

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 "antissubversive 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

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 “antissubversive 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

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

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: Sudamericana, 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.