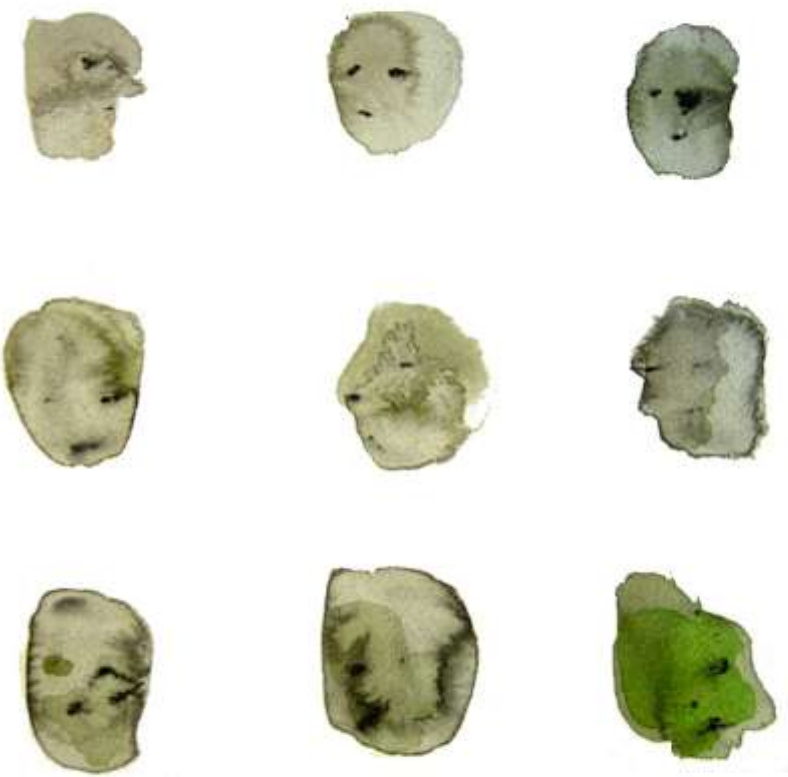
Claudia Hilb & Philippe-Joseph Salazar



New beginnings:
Argentina & South Africa

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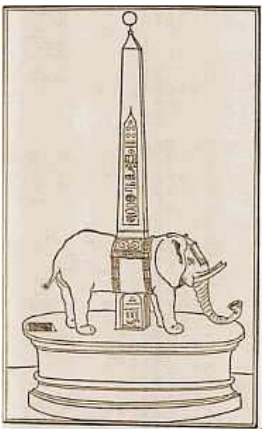
THE ELEPHANT AND THE OBELISK, II
a Special Series and an Imprint of the African Yearbook of Rhetoric



NEW BEGINNINGS: ARGENTINA & SOUTH AFRICA

Edited by Claudia Hilb & Philippe-Joseph Salazar

AfricaRhetoric Publishing

2012

This volume is a book issue of the African Yearbook of Rhetoric, Vol. 3 No. 2, 2012
in the Special Series: The Elephant and the Obelisk, II

The title of this book is:
NEW BEGINNINGS:
ARGENTINA & SOUTH AFRICA

Original cover art "heads" by Toni Bico.
www.tonibico.com

Copy-edited by: Brett Syndercombe.

Printed by:
The INCWADI Press
PO Box 293, Newlands, 7725
Cape Town
Republic of South Africa

Publisher:
AfricaRhetoric Publishing
PO Box 677, Melkbosstrand, 7437
Cape Town
Republic of South Africa
africarhetoric@rhetoricafrica.org

ISBN 978-0-9870334-0-6
ISSN 2220-2188

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EDITORS' FOREWORD

Claudia Hilb & Philippe-Joseph Salazar

This volume marks the mid-point of a collaborative work by two groups of researchers in political rhetoric, at the University of Buenos Aires and at the University of Cape Town (funded by NRF, project UID 75930). Its theoretical import and civic object are to reflect on "new beginnings" — how Argentina and South Africa conceived and received public arguments of justice or vengeance, in reconciliation or discord, with equanimity or trauma, in order to "begin anew" after dictatorship and apartheid.

This volume is a "report" as it responds to a practical purpose: we needed to take stock of the work already done and, by reporting on what had been achieved, to prepare for the next stage of research. This is a "work in progress" in the best, perhaps only true sense of the expression. Put to good, collective and reflective use in a workshop held in Buenos Aires, this volume is indeed a blueprint for research on "new beginnings".

NEW BEGINNINGS: ARGENTINA & SOUTH AFRICA brings together some of the best political philosophers in Latin America, junior researchers in political discourse, and the expertise of the Centre for Rhetoric Studies, in Cape Town. In the multi-lingual tradition of AfricaRhetoric Publishing most chapters are in English but some are written in Spanish.

NOT ONE ANSWER?

By Martin Böhmer

Often discussions about massive human rights violations revolve around a single question: How should a country, any country, come to terms with a past event of radical evil? In this brief essay I argue that the question thus articulated is impossible to answer reasonably, *i.e.* providing enough details and nuances in order to organise an overall public policy response adequate for any country at any juncture of its history.

PUNISHMENT FOR ALL?

One such answer is pushed from the new institutions of international law such as the International Criminal Court: justice in the form of criminal punishment. In accordance with such institutions, if a country fails to redress an event of radical evil, the international community is bound to prosecute the wrongdoers and punish them. This answer has a long and venerable tradition starting with the Nuremberg trials and it seems the most natural one, "a crime has to be prosecuted, tried and punished".[1]

Nevertheless, and even though since the Holocaust the universal conscience became more sensitive to events of radical evil and multiple international treaties and constitutions regulated generously and judges enforced strongly human rights rules to limit popular will, despite judicial review being extended to countries that had rejected it, thus bringing to an end years of legislative (or executive) supremacy, and regardless of the fact that massive human rights violations still happen, seldom was a perpetrator prosecuted, tried and punished.[2]

The situation is not surprising. Watching Eichmann, Hannah Arendt admitted the powerlessness produced by a banal perpetrator of radical

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[1] Diane Orentlicher, "Settling accounts: The duty to punish human rights violations of a prior regime", *The Yale Law Journal* 100, 8 (1991): 2 537.
[2] See Carlos Santiago Nino, *Radical evil on trial* (Yale University Press, 1996).

evil: if, in order to organise massive, systematic violations of human rights an accordingly massive network of willing, though banal, perpetrators is needed, who to punish? Every one of the hundreds of thousands? And how to punish, what kind of punishment is fitting for a literally unimaginable string of horrifying deeds? The famous end of her report (since you do not want to share the earth with us we cannot be expected to want to share the earth with you) attests to the intellectual despair in the lack of an answer.[3]

PUNISHMENT

The justification of criminal punishment is a traditional example of the opposition between two theories of metaethics: deontologism and consequentialism. The former justifies punishment when it is the response in the form of a proportional evil inflicted on the wrongdoer to the evil she committed against her victim. In a Kantian fashion the perpetrator deserves to be punished and, in order not to use him as a means to society's ends, punishment has to be inflicted albeit in a proportional way. Retribution is deserved; otherwise her dignity would be violated.

Utilitarianism is the consequentialist theory that has developed a justification of punishment based on deterrence. In this case, punishment is inflicted in order for the perpetrator (or others, society at large) not to do it again. In this case both the sanction inflicted and the number of perpetrators punished depends on their efficiency in achieving the desired goal: when balanced the evil done to the perpetrator (the sanction) with the good done to the community (the crimes deterred) the latter has to outweigh the former.

Both have problems, and more so in the context of radical evil. Retribution, the theory behind Arendt's perplexity, has the problems of proportionality (what should be done to someone who is responsible

[3] See Hannah Arendt, *Eichman in Jerusalem, A report on the banality of evil* (London: Penguin Books, 1994).

for the killings of millions?), banality (what kind of *mens rea* is required from an autonomous perpetrator?), scope (who, out of the thousands responsible, should receive due punishment?), and aim (are we punishing deeds or the particular evil will of the wrongdoer? Are we punishing her for what she is rather than for what she did?). Retribution seems too close to vengeance. Deterrence, on the other hand, has the problems of a public policy of punishment using the perpetrator as a mean to society's aspirations, and thus seems contradictory to the goal of putting an end to the vicious circle of treating human beings in an instrumental way. Deterrence seems too close to slavery.

Why then is it so natural to think about criminal punishment in the context of everyday crimes, heinous as they may be, and so difficult in the context of radical evil? Some answers were already mentioned: the radicalism of its evilness, the amount of people responsible, the proportionality problem, the contradiction between goals and principles. But on top of all that, societies that experienced an event of radical evil tend to have their institutions dismantled and their civil societies in moral disarray. Criminal punishment assumes too much institutionality: a working Judiciary, a system of legal defense, trained prosecutors, a way to publicize the decision and prisons, or a decent set of law enforcement institutions. In this sense a consequentialist approach may be what is needed, but one connected to the creation of a constitutional culture, respectful both of a democratic mandate, the restrictions of human rights and a sense of community flexible enough to sustain a plural *demos*. I will come back to this alternative later in this essay.

TRUTH

Many societies have chosen different strategies to cope with massive human rights violations. One usually endorsed is truth, the search for a neutral report on what happened. Truth, which recently became a right on its own, a right even criminally prosecutable, is also a difficult goal. It used to be regarded as a substitute for punishment, a response adequate to those societies that lack the necessary institutional devices

to prosecute the perpetrators. Nevertheless, it eventually won relevance on its own. One reason is that the search for truth is a strategy directed towards the victim, it is a way to acknowledge her loss, a way to set the record straight in the most neutral way possible.[4]

Perpetrators of massive human rights violations tend not to limit themselves to the imposition of suffering. It is usual in these events that they seek to transform social narratives: to wipe out certain doctrines, opinions, world views and to impose theirs in the belief that there is a way to create a unified world anew out of the corpses of their enemies. To counteract such an attempt and to vindicate the world that suffered under the atrocities through a criminal trial is not the best of alternatives. Trials are not about truth, they are about justice, *i.e.* they tend in the first instance to discard the possibility of an innocent to be punished, putting a disproportionate burden on the side of the prosecution and only when it succeeds is the accused is duly sanctioned. Thus, in such instances, victims (witnesses) are cross examined ferociously; their narrative is disregarded, changed for the one better suited to the occasion, their recollections doubted, their credibility questioned.

If on the contrary, for reasons I will later explore, a certain society wants to put the victims at center stage, to restitute their confidence and to send a message of acknowledgement of the evil committed against them, the community ought to listen rather than talk, to believe rather than doubt, to find rather than hide. Thus Truth Commissions were created to achieve an array of goals of which trying to set the record straight and to give back to the victims as much dignity as possible are none the less important.

But the achievement of truth is a difficult task. Proofs are hard to get, narratives are contradictory, perpetrators tend not to cooperate and the record created with such fragile instruments seems many a time a

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[4] See Martha Minow, *Between vengeance and forgiveness* (Boston, MA: Beacon Press, 1998). Her book is an excellent overview of the strategies I deal with here.

victor's story, the narrative of the winners. But even when it is more plausible to set the record straight, when the evidence is not tampered with, when there is a certain consensus about what happened and why, the drive of the endeavor could prove, once again in some instances (like in the cases of deterrence and retribution), counterproductive. In effect, a democratic society should be able to deal with plural narratives, more so in societies that live under the shadow of a past event of radical evil. The search for common ways of dealing with disagreement and conflict is key to the creation of a decent society and the idea of a single truth about the past may endanger that goal.

RECONCILIATION

Events of radical evil create individual as well as social wounds. The possibility of reconciliation between perpetrators and victims is based on the hope that the healing of one kind of wound, the individual, would help the healing of the other one, the social. Guilt, when present, is difficult to deny without pain. Shame of victimisation, on the other hand, is hard to admit even when it has nothing to do with the person's own deeds. The effort at reconciliation tries to have people meet in that difficult space between guilt and shame. It needs from the victim a perception of the perpetrator's apology as sincere and the disclosure of an event that is now regarded as evil, as truthful. In the case of the perpetrator, reconciliation calls for the perception that the victim does not seek revenge and if she does not forgive, at least the acknowledgement of the perpetrator's effort and repentance as being close at hand.

For many people events of radical evil are also products of radical moral disagreements. Perpetrators will seldom admit any guilt and victims will seldom admit any repentance. For others, forgiveness is too close to forgetfulness, thus, the attempt at creating settings to achieve forgiveness among the actors jeopardise the efforts to keep the discussion going in order not to repeat the story again. Reconciliation is thus a too easy way out: dangerous if insincere, and dangerous if completely successful.

REPARATIONS

Sometimes, searching for ways of acknowledging the wrongdoing, societies reach out to the victims collectively, hoping to offer a way of showing common repentance. This is what happens when reparations are offered. Money, in cases of gross inequality or when there are no other alternatives at hand. Land, or scholarships, or a grave, or a monument are also means to try to repair the irreparable. These gestures have a possibility to succeed when performed in the right context, when they do not try to occupy the whole space of the scar, when they serve the purpose of showing repentance, of providing a place or an opportunity to mourn and maybe to forgive. In their collective aspect they are also a communitarian endeavor; their very existence is evidence of a collective effort to identify what happened as something that should not happen again and the suffering as something that is not deserved by the victim. The reparations, if successful, are a way to show both their own limits (their radical inappropriateness) and the common will to weave again the fabric of society. In such attempts lies their possibility and their danger: a failed attempt to repair could be regarded as a mockery, as a way to banalise the pain of the victims in trying to commensurate what is incommensurable.

DIAGNOSIS, NORMATIVE THEORIES AND PUBLIC POLICIES

Going back to where I started: this brief account of the usual responses to radical evil shows that there is no single answer, a one-size-fits-all response. The nuances of each case are way too intricate and varied, and humble any attempt at trying to provide a single, universal answer. That is the reason why we find different and multiple approaches in different countries. In what follows I will try to show that to account for these differences one has to identify in each case, a.) the diagnosis each society produced about why the events happened, b.) a normative theory of why they were wrong, and, c.) a public policy to redress the societal trends that produced the events. I am not implying here that societies are always right. They may get the diagnosis wrong, or their normative theory could be inadequate, or the

policies could be ill planned or badly enforced. My point is that these three aspects explain both the decision each country made, the differences in responses among countries and that, when coupled with a good history of their development, they may even become a source of social knowledge about how to deal with radical evil.

THE CASE OF ARGENTINA

Argentina's experience of radical evil happened in the mid 70s, only thirty years after the Holocaust and less than that after Nuremberg. A military coup d'état had taken over (once again, since this was the sixth since 1930) the democratic institutions amidst a generalised situation of political violence. The response, once the armed forces were in power, was to orchestrate a clandestine system of massive kidnappings, torture and killings under the cynical name of "disappearances". The State itself became terrorist and criminal even under the legal definitions valid at the time. The diagnosis of why it happened was contested but eventually one won the day: the problem was the breach of due process, the complete disregard for the rule of law. The families of the victims (a crucial actor: the Mothers of Plaza de Mayo) asked for the truth of their whereabouts, and for due process if they were indicted of a crime and for punishment if those who took their children away were acting unlawfully. Many were the social trends blamed for this event: the traditional disregard for rules, corporatism, a system of concentration of powers, the lack of a culture of liberal values. In any case, when the dictatorship collapsed under the pressure of an economic crisis, the defeat in the Malvinas war against Britain and crucially under the weight of the mounting internal but very importantly external pressure of human rights groups, a process of transition to democracy started.

The winning party campaigned using the Constitution as a rallying cry and promising to prosecute the perpetrators. It was not clear they would be able keep their word. After all, the military responsible for the atrocities was still in office and had fire power over the civilians. The international situation was not favorable. Most of Latin America was under dictatorships, the brief spring for human rights in the region

the Carter administration had brought from the United States of America was gone and the Cold War was in full swing under Reagan. The Berlin Wall was still standing and Mandela was still in prison. In that context and only with Nuremberg as precedent, a civil government put together a Truth Commission to gather evidence, and with that information printed in the famous *Never Again Report*, prosecuted the members of the Juntas that until recently were the owners of life, death and liberty in Argentina. In a few months five civil judges sentenced them to prison. It was in that trial that the closing remarks of the prosecution ended with the same words as the title of the Report: "Your Honors: Never again!"

After this trial (which was not the only one, hundreds of military personnel were being tried at the time) the story has highs and lows. There were violent eruptions of military pressure to limit the prosecutions that forced the hand of the government amidst difficult economic circumstances, a hazardous change of government that brought a general amnesty, the permanent pressure of human rights organisations that would eventually open up trials based on the right to truth, the search for the children of the disappeared, and then the decision to prosecute again under the justification that amnesty in these cases was unconstitutional and illegal under international law.

But I believe that the success of the struggle for the right to due process should not be evaluated against the story of the criminal prosecutions. If the diagnosis had been the lack of rule of law, the evaluation of the strategy to address this issue has to focus on whether it changed the configuration of Argentine politics in order for it to never again produce dictatorships and violations of human rights. The strategy was the following: out of the demands of the families of the victims assumed by a political party, the democratic government decides to prosecute the worst perpetrators of State sponsored massive human rights violations. It gathers a Truth Commission peopled by a group of notables which compiles evidence to be used by the prosecutors and published in a Report. The worst perpetrators are prosecuted and sentenced to several years of imprisonment. In hindsight the strategy is translated into the reconfigured Argentine politics as follows: A mobilised civil society becomes organised

collectively and collectively identifies a public policy as a violation of human rights. The organisations demand the authorities to end the violation and when they do not respond they look for alternatives. Eventually the definition of the situation (a violation of a right) is translated into legal jargon and taken to the Courts, which produce a decision that has to be enforced by the authorities and the enforcement controlled by the civil society in an endless game.

In effect, the courage of the Mothers and the human rights organisations is translated in the Argentine democracy into the hundreds of new NGOs that collectively defend plural definitions of human rights. Now we have rights where in the past there was only the common good defined by the State, even a non democratic one. The shame produced by the Report (which became a best seller) explains why social protests are not criminally prosecuted in Argentina even when there are more than three thousand street and highway blockades a year. No democratic government wishes to be equated to a dictatorship. In fact, a President had to step down when two people were killed by police in a public demonstration. The intervention of the Courts, the use of constitutional rights and of the international human rights treaties, opened up a huge locus of deliberation about the adequacy of public policies unheard of in Argentina's history before. Some truth, some punishment, some reparations, some amnesty in different proportions, changed Argentine politics. Almost thirty years have gone by and we still find unimaginable the possibility of a coup, and the ethics of human rights pervades every interstice of our political language. It is impossible to think that just one answer, one strategy, would have accomplished so much.

THE CASE OF SOUTH AFRICA

I do not dare speak about South Africa in detail, but add a comparative perspective, if Argentina's diagnosis was the lack of rule of law, then its normative theory was that the violation of due process was wrong and that criminal prosecutions were the answer; it was not South Africa's diagnosis. On the contrary, it seems that there was a thin rule of law under the apartheid regime. It was horribly unjust, but it was

regulated by law and applied by authorities and judges. South Africa's diagnosis was the lack of equal dignity, thus it was not reasonable to demand criminal prosecutions.[5] The idea was to bring dignity back to the people and that is not what victims receive under cross examination in a court of law. Dignity is re-established when people are heard intently, empathically, when all the others, but prominently the State, hears in awe and reverence the story of the sufferings, when officers of the State cry with them, when their neighbors acknowledge their loss and mourn with them, when the community tries to repair what can be repaired and attempt to establish the truth even at the cost of less due punishment. That is the reason for the existence of the Truth and Reconciliation Commission: a certain diagnosis, a certain normative belief and a public policy that puts dignity, rights and a new Constitution at center stage.

NOT ONE ANSWER? THE PLACE OF ART IN THE FACE OF NEGATIONISM

At this point I want to insist on my first proposal. [6] There is no single answer to these tragedies. But then again, is there not? All these events, no matter what strategy the communities use to counteract the pull of evil behaviour, in the end all tend to enforce one mandate: keep the conversation going. This mandate is ambiguous, though. It could assume the hope that the persistence of the story will avoid the recurrence of the event. The call to show the documentaries on the genocides or to teach their history in schools attests to such interpretation. But just the telling of the deeds will not do it. If the hope is justified, the mandate to keep the conversation going should stress the fact that it is a *conversation* we are talking about. The mandate should thus include, prominently, strategies to make people *listen* when they do not want to. To listen to stories that show the human capacity to perform radically evil deeds is not easy. Repetitions of testimonies

[5] As proposed, among many other sources in Alex Boraine, *A country unmasked. Inside South Africa's Truth and Reconciliation Commission* (New York: Oxford University Press, 2001).

[6] I owe many things to Jorge Semprún's work, on this issue; see his *Literature or Life* (New York: Penguin Books, 1998).

become boring, some renditions seem implausible, the work of skeptics erodes the trustworthiness of the victims and sheer horror or shame make people turn their heads away. The threat if it does not is silence, is to have people leaving the conversation, quitting the effort to understand each other, the effort to live with each other. The threat is to forget what we were capable of, to forget the source of our shame, to not be afraid of producing an event of radical evil again.

That is the danger of negationism: the call to exit the conversation, to leave the victims alone, to deny their story, to not listen to their truth, to not pay attention to their claims, to not listen to them as witnesses in court or with the necessary empathy of those who would like to be forgiven for not having done enough. And it is also the danger of banalisation: to pretend that every claim is a fundamental human rights claim, that anyone can become an exception as the victims of radical evil rightfully can. It is the danger to pretend that authorities can, in their ambition to govern, reclaim the sacred power of the founding exception and disrupt the rule of law under the guise of enforcing a human rights policy.[7]

Some authors have thus insisted on focusing on the performative effect of the strategy proposed. The question is thus: Will the policy make people listen? And even: will the policy produce the kind of empathic attention that will eventually produce the kind of political culture able to prevent evil? Will it have the qualities of a work of art, one that works well, one that performs well?[8]

The way to avoid this danger is to find new ways of listening intently, empathically to others, to those others that are difficult to listen to, either because they are radically different from ourselves or because their story is so extremely painful. The strategies that make us look again, listen again, no matter which discipline claims them as their own (be it law, psychology, religion or politics) are properly called art,

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[7] On the dilemmas transitions to democracies face, see Ruti Teitel, *Transitional justice* (Boston MA: Oxford University Press, 2000).

[8] See Hubert Dreyfus on Heidegger on art at: http://socrates.berkeley.edu/~hdreyfus/html/papers.html.

artifacts beautiful enough, weird enough, challenging enough to make us take another look at things we do not usually want to see, or to see again or that we have banalised as natural, thus losing its unique power to make us talk, to create communities and to honour the sacredness of the oath to never again. And that is the only answer we have imagined thus far.

MARTIN BÖHMER, *University of Buenos Aires.*

REVOLUTIONARY WAR, HUMAN RIGHTS AND INCOMPLETE TRUTHS

By Vera Carnovale

If this has not been a war, a revolutionary war, a non-conventional, atypical, but real, cruel, true war, God come and say.[1]

The defiant appeal to God made by the counsel of former commander Emilio Massera during the *Juicio a las Juntas* poorly concealed his impotence. At that time the figure of war, as making sense of the drama lived in Argentina, was being categorically rejected by the majority of society who in a climate of democratic "awakening" was discovering the massive nature of the crimes perpetrated by the State, and was fervently siding with democracy and law. Perhaps what was most irritating to those who had carried out the "fight against subversion" was the fact that within that wide spectrum one could not only find their "enemies of yesterday" — ex-militants and combatants enrolled in the revolutionary war now "posing as victims" — but also a heterogeneous chorus of political actors who not so long ago had spared no effort in reaching political agreements and setting up legal dispositions in order to "annihilate the action of subversive elements".[2] After the storm, these actors would have "washed their hands openly" [3] of all responsability for the past, and the hierarchs of the Armed Forces, "unjustly condemned", would from that moment on affirm that they were "the scapegoat" of a society that had found a way to be able to rinse itself of "collective guilt" and "silence its conscience".[4]

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1 Dr. Prats Cardona, Emilio Massera's counsel during the *Juicio a las Juntas Militares* (1985).

2 Ramón Díaz Bessone, *Guerra revolucionaria en la Argentina (1959-1978),* (Buenos Aires: Editorial Fraterna, 1986): 13.

3 *Ibid.*

4 General Jorge Rafael Videla, "Manifestación ante los jueces. Introito" (23 December 2010).

In this paper I am not going to deal with the dimension of collective responsibilities in the setting up and running of state terrorism. Instead, I would like to explore the narratives of those who implemented it — or have defended it and still vindicate it — and in so doing compare some of its core points with the more general issue of social memory and, especially, with the issue of militant memories and the place this continues to occupy in official discourse and state policies. Readers of those former narratives will have no trouble spotting a tendency to swing towards some recurring topics: the figure of war, as an explanatory key; the insistence on the exceptional features of that war; the demand for recognition for those who won, and for homage to "the forgotten dead"; the requirement of a whole or "complete truth"; the indication of a "political defeat" as the other face of the military victory; the appeal to the reconciliation of Argentinians. Along with these topics, other exculpatory arguments can be identified ("we were convoked" by the constitutional government; "we proceeded within the framework of legality"; "the methods were imposed by the enemy"), arguments articulated with negationist components, simple lies and justifications.

THE "TERRORIST AGGRESSION"

> From the mid 1960s the Argentine Republic began to suffer the aggression of terrorism which, through the use of violence, attempted to render effective a political project intending to subvert the moral and ethical values shared by the vast majority of Argentinians. This project sought to modify the conception of man and of the state of our community, conquering power through violence…

Explained the *Final Document of the Militar Junta on the War against Subversion and Terrorism,* in April 1983. The document went on to say that "terrorist aggression" had first taken the form of rural guerrilla warfare. Its first attempts had failed, but the change of the continental strategy of "international terrorism" — following its defeat in a bordering country (namely, after "Che" Guevara's death in Bolivia) — implied a shift towards urban guerrilla warfare. Thus, the nation had

begun to undergo the assailment of its most legitimate foundations, "our traditional way of life" characterised by Western and Christian values carried out by international Marxism-Leninism, who appealing to *revolutionary war* strategy, "induced many to accept criminal violence as a mode of political action". The *Final Document* then identified what it understood to be a decisive turning point:

> Starting on 25 May 1973 with the ascension of the constitutional government, the infiltration of the State apparatus, made it possible for terrorists to abandon clandestinity, and join those who had gained their freedom to start their attack on power.

The mentioning of those who "gained their freedom" is of particular importance as it would become yet another recurring topic in the "rhetorical artillery" of the Armed Forces when seeking to justify themselves. As Videla would remember years later, if thanks to the legal provisions of General Lanusse's government (1971 - 1973), on 25 May 1973 "there were about 1 500 people in preventive detention or serving a sentence respecting the due process of law"[5] the decree establishing their liberation signed that same day by the new president Hector Cámpora, and the amnesty law enacted by the National Congress shortly after, freed "all the terrorists under arrest… All of them… came out ready to kill".[6]

Even more important for the argumentative strategy of the military was that the revocation of the former criminal legislation had deprived the defenders of the attacked nation of all legal instruments:

> Strange paradox: The judicial remedy, effectively implemented by a military government to fight subversive terrorism with the means of law, was then demagogically annulled by the constitutional government which succeeded it.[7]

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[5] Videla, 2010.
[6] *Ibid.*
[7] *Ibid.*

The document held that in 1974 subversive action had entered a new phase: "the stage of selective assassinations was followed by the phase of indiscriminate terrorism, which produced victims in all sectors of society".[8] This new phase was accompanied by an increasing operational capacity of subversion, as shown by the assault on barracks and military garrisons, as well as by the settlement of a guerilla unit in the province of Tucuman.

Thus "security and order no longer existed", explained the *Final Document*, and "as a last resort" the constitutional government of Isabel Perón finally declared a state of siege in the entire country, ordering the Armed Forces to neutralize and/or destroy the terrorist hub acting in and extending from the province of Tucuman. The situation was of unprecedented gravity and did not allow for hesitation.

> It was not a situation that could be controlled by the police or the judicial institutions of the time, and so it was also understood by the constitutional government of Isabel Perón. A relentless battle was to be fought…

The defence counsel for Massera would explain during the trial.

"WE WERE CONVOKED"

It was at this crucial moment, so the story continues, that the Armed Forces were summoned by the constitutional government to deal with subversion. This appeal materialised in two resolutions: decree nº 261 dated 5 February 1975, and decree nº 2772 of 6 October, of that same year, ordered the execution of the military and security operations "in order to neutralize and/or destroy the action of the subversive elements in the entire territory of the country". It is worth quoting the extensive fragment in which, in 2010, Videla evoked that historic meeting:

[8] *Ibid.*

> In the early days of the month of October 1975, Dr. Luder, temporarily in charge of the Presidency of the Nation… convened a cabinet meeting to determine how to face the extent to which the subversive activity had spread. At that meeting we, the commanding generals, were invited to expose our points of view… I then said that, repression by the police and security forces having been carried out without achieving a restoration of order, and Justice having proved to be ineffective... the moment seemed to have come to appeal, as a last resort, to the action of the armed forces in order to fight subversive terrorism. I added that the decision to employ the Armed Forces to fulfil this task in fact implied recognizing the existence of a state of internal war, along with its aftermath; this means, the Armed Forces are organised, equipped and trained for combat, that is to make war, where you die or you kill… It should be noted that the aggressor was acting in hiding, employing a cell-like organisation which was difficult to penetrate, and that his localisation thus imposed a patient task of intelligence. I must pay tribute to the civic courage shown by Dr. Luder at that moment when, without hesitation, he chose a course of action which, while being the most risky in terms of the possible errors or excesses it could incur, would best ensure the defeat of terrorism.[9]

This tribute to the "civil courage" shown by Luder in 1975 is the flip side of the open reproach that both Videla and Prats Cardona would pose to Luder during their statements in the *Juicio a las Juntas*. In effect, called as a witness at the trial, Luder would endeavour to explain that the concept "to annihilate the action of subversion" meant putting an end to its fighting capacity, but at no point entailed the physical annihilation of the subversives. The declaration couldn't look more like a betrayal. However, careful in public not to show their resentment before such an exculpation, former commanders answered sticking to technical, military arguments. Prats Cardona thus pointed out that:

[9] *Ibid.*

> The definition of annihilation established by the regulation of military terminology, which was effective during the whole duration of the decrees concerned, consists of producing the effect of the research of physical and/or moral destruction of the enemy, usually by combat actions… As I admit I am poorly instructed in military matters, I will follow with the respect of a disciple [of] Clausewitz's thought when he maintains that unarming the enemy, forcing him to comply with our intentions, involves materially and morally breaking his will to fight, to which we should add — according to Clausewitz's famous sentence — that blood is the price of victory.[10]

In the same vein, Videla noted that Luder had fallen into a:

> Semantic interpretation of the term annihilate, failing to notice that the regulations in force at that moment accurately defined the scope of the term. What is even worse, he has forgotten… that the action of annihilation represented the most accurate interpretation of what general Perón had expressed in a letter sent to the military garrison of Azul, after the attack it had suffered. From that letter…

He added,

> I want to recover the following sentence, referring to the terrorist attackers: that the small remaining number of psychopaths must be exterminated one by one for the sake of the Republic.[11]

THE METHODS

Both the former exhortation of Perón, as well as the decrees of the constitutional government which succeeded him after his death, represented an "unprecedented challenge for the Armed Forces, since

[10] Cardona, 1985.
[11] Videla, 2010.

its organic doctrine, its structure and its deployment were built on the previsions of classic struggle",[12] and as the revolutionary war was defined, first and foremost, as an "unconventional" war which lacked legal status, not "having been previously conceptualised or recognised as a deed of war in the war codes, in spite of which, from the doctrinal point of view, the revolutionary war sets up a state of war".[13] In this kind of war, the lawyer went on, the partisans make use of entirely irregular tactics and procedures in order to achieve surprise and obtain greater results, while at the same time protecting their cunning and clandestine action.

> And here the question naturally arises: how should the attacked country respond in the absence of legal norms, in a conflict not conventionally recognised as such, but whose manifestations are unambiguous and whose consequences are disastrous? The sense of the response cannot be juridical.[14]

Carl Schmitt,[15] who identified the rise of a new theory of war — the revolutionary war — in the Spanish guerrillas who fought against the Napoleonic army, warned that given the bewilderment generated by this irregular combat, Napoleon had established the following: *For the partisans, partisan methods.* The defensive strategy of the Armed Forces was to assume a similar trend: when one of the adversaries ignores the limitations and regulations of the law of war, Prats Cardona would argue once more, "the other one has the right to proceed in the same way". In a war neither triggered nor elected by the Armed Forces, so the story continues, the scenario and the methods were imposed by the enemy.

On these methods very little — or nothing — will be said; only silence, euphemisms and open lies, which will nonetheless fail to hide the

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12 *Final Document of the Militar Junta on the War against Subversion and Terrorism.*

13 Cardona, 1985.

14 *Ibid.*

15 Carl Schmitt, *Teoría del partisano. Acotación al concepto de los político*, (Buenos Aires: Struhart & Cía., 2005).

awareness of the crimes. First of all, clandestinity is recognised and attributed to the compartimentalised structure of revolutionary organisations, and to the nature of their actions ("surprise, systematic attack"), which, it will be said, "imposed the strictest secrecy on information related to military actions".[16]

Following this line of thought one might have expected that upon the conflict's cessation this strict secrecy would be lifted; but it was not. Aside from the statements of some solitary repentants, silence, denial and lies were, from the first moments, the hallmarks of the military discourse concerning the "methods" used in the "war".

As an example, let us quote the *Final Document* :

> Many of the disappearances are a result of how terrorists operate. They change their real names and surnames, they know each other by what they call 'war names' and possess lots of falsified personal documentation… Those who decide to join terrorist organisations do so surreptitiously, abandoning their family, labour and social environment. The most typical case is: a family reports a disappearance they cannot explain... Thus, some of the 'disappeared' whose absence had been reported turned up later on carrying out terrorist actions. In other cases, the terrorists have left the country clandestinely and live abroad under false identity. Others, after going into exile, have returned to the country with a false identity… When possible, the terrorists would always withdraw the bodies of their dead from the place of a confrontation. Their corpses, as well as those of the wounded who died as a result of the action, were destroyed or secretly buried by them.

RECOGNITION AND RECONCILIATION

Along with justifications, exculpatory and negationist topics, the story

[16] *Final Document of the Militar Junta.*

told by the Armed Forces strongly emphasises a demand for social recognition, for "complete truth" and, finally, for reconciliation. Not surprisingly, these stories gain more public resonance in the contexts of the prosecution of repressors.

The *Final Document* noted:

> All of these, individual and collective, physical and spiritual, are the aftermaths of a war that we Argentinians must overcome. This will only become possible with humility and without [the] spirit of revenge, but essentially, [by] putting aside unjust partialities which only serve to bring to the surface the pain of those who, contributing to the peace of the Republic, have endured with stoic conduct the consequences of an aggression they neither caused nor deserved… Those who rendered their lives fighting the terrorist disease deserve an eternal tribute of respect and gratitude. Those who lost their lives serving in terrorist organisations and attacked the society that had nurtured them, beyond ideological differences, and unified by the condition of children of God, let them be forgiven… Reconciliation is the difficult start of an era of maturity.

Twenty years later, one of the young leaders of the Argentine Association for a Complete Memory, claimed:

> The country desperately needs reconciliation. Eternal resentment leads nowhere; it only serves to keep hatred alive, and to encourage such things to happen again. But to attain the long-awaited and unmaterialised reconciliation, it is first necessary to reach an overcoming and supra-ideological truth. For this, it is necessary to know the truth in its whole extension, this being the only possible truth. It is well known that he who says a half-truth, lies twice… But that's the way it is. If someone died as a result of the military response to war against terrorism, he will probably be declared a martyr, plaques in his honour will be discovered, and his relatives and spouses will be lavishly compensated. In *contrario sensu*, a victim killed by terrorist and/or subversive action will only be

> remembered *in rectore* and inadvertently by immediate family, and that's it. In silent pain they endure not only the anguish at the loss of a beloved one, but also the indifference and oblivion (if not the contempt) from the defenders of 'human rights'.[17]

This last fragment refers to the fact that the militant stories about the recent past seem to have won the battle in the field of social memory, successfully pulling off the imposition of a speech which was strongly condemnatory of repressors and, to a large extent, vindicatory of victims of state terrorism. In these stories and memories there is no place for the "other dead"; more importantly, as we will see, we can observe semantic displacements and/or paradigmatic shifts, concerning the significance of speeches, representations and practices supported by revolutionary organisations decades ago.

SHARED IMAGINARIES OF YESTERDAY AND MILITANT MEMORIES OF TODAY

As the *Final Document* states, during the 70s — if not before — the main armed revolutionary organisations characterised the political process as a "revolutionary war"; in other words, having discarded insurrection as a strategy for seizing power, they appealed to the Asian model of the "prolonged popular war".

It could thus be said that the imaginary of the guerilla has been filled by notions of warfare, which have boosted practices and imperatives corresponding to a culture of warriors. So mighty was the conviction that they were fighting a war, that — long before 1976 or the decrees of 1975 — the guerrillas appealed to the Geneva Conventions when denouncing the Armed Forces for ignoring war regulations or war codes.

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[17] Nicolás Márquez, *La otra parte de la verdad: La respuesta a los que han ocultado y deformado la verdad histórica sobre la década del '70 y el terrorismo* (Buenos Aires: Argentinos por la Memoria Completa, 2004): 87.

After the defeat of the guerrillas, only the right-wing spokesmen seemed to adhere to the once-shared notion. In fact, the figure of the war was abandoned by left-militant stories as an explanatory key of what had happened, only to be replaced by the notion of State terrorism or genocide. This change could not but involve the displacement of the figure of the "combatant" by the "victim", a displacement not left untouched by tensions and instrumental uses.

It is perfectly understandable that militants who were kidnapped, tortured, murdered and "disappeared", or even those who were directly executed at the time of their arrest, be considered as victims of State terrorism, but: is he who died in the attempted assault on a barracks a victim of state terrorism?

Another theme of the once-shared warrior imaginary was the appeal to the idea of parity between the contending forces. Refocusing on the *Final Document*, we read that: "The operations of [guerrillas] were acquiring a similar level to that of the regular forces". On the other side, from the perspective of the guerrilla organisations, the very notion of revolutionary war involved the construction of an army that "grows from small to big" up to the size of a regular army. Plenty of examples of representations and practices beg for the insistence on this parity.

Today, however, this notion of imaginary parity is totally dismissed by militant memories, precisely because, in ascribing to the notion of State terrorism the impossibility (conceptual, political, and legal) of the equalisation between the State forces and those of any civil society group is what primarily stands out. Moreover, the idea of parity which filled the imagery and the actions of the revolutionary organisations is explicitly fought against since, it is argued, it nurtures the so-called "theory of the two devils".

Finally, the question of the "methods" used by the military — a question which was systematically silenced in the military stories — was the main target of the allegations of the left revolutionary organisations first and of the human rights movement later. However, the undisputable illegitimacy of those methods, and their imperative

condemnation — political, ethical and legal —, blurs another problem which has received little attention: that of the "other victims".

DEBTS AND TENSIONS OF THE MILITANT MEMORIES

I must say, with identical religious sentiment, that I have also said prayers for the dead, extending them equally to all those who suffered and died, victims of subversive terrorism, as now these dead seem to have been forgotten.[18]

What will the State do with those "other forgotten victims"? What shall the place of those deaths be in a memory that attempts to be "politically correct"?

At this point, it is necessary to briefly address the reorientation of the revolutionary militancy during the military dictatorship, towards practices — mainly of denunciation — of the human rights movement. It is certain that this was not a novel occurrence: during their active life, the revolutionary organisations had fostered the constitution of organisational spaces dedicated to the defence of political prisoners. However, during the military dictatorship significant transmutations occurred — mainly in exile. First of all, the body of the political activist originally thought of as a body offered for revolutionary slaughter, came to be understood as an entity whose physical integrity should be ensured. Secondly, international positive law and its instruments came to be highly valued and used. It is therefore not surprising that the activities of denunciation before international human rights organisations would redirect old revolutionary ideology towards something closer to classic political liberalism. And, perhaps as a corollary of this reorientation, in recent years we have seen many of the former militants achieving key positions in the Argentinian State, as well as in the local and international movement of human rights.

However, we would like to stress the fact that, even with nuances, these militants keep offering a vindicatory or nostalgic reading of the armed

[18] Cardona, 1985.

experience. To put it another way, it is worth pointing out that important marks of the former ideology and experience of the revolution are still embedded in Argentinian political culture, even in spaces circumscribed by notions corresponding to the domains of law and legality.

Can those former militants, today's public servants, deal with those "other truths", with those "forgotten dead"? In other words, can it be possible to fly the flags of human rights and outline public policy in this area, while being unwilling to abandon the meaning of revolution? The twentieth-century revolutionary tradition considered it necessary to temporarily withhold supreme humanist values, and to subsume them beneath the reasons of revolution. Strictly speaking, such a suspension expressed a need as well as a promise: that of the creation of a new order of emancipation, of a new humanity. As Merleau-Ponty pointed out, humanism of the Beautiful Soul and non-violence practiced by a good conscience could no less involve passive observation of evil and complicity with the various and most oppressive forms of violence in history. And so humanism, in its rigorous attempt to come into being, turned into revolutionary violence. Revolutionary terrorism was, somehow, modern humanism carried out to its ultimate consequences.

The fact that this violence has not created new human relations, the fact that it has not achieved engagement in the actual construction of an emancipatory order, is not only its unfulfilled promise but, above all, the most tragic aspect of the revolutionary failure. A failure which compels us to look into how humanism is linked to revolution, and liberalism to the left; or, as the subject of my paper suggests, to put into question the link between truths and memories.

VERA CARNOVALE, *University of San Martín & CONICET.*

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USES AND LIMITS OF THE FIGURE OF "GENOCIDE"

By Hugo Vezzetti

I

I propose to investigate certain figures present in the discourse related to the memory and the history of the recent past in Argentina. There is a term frequently applied to the period of violence and mass crimes experienced there: "genocidal dictatorship", "Argentine genocide". My concern is not the legal or theoretical definition of the term of *genocide*, but rather its *uses* and impact on the social and historical consciousness.

Genocide is the name of a category that was coined toward the end of the Second World War by Raphael Lemkin, a Polish and Jewish lawyer. It was used to refer to the politics of the Nazi regime in eastern Europe, especially with regard to the Jews, but also to Poles and Slavic peoples in general.[1] Lemkin was concerned not only with extermination and mass murder, but also with the Nazi regime's politics regarding the long-term restructuring of national communities and groups on a demographic scale in Europe. The physical destruction of entire populations was for him as important as the destruction, over a long period, of culture, language, national sentiment and religion. In this sense, the reference was to a new crime, one that was incomparable to the massacres of towns and communities, occurrences that have been found since the very origins of Western history in Biblical and Homeric accounts.

The meaning of the term in the language of Law and the Social Sciences is known to have grown and become more generalised. First it included domestic genocide — the destruction of groups within a country — before expanding to refer to other collective crimes and violence. There are broader and more restrictive definitions of the

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[1] See Raphael Lemkin, *Axis rule in occupied Europe: Analysis, proposals for redress* (Washington, D.C.: Carnegie Endowment for International Peace, 1944): http://www.preventgenocide.org/lemkin/AxisRule1944-1.htm .

term.[2] In a work of synthesis, Adam Jones provides a historical presentation and a discussion of these uses, which ends up covering murders and massacres of very different natures. These uses include not only the most well known cases (Armenia, the Shoah, Rwanda, Kosovo) but also the terrors of Stalin, of Cambodia and of Tibet under Chinese domination. Also however, the category of genocide is discussed in terms of its application to the Allied bombings of civilian populations in German cities during World War II, the atomic bombings of Tokyo, Hiroshima and Nagasaki, slavery in the United States, massacres in Haiti (by various perpetrators) and Bolivia, North American sanctions in Iraq, right up to the terrorist attack on the World Trade Center in New York. Only a very broad acceptance of the notion of the partial or complete extermination of a "national group" (which is part of the definition of the term included in the 1948 Convention on Genocide) allows for all of these collective crimes to be considered, by one party or another, as cases of genocide.[3] There appears to be a "genocide continuum" that encompasses diverse strategies of social and cultural action, including "cultural genocide".[4]

It is facile, of course, to warn that such qualifications of genocide are historical judgments which have overflowed the limits of jurisprudence and which depend on the stance and affiliation of whoever utters them. Nearly always, genocides are crimes of others perpetrated on one's own group or community, while crimes committed by one's own group are disguised or classified differently. In academia, some have tried to come to terms with this rather arbitrary usage by adopting a broad and lax criterion in which all such cases — even incomplete attempts — are genocides. There appear to be levels of genocidal practices; what is more, in reference to civil wars and revolutions, A. Jones has gathered expressions put forth by other authors, such as

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[2] The Spanish dictionary *Diccionario de la real academia Española,* for example, adopts a broad definition: "The systematic extermination or elimination of a social group for motives of race, ethnicity, religion, politics or nationality".

[3] Adam Jones, *Genocide: A comprehensive introduction* (London: Routledge/Taylor & Francis, 2006). See Chapter 1, "The origins of genocide": http://www.genocidetext.net/.

[4] *Ibid.* 32 - 33.

"genocide by the oppressed" or "subaltern genocide" and asks if there might be genocides that are justified.[5]

II

In light of this broad and leveling usage, it is worth returning to the ideas that inspired Lemkin, as a framework for an investigation of the uses of this figure in Argentina. Briefly, what was the new entity or nucleus of the problem that Lemkin wished to indicate and categorise? It consisted of crimes committed by states or other forces that were in a position to effectively dominate communities or groups. The focus was on the question of nationalities and the domination of them by States, within the context of recent European history, where the problem had emerged very strongly, first in the various national and territorial restructurings that occurred after World War I, then with the Nazi agenda and finally with the Soviet domination of eastern European nationalities. The affected group or community under such policies (which, as has been said, had long-term goals that went beyond extermination) was singled out for its alien *identity,* its condition of foreignness, either real or attributed, that was separate from the social and State body in terms of language, religion, customs and nationality. Lemkin appears to share with Spengler the concept of a unique character and a particular genius for each cultural community: this is what is to be preserved, and from this springs the irreversible nature of the destruction implied in genocides.

In these cases — and this is important when considering changes in posterior usages — the context is one of long-term agendas, supported by consolidated national majorities, and not one faction against another within the same national community, as is the case in revolutions or civil wars, in which massacres are or can be reciprocal. And if the focus is on the destruction of a culture (a fundamental of life in a national group), that is to say a collective, there is no great attention paid to the individual.

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[5] *Ibid.* 48 - 50.

As we delve into the case of Argentina, the problem resides not only in including political groups in these crimes (political groups were excluded from the definition of the Convention of 1948, but became included again as part of the legal and historical broadening of the definition) but also in the fundamental relationship that Lemkin established between community, culture and identity. In the cases Lemkin considers, it is clear that belonging to a national or cultural group is not a choice. This does not exclude political action by a community (something that is very clear in the case of the Armenians under Turkish domination). The nature of such action, however, is quite different from that of modern political parties or insurgent organisations, which are associative collectives that can only with difficulty be likened to the identity-giving communities Lemkin discusses. The organisations that were the victims of State terrorism in Argentina consisted of individuals, and the tactics of political repression involved an action — a technology, actually — directed against individuals. This is known and understood to be a part of the creation of the police and modern security organisms in terms of their activities of vigilance, control and repression of organisations that are considered dangerous.[6] The system of police information and security combines the individual's dossier with the organisational chart of the group to which he or she belongs. All of this was applied in the repression in Argentina and in other Latin American dictatorships. And it is clear that, due to their associative nature, modern political groups draw together, as a rule, diverse ethnic, cultural and religious make-ups — basic identities that political affiliation does not erase. It is difficult to talk about a common identity within the diverse categories of "subversives" that were the victims of the illegal repressive system. They included guerillas, followers of Che Guevara, Peronists, Christians, union and community leaders, intellectuals, priests, nuns, *etc.*

[6] The police create one of the modern forms of writing that individualises: the dossier or criminal record. See M. Foucault, *El poder psiquiátrico* (Buenos Aires: FCE, 2005): 71 - 72; and *Vigilar y castigar* (Buenos Aires: Siglo XXI Editores, 1976): 216 - 217. This becomes a fundamental tool in the fight against revolutionary organisations, which later, in post-revolutionary states such as the USSR or Cuba, will be applied to the enemies of the new order.

Let's return to some of the features that have characterised the emergence of the term in order to get at what it effectively does or does not allow us to think about the Argentine experience. *Genocide* is a qualifier for crimes whose magnitude or characteristics did not fall into categories previously forged by legal thinking. In some way, they went beyond legal thinking and threw it into question. This condition of crimes that fall outside of certain limits and that alter previous paradigms will eventually overflow legal dimensions and establish itself as an ethical problem within the historical consciousness, as well as a problem for philosophical thought and for historical knowledge. To this condition (that of an occurrence altering existing categories of thought) another is added which has to do with the present day, with "modernity" it might be said: that of genocide as an event of the twentieth century, the instrumental, rational, technical dimension that was necessary for the undertaking of detention, concentration and extermination on a gigantic scale. When we incorporate this, which supposes the presence of administrative, scientific, technological, organisational and logistical complexes (that which Hanna Arendt called "administrative massacres"), the figure of *genocide* is manifested in an event that has become established as a standard and as a historical reference: the Holocaust.

If we take the two aforementioned features (the event which goes beyond previous frameworks of knowledge and understanding and the technical, rational dimension), there are without a doubt methods and practices on the part of the repressive, exterminating apparatus which arise from this new standard and become thinkable. These are what make up the unprecedented, unique character of this new apparatus, this way of acting, which are incomparable to other forms of violence, including those of terrorist practices by the state. Particularly outstanding in it is the organisational and administrative dimension, the regularity of the practices of detention and extermination. In the literature on Argentina, this comes out especially in works on the Clandestine Detention Centers (CDCs).

Nevertheless, there are other problems that have been relegated to the margins when the Argentine experience is superimposed on the Holocaust, and that have often come to light in more recent research,

especially from the perspective of historical knowledge. It is these I wish to point out and synthesize.

i. The figure of genocide tends to emphasise the event itself and not the longer period in which the origin, the development, the conditions that made state terrorism possible came about. These conditions have been researched within existing historiography, and almost no use is made of the genocide category, or legal or sociological categorising. State terrorism in Argentina did not begin in 1976 with the dictatorship. At that point, however, it was indeed installed as an administrative and hierarchical system, in which repressive practices (more or less prolonged illegal detentions, torture, murder and forced disappearances) were generalised and quite homogeneous. This was also true of the means of operation, the subordination of police and security personnel, the logistics of detention centers and so on. There is no doubt that this systematic nature depended on the organic, institutional control that the Argentine Armed Forces (FFAA), controlled by the State, maintained over this entire complex of men and activities.

   Terrorism, as a method, was the most solid aspect of the agreement between military factions, which were at loggerheads in nearly every other way. Nevertheless, terrorism was far from being a means uniformly orientated toward extermination as an end. Rather, it was used for various ends, including — according to the most well-known instances of conflict and disintegration — in the struggle between factions within the military itself. There was something uncontrollable in the terror, which ended up being used for purposes other than the proclaimed war on subversion: political purposes, the settling of accounts between rival factions, or as an "instrument to gain personal advantages".[7] The system revealed in the Trial of the Juntas was hierarchical and institutionally organised, yet terror was wielded in a

[7] T. Halperin Donghi, *La larga agonía de la Argentina peronista* (Buenos Aires: Ariel, 1994): 103.

decentralised way that depended on which force, which geographical area, which initiative undertaken at which decision-making level. It cannot be said that the armed forces and the diverse security forces constituted an entirely unified apparatus insofar as criteria and proceedings.

ii. At the empirical level, there is much research to be done on the estimate of the actual number of those detained illegally, the number murdered and the percentage of survivors. Some data supports the notion that the extermination was *selective* and not general. For example, according to numbers given in 2009 by the National Memorial Archive, those released from CDCs number between 28% and 39%.[8] According to estimates based on the open list provided by the Association of Ex-Detainees/Disappeared, those released number 35% to 41%.[9] These percentages of survivors do not correspond with those of classic genocides. Yet they are provisional, basic elements of judgment to be used if we wish to make a comparative analysis with the category of genocide that springs from cases traditionally used as models.

iii. The same idea of varied, selective actions can be applied to the differences between stages in the entire period of state military control, from 24 March 1976 to 10 December 1983. Numbers of victims and CDCs are concentrated in the first two years, 1976 - 1977. By 1978, the majority of CDCs were no longer in operation. This remains to be researched, but there were 360 CDCs in 1976 - 77, 60 in 1978 and, according to the visit by the Inter-American Commission on Human Rights of the Organisation of American States, there were 7 in 1979.[10]

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[8] Ramón Torres Molina, "Veinticinco años del informe de la CONADEP", *Página 12*, (15 September 2009): http://www.pagina12.com.ar/diario/elpais/1-131783-2009-09-15.html.

[9] Information which comes out of the data compiling work done by the Association of Ex-Detainees/Disappeared. This information is provisional and subject to correction: http://www.exdesaparecidos.org.ar/aedd/genocidio.php

[10] http://es.wikipedia.org/wiki/Centro_clandestino_de_detenci%C3%B3n

iv. In terms of victims (leaving aside the total number and referring only to percentages), if we take the period of violence and terrorism in its totality, as does the list of victims at the Monument in the Memorial Park (1969 - 1983), nearly 80% are concentrated between 1976 and 1977. The number of victims in 1978 is almost the same as in 1975, and from 1979 onward it declines much more.[11] So the dictatorship after 1978 tends to conform more to known military regimes, and although practices of terror do not disappear, they do not play the same integrated and systematic role they did in the first two years. It can be said that the system of state terror investigated and revealed by the Trial of the Juntas no longer exists after 1978. In fact, the Trial of the Juntas could not prove crimes of the Juntas that existed after 1979.

v. I wish to point out another problem: that of the discourse and the "mentality" that enabled the system of repressive terror. There were conditions that existed prior to the formation of that system, not only in terms of organisational structures but of actors as well. The question is *how to form subjects and justify practices* which go beyond usual limits, such as torture, physical humiliation, extermination and the disappearance of remains. This is a question that is not usually posed within the methodology or the logic of the repressing, exterminating apparatus. And the concern is not only nor principally about the leaders, but rather about the lesser agents, the subordinates, the collaborators with various functions, the cogs necessary for the functioning of the system. This question must delve into society and politics. Of course, there are well known questions: the military doctrine of the counterinsurgency, the blessing of the Catholic Church, the discourse of business and union leaders, and so on. Society — from which sprang the executors of repression (police, sub-officials, prison personnel, low-level employees) — forms part of the conditions of the repressive system. The usages of *genocide* tend to employ a *binary* way of

(Argentina)#Ciudad_de_Buenos_Aires

[11] Viewable at: http://www.parquedelamemoria.org.ar/basedatos/.

thinking: executors (the apparatus)/victims, and place society on the side of the victims. The problem is more complex, however. As less visible relationships are researched, along with politics and the dictatorship, society (leaders, organisations, public opinion, *etc.*) cannot simply be considered a victim or a passive spectator of a genocide perpetrated by others.

Of course, this includes political society; *Peronism* for example. Beginning in 1974, Perón imposed a new representation of guerrillas; no longer were they the "marvelous youth" but rather a criminal organisation financed and led from the outside. The dictatorship may have been innovative in terms of methodology, but it did not need to create new perceptions of subversion; a variety of topics on the theme had already been broached by Perón, Peronist unions and the Justicialist Party (Partido Justicialista - PJ) and included "terrorist organisations", the "unpatriotic character", international plotting, a broadened notion of subversion, the call for nationalism, and the argument that laws of the time were too weak to deter the new forms of insurgency.[12] This political construction of subversion had effects on security forces which, like the majority of society, voted for Perón and followed his teachings. State terrorism and extermination, therefore, were applied to insurgent organisations and to society in general. Yet simultaneously and in great measure, they were born out of movements, impulses and projections clearly present in that same society. This complex of actions and responsibilities cannot be reduced to the compact figure of *genocide*.

vi. State terrorism was not the only key component of the relationship the dictatorship maintained with society. It did not exercise its domination only by means of terror. Available research shows a myriad of actions, initiatives, long-term projects (which went far beyond the massacre being

[12] Hugo Vezzetti, *Sobre la violencia revolucionaria. Memorias y olvidos* (Buenos Aires: Siglo XXI Editores, 2009): 71 - 74.

> perpetrated), political and economic failures, demonstrations and counter-demonstrations and diverse and opposing relationships within civilian leadership and political sectors. The intricate tangle of this military-civilian complex does not correspond to the representation of the pure, homogenous violence that we understand as genocide or the "Terrorist State", an all-embracing system that is uniformly applied to society. The dictatorship also *governed* society, and it did so with relative efficiency, only falling as a consequence of a military defeat by a foreign army. It is necessary to return to the historical and political questions of the dictatorship and society as does a political historiography of the regime, one that occupied itself not only with the means of power and the management of the state and society, but also with the obstacles and resistance that confronted it, especially internally. If we focus on the behavior of diverse sectors, not only civilian participants but also low-level civil servants and employees, middle managers, politicians and unionists at various levels, we see that they were not simply actors dragged along by obedience. To be sure, there was fear and subordination to power, but interchanges and negotiations were also in play. As State terror waned and constructive policies based on consensus increased, the space given to action by organisations grew, as did the possibility of making more critical positions known. More than the compact figure of the Terrorist State or genocide, therefore, the methodology of terror presents us with a subterranean, clandestine region of the State that coexisted with other governmental practices. I prefer the figure of the "split" State.[13]

Finally, the figure of *genocide* replaces and marginalises the figure of an *internal war*. The representation of the conflicts as a war was already quite present in the historical consciousness years before the dictator-

[13] Luis A. Romero introduces the idea of a "split" State under the dictatorship. One part is "clandestine and terrorist" and the other "public, resting on a legal order which this part itself established, and which silenced all other voices": Luis A. Romero, *Breve historia contemporánea de la Argentina* (Buenos Aires: FCE, 1994): 288.

ship. I refer not only to military language or doctrine (which imposed the term "war against subversion") or to the doctrines of guerilla groups who spoke in Guevarist terms of the "revolutionary war". War figures and discourse were present and by some means tangible in political language, especially in that of Peronist sectors. These figures and discourse accompanied the escalating political violence in society and created a backdrop of an "internal war" which had an impact on how the conflicts were perceived and on the justification of fighting methods used.[14] So if the dictatorship succeeded in implanting in society the idea that it was beset by a war against subversion, this extended meaning was shored up by previous experience. Repression was presented, and admitted, as a battle within the nation's bowels, unconventional and therefore justifying unconventional methods. All this was already present in the conditions that led up to the political and moral collapse which reached its climax in those first years of the dictatorship. After the Malvinas defeat, the sinister face of illegal repression and extermination became visible, and a new representation was implanted, one founded on human rights. There is a new narration: there was no war; rather there were crimes and extensive violations of basic rights. The figure of *genocide* is inserted into this new paradigm, springing from the discourse, the public exposure given to legal proceedings and due recognition of the victims.

But this too compact meaning of crimes and victims has been opened up for revision and discussion. Testimonies as well as research endeavors and public pronouncements have tended to cling to the militant, even combative, condition of these victims. At the *Monument to the Victims of State Terrorism,* this recognition appears to be a bit paradoxical in a way. In the introduction to the list of those remembered there, the detained/disappeared, the murderers and those who "died fighting for

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[14] See J. Peron, "Documento reservado, Consejo Superior Peronista", *La Opinión* (10 October 1973): "The murder of our colleague José Ignacio Rucci and the premeditated way in which this was done mark the high point of the escalation of aggression against the National Peronist Movement which terrorist, subversive Marxist groups have been carrying out in a systematic way. A true war has been unleashed against our organisation and against our leaders. This war has manifested itself in various ways… "

the same ideals of justice and equality" are all mentioned. Victims and combatants coexist and are part of the same memorial.

Of course, within existing historiography can be found the topic of the radicalisation of the conflicts and the escalation of political violence, including the idea of a "larval" civil war. My aim is not to substitute a thesis of "civil war" for that of "genocide", thereby risking a substitution of one reductionism for another. It is enough for me to point to another vision, another focus let us say, on the characterisation of a period, that of the dictatorship, which for known and understandable reasons has remained frozen in an account of pure terrorism wielded from the apex of power. I wish to reinstate something that should be included in the discussion, thinking and intellectualisation of those dark times. Faced with an excess of certainties, I am interested in reopening questions and approaching, in representations and in vocabulary itself, conflicts, rejections, latencies. What other terms have been marginalised or displaced, if not suppressed, by the compact figure of *genocide?* And what I see is that terms such as "war" or "civil war" and the political conflict in general, things that were very present and active in the discourse and actions of the protagonists of the 1970s, and which are generally absent in the "Memory Studies" are reappearing, a bit out of place, in works on political or intellectual history.

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JUSTICIA, RECONCILIACIÓN, PERDÓN

By Claudia Hilb

Este texto retorna sobre las preguntas acerca de la responsabilidad y el arrepentimiento surgidas al calor de un escrito publicado en un número precedente de AYOR.[1] Reflexionando acerca de la acción de la "Truth and Reconciliation Commission"[2] en Sudáfrica, y la experiencia en Argentina de los juicios a los militares desde 1985, me encontré con la pregunta de por qué, en Argentina, estaba completamente vedado el lenguaje del perdón, el arrepentimiento y la reconciliación, que ocupaba en cambio un lugar central en la salida sudafricana del Apartheid. Sin estar en absoluto segura de que todo pueda o deba perdonarse, ni de que el arrepentimiento deba incidir de manera radical en la acción de la justicia, la contrastación de ambas situaciones me llevó a interrogarme sobre esta diferencia notoria, y sobre aquello que, en Argentina, el carácter virtuoso de la salida por medio de los juicios pudo a la vez dejar de lado.

En busca de insumos para mi reflexión, acudí a la obra de Arendt, y a su tratamiento del perdón. Ese recorrido, que restituyo de forma resumida, constituye la primera parte de esta nota. Lo que de él obtuve me permitió alimentar mis intuiciones — ello constituye la segunda parte.

Entonces, respecto de Arendt y el perdón:

i. Desde las primeras entradas en el *Diario Filosófico* (1950), hasta *La Condición Humana,*[3] el tratamiento que hace Arendt del perdón va adquiriendo connotaciones crecientemente políticas. En 1950, el perdón es claramente antipolítico, ya sea que Arendt lo considere en su carácter vertical, asimétrico, en su

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1 Claudia Hilb, "Virtuous justice, and its price in truth in post-dictatorial Argentina", *African Yearbook of Rhetoric* 2, 1 (2011): 13 - 20.

2 TRC. Conservamos la denominación en inglés.

3 Hannah Arendt, *The human condition* (Chicago: The University of Chicago Press, 1958).

carácter religioso (como igualdad negativa: todos somos iguales en nuestro carácter de pecadores), o como despedida, como un perdón que pone fin a toda relación. En *La Condición Humana*, el perdón adquiere en cambio una connotación claramente política y plural: como la promesa, pertenece al ámbito de la acción, de la capacidad del hombre de actuar. Se da *entre* los hombres, depende de la pluralidad, la presencia y acción de otros, y permite redimir a la acción de su carácter irreversible.

ii. La politización del perdón que se produce entre las anotaciones de 1950 y la *Condición Humana* parece estar impulsada por la reflexión de Arendt sobre la *comprensión* y la *reconciliación*. En 1950, Arendt oponía reconciliación y perdón: la reconciliación, escribía, acoge lo dado como dado. No se despide, no descarga al otro de su peso, como pretende hacer el perdón, sino que reestablece la igualdad y solidaridad entre hombres que actúan - pero esta igualdad no reúne a los hombres en su común condición de pecadores, sino que resulta del reconocimiento de los avatares indeseables de la acción de hombres que no son injustos, pero que cometen injusticias. En *Comprensión y Política* (1953) avanza en el mismo sentido: nos reconciliamos con el mundo a través de la comprensión — comprender es reconciliarse en acto, es el modo en que como ser particular me reconcilio con lo común y encuentro mi lugar en ese mundo común. Somos capaces de comprender, de reconciliarnos en acto y acoger lo dado como dado, aún con aquello para lo cual no teníamos categorías previas bajo las cuales subsumir lo que adviene, porque en tanto seres cuya esencia es comenzar podemos hallar en nosotros mismos suficiente origen para comprender o juzgar aún cuando nuestras categorías preconcebidas o nuestras reglas morales consuetudinarias se han mostrado impotentes ante la novedad de lo que acontece.

Podemos reconciliarnos con el mundo porque podemos comprender, podemos comprender — incluso lo absolutamente novedoso — porque llevamos en nosotros la capacidad de comenzar. Advertimos sin embargo que el perdón, que aparecía en 1950 como contrario a la

reconciliación, adquiere en 1953 connotación política: el perdón aparece como una acción singular que se propone lo aparentemente imposible, deshacer lo hecho, y que logra introducir un nuevo comienzo donde todo parecía haber concluído; su improbable posibilidad puede volverse posible sobre la escena de igualación restituida por la reconciliación, que alcanzamos a través de la comprensión. La reconciliación ya no aparece como opuesta, sino como condición de posibilidad del perdón entre iguales, entre actores que, tomados en los avatares de la acción, cometen injusticias.

iii. "Comprensión y política" provee también los primeros esbozos de la relación entre el pensar y el mal: si comprender, pensar sin conceptos bajo los cuales subsumir lo que hemos de comprender, nos permite reconciliarnos con el mundo, la identificación de esta capacidad nos permite también entender qué sucede cuando esta disposición a pensar, a juzgar por uno mismo, está ausente. La identificación de esta capacidad nos abre las puertas para comprender la tremenda banalidad del mal, que se asienta en la *ausencia* de esta capacidad de pensar, en la defección de la capacidad de juzgar por sí mismos de quiénes estuvieron dispuestos a abandonar sus reglas morales consuetudinarias de un día para el otro, para adoptar las nuevas reglas criminales que les fueron ofrecidas como sustituto. El caso paradigmático será para Arendt, como sabemos, el de Adolf Eichmann.

iv. Precisamente en *Eichmann en Jerusalén*,[4] y en "Algunas cuestiones de filosofía moral" (1965 - 1966), y "El pensar y las reflexiones morales" (1971), hallamos el hilo que liga el pensar al remordimiento, y la *ausencia* del pensar al silenciamiento de la conciencia — a la ausencia de remordimiento. El remordimiento o el arrepentimiento sólo está al alcance de quien ha entrado seriamente en diálogo consigo mismo. En palabras de Arendt, "la manera más segura para el criminal de

[4] Hannah Arendt, *Eichmann en Jerusalén,* (Barcelona: Lumen, 2003).

no ser nunca descubierto y olvidar el castigo es olvidar lo que ha hecho y no volver a pensar en ello nunca más… Nadie puede recordar lo que no ha pensado a fondo mediante la conversación consigo mismo al respecto".[5] Esto es, la ausencia de la capacidad de pensar protege al criminal de ser descubierto por él mismo. No hay remordimiento porque no hay reflexión silenciosa sobre lo hecho, porque no hay trabajo de la conciencia, diálogo del dos-en-uno de la conciencia. El criminal más terrible no es el malvado de la literatura, sino aquel que, carente de la imaginación que requiere el pensar, no sufre de remordimientos porque ha acallado el diálogo consigo mismo anulando la pluralidad del dos en uno en su seno. La expresión por medio de clichés, de frases hechas, es la manifestación más visible de la ausencia del diálogo propio del pensar.

v. Ese hilo que anuda pensar y remordimiento nos permite volver sobre el perdón tal como aparecía en *La Condición Humana*. El perdón se muestra allí como aquella capacidad propia del actor, que permite "liberar a los hombres de aquello que han hecho sin saberlo",[6] redimiendo al actor de la fragilidad de la acción. El perdón perdona el *qué* en aras del *quién* restituyéndolo a su cualidad de agente libre. Pero ese modo de disponer la escena del perdón indica también que no todo mal es perdonable: no lo es el mal hecho adrede, el de quién *sí* sabía lo que hacía y no se arrepiente de haberlo hecho — pero ese mal es raro, dice Arendt[7] — y no lo es tampoco el "mal radical", aquel sobre el cual nos dice Arendt entonces que sabemos tan poco. Pero algo más sabremos, leyéndola, en 1966: el mal radical, advertíamos, es aquel que no conoce tampoco el remordimiento porque elude su misma posibilidad. El mal radical es aquel realizado por hombres incapaces de pluralidad, incapaces de vivir propiamente en el mundo bajo la forma de esa moralidad que surge de la voluntad de vivir unos con otros

[5] Hannah Arendt, *Responsiblity and judgment* (New York: Schocken Books, 2003): 93 - 94.
[6] Arendt, *The human condition*, 240.
[7] *Ibid.* 240.

> en el modo de la acción y la palabra, como son también incapaces de vivir propiamente con ellos mismos bajo la forma del diálogo silencioso del dos-en-uno. Como el mal hecho a propósito que no conoce el arrepentimiento, el mal radical cometido por el hombre banal que no conoce el remordimiento aparece también como imperdonable.

En síntesis: la politización progresiva del perdón ha ido acompañada de una mejor determinación de lo perdonable y lo imperdonable. Lo imperdonable ha quedado asociado a un agente que desconoce el arrepentimiento y el remordimiento. Un agente que o bien es auténticamente malvado — consciente del mal hecho adrede no se arrepiente de él — o bien que, incapaz de pluralidad, ha obturado su capacidad de pensar, de entrar en diálogo consigo mismo, de modo tal que ha logrado escapar a la voz de su conciencia, que emana del diálogo del dos-en-uno del pensar. El agente auténticamente malvado no ha de ser perdonado porque el resultado de su acción debe ser considerado su producto deliberado, y no el efecto del carácter indeterminado de la acción. El banal funcionario del mal radical no puede ser perdonado porque no puede, propiamente, ser considerado un actor: en su incapacidad de pensar por sí mismo y su concomitante incapacidad de arrepentirse, ha demostrado ser incapaz de insertarse en el mundo común a través de la acción libre y la palabra, incapaz de pertenecer al ámbito plural de la coexistencia de los hombres en tanto actores. Frente a uno y otro, el perdón que se despliega sobre la escena de la pluralidad de la acción entre los hombres involucra a actores que se reconocen como tales, y que hallan en la posibilidad del perdón — de perdonar y ser perdonados — el reconocimiento de su cualidad de actores, de iniciadores, y también de las fragilidades a las que esta condición los expone.

Así, podemos decir que sólo quienes "no saben lo que hacen" porque las consecuencias de sus actos exceden su capacidad de dominarlos, y de quienes podemos pensar que, puestos ante estas consecuencias, querrían poder deshacerlas, sólo ellos son susceptibles de ser perdonados, sólo de ellos podemos decir que el *quién* tiene primacía sobre el *qué*, que el *qué* es perdonado por mor del *quién*. Así, la disposición al arrepentimiento, al "querer que aquello que resultó de

nuestra acción no hubiera sucedido", parece indisociable de la posibilidad del perdón entendido como una facultad de estabilización del mundo de la acción de y entre los hombres.[8] Es en nuestra capacidad de actores, en nuestra aperutra a la pluralidad, que somos capaces de perdonar, y también, que somos capaces de arrepentirnos.

Centremos ahora la mirada en las diferencias entre estos casos ejemplares de "nuevos comienzos", el de Argentina a partir del Juicio a las Juntas, y el de Sudáfrica a partir de la labor de la TRC. Como anunciaba, querría servirme del recorrido anterior para reflexionar acerca del rechazo, en Argentina, de todo argumento en términos de arrepentimiento y reconciliación, que contrasta con la centralidad de estos términos en el escenario sudafricano. Repito: se trata para mí de dos soluciones ejemplares, y no pretendo inclinarme por una, contra la otra. Procuro tan solo observar, a la luz del ejemplo sudafricano y del recorrido arendtiano, aquello que, en la opción por la justicia retributiva, ha quedado impensado en la Argentina postdictatorial.

Restituyo en dos palabras los grandes rasgos del escenario argentino: desde la fantástica labor de recolección de testimonios de las víctimas por parte de la CONADEP, pasando por el juicio a las Juntas de Comandantes de la Dictadura y las condenas de los Comandantes (1985), las leyes de obediencia debida y punto final ("leyes de perdón"), que pusieron fin a los juicios (1986 - 1987), los indultos que liberaron a los Comandantes (1990), y por fin la declaración de nulidad de las leyes de perdón y la reapertura de los juicios (2004 hasta la actualidad), todo el procedimiento, en sus avances y retrocesos, fue exclusivamente jurídico. No hubo, en ningún momento — salvo escasísimas excepciones — perpetradores que contribuyeran con su relato al esclarecimiento de lo sucedido. En ese escenario, de hecho su declaración solo podría haber contribuído a su propia inculpación.

Dos palabras igualmente respecto del escenario sudafricano. La TRC tuvo por tarea escuchar a víctimas y victimarios de actos horrendos contra los derechos humanos. Respecto de los victimarios, quienes de manera voluntaria solicitaran dentro de un plazo establecido exponer

[8] *Ibid*. 239 - 240.

sus crímenes ante dicha Comisión, serían amnistiados siempre y cuando procedieran a la "plena exposición" de sus crímenes, y pudieran demostrar que éstos estaban "asociados a un objetivo político". Quien no solicitara espontáneamente la amnistía y fuera posteriormente inculpado por una denuncia, o quien la solicitara y no procediera a lo que, a juicio de la Comisión, era un relato exhaustivo, proseguiría el camino de la justicia ordinaria. Recuperando los términos de Barbara Cassin, podemos afirmar que la solución inédita a la que se arribó en Sudáfrica redundó en que los principales interesados en decir la verdad serían los propios criminales.[9]

Relevemos esta primera diferencia: en Argentina, el dispositivo judicial puesto en marcha tuvo por efecto fundamental la cárcel de los principales responsables, pero también el silencio casi unánime de los perpetradores. Su confesión solo podía acarrearles mayores condenas, y ostracismo entre sus pares, como lo aprendería el capitán Scilingo, quien tras hablar abiertamente sería condenado a 1084 años de prisión por el Juez Garzón en España, donde había ido voluntariamente a declarar.[10] En Sudáfrica, en cambio, individuos culpables de crímenes horrorosos se presentan voluntariamente ante la Comisión para relatar — ante sus víctimas — los crímenes perpetrados. Son ellos, los perpetradores, los más interesados en exponer toda la verdad: no habrá cárcel para quiénes relaten de manera exhaustiva sus crímenes, si pueden justificar su motivación política.

La escena de la TRC propone, propiamente, una economía del perdón: quien cuenta el mal que ha hecho, será amnistiado. Posiblemente, quiénes entran en esa escena lo hagan mayoritariamente en función de ese cálculo económico. Pero a la luz de las reflexiones de Arendt, podemos imaginar que quiénes por ella transitan no saldrán, en muchos de los casos, iguales a como entraron. En el camino se habrán

[9] Barbara Cassin, "Amnistie et pardon: Pour une ligne de partage entre éthique et politique", Barbara Cassin, Olivier Cayla et Philippe-Joseph Salazar (Dir.), *Vérité, Réconciliation, Réparation*. *Le Genre Humain* 43 (2004): 37-57, [50-51].

[10] Scilingo fue juzgado según las leyes españolas, que conceden a los tribunales españoles jurisdicción universal sobre crímenes de lesa humanidad, genocidio o terrorismo acaecidos en cualquier lugar del mundo.

visto obligados, por el mismo dispositivo de amnistía, a reactivar su capacidad de pensar, de enfrentarse a ellos mismos: puestos ante su propio relato, obligados — por su propio interés — a revivir en la palabra, de manera exhaustiva, los actos estremecedores de los que son autores, ¿pueden aún seguir olvidando lo que han hecho? ¿pueden seguir eludiendo la conversación con ellos mismos? ¿pueden escapar al remordimiento? Ni el arrepentimiento ni el perdón son condiciones para la amnistía. Pero hubo en importantes ocasiones, arrepentimiento, y hubo también, en muchas ocasiones, perdón.

Entonces, sugiero: en Argentina está obturada la posibilidad del perdón porque está obturada la posibilidad del arrepentimiento. En una escena que dispone el castigo de los hechos como opción exclusiva, el relato detallado y público de los actos no sólo no es exigido sino que es contrario al interés del inculpado: su confesión sólo contribuiría al castigo. Nada hay, en el dispositivo judicial, que favorezca la experiencia del remordimiento. En Sudáfrica, en cambio, puede haber perdón porque puede haber arrepentimiento. Y puede haber arrepentimiento porque la escena dispone las condiciones no sólo "económicas" sino también llamémoslas "existenciales" para la experiencia del remordimiento.

Retomo, asimismo, una segunda diferencia fundamental a la que me referí en el texto precedente: la dinámica de los Juicios instaura en Argentina una distinción tajante entre militares culpables, y una sociedad inocente. Las víctimas de la barbarie militar, muchas veces activistas de organizaciones armadas que practicaron el terrorismo, sólo aparecen públicamente en su condición de víctimas. El nuevo comienzo ha de fundarse sobre el enjuiciamiento de los culpables de las fuerzas militares y policiales; los crímenes de las fuerzas de izquierda armada han quedado absorbidos bajo su condición de víctimas de la violencia estatal.

En Sudáfrica, en cambio, la amnistía atañe potencialmente tanto a los agentes del apartheid como a los militantes que enfrentaron, de manera violenta, al régimen criminal. Un mismo individuo, combatiente de la ANC o agente estatal, puede presentarse para obtener reparación como víctima, y amnistía como victimario. La escena de nuevo comienzo se

dibuja en la re-integración del criminal a la comunidad a través de su demanda de perdón político, y en el común reconocimiento de que — pese a las enormes diferencias entre ambos campos — la violencia los ha alcanzado a todos y, que para fundar una nueva comunidad eximida de la violencia, todos deben mostrarse deseosos de incorporarse a ella asumiendo públicamente el carácter criminal de sus acciones precedentes. La escena de confesión y amnistía restituye al culpable de esos crímenes su capacidad de actuar, y así, su condición de actor pleno del nuevo comienzo. [11]

Podemos ahora completar la sugerencia anterior: si en Argentina está obturada la posibilidad del perdón, porque está obturada la posibilidad del arrepentimiento, también está obturada la posibilidad de reconciliación porque está obturada la posibilidad de la asunción de la responsabilidad. Y esto es así no sólo en el campo de los victimarios.[12] La escena de la justicia, que juzga a los perpetradores, no propone tampoco, para quienes participaron de la violencia política antiestatal, ningún incentivo para una revisión de su propio accionar, para la asunción de un peso compartido; allí comparecen exclusivamente en tanto víctimas. Y también como víctimas, o eventualmente como héroes, aparecen en el relato cristalizado del pasado, desligados de toda responsabilidad.[13] Así, al mismo tiempo que la escena provee, de

[11] Obsérvese, a la luz de nuestras reflexions sobre Arendt, esta afirmación del TRC report, Volumen 1, cap. 5: [103] "What is required is that individuals and the community as a whole must recognise that the abdication of responsibility, the unquestioning obeying of commands (simply doing one's job), submitting to the fear of punishment, moral indifference, the closing of one's eyes to events or permitting oneself to be intoxicated, seduced or bought with personal advantages are all essential parts of the many-layered spiral of responsibility which makes largescale, systematic human rights violations possible in modern states".: http://www.justice.gov.za/trc/report/finalreport/Volume%201.pdf.

[12] Salvo escasas excepciones de quienes reivindicaron cínicamente los peores tormentos, usualmente los altos mandos adujeron razones de guerra interna para intentar justificar lo injustificable; los mandos inferiores apelaron habitualmente a la noción de obediencia.

[13] Emblemático es el caso del Parque de la Memoria, en Buenos Aires: en sus muros están inscriptos los nombres de las víctimas de la Dictadura 1976 - 1983, pero también de miembros de organizaciones armadas insurrectas

manera ejemplar, el castigo para los mayores criminales, no provee las condiciones mínimas para la asunción de las responsabilidades particulares. Ni tampoco para reconciliación alguna, si por reconciliación entendemos el reconocimiento, la asunción, de un peso compartido. En Sudáfrica, en cambio, puede haber reconciliación porque la escena — sin dejar de afirmar enfáticamente la naturaleza radicalmente malvada del apartheid — favorece simultáneamente el reconocimiento de un peso compartido. No hay, en cambio, castigo para quiénes comparecen voluntariamente y relatan exhaustivamente sus crímenes, por más horrendos que sean.

En el contraste con la experiencia sudafricana descubrimos que la disposición de la escena de los Juicios parece haber ocluído en Argentina la posibilidad de que los propios militares contribuyeran a producir la verdad de sus crímenes. Ello dificultó no sólo el acceso a una verdad necesaria — el destino de los desaparecidos y de los niños apropiados — sino también la confrontación singular de cada perpetrador con sus crímenes. Si nuestras reflexiones anteriores son pertinentes, se dificultó así la posibilidad del arrepentimiento. Pero se ocluyó asimismo la posibilidad de que, en la proliferación de relatos, se diera a luz una verdad más compleja. De una verdad que, al tiempo que debía sostener como legado común, bajo la forma de un relato irrenunciable, la convicción de que en la Argentina había ocurrido el Mal bajo la forma de campos de tortura, desaparición y muerte, no podía reducir, sin embargo, la comprensión de lo ocurrido al súbito desencadenamiento del Mal, que se impuso sobre el Bien.

La disposición de una escena que, a la vez que desalentaba la exposición de los perpetradores consolidaba la cristalización de un relato en términos, exclusivamente, de criminales (militares) y víctimas (civiles) propendió a silenciar a los perpetradores y a ocluir las condiciones para el arrepentimiento, como así también a desalentar la proliferación de relatos contradictorios por parte de quienes, como víctimas civiles, familiares de las víctimas o combatientes de una causa, habían quedado situados en el campo opuesto. Si, en la escena sudafricana, quienes se opusieron al apartheid se encontraron, muchas

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muertos en combate durante el período de legalidad, 1973 - 1976.

veces, obligados también ellos a repensar sus acciones y someterlas a la exposición pública, en la escena argentina esto no sucedió. Y habría sido, probablemente, tanto más necesario, cuanto que así como después del *Nunca Más* ya nadie pudo ignorar la barbarie perpetrada por los militares, nadie puede ignorar tampoco que, en Argentina, el advenimiento del Terror estatal en 1976 no fue solo el estallido de una violencia sin precedentes, sino también la culminación de un tiempo largo de banalización y legitimación de la violencia y el asesinato políticos en la que las organizaciones revolucionarias armadas, peronistas y de izquierda, tuvieron una responsabilidad que no puede desconocerse. El Terror estatal, lo afirmo enfáticamente, no fue su consecuencia necesaria: el Mal nunca es una consecuencia necesaria. Pero aquella banalización de la violencia contribuyó a preparar las condiciones que lo hicieron posible.

Vuelvo hacia atrás: si en la insistencia en el trabajo de la justicia, en la persecución de los máximos culpables, reconocemos el mayor legado de nuestra historia reciente, esa insistencia está cobijando también la negativa a asumir cualquier responsabilidad por parte de una generación que, al tiempo que proveyó la mayor cantidad de víctimas al Terror, contribuyó asimismo a generar las condiciones para su advenimiento. La insistencia en la justicia retributiva y la oposición a considerar cualquier alternativa al mayor castigo, al tiempo que reafirma el camino escogido para la salida del régimen de Terror, ampara también la renuencia a derogar el relato del Mal que simplemente se abatió sobre el Bien.[14] En la disposición de la escena jurídica — en la discriminación sin fallas de militares, moralmente malvados y criminalmente culpables, y civiles, moralmente buenos y criminalmente inocentes — queda legitimada la negativa a reinterrogar, en el campo de quiénes fueron partícipes de la violencia insurreccional, cómo pudo suceder lo que nunca debió haber sucedido. La repetición, en el discurso de buena parte de los sobrevivientes y herederos de aquella izquierda insurreccional, de clichés y frases hechas, nos pone también en este campo en presencia de individuos aparentemente más

[14] Los escasos pronunciamientos favorables a una reducción de penas para quienes proveyeran datos sobre desapariciones y apropiaciones de niños fueron objeto de críticas vehementes.

dispuestos a subsumir su reflexión bajo normas y costumbres ininterrogados y slóganes congelados que a enfrentar, en la rememoración de los hechos, su propia responsabilidad.

Concluyo retomando algo ya dicho en el artículo anterior, pero que a la luz del camino recorrido con ayuda de Arendt parece adquirir mayor consistencia: allí y sólo allí donde hay una asunción común de aquello que sucedió *pero no debería haber sucedido* — donde la comprensión de cómo pudo suceder hace posible que pueda haber arrepentimiento por haber contribuido a que sucediera- puede imaginarse la constitución de una escena común de re-conciliación. Significa — siguiendo a Arendt- asumir la responsabilidad compartida por un mundo común, que exige que comprendamos como fue posible que aquello sucediera. Y en ese comprender, así como quizá debamos generar las condiciones políticas para que los perpetradores se enfrenten, en el relato, al horror cometido, debemos también confrontarnos nosotros, ya no solo en nuestra condición de víctimas, al relato de aquello que hicimos y creímos. En esa rememoración no habremos de escapar, tampoco nosotros, al examen de nuestra responsabilidad.

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FROM JUDICIAL TRUTH TO HISTORICAL KNOWLEDGE: THE DISAPPEARANCE OF PERSONS IN ARGENTINA

By Emilio Crenzel

1. INTRODUCTION

The military dictatorship that began on 24 March 1976 brought two substantial changes to Argentina's intense history of military interventions and political violence in the twentieth century. First, the new regime instituted an unprecedented form of political crime — enforced disappearance — which condensed the State's will to exterminate. Second, by perpetrating the disappearances in covert actions it introduced a new practice of political killing. These characteristics also set Argentina's dictatorship apart from the other regimes that spread throughout Latin America's Southern Cone during that period.

The practice of disappearance began with a few scattered cases in the early 1970s, under an increasingly radicalised political climate, and became more widespread in 1975, when constitutionally-elected President María Estela Martínez de Perón authorized the armed forces to eliminate subversive activity. However, it would only become systematic after the coup d'état. Disappearances consisted of the abduction of individuals by military or police officers, in uniform or plainclothes. After having their property looted, the victims were taken to military or police facilities used as 'clandestine detention centers', where they were tortured and usually killed. Their bodies were then buried in unmarked graves, incinerated or thrown into the sea, while many of the children born in captivity were appropriated by their captors. The state denied any responsibility for these crimes.

In these pages I will first describe the process of the construction of a public truth regarding the system of enforced disappearances, then I shall examine the rhetoric that characterised that truth, and, lastly, I shall analyze its limitations, revealing key aspects of the disappearances that are lacking from our historical knowledge, and whose examination

would contribute to shape another kind of truth about this crime and the cycle of political violence experienced by Argentina three decades ago.

2. THE STRUGGLE FOR THE TRUTH DURING THE MILITARY DICTATORSHIP

The dictatorship's discourse regarding the disappeared combined two strategies. First, silence and denial of their existence and any responsibility in their fate; and, later, portrayal of the disappeared as an offshoot of the "antisubversive war". In 1977, General Videla declared that the disappeared were subversives who had either gone underground, fled the country or been killed in armed clashes that had left their bodies unrecognizable.[1] This second approach sought to confront the growing visibility of organisations such as the Mothers of Plaza de Mayo, which were formed by relatives of the disappeared and who began joining other human rights organisations in denouncing the disappearances. "Knowing the truth" was their first demand, which extended beyond national borders and was taken up by transnational human rights networks and the parliaments of the United States and Western Europe.[2]

The official rhetoric, the climate of terror, the covert nature of the crime, and the emotional and cognitive obstacles imposed by situations of extreme violence delayed general awareness of the characteristics of the disappearances, the identity of the perpetrators, and the ultimate aim of this crime, even among those who denounced it. The idea that it was the State, and not paramilitary groups, that was responsible for the disappearances, and that these were not isolated incidents but affected thousands of individuals, who were for the most part murdered, only became common knowledge in 1979 with the release of the report of the Organisation of American States' Inter-American Commission on

1 Horacio Verbitsky, *El vuelo* (Buenos Aires: Planeta, 1995): 78.

2 Elizabeth Jelin, "La política de la memoria: El movimiento de Derechos Humanos y la construcción de la democracia en Argentina", in Carlos Acuña *et al.*, *Juicio, castigos y memorias. Derechos Humanos y justicia en la política Argentina* (Buenos Aires: Nueva Visión, 1995): 106, 107.

Human Rights, which had visited the country to conduct an investigation in response to thousands of communications.

At the same time, influenced by the culture of transnational human rights networks, the organisations that denounced the disappearances began basing their demands on a moral imperative that sought to appeal to the public's empathy by describing in detail the acts of violence committed by the State, but without putting them into an historical context. Simultaneously, the victims were individualised only by their age, gender, occupation, and moral values, all of which were completely unrelated to "subversion" and political affiliations.[3] In this way, they stressed the humanity of the disappeared but accepted the limits imposed by the dictatorship's stigmatising discourse, which denied the right to be considered a subject of law to anyone "guilty" of "subversive" activities. These reports would become public after Argentina's military defeat in the war with Great Britain over the Falkland/Malvinas Islands in June 1982, in a context of increasing discontent with the dictatorship and a vigorous presence of the human rights movement.

3. NEVER AGAIN: THE STATISATION AND JUDICIALISATION OF TRUTH

Upon taking office as constitutional president in December 1983, Radical Party candidate Raúl Alfonsín ordered the prosecution of seven guerrilla leaders and the military juntas that ruled during the dictatorship. Alfonsín's decision would come to be known as "the theory of the two evils" because it limited accountability for political violence to two sets of leaders and explained state violence as a response to guerrilla violence. He also called for a distinction between "those who planned the repression and issued the orders" — the juntas and other high-ranking military officers — who were to be tried; "those who, prompted by cruelty, perversion, or greed, acted beyond

[3] For a similar process among those who denounced the Uruguayan dictatorship, see Vania Markarian, *Left in transformation: Uruguayan exiles and the Latin American human rights networks, 1967 – 1984* (New York: Routledge, 2005).

their orders", who would also be tried; and "Those who carried out orders strictly to the letter, but who due to the hierarchical nature of military institutions and the prevailing ideological climate — the defense of 'Western Christian civilization' — were unable to disobey them or realize their illegality". This last group would not be held accountable.[4]

At the same time, Alfonsín created the National Commission on the Disappearance of Persons (CONADEP), formed by civil society personalities and congresspersons, and mandated it with receiving testimony and evidence of disappearances, presenting the information gathered to the courts, and issuing a final report.[5]

With the help of most human rights organisations, CONADEP greatly expanded the body of evidence. The testimony provided by relatives of the disappeared, survivors, some perpetrators, and other witnesses, along with written documents, confirmed the veracity of the reports and enabled the identification of illegal holding places, perpetrators, and victims. Thus, CONADEP became the first commission in the world to successfully investigate the practice of enforced disappearance of persons.[6] Using a judicial rhetoric, CONADEP's report, *Nunca Más* (Never Again), installed a new public truth about the disappearances by proving the material existence of the system, which was negated by its perpetrators, and held justice and democracy as guarantees that the horror would not be repeated.

The *Nunca Más* report combined the Alfonsín administration's reading of the past of political violence with the humanitarian narrative articulated by those who denounced the disappearances during the dictatorship. In line with the decrees ordering the trial of top military and guerrilla leaders, it presented political violence as a product of

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[4] See Carlos Nino, "The duty to punish past abuses of human rights put into context: The case of Argentina", in Neil Kritz, (Ed.), *Transitional justice. How emerging democracies reckon with former Regimes* (Washington: United States Institute of Peace, 1995): 417 – 443.

[5] National Executive Decree 187 (15 December 1983).

[6] See Priscilla Hayner, "Fifteen truth commissions — 1974 to 1994: A comparative study", in *Human Rights Quarterly* 16, 4 (1994): 597 – 655.

ideological extremes and placed the responsibility of the disappearances exclusively on the dictatorship, thus silencing the political and moral responsibilities of civil society and the political community in the disappearances that occurred before and after the coup. The body of the report, based on testimonies of relatives of the disappeared and disappearance survivors, reconstructed the system of disappearances through realistic and detailed descriptions of its stages and practice.

The report placed the number of disappearances at 8 960 — although recognizing that it was not a final figure — and excluded both guerrilla members and political activists from the universe of victims, identifying the disappeared exclusively by their name, gender, age, occupation, and classifications such as: "Children and Pregnant Women Who Disappeared", "Adolescents", "The Family as Victim", and "The Sick and Disabled", thus suggesting their defenselessness and "innocence".[7] It also identified the perpetrators as military or police officers, established that most clandestine detention centers were located in military facilities, and illustrated the coordination of repression among the dictatorships of the regions, briefly outlining their doctrine. Lastly, it revealed that the system had been planned by the military juntas, and highlighted that any attempt at dissent was brutally punished, thus subscribing to the official position that the vast majority of perpetrators could not be held accountable as they were unable to disobey orders from their superiors.[8]

As of its publication in 1984, *Nunca Más* became the public truth regarding the system of disappearances. The report was translated into several languages and half a million copies were sold. It defined the rhetoric strategy of the prosecution in the military junta trial and was accepted as evidence by the court. Moreover, it became a model for the "truth commissions" created in Latin America to investigate human rights abuses committed under the dictatorships and civil wars of the

[7] Comisión Nacional sobre la Desaparición de Personas, *Nunca Más. Informe de la Comisión Nacional sobre la Desaparición de Personas,* (Buenos Aires: EUDEBA, 1984): 9, 10.
[8] *Ibid.* 8, 15, 16, 253 – 259, 265 – 276, 300, 347 – 349, 481.

last third of the twentieth century, and was incorporated into school curricula and various "memory sites" with the aim of conveying a meaningful account of the dictatorship and the past violence to younger generations.[9]

4. What we still do not know: From judicial truth to historical knowledge

The rhetoric style of the truth proposed by *Nunca Más* was modeled on, and at the same time, enhanced by, the judicial paradigm on which the prosecution of human rights abuses in Argentina was based, starting with the decrees ordering the military and guerrilla leaders' trials. This marked the epistemic limits of the construction of knowledge on the disappearances, but also determined the aspects that would be disregarded by the investigation.

In the first place, we know little about the identity of the disappeared. CONADEP and the criminal trials restored the victims as human beings and subjects of law, but obliterated their political affiliations. Thus, while they were now held as "innocent", this did not entail abandoning the legal dyad established by the dictatorship's portrayal of the disappeared as criminals.[10] Knowing the political affiliations of the disappeared would make it possible to establish the political logic behind the extermination, determine the proportion of disappeared activists who were official members of a specific organisation, and the organisations they belonged to, and correlate that information with their class profile, the place where they were abducted, and the institutional period in which they were disappeared — before or after the 1976 coup. That would in turn enable us to put into question the arguments that reject any radicalised affiliation on the part of the disappeared — and in particular any guerrilla connections — or that posit that most post-coup

[9] Emilio Crenzel, *Memory of the Argentina disappearances: The political history of Nunca Más* (New York/London: Routledge, 2011).

[10] There are insufficient academic contributions on this subject. See Inés Izaguirre, *Los desaparecidos, recuperación de una identidad expropiada* (Buenos Aires: Instituto de Investigaciones Gino Germani, Universidad de Buenos Aires, 1992).

disappearances targeted social activists unrelated to guerrilla groups. In both cases, the "antisubversive war" and the "two evils" theories could be revisited with rigorous information.

Moreover, CONADEP classified the disappeared by their occupation, using non-mutually exclusive alternatives that combined occupational categories — workers, employees — specific occupations — lawyers, journalists, teachers — and generic occupational descriptions — professionals.[11] While this resulted from insufficient information — in many cases provided by the victims' relatives and friends — by presenting them in that way the Commission also sought to highlight the widespread nature of repression. This information was never reexamined, despite the fact that the state has statistical instruments to do so or can re-gather such data, a possibility that is increasingly threatened by the passage of generations. Such new data would help accurately establish the class profile of the disappeared, an aspect that is also key to understanding the logic behind their extermination.

Lastly, the number of victims is still clouded by indetermination and political struggles.[12] On the one hand, the indefiniteness of that figure is a result of the characteristics of the crime and the perpetrators' refusal to surrender the records in their power. On the other, it became a symbol/fetish in the struggle between the human rights organisations — that held up the figure of 30 000 disappeared to expose the magnitude of the extermination — and those on the side of the repressive forces — who relativised the number of victims. As a result of the state's growing alliance with the human rights organisations and its classification of the disappearances as a genocide, it has inhibited its authority to publicise the figures in its power.

The number of disappeared recorded by CONADEP (8 960) has in fact been modified through additions and eliminations. New reports were filed, especially after a 1994 law granting economic compensation to relatives of the disappeared, and others were removed (erroneously

[11] *Nunca Más*, 294, 296, 375.

[12] Alison Brisk, "The politics of measurement. The contested count of the Disappeared in Argentina", *Human Rights Quarterly* 16, 4 (1994): 676 – 692.

included due to spelling mistakes, duplications of women recorded under their maiden and married names, survivors who had been recorded as disappeared, *etc.*) In 2009, the state registered 7 140 disappeared, 1 336 persons summarily executed, 2 793 survivors, and 1 541 reports pending consideration. As Vezzetti notes, the survivors represent 39% of the total number of disappeared recorded, thus evidencing the selectiveness of enforced disappearance and distinguishing it from genocide.[13]

The significant percentage of survivors also merits examination. While CONADEP and the courts looked for objective evidence in their testimonies, and testimonial and biographic literature have made their memories increasingly available to the public, there are no analytical studies of their class profile, political affiliations, or even their distribution according to place of captivity and year of liberation. This data, which could be contrasted to the data of the universe of the disappeared, would enable us to investigate whether any sector of the armed forces adopted a selective policy towards the disappearances, and determine the political situation or situations under which liberations occurred. Neither are there any academic works that overcome moral considerations to examine the captor-captive relationship in the clandestine detention centers.[14]

Second, the perpetrators also constitute an unknown universe. The truth presented by *Nunca Más* and sought by the criminal inquest focused on establishing facts and identifying responsible parties. However, the life stories of the perpetrators, their class profile and their ideas and values remain unexplored topics. Some journalistic reports have featured biographies of the dictators or statements by the few perpetrators who

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[13] See http://www.pagina12.com.ar/diario/elpais/1-131783-2009-09-15.html, quoted in Hugo Vezzetti "Verdad jurídica y verdad histórica. Condiciones, usos y límites de la figura del 'genocidio'", paper delivered at the international seminar "Nuevos comienzos: Justicia, verdad y reconciliación en Argentina, Uruguay y Sudáfrica," (Buenos Aires: Instituto de Investigaciones Gino Germani, December 2011); and in English in this volume: 29 – 40.

[14] An exception is Pilar Calveiro, *Poder y desaparición: Los campos de concentración en Argentina* (Buenos Aires: Colihue, 1998).

came forward with confessions, but there are few academic contributions addressing this issue.[15]

Here, too, the legal discussion regarding the scope of punishment — which opposed Alfonsín's call to exonerate the most direct perpetrators on the grounds that they were following their superiors' orders, to the human rights movement's demand for full retributive justice, condensed in the slogan "trial and punishment for all perpetrators" — left no room for an investigation into the motives of the different levels of perpetrators. In particular, we do not know how important their allegiance to the war against subversion was, if they had any real chance of disobeying orders without suffering consequences, and what role peer pressure and/or competition and the desire for professional advancement, status, and personal profit played. Internationally, several recent research works have posed the need to revise Milgram's thesis of the widespread willingness to obey orders issued by legitimate authorities, and Arendt's contributions highlighting the suppression of the moral implications of the perpetrators' acts by virtue of their position within a bureaucratic machinery or the prevailing ideological context that justified their actions.[16] These new contributions underline the opportunity that the Holocaust perpetrators had of refusing to participate in the killings and stress their strong anti-Semitic beliefs and their awareness of the consequences of their actions.[17] In Argentina's case, Malamud Goti posited that the high military command's decision to plan the counterinsurgency war coincided with a pressure "from

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15 See María Seoane and Vicente Muleiro, *El Dictador. La historia secreta y pública de Jorge Rafael Videla* (Buenos Aires: Sudamericana, 2001); and, Horacio Verbitsky, *El vuelo* (Buenos Aires: Sudamerican, 2004). For an academic perspective, see Leigh Payne, *Unsettling accounts: Neither truth nor reconciliation in confessions of State violence* (Durham: Duke University Press, 2008).

16 See Stanley Milgram, *Obedience to authority; An experimental view* (New York: HarperCollins, 1974); Hannah Arendt, *Eichmann in Jerusalem: A report on the banality of evil* (London: Faber & Faber, 1963); and Hannah Arendt, *The origins of totalitarianism* (New York: Harcourt Brace Jovanovich, 1973).

17 See Christopher Browning, *Ordinary men. Reserve Police Battalion 101 and the final solution in Poland* (New York: HarperCollins, 1992), and Albert Breton and Ronald Wintrobe, "The bureaucracy of murder revisited", in *Journal of Political Economy* 94, 5 (1986): 905 – 926.

below" exerted by officers who were combating guerrilla groups and were pressing the armed forces to take an organised and drastic approach.[18] Not much is known either of why and when the armed forces decided to turn clandestine extermination into a state policy.

While there are testimonies linking that decision to the military's reaction to the 1973 amnesty granted by the constitutional Peronist government — after which the amnestied prisoners resumed their activism, even taking up arms — to the desire to avoid the kind of denunciations that were being brought by the international community against the Pinochet dictatorship in Chile, to the Vatican's probable opposition to public mass executions, and to the advantages of a method unfettered by legal obstacles, we have a poor historical understanding of how that decision came to be and who participated in its adoption. In this sense, the institutional periodisation established by *Nunca Más* and the military junta trial, which limited the responsibility of the disappearances to the dictatorship, prevented an examination into the historical genesis of this system and into how its implementation was part of the escalation of state repression, with the involvement of constitutional governments. Recent contributions have focused on the repressive policies of the 1973 – 1976 Peronist governments, which, in the framework of the antisubversive war, adopted the "internal enemy" discourse, a rhetoric that would become increasingly dominant after the 1976 coup.[19]

The judicial truth regarding the system of disappearances presented the armed forces and the state as solely responsible. This constructed a vertical image of the system, where the state's violence targeted a "we" represented by civil society and the political community as the collective victim of the crimes. Thus, the criminal, political, and moral responsibilities of large economic, religious and political groups were overlooked, along with the responsibilities of ordinary men and women. That is, a militarised and state-centered image of the crime was forged as a result of the construction of the judicial truth of the system of

[18] Jaime Malamud Goti, *Terror y justicia en la Argentina. Responsabilidad y democracia después de los juicios al terrorismo de Estado,* (Buenos Aires: Ediciones de la Flor, 2000): 26.

[19] See Marina Franco, *Un enemigo para la Nación. Orden interno, violencia y "subversión" (1973 - 1976)* (Buenos Aires: Fondo de Cultura Económica, 2012).

disappearances and the political need for a new institutional order, distinct from the dictatorship, after the return to democracy. There is no doubt that the armed forces perpetrated the crime and used the state to do it. However, this perspective precluded the investigation of other responsibilities, such as that of Catholic authorities, which justified the abuses and the extermination, and the silences and complicities of political and business elites and the courts, but also of other mid-level organisations, trade unions and university associations.

Similarly, the judicial truth regarding this system failed to encourage the wish to investigate the types and degrees of knowledge that existed in civil society with respect to the system of disappearances as it was being implemented, and, more specifically, knowledge of its characteristics, perpetrators, and nature. It is, in fact, a historical problem outside the competence of the courts and which academic research has only recently begun to address. It has been examined in some essays and research works that compare groups with different economic and educational levels, or groups that were diversely connected and affected by the disappearances, differed in their political affiliations, or were located in different regions across the country.[20] Such an investigation would enable us to deconstruct two perspectives that are equally totalising and removed from reality: the perspective crystalised in *Nunca Más*, which presented a society oblivious to the disappearances as they occurred, and the perspective that emerged in the heat of the crisis of the early twenty-first century, which posited society's complicity and full awareness of these crimes.

5. Conclusions

Argentina set itself apart from the rest of the world because of the wide range and originality of the transitional justice policies it

[20] See Hugo Vezzetti, *Pasado y presente. Guerra, dictadura y sociedad en la Argentina,* (Buenos Aires: Siglo XXI Editores, 2002); Gabriela Águila, *Dictadura, represión y sociedad en Rosario, 1976 - 1983. Un estudio sobre la represión y los comportamientos y actitudes sociales en dictadura* (Buenos Aires: Prometeo, 2008); and Emilio Crenzel, "Cartas a Videla: Una exploración sobre el miedo, el terror y la memoria", *Telar* 2 and 3 (2005): 41 – 57.

implemented following the reinstatement of democracy in 1983, which included a successful truth commission, criminal trials, reparation laws, and the intergenerational transmission of the memory of human rights violations.[21] This process was the result of the struggles of the human rights movement, of initiatives by different constitutional governments, and of alliances that — not without friction and moments of rupture — were forged between these actors. In the course of this process, the truth about the human rights violations was constructed within the frameworks established by the courts for investigation. This made it possible to reconstruct the materiality of the crime and punish some of its perpetrators. However, it created a prism that overlooked aspects that were key to understanding what happened, and which are part of an agenda for future research. If we know so little about the identity of the disappeared and the perpetrators, the genesis of the system of enforced disappearances, and the relationships that the various groups and actors maintained with that system, it is possible that we may have overestimated the knowledge and truth we gained regarding this crime.

Twenty years after the Trial of the Juntas, one of its architects, Malamud Goti, showing intellectual courage, dismissed the idea that the courts were capable of processing the full range of consequences of the country's political conflicts, which cannot be reduced to an innocence/culpability dichotomy.[22] Accepting these limitations, but recognizing the need for justice, the challenge now is to construct a polysemic truth that will simultaneously contribute to punish what cannot be forgiven, while at the same time providing insight into what cannot be intellectually and politically ignored.

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[21] See Kathryn Sikkink, "From pariah State to global protagonist: Argentina and the struggle for international human rights", *Latin American Politics* 50, 1 (2008): 1 – 30.

[22] Goti, *Terror y justicia en la Argentina,* 188, *ff.*

On innocent victims and demons in Argentina (1983 – 1985)

By Lucas Martín

On 24 March 1976 began the so-called "Process of National Reorganisation" (*Proceso de Reorganización Nacional*). This dictatorship, the last in Argentina's history, marked a turning point, distinguishing itself from preceding dictatorships by waging terror and carrying out forced disappearances. The *Proceso* established an organised, covert structure for kidnapping individuals who were considered "subversive", imprisoning them in clandestine prisons, torturing and murdering them. To this day, *los desaparecidos* (the disappeared) have remained hidden from the rest of the world because those responsible, with support from the state, secretly disposed of the corpses. According to the report by the National Commission on the Disappearance of Persons (CONADEP in Spanish), the number of *desaparecidos* totaled approximately 9 000 victims.[1]

The regime of State terror and forced disappearances was a pivotal moment in Argentina's history, but it cannot be argued that it appeared out of nowhere. For years, the country's history had been marked by increasingly repressive military dictatorships with deep-rooted social consensus. In the mid-1970s, the Argentine people were living in a country weighed down by growing violence and repression, where the legitimacy of political adversaries — the "enemy" — was progressively denied while democratic institutions were abandoned in the name of fundamental values or particular interests.

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[1] Most of the victims were killed during the first two years of the regime. The number of victims is estimated to be about 11 000 if we include those killed in supposed escape attempts, confrontations with the military or police, and those few of the detained/disappeared who managed to escape or were later released. See Asamblea Permanente de Derechos Humanos, *Las cifras de la Guerra Sucia* (Buenos Aires: s/d, 1988): 33; Prudencio García, *El drama de la autonomía militar. Argentina bajo las Juntas Militares* (Madrid: Alianza, 1995): 163, 166.

The situation that preceded the *coup d'état* had only served to exacerbate these features of the past. The growing political violence of the revolutionary left-wing, the government squads and the extreme right, the inefficiency of the government to face a multifaceted crisis, the "vacuum of power" and the death of President Juan Domingo Perón: all these circumstances created a unique context that gave rise to an unprecedented regime.

When the dictatorship came to an end in 1983, a year after the country's defeat in the Falklands/Malvinas War, the crimes committed during the *Proceso* became public. In this context of democratic transition — a moment of political revision and reconstruction — two forms of acknowledging the traumatic past took shape: the discourse of blame and innocence and the so-called "theory of the two demons".

The aim of this article is to examine how these particular discourses crystalised: as they developed, they obstructed important aspects of the past which, had they been considered, would have recognised a certain degree of responsibility on the Argentine society's part and contributed to a better understanding of this traumatic period. In this sense, I will point out an occluded distinction between the victim of *repression* and the victim of *deception* in order to discuss the critical importance of the social dilemma of truth under dictatorship.

After the Falkand/Malvinas War — particularly after the new democracy was established at the end of 1983 — the public exposure to what had occurred during the dictatorship was overwhelming. These discoveries were presented to the public in three ways between 1983 and 1985. The first became known as the "horror show": the media startled and saturated the public with the most heinous aspects of terrorist repression by the State, leading to society's rejection of these crimes as irrational and inhumane.[2]

[2] *Cf.* Inés González Bombal, " 'Nunca Más'. El juicio más allá de los estrados", in Carlos H. Acuña, Inés González Bombal, Elizabeth Jelin *et al.*, *Juicio, castigos y memoria. Derechos humanos y justicia en la política argentina* (Buenos Aires: Nueva Visión, 1995); Claudia Feld, *Del estrado a la pantalla: Las imágenes del juicio a los ex comandantes en Argentina* (Madrid: Siglo Veintiuno, 2002);

The second moment was marked by the work done by CONADEP, a commission created by executive decree to establish the truth regarding the crimes committed during the dictatorship. CONADEP was the place where survivors and family members of the victims went to testify and were received within the sober framework of a state-sponsored institution which was comprised of figures whose integrity was amply acknowledged by society. The work of CONADEP changed the tone of the accounts of what had actually occurred as a growing number of testimonies and evidence revealed the systematic nature of the crimes. The general response of Argentine society was moral condemnation, as symbolised in the expression *Nunca más*[3] (Never Again), the title of the book on the Commission's report (which soon became a best seller).

Finally, the third type of public presentation was the trial of the dictators who had ruled the country — nine Commanders of the Armed Forces. The solemn tone of courtroom proceedings subdued part of the sensationalist aspects of the "horror show" whilst the moral condemnation of *Nunca más* was institutionalised by the authority of a renewed Judiciary. This did not, however, keep emotions from playing an important role before, during and after the trial. It was in these years of transition, political revision and reconstruction that the discourse of blame and (the myth of) innocence, as well as the "theory of the two demons", took shape as the preeminent ways of acknowledging the traumatic past.

The discourse of blame and the "myth of innocence" had a dual origin: the public exposure to the atrocities committed and the ensuing trials. First, the constant media coverage of horrifying images and testimonies led the spectator to establish a direct emotional bond — one that was not mediated by any type of reflection — with the pain of the surviving victims and the loved ones of the victims who did not survive. This bond highlighted the innocence of the victims and

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Emilio Crenzel, *La historia política del Nunca Más. La memoria de las desapariciones en Argentina* (Buenos Aires: Siglo Veintiuno, 2008).

[3] Comisión Nacional sobre la Desaparición de Personas, *Nunca Más. Informe de la Comisión Nacional sobre la Desaparición de Personas,* (Buenos Aires: EUDEBA, 1984).

condemned the perpetrators. There was thus identification with the victims in general, particularly with the "extreme victims" or "innocent victims"[4]: the children, elderly, pregnant women, *etc.*, the cases in which the crimes reached new peaks of monstrosity and became even more alien, thus increasing society's certainty of its own "innocence". In addition, society reacted as if all this were a novelty when the events were in fact quotidian truths that citizens had opted to ignore or tolerate. The CONADEP Report gave evidence to this blame/innocence discourse by revealing the systematic nature of crimes, and public consensus further fostered this discourse as well.

Secondly, the trial of the dictators contributed to spreading the discourse of blame/innocence by giving a biased perspective which focused on the events that would establish the criminal responsibilities solely of military and police officials, based on legal definitions of the crimes committed — the victims being taken as mere civilians, as simple human beings without political identities. By overlooking the fact that most of the victims were political and even armed activists, society freed itself from the need to address the incurred political responsibility, first by fostering the "consensus against subversion" that favoured the coup and secondly, by ignoring or remaining silent before this unparalleled repression — hidden, but nevertheless perceptible — which the former consensus upheld.

Society thus manifested its indignation in an emotional, moral way, focusing it on the armed forces and police; the only "guilty" parties because they had borne arms, kidnapped, tortured, murdered and deceived.[5] For their part, the victims and the society at large identified

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[4] The term is taken from Bombal, "'Nunca Más'", 206. See also Claudia Hilb, "Responsabilidad como legado", in César Tcach (Ed.), *La politica en consignas, Memoria de los setenta* (Rosario: Homo Sapiens, 2003); Hugo Vezzetti, *Pasado y presente. Guerra, dictadura y sociedad en la Argentina* (Buenos Aires: Siglo XXI, 2002): 136 - 137; Marcos Novaro and Vicente Palermo call this moral identification of society with the victims the "myth of innocence", in *La dictadura militar (1976-1983). Del golpe de estado a la restauración democrática* (Buenos Aires: Paidós, 2003): 487 - 491.

[5] Guillermo O'Donnell, *Contrapuntos. Ensayos escogidos sobre autoritarismo y democratización* (Buenos Aires: Paidós, 1997): 157; Jaime Malamud Goti, *Terror*

with each other within a retrospective projection encompassed by the "myth of innocence". The new beginning of democracy thus lacked any political reflection on the past.[6]

On a deeper analytical level, it could be said that Argentine society was declaring itself to be implicitly innocent in two regards: as a victim of *repression* and of *deception*. While the account of *repression* confirmed the innocence of a powerless, subjugated society, the account of *deception* — clandestinity and lies — revealed society's *ignorance* of the events that extended innocence to include the silence that society had maintained under the regime.

So, as we see, a second myth arises from the first, the "myth of ignorance", allowing us to highlight an occluded gap in the discourse of the transition. We find ourselves before two figures of the victimised society. On one hand, the dual discourse of blame and victimisation created the figure of society as a victim of State terrorism. Society identifies with the victims of repression, especially, as aforementioned, with the "extreme, innocent victims". On the other hand, there is the supposed 'revelation' of an ignored truth that confirms the figure of innocence of society as a victim by evoking the clandestine nature of the state terror, particularly the practice of forced disappearance.

There is clearly a gap between these two figures: as society accepted the public accounts of the truth as a revelation, its identification with the victims of repression became more problematic. By identifying with the direct victims of terror, society denied its own ignorance, an ignorance that it attributed retroactively when it heard the accounts of horror as if it were the first time.

How can one ignore and at the same time suffer from terror? How can

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y justicia en la Argentina. Responsabilidad y democracia después de los juicios al terrorismo de Estado (Buenos Aires: Ediciones de la Flor, 2000).

[6] Even the new claim for human rights, whose disclosure changed the Argentinian political culture, lost its political tone within that diffuse "solidarity of sentiments". Vezzetti, *Pasado y presente,* 119 - 120; and Bombal, "'Nunca Más'", 204 - 205.

society present itself as a victim of terror and simultaneously claim to have been deceived about what actually happened? As could be seen in the testimonies of surviving victims during the Trial of the Juntas, the victim who in fact survived the "clandestine torture centers" presented a truth that they came to know through experience but could not voice after the regime's demise.

We believe that this neglected gap between the victim of repression and the victim of deception reflects the complexity of the reality experienced by society during the *Proceso*: there were those who knew what was going on but were paralyzed with fear, there were those who did not want to know (willful and consciously ignorant), and there was a limited number of those who, despite the danger, bravely denounced what was happening and demand the truth (the Mothers of the Plaza de Mayo in particular). The clandestine nature of the sordid system and the subsequent detailed unveiling to the public nourished the idea of a novel truth, from which Argentine society adopted the role of the *innocent victim* without further nuances, thus hindering any reflection and shifting to a moral, emotional discourse of blame and to the myth of innocence.

The so-called "theory of the two demons" crystalised in the same context. According to this "theory" — considered by come to be a "thesis" or "scheme" — rebel terrorist groups, as well as those led and supported by the State, carried out many acts of extreme violence against one another that were equally reprehensible and demonised. The newly-elected democratic government partly supported this view when it decided to bring justice to both the leaders of the military and the guerrillas. President Raul Alfonsín's own words seem to provide the terms for this "theory" when he said that "the intention had been to fight the demon with the demon, turning the country into a hell-hole". This could also be observed in the "Prologue" to the CONADEP Report[7] as well as in the speech that Antonio Tróccoli (Minister of

[7] The very beginning of the Report stated: "During the 1970s, Argentina was torn by terror from both the extreme right and the far left". It also describes a "diabolical technology… employed by people who may well have been sadists, but who were carrying out orders". See also the reference to Dante: "The victims were then taken to a chamber over whose doorway might well

Domestic Affairs) gave as an introduction for the televised transmission of the Commission's Report. Minister Tróccoli stated that CONADEP's Report had settled only "one side of the drama", the other side being that of the "the subversion and the terrorism encouraged from abroad", in other words, communism. In his view, also being the official public one, both "messianic projects" ended up being pushed into a "diabolical cogwheel mechanism of death and terror"[8] during the 1970s within a "weakened society".

Unlike the dual discourse of blame and the innocent victim, this "theory" *explains* the horror by extending its interpretation into the years before the 1976 coup to include the actions of the aforementioned revolutionary organisations. As critics of this theory note, the main feature of this framework lies in the implicit and unrecognised: the role of society in the origins and justifications of the *Proceso*. "Subversion" *explains* State terrorism to such an extent that society appears as an external spectator who witnesses the confrontation of the two demons, thus confirming the notion of its innocence and acquitting itself from any responsibility.[9]

Both the figure of the *innocent victim* and that of the *two demons* have historic roots. The first can be found in the social representations of the 1970s which interpreted political reality in terms of "chaos vs. order" and "war".[10] Political violence was actually the most salient political problem at that time. The theory of the two demons, however, encapsulated those discourses that were not fully compatible: the discourse of chaos/order, connected with internal government policy, while the warrior refers to foreign affairs or civil war. It could be said

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have been inscribed the words Dante read on the gates of Hell: 'Abandon hope, all ye who enter here"'. The English version of the Report is available at: http://web.archive.org/web/20050211130829/http://www.nuncamas.org/english/library/nevagain/nevagain_001.htm.

[8] For President Alfonsin's and Minister Tróccoli's words see the video produced by Memoria Abierta: http://www.memoriaabierta.org.ar/materiales/nuncamas.php.

[9] Vezzetti, *Pasado y presente*, 37, 15, 40; Novaro and Palermo, *La dictadura militar*, 491.

[10] Vezzetti, *Pasado y presente*, 18, 56 – 57, *ff.*

that the theory of two demons combined them in a sort of "diachronic civil war" in which State terror acts as a substitute punishment for revolutionary "chaos". Nonetheless, society had not blindly embraced any of the discourses during the 1970s: it had kept a sensible *distance* from them. Armed leftist groups moved towards militarisation and secrecy in the hope that a new military repression would raise awareness that did not exist in society.[11] This is also why the dictatorship chose not to seek the people's explicit support once it was installed, in spite of the fact that its leaders were aware of the broad social consensus that justified their actions. In short, if it is true that the discourses of "chaos" and "war" played an important role in the representations that circulated during the 1970s, it is also conversely true that these representations, especially that of "war", were far from undisputed by society.[12]

To express it more succinctly: Argentine society did not blindly embrace a totalitarian movement nor did it purposefully divide itself into a civil war society. The consensus it provided the dictatorship — a consensus that allowed the horror to occur in Argentina — was a negative consensus "against subversion", one that established *distance* from what was occurring. Nevertheless, this distance is different from the distance represented by the two retrospective discourses of the new beginning of democracy.

How does a distance that had given shape to a *consensus against subversion* become a distance in which society becomes *innocent*? Two modifications in the representations of the 70s could be pointed out in this recreation of the new democracy. First, the military was no longer part of the "order" — it had become one of the "demons" — and second, the idea of "war" (or fight) drives out the idea of "chaos and order". These two modifications involved two important shifts, fostering the image of a distance that accompanies innocence.

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11 Pilar Calveiro, *Violencia y/o política. Una aproximación a la guerrilla de los años 70* (Buenos Aires: Grupo Editorial Norma, 2005): 104 - 105.

12 See Lucas Martín, "Dictadores preocupados. El problema de la verdad durante el 'Proceso' (1976 - 1983)", in *Postdata. Revista de reflexión y análisis politico* 15, 1 (2010): 75 - 103; also, Novaro and Palermo, *La dictadura militar*, 33 - 34, 130.

The first is a specific product of the "theory of the two demons" and it involves moving the discourse of "chaos and order" to the discourse of "war". While during the violent 1970s the military appeared as a promise of "order" that would put an end to the "chaos", during the years of the democratic transition, the *alternatives* of (negative) chaos and (positive) order became an *antagonism* between two negative extremes: the two 'demons'. There is thus a retrospective modification of the images, as the military were turned into demons, whilst they had not been seen as such in 1976 — at least not by the widespread "consensus against subversion". This change permitted the retrospective projection of the image of society that is simultaneously victim and spectator. In fact, to create this image, the figure of war is much more convenient than the *ordenancista* ("disciplinarian") figure of chaos and order.[13] While the figure of war maintains a distinction between fighters and civilians — giving way to the image of the innocent distance of those outside the battlefield — the figure of chaos and order makes moral condemnation difficult without making certain concessions, given that all of society was implicated, either as active participants of the chaos or calling for order.

The second shift lead society from a distance that can be considered "decisive" to a distance in which society played the role of the innocent victim (and spectator) at the onset of state terrorism. Both figures of *consensus* and *innocence* are marked by their distance from the regime, but by moving from one to the other, the "decisive" nature of that distance is lost in society's retrospect. It was then neither the perceptible distance that the military and the guerrillas had had to deal with, nor the necessary anti-subversive distance which made it possible to overlook the forced disappearances. It became an inconsequential distance, absent from the scene: the distance purely of a spectator, as

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[13] Although the *Proceso* had intended to distinguish itself from previous dictatorships by aiming at not just the restoration of order but also at the imposition of a radical change of Argentine society at large. However, the "disciplinarian" element was an important pillar of the claims to legitimacy in public speeches. Guillermo O'Donnell, "Democracia en la Argentina: Micro y macro", in Oscar Oszlak (Ed.), *"Proceso", crisis y transición democrática* 1 (Buenos Aires: CEAL, 1987): 19 - 20, 29.

if society had never fostered a discourse of chaos and order that would shape the "consensus against subversion".

In sum, through the image that Argentine society presented of itself during the transition to democracy, an image constructed through the two shifts in the image of distance described above, Argentine society could overlook its own decisive role in the recent past.

We can conclude that the discourse of blame and innocence and the theory of the two demons have contributed to crystalising a common meaning of the traumatic past that exempts Argentine society from taking responsibility. Acknowledging the restrictions of the domination, the effects of terror and the way in which society distanced itself from those who supported political violence; we could attempt to understand how society could contribute to its own subjugation to terror by means of retracing the rhetorical figures and shifts. According to our analysis, what the retrospectively occluded distinction between the victim of *terror* and the victims of *deception* demonstrates is that society could not have been oblivious to the truths "discovered" during the transition.

During the transition to democracy, why couldn't post-dictatorial society admit how much was known of what had gone on during the dictatorship, given that it would have been easy to argue that the terror and the threat of violence had forced them into silence? Why were there victims of terror *and* victims of deception? Why did the military resort to lies and secrecy while inflicting terror? Does not the mechanism of deception and secrecy reveal that the dictators had to lie to society because they needed its consent? Does this not indicate that the terror alone was not sufficient, that the military regime was not all-powerful? How truly powerless was Argentine society? What would have happened if the lies had not worked and the truth had been known, demanded and voiced? Did not Argentine society admit its own responsibility by avoiding the fact that the dictators' lies revealed the power that society could have wielded had it demanded the truth?

Although it is difficult to establish exactly how much society knew, there were certainly many events that indicate a certain awareness of

what was occurring[14]: the magnitude and extension of the crimes; the unnecessary and flamboyant display of power of the death squads; the corpses that were dumped in empty lots or found washed up on river banks; the people who suddenly stopped showing up at work, at the club, or around their neighborhoods, and the newspaper articles regarding people killed in suspicious confrontations with the security forces. All of these quotidian occurrences contributed to what was known at the time as the "stifling atmosphere".[15] In addition, the clichés that circulated during the years of the *Proceso* ("I don't know", "don't find out", "don't get involved", "there must be a reason", "they must have done something") must all be taken as calls to silence and submission that were directed at something that was unsettling them. They indicate an awareness of what was happening and reveal that silence was, to a certain extent, independent of the terror. From this perspective, it is possible to posit that the aforementioned *decisive distancing* of society focused on *the truth* of what was actually happening. The rhetoric of the innocent victim, as well as the theory of two demons, aided Argentinians in turning the page of the recent past before having read the whole story.[16]

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[14] I intend to establish some milestones on this matter in "Le mensonge organisé pendant la dernière dictature argentine. Penser la société avec H. Arendt", in *Tumultes* 31 (Paris: Editions Kimé, 2008): 195 - 214.

[15] Hugo Quiroga, "La verdad de la justicia y la verdad de la política. Los derechos humanos en la dictadura y en la democracia", in Hugo Quiroga and César Tcach (Eds.), *A veinte años del golpe. Con memoria democrática* (Rosario: Homo Sapiens, 1996): 73.

[16] The author would like to express his gratitude to Wendy Gosselin and Valentina Iricibar for their help in the English version of this text.

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"*MIERDA*", OR CONCERNING "EVIL" IN POLITICS. A RHETORICAL ANALYSIS.

By Philippe-Joseph Salazar

My purpose is to outline the question of "the diabolical". To acknowledge something like "the diabolical" in politics of transition has a direct bearing on the appreciation by which in order to achieve a "new beginning" a traumatised polity "treats" the diabolical and proceeds to reconciliation, or to vengeance.[1]

I.

Let me begin with immediate differences and one analogy on the question of "the diabolical" in Argentina and South Africa. Both in the Report by the Truth and Reconciliation Commission[2] and in the debate ensuing from the republication of the *Nunca más* Report by CONADEP "the diabolical" makes its presence felt. The TRC Report names apartheid "evil" and in Argentina there is a debate on the mysteriously named "teoría de los dos demonios". Terms vary but fall within the same paradigm, "the diabolical".

However, there are immediate differences in the treatment of "the diabolical" in public debate. In South Africa, it was a case of a morbid or eroticised fascination for "prime evil", Colonel Eugene de Kock.[3] In Argentina (as the English entry in Wikipedia says cleverly) it functions

[1] Material is based upon work supported by the National Research Foundation of South Africa (GUN: 75930). Any opinions, findings and conclusions or recommendations expressed in these materials are those of the author and therefore the NRF does not accept any liability in regard thereto.

[2] Readers are refered to two compendia of the TRC Report: 1.) Erik Doxtader and Philippe-Joseph Salazar, *Truth and reconciliation in South Africa. The fundamental documents* (Cape Town: David Philip, 2007): 2.) French-English version by Philippe-Joseph Salazar, *Amnistier l'Apartheid* (Paris: Le Seuil, 2004).

[3] In Doxtader and Salazar, *op. cit.*, Document 35: 210 - 217 and note: 297.

like (or as) a "rhetorical device",[4] and it refers to the "theory" whereby criminals *pro* and *con* engaged in acts of violence that were "demoniac"; in South Africa however the epithet "evil" has never been applied (to my knowledge) to crimes committed by Liberation movements.

Further, that apartheid was evil was taken for granted, not only as an idea but as practice. Some perpetrators[5] actually staged its exorcism and expressed that they "had found God again", after they had been deposed by the TRC; as if, through talking they exorcised the evil in themselves. An apartheid cabinet minister washed the feet of an opponent (by then also a Cabinet official) whose assassination he had ordered or covered up, in a gesture of religious atonement at Easter time.

In addition, whereas Liberation movements were asked by the TRC to justify their human rights violations, by contrast in Argentina the suggestion that those who, from anti-junta or security forces, committed crimes were equally demoniac, was not taken for granted. In fact it deeply divides the partisans of criminal tribunals, who won in the end, and the partisans of a reconciliation akin to South Africa's whereby perpetrators and victims were treated "with fair handedness" — *i.e.* not in the same way but with the same recognition that apartheid being evil, perpetrators were also its victims. No such consideration seems acceptable to many or even most of the relatives of victims in Argentina.[6]

The leader of the Mothers of the Plaza de Mayo called the idea of

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[4] "The theory of the two demons (Spanish: *Teoría de los dos demonios*) is a rhetorical device used in Argentine political discourse to disqualify arguments that appear to morally equate violent political subversion with illegal repressive activities carried out by the state": http://en.wikipedia.org/w/index.php?title=Theory_of_the_two_demons&oldid=422752387.

[5] For an anthropology of "perpetrators", see Philippe-Joseph Salazar, "Relato, reconciliación, reconocimiento, a propósito de los *perpetradores* y de la amnistía de Sudáfrica", *Historia, Antropología y Fuentes Orales* 42 (2009): 37 - 53.

[6] Argenpress.info (20 September 2010): http://www.argenpress.info/2010/09/argentina-cordoba-la-teoria-de-los-dos.html.

"fair handedness" or equally shared evil "*Mierda*", "shit". [7]

The word is strong. Indeed "the diabolical" in theology is often in proximity with vile matters, cold semen and excrement; so, when voices of vengeance evoke indirectly the purity or innocence of "our children" (who were undoubtedly tortured, or raped and killed), the link between the excremental nature of the "diabolical" on one side and the virginal on the other settles in a neat, if somewhat expected, balance of opposites. None of this was prominent in South Africa where, mostly, pardon granted and remorse expressed equalised pain and anger. Victimhood at the hands of "evil" apartheid was perceived to be borne both by perpetrators and what we usually and juristically call, victims. Some Liberation fighters, who had been tortured refused for that reason to appear as "victims".

One step back into rhetoric: How common places are turned into ethical arguments, how such arguments have no other truth-value than the rhetorical effects they produce as they solidify in objects for transactions, is the ambit of rhetoric as practical philosophy. Arguments are commodities. I have called them, elsewhere, "rhetoremes". This is in essence a radical, materialist approach.

II.

Thus, if there is a discursive theory of "evil", it is found in the TRC Report. I will list the main instances of "evil" in the Report, and facing each occurrence, I will offer the prolegomena of a gloss. The sum of the glosses structures the rhetoreme "evil".

A similar work must be done with regard to the controversy around the "demonios" and the new, 2006 version of *Nunca más* which rejects a "symmetry" between "State terrorism" and acts of rebellion — bearing in mind that the idiom *teoría de los dos demonios* is not to be found in the original *Nunca más* and is a rebuttal device used by its opponent.

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[7] Olivier Galak, "Controversia por el prólogo agregado al informe 'Nunca más' ", *La Nacion* (19 May 2006).

1. The online presentation on the TRC website states:

"The Mandate (Volume 1, Chapter 4, paragraph 1) is critical to understanding the way in which the Commission grappled with and interpreted its mandate, and how it dealt with the complexities that attended this process. The chapter explores the origins of the Commission and the political processes that brought it into existence. It provides some background as to how the Commission approached its work and takes up some of the important debates that provided the framework within which the Commission operated. These include a discussion on terminology; the debate on the definition of victims in an apartheid society and the necessarily narrow focus of the Commission ("Who were the victims of gross violations of human rights?"): "…It can never be forgotten that the system itself was evil, inhumane and degrading for the many millions who became its second and third class citizens. Amongst its many crimes, perhaps the greatest was its power to humiliate, to denigrate and to remove the self-confidence, self-esteem and dignity of its millions of victims".[1]

Gloss: Apartheid as a system is "evil, inhumane, degrading". That is: a theological definition of evil appears first in connection with the degradation of mankind from its Edenic status to what we call humanity,[2] when death becomes an integral part of humanity. Apartheid is equated with the Fall and Death.[3]

[1] http://www.justice.gov.za/trc/report/execsum.htm
[2] Genesis 3.
[3] Wisdom 2: 24.

2. A statement about the Scriptural basis for the imperative to oppose evil:

"Liberation theologists' biblical imperative is to be found in Isaiah Chapter 61, verse 1 – 4, and is quoted in Luke Chapter 4, verse 18 - 19, particularly the words: "To set at liberty those who are oppressed". For this reason a group of Theologians met together at that critical time of South Africa's history, and using the process of wide and in-depth consultation, eventually came up with what came to be known as the (*Kairos*)[4] Document, issued as a challenge to the churches. In its short lifetime, the institute has suffered much at the hands of the previous government and from rejection by most churches who have misunderstood is vision and mission. Both government and the churches singled out liberation theology as the devil's theology and thus accused ICT of serving the interest of….[TAPE ENDS] …[inaudible] have a lot in common between communism, barring atheism and Christianity than the church would care to admit.[5]

Gloss: Apartheid branded Liberation theology, the "devil's theology". What is highlighted here is the accusatory or adversarial nature of apartheid: again, there is a Scriptural reference, whereby Satan is "accusatory" in that sense that he indicts the innocent using false claims.[6]

[4] Transcript says "Carus", a transcription which shows how little knowledge the TRC staff had of Liberation theology in South Africa (*Kairos document*, 1985 ; in Doxtader and Salazar, *op. cit*, Document 9: 50 - 56).

[5] Statement by the General Secretary of the Institute for Contextual Theology, Faith Community Hearings, 17-19 Nov. 1997: http://www.justice.gov.za/trc/special/faith/faith_a.htm).

[6] Psalms 109: 6.

3. A statement regarding the use of violence in opposing violence:

"As we reflect on the past and look to the future, there are several things we would like to say. Notwithstanding that many in the White community saw the evil of apartheid and its out working, many did not and may not have chosen to. That stands as a sombre lesson of how whole communities and countries can be misled by skilful leaders. It has happened before and no doubt it will happen again. While we believe that many of the government officials of the old regime were sincere Christians, nevertheless, we were a witness to how the bible and its message can be misused to support an evil ideology… But then so did some liberation theologians who finally supported violence as a means of continuing the struggle. They argued that the crucifixion of Jesus sanctioned violence as a method of obtaining freedom". [7]

Gloss: The question is, what is it to "see evil" and to choose not to oppose it? Theologically, it means that the Whites were "possessed" by that evil spirit unless, through "sincerity" they "witnessed" how the possession operated and how the victory over evil and of life over death (the Crucifixion) was misused – itself a case of derivative "possession". The text behind this instantiation of evil is the story of Christ chasing demons from a possessed man into a herd of pigs.[8]

[7] Statement by the representative of the Church of England in South Africa, *Ibid.*

[8] Luke 8: 22 - 36.

4. A statement regarding "moral strength" in opposing evil:

"We are grateful to God that in spite of our shortcomings we were given strength to resist the evil of apartheid. In spite of extreme government pressure, we refused to withdraw our membership from the World Council of Churches. A number of our pulpits fearlessly proclaimed a wholesome gospel that prophetically declared that the people of South Africa will be free. We constantly focused our prayers to the cause of justice and to the discomfort of many, we used sometimes symbols that sought to keep the hope alive for a new South Africa to dawn. A number of our ministers suffered public humiliation at the hands of the government and its agents of evil. A large number of Methodist families suffered at the hands of the tyrannical system, as they responded to the prophetic call to resist apartheid".[9]

Gloss: "Agents of evil" is an interesting artefact as it introduces, precisely, agency. The question of the agency of perpetrators is a key element – see below. In opposition to the energumen "possessed" (he who is "travailed by evil", in Greek is an "*energumenos*") there is the "agent".

[9] Statement by the representative of the Methodist church, *Ibid.*

5. A statement regarding the intrinsic nature of evil:

"But from 1947 when the Conference was established, the Bishops sought to speak as a Conference on the issues of the day and they began to attach the false theological base on which the ideology of apartheid was based. In 1951 one of the first Conference statements condemned racial discrimination but didn't use the word apartheid, but here we see the fact that we were a church community of the day. We reflected the way issues were looked at in that day. For example, it reflected a paternalistic spirit, the statement in 1952, maintaining that most non-Europeans (was the word commonly used at the time) were not yet ready for full participation in the social, political and economic life of the country, but must be allowed and encouraged to evolve towards such participation. That was an early statement, but by 1957, the Conference had begun to focus much more critically and it in 1957 called apartheid what it really is: intrinsically evil".[10]

Gloss: Indeed the Catholic Church was the first to provide a neat definition, and the first to oppose apartheid on solid, doctrinal grounds. The key term is "intrinsically". What would be "extrinsic evil"? The product or the application of a system. That will be the exact defence by F.W. de Klerk, as representative of the apartheid National Party: that if "apartheid was wrong",[11] and its applications were "mistaken", apartheid leaders were however "honourable" "within the context of their time".[12] This distinction sets into motion a new distinction: if apartheid was "intrinsically" evil, then some made the choice to support it (as, by contrast, if it had been only "extrinsically" *i.e.* through applications, "evil", then agents needed not choose it; they would merely have acted, and

[10] Statement by the representative of the Roman Catholic Church, *Ibid.*

[11] Statement by F.W. de Klerk, 14 May 1997 (http://www.justice.gov.za/trc/special/party2/np2.htm); analysis in Salazar, *Amnistier l'Apartheid* : 58 - 59.

[12] Statement by F.W. de Klerk (21 August 1996) in Doxtader and Salazar, *op. cit.*, Document 47: 311 - 319.

then realized the application was "evil"). What is summoned here is the "temptatory" nature of evil, a commonplace of Christian theology.[13]

[13] For instance, Luke 11, 4, 22, 40.

6. What the Report says about the motives for evil actions.

"We have sought to carry out our work to the best of our ability, without bias. I cannot, however, be asked to be neutral about apartheid. It is an intrinsically evil system. But I am even-handed in that I will let an apartheid supporter tell me what he or she sincerely believed moved him or her, and what his or her insights and perspectives were; and I will take these seriously into account in making my finding. I do believe that there were those who supported apartheid who genuinely believed that it offered the best solution to the complexities of a multiracial land with citizens at very different levels of economic, social and educational development… I do believe such people were not driven by malicious motives".[14]

Gloss: Motives were generally not "malicious". That is, agents acted through temptation, and lack of resistance to temptation and its persuasiveness. Theologically congruent with the persuasive nature of evil whereby "to persuade" (to do a given action — in Eve's case to access the forbidden) (*peirô*, in Greek) is akin to "to tempt" (*peirazô*).[15] In short: the tempted is put to a test that he does not see as a "test".[16]

[14] Report, *Foreword* by Desmond Tutu ; in Doxtader and Salazar, *op. cit.*, Document 17: 85 - 89.

[15] Matthew 4: 1 - 3.

[16] The Hebrew "*massah*" translates as "test", or "temptation".

7. The human dignity of evil perpetrators:

"At the forum on Reconciliation, Reconstruction and Economic Justice in Cape Town on 19 March 1997, Ms Ngewu (whose son was killed by the police in the 'Gugulethu Seven' incident), was asked how she saw the notion of reconciliation. She responded as follows (to the question on perpetrators serving long prison sentences): "In my opinion, I do not agree with this view. We do not want to see people suffer in the same way that we did suffer, and we did not want our families to have suffered. We do not want to return the suffering that was imposed upon us… We do not want to return the evil that perpetrators committed to the nation. We want to demonstrate humaneness towards them, so that they in turn may restore their own humanity".[17]

Gloss: This goes to the heart of the redemptive purport that is within naming apartheid as evil. It is impossible here not bring to bear Freud's analysis of "diabolical neurosis" whereby the Devil is a substitute for the Father, allowing for the two sides of the Father (translation: the State, Society *etc.*) to play itself out, both destructively and positively.[18]

[17] Report V, 9, paragraph 33, in Doxtader and Salazar, *op. cit.*, Document 58: 389 - 411.

[18] Sigmund Freud, "A seventeeth-century demoniological neurosis", in *The standard edition of complete psychological works 19*, James Strachey *et al.* (Eds.) (London: W.W. Norton & Co., 1961): 67 - 105.

8. How to restore from evil:

"One of the reasons for this failure of emphasis is the fact that the greater part of the Commission's focus has been on what could be regarded as the exceptional — on gross violations of human rights rather than the more mundane but nonetheless traumatising dimensions of apartheid life that affected every single Black South African… The media has understandably focused on these events — labelling Eugene de Kock, the Vlakplaas commander, 'Prime Evil'. The vast majority of victims who either made statements to the Commission or who appeared at public hearings of the Human Rights Violations Committee to tell their stories of suffering simply did not receive the same level of public attention... The result is that ordinary South Africans do not see themselves as represented by those the Commission defines as perpetrators, failing to recognise the 'little perpetrator' in each one of us. To understand the source of evil is not to condone it. It is only by recognising the potential for evil in each one of us that we can take full responsibility for ensuring that such evil will never be repeated".[19]

Gloss: Can "evil" repeat itself? The Report answers positively. So, the work or reconciliation is to prevent "such evil" to repeat itself. Oddly, the intent is not to prevent a similar evil, or a similar process, but to prevent the repetition of this particular temptation. Question: Can reconciliatory politics also ward off an iteration of "evil", that is, recognize it as an iteration and "treat" it before it happens?

[19] Report I, 5, *Ubuntu promoting restorative justice*, paragraphs 107 - 108, in Doxtader and Salazar, *op. cit.*, Document 18: 90 - 98.

9. How to differentiate between evil and victimhood:

The Act makes a clear distinction between "the perspectives of victims and the motives and perspectives of the persons responsible for the commission of the violations". This magnitude gap has a number of features:

a.) The importance of the act is usually far greater for the victim. Horror of the experience is usually seen in the victim's terms; for the perpetrator it is often "a very small thing".

b.) Perpetrators tend to have less emotions about their acts than do victims. This may be illustrated in the recent book by Vlakplaas operative Colonel Eugene de Kock, where repeated acts of violence are described in a matter-of-fact manner…

c.) The magnitude gap manifests in different time perspectives. The experience of violence typically fades faster for perpetrators than for victims. For victims, the suffering may continue long after the event.

d.) Moral evaluations of the events may differ: actions may appear less wrong, less evil, to the perpetrator than to the victim. While victims tend to rate events in stark categories of right and wrong, perpetrators may see large grey areas.[20]

Gloss: What is this "gap" and what is this "magnitude"? "Mierda", "shit". Not to differentiate between victims (as commonly understood, in a juristic definition based on normal penal laws —as opposed to their definition as criminals by emergency or security regulations) and perpetrators (as defined by a non-juristic legalism, South African style, which dovetails with their juristic definition as security officers performing their orders implies 1.) that there is a gap, to be filled; and 2.) that this closure has to remain open. This is where "shit" is, in that gap that has to exist, yet to be filled. Lacan: "Le stade anal se caractérise

[20] Report V, 7, *Perpetrators, the problem of perspectives*, paragraph 47, in Doxtader and Salazar, *op. cit.*, Document 43: 266 - 285.

en ceci, que le sujet ne satisfait un besoin uniquement pour la satisfaction d'un autre".[21] In sum, "shit" is the name of the TRC's satisfying a need in order to satisfy someone else. This other is the Mother and ultimately the sexual partner whose demand has to be satisfied for the subject to be. It is the scene of sado-masochism. The TRC is a sado-masochist scene whereby it lodges its desire for a redemptive politics in giving satisfaction to perpetrators. It embodies the self-eliminating gesture of the obsessional:

"*Le fantasme fondamental de l'obsessionnel en tant qu'il se dévalorise, en tant qu'il met hors de lui tout le jeu de la dialectique érotique, qu'il feint, comme dit l'autre, d'en être l'organisateur. C'est sur le fondement de sa propre elimination qu'il fonde tout ce fantasm*"

[21] Jacques Lacan, *Le transfert* : http://www.ecole-lacanienne.net/bibliotheque.php?id=13.

10. A constitutional court judgment to a challenge by a Liberation movement (AZAPO) regarding the amnesty process: [22]

"Every decent human being must feel grave discomfort in living with a consequence which might allow the perpetrators of evil acts to walk the streets of this land with impunity, protected in their freedom by an amnesty, immune from constitutional attack, but the circumstances in support of this course require carefully to be appreciated… The Act seeks to address this massive problem by encouraging these survivors and the dependants of the tortured and the wounded, the maimed and the dead to unburden their grief publicly, to receive the collective recognition of a new nation that they were wronged, and crucially, to help them to discover what did in truth happen to their loved ones, where and under what circumstances it did happen, and who was responsible... With that incentive, what might unfold are objectives fundamental to the ethos of a new constitutional order. The families of those unlawfully tortured, maimed or traumatised become more empowered to discover the truth, the perpetrators become exposed to opportunities to obtain relief from the burden of a guilt or an anxiety they might be living with for many long years, the country begins the long and necessary process of healing the wounds of the past, transforming anger and grief into a mature understanding and creating the emotional and structural climate essential for the "reconciliation and reconstruction" which informs the very difficult and sometimes painful objectives of the amnesty articulated in the Epilogue" (of the Interim Constitution of 1993 which imposed an amnesty and a reconciliation process)".

[22] Constitutional Court of South Africa, Case CCT 17/96 (25 July 1996); in Doxtader and Salazar, *op. cit.*, Document 5: 28 - 35, and note p. 36.

Gloss: Rare is a legal and constitutional document that invokes evil to make an argument about the fundamental law and the Law as foundational.[23] The Court interposes itself between the before and the after, and stands at that very point where the Constitution anchors itself not in a procedure of universal access to sovereignty, but in an ethical process. The opening sentence of this landmark decision sealed forever the temptation to re-introduce a new evil into politics, *i.e.*: a negation of the reconciliation and amnesty which would result in a diabolical process: that of accusation, calumny, seduction by arguments and degradation into death (the figures of the diabolical); or retaliation. However the dramatic nature of the opening sentence, in a judicial and constitutional judgement, must be noted: "perpetrators of evil acts to walk the streets of this land with impunity, protected in their freedom by an amnesty, immune from constitutional attack". What does that "walk" mean? What is the philosophical sense of "walking free"?

[23] For the Epilogue, see in Salazar, *Amnistier l'Apartheid* : 37 - 58; and, Doxtader and Salazar, *op. cit.*, Document 2: 5.

III.

To answer this question, I make the following proposal: perpetrators incarnate what is evil in politics; they are, to use a phenomenological approximation, "la chair du monde politique". They represent politics gone wrong, and the sign of its rectification, in the same way as, in Pauline theology, flesh, "la chair", is the locale both for death and redemption. Reconciliation is possible when the agency of death and the agency of humanity redeemed are in the same site, and proceed from that site to "reconciliation". Paul: "He has reconciled you in the body of his flesh, through death" (*nunc autem reconciliavit in corpore carnis eius per mortem* / ἀποκατήλλαξεν ἐν τῷσώματι τῆς σαρκὸς αὐτοῦ διὰ τοῦ θανάτου).[1] The Greek phrase, more than the Latin one, indicates a thorough change by which a radical exchange takes place. To let "evil walk among us" is to perform an exchange (by which we acknowledge the deadly nature of their acts, a death of their humanity) and proceed to a change, both in victims and in perpetrators. Of course one has first to reconcile oneself, and one's political ideas with this self-recognition, that politics is in essence diabolical, that it places individuals in front of choices they do not fully understand, and confront then with means they do not really, and cannot, comprehend. Perpetrators "perpetrate", as I have explained it elsewhere,[2] that is they "fulfill thoroughly" their (misconceived and unapprehended) contract, and in so doing they embody deliberative politics confronted with personal responsibility: like Satan, they were able to argue (for and among themselves) the *pro* at the time they committed the act, and they can argue now the *con* as they are faced with external, unanticipated consequences — shifting the argument, the iron rule of being in politics.

In fact the question of "the diabolical" in political choice was first posed by French political philosopher Maurice Duverger (and my contention is that it is the actual source for the *teoría de los dos demonios*). In 1960, at the height of the National Liberation Front-led revolt in

[1] Colossians 1: 21 - 22 (Vulgate/Stephanus).

[2] Philippe-Joseph Salazar, "Perpetrator, ou De la citoyenneté criminelle", *Rue Descartes* 36 (2002): 167 - 180.

Algeria, on the cusp of a diabolical choice by the newly-founded De Gaulle régime to betray its own citizens ("Let them suffer" was his recorded comment), actions which both confronted the French people, at least those who cared, with a radical choice, Duverger wrote on "The two betrayals".[3] Because the Republic was under a double, treacherous or treasonable, attempt to violate its human rights and political charter – on one hand by supporters of the use of brutal force, and torture, by the French army (premise of a treacherous coup d'État), and on the other by supporters of the use of terrorism, and torture, by the rebels (premise of the treacherous massacre of French and Algerians alike in denial of their rights), Duverger warns of the simultaneous possibility of "two treasons", both made in the name of justice, yet both resulting in a denial of justice. Support given, in France, to acts of terror committed by French citizens either pro-army militiamen and pro-rebellion operatives, are for him equally "diabolical". In my view, they may or may not be "treasonous", yet they both "perpetrate" politics to its utmost limit, showing, indeed, the innate diabolism of any political engagement whose stakes are life, death and identity.

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[3] Maurice Duverger, "Les deux trahisons", *Le Monde* (27 April 1960), reprinted in Anne Simonin, *Le droit de la désobéissance* (Paris: Minuit, 2012): 61 - 63.

NUEVO COMIENZO DEMOCRÁTICO EN URUGUAY: LA LEY DE CADUCIDAD EN QUERELLA

By Nicolás Abraham & Eugenia Mattei

Si deseamos comprender el modo en que Uruguay ha pensado su pasado reciente resulta útil indagar sobre los avatares que llevaron a la negociación, promulgación, aplicación, ratificación popular y posterior neutralización[1] de la denominada Ley de Caducidad de la Pretensión Punitiva del Estado, originariamente sancionada en 1986.

Intentaremos mostrar en este texto, en primer lugar, que la promulgación de la Ley de Caducidad obstruyó de manera explícita el camino de la Justicia produciendo una simultánea e implícita obturación del camino de la Verdad. Esto es: si bien dicha Ley incluía artículos que le permitían al Poder Ejecutivo adoptar vía excepción (artículo 3º) o vía investigaciones no judiciales (artículo 4º) medidas que lo condujeran a un camino o al otro, el uso esporádico y tardío de esas facultades parece abogar por la tesis de que fue el espíritu mismo de la Ley, reflejado en su artículo 1º, el que obturó la consolidación de esas posibilidades.

A la vez, intentaremos exponer que la forma en que se fueron dando los acontecimientos que tuvieron por objeto a la Ley de Caducidad — ley que, por sí misma, concierne lo que podemos denominar el polo de la Verdad y la Justicia — fueron introduciendo lentamente, en la ya compleja discusión sobre la derogación de dicha Ley, de manera inesperada tal vez, lo que podemos identificar como una contraposición entre el principio democrático del pueblo y los principios fundacionales del Estado de Derecho, que se expresa principalmente en la tensión entre las herramientas modernas de la democracia directa, los controles constitucionales nacionales — y,

[1] Los efectos de la llamada Ley de Caducidad Nº 15.848 fueron suspendidos, como veremos en el transcurso del artículo, por la Ley Nº18831. Por eso decimos neutralización (de sus efectos) y no derogación o anulación.

también, los controles internacionales — y las facultades representativas del Parlamento. En síntesis, nuestro artículo tendrá como fin principal mostrar cómo, en el nuevo comienzo democrático emprendido por Uruguay desde 1985, el camino marcado por la Ley de Caducidad significó, por lo menos hasta el inicio de la querella de los últimos años alrededor de esa misma Ley, la renuncia tanto a optar por el camino de la Verdad como por el de la Justicia[2] y como, a la vez, en ese camino va apareciendo una tensión subyacente, que atraviesa el debate de los últimos años, entre principio democrático y principio fundador del Derecho.

JUSTICIA Y VERDAD

Señala Claudia Hilb en su texto "¿Cómo fundar una comunidad después del crimen?" [3] :

> En Argentina desde 1983, y en Sudáfrica desde 1994, se tramitó la salida de regímenes de Terror y se sentaron los cimientos de los "nuevos comienzos" en una y otra comunidad política. En Argentina, podemos decir de manera muy simplificada, se optó por la Justicia — y no es casual que los hitos de este proceso sean hitos jurídicos, empezando por el Juicio a las Juntas, que condenó en 1985 a los principales actores de la Dictadura de 1976 - 1983, continuando por las leyes de punto final y obediencia debida, por la ley de amnistía de 1990 y por la declaración de nulidad de estas últimas tres leyes en 2004. En Sudáfrica, diremos de modo igualmente simplificado, se optó por la Verdad, más precisamente, por una amnistía asentada en la exposición de la Verdad, y no es casual

[2] Hablamos de Justicia en un sentido estricto, como justicia penal retributiva.
[3] Claudia Hilb, "Cómo fundar una comunidad después del crimen. Una reflexión sobre el carácter político del perdón y la reconciliación, a la luz de los Juicios a las Juntas en Argentina y de la Comisión de la Verdad y la Reconciliación en Sudáfrica", Ponencia presentada en el Simposio Hannah Arendt, III Congreso Colombiano de Filosofía, (Colombia: 2010) (publicación en prensa).

> que la Comisión que desde 1995 llevó adelante ese proceso recibiera el nombre de Comisión de Verdad y Reconciliación.

De acuerdo con ello, entonces, podemos hablar para el caso argentino y el sudafricano, de dos caminos distintos. El primero se asienta en la justicia penal retributiva productora de una verdad jurídica, es decir, de un relato contrastado o basado en un conjunto de pruebas jurídicas, destinadas al castigo de los culpables. El segundo se asienta en el carácter curativo de una verdad narrativa,[4] construida a través del relato tanto de víctimas como de perpetradores. A su vez, para estos últimos, la exhaustividad y veracidad del relato es la condición de la amnistía.

Tenemos entonces, por un lado, una justicia retributiva con un objetivo inmediato de castigo a los perpetradores y, por el otro, un proceso narrativo productor de una "verdad curativa". En ambos casos, el objetivo perseguido, en última instancia, no refiere tanto al tipo de verdad a producir, o al castigo a infringir, sino a los efectos que ese proceso y ese producto tendrán en el cuerpo social. O lo que es lo mismo, el "objetivo final" de ambos procesos tiene que ver con la respuesta a la pregunta que titula el artículo de Hilb: cómo fundar una comunidad después del crimen.

Ahora bien, a la luz de lo anterior ¿cuál es el camino tomado por Uruguay? ¿Es uno de los anteriores, o es uno propio? Como señalamos al comenzar, a nuestro entender la promulgación de la Ley de Caducidad de la Pretensión Punitiva del Estado, al bloquear de manera explícita el camino de la Justicia[5] obstruye el camino de la Verdad. Uruguay parece no tomar ninguno de los dos senderos; ni el de la verdad (Sudáfrica) ni el de la justicia (Argentina). La ley uruguaya otorga una amnistía que no considera la condición impuesta en

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[4] "Mucho y muy bueno se ha dicho sobre el efecto curativo, re-humanizador, que la exposición de las historias tuvo tanto para víctimas como para victimarios, sobre el poder creador de comunidad del discurso, sobre la potencia transformadora por la cual el dispositivo de amnistía convertía un mal moral en un bien político". *Ibid.* Nota 34.

[5] La Corte Interamericana de Derechos Humanos por su parte, dice que el artículo 1 de la Ley "obstaculiza" esa posibilidad.

Sudáfrica: su alcance es general, no particular,[6] y no comporta ningún incentivo que lleve a los perpetradores a decir la verdad. En Argentina, al no estar previstas condonaciones de penas o amnistías, tampoco ha habido incentivos para decir la verdad, pero en oposición a ella, la normativa uruguaya clausura de derecho la posibilidad de los juicios; tampoco existió allí justicia retributiva.

Ahora bien, la especificidad del caso uruguayo no estriba en no haber optado por ninguno de estos dos caminos — lo mismo sucedió en muchos otros países, tras la salida de regímenes de terror- sino en que esa elección ha sido refrendada por dos consultas populares- el referéndum de 1989 y el plebiscito de 2009 — promovidas con el propósito de derogar la ley, pero que contrariamente a las expectativas de quienes las promovieron, ratificaron la Ley de Caducidad.[7] Y en que — no obstante el carácter fallido de esos intentos — el Parlamento uruguayo votó en 2011 una nueva ley que suspendió los efectos de la Ley de Caducidad. Estas iniciativas nos conducirán a preguntarnos: ¿sobre qué argumentos puede legítimamente, o pudo legítimamente, suspenderse una ley dos veces refrendada por una consulta popular? Recapitularemos esta pregunta hacia el final del artículo. Antes, creemos necesario restituir brevemente los acontecimientos que hacen a lo que llamamos la clausura del camino de la Justicia Observamos, en

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[6] La generalidad de la amnistía uruguaya está dada en el artículo 1º de la Ley de Caducidad. Incluso la Corte Suprema de Justicia, en el fallo de 1988 que la declara constitucional dice que pese a no figurar la palabra "amnistía", la intención del legislador había sido conferir una "auténtica amnistía" a las fuerzas de seguridad. No obstante, es todavía tema de discusión si la Ley implicaba o no formalmente una amnistía (más allá de que en los hechos lo haya sido). Véase: Suprema Corte de Justicia de Uruguay. Caso "Sabalsagaray Curutchet Blanca Stela – Denuncia de Excepción de Inconstitucionalidad" de 19 de octubre de 2009.

[7] David Altman analiza cómo el referéndum en Uruguay resulta ser una herramienta reactiva en los ciudadanos para vetar un política adoptada, y agrega: "En América, Uruguay sigue siendo el único país en donde se ha utilizado sistemáticamente esta institución a escala nacional y ha generado diversos resultados" David Altman, "Democracia directa en el continente americano: ¿Autolegitimación gubernamental o censura ciudadana?", *Política y gobierno* 2, 2 (México: 2005): 215.

primer lugar, que la Ley es producto de un acuerdo entre miembros de las Fuerzas Armadas, de la Unión Cívica, del Partido Colorado y del Frente Amplio que negociaron una salida política de la dictadura[8]: el denominado "Pacto del Club Naval". Recordemos que antes del institucional "Pacto del Club Naval" los sucesos del año 1980 generaron un espacio propicio para la posterior salida política de la dictadura. En ese año, con un plebiscito convocado por los militares, cuyo resultado es desfavorable a la nueva Constitución redactada por ellos, se inicia el declive del intento de fundación llevado adelante por la dictadura. En mayo y junio de 1983 se llevan a cabo las conversaciones del "Parque Hotel" entre militares y políticos para buscar una salida política de la dictadura. Aunque las conversaciones fracasan, pautan una dinámica formal de negociación que concluirá, entre julio y agosto de 1984, en el mencionado acuerdo del Club Naval.[9]

Como bien señala Gerardo Caetano,[10] el final de la dictadura estuvo simbolizado, en gran parte, por este acuerdo concertado el 23 de agosto de 1984. De las negociaciones resultó la promulgación del Acto Institucional Nº 19 que puso en marcha un conjunto de normas constitucionales transitorias ― que abordaban cuestiones conflictivas como la jurisdicción militar, los ascensos de los funcionarios y el nombramiento de jefe de los comandantes, *etc.* ― y que convocó al

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[8] Resulta digno de mención que el Frente Amplio, claramente de izquierda, participa de esos acuerdos, y que no lo hace el Partido Nacional, de raigambre más centrista. Véase: Luis, González, "Transición y restauración democrática", Charles Gillespie *et. al.*, *Uruguay y la democracia* (Montevideo: Banda Oriental, 1985); y, Daniel Corbo, "La transición de la dictadura a la democracia en Uruguay. Perspectiva Comparada sobre los modelos de salida política en el Cono Sur en América Latina", *Humanidades 7*, 1 (Montevideo: 2007).

[9] Véase: Eugenia Allier Montaño, *Batallas por la memoria. Los usos político del pasado reciente en Uruguay* (México: UAM, Instituto de Investigaciones Sociales, 2010) y Gerardo Caetano y José Rilla, *Breve Historia de la dictadura,* (Montevideo: EBO-CLAEH, 1989).

[10] Gerardo Caetano, "The citizens' testament and the necessary risks of truth: Accounts pending in contemporary Uruguay", *Studies in Hispanic Issues On Line* 4 (USA: the University of Minnesota, 2009*).*

mismo tiempo a elecciones nacionales para el 25 de noviembre 1984. Los lineamientos del pacto proveerían posteriormente los argumentos para la promulgación de la Ley de Caducidad.[11]

Como resultado de la elecciones de 1984, en 1985 se reinstituyó la democracia con el ascenso a la Presidencia de Julio María Sanguinetti. A siete días de asumir, el presidente promulgó la Ley de Pacificación Nacional[12] que liberaba a todos los presos políticos que no habían cometido delitos de sangre. A la vez, Sanguinetti, heredero de las negociaciones del acuerdo del Club Naval, comenzó a considerar la posibilidad de una amnistía para los integrantes de las Fuerzas Armadas, sustentada sobre el argumento de la contribución a la paz. La búsqueda de la paz se entretejió con la afirmación de que había existido una guerra entre dos bandos en pugna,[13] y dio sentido al argumento que — para contrabalancear la ley que había liberado a los presos politicos — proponía renunciar a investigar los crímenes cometidos durante la dictadura por militares y policías.

Apoyándose en esta "simetría de culpa" de dos bandos en pugna[14] y en un clima tenso suscitado por la negativa de militares, acusados de cometer delitos de lesa humanidad, a comparecer ante la justicia civil, los partidos políticos presentaron en el curso de 1986 diferentes proyectos de amnistía. Fue en este contexto que el Partido Nacional presentó la Ley de Caducidad de la Pretensión Punitiva del Estado, que

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11 No podemos afirmar fehacientemente que las conversaciones del Club Naval hayan abordado explícitamente la cuestión de la amnistía a los militares, pues los participantes allí presentes tienen relatos contradictorios al respecto. No obstante todo nos lleva a atrevernos a sostener que dichas negociaciones permitieron — como mínimo — comenzar a pensar esa posibilidad.

12 Ley Nº 15.737.

13 Cabe destacar que no sólo para los miliares había existido una guerra; así lo entendían también los representantes de los movimientos guerrilleros y sobre todo los de los Partidos Colorado y Nacional.

14 En la expresión "simetría de culpa" encontramos una familiaridad con la teoría de los dos demonios en Argentina. Al respecto, véase Silvia Dutrénit y Gonzalo Varela, *Tramitando el pasado: Violaciones de los derechos humanos y agendas gubernamentales en casos latinoamericanos* (México: Flacso-Clacso, 2010).

fue aprobada en diciembre de 1986 con los votos afirmativos de ese Partido[15] y del Partido Colorado, y la oposición del Frente Amplio y la Unión Cívica. En su artículo primero, esa ley establecía, lo siguiente:

> Reconócese que, como consecuencia de la lógica de los hechos originados por el acuerdo celebrado entre partidos políticos y las Fuerzas Armadas en agosto de 1984 y a efecto de concluir la transición hacia la plena vigencia del orden constitucional, ha caducado el ejercicio de la pretensión punitiva del Estado respecto de los delitos cometidos hasta el 1º de marzo de 1985 por funcionarios militares y policiales, equiparados y asimilados por móviles políticos o en ocasión del cumplimiento de sus funciones y en ocasión de acciones ordenadas por los mandos que actuaron durante el período de facto.

Al día siguiente de su aprobación, diferentes sectores pedían la revocación de esta Ley que, en ese artículo primero, obstruía de manera incontrovertible el camino de la justicia penal.

Ahora bien, importa aquí observar que esta obstrucción de la Justicia también dificultó de forma implícita el camino de la Verdad. Más allá de ciertas acciones puntuales muy posteriores (la Comisión para la Paz del presidente Batlle,[16] los casos excluidos del alcance de la Ley de

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[15] Cabe destacar que casi un tercio de los legisladores del Partido Nacional votaron en contra del proyecto.

[16] El informe presentado por la Comisión para la Paz en el año 2003, 18 años luego de iniciada la democracia, elaboró una verdad a pedido del Ejecutivo que no tuvo ni la profundidad del Informe de la Conadep argentina, presentado antes de cumplirse el primer año de la restauración democrática argentina, ni mucho menos el valor narrativo — curativo — de la Comisión de Verdad y Reconciliación sudafricana. Ni tampoco, y he aquí una diferencia sustancial, pudo hacer uso de la amenaza de una futura sanción penal que pudiera ser amnistiada ante la presentación espontánea y el relato exhaustivo de parte de los perpetradores, pues la misma Ley de Caducidad que fundamenta el origen de la Comisión (Art. 4), es la que excluye esa amenaza en su primer artículo. Existió también otro informe, llamado "Uruguay, Nunca más" que estuvo a cargo del Servicio de Paz y Justicia (SERPAJ) una organización no gubernamental, mientras que en la Argentina el "Nunca

Caducidad que decretaron los presidentes Tabaré Vázquez y Mujica), no hubo en Uruguay, desde su restauración democrática hasta hoy, un dispositivo normativo que generara incentivos para elaborar una verdad. Pero importa subrayar que, paradójicamente, esas "acciones puntuales" tenían su fundamento legal en la propia Ley de Caducidad. Es decir, la misma ley dejaba un resquicio a través del cual podía abrirse — y pensarse — tanto el camino de la Justicia como el de la Verdad. En efecto, leemos en sus artículos tercero y cuarto:

Artículo 3º: A los efectos previstos en los artículos anteriores, el Juez interviniente en las denuncias correspondientes, requerirá al Poder Ejecutivo que informe, dentro del plazo perentorio de treinta días de recibida la comunicación, si el hecho investigado lo considera comprendido o no en el artículo 1º de la presente ley.

Si el Poder Ejecutivo así lo comunicare, el Juez dispondrá la clausura y el archivo de los antecedentes. Si en cambio, no contestare o informa que no se halla comprendido dispondrá continuar la indagatoria... Artículo 4º:

> Sin perjuicio de lo dispuesto en los artículos precedentes el Juez de la causa remitirá al Poder Ejecutivo testimonios de las denuncias presentadas hasta la fecha de promulgación de la presente ley referentes a actuaciones relativas a personas presuntamente detenidas en operaciones militares o policiales y desaparecidas así como de menores presuntamente secuestrados en similares condiciones.

El Poder Ejecutivo dispondrá de inmediato las investigaciones destinadas al esclarecimiento de estos hechos...

Como vemos, el artículo 3º dejaba en manos del Poder Ejecutivo (PE) la decisión respecto de si un caso en particular era alcanzado o no por la Ley de Caducidad. Esta facultad le podría haber permitido al PE, sin necesidad de derogar la Ley de Caducidad, reabrir los juicios a los militares. Sin embargo dicha potestad recién fue utilizada en el año

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Más" de la Conadep fue producto de la decisión del poder ejecutivo.

2005 por el presidente Tabaré Vázquez. Por otro lado, el artículo 4º no sólo facultaba, sino que obligaba al PE a tomar medidas de esclarecimiento de los hechos. La puesta en práctica de este artículo podría haber contribuido a que Uruguay transitara el camino de la Verdad; no obstante, ello no sucedió; la grieta abierta por estos artículos no terminó de abrirse.

Pero el hecho de que esos resquicios por donde reintroducir la demanda de verdad o de justicia no hayan sido explotados, no significa tampoco que el asunto del pasado traumático haya quedado clausurado en Uruguay. En efecto, en el momento en que escribimos, los efectos de la Ley de Caducidad han sido suspendidos como consecuencia de una ley del Parlamento uruguayo (Ley 18.831) sancionada en octubre del año 2011.[17] Esta ley llega después de un amplio debate y de un recorrido histórico que incluyó, sucesivamente, el referéndum de 1989 que ratificó la Ley de Caducidad, dos fallos de la Corte Suprema uruguaya, uno que la declaraba constitucional,[18] y otro posterior que la declaró inconstitucional;[19] un plebiscito del año 2009 que volvió a refrendar la vigencia de la ley, seguido de un tercer fallo, esta vez de la

[17] Ley Nº 18.831: Artículo 1º: Se restablece el pleno ejercicio de la pretensión punitiva del Estado para los delitos cometidos en aplicación del terrorismo de Estado hasta el 1° de marzo de 1985, comprendidos en el artículo 1° de la Ley N° 15.848, de 22 de diciembre de 1986. Artículo 2º: No se computará plazo alguno, procesal, de prescripción o de caducidad, en el período comprendido entre el 22 de diciembre de 1986 y la vigencia de esta ley, para los delitos a que refiere el artículo 1° de esta ley. Artículo 3º: Declárase que, los delitos a que refieren los artículos anteriores, son crímenes de lesa humidad de conformidad con los tratados internacionales de los que la República es parte.

[18] Fallos de la Suprema Corte de Justicia de Uruguay, "Detta, Josefina; Menotti, Noris; Martínez, Federico; Musso Osiris; Burgell, Jorge s/inconstitucionalidad de la ley 15.848. Arts.1, 2, 3 y 4". También, Suprema Corte de Uruguay, "Macchi Torres, Jessi. Homicidio. Inconstitucionalidad de oficio Ley Nº 15.848, arts. 1º y 3º", y "Whitelaw Agustoni, Agustín Germán; Barredo Longo, Fernando José. Denuncia. Inconstitucionalidad". Todos del año 1988.

[19] Suprema Corte de Justicia de Uruguay. Caso "Sabalsagaray Curutchet Blanca Stela — Denuncia de Excepción de Inconstitucionalidad", de 19 de octubre de 2009.

Corte Interamericana de Derechos Humanos (CIDH),[20] que declaró la incompatibilidad de dicha normativa con la Convención Americana de Derechos Humanos de la OEA; a este fallo de la CIDH siguió a fines del 2010, un intento fallido de ley interpretativa impulsado por el gobernante Frente Amplio — y cuestionado por el propio Presidente Mujica[21] — para suprimir los efectos de la Ley de Caducidad. Observamos, así, no sólo una contraposición entre instancias jurídicas, sino sobre todo una contraposición de estas con la expresión de la voluntad popular en dos plebiscitos. Es finalmente con la promulgación de la Ley Nº 18.831 — esta vez apoyada por el Presidente Mujica — que se restablece la pretensión punitiva del Estado, y se declara delitos de lesa humanidad y por lo tanto imprescriptibles, a los delitos cometidos por la dictadura. Esto último parece abrir un camino hacia la justicia retributiva pues tiene como horizonte saldar, mediante el castigo penal, la culpabilidad de los militares para restaurar la dignidad de los detenidos-desaparecidos en tanto víctimas.

En las contraposiciones descriptas observamos asimismo que, a lo largo de todo el proceso, y a través de las distintas intervenciones que se sucedieron — nacionales, internacionales, judiciales, representativas — se vislumbra una disputa que subyace a la tensión entre Justicia — Verdad dentro de la ley: una legitimidad soberana directa que reclama para sí la decisión sobre el tratamiento de su pasado frente a otra legitimidad de pretensiones universales que argumenta la primacía del principio de Derechos Humanos.

El debate, entendemos, está todavía abierto, tanto en lo que concierne al camino de la Justicia como al de la Verdad. Por un lado, es probable que surjan presentaciones judiciales cuestionando la validez de la Ley Nº 18.831. Validez de una ley que, al suspender los efectos de la Ley de

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[20] CIDH: Caso "Juan Gelman, María Claudia García Iruretagoyena de Gelman y María Macarena Gelman García Iruretagoyena contra la República Oriental del Uruguay" sentencia del 24 febrero de 2011.

[21] Mujica se manifestó personalmente en contra del proyecto interpretativo, pero simultáneamente a favor de que los representantes del Frente Amplio cumplieran con la disciplina del Partido, que había resuelto impulsarlo.

Caducidad en conformidad con un fallo de un organismo internacional, es decir, al suspender una ley inconstitucional para el Derecho uruguayo -en tanto este expresamente reconoce como propia la legislación internacional en cuestión- desconoce lo expresado a través del voto ciudadano en un plebiscito. Lo sabe el presidente uruguayo Mujica, cuando declara que "Alguna decisión tendrá que haber por parte de la Suprema Corte de Justicia y estaremos a lo que ella decida".[22] Por el otro, es posible también que la restitución de la posibilidad del castigo impulse condiciones similares a las que nos provee el ejemplo sudafricano, en el que la amenaza de castigo y la promesa de amnistía fueron las herramientas que hicieron del relato exhaustivo y auto acusador — de la provisión de Verdad- una prenda para la libertad.

Retomaremos, para finalizar, lo que sugeríamos al comienzo: entendemos que los vaivenes que hemos intentado reflejar en este artículo respecto de la Ley de Caducidad, y las instancias que podemos imaginar se abren tras la Ley Nº 18.831 que restablece la pretensión punitiva del Estado, ponen en juego una tensión que no se expresa sólo en los términos de la Verdad y la Justicia, sino también en otros: la oposición entre la legitimidad de la voluntad popular, es decir, el principio democrático, que se ha expresado en la forma de referéndum y de plebiscito a favor de la vigencia de la Ley, y el principio fundador de los Derechos, en particular de los Derechos Humanos, como horizonte de una comunidad civilizada.

Es sobre este punto que deseamos concluir este trabajo. Si nuestra lectura es adecuada, la voluntad popular uruguaya se ha expresado, al celebrar el mantenimiento de la Ley de Caducidad, en contra del camino de la Justicia; y ha sido el Parlamento, investido también de legitimidad democrática, el que ha cambiado el rumbo de esa decisión. Más allá de los argumentos formales que pueden entretejerse, es claro que el Frente Amplio ha desoído el veredicto del referéndum y el plebiscito con un argumento paradójico, a saber: la Doctrina Internacional de Derechos Humanos tiene poder limitante de las instituciones de la república democrática, y ello permite que un Poder

[22] José Mujica, *El País*, 27 octubre de 2011.

Legislativo obligado constitucionalmente a respetar la decisión vinculante de un referéndum, pueda desentenderse de esa obligación amparándose en dicha Doctrina. No es menor esta discusión. Se abren cuestiones soberanas.

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El juicio según Arendt: Su aporte a la reflexión sobre pasados traumáticos

By Valeria Bosoer

¿Qué pasa con la facultad humana de juicio cuando se enfrenta a casos que representan la quiebra de todas las normas habituales y que carecen, por tanto, de antecedentes en el sentido de que no están previstos en las reglas generales, ni siquiera como excepciones a dichas reglas? [1]

Introducción

Uno de los desafíos que enfrentan las comunidades políticas al salir de periodos de violencia traumática, es el de actuar sobre las injusticias cometidas en el pasado a través de procesos de búsqueda de justicia y verdad. Entendemos que, para ello, la facultad humana de juicio, esto es la capacidad de los seres humanos para discernir el bien y el mal, lo justo y lo injusto, sin contar para ello necesariamente con normas, reglas o categorías previas, resulta ineludible. De la recuperación de la confianza en este poder humano para juzgar, tanto en el terreno político, legal y moral, depende, en cierta forma, la capacidad de los ciudadanos y de las nuevas instituciones para procesar las consecuencias de sus pasados traumáticos.

Hannah Arendt (1906 - 1975) entendió la cuestión del juicio humano como un problema fundamental para las comunidades políticas que han salido de periodos de violencia traumática, y que buscan lidiar con su pasado. Arendt se interesó especialmente por esta cuestión a partir de su presencia en el tribunal israelí que juzgó a Adolf Eichmann en 1961. Su libro *Eichmann en Jerusalén*[2] (en adelante EJ), crónica de aquel juicio, muestra, de un modo particularmente realista, las múltiples manifestaciones del problema del juicio humano en el marco de un

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[1] Hannah Arendt, "Responsabilidad personal bajo una dictadura", en *Responsabilidad y juicio* (Barcelona: Paidós, 2007): 56.

[2] Hannah Arendt, *Eichmann en Jerusalén* (Barcelona: Lumen, 2003).

proceso jurídico diseñado para enfrentar los crímenes del nazismo.[3]

Nuestro artículo se propone restituir los trazos esenciales del tratamiento arendtiano del juicio tal como este se pone en escena, particularmente en EJ, con el fin de contribuir a la reflexión sobre los usos del juicio político (en clave arendtiana) en el debate sobre los modos de procesamiento de pasados traumáticos. Para ello organizamos el texto en tres apartados. En el primero recordamos las principales dimensiones del concepto de juicio arendtiano. En el segundo analizamos tres aspectos del tratamiento arendtiano del problema del juicio en EJ, allí donde este se hace presente en un contexto particular: el ejercicio del "juicio directo" de la propia Arendt, su elaboración de la noción de la "banalidad del mal" encarnada por Eichmann, y su tratamiento del valor ejemplificador del testimonio. Finalmente, en el último apartado, ilustramos los aspectos analizados del juicio arendtiano refiriéndonos brevemente al caso de Argentina; particularmente, a dos acontecimientos paradigmáticos del proceso de verdad y justicia en Argentina, esto es, al rol que tuvo el establecimiento de la CONADEP y el Juicio a las Juntas Militares para la afirmación de los procesos de verdad y justicia en la recuperación democrática.

1. EL "JUICIO ARENDTIANO"

Arendt parte de la aseveración de que en el contexto de crisis de la autoridad y ruptura de la tradición, los ciudadanos de las comunidades políticas modernas carecen de criterios, estándares o principios heredados que les permitan juzgar sus acciones: el modo, entonces, en el que pueden orientarse en el espacio público es a través de la práctica de juicios reflexivos,[4] con capacidad de crear criterios a partir de la reflexión sobre casos particulares, que luego de su discusión y el intercambio de perspectivas con otros, alcancen un grado de

[3] Eichmann fue el funcionario encargado de organizar e implementar "la Solución Final al problema judío", el plan sistemático de exterminio que condujo al Holocausto.

[4] *Cf. Infra.*

generalidad en el marco de la pluralidad. Antes que en un fundamento, entonces, las democracias modernas se sustentan en puntos de apoyo conformados por el producto de estos juicios reflexivos/políticos, que cambian históricamente.

Como es sabido, para moldear su concepción del juicio en el terreno político, Arendt realiza una reinterpretación del juicio estético kantiano. Retoma la noción kantiana de "juicio reflexivo" que (a diferencia del "juicio determinante", que subsume lo particular bajo una regla general) deriva por su parte la regla del particular. A la vez, entiende que quien está en condiciones de juzgar es el espectador, y no el actor, ya que este último tiene sus intereses comprometidos con el objeto de juicio. Por fin, sostiene que el juicio depende de la "mentalidad ampliada", definida por Kant como la "habilidad para ver las cosas no solo desde el punto de vista personal sino también según la perspectiva de todos los que están presentes en la escena del juicio".[5] Esto supone, entonces, su conformación en un ámbito público-político. En síntesis, la facultad humana de juicio consiste para Arendt en un ejercicio de pensamiento político, centrado en lo particular y no dependiente de reglas previas, que se realiza desde el rol del espectador desinteresado, y que requiere para su ejercicio del intercambio de perspectivas con otros ("mentalidad ampliada"), y por tanto sólo puede desenvolverse en el espacio público de pluralidad y comunicabilidad.

2. Eichmann en Jerusalén

2.1. Arendt, espectadora

Arendt asistió al juicio a Eichmann en Israel como reportera para la revista *The New Yorker*. Es sabido que buscó explícitamente la cercanía con este acontecimiento pues confiaba en la proximidad con el objeto de juicio para juzgarlo "sin mediaciones". [6] Así lo expresó en una carta dirigida a Jaspers del 2 de diciembre de 1960:

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[5] Hannah Arendt, *Conferencias sobre la filosofía política de Kant* (Barcelona: Paidós, 2003): 84, 150.

[6] Elizabeth Young-Bruehl, *Hannah Arendt* (Barcelona: Paidós, 2006): 414.

> Nunca me perdonaré no ir a ver ese desastre en directo y en toda su extraña inanidad, sin la mediación de las palabras impresas. No olvide que dejé Alemania muy pronto y que viví muy poco de todo eso directamente.[7]

Podemos decir, entonces, que las reflexiones de la propia Arendt en EJ se suscitan desde su rol de espectadora, esto es, de la observación atenta de los actores que formaron parte de aquel juicio (el fiscal, los jueces, el defensor, los testigos, el acusado y el público presente). Y que su observación tanto del perpetrador como de las víctimas — focos privilegiados de su atención — son ellos mismos objeto del "juicio directo" tal como lo entiende la propia Arendt, de quien juzga reflexivamente frente a la ausencia de categorías previas.

2.2. EL MAL BANAL

En efecto, a los ojos de Arendt, el "mal" que encarnaba Eichmann no estaba previsto en ninguna categoría previa del pensamiento occidental. El juicio que formula Arendt nos ilustra, simultáneamente, sobre la naturaleza de ese nuevo mal, y sobre la propia naturaleza del juicio reflexivo. Observemos este juicio de Arendt en tres pasos: En primer lugar, observando al perpetrador, Arendt consideró que el mal que Eichmann encarnaba no podía encontrar su sentido bajo las viejas categorías que la tradición de pensamiento occidental ofrecía al problema de la acción malvada. Con Eichmann se hallaba en presencia de un tipo de maldad sin precedentes practicada en los sistemas totalitarios por funcionarios "terroríficamente normales":

> Los más grave del caso Eichmann era precisamente que hubo muchos hombres como él, y que estos hombres no fueron pervertidos ni sádicos, sino que fueron y siguen siendo, terroríficamente "normales". Desde el punto de vista de nuestras instituciones jurídicas y de nuestros criterios morales, esta normali-

[7] Hannah Arendt and Karl Jaspers, *Correspondence 1926 - 1969* (New York: Harcourt Brace, 1992).

> dad resultaba mucho más terrorífica que todas las atrocidades juntas, por cuanto implicaba que este nuevo tipo de delincuente… comete sus delitos en circunstancias que casi le impiden saber o intuir que realiza actos de maldad.[8]

Para nombrar este nuevo fenómeno, forjó la fórmula *banalidad del mal*. De acuerdo con esta fórmula, el rasgo principal de este tipo de mal brota de la ausencia de pensamiento y de la falta de juicio del perpetrador:

> De la reticencia o incapacidad para relacionarse con los demás mediante el juicio, nacen los verdaderos *skándala*, las auténticas causas de tropiezo que los poderes humanos no pueden eliminar porque no se deben a motivaciones humanas y humanamente comprensibles. Ahí radica el horror y, al mismo tiempo, la banalidad del mal.[9]

En segundo lugar, a ojos de Arendt, si Eichmann estaba casi impedido de "saber o intuir que realiza(ba) actos de maldad" es porque carecía de conciencia sobre sus propios actos, porque no pensaba y no se comunicaba ni consigo mismo ni con los demás. Era incapaz de entablar el diálogo consigo mismo, de pensar por sí mismo y de pensar de forma ampliada:

> Cuanto más se le escuchaba, más evidente era que su incapacidad para hablar iba estrechamente unida a su incapacidad para pensar, particularmente, para pensar desde el punto de vista de otra persona.[10]

Así, en términos de Arendt, Eichmann era incapaz de juicio reflexivo, y sólo era capaz de realizar una operación mental semejante al "juicio determinante" kantiano. La regla general bajo la cual subsumía todos los casos y que se limitaba a aplicar automáticamente a cualquier tipo de situación, y sin la mediación de reflexión alguna, era "la voluntad del

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[8] *Ibíd*. 402 - 3.
[9] Arendt, *Responsabilidad y Juicio*, 150.
[10] Arendt, *Eichmann en Jerusalén*, 79.

Führer".[11] En este sentido, tal como lo expresa Arendt, Eichmann actuó siempre "dentro de los límites impuestos por sus obligaciones de conciencia: se comportó en armonía con la norma general".[12]

Observamos, en tercer lugar, que según Arendt, la destrucción de las condiciones para el ejercicio del pensamiento y del juicio fue precisamente uno de los principales objetivos de los totalitarismos. Estos regímenes se organizaron bajo el propósito de reemplazar el uso del pensamiento y el juicio autónomo por los mecanismos de una *ideología* (lógica de una idea).[13] Tal modo de "pensar" ó más bien de "ausencia de pensamiento", no aceptaba perspectivas diferentes a la propia y procuraba la coherencia total y no admitía, por tanto, ninguna contingencia. En este sentido, en el contexto del terror totalitario el *modus operandi* de la ideología reemplazó al pensamiento autónomo y al "juicio reflexivo", y se nutrió, en cambio, del "juicio determinante". De allí que una de las principales lecciones que leemos en EJ es que la ausencia de pensamiento y la falta de juicio, en el contexto totalitario de ideología y terror, pueden tener consecuencias particularmente perversas para la experiencia humana.[14]

Juzgando, entonces, aquello para lo cual no tenía categorías, Arendt juzgó que Eichmann no debía ser considerado un "monstruo" sino un hombre incapaz de comunicarse realmente con los demás, y consigo mismo, y que por tanto su característica principal no era otra que la ausencia de pensamiento y de juicio. Su constatación de un nuevo tipo de mal que no encajaba en conceptos previos, su novedosa denominación, a falta de otras categorías, como "banalidad del mal", y la reflexión sobre su sentido ligado a la conexión entre el mal totalitario y la ausencia de pensamiento y de juicio, nos proveen a nosotros — a

11 Arendt, *Responsabilidad y Juicio*, 69.

12 Arendt, *Eichmann en Jerusalén,* 426.

13 En el caso del nazismo, se trató de la transformación de la cosmovisión antisemita en ideología, bajo la forma de un razonamiento guiado por los mecanismos de deducción lógica a partir de esta idea. *Cfr.* Hannah Arendt, "Ideología y terror", en *Los orígenes del totalitarismo* (Madrid: Alianza, 1987).

14 "Una de las *lecciones* que nos dio el proceso de Jerusalén fue que tal alejamiento de la realidad y tal irreflexión pueden causar más daño que todos los malos instintos inherentes, quizás, a la naturaleza humana". *Ibíd.* 418.

través del ejercicio del juicio reflexivo por parte de Arendt — nuevas categorías con las cuales intentar pensar el mal.

2.3. LA MEMORIA Y EL VALOR EJEMPLIFICADOR DEL TESTIMONIO

Otro sentido que — sirviéndonos de Arendt — ha de interesarnos particularmente, y que podemos observar que cobra el juicio a Eichmann, es su impacto sobre el juicio reflexivo de los espectadores, incentivado por la aparición pública de numerosos relatos en los testimonios de las víctimas. Sabemos, en efecto, que para Arendt, la narración y la producción de relatos cumplen una función política, en la medida en que contribuyen a la reconciliación con el pasado vía la comprensión y el juicio de los espectadores sobre dichas historias.[15] A través de la comprensión del espectador, de quien asiste a la narración, abre la posibilidad de reconciliarse con el mundo en donde tales atrocidades han sido posibles.

Así, refiriéndose a la historia de Anton Schmid, un sargento alemán que durante cinco meses salvó a judíos dándoles documentos falsos, hasta que finalmente fue descubierto y ejecutado, Arendt afirma que para Alemania, y para el resto del mundo, sería de una "gran importancia práctica" que más historias como ésta salgan a la luz pública, porque:

> La lección de esta historia es sencilla y al alcance de todos. Desde un punto de vista político, nos dice que en circunstancias de terror, la mayoría de la gente se doblegará, pero algunos no se doblegarán… Desde un punto de vista humano, la lección es que actitudes cual la que comentamos constituyen cuan-

[15] En EJ, la mirada del "juicio arendtiano" está colocada, sobre todo, en la perspectiva del espectador que recibe las historias, y que a partir de ellas puede juzgar el pasado "con otros ojos". En otros escritos, que no son el objeto principal de este artículo, Arendt reflexiona sobre el valor de la narración (*storytelling*) desde la perspectiva del propio narrador y del historiador. Véase: Hannah Arendt, *Hombres en tiempos de oscuridad* (Barcelona: Gedisa, 2008) y Arendt, "El concepto de historia: antiguo y moderno", en *Entre pasado y futuro* (Barcelona: Península, 2003).

> to se necesita, y no puede razonablemente pedirse más, para que este planeta siga siendo un lugar apto para que lo habiten los seres humanos.[16]

Según leemos en EJ, el público presente en aquél tribunal se habría interesado especialmente por el caso de este hombre que fue capaz de discernir el bien y el mal basado en su juicio autónomo.[17] De este modo, Arendt coloca el énfasis una vez más en un caso de juicio reflexivo: el sargento Schmid juzgó desatado de las reglas imperantes en aquél momento; su juicio fue en contra de la práctica reinante en el régimen totalitario — y que la mayoría, incluido Eichmann, acataba- de seguir ciegamente las órdenes de los mandos superiores. Y el juicio reflexivo del sargento Schmid permite a la vez, al espectador, comprender por qué el mal ha sido posible pero también, comprender que el juicio y el discernimiento autónomo sobre el bien y el mal son posibles, aún en los contextos más extremos de terror, amparados en nuestra capacidad de pensar y de juzgar.

La historia de Schmid irrumpe en el juicio a Eichmann en el testimonio de Abba Kovner, un superviviente miembro de una organización clandestina judía a la que el sargento alemán había brindado ayuda. Así, el relato de un testigo ante el tribunal se convierte en vehículo de una historia que, por su parte nutre el juicio reflexivo de los espectadores sobre el pasado, y contribuye a la conformación de memorias colectivas. Kovner rescata este ejemplo del olvido colocándolo en su relato,[18] y funciona de esta forma como un agente de memoria; al

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16 *Ibíd.* 339 - 340.

17 "Durante los pocos minutos que Kovner necesitó para relatar la ayuda que le había prestado un sargento alemán, en la sala de audiencia reinó un anormal silencio. Parecía que la multitud hubiera decidido espontáneamente guardar los tradicionales dos minutos de silencio en memoria del sargento Anton Schmid". *Ibíd.* 337.

18 *Ibíd.* 335. En el valor ejemplificador del testimonio de Kovner se sustenta Arendt cuando afirma que los intentos nazis de borrar toda huella de las matanzas, así como también los intentos de hacer desaparecer en el anonimato a todos aquellos que se oponían al régimen, estaban destinados al fracaso: "Las bolsas de olvido no existen. Ninguna obra humana es perfecta, y, por otra parte, hay en el mundo demasiada gente para que el olvido sea

mismo tiempo, el valor ejemplificador del relato del testigo es reconocido por los espectadores (Arendt y el público que guardó sus "respetuosos dos minutos de silencio"),[19] quienes a partir del conocimiento de este ejemplo amplían sus perspectivas sobre el pasado, y pueden juzgar reflexivamente, entablando finalmente una nueva relación con lo ocurrido. Esta nueva relación con el pasado, facilitada por la "mentalidad ampliada" y por el juicio reflexivo de los espectadores, incorpora la perspectiva emanada del ejemplo del sargento Schmid, un hombre que supo juzgar de manera autónoma en el contexto de la ideología y el terror totalitario.

Dicho de otro modo, el rescate de los relatos de quienes han sabido ejercitar su conciencia, pensamiento y juicio en tiempos de total desorientación y terror, a la vez da cuenta de la exigibilidad de la capacidad de juzgar a los actores, y posibilita una rearticulación del ejercicio del juicio político, desde el rol de los espectadores, a través de la posibilidad de ampliar su mentalidad mediante la inclusión de nuevas perspectivas sobre el pasado, y de ese modo también enriquece la comprensión sobre lo ocurrido y las memorias compartidas.

3. El caso de Argentina

Consideramos que algunos aspectos del tratamiento arendtiano del juicio en EJ pueden contribuir a pensar escenarios histórico-políticos más recientes, como es el caso argentino de la CONADEP (1983-1984) y el Juicio a las Juntas (1985). El establecimiento de un primer registro oficial de testimonios de las víctimas del terrorismo de Estado a través de la Comisión Nacional sobre la Desaparición de Personas (CONADEP), que elaboró el Informe "Nunca más",[20] y el Juicio a los principales responsables de los crímenes de la última dictadura militar

posible. Siempre quedará un hombre vivo para contar la historia". *Ibíd.* 339.

[19] No solamente Arendt y el público presente en el juicio a Eichmann reconocieron el valor ejemplificador del relato sobre Schmid. En 1964 la institución oficial israelí constituida en memoria de las víctimas del Holocausto reconoció con el título "*Righteous among the nations"* el ejemplo de coraje del sargento alemán. *Cfr.* : http://www1.yadvashem.org

[20] CONADEP, *Nunca Más* (Buenos Aires: Eudeba, 1984).

que le siguió, generaron un gran consenso social. Ese consenso se sintetizó en la adopción, por parte de amplios sectores de la sociedad, de la proclama "Nunca Más", emanada del título del informe de la CONADEP. Entendemos que esta proclama puede leerse, en clave del "juicio arendtiano", como el resultado de un juicio reflexivo[21] del público de espectadores de la sociedad argentina, conformado a partir del impacto público de los testimonios sobre las violaciones a los derechos humanos durante la dictadura militar gracias a la acción conjunta del estado, y sectores de la sociedad civil en la CONADEP, y al Juicio a las Juntas. ¿De qué modos contribuyeron estos acontecimientos emblemáticos de la transición democrática en Argentina al juicio reflexivo sobre el pasado de violencia traumática?

Sugerimos que el conocimiento público de los testimonios de las víctimas ocasionó una "re-información" de la sociedad sobre lo ocurrido en el pasado, que contribuyó al juicio reflexivo de los espectadores, sintetizado en la proclama "Nunca Más". Esta "re-información" se produjo como efecto, en primer lugar, de la confección de un registro público de denuncias por parte de la CONADEP,[22] y de su publicación en el libro "Nunca Más", que obtuvo un notable éxito editorial. La difusión pública del "Nunca Más"[23] significó una intervención política que postuló una nueva verdad pública de carácter oficial sobre las desapariciones, e instituyó un juicio político-cultural sobre sus responsables que antecedió al

[21] Bombal utiliza el concepto de "juicio reflexivo" para el análisis del caso argentino. Su aproximación contribuye a la perspectiva teórica que presentamos en este artículo. Sin embargo, esta autora utiliza directamente el modelo kantiano como referencia, mientras nosotros colocamos en el centro la interpretación arendtiana, específicamente a partir del EJ. *Cfr.* Inés González Bombal, "Nunca Más": el juicio más allá de los estrados", en Carlos Acuña *et al.*, *Juicio, castigos y memorias. Derechos humanos y justicia en la política argentina* (Buenos Aires: Nueva Visión, 1995).

[22] "Los miles de testimonios provenientes de distintos lugares del país expresaban un verdadero ejercicio público de evocación que permitía ampliar el saber sobre las desapariciones". *Ibíd.* 75.

[23] La CONADEP elaboró un programa televisivo titulado "Nunca Más", que tuvo una gran audiencia; a través de él, por primera vez, el estado anunció un relato sobre las desapariciones en la voz de los testigos directos. *Ibíd.* 80 - 89.

veredicto del tribunal que juzgó a las Juntas Militares.[24] En segundo lugar, el conocimiento público de los testimonios sobre el pasado organizados por la CONADEP se potenció con el Juicio a las Juntas Militares, que llevó algunos testimonios de las víctimas incluidos en el "Nunca Más" al tribunal, y permitió, de ese modo, que éstos tomaran estado público, gracias a los medios de comunicación que transmitieron el juicio. Simultáneamente, la nueva verdad pública sobre el pasado elaborada por la CONADEP vertebró la estrategia de acusación de la fiscalía, y fue reconocida por el tribunal que aceptó su calidad probatoria.[25]

Por fin, la transformación de los testimonios en pruebas jurídicas, y la consecuente sentencia que se derivó de ellas legitimó una interpretación del pasado, que dio un fuerte sostén a un ejercicio del juicio reflexivo por parte de la sociedad sobre el pasado traumático. Esta suerte de juicio político sobre lo ocurrido, surgido al calor de un espacio público activo y crítico con el pasado, conformó en torno suyo un consenso social, cultural y político de la transición argentina. Este tomó la forma del reconocimiento de la existencia de las víctimas y de la desaparición como hecho inadmisible para la figura de sujeto de derechos sobre el que se empeñaba en fundar un orden nuevo.

4. CONCLUSIONES

Sirviéndonos de la mirada de Arendt, partimos del supuesto de que el advenimiento del mal absoluto[26] en una comunidad política representa el quiebre de las normas habituales que guiaban hasta ese momento los comportamientos sociales, y la ruptura de la trama de categorías y reglas generales (criterios para distinguir el bien y el mal, lo justo y lo injusto) bajo los cuales solían juzgarse las acciones y los discursos de los

[24] Bombal, *"Nunca Más"*, 208; y, Crenzel, *La historia política,* 137.
[25] "La frase "Nunca Más" con la que (el fiscal) cerró su alocución, que afirmó que ya pertenecía al pueblo argentino, se convirtió, así, en patrimonio común del estado, la comunidad nacional e internacional y de los propios desaparecidos en demanda de justicia". *Cfr.* Crenzel, *La historia política*, 140.
[26] Hannah Arendt, *The origins of totalitarianism* (New York: Harcourt, 1976 (1951)): viii.

actores. Y que cuando la sociedad sale de esta situación traumática, aparece el desafío de procesar las consecuencias del trauma, para lo cual se hace necesario restablecer, si no las viejas categorías generales (inadecuadas para abarcar las experiencias ligadas a las nuevas formas del mal), de algún modo sí la confianza en la capacidad humana para juzgar fenómenos nuevos. Esto es, un modo de juzgar sin el apoyo en normas preestablecidas y con un único basamento en la experiencia compartida. Es en este sentido que buscamos colocar la cuestión de la facultad humana del juicio postulada por Arendt en el contexto de la reflexión sobre situaciones de salida de pasados traumáticos.

Hemos visto, entonces, de qué manera se manifestó el problema del juicio en EJ, y hemos procurado indicar que la facultad de juicio atañe tanto a los hombres en tiempos de oscuridad — a aquellos que juzgarán por ellos mismos, y a aquellos que renunciarán a su capacidad de hacerlo — como también al conjunto de la sociedad que posteriormente juzgará desde el rol del espectador estos fenómenos. Sobre este último aspecto hemos reflexionado en el caso de Argentina, específicamente acerca del juicio reflexivo de la sociedad sintetizado en el "Nunca Más", que fue producto de la CONADEP y del Juicio a las Juntas, y que imprimió el carácter de la transición democrática que dejó atrás el pasado traumático. De esta forma hemos procurado mostrar que el concepto de juicio político a la luz de EJ resulta un eje sugerente para reflexionar en torno al procesamiento de pasados traumáticos.

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FORGETTING RESPONSIBILITY: HANNAH ARENDT AND THE WORK OF (UNDOING) PSYCHIC RESISTANCE POST-APARTHEID

By Sergio Alloggio & Kylie Thomas

It's not that I forgot. It's just that I don't care.[1]

The critical writing of history is a continuous struggle to liberate the past from within the unconscious of a collective that forgets the conditions of its own existence.[2]

This paper engages with some of the writings of Hannah Arendt in order to draw a political parallel between the complex nexus of responsibility, judgement and sociality in post-war Germany and post-apartheid South Africa. In her writings on post-war Germany Arendt described the failure on the part of the German public to recognise and respond to what she terms "the horror" of Nazism.[3] In her report on the aftermath of war, written on her return to Germany from the United States in 1949, Arendt recounts how she found "an inability to feel", "absence of mourning for the dead" and a "general lack of emotion"[4] in those she encountered in Germany at that time. In this paper we connect her insights on post-war Germany to her later work on the difficulties of judging; this allows us to cast light on the problem of the evasion of responsibility in contemporary South Africa. Read in conjunction with some of the concepts developed by Sigmund Freud, Arendt's later work helps us to open up the trans-generational trauma of apartheid and to approach the redoubled form of repression that, we argue, characterises the post-apartheid

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1 Comment printed on the t-shirt of a white student at the University of Cape Town, South Africa.

2 Susan Buck-Morss, *Hegel, Haiti and universal history* (Pittsburgh: University of Pittsburgh Press, 2009): 85.

3 Hannah Arendt, *Responsibility and judgment* (New York: Schocken Books, 2003): 2 - 3.

4 Arendt, *Responsibility and judgment*, 249.

condition. We employ psychoanalysis not as a therapeutics but as a means for approaching questions about the constitutive relation between the psychic and the political, drawing in particular on Freud's theorisations of the meanings of symptoms, repression, resistance and memory. In conclusion, via Theodor Adorno's essay "The meaning of working through the past"[5] we advocate for a post-apartheid pedagogy that seeks to unearth the problem of responsibility from the sinking sands of reconciled national history.

The post-apartheid state recognised the intensive economic and social restructuring necessary to positively transform South African society and in 1994 the new ANC-led government launched the Reconstruction and Development Plan. Addressing the psychic effects of apartheid and finding the truth about the history of the country was also acknowledged as essential to the so-called "peaceful transition to democracy". The Truth and Reconciliation Commission (TRC) hearings that took place in South Africa between 1996 and 1999 opened a space for both victims and perpetrators to testify to their experiences under apartheid. The TRC was a site through which the wounds of the national body were made public; a *temporary* arena of witnessing that made visible the damage of a nearly fifty-year political configuration. The symptoms that were made visible at the hearings were, however, for the most part, signs that South Africans failed to diagnose or to read in any depth, nor did they attend to them in ways that would allow for recognition of the *on-going* nature of the trauma of apartheid. In the post-apartheid present a form of selective national amnesia has taken hold, both through the propagation of reified forms of national history and as a result of the exigencies of the present. As numerous scholars have noted, the TRC was a symbolic process, only the start of the material work required to alter the society for the better[6]. But more than a decade after the end of the TRC hearings, the unbearable psycho-political legacy of apartheid remains. Ongoing violence, poverty, the chasm between rich and poor, the persistence of

[5] Theodor W. Adorno, *Can one live after Auschwitz? A philosophical reader,* Rolf Tiedemann (Ed.) (San Francisco, CA: Stanford University Press, 2003).

[6] See for instance the work of Erik Doxtader, Pumla Gobodo-Madikizela, Chabani Manganyi, Fiona Ross and Joseph-Philippe Salazar.

racism and the still largely segregated social worlds of South Africans make it increasingly clear that this legacy will not simply disappear over time. Focusing on the powerful forms of psycho-political resistance that characterise life in post-apartheid South Africa, and drawing on Arendt, Freud, and Adorno, we argue for the importance of critical responsibility for the emergence of alternative forms of post-apartheid subjectivity.

FOR A SOUTH AFRICAN PSYCHO-POLITICAL: ARENDT *AND* FREUD

In the 1930s Arendt was a student of two of the most important philosophers in Germany — Martin Heidegger and Karl Jaspers. In 1929 she submitted her doctoral dissertation on Augustine's concept of love, but her promising career as an academic in Germany, like that of many other Jewish scholars, was swiftly brought to an end by the rise of Nazism. The events of the war and its aftermath inaugurated a radical shift in Arendt's political philosophy. From 1941 Arendt lived and worked in the United States and in 1963, with the publication of *Eichmann in Jerusalem*, Arendt's name became synonymous with a powerful critique of the unexamined inner workings and consequences of Nazism and their effects on everyday life. Through her impassioned account of the Eichmann trial, at which she was present as a journalist, and in her subsequent analysis of Eichmann's testimony, Arendt provides insight into how Nazi officials saw themselves as 'moral agents'. In this way Arendt began to engage with what was to become her life's work — thinking the problems of judgement and responsibility within the horizon of totalitarian monstrosity and its aftermath. For Arendt, the scale and depth of the historically unprecedented events of post-Weimar Germany created an abyss in understanding and rendered all prior systems of knowledge useless:

> We had to learn everything from scratch, in the raw, as it were — that is, without the help of categories and general rules under which to subsume our experiences… The more these things are discussed, the clearer it becomes, I think, that we

> actually find ourselves here in a position between the devil and the deep sea.[7]

However, Arendt also points out that this abyss in understanding extends to a time prior to these events and prefigures them. It is as if, in Arendt, we can perceive a subcutaneous passivity in the political body that is retroactively dated and that provides us with a way to begin to fathom the origins of totalitarianism. For her, "Without taking into account the almost universal breakdown, not of personal responsibility, but of personal *judgement* in the early stages of the Nazi regime, it is impossible to understand what actually happened".[8] It is important to emphasize that Arendt is not simply talking about an *inability* to judge — she is unequivocal in her dismissal of the 'cog-theory' as a mode of explanation for the institutional functioning of Nazism.[9] On the contrary, there are two instances in Arendt's analysis that seek to fundamentally contest those understandings of the rise of Nazism within which questions of agency, critical thinking and responsibility are suspended. The first is to be found in a fascinating passage in her article entitled "Personal responsibility under dictatorship" in which she responds to those who have reacted against her claiming the right to pass judgement on moral and political issues and on those who were complicit in Nazism by noting "how uncomfortable most of us are when confronted by moral issues".[10] She also draws attention to her own discomfort in occupying the seat of judgement and goes on to relate why this should be so:

> My early intellectual formation occurred in an atmosphere where nobody paid much attention to moral questions… To be sure, every once in a while we were confronted with moral weakness, with lack of steadfastness or loyalty, with this curious, almost automatic yielding under pressure, especially of public opinion, which is so symptomatic of the educated strata of certain societies, but we had no idea how serious such things

[7] Arendt, *Responsibility and judgment*, 25
[8] *Ibid.* 24.
[9] *Ibid.* 29 - 30.
[10] *Ibid.* 22.

> were and least of all where they could lead. We did not know much about the nature of these phenomena, and I am afraid we cared even less. Well, it turned out that we would be given ample opportunity to learn.[11]

Arendt notes the deeply entrenched suspension of critical thinking within Germany prior to the war and for her the absence of personal and public spaces of deliberation is intimately bound to the disintegration of the very precondition for what would be considered a just social life. In her final, unfinished volume, *The life of the mind*, she compares those who fail to think to "sleepwalkers" and describes thinking as that which "rouses you from sleep".[12] It is clear that for her, thinking is a conscious process inextricably bound to political understanding that results in judging that proceeds outside and beyond any form of pre-ordained morality. In her reading of SS official Adolf Eichmann's decision to blindly follow the dictates of the Nazi regime, what he, at his trial described as *Kadavergehorsam*, Arendt points to how, in ceasing to think, Eichmann willingly gave up what for her would constitute his humanness.[13]

The second instance in which Arendt's account undermines a linear explanation of the 'total collapse' of morality is her well-known analogy between the changing of morality/*mores* and "the changing of clothes".[14] In this conception morality is understood to be a set of superficial and replaceable norms and values that are disconnected from any kind of critical responsibility. As Arendt's work shows, such forms of 'morality' make possible and legitimate the most inhumane violence. Within such 'moral' rhetoric Auschwitz is made a 'medical matter', and the murder of anti-apartheid activists like Steve Biko and

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[11] *Ibid*. 22 - 3.

[12] Hannah Arendt, *The life of the mind, 1: Thinking* (New York: Harcourt Brace Jovanovich, 1978): 191, 178.

[13] See José Brunner's "Eichmann, Arendt and Freud in Jerusalem: On the evils of narcissism and the pleasures of thoughtlessness" in *History and memory* 8, 2 (1996): 61 – 88, for a psychoanalytic reading of Eichmann's character as described in Arendt's book, *Eichmann in Jerusalem*.

[14] Arendt, *Responsibility and judgment*, 43.

Siphiwo Mthimkulu is termed "elimination".[15] In the end, for Arendt the only antidote to this collective breakdown in moral thinking lies not in:

> a.) highly developed intelligence or sophistication in moral matters, but rather the disposition to live together explicitly with oneself, to have intercourse with oneself, that is, to be engaged in that silent dialogue between me and myself which, since Socrates and Plato we usually call thinking.[16]

Arendt goes on to explain that such forms of reasoning are not limited to professional thinkers but may be achieved by anyone, who, in spite of external circumstances, makes use of critical reasoning to "examine things and to make up their own minds".[17] In *The life of the mind*, Arendt returns to the question of the conditions under which it became "no more difficult to change the mores and habits of a people than it would to change their table manners".[18] She observes that the reversal of "the basic commandments of Western morality" under Nazism should not be thought apart from its "sequel — the reversal of the reversal, the fact that it was so surprisingly easy "to re-educate" the Germans after the collapse of the Third Reich, so easy indeed that it was as though re-education was automatic — should not console us either. It was actually the same phenomenon".[19]

In what we read as Arendt's philosophy (although of course, she famously resisted such labelling), thinking can only take place after a 'withdrawal' that allows consciousness to begin that 'silent dialogue' that the self conducts with the self. In *The life of the mind*, Arendt explicitly focuses on mental activities without borrowing from the lexicon of psychoanalysis.[20] She refuses to read inner life as determined

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15 See the testimony of South African Security Policeman Gideon Johannes Nieuwoudt delivered at the TRC and also in Mark Kaplan's film *Between Joyce and remembrance*.

16 Arendt, *Responsibility and judgment*, 44 - 5.

17 *Ibid*. 45.

18 Arendt, *The life of the mind,* 177.

19 *Ibid*. 178.

20 In *Without alibi* (San Francisco, CA: Stanford University Press, 2002): 57,

by unconscious drives, and instead resolutely insists on the possibility of describing the workings of "Thinking, willing and judging"[21] without recourse to psychoanalytic terms or concepts.[22] *The life of the mind*, like Arendt's other works, employs an approach to the study of complex matters such as memory, imagination, will, and the relation between inner and outer life that remains faithful to "protocols of transparency, scenarios of operationality".[23] There is simply no space in her reflections for repression, latent content, sublimation, or the multiple ways in which traumatic experience affects psychic life. The inner life of the Arendtian subject proceeds through the 'silent dialogue' between the part of myself that raises questions and the part that seeks to answer them. This inner dialogical arena is the locus of the struggle that takes place as I strive to be in agreement with myself. This "duality of the two in one" is for Arendt a critical component of any ethical being.[24] For her the accordance of my inner selves is the precondition for living *first* with myself and then with others.[25] The two inner actors of the "soundless dialogue" are characterised by a thoroughgoing rationality, and in this way Arendt's "two in one" theory dispenses with the productive elements of psychoanalytic thinking rather too swiftly.

Recognising what we read as a reductive aspect of her otherwise insightful analysis, in this paper we draw on the writings of Freud *alongside* Arendt in order to think about psychic repression during and

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Jacques Derrida points out that "the work of Hannah Arendt signals but… never deploys" what he terms "a symptomatology of the unconscious". See also his remarks on Arendt's studious avoidance of psychoanalysis: *Ibid.* 67.

[21] Derrida, *Without alibi,* 67.

[22] See, for instance, *The life of the mind*, 113, for Arendt's resistance to psychoanalysis.

[23] We draw this phrase from Jean-François Lyotard *The inhuman* (Stanford: Stanford University Press, 1992): 201.

[24] Arendt, *Responsibility and judgment*, 187.

[25] There is a way in which the TRC process can be understood as having operated in exactly the opposite way — by calling for an external reconciliation between perpetrators and victims without first confronting the multiple forms of psycho-political resistance that would make such reconciliation not only possible but meaningful.

after apartheid. The writings of Freud help us to recognise the burden of history and its weight on both the individual psyche and within the social body as a whole. However, just as Arendt refuses the unconscious psychic dimension of the political, Freud does not take into account the political construction of the inner geography of the subject.[26] Our intention in positioning Arendt *alongside* Freud is to show how the political is informed by the unconscious and how the unconscious is in itself a political construct. In the section that follows we ask: what are the psychic effects of the vast biopolitical experiment called apartheid? How has this affected the ability of South Africans, both black and white, to judge their past? How might fusing the work of Freud and Arendt offer a way to think the fallout of apartheid differently? What kind of political subject might be imagined into being if we refuse the routine division of the psychic and the political?

REPRESSION² : STATES OF EMERGENCY

In 1900 Freud published *The interpretation of dreams* and in 1901, *Psychopathology of everyday life*. In these works Freud began his reading of dreams as the projection of unconscious desires and inaugurated a new 'science': psychoanalysis, a form of 'therapy' that "does its work by transforming something unconscious into something conscious".[27] As Freud has taught us, the psyche is a site of permanent conflict between different instances, two connected but at the same time heterogeneous realms — the conscious and the unconscious. In the unconscious,

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[26] For a critique of Freud's own blindness to his own historical moment and the racist, sexist, hetero-normative presuppositions at work in order to produce the dream of psychoanalysis as science, see for instance Luce Irigaray's *To speak is never neutral* (London: Routledge, 2002), Derrida, in *Without alibi*, 272; also addresses some of the deadlocks in Freud's attempts to think the psycho-political and draws attention to how Freud's general pessimism finds its cure in a "dictatorship of reason". "The ideal, Freud then says, and he even speaks at this point of utopia, would be a community in which freedom consisted in submitting the life of the drives to a 'dictatorship of reason (*Diktatur der Vernunft)*' ".

[27] Sigmund Freud, *Introductory lectures on Psycho-analysis* (London: Allen & Unwin, 1922): 237.

space and time are unfixed and follow neither a linear chronology nor causal dynamics. In the unconscious, cause and effect are not the primary laws: time, space and causality succumb to the living fabric of pleasure, pain and emotional life.

According to Freud, insistent desires, whose content the individual feels she or he must repress, will often find alternative paths towards satisfaction and therefore manifest themselves as symptoms. He defines a symptom in the following way, "A symptom is a sign of, and a substitute for, an instinctual satisfaction which has remained in abeyance. It is a consequence of the process of repression".[28] For him, symptoms are signs that the subject cannot read themselves but that the work of psychoanalysis renders legible, and ultimately cures. Freud's psychoanalysis operates through its (his) desire for the conservative normalisation of the patient and in his formulation of the ineradicable presence of evil within any collectivity. His theorisations allow no place for a positive plurality — from his claims about the primordial origins of the human psyche to the dysfunctions of metropolitan life, the possibilities for radical agency are at their best deferred and, at worst, practically negated.[29] For Freud when the psychoanalytic process is successful it is able to produce subjects who are at peace with themselves and also at peace with others. Thus the desire of Freud's psychoanalytic thinking and of Arendt's political philosophy is a similar one: to formulate a way for subjects to live with themselves, which will also affect, necessarily, their conduct within the collective. However, the peace that Arendt argues will come about in the subject who can live with his or her self is of a different order from that brought about by psychoanalysis — for her, being able to live with oneself entails a constant process of self-reflexive thought. Arendt resists the victimisation of the subject by psychoanalysis and

[28] Sigmund Freud, *Inhibitions, symptoms and anxiety* (Toronto: Hogarth, 1959): 91.

[29] For Freud's applications of psychoanalysis to the study of society see *Totem and taboo*, *timely reflections on war and death* (London: Moffat, Yard and Company, 1918) and *Group psychology and the analysis of the ego* (New York: Boni and Liveright, 1922). For a radical account of the political possibilities of psychoanalysis, see Frantz Fanon, *The wretched of the Earth* (New York: Grove, 1963); and, *Black skin, White masks* (New York: Grove, 1967).

insists on the transformation of the inner faculties of thinking, willing and judging as immanent political activities.

Yet, as we argue here, the psyche is a permanent battlefield in which we cannot perceive the workings of the faculties Arendt describes in *The Life of the mind* as naturally given as she claims — what kind of thinking, willing or judging can be analysed during and after apartheid without taking apartheid itself as a constitutive part of such forms of thought? What we call repression[2] is a kind of historical repression that redoubles what was operating during apartheid and manifests in multiple ways across different people in South Africa. The redoubling effect is a combination of the first experience of repression under apartheid — a repression needed in order to make bearable the unbearable — apartheid as a State. The elevation squared operates to efface the first repression and in this way to make possible the repression of how economic, social and political life in contemporary South Africa continues to be overdetermined by the racism, injustice and inequality of the past. Our analysis of the forgetting of responsibility draws attention to the constant work required to continually *forget-deny-repress* both past and present injustice. We argue that in order to achieve the conditions of possibility for Arendt's 'silent dialogue' in contemporary South Africa we must unearth the relation between the rational and the irrational, the conscious and the unconscious, history and the present, the forgotten and the remembered, the acknowledged and the disavowed.[30] Such work, that of *undoing* the redoubled forms of psychic resistance, would result in a psycho-political configuration in which such tensions are not buried in the unconscious but provide the political grammar for breaking the vicious cycle that binds violence and reconciliation.

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[30] Peter Sloterdijk develops the term "*metanoia*" as a means of describing what he understands to be the positive transformation of the psycho-political legacy of war in his *Theory of the Post-War periods: Observations on Franco-German relations since 1945* (Vienna: Springer, 2009): 14. His diagnosis of the "*metanoia*" of the present significantly differs from the approach we follow here, in particular in his proclamations of so-called "normalisation" (see in particular 36 - 43).

In his essay "The meaning of working through the past",[31] Adorno takes up the question of memory and psychic resistance in Germany — post-Nazism. Like Arendt, Adorno is disturbed by the lack of critical reflection and engagement with what both thinkers refer to as "the horror" of the past:

> One wants to break free of the past: rightly, because nothing at all can live in its shadow, and because there will be no end to the terror as long as guilt and violence are repaid by guilt and violence; wrongly, because the past that one would like to evade is still very much alive.[32]

Adorno's reading of "the effacement of memory" in Germany complicates Arendt's position on thinking and judging as critical subjectivity. For him:

> The effacement of memory is more the achievement of an all-too-alert consciousness than its weakness when confronted with the superior strength of unconscious processes. In the forgetting of what has scarcely transpired there resonates the fury of one who must first talk himself out of what everyone knows, before he can then talk others out of it as well.[33]

Like Arendt, we understand critical reflexivity to be the *conditio sine qua non* of an anti-authoritarian society. As long as South Africans remain bound by the psycho-political knot of redoubled repression, critical reflexivity remains beyond their reach and the society will continue to bear the marks of apartheid-era authoritarianism. As Adorno has written, "This bears directly on democratic pedagogy".[34] For Adorno there are both conscious and unconscious processes that constitute the life of the mind and it is necessary to address the workings of both in the psycho-political "re-education" of the subject.[35] In Adorno's theorisation of the troubled relation between the German people and

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[31] Adorno, *Can one live after Auschwitz?*
[32] *Ibid.* 3.
[33] *Ibid.* 6.
[34] *Ibid.* 14.
[35] *Ibid.* 15.

their history, what in various places he refers to as "the unmastered past",[36] there is both what South African scholar Pumla Dineo Gqola has termed "unremembering",[37] a deliberate, wilful refusal to engage with the events of the past, and psychic resistance, repression and traumatic repetition. In response, Adorno calls for "a precise and undiluted knowledge of Freudian theory" as an indispensable component of the radical transformation of education that must begin with the education of "the educators themselves".[38] The work of undoing psychic resistance through an engagement with apartheid, and its psycho-political legacy as trans-generational trauma, is what we understand to be one of the most important tasks of scholars in our context. Without this, we are not merely unthinking somnambulists but those who desire a hollow ataraxia in the "anticipated oblivion of a better future".[39]

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[36] *Ibid.* 10. See Arendt's discussion of this term in her *Responsibility and judgment*, 23.
[37] Pumla Dineo Gqola, *What is slavery to me?* (Johannesburg: Wits University Press, 2010): 8.
[38] Adorno, *Can one live after Auschwitz?*, 15.
[39] Hannah Arendt, *The origins of totalitarianism* (New York: Harcourt and Brace, 1951): ix.

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