The Right not to be Subjected to Enforced Disappearance: Finding Nemo in the International Human Rights Regime

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Abstract

The right not to be subjected to enforced disappearance, introduced by the 2007 Convention on Disappearances poses theoretical and doctrinal questions to the established system of human rights protection. human rights system of protection. Although the legal affirmation of the right was long awaited, so far there is little attention to its systemic incorporation in the international human rights regime. This article attempts to categorize the right both on a taxonomic and on a content-based approach. It also explores the dignitarian and political aspects of the right, arguing that enforced disappearance is a severe violation of human dignity, and tests human rights subjectivity.

1. Introduction

The stipulation of the right not to be subjected to enforced disappearance in Article 1(1) of the 2007 United Nations Convention for the Protection of All Persons from Enforced Disappearance (hereinafter the Convention) is considered fairly a noteworthy step towards the effective completion of the international human rights regime (Donnelly, 1986). The right's alleged success rests mainly on two grounds; first, it is a definite legal response to the relevant state practices, and second it is sort of a formal atonement of the international community for the victims of enforced disappearances (the disappeared and their relatives). Yet, the fact that the right is not mentioned in any of the general universal human rights instruments (either the Universal Declaration of Human Rights – UDHR or the two Covenants, which are usually referred to as the "International Bill of Human Rights") raises interpretive issues regarding their intrinsic cohesion, and challenges the right's potential comprehensive integration in the current regime. In this respect, the belated conventional inclusion of the prohibition on disappearance has attracted critics who identify it as a "testimony to the inadequacy" of the existing positivism-centered human rights system (Boucher, 2009, pp.249-250).

Conversely, the absence of the right's reference, coupled with its systemic proximity to well established fundamental human rights (such as the right to life and the prohibition on torture) have long sustained the contention that the prohibition on disappearance does not constitute a distinct right, and further cast doubts on its normative character. This view is embraced by eminent scholars, including among others Theo van Boven (2010), for whom the right not to be subjected to enforced disappearance is an example of "the further elaboration of the normative scope of [core] human rights", and the Convention respectively does not "define [a] new right but re-define[s] and re-conceptualize[s] existing human rights in order to make them more explicit and more inclusive" (p.184). Following the same reasoning the states which were applying disappearance practices during the seventies and onwards, attempted to associate these considerations with the broader debate on the proliferation of human rights, with the view to maintain a low threshold on the international protection against enforced disappearance. However, enforced disappearances cannot fall within the proliferation - fragmentation human rights dilemma, which was addressed by the UN General Assembly during the mid-eighties, since this debate related almost exclusively to the so-called solidarity rights; that is, aspirations for the improvement of people's standard of living, which usually lacked strong moral underpinnings. From a theoretical perspective, human rights experts in support of a finite human rights list forewarned that the acknowledgment of rights lacking in solid moral values would redound to a destabilizing factor for the well-founded ones. Thereby, it has been asserted that if every demand was called a human right, then "the currency of our moral language [would become] debased" (Mulgan, 1968, p.20).

However, the late manifestation of the right against disappearance cannot not be attached to the proliferation dialectic; first, because the international community readily proclaimed during the last decades the existence of third generation rights whose scope is hitherto contested (Alston, 1984), and second, because it is directed against the core of

human existence. The inseparable bond between an enforced disappearance and the essence of human being is easy to conceive, taking into account that even reflections of a potential disappearance are enough to instigate horrifying feelings to any person who identifies himself as a potential victim (just like practices of torture or execution) (Waldron, 2010). Hence, its late integration is the outcome of political disinclination veiled under the argument of human rights' non-proliferation. In any case, all theoretical objections concerning the right's conceptual ambiguity and its complex character attenuated after the relevant UN reports (UN Doc E/CN.4/2004/59, 2004; UN Doc E/CN.4/2002/71, 2002), which affirmed the existing gaps in the victims' legal protection and attested the need for a separate prohibition on disappearance.

Overall, the existence of the right against enforced disappearance was not called into question during the Convention's drafting and its establishment was a unanimous decision. Therefore, Article 1 provides for a non-derogable right not to be subjected to enforced disappearance. The right's nature and dimensions have attracted little theoretical analysis until now, and they remain at most unexplored. In this regard, a thorough analysis of the right's special features as well as the demarcation of the good protected by it, are essential for its evaluation in the context of the international human rights regime.

2. The genetics of the right: Article 1(1)

The right not to be subjected to enforced disappearance is a negative right, a feature which is evident in the first instance by its syntax. The application of grammatical interpretation indicates that Article 1(1) introduces a general prohibition addressed to the Convention's parties not to apply the practice of enforced disappearances to all persons, either nationals or foreigners ("anyone"). Accordingly, the provision sets out an additional layer of protection of the private sphere, which may not be disrupted by state authorities. In other words, the individual (the subject of the right) shall claim that the government does not implement enforced disappearance practices against him, and the state has the correlative duty to refrain from such practices.

This pattern, where the pair "individual-claim" mirrors the pair "state-duty" refers directly to the Hohfeldian classification of human rights. More specifically, Hohfeld has identified four categories of human rights, the first of which is claim-rights. These are the rights which imply the existence of a subject (right-holder) and of at least one duty-bearer (either the state or other individuals); the right's protection depends on the duty-bearer's abstention from interfering within its field of protection (Hohfeld, 1926-1927). For Hohfeld, claim-rights are the only rights *stricto sensu*, because they entail clear duties (Brown, 1999). Claim-rights correlate to a "perfect [moral and legal] duty" (Kant, 1778, republished 2010, pp.39, 68) not to interfere with them. In this framework, the right against disappearance qualifies as a claim-right according to the Hohfeldian system, as individuals may raise their claim not to be forcefully disappeared vis-à-vis the pertinent governmental authorities.

Nevertheless, this analysis carries Hohfeld's judicial background and as such it applies only in strict judicial context. Therefore, it seems that in the Hohfeldian scheme, justiciability is the safest criterion in order to categorize claim-rights, which are eventually synonymous to enforceable rights. From this angle, Hohfeld's theory has little value for enforced disappearance, since it draws away from the heretofore judicial solutions, which are addressing practices of enforced disappearance in the absence of a corresponding legal right (that is, the accumulation of established rights' breaches). Accordingly, the existence of a claim-right passes through the positivist test and consequently a claim-right can only be a legal right; this juridical analytic view is also endorsed by Roscoe Pound who characterizes claim-rights as "significant legal institutions" (Pound, 1915, p.101). Thus, Hohfeld's explanatory theory may apply only to the Convention's member-states, or to those states which have expressly proclaimed the right not to be subjected to enforced disappearance at a constitutional level. Although this restrictive interpretation of the Hohfeldian theory lessens considerably its field of application, it does not minimize the classification's theoretical value, and the categorization of the right on disappearances among claim-rights.

Furthermore, it is not only Hohfeld's theoretical frame according to which the right not to be subjected to enforced disappearance should be placed at the hard core of human rights protection. The right's negative formulation in conjunction with the right-holder's absolute and categorical interest in creating a firewall against state authorities from performing disappearance practices against him should place it systemically among our most familiar civil liberties (Waldron, 1993), located at the heart of the first-generation rights (Vasak, 1977). Certainly though, this categorization is hard to sustain, for it neglects the historical descent of civil liberties, most of which precede the UDHR and have a pre-nineteenth century origin (Glendon, 2004). Despite the historical inconsistencies that the acknowledgment of a "freedom from enforced disappearance" may entail, the right's nature and its protective scope converge to this categorization.

Committing an enforced disappearance predisposes at least the endangerment of the victim's physical integrity and mental health, implies ultimate allegiance to the captor, and results in the victim's alienation from any social or legal structure. These perils suffice for the establishment of a reasonable individual interest in protecting oneself from disappearance. It is an interest in avoiding the extreme pain and suffering caused by enforced disappearance. In this respect, when such compelling individual interests also dispose strong moral underpinnings, they lay the foundations for the emergence of a right. Particularly for civil liberties, individual interest is innate to human nature and unchallenged morality serves as a threshold for the prospect of normativity. That is, "human interest" alongside "moral nature" are the constituents for the occurrence of a human rights norm (Donnelly, 2003, p.14).

This general concept has been partly endorsed by the drafters of the UDHR (Glendon, 2004), and is further advanced by several liberal human rights theorists. Jeremy Waldron (1993), among other contemporary theorists, perceives first-generation rights as those evoking "images of autonomy, rational agency and independence" (pp.7, 11), rendering their protection vital for the right-holder's well-being or material satisfaction. For Waldron (1993), the distinguishing feature of civil liberties, which prioritizes the need for their protection compared to the rest human rights, is the sense of extra "urgency" they bear (p.13). Urgency denotes the shared objective realization that must be ascribed to civil liberties. Their objectivity stems from the "agent-neutral" moral principles on which they are built. Reversely, civil rights are free from moral relativity or diffusion, and so morality is an "independent variable" (Gewirth, 1980, p.6). This means that they are not dependent on the right-holder's personal interests and perceptions, and thus they are not subject to positional interpretations. Consequently, although they are the rights of the individual, they are not individualistic rights. Hence, urgency evolves to an additional qualitative characteristic of civil liberties, both moral and factual. Initially it moralizes It serves as the moral shield in the rhetoric of civil liberties justifying the necessity of their protection (*in abstracto* protection), whilst it turns to a fact when a particular right of the holder is breached and the latter seeks protection (*in concreto* protection). Apparently, this argument relies on an essential tautology, where morality and urgency are interlocked; in this perspective, first-generation rights turn into a self-fulfilling moral prophecy.

According to this analysis, the pronouncement and recognition of civil liberties depends on the interplay between individual interest, moral objectivity, and urgency of protection. This threefold test corresponds to Alan Gewirth's perception of human rights. Gewirth defines human rights as "personally oriented, normatively necessary, moral requirements", further pointing that morality and normativity are unavoidably intertwined (Gewirth, 1984). Their combination is the equivalent of the Waldronian "morally-neutral principles" (referred as "moral objectivity"), whereas "urgency of protection" reflects the Gewirthian "necessary requirements" (as it follows from the abridgment of the phrase "normatively necessary, moral requirements"). The common factor of these approaches is the endeavor to preclude a relativity-based reading of human rights that could challenge the absolute character of the right-holder's protection. Consequently, individual protection is the decisive element around which both theories revolve; it emerges as the genuine purpose of human rights' existence, their underlying *rationale*. It is a protection-oriented teleological interpretation (or else what Gewirth [1980] names "normative moral interpretation", pp.156, 280), under which the right not to be subjected to enforced disappearance qualifies by way of induction as a civil liberty.

Furthermore, enforced disappearance threatens the individual in such a way that its moral foundations are immune to relativistic interpretations. Regardless of the particular circumstances under which a disappearance occurs, the practice aims mainly at stripping the individual from any humane quality he/she bears, and render legal institutions void. Apart from the violation of legal norms, and the breach of self-evident morally objective values like life, deprivation of liberty, practical abolishment of the right to justice and torture, the victim of enforced disappearance deserves urgent protection because it despises the philosophy of rights itself, making the rule of law inaccessible to the victim, or else taking away from it the right to have rights (Kesby, 2012). Indeed, enforced "disappearances [have] reshaped our understandings" of well established human rights (Donnelly, 2003, p.58). In this respect, if the right-holder's protection is opted as the most appropriate interpretive tool in human rights literature in general, then the characterization of the right not to be subjected to enforced disappearance as a "freedom" is certainly consistent with the international human rights regime.

However, the theoretical classification of the right against enforced disappearance as a civil right does not automatically presume its systemic incorporation to the international human rights regime. This integration, given the lack of any explicit reference to the International Bill of Human Rights, can only come through the interpretive connection of the right to the principle of human dignity, which permeates the established international human rights regime. That is, why and how the commission of enforced disappearance amounts to severe desecration of human dignity.

3. Dignitarian aspects of enforced disappearance

The conceptual vicinity of the right against disappearance and human dignity is obviously uncontroversial as well as logical; however, it is *prima facie* legally unfounded. Apart from the historically justified lack of reporting enforced disappearances either in the UDHR or the Covenants (as the phenomenon had not yet received international attention during their conclusion), the absence of reference to human dignity both in the provisions of the Convention on Enforced Disappearance and in its preambulatory clauses, although a minor weakness of the Convention, suggests the loose reflexes of its drafters and further makes the notional connection of dignity and disappearance initially problematic. This omission is particularly intriguing, taking into account the Convention's "structural loans for use" from other UN human rights instruments (like the Convention against Torture), where it is a commonplace to associate the rights in question to human dignity. This structural discontinuity between the Convention and the UDHR does not negate the intrinsic link between disappearances and dignity, but instead renders their joint interpretation as the only pathway. Evidently, this approach depends on the necessary condition that human dignity is the cornerstone of the UDHR, and therefore justifies a short digression in its meaning and role within the international human rights regime.

Human dignity is unquestionably the starting point of the modern (post-UN) human rights discourse, for it captures the critical shift from natural law to legal positivism, or better the latter's acceptance of nature as the inceptive source of human rights (Glendon, 1999). Thus, its reference in the UDHR signifies the drafters' attempt to bridge different legal traditions; as such, human dignity is the "minimum yardstick" of human rights law, "by virtue [of human beings] common humanity" (Brown, 1999, p.107). This dignitarian approach of human rights unfolds at least three key functions of dignity: a) it is the *causa* of human rights existence (a), and in the meantime a prerequisite of their functioning (b). Moreover, human dignity thrusts the development and flourishing of human nature (c). Regarding the first two functions, human dignity is simultaneously the source of human rights and their protective scope. In other words, human beings have and claim rights due to dignity (Osiatyński, 2009), and conversely the protection of human rights is intended to safeguard it (Dworkin, 1997, p.199), revealing an axiomatically cyclical relation between them. In the context of the well-known chicken-egg dilemma human dignity is egg and chicken together. Beyond this, the first two functions presuppose that human dignity is inherent to human beings, who therefore seek "a life of dignity" through human rights' protection (Donnelly, 2003, p.14). In turn, dignity's inherence provides a degree of objectiveness to the rather indeterminate content of the term, first because it connotes that human dignity is a natural and thus inalienable virtue, and second because it adds a moral nuance to its meaning. In this framework, dignity's inherent nature is employed to establish a standardized and uncontroversial language of human rights, sometimes setting aside its progressive aspect.

This progressive attribute incorporated by human dignity is emphasized by the third function mentioned above. Indeed, human dignity cannot be confined to a standard-content approach, for otherwise it would abjure any potential improvement of people's moral evolution. Hence, dignity's natural interpretation is deficient if "the intervention of [human] thought and reflection" is not incorporated therein (Hume, 1896, Book III, Part II, Sect I). That is, commonly accepted notions produced by human experience attain a natural sheath. In this natural-empirical oriented understanding, human dignity "is concerned with what human beings might become, not what they have been historically or "are" in some scientifically determinable sense" (Donnelly, 2009, p.23), rejecting human nature's perceived immutability (Boucher, 2009, pp.75, 93). Dignity is the driving force behind human possibility, aiming at human flourishing,¹ and consequently morality (which guarantees inherence's objectivity) evolves to "a distinct, independent dimension of [...] experience" (Dworkin, 2006, p.128). Empiricism as expressed in human possibility incurs a dynamic interpretation of human dignity and therefore human rights, yet without challenging their rooting in human nature; overall, it attempts the reconciliation of the empirical and natural approach to human rights law.

The debate and various interpretive approaches on the functions of human dignity under consideration attest its significance for the international human rights regime. As a result, the international Bill of Human Rights rests on a "dignity-based language of rights" which necessitates a conjunctive analysis of human rights and dignity (Glendon, 1999,

¹ The coexistence of human nature and human possibility (flourishing) appears plainly in the American Declaration of Independence, which states that "men are [...] endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness". Although human rights are endowed to humans by their Creator (that is the metaphysical expression of human nature, corresponding to the term "human dignity" in positivistic terms), humans are engaged in the pursuit of happiness and moreover have a right to it (human flourishing as a matter of human intervention in their nature). The pursuit of happiness has long been seen as a phrase which promotes a utilitarian understanding of human rights, although "its most fundamental point is to recognize and honor the inherent worth of every human being".

p.8). In particular, as regards the right not to be subjected to enforced disappearance, it remains to explore the links between its protective scope and human dignity, (i.e. why and how the commission of an enforced disappearance violates human dignity), in order to substantiate the emergence of the norm, and its systemic incorporation in the UDHR.

Although it seems straightforward to point out the differences between enforced disappearances and other forms of suffering, it is quite difficult to positively distinguish the particular way in which enforced disappearances trample on human dignity. At this point, Susan Marks and Andrew Clapham's *International Human Rights Lexicon* considerably contributes to the understanding of the norm, suggesting that enforced disappearances trap the disappeared in the condition of "bare life" (Marks & Clapham, 2005, pp.121-122). The concept of "bare life" has been introduced in Giorgio Agamben's *Homo Sacer* as a constitutive element of the expansive trend of sovereign exception and within the broader context of the changing structure of sovereignty. Agamben rereads and juxtaposes the Aristotelian terms *bios* and *zoē*, locating "bare life" in between. It is a state where the sovereign alienates the man both from *physis* and *nomos*, depriving him from his natural activities, as well as the regular juridical order respectively (Agamben, 1998a, p.90). "Bare life" is an intermediate situation between life and death; the sovereign suspends every humane activity and decreases the victim's life to minimum biological functions. Agamben's theory of "bare life" is founded on the example of World War II captives who were treated as guinea pigs in the Nazi concentration camps (the so-called *Versuchpersonen* or VPs). In his description of the life conditions of the "experimental subjects", Agamben (1998a) mentions

[t]hey were persons sentenced to death or detained in a camp, the entry into which meant the definitive exclusion from the political community. Precisely because they were lacking almost all the rights and expectations that we customarily attribute to human existence, and yet were still biologically alive, they came to be situated in a limit zone between life and death, inside and outside, in which they were no longer anything but bare life [...] Like the fence of the camp, the interval between death sentence and execution delimits an extratemporal and extraterritorial threshold in which the human body is separated from its normal political status and abandoned, in a state of exception, to the most extreme misfortunes (p.159).

Apparently, concentration camps absorb every humane quality from the detainees. First, the victims are deprived from any legal protection, or potential protection ("no rights or expectations"), since the camp is a space of juridical exception meant to extinguish *nomos*. Second and most important, concentration camps literally remove detainees from the political communities they belong ("exclusion from the political community"); they constitute a forced form of political exile within the territorial boundaries of the political community. For Agamben, such removal from political life impinges on victims' nature (*physis*). The equation of one's participation in political life to man's nature fully aligns with the Aristotelian definition of human being as a *physei politikon zōon* (political animal by nature) predestined to form part of a *polis* (political community) (Aristotle, 1253a, 3-4).

Agamben suggests that a "bare life" is a process of dehumanization analyzed in two aspects: victims not only experience excessive suffering, but they are also excluded from political life. "Bare life" overturns the underlying concession of human rights theory that "all human beings [are] citizens of some kind of political community" and therefore "if the law of their country [does] not live up to the demands of the Rights of Man, they [are] expected to change them, by legislation in democratic countries or through revolutionary action in despotism" (Arendt, 1973, p.293). Captives in concentration camps have neither the first nor the second option, as human rights are subrogated by the captors' absolute power;; a perspective which directly indicates the political dimension of human rights. Astonishingly enough Agamben does not associate the "bare life" concept to the phenomenon of enforced disappearance, particularly under the form it received in Latin America; there, in the rise of totalitarianism, secret detention facilities did not differ at all from WWII concentration camps. He only draws an interesting parallel between the Nazi paradigm and the Yugoslav war practices. Still, even these scattered references to the war in former Yugoslavia fail to report that disappearances were a deliberate governmental policy and limelight nothing but aspects of ethnic cleansing (Agamben, 1998a).

From this perspective, "bare life" is epitomized by Hannah Arendt's analysis on the concepts of totalitarianism and violence, echoing to a great extent its insights and descriptions. In contrast, although Arendt's work could not reasonably refer to enforced disappearance (given that it precedes the phenomenon's emergence and crystallization), her narration on the extermination of the victims of Nazism is prophetic of the respective contemporary testimonies on disappearance. Thus, she mentions that "the camps are meant not only to exterminate people and degrade human beings, but also serve the ghastly experiment of eliminating [...] the human personality into a mere thing, into something that even animals are not" (Arendt, 1973, p.438). Both Agamben's and Arendt's analysis of the lives lived in concentration camps offer a vivid visualization of the lives of the disappeared, even though the link between the two practices is not self-evident. The concept of "bare life" (or of lives lived under the captors' discretion) explains better than any other, how enforced

disappearance violates human dignity. The breach is twofold: the disappeared are forcefully expelled from the corps politique they belonged to, and they cease to exist because their fate is kept unknown (alienation from their *physis*); hence, they are not anymore the subjects of human rights, since they are literally and metaphorically situated outside the protection of the law (alienation from *nomos*). This contemporaneous alienation from *physis* and *nomos* constitutes the reduction from *bios* to *zoë*, that bereaves the disappeared of a life of dignity.

4. Political aspects of enforced disappearance

Two issues arise from the application of "bare life" to enforced disappearance. Firstly, "bare life" has a distinct and prominent political dimension; in Agambenian terms, it is "authentically political", a possible outcome of the "politicization of life" (the so-called "biopolitics" - the politics of *bios*, 1998a, p.106, 120-122). For Arendt too, life in concentration camps is a deliberate political choice of the sovereign, in an attempt to cease any form of existing or fictitious opposition (Arendt, 1973). Therefore, if the phenomenon of enforced disappearance is an expression of "bare life", it remains to spot the political ramifications of the right not to be subjected to enforced disappearance. Secondly, the reduction from *bios* to *zoë* and particularly the alienation from *physis* and *nomos* constitutes such a stern violation of human dignity, that questions the very essence of living as a human being. Again there is an unavoidable tautology: human dignity is a human feature, and vice versa a life without dignity is not worth living for a human being. Following this argument, those exposed to "bare life" are forcefully deprived of their inherent capacity as subjects of human rights. Hence, it is worth exploring whether enforced disappearance endangers human rights subjectivity (recognition as a person before the law); or, do the disappeared have rights?

Moving into the first issue, "bare life's" political content is indisputable. It is the choice of the sovereign to abruptly cut the links of the individual from the political community, a policy of the arbitrary political exclusion of those deemed dangerous or unwelcome. In this regard, "bare life" is the ultimate measure in the hands of the sovereign to impose domestic quality. Although, Agamben (1998a) does not confine "bare life" to totalitarian regimes, his contemplations directly imply certain democratic deficits, picturing forms of "total domination" within the sovereign's jurisdiction (politics over *bios*, p.120), partly diverging from Arendt's (1973) fixed context, where such political exclusion is a method of suppression originating from the totalitarian rule ("totalitarian domination", p.438). However, the right against enforced disappearance properly does not condition its existence on particular political circumstances as such a prerequisite would render the right's field of protection precarious. Politicizing enforced disappearance has never been an option for the drafters of the Convention, albeit the commission of disappearances presupposes a settled state policy. Even outside the conventional box, the characterization of disappearances as political acts was attempted only by those states practicing them with the view to relegate their significance and hold the international community outside their internal affairs (Egeland, 1982).

Thus, the issue at stake is not whether enforced disappearances are associated with certain political regimes, but whether they are a sign of bad governance, or political immaturity when they are employed as official state policy. The wording points directly to contemporary manifestations of the phenomenon, where disappearances are used by states with long established democratic culture as alleged anti-terrorist tools to the benefit of the society, and do not occur strictly within the totalitarian context, in which case Arendt's model would suffice. In this occasion, enforced disappearances are purged in the name of national security and public order, and thus are not easily conceived as a state terror policy, firstly because terror is not addressed to the citizens of the country that applies them, and secondly because most times the victims are transferred outside the state's jurisdiction (the "not in my backyard doctrine"). From this perspective, intimidation seems a tolerable deduction, since it is directed against state enemies, leaving the population secure and untouched by terrorism. What is more, the boundaries between exclusion and inclusion zones (the disappeared and the rest) are indiscernible; given that the victims are aliens, they are politically and territorially remote from the rest of the community. Nonetheless, enforced disappearances remain a policy of "exportable" state terror (Agamben, 2001) designed to bring the victim under "total domination", effectively matching the Agambenian definition of what is a "camp", as well as the concept of "bare life". Agamben (1998b) observes that

[t]he camp as dislocating localization is the hidden matrix of the politics in which we are still living, and it is this structure of the camp that we must learn to recognize in all its metamorphoses, into the zones d'attentes of our airports and certain outskirts of our cities (p.114),

so as to emphasize the dynamic interpretation these terms require. Apparently, the policy of enforced disappearances is implemented by democratic governments under the pretext of public order and national security, a fact which reveals the

shortcomings of modern democracies.

However, the application of Agamben's theory of "bare life" is necessarily limited to enforced disappearances that involve state complicity. Enforced disappearances carried out by non-state actors do not match the theory, irrespectively of whether they entail state complicity or not (depending on the governmental authorities' willingness and ability to smite their occurrence). Put it simply, the less the sovereign is involved in the practice, the less "bare life" is a successful explanatory formula for disappearances. Inevitably, enforced disappearances arising between social groups (syndicates of crime, clans etc) are placed outside the "bare life" frame, despite their undoubted implications concerning structural and political flaws.

The second political issue ensuing enforced disappearances is the glaring reality that the disappeared are placed outside the protection of the law (the Agambenian alienation from *nomos*). The Convention addresses the matter in Article 2 in the light of disappearances' constitutive elements. Under Article 1, the right against enforced disappearance emerges as a hyper-right, whose violation entails not only the breach of a series of civil rights, but also the dispossession of all rights, such as political rights. Taking this into consideration, enforced disappearance is the ultimate contemporary example of Agamben's bipolarity between zones of rights and zones of no-rights, materializing the quagmire of "bare life" (Kesby, 2012, p.130). The United Nations Working Group on Enforced or Involuntary Disappearances confirms the accuracy of this conceptualization and mentions that "while deprived of his/her liberty [the disappeared] is denied any right under the law, and is placed in a legal limbo, in a situation of total defencelessness [...] [Technically, the victim] is a non-person" (<http://www.ohchr.org/Documents/Issues/Disappearances/GCRecognition.pdf>). The UNWGEID essentially reiterates the terminology introduced in recent jurisprudence (*Anzualdo Castro v. Peru*, 2009), further underlying the fact that the disappeared are not subjects of human rights.

5. Conclusions

This article aimed through the application of an inductive method to answer questions like: why was the right belatedly incorporated in the international human rights protection scheme, what its protective scope is, and how it particularly protects human dignity. In this attempt, different schools of legal thought have been employed, seeking to better substantiate disappearances' legal existence, and not with a view to reconcile them within the narrow limits of an article. The right not to be subjected to enforced disappearance is a) negative, and b) civil. The breach of the right constitutes c) a blatant violation of human dignity, something which d) became clear after the standardization of the respective practice. An enforced disappearance results in e) putting the victim outside the protection of the law and f) alienating them from the political community. Taking these propositions for granted, the above analysis is unnecessary for it explains the obvious. However, whence it comes to the emergence of a human right's norm, questions like why, what and how are necessary, in order to evaluate the norm within the frame of the international human rights regime.

The right against disappearance is a turning point that signals the simultaneous ripeness of the international community and of international institutions to tackle the phenomenon of enforced disappearance, as well as to enhance the individual and the rule of law vis-à-vis any similar practices. From this point of view, human rights and human dignity are the reflection of human perversity: the more ways human beings invoke to infringe other people's human dignity, the more legal responses are necessary. This observation requires a progressive interpretation of the notion of human dignity and further denotes that the occurrence and recognition of new human rights is not a taboo.

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