person in distress,⁷¹ such as parent and child, husband and wife,⁷² guardian, ward, or police. The term “bystander” encompasses an extraordinarily wide range of actors and behaviors, from passive onlookers and witnesses to helpers, collaborators, and even those who might exploit a situation.⁷³ There are different forms of bystanding behaviors, many different positions of bystanders, and many different capacities to react as a bystander.⁷⁴ Jewish law does not restrict the duty to rescue those witnessing or finding a person in distress. It extends the duty to anyone informed or aware of the danger to another’s life who is able to save another. Ability is determined by a combination of factors such as geographic proximity, mental awareness, know-how, physical disposition, the seriousness or likelihood of the harm, the visibility of the action, the stage of the action and, the relationship among bystanders, victims, and perpetrators.⁷⁵ The “small fears, anxieties, resentments, and jealousies that constitute a society and represent the violent regimes’ conditions of possibility” may explain many of the reasons for the passive bystander.⁷⁶

In Argentina, there is an ongoing process of revisiting the idea and responsibility of the bystander in relation to enforced disappearances. The definitions and answers to solving this puzzle influence memorialization projects, shape public policies, and enrich political, cultural, and legal accountability initiatives (criminal or otherwise).⁷⁷

During the Argentine dictatorship, there was a culture of silent bystanders.⁷⁸ In fact, through different means, there was extensive use of phrases

70. HAIM H. COHN, HUMAN RIGHTS IN JEWISH LAW 36-37 (1984).

71. *Id.* at 218.

72. In Section VI (Cain, Abel, Brotherhood, and kinship: disappearances and the relatives of the disappeared) we discuss the role of relatives in cases of enforced disappearances.

73. Victoria J. Barnett, *The Changing View of the “Bystander” in Holocaust Scholarship: Historical, Ethical, and Political Implications*, 2017 UTAH L. REV. 633, 636 (2017).

74. Dan Bar-On, *The Bystander in Relation to the Victim and the Perpetrator: Today and During the Holocaust*, 14 SOC. JUST. RES. 125, 130 (2001).

75. COHN, *supra* note 69, at 218.

76. Mauro Greco, *The Silent Majority in Cinema about the Argentinian (Post)Dictatorship: Collective Responsibility, Desires of Repression and Micro-Fascisms*, LAW, CULTURE AND THE HUMANITIES 1 (2019).

77. Juan Pablo Bohoslavsky & Veerle Opgenhaffen, *The Past and Present of Corporate Complicity: Financing the Argentinean Dictatorship*, 23 HARV. HUM. RTS J. 157 (2010).

78. For instance, in the context of corporate responsibility see Willem de Haan, *To Know or not to Know: Silent Complicity in Crimes Against Humanity in Argentina (1976–1983)*, 62 BUS. HIST. 1279 (2020).

such as *no te metás* (do not get involved), *por algo será* (there must be a reason for their disappearance), *algo habrán hecho* (they must have done something), *no es con nosotros* (it is not with us),⁷⁹ or *el silencio es salud* (silence is health, or keeping quiet is healthy).⁸⁰ All these phrases represent different types of attitudes, justifications, and explanations for the bystander attitude of many societies confronted with mass violence.⁸¹ They were self-protection strategies reflecting mechanisms of self-censorship or expressions of mistrust or of denial and ignorance. Particularly, the clandestine nature of enforced disappearances clearly favored this type of attitude and led these sectors to accept the official version of events, not finding sufficient reasons to break with the mandate of silence. Many Argentines claimed they were unaware of widespread human rights violations. Yet, many people seemed to not want to know or talk about such events.⁸² For other sectors, on the other hand, to comply with the “command of silence” involved adopting a cynical stance and a certain amount of complicity through which they accepted and adhered to the accusations of the regime that associated the victims of repression with subversion (*por algo será*).⁸³

Human rights law and international criminal justice mechanisms take up as subjects those accused of responsibility for grave violations of international law. However, bystanders to these egregious acts are left outside the scope of these enterprises⁸⁴ while at the same time being “a critical segment that must engage in the social and political processes of reclaiming and rebuilding communities after the bloodshed and as such are one of the audiences to which the enterprise of international justice is directed.”⁸⁵ Neither subjects nor objects of human rights cases or of criminal (domestic, foreign, or international) trials, “bystanders illustrate a challenge to law as a vehicle to establish the roles (victim/perpetrator) in and responsibilities (guilt/innocence) for serious violations of international criminal law” and human rights law.⁸⁶ The inherent tension in legal and political approaches to the bystander problem derives from the “difficulty of understanding (and in legal cases, addressing) a collective phenomenon through the lens of ethics and norms that apply to individual behavior.”⁸⁷

79. Mercedes María Barros, *El Silencio Bajo la Última Dictadura Militar en la Argentina*, 5 PENSAMIENTO PLURAL 79 (2009), <http://www.pensamentoplural.ufpel.edu.br/edicoes/05/04.pdf>.

80. Uki Goñi, *El Silencio es Salud: Cómo Llega el Totalitarismo*, EL CORREO (Feb. 16, 2020), <http://www.elcorreo.eu.org/El-silencio-es-salud-como-llega-el-totalitarismo?lang=frin>.

81. Bar-On, *supra* note 74.

82. Barbara Sutton, & Kari Marie Norgaard, *Cultures of Denial: Avoiding Knowledge of State Violations of Human Rights in Argentina and the United States*, 28 SOCIOLOGICAL FORUM 495, 497 (2013).

83. Barros, *supra* note 78, at 84.

84. Laurel E. Fletcher, *From Indifference to Engagement: Bystanders and International Criminal Justice*, 26 MICH. J. INT'L L. 1013, 1015 (2005).

85. *Id.*

86. *Id.* at 1015-16.

87. Barnett, *supra* note 72, at 634.

The protagonists of international criminal trials are the accused and the victims.⁸⁸ In international human rights law, the protagonists are the state and the victims.⁸⁹ Punishment and justice acknowledge the relationship of perpetrators and victims to the processes that lead to mass violence.⁹⁰ Yet bystanders are not an explicit focus of proceedings. In the case of enforced disappearances, the definition only goes as far as to include the concepts of “authorization, support or acquiescence of the State”⁹¹ or “support, direct or indirect, consent or acquiescence” (Preamble, UN Declaration) or “authorization, support or acquiescence.”⁹² These definitions fall short of the narrow concept of bystanders understood as “those who did not participate in crimes but nonetheless did not intervene to stop the carnage. [T]heir role in the events is defined by their inaction and passivity.”⁹³ As we have said, some of the interpretations of the Torah story question God’s passivity in allowing Cain to kill his brother. The conventional response appears to be that it would violate fundamental principles of fairness to impose criminal liability on the bystander group, who might be morally but not legally complicit.⁹⁴ In Argentina, the current efforts are to go beyond the narrow concept of the bystander in order to include those who enabled or profited from enforced disappearances as criminally responsible.

The Torah offers an alternative possibility of understanding the issue of bystanders and collective approaches to enforced disappearances. Cain built cities, and part of the punishment came seven generations later: Abel’s bloods (in plural) cry out. All these indications refer to the idea that there is something beyond the simple victim-perpetrator dichotomy. That communities, composed mainly of bystanders, are grounded on the bloods of victims and edified, in part, by the perpetrators. From this perspective, it is very clear that limiting our dealing with violence to only Cain, the perpetrator,

88. Fletcher, *supra* note 84 at 1026.

89. See for instance, Entitlement of legal entities to hold rights under the Inter-American Human Rights System (Interpretation and scope of Article 1(2), in relation to Articles 1(2), 8, 11(2), 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62(3) of the American Convention on Human Rights, as well as of Article 8(1)(A) and (B) of the Protocol of San Salvador). Advisory Opinion OC-22/16, Inter-Am. Ct. H.R. (ser. A) No. 22, (Feb. 26, 2016) ¶ 42 (stating that object and purpose of the American Convention on Human Rights is the protection of the fundamental rights of human beings against their own or any other state).

90. Fletcher, *supra* note 83, at 1026.

91. G.A. Res. 61/177, *supra* note 29, art. 2; Inter-American Convention on the Forced Disappearance of Persons, signed June 9, 1994, art. 2, O.A.S. Doc. OEA/Ser.P/AG/doc.3114/94 (1994) (not in force), reprinted in 33 I.L.M. 1529 (1994).

92. Universal Declaration of Human Rights, adopted 10 Dec. 1948, G.A. Res. 217A (III), U.N. GAOR, 3d Sess, pmbi., U.N. Doc. A/RES/3/217A (1948); Rome Statute of the International Criminal Court, adopted 17 July 1998, art. 7 (1) (i)4, U.N. Doc. A/CONF.183/9 (1998), 2187 U.N.T.S. 90 (entered into force 1 July 2002) (Elements of the Crime).

93. COLLEEN MURPHY, THE CONCEPTUAL FOUNDATIONS OF TRANSITIONAL JUSTICE 55 (2017).

94. Fletcher, *supra* note 84, at 1030.

is not enough. We need to expand our approach and understanding of accountability, punishment, memory, and prevention to go beyond individual criminal liability or State international responsibility. Argentina's experience demonstrates that it is possible to expand the scope of justice, truth, reparation, memory, and guarantees of non-repetition.

A new wave of prosecutions is bringing to justice non-traditional civil actors for their role during the dictatorship. Some of the cases could be defined as accountability applied to a broad concept of the bystander. A court convicted a priest for his participation in enforced disappearances cases,⁹⁵ and another court convicted several judges for their complicity in enforced disappearances.⁹⁶ A doctor was convicted for his participation during the dictatorship.⁹⁷ There are also efforts to hold the economic accomplices of the dictatorship accountable.⁹⁸ More than a dozen business people are under criminal investigation or have been charged with participating in crimes against humanity, including enforced disappearances.⁹⁹ Another application of the broad concept of the bystander is accountability for the role of the media as legitimizing the dictatorship, cooperating with the regime, and disseminating false information produced by the authorities.¹⁰⁰

The insistence on criminal accountability, essential as the Torah story demonstrates, has downplayed the development of notions of the collective failure of international bodies and institutions that protect against enforced disappearances. While Argentina's situation made excellent and unequal contributions to the development of international law and institutions that

95. Christian Von Wernich, TRIAL INT'L (May 31, 2016), <http://perma.cc/SB6A-TSVX>.

96. 28 Ex-Officials of Argentina's Military Dictatorship Sentenced, TELESUR (July 26, 2017), <http://perma.cc/5L5S-LDKS>.

97. Berges was convicted in the cases known as "Circuito Camps." Centro de Información Judicial, *Les a humanidad: difundieron los fundamentos del fallo que condenó a 23 acusados por el "Circuito Camps"* (Mar. 26, 2013), <https://www.cij.gov.ar/nota-11023-Lesa-humanidad--difundieron-los-fundamentos-del-fallo-que-conden--a-23-acusados-por-el-Circuito-Camps-.html>.

98. THE ECONOMIC ACCOMPLICES TO THE ARGENTINE DICTATORSHIP: OUTSTANDING DEBTS (Horacio Verbitsky & Juan Pablo Bohoslavsky eds., 2015).

99. Jose Roberto Gabriel Pereira & Leigh A. Payne, *Rendición de Cuentas por Complicidad Empresarial en Violaciones de Derechos Humanos: ¿Innovación en la Justicia Transicional de Argentina?*, in *DERECHOS HUMANOS Y EMPRESAS—REFLEXIONES DESDE AMÉRICA LATINA* 293 (H. Cantú Rivera ed., 2017). Responsabilidad empresarial en delitos de lesa humanidad. Represión a trabajadores durante el terrorismo de Estado (Business responsibility in crimes against humanity: The of workers during state terrorism), prepared by Instituto Interamericano de Derechos Humanos and Centro de Estudios Legales y Sociales (the Inter-American Institute of Human Rights and the Center for Legal and Social Studies) (2015), <http://www.saij.gob.ar/responsabilidad-empresarial-delitos-lesa-humanidad-tomo-represion-trabajadores-durante-terrorismo-estado-ministerio-justicia-derechos-humanos-nacion-lb000183-2015-11/123456789-0abc-defg-g38-1000blsorbil>.

100. María Lorena Montero, *Prensa y Represión, La Nueva Provincia y la Corporación Militar en la Persecución Ideológica a la Comunidad Universitaria (Bahía Blanca, 1974-1976)*, NUEVO MUNDO MUNDOS NUEVOS (Dec. 10, 2018), <https://journals.openedition.org/nuevomundo/74750>.

respond to enforced disappearances, the truth is that 30,000 persons disappeared in the country.¹⁰¹ In fact, in early scholarship on the Holocaust, the term “bystanders” was used primarily as a collective designation for the international community and its citizens for their failure to stop the genocide.¹⁰² The Argentine example demonstrates the utility of taking a complex, multifaceted approach to understanding and examining the multiple levels (individual, institutional, and international) of bystander behavior, as proposed by Victoria Barnett with regard to the Holocaust.¹⁰³ This approach should lead to better ethical and legal ways to address the problem of multiple layers of bystanders in Argentina and enforced disappearances in other contexts.

In sum, the Biblical story shows the importance of not reducing the accountability process to the direct perpetrator and not concentrating exclusively on establishing harsh criminal penalties. Questioning the responsibility of the bystanders appears to be essential in understanding who failed to protect and who cooperated or facilitated the commission of the crime.

V. CAIN AND ABEL, BROTHERHOOD, HUMANITY AND ENFORCED DISAPPEARANCES

The story of Cain and Abel is an explicit rejection of Feced’s position that the victims of the Argentine dictatorship are not our brothers. While Cain kills Abel, the emphasis is placed on the fraternal relationship. Brotherhood is repeated throughout the section: Cain addresses his *brother*; Cain rises against his *brother*; God asks Cain about his *brother’s* whereabouts; Cain asks if he is his *brother’s* keeper; the *brother’s* blood cries out; the ground receives the blood of a *brother*.¹⁰⁴

Those seven repetitions insist on seeing the other as our brother and convey a sense of community and shared responsibility.¹⁰⁵ At the same time, the repetition stresses the fundamental principle that whoever kills, kills his brother. In fact, Ellie Wiesel has gone as far as to argue that every murder is against humanity; it is a genocide.¹⁰⁶

Cain questioning God’s responsibility is a reminder that those in charge, divine or human, have a duty to protect and should take responsibility for harming humans or failing to protect those harmed.¹⁰⁷ Rabbi Meyer under-

101. Dulitzky, *supra* note 17.

102. Barnett, *supra* note 72, at 634.

103. *Id.* at 638.

104. Craig, *supra* note 37, at 109, 119, 120.

105. *Id.* at 121. See also, Diego Pérez Gondar, *La Historia de Caín y Abel en la Tradición Rabínica, Cristiana y Gnóstica: The Story of Cain and Abel in Rabbinic, Christian and Gnostic Tradition* (2015).

106. WIESEL, *supra* note 38.

107. NOVAK, *supra* note 67, at 190-91.

stood that the only appropriate response is to affirm, “Yes, I am my brother’s keeper.” “Brother” should be thought of not in its strict biological sense but in the broader sense of the other, the one who needs our help.¹⁰⁸ As Martin Luther King Jr. said, “We are inevitably our brother’s keeper because we are our brother’s brother. Whatever affects one directly affects all indirectly.”¹⁰⁹ The dictatorship, to the contrary, as represented by Feced’s statement, relied on human indifference rather than so much on fear or hatred. The best antidote to that indifference is insisting on the brotherhood keeper’s responsibility.

The many references to brotherhood provide an understanding that ordinary human beings (Cain and the perpetrators) do horrible things and that Cain and the perpetrators are also our brothers. Accepting that they are our brothers, part of our community, does not diminish their responsibility or the horror that they committed. On the contrary, it reinforces the idea that they (Cain and the perpetrators) must take responsibility for harming their sibling(s). At the same time, it is a call to assume the social, collective responsibility of seeing the perpetrators as part of the community. When Jorge Luis Borges writes that he did not remember if he was Cain or Abel, he was saying it was not to say that it does not matter if somebody is the victim or the perpetrator. To the contrary, it requires us to see that both are our brothers, and that the violence took place within our family and our community. It represents a call to see the humanity of both victim and perpetrators, as well as that of the bystanders. We cannot deal with the violent actions of enforced disappearances by seeing and respecting the rights of the victims at the expense of the rights of the perpetrators.

Michael Ignatieff calls the ironic fact that intolerance between brothers is often stronger than that between strangers the “*Cain and Abel Syndrome*.”¹¹⁰ The brothers, according to Ignatieff, are those that are close and have a lot in common with us, while the strangers are those that are distant and lack a real everyday connection.¹¹¹ He asserts that the “the analytical question, therefore, is how the essential elements of similarity which make groups ‘brothers’ are denied and reconstrued so that the two groups confront each other as ‘strangers.’”¹¹² This syndrome was seen on full display in Argentina.

However, an alternative view reads Cain’s reply to God—“Am I my brother’s keeper?”—as indicating that he, Cain, felt no connection to humanity.¹¹³ In psychological terms, André Lacocque diagnoses Cain as a

108. Testimony of Martin Hazan in MARIELA VOLCOVICH, MARSHAL, MARSHAL T. MEYER: EL HOMBRE, UN RABINO 198 (2009).

109. MARTIN LUTHER KING JR., WHERE DO WE GO FROM HERE: CHAOS OR COMMUNITY? 177-201 (2010).

110. Michael Ignatieff, *Nationalism and Toleration*, in THE POLITICS OF TOLERATION: TOLERANCE AND INTOLERANCE IN MODERN LIFE 77, 96-97 (Susan Mendus ed., 1999).

111. *Id.*

112. *Id.*

113. Claire Elise Katz, *Levinas—Between Philosophy and Rhetoric: The “Teaching” of Levinas’s Scriptural References*, 38 PHIL. & RHETORIC 159, 166 (2005).

narcissist because “Only a narcissistic blindness can bring someone to even gracefully kill a brother since he is not ‘me,’ therefore less sacrosanct, ‘less human’ than one is oneself.”¹¹⁴ As Feced in Argentina, Cain could not see the face of his brother Abel. Violence consists in “ignoring the face of a being, avoiding the gaze, and catching sight of an angle whereby the no inscribed on a face by the very fact that it is a face becomes a hostile or submissive force.”¹¹⁵ Feced’s representation of the disappeared as lacking humanity follows Carl Schmidt’s references to the Cain and Abel story. Schmidt uses the biblical story to justify his idea of the inevitability of hostility in politics and the definition of the enemy as something which can be annihilated.¹¹⁶ The majority of people need to be anesthetized against their elementary sensitivity to the other’s suffering.¹¹⁷ In order to justify “their ruthless exercise of power,” not only do they have to “elevate their own role into an instrument of the Absolute, but they also had to demonize their opponents, to portray them as corruption and decadence personified.” Such demonization plays a “precise strategic function:” it justifies the abusers doing whatever they wanted, “since, against such an enemy . . . everything is permitted.”¹¹⁸ That is why Tortolo used the idea that the officers who killed and perpetrated disappearances were the righteous Abel.

Both in Argentina and globally, enforced disappearances are described as a repressive tool that relies upon or accomplishes the dehumanization of the victims and sometimes of the perpetrators as well. For instance, in Argentina, the Chief of the Buenos Aires Police during the dictatorship, General Ramon Camps, said that the disappeared are not persons, “but subversives, terrorists or pacifists.”¹¹⁹ The New York Times asserted that the disappearances in Argentina were a “clear effort to dehumanize the prisoners.”¹²⁰ Meanwhile, on the first anniversary of the coup, Argentine journalist and writer Rodolfo Walsh wrote in an open letter to the military junta that “the original objective of extracting information through the use of torture is subordinated in the perverted minds of those who administer it to the need to utterly destroy their victims, depriving them of all human dignity, which both the torturers

114. ANDRÉ LACOCQUE, *ONSLAUGHT AGAINST INNOCENCE: CAIN, ABEL, AND THE YAHWIST* 102 (2008).

115. EMMANUEL LEVINAS, *COLLECTED PHILOSOPHICAL PAPERS* 19 (1987).

116. Jean-Claude Monod, *Hostility, Politics, Brotherhood: Abel and Cain as Seen by Carl Schmitt and Jacques Derrida*, in *LANGUAGE, IDEOLOGY, AND THE HUMAN: NEW INTERVENTIONS* 95 (1st ed., Sanja Bahun & Dušan Radunović eds., 2012).

117. SLAVOJ ŽIŽEK & BORIS GUNJEVIĆ, *GOD IN PAIN: INVERSIONS OF APOCALYPSE* 45 (Ellen Elias-Bursac, trans., 2012).

118. *Id.* at 47.

119. *Cited by* MARTÍN ANDERSEN, *LA POLICÍA* 268 (2001) (No desaparecieron personas, sino subversivos, terroristas o pacifistas.).

120. Paul Heath Hoeffel & Juan Montalvo, *Missing or Dead in Argentina*, *N.Y. TIMES* (Oct. 21, 1979), <https://www.nytimes.com/1979/10/21/archives/missing-or-dead-in-argentina-since-the-military-took-over-the.html>.

and you have already lost.”¹²¹ The concealment of the bodies, the denial of the victims’ names, the depersonalization during the time of detention, and the attempt to “break” their last physical, mental, and moral resistance were done in “the search to dehumanize and degrade the victims.”¹²² “It is hard to think of any carefully planned practice that could so perfectly encapsulate the capacity for human beings in power to debase themselves and dehumanize their victims.”¹²³ The United Nations have called enforced disappearances a “form of dehumanization.”¹²⁴ The Council of Europe described enforced disappearances as “a degrading and dehumanizing practice for the victims.”¹²⁵ Similarly, some of the sages had explained that Cain’s mark was a horn. As such, some argue that Cain’s identity has crossed the no-man’s land between man and animal/prey losing his own humanity.¹²⁶

In certain circumstances, such as those that took place in Argentina,¹²⁷ enforced disappearances constitute crimes against humanity.¹²⁸ “Crimes against humanity” “suggests offenses that aggrieve not only the victims and their own communities, but all human beings, regardless of their community.”¹²⁹ In this sense, crimes against humanity relate to Cain and Abel’s story, understood as a fratricide with a collective impact and responsibility. Wiesel calls the killing of Abel the first genocide. Alternatively, crimes against humanity “suggests that these offenses cut deep, violating the core humanity that we all share and that distinguishes us from other natural beings.”¹³⁰ By defining enforced disappearances as crimes against humanity, many appear to

-
121. We are using the quote included in David Streitfeld, *Haunted by the Past*, WASH. POST (Mar. 5, 1995), <https://www.washingtonpost.com/archive/entertainment/books/1995/03/05/haunted-by-the-past/0407ece5-37a4-491b-9039-8ced0559d406/>. The full letter in English and Spanish is reprinted in Rodolfo Walsh, *Open Letter from a Writer to the Military Junta* (Bilingual edition English/Spanish 1977), http://www.jus.gob.ar/media/2940455/carta_rw_ingles-espa_ol_web.pdf. On March 25, 1977, the day after posting the first copies of his “Open Letter,” Walsh was kidnapped by a commando group of the Argentine Navy. He remains disappeared since then.
 122. CES-DAIA, INFORME SOBRE LA SITUACIÓN DE LOS DETENIDOS-DESAPARECIDOS JUDÍOS DURANTE EL GENOCIDIO PERPETRADO EN ARGENTINA 305 (2000).
 123. Paul Seils, *Forced Disappearances are Crimes Against Humanity That Can’t be Justified*, INT’L CENTER FOR TRANSITIONAL JUSTICE (ICTJ) (Sept. 4, 2012), <https://www.ictj.org/news/forced-disappearances-are-crimes-against-humanity-can%E2%80%99t-be-justified>.
 124. United Nations, *International Day of the Victims of Enforced Disappearances, 30 August* (n.d.), <https://www.un.org/en/observances/victims-enforced-disappearance>.
 125. COUNCIL OF EUROPE (CoE), SECRET DETENTIONS AND UNLAWFUL INTER-STATE TRANSFERS OF DETAINEES IN EUROPE 45 (2008).
 126. Rabbi David Fohrman, *The Death of Cain, The World’s First Murder, Epilogue* (May 8, 2009), <https://www.aish.com/jl/b/eb/ca/48950551.html>.
 127. Pablo F. Parenti, *The Prosecution of International Crimes in Argentina*, 10 INT’L CRIM. L. REV. 491 (2010).
 128. Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, U.N. Doc. A/HRC/16/48, ¶ 39 (Jan. 26, 2011).
 129. David Luban, *A Theory of Crimes Against Humanity*, 29 YALE J. INT’L L. 85 (2004).
 130. *Id.*

be referring to a crime “against the human status”¹³¹ equating “humanity as humanness.”¹³² Crimes against humanity are denials of humanity in general, seeking to dehumanize their victims.¹³³ Crimes against humanity have a third primary meaning as well, namely “the merciless, ruthless, cold-blooded aspects of the crimes... the absence of compassion, of humaneness.”¹³⁴ Cain (the perpetrator) rather than Abel (the victim) is the one deprived of his “humanness.”

The Torah offers a strong rejection of Feced’s and all the other positions denying the humanity, the brotherhood between the disappeared and the perpetrator. Cain needs to see Abel as his brother, as another human being, to assert his own power, exert violence over his brother, and achieve his own desire for revenge, thereby letting his rage out. Cain cannot achieve these goals unless Abel remains his brother. The story demonstrates the capacity to see the humanity in the other, to see our brother that explains the violence. Cain killed Abel only because he was upset with his brother and sought to exercise control over another human being. Using the concept of dehumanization to characterize the victims and practice of enforced disappearances is “misleading, harmful, and worth resisting” as Walter Johnson argued in relation to the same use regarding enslaved people.¹³⁵ “This language of ‘dehumanization’ is misleading because slavery depended upon the human capacities of enslaved people.”¹³⁶ Similar to the disappeared,¹³⁷ enslaved people could be terrorized: their fears could make them controllable. And they could be tortured: beaten, starved, raped, humiliated, and degraded. “It is these last that are conventionally understood to be the most ‘inhuman’ of slaveholders’ actions and those that most ‘dehumanized’ enslaved people.”¹³⁸ Slaveholders, similarly to the repressors,¹³⁹ depended upon violated enslaved people to bear witness, to provide satisfaction, and to provide a living, human register of slaveholders’ power.¹⁴⁰ At the most, as Pilar Calveiro has said in relation to disappearances, “humanity enters into suspense.”¹⁴¹

While I do not embrace Johnson’s critique of the human rights approach,¹⁴² I agree with him about the risk of depriving both the victims and perpetra-

131. HANNAH ARENDT, *EICHMANN IN JERUSALEM: A REPORT ON THE BANALITY OF EVIL* 268 (rev. ed. 1965).

132. Luban, *supra* note 129, at 90.

133. Case of Goiburú et al. v. Paraguay, Merits, Reparations and Costs, Judgment of Sept. 22, 2006, Inter-Am. Ct. H.R. (Ser. C) No. 153. Opinion: Judge Cançado Trindade at 42.

134. Luban, *supra* note 129, at 87, n. 4.

135. Walter Johnson, *To Remake the World: Slavery, Racial Capitalism, and Justice* (Feb. 20, 2018), <http://bostonreview.net/forum/walter-johnson-to-remake-the-world>.

136. *Id.*

137. CALVEIRO, *supra* note 53, at 60.

138. Johnson, *supra* note 135.

139. CALVEIRO, *supra* note 53, at 44, et seq.

140. Johnson, *supra* note 135.

141. CALVEIRO, *supra* note 53, at 62.

142. See Roberto Gargarella, FORUM RESPONSE, *To Remake the World: Slavery, Racial Capitalism, and Justice*, THEORIES OF JUSTICE (Feb. 20, 2018), <http://bostonreview.net/forum/remake-world-slavery-racial-capitalism-and-justice/roberto-gargarella-theories-justice>.

tors of their agency and humanity. I do not see Cain nor the perpetrators of enforced disappearances as lacking any sense of humanity. To the contrary, it is precisely the very need to oppress, repress, and harm another human being that makes Cain and the perpetrators very human. The “Cain and Abel syndrome” requires us to see the humanity of the brothers and understand that Cain and Abel are both our brothers. That violence occurred within our family, our community, and within a fraternal relationship. At its root, the syndrome and disappearances are a social and “political problem and one which must therefore seek a political solution.”¹⁴³ It is not enough to exclusively approach it from a legal perspective, arguing that perpetrators lack humanness, and the victims were deprived of their humanity.

VI. CAIN, ABEL, BROTHERHOOD AND KINSHIP: DISAPPEARANCES AND THE RELATIVES OF THE DISAPPEARED

Cain and Abel is a story of kinship and brotherhood.¹⁴⁴ Similarly, there is no possibility of understanding enforced disappearances without considering the relatives.¹⁴⁵ Mothers and the Grandmothers of the Plaza de Mayo, the iconic human rights organizations combating enforced disappearances, represent a model of activism based on family ties in Argentina, Latin America, and throughout the world.¹⁴⁶ The now-grown children of the disappeared formed their own organization, *Hijos e Hijas por la Identidad y la Justicia contra el Olvido y el Silencio* (HIJOS, Daughters and Sons for Identity and Justice against Forgetting and Silence).¹⁴⁷

As their names reveal, these and similar groups¹⁴⁸ are particular models of activism organized around kinship categories and largely biologically defined affective ties.¹⁴⁹ Cain and Abel is both a fraternal and fratricidal story. In contrast, Mothers, Grandmothers, and HIJOS represent paradigmatic cases of privileged instances that communicate the critical role played by blood ties and family values in forming legitimate political representation and the significant place granted to the suffering of the victims.¹⁵⁰ The public rounds

143. Susan Mendus, *My Brother's Keeper: The Politics of Intolerance*, in *THE POLITICS OF TOLERATION IN MODERN LIFE*, *supra* 110, at 1, 2.

144. The Torah mentions the word brother seven times in the Cain and Abel section.

145. Noa Vaisman, *Kinship Knowledge and the State: The Case of Argentina's Adult "Living Disappeared,"* in *THE CAMBRIDGE HANDBOOK OF KINSHIP* 279 (Sandra Bamford ed., 2019).

146. JOSIF KOVRAS, *GRASSROOTS ACTIVISM AND THE EVOLUTION OF TRANSITIONAL JUSTICE: THE FAMILIES OF THE DISAPPEARED* (2017).

147. Susana Kaiser, *Escraches: Demonstrations, Communication and Political Memory in Post-Dictatorial Argentina*, 24 *MEDIA, CULTURE & SOC'Y* 499 (2002).

148. In Argentina, see for example the organization Familiares de Desaparecidos y Detenidos por Razones Políticas.

149. Ari Gandsman, *The Limits of Kinship Mobilizations and the (A)politics of Human Rights in Argentina*, 17 *J. LATIN AM. & CARIBBEAN ANTHROPOLOGY* 193 (2012).

150. Virginia Vecchioli, *Deserving victimhood: Kinship, Emotions and Morality in Contemporary Politics*, 15 *VIBRANT, VIRTUAL BRAZ. ANTHR* (2018), <https://doi.org/10.1590/1809-43412018v15n3d506>.

in Plaza de Mayo and the *escraches* carried out by the relatives could be interpreted as Abel's blood, crying out from the earth and forcing society to confront the plight of the disappeared. While in Cain, the family ties are used to bring more repudiation to his actions, in Argentina, the blood kinship is highlighted and politicized to generate legitimacy and universal sympathy for their actions.¹⁵¹ This political use of the concept of family was particularly important in Argentina, given that the ideologues of the dictatorship relied heavily on the idea of protecting the "traditional" Argentine family and arguing that the so-called "subversives" were trying to destroy the families' ties and the traditional Christian family values.¹⁵²

VII. CAIN AS A WANDERER AND ENFORCED DISAPPEARANCES

God punishes Cain, making him a wanderer, "neither fully alive nor fully dead."¹⁵³ We cannot compare Cain to the disappeared person; however, there is this same ambiguity, not knowing if the disappeared person is alive or dead.¹⁵⁴ As the dictator Jorge Rafael Videla cynically said regarding the disappeared in Argentina: "I will tell you the disappeared is something unknown, as long as he is disappeared he cannot have special treatment, because he has no entity. He is neither dead nor alive . . . he is a disappeared."¹⁵⁵ That uncertainty of fate produces an "ambiguous loss."¹⁵⁶

The disappeared becomes a wanderer, exposed as Cain to be killed, a person placed in a situation of "bare life" using the expression of Giorgio Agamben.¹⁵⁷ Regarding enforced disappearances, the State has the power to produce bare life: a situation in which the person becomes exposed to death without any consequences for the perpetrator. One of the Argentine

151. MARGUERITE BOUVARD, *REVOLUTIONIZING MOTHERHOOD: THE MOTHERS OF THE PLAZA DE MAYO* (1994); RITA ARDITTI, *SEARCHING FOR LIFE: THE GRANDMOTHERS OF THE PLAZA DE MAYO AND THE DISAPPEARED CHILDREN OF ARGENTINA* (1999).

152. FEDERICO FINCHSTEIN, *THE IDEOLOGICAL ORIGINS OF THE DIRTY WAR: FASCISM, POPULISM, AND DICTATORSHIP IN TWENTIETH CENTURY ARGENTINA* 146 (2014).

153. ORNSTEIN, *supra* note 34, at 151.

154. Simon Robins, *Ambiguous Loss in a Non-Western Context: Families of the Disappeared in Postconflict Nepal*, 59 *FAM. REL.* 253 (2010).

155. José Ignacio López, *Videla y una Explicación Tenebrosa: "Ni Muerto, ni Vivo, Está Desaparecido,"* CLARÍN, Buenos Aires, (Dec. 14, 1979), <https://www.perfil.com/noticias/politica/videla-y-una-explicacion-tenebrosa-ni-muerto-ni-vivo-esta-desaparecido-20130517-0035.phtml> (translation by the author).

frente al desaparecido en tanto éste como tal, es una incógnita, mientras sea desaparecido no puede tener tratamiento especial, porque no tiene entidad. No está muerto ni vivo . . . está desaparecido"

156. Ambiguous loss is a theory around the idea of a "loss that remains unclear" elaborated by Pauline Boss. See PAULINE BOSS, *AMBIGUOUS LOSS* (1999); PAULINE BOSS, *LOSS, TRAUMA, AND RESILIENCE: THERAPEUTIC WORK WITH AMBIGUOUS LOSS* (2006). In the context of enforced disappearances see Robins, *supra* note 154.

157. *Cited by* SUSAN MARKS & ANDREW CLAPHAM, *INTERNATIONAL HUMAN RIGHTS LEXICON* 121 (2005).

torturers in a secret detention center said, “You are going to live as long as we want. Here we are God.”¹⁵⁸ However, if the State is the producer of bare life, of an “eternal wanderer,” we need to understand how political and legal arrangements created a system that allowed enforced disappearances (or anything else) to happen in the first place.¹⁵⁹ While the Bible is very clear about the public nature of Cain’s mark, the conversation and the killing in the field, remain a secret.

In the case of Argentina, Emilio Mignone and Augusto Conte, two of the founders of the Center for Legal and Social Studies (CELS), presented at the Paris Colloquium in 1981 “The doctrine of global parallelism.”¹⁶⁰ According to Mignone and Conte, the logic of the repressive action of the dictatorship was governed by two levels of normativity. The dictatorship endowed itself with almost unlimited public powers through exceptional legislation: death penalty, a general increase in sanctions and new criminal figures, centralization of all security forces under the control of the Armed Forces, the constitution of military tribunals of the nature of those that act in time of war, control over political parties, labor unions, and media.¹⁶¹ This level of repressive regulation was never used in a sustained manner. It functioned as reinsurance, a latent threat, “a public mark” that was never put into action, and some charade of a legal order.¹⁶² However, despite having an immense repressive arsenal, the Armed Forces chose to carry out their operations clandestinely. The secret measures, particularly the systematic practice of enforced disappearances, formed the second level of regulation and were applied without restrictions. This is what Conte and Mignone called “global parallelism,” the equivalence between two normative and factual orders, one public and the other secret.¹⁶³

Disappearances did not constitute marginal episodes or excesses of repression, nor are they the product of chaos, anarchy, or confusion. Disappearances were the central piece of the system of repression chosen and designed by the Argentine Armed Forces. In other words, there is a need to unpack the formal legal system as well as the informal, secret one in order to understand and challenge enforced disappearances.

158. CALVEIRO, *supra* note 53, at 54.

159. MARKS & CLAPHAM, *supra* note 157, at 122, 132.

160. Emilio Fermín Mignone & Augusto Conte, *El Caso Argentino: Desapariciones Forzadas Como Instrumento Básico y Generalizado de una Política: La doctrina del Paralelismo Global: Su Concepción y Aplicación: Necesidad de su Denuncia y Condena: Conclusiones y Recomendaciones* (Jan. 31-Feb. 1, 1981), https://www.cels.org.ar/common/documentos/Coloquio_Paris_parallelismoglobal.pdf.

161. See *Report on the Situation of Human Rights in Argentina*, Inter-Am. Comm’n H.R., OEA/Ser.LN/II.49, Doc. 19 corr.1 (1980).

162. Mignone & Conte, *supra* note 160.

163. *Id.*

Another possibility of linking the biblical idea of the eternal wanderer is to think about the Thursday marches of the Mothers and Grandmothers of Plaza de Mayo. Since 1977, every Thursday at 3:30 pm, the Mothers and Grandmothers of Plaza de Mayo walk around the *Pirámide de Mayo* in the center of the city of Buenos Aires.¹⁶⁴ As the dictatorship forbade gatherings in public spaces, the Mothers and Grandmothers would walk in circles in pairs.¹⁶⁵ The Mothers and Grandmothers, as eternal wanderers, continue marching. As the Guardian put it in 2017, “four decades on and 2,037 marches later, the mothers are still marching, though some of them must now use wheelchairs.”¹⁶⁶

Enforced disappearances constitute a continuous crime. As Borges put it, it “is the story of Cain that keeps killing Abel.”¹⁶⁷ Likewise, the Inter-American Court has considered that enforced disappearance is a crime that continues to exist until the whereabouts or fate of the disappeared person is established.¹⁶⁸ The relevant factors for the conclusion of an enforced disappearance is the establishment of the person’s whereabouts or the identification of their remains.¹⁶⁹ In the meantime, both the disappeared and their relatives, as well as the perpetrators are eternal wanderers.

VIII. CAIN, ABEL, AND MEMORY ON ENFORCED DISAPPEARANCES

“And thou shalt remember that thou wast a bondman in the land of Egypt, and HaShem thy God redeemed thee,” (Deut. 15:15) is a call to remember the disappeared. However, the biblical mandate is complex, full of ambiguity and multiplicity. Remembering past slavery requires a connection to the oppressed of the present. It is not a memory about simply remembering but about dealing with contemporary oppressions. It is a memory that raises sensitivity regarding the victim.¹⁷⁰

Additionally, it is a memory about resistance, redemption, and liberation—a past struggle to construct a better present and future. “We were slaves” and “we were liberated” is a call to remember resistance, the struggle against

164. BOUVARD, *supra* note 149.

165. DIANA TAYLOR, *DISAPPEARING ACTS: SPECTACLES OF GENDER AND NATIONALISM IN ARGENTINA’S DIRTY WAR* (1997).

166. Uki Goñi, *40 Years Later, The Mothers of Argentina’s “Disappeared” Refuse to be Silent*, THE GUARDIAN (Apr. 28, 2017), <https://www.theguardian.com/world/2017/apr/28/mothers-plaza-de-mayo-argentina-anniversary>.

167. Jorge Luis Borges, *Milonga de Dos Hermanos in OBRAS COMPLETAS* 955 (Emecé Editores, 1974) (“es la historia de Caín que sigue matando a Abel”).

168. Case of González Medina and Family v. Dominican Republic, Judgment of Feb. 27, 2012, Inter-Am. Ct. H.R., (Ser. C) No. 240, ¶ 50.

169. Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia, Judgment of September 1, 2010, Inter-Am. Ct. H.R., (Ser. C) No. 217, ¶ 59.

170. Israel-Vleeschhouwer, *supra* note 34, at 126.

the Egyptian Pharaoh, the tyrant, and the slaveholder. The call to remember “always,” “in each and every generation” is a mandate to recollect the past. However, it is not a frozen memory but an open one that is reinterpreted and negotiated in “each and every generation.” This is similar to the way that Argentina remembers enforced disappearances, not as static but as a continuous redefinition.¹⁷¹ Particularly, today there is a redefinition of the disappeared, moving from an image of an innocent victim to one of a victim due to their political militancy and stances.¹⁷² The clear distinction between the oppressive past and the resistance “have served to sculpt a much clearer distinction between democracy (good, human rights) and dictatorship (bad, abuse of human rights) than ever existed.”¹⁷³ Keeping alive the memory of the disappeared remains a continuous effort.¹⁷⁴ Argentina “stands out for the degree of visibility and sophistication of memory debates.”¹⁷⁵

Cain’s mark is also a reminder of the murder, the disappearance. By placing a mark on Cain, God keeps Abel’s memory by keeping him present on Cain’s forehead. It marks Cain as a murderer, serves as a reminder to other human beings of what he did, and reminds them to not kill him, presumably because he is already serving out a divinely imposed punishment.¹⁷⁶ At any rate, it is a permanent or at least lifelong reminder of what has happened.

Cain and Abel also bring another twist to the purpose of memory. The Torah tells us that Cain, carrying his mark, built cities. Those cities are built on the base of violence, on Cain’s mark as a reminder of the killing, and the mark as a sign of punishment, protection, and repentance. People who inhabit those cities are permanently reminded of their origin. Similarly, memory serves the purpose of reminding us how our society and cities were built based on the original violence, including enforced disappearances.

-
171. Ludmila Da Silva Catela, *Pasados en Conflictos: De Memorias Dominantes, Subterráneas y Denegadas*, in *PROBLEMAS DE HISTORIA RECIENTE DEL CONO SUR 99* (Ernesto Bohoslavsky, Marina Franco, Mariana Iglesias & Daniel Lvovich, eds., 2011).
 172. Rodrigo González Tizón, *¿Qué Harían hoy Nuestros Compañeros Detenidos-Desaparecidos? La Memoria de la Militancia Pasada en las Disputas Políticas del Presente Luego de la Crisis del 2001: El Caso de la Comisión de Homenaje a las Víctimas de El Vesubio y Puente 12*, in *CONSTRUIR SOBRE LOS ESCOMBROS: POLÍTICA Y CULTURA EN LA ARGENTINA POSCRISIS DEL 2001*, at 125-42 (2018).
 173. Robin Rodd, *Remembering Obedience and Dissent: Democratic Citizenship and Memorials to State Violence in Australia and Argentina*, in *MAPPING SOUTH-SOUTH CONNECTIONS: AUSTRALIA AND LATIN AMERICA, STUDIES OF THE AMERICAS 263* (Fernanda Penalzo & Sarah Walsh eds., 2019).
 174. ELIZABETH JELIN, *LOS TRABAJOS DE LA MEMORIA* (2002).
 175. KATHERINE HITE, *POLITICS AND THE ART OF COMMEMORATION: MEMORIALS TO STRUGGLE IN LATIN AMERICA AND SPAIN 96* (2012).
 176. Some have taken Cain’s mark as a sign that “criminals” may have some distinctive physical “marks” that could allow for their proper identification. See Paolo Marchetti, *The Mark of Cain: The Search of the Criminal man Between Medicine and Law*, *FORUM HISTORIAE IURIS* (n.d.), <https://forhistiur.net/legacy/vorlesung/1106marchetti.pdf>.

In his Abel and Cain short story, the famous Argentine writer Jorge Luis Borges makes Cain say: "to forget is to forgive."¹⁷⁷ However, in "Everness," Borges responds to himself: "One thing does not exist: Oblivion."¹⁷⁸ Borges' multiple references to Cain and Abel represent a broader dealing of the writer with Argentinean violent past and present.¹⁷⁹ As Borges himself wrote, "we Argentines (. . . due to the gravitation of our past) identify ourselves with . . . the death of the shepherd Abel at the hands of Cain, who was a farmer."¹⁸⁰

IX. CAIN THE WICKED, ABEL THE RIGHTEOUS, AND THE PERPETRATORS AND VICTIMS OF ENFORCED DISAPPEARANCES

Genesis presents another parallel with the treatment of disappearances in Argentina. Most interpretations represent Cain as evil and Abel as the expression of the innocent, righteous victim.¹⁸¹ Similarly, the predominant discourse in Argentina presents the disappeared as innocent victims.¹⁸² Of course, as Feced and Tortolo's quotes at the beginning demonstrated, the dictatorship and its supporters maintained the opposite.

However, many commentators have challenged the idea of a "completely innocent" Abel, arguing that the brothers were engaged in an active confrontation.¹⁸³ Abel was not blameless as he was ambitious and showed a great deal of vanity.¹⁸⁴ Although Cain is faulted for killing Abel, both brothers are criticized for their self-centered attitudes.¹⁸⁵ In these works, the commentators feature Cain's complaint to Abel that God took his and not Cain's offering. Abel then replies in a very self-righteous, self-serving tone. He says, "It is because the fruit of my deeds was better than yours and preferable to

177. Jorge Luis Borges, *Abel y Caín or Leyenda*, in *ELOGIO DE LA SOMBRA* (1969).

178. Jorge Luis Borges used the Cain and Abel story in many poems and stories, see for example *Everness* in *OBRA COMPLETA*, 927 (1974). See EDNA AIZENBERG, EDNA, *THE ALEPH WEAVER: BIBLICAL, KABBALISTIC AND JUDAIC ELEMENTS IN BORGES* (1985).

179. *Id.* at 100.

180. Jorge Luis Borges, *Historia de Jinetes* in *OBRA COMPLETA*, *supra* note 167, at 154 [(*Ya que los argentinos [por gravitación de nuestro pasado] nos identificamos con . . . la muerte del pastor de ovejas Abel a manos de Caín, que era labrador*) (since we Argentines (. . . because of the pull of our past) identify with the . . . the death of the sheep herder Abel at Cain's hands, who was a farmer.)]

181. BYRON, *supra* note 46, at ch. 6. On the representation of the human rights abuses, included enforced disappearances, committed by the Argentine dictatorship as evil, see CARLOS SANTIAGO NIÑO, *RADICAL EVIL ON TRIAL* (1996).

182. Emilio Crenzel, *Between the Voices of the State and the Human Rights Movement: Never Again and the Memories of the Disappeared in Argentina*, 44 *J. SOC. HIST.* 1063 (2011). Lucas Martín, *On Innocent Victims and Demons in Argentina (1983-1985)*, 3 *AFR. Y.B. RHETORIC* 65 (2012), <http://www.africanrhetoric.org>.

183. ORNSTEIN *supra* note 34, at 79.

184. See, e.g., Vermeulen, *supra* note 48, at 35-36; Joel Duman, *The Treatment of the Cain and Abel story in Midrash Tanhuma*, MOED (2007).

185. Zucker, *supra* note 66, at 14-15.

yours that my offering was accepted with favor.”¹⁸⁶ Abel never thought of bringing an offering until Cain did so; his only intention was to make his older brother look bad.¹⁸⁷

In Argentina, the “two-demon theory” (*teoría de los dos demonios*) similarly argues that before the dictatorship, the country was engulfed in a spiral of violence coming from the right and the left. That view was put forward in the prologue to the Argentine Truth Commission Report, written by author Ernesto Sabato points out the innocence of the victims: “The vast majority of them were innocent not only of any acts of terrorism, but even of belonging to the fighting units of the guerrilla organization.”¹⁸⁸ Similar to Abel’s picture, the emphasis on “innocence” with all its religious tones of martyrdom would become a defining feature of Argentina.¹⁸⁹ The *desaparecido* becomes an innocent victim of State terror, shaping a humanitarian narrative that favors the identification of the victims on the basis of their name, gender, and age rather than their political affiliations or on any discussion on previous use of violence on their part.¹⁹⁰ Similar to the Torah’s predominant interpretation of Abel, the absolute or pure innocence of the disappeared exposes the radical evil of the perpetrators.¹⁹¹

The rabbis’ interpretation is useful for the discussions in Argentina. Alleging the possible contribution of Abel to Cain’s anger in no way provides any moral or legal justification for the crime committed nor for reducing his culpability or punishment. It presents a more nuanced and human story. Equally, recognizing the historical context of political violence in Argentina does not in any way change the legal recognition of the disappeared as victims of human rights abuses nor provides any political, legal, social, or moral justification for enforced disappearances.

X. THE MARK OF CAIN AND ENFORCED DISAPPEARANCES

The mark of Cain is perplexing and has been, and is interpreted in numerous ways, many times contradictory and even used to justify oppression, racism,

186. *Id.* at 15.

187. *Id.* at 15-16.

188. NUNCA MÁS, *supra* note 9, Prologue. On reading Ernesto Sabato’s writing in light of the Cain and Abel story, see Alejandro Hermsilla Sánchez, *Teoría del incesto y la propiedad en “Sobre Héroes y Tumbas,”* REVISTA DE LITERATURA HISPANOAMERICANA, (2008); Alejandro Hermsilla Sánchez, *Influencias de Miguel de Unamuno en Ernesto Sábato y el Pensamiento Argentino*, 44 CUADERNOS CÁTEDRA MIGUEL DE UNAMUNO 81 (2007). Eduardo Barros-Grela, *Performatividad lúdica y Espacios de Género en Rayuela y el túnel* (2012), https://www.researchgate.net/publication/262090303_Performatividad_ludica_y_espacios_de_genero_en_Rayuela_y_el_tunel.

189. BAER & SZNAIDER, *supra* note 54, at 34-35.

190. CRENZEL, *LA HISTORIA POLÍTICA DEL NUNCA MÁS*, *supra* note 31, at 102.

191. BAER & SZNAIDER, *supra* note 54.

and violence.¹⁹² It could be interpreted that God placed the mark as a “token of forgiveness” given Cain’s sincere repentance when he acknowledged his sin (Genesis 4:13). Before the killing, God tells Cain “If thou doest well, shall it not be lifted up?” (Genesis 4:7). This passage provides another indication of the possibility of redemption even after doing wrong. In the context of enforced disappearances, it could be read as a call for information in possession of the perpetrators to diminish the suffering of the relatives. It may be an offer for a reduction of punishment.¹⁹³ International Law requires that enforced disappearances be punished “by appropriate penalties which take into account its extreme seriousness.”¹⁹⁴ The sanction could be mitigated if the person who committed the disappearance contributes to bringing the disappeared person forward alive or makes it possible to clarify cases of enforced disappearance or to identify the perpetrators.¹⁹⁵

Cain was also viewed as a type of utter perverseness, an offspring of Satan, a lawless rebel, whose words of repentance were insincere.¹⁹⁶ Because of that untruthful repentance, his punishment was of an extraordinary character and deserved to be marked.¹⁹⁷

The possible contradictory interpretations of the Torah text do not allow to make a clear case that Cain was repentant. In the case of Argentina, there are almost no individual repentance of perpetrators and very timid (although important) institutional recognition on the part of the Armed Forces of the human rights abuses committed during the dictatorship.¹⁹⁸

Regardless of the meaning of the mark, either as punishment or protection, it is a signal to society. Every person who sees the mark is reminded of what Cain did and what happened to Abel. It also brings attention to and questions what each person did while Cain was killing Abel. As the mark remains for seven generations, it shows that Abel’s “bloods” continue to cry out. Enforced disappearances are “prototypical continuous acts”¹⁹⁹ that remain while the fate or whereabouts of the person are not determined.

192. Nyasha Junior, *The Mark of Cain and White Violence*, 139 J. BIB. LIT. 661 (2020); Lewis M. Killian, *The Stigma of Race: Who Now Bears the Mark of Cain?*, 8 SYMBOLIC INTERACTION 1 (1985).

193. Paul Tewkesbury, *Rereading Cain, Abel, and Martin Luther King Jr in Charles Johnson’s Dreamer*, 34 LIT. & THEOLOGY 263 (2020).

194. Res. 61/177, *supra* note 29, art. 7.

195. *Id.*

196. See on Satan, Pirkei DeRabbi Eliezer, xxi; on lawless rebel, Midrash Lekach Tov, Genesis 4 and Targum Jerusalem, Genesis 4; on insincerity, Sanhedrin Talmud, 101b, <https://www.sefaria.org/texts>.

197. Kaufmann Kohler, W. H. Bennett & Louis Ginzberg, *Cain*, in JEWISH ENCYCLOPEDIA (1906).

198. The most important confession came from retired navy officer Adolfo Scilingo recognizing his participation in pushing live political dissidents out of airplanes. HORACIO VERBITSKY, *THE FLIGHT: CONFESSIONS OF AN ARGENTINE DIRTY WARRIOR* (1996). The Army admitted the “mistakes” committed during the dictatorship and apologized for them. See *For the First Time, Argentine Army Admits “Dirty War” Killings*, N.Y. TIMES (Apr. 26, 1995).

199. U.N. WGEID, General Comment on Enforced Disappearance as a Continuous Crime, U.N. Doc. A/HRC/16/48, at 38.1 (Jan. 26, 2011).

XI. THE SEVEN-FOLD GENERATIONS AND THE INTER-GENERATIONAL EFFECTS OF ENFORCED DISAPPEARANCES

The seven-fold punishment and mark also connect the biblical story to the plight of the disappeared. God urges man not to kill Cain, threatening seven-fold vengeance. It could represent the fact that enforced disappearance can generate transgenerational sequelae.²⁰⁰

Genesis describes, in great detail, Cain's offspring and descendants²⁰¹—to describe the importance of family and community. Abel's blood in plural (Gen 4:10) is understood to remind us of all the generations lost with the disappearance/killing of Abel. Cain and Abel are brothers, so Cain's offspring and descendants are also relatives of Abel, the victim. The harm is not limited to him but also to the generations to come. Thus, the Torah's call to consider all the harm produced to determine the proper punishment is also an invocation to take proactive upstanding action to address wrongdoing—for it is not on behalf of one, but many to come.

Similarly, for the International Convention, "victim" means "the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance."²⁰² The Inter-American Court of Human Rights has accepted a broad concept of family and next of kin in determining reparations for enforced disappearances.²⁰³

Despite the fact that Moni was my mother's cousin, I truly feel that she is my relative and personally feel that her disappearance harms my family and imposes a duty on me to seek truth and justice for her and our harm.

The seven generations also represent the necessary pass of time to deal with grave human rights abuses. In the transitional justice context, it has been argued that in countries in transition, characterized by a large number of crimes committed with the involvement of possibly several thousands of individuals and a massive number of victims, prosecuting and judging all of those responsible at the outset of a transition might be simply impossible.²⁰⁴

200. Case of Rochac Hernández et al. v. El Salvador. Merits, Reparations and Costs. Judgment of Oct. 14, 2014. I/A Court H.R. (Ser. C) No. 285 at 114. For some of the transgenerational memories and transformation in the activism of the relatives of the disappeared in Argentina. See LUCIANA CECILIA GUGLIELMO, MEMORIAS INTERGENERACIONALES DE LA DICTADURA: UN ESTUDIO SOBRE EL RECONOCIMIENTO DE LA DIMENSIÓN JUVENIL Y DE LA DIMENSIÓN POLÍTICA DE LOS HIJOS DESAPARECIDOS, EN NARRATIVAS BIOGRÁFICAS DE ABUELAS DE PLAZA DE MAYO (2012).

201. ZIZEK & GUNJEVIC, *supra* note 117, at 104 noted that "Judaism is the religion of genealogy, of the succession of generations."

202. Res. 61/177, *supra* note 29, art. 24.1.

203. Case of Trujillo-Oroza v. Bolivia. Reparations and Costs. Judgment of Feb. 27, 2002. Inter-Am. Ct. H.R., (Ser. C) No. 92, ¶ 57 (recognizing the extended concept of family); Rights and guarantees of children in the context of migration and/or in need of international protection. Advisory Opinion OC-21/14, Inter-Am. Ct. H.R., (Ser. A) No.21, 272 (Aug. 19, 2014) (recognizing that cousins are possible members of the extended family).

204. U.N. Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Pablo de Greiff, U.N. Doc. A/HRC/27/56 at 33 (2014).

It is not only that there are weak judiciaries but they mainly face credibility, capability and resource constraints.²⁰⁵ The conflict within which these crimes are committed could create difficulties in obtaining evidence at the outset of the conflict, and the expectations and needs of justice should be adapted accordingly.²⁰⁶

As states, non-state groups (such as rebel organizations), and individuals move beyond the conflict, they may be more inclined to provide information and evidence for war crimes prosecutions, either because they in time recognize that it is in their self-interest to do so, or because passions have sufficiently cooled to make cooperation possible. Accordingly, the passage of time can result in a more complete and truer picture of the circumstances of the alleged crime. It is for this reason that war crimes investigations can in many ways improve over time, and delay can in fact be a necessary component of achieving justice.²⁰⁷

For instance, in the case of Argentina, individuals and society in general changed over time through sparks of acknowledgment of the human rights abuses committed and new attitudes towards the victims as a result of the shifting political climate or personal experiences.²⁰⁸

XII. CAIN AND ABEL AND JUSTICE AND PUNISHMENT FOR ENFORCED DISAPPEARANCES

Cain is rapidly found, questioned, convicted, and punished by God.²⁰⁹ “Justice, justice shalt thou follow” (Deut. 16:20) provides the response to how we need to react regarding those who perpetrated enforced disappearances. It is not only that we need to pursue justice, but we should do it in a just manner. God questioned Cain, “Where is your brother Abel? . . . What have you done?” (Genesis 4:9-10). God knew the answers, so the teaching is that God did not punish Cain until God first questioned him.²¹⁰ The Cain and Abel story demonstrates an embryonic form of due process and the right to defense prior to the imposition of a penalty.²¹¹ Additionally, the degree of due process guarantees offered should act as a criterion to judge the legitimacy of international and domestic tribunals.²¹²

205. *Id.*

206. Jean Galbraith, *The Pace of International Criminal Justice*, 31 MICH. J. INT’L L., 79, 108 (2009).

207. Alex Whiting, *In International Criminal Prosecutions, Justice Delayed Can Be Justice Delivered*, 50 HARV. INT’L L.J. 323, 327-28 (2009).

208. Barbara Sutton & Kari Marie Norgaard, *Cultures of Denial: Avoiding Knowledge of State Violations of Human Rights in Argentina and the United States*, 28 SOCIOLOGICAL F. 495, 504 (2013).

209. Reza Barmaki, *Murder in Judaism: A Theological Perspective*, 7 INT’L J. PUB. THEOLOGY 157, 168 (2013).

210. COHN, *supra* note 70, at 191.

211. Clifford S. Fishman, *Old Testament Justice*, 51 CATH. U. L. REV. 405, 414 (2002).

212. David Luban, *Folktales of International Justice*, GEORGETOWN LAW FACULTY PUBLICATIONS AND OTHER WORKS 181, 185 (2004), <https://scholarship.law.georgetown.edu/facpub/527>.

Cain, as the Argentinian officials, moved from a position of absolute control by force of the destiny of Abel (and the disappeared) to one of extreme vulnerability and fragility (my punishment is too great to bear). Cain and the military officers do not want to appear as perpetrators nor bear the proper punishment.²¹³ Thus, in Argentina, they insisted that they did nothing wrong and that they should not be punished.²¹⁴ It is important to note that even when under military pressure, the Argentine Congress passed the impunity laws, the legislation did not justify, in any way, the actions of the dictatorship.

In the Torah, God is a bystander of the killing who becomes the prosecutor and the judge. God summons Cain, questions him, indicts him, weighs evidence against him, considers his pleas and arguments, and finally imposes the penalty. In the case of enforced disappearances in Argentina, most of the judges and prosecutors involved in dealing with cases of enforced disappearances were at least bystanders, if not accomplices, during the dictatorship. For instance, one of the six judges who convicted members of the military leaders in the famous Junta Trial was Jorge Torlasco.²¹⁵ He served as a judge during the dictatorship.²¹⁶ In such a capacity, he intervened in the habeas corpus filed on behalf of my cousin Moni.²¹⁷ Sadly, and despite some attempts by judge Torlasco, the habeas corpus was unsuccessful in protecting Moni.²¹⁸

The story of Cain and Abel presents the image of a just and merciful God when imposing the penalty on Cain. This is one of the earliest biblical accounts of God's response to human suffering and violence and God's mercy in the face of injustice. Although death is unambiguously the penalty for murder (see Genesis 9:5–6; Deut. 19:11–13), Cain is not punished by death. "This cannot be attributed to judicial incompetence. Abel's blood cries out for justice to God, the Bible's pre-eminent Judge, and yet God banished Cain when he should rightfully have applied the death sentence."²¹⁹ God

-
213. Gerrie F. Snyman, *Cain and Vulnerability: The Reception of Cain in Genesis Rabbah 22 and Targum Onkelos, Targum Neofiti and Targum Pseudo-Jonathan*, 29 OLD TESTAMENT ESSAYS 601 (2016), https://www.researchgate.net/publication/313328577_Cain_and_Vulnerability_The_Reception_of_Cain_in_Genesis_Rabbah_22_and_Targum_Onkelos_Targum_Neofiti_and_Targum_Pseudo-Jonathan.
214. See *Documento Final de la Junta Militar sobre la guerra contra la subversion y el terrorismo* (Apr. 1983); Self Amnesty Law 22.921 (BOLETÍN OFICIAL DE LA REPÚBLICA ARGENTINA) (Sept. 22, 1983).
215. For different views of the Junta Trial by the architects of the Argentine Transitional framework see CARLOS SANTIAGO NINO, *RADICAL EVIL ON TRIAL*, (1996); JAIME MALAMUD-GOTI, *GAME WITHOUT END: STATE TERROR AND THE POLITICS OF JUSTICE* (1996). For a perspective contemporary view of the trial by human rights activists, see Emilio Fermin Mignone, Cynthia L. Estlund, & Samuel Issacharoff, *Dictatorship on Trial: Prosecution of Human Rights Violations in Argentina*, 10 YALE J. INT'L L. 118 (1984).
216. PEPE ELIASCHEV, *LOS HOMBRES DEL JUICIO* (2d ed., 2011).
217. Parts of the habeas corpus are included in the file of the Inter-American Commission on Human Rights and in possession of the author.
218. In fact, the habeas corpus was completely ineffective to protect the disappeared during the dictatorship. REPORT ON THE SITUATION OF HUMAN RIGHTS IN ARGENTINA, *supra* note 36, at 122–24.
219. Diana Lipton, *Legal Analogy in Deuteronomy and Fratricide in the Field*, in *STUDIES ON THE TEXT AND VERSIONS OF THE HEBREW BIBLE IN HONOUR OF ROBERT GORDON*, 21, 32 (2011).

had mercy on him and pardoned his life. By listening to Cain's plea, God showed that not even a murderer loses his personal worth. Cain pleading to a lesser charge after having murdered Abel is the first plea bargain recorded in history.²²⁰

This requires thinking harder on the meaning of making "enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness,"²²¹ the prohibition of amnesties, pardons, and other similar measures in cases of enforced disappearances, the applicability of statutes of limitations, the possibility of reduced or suspended sentences, lenient conditions of confinement, and other types of alternative sentences.²²² In Argentina, beyond the classical discussion on amnesties and pardons, the current debates are around the possibility of house arrest,²²³ the applicability of certain benefits on how to count the years spent on preventive detention,²²⁴ the possibility of releasing a convicted officer on probation²²⁵ or the detention of convicted military officers in military rather than civil prisons.²²⁶ Rather than showing a merciful approach as in Genesis, many human rights activists and relatives have requested the most stringent criminal approach. While it is true that the Argentine justice process was and is extremely careful in protecting the due process guarantees of those accused of committing enforced disappearances,²²⁷ it is equally true that in all the debates, the most prominent human rights organizations have taken the harshest approach against the defendant or the convicted person.²²⁸ This

220. D.J. Newman, *Reshape the Deal*, 9 TRIAL 11 (1973), cited by Albert Alschuler, *Plea Bargaining and Its History*, 79 COL. L. REV. 1, 2 (1979).

221. Res. 61/177, *supra* note 29, art. 7.

222. For all the extensive literature on this topic, see particularly Naomi Roht-Arriaza, *After Amnesties are Gone: Latin American National Courts and the new Contours of the Fight Against Impunity*, 37 HUM. RTS. Q., 342 (2015); see *Case of Rochela Massacre v. Colombia*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 163 (May 11, 2007) ¶ 196; U.N. Report of the Working Group on Enforced or Involuntary Disappearances Addendum Mission to Chile, U.N. Doc. A/HRC/22/45/Add.1, at 28-32; Inter-Am. Ct. H.R., *Case of Barrios Altos and of La Cantuta v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights (May 30, 2018).

223. See, e.g. *We Reject the Attempt to Benefit Those Convicted of Crimes Against Humanity With House Arrest on the Pretext of Prison Overpopulation*, CELS (Mar. 7, 2018), <https://www.cels.org.ar/web/en/2018/03/repudiamos-el-intento-de-beneficiar-a-los-genocidas-con-domiciliarias-con-el-pretecto-de-la-superpoblacion-carcelaria/>.

224. See *Supreme Court Rules the "2 for 1" Benefit is not Applicable to Crimes Against Humanity*, CELS (Dec. 5 2018), <https://www.cels.org.ar/web/en/2018/12/corte-suprema-de-justicia-de-la-nacion-no-es-aplicable-el-2x1-para-delitos-de-lesa-humanidad/>.

225. *Tigre Acosta: Pedimos que no se le Otorgue la Libertad Condicional*, CELS (Sept. 9, 2019), <https://www.cels.org.ar/web/2019/09/tigre-acosta-pedimos-que-no-se-le-otorque-la-libertad-condiciones/>.

226. Gastón Chillier, *Las Unidades Militares Como Cárceles*, Página 12 (n.d.), <https://www.pagina12.com.ar/diario/elpais/subnotas/122412-39108-2009-03-31.html>.

227. CELS, *Sobre el Proceso de Memoria, Verdad y Justicia*, <https://www.cels.org.ar/web/2014/12/sobre-el-proceso-de-memoria-verdad-y-justicia/>.

228. See notes 220-224.

approach shared by human rights groups globally has brought criticisms for what is perceived as a punitive approach.²²⁹

Recognizing terror and violence as cultural and political rather than in terms of criminal accountability between the criminal and the victim creates a more nuanced and ambivalent view of the past and the responsibilities of the present. However, Argentina's approach has strengthened binary oppositions between good and evil, victim and perpetrator, and democracy and dictatorship, which occlude questions of complicity and consent.²³⁰ In Cain and Abel's story, this binary approach is represented by the image of Abel as the righteous and Cain as the wicked. However, the Torah brings many more characters to the plot. Adam and Eve (the relatives) appear later in the chapter. God (the judge) is a permanent presence. The seven generations (the society) should remember and see Cain. The cities built by Cain represent that societies are built based on past oppression. Interpreted in this way, we need to expand the conception, approach, and understanding of enforced disappearance to go beyond the victims (the disappeared and the relatives), and the perpetrators. It is essential to focus not only on the victims, but also focus on how and why they were disappeared, how the repression was organized, carried out, maintained, and legitimized. Who benefited from the repression, who supported the disappearances, and how did they provide support?

One of Cain's seventh-generation descendants is apparently murdered. While there are several potential interpretations, certainly it is possible to understand that justice plays out over time. Perhaps it represents the painstaking process required for justice to commence or to be achieved,²³¹ especially as the families of the disappeared not only transmit the memory and suffering through generations but also that they must wait "seven generations" before they finally receive justice. The message is one of hope, that justice sooner or later will be achieved and that families should never give up in their pursuit of justice.²³²

-
229. EZEQUIEL MALARINO, ACTIVISMO JUDICIAL, PUNITIVIZACIÓN Y NACIONALIZACIÓN: TENDENCIAS ANTIDEMOCRÁTICAS Y ANTLIBERALES DE LA CORTE INTERAMERICANA DE DERECHOS HUMANOS, in SISTEMA INTERAMERICANO DE PROTECCIÓN DE LOS DERECHOS HUMANOS 25, 46 (Gisela Elsner et al. eds., 2009); Fernando Felipe Basch, *The Doctrine of the Inter-American Court of Human Rights Regarding States' Duty to Punish Human Rights Violations and Its Dangers*, 23 AM. U. INT'L L. REV. 195, 213–21 (2007); Daniel Pastor, *La Deriva Neopunitivista de Organismos y Activistas como Causa del Desprestigio Actual de los Derechos Humanos*, 1 NUEVA DOCTRINA PENAL 73, 73–75 (2005); Karen Engle, *Anti-Impunity and the Turn to Criminal Law in Human Rights*, 100 CORNELL L. REV. 1069, 1079 (2015).
230. DAVID SHEININ, CONSENT OF THE DAMNED: ORDINARY ARGENTINIANS IN THE DIRTY WAR 10 (2013).
231. For Argentina, see, e.g., Laurel E. Fletcher, Harvey M. Weinstein & Jamie Rowen, *Context, Timing and the Dynamics of Transitional Justice: A Historical Perspective*, 31 HUM. RTS. Q. 163 (2009).
232. See for instance, Par Engstrom & Gabriel Pereira, *From Amnesty to Accountability: The Ebbs and Flows in the Search for Justice in Argentina*, in AMNESTY IN THE AGE OF HUMAN RIGHTS ACCOUNTABILITY: COMPARATIVE AND INTERNATIONAL PERSPECTIVES (Leigh A. Payne & Francesca Lessa eds., 2012), <https://ssrn.com/abstract=2013349>.

XIII. AYEKA (WHERE ARE YOU?), HINENI (HERE, I AM), AND ENFORCED DISAPPEARANCES

Ayeka, where are you? (Hebrew word/phrase אַיֶּקָא), the very first question in the Torah could be read literally as where are you physically? This appears to be the use in Argentina, when the relatives of disappeared persons held signs asking, Cain, where is your brother? The question refers to where the disappeared persons are physically.

However, there is another profound meaning of the *Ayeka*, where are you, question. Rashi's commentary connects the Cain and Abel story with the previous Genesis chapter when God asks Adam, "Where are you?" Rashi explains in both instances that God knew where Cain and Adam were. Rashi adds that God knew where Adam was but wanted to enter into a conversation rather than suddenly punish him.²³³ Similarly, God asked Cain, "where is your brother?" God wanted to give them the possibility to repent and assume responsibility prior to the imposition of proper punishment. Rashi explains that God is asking, "Where are you in this moment, what are you doing, and where are you going in this life?" (Rashi commentary on Genesis 3:9) Adam and Cain argue that they were afraid or that they did not know the answer (Genesis 3:10 and 4:9).

Ayeka is asked several more times. Those later questions are answered with a clear "*Hineni*" "Here am I." In contrast to Adam and Cain, Abraham's answer to God's directive to sacrifice his son Isaac is: "Here am I"—*Hineni* (Genesis 22:1). On the trek up the mountain, Isaac also called to his father, and Abraham responded: "*Hineni*"—"Here am I, my son." (Genesis 22:7). Rashi explains that *Hineni* is the "reply of the pious. It is an expression of humility and an expression of readiness."²³⁴ (Rashi) *Hineni* is also repeated by Jacob, Joseph, Esau, Moses at Mount Sinai, by Samuel three times, Isaiah, and by God. (Genesis 31:11 and 46:2; 27:1; Exodus 3:4; 1 Samuel 3:4-6, Isaiah 6:8; Isaiah 58:9 respectively.)²³⁵ Rashi considers that *Hineni* is "a language of humility and alacrity, immediately responsive" to a command.²³⁶

In all these instances, the *Hineni* is a full personal and spiritual response that conveys readiness to assume responsibility and act upon that responsibility. Equally, *Hineni* responds "yes" to the "Am I my Brother's keeper" question, as it requires assuming responsibility for everything and everybody.²³⁷ Philosopher Emmanuel Levinas explains that *Hineni* expresses the recognition

233. Rashi references Midrash Bereshit, Rabbah as the source of this idea.

234. Rashi Commentary on Genesis 22:1, https://www.sefaria.org/Rashi_on_Genesis.22.1.2?lang=bi&with=all&lang2=en.

235. See Norman J. Cohen, *HINEINI IN OUR LIVES: LEARNING HOW TO RESPOND TO OTHERS THROUGH 14 BIBLICAL TEXTS & PERSONAL STORIES* (2005).

236. Rashi Commentary, *supra* note 234, Genesis 37:13.

237. David Goodman & Scott Grover, *Hineni and Transference: The Remembering and Forgetting of the Other*, 56 *PASTORAL PSYCH.* 561 (2008).

that we are not alone, that we need to answer for everything and for everyone, and acknowledge our responsibility to others.²³⁸ According to Levinas, *Hineni* is the “obligation to make ourselves available to the neediness (and especially the suffering) of the other person.”²³⁹ For Levinas, seeing the other is already an obligation toward him. To hear a voice speaking to you is ipso facto to accept obligation to the one speaking.²⁴⁰ *Hineni* speaks to a way of seeing ourselves vis-a-vis others and the world at large. In the words of Rabbi Shmuly Yankowitz: “The fundamental commitment of being a Jew is to answer the question, ‘Ayeka’ (where are you?), with ‘Hineni’ (here I am), affirming a sense of responsibility and obligation to the other.”²⁴¹ Reading Cain’s question about being his brother’s keeper from the perspective of *Hineni* “must cause the reader to scream: ‘Of course you are!’”²⁴²

The international human rights community could be questioned as to whether it answered to the plight of the disappeared with a clear *Hineni*. Abel’s blood crying out is and should not be in vain.²⁴³ Did the international community do everything that it could to protect the disappeared in a way like what the Torah requires that whoever is in a position to save a human life should do so (Lev. 19:16)?

We need to hear the voice. In one of the first international meetings on enforced disappearances, the Argentine writer Julio Cortazar made the same connection between *Ayeka* and *Hineni* on disappearances. He said that “the invisible presence of thousands and thousands of disappeared precedes and exceeds and continues all the intellectual work that we can carry out... Here, in this room where they are not, where they are evoked as a reason for work, here we must feel them.” The disappeared are a “perceptible . . . innumerable crowd gathered in a silent testimony, in an implacable accusation.”²⁴⁴

As Rabbi Marshal Meyer has said

I have to answer a question from the Bible: Am I my brother’s keeper? When God asks him what happened to his brother Abel, Cain, the murderer of his brother, yells: Am I my brother’s guardian? It is for each generation to answer yes. Obviously, the answer from Argentina between 76 and 83 was I am not my brother’s guardian. My challenge is to try to get more and more people to shout: Yes, I am my brother’s keeper. If all Argentines had shouted in ‘76, if we

238. See, e.g., EMMANUEL LEVINAS, *OTHERWISE THAN BEING, OR BEYOND ESSENCE* 11, 114, 142 (1998).

239. HILARY PUTNAM, *JEWISH PHILOSOPHY AS A GUIDE TO LIFE: ROSENZWEIG, BUBER, LEVINAS, WITTGENSTEIN* 74 (2008).

240. EMMANUEL LEVINAS, *NINE TALMUDIC READINGS* 47-48 (Annette Aronowicz trans., 1994) .

241. Rabbi Lauren Grabelle Herrmann, *From Ayeka to Hineni: Showing Up & Taking Responsibility in a Broken World*, MEDIUM (Sept. 29, 2020), <https://rabbilauren.medium.com/from-ayeka-to-hineni-showing-up-in-a-broken-world-273c239e3db7>.

242. Theodore Y. Blumoff, *An Essay on Liberalism and Public Theology*, 14 J. L. & RELIGION 229, 281 (1999-2000).

243. Craig, *supra* note 38, at 125.

244. Julio Cortázar, *Coloquio de París*, (Centro de Estudios Legales y Sociales, Jan. 1981), <https://www.cels.org.ar/common/documentos/>; Monod, *supra* note 116, at 95-112.

had all raised our voices, if we had all gone on hunger strikes—as some people did,—if we had all shouted enough! If rather than having kept quiet we have answered yes, we are guardians of our brothers!, all this horror would never have happened.²⁴⁵

This collective vision makes it much more nuanced and problematizes the simple metaphor of the human rights movement as a triage: victim, savage, and savior as developed by Makau Mutua.²⁴⁶ Mutua argues that the “grand narrative of human rights contains a subtext that depicts an epochal contest pitting savages, on the one hand, against victims and saviors, on the other.”²⁴⁷ However, taking his call for a more reflective and critical view of human rights work, Cain and Abel’s story allows us to see that this narrative is quite incomplete and there are often not clearly defined categories of savages, victims, or saviors. While the story is very clear that Cain is the killer and Abel is murdered, the idea of God as the savior is much more problematic. As we said, rabbis wonder why God did not save Abel. Later, God, who failed to save Abel, becomes the prosecutor and judge. In enforced disappearances, the State appears to play Cain’s role as the perpetrator, God’s role as a bystander who fails to protect, and the savior that oversees guaranteeing investigation, punishment, truth, and reparation.

On Yom Kippur, Jews confess sins in the plural and aim to take responsibility for the sins of omission and commission of themselves as well as their community and the larger society. It is a plural *Hineni*, *Hinenu*. The prayer *Ashamnu*, literally starts with “we have trespassed” or “we are guilty.” Each line of the other main confession, *Al Het* begins: “For the sin we have sinned before Thee” and asks God to “forgive us, pardon us, grant us atonement.” These confessions in the first-person plural are an expression of our individual and collective responsibility to humanity. A collective *Hineni*, a *Hinenu*.

Bringing together the concepts of the bystander, *Hineni*, *Tikkum Olam*, and *Ashamnu* requires thinking about the collective reaction to enforced disappearances. It questions how society and the international community reacted to enforced disappearances. It calls, in fact, to be an *upstander*, a person who stands up for their belief, even if they are alone or confronted with danger, disapproval, monetary expenses, time, emotion, and dire risks to their personal safety.²⁴⁸ Put in different words, “we need three more commandments, and they are these: thou shalt not be a perpetrator; thou shalt not be a victim; and thou shalt never, but never, be a bystander.”²⁴⁹ Or in

245. Cited by Fernando Camacho Padilla, *La Construcción Histórica de la Represión de Argentina y Chile: las Comisiones de la Verdad como Instrumentos de la Narración Oficial*, 7 *REVISTA DE HISTORIA IBEROAMERICANA* 35, 68 (2014).

246. Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 *HARV. INT’L L.J.* 201 (2001).

247. *Id.* at 201.

248. Martha Minow, *Upstanders, Whistle-Blowers, and Rescuers*, *UTAH L. REV.* 815 (2017).

249. Yehuda Bauer, *On the Holocaust and its Implications*, in *THE HOLOCAUST AND THE UNITED NATIONS OUTREACH PROGRAMME* 1, 7 (2009), https://www.un.org/sites/un2.un.org/files/dpj_i.pdf.

other words, to be an active bystander, that is “a person or persons (not directly involved as a target or perpetrator) to speak out about or to seek to engage others in responding (either directly or indirectly, immediately or at a later time)” against abuses.²⁵⁰

“The art of forgetting is an impossibility because any allusion represents a presence, even when it refers to an absence.”²⁵¹ It is remarkable that in most public demonstrations on behalf of the disappeared, their names or the number 30,000 are called, and the crowd responds with a loud *Presente*.²⁵² The disappeared are “Here.” One of the ways to translate *Presente* or *Here* is *Hineh*, the same root word as *Hineni*. *Hineh* represents the resistance to the disappearance from public memory, collective consciousness, and to the passage of time.²⁵³ This *Presente/Hineh* brings us back to the need to see and feel the presence of the disappeared, to see the other, in order to be able to articulate a proper response to their call. The disappeared, those “absent bodies” “gave up their materiality and individuality to become an active political and social body,” triggering stories, testimonies, and fundamentally social and political action.²⁵⁴

In fact, when in Argentina and other parts, the response to the name of the disappeared is *Presente*, *Hineh*, *Here*, we bring the idea of presence in all its possible meanings: physical proximity or various degrees of knowledge and awareness with the concomitant ability to rescue the victim or to ward off the danger.²⁵⁵

Hineni does not mean having any or all the answers or solutions. *Hineni* does not mean that things are uncomplicated. *Hineni* does not mean that we are confident in our ability to make an impact. Saying *Hineni* is a stance, a way of being in the world. It is listening, turning in, and turning toward. *Hineni* is a decision not to be indifferent.²⁵⁶ Judaism has always been a religion focused on creating norms of behavior rather than on creating dogma or philosophical creeds. Thus, discussion of human rights, such as enforced

250. Jacqueline K. Nelson, Kevin M. Dunn, & Yin Paradies, *Bystander Anti-Racism: A Review of the Literature*, 11 ANALYSES OF SOC. ISSUES & PUB. POL'Y, 263 (2011), <https://spssi.onlinelibrary.wiley.com/doi/full/10.1111/j.1530-2415.2011.01274.x>.

251. SCHALANSKY, *supra* note 14, at 15.

252. See, e.g., PRESENTES! ¡AHORA Y SIEMPRE! (PRESENT! NOW AND FOREVER!) (Cristina Sánchez & Aída Sarti eds., 2007); *Encuentro Memoria, Verdad y Justicia*, 1976 – 24 De Marzo – 2015, 30.000 Compañeros Detenidos Desaparecidos Presente!!! (Truth, Memory, and Justice Meeting, 1976-March 24-2015, 30,000 Companions Detained and Disappeared are Present!!!). March 24, 1976 was the day of the coup. Law 25.663 (2002) established March 24 as the National Day for Memory, Truth and Justice.

253. NATASHA ZARETSKY, ACTS OF REPAIR, JUSTICE, TRUTH, AND THE POLITICS OF MEMORY IN ARGENTINA 38 (2020).

254. Andrea Díaz Mattei, *The Disappeared and the Significant Re-Materialization of the Absent Body: Art and Social Activism*, in BODY BETWEEN MATERIALITY AND POWER: ESSAYS IN VISUAL STUDIES 13 (Nasheli Jimenez del Vial, ed., 2016).

255. Aaron Kirschenbaum, *The Bystander's Duty to Rescue in Jewish Law*, 8 J. REL. ETHICS 204, 220 (1980).

256. Lauren Grabelle Herrmann, *From Ayeka to Hineni: Showing Up & Taking Responsibility in a Broken World* (Sept. 29, 2020), <https://rabbilauren.medium.com/from-ayeka-to-hineni-showing-orwup-in-a-broken-world-273c239e3db7>.

disappearances, should deal with the concrete application to each specific situation rather than to the abstract and theoretical response.²⁵⁷ “Here I am. *Hineni*. Here I am. I am ready to speak up for our values at home and abroad. I am ready to do what needs to be done. The work may not be finished in a day, in a year, in a term, in a lifetime, but I’m ready to do my part.”²⁵⁸ For the Jews and for humanity, “history is an open-ended, undecided process in which we wander without any guarantee of the final result.”²⁵⁹

In Argentina and many other parts of the world, relatives deal with the same question of *Ayeka* and struggle with the same *Hineni*. While the Torah’s *Ayeka* and *Hineni* are personal questions and responses, the powerful message that they transmit allows us to extend their force to the Argentine society and the international community. Where do I/you/they stand? What is/was the right way to behave to confront disappearances? Am I/are you/they on the right direction? Have I/we/they acted correctly? How can I/we/they correct and overcome the failings and shortcomings? Of course, I do not pretend to argue that the *Ayeka* question is the same for the perpetrators as it is for society or the international community.

The *Ayeka* also applies to the Argentinian officials or security forces who perpetrated the disappearances. The Torah demonstrates that the *Ayeka* is posed as an opportunity to assume responsibility or repent. Sadly, most of those tried in Argentina for the disappearances refused to respond *Hineni*, to assume any responsibility, to provide any information of the fate and whereabouts of the disappeared, or to express any regret.²⁶⁰

XIV. CONCLUSION

Both the Cain and Abel story and enforced disappearance narratives are characterized by gaps, silences, and tragic unexplained actions prompting excruciating questions and an unending search for answers. Borges wrote “This bullet is old . . . In the dawn of time it was the stone that Cain hurled at Abel, and in the future it shall be many things that we cannot even imagine today, but that will be able to put an end to men and their wondrous,

257. HASS, *supra* note 41, at xiii.

258. Remarks by the President at the 71st General Assembly of the Union for Reform Judaism (Dec. 16, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/12/16/remarks-president-71st-general-assembly-union-reform-judaism>.

259. ZIZEK & GUNJEVIC, *supra* note 117, at 222.

260. Virginia Vecchioli & Eduardo Fioravanti, *Las Demandas de Memoria, Verdad y Justicia en el Testimonio Público de los Responsables del Terrorismo de Estado en Argentina*, 62 REVISTA DESACATOS 54 (2020), <https://desacatos.ciesas.edu.mx/index.php/Desacatos/article/view/2199/1504>. One of the few confessions is that of Alfredo Scilingo. See VERBITSKY, *supra* note 198.

fragile life.”²⁶¹ Cain and Abel and enforced disappearances are part of what Elizabeth Jelin calls the “great tale” (*el gran relato*) that coexists with “private memories.”²⁶² Like all narratives, these “great tales” are selective. Building a set of heroes involves overshadowing the action of others and highlighting certain traits as signs of heroism implies silencing others. Once these “great tales” or official canonical narratives have been established, they become the targets for attempts at reform, revisionism, and alternative narratives. Those “private memories” are part of the resistance against power, offering different narratives and meanings of the past, the present, and the future.²⁶³

The Cain and Abel story is as complex as the story of enforced disappearances.

Unpacking enforced disappearances while considering the biblical story allows for fresh readings of the binary approach to victims and perpetrators, questions the role of bystanders, challenges the traditional understanding of accountability limited to criminal responses, and creates a more nuanced approach to punishment. It also allows us to think critically about memory, the effectiveness of the international response to enforced disappearances, and the inter-generational effect of disappearances.

The biblical story of Cain and Abel has been read, interpreted, completed, retold, and given different meanings by Judaism, Islam, and Christianity. Similarly, the concept of enforced disappearance has traveled, been adapted, and adopted across borders, political contexts, cultures, countries, and times. While enforced disappearances as an international concern were born in the context of the dictatorships in the southern cone, particularly Argentina, today they are a global phenomenon that exist in a multiplicity of scenarios.

The question about Cain being “[his] brother’s keeper” highlights the irony in how the very individual or groups (i.e., Cain or security forces) who are meant to provide protection (i.e., to Abel or to Argentinians) are the very ones harming them (through killing or kidnapping). However, a closer reading of the biblical story shows a more complex picture. Rather than a binary play between brothers, there are three actors, Cain, Abel, and God. While most interpretations focus on the idea of Cain as his “brother’s keeper,” there are interpretations that assert that God is the keeper and bears responsibility for not protecting Abel. Cain questioning God for the divine responsibility is a reminder that those in charge, divine or otherwise, have

261. Jorge Luis Borges, *In Memoriam J. F. K.* in *OBRAS COMPLETAS*, *supra* note 167, at 853.

(Esta bala es antigua . . . En el alba del tiempo fue la piedra que Caín lanzó contra Abel y será muchas cosas que hoy ni siquiera imaginamos y que podrán concluir con los hombres y con su prodigioso y frágil destino).

(This bullet is old. . . . At the dawn of time it was the stone that Cain threw against Abel and it shall be many things that we cannot even imagine and it will be able to put an end to men and their wondrous, fragile life.)

262. JELIN, *supra* note 174, at 40-41.

263. *Id.*

a duty to protect and should take responsibility for harming humans or allowing people to be harmed and for failing to protect them. The keeper question and the mark of Cain are a call for society to confront itself. It is a reminder of what Cain did and what happened. What did society do? What did they know then versus what do they know now, and what did they do to prevent it and address it? As such, the Genesis story brings the role of the bystander to the forefront, including (particularly in Argentina) the role of civilians and businesses.

The insistence on brotherhood (repeated seven times in Genesis) serves to criticize the approach of depriving both victims and perpetrators of their agency and humanity. I do not see Cain nor the perpetrators of enforced disappearances as lacking any sense of humanity. To the contrary, it is precisely the very need to oppress, repress, and harm another human being that makes Cain and the perpetrators very human. The Cain and Abel story requires us to see the humanity of the brothers and understand that Cain and Abel are both our brothers. That violence occurred within our family, our community, and within a fraternal relationship. At its root, disappearances are a social and political problem which must therefore seek a political solution.

God's punishing Cain by making him a wanderer, neither fully alive nor fully dead connects to the same ambiguity of the disappeared not knowing if the disappeared person is alive or dead. There is also a possibility of understanding the disappeared as a wanderer, exposed as Cain to be killed, a person placed in a situation of "bare life" using the expression of Giorgio Agamben. Another possibility of linking the biblical idea of the eternal wanderer is to think about the Thursday marches of the Mothers and Grandmothers in the Plaza de Mayo demanding answers to the fate of their children. Enforced disappearances remain insoluble as a continuous crime until the whereabouts or fate of the disappeared person is established. In the meantime, both the disappeared and their relatives, as well as the perpetrators, are eternal wanderers.

Cain is rapidly found, questioned, convicted, and punished by God, providing insights on how to react regarding perpetrators of enforced disappearances. It is not only that we need to pursue justice, but we should do it in a just manner. Traditional discussions on criminal punishment, its severity, and the way penalties are enforced could benefit from a new reading of the biblical story.

By placing a mark on Cain's forehead, God keeps Abel present. It marks Cain as a murderer, serves as a reminder to other human beings of what he did, prevents them from killing him, presumably because he is already serving out a divinely imposed punishment. The Torah also tells that Cain, carrying his mark, built cities. Those cities are built based on violence, on Cain's mark as a reminder of the killing, and the mark as a sign of punishment, protection, and repentance. People who inhabit those cities are

permanently reminded of their origin. Similarly, memory serves the purpose of reminding us how our society and cities were built based on the original violence, including enforced disappearances. It could be interpreted that God placed the mark as a “token of forgiveness” given Cain’s sincere repentance when he acknowledged his sin and the possibility of redemption. In the case of enforced disappearance, a similar approach leads to the possibility of mitigating the penalty if the person who committed the disappearance helps to bring the disappeared person forward alive or makes it possible to clarify the crimes or to identify other perpetrators. The mark could also be a signal to the community. Every person who sees the mark is reminded of what Cain did and what happened to Abel. What was everyone doing while Cain killed Abel?

Most interpretations represent Cain as evil and Abel as the expression of the innocent, righteous victim. Similarly, the predominant discourse presents the disappeared as innocent victims. However, there is an alternative interpretation alleging the possible contribution of Abel to Cain’s anger. In no way does Abel’s attitude provide any moral or legal justification for the crime, nor does it reduce Cain’s culpability or punishment. It presents a more nuanced and human story. Equally, recognizing the historical context of political violence in Argentina does not in any way change the legal recognition of the disappeared as victims of human rights abuses, nor does it provide any political, legal, social, or moral justification for the enforced disappearances.

God’s question *Ayeka* (Where are you?) and the response *Hineni* (Here I am) connect them to the issue of enforced disappearances. It underscores the multiple facets of the question “Where?” and the multiple meanings of “Here,” from the physical and local to the moral and personal, and institutional responsibility in dealing with enforced disappearances. I have spent the last twenty-five years of my life trying to find an adequate answer to the questions: Where are the disappeared? What is the proper remedy for the disappearance? What is the proper punishment for those who perpetrated the crime? What are the rights of the relatives of those who disappeared? I study (and try to influence) how the international community responds to the *Ayeka*. Do the international human rights systems effectively say *Hineni*? I remain committed to providing a personal, familial, and legal response to *Ayeka* and understand (and hopefully influence) the meaning of an effective *Hineni*. As Abel in the Torah, as Cortázar reminded us, the voice of the disappeared continues to cry out. When God tells Cain that He can hear Abel’s cry, it is the Torah’s sign that we can and need to relate to the suffering of the victim.²⁶⁴ *Hineni* is our response. *Hineni* is the response to the voice of the disappeared.

264. NOVAK, *supra* note 68, at 120-21.