

The Search for the Truth Before the Courts

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Between 1976 and 1983 Argentina experienced the most terrible military dictatorship of its history. On March 24, 1976, the military overthrew the constitutional president, María Estela Martínez de Perón, and formed a government junta that included the heads of the army, the air force, and the navy. The military had played a role in Argentina's history since the country's beginnings; it had always been a political player, and had been accepted in public opinion as the guardian of the nation's founding principles. Yet its crucial role on Argentina's political scene had led to permanent institutional instability: since 1930, the military had overthrown six constitutional governments.¹ The power of the armed forces had distorted their function.

The military had intruded repeatedly in government, but the 1976 coup was different. The program was not in this case limited to "reestablishing" social and economic order, as on previous occasions. Rather, the goals were radical changes in Argentine society. Beyond this, too, the salient characteristic of the new military dictatorship was the creation and implementation of a system of state terrorism. Since the early 1970s, Argentina had faced serious internal social conflict, with various armed political organizations practicing the use of direct force. Even before the coup, the constitutional government had responded through the secret use of military and para-police bodies to suppress political opposition. When the armed forces took power, one of their principal and immediate goals was to dismantle all means of political opposition and the economic, human, cultural, and social resources that supported it.

The junta dissolved the congress and assumed legislative functions, replacing nearly all of the judges and abolishing most of the individual rights established by the constitution. Although the military constructed a "legal" framework to allow them to suppress the population, they also established a system of secret plans and orders, circumventing judicial control. The clandestine, underground nature of the repression helped it both to evade international and Vatican diplomacy and to avoid conflict with the Argentine Catholic Church. It was also very effective, for even as it eluded control, it generated terror, paralyzing the defensive responses of the public.²

To carry out the repression, more than 600 clandestine holding centers were set up, the majority of them in offices of the military or police. Here people were detained after illegal arrest, that is, arrest without a court order. The kidnappings took place in homes, workplaces, on the street, in places of study. Many people were kidnapped along with young children or babies, and a large number of pregnant women were also arrested. The detainees were subject to extensive and repeated torture sessions in which the most aberrant methods were used to obtain information. Meanwhile the clandestine nature of the process made it possible to deny that prisoners were being held at all, and to avoid judicial investigation.

The whereabouts of most of the missing is still unknown. The only certainty is that the final decision as to their fate rested with the forces under whose orders they had been arrested. The most common way of disposing of them was to throw them, still living, into the sea. This method was favored because the military wanted to avoid opposition from the international community, and so opted against the responsibility of execution by firing squad or the carrying out of death sentences by some other means. Instead they were permanently "disappeared." At least 30,000 people were eliminated.

More than 500 children of the disappeared, some of them arrested with their parents, others born in prison, were illegally handed over to military families who registered them as their own. Even today, only seventy-four of these children have been recovered by their original families.

The system involved a systematic, widespread violation of basic human rights. The aim was to change the social, political, economic, and cultural structure of the country and to guarantee the uncontested power of the armed forces.³ The clandestine, repressive doctrine of the dictatorship took on the character of state terrorism. For Hannah Arendt in *The Origins of Totalitarianism*, a terrorist state is one that, deliberately and as a political tool, clandestinely uses its power to threaten, kidnap, assassinate, torture, place bombs, wreak havoc, commit arson, and so on, with the complicity of official bodies and leaving its citizens completely defenseless.⁴

This was the situation in Argentina from 1976 until 1983.

Opposition and Accusations of Serious Human-Rights Violations

Indifference and confusion predominated in the response of the Argentine public. Individual relatives of the victims tried to report the disappearances through various channels, all in vain. Visits to civil or military authorities to request information, interviews with religious authorities, police and judicial reports — all were fruitless. More than 80,000 requests of habeas corpus were made during these years; most of them were rejected or filed away uninvestigated.

Human-rights organizations played an important role in recording the accusations and establishing systems for dealing with them — sponsoring legal action, receiving and compiling the testimonies of people who had been freed from the clandestine detention centers, documenting human-rights violations. The recognition that some groups achieved outside Argentina — the Mothers of the Plaza de Mayo, for example — was of major significance. These groups became symbols of the fight against authoritarian repression. International solidarity also played an important role. Missions from various international organizations were present in Argentina to put pressure on the Argentine military, to take reports from hundreds of people, and to let the world know what was happening. Outside help and Argentine use of international forums for the protection of human rights, such as the Organization of American States and the United Nations, supported opposition to the dictatorship.

The Recovery of Democracy

The military dictatorship did not fall because of public pressure, political opposition, or the activity of national or international human-rights organizations: its own mistakes were its downfall. The transition to democracy came through the crisis raging within the armed forces and the failed economic policy, problems aggravated by the war in the Falkland Islands.⁵ These were what forced the military to hold elections and kept it from setting the conditions in the transition to democracy. It tried in vain to negotiate immunity for the crimes it had committed, and before stepping down it passed what was called the "National Pacification" law,⁶ which amnestied all the crimes "committed in the struggle against terrorism."

Democratic elections were held in Argentina on October 30, 1983, and Rúl Alfonsín, the Radical Civic Union candidate, was elected president. His campaign had featured a promise to put military personnel responsible for crimes against human dignity on trial. One of the first measures taken by the federal congress of the new government was an annulment of the amnesty law. Almost at the same

time, the executive created the Comisión Nacional Sobre la Desaparición de Personas (CONADEP, the national commission for the "disappeared"). Designed to examine the cases of the many who had gone missing under the dictatorship, the commission was authorized to research the methods of state terrorism, process accusations and proof, and learn the whereabouts of the disappeared and of the children who had been taken from their parents.⁷

In less than a year, CONADEP received 8,960 reports of people who had gone missing, organized a database of 7,380 files documenting these cases, sent out more than 1,300 requests for police and legal records, located 340 clandestine detention centers, listed 1,300 persons who had been seen in these centers and were now missing, investigated cemeteries and mass graves where unidentified corpses were buried on military orders, and identified 80 cases to be investigated and tried. CONADEP also identified 1,351 people involved in the repression, although it was not authorized to release their names. Its greatest achievement was the report *Nunca más* (Never again), a strong condemnation of the repression.⁸ The report confirmed the state's methods and terrorist practices: kidnapping, torture, clandestine arrest, the murder of defenseless prisoners. The example of CONADEP demonstrates the ability of democratic governments to investigate and shed light on what was intended to remain secret.

The push to put the members of the junta on trial was another strategy that the democratic government undertook by decree of the executive.⁹ The government wanted to punish human-rights violations, but it also sought to guarantee the stability of the new democracy by incorporating the military into the democratic structure. As a result, the trials were initially to be the responsibility of the armed forces, with the civil justice system reviewing the sentences. The military courts postponed taking action, however, and civilian judges stepped in. On December 9, 1985, after a nine-month investigation, the justice system announced that it had established the existence of a deliberate plan to carry out a clandestine policy of repression, and that this policy had been the main weapon of the dictatorship in its campaign to eliminate subversion. As a result, five senior officers of the junta were sentenced for crimes of homicide, illegal deprivation of freedom, torture, and other offenses. Four of the officers were to be excused from serving their sentences, because the judges found the evidence against them insufficient or inconclusive. Even so, the trial was a milestone in Argentina's recent history.

Meanwhile, around 2,000 cases were brought against lower-ranking personnel who were still on active duty. The trials caused great uneasiness in the military, which began to put pressure on the government, inducing it to pass a law preventing the prosecution of some of the accused by reducing the statute of limitations to sixty days. Anyone who had not been indicted within that period could not be prosecuted in the future. This law, enacted at the very end of 1986, was known as the "Final Point" law.¹⁰ Having passed it, the government expected that only a small number of military personnel would be brought to justice.

Yet the filing of reports only grew, and thanks to the work of certain judges, many military cases began to be processed. Accordingly, before long, the democratic government faced an open crisis in which the military demanded an amnesty. The result was the "Duty of Obedience" law,¹¹ which obliged prosecuting judges to presume that the military personnel on trial had been acting under orders. This presumption, which was to be applied regardless of any evidence to the contrary, led to members of the military being relieved from having to serve prison terms.

Both of these laws were applied by judges and recognized by the Supreme Court. The consequence was that the prosecution of crimes of state terrorism has been paralyzed for fifteen years. Impunity for serious violations of human rights during this period threatened to be restored in 1989 and 1990,

when Alfonsín's successor as president, Carlos Menem, pardoned the very commanding officers who had been sentenced in 1985. Through these laws and decrees of impunity, the family members of victims of the repression have been denied access to justice. A number of international human-rights organizations have determined that the laws of impunity are incompatible with international treaties that Argentina has ratified.

The laws of impunity were in effect for more than ten years, and were finally abolished by the National Congress on March 24, 1998, twenty-two years after the coup. The entire political leadership immediately pointed out that the repeal was merely symbolic since the laws had already been put into effect. Nevertheless, human-rights organizations interpreted that symbolic meaning as a step toward justice. Its effects will be analyzed later.

The Right to the Truth

An impasse in the social debate about the past developed after the rules of impunity were passed. Nearly ten years later, in 1995, a sailor named Adolfo Scilingo publicly confessed to his involvement in state terrorism: he said that he had thrown drugged, naked, but living prisoners from navy warplanes into the Rio de la Plata. This confession reopened the debate.

For the first time a member of the military itself had explained the methods it had used. Different social sectors reacted in different ways, but the state institutions, as usual, kept silent, acting only to silence the remorseful sailor. Scilingo's story, however, revived the public's need to know what happened. The CONADEP report had been unable to answer the requests of individuals for information about what had happened to their loved ones — what detention centers they had been held in, who had been responsible for their disappearance, their final fate, the location of their remains. The justice system, too, had been unable to satisfy the right to know. Now, in addition to these claims by families and individuals, a strong social desire began to be expressed addressing the need to build collective memory, to construct a sense of the past that, through critical reflection on what had happened under the junta, would move the society forward into the future.

The individual complaints had to be processed institutionally, and the system chosen for this was the judicial one. The judges had investigative power, and the system allowed the families the possibility of active participation in propelling the proceedings forward. The right to the truth was considered a collective right, and, as such, characteristic of democratic societies. Thus the "Right to the Truth Trials" were begun.

Although it was impossible to sentence all of the guilty, it was possible to gain detailed information on the methods that the military dictatorship had used. Exhaustive research was done. The legal action taken was based on international codes of human rights, on the right to the truth, and, as part of this right, on the right to proper mourning and to the cultural heritage that clandestine proceedings had denied. The Argentine state was asked to comply with international obligations based on the doctrines of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. These official bodies recognize both the rights of relatives to know where the missing lie and the obligation of the state to investigate human-rights violations until the whole truth has been revealed.

In the particular case of abduction, the investigation required a redress that included the uncovering of the facts and their communication to the victims' relatives. Since abduction had been a state tool to disturb and confuse relatives and to deceive the public and the world, the truth of what had hap-

pened was indispensable. The state had to make all existing information available and to supply the means to reach the truth.

Attempts were made to get local courts to recognize this right to the truth, which had previously been the realm of international systems of justice. This involved a reconception of preexisting state duties and individual rights. The Argentine legal system had included the right to the truth among the rights born of the people's sovereignty and of the republican government specified in the Constitution. The argument was made, then, that the state could not pretend to be ignorant of its obligation to investigate. The right to the truth involved the right to answers from the state; everyone was entitled to ask the state to tell them what they had a right to know; the right to the truth was by extension an aspect of the right to justice. There was also a communal aspect to the right to the truth: the society had the right to know its past, as, among other things, a safeguard of its future. It had a right to know its institutions, its leaders, and events that had taken place within it if it was to find a way to solidify democracy through knowledge of its successes and failures.

As part of the right to the truth, the judicial petitions included the right to mourn. This right was seen as extending to cases of missing persons whose bodies had never been found. Recovery of the body, then, or at least information as to its fate, was part of the truth to be revealed.

The bases for claiming these rights derived from both internal, national law and international human-rights law. Internationally, the Inter-American Commission on Human Rights had been stressing the obligation to investigate Argentina's missing-persons cases since 1979, when its members visited the country and made the following recommendations:

The Commission holds that the problem of the disappeared is one of the gravest faced by the Republic of Argentina in the field of human rights. Therefore the Commission recommends the following:

- a) That detailed reports be made concerning the circumstances of the the disappeared, by which shall be understood those apprehended in operations the circumstances and character of which imply the use of public force. ...
- c) That appropriate measures be taken to ensure that proceedings leading to the disappearance of persons do not continue. In this regard, it has come to the Commission's attention that there have been recent cases of this nature, which must be cleared up as soon as possible along with the others.¹²

In a report that the Commission released after the passing of the laws of impunity, it recommended "the adoption of the necessary measures to clear up the facts and identify those responsible for the human-rights violations that took place during the last military dictatorship."¹³

In the judicial realm, the Inter-American Court of Human Rights made a broad assertion of the state's duty to investigate in July 1988, in a case involving forcible disappearances in Honduras. The Court stated:

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within

its jurisdiction. ... The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective.¹⁴

In other words, the state must resort to whatever means it has at its disposal to investigate human-rights violations, and it must fulfill this duty on its own rather than depending on private initiative. The Court continued,

The duty to investigate facts of this type continues as long as there is uncertainty about the fate of the person who has disappeared. Even in the hypothetical case that those individually responsible for crimes of this type cannot be legally punished under certain circumstances, the State is obligated to use the means at its disposal to inform the relatives of the fate of the victims and, if they have been killed, the location of their remains.¹⁵

These are the judicial bases on which the right to truth is based in the international order.

To put this right into practice in Argentina, the faculties of judicial power for gathering information were indispensable if the international commitment to investigate and make amends for the consequences of human-rights violations was to be fulfilled. Legal impunity was in any case to be construed as nonpunishment, but was made even worse if the perpetrators could not be identified and the truth of what had happened was unknown. This is why judicial involvement had not come to an end; there were still rights to be protected.

Responses to Justice

On April 20, 1995, the judges passed a resolution stating that "public interest demands the determination of the truth in court (which is the way to achieve the highest values: truth and justice)," and that this demand should be safeguarded for its particular relevance in criminal prosecutions. The resolution acknowledged the rights to the truth and to mourning as integral parts of international human rights. The judges demonstrated their acceptance of this principle by quoting a sentence from the original petition: "Those who deny us the right to bury our dead are denying our humanity."¹⁶ There is now case law in place that protects the right to the truth. Important measures have been taken toward that end, such as calling the main perpetrators of state terrorism back to the stand to testify. In an amicable resolution accord signed before the Inter-American Commission on Human Rights in 1999, the state has even committed itself to guaranteeing the rights of victims and their relatives to the truth.

The fight for the right to the truth does not exclude a struggle for justice, and in fact the "Duty of Obedience" and "Final Point" laws have now been repealed. On March 6, 2001, twenty-five years after the coup, a judge annulled the impunity laws as conflicting with the Argentine Constitution, the American Declaration of Rights and Duties of Man, the American Convention on Human Rights, the International Civil and Political Rights Pact, and the principles and objectives of the Convention Against Torture. This ruling, which seemed impossible just a few years ago, was the result of a charge made by the Centro de Estudios Legales y Sociales (CELS — the Center for legal and social studies), the organization to which I belong. The decision was confirmed by the Court of Appeals on November 9, 2001. It signifies an important move forward on the road to justice and also truth, since both go hand in hand. It is important to say that the Argentine state once again has the opportunity to guarantee justice, condemn crimes against humanity, and prevent their recurrence.

Conclusions

The Argentine experience demonstrates the use of nearly every tool we have in reckoning with the past: truth commissions, trials, amnesties, pardons, broad automatic amnesties, truth trials, trials abroad that bring universal jurisdiction to bear, economic compensation, and, twenty-five years after the fact, the reactivation of justice in the national courts through judicial nullification of amnesty. Since the adoption and implementation of each of these measures involved intense debate on the political scene, Argentina's traumatic past could not be resolved by automatically applying formulas based on theory. At the same time, however, theoretical plans were essential guides, for the state, for the victims and their relatives, and for civilian society.

The social and institutional process relating to this period is not over, nor can closure be one-sided. The lucid, active, imaginative, and obstinate participation of the human-rights movement, whose fight knew no territorial, legal, or temporal boundaries, has been essential. This movement and its particular characteristics are also the legacy of the dictatorship that inversely gave rise, for the first time in Argentina, to independent organizations with the staying power to contribute effectively to the consolidation of the institutional system, constituting a strong safeguard against a recurrence of these events. National appreciation of the progress in human-rights protection internationally proved an indispensable tool in the national human-rights movement's lawsuits. The knowledge that not only written law but inalienable social rights were at stake helped us to recover from our reversals and persevere.

There can be no mistake in the final conclusion: in Argentina, the progress we have made in this field in recent years we have made in spite of the state. The efforts of civilians who demanded maximum performance from the state in the reckoning process were a decisive factor. The outcome of the process is uncertain but the petition is undeniable.

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References

- 1 Those coups took place in 1930, 1943, 1955, 1962, 1966, and, most recently, in 1976.
- 2 See Carlos Acuña and Catalina Smulovitz, "Militares en la Transición Argentina: del gobierno a la subordinación constitucional," in Carlos Acuña et al., Juicio, castigos y memoria. Derechos humanos y justicia en la política argentina (Buenos Aires: Ed. Nueva Visión, 1995), p. 29.
- 3 This is the opinion of Emilio Mignone, founder of the Centro de Estudios Legales y Sociales. See Mignone, Derechos humanos y sociedad (Buenos Aires: Ediciones del Pensamiento Nacional, 1991), p. 54.
- 4 Hannah Arendt, The Origins of Totalitarianism (New York: Harcourt, Brace, 1951).

- 5** Historically Argentina has claimed sovereignty over the Falkland Islands, in the South Atlantic, but they have long been ruled by Great Britain. In 1982, General Leopoldo Galtieri led an invasion of the islands to fight British rule. His resounding defeat was the beginning of the end for the regime.
- 6** Law 22.924, dated September 23, 1983.
- 7** Law 187/83, dated December 15, 1983.
- 8** Nunca más was presented to the president on September 20, 1984.
- 9** Decree 158/83, dated December 13, 1983, in which the nation's president ordered that the military courts conduct the hearing of a penal process against the military leaders.
- 10** Law 23.492, "Final Point," dated December 24, 1986.
- 11** Law 23.521, "Determination of the Extent of the Duty of Obedience," dated June 8, 1987.
- 12** Inter-American Commission on Human Rights, report on the Argentine human rights situation adopted by the Commission at its 667th meeting, held on April 11, 1980, p. 7.
- 13** Report 28/92 Argentina, dated October 2, 1992. The same conclusion was arrived at in relation to Uruguay in Report 29/92, recommendation no. 3.
- 14** "Velásquez Rodríguez" case, sentence of July 29, 1988, Series C, no. 4, paragraphs 176-77, Inter-American Court of Human Rights.
- 15** Ibid., paragraph 181.
- 16** Federal Court of Appeals, April 20, 1995, case no. 761.