HUMAN RIGHTS ACTS

Media Reform and Politics in Argentina

By Sebastián Martín Valdez

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a Irene con todo mi amor.
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Statement of Authentication

The work presented in this thesis is, to the best of my knowledge and belief, original except as acknowledged in the text. I hereby declare that I have not submitted this material, either in full or in part, for a degree at this or any other institution.

Sebastián Martín Valdez

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Abstract

This thesis examines the ways in which human rights are mobilised as part of the development and implementation of broadcasting policies in Argentina and draws on a nine-month period of ethnographic fieldwork across several sites and events in Buenos Aires. By focusing on the highly debated Audio-Visual Communication Services (ACS) Act, I examine how human rights have contributed to a transformation of the terrain of politics in the country. In Argentina, human rights constitute a prominent moral-legal discourse within the domestic political field. I argue that they have served as a means for phrasing citizens’ demands, formulating public policies and envisaging new forms of governance. In particular, the research focuses on how the expansion of human rights discourses, instruments and regulations have signalled a transformation at the level of government and activist practices in contemporary Argentina.

The central research questions driving the study are: How do human rights shape, and how are they shaped by, the process of development and implementation of the ACS Act? How do human rights contribute to the emergence of new forms of activist and government practices in Argentina? In which ways are human rights being transformed and reenacted in the actions of activists, experts and public officers?
CHAPTER I
INTRODUCTION

1.1 Research Problem: Human Rights as an Object of Anthropological Research

In this thesis, I focus on the debates around the implementation of a highly contested program of media reform in Argentina, called the Audio-Visual Communication Services Act (ACS Act). Enacted in October 2009, the main objective of the reform was to democratise Argentina’s media landscape by establishing limits to media concentration and promoting the emergence of not-for-profit television and radio stations. However, I argue that the ACS Act was part of a broader array of public policies in the country closely connected to a long history of human rights activism that traces back to the 1970s. By focusing on the actions of human rights experts, activists and public servants, this thesis examines the emergence of new forms of engagement with the political in Argentina. In particular, the research focuses on how the expansion of human rights discourses, instruments and regulations have entailed a transformation at the level of government and activist practices in contemporary Argentina.

When the idea of new regulations for broadcast media became a tangible possibility in the first years of the Cristina Kirchner administration (2007–2015), a flurry of speculations, projects and political ideas rapidly filled the public debate. From its first drafts, the

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1 In Argentina, the notion of ‘activism’ is usually employed when referring to forms of involvement with non-governmental organisations (NGOs). NGO activism is sometimes seen more as a professional career than a form of political and ideological commitment. The notion of ‘militancy’, in contrast, builds on a long tradition of political participation in Argentina and evokes a modernist imaginary of social change. As an identifying mark of political commitment, the notion of ‘militancy’ gained currency in Argentina during the period under study (2003–2015). However, because outside Argentina the notion of militancy is often associated to more radical forms of political action (such as guerrilla combatants or revolutionary groups), in this dissertation I will employ the notion of ‘activism’ (except for fieldwork translations).
ACS Act brought together an ambitious plan of reforms that involved technical, economic, institutional and moral considerations. The overriding stated objective was, from its inception, to democratise Argentina’s media structure. In practice, however, as this thesis demonstrates, the reform became subject to a much broader array of desires and expectations in the public imagination. At the moment of drafting, there was hope that the reform would boost the audio-visual industry as a whole, promoting the creation of new jobs for artists, technicians, journalists, producers and community cultural workers across the country. There was an aspiration that it would grow technical capacity to the most remote areas of the country, helping to counter the strong centralisation of media production in the city of Buenos Aires.

Perhaps most importantly, the ACS Act was envisioned as sitting at the crossroads of – and providing the opportunity to (re)define – the rights of multiple and diverse groups including indigenous communities, sexual minorities, migrants and children. Above all, the new legislation addressed unresolved issues from the past – removing the last traces of the military dictatorship – and presented a promise of future prosperity and democracy.

Despite strong support from many sectors, the reform also faced vehement criticism from the very beginning from a range of actors and institutions. In fact, the ACS Act has arguably been the most intensely debated piece of public policy in Argentina since the Trial of the Juntas in 1985. In hindsight, the Act has certainly contributed to furthering polarisation in an already tense political atmosphere, as is evident in many of the reflections it has prompted.

2 The 1985 Trial of the Juntas was a key moment for the transition to democracy process initiated under the administration of President Raúl Alfonsín (1983-1989). I outline the historical background of human rights in Argentina in Chapter III of this dissertation.
Typically, commentary on the ACS Act has taken one of two approaches. A first kind of analysis accepts the basic premises of the ACS Act and criticises its claims on its own terms. It evaluates the limitations and possibilities of the reform: it defines principles, clarifies what is working and what is not, and considers the alternatives when obstacles are present. A second type of approach proceeds from outside: it frames a priori the ACS Act as a purely ideological instrument, complicit with the agenda of the government and its political allies. In this view, the populist rhetoric of rights and social justice conceals the government’s true intentions: to silence critical voices and control the terms of the public debate.

In this study, I take a different path. Although both of these critical approaches are necessary, I maintain that they leave unexamined the most notable aspect of the ACS Act: its engagement with human rights discourse as a project of social change. Besides its stated policy aims and its efficacy in delivering them, the ACS Act has had a performative effect that is not measurable against its own standards and benchmarks. Although its implementation faced considerable limitations and, in fact, most of its promises remain unfulfilled, the reform also brought about very concrete social effects on the ground. At its heart, the ACS Act was a bold effort to recast the human rights discourse as part of a populist project of social transformation. It is precisely this effort that is at the centre of my analysis. By following the debates around and implementation of the ACS Act, this thesis pays attention to the performativity of human rights: the specific ways in which they are reactualised and transformed in the Argentinean context.
1.2 Motivation for the Study and the Construction of the Research Problem

“[T]he ethnographic question is not whether but how development projects work; not whether a project succeeds, but how ‘success’ is produced” (Mosse, 2005, p. 8).

My initial interest in human rights began to take shape in light of the increasing centrality and political influence of advocacy groups in Argentina in the late 1990s and early 2000s. In particular, I felt drawn to the kind of work carried out by the Centre for Legal and Social Studies (CELS). As I discuss throughout this thesis (in Chapters V and VI in particular), CELS has advanced a wide range of legal cases and advocacy campaigns which have had enduring effects on different aspects of the country’s political life, including substantial reforms to the Argentinean Supreme Court of Justice, the reopening of trials for crimes against humanity, the drafting and promotion of legal amendments and bills, and the legal representation of cases before national and international courts, among other actions. In CELS, I saw – and still see – a successful collective experience of expert and activist work. I have followed with interest its actions, and it became a model of inspiration that has guided my post-graduate and professional life. Indeed, after receiving my undergraduate degree in anthropology in 2011 I decided to orient my research toward human rights issues. I presented a proposal to CELS and for a few months in 2012 I worked with them as an intern in the drafting of human rights reports. While brief, it was a very gratifying and stimulating experience, and one that shapes this doctoral thesis.

3 Drawing on the contributions of my former professor and friend Elena Achilli, in this section I provide an account of the process of construction of the research problem. As Achilli (2005, p. 83-94) notes, ethnographic reflexivity requires making explicit how the initial questions and motivations that originally guided the research changed during the research process. This perspective highlights the dialogical and intersubjective nature of ethnography as a mode of knowledge production.

4 For a detailed analysis of how advocacy groups gained influence in Argentina and in Latin America see Peruzzotti (2002); Peruzzotti and Smulovitz (2006); and Smulovitz (2010).
In the face of the proliferation of human rights policies implemented in Argentina since 2003 (described in the next section of this chapter), I began to take an interest in the actual implications of the government’s actions\(^5\). When I started this doctoral research project on the ACS Act in March 2013, my initial questions were: how are the abstract principles enshrined in the ACS Act translated on the ground? Will the ACS Act effectively change the conditions of access and participation in media circuits? What are the main obstacles to the implementation of the reform? In which aspects is the reform succeeding and in which was it failing?

With these initial questions in mind I was particularly interested in mapping the ‘in-between’ of these two moments: the law, on the one hand, and the reality of the country’s media landscape, on the other. I imagined that exploring that gap would allow me to identify the key areas explaining the relative success or failure in the implementation of the ACS Act. Thus, the initial questions shaping my research were in line with the classic approach of critical legal studies, this is, a type of analysis focused on the distance between ‘written norms’ and ‘reality’. However, over time I came to believe that even when this approach has proven to be extremely productive in Argentina (Abramovich & Courtis, 2002, 2006; Abregú, Palmieri, Tiscornia, & Frühling, 1998; Courtis & Pacecca, 2007) and elsewhere (Blau & Moncada, 2005; Farmer, 2004), it had the difficulty of remaining too close to the perspective adopted by the experts and activists working for state agencies and human rights organisations. To some extent, the approach I eventually adopted in this dissertation emerged as a reaction to the way in which the ACS Act was

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\(^5\) The emerging questions of the thesis were informed by a previous research project conducted in collaboration with a colleague from the National University of Cuyo (Mendoza) in 2012. The study’s objective was to elucidate the main impacts of the new Migration Act (2004) among Bolivian migrants living in Mendoza. Focused on Bolivian rural workers, the underlying assumption guiding the project was that the new regulation had not eliminated some of the most nefarious labour aspects of local agricultural production, such as child labour, the lack of social security and the unsafe working conditions. The project attempted to identify the specific areas in which government plans were somehow failing in making effective those rights granted by law. However, as I will explain, these initial questions were later reformulated.
addressed by the press and in scholarly works. My research is an attempt to go beyond the sort of critique that rushes to find hidden motives behind government plans (ultimately, the silencing of critical voices in the media), but without reproducing the ‘enchanted’ gaze (Vecchioli, 2013) of those who view the reform a priori as an act of emancipation and justice.

The general argument underlying the driving questions of this dissertation is that framing the problem exclusively in terms of policy ‘failure’/‘success’, or as a mere result of power structures, leaves unexamined significant aspects of human rights in Argentina. Beyond its relative success or failure, the ACS Act, and human rights policies in general, entail the expansion of ideas, practices and institutions that result in very concrete effects on the ground. The ‘recognition’ of new rights is not only a rhetorical gesture; on the contrary, it involves the mobilisation of a significant number of material resources and people, including the creation of agencies that ensure the protection of those rights; the use and dissemination of a specific lexicon taken from international documents and bodies; the adoption of a legal technical repertoire that includes standards, reports, monitoring techniques and public hearings; the creation and mobilisation of credentials and expertise; and the appeal to specific forms of truth production and authorisation.

Thus, while this thesis draws inspiration from critical legal studies, it also attempts to move away from the traditional realist critique centred on the gap between ‘written norms’, on the one hand, and ‘reality’, on the other6. Instead, the thesis favours a more processual approach in

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6 Mariana Valverde provides an insightful critique of the limits of the classical approach adopted by most Law and Society studies: “The realist epistemology that continues to be employed by most critical students of law in its social context has had the effect of generating what one might call a ‘society effect’. Keen to expose and denounce formalist claims about law’s majestic sovereignty, critical legal scholars have tended to fetishise society, regarding law as an effect or a tool of social structures. However necessary it was and still is to denounce the false universalism of liberal legal practice and formalist legal theory and to document the exclusions produced by universal liberal notions, it is also important to remember that, like other complex social institutions, law has a strong constitutive ability
which human rights are seen as the effect of a wide set of concerted actions, instruments and knowledges. On this point, I find useful Mariana Valverde’s (2009) proposal of thinking in terms of ‘legal complexes’ rather than ‘law’. While ‘law’ and ‘human rights’ can be said to have certain effectiveness as a spectral force (Derrida, 1994), Valverde observes that “what people do when invoking the law or facing legal difficulties is never law as such” (2009, p. 10). On the contrary, she notes, “people interact with, and help to maintain or transform, various legal complexes – ill-defined, uncoordinated, often decentralised sets of networks, institutions, rituals, texts, and relations of power and of knowledge” (ibid.). This emphasis on human rights as a process enables the research to move beyond the conventional notion of rights as pre-given entitlements since, as such, they tend to remain opaque and unexamined.

As discussed in detail in Chapter II, this research builds on recent anthropological studies of law and bureaucracies which have turned their attention to processes of ‘law-making’ rather than taking legal categories and instruments for granted (Barrera, 2013; Davis, Kingsbury, & Merry, 2012; Hagan & Levi, 2007; Herzfeld, 1993; Hull, 2012; Latour, 2010; Merry & Coutin, 2014; Pottage & Mundy, 2004; Timmermans & Epstein, 2010; Valverde, 2009). Appealing to a famous metaphor popularised by Bruno Latour (1999) it could be said that legal entities (including human rights) have remained ‘blackboxed’ in much of scholarly work. The idea of ‘blackboxing’ is employed in the science and technology studies (STS) tradition to indicate

“the social process through which the joint production of actors and artefacts becomes entirely opaque by its own success... When a machine runs efficiently, when a matter of fact is settled, one needs to focus only on its inputs and outputs and not on its internal complexity. Thus, paradoxically, the more science and technology succeed, the more opaque and obscure they become” (1999, p. 183; 304).

whose effects cannot always be predicted even if we know what the generalised relations of power are in a particular context” (2009, p. 10; my emphasis).
According to this line of thinking it could be argued that, in fact, it was the very success of human rights discourse worldwide in the second part of the twentieth century (Moyn, 2010) which explains, at least in part, why human rights are so often regarded as self-evident truths.

In order to examine how human rights are enacted and reappropriated in the debates around the ACS Act, this study builds on performativity theory (Butler, 2010; Callon, 1998). By focusing on the development and implementation of this regulation, my study traces how legal experts, political activists and public officers articulate a distinctive view of human rights in Argentina. In the next section of this chapter I describe the context of the study and outline the main argument of the thesis.

1.3 Context of the Study: The Politics of Human Rights in Argentina

A crucial point of reference for understanding the events I analyse in this research is the acute social, economic and institutional crisis that affected the country at the beginning of the 2000s, with its peak in December 2001. As the economic model of the 1990s revealed itself to have bankrupted the nation, Argentineans from a variety of social backgrounds and ideological commitments demanded that the regime end. Expressed most concisely in the popular slogan ¡Que se vayan todos! (“To hell with them all!”), the demand for change was articulated as an emphatic repudiation of political and economic elites. A generalised sense of illegitimacy of the elites permeated Argentinean society, undermining trust in state agencies, political parties and financial institutions alike. The resignation of President Fernando de la Rúa (1999-2001), and the subsequent removal of four provisional presidents in two weeks, clearly illustrates the deep implications of the situation.
The crisis of political representation that characterised this conjuncture has been well documented in a vast body of scholarly work (Novaro & Palermo, 2004; Pereyra, Pérez, & Schuster, 2008; Svampa, Bombal, & Bergel, 2003; Torre, 2003; Visacovsky, 2010). One that is of particular relevance to this study is Javier Auyero’s *Routine Politics and Violence in Argentina: The Grey Zone of State Power*, (2007), which explores the public engagement with the notion of ‘politics’ as it emerged in the aftermath of the 2001 crisis. Auyero’s ethnographic account of this conjuncture describes the generalised mistrust from vulnerable sectors of the population towards political elites and institutions characteristic of the period. In doing so, his work documents how the idea of ‘politics’ was depicted by those groups most affected by the crisis.

“Countless times during the course of our fieldwork, we heard the expression ‘It’s all politics. What can we do? It’s all about politics.’ When discussing the distribution of welfare in the neighbourhood or the kind of food provided by communal soup kitchens, when chatting about police actions during the lootings or about the rising incidence of crime in their neighbourhoods, even when talking about their future (individual and collective) prospects, residents in Moreno and La Matanza expressed their views in the language of politics. They were not, however, referring to a joint transformative capacity nor to a collective struggle for resources. They were certainly not referring to specific public policies nor to debates in Congress. ‘Politics’ (as in the expression ‘it’s all about politics’), connotes something profoundly disempowering for them (What can we do?). When speaking about politics, they refer to something coming from above, something beyond their control – sometimes they hint at a sort of conspiracy, but most of the time they use the language of politics to talk about how impotent and vulnerable they feel. Their moral universe is infused by politics, and this is the source of the (mostly bad) deeds that they do not fully comprehend and about which they are powerless” (Auyero, 2007, p. 148).

Providing a detailed account of a series of lootings that took place during a critical week in December 2001, Auyero’s study captures the wave of antipolitical sentiment that was the sign of the period. In that context, ‘politics’ was perceived by both victims and perpetrators of the lootings as a sort of unalterable reality, a type of activity done elsewhere and in which they were not agents. That perception of politics as “something profoundly disempowering” (Ibid.), as a source of
arbitrariness and injustice, is diametrically opposed to the idea of politics I document in this thesis.

During my fieldwork in Buenos Aires I encountered a very different form of engagement with ‘politics’: one marked by a celebration of militancy and political commitment as a way of processing social conflicts. Contrary to the generalised mistrust and the sense of illegitimacy documented by Auyero (2007), my fieldwork indicates that human rights contributed to a renewed commitment with political action and discourses in Argentina. This leads me to claim that the 2009 ACS Act must be understood as part of a broader array of human rights policies and ideas which gained momentum in Argentina during the governments of Néstor Kirchner (2003-2007) and Cristina Fernández de Kirchner (2007-2015). In doing so I contend that, amidst a deep institutional and political crisis, human rights were mobilised by the government as a reparatory, healing language that served to address some of the most pressing demands of Argentinean society.

It can’t be overlooked that when Néstor Kirchner assumed the country’s presidency in May 2003 with barely 22% of the vote the political situation remained very fragile. Relying on a refoundational populist discourse, the newly elected president announced a radical break with the past and, in particular, with the ‘neoliberal years’. Against this backdrop of a deep crisis of legitimacy and widespread disbelief in government institutions, the new government found in human rights a political discourse which resonated deeply in Argentinean society. In much the same way they guided transitional justice efforts with the return of democracy in 1983 (discussed in Chapter III), human rights became a matter of exceptional significance in the new government’s agenda and discourse.

One of the first measures adopted by Néstor Kirchner was the annulment of ‘Due Obedience’ and ‘Full Stop’ laws, which impeded the prosecution of those responsible for human rights violations during the
dictatorship (explored in detail in Chapter III). However, the rights’ agenda of Néstor Kirchner’s government, and even more emphatically during Cristina Fernández de Kirchner’s presidency (2007-2015), human rights policies rapidly expanded beyond the historical demands for trial and punishment of the culprits. In this way, between 2003 and 2015 an unprecedented proliferation of human rights programs, regulations and agencies emerged: the Argentinean Congress enacted new laws such as the new Migration Act (2004), Comprehensive Protection of the Rights of Children Act (2005), Trafficking in Persons Act (2008), Comprehensive Protection of Women Act (2009), Audio-Visual Communication Services Act (2009), Same-Sex Marriage Act (2010) and Gender Identity Act (2012). Congress also approved a number of special programs, with the Universal Child Allowance (2009) and the National Plan of Human Rights (2010) among the most salient. Likewise, new state agencies were created and some existing government bodies were reformed. For instance, the Ministry of Justice changed its name to Ministry of Justice and Human Rights, which marked the beginning of important institutional reforms in the judiciary. Perhaps most importantly, the new administration initiated a period of close collaboration with human rights organisations and experts, whose support and opinions gained considerable influence in the new context.

The enactment of the Audio-Visual Communication Services Act in 2009 must be understood in connection with this broader space of human rights policies. Building on a platform of ‘21 points’ agreed by a coalition of social movements, unions and human rights organisations in 2004, this comprehensive regulation conveyed broad aspirations for media democratisation in the country7. In this way, the ACS Act became central to a populist and ‘postneoliberal’ (Grugel & Riggirozzi, 2012;

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7 I describe the Coalition for Democratic Communication in Chapter V of the thesis. More information on the Coalition can be found at http://www.coalicion.org.ar/.
Sader, 2009; Yates & Bakker, 2014) agenda of social reforms in Argentina initiated with the government of Néstor Kirchner in 2003.

1.4 Significance of the Study

The events I follow and examine in this dissertation constitute, at one level, a distinctive Argentinean story, one that takes place in the tumultuous years spanning the immediate aftermath of the 2001 crisis and the end of the Kirchnerist governments in December 2015. And yet, Argentina – and Latin America more generally – also emerges as a productive “epistemological location” (von Schnitzler, 2016, p. 8), in the sense that it helps us to think differently about contemporary political and academic debates. As postcolonial theory emphasises (Comaroff & Comaroff, 2012a; de Sousa Santos, 2015; Mbembe, Mongin, Lempereur, & Schlegel, 2006), doing research from and on the ‘global south’ invites us to unsettle conventional assumptions and provides critical purchase in the analysis of contemporary problems.

Latin America, and especially the Southern Cone of South America (Chile, Uruguay and Argentina), has a long tradition of academic debates and policy development in the field of human rights. Socio-legal scholar Kathryn Sikkink states that Argentina has been the source of “an unusually high level of human rights innovation and protagonism” (2008, p. 2), moreover arguing that “these innovations have been diffused broadly, especially in the Latin American region, but also in other parts of the world. Argentina has been an ‘exporter’ of human rights tactics, ideas and experts” (ibid.). Along the same lines, Levy (2010) highlights that transitional justice and human rights standards

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8 The notion of ‘global south’, however, should not be understood in its literalness as a geographical location or as a synonym of ‘Third World’. Instead, it can be better interpreted as a proposal to unsettle conventional and normative accounts of the political. According to Jean and John Comaroff (2012), the notion emphasises “the effect of the south... on theory, the effects of its ex-centricity... of its structural and tropic situation in the history of the ongoing global present”. In this sense, rather than on being originated in a particular geographical or geopolitical location, this literature relies on the productivity of the ‘anomalous’ (Ferguson, 2012) and on the “multiple displacements, multiple focal lengths, multiple interpellations” (Comaroff & Comaroff, 2012b) that the notion of ‘global south’ invites.
developed in Argentina have set legal, cultural and institutional precedents in the global human rights regime. This makes Argentina a strategic location for reflecting on transnational trends and debates in the field of human rights.

Importantly, the analysis of human rights politics in Argentina offers new perspectives about ongoing debates in the field of human rights. This dissertation builds on, and contributes to, recent scholarly work focused on the effects of the global expansion of human rights since the 1970s (Allen, 2013; Asad, 2003; Barnett, 2013; Brown, 2004; Comaroff & Comaroff, 2009; Dezala & Garth, 2006; Douzinas, 2000; Guilhot, 2008; Moyn, 2010; Whyte, 2017). Moreover, the thesis makes a counterpoint to a relatively common thesis underlying academic debates that human rights tend to have ‘depoliticising’ effects. From this perspective, the rapid expansion of human rights discourses since the 1970s have displaced modernist imaginaries of radical social transformation – often articulated in anticolonial or socialist projects of national liberation – giving place instead to more technical and ‘minimalist’ forms of intervention. This scholarship suggests that while human rights are the primary language through which politics is articulated nowadays, they are frequently evoked as a ‘moral utopia’ (Moyn, 2010), as a set of minimal principles that limit both politics and state power ‘from the outside’ (Guilhot, 2008). Thus, human rights are portrayed as a ‘minimalist’ project, aimed not at fostering broad social transformation but at the ‘attenuation of human suffering’. In words of Wendy Brown, “human rights take their shape as a moral discourse, centred on pain and suffering rather than political discourse of comprehensive justice” (2004, p. 453).

To a large extent, the concerns and questions that shape these scholarly debates emerged as a response to the global conjuncture initiated by the events of 9/11 in the United States and the ‘war on terror’ that followed. In this context, many scholars have observed the increasing conflation of human rights, humanitarianism and military
intervention, and have reflected critically on how the proliferation of humanitarian discourses prevents the emergence of alternative frameworks for political action. The type of political rationality that human rights and humanitarianism produce has been variously called a “politics of fatalism” (Brown, 2004), a “politics of humanity” (Feldman & Ticktin, 2010; Ticktin, 2014), a “politics of suffering” (Whyte, 2012), and a “politics of life” (Fassin, 2007, 2010). Inspired by the work of Giorgio Agamben (1998), this scholarship suggests that, in its contemporary form, human rights takes as its cause the defence of ‘bare life’ and the ‘amelioration of suffering’, leaving aside alternative demands for social, economic and political reform.

While this literature raises important questions about the politics of human rights globally, it fails to take into account how rights discourses are envisioned, reappropriated and debated in the Latin American context. In this sense, my research on human rights in Argentina challenges widespread assumptions about the ‘depoliticising’ effects brought about by human rights discourse. A central argument guiding this research is that human rights in Argentina are mobilised in explicitly political terms, and they are often articulated as part of a broader populist discourse of social change. As I show in the chapters that follow, since 2003 human rights have helped to articulate broad demands for social change and economic reforms in Argentina.

The ‘war on terror’ and humanitarian discourses certainly are a dominant framework in current international politics. However, these discourses do not exhaust the potential instantiations of the human rights project. The renewed ‘boom’ of human rights in Argentina must be understood in the context of broader transformations in Latin America at the turn of the new millennium. The rise of new governments as a response to the collapse of neoliberal agendas in Bolivia, Brazil, Chile, Ecuador, Uruguay, Venezuela and Argentina prompted a “return of the state” (Grugel & Riggirozzi, 2007; Grugel &
Riggirozzi, 2012), and more broadly a “return of populism” (De la Torre & Peruzzotti, 2008; Laclau, 2006a, 2006b) in the Latin American region.

The imbrication of human rights and a populist discourse of social change in Argentina opens up a different set of questions and concerns. Thus this study will examine what happens to human rights within highly polarised political contexts; what are the ambiguities and tensions that arise when human rights discourse is central to the government’s own agenda; and how human rights contribute to the emergence of new forms of activist and government practices in Argentina.

1.5 Research Questions

As already noted, by following the disputes around the ACS Act in the streets, in courtrooms, in government agencies and in the media, I aim to develop an account of how human rights have contributed to a transformation of the political terrain in the country. Building on previous contributions to political and legal anthropology (Comaroff & Comaroff, 2009; Scott, 1998; von Schnitzler, 2016), I use the notion of ‘political terrain’ to refer to the discursive arena within which certain political languages resonate whereas others cannot.

At the same time, I use the term to call attention to the many ways political claims are made – that is, to the techniques, vocabularies and materialities that enable political action (von Schnitzler, 2016). In doing so, I pay attention to the multiple formats through which human rights are simultaneously appropriated and transformed in Argentina: graffiti, memorials, media events, public hearings, files, standards, government reports. The underlying argument is that these various ‘cultural forms’ (Slaughter, 2009) actively shape the ways in which people view and engage with human rights ideals. Human rights reports, for instance, imply very specific forms of truth-construction, and they compel people
to engage with human rights in very different ways from, say, street graffiti and memorials. While aesthetic scenes such as memorials or graffiti appeal to emotions and imagination, the bureaucratic practices put in motion by the circulation of files and reports appeal instead to objectivity, neutrality and systematisation.

In summary then, the research questions driving this study are:

- How do human rights shape, and how are they shaped by, the process of development and implementation of the ACS Act?

- How do human rights contribute to the emergence of new forms of activist and government practices in Argentina?

- In which ways are human rights being transformed and reactualised in the actions of activists, experts and public officers?

1.6 Research Approach and Methods

This dissertation builds on performativity theory (Butler, 1997, 1999, 2010; Callon, 1998; Derrida, 1977) in order to examine the complex imbrications between human rights and politics in Argentina. Importantly, a focus on performativity calls into question the idea that there is a stable entity (or entities) that can be delimited as ‘human rights’, one that pre-exists the activities of human rights bureaucracies and agents. On the contrary, performativity theory draws our attention to the diverse set of processes and materials through which human rights are ‘effected’, this is, how they are brought into being.
Throughout this thesis, I use the idea of performativity to illuminate different aspects of human rights. First, my understanding of performativity is informed by Derrida’s notion of iterability. The authoritative force of human rights discourse relies on an endless chain of discursive (verbal and nonverbal) references. It is precisely because the ACS Act is a repetition, an iteration of preexisting norms and legal formulas that it can be inscribed and recognised as a human rights act. But, simultaneously, the ACS Act also contains some novelty and originality: it is not only ‘constative’ but also ‘performative’ in that it brings new realities into being.

Second, the ACS Act and human rights in Argentina are also performed in a ‘theatrical’ sense. As they are tied to powerful emotional events, images and discourses, human rights are often performed in quite spectacular and sometimes sensationalistic ways. The circulation of spectacular images and narratives has been crucial to the dissemination of human rights ideas.

Third, I understand performativity theory drawing on the work of Michel Callon and other science and technology studies (STS) scholars. From this perspective, academics, public officers, and activists who mobilise human rights instruments and methodologies do not merely evaluate the compliance or violation of rights in a given social setting. Instead, these forms of expert and technical practices can be understood as actively producing ‘human rights settings’. By this I mean that human rights are not preexistent entitlements ‘recognised’ in international treaties that are later applied in ‘local’ contexts. Rather, they are repeatedly constituted through the work of experts, government officials and human rights advocates.

Finally, although it is not used explicitly, the idea of performativity is employed by some of my informants who took part in the formulation and implementation of the ACS Act. This is particularly the case for the agents working at the Defensoría (Ombudsman’s Office for Television
and Radio Audiences). As I explore in detail in Chapter VII, human rights experts and public officers at the Defensoría evaluate the ‘performative effects’ of certain media content, focusing in particular on whether this content is ‘discriminatory’ and how it reproduces inequality and violence.

In the following section I outline the methodological approach of the thesis and describe in detail the fieldwork conducted in Argentina.

**Doing Ethnography in Buenos Aires**

The ACS Act is a very complex and ambitious media reform and it is beyond the scope of this study to offer a comprehensive analysis of its development since 2009. Instead, the research strategy adopted was to follow key aspects of the debates and implementation of this reform across multiple sites. The research design of this study is grounded in ethnographic fieldwork and archival research conducted in the city of Buenos Aires between April and November 2014. The fieldwork involved participant observation and semi-structured interviews at three key sites: AFSCA⁹, the Defensoría¹⁰ and the Ministry of Federal Planning and Infrastructure. Semi-structured interviews were also undertaken with a range of expert-activists from the human rights organisation CELS and the community media groups *La Tribu* and *Barricada TV*.

In analysing this data, I developed an account of the professional and political trajectories of the expert-activist-public officers who

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⁹ AFSCA stands for Autoridad Federal de Servicios de Comunicación Audiovisual (Federal Authority of Audiovisual Communication Services – hereafter AFSCA). The agency was the main government body in charge of the implementation of the reform until December 2015. This included the allocation of broadcasting licenses, regulating the radio spectrum and the transition to digital TV, promoting the emergence of new indigenous and community media, and stipulating a regime of sanctions for violations of the law. However, having barely taken office on the 10th of December 2015, President Mauricio Macri issued a decree (267/2015) ordering the dissolution of AFSCA. The new administration created a new government body, ENACOM – Ente Nacional de Comunicaciones (Federal Agency of Communications).

¹⁰ Defensoría del Publico Audiovisual (Ombudsman’s Office for Television and Radio Audiences). Throughout the thesis I refer to this agency as the Defensoría.
participated in the development and implementation of the reform. The interviews and ethnographic observations conducted at these sites were also useful to help me develop a more nuanced understanding of how human rights instruments are reappropriated in the development of new modes of government action. Concurrently, a thorough analysis of policy documents (resolutions, internal policy procedures, reports) and a variety of media sources, allowed me to focus on the institutional narratives that frame the implementation of the ACS Act as a human rights policy.

Ethnographic observations and informal interviews were also undertaken in some of the most iconic sites of the human rights movement in Argentina, such as the Plaza de Mayo, Universidad Madres de Plaza de Mayo, Parque de la Memoria, and the ex-clandestine detention centre ESMA\textsuperscript{11}, now refurnished as the Space of Memory and Human Rights. These observations allowed analysing the dissemination of human rights ideas beyond circuits of human rights experts and public officers.

The research also involved several fieldtrips to the city of Mendoza and a two-week trip to the city of Rosario, where I participated in workshops and conducted interviews with state officers and experts that participated in the implementation of the ACS Act. Although I spent most of my time in Buenos Aires, the observations and interviews conducted in these other two cities gave me a broader understanding of the reform and its implementation in different localities. Many of the concerns, expectations and questions faced by my informants in Buenos Aires were also shared by state officers and activists in other regions of the country.

Overall, the empirical data was produced through semi-structured, in-depth interviews with 30 participants, 10 non-recorded extended conversations with activists and public officers, and ethnographic

\textsuperscript{11} ESMA stands for Escuela de Mecánica de la Armada – Naval School of Mechanical Engineering.
observations of various political events and government initiatives. Data was also produced through the analysis of policy documents such as human rights reports, video records of public hearings, government resolutions and court decisions. Additionally, audiovisual documentary sources were employed to develop the political-historical background and situate the trajectory of the ACS Act within a broader context of public debates.

The research approach draws on the tradition of multisited ethnography (Marcus, 1995). As Robben & Sluka observe (2012, p. 367), conducting multisited fieldwork is not the same as doing fieldwork at multiple sites. Multisited ethnography entails moving across different sites following the object of the research, that is to say, following a path and tracing connections rather than undertaking a comparative analysis based on multiple case studies. In other words, multisited ethnography “is designed around chains, paths, threads, conjunctions, or juxtapositions of locations in which the ethnographer establishes some form of literal, physical presence, with an explicit, posited logic of association or connection among sites that in fact defines the argument of the ethnography” (Marcus, 1995, p. 105).

In following the debates around the ACS Act, I found myself taking part in street demonstrations and political gatherings, chatting with community media producers and attending workshops on media and human rights. Similarly, I spent time talking with human rights experts and state planners working at government agencies as well as learning about bureaucratic procedures and doing archival research. In the process, I gradually became involved in networks of activists, experts and public officers, moving between different sites as opportunities emerged.

The dissertation is structured around the analysis of four key moments of the debates and implementation of the ACS Act. I examine each of these moments or instances in the four empirical chapters of the dissertation (chapters IV-VII). Firstly, I focus on the circulation of
performances, stories and narratives about human rights in the city of Buenos Aires. I contend that looking at these ‘aesthetic scenes’ (Sliwinski, 2011) is crucial for understanding how the ACS Act participates in a broader imaginary of human rights and politics in the country. Secondly, I retrace the process of public debates that preceded the enactment of the ACS Act in 2009. A central strategy for this analysis has been the reconstruction of the political and professional trajectories of the expert-activist-public officers who took part in the development of the reform. Thirdly, I examine the judicial disputes around key articles of the reform, which concluded in a public hearing at the Supreme Court of Justice in 2013. Finally, I examine the workings of the Defensoria, a government agency created by the ACS and placed in charge of implementing important aspects of the reform.

In the next sections of this chapter I explain in detail the methodological choices and strategies employed to address each of these lines of analysis. The chapter concludes with a reflection on the implications of conducting ethnographic research on human rights in a highly polarised political context.

Following ‘Aesthetic Scenes’ in Buenos Aires (Chapter IV)

Living in Villa Crespo, a relatively central residential neighbourhood, I experienced the rhythms of daily life in the city of Buenos Aires: the frequent street demonstrations (and resulting traffic interruptions), the lively chats in cafés, the countless bookshops on Corrientes Avenue, as well as the sharp social contrasts of a South American metropole. While I did not originally plan to conduct research on the city neighbourhoods or on the many iconic sites of the human rights movement, my stay and experience in the city informed my understanding of how human rights ideas circulate and shape public imaginaries and political feelings. It provided a grounded sense of human rights as inscribed in Buenos Aires’ urban fabric and political atmosphere. When moving across
multiple sites to attend political events and meet with research participants I observed a variety of references to human rights stories and vignettes: on graffiti, murals, memorial plaques, books, buildings. Reflecting on these many encounters opened up a sensory level in which human rights also become present, sometimes as a kind of background noise, almost invisible yet at the same time ubiquitous.

When reflecting and writing about this affective and sensory dimension of human rights, I found useful Tim Ingold’s work on walking and ethnography (Ingold & Vergunst, 2008; Lee & Ingold, 2006; see also Pink, 2008). It was precisely by walking through the city, moving from one point to another, that I found and experienced these multiple ‘aesthetic scenes’ (Sliwinski, 2011). I examine these narratives and aesthetic scenes by retracing my fieldwork itinerary in the city. In this way, the ethnographic description recreates my own movements while following the activists, experts and public officers in their engagements with human rights discourse. While I refer to these encounters in different parts of the thesis, the analysis is particularly centred on two ‘aesthetic scenes’. In the first instance, I examine the Baldosas por la Memoria (Tiles for Remembrance) memory project, carried out by collectives of neighbours from the city of Buenos Aires. The project involves laying out hundreds of concrete and ceramic tiles throughout the city as a way of remembering the life and stories of militancy of local residents that were disappeared during the dictatorship (1976–1983). By following the steps of the disappeared, the tiles tell a particular story of the city and its imbrication with human rights imaginaries.

Secondly, I describe my participation at a political event organised by the government for the anniversary of the ACS Act’s promulgation. Significantly, the event was held in a former clandestine detention centre and involved a video conference between the Argentinean president, Cristina Fernandez de Kirchner, and the president of Russia, Vladimir Putin. Ultimately, these two ethnographic vignettes provide insights into how human rights are understood and felt among circuits
of activists, experts and public officers. Grounded on ethnographic observations, photographic registers, informal conversations with experts and activists, and the analysis of media sources, the focus on these aesthetic scenes sheds light on how certain imaginaries of human rights are transversal to ‘state’ and ‘non-state’ actors, opening a window to examining how the boundaries between ‘state’ and ‘society’ are continuously renegotiated and transformed.

The ACS Act as a Human Rights Cause (Chapter V)

The thesis also focuses on the process of social mobilisation and on the debates that preceded the enactment of the ACS Act in 2009. In particular, I attempt to understand how the social demand for democratising Argentina’s media structure was translated into the legal-technical language of human rights. A central strategy in this inquiry is the analysis of how human rights experts and community media activists mobilise human rights discourse. I focus on two groups, the Centre for Legal and Social Studies (CELS) and the Coalition for a Democratic Communication. The analysis CELS and the Coalition is based on a variety of sources: in-depth interviews with key participants, human rights reports, media sources, and the text of the ACS itself.

I conducted 15 interviews with informants who played an active role in the debates and promotion of the reform. The selection of the first group of participants was guided by a preliminary research phase involving the review of official documents and media sources. Subsequent interviews were conducted based on the suggestions and contacts provided by these first informants. The interviews ranged from 45 minutes to 2.5 hours, and they took place at public offices, universities, cafés, and community media organisations. Although the topics addressed varied with each informant, two key themes run across all the interviews: first, the political and professional trajectories of the participants, and second, their participation and experience in the development of the reform.
This data was complemented with the analysis of media sources and the text of the ACS Act itself. By focusing on the constitution of the ACS Act as a political cause, my analysis seeks to elucidate how human rights have provided a lexicon for the actions of political activists and experts. Simultaneously, this analysis highlights the points of intersection between modes of activist and expert intervention and processes of state-making in Argentina.

The Public Hearings at the Supreme Court of Justice (Chapter VI)

A third crucial moment of the debates around the ACS Act was its long and highly mediatised judicial trajectory. In particular, in this chapter I focus on two public hearings that took place in August 2013 at the Argentinean Supreme Court of Justice. The hearings were convened by the Court as the final stage of a long process of judicial disputes around key articles of the reform. The focus on this event allows me to analyse three aspects of how human rights are entangled in the debates on the ACS Act. First, the hearings represent a key site where competing views on the rights to freedom of expression and communication were confronted in a much-publicised and precedent-setting legal case. Second, I examine the hearings not only as a form of public deliberation and transparency but, importantly, as a means of strengthening judicial legitimacy in a context of increasing anxiety around the ‘judicialisation of politics’. Finally, I reflect on the performative potential of human rights during the hearings and the ways in which they were staged for a wider television audience. Alongside the explicit goals of fostering participation and informing the judges, the hearings are also a state performance on practices of good governance, transparency and participative decision-making.

I address the hearings based on the analysis of video records that are available online. This material was complemented with interviews with
experts and public officers who participated in the event, as well as the revision and analysis of documentary and media sources.

The Defensoría and the Implementation of the ACS Act (Chapter VII)

Finally, I focus on the work of the Defensoría del Público de Servicios de Comunicación Audiovisual (Ombudsman’s Office for Television and Radio Audiences). While the implementation of the ACS Act involved the participation of a number of government agencies, I concentrate on the Defensoría because human rights are central to its institutional narrative. In fact, many of my informants at this agency had previous professional experience as activists and experts participating in human rights and community media organisations. The agency was created in 2009 by the ACS Act with the stated aim of “protecting and promoting the rights of the audiences” (www.defensadelpublico.gob.ar). Under this broad umbrella, the Defensoría undertakes a variety of activities which include monitoring the functioning of media, receiving and processing complaints from members of the audience, conducting workshops with media practitioners, and ensuring the participation of minorities and vulnerable groups in the public debate.

My analysis of the activities carried out by the Defensoría was based on interviews with public officers and experts, ethnographic observations at workshops, conferences and roundtables, and the review of documentary sources such as internal reports, resolutions and denuncias (complaints) presented by members of the audience. I focus on two interrelated aspects of the agency’s work. First I examine the Agency’s institutional narrative. The Defensoría develops an intense agenda of institutional communication to publicise its actions in the form of video clips, public speeches, regular reports of the actions undertaken, and several printed publications. Second, I look at the strategies of intervention: ‘territorialisation’, which involves regular trips of Defensoría agents to remote communities and locations, and
‘participation’, an ongoing process of consultation and participative decision-making with advocacy groups, experts, minorities and media practitioners.

1.7 Ambivalent Positionality

The decision to carry out research on human rights, particularly through a focus on the ACS Act, entailed a real challenge in terms of my position as researcher, for a number of reasons. To begin with, the research was conducted within an extremely polarised political atmosphere, which reached one of its most intense periods in the heat of the public debates around the ACS Act. From its enactment in 2009, the discussions and disputes it triggered became the centre of the public attention, and these only intensified in the years of its judicial treatment, precisely when I started my project in 2013. To some extent, the inflated and excessive tone of this debate, and in particular, the type of binary logic in which it was framed, became the focus of my analytical efforts. While not always a simple task, I tried to keep my research project away from the assumptions that aligned the positions on this issue. In this regard, my work attempts to provide a response (Riles, 2006b; see also Barrera, 2012), an analytical effort to elucidate the meanings, reasons and passions around the ACS Act, without being trapped by type of framework that shaped the debate.12

However, this attempt at keeping the project at some distance from strong normative assertions was soon complicated by a second element. Any examination of politics and human rights in Argentina, as well as in other countries in the Southern Cone13, elicits intense emotions and deeply rooted moral considerations among circles of activists and

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12 My understanding of ethnography as a response is informed by Annelise Riles (2006b). Riles defines the act of ethnographic conceptualisation and response as a form of ethical and epistemological engagement with the research subjects.
13 The Southern Cone of South America is comprised of Argentina, Chile and Uruguay.
experts, including the researcher himself. As a university student I participated in countless political events and campaigns supporting diverse claims of the human rights movement. Over the years of my undergraduate studies and engagement with human rights organisations, I have assumed as my own many of the ideas and demands advocated by ‘los organismos’, as the most prominent human rights organisations are frequently referred to. As I mentioned above, it was the work and actions of advocacy groups such as CELS, Madres de Plaza de Mayo and Abuelas de Plaza de Mayo that originally inspired this research project.

With this in mind, I have tried to keep a ‘distant’ perspective through the research process of a topic that, in principle, appeared to me as something familiar. This familiarity was at times further complicated by the fact that professionals and activists (in particular the youngest) very assumed that I shared their points of view on the ACS Act, human rights and government plans. I had to work to gain their trust, but I also spoke my mind when I considered it important to clarify my position. For example, in many situations I expressed my scepticism about aspects of the reform, and I voiced some concerns or critiques towards the government while chatting with participants. I tried to remain thoughtful and respectful about their work and ideas, and over time I managed to gain their trust while keeping my critical stance overt and explicit.

During my time conducting fieldwork in Argentina, and also while writing this dissertation, I have persistently reflected on this concern regarding my position as a critical (though often sympathetic) observer.

14 On this issue see Virginia Vecchioli (2013). Drawing on Elías (1987), Vecchioli warns about the risks of reducing the analysis to the reproduction of an ‘enchanted’ gaze of those subjects’ points of view with whom we empathise, politically and morally (2013, p. 10). As Vecchioli rightly asserts, maintaining a perspective at a distance from common-sense evaluations is not an easy task since it entails confronting “emotionally gratifying ideals and beliefs”, and the researcher risks being stigmatised when his research findings do not confirm the set of values and beliefs shared in his own social circles. In Vecchioli’s view, this explains the proliferation of scholarly work on human rights organisations and the lack of attention toward the groups that vindicate the memory of those who ‘fought against subversion’ (the relatives of military officials).
outside government agencies, networks of activists and human rights organisations. This is an important matter of concern and reflection that is shared by ethnographers in many contexts, but perhaps with more intensity by those who study human rights (Allen, 2013; Tate, 2007; Vecchioli, 2013), development (Bebbington, 2010; Li, 2008; Mosse, 2006) and humanitarian interventions (Fassin, 2012; Ticktin, 2014). Since both human rights practice and ethnographic accounts of human rights involve deep ethical commitments, it is important to make explicit the grounds on which one takes a critical stance. In Miriam Ticktin’s words, “what moral position does one occupy to critique a morally driven movement?” (2014, p. 277). More often than not, the questions associated with human rights campaigns and programs seem to be indisputable, beyond debate (Fassin, 2012). Who could be against the protection of freedom of speech and basic human rights? In this way, I was never merely observing and recording. Rather I was an active participant in the events I report on and, to the best of my ability, aware of and reflective on my own activist inclinations on the topic I was studying.

According to Marilyn Strathern, ethnography – or what she defines as the “ethnographic moment” – is “a moment of immersement that is simultaneously total and partial, a totalizing activity which is not the only activity in which the person is engaged” (1999, p. 1). Because of this, when the ethnographer is in the field, he or she is anticipating the future moment of writing, when “the ideas and narratives which made sense of everyday field experience have to be rearranged to make sense in the context of arguments and analyses addressed to another audience”. In this sense, the ethnographic practice occupies “a double location, both in... ‘the field’ and in the study”15 (p. 2). It is precisely this double positionality that opens up the potential for ethnographic critique. In a discussion on the ethics of what he calls ‘moral

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15 According to Strathern this dual location results in a “common anthropological experience” marked by a “sense of loss or incompleteness” due to the complexities of harmonising the ethnographer’s double location, at the same time inside and outside ‘the field’ (1999, p. 2).
anthropology’, Didier Fassin (2011) describes the ethnographic stance through Plato’s allegory of the cave, as on the threshold or border, from where it is possible to go inside and outside alternately:

“The anthropologist acknowledges holding most of his understanding of society from the people he works with or amidst and must therefore account for the way they make sense of the world they live in, more precisely the moral categories and judgments they use, and the ethics they mobilize to confront problems or dilemmas. But he also knows that he must maintain a distance from their interpretations and justifications to shed light on facts and processes which may not be visible to or are rendered invisible by the actors, such as the hidden reasons that motivate their choice of certain norms, the interests they have in defending certain values, and the unanticipated consequences of the sentiments that drive them” (2011, p. 485).

Throughout my research I have assumed this type of borderline perspective as a way to shed light on the ethical and political blind spots of human rights policies in Argentina. The notion of ‘ethnographic effect’ employed by Marilyn Strathern (1999) seems to capture the precarious arrangements that make up any ethnography. That is to say, it does not rely on fixed schemes to be strictly followed by the researcher. Instead, the ethnographer goes back and forth, but on a constant reorganisation of materials and intersubjective engagements. In this sense, ethnography is not only a method of ‘data collection’16 but also the articulation of an “argument” (Guber, 2004) that takes into account the points of view, the reasons and the principles of the actors in a dialogical mode. In saying that ethnography is ‘dialogical’ I try to emphasise how my encounters with experts, activists and public officers not only ‘informed’ my perspective but also shaped my own position as a researcher. The multiple ways in which they categorised me as researcher, an international student in Australia or a fellow activist had a direct influence on how I engaged with the field.

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16 As Strathern points out, the idea of “data collection” has been challenged from several points of view in the last decades: ‘collection’ for its political and colonial connotations and ‘data’ for its epistemological implications (1999, pp. 3-4).
1.8 Overview of Chapters

The dissertation is organised in eight chapters, including the Introduction (Chapter I) and the Conclusion (Chapter VIII) of the thesis. Chapter II, introduces key theoretical debates that inform my analysis of human rights in Argentina. In the first section of the chapter I draw on performativity theories (Austin, 1975; Butler, 1997, 1999, 2010) and lay out the theoretical approach of this study. In the second section I engage with contemporary scholarly debates on human rights and I position my own research in these debates. The final section of the chapter presents a literature review on communication rights and the information society. In discussing this literature, this section outlines the intellectual context that informed the debates around the ACS Act in Argentina.

Chapter III outlines the historical background of human rights in Argentina. In particular, the chapter focuses on the emergence of human rights as a novel mode of expert and activist intervention in the 1970s. The chapter is organised in four main sections and it traces a gradual transformation in the ways human rights have been understood and enacted in Argentina between the mid-1970s and early 2000s.

In discussing the research approach and methods of this dissertation, in the previous section of this chapter I have also described the content and rationale of the four empirical chapters of the thesis (Chapters IV-VII). As I have explained, each of these four chapters address key moments in the process of debates, formulation and implementation of the ACS Act. Taken together, Chapters IV-VII seek to illuminate different aspects of this process and, in doing so, they put forward a nuance understanding of the interplay between human rights discourse and political action in Argentina.

The thesis ends with a brief conclusion integrating the major themes discussed throughout the chapters. It also identifies the limitations of
the study and considers how the findings of this thesis could be taken further in future research projects.
CHAPTER II
PERFORMING HUMAN RIGHTS

2.1 ‘From the Simple Fact that Man is Man’

God may have died... but at least we have international law.

- Costas Douzinas, The End of Human Rights (2000, p. 9)

Contemporary human rights law... exposes the fundamental tautological condition of all law. Without warrant or sanction, without the premise of Nature or the dictum of an executor, contemporary human rights law requir(es) that what is taken for granted be – therefore and thereafter – obsessively recited and rearticulated.

- Joseph Slaughter, Human Rights, Inc. (2007, p.72)

Since their proclamation in the 1948 Universal Declaration of Human Rights, and in particular from the 1970s onwards, human rights have become a strikingly powerful and pervasive global narrative. Their core international documents have been endorsed by almost every state, which seems to convey at least some degree of meaningful consensus on what allegedly are humanity’s moral aspirations. At the same time, human rights law is becoming increasingly prominent within domestic legislations, to the point that almost all recently adopted national constitutions have included human rights provisions. Beyond its legal codification in agreements, covenants and declarations, the power of human rights is also palpable in subtler forms. They have become so central to our way of thinking and acting in the political terrain that it is frequently difficult to find alternative vocabularies of political critique. From local communities engaged in struggles to transnational activist

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17 According to Stone Sweet, many of the new “constitutional texts proclaim human rights before they establish state institutions and before they distribute governmental functions. In consequence of this fact, rights are considered by legal scholars and many judges to possess a juridical existence that is prior to and independent of the state. Doctrine has it that rights are invested with a kind of ‘supraconstitutional’ normativity that makes (at least some of) them immune to change through constitutional revision… This is inherently a natural law position, although natural law is rarely explicitly invoked” (2000, p. 95).
networks, a wide range of social movements find in human rights a
language in which their claims are widely resonant and politically
compelling. International bodies, government agencies, and political
leaders, for their part, also appeal to human rights as a way to
legitimise their diplomatic, commercial, humanitarian and military
endeavours. Human rights act nowadays as a sort of metacode that
facilitates regional integration efforts, military-humanitarian
interventions and the harmonisation of divergent legal regimes.

In their current form, human rights are fundamentally grounded in the
structures of the United Nations – the so-called universal human rights
system – and their core legal-philosophical precepts are found in a set
of foundational international agreements. As they emerged in the
aftermath of World War II, these texts are embedded in a profound
humanitarian sensibility, a consequence of the emotional and political
shock at the horrors of war and the Holocaust. In this sense,
contemporary human rights crystallised as an international
commitment to prevent future atrocities. They assert a set of axiological
principles grounded simultaneously on presupposed universal moral
aspirations and shared biological membership in the human species.

As enunciated in these texts, human rights resonate with the voice of
the universal: “...the recognition of the inherent dignity and of the equal
and inalienable rights of all members of the human family is the
foundation of freedom, justice and peace in the world” (UDHR,
Preamble); “All human beings are born free and equal in dignity and
rights. They are endowed with reason and conscience and should act
towards one another in a spirit of brotherhood” (UDHR, Article I);
“Everyone has the right to recognition everywhere as a person before the

18 Since the Universal Declaration of Human Rights was established in 1948, six other UN conventions
have been widely ratified all over the world: the Convention on the Rights of the Child (1959), the
International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on
Civil and Political Rights (1966), the International Covenant on the Elimination of All Forms of Racial
Discrimination (1969), the Convention on the Elimination of All Forms of Discrimination Against Women
(1979), and the Convention Against Torture (1985).
law” (UDHR, Article 6). Human rights, thus, are regarded as self-evident, a natural derivation of “the simple fact that man is man”, as famously asserted by natural law theorist Jacques Maritain (1948, 63). Joseph Slaughter has summarised this “textual logic” by which human rights “announce [themselves] simultaneously as a speech act of recognition – simply an acknowledgement of ostensibly natural truths about the human – and as a speech act of declaration that intends to effect the right of everyone ‘to recognition everywhere as a person before the law’ (UDHR)” (2009, p. 14; emphasis added).

Beyond its enunciation in international covenants and declarations, the foundationalism of human rights discourse is also reproduced in the writings of legal philosophers, activists, politicians and academics. The work of legal philosopher Jack Donnelly, for example, is a common reference used to define what human rights are and how they should be understood. In his book *Universal Human Rights in Theory and Practice* (2013), widely used as a textbook for teaching human rights, Donnelly asserts that:

> “Human rights are literally the rights that one has simply because one is a human being (...) Human rights are equal rights: one either is or is not a human being, and therefore has the same human rights as everyone else (or none at all). Human rights also are inalienable rights: one cannot stop being human, no matter how badly one behaves or how barbarously one is treated. And they are universal rights, in the sense that today we consider all members of the species Homo sapiens ‘human beings’ and thus holders of human rights” (p. 10); “Claiming a human right, even when it also involves a demand to create or better enforce a parallel legal right, involves exercising a (human) right that one already has. And in contrast to other grounds on which legal rights might be demanded – for example, justice, utility, self-interest, or beneficence – human rights claims rest on a prior moral (and international legal) entitlement” (p. 12; emphasis added).

In these statements, human rights seem to have some sort of objective or natural existence that precedes any act of declaration and legal
codification\textsuperscript{19}. Donnelly’s reflections go beyond the reassertion of human rights’ seemingly prepolitical existence, and his understanding of human rights law is not as clear-cut as these statements would seem to indicate. And yet, the kind of rhetoric reproduced here contributes to the reinforcement of certain shared ideas about human rights that present them as taken-for-granted moral imperatives, or as a matter of common sense. Moreover, as an increasing number of scholars (see for example Allen, 2009; Asad, 2000; Dezalay & Garth, 2006; Hagan & Levi, 2007; Jean-Klein & Riles, 2005; Madsen, 2011; Riles, 2006a; Vecchioli, 2009) have argued, a significant portion of the anthropological, sociological, and historical work on human rights assumes many of the epistemological tenets it seeks to account for. Some of this work, indeed, has almost entirely adopted human rights language, to the point that

“a whole genre of human rights literature has in practice developed importing the normative method of writing ‘recommendations’ from human rights consultancy and activism in combination with straightforward legal doctrinal and institutional analysis” (Madsen, 2011, p. 270).

My personal interest in human rights, and particularly in how they are present in the debates around media policies in Argentina, is deeply inspired by the work of anthropologists, socio-legal scholars and lawyers who found in the language of law a way to combine their professional efforts with meaningful and principled political praxis. As shown in the following chapters human rights have proved to be extremely fertile ground for the advancement of progressive political agendas. Importantly, the efforts of scholars and experts have contributed substantially to this realisation. However, the very success of human rights discourse has meant that many of its normative and

\textsuperscript{19} Paul Patton has rightly observed that this understanding of human rights is also present in the language we employ when referring to human rights: “claiming that some way of acting or being treated is a right amounts to claiming that it is more like an empirical fact than a merely subjective value judgement or preference. Hence the common recourse to the language of discovery in speaking about rights: people often refer to the acknowledgement that a particular group possesses certain rights or the recognition of those rights by the law, as though the rights in question exist in some sense independently of their institutionalisation in systems of law” (Patton, p. 235).
epistemological assumptions have been adopted into social research approaches. While necessary, this literature leaves unexamined many of the effects of the global expansion of human rights. In Argentina’s current context, in which the language of human rights saturates political discourse, it is therefore important to rethink the theoretical and methodological tools from which to understand human rights discourses and practices.

The concept of performativity provides a productive way to think about human rights. Importantly, a focus on performativity calls into question the idea that there is a stable entity (or entities) that can be delimited as ‘human rights’, one that pre-exists the activities of human rights bureaucracies and agents. On the contrary, the notion of performativity draws our attention to the diverse set of processes through which human rights are ‘effected’, this is, how they are brought into being. Simultaneously, thinking in terms of performativity also illuminates the effects of human rights beyond their stated aims given that, as Wendy Brown has observed, “it is in the nature of every significant political project to ripple beyond the project’s avowed target and action... [Since] [n]o effective project produces only the consequences it aims to produce” (2004, pp. 452, 453).

In this chapter, I clarify the theoretical approach of the thesis and I position my own research as part of a dialogue with the contemporary literature on human rights. The chapter is structured in three main sections. In the first part I make a case for approaching human rights through the notion of performativity. Drawing on the works of Jacques Derrida (1977), Judith Butler (1997, 1999, 2010), Michel Callon (1998) and Sally Merry (2011, 2016), this section clarifies the conceptual underpinnings of the research. In particular, I distinguish the different modalities of ‘performativity’ that are discussed across the thesis. In paying attention to the performativity of human rights my research aims to illuminate how they simultaneously shape, and are shaped by, the political terrain in Argentina.
In the second section I engage with a line of research that reflects on the discursive operation of human rights and, in particular, on the effects of their global expansion. Rather than asking whether human rights are being violated in a given context, or whether it is pertinent to demand the recognition of a new human right, this approach is concerned with questions such as: what are the effects of the expansion of human rights as a language of moral and political critique? What do human rights do to our way of thinking and acting politically? While much of this work emphasises the depoliticising effects of human rights, I maintain that in the Argentinean context human rights are mobilised in explicitly political terms.

Finally, the third section presents a discussion of the scholarly literature in the field of communication rights. In particular, I trace the emergence of demands around the ‘human right to communicate’ in the 1960s and their reformulation in the context of the so-called ‘information society’ at the beginning of the new millennium. This discussion aims to present the intellectual context that informs the debates around the Audio-Visual Communication Services Act in Argentina.

2.2 Performativity, Performance and the Making of Human Rights

“[The slogan] ‘I am a man’..., bears within it either a paradox (“I am not a person and hence I demand to be treated as one”) or a narrative (“I was born a nonperson, and thanks to others, to whom this sign is addressed, I am becoming a person”) ... what is proffered here is a promise rather than a description, performative rather than constative, but a promise that only makes sense if it adopts the form and the structure of a statement. And it is not merely a claim about me, a proposition of identity, it is a demand and a claim about all of us: I am what you are, we are human together, and that may require some adjustments on your part.”

- Keenan, 2013, p. 294
2.2.1 How to Do (Legal) Things With Words

The British philosopher J. L. Austin (1975) introduced the concept of ‘performativity’ in his analysis of a specific class of linguistic forms, one that troubled the more traditional focus on the truth functionality of propositions. For example, ‘constative’ statements such as “this is a wedding ceremony” can be evaluated as either true or false: their meaning is tied to their truth function. In contrast, ‘performative’ statements such as “I hereby pronounce you man and wife” cannot be solely evaluated in terms of their truth content\textsuperscript{20}. These words do something in the world, something that is not just a matter of generating consequences, like persuading or alarming a certain audience. Forms of expression such as promises, assertions, bets, threats or thanks can be considered actions in themselves. Rather than merely representing a state of affairs – and given certain ‘felicitous’ conditions – these utterances accomplish something: they are performative. Therefore, it could be said that, under the appropriate circumstances, performative utterances produce a different world, if only for a single speaker and a single addressee.

Although Austin draws attention to the force of conventions in the constitution of meaning, in his famous lectures How to Do Things With Words he seemed to grant a certain privilege to non-citational or ‘original’ utterances over those expressions that are merely a repetition or a quotation. In particular, Austin suggested that:

\textsuperscript{20} Canonical discussion of linguistic performatives has very often focused on legal utterances such as marriage rituals, acts of naming, court rulings and legislative enactments. Significantly, Austin expressed a particular interest in the performativity of law and legal discourse, since, as he observes, “many of the ‘acts’ which concern the jurist are or include the utterance of performatives” (1975, p. 19). Austin further noted that the legal profession is particularly attuned to the peculiarities of the performative and takes special precautions to avoid the many varieties of ‘infelicity’ to which such speech acts are exposed (p. 22). The author draws some of its most famous examples of performative utterances precisely from legal scenarios. In her preface to the 1999 edition of Gender Trouble Judith Butler tells how her theory of gender performativity was inspired by Derrida’s, “Before the Law”. In that text, Butler explains, Derrida examines how the power of law rests to some extent on an expectation, the anticipation of an essence, and it is precisely that anticipation that produces the effect of the authority of law (Butler, 1999).
“[A] performative utterance will, for example, be in a peculiar way hollow or void if said by an actor on the stage, or if introduced in a poem, or spoken in soliloquy. This applies in a similar manner to any and every utterance – a sea-change in special circumstances. Language in such circumstances is in special ways – intelligibly – used not seriously, but in ways parasitic upon its normal use – ways which fall under the doctrine of the etiolations of language” (Austin, 1975, pp. 21-22).

In this crucial passage Austin refers to fictional or theatrical utterances as ‘non-serious’ and excludes the consideration of such forms of expression in his account of the workings of the performative. Although Austin had also observed that language is “essentially mimicable, reproducible” (Austin, 1975, p. 96), the ambivalence he expressed towards the citational/non-citational nature of performatives was a key point in subsequent engagements with his work. Derrida (1977), in particular, takes issue with the distinction posited by Austin between original, substantial, normal or valid performatives and secondary, hollow, abnormal ones. In Austin’s lectures, the ‘parasitic’ nature of hollow performatives is clearly seen in the fact that they are quotations or citations of original performatives, mimicking the form but lacking the performative force of that which they cite. For Derrida, then, the distinction between original and secondary utterances is undermined by Austin’s strong insistence that performatives are conventional in nature, that is, ‘iterable’, repeatable:

“Isn’t it true that what Austin excludes as anomaly, exception, ‘non-serious’, citation (on stage, in a poem, or a soliloquy) is the determined modification of a general citationality... without which there would not even be a ‘successful’ performative?... Could a performative utterance succeed if its formulation did not repeat a ‘coded’ or iterable utterance, or in other words, if the formula I pronounce in order to open a meeting, launch a ship or a marriage were not identifiable as conforming with an iterable model, if it were not then identifiable in some way as a ‘citation’?... In such a typology the category of intention will not disappear; it will have its

21 The history of the concept of performativity has prompted a long and rich intellectual debate between diverse theoretical traditions (whose main protagonists are perhaps John Searle and Jacques Derrida). In this chapter I do not attempt to provide a comprehensive account of such debates; instead, my goal is to trace one particular trajectory, that which informs Judith Butler’s work and, through her work, a broader literature in the field of cultural studies. For a detailed intellectual history of the concept see James Loxley (2006).
place, but from that place it will no longer be able to govern the entire scene and system of utterance” (1977, pp. 17-18).

If valid or original speech acts themselves involve an essential element of citation, this citationality cannot be the element that invalidates fictional performatives as non-serious. If they are conventional in nature, repetitions of an established formula, even ‘felicitous’ performatives, are characterised by the derivativeness that Austin seeks to ascribe only to abnormal or hollow performatives. In this critical reading of Austin, Derrida emphasises that the constitution of meaning relies on citation and repetition: any act of signification must be recognisable to others in order to work, which is to say that it must be repeatable in new contexts. The original is marked from the very beginning by its repeatability.

Derrida’s intervention has relevant consequences for theories of performativity and the way other influential authors will take up the concept (in particular Judith Butler). Here I summarise some of the crucial points of his reformulation.

First, citationality or ‘iterability’ is inherent to the constitution of meaning in general and to the way performativity works. Therefore, the distinction between ‘original’ and ‘secondary’ performatives becomes irrelevant or inadequate. Second, because of this, performativity does not rely on a single act of signification, but precisely on repetition and convention. Importantly, this entails that performative power cannot be the function of a single will (the speaker), but is always derivative and dependent on the authoritative force of prior discourses. Third, if every utterance is already a citation, theatrical performances cannot be invalidated a priori as ‘hollow’ or ‘void’ performatives. Fourth, failure or ‘risk’ is internal to performativity. This is why performative power requires constant repetition and recitation. Finally, all speech acts entail at the same time repetition and alteration. Any repetition is marked by alteration, because repetition happens in a new context,
which can in turn never be completely determined. Thus every repetition is always also – however slightly – an original. Equally there can be no pure original or beginning because there cannot be a one-off signifying event.

The points summarised above are significant for the way the idea of performativity was later extended to the critical analysis of a broader universe of cultural practices. In the coming sections I discuss how this understanding of the concept was subsequently reappropriated in cultural research on gender, law and the economy, and how these contributions inform my own research.

2.2.2 Performance, Performative, Performativity

“It is always possible to ask how a banality becomes established as such.”

-Judith Butler, 2010, p. 148

Whereas for Austin ‘performative’ had a very specialised and technical meaning, the notion has also been employed in a quite different sense in a vast body of scholarship that is often referred to as ‘performance studies’ or ‘performance theory’. In this field, the notion of ‘performativity’ has been frequently used as an adjective denoting the performance aspect of any event or practice under consideration. In this sense, to characterise a public declaration as ‘performative’ would mean to examine it as some sort of theatrical performance, without the specific implications that would follow from a classic linguistic perspective in the tradition of Austin. ‘Performativity’ would therefore refer to the rather general quality something might have by virtue of being a performance.
The work of Judith Butler expresses a particular convergence of both of these traditions. In analysing the performativity of gender, Butler draws on the theatrical or dramatic connotation of the notion of ‘act’ to describe the ways in which gender is performed. “In what senses, then, is gender an act? As in other ritual social dramas, the action of gender requires a performance that is repeated” (Butler, 1999, p. 178). Central to her critical analysis of gender performativity is the rejection of an ontological understanding of gender, by which gender identities would be no more than the expression of an essence. Against this dominant ontological view of gender as given, Butler observed that the drag act was a particular kind of theatrical genre with the potential of subverting established gender categories. ‘Performance’, in this context, was simultaneously a theatrical enactment (the drag act) and a rupture of the stylised conventions that define the dominant categories of gender.

In *Excitable Speech*, Judith Butler takes up and extends Derrida’s reformulation of the concept of performativity:

“If a performative provisionally succeeds (and I will suggest that ‘success’ is always and only provisional), then it is not because an intention successfully governs the action of speech, but only because the action echoes prior actions, and *accumulates the force of authority through the repetition or citation of a prior and authoritative set of practices*. It is not simply that the speech act takes place *within* a practice, but that the act is itself a ritualised practice. What this means, then, is that a performative ‘works’ to the extent that it *draws on and covers over* the constitutive conventions by which it is mobilised. In this sense, no term or statement can function performatively without the accumulating and dissimulating historicity of force” (Butler, 1997, p. 51).

In this conceptualisation Butler employs the notion of performativity in a sense that is clearly informed by Austin’s work (although through the lenses of Derrida and Foucault). Here, performativity is a way to emphasise effects in the constitution of the social rather than, for

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22 In the preface to the 1999 edition of *Gender Trouble*, Butler acknowledges the ambivalent meanings that the notion of performativity has in her own work: “My theory sometimes waffles between understanding performativity as linguistic and casting it as theatrical. I have come to think that the two are invariably related, chiasmically so, and that a reconsideration of the speech act as an instance of power invariably draws attention to both its theatrical and linguistic dimensions” (Butler, 1999, p. xxv).
instance, interests or structural causes. By saying, for example, that gender is performatively constituted, the idea of gender as a stable and preexistent entity is called into question. Similarly, by focusing on ‘state effects’, some influential works on the anthropology of the state have challenged the notion of ‘state’ as an already delimited and monolithic field (Abrams, 1988; Mitchell, 2006). Instead, this literature approaches the state as a process (Steinmetz, 1999), a series of multiple and heterogeneous enactments that encompass rituals, uniforms, credentials, buildings and so on. In this sense, the idea of performativity, although not always explicitly employed, “describes a set of processes that produce ontological effects, that is, that work to bring into being certain kinds of realities” (Butler, 2010, p. 147). Butler further explains that to understand how entities are naturalised it is necessary to consider the relation between processes of reiteration, reestablishment and sedimentation, since performativity is a process that achieves its effects in both regenerative and accumulative ways. From this perspective, to say that human rights, the state or the market are “performatively produced is not to say that [they are] produced ex nihilo at every instant, but only that [their] apparently seamless regeneration brings about a naturalised effect. This effect is part of an iterable structure” (Butler, 2010, p. 149).

A crucial point in performativity theory is the notion of ‘performative agency’ put forward by Judith Butler (2010) (and consistent with STS and Foucault’s approach). In Butler’s view, performative agency is not the effect of single subjects’ utterances, as it was envisioned by Austin (1975) in his classical model of performance. Instead, performative agency is the result of broad networks of social relations, institutionalised practices, technical instruments and the material environment: “the assumption of a sovereign speaker is lost, and whatever conception of agency takes its place presumes that agency is itself dispersed” (Butler, 2010, p. 150). Following Derrida, Butler refutes the Austinian model of performativity as the discrete action of a single
subject. In this conceptualisation, performative power is not only exercised through the explicit speech acts of certain subjects. Importantly, other forms include: “a) the mundane and repeated acts of delimitation that seek to maintain a separation among economic, social and political spheres; b) modes of prediction and anticipation (here I could include modes of monitoring), and c) organisations of human and non-human networks” (Butler, 2010, p. 150).

Performance and performativity become relevant in this thesis as an analytical approach to examine different aspects of human rights in Argentina. I am interested in the textual articulation of the ACS Act as a ‘human rights policy’. It is precisely because the ACS Act is a repetition, an iteration of preexisting norms and legal formulas that it can be inscribed and recognised as a human rights act. Simultaneously, I argue, the ACS Act contains some novelty and originality: it is not only ‘constative’ but also ‘performative’ in that it brings new realities into being. Secondly, as I discuss in particular in Chapter IV, the ACS Act and human rights in Argentina are also performed in a ‘theatrical’ sense. Since they are tied to powerful emotional events, images and discourses, human rights are often deployed in quite spectacular and sometimes sensationalistic ways. The circulation of spectacular images and narratives has been crucial to the diffusion of human rights ideas and the production of audiences. Finally, I focus on the performativity of expert knowledge, instruments and techniques. Drawing on the work of Sally Merry (2011), Michel Callon (1998) and others, Chapter VII of the thesis focuses on how human rights are performed in the practices of public officers, experts and activists working at the Defensoría.

The Vernacularisation of Human Rights

The concept of performativity as discussed by Derrida and Butler, and particularly their understanding of citation and iterability as constitutive of every act of signification, provide a productive way of
thinking about the formal and performative aspects involved in the making of both human rights and law. The popular claims for a ‘human right to communicate’, as well as the formulation and implementation of the ACS Act, are grounded in the appeal to transnational discourses and standards on the rights to communication, the information society, and human rights broadly speaking. As Sally Merry (2006) has pointed out, the efficacy of mobilising human rights discourses in concrete contexts entails a work of ‘translation’, mediated by experts, which facilitates a process that Merry calls the ‘vernacularisation’ of human rights (p. 219). As Merry further explains, this vernacularisation affords (and is produced by) new iterations of the human rights discourse. At the same time, by analysing the performative enactments of human rights in Argentina (street interventions, media events, judicial disputes and bureaucratic instruments) this thesis focuses on how the abstract principles enshrined in international covenants and declarations are reappropriated and transformed in Argentina through the work of activists, experts and public officers.

**Performance, Aesthetic Scenes and Human Rights in Buenos Aires**

The demands for new broadcast regulations as well as many of the instances in which, once sanctioned, the ACS Act was celebrated and defended by its promoters were deeply embedded in a rhetoric that links today’s political struggles with a human rights activist tradition that dates back decades. As I argue in Chapter IV, this political imaginary is materialised in a human rights culture that is manifest in the city of Buenos Aires itself, in ‘aesthetic scenes’ including graffiti, murals, memorial plaques, public demonstrations, political events and so on.

In order to examine these many performances of human rights in the city, the research draws inspiration from recent scholarly work concerned with the cultural forces at work in the making of human rights (Hunt, 2007; McLagan & McKee, 2012; Slaughter, 2009;
Sliwinski, 2011). I use the notion of ‘aesthetic scene’ proposed by Sharon Sliwinski (2011) as a way to examine the constitution of public imaginaries of human rights in Argentina. In her recent work centred on the articulations between photography and human rights, Sliwinski defines the notion of ‘aesthetic scene’ as a domain of sensible knowledge that results from the encounter between the circulation of visual images and the responses they elicit in distant spectators. While human rights are more frequently considered at the level of legal principles and institutional rules, the author’s basic assumption is that human rights also operate in a terrain of emotions and imagination.

My understanding of the notion of ‘aesthetic scene’ is, however, slightly different than the one proposed by Sliwinski. Her work is mainly concerned with the responses that ‘distant’ spectators provide to the images of human suffering that circulate in humanitarian campaigns and media coverage. Drawing on the work of Kant, Sliwinski observes that it is precisely this ‘distant’ stance that allows for an ethical judgement of events such as mass atrocities and the suffering of others. The ‘aesthetic scenes’ documented in my study are better understood as attempts to reinscribe human rights ideals as part of a local tradition of militancy and activism. In this way, the focus is not so much on the responses generated by ‘distant others’ but on how these ‘aesthetic scenes’ are a constitutive element of government and activist practices in Argentina.

**Human Rights, Expertise and Government**

Human rights are also performed in the sense Michel Callon and other STS scholars use the term ‘performativity’. For Callon (1998), performativity can be understood in a relatively broad sense as the performative effects of ‘economics’ in (partly) producing, and not merely describing, the field known as ‘the economy’. This is, performativity refers to the ways in which those theories, instruments and knowledge
pertaining to the domain of what the author calls ‘economics’ are constitutive of markets and shape processes of ‘economisation’. In this sense, ‘the economy’ as a domain of social life is not prior to and external to ‘economics’ (Muniesa, Millo, & Callon, 2007).

Recent trends in the field of legal anthropology have adopted a similar lens to shed light on the ways ‘technologies of truth’ (Merry & Coutin, 2014), such as monitoring and auditing instruments, do not merely measure or ‘monitor’ social settings but also shape social realities. ‘Technologies of truth’ such as standards, indicators and other forms of measurement and monitoring techniques, together with a concern for issues of ‘transparency’ and ‘participation’, are particularly relevant to contemporary human rights regimes, and they signal a broader move toward what has variously been called ‘new governance’, ‘experimentalism’ and ‘results-based management’: a shift from command-control strategies to collaborative, consensus-building discussions (Sabel & Zeitlin, 2012).

Drawing on these insights, my research examines how the expansion of human rights in government arenas has entailed the adoption of new techniques, knowledge and government devices (monitoring, reports, public hearings and standards, among others). Accordingly, in this thesis I examine how a repertoire of techniques, knowledge and modes of legitimation adopted from human rights regimes have served to enable the creation of new spaces of governmental intervention by constituting the domain of media broadcasting as “administrable” (Dean, 2010). Moreover, a I discuss in chapters IV-VII human rights are not preexistent entitlements ‘recognised’ in international treaties that are later applied in ‘local’ contexts. Instead, I suggest that human rights are the result of the work of experts, government officials and political activists.

The idea of performativity is crucial to understanding how these varied ‘technologies of truth’ are brought into being and how they operate. As
Merry and Coutin (2014) point out, legal regimes are constructed at least partially out of preexisting materials (international declarations, legal formulas, standards, techniques of mediation, etc.), and in this way they participate in the citational practices that are characteristic of legal regimes in general (as well as of scholarly work and of language itself). Building on the tradition of science and technology studies, Merry and Coutin argue that law is produced through any number of material arrangements and technological objects (2014, p. 3). The elaboration of human rights reports, administrative resolutions or even a legal denunciation entails a work of ‘entextualisation’ by which elements taken from other texts are excerpted and redeployed in a new case or context, and it is precisely this reiteration which grants authoritative power to human rights work. As Merry and Coutin assert, “each instantiation of law... builds on prior instantiations”, and legal regimes “are, in a sense, the residue of prior negotiations, a residue that leads forward as well as into the past” (2014, p. 3).

From this perspective, the ACS Act can be understood as a new iteration of transnational human rights regimes. It builds on agreed legal formulas and standards, on human rights reports produced by international bodies and NGOs, and on comparative jurisprudence in relation to freedom of speech and communication rights. However, the ACS Act also embodies a distinctive view of human rights ideals. This view, I argue, results from a local tradition of human rights activism and a particular conjuncture marked by the rise of populist discourses in Argentina. In the next section of this chapter I situate my research on Argentina within the contemporary literature about the effects of the global expansion of human rights.
2.3 The Politics of Human Rights in Argentina

“The main contemporary effect of human rights is to depoliticise politics itself.”

Costas Douzinas, Human Rights and Empire (2007)

In saying that human rights are performative, this thesis calls attention to the effects brought about by the expansion of human rights ideas, instruments and regulations in Argentina. A central argument guiding this research is that human rights have contributed to a transformation of the political terrain in Argentina. Building on anthropological and historical studies in the field (Comaroff & Comaroff, 2009; Dezalay & Garth, 2006, 2011; Guilhot, 2008; Moyn, 2010; von Schnitzler, 2014), I argue that human rights have come to define the terms of what is considered legitimate and possible in the terrain of political action, while alternative modes of intervention are excluded. While in the 1960s and 1970s political action was largely shaped by a modernist ideal of radical social change, often articulated in anticolonial or socialist projects of national liberation, these projects of total transformation have now been displaced by more moderate and ‘minimalist’ forms of political action.

Scholarship on human rights in various contexts has shown remarkable parallels in terms of the effects that transnational human rights regimes have had on politics over recent decades (Allen, 2013; Babul, 2012; Dicklitch & Lwanga, 2003; Goodale & Merry, 2007; Levitt & Merry, 2009; Tate, 2007). Many of these studies echo the now-foundational critiques of the development industry provided by anthropologists almost three decades ago (Escobar, 1984, 1988, 1991; Ferguson, 1985, 1994).

A common feature highlighted by this line of argument is that human rights have served as mediators for relations between ‘Third World’ countries and major global powers like the United States and western
European countries. In particular, scholars have shown how human rights are often employed as measures against which ‘developing nations’ such as Guatemala, Colombia, Palestine or Turkey are screened and evaluated (Allen, 2013; Babul, 2012; Moodie, 2006; Tate, 2007). In this sense, the human rights system operates simultaneously as a disciplinary constraint and as a mediating force meant to incorporate nations into global economy.

In addition, this literature points to the fact that the professionalisation of human rights work, alongside the increasingly prominent role played by nongovernmental organisations (NGOs), has altered what once were radical visions of societal transformation, instead favouring more nuanced technical interventions aimed at achieving “short-term relief” (Redfield, 2013; von Schnitzler, 2014, p. 338). This position is founded on the belief that, in contrast to former revolutionaries guided by ideals of self-sacrifice and a collectivist ethics, political activism is now performed as a delicate balance between pragmatic choices of career development and a commitment to advancing social justice (Elyachar, 2005; Vecchioli, 2009). In addition, many scholars have noted that donors’ ability to impose NGOs’ and state priorities often undermines human rights’ local legitimacy. The excellent ethnographic research carried out by Lori Allen (2013), for example, shows how the expansion and material success of the human rights “industry” in occupied Palestine is received by most Palestinians with cynicism as “they are distressed by the new kinds of avaricious, individualistic political subjects being formed” within the NGO world (p. 97).

The Argentinean context presents some interesting counterpoints in this regard. As is discussed in detail in the following chapters, national human rights organisations like Madres de Plaza de Mayo, Abuelas de Plaza de Mayo and CELS, among others, retain enormous prestige and social recognition in Argentina. Far from the scepticism and political apathy that human rights evoke in other contexts, the struggle of the Madres and Abuelas still stands today as a powerful symbol of the
resistance against the military dictatorship, and it reasserts some of the revolutionary ideals of the 1960s and 1970s. Against theoretical generalisations around the ‘depoliticising’ effects of human rights, a central argument of this thesis is that human rights in Argentina are mobilised in explicitly political terms and are often articulated as part of a broader discourse of social justice. More specifically, I suggest, human rights can be seen as a “nodal point” for the articulation of a populist project that sought to expand the horizon of democratic politics (Laclau & Mouffe, 2001). As I show throughout this thesis, such project was not exempt of tensions, ambiguities and contradictions.

As anthropologist Karen Faulk (2012) has compellingly argued, human rights discourse in Argentina is an “essential feature of public discussion, and figures centrally in claims made by groups from across society about rights of citizenship” (p. 3). More importantly, while human rights are sometimes construed as part of transnational ‘empires of law’ (Goodale, 2007) that facilitates the local adoption of neoliberal reforms, Faulk suggest that activist groups within Argentina “use a modified version of [human rights] discourse to challenge the precepts of (neo)liberalism itself” (2012, p. 4). In this thesis, I extend Faulk’s important insights and examine how human rights were mobilised by state and non-state actors in the context of the debates around the ACS Act.

One important contribution of this thesis to ongoing debates on human is the analysis of how rights discourses and practices shape processes of state formation in contemporary Argentina. As George Steinmetz observes, studies of state-formation have typically concentrated on “a mythic initial moment in which centralized, coercion-wielding, hegemonic organizations are created within a given territory. All activities that follow this original era are then described as policymaking rather than state-formation” (Steinmetz, 1999, p. 9). However, the idea that states are constituted once and for all has been challenged by sociological and anthropological studies on the state in recent decades.
(Abrams, 1988; Joseph & Nugent, 1994; Mitchell, 1991, 2006; Sharma & Gupta, 2009). In particular, this research has called into question the idea of ‘the state’ as a repository of power that can be defined as a fixed set of political institutions. Accordingly, in this thesis I will approach the state as a process, a relational field whose limits cannot be fixed in advance.

As a means of gaining insight into the complex articulations between human rights, broadcast regulations and processes of state formation, the approach described above is useful and productive for a number of reasons. In the first place, it helps to overcome the limitations of a binary conceptual logic that opposes ‘the state’ on the one hand and ‘civil society’ on the other. As the work of Mitchell (1991) has shown, the appearance of the state as a discrete and autonomous social realm is the result of a reification established through routine and everyday social practices. In other words, the way ‘the state’ is construed as a separate entity from civil society is itself an effect of power and it is subject to continuous renegotiations. These insights are particularly useful in reflecting on contemporary Latin American states, where former activists and social movements have come to occupy government administrations. With the advent of left-populist governments in many Latin American countries in the late 1990s and 2000s, the term ‘civil society’ functions at times to dismiss government-social movements’ mutual imbrications and reassert the state/society divide. In fact, the ‘autonomy’ of civil society institutions as a space for free democratic debate has become a hegemonic notion since the 1990s (Buttigieg, 1995). This perspective tends to represent the state and civil society as enclosed entities where “the former [is] corrupt and repressive and the latter noble and liberatory” (Nelson, 1999, p. 102).

In the case of Argentina, the alignment of human rights activists and organisations with the governments of Néstor Kirchner (2003-2007) and Cristina Fernández de Kirchner (2007-2015) has been interpreted by both scholars and political observers as a sign of co-optation (see for
example Sarlo, 2011). In my view, by framing the terms of the problem in this way, this interpretation tends to obfuscate the fact that human rights actors, ideas and resources have taken part in government decision-making at least since the country’s return to democracy in 1983. Even more problematically, I suggest, the rush to identify hidden motives on the part of the political elites (impersonated in the figures of Néstor and Cristina Kirchner) narrows the analysis unnecessarily, leaving out of focus much of “what human rights do”, to use Talal Asad’s expression (2000). While the relationship between the government and social groups is ambiguous and complicated, anthropological literature on the state as a process helps to move beyond stereotypes. Rather than seeing the relationship between human rights groups and the state as a sign of co-optation, my study aims to illuminate the mutually formative effects by which human rights and state are coproduced (Hilgartner, Miller, & Hagendijk, 2015).

In particular, I contend that the normative expansion of human rights in Argentina is prompting new forms of government in the country, in line with what some scholars have defined as “new governance” or “experimentalism” (Rhodes, 1996; Sabel & Zeitlin, 2008). At the same time, whereas in the formative decades of human rights much of its work consisted in the documentation and denunciation of violations of formally recognised human rights, in today’s context human rights have become governmental projects and they shape new forms government.

In the next section, the last part of this chapter, I draw on scholarly literature on communication rights and the information society. As is explained in some detail below, this literature informs many of the views and ideas of several of my informants in Argentina.
2.4 Communication Rights in the Age of the ‘Information Society’

In this section I review a body of scholarship in the field of communication studies that has been directly involved in debates around human rights issues. Particularly concerned with communication rights and freedom of expression, this literature provides the intellectual and ideological landscape that informs the debates around media policies in Argentina. Much of this work is dedicated to defining categories, establishing program goals and discussing the philosophical grounds of the right to communication within the human rights system. To a large extent this literature is framed by the context of debates on the ‘information society’ during the UN summits of 2003 and 2005, which coincided with the first years of Néstor Kirchner’s presidency. The debates around ‘the human right to communicate’ can be traced back to the 1970s and the UN-sponsored program that came to be known as NWICO – the New World Information and Communication Order – which culminated in the publication of the report “Many Voices One World”, also known as the MacBride Report, in early 1980s. While scholars in this line of research have helped to push forward the agenda on media democratisation, they have not focused on human rights as an object of study in itself: human rights has been, instead, their field of intervention. The kind of reflection this literature provides is exactly what is at the heart of my own research, particularly given that in Argentina the ACS Act is largely grounded in the political and philosophical precepts developed, at least in part, by this body of scholarship. In this way, rather than outlining a theoretical approach, this section is meant to familiarise the reader with how notions of human rights and communication rights are understood by my informants: policy planners, human rights experts and media activists in Argentina.

So far in this chapter I have discussed a body of scholarly work that critically engages with contemporary human rights discourse. Most of
this work is concerned with the ambiguities that result from human rights’ global expansion since the 1970s. In summary, the main points of these debates can be summarised as follows: human rights are nowadays are articulated vis-à-vis a hegemonic discourse through which political claims are enunciated, envisioned and imagined by a broad range of political actors. However, human rights are also frequently evoked as a “moral utopia” (Moyn, 2010), a set of minimal principles that limit both politics and state power ‘from the outside’, as it were. It is precisely because they are apolitical that they can be considered a universalist moral utopia. Thus, human rights are depicted as a ‘minimalist’ project, aimed not at fostering comprehensive projects of social justice but the ‘attenuation of human suffering’. As Wendy Brown put it, “human rights take their shape as a moral discourse, centred on pain and suffering rather than political discourse of comprehensive justice” (2004, p. 453). My discussion of the literature on communication rights in this section engages with these debates and is driven by the following questions: how do the demands for a human right to communicate fit into this broader picture of human rights? More precisely, how do discourses on communication rights relate to the thesis of the emergence of human rights as a ‘moral utopia’? How do demands for communication rights fit within the ‘minimalist’ and ‘pragmatist’ program promulgated by advocates such as Michael Ignatieff (2003) and others?

I argue that the amalgam of ideas and demands calling for a human right to communicate does not fit easily within the previous description. On the contrary, communication rights activists and scholars have remained rather marginal to the prevailing liberal vision of human rights and, in many senses, they voice an alternative view of the human rights project. I maintain that this divergence is clearly expressed in three crucial points. First, the demand for the ‘human right to communicate’ emerged in the 1970s as part of a broader discourse that campaigned for the ‘New World of Information and Communication
Order’ (NWICO). The NWICO expressed the view of the Non-Aligned Movement, and as such, it was mobilised as an anti-imperialist and explicitly political project (Burke, 2015). In this way, it called into question the prevailing liberal view of human rights based on the idea of ideological neutrality. Secondly, the NWICO agenda entailed a marked statist component, inasmuch as it focused on the defence of national self-determination and the sovereignty of postcolonial states. In the view of the non-aligned countries, the protection and promotion of cultural diversity, plurality of voices and communication rights was, above all, grounded in the respect for state sovereignty. Third, the NWICO agenda also expressed a doctrinal and conceptual critique of the liberal vision of human rights. Those scholars and activists who question the more traditional approach to freedom of expression (as enshrined in international law) often rely on a ‘structural approach’ (rather than a ‘minimalist’ or ‘pragmatist’ one) concerned with the structural imbalances in national and transnational information flows. Importantly, these three aspects of the human right to communicate and the NWICO project were also crucial in shaping policy debates in Argentina. In different ways, I come back to each of these points in subsequent chapters of the thesis.

I offer a final clarification before moving into a discussion of the literature. In developing this section, I have focused on those studies that discuss the right to communicate and the NWICO project of the 1970s and 1980s. In a striking way, the ideas and debates that surrounded the implementation of the ACS Act recreated, 40 years later, many of the demands expressed by the Non-Aligned Movement in the 1970s. When at the turn of the new millennium the fascination with information and communication technologies (ICTs) seemed to be dominating policy and public debate, in Argentina the debate around the democratisation of media gained momentum. The World Summits on the Information Society (WSIS), held in Geneva (2003) and Tunis (2005), provided the appropriate framework to revisit the discussion on
media policies in the country. However, and as I further develop in Chapter V of this thesis, the demands put forward by experts and activists in the Argentinean context were not centred on the role of digital media and the internet but rather, surprisingly, on television and radio.

2.4.1 The Demand for ‘New World Orders’

“Since information in the world shows a disequilibrium favouring some and ignoring others, it is the duty of the non-aligned countries and the other developing countries to change this situation and obtain the decolonisation of information and initiate a new international order in information.”

(German Carnero Roque, committee rapporteur at the Non Aligned Symposium on Information, quoted in Nordenstreng, 2011, p. 229)

Although the ‘right to communicate’ does not exist as a provision of international law, it has sparked heated debates in international forums since it was first proposed in late 1960s. Its original proponent was UN official Jean d’Arcy23, who introduced into the international agenda the idea that human communication, as an interactive and conversational process, had to be protected and promoted by international law. In an article published in 1969 d’Arcy famously wrote: “The time will come when the Universal Declaration of Human Rights will have to encompass a more extensive right than the right to information... This is the right of men to communicate” (d'Arcy, 1969, p. 14). He observed that the prevailing doctrine in international human rights law, in particular Article 19 of the UDHR, conceived communication in a restricted manner, as a one-way process of seeking, receiving and disseminating information and ideas. His claim initiated what is now a well-established movement within the human rights system. Proponents of the ‘right to communicate’ emphasise the idea that communication,

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23 Jean d’Arcy was the director of Radio and Visual Services at the UN Office of Public Information between 1961 and 1971.
as a dialogical and interactive process, needs special protective and enabling provisions which are not sufficiently covered by Article 19\textsuperscript{24}.

Importantly, the idea of a human right to communicate emerged alongside the rise of the notion of the ‘Third World’ in the 1960s and 1970s as a major element in the geopolitical scene. Against the background of processes of decolonisation, the movement of non-aligned countries\textsuperscript{25} that took shape in these years denounced the imbalance in communication resources and demanded a more just distribution of technological capacity to participate in circuits of information. As a result of their persistent efforts, the UN General Assembly in 1974 formally approved the creation of a New International Economic Order (NIEO), which spoke of the right to “pursue progressive social transformation that enables the full participation of the population in the development process” (Hamelink, 1979, p. 145).

In a recent article, Finnish scholar Kaarle Nordenstreng (2011) recounts his experience at the Non-Aligned Symposium on Information that took place in March 1976 in Tunis. It was precisely at this international event that the concept of a ‘New World Information and Communication Order’ was born. According to Nordenstreng, the driving idea that fuelled debates around the NWICO was that no real self-determination would be possible unless political, economic and cultural autonomy for all states could be obtained. This was the subject of much controversy, mainly due to the Cold-War climate, as the aspirations and demands of Third World countries were supported by the Socialist Bloc and strongly

\textsuperscript{24} Article 19 establishes that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” However, communication rights proponents have pointed to the limitations of the notion of human communication enshrined in this article. Cees Hamelink, for example, argues that “all of the provisions in the ‘freedom of information’ articles in international human rights law address one-way processes of transport, reception, consultation and allocution, and do not pertain to the two-way interactive process of conversation. Even if the news and entertainment media would have a maximum freedom of expression and the fullest possible access to information sources, this would not guarantee that people are enabled to participate in societal dialogues” (2004, p. 2017).

\textsuperscript{25} The Non-Aligned Movement started to take shape with the creation of the Group of 77, established in 1964 (Burke, 2015).
opposed by liberal capitalist countries and major media corporations. The demands outlined under the NWICO agenda concerned a wide range of issues, which have been summarised as the ‘four Ds’: democratisation (the need for pluralism of sources of information), decolonisation (the struggle for independence from foreign structures and for self-reliance), de-monopolisation (limiting the concentration of ownership in media industries) and development (Nordenstreng, 1984).

In effect, the program agenda for a NWICO – and the ideal of a human right to communicate – was part of a broader demand for ‘new world orders’ that emerged alongside the consolidation of the Non-Aligned Movement in international fora. Perhaps most significantly, the claim for communication rights was seen as dependent on global social transformation, including in particular a call for a ‘New International Economic Order’ (NIEO)

“The new communication order must be considered an element of the new economic order... There is a coherent correlation between these two orders stemming from the fact that information is now a specific kind of basic economic resource (and not just a commodity) which performs an essential social function but which is today unequally distributed and poorly used. In some other respects, the new communication order is a precondition of the new economic order, just as communication is the sine qua non of all economic activities between groups, peoples and nations” (MacBride Commission quoted in McKenna, 2011, p. 142).

Decisive actions were required to address these goals and to transform the prevailing ‘Information and Communication Order’ of the time in a way that would enable states to “develop their cultural system in an autonomous way and, with complete sovereign control of resources,

26 Roland Burke observes that during the 1970s and early 1980s, a ‘structural turn’ in human rights circles occurred: an emphasis on ‘structural’ conditions and a demand for the establishment of a ‘New International Order’ as prerequisites for the fulfillment of human rights principles. Alongside the NWICO and the NIEO, Burke mentions the proliferation of a series of auxiliary ‘new international orders’, including the ‘New International Humanitarian Order’, the ‘New International Health Order’, and even the ‘New International Human Order’. “This armamentarium of revisionist ‘orders’ placed human rights everywhere”, laments the author, arguing that “the structural approach drew the web of contingent and causal conditions for respecting human rights so wide, and dispersed responsibility so thin, that meaning and moral clarity were often diminished. The intellectual and linguistic parsimony that was such a powerful asset to human rights as a language of protest was lost” (Burke, 2015, p. 56).
fully and effectively participate as independent members of the international community” (Hamelink quoted in Padovani, 2005, p. 318). The demand for a NWICO led to the establishment of the International Commission for the Study of Communication Problems, presided by Irish politician Sean MacBride; its final report, known as the MacBride Report, adopted by UNESCO at its General Conference in 1980, was the culmination of the NWICO debate that later became gradually marginalised (Padovani, 2005). It envisioned the “right to communicate” as linked to processes of development and democratisation, which in turn were argued to require an “enabling environment” rather than the mere recognition of individual freedoms that had been translated into the doctrine of “free flow of information” (Dakrouy & Hoffmann, 2010).

The MacBride Report has been widely recognised as a direct historical precedent to the World Summits on the Information Society held in 2003 and 2005. Claudia Padovani (2005) in particular has observed that in the early debates around a NWICO “there was clear awareness that a reordering of information and communication at the international level was crucial to bring about radical changes in global power relations” (p. 318).

The insights of the McBride Report as well as the broader program articulated around the NWICO debates were abandoned by mid-1980s. However, some of the claims of the Non-Aligned Movement were later taken up in the context of the World Summits on the Information Society-WSIS held in 2003 and 2005. In the next section of this chapter I briefly discuss how the demands for the right to communicate were redefined at the beginning of the 2000s.

2.4.2 The Information Society in the Twenty-First Century

“Our vision of the information society is grounded in the right to communicate, as a means to enhance human rights and to strengthen the social, economic and cultural lives of people and communities. The information society that interests us is one that is
based on principles of transparency, diversity, participation and social and economic justice. “


The boom of new information and communication technologies at the turn of the new millennium radically changed the terms of the debate as it took place four decades earlier. As we saw, a central point in the NWICO program was to counter the power of transnational corporations in shaping media news and the public debate. Freedom of expression conceived simply as ‘free flow of information’ entailed, in practice, a ‘unidirectional’ model of information, moving from industrialised western countries to the less-developed nations of the Third World. To the cultural colonisation and the commodification of information that resulted from this state of affairs, the NWICO project opposed the principle of information as a ‘public good’. Ultimately, the nascent post-colonial states were to be the condition of possibility of a world with ‘many voices’, of information as a public good, and of the idea of communication as a human right.

However, the debate was redefined in the context of the information society. The fundamental oppositions that structured the disputes of the 1970s – information as public good vs information as commodity; colonisation vs decolonisation; (postcolonial) state vs private capital – vanished by the end of the 1990s. The new information and communication technologies were presented as a reconciliation of neoliberal capitalism and the interests of the poorest people in the world – the ‘bottom of the pyramid’, to use ICT4D jargon. As William Mazzarella (2010) has observed,

“The emergent discourse of the ‘knowledge society’... allowed a rhetoric of social justice to blend with an entrepreneurial agenda that was by no means necessarily critical of large-scale corporate

27 ICT4D stands for Information and Communication Technologies for Development.
Global disparities in access to information and communication technologies formed the basis of the call for a UN-sponsored World Summit on the Information Society. It took place in two phases: Geneva in 2003 and Tunis in 2005. The event brought together over 170 states and tens of thousands of delegates, including many heads of state, activists and business representatives.

A key point stressed in communication rights discourses in the context of WSIS was the demand that everyone should be able to ‘participate’ in the information society. The claim that participation is a key element of communication rights was already present in the earlier debates of the 1970s and 1980s, when the notion that the ‘free flow of information’ as a unidirectional process was put into question. In those early stages the demand for participation sought to move beyond a perspective that individuals and collectives are mere receivers of information, pursuing instead a regulatory paradigm that “favour[ed] multiplicity, smallness of scale, locality, deinstitutionalisation, interchange of sender-receiver roles [and] horizontality of communication links at all levels of society” (McQuail quoted in Servaes, 2008, pp. 22-23). In this way, the idea of participation involved not only access to sources of information (predominantly located in the US and western European countries) but, crucially, to the means for producing media content and participating in global media circuits.

During the 2003 and 2005 summits, however, the issue of ‘participation’ acquired a new emphasis: while it encompassed long-standing claims over media democratisation, it was also a demand for global citizens to “effectively be a part of the decision-making processes that will determine the regulatory and social construction of an Information Society” (McKenna, 2011, p. 79). Scholars and experts, many of whom actively participated in the summits, have observed that
gaining access to global governance spheres was a tangible and very significant achievement for activists, social movements and media practitioners (Calabrese, 2004; Cammaerts & Carpentier, 2007; Girard & Siochru, 2003; Mueller, Kuerbis, & Pagé, 2007; Padovani & Calabrese, 2014; Thomas, 2006). While most accounts have recognised the limited influence of civil society actors in terms of actual policy outcome (Dany, 2004), they highlight the precedent set through the process as it involved new modes of civic participation in transnational debates on the media, the internet and human rights (Chakravartty, 2007). Likewise, researchers and activists have documented the role of civil society organisations in the debates, highlighting the fact that the experience of participation fostered new areas of expertise and novel institutional alliances (Dany, 2008). The publication of Civil Society Declarations in both WSIS phases provided an alternative set of principles and program goals which were disseminated beyond intergovernmental circles.

As a means of addressing political and ethical concerns, ‘multistakeholderism’ at WSIS signalled a radical change from the earlier era associated with the NWICO. While it has been observed that the NWICO period “represented an effort on the part of economically and militarily weaker nations to use the interstate system to consolidate the nation-state” (Gupta, 1992), debates about the diversity of non-state actors were key protagonists of WSIS. According to Paula Chakravartty civil society organisations “replaced the role of non-aligned nation states in raising ethical concerns in the multilateral forum of global communications governance in the era of the WSIS” (2007, p. 5). The leading role of non-state actors in this new period has been explained, at least in part, as a response of the “contradictory role of the post-colonial state in the NWICO era, when passionate calls for redistribution and accountability in the international arena went hand-in-hand with

28 The Civil Society Declarations are available online at www.itu.int/net/wsis/docs/geneva/civil-society-declaration.pdf
silences over internal inequalities and repression of difference” (Chakravartty, 2006, p. 251). In these decades, government leaders of non-aligned states repeatedly made claims for cultural difference and self-determination through strictly national frames, prioritising state sovereignty over internal inequities and cultural conflicts, namely racial or gender discrimination, political repression and censorship. However, over the three decades between the NWICO and WSIS, the emergence of a variety of new social movements, including indigenous communities, feminists and queer advocacy groups, have shaken and transformed the traditional frames of political representation (Chakravartty, 2006).

2.5 Conclusion

In the final section of this chapter I outlined the history and the main debates around the demands for communication rights. The transnational discourses around communication rights and the information society informed the views of the activists and human rights experts who took part in the campaign for a new media regulation in Argentina. In fact, the Coalition for a Democratic Communication, which brought together a broad range of social movements and activists claiming for the enactment of the ACS Act, was created in 2004, just in the between the celebration of the two WSIS. That same year, the Coalition articulated the ‘21 points for a democratic communication’ which later served as the base document for the drafting of the 2009 ACS Act.

The next chapter of the thesis focuses on the history of human rights activism in Argentina. In particular, I focus on how human rights discourse has shaped political ideas and practices in the country since their emergence in the 1970 decade.
3.1 “The Struggle Is Worth It”

In the early hours of Friday 8\textsuperscript{th} of August 2014 I was on a train on my way to a meeting while doing fieldwork in the city of Buenos Aires. Alongside the railway I could see a lot of graffiti depicting this phrase: \textit{The struggle is worth it. Guido Carlotto, recovered grandchild #114} (see an example in Figure 3.1). I felt greatly moved, and also surprised to find these works, as they had most likely been done just a few hours earlier overnight. It was clear that many people must have worked to make them, since, as I would later notice, similar graffiti was all over the city. The acronym \textit{Jotapé} indicated the authorship: it had been made by Juventud Peronista (Peronist Youth), a political branch of Peronism aligned with Cristina Fernández de Kirchner’s government. Just a few days before, on Tuesday the 5\textsuperscript{th}, a breaking story had burst across the press and social media and profoundly touched Argentineans
of all generations: after 36 years of ceaseless searching, Estela de Carlotto, one of the founders of the Abuelas de Plaza de Mayo, had finally found her grandson Guido. Significantly, the expression ‘The struggle is worth it’ had been introduced the previous day in a public speech delivered by President Cristina Kirchner in reference to the Abuelas’ announcement. The phrase would be later replicated in graffiti and murals all over the country.29

Ignacio Hurban, 36, was raised in a modest rural family in the countryside of the Province of Buenos Aires. He studied at the Music Institute of Avellaneda and after a few years he became a relatively well-known composer and municipal orchestra conductor in the provincial town of Olavarría. He was – he is – also part of a jazz and tango band for which, without yet knowing about his biological origins, he composed a song as an homage to the strength and resilience of The Madres and Abuelas. Ignacio Hurban had, in his own words, an “extraordinarily happy life”30. However, he had been wondering for some time about his family history since he knew he was adopted. Encouraged by friends, Ignacio decided to go to the Abuelas de Plaza de Mayo where, after a DNA test, it turned out that his parents were Laura Carlotto and Oscar Montoya, both Peronist activists disappeared by the military regime. That day Ignacio Hurban found out he was Guido Carlotto.

I first learned about Ignacio-Guido’s identification through friends and relatives who posted the news online via social networks. Everyone seemed to be emotionally shocked. In the weeks that followed, Guido Carlotto quickly became a public figure and his story attracted widespread media coverage in Argentina and overseas. Political,

29 In a speech broadcast nationally on August 7th, 2014, President Fernández de Kirchner referred to the announcement in the following terms: “[T]he most important message left by Guido, by Estela, is that The struggle is worth it. 36 years of struggle. Argentineans are still reeling. It is the shock that comes with thirty-six years of struggle. And I believe that the most important message coming out of this is that The struggle is worth it – someone from the audience interrupts: ‘and love triumphs over hatred’ – And love triumphs over hatred, absolutely. This is the great message of all this.” The complete speech can be accessed online: https://www.youtube.com/watch?v=pmELBBzLxTY
30 Perfil, 9/08/2014.
religious and popular leaders acknowledged the work done by the grandmothers and welcomed the restitution of another grandchild. Estela and Guido Carlotto were later invited by Pope Francis to a private meeting at the Vatican, and they were even honoured by the soccer club River Plate in the presence of tens of thousands of people. The story proved powerfully moving for many, possibly millions in Argentina who, like me, have grown up with the struggles of the Madres and the Abuelas.

Although exceptional due to its unusual media coverage, Guido Carlotto’s identification cannot be seen as the dramatic story of a single person or family. It is part of a social setting emotionally charged with the memories of the country’s recent past. Stories like Guido’s persistently bring to the political present traumatic events from that past that remain as “public and open questions” (Jelin, 1995). In this regard, human rights provide a heuristic framework that helps to both make sense of Argentina’s recent history and rearticulate it within current – and contested – political imaginaries.

Ignacio-Guido is one of the estimated 500 infants who were forcibly abducted during Argentina’s last military dictatorship (1976-1983) and, as of July 2017, he is also the 114th of 122 grandchildren whose identity has been ‘restored’ by the efforts of human rights organisations31. Born to leftist activists, guerrilla militants, and regime opponents, these infants had been taken from their birth parents and given to members or supporters of the dictatorial government. Since the years of the resistance against the dictatorship, Abuelas de Plazo de Mayo concentrated its efforts on locating the abducted grandchildren, reconstructing the truth about their family history and demanding the prosecution of the culprits. From the return to democracy in 1983 onwards, Abuelas and state agencies have jointly developed multiple mechanisms to locate the grandchildren and to ‘restitute their identity’.

31 See www.abuelas.org.ar.
The procedures involve a wide range of practices, knowledges and institutions: from the creation of the National Genetic Data Bank (BNDG)\textsuperscript{32} and the conducting of DNA tests to the full investigation of the facts that surrounded the abduction of the infants and the criminal prosecution of those considered responsible for crimes\textsuperscript{33}.

Abuelas has also set up a Support Centre for the Right to Identity (Centro de Atención por el Derecho a la Identidad), which offers therapeutic support to recovered grandchildren. Among other activities, a team of psychologists and social scientists that work at the centre has prepared a ‘biographical family archive’ for each grandchild expected to be found\textsuperscript{34}. The archives are made up of fragments of their parents’ history: recorded interviews with friends, fellow activists and family members; photographs and videos; personal belongings; writings and diaries. The aim of these archives is to ensure the right of the grandchildren to know the truth about their origins and their family histories: what Abuelas has defined as “the right to identity”\textsuperscript{35}. Although these archives are personal and their content remains closed to the public, the pieces and collages of family pasts they reassemble replicate a broader, collective, public memory about the disappeared and a political project that remains both contested and upheld in contemporary Argentina.

\textsuperscript{32} The National Genetic Data Bank was created in 1987 by law 23511, under the government of President Raúl Alfonsín. In 2009 it started to operate under the Ministry of Science, Technology and Productive Innovation. It holds genetic and biological sampling data from relatives of people who were abducted and/or disappeared by the military regime. The aim of the law was to ensure the storage and analysis of genetic information needed as evidence for the clarification and prosecution of crimes against humanity committed between 1976 and 1983 (http://www.mincyt.gob.ar/ministerio/banco-nacional-de-datos-geneticos-bndg-23).

\textsuperscript{33} Because the abduction of the children is considered part of a systematic plan of state terrorism, such abductions are treated as ‘crimes against humanity’. Therefore the crimes are imprescriptible.

\textsuperscript{34} More details about the ‘biographical family archives’ can be found at www.abuelas.org.ar

\textsuperscript{35} It is worth mentioning that this expression is not just used by Abuelas: it is legally recognised in international instruments As Kathryn Sikkink recounts: “[d]uring the international process of drafting the Convention on the Rights of the Child in the late 1980s, the Grandmothers persuaded the Argentine Foreign Ministry to press for provisions in the convention on the ‘right to identity’. The final convention includes these provisions as articles 7 and 8; they are informally called the ‘Argentine articles’” (2008).
I recount the story of Estela de Carlotto and her grandson Guido here as it reveals two issues that are central to my analysis of how human rights have come to play a role in the debates over the ACS Act. In the first place, Guido Carlotto’s story shows the powerful emotional and political appeal that human rights still retain in Argentinean society today. Far from the political apathy, scepticism, and even cynicism that they prompt in other contexts (see for example Allen, 2013; Dicklitch & Lwanga, 2003) human rights discourses in Argentina are deeply embedded in a national activist and political tradition. The graffiti asserting that “The struggle is worth it” is a celebration of Estela de Carlotto’s reunion with her grandchild, but it is also something else: it is a proclamation of the values of activism and political commitment as means for social transformation. As I explained in previous chapters, a central argument of this thesis is that human rights have helped to rearticulate, in a language of rights, a tradition of political and social activism that the military regime intended to eradicate. The ongoing debates around media policies in Argentina are not alien to these contested accounts of the country’s past. In fact, and as I show in the chapters that follow, the Audio-Visual Communication Services Act is seen by my interlocutors as part of a broader political imaginary in which ‘the human rights cause’ is a driving narrative.

On the other hand, the stories of Guido Carlotto and those of other recovered grandchildren shed light on another aspect of human rights in Argentina: their constitution as an authoritative mode of knowledge production and a domain of expert intervention. With few remarkable exceptions (Vecchioli, 2009, 2012) this aspect of human rights remains largely overlooked by scholarly work in the country. And yet, Guido Carlotto’s story is not only a story; it is also a case, in the juridical sense of the term. As was described above, the identification of a grandchild that had been illegally abducted by the military sets in motion a series of legal and institutional mechanisms that allow treatment of the case as a human rights issue. In Argentina’s current
context this seems to be a matter of course, an “evident truth” for anyone, as Emilio Crenzel (2013) has observed. However, when Abuelas de Plaza de Mayo and other organisations began to demand answers from the military regime about the fate of their relatives, human rights were still a fledging project whose terms were rather obscure and undefined.

How was it, then, that human rights evolved into an institutionalised form of knowledge and expertise in Argentina? How did their emergence contribute to forging new political visions in the postdictatorial context? In particular, how did human rights help to shape new forms of activist and governmental practices in the country? In the following sections of this chapter I address these questions by outlining the history of human rights in Argentina. In particular, I document the rise of human rights as a preeminent framework in Argentina’s contemporary politics, and I explore how they became an ‘evident truth’ in the postdictatorial context.

### 3.2 A Genealogy of Human Rights in Argentina

The story that introduces this chapter illuminates how human rights are seen today in Argentina and, in particular, how they evoke a specific political tradition in the country. However, while this is a predominant view at present, human rights cannot be invested with a single meaning, least of all along their tumultuous and dizzying history. Indeed, since human rights emerged on the international scene by mid-20th century they have been subject to multiple disputes, reinterpretations and mutations (Guilhot, 2011; Moyn, 2010). Consequently, in this chapter I provide an account of the struggles for the appropriation and the definition of human rights in Argentina, and of the different political projects that sought to establish their hegemony over human rights discourse. In doing so, the chapter also traces the emergence of human rights as a mode of knowledge and expert
intervention, with its specific repertoire of instruments, techniques and methodologies.

The chapter proceeds as follows. In the next section I describe the emergence of the ‘human rights cause’ in Argentina that began to take shape by mid-1970s, in the midst of increasing illegal repression of leftist groups, trade unions and dissidents (roughly 1974-1983). The knowledge and expertise of human rights lawyers during this period were forged in their advocacy on behalf of political prisoners and their denunciations of the repressive actions of the regime. In these initial years, human rights were mainly seen as a matter of international law, a set of moral and legal principles that established limits over the sovereign power of states.

In the second section I trace the debates around accountability and ‘transition to democracy’ initiated during Raúl Alfonsin’s administration (1983-1989). In particular, I focus on the distinctive set of measures and knowledges that in this period came to be associated with human rights work: truth commissions, human rights trials, reparations to victims of state violence, and the reform of abusive institutions. In this context, human rights were no longer seen as a limit to the state imposed by international legal norms. Rather, they defined a concrete political agenda of judicial responses and institutional reform that emerged transnationally as the ‘transition to democracy’ paradigm.

I conclude the chapter by focusing on a number of significant changes that occurred in the human rights field between 1989 and 2003. Specifically, I chart the proliferation of nongovernmental organisations (NGOs) and the expansion of new modalities of legal intervention as a legitimate way of acting politically. Paradoxically, while human rights were no longer at the centre of the government’s agenda, a series of institutional reforms significantly expanded the influence of human rights actors in the country during these years. After the constitutional reform of 1994 human rights activism gained renewed impetus and
experienced novel forms of judicial activism, namely ‘structural litigation’ or ‘public interest litigation’. This period coincides with the emergence of what scholarly literature has called ‘the judicialisation of politics’ (Comaroff & Comaroff, 2009; Couso, Huneeus, & Sieder, 2010; Peruzzotti & Smulovitz, 2006; Smulovitz, 2008).

In general terms, these sections outline a gradual transformation in the ways human rights have been understood and enacted over the last four decades in Argentina: from their initial establishment as a set of legal and moral principles imagined to be above states and politics (mid-1970s to 1983), and the expansion of institutional human rights regimes alongside both the ‘transition to democracy’ agenda (1983-1989) and neoliberal restructuring policies (1989-2003), to the reformulation of human rights as a discourse of social change and a set of state-making technologies under the Kirchner administrations (2003-2015). In providing this historical background, the chapter retraces the mutually formative effects between the terrain of politics and the expansion of human rights as a regime of expert knowledge.

3.2.1 The Rise of the Human Rights Cause (1976-1983)

The human rights movement that took shape during the mid-1970s in Argentina was composed of a wide range of human rights organisations (HROs), many of which had emerged before the military coup of 1976. The oldest of these, the Liga por los Derechos del Hombre (Argentinean League for the Rights of Man – Liga), was created in 1937 with the objective of protecting persecuted political activists, in particular anarchists and communists who in those years had considerable influence over workers’ unions. Liga contributed to the creation of other HROs during the 1970s and 1980s. In 1971, the Servicio de Paz y Justicia (Peace and Justice Service – SERPAJ) was founded as a pan-Latin American movement strongly influenced by liberation theology. The Argentinean branch of SERPAJ was created in 1974 under the
leadership of Adolfo Pérez Esquivel, who later received the Nobel Peace Prize for his denunciations of military crimes. In 1975, the Asamblea Permanente por los Derechos Humanos (Permanent Assembly for Human Rights – Asamblea) was created by members of diverse political parties, representatives of different religions and intellectuals. The Movimiento Ecuménico por los Derechos Humanos (Ecumenical Movement for Human Rights – MEDH) was founded in February 1976 by representatives of different denominations of the Christian Church (Bruschttein, 2002; Vecchioli, 2012).

A civic-military coup initiated on the 24th of March of 1976 inaugurated a period of extremely violent repression as well as the systematic imprisonment and assassination of political opponents and members of leftist groups36. The human rights organisations mentioned above began to play a much more significant role in this new context (Van Drunen, 2010). The relatives of those activists and guerrilla militants who had been imprisoned and remained ‘disappeared’ initiated a desperate search hoping to find any information. In this context, existing human rights organisations provided legal advice to the relatives of the disappeared and supported their decision to set up new organisations. Thus, by the end of 1977 many new HROs emerged: Familiares de Detenidos y Desaparecidos por Razones Políticas (Relatives of the Disappeared and Imprisoned for Political Reasons – Familiares), created in September 1976; Madres de Plaza de Mayo (Mothers of the Plaza de Mayo – Madres), in April 1977; and Asociación Abuelas de Plaza de Mayo (Association of Grandmothers of the Plaza de Mayo – Abuelas), in October 1977, which was started by a group of Madres of the Plaza de

36 The two decades that preceded the 1976 military dictatorship were characterised by a series of military coups and by the radicalisation of political action. President Juan Domingo Perón (1945-1955) was overthrown in 1955 by a coalition of civic and military groups known as the Revolución Libertadora (Liberation Revolution). This coup d’état inaugurated a period of almost two decades (1955-1973) in which the largest political force of the country, Peronism, was banned from electoral competition. Perón was forced into exile and vast political networks went underground, which over the years resulted in the radicalisation of political actions, including the rise of left- and right-wing armed groups (Cavarozzi, 2002). Promoted by a variety of actors (the Catholic and Protestant churches, pacifists, legal experts with transnational connections), human rights emerged in this context as a truly novel ideology.
Mayo who left the association in order to concentrate on their missing grandchildren.

Although the human rights movement managed to act as a unified force, there were important differences between the organisations created by the relatives of detainees and the disappeared, known as organismos de afectados (organisations of ‘affected’), and those organisations that had been created before the military coup, the so-called organismos de no afectados (organisations of ‘non-affected’). In particular, scholarship has shown that the dictatorship created a binding emotional experience among the relatives of the victims, which was often expressed in terms of ‘family’ and ‘brotherhood’ (Filc, 1997; Vecchioli, 2005). For the organisations of relatives, the experience of loss of a loved one was seen as non-transferable: “only [a Madre] can understand another Madre” (quoted in Vecchioli, 2005, p. 244). The loss of loved ones and the pursuit of answers about their fate was a key force behind the creation and resilience of human rights organisations, as well as a binding element among a rather heterogeneous movement. Much of the strength of the human rights movement in the country derives, in fact, from the emotional commitment of those activists directly impacted by human rights abuses.

In a context of illegal repression and state terror, the actions of the Madres and Abuelas were able to make visible their demands by constructing an image of “ideological neutrality” (Robben, 2005, p. 306). Many of these mothers were in fact housewives who had little if any involvement in political activities before the military coup. At the same time, as van Drunen (2010) suggest, the references to human rights and ideological neutrality were also strategic choices that, even though by no means made them immune to military repression, did make it more difficult for the regime to attack a group of mothers and housewives seeking information about their children. In the face of the

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37 Indeed, on April 1977 three of the founding mothers were disappeared by the regime (see Bouvard, 1993). I am thankful to Susana Kaiser for pointing this out to me.
regime’s discourse that justified military intervention as a fight against subversion and communism, the mobilisation of Madres sought to distance itself from any political gesture and appealed instead to the values of family, love and human dignity.

The organisations comprised of relatives of political prisoners and the disappeared, especially the Madres and Abuelas, acquired great public visibility from their first actions. Given the absence of official responses on the part of the government authorities, Madres began their now-emblematic weekly gatherings on the Plaza de Mayo with the aim of breaking the silence about illegal repression. During the first years of the regime, the nature of the repressive actions and the forced disappearances were not yet a clear fact for significant segments of the public, and indeed, the regime enjoyed some degree of consensus among the population38. The denunciations of this group of desperate women and their marching in front of the Casa Rosada presidential palace were not fully understood in these initial years, which is why they began to be known as las locas, the madwomen. As the months passed, however, Madres achieved a certain degree of public recognition, and by the first anniversary of the association in April 1978 hundreds of people were joining the mothers in their Thursday afternoon demonstrations at Plaza de Mayo (Bouvard, 1993).

In the process of becoming collectives, the Madres and Abuelas also crafted their own symbols. The Plaza de Mayo itself acquired a transformative connotation for these women who learned to face the threats of state terrorism while appropriating the public space to make their cause visible and public. Since the end of 1977 the Madres also began to use their handkerchiefs, in part as a means of protection against tear gas used against them by security forces, but mainly as a mark of identity that strengthened and unified them as a group. Both

38 As the report *Nunca Más* (Never Again) later stated, Argentina’s dictatorship “distinguished itself from the methods employed in other countries by the total secrecy in which [the repression] was carried out, the detention of persons following their disappearance and the persistent official refusals to recognise the responsibility of the intervening organisms” (CONADEP, 1985)
the Plaza and the handkerchiefs later became internationally known symbols of the Madres and Abuelas, but also of the human rights movement and the resistance against the dictatorship in general (Bouvard, 1993).

Unlike the HROs made up of relatives, the organisations of ‘non-affected’ citizens mobilised on the basis of religious, professional or political principles. Although many of those who participated in these organisations had family ties with victims of state repression, their mode of participation in the human rights movement was not shaped under the rubric of victimhood. In addition, while The Madres and Abuelas sought to differentiate themselves from any kind of political or ideological action, the organisations of ‘non-affected’ citizens emphasised the political commitment of their members as well as their participation in diverse activist and professional networks. As Virginia Vecchioli (2012) has observed, the human rights cause in Argentina builds on a long tradition of ‘cause lawyers’ in the country that began to emerge in the 1930s through the defence of workers and political prisoners. From these early years, one of the main routes of entry to legal activism was the practice of labour law. Many of those who later became experts in the human rights field initiated their professional and activist trajectories as lawyers representing worker unions. As workers and activists with diverse political affiliations became targets for prosecution under succeeding authoritarian regimes between the 1930s and the 1970s, these lawyers gradually assumed the defence of revolutionary militants and became themselves victims of repression by the dictatorship (Vecchioli, 2012).

As Marcelo Cavarozzi (2002) has observed, with the proscription of Peronism in 1955 a significant number of Argentineans saw themselves unable to express their political choices through electoral or institutional channels. In addition, the ideological influence of the Cuban Revolution after its irruption in 1959 and the effervescent political atmosphere of the 1960s in Latin American strengthened a
radical imagery and favoured the ideal of the socialist revolution. In this context, commitment to the cause of workers and their organisations moved towards the defence of political prisoners and the appeal to the ‘rights of man’. Vecchioli (2012) retraces the process of emergence of a new category of lawyers who founded their professional practices on a set of ethical principles that distinguished them from other legal practitioners: selfless commitment, dedication and sacrifice for the cause, and a cult of heroism and courage. For these lawyers, then, professional practice was revealed to be a means for political transformation. However, as Vecchioli asserts, this “did not entail a mere ‘tactical’ use of law”, but rather “those lawyers that [were] involved in the defence of political prisoners committed to a new world of values and representations that guided both their profession and their political commitment” (2012, p. 11; my translation).

By the mid-1970s and amidst the worsening of the repression in the last years of the democratic government of Isabel Perón (1974-1976)\(^39\), the human rights rhetoric and the recourse to transnational actors became increasingly central resources for these cause lawyers and for the victims of state repression. Indeed, as Emilio Crenzel (2013) explains, the military coup of 1976 coincided with a boom of human rights globally. During these years, major new HROs like Human Rights Watch were created, while other organisations like Amnesty International and Médecins Sans Frontières achieved global recognition\(^40\). In addition, Jimmy Carter’s presidency in the US (1977-1981) made human rights the ideological banner of that country’s foreign policy in the context of the Cold War. This prompted a change in the relations that Washington had maintained with dictatorial governments in South America until this time, some of which it had

\(^39\) Juan Domingo Perón returned from exile in 1973 and won the national elections with 62% of the votes over his opponent Ricardo Balbín of the Radical Party. Perón assumed the presidency for the third time on the 12\(^{th}\) of October 1973. However, he died a few months later, in July 1974, which touched off a new cycle of social unrest.

\(^40\) For instance, Amnesty International was awarded the 1977 Nobel Peace Prize, a sign of gathering momentum for the human rights cause.
strongly supported as part of its strategy in the war against communism. In the new political atmosphere, international bodies such as the OAS (Organisation of American States) that had been traditionally despised by leftist activists became highly valued interlocutors for the relatives of political prisoners and exiles (Crenzel, 2013; Moyn, 2010).

At the same time, many of the activists and the politically persecuted that went into exile after 1976 soon joined transnational networks of human rights activists and experts. The experience of exile fostered the professionalisation of this form of activism as well as the acquisition of diplomas, degrees and academic credentials on international jurisprudence and the rules of international bodies like the OAS and the UN. As a former detainee of the Argentinean regime who would later hold senior positions in the human rights system explained:

“...overseas we began to discover the international system for the protection of human rights... I believe it was a great school of politics... where we had to participate in a field that was configured differently than we had expected... we found interlocutors within the US government while the Soviet [government] closed every door on us” (quoted in: Vecchioli, 2009, p. 49; my translation).

In this way, the national-transnational interface represented a key instance for the transmission of human rights culture, providing a lexicon to the victims of the repression that would allow their demands to be amplified and made audible to global audiences. More importantly, the humanitarian narrative of human rights grounded its legitimacy in factual and realistic descriptions of the abduction, torture, places of confinement, occupations, ages and genders of the victims of human rights violations. Domestic organisations like Asamblea and CELS put together significant documentary archives based on detailed compilations of complaints and the systematic reconstruction of the clandestine system of state repression. In this way, the technical-legal grounds of the denunciations displaced the dominant interpretations of the repression that had prevailed until then and had been based either
in the idea of a “war against left-wing terrorism” – as the military attempted to impose – or in the idea of class struggle, as understood by leftist organisations (Mignone, 1991).

A turning point for the human rights cause was the visit of representatives of the Inter-American Commission on Human Rights (IACHR) in 1979. Argentinean HROs and activists worked closely with the investigation, providing the IACHR with documents, contacts and information. Although the military reorganised some of the major clandestine detention centres that were expected to be inspected and transferred political prisoners to a nearby island, the IACHR managed to get beyond the official version of the facts. The IACHR report documented 5,580 cases of disappearances and offered detailed information on human rights violations in the country, backing the denunciations of the human rights movement. Although the report’s publication and circulation was prohibited in Argentina, many copies were introduced and circulated by human rights activists (Sikkink, 2008; Van Drunen, 2010).

After the IACHR’s visit, the international repercussions of the denunciations as well as the mass of evidence of abductions, torture and disappearances forced the Junta to offer some answers about the fate of the disappeared. The regime declared that the country had been at war, and unconventional means had been necessary to ensure victory over the subversives. The then-Commander in Chief Roberto Viola infamously asserted: “it must be understood that here has not been (...) any violation of human rights. Here there has been a war, savage violence unleashed by terrorism, decisively confronted and overcome by the armed forces” (Cohen Salama, 1992, p. 46; my translation).

In the face of these declarations, the human rights movement reinforced its opposition against the regime and launched the slogans “aparición con vida” (“safe return”) and “juicio y castigo a todos los culpables” (“trial
and punishment for those responsible”). In 1980 the president of SERPAJ, Adolfo Pérez Esquivel, received the Nobel Peace Prize, symbolising the widespread support that the human rights movement had gained internationally. On the domestic scene it brought about greater media coverage and public attention to the demands of the movement. By the fourth anniversary of Madres, in April 1981, two thousand people joined them at the Plaza de Mayo despite the official ban on public demonstrations. This set off a cycle of mass protests calling for the return of democratic rule (Van Drunen, 2010).

In a final attempt to mobilise nationalist feelings and political support, the regime launched a military invasion of the Malvinas (Falkland) Islands in April 1982. For a period of several weeks the military recovered the Malvinas from the British, who had occupied the islands since 1833, and sent over 10,000 soldiers and officials to guard them. The British government – with the support of the US – responded by sending troops to the area, marking the beginning of two months of armed confrontation. The Malvinas War ended in disaster for both sides, with thousands of soldiers dead or wounded. The Argentinean military was defeated, which dealt a final blow to the regime and initiated a long process of transition to democracy that stretched from mid-1982 to the elections in October 1983 (Novaro & Palermo, 2003; Romero, 1994).

The human rights movement played a major role in articulating the resistance against the military dictatorship and guiding the process of transition to democracy. The human rights doctrine that prevailed in these early stages tended to emphasise the international legal foundations of human rights. While this was a strategic choice made by local actors, it certainly was in tune with a liberal conception of human rights that flourished internationally by the end of the 1970s. For transnational networks of experts and activists, human rights were essentially a set of fundamental principles agreed upon by a vast number of world nations. This was extremely important in the context
of the Cold War, where the recognition of the juridical equality of states and political regimes favoured the notion of ‘ideological neutrality’. The prevailing ideas were characterised by the proximity of human rights to the ecumenical religious movement, the pacifist movement and the civil rights movement in the US. While standards and principles had been jointly developed in international settings, state sovereignty was seen as one of the major obstacles to the full realisation of human rights. In fact, international law was understood by both local and transnational actors as a limit against the abuse of state power. Accordingly, the prevailing doctrine established a link between progress in human rights and the limitation of state sovereignty through (international) law (Guilhot, 2005, 2008).

The actions of the nascent human rights movement in Argentina during the dictatorship set out the main lines of a politics of “naming and shaming” (Arthur, 2009). This politics proved effective, simultaneously acting on two levels: on the one hand, the public demonstrations led by the organisations of relatives, in particular the Madres and Abuelas. They succeeded in making visible the terrorist actions of the regime and gained the empathy and emotional commitment of significant portions of public opinion. At the same time, those advocacy organisations, trained in the defence of political prisoners for decades, oriented their efforts toward the mobilisation of increasingly available international resources. In a context in which the human rights language gained momentum, local activists and experts took advantage of the new currency circulating in international settings. In particular, organisations such as CELS and Asamblea combined the defence of political prisoners and the presentation of habeas corpus with a meticulous documentation of the cases and reconstructions of the methods employed by the regime. These activists’ work with the IACHR on its pioneering report trained them in the use of an objective and veracious lexicon, devoid of any contextual appreciations and political biases. By relying on the idea of ‘promoting change by reporting facts’,
the movement was contributing to shaping one of the most central and widespread practices among HROs: the documentation of human rights violations^41.

3.2.2 Transitional Politics and the Challenges of Democracy (1983-1989)

The process of democratic transition in Argentina differed from other transitional processes in the Southern Cone (Argentina, Chile and Uruguay). Importantly, Argentina’s defeat in the Malvinas War decisively debilitated the military and their capacity to establish conditions and limits on the treatment of human rights violations (Crenzel, 2013). In addition, the human rights movement described above played a fundamental role in shaping the political agenda of the transition. The reference to universal moral values that stood above ideological sympathies and political affiliations enabled diverse political actors to come together, including those who defended the revolutionary ideals of the victims, and those who believed that militant guerrilla leaders should be prosecuted. Moreover, human rights constituted the central political imagery of the nascent democratic order, and, as Romero (1994) asserted,

“they imposed on all political practice an ethical dimension, a sense of engagement and an appreciation of the basic agreements of society above political affiliations, which in the context of previous experiences, was truly original” (p. 325; my translation).

However, the government would soon face important challenges as it tried to address the high expectations posed by a variety of actors.

On the 10th of December 1983, Raúl Alfonsín assumed the presidency of the country. His campaign was based on a strong commitment to the restoration of the rule of law and the prosecution of the culprits for crimes and human rights violations during the dictatorship. For the human rights movement and its political agenda, the advent of the

^41 For a theoretical discussion on human rights reports see Moon (2012).
Alfonsí administration brought about a shift from ‘naming and shaming’ of the perpetrators of abuses committed by the military regime to a new form of intervention, this time jointly developed with state institutions and focused on accountability for past crimes (Arthur, 2009). This transformation of the human rights agenda entailed a series of political and technical issues that decisively shaped the debates during that period. In the words of Emilio Mignone, one of the founders of CELS:

“In the years of the dictatorship] the struggle was to defend the most elementary of human rights... While the stakes in this struggle were high – life or death for thousands of individuals – it was nonetheless an unfortunately familiar effort at defining the limits of what a state may inflict on its citizens.

With the election of a civilian government in October 1983, however, this battle moved onto the unfamiliar ground of setting an affirmative agenda for the trial and punishment of those responsible for acts of state terror. With little guidance from Argentinean history or the experience of other countries in the transition from military to civilian rule, and with the constant rumblings of future military uprisings in the background, the restored civilian political and legal institutions turned to the issue that would dominate the first year of civilian rule: the prosecution of the military” (1984, p. 118; emphasis added, my translation).

One of the first issues to be addressed by the government was uncover the veil of secrecy that had shrouded the repressive practices of the regime. While HROs had gathered numerous testimonies and documentation in the previous years, there was still a need to undertake a full investigation of the methods used in the repression in order to generate the material evidence for the judicial process. But orders had generally been given orally and much of the written documentation was destroyed by the regime. In addition, members of the police and the armed forces remained silent and uncooperative with the process (Van Drunen, 2010).

In the face of this situation the human rights movement advocated for the establishment of a bicameral commission with the power to subpoena witnesses and compel testimonies, thus gaining greater
access to information in the hands of the military (Mignone, Estlund & Issacharoff, 1984). But Alfonsin objected to this proposal and, instead, issued a decree creating a National Commission on the Disappearance of Persons (CONADEP). The Commission would have the jurisdiction to hear complaints from victims and pass these on to the judiciary, and to receive voluntary testimonies and documentation from private citizens (Nino, 1998). However, it could not compel witnesses to testify, and thus had to rely on the voluntary testimonies of victims and of a small group of military and police personnel. Because of their opposition to the use of military courts proposed in the decree, Nobel Peace Prize laureate Adolfo Pérez Esquivel (leader of SERPAJ) and Augusto Conte and Emilio Mignone (leaders of the Centro de Estudios Legales y Sociales) turned down the invitation.

Even though the creation of an executive commission caught them by surprise, HROs actively cooperated with CONADEP, and this was reflected in the report that resulted from the investigation (Cohen Salama, 1992). The final document produced by the Commission was called Nunca Más (Never Again). It presented 8,961 cases of disappeared people, although stating that this figure could not be considered definite (CONADEP 1984). It also documented in detail the location and organisation of 340 clandestine detention centres and affirmed that the repressive actions of the regime were a systematic and well-planned integral part of a ‘Process of National Reorganisation’.

The Nunca Mas report and the Trial of the Juntas became foundational symbols and instruments of the new democracy. Moreover, according to Kathryn Sikkink, they marked the beginning of a “justice cascade”, “not only in Latin America, but globally” (2008, p. 1). Although several of the HROs, especially the Madres, have been critical of Alfonsin’s policies for dealing with the legacy of human rights violations, the measures adopted have been both nationally and internationally celebrated over the years. Kathryn Sikkink (2008) for instance points to the uniqueness of the CONADEP report and the Trial of the Juntas when placed in an
international context. Moreover, Sikkink affirms that CONADEP was the first important truth commission in the world, and provided a model for all subsequent truth commissions, and that the report was the first of its kind to be published and made available to a broader public. Its title, *Nunca Más*, became a slogan adopted by transitional justice movements all over the world. Similarly, referring to the Trial of the Juntas, Sikkink recalls that “no previous trials of the leaders of authoritarian regimes for human rights violations during their governments had ever been held in Latin America” (2008, p.7).

Many observers in Argentina, including human rights activists, have also positively evaluated the transitional justice instruments implemented under the Alfonsin government. First, they point to the fact that the *Nunca Más* report and the Trial of the Juntas have obliged Argentinean people to confront their past, and have raised awareness concerning the human rights violations (Jelin, 1995). The Trial, even more so than the CONADEP report, had a profound impact on the Argentinean public because of the public hearings in which, day after day, the victims recounted the horrors they had gone through.

Secondly, both measures were of great importance for enabling juridical proof to be assembled about the human rights violations, and the construction of a database that demonstrated the systematic character of the repression. In more conservative parts of the country, where the discourse of the ‘war against subversion’ still maintains a strong hold, the *Nunca Más* report is a powerful instrument against denial. In this context, Acuña & Smulovitz state that the trial became “the space in which the logic of justice, by transforming historical data into proof, ended up producing the authoritative version of what had happened in recent years in Argentina” (1995, p. 58; my translation).

The measures have also played a crucial role in delegitimising the voice of the military in favour of those of the victims. Both the *Nunca Más* process and the Trial deconstructed the armed forces’ argument that
the repression was inevitable in the ‘war against subversion’. Nunca Más and the trial presented the Argentinean public with evidence that what had happened in Argentina should be understood as crimes against humanity, putting it on the same level as other experiences of ‘administrated massacres’ of the twentieth century, particularly the Holocaust (Vezzetti, 2002). In view of this, González Bombal rightfully observes that human rights organisations and instruments were crucial to refute the ‘war paradigm’ used by the military to justify its crimes.

The Argentinean case is exemplary of how transitions to democracy in varied contexts contributed to transforming international human rights regimes. As Paige Arthur notes,

“the turn away from ‘naming and shaming’ and toward accountability for past abuse among human rights activists was taken up at the international level, where the focus on political change as ‘transition to democracy’ helped to legitimate those claims to justice that prioritized legal-institutional reforms and responses – such as punishing leaders, vetting abusive security forces, and replacing state secrecy with truth and transparency – over other claims to justice that were oriented toward social justice and redistribution” (2010, p. 321).

In this sense, the field of transitional justice defined a series of legitimate measures: documenting human rights violations (reports, testimonies, forensic evidence, etc.), prosecuting for past abuses and establishing institutional mechanisms to prevent future atrocities. At the same time, the ‘transitional justice’ paradigm left aside alternative modes of intervention, namely, claims for socioeconomic rights and distributive justice.

In the next section of this chapter I focus on the expansion and subsequent transformation of the human rights agenda and institutional regime in Argentina during 1990s.
3.2.3 The Paradoxes of Neoliberalism: The Politics of Impunity and the Emergence of ‘Societal Accountability’ (1989-2003)

“Alerta, Alerta, Alerta los vecinos, que al lado de su casa está viviendo un asesino! (Alert, Alert, Alert all neighbours, there is an assassin living next door!)”

Slogan popularised by HIJOS in public demonstrations and performances during the 1990s.

The period initiated with the government of Carlos Menem (1989-1999) is marked by a paradox. On the one hand, the new administration signalled the beginning of a politics of impunity, pulled back the process of transitional justice and took the ‘human rights issue’ off the government’s agenda. For the human rights movement, the struggles for ‘trial and punishment’ would no longer take place in the courtrooms but in the streets and the Plaza de Mayo. On the other, however, a significant number of NGOs and advocacy groups were created in these years, developing new forms of legal activism and societal accountability. Neoliberal restructuring brought about a series of significant institutional changes which, alongside the economic reforms, consolidated the institutional-legal regime of human rights in Argentina. In this way, the new context facilitated the adoption of new activist strategies, most prominently ‘structural’ or ‘strategic litigation’.

One of the first decisions taken by Menem was to put an end to the transitional justice process. Shortly after taking office, Menem issued a presidential pardon (‘indulto’) for all low-ranking military officers who had been condemned during the Trials. The initial decree issued in 1989 excluded the commanding chiefs of the military junta (Jorge Rafael Videla, Roberto Viola, Emilio Massera and Armando Lambruschini) and a group of high-ranking generals as well as the leader of the Peronist revolutionary organisation Montoneros. However, in December 1990, Menem extended the pardon and included the military generals as well as the leader of the Montoneros. The action was an attempt to gain full control over the armed forces and end the
period of military unrest that characterised the aftermath of the human rights trials (Acuña & Smulovitz, 1995).

After these initial actions, the ‘human rights cause’ was fully removed from the government’s agenda. The human rights movement in this period was marked by an emphatic repudiation of the ‘politics of impunity’ carried out by Menem’s government. In this decade, a new generation of relatives of the disappeared joined the human rights movement, which resulted in the creation of HIJOS\(^{42}\) (‘Children’). HIJOS was one the most active human rights organisations in these years, organising constant public demonstrations and performances to make visible the demands for justice\(^{43}\).

According to Enrique Peruzzotti, the human rights organisations adopted a “maximalist political strategy centred around retributive issues” and considered neither the factual constraints of the process of democratic consolidation (the military threat) nor the government’s decision to ‘politically self-limit’ judicial power: “instead of saluting the governmental efforts to bind itself to a juridical logic, human rights organisations criticised them as a sign of weakness that illustrated the absence of a true political commitment to the human rights cause” (2002, p. 85).

Despite the interruptions and failure in delivering justice for ‘crimes against humanity’, the politics of human rights developed in the 1980s consolidated new modalities of activism, introducing a rights-oriented discourse and promoting the emergence of a plurality of NGOs. In

\(^{42}\) HIJOS stands for Hijos e Hijas por la Identidad y la Justicia contra el Olvido y el Silencio – “Sons and Daughters for Identity and Justice against Oblivion and Silence”. The organisation was created in 1994 by children of the disappeared and of former political prisoners.

\(^{43}\) Susana Kaiser (2002, 2005) provides an insightful account of the actions and perspectives of HIJOS and the ‘second generation’ of victims. As Kaiser documents (2002), an emblematic form of human rights activism during the 1990s were the escraches (‘exposures’), public demonstrations popularised by HIJOS designed to expose or uncover the residences of torturers and repressors. Escraches where highly performative: HIJOS and other human rights activists would march on the neighbourhoods where torturers lived displaying banners and chanting slogans such as the one cited at the beginning of this section (“Alert, Alert, Alert all neighbours, there is an assassin living next door!”).
particular, scholarship has observed (Romero, 1994; Peruzzotti, 2002) that the human rights movement reintroduced a legal-ethical narrative about political institutions that had been eroded over decades of praetorian struggles and military coups. In this sense, the human rights agenda of the 1980s redeemed constitutional-democratic institutions and represented a rupture with “the empirical form of legitimacy that had governed the political dynamics of Argentina” (Peruzzotti, 2002, p. 86).

According to Enrique Peruzzotti (2002), the human rights movement also propitiated a shift from “populist movimentismo” to a liberal-constitutional ideology focused on limiting state power and protecting “societal autonomy against a radical form of state intervention in civil society” (p. 86). The consolidation of a rights-oriented politics in the 1990s initiated a process of ‘juridification from below’ (de Sousa Santos & Rodríguez-Garavito, 2005; Peruzzotti, 2002), aimed at extending and consolidating constitutional principles and mechanisms of accountability of government actions.

A new generation of advocacy groups was created in the 1980s and 1990s, such as Poder Ciudadano, Conciencia, Memoria Activa, ADC (Association for Civil Rights) and CIPPEC (Centre for the Implementation of Public Policy on Equity and Growth). These new NGOs brought about a new agenda which, in many respects, differed greatly from the traditional demands of the ‘historical’ HROs (such as Madres and Abuelas de Plaza de Mayo). In line with the dissemination of global discourses centred on civil society, transparency and good governance, this group of NGOs appealed to a ‘politics of accountability’ that mobilised innovative mechanisms of control (Peruzzotti, 2002; Peruzzotti & Smulovitz, 2006). Smulovitz and Peruzzotti (2006) have labelled this form of activism as ‘societal accountability’, referring to the

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44 According to Catalina Smulovitz, 40% of advocacy organisations in Argentina were created between 1983 and 2000, whereas another 45% were founded after the financial and institutional crisis of 2001 (Smulovitz, 2008).
proliferation of civic associations, NGOs and social movements which push accountability practices beyond the traditional focus on ‘checks and balances’ and the electoral arena. This modality of political action focuses on the consolidation of minimal procedural conditions and the promotion of a plurality of monitoring and agenda-setting activities.

One of consequences of this form of activism has been the increasing use of rights discourses and courts of law as instruments for political action, what scholarship has termed the “judicialisation of politics” (Comaroff & Comaroff, 2009; Couso, Huneeus & Sieder, 2010). In addition to the emergence of new NGOs and advocacy organisations, activism around issues of accountability and the recourse to judicial mechanisms was consolidated by a series of institutional changes in the 1990s. In particular, in 1994, a constitutional reform granted constitutional status to a series of international human rights covenants45, as well as collective rights (environmental rights, consumer rights, indigenous rights and the protection against all forms of discrimination). The new Constitution also expanded the number of actors entitled to present demands, authorising the Ombudsman’s office and civil associations to advocate for new causes.

Although human rights were absent from the government’s discourse and policies during the Menem administrations, NGOs and advocacy groups engaged in new forms of activism. Importantly, during this decade the human rights movement expanded its strategies and areas of intervention in democratic politics. Forms of expert activism gained influence in shaping the demands of a variety of political actors, including indigenous groups, unions, women’s advocacy groups and social movements in general.

45 As specified in Article 22, Paragraph 75 of the Constitution of the Republic of Argentina.
3.3 Conclusion

In this chapter I have discussed the history of human rights in Argentina. In general terms, I have outlined a gradual transformation in the ways human rights have been understood and enacted over three decades: from their initial constitution as a set of legal and moral principles imagined to sit above states and politics (mid-1970s to 1983) to the expansion of institutional human rights regimes alongside both the ‘transition to democracy’ agenda (1983-1989) and neoliberal restructuring policies in the 1990s (1989-2003). In doing so, I have provided an account of the mutually formative effects of the terrain of politics and the expansion of human rights as a regime of expert knowledge in Argentina.

The following chapter examines human rights discourse and politics under the governments of Néstor Kirchner (2003-2007) and Cristina Fernández de Kirchner (2007-2015). While in this chapter I centred my attention on human rights as a domain of expert knowledge, in the next chapter I examine how ideas and meanings about human rights are disseminated in Argentina through forms of storytelling, political performances and memorials. I argue that, besides being a language of experts, human rights are also constituted through affective and aesthetic experiences. In this way, the chapter aims to give an account of how human rights are constitutive of political imaginaries in contemporary Argentina.
CHAPTER IV
IMAGINING HUMAN RIGHTS
Narrative and Aesthetics in the Making of Human Rights

4.1 Introduction

“At any historical moment, only certain stories are tellable and intelligible.”

– Kay Schaffer and Sidonie Smith (2004)

Before President Néstor Kirchner took office in 2003, the ‘official’ vision of human rights in Argentina was the one best expressed in CONADEP’s Nunca Más (Never Again) report. As detailed in Chapter III, this report was the result of joint work carried out by human rights organisations and state agencies as well as witnesses, journalists and individual collaborators. After years of silence and relative ignorance about what had actually happened to the disappeared, the Commission conducted systematic research and documentation of evidence on the regime’s methods of repression. The final report was crucial in the Trial of the Juntas that took place in 1985, but also in decisively refuting, before the eyes of the public, the military version of the events which claimed that Argentina had been at war and extreme actions were needed to reestablish public order. In spite of some controversies surrounding its publication, the report amply demonstrated the systematic nature of the crimes and disappearances committed by the regime, discrediting the idea of a ‘dirty war’46.

46 The evidence gathered by CONADEP demonstrated that the vast majority of the detentions, kidnappings and assassinations had not occurred during armed confrontations with revolutionary groups. Instead, most took place during the night and were perpetrated by clandestine task forces (CONADEP, 1984). The overwhelming amount of evidence gathered and analysed by CONADEP
However, in addition to being the crucial body of evidence that guided the prosecution strategy and proved the Junta’s responsibility in perpetrating crimes, *Nunca Más* was the main narrative through which people came to imagine, know and feel the actions of the military regime.\(^{47}\) The media reported detailed testimonies of physical torture and images of mass graves, corpses and lacerated bodies, and the publication of forensic and expert descriptions of the methods of assassination used circulated in the media from CONADEP’s initial steps in December 1983 to the resolution of the Trial in December 1985. Day after day, week after week, through testimonies, photographs, journal articles and television specials, the narration of the horrors committed by the regime were disseminated in national and international media.\(^{48}\) Published in November 1984, the first edition of the report became a best seller and its 40,000 copies sold out within two days of release. The report has since been translated into Italian, English, Portuguese, Hebrew and German, expanding its repercussions internationally. *Nunca Más* has been republished several times since then, and by 2009 more than half a million copies had been sold, many

\(^{47}\) The performativity of the many stories and narratives produced by truth commissions has been a topic of considerable scholarly attention (Cole, 2010; Crenzel, 2008; Grandin, 2005). According to Joseph Slaughter, “at the end of the twentieth century the confluence of the vocabulary and concerns of human rights and literature was perhaps nowhere more apparent than in the phenomena of truth commissions” (2009, p. 141).

\(^{48}\) Despite its importance in galvanising a certain vision of human rights, the narrative outlined in *Nunca Más* was neither homogeneous nor left unchallenged. In fact, it was severely criticised by some human rights groups who saw in the report an attempt to establish definitive closure to the issue of disappearances. The Madres posed particularly acute critiques. One of them observed that “the book was paralysing because they describe all this horror and they don’t give a way out. The assumption is that the disappeared are dead and the story is over” (quoted in Fisher, 1989, p. 131). In addition, the Madres’ journal pointed out that the report’s prologue erroneously equated state terrorism with the actions of revolutionary groups, and it concealed the fact that the military coup attempted to impose the economic project of transnational corporations and imperialism (see Crenzel, 2013, p. 10).
of which were published and distributed outside Argentina49 (Crenzel, 2008; Sikkink, 2008).

The repercussions of the circulation of the many stories and images that surrounded the publication of Nunca Más reveal another, crucially important, aspect in the making of human rights: that the struggle for universal human rights also takes place in a terrain of emotions and imagination. “Spectatorship... is crucial because rights must be seen to be violated in order to come into consciousness”, writes Lynn Hunt (Hunt, 2011, p. ix). Testimonies and visual representations of atrocities and human suffering have long played a significant role in creating a shared cultural understanding of what constitutes dignity, inalienable rights and, ultimately, humanity. As such, Nunca Más and associated cultural forms entered into everyday, popular culture, contributing to the forging of a certain interpretation of past events. In particular, they decisively established that the actions of the military regime were not ordinary crimes but ‘crimes against humanity’: the methods employed disintegrated the very dignity of the human person – they were ‘inhuman’ and, therefore, repudiable by humanity as a whole.

In recent years, the circulation of images and representations of human suffering around the world has been critically addressed by scholarship on human rights and humanitarianism. From different disciplinary perspectives, this literature remarks on the ambiguities that result from the increasing emphasis on “vulnerable bodies” in humanitarian discourses (Allen, 2009). In a sense, much of this work echoes the now widespread critiques to the new agenda of rights, centred on the ‘amelioration of suffering’ that emerged globally in the 1970s. Critics contend that these images and stories constitute political space and tend to favour a “politics of bare life”, leaving aside alternative views of

49 Human rights scholars Priscilla Hayner (2001) and Kathryn Sikkink (2008) note that Nunca Más was a foundational step for what is now a voluminous canon of truth commission reports that circulated widely in the 1980s and 1990s. Sikkink notes that although Uganda and Bolivia established truth commissions before Argentina did (in 1974 and 1982 respectively), neither published a final report.
justice and social change (Möller & Sontag, 2010). In the words of Carolyn Dean,

“the particular ambivalence and difficulties encountered in debates on atrocity photography are related to the increasing preeminence of vulnerable bodies in human rights discourses and the commensurate decline of heroic narratives of victims’ struggles after the Second World War, and especially after the 1970s” (2015, p. 240).

Retracing my steps while doing fieldwork in the city of Buenos Aires, in this chapter I describe my encounters with affective and ‘aesthetic scenes’ (Sliwinski, 2011) that fuel the human rights imaginary in contemporary Argentina. The general assumption guiding the analysis is that cultural forms such as testimonies, biographies, films and photographs – and also less institutionally sanctioned interventions such as graffiti and murals – do not simply ‘reflect’ social figurations of human rights; on the contrary, they actively “shape how the social order and its subjects are imagined, articulated and effected” (Slaughter, 2009, p. 11). Through the circulation of these various cultural manifestations, human rights become legible and conventional, in the double sense of publicly shared and formally regular.

From the start of my fieldwork in Buenos Aires, I became aware of a human rights narrative that had an unexpected dimension in Argentina in that it constituted what may be called the ‘official’ vision of human rights in the country. This view of human rights is certainly different from both the one expressed in the Nunca Más report and the one that aligns with the so-called ‘politics of suffering’ that largely characterises humanitarian discourses. The multiple inscriptions I repeatedly observed in the city as I moved from political events to community radio stations, from interviews with state officers to street demonstrations, evoked and provoked a renewed association between memory, politics and human rights in Argentina.
Paying attention to the aesthetic and affective dimension of human rights enriches my analysis of human rights in two important ways. On the one hand, it allows me to go beyond a rather teleological approach that assumes a governmental rationality underlying any reference to human rights. While governmentality literature has much to contribute to the study of human rights, human rights are more than a ‘technology of government’ that incorporates subjects and political action into a legal-normative framework (see for instance Odysseos, 2010; Zigon, 2013). In my view, a governmentality lens does not fully capture the complex affective and sensory elements that are also part of the making of human rights. Even more problematically, it tends to collapse political questions (and relations) into a governmental rationale, narrowing the analysis of ‘politics’ to the domain of government (on this issue see Li, 2007, pp. 22-27). On the other hand, this approach helps to understand how transnational ideas of human rights are reappropriated and transformed in the Argentinean context. Sally Merry (2006) has focused attention on the importance of examining the processes of ‘vernacularisation’ of human rights, emphasising in particular the role of experts and brokers in ‘translating’ the international language of human rights for ‘local’ contexts. While in the following chapters I analyse the workings of experts and human rights activists, in this chapter I focus on the ways the circulation of various cultural forms (memorials, life stories, images, etc.) also take on a role in making human rights legible and culturally shared.

### 4.2 Fieldwork Itineraries: Melancholy and the Politics of Remembrance in Buenos Aires

Just a few metres from a street newsstand on Corrientes Avenue in the city of Buenos Aires, a tile of around 40 by 40 cm states: “Here lived and was kidnapped Mónica Liliana Goldstein, a people’s militant detainee-disappeared by state terrorism. 06-10-1976. Neighbourhoods for Remembrance and Justice” (Figure 4.1). During my time in the city I
passed that corner countless times as I was staying in an apartment just a few blocks away. By the time I encountered this tile and many others of the hundreds that had been laid all over the city, the project Baldosas por la Memoria (Tiles for Remembrance) had been established for almost ten years. It was started in mid-2005, conceived by neighbourhood committees with previous experience in the recovery of clandestine detention centres and their refunctionalisation as ‘sites of memory’. Initially the collective gathered together committees from six city neighbourhoods who started by sticking adhesive film printed with memorials on the sidewalks to remember their friends, relatives, neighbours and comrades. The project rapidly expanded to over 20 neighbourhoods in Buenos Aires city that comprise the Coordinadora de Barrios por la Memoria y Justicia (‘Network of Neighbourhoods for Memory and Justice’), and many other groups in various provinces. Instead of adhesive film, nowadays project consists of laying tiles of concrete and ceramic and holding small performances or telling stories and anecdotes each time a new tile is put in place. The inauguration of each tile includes the participation of relatives and loved ones as well as residents and members of the neighbourhoods’ committees.

Some 15 blocks away from the tile pictured above, also on Corrientes Avenue, there is another tile whose story is told in the book Baldosas por la Memoria II, published by the Collective in 2010:

Carlos Alberto Abadi ‘Turco’ (Spanish for ‘Turkish’; used as a nickname)

He was born on 25-01-52. He lived on Corrientes 2362, Balvanera neighbourhood, Buenos Aires City, and there we laid the tile with his name. He was a worker and studied psychology at the University
of Buenos Aires. On 6-05-1977 he was kidnapped at the corner of Moreno and Alberti. On 8-03-2008 we made this tile together with Reina (his sister) and other relatives. When we put the tile in its place, on the 18th of May of that year while listening to ‘Nostalgia’, Isabel Fernández Blanco and Isabel Cerruti remembered …: the best homage is fighting to fulfil his desire for a better world… He was a man who devoted his life to an ideal and took special care not to put his family at risk. Before becoming a militant, he assisted his older brother who suffered from a chronic illness and was unable to get around. He worked and studied since he was a little boy… He had integrity, he was respectful and protective of his beloved ones. I am proud to be his sister and I have transmitted to my children my love for him. Carlos was greatly moved by music. The tango ‘Nostalgia’ drove him to tears…” (2010, p. 57, my translation)

The publication of the two books complementing the project (Baldosas por la Memoria I and II; 2008, 2010), as well as the performances and stories told at the chosen sites, paint biographical sketches of each victim being remembered, compelling a kind of empathy and emotional response which differs from the one encouraged by other forms of memorialisation. Here, the names of the victims are removed from the alphabetic or chronological lists which often characterise ‘museums of memory’ (as they are represented, for instance, at the Parque de la Memoria, also in Buenos Aires). Instead, the names and profiles portrayed on the tiles resignify seemingly trivial locations all over the city. While sometimes the tiles are vandalised or simply ignored by passers-by, at other locations they are adopted and cared for by local residents. For me, the tiles have a peculiar effect in producing a sense of space and time in Buenos Aires. The joint work carried out by the collective simultaneously entails doing territorial and biographical research to reconstruct, at least fragmentarily, the routines and itineraries of those detainees-disappeared who lived in the city. In doing so they index specific places that figured in the victims’ everyday lives (schools, offices, homes), their militancy or their kidnapping, while at the same time being spread across the city in a seemingly aleatory and unexpected manner.

In her work on the public demonstrations performed by the organisation HIJOS (‘Children’), Susana Kaiser (2002) examines a mode
of memory practice in Argentina which, in a way, mirrors the type of mapping exercise performed by the Tiles for Memory Project. As Kaiser explains, the *escraches* sought to publicly expose those tortures and assassins who benefited from amnesty laws. In doing so, human rights activists signalled the homes of perpetrators, held ceremonies in their neighbourhoods and informed passers by about the repressors’ names and activities during the dictatorship. The city of Buenos Aires, perhaps more than any other in Argentina, is criss-crossed by these multiple routes, locations and narratives that actively produce a sense of urban spatiality, one that is tied to the stories of residents and communities.

The two books published by the Coordinadora compile the stories and speeches that the victims’ relatives, friends and comrades delivered at the inaugural ceremonies for new tiles. Importantly, the reconstructions emphasise the militant trajectories and political commitment of most of the victims:

Lila was 20 years old, Claudio 23. They were kidnapped on 4-11-1976 as part of Operation Condor in Uruguay... Luis was 26 years old and he was kidnapped on 10-08-1976 at the bar El Olmo... The three brothers lived at Larrea 1058, and there we laid a tile with their names. On Saturday 16th of August 2008 we crowded the whole block. We had tasteful plates, colours, sounds, poems, the readings of Althusser and other greats... ‘Luis studied medicine and he was taken due to a gesture of solidarity with Juli and Walter, who were kidnapped the day before. Lila crafted paper figurines almost as sweet as herself. Quique was unbeatable at chess, a musician, a poet, seductive, hilarious, caustic, brave... This house is a symbol. Its doors were always open to artists and revolutionary people. It was raided on several occasions, but never silenced...’ Jorge (friend).” (2011, p 173-174; my translation).

“Nora Débora Friszman... ‘Only once did I ever see her angry. It was enough to hope it would never happen again. One night we had a job to do around the 8th Police Station. It was a damn difficult job, late, hard to keep out of sight. We were passing by and pretending to be a young couple talking on the sidewalk when, suddenly, about

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50 Similarly, Andrea Giunta (2014) recounts the case of 30 paving stones that were installed by a memory commission of Banco de la Nación Argentina (Bank of the Argentinean Nation) workers on the sidewalk in front of the bank’s headquarters, adjacent to the Plaza de Mayo. When the paving stones were destroyed in the course of a public works project, the bank’s employees immediately denounced the incident and the plaques were eventually replaced by the city authorities. The story is a good example of how communities appropriate and engage with...
ten cops appeared in front of us. “They are coming”... and I tried to kiss her, to pretend. She punched me in the face... That was the time I saw her angry... They say she was biting one of the kidnappers when she was taken away. “Viva la Patria!” she screamed when she saw they were coming for her.’ Her militant companion, ‘el Sueco... ” (2011, p.116; my translation).

This form of urban intervention is seen by members of the collective as a way to recognise and perpetuate the legacy and political commitment of the detainees-disappeared. Significantly, most tiles refer to them as ‘comrades’ or ‘people’s militants’, while the category of ‘victim’ is absent from both the tiles and the two books. The vignettes, scenes and descriptions portray a profile of the disappeared that accentuates their militant attributes – bravery and courage, solidarity, dedication, commitment, sacrifice – and therefore step away from the notion of ‘suffering human’ frequently evoked as the central figure of the human rights narrative51. Thus, the tiles compel a different kind of empathy and emotional response, one that is not oriented toward raising awareness of the pain and suffering of distant others (Sontag, 2003) or creating a ‘community of spectators’, and, thus, a notion of universal humanity (Sliwinski, 2011). Rather, they prompt self-reflection and the explicit commitment to reconstructing a political tradition which is deeply imbricated with human rights imaginary and memory practices: “We are not just neighbours with memory, we are militants who retrace the stories of other militants who preceded us. Each homage is a vindication, each mark on the street is the footprint engraved by a militant companion” (Barrios, 2011, p, 8, my translation).

As with these tiles, other material things encountered in the city – a mural, a book, a building – act as interruptions in the habitual flow of the urban experience, bringing to the political present flashes and fragments of past histories. In all these inscriptions there seems to be an intuition guided by what Walter Benjamin called a “practice of

51 The mobilisation of images and representations of human suffering has been critically addressed by an increasing corpus of scholarship on human rights and humanitarian issues. This literature, representing various disciplinary perspectives, sharply remarks on the ambiguities of a ‘politics of suffering’ that frequently underlies the appeal to humanitarian discourses (see for instance Allen, 2009; W. Brown, 2004; C. J. Dean, 2015; Sontag, 2003; Ticktin, 2014; Whyte, 2012).
melancholic remembrance”: it is precisely by dwelling on loss, past violence and the feeling that things could have been otherwise that one returns more attentive to the political present. Jonathan Flatley has explored the way in which this particular form of melancholy was, for Benjamin, the driving force of political action, “wherein what has been comes together in a flash with the now to form a constellation” (Benjamin quoted in Flatley 2009, p. 72).

My encounters with these multiple ‘practices of melancholic remembrance’ while doing fieldwork in Buenos Aires were not casual, since human rights organisations, political groups and government actors actively work in the production of this narrative52. In a manner analogous to the work of the Coordinadora, curatorial strategies

52 The joint work of human rights organisations and state agencies in producing memory narratives in Argentina has been amply addressed in scholarly work (Crenzel, 2015; Guglielmucci, 2013; Jelin, 1995; Kaiser, 2005; Vecchioli, 2013b). Importantly, this scholarship documents a tradition of cooperation between human rights groups and state agencies which goes back to the democratic transition in 1983.
deployed in ‘sites of remembrance’ also appeal to the force of material objects in evoking fragments of past stories that appear again and again in the media and in the city’s cultural circuits. During my participation in a forum on the ACS Act held at the former clandestine detention centre ESMA I could see the exhibition Memorias de Vida y Militancia\(^{53}\) (Memories of Life and Militancy), which in a way replicates the kind of political memory performed by the tile project\(^{54}\). The life stories of over 30 detainees-disappeared that were captive at ESMA are portrayed in a series of collages of paintings, letters, photographs and other objects (example in Figure 4.2). Brief texts accompany the collages:

“Franca Jarach. She spent her childhood in a joyous house located in the Belgrano neighbourhood... She enjoyed classical and rock music, and she used to listen The Beatles and Almendra... She became politically active from her early school years and joined the Network of High-School Students... She was kidnapped on the 25\(^{th}\) of June 1976 and seen at the clandestine detention centre ESMA. She was 18 years old. She remained disappeared” (Memorias de Vida y Militancia – Memories of Life and Militancy, ESMA)

As aesthetic and affective experiences, these modes of evoking the past call for the construction of a political subjectivity rather than a detailed reconstruction of historical events. They bring about glimpses of individual and collective stories. Once again, the memories around the detainees-disappeared resonate with Benjamin’s notion of history, for whom, against the historicist impulse towards objective truth, history was a matter of subjective experience: “to articulate the past historically does not mean to recognise it the ‘way it really was.’ It means to seize hold of memory as it flashes up at a moment of danger” (Benjamin, 1968, p. 257).

\(^{53}\) The exhibition can be accessed online at [http://www.espaciomemoria.ar/memoriasvida.php](http://www.espaciomemoria.ar/memoriasvida.php).

\(^{54}\) Likewise, the exhibition Vestiges, coordinated by the network of human rights groups that comprise the project Memoria Abierta (Open Memory), “seeks to explore the power of objects to establish relations between present and past, in a way that can be used for the transmission of memory and, at the same time, foster debate and reflection”. For this purpose, a team from Memoria Abierta collected objects that belonged to the disappeared “who participated politically during the military dictatorship” – football t-shirts, musical instruments, mosaics, toys, writings – and asked friends or relatives who had kept those objects to tell their story. The exhibition can be viewed at Memoria Abierta’s website: [http://www.memoriaabierta.org.ar/vestigios/index-2.html](http://www.memoriaabierta.org.ar/vestigios/index-2.html).
Modes of remembering the detainees-disappeared have publicly circulated since the times of the dictatorship. However, references to the victims’ militant trajectories and political projects were generally absent from any kind of public commemoration until late 1990s. Perhaps one of the most extended modes of public remembrance started when Estela de Carlotto published a photograph of her pregnant daughter Laura in the then-nascent leftist newspaper Página 12. Other relatives and friends soon joined the initiative and over time such ‘recordatorios’ became an established form of public intervention, and one which continues even today. Often accompanied by poems, song lyrics, or simply words of affection, some have pointed out that ‘recordatorios’ represent an intersection of the obituary genre with the format of searching for missing persons (Reati, 2007; Van Dembroucke, 2010). But references to personal biographies, and in particular the political activities of the victims, were usually avoided in a time when the figure of ‘the militant’ still had negative and stigmatising connotations (Jelin, 2013). Even the accompanying photographs, generally taken from personal identification cards, reproduced the rather impersonal aesthetics that characterised the judicial style of the Nunca Más report. Estela Schindel (2009) describes another interesting example of street intervention, the so-called Siluetazo (Silhouettes), which took place in the first months of the return to democracy in 1983. It was an action aimed at making visible and topical the claim for the disappeared, with artists and human rights activists crafting full-scale silhouettes of disappeared people that would then be stuck to trees, buildings and monuments. These interventions, however, reproduced a common convention at the time that would later be replicated in the Nunca Más report: the notion of the victim emerging from these accounts was of one without past, without personal or political trajectories. “It could have been anyone”, was the implicit narrative.

As detailed in the previous chapter, during the years of the democratic transition, human rights were mobilised as a moral critique of the maximalist political projects of the 1970s that preceded Alfonsin’s
presidency. In this version, human rights proposed a neutral space in Argentina, a set of mechanisms to reestablish the rule of law and the democratic encounter. But to be effective, human rights had to remain apolitical, or even antipolitical. It is not surprising, therefore, that the narrative genre that best expressed this view was the human rights report. As such, *Nunca Más* was a compilation of testimonies, forensic analyses, lists of cases, and detailed descriptions of buildings and sequences of action. The vocabulary employed was technical and descriptive, and while it refrained from making political assessments, it judged the actions of the dictatorship as a violation of the religious and political principles of the West. Although many of the descriptions of torture provided by survivors and witnesses had a profound emotional effect, the narrative style guiding the report was the one of a judicial investigation (CONADEP, 1984).

In an exemplary way, *Nunca Más* addressed Michael Ignatieff’s call for a “minimalist” notion of human rights: “The universal commitments implied by human rights can only be compatible with a wide variety of ways of living if the universalism implied is self-consciously minimalist” (2003, p. 322). The central concern of the human rights project, therefore, has to be the bodily integrity of individual people: “the elemental priority of all human rights activism: to stop torture, beatings, killings, rape, and assault, and to improve, as best as we can, the security of ordinary people” (2003). The victim-subject emerging from this notion of human rights is produced precisely through the narration of physical pain and suffering, making the body the starting point of the victim’s subjectivity. Likewise, the victims are mainly referred to as ‘persons’ or ‘human beings’, and the report generally avoids mentioning their biographical details, besides their gender and age or political affiliations. Within the ‘transition to democracy’ project, *Nunca Más* and the human rights narrative it charted helped to reconstruct the liberal foundations of democracy.
However, this “liberal” vision of human rights, as Marcos Novaro (2008) has defined it, progressively began to lose momentum in Argentina by the end of the 1980s, when attempts to condemn the genocides succumbed to pressures from the still-threatening military forces. The amnesty laws promulgated towards the end of Alfonsín’s government resulted in the ‘human rights cause’ remaining unfulfilled and open (Jelin, 1995), perpetuating the calls for ‘truth, trials and punishment for all the culprits’. In this context, and since the mid-1990s, new ways of representing the country’s political past and the issue of the disappeared started to gain currency. In particular, the circulation of films such as Cazadores de Utopías, and non-fiction literary works like Todo o Nada (Seoane, 1992), and La Voluntad (Anguita & Caparrós, 1998), the latter becoming a bestseller, initiated the canonisation of ‘memories of life and militancy’ as a central narrative genre in the circulation of human rights. The subjects of these stories are invariably militants or “victims who participated politically during the dictatorship”. Although they retrace the trajectories of individuals, the stories also have a metonymic effect, since each narration makes us aware of the lives of many other victims that remain muted or untold. Following Pramod Nayar, it could be argued that each biographical fragment, each material object recovered and articulated in a broader constellation, “will always be speaking on behalf of others”, generating a “collectivised imaginary” that “makes publics out of privacies and vice-versa” (2014, p. 21).

Whereas the reinscription of the dictatorship’s victims in a personal, political and social history was a disruptive act in the 1980s and 1990s, when President Néstor Kirchner took office in 2003, the recognition of

55 The end of Alfonsín’s administration and the election of President Menem also marked a period of relative marginalisation of ‘the human rights question’ in the country. However, some relevant events occurred in the second half of the 1990s that gave new impetus to demands of HROs, most prominently, the appearance of the human rights group HIJOS, the 1994 constitutional reform which granted constitutional status to human rights treaties and, above all, the revival of claims for justice after the publication of new testimonies and evidence (in particular El Vuelo (1995) by Horacio Verbitsky).

56 As Memoria Abierta refers to the life stories portrayed in the exhibition Vestiges. See http://www.memoriaabierta.org.ar/vestigios/
the victims’ political trajectories became the prevailing discourse mobilised by the government and aligned political groups, as well as by most human rights organisations.

In this section I have described my encounters with images, memorials and narratives that mediate a distinctive view of human rights in Argentina. I have argued that, in contrast to the increasing emphasis on human suffering and vulnerable bodies that pervades transnational discourses of human rights, in Argentina human rights are rearticulated as part of a political-activist imaginary. The stories and memorials described portray heroic narratives of sacrifice, bravery and political commitment.

In the next section of this chapter I describe my participation at a forum on media regulation in Latin America on the 5th anniversary of the ACS Act. This event was held at ESMA (Space for Memory and Human Rights), a former clandestine detention centre which now functions as a memorial and a space for the promotion of human rights policies. By describing my participation at this event, the last section of the chapter examines how the ideals behind the ACS Act hinge on a broader imaginary of human rights and political militancy in contemporary Argentina.

57 While the celebration of militancy and political commitment is a central feature of the prevailing human rights discourse in Argentina, I do not intend to suggest that it represents a uniform or unchallenged view. Indeed, the fact that it has become part of the ‘official’ account of human rights has encouraged the emergence of new ways of making sense of the country’s violent past (and its ongoing effects). Some of the most groundbreaking ways of engaging with issues of memory and human rights are emerging among children of disappeared, most prominently the documentary film Los Rubios (The Blondes) released in 2003 (Carri, 2007), the blog Diario de una Princesa Montonera (Diary of a Montonera Princess), which was later turned into a book (Perez, 2012) and the novel Los Topos (The Moles) (Bruzzone, 2012). The genre has been defined as ‘auto-fiction’ and is characterised by the use of humour and a critical view of some of the conventions among human rights groups (even as some of the authors are active participants in these groups). For a critical study of these emerging narratives see the work of Cecilia Sosa (2013).
4.3 *Mística, Spectacle, and the Hyperpoliticisation of Human Rights*

“[S]tate ceremonials were... designed to express a view of the ultimate nature of reality, and, at the same time, to shape the existing conditions of life to be consonant with that reality; that is, theatre to present an ontology and, by presenting it, to make it happen – make it actual.”

- Clifford Geertz (1980, p. 104)

It is October 2014 and I am in a huge hall, so big that it looks empty in spite of there being thirty or forty people. Most of us have just arrived from an adjacent conference room, where a panel discussion on the situation of media in Latin America was taking place. One of the presentations was interrupted and we were asked, with little explanation, to move into this central hall. A group of public officers from various neighbouring countries chat amiably, while young activists with blue shirts and flags slowly fill the room. Through the large windows on the north side, sunlight streams into the hall, rendering the faces stencilled on the glass barely discernible. The hall is the central nave of the Space for Memory and Human Rights (Figure 4.3). The
youngsters are activists of Nuevo Encuentro and other political groups that form part of the country’s governing coalition. The faces stencilled on the windows belong to detainees-disappeared who were captive and tortured in these same premises when they served as a detention centre during the dictatorship. Today is the first day of an event organised by AFSCA on the 5th anniversary of the ACS Act’s promulgation.

After a few minutes the place is completely occupied, mostly by young activists but also by journalists and public officers who seem to have congregated specifically for this moment (Figure 4.4). I recognise many prominent human rights activists in the audience. A couple of television cameras are now in place whilst an announcer informs us that we will soon be in a video conference with President Fernández de Kirchner. It is only then that I understand why the event has been rescheduled around this moment. Like any other person living in Argentina, I am familiar with political performances of this kind in which the president uses the national television network to publicise acts of government. I realise I am witnessing ‘behind the scenes’ one of the recurrent media
events choreographed by the national government: the presidential *cadenas nacionales* (blanket broadcast).

The announcer welcomed all present and apologised for the sudden change in programming. He then continued: “*We are pleased to initiate a direct link with our President, Cristina Fernández de Kirchner, and with the President of the Russian Federation, Vladimir Putin*”. The images of both presidents appear on a giant screen before us (Figure 4.5).

“*Mr. President, all Argentineans warmly greet you and the Russian people. Please applaud!*” The transmission beamed images of various locations around the country also participating in the video conference with both presidents. Fluttering flags. Applauses. Loud chanting. President Fernández de Kirchner says: “*Today is an historical moment because as of today we are including the Russian television channel in the Argentinean digital television service…*” And she continued,

“We are very happy as this entails a new bridge between the peoples. And we are doing this... without the mediation of the big transnational corporations which usually report world news in line with their own interests... [We stand for] a plurality of voices,
cultural diversity and multilateralism in the fields of communication and information.”

After her initial introduction, Fernández de Kirchner handed over the floor to President Putin: “Mr President, we are listening to you”. Some people in the audience could not help but smile as we watched the magnified image of Vladimir Putin’s face speaking in Russian directly to the camera. It took a few moments for the president to pause, and we heard the Spanish translation:

“Dear Mr. President, dear Argentinean television viewers, dear friends, dear Cristina. I would like to convey my greetings and congratulations for a memorable event... A new source of reliable and relevant information will soon be available in your country. The right to information is an inalienable right, and one of the most important human rights. With the evolution of technology, the media has acquired enormous relevance... Serious information wars and the attempt on the part of some actors to establish a monopoly over truth are marks that characterise our times, as the President just said. In these conditions alternative sources of information are crucially needed.”

The conversation between the two Presidents continued for 15 or more minutes while we all listened, at once amused and amazed. Two young people from the audience standing next to me joked, “Is this Big Brother?” Certainly, it was a curious scene. Here we were inside one of the most solemn memorials of the country’s recent history watching the gigantic image of President Putin looking directly to us and speaking in a language we could not comprehend. Both the figure of Vladimir Putin and the promotion of the Russia Today television channel might seem awkward choices on the part of the government to publicise its commitment to human rights and freedom of expression. Indeed, the rather unsettling effect that the association of Putin with human rights (and ESMA) produced on the public was well captured by the jokes and giggles among the activists who were themselves part of the country’s governing coalition. As had often occurred in the past, human rights

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58 At the time of the video conference Russia was categorised as ‘not free’ by Freedom House. See https://freedomhouse.org/report/freedom-world/2014/russia. For a critical account of Freedom House indicators see Bradley (2015) and Bush (2017).
entered the media circuit enmeshed in a set of dissimilar or, at the very least, seemingly contradictory elements. In fact, the press and observers would later refer to the ‘unusual’ video conference with President Putin in a mocking tone, while criticising the politicisation of ESMA, the abusive use of the national television networks and the ‘emptying’ of the human rights lexicon (see for example Kirschbaum, 2014).

![Figure 4.6: Vladimir Putin in a video conference with Cristina Fernández de Kirchner. Source: Kremlin (2014).](image)

However, the communication with Vladimir Putin and the ideas put forward by both presidents were in line with the government advancement of human rights in international politics as a matter of national self-determination, sovereignty and multilateralism, a strategic goal that has aligned Russian and Argentinean interests in the past. From 2003 the Argentinean government had been reorienting its strategy of international alliances, prioritising close relations with Latin American states (in particular Bolivia, Brazil, Ecuador, Uruguay and Venezuela). This entailed not only the creation of new international bodies and initiatives in Latin America (such UNASUR and Telesur) but also increased relationships with other geopolitical powers such as Russia and China.
Importantly, the inclusion of *Russia Today* in Argentinean free-to-air digital television happened in the context of growing tensions in terms of the rights to privacy, freedom of information and press freedom on the international scene. Just a few months before this political event, Edward Snowden had revealed classified information about CIA programs of illegal massive surveillance in the United States and abroad. At the time of the video conference, Snowden had just applied to extend his political asylum in Russia. Likewise, Wikileaks founder Julian Assange, who had released thousands of confidential cables since 2006, had been granted asylum by the Ecuadorian government and remained at the country’s embassy in London. Both cases had been widely covered by *Russia Today*\(^{59}\). It was in this context that Putin promoted the state-funded television channel as an ‘alternative source of information’ in the midst of ‘serious information wars’.

In this context, the presidents’ speeches emphasising ‘inalienable rights’, ‘multilateralism’ and, perhaps above all, ‘alternative sources of information’ outlined the key points that sustain a distinctive view of human rights. While press freedom and human rights are often construed as limiting the power of nation-states, at this event they were invoked to denounce international imbalances in media circuits. The presidents grounded their arguments on notions of communication rights that gained momentum in the 1960s and 1970s, when the newly independent postcolonial states called for a ‘New World Order’.

As I discussed in Chapter II, the ‘right to communication’, in this context, encompassed much more than the right of individuals to exercise their freedom of expression. It can be regarded as a claim for national self-determination and a more just distribution of technical capacities among nations. It was also a call for a new geopolitical order voiced by the Non-Aligned Movement. With its emphasis on a national

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\(^{59}\) Interestingly enough, Julian Assange hosted a television program produced by *Russia Today*. *The Julian Assange Show* included a special episode on the Occupy Movement and interviews with political leaders such as the then-president of Ecuador Rafael Correa as well as left-wing intellectuals such as Noam Chomsky and Slavoj Žižek. See [https://www.rt.com/tags/the-julian-assange-show/](https://www.rt.com/tags/the-julian-assange-show/)
project of liberation and on collective rather than individual rights, human rights are, in this narrative, the ‘rights of peoples’.

More powerful than the Presidents’ words was, however, the political performance organised to mark the occasion of the 5th anniversary of the ACS Act. After the video conference with President Putin finished, the video link moved to the various locations where a number of political events were being held: the inauguration of infrastructure projects, the announcement of public policy plans and the commemoration of the anniversary of the ACS Act, at which I was present. While I had participated in public demonstrations and watched *cadenas nacionales* (presidential blanket broadcast) many times in the past, it was the first time I was present *inside* this type of media event, witnessing firsthand the preparations, the chants and the people’s reactions to the presidential communication. In the jargon of political activists, I took part in the making of the *mística*.

There is a special rhythm or synchrony characteristic of this type of media events. The president salutes the audience and the crowd. The activists respond with chants, fluttering flags and applause. The television broadcast, projected on the screen mounted before us, alternates between images of the crowd at the different locations and the president delivering her speech. As it was made clear to me from the start of the video conference, these events are carefully planned by the organisers. This does not mean that there are not spontaneous emotional responses from the activists and supporters there assembled. However, the crowd’s bodily reactions and chants did not happen at just any point; they would always be after specific kinds of references in the presidential speech (for example, when remembering the

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60 *Mística* (‘mystique’) is the word used by activists to refer to the broad repertoire of images, songs, slogans, icons, clothing and even buildings (such as the ex-ESMA) that constitute the liturgy of political militancy. *Mística* is a form of cultural politics consciously nurtured by political organisations. While sometimes it involves theatrical or musical performances, in this chapter I employ the term in a broader sense to include the full range of aesthetic elements that constituted the setting of the presidential *cadena nacional*. 

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disappeared, when denouncing the actions of the 'big transnational corporations', or when evoking the figure of the late president Néstor Kirchner\textsuperscript{61}). Sometimes, the precise moments of the interventions are well-known and eagerly anticipated by the crowd. When the president evoked the disappeared, for example, someone from the crowd yelled out:

- Activist: Thirty thousand comrades disappeared!
- Crowd: Present!
- Activist: Today!
- Crowd: And always!
- Activist: Today!
- Crowd: And always!

The bodily anticipation of these moments, the tacit agreement which galvanises the crowd to act in unison, does not decrease the intensity of the engagement; rather, it increases it. It is a singular form of political participation, in which the collective nature of the experience prepares the body and imposes a certain rhythm and atmosphere: the amplification of sounds, the awareness of a shared sensual experience, the physical proximity of bodies, etc. In this sense, the responses and interventions of the crowd are mediated through discourse as much as through embodiment.

Political performances and popular assemblies such as the \textit{cadenas nacionales} are powerful instances of subjectivity in contemporary Argentina. They elicit personal and emotional forms of engagement with both human rights discourse and political action. The form of the aesthetic and affective experiences on which these events rely result in a series of accumulative, performative effects that shape the political subjectivities of human rights activists, public officers and supporters of the government.

\textsuperscript{61} Néstor Kirchner passed away in October 2010.
While public assemblies such as *cadenas nacionales* rely on the act of coming together, on groups of people reclaiming the public space and speaking as a collective, these events are also translocal because they are broadcast live and circulated through national, and sometime transnational, media networks. This means that the media do not merely report the event but it is part of the action and constitutes the scene being communicated. Most of those present at ESMA – activists, human rights advocates, public officers – are, in a way, performing for the camera. They are consciously taking part in a state ceremony, helping to project an image of both ‘popular sovereignty’ and human rights. Although mediated, those who are watching the live broadcasting from home also have access to a distinctive sensual and aesthetic experience of the event. In this way, political activists, human rights groups and their associated symbols (the Madres’ white scarves, Plaza de Mayo, ESMA) enter media circuits (Himpele, 2008) inscribed as part of a set of larger oppositions that have marked the terms of the public debate for the last decade: popular government vs corporations; State vs Market; alternative media vs monopolies; ‘the people’ vs ‘de facto powers’.

My experience of this event was ambiguous. I felt emotionally invested in a shared political past and a tradition of human rights struggles in Argentina. However, I remained sceptical and cautious about the government’s discourse. Once the event had concluded, I introduced myself to the two young people by my side, who turned out to be Nuevo Encuentro activists. I asked what their thoughts were. They both answered very succinctly but decisively: they found it “good”. In an attempt to link back to their earlier joking comment, I observed that, in my view, the event was a bit too pompous for what was essentially the announcement of a new television channel in the country. Was it really necessary to interrupt all panel discussions and presentations so that we all could be present at the video conference at the right time? Moreover, what did they think about Vladimir Putin talking about
freedom of expression at ESMA? They looked at me quizzically for a few
seconds. Then one of them said:

“As you surely know, the largest media groups in this country are in
constant confrontation with the president and the government. They
protect the interests of powerful corporations. For ‘the project’ to
continue, the government needs to communicate its actions and to
find ways to make its voice heard... and about Putin, would you
rather have Obama talking to the country?”

My questions had opened the door to a well-considered and oft-repeated
critique on the role of media that activists and government supporters
usually convey. Not completely satisfied, I referred to the president’s
discretionary use of cadenas nacionales. One of them replied, once again,
that in a context of harsh confrontation with the country’s biggest
media groups, the government needed to find ways to communicate its
ideas. People could not rely exclusively on private media outlets to
obtain information. And he concluded: “No other government has done
as much to advance human rights!”

Their responses made me reflect on how human rights are seen within
Argentina’s highly politicised context. These activists remained
convinced that the government’s actions were necessary to advance the
human rights agenda. Although their joking comments and laughs may
indicate scepticism about Putin’s genuine commitment to human rights
(and even some discomfort about the Putin-ESMA-disappeared
association), they saw this alliance as relevant to a concrete political
agenda on the ground. This was a common idea I encountered during
my fieldwork: if human rights are to be more than a pure ideal
enshrined by international law, it is necessary to tolerate some degree of
‘contamination’.

These tensions illustrate what Samuel Moyn has called the
‘contemporary dilemma of human rights’:

“Though they were born as an alternative to grand political missions
– or even as a moral criticism of politics – human rights were forced
to take on the grand political mission of providing a global framework for the achievement of freedom, identity and prosperity. They were forced, slowly but surely, to assume the very maximalism they triumphed by avoiding” (2010, p. 9).

4.4 Everything is Political

In his classic work on the genesis of the modern state as a bureaucratic field, Pierre Bourdieu (Bourdieu, 1999) proposes that, in order to understand the “properly symbolic dimension of the power of the state... and in particular... the effect of universality”, it is necessary to understand the work of “universalisation” through which state agents gain performative authority over the “general interest” (p. 71). Central to this work of universalisation, observes Bourdieu, is

“the obligatory reference to the values of neutrality and disinterested loyalty to the public good. Such values impose themselves with increasing force upon the functionaries of the state as the history of the long work of symbolic construction unfolds whereby the official representation of the state as the site of universality and of service of the general interest is invented and imposed” (p. 72).

While participating at political gatherings and having conversations with public servants about their activities and experiences my interlocutors frequently voiced a very different understanding of “the state”. In the narratives of many of the militants-experts-public servants that I interviewed, the idea of the state as a proxy for “the universal”, as depicted by Bourdieu (1999, p. 68), was very often relativised and challenged. During my observations at a panel discussion on public media in Latin America, a prominent legal professional and public servant expressed a distinctive understanding of “the state” when asked about the role of public media:

-Spanish participant at the audience phrase a question: Hello... right now, in Spain, Public TV is being emptied. I think there is something in citizens’ culture, something that I also perceive here, by which too often we tend to associate public TV to the political party in the government. Isn’t it? And there is something that has
been said in a previous panel presentation and keeps coming to my mind, and is that information is a public good. What can we do... so that the common citizens do not immediately associate public TV with the government?... Because I really think it is something that happens in Spain, in England, and I am here and I perceive the same. What happens that we tend to think that Public TV belongs to the political party in government?

-Public Servant: it is a curious contribution, precisely because here Public TV is often criticised.... And they usually criticize us, and I say “us” because I am part of the government, I am a militant of this political project. We are usually criticised in comparison with European public TV... It may seem a heresy what I am about to say, but I am concerned about fantasies that separate ‘State’ and ‘government’. It seems that the State is an entity without moral, without desires, without political tradition. Which precedes and comes before... Governments, which we may like or not, are the choice made by a society in a given moment. ...Public TV does not mean apolitical TV. Because believing that there is such a thing as communication without political content is believing that there is such a thing as ‘independent journalism’ (applauses from the public). That is a liberal fantasy... I believe... that public TV has to ensure a minimum access to information for everyone. But Public TV is also constructed in concrete spaces where the State ‘slash’ Government, I do not separate, gives a vision, a distinct vision. Of course, it is also important to support all sectors, empowering civil society to communicate properly, with resources, with means, with accurate professionals. This is important as well. But I believe that all communication is public. So, let's make a distinction. One issue is the media which are directly controlled by the State. But “public media” is something else. I think that we should formulate the issue in that way. Otherwise we are asking for fictions: the state does not have ideology, communication and public TV does not have political approach. The point is: there is not a single truth. The critical issue is to have enough voices, multiple approaches. Every State TV channel could say “the rain is green”. But if I have enough voices that say “clearly, the rain is not green”, at least I can call that statement into question, I can raise doubts. What is important is to strengthen democratic debate, not to diminish or flatten content from public ‘slash’ state media. (Audio-recorded, October 2014; my translation, emphasis added).

A first point to highlight in the intervention of this public officer is her strong criticism to the idea of a neutral state as an entity “without moral, without desires, without political tradition”. To the image of a transcendent, universalist state, the public officer opposed the legitimacy of a shared political project. Even more, she finds her own legitimate position in the state as a militant of that political project. The vindication of militancy as the foundation of a legitimate position in the
state was shared by many of the experts, activists and public servants I interviewed. ‘Neutrality’, on the other hand, was frequently associated with lack of commitment rather than ‘disinterested loyalty’ (against Bourdieu’s observations). During an interview conducted prior to the referred discussion, this public officer told me: “for us it’s not the same one policy or the other. We are here because this is what we do and this is what we want to do. We live here. I arrive early in the morning and sometimes I do not leave this place until it’s midnight trying to solve what is necessary” (Interview with Fernanda, June 2014).

This understanding of the state as the crystallisation of a political project (rather than a transcendent entity sitting above ideology) was the cause of frequent criticisms by the political opposition. Particularly during the second term of Cristina Kirchner’s government (2011-2015), political analysts and scholars repeatedly expressed their frustration at the lack of a relevant distinction between the state and the government (see for example La Nación, 2011). Often invoking European democracies or the United States as ideal types of republicanism, observers lamented the absence of clear boundaries between political organisations and the state.

While in the view of political opponents and commentators, political allegiance was often seen as a motive of suspicion, the activist-public officers I interviewed expressed a quite different view. From their perspective, their political commitment and sacrifice for a cause was asserted precisely as the evidence of disinterested service and a commitment to the public good.

While participating at political events or when interviewing public officers from AFSCA (Federal Authority on Audio-Visual Communication Services), I noticed that almost all my interlocutors were part of the ruling coalition (Frente para la Victoria – FPV). In my visits to state agents’ offices it was common to find photographs of these officials accompanying Néstor or Cristina Kirchner or, in some cases, other Latin American presidents such as Evo Morales (President of Bolivia),
Lula (former President of Brasil), Rafael Correa (former president of Ecuador) and Hugo Chavez (former president of Venezuela). The recognition of a ‘national popular’ political legacy was particularly evident in the offices décor, often garnished with small objects and collectable figures which are part of a Peronist pop culture in Argentina. For example, during an interview with a public servant from AFSCA, who was a militant of a socialist (non-Peronist) party and the FPV, I noted in his desk a small figure of Perón with the shape of a Russian doll. I showed interest in the object and my interviewee willingly showed me the “perushka”, a Peronist mamushka (Russian doll) with figures of Perón, Evita, Nestor and Cristina Kirchner as well as other political leaders. When I asked if it was a present from a Peronist friend he answered grinning “*I bought it, it amuses me. But also… one thing you really learn when working at the government: the people are Peronist. Let’s say this is a reminder for not being away from the people*”.

As I have described earlier in this chapter, the Kirchners’ governments, as well as a broader space of political organisations, shared a form of liturgy and political aesthetic which denoted a celebration of militancy and political commitment. Since Néstor Kirchner came to office in 2003, the government and aligned political groups invoked a refoundational discourse which celebrated the ‘return of the political’ and of ‘the state’ against the years of neoliberal technocracy.

### 4.5 Conclusion

By focusing on ‘aesthetic scenes’ (Sliwinski, 2011) in the city of Buenos Aires, this chapter examines the multiple and complex ways human rights are envisioned, imagined and felt in Argentina. I have shown how media forms such as the *Nunca Más* report, the Tiles for Remembrance project and the presidential *cadenas nacionales* are crucial to the

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62 During the period under analysis, all these presidents became prominent political leaders for social movements and activists across Latin America.
dissemination and reenactment of human rights ideals. Because they prompt sensual and emotional forms of engagement with human rights, these scenes help to make human rights legible and culturally shared in Argentina.

Central to the chapter’s argument is that human rights have become a nodal point for the articulation of a nationalist-populist imaginary in Argentina. The circulation of images, photographs and political events do not merely reflect ideas about human rights: rather, they actively shape political subjectivities. I suggest that the forms of engagement with human rights discourse that these aesthetic scenes elicit are important in the constitution of collective identities.

Drawing on Jason Frank’s insights (2009), these scenes can be understood as “constituent moments” in the enactment of ‘the people’ and the ‘popular will’. Similarly, as Judith Butler (2015) observes in her recent study on public assemblies, the claim ‘we the people’ is rarely actually spoken or written. And yet, such a claim is implicitly invoked in any number of public pronouncements, performances and demonstrations. As becomes evident in public assemblies such as cadenas nacionales, the concerted movements of people gathering together, the chants, the slogans, and even the silences at specific moments are performative claims that produce, and represent for others, instances of political commitment and collective self-determination.

Each of the aesthetic scenes I have described and examined in this chapter can be understood not only as human rights performances but as performative enactments of ‘the people’. However, ‘the people’ is never fully produced or captured in a single utterance. Rather, each of these scenes are moments in the constitution of political identities and subjects. As Butler (2015) observes,
“The speech act, however punctual, is nevertheless inserted in a citational chain, and that means that the temporal conditions for making the speech act precede and exceed the momentary occasion of its enunciation…. When and where popular sovereignty – the self-legislative power of the people – is ‘declared’ or, rather, ‘declares itself’, it is not exactly at a single instance, but instead in a series of speech acts or what I would suggest are performative enactments that are not restrictively verbal” (p. 176).

In the Argentinean political context marked by a populist government narrative and a polarised political debate, the question of who are ‘the people’ becomes a matter of central importance. The issue has certainly been amply discussed by prominent political philosophers, including Derrida (1986), Balibar (2009), Laclau (2005), Rancière (2003) and Butler (2015). Although these authors approach the problem from different perspectives, each of them observes that any designation of ‘the people’ works through the delimitation of a boundary that sets up terms of inclusion and exclusion.

Activists, experts and public officers who campaigned for and worked on the implementation of the ACS Act tend to see this regulation as a significant moment in the articulation of a broader political project. As I have described in the analysis of the cadena nacional at ESMA, the ACS Act is often inscribed as part of a set of oppositions that operate by delimiting the boundaries of who are ‘the people’: state vs market; popular government vs corporations; alternative media vs monopolies; ‘the people’ vs ‘de facto powers’.

This of course does not mean that the ‘we’ enunciated in those instances constitutes a uniform subject. Each attempt to represent a political collective may trigger contradictions among convinced activists, as the laughs and jokes among activists suggest. However, even when many of those present might be sceptical about the genuineness of Vladimir Putin’s agenda when evoking human rights, they nevertheless conveyed trust in ‘the project’, as my interlocutors firmly expressed.
In the next chapter of the thesis I focus on the work of the experts, activists and public officers who helped draft the ACS Act. While in this chapter I paid attention to aesthetics and affect, the following chapter examines how technical expertise also plays a role in the making of human rights claims.
CHAPTER V
ENACTING HUMAN RIGHTS
Reckoning with Liberalism

5.1. Introduction

“Todo lo que no se legisla explícita y taxativamente a favor del más débil queda implicitamente legislado a favor del más fuerte.”

[“Any legislation not explicitly and stringently in favour of the weakest is implicitly in favour of the strongest.”]

Raúl Scalabrini Ortíz, quoted by congressman Agustín Rossi during legislative debates on the ACS Act, 16th of September 2009

Thomas Keenan (1997, p. 37-42) suggests that human rights are, above all, claims about humanity. They are claims in the double sense that they express pronouncements about what humanity is and demands for how humanity ought to be. As a matter of practice, even when human rights are sometimes construed as natural and inalienable, they only come into effect when people claim them.

For human rights claims to be effective, however, they must meet certain “felicity conditions”, to use Austin’s expression (1975). In the previous chapter of this thesis I suggested that the ACS Act resonated widely in Argentina’s political arena because it successfully appealed to a public imaginary about human rights. I focused on how ideas on human rights and the ACS Act become legible and shared in Argentina through the circulation of narratives, images and highly performative political events. I argued that, by appealing to imagination and emotion, these ‘aesthetic scenes’ (Sliwinski, 2011) are crucial to the success of human rights because they help to make them part of Argentina’s public and popular culture.
In this chapter, I focus on a different, and yet equally relevant, aspect of human rights claims: their articulation in a legal-technical language. The chapter examines the performativity of human rights by attending to two interrelated aspects of political claim-making in Argentina. Firstly, demands are effective as long as they are formulated in the highly codified language of international law and human rights. Human rights provide a moral and legal lexicon which enables the translation of social and political demands into policy programs that can be managed by state administrations. By invoking the language of human rights, activists, experts and public officers position themselves as defenders of the popular will and push forward programmatic agendas that are legible for state bureaucracies and networks of activists. Second, each new instantiation of human rights discourse simultaneously reinforces and transforms it. Activists, experts and public officers rely on the authoritative force of human rights but, to some extent, they also bring about novel forms of engagement with human rights, envisioning new modes of intervention and opening up the space for new claims.

The chapter is structured in two main parts. In the first section, I focus on the work of a highly professionalised and influential human rights organisation in Argentina, the Centro de Estudios Legales y Sociales (Centre for Legal and Social Studies – CELS). Many of my informants who participated in the campaign for the ACS Act, or who work at government agencies on its implementation, are members or ex-members of CELS. Because of its central role in these debates, CELS is a key entry point to examine how the social and political demand for a new media regulation was articulated in a human rights policy framework.

The second part of the chapter traces the trajectories of activists, experts and public officers who played a key role in the formulation of the ACS Act. In particular, I concentrate on the Coalition for a Democratic Communication, an activist network which brought together a vast number of organisations and social movements,
including CELS. The Coalition was crucial in getting the demand for a new regulation on the public agenda; it elaborated (and campaigned for) the program of demands (called “the 21 points”) that served as the basis for the drafting of the ACS Act.

Central to my analysis in this chapter is the question of how activists, experts and public officers conceive of and participate in processes of state formation when articulating human rights claims. As I show in my discussion of CELS and the Coalition, the claim for a new media regulation was grounded in a (disputed) understanding of the ‘national-popular’ state in Argentina. In doing so, the experts, activists and public officers who campaigned for the ACS Act challenged traditional notions of the state, civil society and human rights activism.

5.2. The Techno-Politics of Human Rights Claims

How were the demands for media democratisation taken up in the legal-technical discourse of experts and state planners? How were the political claims of media activists translated into an implementable policy program? The work of human rights experts was central to this process. Indeed, one of the most important aspects in human rights’ transformation of the way people think and act politically in Argentina (as in many other parts of the world) is the increasing relevance of legal-technical expertise in the discussion of public issues. The significance that expert knowledge and legal-technical repertoires have acquired in the political debate has entailed, to some extent, a professionalisation of activism63 (Vecchioli, 2009), whereby actors persistently need to rely on academic and professional credentials when engaging with rights discourses.

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63 For a detailed account of the professionalization of human rights activism in Argentina see Vecchioli (2009, 2012).
This process is, of course, not exclusive of human rights circuits in Argentina. Building on the work of Timothy Mitchell (2002) and Gabrielle Hecht (2011), recent studies on human rights, development and humanitarianism have proposed the notion of ‘techno-politics’ (Redfield, 2013; von Schnitzler, 2014) or ‘techno-moral politics’ (Bornstein & Sharma, 2016) as a way to conceptualise the complex imbrications between the technical and the political in the practices of human rights actors. In their work on NGO activism in India for instance, Bornstein and Sharma (2016) define ‘techno-moral politics’ as “the strategic integration of moral and technical vocabularies as political tactics”, by which

“social actors translate moral projects into technical, implementable terms as laws or policies, as well as justify technocratic acts – such as development and legislation regarding administrative reform – as moral imperatives” (2016, p. 77).

In Latin America, the relevance of expertise and technical knowledge in political debates must be understood in light of two translocal processes: first, the wide diffusion of neoliberal ideologies, transparency and the rule of law (Arthur, 2009; Guilhot, 2005; Peruzzotti, 2002; Randeria, 2007), which have contributed to the so-called “judicialisation of politics” (Comaroff & Comaroff, 2009; Couso, Huneeus & Sieder, 2010; Smulovitz, 2008). Second, the postdictatorial traditions of legal-political activism in countries like Brazil, Chile, Uruguay and Argentina (which I have discussed in some detail in previous chapters).

Many scholars have underscored the contemporaneity and parallels between the rise of human rights and neoliberalism (Asad, 2003; Bornstein & Sharma, 2016; Comaroff & Comaroff, 2008; von Schnitzler, 2016; Whyte, 2017). Much of this literature suggests that both neoliberalism and human rights are characterised by a technocratic rationality which tends to convert conflicts around poverty, inequality and class into technical questions that can be solved through technical solutions. In a tone that resembles critical scholarship on humanitarian
discourses (discussed in Chapters I and II), this literature suggests that human rights and neoliberalism tend to have depoliticising effects, as they have replaced former utopian visions of social transformation with technocratic forms of short-term relief and a “minimal biopolitics” (Moyn, 2010; Redfield, 2013; von Schnitzler, 2016).

In this chapter, I argue that the input of human rights experts into the formulation and implementation of the ACS Act did not involve such a ‘depoliticising’ translation of social demands. Much to the contrary, I argue that the legal approach and political ideas of human rights experts, activists and public officers in Argentina enabled a distinctive form of engagement with human rights discourse.

As I have already indicated, many of the actors who took part in the development and implementation of the ACS Act had previous professional and activist experience in human rights organisations. One of these organisations stood out in the trajectories of many of my informants: the Centre for Legal and Social Studies (CELS). Although I knew about the importance of CELS in the campaign for the ACS Act and its role in policy-making during these years, I was surprised to learn that many of the public officers I interviewed had been involved with this organisation in the past. Hence, in the next sections of this chapter I focus on the work of CELS, its approach to human rights activism and its views on freedom of expression and the role of the state in Argentina.

5.2.1. The Centre for Legal and Social Studies (CELS)

In Chapter III I briefly referred to CELS’ origins in late 1970s, its actions during the military dictatorship, and its contribution to transitional justice efforts in the 1980s. In this section, I focus on three aspects that help to understand CELS’ work in the context that emerged after the 2001 crisis. First, I outline CELS’ institutional profile and its
participation in national and international networks of human rights activism. Second, I discuss CELS’ activist strategies and its distinctive approach to human rights issues. Finally, I examine CELS’ understanding of, and relationship with, the Argentinean state.

As Virginia Vecchioli has shown (2009), the professionalisation of human rights activism in Argentina must be understood in connection with both a process of internationalisation of expertise and the need to engage with funding sources such as international donors and philanthropic foundations. CELS certainly is a successful example of participation in these transnational circuits of legal-technical expertise and philanthropic funding.

CELS’ main source of funding is the Ford Foundation\textsuperscript{64}, the second largest philanthropic organisation in the United States. However, the growing success of CELS in the international market of philanthropic funding is also evident in the vast number of institutions that currently fund its operations, which include the European Union, the Oak Foundation, and the Open Society Foundation, among others\textsuperscript{65}. CELS does not receive funding from the Argentinean state, except through research grants. It also receives individual donations, although the significance of this type of funding in the overall budget is relatively minor (less than 5%). According to the annual balances published by CELS (available online at \url{www.cels.org.ar}), the organisation more than quadrupled its annual budget in the last decade, increasing from around US$500,000 in 2003 to over US$2.2 million in 2016.

CELS’ legitimacy and operational capacity is also grounded in its ability to engage with international human rights bodies and organisations.

\textsuperscript{64} Dezalay and Garth (2002) refer to the Ford Foundation as a “champion” in the professionalisation of human rights activism in Latin America. Paradoxically, the authors observe, the Ford Foundation began to intervene in the emerging field of human rights during the Cold War and under the auspices of the CIA and the US State Department, when the US government endorsed and supported authoritarian regimes across Latin America. Later, the Ford Foundation backed the activities of advocacy groups committed to the defence of political prisoners and the denunciation of state terrorism. See Dezalay, Garth, and Rodríguez (2002).

\textsuperscript{65} Details can be found on CELS’ website at \url{www.cels.org.ar}.
The annual reports prepared by CELS are taken as the main source of information in the US Department’s periodic reports on human rights in Argentina. Furthermore, CELS is the local referent of a large network of international human rights organisations which include Amnesty International, Human Rights Watch, and Transparency International among the most prominent.

Building on their professional experience at CELS, former members of the organisation currently occupy high positions in the Inter-American Human Rights System as well as in global philanthropic institutions and interstate government bodies. This is the case, for example, of Victor Abramovich, former executive director of CELS, who has served in various capacities at the Inter-American Human Rights Commission and as executive director of the MERCOSUR’s Institute of Human Rights Policies (2010-2014). Martín Abregú, another former director of CELS, is currently member of the executive board and vice-president of the Ford Foundation, based in New York. This participation in these multiple transnational networks is critical to CELS’ institutional legitimacy as a relevant actor in human rights circles.

CELS’ inclination towards technical skill and expert knowledge is well captured in the choice of its name Centro de Estudios (Centre for Studies). As Nicolas Guilhot suggests referring to similar cases in the US, the centro de estudios designation seems to rely on authoritative academic power to foreground a commitment to objectivity, scientific knowledge and the search for truth (2005). Members of CELS and other prominent NGOs in the country typically have degrees from and academic positions in US, European and Latin American universities. The participation in academic circuits is a crucial strategy of human rights actors and organisations to build a legitimate position in the human rights field (Dezalay & Garth, 2011). In fact, CELS runs an extensive academic program in collaboration with Argentinean and foreign universities, including the development of legal clinics, postgraduate programs and research projects. As Virginia Vecchioli
(2009) observes, the fact that CELS takes part in legal clinics and curriculum development is indicative of its recognition in Argentina as a legitimate actor in the definition of what law and human rights are.

In recent years, CELS has led regional efforts towards the decentralisation of HRO networks, widening its agenda and developing new partnerships, what has been called ‘frameworks of South-South cooperation’. According to Sergio, a young lawyer who worked with CELS in the past, the new agenda of ‘South-South cooperation’ gained relevance in the last decade driven by the increasing protagonism of states such as Brazil, India and other emergent nations in international politics (and particularly in human rights arenas). Although the specific content of this framework (which largely exceeds CELS’ activities) remains elusive (Lechini, 2009), CELS sees this agenda as an effort to push forward a distinctive view of human rights, one which originates in the ‘global South’ and grants greater importance to collective rights (interview with Sergio, August 2014).

Scholarship on human rights advocacy and NGO activism shows that the need to cater to the demands of international donors and philanthropic organisations has frequently undermined HROs’ local legitimacy (Allen 2013, 2016). However, CELS has managed to struck a delicate balance between its participation in transnational human rights networks and its involvement in Argentina’s public debate. CELS’ reputation in the country relies on a long institutional history which combines the moral legitimacy gained during the years of anti-dictatorial struggle and a profile characterised by its professionalism and technical rigour (Bruschtein, 2002).

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66 In her ethnography of human rights in Palestine, for example, anthropologist Lori Allen (2013, 2016) describes how the Palestinian population perceive with scepticism, and even cynicism, the proliferation of human rights organisations in the country. According to Allen, human rights are seen as an ‘industry’ whose success in attracting international funds does not reflect any progress in the wellbeing of the local population. In Allen’s words, this is because “[i]f human rights have become the ‘lingua franca’ of global politics, this language is ever more clearly being shown to be spoken with a forked tongue tied by donor demands” (Allen, 2016, p. 359).
CELS occupies a unique position within human rights networks in Argentina. It is the oldest of a group of highly professionalised NGOs with great lobbying capacity and influence in the country’s public debates. However, founded in 1979 by relatives of political prisoners and the disappeared, CELS is also considered part of ‘los organismos’, the historical coalition of human rights organisations (HROs) that also include the Madres and Abuelas de Plaza de Mayo. In this way, CELS participates simultaneously in two distinct groups of human rights activism in Argentina: on the one hand, the human rights groups and social movements that emerged during the years of anti-dictatorial struggle and contributed to shaping the process of transitional justice after 1983, and on the other, the universe of highly professionalised and transnational NGOs that emerged in the country by late 1980s and early 1990s.

CELS’ singular position in national and transnational human rights networks affords them a distinctive approach to human rights issues. One of the main differences between CELS and other legal and technically oriented HROs is its view of the state and human rights activism. Because of its prominence in debates around transitional justice, institutional reforms and human rights issues in Argentina broadly speaking, CELS has cultivated a fluent dialogue with government authorities throughout its history. However, the relationship between human rights groups and government authorities changed radically after Néstor Kirchner took office in 2003.

In the next section of this chapter I analyse the relationship between CELS and the Argentinean government during the Kirchner

67 Apart from CELS, which was founded in 1979, most NGOs in the country emerged in the late 1980s. Among the most influential are ADC (Asociación por los Derechos Civiles – Association for Civil Rights), Poder Ciudadano (Citizen Power), CIPPEC (Centro de Implementación de Políticas Públicas para Equidad y Crecimiento – Centre for the Implementation of Public Policy for Equity and Growth) and ACIJ (Asociación Civil por la Igualdad y la Justicia – Civil Association for Equality and Justice). Members of these organisations typically have degrees from US or European universities, as well as professional experience at international government bodies and institutions.
administrations. I discuss how CELS engaged in debates around the role of the state in Argentina and the nature of human rights activism.

5.2.2 “CELS is not just another NGO”

As discussed in previous chapters, the governments of Néstor Kirchner (2003–2007) and Cristina Kirchner (2007–2015) were a period of unprecedented collaboration between state agencies and human rights groups. Some of the first measures adopted by Néstor Kirchner’s government addressed longstanding demands of the human rights movement. In addition, the creation of new government agencies and human rights programs involved the participation of HROs and positioned prominent human rights activists in key areas of political decision-making.

Less than a year into office, Néstor Kirchner’s administration had gained the respect and support of the human rights movement. Hebe de Bonafini, head of Madres, expressed that “Kirchner is not like the others. He has begun to do some of the things with that we have been dreaming about for a long time” (“Kirchner no es como los demás”,
2003). Similarly, the president of Abuelas, Estela de Carlotto, observed that

“President Kirchner is an outsider, a stranger who is doing more than he promised... He and his cabinet belong to the generation of the disappeared... The president is a determined man who governs with open doors” (Paganetti, 2004).

Importantly, members and ex-members of CELS and other human rights groups assumed key government roles during these years. Nilda Garré, former member of CELS, served as defence minister (2005–2010), minister of security (2010–2013) and the Argentinean representative to the Organisation of American States (OAS) (2013–2015); Jorge Taiana, also a member of CELS, served as foreign minister (2005–2010); Alicia Oliveira, one of the founders of CELS, served as human rights secretary at the Ministry of Foreign Affairs (2003–2005); Andrea Pochak, former deputy director of CELS, currently serves as director of human rights at the Office of the Public Prosecutor.

During my fieldwork, I learned of several human rights experts with previous or ongoing links to CELS who were serving as mid-level officials in the national government68. All my interviewees acknowledged a significant transformation in the relationship between CELS and the Argentinean state since 2003. However, they were very cautious when talking about this subject with me, mainly because the close relationship between CELS and the government was the target of harsh criticism (see for example “El poder del periodismo”, 2017; Leuco, 2017). Camila, a young human rights lawyer who works with CELS, considered that the relationship with the government should not be understood in terms of “co-optation” or “alignment”. When I asked her for her views about accusations of co-optation and lack of independence, Camila answered in a frustrated tone:

68 I refer to these activist-expert-public servants in Chapter VII in my discussion of the work of the Defensoría.
“I do not think it can be called ‘co-optation’... the government took the agenda and the demands of the human rights movement; there are policies in place for almost every issue we have been claiming for... that is not alignment, it is responsibility!” (Interview with Camila, August 2014)

The idea of ‘responsibility’ emerged frequently during my conversations with human rights and community media activists. Many of my informants pointed out that CELS has publicly expressed critical views on several government policies and initiatives when it was considered necessary. However, as Camila suggested in her response, there was a shared sense among activists that the Kirchner administrations genuinely adopted the human rights agenda. Importantly, Néstor Kirchner assumed the presidency under highly fragile political circumstances with barely 22% of the vote. Aware of the challenges and difficulties the new administration faced, political activists and human rights experts determined that criticism against the government had to be prudent and ‘realistic’. In the words of Néstor Piccone, a union leader who accepted a position in the Ministry of Infrastructure, “we must act responsibly instead of ‘throwing stones’ [criticising from the outside] at a national-popular government” (Interview with Néstor Piccone, August 2014).

Although not always publicly voiced, activists and human rights groups who remained sceptical and distant from the Kirchner administrations expressed criticisms towards CELS’ relationship with the government. It was considered that a human rights organisation should be mainly concerned with monitoring and preventing state abuses of fundamental rights and democratic institutions. From this perspective, CELS’ independence and ability to play the role of a ‘watchdog’ NGO was compromised. Because this issue had generated internal discussions at

69 Criticisms of specific initiatives have included the government’s attempt to reform the judiciary in 2013, the appointment of military officials under investigation for crimes against humanity and shortcomings in the implementation of policy programs. See in particular CELS’ 2015 Annual Report (available online at www.cels.org.ar).
CELS, many of my interviewees evaded my questions on this topic\textsuperscript{70}. Only Sergio and Camila, two young lawyers who worked with the organisation, provided some answers. From their perspective, CELS’ critics confused the political and ideological commitment of its members with plain co-optation or partisan politics. In addition, Sergio observed, the accusation of co-optation gloss over the fact that human rights groups have collaborated with the government since the return to democracy in the 1980s.

CELS’ members did not see the organisation as a ‘watchdog NGO’ in the classic sense of the term, this is, exclusively concerned with monitoring and denouncing abuses of state power\textsuperscript{71}. According to Sergio,

\begin{quote}
“CELS is not just another NGO. It is an NGO ‘on paper’, yes, but it is part of the organismos históricos (‘historic organisations’) and a tradition of democratic resistance... CELS has a different profile. The work with [the HROs] ADC, Poder Ciudadano and others is a shared goal and is much appreciated, but there are important differences as well.” (Interview with Sergio, August 2014)
\end{quote}

CELS certainly gained influence and visibility in the public debate during the Kirchner administrations. The organisation played a major role in important reforms and human rights initiatives, including substantial reforms to the Argentinean Supreme Court of Justice (which I discuss in the next chapter), the reopening of trials for crimes against humanity, and the enactment of new legislation, including the ACS Act. CELS’ work with the government in the formulation of public policy did not prevent the organisation from continuing to monitor state abuses,

\textsuperscript{70} Different views on the state and the relationship with the Kirchner governments have generated internal discussions among CELS members. While most of these debates usually take place behind closed doors, on some occasions critical opinions are made public. Roberto Gargarella, for example, a constitutional lawyer who works with CELS, has repeatedly voiced criticism of the relationship between CELS and the government. In particular, Gargarella argues that in the context of the indigenous protests that occurred in 2011, CELS mediated on behalf of the government to discourage the protesters from setting up camp in front of government agency buildings. According to Gargarella, “CELS and its authorities played role opposite to the one they should have” (his full opinion is available online at http://seminariogargarella.blogspot.com.au/2013/05/qom-mferreyra-lesa-cels.html).

\textsuperscript{71} For an insightful ethnographic analysis of the liberal ideals of independence/autonomy from the state in Latin America see Naomi Schiller (2011, 2013).
pointing out shortcomings in the implementation of new regulations or presenting judicial demands against the state on several occasions.

Still, CELS’ closeness to the government in some critical areas generated tensions with other human rights actors\(^72\). From the perspective of my interlocutors, the tensions and differences with other HROs were a result of a very particular political conjuncture. Sergio considered that “CELS would not come through unscathed” from a decade of highly polarised political debates, least of all considering that human rights were central to the government’s discourse and agenda. He believed that CELS’ proximity to the government on some issues, as well as the accusation of ‘ politicisation’, was perhaps an unavoidable cost. In his view, principled human rights work and political commitment are not incompatible. And he considered it was precisely this conviction that differentiated CELS from other NGOs and think tanks in Argentina.

5.2.3 Neutrality vs Objectivity: Reckoning with Liberalism

Literature on the politics of expertise and NGO activism suggests that human rights actors rely on the formal language of law to distance “themselves from value-laden claims... and bracket off the messy vernaculars of politics and morality” (Bornstein & Sharma, 2016, p. 79). Indeed, notions of neutrality and objectivity have been central to human rights work since the emergence of transnational human rights organisations in the 1970s (Moyn, 2010). By strictly limiting their activities to fact-finding and the observance of international law, human rights activists have sought to avoid accusations of ideological bias, particularly in contexts of grave political confrontations. It is often argued that “the single most important activity that HROs undertake to

\(^72\) Perhaps the clearest example of the tensions and differences between CELS and other HROs in Argentina was the disbanding of the Coalition for a Court of Democracy, which played a major role in the reforms to the Argentinean Supreme Court of Justice in 2003 and 2004.
promote human rights is that of *documenting* human rights violations” (Moon, 2012, p. 876; emphasis in the original).

While neutrality and objectivity are sometimes treated as equivalent categories when referring to human rights work, my informants make a clear distinction between these two terms. ‘Objectivity’ is generally understood as the result of methodological rigour in documenting facts and assessing the situation of human rights in a given context: auditing the allocation of resources, evaluating institutional frameworks, monitoring compliance with international standards, etc. In fact, CELS’ strong reputation in Argentina and abroad is grounded, at least in part, in its systematic work of documentation since it was founded in 1979. The organisation’s extensive documentary archive is a frequent source of consultation for scholars, journalists and international bodies concerned with human rights abuses in Argentina.

However, contrary to what has been observed in other contexts (see for example Allen, 2013), CELS members explicitly voice a commitment to a political cause and reject a position of ‘ideological neutrality’. Significantly, the debates around neutrality, human rights activism and the role of the state have been addressed in recent publications authored by CELS, including its 2015 Annual Report on human rights.

The prologue to the 2015 Annual Report begins by stating that the report “is published at a very particular conjuncture” because it coincides with the 35th anniversary of the organisation and with the end of the Kirchner administrations (CELS, 2015; p. 21). While CELS’ understandings of human rights activism and the state are tacitly discussed in different parts of the document, these questions are specifically addressed in Chapter IV of the report, which is entitled “Los Derechos Humanos en las Disputas de la Historia” (“Human Rights in the Disputes over History”). I reproduce sections of the chapter as it clearly illustrates CELS’ position in these debates:
“From a classic liberal point of view... the state must be neutral... From our perspective, instead, state positioning is inevitable... The oft-repeated notion of 'co-optation' reveals a peculiar understanding of the state: as an artefact of pure domination, external to society, and not as an intrinsic element, which operates from within social relations, which constitutes and is constituted by them...” (CELS Annual Report, 2015, p. 186-187, my translation).

In this report, CELS challenges what is portrayed as a “classic liberal” understanding of the state and human rights. Contrary to liberal claims of ideological neutrality, CELS emphasises that the state and human rights should be seen as constitutive of power relations. Moreover, it is argued, the actions of human rights groups in Argentina were never driven by a “liberal philosophical position” but by concrete political considerations:

“[W]hen issues around the ‘politicisation’ of the human rights movement are raised, it is important to note that distance from the state, which was crucial when the organismos were created, was never based in a liberal philosophical position... but in a concrete political dispute against the authoritarian regime... The assertion that these organisations are compromising certain foundational pillars by expressing their support to the government’s policies assumes a priori a promise of political impartiality, which is considered a value per se... [however] it could not be said that ‘apolitical’ or non-partisan activism were foundational marks of the human rights movement in Argentina. There was a tactical decision made by relatives and victims by which their denunciations [of state terrorism] were formulated in terms of fundamental rights and humanitarian principles...” (CELS Annual Report, 2015, p. 187-188, my translation).

Perhaps more importantly, the report acknowledges and celebrates a change in the human rights agenda during the administrations of Néstor and Cristina Kirchner:

“The emergence of Kirchnerism entailed a change in human rights... because it inscribed human rights discourse on a novel social-political horizon, driven by a national-popular narrative rather than a universalist one, although without excluding the latter.” (CELS Annual Report, 2015, p. 188, my translation)

It would be wrong to suggest that CELS’ members and collaborators share a common view of the Kirchner governments. On the contrary,
activists and experts from CELS subscribe to different political parties and ideologies; what’s more, some of them have been harsh critics of the government during these years. However, the report makes explicit the organisation’s ideological commitments and its identification with a “national-popular” tradition of activism.

It is highly significant that CELS decided to include a section addressing these debates in a human rights report. As an established literary genre, the human rights report has “its own rules of style and presentation” and it is often restricted to practices of documentation and the systematisation of evidence73 (Dudai, 2006, p. 783). In fact, because human rights reports are highly codified, socio-legal scholarship has pointed out their constraints and limitations in depicting social problems. In a recent article, Claire Moon asserts that human rights reports “claims to objectivity and universality are... grounded in their dislocation from historical, political and broader social interpretations of violence and suffering” (Moon, 2012, p. 878). Moreover, Moon suggests, since human rights reports are driven by a “legalistic style of thought” (877), they exclude context and history in their accounts:

“What HROs ‘see’ is framed by international human rights and humanitarian law, which... provide the criteria for the mandates determining... the selection of events they investigate, and the practical recommendations they make... Law provides the first and final point of reference for HRO mandates and reports” (Moon, 2012, pp. 879-880).

This picture of human rights reports and activism clearly contrasts with CELS’ profile. If “credo is manifest in form”, as Moon suggests (2012, p. 876), then CELS’ decision to include a discussion on the politics of

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73 According to Claire Moon (2012), the aim of human rights reports is to document facts about human rights obstacles, abuses and progresses in a given region or country. Stressing objectivity and evidence, these reports are characterised by a detached language style, devoid of explicit ideological invocations and political considerations. In some cases, reports include strong condemnatory and moral pronouncements on the violation of fundamental rights, acknowledge progress in certain areas and formulate recommendations to states on future lines of action or specific measures to be implemented.
human rights in one of its reports is indicative of its distinctive praxis in
the field.

In the next section I briefly outline a ‘structural approach’ proposed by
a prominent human rights expert in Argentina. I suggest that the
ideological positions defined in the report and voiced by my interviewees
find in this approach the technical and legal basis to turn political
demands into implementable policy frameworks.

5.2.4. Mind the Gap: From Formal to Substantive Equality

In an article published in 2009, human rights expert Victor Abramovich
outlined an approach to human rights issues which he had suggested
in previous publications as well as in his professional capacity as a
lawyer and official of human rights bodies. Abramovich is the former
executive director of CELS, and his ideas have been highly influential in
circles of human rights activism in Argentina. Moreover, the ‘structural
approach’ to human rights he proposes was central in the process of
formulation, implementation and judicial treatment of the ACS Act.
Importantly, Abramovich argues that this approach is grounded on
international standards established by the Inter-American Court of
Human Rights (IACHR)’s jurisprudence74.

Abramovich’s driving argument is that the role of human rights regimes
in Latin America has visibly changed since the emergence of human
rights in the 1970s. While originally human rights institutions focused
on documenting the abuses committed by authoritarian regimes and
later on contributing to the democratic transition processes, presently
“the Inter-American System (ISHR) faces the challenge of improving the
structural conditions that guarantee the realization of rights” (2009, p. 9;
my emphasis). The greatest threat to Latin American democracies in the

74 At the time of writing this article, Abramovich was a member of the Inter-American Commission of
Human Rights, were he served as Special Rapporteur on the Rights of Women and Special Rapporteur
on the Rights of Indigenous Peoples, among other responsibilities.
current context is the “sustained increase in social inequality... which imposes structural limitations on the exercise of social, political, cultural and civil rights” (p. 16).

Crucially, Abramovich contends, the growing relevance of these issues in Latin America has prompted the IACHR to abandon a classic liberal understanding of ‘equality’. He suggests that, instead, the Court’s recent jurisprudence relies on a concept of ‘structural’ or ‘substantive equality’ (Abramovich, 2009).

“The Court’s jurisprudence] is evolving from a classical notion of equality, which focuses on the elimination of privileges... or arbitrary differences, ...and demands of the state a kind of neutrality or ‘blindness’ with respect to differences, and is moving towards a notion of substantive equality, which requires the state to assume an active role... granting special protection to certain groups who have suffered historical and structural discrimination. This notion requires the state to abandon its neutrality and rely on tools to diagnose the social situation to identify groups or sectors that should receive, in a given historical moment, urgent and special measures of protection” (pp. 17-18).

Through a detailed and extensive analysis of the IACHR's jurisprudence, Abramovich seeks to provide legal and technical grounds to a broader analytical perspective on human rights discourse. Although not explicitly mentioned in the article, the emphasis on the concept of ‘structural equality’ resonates with an intellectual tradition in the human rights field concerned with ‘structural violence’ (Farmer, 2004; Galtung, 1969; Gready, 2010; Gready & Robins, 2014). From this perspective, human rights should readjust its epistemological lenses in order to address structural patterns of social exclusion and abuses of rights. Crucial to these contributions is the idea that human rights tools and strategies typically “under-emphasize[e] broad political questions... by looking only at certain brutal manifestations [of violence]”, such as torture or genocide (Gready, 2010, p. 39). In this way, the target of human rights actions and campaigns is often restricted to “symptoms... rather than structural violence and its enduring legacies (racism, inequality, violent crime” (p. 39).
Efforts to reorient the focus of human rights activism to the transformation of ‘structural patterns’ of violence and exclusion have been central to CELS’ strategies in the last decade and a half. Human rights experts and activists no longer understand their main responsibility as predominantly concerned with ‘naming and shaming’ the abuses perpetrated by the state. Particularly since 2003, human rights actors conceive of their work as the transformation of structural patterns which, ultimately, are the main cause impeding the full enjoyment of human rights.

One of the central strategies adopted by HROs in this line of action is ‘structural litigation’ or ‘strategic litigation’. According to CELS, “structural litigation does not merely establish limits to abuses of power but, in some contexts, it contributes to the emergence of affirmative actions on the part of the State in order to address structural problems” (CELS, 2008, p. 20). The judicial action on these cases opens up the debate and revision on the content and implementation of public policy. Therefore, the ‘structural litigation’ is driven by a more comprehensive strategy of intervention which includes monitoring and participation in the design of policy.

Importantly, the ‘structural approach’ described in this section has driven experts, activists and public officers in the debates and implementation of the ACS Act. Moreover, as I discuss in Chapter VI of this thesis, the legal arguments developed by Abramovich were taken up by the Argentinean Supreme Court of Justice during the judicial treatment of the ACS Act.

In the next sections of this chapter section I focus on the struggles for freedom of expression and communication rights in Argentina. I suggest that the change of approach proposed by Victor Abramovich was not only evident in the IACHR’s jurisprudence, but also in the activist trajectories and strategies of human rights actors. By focusing on the trajectories of prominent legal experts and activists, in the next section I
retrace in the shift in human rights activism from a focus on state abuses to a focus on structural patterns of violence.

5.3. From Freedom of Expression to Communication Rights

“CELS was the first place where I left my CV as soon as I graduated”, remembers Damián Loreti. He received his law degree from the University of Buenos Aires in 1986. Although at this time CELS was still a relatively new institution (founded in 1979) it had already earned a reputation in Argentina as a leading actor in the emerging human rights field. During the transitional justice deliberations CELS became a central player, contributing to the process with trained experts and a detailed documentary archive assembled in the years of the dictatorship. For a young law graduate like Damián Loreti, CELS was a model of professional advocacy and ethical practice. He was very familiar with the organisation from his years as a union activist in early 1980s and admired its work. However, his first attempt to join the organisation received no response.

In the following years Loreti began to teach communication rights at the University of Buenos Aires. Around the same time, he joined a Peronist political group and began his professional career as a union lawyer representing FATPREN\(^75\) (national federation of journalist unions), and SATSAID\(^76\) (national union of television workers). In 1989 he helped draft the bill for a broadcasting regulation as part of a policy advisory team. However, as with several other draft bills proposed in that period, the proposal was not even discussed in parliamentary sessions owing to the lobbying of media groups.

After Alfonsin’s government (1983-1989) the political conditions changed and the possibility of passing a new regulation seemed to fade.

\(^75\) FATPREN stands for Federación Argentina de Sindicatos de Prensa (Argentinean Federation of Press Unions).

\(^76\) SATSAID stands for Sindicato Argentino de Televisión (Argentinean Union of Television Workers).
away. In the activist jargon used by my interlocutors, the 1990s were “a defensive phase”, a period in which activists’ strategies focused on stopping what they considered “even worse regulations”.

“During the Menem years we were the lobbyists. [The government] sent horrible proposals to the Congress, but together with the unions, human rights organisations and other groups we could stop pretty ugly things. Eventually, some of these reforms were partially enforced by a presidential decree which redesigned the controls over media concentration... what we call the ‘worsening’ of the previous regulation” (Interview with Damián Loreti, September 2014; my translation).

Neoliberal restructuring in these years resulted in high levels of market concentration in the media industry, which compromised the economic sustainability of small- and medium-scale media and the ability to access plural sources of information (Mastrini & Becerra, 2006; Marino, 2009). In this context, those activists involved in the defence of freedom of expression focused on protecting the journalists, union activists and community media producers who voiced criticisms towards the neoliberal reforms implemented by the Menem administration (1989-1999). Loreti took on several cases related to issues of freedom of expression representing union workers who were prosecuted for their public declarations. The Menem administration also reactivated aspects of the decree-law enacted by the military, which had been suspended by Alfonsin. Loreti and other legal professionals represented community media groups that faced the seizure and confiscation of their technical equipment. In most cases they managed to stop the confiscations, but community media and other nonprofit broadcasters remained in a semi-clandestine situation. In 1998 Loreti also began to collaborate with AMARC77, an international network of community radio stations, and represented them on issues of freedom of expression at national and international court cases.

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77 AMARC stands for Asociación Mundial de Radios Comunitarias (World Association of Community Radio Broadcasters). Since 2015 Damián Loreti is vice-president of AMARC’s international board.
By the early 2000s Loreti was a renowned expert on issues of communication rights and freedom of expression in the country. Over the years, he forged a profile as a human rights expert gained through his engagements in national and transnational networks. It was in these years that CELS contacted Loreti asking for advice on issues of freedom of expression. He collaborated with CELS in preparing the legal defence of its president, Horacio Verbitsky, on a judicial case and later on in representing the organisation before the Inter-American Human Rights Commission. Eventually, Loreti was invited to participate as a member of CELS’ executive board.

Damián Loreti has been a central actor in the demands and formulation of the ACS Act. His professional and activist trajectory illustrates two important points that are central to my argument in this chapter: first, the imbrication of political action, professional career and academic credentials in the trajectories of human rights actors in the country, and second, a gradual, and yet clearly defined, shift of human rights work in Argentina from the denunciation of state abuses to the transformation of ‘structural patterns’.

At the turn of the new millennium, against the background of global debates on the information society, Loreti and other fellow activists evaluated the possibility of moving forward the debate on freedom of expression and communication rights.

5.3.1 A Coalition for Democratic Communication

In the first months of 2004, a group of activists started a series of regular meetings at a bar in San Telmo, a traditional neighbourhood of Buenos Aires. It was a small group, no more than six or seven union leaders, lawyers and representatives of community media networks who came together to discuss a series of basic agreements for demanding a new media regulation. Most of them knew each other from decades of
struggles for replacing the decree-law enacted by the military regime. Although dozens of draft bills had been sent to the Congress since 1983, all had invariably failed due to a combination of the lobbying of media corporations and lack of political support.

The election of a new government in 2003 seemed to provide an appropriate context for this demand. According to Damián Loreti,

> “if there was a moment in which it was possible to enact a law, it was this one. It was now... We saw Kirchner fighting the IMF, pushing the new Migration Act, which was the other regulation remaining from the dictatorship. We had to build a broad platform” (Interview with Damián Loreti, September 2014; my translation).

From the point of view of my interlocutors, the nature of the relationship with the new government was crucial to the success of their campaign. Some of them, with long union and activist trajectories, had accepted government positions, which facilitated channels of communication with high-ranking public officers. These activist-public officers saw their work in the government as an ‘activist responsibility’: they had accepted positions as representatives of social movements or unions who supported the new government. Néstor Piccone, one of the founders of the Coalition, evaluated that this time it was possible to “fight the battle from within”. Like many other activist-expert-public officers, he campaigned for the enactment of the ACS Act in multiple capacities:

> “In my militancy outside Radio Nacional I helped to organise the Coalition... representing the sector [unions of television workers] and representing the government as well. This enabled us to reach Albiztúr [Secretary of Media], reach Kirchner and explain our views. In the first years, Kirchner wouldn't see us. Parrilli [presidential advisor] told us, ‘This is not on the agenda’. But we believed that in the long term they were going to take it up. Because we witnessed Kirchner's speeches, fighting the media groups... neither the politicians nor the Kirchner government were aware of the power of media. We had seen it from the inside. Not because we were enlightened, but because of experience” (Interview with Néstor Piccone, August 2014).
However, aware of the failed attempts in the past, the group decided not to draft a new bill. The aim was, instead, to build a wide platform for spreading the demand for a new media regulation and put together a broad social coalition.

We did learn from previous experiences, and this time we did not aim at drafting a full project. What impeded debate over a new regulation? We knew it was a difficult endeavour. We confronted powerful actors, large economic groups, big media corporations, people with power who didn’t want a new regulation and had the means of obstructing the process. Until now, we had been discussing this in isolation. Now we had to find a way to bring people together (Interview with Néstor Piccone, August 2014; my translation).

After months of deliberations the group agreed on 21 points, “one for each year of democracy without a democratic regulation”, as Piccone explained to me. The 27th of August 2004, on National Broadcasting Day, the activists presented the 21 points in a program broadcast live by Radio Nacional. News agencies and radio stations in many parts of Latin America rebroadcast the program with key representatives from social movements and political groups expressing their support of the document and highlighted the importance of demanding a new media regulation. Soon after, the group adopted the name Coalición por una Radiodifusión Democrática78, created a website (www.coalicion.org.ar) and began to receive endorsements of national and international social movements and institutions.

Eventually, the Coalition brought together a very broad and heterogeneous network of social movements, intellectuals, unions and human rights groups. In the narrative of the activists I interviewed, the shared experience of past struggles is highlighted as the key binding element of the group. Many of these actors had participated in joint political actions in the past, organising mass communication campaigns and designing judicial strategies to confront the most regressive aspects of the previous legal framework. Until 2003, most of these judicial

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78 Coalition for a Democratic Broadcasting. The name was later changed to Coalition for Democratic Communication.
actions and policy proposals had ended in frustration and failure. That year, however, the Argentinean Supreme Court of Justice declared unconstitutional those aspects of the regulation that impeded nonprofit media from making use of the radio spectrum.\footnote{In a legal case presented by the community radio station La Ranchada, the court ruled that article 45 of the decree law 22.285 was unconstitutional. The human rights expert representing the station, Julio Rodríguez Villafañe, was also a founding member of the Coalition, and he also participated as \textit{amicus curiae} during the public hearings on the ACS Act that took place in 2013 (discussed in Chapter VI).}

Crucial to the performative efficacy of the Coalition’s demands was the collaboration between state and non-state actors in the construction of the media as a “public problem” (Gusfield, 1984). The activist campaign built on the broad social and political consensus about the illegitimacy of the previous regulation. While the Coalition underwent some tensions and internal conflicts, precisely because of the blurred boundaries between some civil society organisations and the state, it successfully placed the demand for a new regulation in the public agenda.

The program of reforms expressed in the ‘21 points’ was organised around three structuring principles: the standards enshrined in international covenants on human rights, the promotion of national media industries, and the ‘federalisation’ (geographical decentralisation) of media production, which has been historically concentrated in metropolitan areas, particularly in Buenos Aires.

In line with the ‘structural approach’ discussed earlier in this chapter, the 21 points assigned a central role to the state in ensuring equal conditions of access to and participation in media circuits. Thus, the point five of the document asserts that...
“The promotion of diversity and pluralism shall be the primary objective of broadcasting legislation. The State has the right and the obligation to exercise sovereign authority in order to ensure cultural diversity and pluralism in communications. This entails equal opportunities for everyone in accessing and participating in the ownership and management of broadcasting services” (Coalición por una Radiodifusión Democrática, 2004; my translation)

Since the advent of Cristina Kirchner’s government in 2007, the political conjuncture favoured the Coalition’s demands for a new media regulation. In a context of marked polarisation between the government and major media conglomerates, President Cristina Kirchner invited the Coalition to present the 21 points in the Presidential Palace80. In April 2008, the president officially declared her interest in a new law and announced the beginning of wide public debate and consultation on the bill draft (Clarín, 2008).

With the '21 points' as the background document for the consultation process, the regulatory agency organised 24 forums of public debate across the country. These forums, together with another 80 public hearings and dialogue roundtables and over 15,000 opinions sent by mail, led to significant changes of the bill draft before it was officially sent to Congress on 27 August 2009 (Cibeira, 2009). A team of legal experts from the government and from human rights organisations systematised the contributions, demands and amendments posed by the public. Crucially, the widespread social participation in the consultation process mobilised large parts of society and secured public support for a politically controversial initiative.

The final text passed by the Congress on 9 October 2009 includes two set of references which are linked to the articles of the law: first, the legal theories, judicial precedents and comparative law that provide legal foundations to the ACS Act. Second, the references include the names of the individuals and organisations who demanded amendments on the bill draft sent to the Congress. In this way, each

80 On the confrontations between the government and mainstream media outlets in Argentina see Liliana Córdoba (2014). On Latin American populist governments and their relationship with the media see Silvio Waisbord (2011).
article of the ACS Act is simultaneously grounded on the legal-technical language of human rights law and on the views and contributions made by individuals, social movements and advocacy groups.

In an interview with Graciana Peñafort, a public officer and lawyer who played a key role in the drafting process, she considered that the ACS Act crystallised as “the expression of popular sovereignty” and a distinctive understanding of human rights ideals, one that challenged more “classical liberal” conceptions of rights and freedom of expression.

“It is incredible that this law literally expresses the concerns of a small media producer from a remote town in [the province of] Salta, or from the aboriginal communities in [the province of] Neuquén. It is incredible because the people, the individuals and organisations, expressed their views and their specific concerns on the law, and the law includes these concerns... With a view to the legitimacy of the project, the names of the individuals and organisations who proposed the amendments were included in the text.... If [the Argentinean writer] Oesterheld was right, that the only possible hero is a collective hero, then this law is the most perfect demonstration of that idea” (Interview with Graciana Peñafort, August 2014; my translation, emphasis added).

5.4 Conclusion

As I showed in Chapter IV, human rights have offered a privileged way for performing (sometimes in spectacular ways) a particular understanding of both political action and the ‘national-popular’ state in Argentina. In this chapter I have argued that, beyond their dramatization in media events and state ceremonials, human rights also gained relevance in the political terrain (and in government actions) as a form of legal-technical knowledge. Human rights experts and activists have been central to the struggles for communication rights in Argentina since the return of democracy in 1983. More importantly, they helped to translate the popular demands for democratising the media into an implementable policy-program.
The ACS Act is grounded on transnational standards on human rights and it echoes the developmental narratives on the information society that gained momentum at the beginning of the 2000s. However, it certainly differentiates from other forms of development projects. In his analysis of intervention programs in the ‘Third World’, James Ferguson (1994) argues that development operates as an “anti-political machine”, one which turns pressing political and social issues (such as inequality, unemployment or racial violence) into technical problems to be managed by experts and state bureaucrats. In doing so, Ferguson suggests, development extends the bureaucratic power of the state and international agencies “under the cover of a neutral, technical mission to which no one can object” (p. 256). According to Ferguson, 

By uncompromisingly reducing poverty to a technical problem, and by promising technical solutions to the suffering of powerless and oppressed people, the hegemonic problematic of development is the principal means through which the question of poverty is depoliticised in the world (1994, p. 256).

Contrary to the ‘depoliticising effects’ documented by Ferguson, the human rights experts, activists and public officers with whom I interacted during my fieldwork envisioned their work as an eminently political activity. As I have shown throughout this chapter, my interlocutors often rejected a neat separation between their professional-technical practice and their ideological commitment to a political project of social transformation. In their view, their struggle for a new media regulation was successful precisely because they managed to place the ACS as a politically pressing question in the public agenda.

In the next chapter of this thesis I focus on a long process of judicial disputes around the ACS Act between the government and Clarin group, one of the largest media conglomerates of Argentina and Latin America. More specifically, I examine the public hearings, held at the Argentinean Supreme Court of Justice, in which the case was publicly debated in 2013.
CHAPTER VI
HUMAN RIGHTS ON THE STAGE
Public Hearings at the Supreme Court of Justice

6.1 Introduction

“Not only must Justice be done; it must also be seen to be done.”

– Popular English aphorism\textsuperscript{81}

“Publicity is the very soul of Justice.”


“As has been tradition since a bylaw agreed in 2004 and implemented in 2005, a public hearing is convened each time the Court hears a case of institutional relevance, and the procedures so allow. In such public hearings the parties appear, in this case Clarín Group and the Executive, who appear before this bench conveying their objections to a judicial decision. This is the issue we must analyse and decide on. However, the Court understands this is a case of institutional relevance which concerns not only the parties but all of society. For this reason, we have summoned the so-called ‘Friends of the Court’, who are persons or institutions with specific subject-matter expertise, for giving guidance to the Tribunal\textsuperscript{82} (Centro de Información Judicial, 2013, my translation).

\textsuperscript{81} This oft-quoted precept was brought into common parlance by the English High Court of Justice in 1924, when ruling on the case The King v. Sussex Justices. Ex parte McCarthy. It is a famous case for setting precedence on the principle that the mere appearance of bias is sufficient to overturn a judicial decision. See Spigelman (2000).

\textsuperscript{82} Transcriptions and video recordings of the public hearings can be found at the Centro de Información Judicial (Judicial Information Centre)’s website: http://www.cij.gov.ar/. Translations of public hearings, interviews with participants and media sources are mine.
This is how the Chair of the Argentinean Supreme Court of Justice, Ricardo Lorenzetti, introduced the first of two days of public hearings on the ACS Act. The television broadcast showed a close-up of the Chief Justice thoroughly detailing the procedures to be followed during the hearings. In many ways, the event was set apart from ordinary practice in domestic civil procedures. The room was full of journalists, public officers and lawyers, and outside the court building thousands of supporters followed the hearings on a giant screen especially mounted for the occasion (Figure 6.1). Although the session was introduced as part of a tradition inaugurated in 2004, never before had a public hearing of this kind been broadcast live83, nor attracted such public attention.

In this chapter, drawing on the analysis of video records from this hearing as well as related media coverage, interviews with participants and archival research, I critically examine the public hearings on the

83 However, all the public hearings conducted within Supreme Court’s procedures have been video-recorded and are available online at the Centro de Información Judicial (Judicial Information Centre)’s website: http://www.cij.gov.ar/
The focus on the public hearings allows for a deep analysis of three aspects of how human rights were appropriated and transformed in the debates on the ACS Act. Firstly, the hearings represent a key moment in which competing views on the rights to freedom of expression and communication were confronted in a much publicised and precedent-setting legal case. As I discuss below, a key element of this contention is lies in the divergent understandings of the role of the state in ensuring/limiting these rights. Secondly, I explore the introduction of public hearings as a form of public deliberation and transparency and, importantly, as a means of strengthening judicial legitimacy in a context of increasing concerns around the ‘judicialisation of politics’. A detailed examination of the hearings reveals how they were used by the Court to present its own intervention as neutral and untouched by partisan conflict. Thirdly, and closely related to the previous point, I reflect on the performative potential of human rights during the hearings and the
ways they were staged for the wider audience that was following the event on television. I argue that beyond the explicit goals of enabling participation and providing guidance to the Tribunal, the hearings were also an instance of state performance of practices of good governance, transparency and participative decision-making.

The chapter proceeds as follows: in the next section I briefly recount the four years of judicial disputes between the Clarín group and the Executive and outline the terms of the political debate it sparked in the media. In section three I recount the introduction of public hearings as a technology of judicial decision-making in Argentinean civil procedures. In particular, I show how the public hearings were part of a broader process of reforms introduced by the Supreme Court of Justice in which human rights organisations played a crucial role. In section four I examine the public hearings as a tool for judicial legitimacy and truth construction. Finally, in section five, I analyse in detail the legal epistemologies and discourses that sustained the judicial strategies of each party.

6.2 “If Clarín Falls, We All Fall”: Competing Views of Democracy in Argentina

On the 11th of October 2009, the day after the senate promulgated the ACS Act, an article published in the newspaper La Nación and Headlined “Ultra ‘K’ Media Law promulgated” lamented in a catastrophic tone that “the gradual Sovietisation of the media is awaiting us with open arms... now, under the force of law” (La Nación, 2009). Although both the national government and the wide range of social movements behind the drafting of the ‘21 points’ strove to present the new regulation as a ‘triumph of democracy’, members of the political opposition and, above all, mainstream media groups, popularised the use of “K [Kirchner] Media Act” and “Media Control Act” to refer to it (“Ley de Medios ‘K’: El Debate”, 2009).
From the start, when President Fernández de Kirchner announced her intention to initiate parliamentary debates on a new media regulation, preliminary proposals and bill drafts were characterised by mainstream media as “revanchista” (‘vindictive’), a reaction to the increasing confrontations between the government and the largest media conglomerate of the country, the Clarín group. From the perspective of critics and political opponents, the ultimate goal of Fernández de Kirchner’s administration was to neutralise those media that expressed a critical voice towards government policies. Most critiques focused on Articles 41, 45, 48 and 161 of the ACS Act, which imposed restrictions on the concentration of media ownership. Those media corporations that surpassed the established limits were required to divest in order to comply with the new stipulations. For mainstream media and the political opposition, the government strategy was very clear: by limiting the influence of major media outlets and promoting the emergence of community, indigenous and other ‘small’ media groups, the government would ensure a chorus of media comprised of political supporters dependent on state funding and, therefore, unable or unwilling to voice criticisms.

The debate rapidly escalated. Some commentators were quick to warn that ‘the republic’ and the most fundamental democratic principles were at stake. Political opponents argued that the government was opportunistic and the reform was merely a façade, a legal manoeuvre designed to dismantle Clarín. Congresswoman Elisa Carrió was perhaps one of the most radical detractors of the ACS Act. While Carrió distanced herself from “Clarín’s methods” (presumably referring to the company’s lobbying strategies and monopolistic practices), the deputy also considered that the “last line of defence of free journalism in Argentina is precisely the Clarín group”: “it is the last resistance. It’s like a wall. If Clarín falls, we all fall” (my emphasis, Perfil, 2009; Bruschtein, 2010). According to this view, although Clarín’s size was perhaps bothersome, it played a role, acted as a sort of pillar in the
republican architecture of ‘checks and balances’. In the midst of a ‘populist wave’, members of the political opposition aligned with Clarín to ‘save the republic’.

Versions of this kind of assessment, and warnings about the excesses of populism and its threats to the republic, were endlessly echoed by mainstream media. The terms of this account, which characterised some of the largest media corporations in Latin America as ‘free journalism’ and community media as inescapably ‘dependent’ (and therefore ‘unfree’), left little leeway for alternative conceptions of democracy, press freedom and the state.

Even before the ACS Act was promulgated, the disputes around it had already moved to the judicial terrain. On the 1st of October 2009, when the bill draft was still being debated by the Senate, Clarín lawyers filed a complaint with a federal court requesting the suspension of the parliamentary debate. The company argued that the legislative process was full of procedural irregularities, and that the document approved by the deputies was unconstitutional because it violated the rights to private property and freedom of expression. The court rejected the request, justifying its decision on the consideration that any intervention on the matter was beyond the tribunal’s competence and would entail interference with the work of Congress. This initial attempt signalled the beginning of a long judiciary battle between the Clarín group and the government. On the 9th of December 2009, just two months after the ACS Act was promulgated, federal judge Edmundo Carbone issued a precautionary measure at the request of the Clarín group. The ruling considered that Articles 41, 45, 48 and 161 of the ACS Act (precisely those setting limits to media concentration) violated the rights to property and freedom of expression and were, therefore, unconstitutional84 (Loreti & Lozano, 2014, p. 743). The precautionary

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84 An important aim of this section is to contextualise the judicial dispute between Clarín and the government. This judicial case began in October 2009 and concluded in October 2013, when the Supreme Court of Justice decided on the constitutionality of the ACS Act. However, the judicial itinerary
measure issued by Judge Carbone remained in place for more than four years, thereby impeding the full implementation of the ACS Act.

Many of those who participated in the demands for a new regulation expressed strong criticism toward this judicial ruling and the subsequent decisions that confirmed it. As one community media producer put it to me:

“the judges simply ignore us. They ignore the wider process of popular participation, the forums in every province, the marathon sessions at Congress, the contributions of each organisation to the text... and they ignore more than two decades of that monstrosity [the previous regulation]” (Interview with Rafael, September 2014).

Similarly, human rights experts, activists and public officers considered that the ruling was an ‘abusive exercise’ of the tribunal’s competencies and an interference with parliamentary functions (see for example the section prepared by de Charras and Baladron for the 2015 CELS Report, p. 561–601). As the president of CELS would later make clear during the hearings, supporters of the ACS Act viewed this long and burdensome judicial process as an overt disregard of ‘popular will’ (I refer to these considerations in the section 6.4 of this chapter).

The moral anxieties and confrontations around this judicial process pointed to larger questions in the name of either ‘the republic’ or ‘the popular will’; the political debate in Argentina crystallised around competing views of the state, freedom of expression and, ultimately, democracy. The expansion of the human rights language was intrinsic to some of these debates. As discussed in previous chapters, the rise of human rights as a prevalent mode of addressing political and social conflicts has brought with it an increasing relevance of the judiciary’s role in processing such conflicts. Control over the constitutionality of laws is perhaps the most classic expression of the ‘judicialisation of

of the ACS Act involved multiple legal presentations by members of the political opposition and the largest media groups of Argentina. It is beyond the scope of this dissertation to offer a full account of this process. For a detailed description see Loreti and Lozano (2014).
politics’ (Comaroff & Comaroff, 2009; Couso et al., 2010). As the ultimate interpreters of the constitution, and by extension of human rights treaties that are constitutionally binding, judges stand as protectors of the popular will.

6.3 Public Hearings at the Argentinean Supreme Court

Public hearings are a relatively recent judicial instrument within Argentinean civil procedures and must be understood as part of a series of reforms of the Supreme Court in the aftermath of the socioeconomic crisis that affected Argentina in 2001 and 2002. By the end of 2001, at the height of the social protests that ended the government of President de la Rúa (1999-2001), the Court was predominantly composed of justices appointed by former president Carlos Menem (1989-1999) who had increased their number from five to nine. Due to its composition and the frequent alignment of the Court’s decisions with the Executive, the tribunal was pejoratively called the ‘Menemist Court’ and the ‘automatic majority’. According to some scholars, during this period the Supreme Court registered the worst legitimacy crisis of its institutional history (Prillaman, 2000; Sabsay, 2004).

In the post-crisis context, discourses on good governance, transparency and human rights pervaded the technical wording of demands for institutional change and legal reform (Barrera, 2012). In June 2003, newly elected president Néstor Kirchner (2003-2007) began a process to modify the Court’s composition by establishing more stringent requirements for publicity and transparency in the nomination of new magistrates, following the recommendations proposed by a coalition of NGOs and human rights organisations (Ruibal, 2008)85. Between 2003

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85 Six NGOs gathered together in the drafting of the document “Una Corte para la Democracia” (A Court for Democracy) (CELS et al., 2002). It which contains a series of proposals for reforming the Supreme Court of Justice. The six NGOs were Centro de Estudios Legales y Sociales (CELS –described in previous chapters); Asociación por los Derechos Civiles (Association for Civil Rights – ADC); Poder Ciudadano (Citizen Power); Instituto de Estudios Comparados en Ciencias Políticas y Penales (Institute for
and 2005 the five justices identified as the ‘Menemist majority’ either stepped down or were removed by the Senate. New judges were appointed under procedures that included the participation of new actors and controls for nomination. At the same time, the Court itself implemented a set of changes oriented to strengthening its mechanisms of publicity, transparency and accountability, as well as promoting the participation of new actors in the Court’s procedures, primarily through the regulation of a public hearing regime (Bylaw 30/2007) and the legal figure of the *amicus curiae* (‘Friend of the Court’) (Bylaws 28/2004 and 14/2006).

Constant meetings and consultations between high-ranking government officials and legal experts from NGOs characterised the planning and formulation of the resulting reforms (Ruibal, 2008). This resulted in a complex dynamic in which human rights organisations such as CELS, ADC and Poder Ciudadano did not merely demand the creation of new rights but also influenced the conditions of their own practice as ‘users of the judicial system’. In this way, the demands of transparency and accountability must be understood as a strategic move on the part of legal activists aiming to gain access to and influence over the head of the country’s judicial system.

As a result of the ongoing efforts to present a reformed image of the institution, the Court began to be known as the ‘new Court’, and the

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Comparative Studies on Political and Penal Sciences – INECIP); Fundación Ambiente y Recursos Naturales (Environment and Natural Resources Foundation – FARN); and Unión de Usuarios y Consumidores (Users’ and Consumers’ Union).

86 About this process, human rights experts expressed that “civil society directly engaged in the debates on what profile of candidate would be convenient or desirable” and that “the commitment demonstrated by the citizens and the level of public dissemination of this subject in the media put under the spotlight the president and Senate’s level of political responsibility over the decision on this issue” (ADC quoted in Ruibal, 2008, p. 735).

87 These included bylaws on the publicity of files circulating within the Court; the full publication of Court judgments; and a differentiated treatment of cases of institutional relevance (Bylaws 35/2003, 36/2003 and 37/2003).

88 In this regard a legal expert from CELS pointed out that “CELS does not specialise in legal reform. We always work as users of justice. But in recent years we realised that this was not enough; we were always stuck with the same institutional problems. And so during the crisis of 2001 we decided to take action on this issue” (Ruibal, 2008, p. 741).
reforms have been welcomed as highly positive by experts and commentators (Barrera, 2012; Litvachky, 2007). In particular, the implementation of a public hearing regime was considered groundbreaking because of both the novelty of orality within a judicial context dominated by written and faceless civil procedures, and the disruptive character of public hearings in a judicial culture marked by secrecy (Barrera, 2012, 2013). In fact, prior to the establishment of public hearings, hearings were conducted behind closed doors and consisted mainly of private encounters between the tribunal and the parties. This was because Argentina’s judicial procedures followed the continental tradition which, unlike the British system, values secrecy and written procedures in processes of adjudication. Although private judicial procedures were targeted by the coalition of HROs (primarily for their lack of transparency and the broad judicial discretion they make possible), judicial officials considered that secrecy functioned as a way to protect the role of the judiciary and the process of adjudication (Barrera, 2013). According to Barrera,

“the Court’s implementation of public hearings not only implies the readjustment of old, bureaucratic Court proceedings, it also has an impact on a native representation of adjudication and the judicial space as an almost-private domain that considers external interference as a disruption” (2013, p. 330).

In this regard, public hearings can be seen as part of a larger institutional move aimed at reverting the Tribunal’s longstanding bad reputation. As I have argued in Chapters I and III of this thesis, human rights discourses have played a central role in Argentina at different historical conjunctures. Much in the same way they gained momentum during the years of democratic transition (1983-1989), human rights also guided important institutional reforms in Argentina in the aftermath of the 2001 economic and institutional crisis.

89 Although public hearings are foreseen by the Argentinean Constitution, their implementation in judicial procedures had been restricted to criminal cases (Ruibal, 2008).
In the previous sections I have described the broader context of debates around the ACS Act, as well as the series of institutional reforms introduced after the 2001 crisis that affected Argentina. In the next section of this chapter I will examine the public hearings on the ACS Act that took place in August 2013.

6.4 A Special Hearing

The public hearing on the ACS Act was ruled to take place under a procedure specifically stipulated for the occasion. The hearings were organised in two different sessions. On the first day the *amici curiae* (‘Friends of the Court’) would put forward their arguments before the justices. In contrast to previous hearings, on this occasion, experts and institutions were called to intervene on behalf of one of the parties, either the Clarin group or the Executive. Each party had the right to present five *amici curiae*, while the Tribunal would call three ‘independent’ experts or institutions. In order not to repeat arguments,
each *amicus curiae* covered certain aspects of the case as agreed with the other participants. Additionally, their statements were limited to arguments and ideas previously presented to the Court in written form, and they were not allowed to respond to other *amici curiae*’s interventions. The second day was set aside for the Court to pose questions to the parties about specific issues, at the end of which the parties would have the chance to state their case before the Tribunal and the audience.

In this section and the following I focus on the performative aspects of the public hearings. As discussed in detail in previous chapters, the idea of performance calls attention to the constitutive effects of these events as a specific type of judicial ritual, one in which subjects and relationships are created, reformulated and contested (Butler, 1997, 2015). As discussed above, the hearings on the ACS Act represented the final stage of a long and highly polarised debate around competing ideas of democracy, human rights and freedom of expression in Argentina. As such, the hearings cannot be understood as discrete events; as Carol Greenhouse (2012) suggests in another context, hearings constitute a highly complex “production format” that is not reducible to simple means and ends. The specific regulations that ruled these hearings defined the terms of the debate in ways not exclusively oriented by the explicit mandate of the hearings – in this case, the constitutional review of the ACS Act. Rephrasing Greenhouse’s expression, I contend that a partisan contest took place *through* this judicial case, not just *about* it (Greenhouse, 2012).

Extracts from the introduction given by Chief Justice Lorenzetti on the second day of the hearings are worthy of attention. The Justice’s opening words on the second day provide a good starting point to examine how the debate was framed by the Court:

“Yesterday the Court had the opportunity to hear positions put forward by the ‘Friends of the Court’ on behalf of each party. By virtue of that, it seems that the issue is very simple: each party
affirms, as usually occurs, that the solution is very simple, and the
decision should be in its favour. What the Court has here is a case.
The constitutional principles are clear; the positions of each party
are clear as well. However, we also have the need to enquire into
very specific issues. That is why we have written some questions in
agreement with all the justices. (...) Each party will have, after the
round of questions, the right to plead. We believe this is an
equitable way for everyone is heard. The role of the Court is to
decide on the case by looking to the rules of the impartiality. The
questions, for those who have to answer, will be presented on a
screen. This is also in order to facilitate the work of the press. As of
yesterday, this public hearing is broadcast live by the Judicial
Information Centre, public media, and private media as well. We
acknowledge with gratitude the presence of all these media” (Centro
de Información Judicial, 2013; my translation).

It should be emphasised that, for this public hearing in particular, the
amici curiae were summoned to advocate on behalf of one party, and
therefore, against each other. As mentioned above, this entailed a
change in the procedures for hearings as they had been conducted until
then. At first glance, it is not totally clear why the Court decided to
organise the hearings in this way. Moreover, this does not seem
consistent with the Chief Justice’s understanding of public hearings as
tools for reaching judicial truth. In a speech that took place a few days
after the sessions on the ACS Act, Chief Justice Lorenzetti contended
that public hearings address two important demands of Argentinean
society. First, hearings address a demand for celerity, since “oral justice
is the fastest justice”. Second, public hearings meet the social demands
for participation in judicial procedures. Because they are “polycentric
and collective processes” where “there are not two but a plurality of
sources of interest... public hearings seem to be the most appropriate
channel for all parties to be heard in a process distinguished by its
complexity” (Lorenzetti, 2014, p. 345).

However, if we assume, following Lorenzetti’s assertions, that the
Court’s aim was to allow the expression of “not two but a plurality of
sources of interest”, then why restrict the amici curiae to advocating for
a single party? Similar ideas are expressed in the first lines of the
extract, where the judge specifically points to the partiality and
reductionism entailed in the *amici curiae* presentations: “each party affirms, as usually occurs, that the solution is very simple, and the decision should be in its favour.” In light of these assertions, the new procedures established by the Court seemed particularly odd.

The succinct presentation made on the previous day by the president of CELS, Horacio Verbitsky, help to deepen the analysis on this issue. As discussed in Chapters III and V of this thesis, CELS has been a central actor in the development of human rights in Argentina, and it certainly played a leading role during the hearings. Although I will now focus on the second half of Verbitsky’s speech, I reproduce it in full as I will return to it later.

“CELS comes to this hearing in fulfilment of its founders’ mandate of contributing to liberate our society from the last remnants of the civic-military dictatorship. As much as we defend the full enforcement of this Act, which we helped draft as part of the Coalition for Democratic Broadcasting, we have also called for a revamping of this Tribunal a decade ago, the repeal of the military justice code, the annulment of the Due Obedience Law, the reform of the criminal provisions that restricted freedom of expression, the improvement of prison facilities. In all cases, we did this before the current government came to office. We welcome the initiative of this Court in favour of transparency and participation. However, we do not agree with the transformation of the amicus curiae into a subordinated ‘amicus parti’. By constraining the ‘Friends of the Court’ to advocating for a single party, the Court goes against the declarations of its Chair against the politicisation of justice, and reduces to a mere issue of parties a vital debate for the formation of popular will in a more informed and full democracy. Besides the parties on this file, there is a country outside [the courtroom]. In addition, the confusing wording of the bylaw that ordered this hearing results on the presentation as ‘independent’ of some camouflaged partisans. We have adapted to this unfair restriction that polarises and impoverishes the terms of the debate in order not to aggravate the already scandalous judicial tardiness which blocked for the first four years the enforcement of this Act, developed with the widest degree of social participation in memory” (Centro de Información Judicial, 2013; my translation).

The room fell silent after Verbitsky’s statement. In his speech, he strongly criticised the conditions of the hearing decided on by the Court as they “impoverish”, “polarise”, and “reduce[d] to a mere issue of parties” the debate over the ACS Act. Curiously, the president of CELS
seemed to agree with Chief Justice Lorenzetti about the simplification of the debate framed in a binary format of two contending parties. More importantly, Verbitsky initiated his argument by exhibiting the credentials of the organisation he represented and proceeded to enumerate a long list of political and judicial achievements while clarifying that they took place “before the existence of the current government”. This clarification points to the core of the contention. If both extracts are read together, what is at the heart of the debate is clear. The new rules stipulated by the Court forced the Friends of the Court to align with one party or the other. In such a way, the rules simultaneously entailed a double movement by which the contributions of the amici curiae were condemned to be partial, while the Tribunal positioned itself as an arbiter, a judge, positioned above two poles: the Clarin group and the government, on this occasion represented by the amici curiae. In light of this, the clarification made by Verbitsky can be seen as a reaction against the CELS/government identification created by the new rules. At the same time, Lorenzetti’s references to “rules of impartiality” and “equality” can be seen to be aimed at reinforcing the Court’s position as neutral and above the partialities in conflict.

It is important to emphasise that the case about the ACS Act was a highly mediated one, and that, during the hearings, the courtroom was full of journalists and television cameras. Throughout the nearly four years from the initial debates around the legislative treatment in 2009 to the public hearings that of August 2013, the press had referred to the ACS Act as the “Kirchnerist Media Act” almost on a daily basis. Moreover, as one of the parties involved was the country’s biggest media corporation, the case was an important focus of media attention, and consequently it resonated widely all over the country. In fact, the hearings were broadcast live and in full through the Judicial Information Centre (CIJ), a website created in 2011 by the Supreme Court as part of its initiatives on transparency, accountability and participation.
In this context of high public visibility and polarised debate, the Court had the difficult task of setting conditions of formal parity not only before the parties but before the audience at large. Crucially, the judges had to decide who was going to speak at the hearings, and this decision had to be done in a way that would not raise suspicions about the Court’s impartiality. Not only CELS but also other participants during the hearings could be seen by the audience as parties in the case: among the Friends of the Court were members of the Coalition that originally drafted and campaigned for the ACS Act, as well as experts and academics who occasionally worked with Clarín and whose participations in the case could easily be considered as partial. In the face of this, the Court’s stipulations were understood as an effort to strengthen its authority and legitimacy in the case.

Judicial legitimacy was cautiously worked by the Court’s justices via several moments of their intervention in the case that aimed, in particular, to establish a clear delimitation between law and politics. In spite of constant criticism of the long and burdensome judicial process, the Court decided to postpone the publication of the judgement for two months, taking into consideration that legislative elections were running on October 2013. On this decision, Justice Zaffaroni explained “the most basic prudence dictates that such a transcendental judgement not be published in the run-up to elections, lest we would seem to be affecting them” (Zaffaroni 2013a; also Zaffaroni 2013b; Fayt 2013).

During the hearings themselves, many stipulations were put in place specifically designed to address the significant media attention in the case. These included the allocation of screens for presenting the Court’s questions to the parties, “in order to facilitate the work of the press”, as explained by Lorenzetti. Significantly, the screens showed not only the questions to the parties but also the time each amicus curiae had to put forward his or her arguments. The decision to situate a highly visible chronometer within the courtroom was used by the Tribunal as an objective measure to prove the conditions of formal parity that ruled the
event. These multiple configurations of the setting of the sessions aimed at constructing an image of the court as impartial and thus legitimate, although at the expense of the Friends of the Court’s own impartiality. As such, the Court seemed to follow the popular English aphorism: “Not only must Justice be done; it must also be seen to be done.”

The counterpoint between Verbitsky and Lorenzetti also speaks to the particular ways in which the law operates in the domain of justice. Whatever the Court’s motives in this case, judicial practices and knowledges treat any subject as within a binary format of parties in conflict, while at the same time articulate universalist principles that “concern the entire society” (Lorenzetti, extract 1). While the hearings provided a privileged stage to make visible and clear the arguments of each party, they also revealed some of the limits of the judicial arena as a site for policy deliberation: as instruments of judicial knowledge, public hearings are shaped as a means for pursuing arbitration between two contending parties. Whereas the responsibility for the final judgement falls to the justices, a range of experts, activists and legal professionals also take part in the “interpretative labour” (Varela, 2016) through which law is coproduced and judgements reached. In the following section of this chapter, I analyse the Friends of the Court’s participations at the hearings and the ways in which they mobilised juridical and factual narratives on the case.

6.5 Legal Epistemologies: Expertise and Experience

6.5.1 Reenacting Victimhood

The workings of the law are grounded in particular legal epistemologies\textsuperscript{90} that frame certain statements as relevant and others as irrelevant to the judicial gaze (Valverde, 2009; von Schnitzler, 2016). One aspect that characterised the hearings under analysis was the

\textsuperscript{90} I borrow the term ‘legal epistemologies’ from Antina von Schnitzler (2016).
Friends of the Court’s impressive display of professional, academic, political and even moral credentials. Among the 13 *amici curiae* who participated in the debates were two ex-judges of the Inter-American Court of Human Rights\(^91\), high-ranking members of national universities\(^92\), representatives of national and international commercial chambers\(^93\), representatives of national professional associations\(^94\), and widely renowned scholars and legal experts as well as members of human rights and civil associations\(^95\). The presence of these experts, activists and high-ranking officers certainly contributed to the theatrical effect of the setting, which also included the presence of local and international press, speakers with foreign or provincial accents, and the pomposity of juridical jargon and rituals.

As specific kinds of judicial performances, public hearings resonate simultaneously on several registers, including reason, emotion and aesthetic experience (Cole, 2007, 2010). Even when most participants had academic or expert credentials, they did not all focus strictly on legal-technical matters. In the context of judicial processes, different kinds of knowledge and forms of truth-telling take on a performative role that serves to translate ethical, political, and social problems into legal ones (Latour, 2010; Valverde, 2009). Conversely, legal-technical issues are often projected as potential social effects, ethical questions or political disputes. During the debates on the ACS Act, this interplay between legal and nonlegal discourses was strategically mobilised by the speakers/actors. Verbitsky’s fragment is particularly eloquent in this regard. He began his argument by establishing the political-moral

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91 Ex-judge Asdrúbal Aguiar advocated as president of the Ibero-American Observatory for Democracy arguing on behalf of the Clarín Group. Ex-Judge Leonardo Franco contributed to the presentation made by Lanús National University, on behalf of the Executive.

92 Rector of San Martín National University Dr. Carlos Ruta and Professor Víctor Abramovich from Lanús National University advocated for the full validity of the ACS Act on behalf of the Executive.

93 Legal representatives of the Ibero-American Association of Pay Television Companies, the International Broadcasting Association, and the Argentinean Association of Journalistic Entities (ADEPA), all three advocating on behalf of the Clarín Group.

94 The president of the Argentinean Association of Lawyers participated as *amicus curiae* on the part of the Executive.

95 Journalist Horacio Verbitsky and lawyer Damián Loretti from CELS, and the president of the Cooperative Confederation of the Argentinean Republic, advocated on behalf of the Executive.
legitimacy of the institution he represents, and linked CELS’ intervention in the case with “its founders\textsuperscript{96} mandate of contributing to liberate our society from the last remnants of the civic-military dictatorship.” Once again, he reminded the Court that the ACS Act came to replace a ‘decree law’ enacted in 1980 by the military junta. In this way, from the very beginning CELS framed its participation within a political tradition that largely transcends legal codification. Only after this introduction did Damián Loretti, CELS’ expert on the matter, present the organisation’s technical analysis.

The statement made by Cynthia Ottaviano, the head of Defensoría (Ombudsman’s Office for Television and Radio Audiences)\textsuperscript{97}, was also a clear example of a non-expert form of truth-telling at the hearings. Ottaviano claimed for the rights of media audiences, paying special attention to the claims issued by citizens who saw their rights as being violated by Clarín. Quoting testimonies of members of the audience, the head of the Defensoría sought to reenact, before the Court and the public at large, the voices of these claimants across the country:

“We have been asked to illuminate the Court about the facts and about the law. It is therefore necessary that I refer to the concrete harms, the damage that day after day, minute after minute, the audiences have to endure due to media concentration... This is what the public tells us.... ‘I have a little daughter who would like to watch the children television channel Pakapaka... I sent several messages to Cablevision [cable operator owned by Clarín] asking them to include Pakapaka... They are breaking our constitutional rights....’ ‘What can we do in Mar del Plata, where we are held captive by this company, since we cannot subscribe to other television cable operator? They keep raising the prices. We are pensioners – where can we go to stop these increases?’ You heard him. He said he is a captive.”

Modulating her voice and inserting pauses at the right moments, Ottaviano’s delivery was highly theatrical. She did not merely enumerate the situations described by the claimants; she played their

\textsuperscript{96} As discussed in previous chapters, CELS was founded in 1979 by relatives of political prisoners and the disappeared, and it played a crucial role during the transitional justice process.

\textsuperscript{97} I address in detail the workings of the Defensoría in the next chapter of this thesis.
voices in the first person, reading the affidavit as it were a script. In addition, the cases selected by the head of the Defensoría did not seem to be randomly chosen: a mother trying to comfort her little daughter, a couple of pensioners, inhabitants of remote locations of the country. The cases were emblematic of disempowered or vulnerable citizens whose rights had been violated and who demanded concrete answers from the state.

The testimony of Rodríguez Villafañe, a former judge and representative of the cooperative movement, likewise sought to represent the voices of those “marginalised from the right to freedom of expression”. Despite his expertise on the matter, Villafañe’s affidavit was grounded in a sort of experiential and empirical, rather than strictly legal, form of knowledge. His presentation focused on the many ways in which Clarín’s monopolistic practices prevented hundreds of cooperative television and radio producers from exercising their right to press freedom.

“Here, we should also talk about how the Clarín group operates in the market. In Tres Arroyos, the local cooperative was recently granted a license as a cable television operator.... But when the cooperative tried to offer the service, Cablevisión [owned by Clarín] automatically undercut the prices to unprecedented lows. And they can afford this type of cross-subsidisation because they have so many licenses.... In this way, they eliminate the competition – the competition they claim to want to preserve” (Centro de Información Judicial, 2013; my translation).

According to Leticia Barrera (2013), judicial performances such as public hearings express of a dual form of agency, since they involve exposing both belonging (racial, institutional, national, etc.) and individuality. This duality was particularly visible in Villafañe’s testimony, since he appeared in court both as a representative of hundreds of media cooperatives and as the personification of the struggles for press freedom and pluralism. In his presentation, Villafañe enumerated exemplary cases that illustrated how Clarín’s size and its dominant position in the market impeded the emergence of alternative
voices. But in addition to the cases he described, his own intervention was articulated as the lively narrative of someone who had experienced firsthand the violation of his rights.

Distinctive forms of meaning production are relevant here. As both a radio producer and legal expert, Rodriguez Villafañe is a great orator. However, his presentation was also distinguished by other qualities. His marked provincial accent, for example, contrasted with the more cosmopolitan and international setting of the hearings. In addition, he spoke in fairly descriptive and plain language, avoiding technical juridical terms and using old-fashioned expressions and rhetorical gestures that emphasised his provincial origins. These vocal and gestural forms of signification added a sense of authenticity and truthfulness to his speech: because he was from el interior (the provinces) he embodied the untold experiences of those who for years had put up with Clarín’s abuses:

“We were marginalised, treated as people who do not have the right to freedom of speech. Many of those who now speak on behalf of the plaintiff never said a word about the fact that, for more than 29 years, the cooperative movement, the solidarity-based economy and the nonprofit sector were denied the right to freedom of speech.

Only we know how the people of Córdoba have suffered... when many of the candidates for governor preferred to be invited to appear on Clarín television shows rather than going out into the province, looking the citizens in the face and giving them real answers... [Media] concentration particularly punishes the provinces because in our places certain corporations end up influencing our governors, our legislators, our mayors. They do not even allow the local democracy to be nurtured...”(Centro de Información Judicial, 2013; my translation).

These factual narratives provided by Villafañe and Ottaviano had a big impact on how the hearings were received by members of the public. In interviews with informants conducted a few months after the hearings, some participants considered that the event provided the opportunity to better understand what was ‘really’ at stake in the case. Graciana Peñafort, for instance, was convinced that Rodriguez Villafañe’s live testimony and his “immense humanity and warmth” were crucial in
making visible the experiences of someone who “knew the monopoly firsthand”. Besides the technicalities and constraints imposed by the judicial process, the ‘everyday’ experiences of some of the participants were also reenacted in and heard by the Court. For many of the activists and media activists following the hearings on television, the embodied nature of some of the testimonies as well as their capacity to convey a sense of ‘authentic truth’ served as a complement, or even as a corrective, to the more technical and disaffected epistemologies offered by human rights experts (Interview with Graciana Peñafort, August 2014).

As Mariana Valverde (2009) has shown, judges and legal experts employ “hybrid” knowledges when developing an argument or, for that matter, a judgement. By “hybrid knowledges” Valverde means that strictly “legal” evaluations are dependent on a variety of forms of reasoning, which include expert knowledge but also “common sense”, previous professional and personal experiences, emotions and moral reasoning. Hence in any judicial case the parties involved seek to mobilise the empathy of the judges, frequently by emphasising particular forms of injury and depicting specific suffering subjects 98. This privileging of experiences of violations of rights was crucial to the case put forward by those who defended the full enforcement of the ACS Act. 99

In an article published after the first day of hearings, a journalist from La Nación commented that “Clarín’s amici curiae displayed a solid technical defence”, while those who spoke on the “government’s side answered with political accusations” (Ventura, 2013). Similarly, Lucas Grossman, a legal expert who presented his case in favour of Clarín, affirmed that some of the testimonies on the government’s side did not address the specific legal-technical subject of the case; in his view,

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99 Even when consumer associations (CODELCO) and chambers of commerce presented their cases on behalf of Clarín, they failed to articulate an empirical narrative focused on the testimonies of specific victims and violations of rights. Instead, these associations grounded their arguments in moral declarations as well as in legal and historical accounts of the role of the press in western democracies.
some presenters “made political speeches for the crowds”. Victor Abramovich, on the other hand, reckoned that the public hearings had been devised precisely to allow the audience to understand the case and the terms of the debate. Besides the legal treatment of the case, or more accurately, as part of the judicial process, the parties had a duty to perform before the audience at large.

While telling and important in the final decision taken by the judges, the treatment of the case also necessitated a different form of evidence and a different legal epistemology. Even if Clarín’s abusive practices and its dominant position in the market restricted the emergence of other voices, the constitutionality of the ACS Act still had to be decided.

6.5.2 Reading the Constitution

The crucial point to be decided by the Court was whether or not the ACS Act respected the constitutional principles of freedom of expression and private property. The role of legal professionals is central to the interpretative labour this decision required, since they not only guide the judges’ decision but also frame the legal disputes and the terms of the judicial debate. This means that legal expertise takes on a performative role, which defines the limits of the problem that the judges then set out to adjudicate (Bauman & Briggs, 1990; von Schnitzler, 2016)

As originally formulated in the demand presented by Clarín, a central issue to be decided in the case was whether or not the restrictions imposed by the ACS Act would entail a risk for the economic sustainability of the company, and consequently, for its ability to exercise press freedom. Indeed, technical reports carried out in previous judicial instances asserted that Clarín’s economy of scale was central to

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100 Building on Erving Goffman (1974) and Michel Callon (1998), I use the notion of ‘framing’ to examine the interpretive politics of how legal experts frame the nature of a problem at hand.
its capacity to be managed with ‘independence’ from state funding. Although this was an important empirical issue for determining whether the ACS Act would “unreasonably” restrict press freedom, the debate was instead centred on divergent legal interpretations and standards. The quantification and financial calculations relating to the economic sustainability of Clarín did not play a central role in the debates (contrary to similar cases in which human rights entitlements are debated against costs, economic calculability and indicators)\(^{101}\).

In his work *The Making of Law* (2010), Bruno Latour examines the law as a distinctive mode of enunciating truth. Borrowing an expression from the theory of speech acts, Latour asks: “on the basis of which signs do [lawyers] recognise the conditions of felicity or infelicity of legal statements?” (2010, p. 129). The work of legal experts, Latour argues, involves successfully establishing imputations and obligations, linking each element being assessed (judged) with the totality of the legal edifice constituted by precedents, procedures, norms and so on. In this sense, the law hinges on a “proliferation of sedimented claims” about what is ‘legal’ and what is not, what conforms pre-existent legal truths and what does not (2010, p. 183).

This specific form of truth production is particularly evident in the constitutional review of norms performed by the judiciary. The review of constitutionality entails detailed work which links the meaning of one legal text to what is expressed in other sets of rules and texts. Particularly in the case of human rights provisions of freedom of speech in Argentina, legal interpretation was performed by reference to three distinctive sets of legal texts: 1- national and international standards and regulations (Argentinean Constitution, American Convention on Human Rights, US Constitution); 2- national and international jurisprudence on the matter (e.g. previous rulings of the Argentinean

\(^{101}\) See for example Sally Merry (2016; Merry et al., 2015) on the increasing use of numeric indicators to monitor human rights policies; also Andrea Ballestero (2014, 2015) and Antina von Schnitzler (2016) on the rationalisation of water consumption and ‘basic needs’.
Supreme Court of Justice, cases addressed by international human rights courts, cases in the US, etc.) and legal theories (legal-philosophical works authored by renowned experts in the field).

Clarin’s legal strategy, which had been validated in previous decisions in the lower courts, was based on a series of slippages and mediations by which the economic scale of the company was seen as a necessary condition for the exercise of press freedom. Lucas Grossman, a representative from San Andrés University, was the *amicus curiae* who most clearly articulated the arguments on behalf of Clarín.

“In *The Irony of Free Speech*, the US constitutional lawyer Owen Fiss... affirms that, perhaps more than any other institution, the press plays the function of making citizens capable of self-governance, and he specifically highlights the fact that – and I quote – ‘[it must not] depend economically on the state and the public officers [must not] interfere with the work of the press hiring or laying off journalists.’

It is a well-known fact that the government aspires to a hegemonic position in the public discourse. Against such an aspiration, the existence of what in [the] Protection of Competition [Act] is known as a ‘vigorous competitor’ becomes essential... someone with enough resources to resist potential blows from the state. Size matters.

Few media can afford to lose state publicity contracts and subsidies and still remain afloat with a dissident discourse. This is why *economies of scale are a safeguard to freedom of expression*” (Centro de Información Judicial, 2013; my translation, emphasis added).

From the liberal view of human rights advanced by Clarín’s lawyers, any state attempt to regulate the media market was a potential threat to freedom of speech. Only under specific circumstances could market regulation be accepted as *reasonable*.

“The affirmation that Argentina requires a special regulation to ensure competition and diversity in the audiovisual market is simply dogmatic. There is no behaviour affecting economic competition... which cannot be resolved with the legislation already in place. Of course, the *Protection of Competition Act requires proving the existence of a dominant position* and the restriction of market competition. *Proving is more difficult than alleging, and I believe it is under this light that we have to understand*
the impugned law” (Centro de Información Judicial, 2013; my translation, emphasis added).

By framing the legal dispute in this way, Lucas Grossman performed what lawyers call a reversal of the burden of proof: it was no longer the claimant, in this case Clarín, that needed to prove the unconstitutionality of the ACS Act but rather the state that had to justify its attempt to regulate the audio-visual market and impose restrictions to media concentration.

This was precisely the main target of critiques in the presentation made by Víctor Abramovich, who presented his affidavit on behalf of the state. Importantly, his presentation had been prepared in collaboration with Leonardo Franco, a former judge of the Inter-American Commission on Human Rights (IACHR) as well as a former member of CELS’ executive board. Abramovich and Franco are both highly renowned human rights experts and frequent contributors to legal theories and debates in the field. As I explained earlier in this thesis, Abramovich’s contributions have had a remarkable influence on the way human rights are understood in Argentina. In line with his structural view of human rights (discussed in detail in Chapter V), Abramovich argued against a “traditional liberal approach” of freedom of expression:

“Affirmative actions aimed at transforming structural patterns of social exclusion are frequently resisted in the name of equal treatment. Those who are historically privileged by the conditions of the social structure rentrench themselves behind a notion of formal equality in order to protect their position and benefits... For those who react against the ACS Act, freedom of expression is understood from a traditional liberal approach, that is, as a right to individual autonomy, which only entails limits to the state...

102 Besides his academic position at Lanús National University, Víctor Abramovich is a prominent human rights expert in Argentina and Latin America. He has served as executive director of CELS and as special rapporteur for the Inter-American Human Rights Commission, and at the time of the public hearings he was the executive director of MERCOSUR’s Institute for Public Human Rights Policies (IPPDH), a South American agency which aims to coordinate human rights policies in the region.
An opposing view of freedom of expression acknowledges the limits and negative obligations it imposes to the state – for example the prohibition of censorship, direct or indirect – but understands freedom of expression as a social right and, as such, it considers with special attention how this right is affected by profoundly unequal and exclusionary social structures. From this perspective, the state has the obligation to act... with the aim of transforming the structural conditions that systematically silence certain segments of the population” (Centro de Información Judicial, 2013; my translation, emphasis added).

This approach, Abramovich argued, was consistent with the American Convention of Human Rights, with IAHRC jurisprudence on freedom of expression and with Argentina’s constitutional provisions and jurisprudence.

“The Court’s position in its interpretation of Article 13 of the Convention is part of a tendency of jurisprudential interpretation in the Inter-American System, one which enshrines a ‘strong’ principle of equality, which entails significant responsibilities on the part of the state, extending its indirect responsibility over the actions of non-state actors and imposing on the state the obligation of overseeing structural patterns that may prevent the exercising of rights. Without any doubt, the ‘strong’ principle of equality enshrined by the Inter-American Court binds perfectly with the strong principle of equality of our Constitution, and particularly with some constitutional interpretations rightly offered by this Supreme Court of Justice, particularly in Article 42, but also Article 75, paragraph 23, which basically includes the idea of structural equality and the obligations of state protection” (Centro de Información Judicial, 2013; my translation, emphasis added).

In the context of the constitutional review performed by the judiciary, the notion of ‘proof’ is somehow paradoxical. In this context, ‘proof’ is a mode of establishing links, pointing to forms of engagement (or disengagement) between the legal text being evaluated and the preexisting body of norms, regulations, precedents and theories. This is why, as Bruno Latour suggests,

“lawyers, even when they make an especially daring argument for overturning established precedents, have to secure the integrity of
the legal edifice, continuity in the exercise of power, and smoothness in the application of the law” (Latour, 2010, pp. 242-243).

In this way, ‘proving’ a legal argument is, above all, a way of framing the judicial case being discussed. When discussing the case over the ACS Act, legal experts and human rights activists mobilised competing ideas about the state, freedom of expression and democracy. Different modes of framing produce the conditions of intelligibility in which certain arguments are relevant and legitimate before the Court, while others are rendered unintelligible or irrelevant.

6.6 Conclusion

The mobilisation of different forms of expertise and knowledge as well as the tensions that emerged at the hearings resonate directly with the broader questions of this research thesis: how do human rights shape (simultaneously enabling and constraining) the articulation of political claims and practices? How do they shape practices of governance and state-making? How are human rights reenacted in the process of debates around the ACS Act? In this chapter I have tried to show the ways in which the public hearings on the ACS Act were performative. On the one hand, they provided a highly visible stage for practices of good governance and transparency aimed at strengthening the legitimacy of the Argentinean Supreme Court of Justice. In a judicial dispute characterised by intense media attention and a polarised political atmosphere, the Court managed to present its own role in the case as neutral and impartial. On the other hand, the hearings were performative in that they framed the terms of debate according to a techno-legal repertoire of procedures, standards and modes of authorisation. The participation of legal experts was crucial in translating political and moral understandings on the role of the state and the press into the techno-legal language of human rights.
According to CELS’ 2015 Annual Report, “the Supreme Court’s ruling confirming the constitutionality of the ACS Act... was the most relevant historical, political and juridical event of 2013” (2015, p. 561). The high exposure of the judicial case and the intense media attention it attracted brought about some unintended effects. The Court was forced to take extra measures in order to present its work on the case as objective and impartial in the eyes of the public. For some participants and commentators, the conditions imposed by the Court affected the richness and depth of the debate, constraining the presentations of the *amici curiae* and simplifying the discussion to a binary conflict between parties; Horacio Verbitsky’s presentation at the hearings was a clear illustration of this critical assessment (see also the chapter prepared by De Charras and Baladron in the 2015 Annual Report published by CELS).

This is perhaps one of the consequences brought about by the judicialisation of politics: while democratic politics (ideally) tends toward universality (Butler, Laclau, & Žižek, 2000), deliberative justice aims at impartiality and objectivity. Because of this, when the political debate moves into the judicial arena, the form of reasoning employed by the judges may tend to equate the ‘popular will’ to a binary conflict between two contending parties. It was precisely this reductionism that was the target of criticisms by Verbitsky and other human rights activists.

Despite this, all my informants (including key participants at the hearings) positively evaluated the public hearings and considered that they were decisively important both in the Court’s ruling and in the public’s understanding of the case.

103 Significantly, this point was raised by Michel Foucault nearly four decades ago. When elaborating on the notion of “the form of the court” Foucault affirmed that “this idea that there can be people who are neutral in relation to the two parties, that they can make judgments about them on the basis of ideas of justice which have absolute validity, and that their decisions must be acted upon, I believe that all this is far removed from and quite foreign to the very idea of popular justice” (1980, p. 8). On the judicialisation of politics in Argentina, see the insightful analysis provided by Luciano Nosetto (2014).
“Even when many claimed that the hearings were merely a formal gesture, it is clear to me that those two days of hearings and debates oriented the judges’ opinions... and that is clearly reflected in the judgement” (Interview with Damián Loreti, 2014).

Apart from its impact on the final decision, the hearings helped to make the judicial dispute more accessible to the public. Before the public hearings, the debate on this issue was characterised by highly polarised opinions in the media, while the core of the dispute was frequently addressed only indirectly and in a fragmentary way. Although the hearings were not legally binding (the *amicus curiae* were meant to provide guidance to the Tribunal) and they only constituted the final stage of four years of judicial disputes, for many people in Argentina, these hearings were the actual trial, so successful were they at making the judicial process visible and accessible to the public. With their focus on embodied testimony and on oral, rather than written, forms of argumentation, the public hearings offered an important instance of publicity, making the disputes around the ACS Act widely accessible for the audience at large.

In the next chapter of this thesis I will concentrate on the workings of a recently created government agency: the Defensoría del Público Audiovisual (Ombudsman’s Office for Television and Radio Audiences).
CHAPTER VII
THE DEFENSORÍA

7.1 Introduction

In the previous chapter, I focused on public hearings on the ACS Act held at the Argentinean Supreme Court of Justice. These hearings were the final instances of a judicial process resolving on key articles of the ACS Act. The legal case was initiated by a legal action filed by the country’s largest media corporation, Clarín Group, who objected to the Act’s imposition of restrictions regarding the concentration of media ownership. While the mainstream media and the Government’s political opposition depicted these measures as an attempt to limit voices critical of the government, supporters of the reform argued that the articles in question were a necessary step to democratise the media landscape. By tracing the terms of this debate in the media and in the judicial arena, the chapter critically examined competing views on freedom of speech, human rights and the role of government that were expressed throughout this dispute. In particular, the chapter paid special attention to the formal, technical and performative aspects of the public hearings in which the case was publicly debated.

In this chapter, I focus on the working methods and activities of a recently created state agency, the Defensoría del Público Audiovisual (Ombudsman’s Office for Television and Radio Audiences). While those articles of the law that imposed limits to media ownership triggered heated debates in the political arena, other aspects of the Act that primarily fell under the remit of the Defensoría – such as the such as restrictions over discriminatory media content – remained relatively uncontested. In this chapter I concentrate on the Defensoría because human discourse is central to the institutional narrative of this government agency. The Defensoría was officially created in 2009 by the
ACS Act with the stated aim of “protecting and promoting the rights of the audiences”. Under this broad umbrella, the Agency undertakes a variety of activities which include monitoring the functioning of media, receiving and processing complaints from members of the public, conducting workshops with media practitioners, and ensuring the participation of minorities and vulnerable groups in the public debate.

By focusing on the Defensoría this chapter examines the instrumental and technical aspects involved in the production of specific “state knowledges” (Plotkin & Zimmermann, 2012): in this case those related to the human right to communication. As I have discussed in Chapters I and II, the development and implementation of the ACS Act builds upon transnational circulating principles, standards and discourses on the information society, media governance and human rights. But the invocation of universal principles also entails some degree of local adjustment in view of the practical aims pursued by activists and state agents. As I have noted, the effectiveness of the local adoption and appropriation of globally generated ideas such as human rights rely heavily on processes of “translation”, mediated by the work experts, who make possible what Sally Merry has called the “vernacularisation” of human rights (2009). Building on Merry’s insights, my analysis of the Defensoría’s lines of actions and approach reveals how the local adoption of transnational human rights ideas in the Argentinean context is in many ways novel and innovative.

This chapter is structured in three main sections. First, I provide a brief overview of the Defensoría’s main lines of work and objectives. Second, I focus on the Agency’s institutional narrative and its strategies of ‘territorialisation’. This section centers specifically on the workings of the Agency’s Department of Promotion and Training, which delivers workshops and supports community media experiences across the country. Finally, I examine the ways in which the Defensoría’s addresses the denuncias (complaints) posed by media audiences regarding the functioning of media. In particular, I focus on how a
repertoire of techniques adopted from human rights regimes enable the creation of new spaces of governmental intervention by constituting the domain of media broadcasting as “administrable” (Dean, 2010).

7.2 The Defensoría: Promoting and Protecting Audiences’ Rights

The Defensoría, was officially created in 2009 by Articles 19 and 20 of the ACS Act. In practice, however, the Agency only started to operate in November 2012, just a year and a half before I started my fieldwork in Argentina. The Agency falls under the control of a parliamentary Two-Chamber Committee, whose creation was also stipulated by the ACS Act, and which oversees the implementation of communication policies. The law is very succinct on the Agency’s functions, which can be summarised as follows:

- Receiving and channelling the consultations and demands posed by the audio-visual services audiences, this is Television, Radio and all media services ruled by the ACS Act (broadly defined as ‘audio-visual services’). The Agency is also in charge of keeping a register and following up the consultations and demands in the course of administrative and judicial procedures. In case it is considered necessary, the Defensoría is responsible for representing the interests of the audiences before the competent authorities.

- Holding public hearings across the country in order to assess the proper functioning of broadcasting media. Summoning public and private actors for the purpose of creating a participatory and permanent debate regarding the media industries and practices.

- Proposing changes to regulations on media services and/or demanding before judiciary authorities existing or future norms that may be considered illegal or unreasonable. The Agency is responsible for elaborating public recommendations to competent authorities on audio-visual communication services. Authorities
are required to take into consideration those recommendations elaborated by the Defensoría office.

- Presenting annual reports on the Defensoría’s activities before the parliamentary Two-Chamber Committee.

The experts, activists and public officers working at the Defensoría repeatedly affirmed to me that the main objective of the Agency was “to protect and promote the audiences’ rights” (expression which is also pervasive in the institutional narrative of the Agency, see www.defensadelpublico.gob.ar), although this objective does not appear phrased in such a way in the wording of the law. Indeed, the brief specifications stipulated by the ACS Act, together with the unique character of the Agency, give to the Defensoría a quite flexible line of action, whose working methods and activities are largely defined by the Agency’s relationship with media audiences, media practitioners and other government agencies. “There are no models for this agency... in some way, it is up to Defensoría to invent itself”, affirmed Laura, one of the young community media journalists working at the Agency (interview, June 2014; my translation). Indeed, it can be argued that the Defensoría develops what has been regarded as an ‘experimentalist’ form of governance, since the Agency builds deliberately provisional frameworks for action which are later revised and re-elaborated (Sabel & Zeitlin, 2012).

Although the Defensoría’s institutional organisation and structure has changed since its creation in 2012, it is possible to identify three main departments and lines of action:

1. Department of Promotion and Training. The Agency undertakes an intense agenda of educational activities all over the country. These activities include a broad range of topics and strategies, from disseminating the ACS Act objectives, to organising workshops on ‘good practices’ for media producers and journalists, and carrying out video projects with schools and neighbourhoods. In addition, the Department of Training and
Promotion provides assistance and technical support to a number of community media projects across the country, most prominently radio and television stations managed by indigenous peoples, youth organisations, peasants’ movements and NGOs. At the time I conducted fieldwork this Department had 10 permanent staff members, most of them with a solid background in community media. When considered necessary, casual staff was hired to deliver workshops on specific areas of expertise.

2. Department of Rights Protection. One of the main responsibilities of the Defensoría is handling the consultations and complaints (denuncias) lodged by the radio and television audiences. The team of lawyers working at this department answer the enquiries and assess the legal grounds of the denuncias presented by the public. When the legal professionals evaluate that there are grounds to initiate a case (that is, when the audiences’ rights are being violated in any way), a team of human rights experts start a process of dialogue with the parties involved. Although other departments actively participate in the process, it is the Department of Rights Protection that leads interventions and drafts the Defensoría’s resolutions. During my fieldwork, the Department was comprised of 15 lawyers with professional backgrounds in human rights and administrative law.

3. Department of Monitoring and Research. The social scientists working at this department undertake periodic monitoring on media programming and elaborate reports which serve as input for setting institutional goals and lines of actions. Likewise, this department maintains a detailed record and identifies patterns on the enquiries, complaints and presentations made by the audiences. The findings of these ongoing research activities are periodically discussed in roundtables with media producers and practitioners where the Defensoria seeks to establish basic agreements for the production of recommendations and guidelines on the media treatment of specific topics: mental
health, violence against women, vulnerable youth, natural disasters, etc. Importantly, the Department of Monitoring and Research also analyses any media content denounced by the public and produces internal reports that guide the Agency’s legal handling of these complaints. This Department had 13 permanent staff members with backgrounds in anthropology, sociology and communications.

In total, the Defensoría had less than 100 permanent staff when I carried out my fieldwork. In addition to the described areas, the Agency has a Department of Institutional Communication, a Department of Legal Affairs (focused on administrative law) and a Department of Administration. During my fieldwork, I focused on the three departments described above because they were more actively engaged in a relationship with broadcast audiences, with communities and with media actors (producers, journalists, publicists, etc.).

The Defensoría is a good example of how the proliferation of human rights legislation and policies in Argentina have contributed to the emergence of new forms of governance and a redefinition of the boundaries between political militancy, vocation for public service and forms of expert intervention. Staff members working at the Agency typically had university degrees in law, social sciences and journalism; however, as I detail in the next sections, most of my informants working for the Defensoría were recruited because of their previous experience in human rights and community media organisations. These state agents understood their work at the Defensoría as a continuation with previous activist activities. At the same time, the networks of contacts that these activists and experts brought with them facilitated the development of institutional partnerships and collaborations with a broad range of social movements and advocacy groups who closely contributed to the reflection and debate on the functioning of media promoted by the Defensoría.
In the next section of this chapter I examine the Defensoría’s institutional narrative. I argue that, in line with the discourse of the Kirchner’s governments, the Agency’s narrative and strategies of intervention aimed at *bajar al territorio* (‘working on the ground’). In the view of my informants, it was imperative to develop a ‘territorial’, as opposed to ‘desk-based’, form of bureaucracy. This required a distinctive knowledge and understanding of human rights work.

### 7.3 ‘Working on the Ground’

In the context that emerged after the deep political and institutional crisis of 2001, human rights discourse and legal-technical repertoires contributed to tackle a major problem of government authorities in Argentina: the generalised mistrust among citizens towards political elites and institutions. In the aftermath of the 2001 crisis, Argentinean political elites faced the challenge of regaining people’s confidence: how to reconstitute the political bonds between the citizenry and the state after the widespread claim posed by Argentinean middle-classes and social movements of ‘to hell with all of them’ (*que se vayan todos*)? How to rebuild the legitimacy of state agents as representatives of the popular will?

The problem of the ‘distance’ (and ‘proximity’) between the rulers and the ruled is a topic of frequent reflection in scholarly and political debates on the state and democracy (Auyero, 2007; Herzfeld, 1993, 2005; Li, 2005; Scott, 1998). According to Luisina Perelmiter (2012), the idea of ‘distance’ as a political problem gained a double connotation in the discourse of the new administrations; it was simultaneously understood as lack of trust in the state and as a problem of excessive centralisation of government agencies in urban centres. Thus, the governments of Néstor Kirchner’s (2003-2007) and Cristina Fernández de Kirchner’s (2007-2015) sought to repair a perception of asymmetry between politicians, suspected of indifference and disaffection, and
citizens who were sceptical and distrustful of the state. At the same time, public servants and bureaucrats also construed the notion of ‘distance’ as a political problem in the more literal sense of geographical remoteness: the distance between centres of government authority located in Buenos Aires and the recipients of public policies from all over the country.

As a response to this double difficulty, the idea of ‘working on the ground’ (bajar al territorio) gained significance in the narrative of state agencies (Perelmiter, 2012; 2016). State agencies envisioned new forms of engaging with the public and sought to portray the image of a government that was ‘close to the people’. In the strategies developed by government agencies, ‘working on the ground’ entailed both the physical movement of public officers into the territory and a more ‘horizontal’ mode of relating with citizens, prioritising the personal interaction and emotional commitment with the recipients of government policies. To the technocratic approach that dominated public policy making in the 1990s, which was largely shaped by managerial models borrowed from the corporate sector, the Kirchners’ administrations opposed the image of a national-popular state, a government ‘closer to the people’.

The governmental ethos of ‘working on the ground’ was also central to the institutional narrative of the Defensoría. Expressions like “mobile Defensoría”, “listening to the people” and “knowing the needs and demands on the ground” were pervasive in the institutional publications and campaigns of the Agency (Defensoría del Público Audiovisual, 2016, p. 21-24). Cynthia Ottaviano, the head of the Agency expressed in several public declarations that the Defensoria “envisions a ‘territorial’ rather than a ‘desk-based’ type of bureaucracy”. This entailed “overcoming the centralism of Buenos Aires”, and working on the “de-centralisation of the Agency” (Ottaviano, 2014; my translation). Similarly, in the 2012-2016 management report published by the Defensoría, Ottaviano evaluated that:
“Since we did not diagnose and neither did we plan from a distance, from the solitude of a desk, the actions conducted involved moving across the territory. Defensoría’s training programs were based not only on the needs and problems of each community, but also on the conflicts, interests and expectations of those spaces” (Defensoría del Público Audiovisual, 2016, p. 71; my translation).

“The activities undertaken expressed the foundational mandate of territorialising – doing in closeness, listening what the audiences have to say, knowing the unique characteristics of each region, understanding the different ways in which communities relate to media, each and every one who participated at the Public Hearings, at workshops, or who contacted the Defensoría to lodge a complaint or to make a query” (Defensoría del Público Audiovisual, 2016, p. 231; my translation).

This narrative was repeatedly expressed by the Defensoría’s members in public declarations, institutional reports and campaigns. More importantly, the aim of building a ‘territorial bureaucracy’ was operationalised through a series of strategies and concrete policy-programs which most prominently included: supporting community media projects across the national territory, conducting public hearings in the provinces, developing ‘mobile’ promotion and training campaigns such as ‘Travelling Defensoría’ and ‘Defensoría goes to the neighbourhood’, as well as recruiting grassroots activists and community media practitioners with solid backgrounds in territorial and community work.

In the next section of this chapter I describe some the Agency’s main strategies for bringing the institutional goal of ‘working on the ground’ into effect. I suggest that crucial to this strategy was the recruitment of community media activists and practitioners. These public agents relied on a form of territorial and ‘experiential’ knowledge gained through years of working with community media groups across the national territory. I focus in particular on the staff members working at the Department of Promotion and Training, who were responsible for delivering workshops and providing support to community media projects all over the country.
7.3.1 The Expert, the Activist and the Public Officer

In Chapter V, I suggested that the public officers I interviewed frequently emphasised their ideological commitment as a mark of devotion for public service. In the eyes of political commentators and members of the opposition partisan affiliation was a reason of suspicion and mistrust towards state agents. From the perspective of my informants, on the contrary, their militancy was the proof that their work at the state was not driven by personal interest, but by a commitment to a greater cause. The Defensoría’s narrative emphasising a new form of policy-making, driven by the imperative of ‘working on the ground’, also hinged on militancy and political commitment as distinctive modes of knowing and devising government strategies.

However, there were significant differences between my informants at the Defensoría and the public officers working for other government agencies, particularly AFSCA (Federal Authority on Audio-Visual Communication Services). As noted earlier in this chapter, the head of the Defensoría is appointed by a parliamentary Two-Chamber Committee and the actions of the Agency fall under the scope of the Congress and not of the Executive. Importantly, this independence meant the Agency remained relatively unaffected by partisan politics and the changing relations of the coalition in power. Although many staff members working at the Defensoría explicitly embraced their commitment with the struggles of ‘national-popular’ movements in Argentina and Latin America, none of my informants were part of the Government Coalition in power. On the contrary, on many occasions they voiced criticisms on some government policies, and they hastened to note that the Agency’s actions did not come within the Executive branch.

Despite these differences, most of my informants at the Defensoría emphasised their previous activist experiences in community media and human rights organisations. Mariano, one of the founders of a very
well-known community radio in Argentina, explained that he was recruited into his position at the Agency as a result of his extensive activist experience delivering workshops and working with community radios all over the country.

“My arrival at the Defensoría has to do with the Department’s coordinator, Ernesto Lamas. We had worked together for many years in community media, accompanying community radios from all over the country, doing workshops, providing technical support and building networks. We had been doing that work as part of our activities at [community radio] La Tribu... I would say since the end of the 1980s. When Ernesto called me, he said: we need you to do exactly the same job you have been doing at La Tribu. But now you have to do it full time and you will have a salary for this” (Interview with Mariano, June 2014; my translation).

Importantly, Mariano and other members of the Defensoría saw their work in the government as a continuation of these previous experiences. As they put it, working at the Defensoría was much more than “getting a new job”. Although their relationship with the Agency was expressed in a formal employment contract, many of my informants explained their work as a personal and political project in which they felt emotionally invested. For these public officers, the notion that synthetised the meaning of their practices was that of ‘militancy’. On many occasions I was told this entailed making extra effort, working longer hours, taking on more tasks but they assumed these responsibilities precisely because they did not work under strictly contract terms (‘trabajar a reglamento’) but ‘out of conviction’.

Only a small portion of the Defensoría’s staff members had previously worked for the state. Laura, who had also collaborated in community media networks for years, considered that the political conjuncture was highly complex and challenging. However, she believed that the new context also presented an opportunity for a political project which, until then, had remained unattended:

Laura: Both from a political and from a personal point of view, I come from the world of community media and that is my background... I understand media from that standpoint the fact
that I am currently working at Defensoría implies that I do see the possibility of working for the state and doing something from this position. I mean... it's not just that I got a new job. Possibly, I would have not accepted a government position in other situation... in community communication you develop a view of the state as the target of your demands, an idea of collective construction against state threats. The state put itself in that position for a long time, ridiculously as it was, and particularly for the community media. Therefore, it is a mark of community media to take a position against the state. For many years, our relationship with the state was [defined by] the threat of seizing our [broadcasting] equipment... After [the enactment of the ACS Act] you must reassess how you conceive of the state in a new period. When the state is paying attention at community media and addressing our demands. However, this debate was really complex.

Sebastián: Do you mean the debate around the relationship between social movements and the state?

Laura: Yes, at least the fact that now such relationship is possible... From my perspective, there is a broad range of new possibilities. The fact that I accepted this position at Defensoría has to do with that. We can build from the state many of the things we demanded to the state. Besides, this is a new agency. I had never worked for a public agency. There are many difficult things about working for the state... But the possibility is here. And that possibility is the result of our struggle. That 'our' is extremely broad... but I do feel a part of that. It did not come out of thin air. And the creation of Defensoría was one of the 21 points. We demanded it. Who were we going to leave it for?” (Interview with Laura, June 2014; my translation).

Although all my interlocutors at the Agency had university degrees (and often postgraduate degrees) in human rights, social sciences and media studies, none of them understood their practices at the Defensoría as purely technical or expert forms of intervention. Rather, they saw these academic credentials as a complement of their practical experience in working with community media across the country. Particularly those public agents working at the Department of Training and Promotion who were recognised at the Agency for a type of practical sensitivity gained through years of ‘working on the ground’. The television and radio stations set up in remote communities, in neighbourhoods or in public schools were depicted by my informants as a source of a practical and situated knowledge, shaped in the experience of activist work and interpersonal relationships. This type of knowledge was often opposed to the technocratic approach of ‘desk-based bureaucrats’:
“The officer who says ‘there are funds, submit a project and a budget’, often has no idea of the real situation in the communities... it is not that easy, sometimes there are grave problems, especially in indigenous communities. So, what do we do now? The Defensoría works with the community or the radio and delivers workshops in which we help to draft a project and support the application for funds” (Interview with Mariano, June 2014; my translation).

“I know how to operate the equipment although I am not a technician. We do have some specialists who help us to do the workshops and give support when necessary... my work has to do with my experience of doing community media for many years, with understanding why some neighbours from a small community set up a radio and start broadcasting. Community media is above all learning how to build communities and bring people together, and that is my experience” (Interview with Mariano, June 2014; my translation).

The Defensoría’s ‘territorial’ work with community media projects across the country was largely focused on new television and radio stations operated by rural communities and indigenous peoples. Existing community media networks had their own training teams in media production, technical operations, journalism, etc. Therefore, these media often did not require the support of the Defensoría. However, the promulgation of the ACS Act in 2009 as well as some complementary programs set in motion by the government had favoured the emergence of new media, particularly in indigenous communities, which were not part of the existing community media networks. In the words of Mariano, the law “equated the indigenous peoples with the Argentinean State”. By enshrining their rights as First Nations in the ACS Act, indigenous communities were not required to apply for broadcasting licenses or authorisations. In addition, some government agencies, in particular AFSCA, provided financial support to the communities for purchasing technical equipment and covering some basic expenses of the projects.

The initial visits to each location were aimed at elaborating a working diagnosis, a sort of ‘community profile’ which was used as the basis of a working plan and agenda. A team of three people from the Department of Training and Promotion travelled to communities or media collectives that contacted the Defensoría requiring assistance in their respective
media projects. During these initial visits, the team focused on establishing personal contact with the people participating in the project, informing them about the kind of support that the Defensoría was able to provide and asking about their expectations and needs. At the same time, Mariano (ibid.) explained, the team employed a “social work methodology” for collecting data on the characteristics of the broader community. The diagnosis focused on the conditions of access to public services (water, energy, education, health public, transport, etc.), on the characteristics of the territory and on the cultural consumption/production of the broader community.

Figure 7.1: Workshop delivered by the Defensoría with members of Aymará community, Salta province. Photo: www.defensadelpublico.gob.ar

After the initial diagnosis, a team from the Defensoría travelled regularly to work on the media projects, spending three or four days on each trip. At the time of conducting fieldwork, the Defensoría was collaborating with around 15 media projects of neighbourhood associations, social movements and indigenous communities across the country. Each location was visited at least two times throughout the year. From the
perspective of these public officers, setting a long-term approach to community media was crucial to the success and consolidation of the projects:

“The best thing about working for the state, in this case, is the possibility of persisting in time. The major strength of our work has to do with the emotional bond, with the trust that communities place in the work you do. The fact that we can return to these communities is extremely important. This is highly appreciated, because they see that we return every time... Our idea is that, ideally, this work has to be continuous. If we have to return for 20 years to the same community, then we will do it... That of course is really difficult if you are La Tribu” (Interview with Mariano, June 2014; my translation).

Although the main activity undertaken during these trips was the organisation of workshops and technical trainings for media production, the public officers taking part in the trips also sought to engage the broader community in the media projects. The personal contact and emotional bonds with the communities and media collectives were carefully nurtured during the trips but also via emails and phone conversations throughout the year.

“It is an advantage that we have a fair budget for these projects. The days we deliver the workshops, for example, we can afford meals and afternoon snacks for every participant. And for those who have to travel long distances, we can cover the transport expenses. That helps.... You have to find ways for bringing people together, engaging the whole community in the projects. For example, the [Indigenous people] Mocovi... one woman from the community prepared the meals. So, for her, it was also a job. If you go to a neighbourhood radio station, you do not call a pizzeria, you ask for the neighbour who prepares homemade meals. Then the people approach the station, become familiar... and get engaged. Now we are considering buying a pickup, because some locations are hard to access. But, mainly, because it is important to have a car. Because while two of us are coordinating a workshop, the third can give a hand in the town... ‘can you give a ride to my grandfather?’ ‘can we buy some groceries?’ (Interview with Mariano, June 2014; my translation).

“I love my work. Of course, I am exhausted as well. Some months I travel every week. Three or four days, every week. If I were married or if I had children... that would be really difficult. But this job is very gratifying, it gives you a lot. We learn in the communities... every time. The encounters are sometimes very moving... This is a job that takes a lot from you, but it also gives you a lot.... our job is
very much about the relationships you can build, because that is community media” (Interview with Mariano, June 2014; my translation).

The “territorial form of bureaucracy” envisioned by the Defensoría relied heavily on the experience and knowledge of public agents like Mariano, Laura and other former activists. They translated the abstract principles enshrined in the ACS Act into the language of local communities, neighbourhoods and schools where they worked. In the words of Sally Merry (2009), the work of these agents was crucial to the ‘vernacularisation’ of human rights ideals.

Scholarly work on expertise and state practices suggests expert discourses found their legitimacy through the authoritative force of science and objectivity (Plotkin and Zimmerman 2012). Experts, it is argued, often attempt to establish clear boundaries between strictly technical matters and their ideological or emotional motivations. As I have showed in this section, in contrast, the public agents working at the Defensoría relied on empathy and a form of interpersonal knowledge acquired through enduring relationships with the people and communities they sought to serve.

From the perspective of my interlocutors, the inclusion of a ‘situated’ or ‘practical’ knowledge at the Defensoría was understood as a means of correcting the technocratic approach that frequently characterises state agencies. Such a claim resonates with scholarly debates on the ethos and practices of government agents. According to Scott (1998), modern states are characterised by a planning and technically oriented rationality which relies on the legitimacy of Western scientific discourse. It is a universal, standardised, impersonal and highly codified form of knowledge which Scott calls “techne” (p. 319). To this abstract and codified rationality Scott contrasts other type of knowledge, which he calls “metis”: a situated and practical form of knowledge, which is acquired through and employed in ‘everyday’ experiences and which resists standardisation (p. 313). For Scott: “[m]etis knowledge is often so implicit and automatic that its bearer is at a loss to explain it” (p.
Implicit in Scott’s analysis is the idea that “techne”/“metis” are two opposing knowledge forms and their difference is correlative to the opposition between state/society. Although these binary oppositions present in Scott’s work have been challenged or relativised\(^\text{104}\), it is precisely the assumption that these oppositional knowledge forms exist which explains the current proliferation of ‘participatory’ and ‘dialogic’ strategies in policy-making (on this issue see also Li, 2007).

In the next section of the chapter I examine the Defensoría’s strategies and approach to address complaints lodged by the audiences on cases of ‘harmful speech’.

**7.4 Governing Hate Speech**

**7.4.1 The Debates around Hate Speech Regulation**

The move toward the regulation of hate speech in democratic societies can be traced to mid-twentieth century, with the expansion of the international normative framework of human rights and within the political context of decolonisation, the campaign against the Apartheid in South Africa, and the civil rights movement in the US. While human rights core documents enshrine freedom of expression as a cornerstone principle of human rights law, they also establish certain restrictions to free speech in the face of other imperatives. Thus, Article 20 of the International Covenant on Civil and Political Rights (1966) states that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”; likewise, the International Convention on the Elimination of All Forms of Racial Discrimination (1969) declares that

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\(^{104}\) As Michael Herzfeld has argued, “the kind of knowledge that Scott designates as typical of metis is not only found throughout the world, but is also... compatible with what we usually regard as scientific knowledge, itself easily categorized (if we are to maintain the classicizing idiom) as techne. To oppose metis to rational planning is to subscribe to the radical binarism of folk and scientific knowledge... Such binarisms themselves arise from hegemonic assumptions of a now-global order” (2005, p. 375).
“State parties condemn all propaganda and all organisations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form... [States] shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination” (International Convention on the Elimination of All Forms of Racial Discrimination – Article 4).

As noted by Bleich (2011), the fact that only a few countries have expressed reservations on these articles while ratifying the treaties speaks to the widespread international acceptance of those principles that restrict hate speech. The most notable exception to this trend toward hate speech regulation is the United States, where the doctrine of “First Amendment absolutism” advances the idea that freedom of speech has priority over other constitutionally protected rights and liberties and is, in fact, presupposed by the exercise of other rights and liberties. Strict adherents to this position tend to include all “content-based” speech as protected speech, and maintain that only verbal threats fall under the category of proscribable speech. The assumption that drives this distinction is that threatening words cannot be regarded as being exclusively the expression of ideas, but, instead, they represent a form of verbal conduct.

Over the last few decades, however, a different understanding of speech and language has gained currency among proponents of hate speech regulation. According to this view, any clear distinction between speech and action is problematic: the very “content” of certain kinds of speech has a performative force by which the message being communicated is, at the same time, enacted. This attribute of speech as being both an expression of ideas and a form of action, has been underscored by critical legal scholars and activists seeking to protect marginalised groups from the effects of hate speech. Supporters of this idea have taken sharp issue with the US First Amendment absolutist position by insisting that speech has the capacity to assault, injure and produce exclusion (Delgado and Stefanic 2006; Downing 1999; Matsuda 1993; Maussen and Grillo 2014).
Very much in line with this understanding of the performative force of hate speech in reinforcing power inequalities, a wide range of Argentinean social movements and activists pushed for the inclusion of broad restrictions to what was defined as “discriminatory content” in Articles 70 and 71 of the Audio-Visual Communication Services Act. Thus, according to Article 70 of the ACS Act, “the programming of the services foreseen in this law shall avoid including contents that promote or encourage discriminatory treatment on the basis of race, colour, sex, sexual orientation, language, religion, political or other views, national or social origin, economic position, birth, physical appearance, disabilities, or that are harmful to human dignity or lead to detrimental behaviours against the environment or the human health and integrity of children or youth”. In addition, Article 71 of the ACS Act states that all programming shall comply with the provisions stipulated by a set or related regulations, including the Integral Protection of Children and Adolescents Act, the Integral Protection of Women Act, and the Mental Health Act.

In spite of the widespread discussion around the ACS Act, the centre of the controversies was dominated by those articles concerning the restriction on the concentration of media ownership, while other aspects of the reform such as the restrictions over discriminatory media content aroused little if any controversy. This certainly is a remarkable absence given both the country’s highly polarised political context, and the intense and long-standing debates that hate speech regulations have prompted in other in other contexts.

In the remaining part of this section I briefly outline the critique of hate speech regulation put forward by Judith Butler in her work *Excitable Speech* (1997).

Although Butler endorses the idea that language can be regarded as a form of action and that, in fact, hate speech may entail injurious effects, in her view it “does not ‘act on’ the addressee in the way proponents of hate speech regulation tend to describe” (1997, p. 72). According to
Butler, those who advocate for legal remedies to hate speech, depict language in “inflated and highly efficacious ways” (74), and they fail to acknowledge the existence of a ‘gap’ between the intention of a speech act and its effects. This is so, Butler argues, since hate speech “is modelled on the speech of a sovereign state, understood as a sovereign speech act with the power to do what it says. This sovereign power is attributed to hate speech when it is said to ‘deprive’ us of rights and liberties. The power attributed to hate speech is a power of absolute and efficacious agency” (p. 77). For Butler, this understanding of the operations of hate speech casts individual subjects as the only agents of power, and it undervalues the fact that hate speech “could not act if it were not a citation of itself... The iterability of hate speech is effectively dissimulated by the ‘subject’ who speaks the speech of hate” (p. 80). In Butler’s view every discriminatory utterance is only possible as a citation, a repetition of an endless discursive chain which renders hate speech efficacious and harmful. Therefore, she argues, the idea of “culpable” subjects as the originating source of hate speech is a mystification and a misleading approach to the regulation of speech.

In the next section I focus on how Defensoría handles those complaints lodged by the audiences which focus on discriminatory contents and hate speech. I examine how the Agency explores alternative modes of regulating hate speech and discriminatory content.

7.4.2 Transforming Structural Patterns: Education and Dialogism

The Defensoría devised a series of instruments and strategies for governing harmful speech which also sought to build a ‘proximate’ form of bureaucracy, a Defensoría which worked ‘close to the people’.

Although the Agency has the power to act ex officio, and indeed it systematically monitors media programming, it is a decision of the Ombudsperson (the head of the Defensoría) to not act unless a demand or complaint is made by a citizen. The reason behind this decision is
that the Agency aimed to elaborate a working agenda based on the needs and enquiries posed by citizens rather than establishing a priori a fixed set of institutional goals and methods. In addition, this decision sought to avoid criticism or accusations of arbitrariness on the part of the Agency.

The queries and complaints made by citizens can be lodged in three ways: in person at the Defensoría offices in Buenos Aires (or AFSCA’s offices in the provinces), online through the Agency’s website (www.defensadelpublico.gob.ar), or via participation at the public hearings conducted periodically in the provinces.

Once the demands have been lodged they are classified according to two main categories: those that refer to issues of “accessibility”, and those that refer to issues of “representation”. Demands on “accessibility” include, for instance, claims about interferences to broadcast services, complaints due to lack of sign languages for certain programming, or requests for specific training from media producers. Demands on representations include all claims related to discrimination and stigmatisation practices in the media, such as the objectification of women, the promotion of violence against social groups and racial discrimination. All demands falling under this category are first analysed in depth by a team of sociologists and linguists and then referred on with a report to a team of lawyers.

According to the Agency’s own estimations, around 30% of all claims received are related to discomfort over content considered to be discriminatory. The ongoing treatment of these cases is particularly interesting in view of the debates described above on the challenges of regulating the hate speech.

In the first place, the Defensoría does not have the authority to impose sanctions. To the contrary, the efforts of this public body are guided by the facilitation of dialogue with the media professionals involved in the complaints. According to the state agents I interviewed, such exchange
opportunities are extremely valuable to retrace the conditions that made possible the creation of the media content being denounced. This is so as the main concern of the Defensoría is not to determine the responsibility of individuals; instead the focus of its interventions is the routines and structures of media production.

“We worked hard through meetings with production teams [that work] at media companies, at the networks, or at radio stations; meetings with news directors, with art programming directors, with network executives. Through dialogue, promoting the ACS Act, informing on the complaints lodged by the public. There is great willingness; the media truly is a fast-paced environment in which very often there is no time for studying the different regulations, or how the Defensoría has acted or settled on given cases. It is then very useful to come close and chat. To us, on the other hand, it is very useful to learn how certain situations are originated. For example, when they develop a news story and end up broadcasting a boy or a girl when they should not, or airing a very violent situation... Well, was there prior reflection? Did someone realise that it shouldn’t have been done that way? Did it escape everyone’s attention?” (Interview with Analía, July 2014; my translation)

Another element worth highlighting in this process is that conflict resolution generally entails some form of “reparation” agreed between the complainants and the alleged offenders. Examples of this type of agreements include the publicity of the ACS Act’s objectives, the participation in workshops and training sessions on issues related to the complaints, or public rectification. It is an explicit aim of the Defensoría to build standards concerning forms of reparation when the rights are violated.

Overall, it can be said that the activities carried out by the Agency are marked by a double temporality. On the one hand, specific cases are managed maintaining ongoing contact both with the people who made the claim or inquiry and with the involved media’s stakeholders. These public agents take great care in promoting the Defensoría as an efficient organisation with agile responsiveness to citizens and effective resolution capacity. Simultaneously, the activity of the Defensoría is long-term oriented, which is why the development of a structure of relationships with media stakeholders, nourished over time, is vital:
“A road map for engagement and cooperation is under way and it is important for us to keep those channels open... because we know, for example, that the same television network will work with various production companies. We are also interested in reaching out to production companies. Independent production companies are important stakeholders, but their interaction with the government is a novelty” (Interview with Analía, October 2014; my translation).

In this regard, the Agency’s interventions and its approach to specific cases is not only aimed at giving a satisfactory response to claimants, but instead, it is also preoccupied in preserving the relationship with those involved in the production of audio-visual content. Ultimately, the goal is to create an “epistemic community”, skilled in reflecting upon media functioning and capable for conflict resolution (Antonova, 2011).

Although the management of these claims is one of the main responsibilities of the Agency, the Defensoría also performs other necessary functions for monitoring and enforcing the ACS Act’s implementation. Among the most important, the Defensoría’s holds annual public hearings in each of the six regions of the country, which provide an extremely good opportunity for the Agency to publicise its work. During 2014, the Agency proposed a discussion agenda centred on the rights of children and adolescents covered by the ACS Act. The Defensoría staff cautiously worked throughout the year to support the participation of children and teenagers during the hearings. During the months leading up to each of these hearings, members of the Defensoría organised workshops with teachers and students of secondary schools with a view to encouraging participation in the proposed debates. In this way, the Agency actively participated in the creation of ‘audiences’.

Other lines of work by which the Defensoría fosters the engagement of multiple stakeholders in developing standards and building consent on media practices is the elaboration of guides for the treatment of specific issues such as natural disasters, mental health, institutional violence, among others. This is facilitated by the fact that an important portion of the Agency’s staff has professional and activist trajectories linked to
human rights organisations, journalist associations, community media groups and international human rights bodies. This networking potential is mobilised when organising and planning co-participative working spaces.

“We aim to do a dialogic work, this is, working with the entire production chain of the audio-visual communication services. Therefore, instead of producing an enlightened scholarly text, [we are interested on] the questions, on the different responses, and on the different instances of this production chain. All that within the framework of the ACS Act, which is not the framework behind the routines of media production. That combination is what makes that what is already meant to be a long-term task becomes an even slower process. We might be producing, along the whole year, one guide. You may say that, speaking in terms of quantity, that is not much. However, the elaboration of that guide entails working with both the whole range of organisations that are related to mental health, and the production chain of the audiovisual communication services” (Interview with Ramiro, 2014; my translation).

While the Defensoría is the institution in charge of coordinating these efforts, the initiation of these guides of good media practice has often led by civil society sectors interested on specific subject-matters.

7.5 Conclusion

In this chapter I have suggested that human rights discourse is both reproduced and transformed through the everyday workings of the Defensoría. Each new resolution enacted by the Agency, each new intervention on a case (actuaciones) simultaneously reinforces and transforms the existing legal regime on press freedom and communication rights. As we have seen, the Defensoría’s interventions on a given case are structured by relatively standardised elements: specific ways of communicating with the parties, a limited range of possible ‘reparations’, and a double temporal logic, by which the management of each case simultaneously aims at addressing the concerns of individual claimants and setting standards that are long term-oriented and replicable. In doing so, the Defensoría has been
successful in creating new forms of governing harmful speech while attempting to transform ‘structural patterns’ of violence. Still, journalists, media producers and citizens establish various degrees of (il)legitimacy and (di)satisfaction by appealing to competing views of freedom of expression, ‘structural violence’ and the role of the state. Such representations are central to the ongoing construction of the human right to communication in Argentina.

Throughout this chapter I have described the debates around the Audio-visual Communication Services Act and the working strategies developed by the Defensoría as part of the implementation of the reforms. Although the Defensoría is still a relatively new agency it is possible to highlight some of the main strategies of intervention that provide an innovative response to the challenges of regulating hate speech. In the first place, the Agency advances a rather pragmatic and flexible line of work, one that displaces the regulation of discriminatory content from a binary format of “victim – victimizer”. On the contrary, the Agency focuses on a set of activities that are long-term oriented and polycentric, seeking to intervene over structural patterns and the conditions of production of hate speech discourses rather than sanctioning individual media actors. In the second place, the Defensoría promotes a dialogic approach to conflict resolution, concerned with consensus-building and participative standard setting which is fundamentally grounded on a pedagogic long-term strategy.
CHAPTER VIII
CONCLUSION

In following the debates around the ACS Act, this thesis has shown the multiple ways in which human rights discourses are performed, simultaneously reenacted and transformed, in Argentina. In doing so, this study contributes to the growing body of ethnographic and cultural studies of human rights that examine how the abstract ideals enshrined in human rights documents are put to work in specific political and cultural settings. Drawing on critical legal studies, political anthropology and performativity theory, the empirical chapters of this thesis have sought to reveal how experts, activists and public officers engage with human rights discourses in Argentina. In other words, the thesis provides a critical account of how human rights are “remade in the vernacular” (Sally Merry, 2006, p. 1).

The central goal of the thesis has been to understand how human rights shape, and are shaped by, the political disputes and debates around the Audio-Visual Communication Services Act. Grounded on a multisited ethnography, the research has answered this question by examining different aspects of the imbrications between human rights and politics in Argentina. The empirical chapters of the thesis focused on key moments in the trajectory of the ACS Act. Chapter IV examined how the ACS Act participates on a broader imaginary about human rights and political activism in Argentina. Drawing on the notion of ‘aesthetic scenes’ (Sliwinski, 2011), this chapter showed how human rights ideas are disseminated through the circulation of various cultural forms, including human rights reports (such as the report *Nunca Más*), memorial projects (the Tiles for Memory) and political events (such as the presidential *cadenas nacionales*). In examining these aesthetic scenes, the chapter showed how human rights also involve a powerful
emotional and aesthetic component. Affect and aesthetics, I argued, are crucial to the ways human rights are imagined and shared in Argentina.

Chapter V examined how experts, activists and public officers mobilised and engaged with the legal-technical language of human rights. I argued that the human rights actors who campaigned for the ACS Act favoured a distinctive legal approach, one concerned with the transformation of structural patterns of violence and inequality. The chapter also addressed the question of how activists, experts and public officers conceive of and participate in processes of state formation when articulating human rights claims. I showed that, in formulating the claim for a new media regulation, these actors challenged traditional notions of the state, civil society and human rights activism.

One of the effects of the expansion of human rights regimes in Argentina, and elsewhere, has been the “judicialisation of politics”. In Chapter VI of the thesis I explored this issue by focusing on how the disputes around the ACS Act were taken to the judicial terrain. I examined in detail the formal, performative and technical aspects of the public hearings held at the Argentinean Supreme Court of Justice. The chapter emphasised the performative potential of human rights during these public hearings and the ways in which they were staged for a wider television audience.

Finally, Chapter VII of the thesis focused on the Defensoría (Ombudsman’s Office for Television and Radio Audiences). By focusing on the institutional narrative and working strategies of this state agency, the chapter highlights the processual character of human rights. The argument is that, rather than merely ‘adopting’ and implementing transnational standards on human rights, the Defensoría actively contributes to the creation of human rights strategies and new forms of government in Argentina.
The key contribution of the thesis is offering an ethnographic analysis on the politics of human rights in Argentina. Crucially, the thesis makes a counterpoint to a widespread argument underlying academic debates which suggests that human rights have had ‘depoliticising’ effects (Allen, 2013; Asad, 2003; Barnett, 2013; Brown, 2004; Comaroff & Comaroff, 2009; Dezalay & Garth, 2006; Douzinas, 2000; Guilhot, 2008; Moyn, 2010; Whyte, 2017). Scholarship in this vein frequently portray human rights as part of highly bureaucratised regimes of expertise and law. Although globally extended, human rights are often seen as increasingly disassociated from the aspirations, concerns and needs of grassroots activists and social movements. In her ethnographic research of human rights in Palestine, for example, Lori Allen examines “what happens—to people, their aspirations and their trajectories; to politics in its institutionalised ad hoc forms; and to ideas about the human rights system itself—when human rights work is disarticulated from a broader political vision and national project” (2013, p. 69).

The core argument of this thesis is that human rights in Argentina are mobilised in explicitly political terms and are often articulated as part of a broader discourse of social justice. More specifically, I suggest, human rights constitute a “nodal point” for the articulation of a populist project that sought to redefine the limits of democratic politics in Argentina. As I show throughout this thesis, such project was not exempt of tensions, ambiguities and contradictions.
Human Rights, Populist Politics and the Limits of Liberalism

The ultimate goal of democratic politics, therefore, is not to eradicate power per se, but to multiply the spaces in which power relations are open to democratic contestation.\(^{105}\)

*Chantal Mouffe, El Retorno de lo Político* (1999, p. 25, my translation)

In his classic study of Peronism, Daniel James recounts a telling anecdote on how Peronist workers engaged with the symbols of liberalism. When a journalist asked workers in 1945 whether they were worried about the possibility of losing their freedom of speech if Juan Perón were elected, the workers replied, “freedom of speech is to do with you people. We never had it” (James, 1993, p. 17). More than 70 years later, these words continue to be timely in Argentina. As I have shown throughout this study, the human rights experts, public officers and activists who campaigned for the ACS Act were driven by the conviction that “the paradigm of freedom was not enough” to ensure equal conditions of access and participation in media circuits (Néstor Busso, 2010, p. 307). To the “paradigm of freedom”, my informants opposed the “paradigm of rights” which assumes that “it is essential the action of the states in ensuring the rights to communication, the right to information and freedom of expression” (p. 308).

Human rights actors in Argentina expressed a shared scepticism towards the formal principles of liberalism, which recognises a formal equality of rights to everyone but neglects the real conditions under which such rights are meant to be exercised. In the words of Graciana Peñaafort, one of the key contributors to the development of the ACS Act,

“...The classical liberal view of freedom of expression argues that the best legislation is the one unwritten. This view says that freedom of expression is an individual right, therefore, the State must refrain

\(^{105}\) This assertion was not present in the original version of the book, published in English in 1993, *The Return of the Political*. I have included a translation of the Spanish version, *El Retorno de lo Político* (1999).
from intervening... That idea is based on a false premise: the idea that we are all equal before the law. And it is pretty clear to me that we are not in equal conditions before the law. If you are [the then major of Buenos Aires] Mauricio Macri, you have the resources to publish your opinion wherever you want, you have the means to own media companies and make your voice heard... Now, if you are [the leader of unemployed movements] Luis D’Elia, your best options to be heard are occupying a public square or interrupting the traffic. Evidently, we are not equal. Therefore, it is a lie that the best law is the one unwritten. I love the expression of (Argentinean Peronist writer] Scalabrini Ortiz: law-makers must legislate in favour of the weakest, because the strongest have their own law: their strength and power. So, that gives you a very clear ideological position. We believed that a new law was necessary” (Interview with Graciana Peñafort, August 2014).

Experts, activists and public officers in Argentina struggled to articulate a counter-hegemonic understanding of politics and human rights that does not depend on the formal prescriptions of liberalism. And yet, liberalism remains a powerful normative discourse in Argentina and the Latin American region. Attempts to explore alternative frameworks to liberal democracy raise serious political challenges and ethical dilemmas. As Wendy Brown observes,

“we criticised liberal democracy not only for its hypocrisy and ideological trickery but also for its institutional and rhetorical embedding of bourgeois, white, masculinist and heterosexual subordination at the heart of humanism . . . still, liberalism, as Gayatri Spivak once wrote in a very different context, is also that which one ‘cannot not want’ (given the other historical possibilities, given the current historical meaning of its deprivation)” (2003, p. 33).

The Audio-Visual Communication Services Act has been a bold defence of human rights’ emancipatory potential and, crucially, it has contributed to push forward the rights agenda beyond (neo)liberal ideologies. As Benjamin Arditi suggests, “Democracy, does not stop at the gates of its liberal incarnation” (2008, p. 73). This study has sought to reveal the challenges and ambiguities that human rights activists, experts and public officers have faced in pursuing a postliberal substantive democracy in Argentina.
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