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Genocide Studies and Prevention: An International Journal

Genocide Studies: Debates from the Latin American Margin

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Interim Editors' Introduction

The Interim Editorial Board of *Genocide Studies and Prevention: An International Journal* (GSP) is happy to announce Special Issue 8.1, entitled *Genocide Studies: Debates from the Latin American Margin*. GSP is the Official Journal of The International Association of Genocide Scholars (IAGS).

This special issue contains articles that have been translated from Spanish into English. The aim of this issue is to enable a larger audience for Hispanic genocide scholars, and to create a greater awareness of issues of genocide in Hispanic countries. We hope you find this special issue informative and engaging.

Furthermore this special issue serves as the inaugural publication of GSP as an online, free and open access journal. There have been a number of major developments in the journal over the past 12 months. Through a process of consultations with the members of IAGS, the Journal Transition Committee that was appointed by the Executive Board (2011-2013), decided to move GSP to an open online format, with the possibility of also releasing print anthologies of selected articles.

This means that GSP will now reach a wider audience, including those in the global south and practitioners who cannot afford to access databases and/or subscribe to print journals. It also means that GSP will be able to publish a broader variety of formats, including art and photo essays, capturing the multi-disciplinary nature of genocide scholarship.

A huge thank you to all of the people who have been involved in the journal transition process, including Wiliam Schabas, Frank Chalk, Emmanuel Taub, Edwin Daniel Jacob, and Lior Zylberman. We would like to express our gratitude to the members of IAGS Executive and Advisory Boards (2005-2007) that started GSP, in partnership with the Zoryan Institute of Toronto, Canada.

Great appreciation goes to the Founding-Editors and other members of GSP's Editorial Boards who worked tirelessly to make GSP the respected journal it is today. These include Samuel Totten, Herbert Hirsch, Eric Markusen (RIP), Alex Alvarez, Henry Theriault, and Nicholas A. Robins, who have built a high quality journal for genocide scholarship. The excellence they strived for will be maintained. Finally we would like to thank Alex Hinton along with the Executive and Advisory Boards of the IAGS (2011-2013) for their tireless efforts in this transitional process.

Starting with this special Issue GSP will be fully published by the IAGS, thanks to the University of South Florida who are providing us with the web platform for the journal.

A call for editors for a new Editorial Board was issued, and the decision with regards to received applications will be announced soon.

GSP-Interim Editorial Board

*Dr. Melanie O'Brien
Rafiki Ubaldo
Amy Fagin
Dr. Kjell Anderson*

Over the past ten years, Latin America has made a number of important legal, sociological, political and even artistic contributions to Genocide Studies. Surprisingly and unfortunately, however, these contributions have made little impact outside the region. In the English-speaking world, reports on recent trials for human rights violations in Argentina, Chile, Colombia and Uruguay are uncommon and the academic output of the region is virtually unknown. The one exception has been the much-debated Rios Montt case in Guatemala; but other issues have been more or less ignored.

Consequently, in this special issue we decided to present recent work on genocide by Spanish-speaking authors. Most legal and academic papers on the subject have been published in Argentina. Consequently, we have selected articles and reports from the last two years of the *Revista de Estudios sobre Genocidio* (Journal of Genocide Studies), edited by the National University of Tres de Febrero, being the only journal on genocide studies published in Spanish, and one legal article from the *Revista de Derecho Penal y Criminología* (Journal of Criminal Law and Criminology), edited by Editorial La Ley, both based in Buenos Aires.

The selection begins with an article by an Argentine jurist, Marcelo Ferreira, on the doctrine developed by the Spanish and Argentine courts for defining massive state violence in Argentina and Chile. The term genocide has been increasingly used in judicial sentences since a Spanish judge (Baltasar Garzón) described the events as a “partial destruction of the national group”. Ferreira analyzes the notions of “group” and “national group” since their inclusion in the Genocide Convention as well as their use in the judgments and recommendations of various national and regional courts, including the Inter-American Court of Human Rights. It also highlights how some interpretations of “national group” express a Eurocentric bias on how nations are constituted – a bias that is both discriminatory and foreign to the way Latin American nations are constituted.

Next comes an article by Spanish historian Antonio Míguez Macho, who proposes a reformulation of the repression of the Franco era in Spain as a “genocidal social practice”. Míguez Macho pays special attention to the persecution and destruction of various social, political and professional groups in the north-western region of Galicia, as seen through primary source documents. He claims that the concepts and approaches previously used to understand repression in Franco’s Spain have obscured the role and consequences of systematic state violence. He also argues that the concept of genocidal social practice can help to assess the impact of these practices in contemporary Spain.

This is followed by an article by Lucrecia Molinari, an Argentine PhD Candidate researching massive state violence in El Salvador. Molinari sets out to analyse the run-up to the repression; the last years of the 1960s. Her approach, which is both challenging and thought-provoking, questions the causal model that links the repression to leftist armed violence in the region. Linking the construction of a counterinsurgency state in El Salvador with the broader political struggles of the 1960s, the article proposes a relative autonomy of repressive policies from left-wing violence, suggesting that counterinsurgency policies in El Salvador (as in many Latin American countries) sought to destroy the social fabric even before the armed left was able to intervene effectively. Counterinsurgency operations went far beyond combating guerrillas, which also explains the size of the massacres and their genocidal character as a “destruction of the national group”.

Following this, Argentine sociologist Lior Zylberman examines the ways in which massive state violence in Argentina has been portrayed in cinema. Through a systematic analysis of the main films of the 1980s (including Argentina’s first Oscar winner, *La Historia Oficial*, “The Official Story”), Zylberman focuses on different narrative strategies, questioning those visions that characterize the period as immersed in what later came to be known as “the theory of the two demons” (the equating of state repressive violence with violence by leftist groups). On the contrary, Zylberman finds many narrative threads based on discursive strategies that would emerge more decisively in the mid-1990s.

Finally, it is no minor issue that Latin American courts have included high-level legal discussions in their judgments of the perpetrators. However, they have not been made public outside the region partly because they have not been translated into English, but also partly because they disagree with the hegemonic trends and tendencies of international courts. This is most notably the case in Argentina, but also in Chile, Colombia and Guatemala, with complex and important debates in Uruguay, Brazil, Ecuador and Peru, among other countries.

For this reason, we decided to include a case note with extracts from a recent Argentine judgment. This judgment was handed down by Federal Court No. 1 of La Plata in 2012 and it is neither the first nor the only judgement to recognise that genocide happened in Argentina (two previous judgments of the same court and another six from other Argentine courts have also done so. In 2012 and 2013 there were two convictions for complicity on genocide). However, we found it significant because of the way Latin American courts have begun to characterise events “unequivocally” as genocide, and because it concerns senior officials involved in running a network of concentration camps.

We sincerely hope that that you will find this selection of papers a stimulating contribution to the complex field of genocide studies.

Last, but not least, I would like to thank some IAGS members who made possible the reality and quality of this issue. First of all, and beyond being in charge of every detail of the issue, Rafiki Ubaldo did an amazing work of managing the administrative relation with our partners in the University of South Florida. Without his commitment, neither the whole journal project nor this issue would have been possible. The whole Journal Transition Committee (Chaired by Kjell Anderson and with the participation of Frank Chalk, William Schabas, Melanie O’Brien, Emmanuel Taub and Amy Fagin) was fundamental in the process of transition to our new online free and open access journal. Finally, the assistance of Douglas Irvin-Ericksson, Adam Müller, Melanie O’Brien, Hannibal Travis, Ernesto Verdeja, Amy Fagin and Andrew Woolford was fundamental in editing the translation of the articles and documents published in this issue.

Daniel Feierstein - Guest Editor

Genocide, and its Definition as the “Partial Elimination of a National Group”

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Summary: *This paper is primarily about the crimes committed by Argentina's last military dictatorship and whether these deserve the legal qualification of crimes against humanity or “genocide.” This question has consequences which go beyond the field of law and affect society and collective psychology through the reconstruction of historical memory. From this perspective, this paper argues that the definition of Genocide set forth in international law is directly applicable in Argentine national law. It also examines the different problems with the use of this term. Finally, it aims to reconstruct the figure of Genocide from the original interpretation of the works of Raphael Lemkin, and establish the “national” group as the superordinate term and ‘ethnic’, ‘racial’ and ‘religious’ groups as cohyponyms, where “national” group includes and goes beyond the other three groups, and authorizes the inclusion of groups not explicitly covered by the 1948 Convention.*

Keywords: *Genocide, crimes against humanity, Argentina, memory, trials*

Date of peer-review approval: *May 30, 2012*

Introduction

On March 24, 1976 the military seized power in Argentina. The de facto government headed by General Jorge Rafael Videla kidnapped, tortured and killed thousands of people. Under the pretext of a war against guerrillas, the military started a war against Argentine society as a whole. “As many as necessary will die to restore peace in Argentina,” Videla promised in 1976. The following year, the former de facto governor of Buenos Aires Province, Ibérico Saint Jean, stated: “First we will kill all the subversives, then we will kill their collaborators, then their sympathizers, then those who remain indifferent, and finally we will kill the timid.” To this end, over six hundred concentration camps were set up (here called ‘secret detention centers’), and the term ‘disappeared’ became widespread. As Videla put it, a disappeared person was “an unknown entity ... They do not exist. They aren’t there, either dead or alive. The person is ‘disappeared.’” From naval aircraft, thousands of people were thrown alive into the sea.

In order to discipline society and change the economic structure of a country which had achieved remarkable social equality and had a large middle class, the military performed a cleansing operation: a surgical action to remove the harmful elements, whose way of thinking did not fit the ‘model’. Significantly, the dictatorship called itself the ‘National Reorganization Process’: the word ‘process’ means “to change from one state of affairs to another”. Most victims were detained in their homes or workplaces, in the presence of witnesses, even though they were later reported to have been killed in combat. Impunity was guaranteed by the absolute silence imposed on the press and the creation of ‘liberated areas’ in which the military could kidnap and kill without interference from the police authorities, who were warned of operations in advance.

One of the defining features of repression was the indefinite status of the victims, whom the repressors referred to as ‘subversives’. Although subversion was defined as ‘Marxist’, repression extended to sectors of the population that had no connection with Marxism. The qualities attributed to subversives were as diverse as: atheist, stateless, Freudian, pro-abortion, enemy of the family institution and, in general, anyone lacking in national spirit (an enigmatic trait potentially applicable to anyone).

While acting like Nazis and treating Jews with special cruelty, the military regime had a quite different ideology from National Socialism. It aimed to promote Liberalism, in the sense of a free market economy. Argentina belonged to the ‘Western and Christian world’. Republican institutions were turned into caricatures of themselves; there was no longer one president but a junta, comprising the heads of the Army, Navy and Air Force. No Parliament, but parodying the notion of a balance of powers. These leaders held office for limited periods of time (there were three military juntas).

The dictatorship permeated all social institutions, not just those related strictly to politics. They clandestinely infiltrated factories and trade unions, and in schools, plain clothes police spied on school children and teachers. The tragedy led to 30,000 disappearances and 4,400 people dropped into the sea, with a network of over 600 clandestine detention centers.

I. Difficulties in prosecuting crimes committed during the dictatorship

The prosecution of crimes committed in Argentina during the last military dictatorship is unprecedented worldwide. The International Federation of Human Rights has stated that Argentina is the jurisdiction for prosecuting crimes against humanity, and the UN Human Rights Council, consisting of forty-seven States, has recognized Argentina as the undisputed world leader in this area. However, although these trials do credit to Argentina's justice system, they face many obstacles that prevent them following their proper course.

Indeed, the proliferation of trials on a case-by-case basis requires an endless parade of defendants and witnesses, all of whom have to recount their sufferings time and again. Hundreds of lawsuits are filed against one, two or three individuals – each starting again from scratch in an endless replay of the same scenario. The Code of Criminal Procedure allows causes related to a particular detention center to be joined in a single trial and witness statements to be read in court, but not all courts are willing to use these provisions.

In practice, each time victims take the witness stand, they are revictimized by being forced to relive their trauma. The witnesses are in danger, and the defendants do not hesitate to threaten them.¹ The Argentine judiciary does not always have available locations for the hearings. In Comodoro Py, the “Vesuvius” trial shared the same courtroom with those of the “Esma” and “ABO” (Atlético-Banco-Olimpo); while in La Plata, the Unit 9 trial has been delayed in order to refurbish La Plata's AMIA building, rented specially for the hearings.

Notwithstanding all of this, it is our contention that the main obstacle to justice in its broadest sense does not lie in substantive or procedural difficulties, but in the legal qualification of the facts. The courts classify or subsume the facts under different legal concepts – as described below – and these inevitably have long-term consequences - legal and otherwise – that will define another important value: the construction of collective memory. It is not only a question of applying penalties and sentencing the perpetrators to long years in prison (an elusive goal, given their ages), but of rescuing and uplifting the very thing the genocidaires tried to erase: our historical memory.

II. Legal descriptions: crimes against humanity and genocide

The Argentine Supreme Court of Justice, in “Simón, Julio Héctor et al, s / illegal deprivation of liberty, etc.,” Case 17,768, placed crimes committed during the military dictatorship under the category of crimes against humanity, thereby making the defenses of prescription and amnesty inadmissible. It is an undisputed fact, then, that the crimes committed during the ‘National Reorganization Process’ constitute crimes against humanity.

The upcoming debate, which poses a dilemma for the courts, is whether these facts can also be framed in the category of genocide. The confusion over the definition and scope of these two terms warrants closer examination. crimes against humanity means any of the acts listed in Article 7 of the Statute of the International Criminal Court, when committed in a widespread or systematic manner against a civilian population. The background of this definition is Article 6 of the Statute of the Nuremberg Tribunal, Control Council Law No. 10, resolutions 3 (I) and 95 (I) of the General Assembly of the United Nations, and the legal principles contained in those documents (codified by the International Law Commission (ILC) in 1950 as the “Nuremberg Principles”).

Crimes against humanity were embodied in the Charter of the International Military Tribunal at Nuremberg in the London Agreement of August 8, 1945, and arose as a result of the failure of international military law to proscribe the Nazis crimes. The category of war crimes refers to victims who are enemy combatants and the civilian populations of occupied countries, so it could not be used to judge atrocities committed by the Nazis in Germany itself against German people: their own population. The category crimes against humanity was created to remedy this deficiency.²

Article 6(c) of the London Charter of the International Military Tribunal defined crimes against humanity as “murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated”.

The broad formula contained in Article 7 of the Statute of the International Criminal Court added further categories under the following subsections: e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, f) Torture, g) Rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization and other serious sexual abuse; i) Enforced disappearance of persons; j) The crime of apartheid.

Crimes against humanity draws on various historical sources, including the older notion of crimes against the law of nations, but it was the Nuremberg process that gradually gave rise to a class of crimes applicable to all States, against any person and at all times and places, even without or against the will of individual States. In contrast, offenses against the law of nations included behaviors such as piracy or the slave trade but lacked the scope currently attributed to crimes against humanity.

Crimes against humanity differ from offenses against the law of nations in their fields of validity.³ In turn, each of their fields of validity has certain characteristic features:

- Material scope: non-derogability / inadmissibility.
- Personal scope: individual responsibility / exclusion of the inadmissibility of the defenses of superior orders and official capacity.
- Timescale: non-applicability of statutory limitations / retroactive application.
- Territorial scope: universal jurisdiction.

In this sense, crimes against humanity are more than just a set of offenses grouped under the same name and designate something additional.

Crimes against humanity is a *nomen iuris* for a set of conditions under which the rules of domestic law can be replaced by those of international law (e.g. suspending the rule of the non-retroactive nature of criminal law). The reasoning is as follows:

- under certain circumstances (the catalog of crimes in question),
- and certain conditions (widespread or systematic attack against a civilian population),
- domestic law rules are displaced by international legal norms relating to due process of law.

The crime of torture, for example, is a crime against humanity if it occurs in the context of a widespread or systematic attack against a civilian population and is committed by people who participate in that attack. Yet this is not the case where torture is committed either in the context of an unconfirmed attack or by someone not related to the attack. It is a crime without statutory limits in the first case, but not in the second. In this sense, crime against humanity does not only refer to specific crimes; it is a qualification, which, when added to one of these crimes, entails the legal consequences described above.

Likewise, genocide is not an isolated category, separate from crimes against humanity, but a particular form of these crimes. All genocide involves the commission of crimes against humanity although the opposite is not always true. Therefore, all the legal consequences described above are also applicable to the crime of genocide.

Genocide includes any of the acts mentioned in Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide, when committed with intent to destroy in whole or in part a national, ethnical, racial or religious group as such. The difference between genocide and crimes against humanity is that genocide aims at the destruction of a group, and not just individuals within the group. Genocide discriminates against a group while crimes against humanity are directed indiscriminately against any civilian population.

The concept of genocide was foreshadowed in a qualitative distinction made by the Nuremberg Tribunal, through two definitions contained in its Statute:

- murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population, before or during the war, or
- persecutions on political, racial or religious grounds in execution of or in connection with, any of the crimes under the jurisdiction of the Tribunal, whether or not they constitute a violation of the domestic law of the country where they had perpetrated.

Thus, a distinction is made between two classes of victims:

- any civilian population: indiscriminate victims;
- specific groups persecuted intentionally: victims of discrimination.

The main difference between crimes against humanity and genocide is the nature of the victims: the first case, the victims are chosen indiscriminately; in the second, they are well differentiated. The victims are indiscriminate when criminal action falls on anyone, regardless of their condition or circumstances – anyone, whoever they may be – and they are discriminated against when the criminal activity is directed not at an undifferentiated subject, but at a subject defined as belonging to a particular group.

The 1948 Genocide Convention characterized the crime of genocide as intent to destroy, in whole or in part, a national, ethnical, racial or religious group. This tight framework, with only four protected groups, has made the concept difficult to apply for several reasons, mainly because all genocides had political motives beyond the ways in which the perpetrators defined their victims. As Daniel Feierstein has pointed out, restricting the definition to four groups ignores two basic principles of law: equality before the law and the impossibility of creating a hierarchy of human life. A murder is always a murder, whoever is killed, but within the framework of the Genocide Convention, the deaths of some are more important than the deaths of others.⁴ Furthermore, the Convention expressly omits political groups, which were protected in the first and second draft of Article 2 of the Convention but were excluded from the final version due to geopolitical and not real philosophical or juridical reasons.

In a similar vein, Zaffaroni argues that the definition of genocide in the Genocide Convention is problematic because “it is clearly intended to impose two limitations: one objective, that is, the omission of political groups; and the other subjective, namely the intention to destroy the group totally or partially. These limitations cannot be explained rationally. There is no legal definition of murder anywhere in the world that ignores certain victims while at the same time requiring *dolus directus* of the first degree and excluding *dolus indirectus* or *dolus eventualis*. All over the world homicide is the killing of any human being.”⁵ As Resolution 96/1 of the UN which called for the Genocide Convention clearly pointed out: “Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings” and, when referring to the groups, the Resolution included all possible groups under the sentence: “Many instances of such crimes of genocide have occurred when racial, religious, political, and other groups have been destroyed, entirely or in part.”⁶

The tight framing or ‘micro-surgical clipping’ of the Convention has resulted in its apparent inapplicability to situations where an attack on people in one of the four protected categories has – supposedly – not been verified. Consequently, “in all subsequent massacres it has been possible to raise doubts about whether or not they were really genocides, with decisions being made purely in the short-term interests of the great powers.”⁷ So, the existence of genocide in Cambodia was denied when Pol Pot exterminated 2,200,000 people between 1975 and 1979 (around one-fourth of the population), because the aim was not to eliminate the population but to politically cleanse the population of anyone infected with the ‘bourgeois virus.’ These ‘class enemies’ were anyone who had completed seventh grade and could read, or who did not belong to the class of poor peasants.⁸ Some have even argued there was no genocide in Rwanda, where Hutus eliminated a million Tutsis in 1994. Their argument is that not all deaths occurred as a result of a positive State action.⁹

III. The difficulties of implementing the Convention on Genocide

Argentina acceded to the Genocide Convention by Decree 6286/1956 of April 9, 1956, and incorporated it into the Constitution in 1994. Accordingly, the Convention takes precedence over domestic law.¹⁰ However, even those judges that refuse to endorse genocide charges have usually not disputed the historical fact that genocide took place. They simply question whether such charges are legally viable.

In sentencing ex-police chaplain Cristian Von Wernich,¹¹ and former police commissioner Miguel Etchecolatz,¹² Judge Carlos Rozanski was the first making limited use of the concept of genocide in the formula “crimes against humanity in the context of genocide”, including as the charge of the sentence. In the “Suarez Mason”¹³ case, Judge Daniel Rafecas found it proven that the facts of the case “are undoubtedly a political genocide or politicide”. In “Police Headquarters CDCs (Clandestine Detention Centers) / kidnappings and disappearances (2nd group),” Judge Daniel Bejas described the facts as “crimes that occurred within the context of the international crime of genocide”. The Federal Court of Córdoba sentenced Menéndez¹⁴ for crimes against humanity, including genocide, and in Case 172/09, “Videla,” it established that the events, that occurred in Penitentiary Unit No. 1 in Córdoba, were “genocidal practices constituting the crime of genocide.” The Federal Court of Tucuman stated that the crimes against Vargas Aignasse¹⁵ deserved to be called genocide, but the term did not apply because the victim could not be included in any of the groups protected by the Genocide Convention. In the “Aguirre” case, the Tribunal found that the crimes were committed “in the

context of the international crime of genocide". In the "Avellaneda" and "Campo de Mayo" cases, prosecutors Javier De Luca, Marcelo Garcia Berro and Patricio Murray argued that there had been a political genocide in Argentina. Alejandro Alagia, the prosecutor in the "Atlético-Banco-Olimpo" case, brought specific charges of genocide asking for a conviction for a genocide charge, even if the Tribunal finally convicted in that case for crimes against humanity.

In other words, the Argentine courts have so far not convicted anybody of genocide in Argentina until verdicts in 2012 and 2013 in the cases Madrid and Manacorda,¹⁶ but in some previous cases they have recognized that genocide took place. Why? The arguments for not applying the term genocide until 2012 can be summarized as follows:

- Procedural arguments: a conviction for genocide would affect the principle of congruence because the defendants were not investigated for this crime until the cases Madrid and Manacorda, which started in 2011.
- Background legal arguments: (i) the Convention lacks regulation and applicable penalties; (ii) the cases do not fit into the categories of the Convention (mainly the question of the four protected groups).

a) Procedural arguments

Experts on criminal procedural law argue that the term genocide involves a violation of the principle of congruence because the defendants have not been investigated for this crime. However, there is a tendency to overlook the fact that the concept of genocide denotes not one crime but a whole category of offenses, and is a qualification added to certain crimes only when the element of genocidal intent has been proven.

Indeed, the defendants were not investigated for genocide or crimes against humanity, and could not have been, because those words do not designate specific crimes but sets of crimes, namely those resulting from the catalogs of Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide, and Article 6 and 7 of the Statute of the International Criminal Court. These crimes have their counterparts in the respective offenses of the Argentine Criminal Code, and it is the latter for which all defendants must be and, in fact, have been investigated.

As mentioned above, the concept of genocide is a qualification added to certain crimes. As such, it entails all the same material, personal, geographical and temporal consequences of crimes against humanity. However, it raises no procedural obstacles any more than does the category of crimes against humanity, which has been used many times by Argentine courts including the Supreme Court.

b) Background legal arguments

1. Lack of regulation and applicable sanction: it is objected that the crime of genocide is not punishable under the Argentine Criminal Code, so there is no assignment of penalties for the offense.

On the other hand, it should be noted that, as mentioned before, genocide as a crime under international law is a category of crimes that are defined individually and have their own specific penalties in the Argentine Criminal Code. The crime of genocide is not specifically provided for, but all individual crimes that can constitute genocide are included. Crimes against humanity are not provided for as a separate category in the Argentine Criminal Code, either. However, this does not prevent their qualification as crimes against humanity and there are a number of specific criminal offenses that can be classified in this way.

In addition, the issue of lack of sanction of genocide is not new but long-standing, and was finally settled some time ago at the level of international law. In fact, specific penalties and punishments for the practices complained of were absent in all the instruments of international criminal law until the adoption of the Rome Statute of the International Criminal Court in July 1998 (Article 77). Until then, all instruments, including the Charters of the Nuremberg and Tokyo Tribunals, lacked applicable penalties and punishments. Consequently, the penalties applied under the international rule of law were the same as those prescribed by national criminal law for similar offenses.

In this regard, the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY) states that the penalties imposed by the Court shall be limited to imprisonment, and for the length of the sentence the Court shall be guided by general practice relating to sentences of imprisonment imposed by the courts of the former Yugoslavia (Article 24(1) of the Statute). And the same rule is laid down in Article 23(1) of the Statute of the International Tribunal for Rwanda (ICTR).

An historical example is the trial of the former Gestapo chief in Lyon, Klaus Barbie, in France on July 4, 1987, for which he was sentenced to life imprisonment for seventeen crimes against humanity. In this case, the Nuremberg Charter was used to define the offense (because in France there was no offense called crimes against humanity), and the French Criminal Code was used for sentencing (to a period of imprisonment because France had already abolished the death penalty).

The Genocide Convention does not contain a description of the penalties to be applied in relation to each crime provided for, but transfers this responsibility to the competent authorities of the State party. Article 5 of the Genocide Convention provides that “The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide”. The Convention gives each State the power to decide what those measures and penalties shall be.

Argentina acceded to the Genocide Convention by Decree 6286/56 of April 9, 1956, and the criminal penalties and punishments for conduct proscribed by it were already established in the Criminal Code before ratification just as the penalties and punishments applied to Klaus Barbie had already been established beforehand in France. Similarly, all of those convicted under the Nuremberg and Tokyo Statutes, or by the *ad hoc* Tribunals for the former Yugoslavia and Rwanda were sentenced according to national laws.

Indeed, as noted by Mirta Mántaras, the obligation under Article V of the Convention has been fulfilled with the rule which incorporated it into the Argentine legal system- Legislative Decree 6286/56 of April 9, 1956 - and no other specific law would be necessary, as the Convention details each of the actions that constitutes genocide: (a) killing members of the group; (b) causing serious bodily or mental harm; (c) deliberately inflicting conditions of life calculated to bring about physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group. Mántaras argues that “if the offenses are accurately described, as they are here, the Convention is operational, which means that it applies directly to the judgment”.¹⁷ Furthermore, criminal penalties and punishments are already incorporated into the Criminal Code, and are as follows: the killing of a group would be aggravated murder with life imprisonment (Articles 70-82 of the Criminal Code); serious physical or mental injuries are provided for in Articles 83-93 of the Criminal Code; unlawful detention is provided for in Articles 140-144 of the Criminal Code; and the forcible transfer of children from one group to another amounts to withholding or concealing minors and suppression of identity, included in Articles 149 and 138 of the Criminal Code. Furthermore, the Argentine Criminal Code allows multiple cases over the same subject matter - as in the case of genocide - to be assigned to the same judge. This makes large-scale convictions and punishments a real if little considered possibility.¹⁸

Moreover, the Argentine legal system expressly mentions genocide as an aggravating factor in Article 2 of Law 23.592, known as the anti-discrimination law: “The most lenient penalty on the scale of criminal penalties for offences punishable by the Criminal Code and supplementary laws shall be increased by one third and the harshest penalty by one half when the offence is committed by means of persecution or out of hatred of a race or religion or for the purpose of destroying all or part of a national, ethnic, racial or religious group. In no case may the punishment imposed exceed the applicable statutory maximum.”

Finally, in the present state of international law, a customary rule on genocide has gradually developed under which the Convention binds all States. There are no longer any escape routes: even States that have not ratified the Convention are bound by its terms.¹⁹ Thus, the International Court of Justice in its Advisory Opinion on Reservations to the Genocide Convention said that “the principles of the Convention are principles recognized as binding on the States by civilized nations, even in the absence of a treaty obligation”.²⁰

In short, any argument that asserts the inapplicability of the figure of genocide due to lack of regulation is unacceptable since no State can invoke the provisions of its internal law as justification for its failure to perform a treaty.²¹ To do so would put the Argentina in breach of its international obligations.²²

2. Lack of fit with the categories of the Convention: The Genocide Convention provides four victim groups -national, ethnic, racial and religious, excluding political groups. So, it is argued that the Convention would be irrelevant to Argentina because the victims do not fit into any of these four categories. In Argentina a political struggle was waged between the military and armed left-wing groups, so that in any case it would be a political genocide, and as such excluded from the Convention definition.

This was the position of the *amicus curiae* brief filed by the human rights organization Nizkor in the case brought against Adolfo Scilingo in Spain, based on the analysis of Yale University’s law clinic. Nizkor says: “The victims of the Argentine military were considered as targets for their alleged political beliefs ... they were

not under attack 'by reason of their membership in a group' as required by the genocidal intent standard, but rather on the basis of their supposed individual political views."

A weaker version admits the existence of genocide but not the legal applicability of the Convention. In this regard, the Federal Court of Tucuman in the "Vargas Aignasse" case said: "This Court recognizes that the degree of blameworthiness in the crimes committed against Claudio Guillermo Vargas Aignasse is the same as that required for the international crime of genocide as defined by the Genocide Convention and in this sense the crimes constitute genocidal practices and also their intellectual authors are clearly genocidaires under any non-legal definition of genocide, but, for the reasons mentioned *ut supra*, it is understood that the victim cannot be included in any of the protected groups of the Genocide Convention."

This article proposes that these interpretations are too narrow and do not match the real situation. It is right in principle to say that there was a political genocide, but the statement falls short: it was political, yet much more than political. The crimes committed during the self-styled "National Reorganization Process" constitute genocide under the terms of the 1948 Convention, and victims must fall into the category of partial national group, not merely political group, which is a much less comprehensive category.

The correct approach is that the 1976 dictatorship was not merely a response to the actions of the armed left, but a project to transform Argentine society as a whole. Terror was directed at each and every member of society in a systematic intent to transform the social relations of an entire people and bring about permanent changes in politics and the economy. Terror was thus directed at the entire population, and many of those killed were social, neighborhood and student activists - and even children without any political affiliation. In the words of Ibérico Saint Jean, a former *de facto* governor of Buenos Aires Province: "First we will kill all the subversives, then we will kill their collaborators, then their sympathizers, then those who remain indifferent, and finally we will kill the timid."²³ On the other hand, if the process is seen as a confrontation between two groups, we fail to understand the perpetrators' intentional and systematic attempt at social and national reorganization. Not surprisingly the perpetrators defined extermination as a 'National Reorganization Process' and not one of political reorganization.

The military's own documents and regulations of the period defined the Argentine population as the objective. Annex 2 of the Army's Plan Contributing to the National Security Plan, in a section titled "Enemy status summary... A) Identifying the adversary defines the adversary or enemy as: "... all organizations or elements thereof in our country or that may arise in the process, which in any way oppose the takeover of power and / or hinder the normal development of the Military Government"²⁴ Point B) then goes on to classify adversaries into 'Active' and 'Potential'. The first turned out to be those who, at that time, opposed the takeover of power by parts of the armed forces and / or that might hinder the future development of the military government, while the latter were those who might do so in future. In other words, an adversary was anyone that might oppose them -in any way - in the present or future.

The military secret file RC-9-1, "Operations against subversive elements" is one of the best files to prove the *dolus specialis* required by the Genocide crime. Section 1017 stipulates: "In the operating environment, the status of the population is the most critical counter-subversion factor. It is here that the forces of law and order should focus their main attention." Section 2001 further adds that: "Any event, however insignificant, produces a dividend for political subversion ... it influences a subversive element which is of vital importance, namely, the population, by exploiting for conquest and domination what is commonly referred to as frustrations or dissatisfactions, whether national or sector-based."

"For these [frustrations or dissatisfactions] to exist, it is essential that they are recognized as such by the social group or sector that experiences them, that is, the following circumstances must exist:

- the group must consciously recognize a good as desirable;
- the same group or social sector must be aware, at the same time, that the desired good cannot be achieved under the current political, social or economic conditions."²⁵

The same document in Annex 3 includes as active or potential adversaries "political-military, political and similar organizations, labor unions, student and religious organizations and persons connected with them". It further states that "the concept is prevention, not cure ... (Activists) should be captured immediately wherever they are, whether at home, on the street or at work (factory, office, educational institution, etc.)". In other words, workers, office workers, educators and students were all targets. Section 3021 also includes children: "The evacuation of detainees will occur as quickly as possible after separation by groups: leaders,

men, women, children, immediately after capture.” In the same line, Military Secret File C9-I/ 1977 establishes labor unionists and other social groups as the primary targets for ‘preventive action.’

The “Psychological Operations Regulation”-Argentine Army RC-5-1-RESERVED is another fundamental file to prove the *dolus specialis* and it shows that State violence was not a reaction to the armed groups of the left, but was scheduled earlier.²⁶ The document, signed by Alejandro Agustín Lanusse on November 8, 1968, states:

“1007. Classification of Psychological Operations: 1) National Strategic Psychological Operations: These will be directed at large segments of the country’s population chosen as targets... “Section 2004, Compulsive action method: the compulsive action method will be any action that tends to motivate behaviors and attitudes by appealing to instincts. It will act on the instinct for self-preservation and other basic human tendencies (the unconscious). Psychological pressure will engender anxiety; massive, generalized anxiety may lead to terror and that is enough to keep the public (the target) at the mercy of any subsequent influence. [The use of] force will involve coercion and even mental violence. Usually this method will be driven, accompanied and supported by physical or material efforts tending towards the same result. Here, strength and vigor will replace the instruments of reason. The technique of physical deeds and hidden psychological methods will be channeled into producing compulsive action...”

“10,008. Planning of psychological operations: 2) In preparing plans for psychological operations... it should be understood that among the above targets there are three main objectives: the [security] forces themselves, the civilian population and irregular enemy forces.”²⁷

The assertion that the entire population was a target for terror is also found in the words of the perpetrators themselves. “Little has been done to fulfill the other objectives that aim to defeat not only the guerrillas but subversion *in toto*”.²⁸ Another stated: “The aggressor in this type of struggle is not just the bomber, the gunman or the kidnapper. At the intellectual level, it is anyone that tries to change our way of life by promoting subversive ideas; in other words, who tries to subvert, change or disrupt [our] values [...] A terrorist is not just someone who kills with a gun or a bomb, but anyone who spreads ideas that are contrary to Western and Christian civilization”.²⁹ (Still another noted that: “It would be absurd to suppose that we have won the war against subversion simply because we have removed the armed threat [...] Residual elements of subversion are now appearing in religious, political, educational, economic, cultural and employment spheres”³⁰

In recent declarations, Videla has stated quite bluntly that “Our goal was to discipline a society in the grips of anarchy, return it to its principles, its natural channels [...] A new model, a fairly radical change; society had to be disciplined for it to be more efficient.”³¹

IV. Composition of the Generic Group

It is contended here that, in the case of genocide, the victim group is not verified objectively, from a constant feature of reality, but is constructed subjectively through an intellectual operation. The group does not pre-exist ‘as such’ but is always constructed by the repressors who, according to one set of criteria or another, trace a circle around certain people, like a predatory animal stalking its prey. The genocidaires construct the group. Any group of people can fall victim to genocide.

The construction of the group as such is purely subjective: it is a slice of reality. Reality is cut into portions, one way or another, on the basis of an arbitrary decision. The group does not exist in nature, but only as an intellectual construction: a classification. This classification is cultural and subjective; there are no true or false classifications just as there are no true or false names.³²

The International Criminal Tribunal for Rwanda said in relation to the classification of Hutus and Tutsis as “ethnic groups” that “for purposes of applying the Genocide Convention, the membership of a group is, in essence, a subjective rather than an objective concept. The genocide perpetrator perceives the victim as belonging to a group destined for destruction. In some cases, the victims may also perceive themselves as belonging to that group.”³³

In relation to Argentina, Mirta Mántaras has argued that in “Argentina the destruction of a national group took place. This group was not pre-existing, but was created by the perpetrators at the same time as individuals appeared expressing their opposition to the economic plan that had been implemented [...] The national group was gradually made up of workers, students, politicians, teenagers, children, employees, housewives, journalists and anyone who the perpetrators suspected for any reason of hindering the achievement of their goals (...) Most of these people did not know one another, but fell under the common denominator of ‘opponent’ (...) They did not need to carry out specific acts of opposition: the mere possibility

that they might act in someone's defense was enough for the perpetrators to include them in the national group to be destroyed."³⁴

Similarly, Martin Losada has said that "the restrictive enumeration of protected groups should not make us lose sight of the fact that the choice of a group targeted for destruction is an essential element of genocide ... the victim-group is not always a social reality; it is often the result of a representation created by the murderers, who see it and construct it ideologically as a threat to their own survival."³⁵

V. Composition of the National Group

The definition of the Argentine genocide as the elimination of the national group was first established by Judge Baltasar Garzón, who made it clear in his indictment of Scilingo and other Argentine military officials that "the characterization as a 'national group' is absolutely valid for examining the events that took place in Argentina since the perpetrators intended to destroy a particular web of social relations in a State in order to bring about a change substantial enough to alter the life of the whole."³⁶

However, Judge Garzón's interpretation was rejected on several doctrinal fronts, and his indictment was reversed in the Spanish National Court. The main challenge to the use of the term 'genocide' came from the amicus curiae brief filed by the human rights organization Nizkor. Based on an analysis by Yale University's law clinic, it argued that "National origin, as used in international instruments and literature, refers to persons having a certain culture, language and traditional way of life peculiar to a nation. ... Consequently, victims of the Argentine military were not a national group..." In the same way, the amicus curiae presented at the ABO trial by the European Centre for Constitutional and Human Rights, together with the legal expert opinion of Theo van Boven, excluded the term genocide on the grounds that the victims of massive human rights violations during the dictatorship were not a national group: "the victims of the Argentine military came from different cultures, different lifestyles and even different nations..."

Also, the judgments that sentenced Bussi (Head of the Third Army, in charge of the repression in the provinces of Córdoba and Tucumán) in the Vargas Aignasse case, and the murderers of Floreal Avellaneda, state that "The explicit meaning (of the expression 'national group')... is associated with the concern of the international community to provide protection to national minorities in the context of the emergence of multinational states at the end of the Second World War. Well, it is difficult to argue that Argentina was a multinational State at the time the events took place."

All these interpretations are, to some extent, contradictory. In Nizkor's analysis, victims do not constitute a national group because they are not united by a "certain culture, language and traditional way of life". This implies that each national group is a homogeneous group with a single language and culture, which is exactly the same interpretation that perpetrators, i.e. Nazis or Ittihadist perpetrators, use to think about their own societies. Van Boven says the same when he excludes from the national group cultures, ways of life and different nations, which, as such, would not be part of the national group because they are not alike. On the other hand, the Argentine courts have reached the opposite conclusion and suggest that the victims are not a national group because they are too much alike, and not *multinational*.

In either case, the victims cannot be a national group - because they are either too much alike, or too different. The hat is either too big or too small, and our head is to blame, not the size of the hat.

In addition, it seems that we are not even allowed to wear the hat, as it is a European garment far too elegant for us. To characterize the national group as a characteristic of multinational States is natural on a continent like Europe where many languages are spoken in the same country, and where, as a result of continuous wars, borders have, until recently, changed overnight, leaving national minorities trapped in hostile countries. With this criterion the Convention would apply only in Europe: a privilege of European nations. Legal rules should be interpreted according to the context in which they are applied, and must adapt to reality, not the reverse.

The common mistake or misconception is to define nationality in terms of supposedly objective criteria that do not stand up to scrutiny, and as such are unverifiable: language, culture and ways of life.

There are countries that have a unified language, culture and way of life, and constitute a nation. Some countries have multiple languages, cultures and ways of life and constitute a nation. Sometimes there is unity of language, culture and way of life in different countries (for example, Argentina and Uruguay). The prosecutor Alejandro Alagia argued in his submission in the ABO case that "When the French Declaration of Human Rights was passed in 1795, very few people spoke French. The most extreme case was the Italian nation, where only 2.5% of the population used the official language in everyday life. In conclusion, there is

no reason to consider language or any other cultural criteria as an objective standard to identify the national group of the 1948 Convention.”

Any supposedly objective investigation of nationality also implies discrimination because it does not even leave the victims with the status of nationals. This is no small mistake: Jews or Gypsies could not be Germans within the German nation. The attempt to define nationality in terms of objective criteria is then a tragic mistake, because it runs along the same line of reasoning that once allowed the Nazis to decide who formed part of the nation and who should be excluded.³⁷

Finally, an objective nationality based on blood, race or language, ignores the Argentine National Constitution, which establishes residence for two consecutive years as the only requirement for foreigners wishing to obtain Argentine citizenship. Citizenship does not depend on any cultural criteria³⁸ although “the authorities may shorten this term in favor of any applicant claiming and proving services to the Republic” (Article 20). Moreover, this formal and subjective criterion is unanimously accepted in international law, where the right not only to acquire but also to change one’s nationality undermines any claim to objective criteria.³⁹

The national group is created by the bond between people as individuals and the nation: a purely formal and subjective criterion. The ICTR described it as follows: “it is comprised of individuals that share a legal bond based on common citizenship granting them reciprocal rights and obligations.”⁴⁰ Such is also the jurisprudence of the Inter-American Court of Human Rights in Advisory Opinion OC4/84,⁴¹ based on the doctrine established in 1955 by the International Court of Justice in *The Hague in the Nottebohm case*.⁴² The Court ruled that “Nationality is the political and legal bond that links a person to a given State and binds him to it with ties of loyalty and fidelity, entitling him to diplomatic protection from that State.”⁴³ This doctrine is mandatory for Argentina because Argentina’s Supreme Court, in the “Giroldi” case, made the pronouncements of the Inter-American Court mandatory, including its judgments and advisory opinions.⁴⁴

The concept of nationality thus defined does not indicate a person’s ethnicity or sociological nationality but that person’s political or legal nationality,⁴⁵ which can only be conferred by the State. Indeed, the basic rule on this issue is that questions of nationality fall within the domestic jurisdiction of the State: only national law, not international law, can determine who are or are not nationals of a given country.⁴⁶

VI. Composition of the partial national group

The Convention on the Prevention and Punishment of the Crime of Genocide refers to crimes committed with the intent to destroy all or part of a group, which includes the partial national group. A partial national group is a part of the whole nation. But does this mean it is a subset or a cross-section of the population? In other words, when we speak of a national group, do we mean some or all members of the population? Is a national group essentially the same as an ethnic, racial or religious group or is it a broader-based notion?

Both the concept of genocide and the word itself were coined by Raphael Lemkin, who stated that “by genocide we mean the destruction of a nation or of an ethnic group”. Lemkin argues that “Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group”. In short, genocide is the destruction of a national or ethnic group. Yet in a footnote Lemkin clarifies the concept of ethnicity: “another term could be used for the same idea namely, ‘ethnocide’ consisting of the Greek word ‘ethnos’ and Latin ‘cide’.”⁴⁷ For Lemkin, the concept of ethnicity overlaps to a certain extent with that of national group. Lemkin continues by saying that “Genocide has two phases: one, destruction of the national pattern of the oppressed group, the other, the imposition of the national pattern of the oppressor”. The concept of national pattern clearly prevails. Lemkin does not say ethnic, racial or religious but national pattern.⁴⁸

He also clearly states that the national group is the generic term. He says: Many authors, instead of using a generic term used current terms connoting only some functional aspect of the main generic notion of genocide. Thus, the terms ‘Germanization’, ‘Magyarization’, ‘Italianisation’, for example, are used to connote the imposition by a stronger nation (Germany, Hungary, Italy), of its national pattern upon a national group controlled by it.”⁴⁹

It is clear that, in contrast to the generic term, the specific terms also refer to national groups. That is “the main generic notion of genocide”. So strong is this idea that Lemkin says that “nations are essential elements of the world community. The world represents only so much culture and intellectual vigor as are created by its component national groups... the destruction of a nation, therefore, represents the loss of its future contributions to the world.”⁵⁰

The notion of nation also predominates when Lemkin describes ‘Techniques of genocide in different fields’ in Chapter IX of his book. The fields in question are: political, social, cultural, economic, biological, physical, religious and moral. In the political field, he says, “The techniques of genocide, which the German occupant has developed in the various occupied countries, represent a concentrated and coordinated attack upon all elements of nationhood: ...In order further to disrupt national unity, Nazi party organizations were established... In line with this policy of imposing the German national pattern.”⁵¹

Regarding the social field, Lemkin says that “The destruction of the national pattern in the social field has been accomplished in part by the abolition of local law and local courts and the imposition of German law and courts, and also by Germanization of the judicial language and of the bar. The social structure of a nation being vital to its national development, the occupant also endeavors to bring about such changes as may weaken the national spiritual resources.”⁵² Regarding the cultural field, Lemkin argues that “In order to prevent the expression of the national spirit through artistic media, a rigid control of all cultural activities has been introduced. All persons engaged in painting, drawing, sculpture, music, literature, and the theater are required to obtain a license for the continuation of their activities.”⁵³

Concerning the economic field, he says that “Participation in economic life is thus made dependent upon one’s being German or being devoted to the cause of Germanism. Consequently, promoting a national ideology other than German is made difficult and dangerous.”⁵⁴ About the biological field, Lemkin says “In the occupied countries of “people of non-related blood,” a policy of depopulation is pursued... [through] the adoption of measures calculated to decrease the birthrate.”⁵⁵ Concerning the physical realm, he says “The physical debilitation and even annihilation of national groups in occupied countries is carried out mainly in the following ways: I. Racial Discrimination in Feeding... 2. Endangering of Health... and 3. Mass Murder”⁵⁶ In the religious field, he states that “[i]n Luxemburg, where the population is predominantly Catholic and religion plays an important role in national life, especially in the field of education, the occupant has tried to disrupt these national and religious influences.”⁵⁷ About the moral field, Lemkin believes that “[i]n order to weaken the spiritual resistance of the national group, the occupant attempts to create an atmosphere of moral debasement within this group... According to this plan, the mental energy of the group should be concentrated upon base instincts and should be diverted from moral and national thinking.”⁵⁸

It is clear then that for Lemkin the national group was broader in scope than an ethnic, racial or religious group. The national group in principle includes all members of the nation and the remaining groups, by definition, are subsumed into this larger group. The inclusion of ethnic, racial and religious groups is meant to highlight typical cases of genocide, but these groups do not exhaust the meaning of the word genocide. Moreover, the national group subsumes and surpasses the others: it refers to ethnic, racial and religious groups and something more. Indeed, it covers any group not included in the ethnic, racial or religious categories. Thus it contains all minority groups that may be subject to persecution, whoever they may be. This includes groups that share a different membership criteria from ethnicity, race or religion, such as: the elderly, transvestites, the disabled, the ugly, or whoever. The national group thus has an inner limit, covering ethnic, racial and religious groups, and an outer limit, which goes beyond the previous one and includes other possible groups.

Any other interpretation inevitably leads to discriminatory consequences, both in terms of what the national group covers (its inner boundary) as what the national group exceeds (its outer boundary). Thus:

- Inner boundary: if we hold that the national group does not cover ethnic, racial or religious groups, we commit the same discrimination as the Nazi genocidaires, who excluded Jews and other groups from the German nation. In their view, Jews, homosexuals, the disabled, etc., were not Germans but something different, only fit to be exterminated. The same applies to all cases of genocide, including Argentina’s.
- Outer boundary: if the national group does not include sexual minorities, the elderly, the disabled, etc., then the principle of equality before the law is violated. To interpret the Convention as meaning that some lives are more important than others is to create an unacceptable hierarchy of human existence.

Such is the extent of the partial national group, and any other interpretation that excludes groups or individuals smacks of violation of the principle of equality before the law enshrined in Article 16 of the Argentine Constitution. This should be understood at a universal level and at all national legal levels because Advisory Opinion 18/2003 of the Inter-American Court of Human Rights on “Status and Rights

of Undocumented Migrants” established that the fundamental principle of equality and non-discrimination belongs to the domain of *jus cogens*, and consequently “entails obligations *erga omnes* on third parties”. Also, that Advisory Opinion reminds us that under the International Covenant on Civil and Political Rights, the Human Rights Committee noted the broad scope of Article 26 of the Covenant, which establishes the basic principle of equality and non-discrimination, and its General Comment No. 18 held on this principle that Art. 26 of the Covenant provides in itself an “autonomous right”, and the application of that principle in the content is not limited to the rights set forth in the Covenant. This enlightened approach of the Human Rights Committee contributed to the ruling by the European Court of Human Rights on a violation of Art.14 of the European Convention on Human Rights in the Case *Gaygusuz versus Austria* (1996), as well as the requirements established in legal doctrine that “distinctions” must be reasonable and consistent with the law (to avoid discrimination) have led to the suggestion that a true “right to equality” has emerged.

VII. Conclusion: The construction of memory and the value of truth

Even though most jurists consider sentencing to be important, legal characterizations are much more so. Much more important than the punishment of criminals is the construction of collective memory. It is important to uncover the truth about massive human rights abuses because concealing the truth causes great harm.⁵⁹ I suggest that the terms genocide and crimes against humanity have different connotations. Genocide implies a collective responsibility. As genocide aims at the elimination of the group, it involves us all: we cannot say others were guilty or unfortunate. Crimes against humanity are construed differently: multiple individual isolated crimes can be watered down and alienated as someone else’s problem.

The choice between treating human rights abuses in Argentina as the genocide of a national group or merely as thousands of unconnected crimes against humanity (even if part of a widespread or systematic attack) involves two different ways of constructing the past, each linked to a different social model. A caring society, which is precisely what the dictatorship set out to repress, or a law-of-the-jungle society, which is precisely what they tried to establish and which flourished in the 1990s - a society that promoted shameless self-interest, an “I’m alright, Jack” attitude, unbridled frivolity, and the forced imposition of an economic model that Argentine society had rejected for decades. Thousands of convictions for unconnected offenses not only hides the truth but also perpetuates the greater crime of the destruction and transformation (‘reorganization’, in the words of the perpetrators) of the whole national group. It is necessary, then, to salvage the truth and recognize that genocide – rather than crimes against humanity - took place in Argentina; and that it was genocide against a national rather than a political group.

Legally speaking, the figure of Genocide is directly applicable in Argentina’s domestic legal order as a customary international law norm ratified by the State in 1956 through the ratification of the United Nations Genocide Convention. In this interpretation, the national group is not defined by supposedly objective criteria, such as the unity or plurality of language, culture and ways of life (sociological nationality), but by the purely formal and subjective criteria of the legal bond between people and the nation (legal nationality), a criterion imposed by Argentina’s various domestic legal systems, as well as by international law in general.

In Lemkin’s work, the national group is the generic group, which both includes and goes beyond ethnic, racial and religious groups, and also allows the incorporation of any other group that could be a victim of the crimes defined in the Convention. This conclusion is also universal, based on the basic principle of equality and non-discrimination.

End Notes

1. In this regard, the Court of Cassation, Argentina’s highest criminal court, issued on February 28, 2012, Policy Decision 1/2012-CFCP (Complex cases - rules and practices) - which established a series of rules for the purpose of simplifying the work of the courts, such as use of video and audiovisual media used in other trials or elsewhere, the reading of testimonies included in other trials, use of telecommunications technologies, such as videoconferencing, in cases where witnesses or the accused cannot appear due to health reasons, or whenever necessary to ensure the protection of the safety and dignity of the victims or witnesses, or they reside in a long way from the courthouse or abroad, or to avoid delays in the hearings.
2. See PARENTI, Paul F., FILIPPINI, Leonardo G., FOLGUEIRO, Hernan L. “Los Crímenes contra la humanidad y el genocidio en el derecho internacional” (“Crimes against humanity and genocide in international law,”) Ad-Hoc, Buenos Aires, 2007, p. 11/67.
3. See FERREIRA, Marcelo, “Crímenes de lesa humanidad: fundamentos y ámbitos de validez” (“Crimes against humanity: Foundations and fields of validity”) in Agustín Gordillo, “Derechos Humanos” (“Human Rights,”) Fundación de Derecho Administrativo, Buenos Aires, 2005, Chapter XV, p. 1/53

4. FEIERSTEIN, Daniel, "El genocidio como práctica social, entre el nazismo y la experiencia argentina" ("Genocide as Social Practice. Reorganizing Society under the Nazis and the Argentina's Military Juntas") Fondo de Cultura Económica, Buenos Aires, 2007, p. 42 onwards. An English version in press in Rutgers University Press, forthcoming 2014.
5. ZAFFARONI, Raul E., "La palabra de los muertos. Conferencias de Criminología Cautelar" ("The word of the dead. Conferences on Cautious Criminology"), Ediar, Buenos Aires 2011, p. 424.
6. United Nations General Assembly Resolutions, Resolution 96/1, December 11th, 1946.
7. ZAFFARONI, op. cit., p. 425.
8. POWER, Samantha, *A Problem from Hell: America and the Age of Genocide*. New York: HarperCollins, 2002 Chapter VI.
9. ZAFFARONI, op. cit., p. 426.
10. Article 75 para. 22 of the Argentina National Constitution establishes the authority of Congress: "To approve or reject treaties concluded with other nations and international organizations, and concordats with the Holy See. Treaties and agreements take precedence over the laws. The American Declaration of the Rights and Duties of Man, the Universal Declaration of Human Rights, the American Convention on Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and its Optional Protocol, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Degrading Treatment or Punishment, the Convention on the Rights of the Child, to the extent that they are applicable, have constitutional status, do not repeal any section of the first part of this Constitution and should be understood as complementing the rights and guarantees recognized therein. They may be denounced, where necessary, only by the national Executive, following approval of two-thirds of all the members of each House." In interpreting this rule, Adelina Loianno argues that "it is clear that the constituent has sought to place the eleven international instruments referred to in the para. 22 Article 75, on the same level as the Constitution. References to the complementarity of existing constitutional provisions, which are not repealed, entrench the meaning of hierarchy already referred to" (Loianno, Adelina, *Esquema actual de la supremacía consitucional* (Current system of consitucional supremacy), in Gordillo, Agustín, *Derechos Humanos, Fundación de Derecho Administrativo* (Human Rights, Foundation of Administrative Law), 5th edition, Buenos Aires, 2005, p.iii -17. In this respect, Agustín Gordillo says that "in human rights in general we have to comply with a supranational and supraconstitutional legal order, which is directly and immediately applicable in domestic law by judges and other national organs of the State" (Gordillo, Agustín, op. cit., p.iii -2).
11. Christian Von Wernich is an Argentine priest of the Catholic Church who served as a police chaplain in the Province of Buenos Aires during the dictatorship. He was convicted for complicity in illegal deprivation of liberty and torture in numerous clandestine detention centers. He is currently detained in the prison of Marcos Paz.
12. Miguel Etchecolatz is a former police officer who served as Director of Police Investigations in the Province of Buenos Aires between March 1976 and late 1977. He was General Ramón Camps' right-hand man. He was sentenced to life imprisonment for numerous counts of unlawful deprivation of liberty, torture and murder. The witness Julio Jorge Lopez, who testified against Etchecolatz in the trial cited above, is currently missing believed dead.
13. Former General Carlos Guillermo Suarez Mason was head of the First Army Corps between 1976 and 1979. The secret detention centers of Automotores Orletti, Pozo de Banfield, La Cacha, and El Olimpo all operated in his jurisdiction. He also joined the Masonic lodge Propaganda Due, led by Licio Gelli. He was pardoned by former President Carlos Menem, but died in prison while being investigated for the theft of babies born in captivity and other crimes committed in secret detention centers. He was sentenced in absentia to life imprisonment by the Italian justice for the kidnapping and murder of Italian citizens living in Argentina during the dictatorship.
14. Luciano Benjamin Menendez was Major General in charge of the Third Army Corps during the dictatorship. During the preparations for war with Chile in 1978 over the disputed Beagle Channel, he said "if they let us attack the chilotes attack, we'll push them back to Easter Island, we'll have our New Year's Eve toast in the Palacio de la Moneda, and afterwards we'll go piss the champagne into the Pacific." Menendez was sentenced to life imprisonment on numerous occasions for crimes against humanity.
15. Guillermo Vargas Aignasse was Senator for the province of Tucumán. He was kidnapped on March 24, 1976. His body was found in a mass grave in the clandestine detention center known as Pozo de Vargas on December 15, 2011.
16. Cases Madrid (3224/2011) and Manacorda (Case 3329/2011) were about the abduction and appropriation of children whose mothers were kidnapped and disappeared. The perpetrators were convicted of the charge of complicity in the Argentine genocide. These were the first convictions for genocide produced in the Argentine justice system.
17. MÁNTARAS, Mirta, "Genocide in Argentina", Buenos Aires, Chilavert, 2005, p. 70.
18. MÁNTARAS, Mirta, op. cit., p. 70/71.
19. LOZADA, Martin, "El crimen de genocidio: su renovada dimensión a 60 años de su construcción conceptual" ("The crime of genocide: its renewed dimension 60 years after its conceptualization"), *Inter-American and European Human Rights Journal*, Volume 2, No. 1-2-2009, p. 177.
20. ICJ (Advisory Opinion) 28 May 1951, "Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide", ICJ Reports (1951), p. 15, para. 24.
21. Article 27 of the Convention on the Law of Treaties

22. In this sense, the obligation of States to investigate, prosecute and punish those responsible for crimes against humanity today is a peremptory norm of international law belonging to the category of *jus cogens*, independently of the criteria that may be established in these States' domestic law. This criterion was applied by the Court in Case 17,439 in re "Pinochet Ugarte, Augusto / no statute of limitations for criminal proceedings", resolution of May 15, 2001, record 18,657, emphasizing the principle that the State cannot invoke internal difficulties to neglect its duty to investigate the facts and punish those criminally responsible.
23. Statements by Saint Jean to the International Herald Tribune, May 26, 1977.
24. MÁNTARAS, Mirta, *op. cit.*, p. 143.
25. MÁNTARAS, Mirta, *op. cit.*, p. 201.
26. It is remarkable that these psychological developments have proliferated in a medium that is so hostile to this kind of thinking. In this regard, René Kaës recounts that "therapy groups were particularly subject to police repression during the dictatorship years: persecuted, banned or dissolved, they were suspected to be considered places of social subversion". And the military's discourse itself stated that "if we allowed the proliferation of corrosive elements-psychoanalysts, psychiatrists, Freudians, etc. - stirring up people's consciences and questioning national and family roots, we would be defeated" (General Acclél Vilas). This apparent contradiction reveals how deep the roots of the sinister repressive plot went: far from being a primitive and violent gut reaction, it was instead the result of a premeditated and rational process, cold and terrifyingly calculated (KAËS, René, "Rupturas catastróficas y trabajo de la memoria. Notas para una investigación", ("Catastrophic ruptures and memory work. Research notes") in PUGET, Janine and KAËS, René [eds.], "Violencia de Estado y Psicoanálisis", ("State Violence and Psychoanalysis"), Group Editorial Lumen, Buenos Aires, 2006, p. 172.
27. pp. 6, 16, 157.
28. 'National Project' developed in 1976 by the military dictatorship's Ministry of Planning, under General Diaz Bessone.
29. Jorge Rafael Videla, in *La Prensa*, December 18, 1977.
30. Carlos Suarez Mason, in *La Prensa*, July 7, 1979.
31. REATO, Ceferino, "Disposición Final. La confesión de Videla sobre los desaparecidos" ("Final Disposition. Videla's confession about the missing"), *Sudamericana*, Buenos Aires, 2012, p. 159.
32. GUIBOURG, Ricardo A., GHIGLIANI, Alexander M., GUARINONI, Ricardo V., "Introducción al conocimiento científico" ("Introduction to scientific knowledge"), Buenos Aires, Eudeba, 1994, p. 37 onwards.
33. The Prosecutor v. Rutaganda (Case ICTR-96-3), Judgment and Sentence, December 6, 1999, paragraphs 56-58, p. 373.
34. MÁNTARAS, Mirta, "Genocidio en Argentina" ("Genocide in Argentina,") *op. cit.*, p. 68.
35. LOZADA, Martin, "El crimen de genocidio. Un análisis en ocasión de su 50º aniversario" ("The crime of genocide. An analysis on the occasion of its 50th anniversary,") published in *Cuadernos de Doctrina y Jurisprudencia*, Volume 5 No. 9-A-1999, Ad-Hoc, Buenos Aires, p. 807.
36. Fragment of the indictment issued by Judge Baltasar Garzón, November 2nd, 1999. Madrid.
37. See the consequences of the different analysis of Nazism and the role of the understanding of the groups in Daniel Feierstein; "The Concept of Genocide and the Partial Destruction of the National Group", *Logos. A Journal of Modern Society and Culture*, Vol. 11, Issue 1, 2012, ISSN 1543-0820, URL: http://logosjournal.com/2012/winter_feierstein
38. Translator's note: This is not strictly speaking true. Article 25 of the Argentine Constitution begins by saying: "The Federal Government shall foster European immigration", however this does not contradict the main argument of the author.
39. American Declaration of the Rights and Duties of Man, Art. XIX: "Every person has the right to the nationality to which he is entitled by law and to change it, if he so wishes, for the nationality of any other country that is willing to grant it to him"; Universal Declaration of Human Rights, Art. Article 15. (1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. The American Convention on Human Rights, Article 20. Right to Nationality (1) Every person has the right to a nationality. (2) Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality. (3) No one shall be arbitrarily deprived of his nationality or of the right to change it. International Covenant on Civil and Political Rights, Art. 24.3: "Every child has the right to acquire a nationality."
40. The Prosecutor v. Jean Paul Akayesu, Trial Judgment, 2 September 1998, ICTR-96-4-T para. 511-515.
41. Commission, OC-4/84 of January 19, 1984, Series A No. 4, No. 22.
42. ICJ Reports 1955, p. 23.
43. At para. 35.
44. GIROLDI, Horacio D. and another, LA LEY, 1995-D, 463. In this regard, see: LOIANNO, Adelina, "Incidencia de la Jurisprudencia de la Corte Interamericana y de las recomendaciones de la Comisión en el derecho interno" ("Impact of the Jurisprudence of the Court and of the recommendations of the Commission on national law") in GORDILLO, Augustine, "Derechos Humanos", 5th ed., Fundación de Derecho Administrativo, Buenos Aires, 2005, p. III-17 onwards.
45. In this regard, Bidart Campos distinguishes between nationality, sociological nationality, and political citizenship. He says the first is acquired spontaneously, and is not susceptible to regulation by the positive law of the State. While political nationality is what a person has under statutory law, and is defined as the legal position is invested with by the positive law of the State in relation to the same "State", according to a criterion that adopts law (e.g., place of birth, nationality or father, or citizenship, or residence, etc.) (CAMPOS Germán Bidart, "Elementary Treatise on Constitutional Law Argentino", Vol. I, Ediar, Buenos Aires, 1985, p. 124).

46. OYARZABAL, Mario JA, "La nacionalidad argentina. Un estudio desde la perspectiva del derecho internacional público, del derecho internacional privado y del derecho interno argentino, con referencias al derecho de la integración" ("Argentine Nationality. A study from the perspective of public international law, private international law and Argentine law, with references to the right of integration"), La Ley, Buenos Aires, 2003, p. 8. The principle of the exclusive competence of the State was confirmed by the Permanent Court of International Justice in its advisory opinion concerning Nationality Decrees in Tunisia and Morocco: "The question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question: depends on the development of international relations. Thus, in the present state of international law, questions of nationality are, in the opinion of this Court, in principle within this reserved domain." The Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws of 1930 established that "It is for each State to determine under its own law who are its nationals..." (Art. 1), and that "Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of the State." (Art. 2). In the aforementioned Nottebohm case, the International Court of Justice determined that "international law leaves it to each State to lay down the rules governing the grant of its own nationality."
47. LEMKIN, Raphael, Axis Rule in Occupied Europe, The Law Book Exchange Ltd. Clark, New Jersey, [1944] 2005. p. 79.
48. LEMKIN, Raphael, op. cit., id.
49. LEMKIN, Raphael, op. cit., p. 80.
50. LEMKIN, Raphael, op. cit., p. 90.
51. LEMKIN, Raphael, op. cit., p. 82-83.
52. LEMKIN, Raphael, op. cit., p. 83.
53. LEMKIN, Raphael, op. cit., p. 84.
54. LEMKIN, Raphael, op. cit., p. 86.
55. LEMKIN, Raphael, op. cit., p. 86.
56. LEMKIN, Raphael, op. cit., p. 87-88.
57. LEMKIN, Raphael, op. cit., p. 89.
58. LEMKIN, Raphael, op. cit., p. 89-90.
59. In this regard: TISSERON S., TOROK M., RAND C., NACHIN C., HACHET P., ROUCHY J. C., "El psiquismo ante la prueba de las generaciones. Clínica del Fantasma" ("The psyche before the generation test. A Clinical Study of Ghosts"), Amorrortu, Buenos Aires, 1997. Also: SHÜTZENBERGER, Anne Ancelin, "¡Ay, mis ancestros!" ("Oh, my ancestors!") Omeba, Buenos Aires, 2006. Also, the French psychiatrist Françoise Dolto says that "what is silenced in the first generation is buried in the body in the second generation" and the trauma transmitted is much greater than the trauma received: the children of Holocaust survivors are three times as likely to suffer from post-traumatic syndrome as their parents. Dolto claims that silent parents convey an unspoken message that is processed by their children and turned into the unspeakable, but also by the grandchildren, who turn it into the unthinkable. Thus, in the third generation, the unspeakable becomes the unthinkable, which then becomes a ghost that haunts all of them. The trauma and pain are transmitted through the centuries. Mehmet Ali Ağca wrote, the day before he shot the Pope on May 13, 1981: "I have decided to kill John Paul II, Supreme Commander of the Crusades": a thousand years later the wound is still open, and Muslims still talk about genocide. In the same vein, Freud says that "Without the assumption of a mass psyche, or a continuity in the emotional life of mankind which permits us to disregard the interruptions of psychic acts through the transgression of individuals, social psychology could not exist at all. If psychic processes of one generation did not continue in the next, if each had to acquire its attitude towards life afresh, there would be no progress in this field and almost no development." (FREUD, Sigmund, Totem and Taboo, Cosimo Classics: New York, p. 203).

A Genealogy of Genocide in Francoist Spain¹

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Summary: *The extermination that was associated with the violence of the Spanish Civil War period and the early 1940s has been studied in depth in recent decades. Until now, however, the concept of genocide has not been discussed with an eye to understanding and interpreting this violence. The hermeneutical and comparative potential of the concept is, however, unquestionable. This article aims both to contextualize the origin and development of the debates about the concept of genocide, and to show what the concept could add to the debate in the case of Spain. In particular, this paper proposes to apply the concept of genocidal practice to the study of the Francoist violence, through analysis of the discourses, the reasons for the violence, and the memories of the events. From this point of view, an analysis will be made of the relationship between the practice of genocidal violence and the discourses of denial devoted to preserving the impunity of the perpetrators to this very day in Spain.*

Keywords: *genocidal practice, Francoist violence, memory, amnesty, impunity, Spain.*

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The story of Juana and Francisco

The lifeless body of Juana Capdevielle was found tossed in a ditch along the highway between A Coruña and Madrid, near the village of Rábade in the province of Lugo. The entry in the Office of Vital Statistics makes reference to the discovery of the corpse of an unidentified woman, around 30 years old, with the cause of death given as “gunshots to her chest and head.” Among her belongings were a 5-centavo coin, a silver watch, and a ring on the middle finger of her right hand. Those who murdered her were concerned with making it clear that their crime was not an everyday robbery, and they had further taken the opportunity to rape the young woman before executing her. She was a newlywed, and her belongings included the gifts she had received on her wedding day in March 1936. Her deceased husband, Francisco Pérez Carballo, had been the gobernador civil of the province of A Coruña. He was executed in the provincial capital, along with the key personnel of that city’s security forces, on the same day he was tried—on July 24—after a sham court-martial of which no written evidence remains. Juana, a librarian and archivist by profession, also was greatly involved in the institutional activity of her partner in those spring days in 1936. For that reason, she was especially detested among the most reactionary media. Both, Francisco and Juana, were killed between July and August 1936. The first crime took place when Galicia had not yet fallen completely into the hands of the leaders of the coup; the second, now in August, was carried out after Juana had been arrested, freed, and finally arrested again, when the front lines of the war were already far from the “tranquil” lands of Galicia, and the insurgents and their backers were in complete control of the situation.

It is one more story among the many that form the jigsaw puzzle of incidents of violence that took place in that context. Indeed, it was a great mosaic that was composed of hundreds, thousands, of personal histories, testimonies, and documents, too, which make it possible to give an account, partial though it may be, of the events experienced in Spain, beginning in July 1936. Undoubtedly, knowledge of the specific cases, including the local or regional point of view as well, influences the perspective we adopt in reflecting on them. All this detail in the knowledge of the individual cases has resulted, on numerous occasions, in a lack of conceptual and comparative thought about their historical significance. In any event, it seems more than appropriate to explicitly discuss the fundamental aspects of a debate so often mentioned, one that in addition is linked with the question of historical memory.²

The argument of this article starts from a gamble that is consciously risky and intentionally provocative: to use the perspective of studies on genocide to account for the acts of violence in the area occupied by the insurgents in Spain during the Civil War, which we call “Francoist violence” in an attempt to be concise. First, it is necessary to clarify the meaning of genocide as a heuristic concept and point out its interpretive scope in

what concerns us here. In addition, these conceptual clarifications are useful for addressing the second point of this article: essentially, to point out both the interpretive and the comparative potential that the concept of genocidal practice can bring to the study of this subject. And third, we will show how the concept of genocide relates to the reconceptualization, in present studies on the “repression,” of so-called historical memory, public policies of memory and reparation, and the legal and judicial aspect of it all.

Genocide: One concept and many misunderstandings

Looking in greater depth at the use and abuse of the concept of genocide, the historian sees, first, formative gaps with respect to its meaning. Paradoxically, there is a lack of awareness that it is a neologism that arose only recently in historical terms (not even seventy years ago) and has found undeniable acceptance not only in academic and legal circles, but also among citizens. Clearly, the everyday use of the concept generally equates its meaning with very serious events of mass killing, and the word is used, above all, to lend force and emphasis. For the same reason, some authors have attempted to label the Francoist violence as “genocide” or have characterized Franco and his associates as “guilty of genocide,” with an undisguised aspiration to employ a word far more definitive than the terms they consider more or less neutral, such as “repression” or “oppressors.”³

It is essential to state that what is written here is by no means intended as denunciation or condemnation: no claim is made that it is more conclusive, or even more definitive. The idea is to employ the concepts with precision, in order to keep politicized attitudes from interfering in the research, and to avoid any trace of “anti-Francoism,” an ideology that has been—and continues to be—dominant in a good number of the studies of “repression,” encouraged by a certain social perspective that supports it. Breaking away from the discourse of “anti-Francoism” means, in addition, abandoning an alleged and imagined specificity of the Spanish case that eliminates reasonable possibilities for comparison—among other reasons, because the discourse of “anti-Francoism” would become the Spanish version of the “antifascist” discourses in the European setting. Nevertheless, “anti-Francoism,” as its name indicates, refers to a purely Spanish phenomenon that is unique and controversial in nature. At the time, there was a prolific controversy, extremely interesting in some aspects, about the “political nature” of the Franco regime, related to the previous question of the authentic nature of the Spanish case, and complicated and shaded by European and international standards for a fascist regime.⁴

One fundamental aspect of this debate has been the strong conceptual differentiation that was established between, on the one hand, the social, political, and ideological foundations of Franco’s dictatorship, as well as its effective political practice, and, on the other hand, the enormous violence that accompanied its accession to power. The areas of study seemed airtight, something that is difficult to sustain from the standpoint of rigorous analysis of the facts. The deaths of Francisco and Juana, with which this essay began as examples of many more such deaths, cannot be dissociated from the fascist, National Catholic, or technocratic policies that characterized Franco’s regime. Genocidal violence is not exclusive to one ideology or one particular expression of policy, but rather is one of the mechanisms available to many ideological purposes with an aspiration to reorganize the social sphere. It is, by definition, an ideological violence, because it entails the construction of an enemy in order to destroy that same enemy. But it is a violence that is defined neither by the number of its victims nor by its identitarian character, much less by alleged success or failure in the pursuit of its immediate objectives of annihilation.⁵

The chief difficulty in understanding this use of the term “genocide” derives from the very nature of the concept. By definition, genocide is a practice, not a result. This is precisely why it is not possible to ask whether “genocide existed” in a concrete historical case by thinking in terms of the results of what occurred. It is possible to ask whether there existed a practice of genocide on the basis of what occurred, in itself. The origin of the term goes back specifically to a concern of a pre-emptive sort: to prevent a certain practice from taking place and having devastating consequences for human beings and the societies they make up at the time. Raphael Lemkin, the Polish lawyer and political scientist who coined the word, traces its use to the study of certain historical cases, particularly that of the Armenians, which made an enormous impression on him. Essentially, Lemkin was looking for a definition that would serve in the field of international law to safeguard and protect populations from being subjected to certain types of extreme violence.⁶ It is a search that dates back beyond Lemkin, at least to the mid-nineteenth century, when the development of international humanitarian legislation began.⁷

Genocide, then, is not a concept invented in light of a single concrete experience, but rather the result of a very long process of defining violence that takes on a new character, at least in the eyes of the person analyzing it. In addition, the concept made possible the sought-after application of international legislation to crimes

of this kind. That was not achieved after World War I, but would indeed have an effect following the end of World War II.⁸

The path taken by the concept as regards legal matters is well known by scholars who deal with the subject. After gaining international status through the resolution of the United Nations General Assembly in its first sessions in 1946, its meaning subtly changed to apply to legal effects in the Convention on the Prevention and Punishment of the Crime of Genocide in 1948. The specific context in which this definition was approved has been discussed many times, and there is no need to reiterate here the vagueness and absurdity that were introduced from the analytical point of view by the exclusion of political groups.⁹ This has been debated on various levels, including the academic one, because the concept always retained an analytical dimension, which had no need to take into account those kinds of legal agreements.¹⁰

At this point it must be stated that preference for the concept has to do with the conceptual precision it provides, and that it is not necessarily exclusive, of course. If there were an extraordinary concept making it possible to account for what “genocide” encompasses without losing any shade of meaning thereby, it would be desirable to accept it and make extensive use of it. Thus far, extermination, political violence, repression, persecution, and politicide are concepts that remain faulty in one or more aspects. In this sense, it should be pointed out what exactly the meaning of genocide or “genocidal practice” contributes. The term “genocidal practice” is used in this article to avoid any kind of confusion about its valid legal dimension or about any nuances that the everyday use of the concept could provide:

- a. It defines a violent process with the aim of eliminating a social group, based on the use of the government’s own machinery and the state’s monopoly on theoretically legitimate violence.
- b. As such a process, it is placed in a sequence, which necessarily begins with a more or less formal definition of the characteristics of the social group whose elimination is sought, and of who this group’s members are. It continues with a number of specific techniques of violence that try to contribute to the aforementioned objective of destroying the social group seen as an adversary, and it is followed by a phase of denial that crimes of such a kind have occurred.
- c. The elimination of the social group, which is the aim of a genocidal practice, comes about to a greater or lesser extent through the physical elimination of its members. Nonetheless, it is not limited to this aspect but also involves destruction of the identitarian manifestations that define the group as such from the perspective of the perpetrators.
- d. Keeping in mind the involvement of the body politic, which is necessary for such a genocidal practice to be accomplished as such, the whole of the society is concerned in its development, whether from the position of victim or person affected by the measures of repression, or through alignment, actively or passively, with the position of the executioners and persecutors.

Genocidal practice and violence on the home front of Franco’s rebels

The genealogy of the concept is an indispensable preliminary step, so that we can apply the term “genocide” in a discerning way. Nevertheless, the great question is whether it has any interpretive potential for historical analysis of the events that were triggered in Spain as a result of the July 1936 coup d’état. In this context, social processes of classification and symbolization were activated, in which the construction of the “Other” as enemy played a fundamental role.¹¹ For the perpetrators, the position of these adversaries was determined not by membership in any political organizations in particular but rather by a well-defined identity. This political, social, and cultural identity was not created with the Republic but took decades to form, feeding on common mobilizing experiences as well as experiences of repression. On various occasions, the authority of the Spanish state would act against that very group in the population, which had been identified as opposed to the “social order.”

In two revolutionary events in particular—in the general strike of August 1917 and the general strike of October 1934—the machinery of the state had applied extraordinary measures of repression: there were arrests of all the leaders, activists, and individuals seen as tied to the aforementioned group identity. And that happened despite the fact that in the greater part of Spain’s territory, the two aforementioned cases of attempted revolution did not turn out to be mere pipe-dreams. In both events, though no crime had specifically been confirmed that would allow the detainees to be charged individually, the soldiers in charge of “restoring public order” identified a group to which they attributed collective responsibility for the occurrences in question. It is not surprising, therefore, that when 1936 arrived the leaders of the coup were so sure about whom they

ought to go after, because they had spent decades attributing “qualities” to an enemy with whom they already had had to deal.¹²

The first to be convinced of this common identity among the enemies of the “social order,” therefore, were their opponents, who interpreted as a negative evil each and every one of the principles of citizenship the others espoused. Thus, the universalization of civil and political rights was regarded as synonymous with the radical egalitarianism that the Bolshevik revolution had enshrined. Further, the promulgation of social rights was seen as the extermination of individual liberty, the limitation of repressive and arbitrary action was regarded as weakness of the state, freedom of conscience as anti-clericalism, women’s rights as destruction of the family, encouragement of alternative values as the destruction of traditional society, and recognition of peoples’ right to self-government/autonomy as separatism. In the conspiracy theory, which was publicized daily in the conservative media, in shared group meetings, and in everyday conversations, there began a proliferation of ideas such as the hidden power of Freemasons or the influence of Judeo-Bolshevism.¹³

As noted earlier, within the conspiracy theory was included the assignment of a secret nature and calling to the opponents, profoundly destructive in value and with repercussions for civilization. Thus, the perpetrators are assigned the role of defenders not only of their group identity and their more or less private interests, but also of the civilization they would represent together. Historically, this was the idea of “Christianity” or “Western civilization,” if not both. The intellectual pedigree of such ideological constructs is rooted in the crises of the Old Regime and in the shaping of the modern liberal nation-states. It takes on a new dimension, however, with the extension of citizen status to increasingly broad sectors of society, something that takes place in the Western world between the end of the nineteenth century and the first decades of the twentieth century. In reality, not only the Jews or the Bolsheviks were the object of these identitarian precautions on the part of broad sectors within modern Western societies; also affected were other groups such as Freemasons and religious, sexual, and cultural dissidents, or even ethnic groups wanting their own national identity.¹⁴

These processes became part of a phenomenon of dehumanization in the way these groups were characterized: “the most painful question about genocide is, how is it possible for people to kill other people on such a massive scale? The answer seems to be that it is not possible, at least not as long as the potential victims are perceived as people. We have no evidence that genocide was ever performed on a group of equals. Not only must the victims not be equals, but also they must be clearly defined as something less than fully human.”¹⁵ Normally, on this point, more propagandistic arguments are combined with support alleged to be scientific or intellectual in nature. It was not only in the case of the Nazis with the Jews that antisemitic propaganda was reinforced by a racist scientific discourse.

References to the subhuman nature of “the reds” (the republican faction) were made from the very start of the Francoist uprising by the press that supported them, and were spread by the radio stations and repeated in public, political, or religious events and ceremonies. Just look at the identification with worms, animals of a very different kind, or the simile of disease. Ethnic consciousness was understood in this context as a force for preserving the class that sustained and defended the regime instituted by the rebels, which in reality was identified by ideology and, above all, by the will to destroy its enemies.¹⁶ As a result of this racist conviction, it was believed that the evil of the “reds” was transmitted not only by ideology but also by blood. Hence, a campaign was launched to take away the children of imprisoned mothers, putting them up for adoption by families considered to be “in order.”¹⁷

In the case of Spain, a process of extermination paralleled the gradual taking of territory by the rebels. It was an extermination that was, nevertheless, delimited in time, with the majority of the crimes, whether committed by the method of direct murder or by legalized murder, concentrated in the months after the seizure of each of the territories. In the places that were occupied in the very first days, the cycle of extermination was concentrated in the second half of 1936 and much of 1937. In those places occupied toward the end of the war, most of the victims were executed before the end of 1941.¹⁸

Presented below, *in Figure 1*, is a comparison of the total numbers of victims of violence who were killed in the first three years of violence, taking as a reference the cases of two Spanish regions that experienced different situations and two Latin American countries that experienced genocidal processes in the 1970s.

Developed by the present author on the basis of these data: for Argentina, Inés Izaguirre, “Una larga tradición de prácticas genocidas normalizadas,” in Asociación Latinoamericana de Sociología, *Latinoamérica en y desde el mundo. Sociología y Ciencias Sociales ante el cambio de época: legitimidades en debate*, XXVI Congreso de la Asociación Latinoamericana de Sociología, August 13-18, 2007, Guadalajara, México; for Chile, Patricio Orellana Vargas, “La represión en Chile, 1973-1989,” Comisión Nacional de Verdad y Reconciliación,

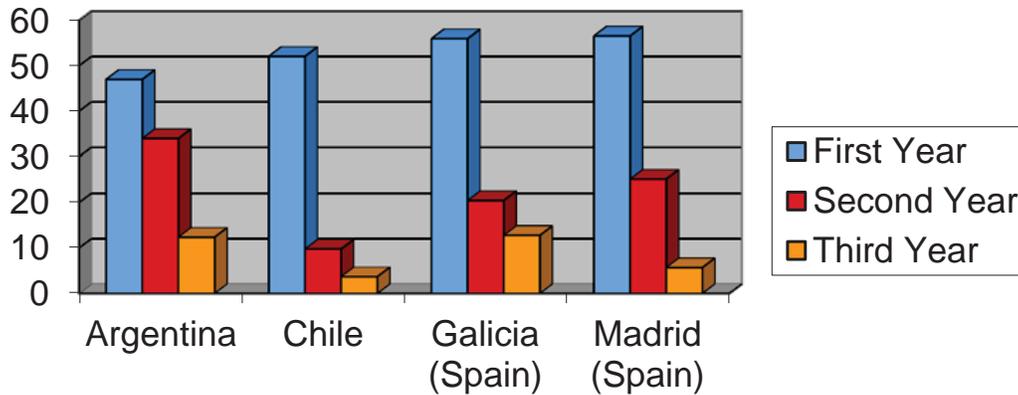


Figure 1. Percentage of the victims killed in the 1st, 2nd and 3rd year of the violence Argentina (1976-1978), Chile (1973-1975), Galicia (1936-1938) and Madrid (1939-1941).

Informe de la Comisión Nacional de Verdad y Reconciliación, Santiago de Chile, Secretaría de Comunicación y Cultura, no date; for Galicia, L. Fernández Prieto and Proxecto “Nomes e Voces,” Informe de Resultados, Santiago de Compostela, USC, 2009; and for Madrid, Julius Ruiz, *Repression in Madrid after the Spanish Civil War* (New York and Oxford: Oxford University Press, 2005), p. 101.

In the case of Galicia, strictly speaking, no civil war took place; instead, from the first days following the 1936 coup d'état, the whole of the territory fell into the hands of the leaders of the coup. Therefore, the violence developed from the first moment on and reached its peak of intensity in the period 1936-1938. In the second Spanish case, Madrid, the dates refer to the time after the end of the Civil War, April 1939, because until then the city had resisted the attacks of the Francoist rebels. In this case, most of the violent deaths were concentrated between 1939 and 1941. If these lines are compared with the cases of Chile and Argentina, it is confirmed that the types of liquidation violence are very similar as to the rates of extermination.

Various explanations have been written to account for this particular criminal chronology. Essentially, these are interim explanations that made the process conditional, but they must be understood within the meaning of genocidal practice. Every genocidal process has a number of phases; extermination is only one of them. The Nazi genocide took place in successive stages, of which the extermination of the Jews meant only a final and late stage. Meanwhile, the stigmatization and persecution of the Jews was preparation for what later would be extermination in the gas chambers, regardless of whether it had already been decided upon or not.¹⁹

In this regard, there is an important disparity between the linear progressions of the various historical cases of genocide, precisely because genocidal practice depends on the interaction existing among the different social, economic, and cultural forces in a country. In this sense, the case of the Third Reich demonstrates how, in this paradigm of a genocidal regime, the practical implementation of extermination plans was conditioned by the current circumstances. One paradigmatic phenomenon might be the Aktion T4 program, which was put into practice between 1939 and 1941—thus, prior to the bulk of the exterminations of Jews—and was slowed and restrained in large part by protests arising from various sectors of German civil society. In the course of this program, “persons considered incurably ill, children with hereditary defects, or ‘unproductive’ adults” were exterminated.²⁰

One can reflect in that regard about the possible existence of a space that is always present in any society: a space for resistance and for confronting oppression. The concept of totalitarianism, as a synonym for a regime that actually obtains the ability to act with complete impunity, conceals social participation in the genocidal violence, be that participation active or in the form of passive complicity. Tolerance for certain forms of violence practiced under the protection of the state is based on the citizens’ acknowledgment of the criminals as authority figures. The importance of Milgram’s findings in this regard is well known.²¹ Analysis of the course of the extermination under Franco reveals that the taking of power by the insurgents granted them the status of authorities in practice, despite the extreme illegality of the action by which they attained that power. The same happens in the case of the coups d'état in Latin America that triggered practices of extermination. The violence will produce differentiation between victims and executioners, between “the drowned and the saved,” until a time has come when anyone who has not been the object of violence on its various scales, ranging from murder to persecution, will become automatically exempt from its consequences.

The society itself makes sure that difference becomes established, thereby intensifying support for the regime and complicit silence regarding the massacre.²²

The discourse of denial and impunity

The last stage of every genocidal practice is always denial of the genocide itself: “the perpetrators of genocides dig up the mass graves, burn the bodies, try to cover up the evidence and intimidate the witnesses. They deny that they committed any crimes, and often blame what happened on the victims.”²³ All the resources that were available to the state apparatus in developing the criminal actions are used subsequently to erase the evidence of what took place, even many decades after the events. Therefore, legal arguments raised to avoid prosecution of this type of criminality are the rule and not the exception. In the Spanish case, continuity of the dictatorial regime was the best guarantee of the predominance of a systematic denial of any genocidal practice. But it was the transition to democracy in the 1970s, known simply as the Transition, and Spanish society as a whole that validated the pattern. To explain this complex way of denying the truth and misrepresenting what was experienced in various social contexts, people turned to developing an entire theory of collective guilt in societies with a genocidal past.²⁴

In the genocidal practices, one can detect the construction of the discourse of denial at the moment of crossing from a context of justification to the context of denial. The context of justification serves as preparation for the genocidal practice and fosters its development by seeking to dehumanize the enemy or by appealing to the logic of pillage. But the context of negation directly promotes the objective of concealing the crimes of those responsible, both the perpetrators and the beneficiaries of these crimes. The first stages of transition between the context of justification and the context of denial appear with the progressive marginalization of the violence practiced by groups and militias, which is replaced with more structured military trials.

In the case of Spain, the groups that at the time were paid the warmest tributes are progressively displaced, in some instances becoming the object of persecution and even sent to the European war fronts as part of the División Azul.²⁵ In this sense, there is nothing special in the practice of the Franco regime. One can recall what the Nazis did in their time with the SA, as a way of consolidating the power of Hitler and his supporters on the one hand, and on the other as part of a discourse intended to deny the “irregular” nature of the violence practiced by the new regime. The violence practiced in the course of the Russian Revolution has as much to do with a practice intended to eliminate “class enemies” as with the establishment in power of the Bolshevik ruling elite in the society.²⁶

Controlling one form of violence in order to continue practicing another form with impunity was also part of the systems employed by the genocidal regimes in Latin America, when the time came to start shutting down channels of irregular violence through “clandestine” mechanisms. If the initial violence of Franco’s regime is seen in corpses that appear daily in roadside ditches or in places where all the neighbors can see them, it is progressively changed into something much more secret. In this sense, a network of concentration camps is created, camps that go beyond the temporary detention centers of the early period and, in addition, perform functions of another kind, related to the “re-education” of the prisoners and forced laborers.²⁷

On the other hand, the “normalization” of civilian life also starts with putting into operation the logic of revenge and compassion. What until then had been complete indifference to the signs of suffering gives way to acts of mercy toward the families of the victims and toward the survivors. These “displays of clemency” serve in addition to strengthen loyalty to the regime and guarantee complicit silence. Thus, there follow cases at the local level of employers who start rehiring the workers they had dismissed, parish priests who take an interest in their parishioners, and measures that prohibit irregular violence, beatings, or extortion. But beyond this, it becomes state policy with the first sentence reductions in 1943 and what would be large-scale pardons by 1945. Evidently, the international context is an important factor for encouraging these practices and whitewashing Franco’s regime. Far beyond this, however, the pardons guarantee social cohesion. What had been at the time violence practiced with aims clearly involving extermination becomes changed into this new discourse of denial in a series of disconnected practices resulting from a context of excesses that frequently conceal personal acts of vengeance.²⁸

The context of excesses as part of a logic of revenge is the first discourse of denial that, strictly speaking, is developed within Spanish society with respect to the Francoist practice of extermination. Almost immediately after the crimes occur, publications and flyers appear, giving a detailed account of what happened, pointing in explanation to the criminal nature of the victims as well as to the situation of confusion generated by the absence of authority in the early days. The discourse of denial, then, begins not by forgetting the crimes but by altering

their significance and diluting their genocidal nature, something that is developed by part of the society itself to differentiate itself from the victims or from those marked by the violence to some extent. Therefore, the public politics of memory has been led, above all, by the actions sponsored by Franco's regime itself. Most interesting of all, without doubt, is the campaign celebrating the "25 years of peace" in the 1960s, because it has a significance that goes far beyond mere justification of the regime and moves on to denial of the genocide.²⁹

Starting with the period of the Transition, measures aimed at reparations for "the victims" begin to be established. The sequence begins in 1976 with the awarding of economic compensation to veterans of the Republican faction, or "bando republicano," who were crippled in the Spanish Civil War. Later, in 1979, would come general awarding of social rights and pensions to all the "Republican" combatants and their family members. Interestingly, this same measure includes the voluntary militias that participated in the revolutionary uprising in Asturias in 1934, equating them with the forces of the Spanish Republican Army. Progressive additions meant that in 1984 there was economic compensation in certain cases for members of the "Republican" security forces, and in 1990 for individuals who had been prisoners in Francoist Spain, provided they had spent more than three years in prison.

Besides these kinds of measures, some autonomous regional governments launched initiatives along the same lines, compensating in a different way the "victims and political prisoners of the Franco regime." The economic compensations paid to the victims and family members reflect an attempt to solve the problem that "not all the victims" had been treated equally. The same idea is behind the resolution on condemnation adopted in a unanimous vote by the Congress of Deputies on November 20, 2002. The concrete significance of the condemnation is perfectly expressed by historian Ángeles Egido in her fiery defense of the parliamentary declaration: "It was, without doubt, a gigantic step. It was very late in being taken, but finally it was taken, and it is fitting only to be pleased at it, if only because of what the taking of it cost.

There is not the slightest doubt that it can be considered a milestone in the democratic memory of the country and, perhaps, the perfect finishing touch to the transition. In the name of the well-known maxim of [Manuel] Azaña, 'Peace, pity, and pardon,' pressure was put on the local governments to join in the search for people who had disappeared and were buried in mass graves, thus contributing to equal rights for both the victorious families and the vanquished ones when it is time to carry out a simple, and common, act of humanity: to honor their dead with dignity, and publicly."³⁰

In this regard, it may be interesting to analyze a study by the Centro de Investigaciones Sociológicas (CIS; Center for Sociological Research) in October 2005, just before the debate about the "recovery of historical memory" began with more force, propelled by the initiatives of the central government and various autonomous regional governments. The study is revealing because it shows the pulse of Spanish society in the face of a number of questions about the "recognition of the victims of the Civil War." The very posing of the questions is a response to the well-known discourse of mixing war and genocide, partly because reference is made to the "victims of the Civil War" and not to the victims of the violence on the home front, as if there were no distinction to be made. Apart from this, it can be observed that the only points where the consensus is quite broad are reached when it comes to questions referring to the need to guarantee equal treatment "to the victims of the two sides."

But if this is the majority sentiment in Spanish society, the law passed by Parliament in 2007, the Ley de Memoria Histórica, or Historical Memory Law (this time, not unanimously), is even more explicit in this respect. The law's preliminary sections contain two fundamental paragraphs that show how the real reason for the law is to give greater consistency to the denial that is part of the significance of the Transition, because of the obvious burden of political (and moral) blame it holds for a good part of the Spanish left wing. Thus, the first paragraph says, "The spirit of reconciliation and harmony and of respect for pluralism and peaceful defense of all ideas that guided the Transition, enabled the establishment of a Constitution for us, that of 1978, which legally expressed the desire of Spaniards for reunification, forming a social and democratic state under the rule of law with the clear wish for integration." And the final paragraph of this explanation of reasons states: "once and for all, the present Law wishes to contribute to the healing of wounds still open among Spaniards and to give satisfaction to those citizens who suffered, directly or through their relatives, the consequences of the tragedy of the Civil War or the Dictatorship's repression. It wishes to do so in the complete certainty that, by entering more deeply into the spirit of reunification and harmony of the Transition, not only will those citizens be recognized and honored but also the democracy of Spain as a whole. It is not the task of the legislator to implant a particular collective memory.

	agree	disagree	either agree or disagree	don't know	no answer
It is useless to debate or take actions to make amends for incidents that are now past history.	43.4	40.0	8.0	7.2	1.4
The Civil War victims have been the great forgotten ones, and now it is time to make amends for this injustice.	53.3	24.0	11.2	9.9	1.6
There were Civil War Victims on both sides, and any homage paid to them must include everyone.	72.9	9.9	6.3	8.8	2.1
The victims were recognized differently, depending on which side they belonged to.	65.9	7.6	6.7	17.8	2.0

Figure 2. Sociological Research Center (Madrid) Study. Questions about the recognition of the victims of the Spanish Civil War (responses in percentages)³¹.

But it is the duty of the legislator and of the law to compensate the victims, to enshrine and protect with maximum legal vigor the right to personal and family memory as an expression of complete democratic citizenship, to nurture constitutional values and to promote the understanding of and reflection on our past in order to avoid the repetition of situations of intolerance and human rights violations such as those experienced then.”³²

Almost one year after the processing of this initiative, on October 30, 2008, the United Nations Commission on Human Rights, a body of independent experts that supervises the implementation of the International Covenant on Civil and Political Rights by the member states, after examining the fifth periodic report presented by Spain, issued, as is usual, its concluding observations. In them, there was praise for what were considered the positive aspects presented in the report, and it was specifically stated that “the Commission welcomes with satisfaction Law No. 52/2007, ‘Historical Memory Law,’ which foresaw compensation for the victims of the dictatorship.” Nevertheless, shortly thereafter, it was stated (this time, among the aspects regarded as negative) that “although note has been taken of the recent decision of the National Court of Spain to look into the question of the disappeared, the Commission is concerned by the continuing applicability of the Amnesty Law of 1977.”

Next, the Commission reminded the Spanish state of the non-applicability of statutory limitations to crimes against humanity and of the incompatibility of the amnesty laws with the International Covenant on Civil and Political Rights, as well as with other rulings of international law to which Spain subscribed. Finally, the critical comments as a whole were summed up in the following recommendation: “The member state would have to:

- a. consider the repeal of the Amnesty Law of 1977;
- b. take the legal measures necessary to guarantee recognition of the inability of national courts to apply statutory limitations to crimes against humanity;
- c. foresee the creation of a committee of independent experts charged with restoring historical truth about the human rights violations committed during the civil war and the dictatorship; and
- d. permit the families to identify and exhume the bodies of the victims and, in this case, pay reparations to the families.”³³

In October 2008, the UN Commission was unaware of the course that events were going to take with regard to “the recent decision of the National Court” to which it referred with satisfaction. Specifically, this was the famous inquiry opened by the judge Baltasar Garzón, who had decided to use his judicial authority to investigate a number of complaints lodged by private individuals and by various associations involved in recovery of historical memory. In the judicial decree of October 2008, the judge said: “The events described and recounted since July 18, 1936, besides belonging to the category of crimes against humanity, include the crime of illegal detention, without the authorities and persons responsible for contributing to the disappearance of the victims having provided the place or the keys to find the location of the bodies, a situation that persists, in

the great majority of cases, to the present day. That is, without having given information on the whereabouts of many of the detainees, so that, if the lists were provided and the bodies were found, the crime would cease to be committed.

Therefore, the point of this investigation, among other objectives, is to put an end to the commission of a permanent crime.³⁴ And the Commission could express its satisfaction because it perhaps had not examined or could not examine the significance of the fact that the Public Prosecutor's Office (Ministerio Fiscal) had given notice of appeal against the decree by which Garzón declared himself competent. Upon being rejected by the judge himself,³⁵ the appeal moved to the next-higher court, the Criminal Chamber of the National Court, which by majority shared the prosecution's opinion.³⁶ Before this decision, Judge Garzón had declined jurisdiction, deferring to the territorial courts, and the case had been closed in November.³⁷

Later, Baltasar Garzón was accused of breach of legal duty (*prevaricación*) for having allowed this lawsuit to proceed initially, and his case was taken to court for oral hearings; finally he was acquitted by the Supreme Court of Spain. This acquittal, nevertheless, did not prevent the Supreme Court from describing the "erroneous" proceeding opened by Judge Garzón and making it the ultimate judicial argument for all the principles of denial from which the Spanish process of transition to democracy arose. Proof of that can be observed in the following lines: "the fundamental idea of the 'transition,' so highly praised nationally and internationally, was to obtain a peaceful reconciliation among the Spaniards, and both the Amnesty Law and the Spanish Constitution were extremely important milestones in that historical development.

It must be recalled that the Constitution, which implemented an express repeal of various regulations, in some way mentions among them the Amnesty Law, which is logical, as it was an essential, irreplaceable, and necessary foundation for overcoming Francoism and all that Francoism meant. To pursue a peaceful 'transition' was no easy task, and what doubt is there that the Amnesty Law also represented an important indicator to the various sectors of society, so that they would accept certain steps that would have to be taken in the establishment of the new regime in a peaceful way, avoiding a violent revolution and a return to conflict. It is precisely because the 'transition' was the wish of the Spanish people, articulated in a law, that no judge or court, in any way, can question the legitimacy of such a process. This is a valid law, whose possible repeal would be exclusively the responsibility of the Parliament."³⁸

Epilogue: Neither justice nor history

Historically, societies exposed to their sins have required state-sponsored acts of contrition. In various cases in Latin America, the new democratic regimes after the end of the genocidal dictatorships hastened to create a number of "truth commissions," where the victims and survivors of the violence gave testimony. Certainly, the course taken by the events following those incidents differs from one country to another, especially with respect to the legal prosecution of the executioners, but the commissions, like the acts of contrition, were a preliminary and necessary step to combat the prevailing discourse of denial and to make it possible to fight against impunity. Little wonder, Julio Cortázar pointed out, that there was the added problem of the genocides in which the perpetrators were fellow countrymen of the victims: "When disappearance and torture are handled by people who talk like us, have the same names as ours and have gone to the same schools, share customs and gestures, come from the same soil and the same history, the abyss that opens in our own mind and in our heart is infinitely deeper than any word that attempts to describe it."³⁹

The principal questions posed in this article have to do with the apparent contradictions between the prevailing discourse about the violence, the Francoist dictatorship, or the political transition to democracy in Spain, on the one hand, and the reality of the historical facts and Spain's present, on the other. The responses to the arguments presented here rely on the discourse of denial upon which Spanish democracy is built. It is a discourse with which reference is made to various aspects of the ideal identity with which the Spanish state wishes to identify its own history and its present, and which it communicates through all the resources of broadcasting, education, and propaganda available to it. That denialist discourse also includes the individual or collective contributions of Spanish society. The harmony between the official discourse and the majority social discourse is quite remarkable, at least to the present day.

As part of that discourse of denial in Spanish democracy, an essential spot is occupied by the paradox of transforming the state itself into the defender of democracy elsewhere in the world. One of the bluntest expressions of these kinds of interventions dates back to 1983, when the Spanish Senate created a "Special Commission for Investigation of the Disappearance of Spanish Subjects in the Americas," which issued a finding describing the principal characteristics of the "repression" and energetically condemning the denial of

the right to investigate the facts by the government of the Argentine dictatorship. It was a report that was even repeated in its main conclusions in 1997, without making any allusion to the obvious comparison with what occurred in Spain, with respect to the people who disappeared and were killed and the crimes of the Franco regime in general.⁴⁰ Thus, the authorization by the principal Spanish courts of the universal principle of justice inspired by the National Court through the persons of Carlos Castresana and Baltasar Garzón did not arise at any time from deep awareness of the implications of that principle for the case of Spain, but from its simple utilization as one more sign of the vitality of Spanish democracy.

The Spanish case does not stand out because of the kind of violence employed or because of the existence of a later denial that that violence had taken place or had possessed particular characteristics. Nor is it the war that makes Spain into a different scenario of its own, because the rationale of the conflict and of the victims by the two sides probably is not a Spanish innovation in its justification or understanding of these kinds of crimes. It is the analysis of the facts and the almost uniform public discourse that are noteworthy, something that responds to an unmistakable wish of Spanish society not to confront its worst fears directly.

This attitude can be justified in political terms as an exercise in mutual concession or by invoking the success of the Transition process, but one must not ignore the direct consequences of what is implied by the fact that the executioners remain unpunished. The body of the acting gobernador civil of the province of A Coruña in 1936 continues to occupy an anonymous grave in the cemetery of San Amaro in A Coruña, almost as if his memory were aware of being a discomfort rather than a cause for democratic cohesion. When they buried him, his gravediggers left a record in writing that this was now the “ex-gobernador civil.” The body of his wife lies anonymously in a cemetery in the province of Lugo, with no more mention than a note made in the civil registry seventy years ago by her executioners themselves. But beyond that, from a historiographical rather than legal point of view, we completely lack the desire to inquire who their executioners were, what persons benefited from those deaths, who denounced those who became victims, and what path they followed later on. The question continues to be the same: Is Spanish society prepared to admit its active participation in a genocidal practice against its own people?

End Notes

1. This study is done in the context of the projects “Perpetrators, Ordinary People, and Violence during the Spanish Civil War (1936-1939): The Case of Galicia” and “Mecanismos de adaptación social en contextos de violencia estatal masiva. El caso de Galicia (1936-1939) en perspectiva comparada,” both, with Antonio Miguez Macho as lead researcher, included in the “Grupo de Referencia Competitiva: Historia agraria e política do mundo rural. Séculos XIX e XX,” lead researcher, Lourenzo Fernández Prieto. I am grateful to Dr. Daniel Feierstein and the members of the Centro de Estudios sobre Genocidio at the Universidad Nacional de Tres de Febrero (in Buenos Aires, Argentina) for suggestions regarding the ideas contained in this text.
2. By way of introduction, see Ignacio Peiró, “La consagración de la memoria: una mirada panorámica a la historiografía contemporánea,” in *Ayer*, 53, 2004, pp. 179-205; Jeffrey C. Alexander, “Toward a Theory of Cultural Trauma,” in Jeffrey C. Alexander (ed.), *Cultural Trauma and Collective Identity* (Berkeley: University of California Press, 2004), pp. 1-30; Enzo Traverso, *El pasado: instrucciones de uso. Historia, memoria, política* (Madrid: Marcial Pons, 2007); Katharine Hodgkin and Susannah Radstone (eds.), *Contested Past. The Politics of Memory* (London: Routledge, 2002); Alberto Rosa, Guglielmo Bellelli, and David Bakhurst (eds.), *Memoria colectiva e identidad nacional* (Madrid: Biblioteca Nueva, 2000); Julio Aróstegui, “Traumas colectivos y memorias generacionales: el caso de la guerra civil,” in Julio Aróstegui and François Godicheau (eds.), *Guerra Civil. Mito y memoria* (Madrid: Marcial Pons, 2006), pp. 57-94.
3. There are possible examples of this in Francisco Moreno Gómez, 1936: el genocidio franquista en Córdoba (Barcelona: Crítica, 2008), and *Fòrum per la Memòria del País Valencià, El genocidio franquista en Valencia. Las fosas silenciadas del cementerio* (Barcelona: Icaria, 2008).
4. It is impossible to cite here what has been a true historiographical flood of references, so only the seminal one will be noted: Ismael Saz, *Fascismo y franquismo* (Valencia: Universitat de València, 2004).
5. Along the lines of what is noted by Daniel Feierstein, *El genocidio como práctica social. Entre el nazismo y la experiencia argentina* (Buenos Aires: Fondo de Cultura Económica, 2007).
6. With respect to Lemkin, see William Korey, “Raphael Lemkin ‘the unofficial man,’” *Midstream*, 35: 5 (1989), pp. 45-48. The concept of genocide is presented in Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation – Analysis of Government – Proposals for Redress* (Washington, D.C.: Carnegie Endowment of International Peace, 1944).
7. There is a short review of the questions in Xavier Pons Rafols, “Revisitando a Martens: las normas básicas de humanidad en la Comisión de Derechos Humanos,” in Marina Vargas Gómez-Urrutia and Ana Salinas de Frías (eds.), *Soberanía del Estado y derecho internacional: homenaje al profesor Juan Antonio Carrillo Salcedo*, vol. 2 (Seville: Universidad de Sevilla, 2005), pp. 1095-1118. On various aspects of the development of international humanitarian law, see Christopher J. Greenwood, “Historical Development and Legal Basis,” in Dieter Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflicts*

- (New York: Oxford University Press, 1995), p. 28; also, Antonio Cassese, "The Martens Clause: Half a Loaf or Simply Pie in the Sky?" *European Journal of International Law*, 11, 2000, pp. 187–216.
8. Daniel Marc Segesser and Myriam Gessler, "Raphael Lemkin and the International Debate on the Punishment of War Crimes (1919-1948)," in Dominik J. Schaller and Jürgen Zimmerer (eds.), *The Origins of Genocide. Raphael Lemkin as a historian of mass violence* (London/New York: Routledge, 2009), pp. 9-24.
 9. William A. Schabas, *Genocide in International Law* (New York: Cambridge University Press, 2000), p. 135ff.
 10. See, among others, Leo Kuper, *Genocide: Its Political Use in the Twentieth Century* (New Haven: Yale University Press, 1981); Feierstein, *El genocidio como práctica social*; or Ben Kiernan, *Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfur* (New Haven: Yale University Press, 2007).
 11. See, for example, the studies by Xosé Manuel Núñez Seixas, *¡Fuera el invasor! Nacionalismos y movilización bélica en la Guerra Civil española, 1936-1939* (Madrid: Marcial Pons, 2006) or Francisco Sevillano, *Rojos. La representación del enemigo en la Guerra Civil* (Madrid: Alianza Editorial, 2007). An original way of approaching this extreme is found in the work of the photographer Sofia Moro, which is a collection of photos and testimonies of protagonists in the Spanish Civil War who happened to meet in time and in space but recount the events from very different points of view: Sofia Moro, *Ellos y nosotros* (Barcelona: Blume, 2006).
 12. Antonio Miguez Macho, "La destrucción de la ciudadanía y la reruralización ideológica de la sociedad. Práctica genocida, perpetradores y víctimas en el caso gallego durante la guerra civil," in Carlos Navajas Zubeldía and Diego Iturriaga Barco (eds.), *Actas del II Congreso Internacional de Historia de Nuestro Tiempo* (Logroño: Universidad de la Rioja, 2010), pp. 295-308. A recent view of these issues is found in Paul Preston, *El holocausto español. Odio y exterminio en la Guerra Civil y después* (Barcelona: Debate, 2011).
 13. A good summary of the relevance of the attributions of meaning is in Ángeles Egido León (coord.), *Memoria de la Segunda República: mito y realidad* (Madrid: Biblioteca Nueva e Centro de Investigación y Estudios Republicanos, 2006), especially in the chapter by Gabriel Jackson on the specter of communism and in the chapter by José Antonio Ferrer on the "Judeo-Masonic conspiracy." The importance of the political discourses of the far right in Acción Española for the formation of conservative opinion on these topics is discussed in Paloma González Cuevas, *Acción Española. Teología política y nacionalismo autoritario en España (1913-1936)* (Madrid: Tecnos, 1998), and José Luis Rodríguez, *La extrema derecha española en el siglo XX* (Madrid: Alianza, 1997). In the case of Germany, the face of Nazism is synthetically defined on the basis of the rejection of the Weimar Republic in Robert Gellately, *No sólo Hitler. La Alemania nazi entre la coacción y el consenso* (Barcelona: Crítica, 2002), pp. 23-53.
 14. Michel Foucault, *Genealogía del Racismo* (Buenos Aires: Altamira, 1996). See also Michel Wieviorka, *El espacio del racismo* (Barcelona: Paidós, 1992).
 15. Frank Chalk and Kurt Jonassohn, *The History and Sociology of Genocide: Analysis and Case Studies* (New Haven: Yale University Press, 1990), p. 28.
 16. These are the theories espoused by Colonel Antonio Vallejo Nájera, chief of the military psychiatric services under Franco: Antonio Vallejo Nájera, *Eugenesia de la Hispanidad y regeneración de la raza* (Burgos: Editorial Española, 1937). On the relationship between these practices and the experiments performed by the Nazis, see Michael Edwards, *A Time of Silence. Civil War and the Culture of Repression in Franco's Spain, 1936-1945* (Cambridge: Cambridge University Press, 1998).
 17. The issue of handing the children of "reds" for adoption came to public attention as a result of the documentary by Montserrat Armengou and Ricard Bellis, "Els Nens perduts del franquisme," aired in February 2002 by TV3, the Catalan public television network. A book on the same topic as the documentary was published: Richard Vinyes, Montserrat Armengou, and Ricard Bellis, *Los niños perdidos del franquismo* (Barcelona: Plaza & Janés, 2002). See also Miguel Ángel Rodríguez Arias, *El caso de los «niños perdidos» del franquismo: crimen contra la humanidad* (Valencia: Tirant lo Blanch, 2008), which supports part of the reasoning present in the decree of the judge at the Audiencia Nacional (National Court, Spain's central criminal court): Baltasar Garzón, *Auto de 18 de noviembre de 2008, Sumario (proc. ordinario) 53/2008, "Delitos contra Altos Organismos de la Nación y delito permanente de detención ilegal, sin dar razón del paradero, en el contexto de crímenes contra la Humanidad."*
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23. Gregory H. Stanton, *Ocho estadios del genocidio* (New Haven: Yale University Centre for International and Area Studies, 1998).
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Counterinsurgency and Union Movement in El Salvador (1967-1968)

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Summary: *The present paper analyzes the wave of protest led by urban workers and the teacher union in 1967 and 1968 in El Salvador, and the repressive strategies that the State implemented in response to those protests.*

Keywords: *El Salvador, counterinsurgency, unionism, social mobilisation*

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Introduction

The present paper analyzes urban worker and teacher union labor protests between 1967 and 1968 in El Salvador. It also describes the strategies that the State, the security forces, and the paramilitary organizations implemented in response to those protests. Numerous studies analyze the way in which security forces and paramilitary groups responded to the protests and popular movements, emphasizing the challenge that guerrillas had posed to the state since the mid-1970s. This paper takes issue with this perspective because, although guerrillas first arose in 1970 and became recognized in 1972, it is possible to detect a counterinsurgency structure in El Salvador as early as 1963 and a change in its function in 1967. This paper highlights the use of this counterinsurgency structure from its origins in 1963 to the protest wave that occurred from 1967 to 1968; that is, several years before the emergence of the guerrilla organizations. In this sense, the paper emphasizes the idea that the status quo was threatened by said mobilization before guerrillas decided to take up arms. This fact must be linked to the characteristics of the social and political ties between the unions and teacher organizations that led the protests.

El Salvador: The “glorious” years

In the early 1960s, the Salvadoran production system was modified significantly which produced grave social and political consequences. The international context was characterized by strong pressure towards industrialization and political liberalization. Within this context, the military that had seized power in El Salvador in 1948 implemented a break with the previous period (1932-1948), which was characterized by repressive and reactionary governments that defended the interests of the traditional oligarchy of the coffee industry.¹ The military implemented economic and political modernization measures aligned with post-second world war ideas. Their government was characterized by a certain amount of political openness. However, they continued to repress El Salvador’s citizens. Other changes were reflected in a new legal framework. The 1950 Political Constitution expanded and redefined the state’s role, allowing it to strongly intervene in the national economy. These new measures empowered the state to promote industrialization and to allocate national resources towards infrastructure.²

However, the main consequences of this turn of events become evident in the 1960s. In this decade, before the war between Honduras and El Salvador (July 1969), the MCCA (Mercado Común Centroamericano or Central American Common Market) was working at its full potential. As a result of this commercial integration, industrial and agricultural production, as well as inter-regional commercial trade, increased rapidly. This was especially evident in more developed countries of Central America, such as El Salvador and Guatemala.³ This is why the period between the mid-1950s and mid-1970s is known in this region as the “20 Glorious Years.”⁴

Successful economic integration promoted by the military resulted in meaningful economic growth. The benefits of this growth impacted each social sector differently. Thus, these benefits were concentrated mostly in the wealthiest economic classes. They also allowed the middle and working classes to rise, but they did not generate any meaningful changes for the poorest groups.⁵ The most significant industrial development in El Salvador took place between 1962 and 1966.⁶ Though the number of industrial employees was low, they were important actors in the government’s development plan. Therefore, it was fundamental to create policies for this

sector. This period was also characterized by cultural modernization, an increase in public expenditure, growth of the Salvadoran state apparatus, political openness, and decreases in state repression. This promoted middle class growth (made up by teachers, professors, professionals, technicians, and students) and also facilitated the formation of unions, confederations, and associations in this sector.⁷

Coupled with these events, electoral reform in 1963 changed the political atmosphere.⁸ This reform redefined the single-party electoral system that had been active since 1932. Many opposition parties achieved legal status and won seats in the Legislative Assembly.⁹ This promoted a period of growth for the legal political opposition until it reached its height in 1968.¹⁰ The 1960s, and particularly the presidency of Julio Rivera (1962-1967), advanced the enforcement and enactment of basic labor rights (such as the right to join a union and to constitute associations among public and urban workers). By contrast, the Labor Code, approved in 1963, strongly limited protest actions.¹¹

The installment of a counterinsurgency structure in the countryside

The rural area presented an entirely different situation than that in the cities. The rural workers did not enjoy any of the aforementioned benefits. Salaries remained low and unions were forbidden. In fact, it was in the rural area where, in 1963, the counterinsurgency infrastructure was installed. Despite the fact that it had been run and financially supported by the United States in its beginnings, the counterinsurgency infrastructure functioned in accordance with the local government goals. That is to say, it was oriented to form a social base for the pro-government party rather than to strictly follow counterinsurgency principals.

The installation of a counterinsurgency infrastructure was linked to a shift in US foreign policy towards Central America.¹² Thus, there were marked increases in the assistance and training of Salvadoran police and security forces. In addition, national security issues were deepened, including the preparation of strategies for possible counterinsurgency warfare. According to counterinsurgency guidelines, strategies should include:

1. the development of a military intelligence system;
2. the training of Central American armed forces for counterinsurgency warfare; and
3. an upgrade of available weapons and equipment.¹³

North American consultants arrived in El Salvador with those goals. While interventions by the United States in matters of internal security were common, the emphasis on using and training local agents was new. They wanted to turn local agents into efficient and collaborative forces. By doing so, consultants from the US sought to reduce marine invasions, which were frequently implemented in other Central American countries.¹⁴

Soon after, the members of the National Guard, a militarized police organization, were included in this training. The National Guard had developed strong ties with local landlords, since its function was to control the rural population. These landlords commonly supplemented the guards' modest wages through alternative forms of payment. Moreover, a command from the landlord was enough for a guard to arrest a rural worker.¹⁵ In this way, the National Guard was a public organization that provided services for private interests.

The training provided by the US gave them technical resources and methods that resulted in their increasing importance in national politics. There was an additional prestige for those in the group: they had access to military positions without having led a military career.¹⁶ They were extensively prepared and had their own study centers and training schools. They were also involved in tuition programs for Ranger trainings in Panama under United States Southern Command (SOUTHCOM) supervision. The benefits of this training program were such that "Their members had 24 months of persistent training along with civil studies so after completion they would receive a substantially higher salary than other organizations."¹⁷

A year after the United States security program started training the National Guard, the National Defense Organization (known by the Spanish initials ORDEN, which also means order) was founded.¹⁸ Although some of its members were National Guard recruits, civilians with no military experience formed ORDEN's largest group. The civilians were mostly compelled to join, and they did so because of promises of land, affordable credits, supplies, permanent jobs, and healthcare. This was the only way to escape poverty for many peasants and having the ORDEN credential would prevent them from being victims of the repressive security forces.¹⁹ ORDEN managed to form an impressive control network and it mobilized between 100,000 and 150,000 people in 1974.²⁰



Fig. 1. Opposition party PAR's Flyer (1967)²³. Source: Mexican ambassador's report. From the Mexican embassy in El Salvador. Acervo Histórico de la Secretaría de Relaciones Exteriores de México.

Although they were trained in counterinsurgency techniques, they served initially to fortify the social base of the pro-government party and the peasantry control, especially under Rivera's presidency (1962-1967).²¹ It is not a coincidence that these types of functions started amidst a context of emerging political openness and growth of opposition parties, along with the agitation and politicization of society.

This politicization responded to the possibilities opened by electoral reform in 1963. The left-wing parties' actions were an example. Although they knew it was impossible to win, they took the opportunity in the pre-electoral context to develop broad political campaigns for "education and political awareness."²² Some of these campaigns tried to appeal to the rural population as shown in Fig. 1.

ORDEN essentially served as a tool to prevent the agitation of rural workers. The politicization of the peasants was especially feared, since the inhumane working conditions in the countryside were the base of the Salvadoran oligarchy's wealth. Finally, ORDEN also secured the rural votes for the pro-government party, given that the peasants were the majority population.

The cities: the beginnings of organizational infrastructure.

As a result of the new labor laws and political openness, many worker organizations arose in the cities. Though some of these new worker organizations were independent and left-leaning, the pro-government organizations experienced the most growth. In order to increase effectiveness in their fight, the independent unions developed relationships with other similar worker organizations, creating networks. They thus established an organizational infrastructure that would later be able to sustain a determined critique of the political and economic order between 1967 and 1968.

Pro-government Unions

The military party supported a pro-government confederation -Confederación General de Sindicatos (CGS)- since 1950, favoring them over other organizations. The military party that took power in 1948 had decided to "take ideological and organic domain"²⁴ of the union movement instead of eliminating it; the latter course of action had been the most utilized strategy in previous presidencies.

Improving the working conditions in the cities was a central objective of the new developmental state project (See Fig. 2), for evidence of the kind of dialogue between the president and pro-government unions even during time of strikes). However, it was not desirable that independent and autonomous unions be the ones to achieve this outcome. These unions were willing to push for concessions through the organization of massive demonstrations and by increasing the participation of popular classes. But these methods were considered too dangerous for the government.

The dominance and heteronomy of the unions and popular classes' organizations were key parts in the authoritative, modernizing governments. They integrated the urban wage-earning sectors in a vertical and authoritative structure. They sought to construct the social base of the pro-government military party (called the Democratic Unification Revolutionary Party, PRUD, in the 1950s, and National Conciliation Party, PCN, in the 1960s). They also controlled, disciplined, and obstructed the independent organization of these sectors. To that end, the government promoted agreements with international organizations, such as the Inter-American Regional Organization of Workers and the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO). They not only advised union matters in an anticommunist way, but also financed the pro-government unions. Thus, since its beginnings in 1958 the CGS constituted a very efficient channel to add workers to the pro-government party.²⁵ This confederation continued to grow through the 1960s, reaching a critical point in 1967 when it controlled most of the unions.

The independent unions

Along with pro-government union support, there was also a constant persecution of left-wing unions and leaders. The independent strikers were discouraged. Belonging to a union that was not pro-government usually resulted in being laid off. This had severe implications considering the limited jobs available in the industry. The independent unions were centered in the Workers General Confederation of El Salvador (CGTS), which was founded in 1957. This organization went through a restructuring phase in 1965, when it changed its name to Unitary Federation of Unions of El Salvador (FUSS). FUSS was different from the pro-government unions because they were autonomous and did not receive any funding or orders from the State or any international organization, and they were not part of the official party. They also sought to overcome a corporate perspective. The wide range of their demands facilitated collaboration with other organizations, constituting a significant critique to the economic order. The autonomous nature of these organizations constituted a major challenge for the military, especially since they were trying to implement a development plan. In these kinds of projects, improving working conditions was desirable. However, the improvement was not to originate from autonomous actors, but rather in a disciplined manner and under the control of the State.

Additionally, the capacity to articulate different demands constituted a problem for the government as the military were trying to make a profound change in the relation between the State and the popular sectors. The most common answer to the demands of popular sectors, the plain repression, was replaced by a combination of repression, concessions, and co-optation of union leaders in the official party. Joining wide sectors, the independent organizations undermined the bases that the pro-government party funded through an expensive client network, and that were held together through surveillance and regular control. Thus, the government was forced to repress the sectors it was trying to co-opt.²⁷

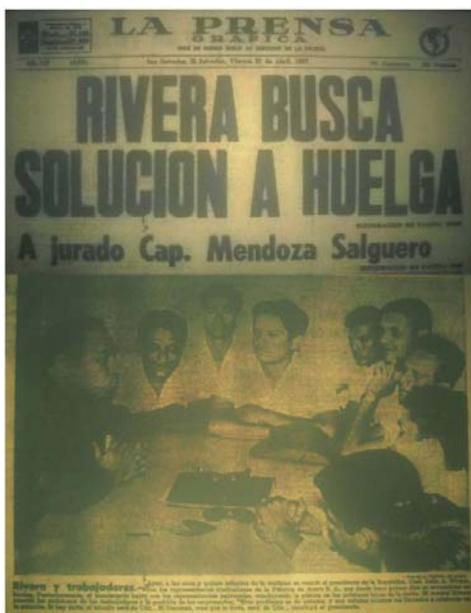


Fig. 2. La Prensa Gráfica Front Page²⁶. Source: La Prensa Gráfica, 21/04/67.

The pro-government unions (CGS), in contrast, carried out a different strategy. They looked for small improvements in labor conditions that were fully in line with the government's authoritarian development program. Thus, they agreed with the economic path that the military government established, including the idea that a good relationship between capitalists and wage-earners was possible and desirable. In light of the growth of pro-government unions, the autonomous organizations had to protect their independence and reinforce their relationship with other unions and sectors. They are the ones who constituted the organizational infrastructure created during the political opening, which encouraged and supported the protest outbreaks since 1967.

Protest outbreak (1967-1968)

Towards the end of Julio Rivera's Presidential term (1962-1967) and the beginning of Fidel Sanchez Hernandez's time in office (1967-1972), there was a series of large and successful strikes that were unprecedented in Salvadoran history.

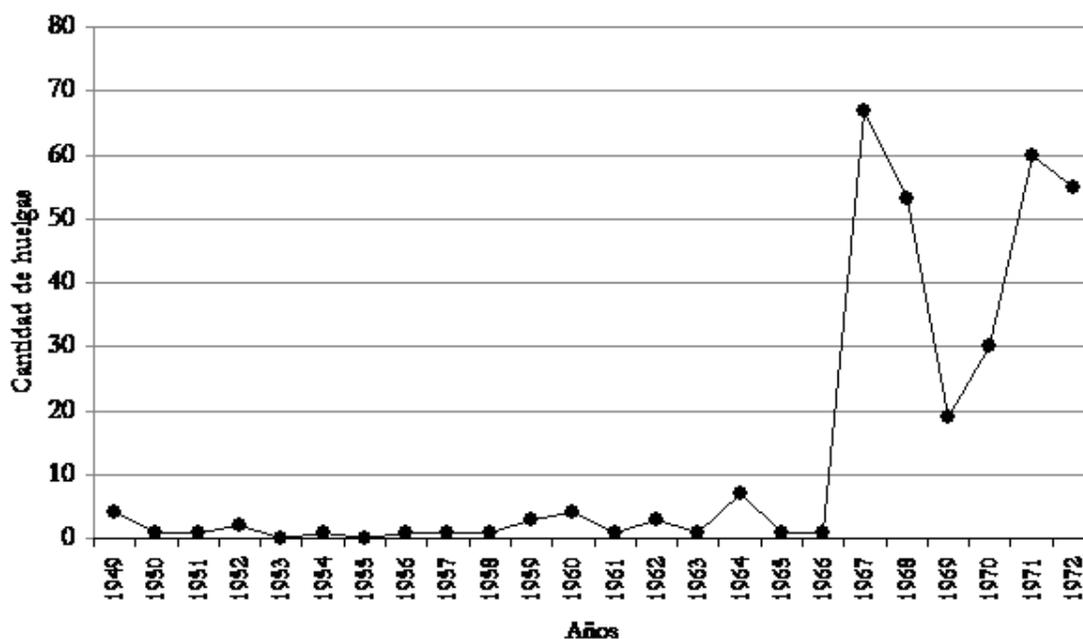


Fig. 3. Amount of Labor Strikes (1949-1972)²⁸.

The workers were aware that after the politicization that characterized the electoral campaign period, presidential weakness would occur—especially between the elections and the start of the new presidency. Therefore, the workers realized that this was the right time to put pressure on the authorities. From 1967 to 1968 several successful strikes were carried out. The protests worth noting are:

1. the urban bus driver strike in January 1967 (organized by a union allied with FUSS, whose demands resulted in salary increases and an 8-hour work shift);
2. a strike in the largest textile factory in El Salvador, called IUSA, in February 1967 (organized by a CGS union that reached an agreement after an 8 day strike);
3. the strike action of garbage collection workers in February 1967 (supported by FUSS);
4. the protest organized by the workers of Acero SA in April 1967 (an important iron and steel factory); and
5. the teachers strike that mobilized various sectors and unions in February 1968.

However, not all strikes and protests in this period were as successful as those listed above. For example, the baker's strike (September-October 1967) was organized by a union with a tradition of struggle and strong links to the Salvadoran Communist Party (PCS). Unlike the rest of the strikes of the period, this strike did not end well for the workers and it was not able to achieve its demands. In this period, such strikes were the most common strategy of the independent unions. There is no doubt that the unions' use of such tactics was possible because of the strengthening of workers' rights and the rise in union membership. The strike option was also connected to the fact that the unions were mostly formed and based in the cities, around urban working and educational areas. However, some of these strikes expanded across the entire national territory. Certain scholars point out that in addition to how pervasive these strikes were in El Salvador, they were characteristically pacific.²⁹ However, as we can see, the most important strikes of the period (as the Acero SA strike in 1967 and the teachers strike in February 1968) included disruptive actions from the workers as well as from the organization of groups in charge of the workers' defense.³⁰

It is also important to note that the demands were directed toward the executive branch and the Legislative Assembly. Mostly, they requested an increase in labor protections, or state intervention in a conflict within the private sector. This was a way to put pressure on the government so it would implement reformist policies. They also pushed for more swift recognition of the legality of strikes and broader protections against massive layoffs. This shows that the government was perceived as a legitimate interlocutor. It also shows that workers

accepted that the State could act on their behalf.³¹ These factors differentiate these strikes from those that took place at the end of the 1970s. In the latter, the increase in state repression changed the relationship between the government and the independent unions.³²

The 1967 and 1968 strikes aimed to demonstrate the contradictions in the government's actions, which were characterized by the combined use of repression and concessions, as well as by an unclear relationship with the business sector. Strikes managed to show clearly the evolving nature of the relationships between the government and workers and between the government and businesses. As for employers, they created the "Salvadoran Industrial Association" (ASI) in 1967. This shows that even though employers continued to have influence over the executive power, they considered it necessary to constitute a group to defend their interests.³³ During these strikes, the independent unions reinforced two main characteristics: their autonomy, and their capacity to articulate their influence into different sectors. These two characteristics made the unions extremely dangerous to both the government and the most powerful economic sectors. These attributes characterized the network of organizations capable of sustaining an important critique of the economic order.

The strikes of this period created a context where a new generation of political leaders learned how to use contextually novel political and organizational resources. Those who constituted the first armed organization of El Salvador, Fuerzas Populares de Liberación (Popular Forces of Liberation, or FPL), were among them. Their leader was Salvador Cayetano Carpio, who was also the General Secretary of the PCS between 1964 and 1970. While he was General Secretary he strongly defended the union's struggle and played a leading role in the most important and combative strikes (like the strike that took place in the factory Acero SA). He left the PCS in 1970 to found the FPL. This organization would later become the largest and most important one in Frente Farabundo Martí de Liberación Nacional (Farabundo Martí National Liberation Front or FMLN).³⁴

Due to their magnitude, researchers considered the 1967 and 1968 strikes to be the pinnacle in the Salvadoran union struggle, until 1977. In the mid-1970s, a new protest wave began and overshadowed the legacy of prior movements, surpassing previous outbreaks in terms of size. The analysis of the 1967-1968 strikes was almost abandoned, and instead, many researchers dedicated themselves to studying the movements of the 1970s. The similarities between the two processes were not fully analyzed and they were sometimes underestimated.³⁵

The 1967 and 1968 strikes signaled an interruption in the growth of pro-government unions³⁶ and an alliance between the independent unions.³⁷ Thus, these strikes mobilized an already-established organizational structure and marked the beginning of a new way of protesting. The relationship between different social sectors included in that structure became stronger. These strong relationships would later be a key element in the popular organizations that appeared afterwards, which were known as "mass fronts." The ability to link multiple sectors—an attribute of the unions analyzed in this paper—would be a characteristic of the mass fronts.³⁸ Union Leaders who had participated in the 1967 and 1968 strikes were among the militants who founded the mass fronts in the mid-1970s. Later they became more aligned with armed organizations. The presence of these leaders—who supported the armed struggle since the mid-1970s—modified the unions' practices, orienting their goals toward revolution.³⁹ It is worth noting that, Salvador Cayetano Carpio, the FUSC leader, was the one who founded the first Salvadoran guerrilla unit, the Popular Forces of Liberation (FPL). Melida Anaya Montes, the leader of the teachers union, was second in command of the FPL until her death.

Political agitation and a new shift in counterinsurgency

When Sanchez Hernandez assumed presidency—in a climate of social and political agitation—a shift in the counterinsurgency strategy was noted. Economic trends had changed: coffee prices were lowering, cotton production was affected by drought and pestilence, and sugar stores were piling up unsold because of the lack of external market demand. Unemployment was growing progressively and life conditions were deteriorating.⁴⁰ In addition, the MCCA had reached levels of saturation and social unrest was observed. Complex subjects such as the agrarian reform had taken an unusual space in the press and in public opinion.⁴¹

Within the context of the labor conflicts, Sanchez formed a cabinet of ministers that combined some progressive elements with strong guarantees for all the economic groups. Colonel Joaquín Saldivar, who had served as the Vice Minister of Defense during the previous term, became the leader of the labor and social security area, while General Fidel Torres, a person Sanchez trusted, handled the defense area. Days after he assumed the position, the front page of the main Salvadoran newspaper ran the headline: "[The President] alerts the police against subversion". The article said:

I encourage you to comply with your duties and to not pay attention to the subversion agents that attempt to confuse the mind. I have heard these subversion agents telling members of the security forces to stop obeying their bosses... This is an invite to break the morale of the security forces; it's a subversion technique to create chaos and take control of the country and democratic institutions⁴².

A few weeks after, an interview with the Minister of the Interior appeared in the same newspaper in an article titled "El Salvador against totalitarianism." There, he analyzed the conflicts that took place within the first semester and had ended with the Acero S.A. general strike. In the article the Minister stated that the conflicts were based on totalitarian doctrines against which they were struggling. He argued that undercover agents led the protest outbreak.⁴³ These statements regarding the communists appeared constantly in the most important Salvadoran newspapers and they preceded a set of announcements that would constitute the shift in the counterinsurgency strategy.

Sanchez Hernandez's military training afforded him more of a counterinsurgency perspective than his predecessors. This was evident through the importance given by Sanchez Hernandez to the Central American Defense Council (CONDECA), a military integration organization. Unlike Rivera, who was scarcely inclined to interfere in other countries' internal matters, Sanchez had adopted North American counterinsurgency techniques. He promoted the idea that since communism didn't recognize geographic borders, the fight against it shouldn't recognize them either. He thus supported the regional fight against communism:

The revolutionary wars and the calls to national freedom...are part of a serious warning that can't be dismissed by the Salvadoran Military...the nature of the current conflicts requires that this government supports the Central American armies' unification to act against any aggressor.⁴⁴

Another clear sign of the shift toward counterinsurgency was the empowerment of ORDEN, the organization created during the previous presidency and financed by the United States. Sanchez removed a large number of Rivera's ministers and gave important places to the main members of ORDEN. Colonel Jose Alberto Medrano stood out amongst them, most notably for his repressive actions; he would later assume the central role in the "death squadrons." Medrano also held a strong relationship with the US embassy and was trusted by the president Sánchez Hernández. He was then appointed National Guard Director. It was at this point when ORDEN extended its actions by incorporating the cities and reinforcing their repressive measures.

During this new stage of ORDEN, one of the first events that the organization participated in was the teachers' strike in February 1968. This event demonstrated that the training received at the beginning of the 1960s by the United States was more useful for these types of actions than for regular peasantry control, a function that had previously been fulfilled by ORDEN. A few months after Sanchez Hernandez took office, the teachers strike was particularly challenging due to its magnitude. It managed to mobilize different social sectors. Among them were the urban working sectors and middle class sectors (college and high school students, teachers, and professor associations). There were peasantry associations as well.⁴⁵ This widespread mobilization can be seen in the announcement published a year later (see fig. 4).

Within this context, ORDEN was in charge of the monitoring, kidnapping, and torture of the union leaders that supported teacher protests. It is important to note that the people who died due to the repression against the teachers strike were not teachers but union leaders. They were members of the independent federation of unions, FUSS, who had come to the strike to support teacher demands. This demonstrated that the most feared aspect of teacher mobilizations was their ability to garner support from multiple areas.

Another sign marking the shift in the counterinsurgency (and consequently the change in how worker protests were dealt with) was the creation of the National Security Agency (ANSESAL) in 1967. References to the communist threat had consistently appeared in the national newspapers. On August 30th, the headline of La Prensa Gráfica was: "Subversive acts will combat [the Minister of] Defense" while an article titled:

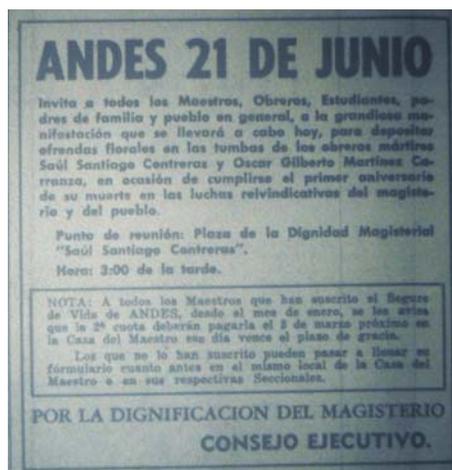


Fig. 4. Teacher's union announcement on year after union leader assassination⁴⁶. Source: La Prensa Gráfica, 1/03/1969.

“Preventative plan by military authority” asserted:

The situation in the country deserves a special discussion considering the new subversive action that constituted a threat to national sovereignty [...]. A national action plan that would reject any insurrection activity has been established.⁴⁷

The article also mentioned that CONDECA approved plans to deter communist infiltration. But the most important article that day was the one that announced the creation of the ANSESAL, the most important organization in the Salvadoran armed forces. This article, titled “Firm actions against subversion”, also affirmed that Colonel Medrano would be its director. Another article, titled “Special Organization,” detailed:

Colonel Fidel Torres announced officially that there would be a special, new organization that would counter effectively the subversive activities. The National Security Agency is run under Colonel Jose Alberto Medrano, but at the same time it will function with the joint participation of the Defense and Interior Ministry, as well as the special agents belonging to those ministries [...]. It is possible—said Minister Torres— that the OLAS agreements will intensify the preexisting problems and create new ones. The agency will have the power to compile and organize national and international information regarding subversion.⁴⁸

The structure was completed with ANSESAL and ORDEN joining together. As it was pointed out, this structure was created in 1963 in response to the counterinsurgency objectives, but was used in this way only after the 1967-1968 waves of protests.

While ORDEN was in charge of the organization of the rural population and the repression of activists, ANSESAL was a huge military network specialized in the collection, organization, and distribution of information about perceived subversion. ANSESAL was formed by military personnel and constituted an elite force that coordinated the intelligence services at a national level.⁴⁹ Even though in the mid-1970s there were more clear signs of its activity, ANSESAL was created at this time and immediately started to gather information about the insurgency activity in the country. A 1983 report shows that 1 out of every 50 Salvadorans was an ANSESAL informant: “It works as the brain of a security network and reaches every town or neighborhood in the country providing information and organizing the death squad’s functions”.⁵⁰ The effectiveness was shown by the decrease in strikes since 1968 (see fig. 3). After that, the union fighting would decrease (between 1969 and 1971).⁵¹ The teachers’ strike in 1971 resulted in a temporary reactivation of the mobilization, but it was only in 1977 that mobilization again achieved significant levels.

Conclusion

This article examines a period of Salvadoran history (1967-1968) that has not been fully analyzed. As noted earlier, most studies of union mobilization dismiss this period and focus on the mobilization that took place in the 1970s.⁵² Also, this article strives to characterize the role played by the State, marking the different responses to the mobilizations by the government. The presidencies of Rivera (1962-1967) and Sanchez Hernandez (1967-1972), which are frequently considered very similar because of their authoritative character and their contradictory political “openness,” are differentiated. As this paper tries to demonstrate, an important shift in counterinsurgency methods can be noted in the Sanchez presidency. That resulted in an empowerment of the counterinsurgency structure and an important change in the way the government dealt with social conflicts.

The article discusses three ideas that can be summarized as follows:

First, the detailed analysis of the protest outbreak in 1967 and 1968 revealed important characteristics that differentiate it from the 1970s protest wave, marked by the increase in popular agitation, the emergence of the armed organizations, and the deepening of the repression. In this article, these characteristics have been summarized in two ideas: independence of the state and powerful groups (or autonomy), and the ability to articulate different social, political, and geographic sectors. These features allowed the urban unions to sustain a serious critique against the State’s economic program and the strategy of co-optation of the official party.

Secondly, the analysis of testimonies, secondary sources, and other documents of that period, allows us to order chronologically the evolution of the counterinsurgency structure. Two different moments were defined: the first phase (between 1963 and 1967) was characterized by the installment of the

counterinsurgent infrastructure provided by the United States. Even though it was created by the US, it responded to local objectives that were different from the North American counterinsurgent standpoint.

The second phase (between 1967 and 1972) was marked by emphasis on eliminating political agitation. In this sense, this moment began the state's counterinsurgency efforts. This is evident when the importance of the information about a growing subversion that prompted the creation of ANSESAL. It was also evident when they intended to provide the anticommunism struggle using a regional body, the Central American defense organization (CONDECA), instead of instead of a national one. Researchers who have analyzed the political repression during the period prior to insurgency operations in 1972 seem to accept that the presence of counterinsurgent infrastructure was created because the guerilla's threat was imminent. However, documents and academic works written before 1972 note that in this period Salvadoran people mostly believed that there was no possibility for the presence of guerrillas in the country because of the existence of a strong repressive system in such a small territory.⁵³

In this respect, this paper contributes insight into the debate surrounding the role played by the United States in the counterinsurgent struggle in Central America. Thus, it is worth repeating that although the United States definitely influenced the characteristics of the counterinsurgent structure in its beginnings, it did not wholly define how this structure functioned once it was implemented. In contrast, the counterinsurgent structure was aimed at resolving obstacles to economic modernization that were defined by a new generation of Salvadoran military. Among those obstacles was the organizational network of middle and working class sectors that had risen since the political opening in 1962. Therefore, the counterinsurgent structure aimed to destroy and reconstruct certain social relationships that threatened the status quo, although they had not yet opted for armed fighting. This is how the government tried to reorganize the social groups to be more favorable to the new economic model.⁵⁴

Finally, this paper attempts to demonstrate the different counterinsurgent measures that were available to neutralize and eventually eliminate social mobilization as it was by the end of the 1960s. Although legal unions supported the social mobilization (we should remember that until 1972 most of the armed groups had not been created yet and the few that were functioning were not important), this mobilization placed the political regime in a place of danger. This happened because, despite the political openness, this regime was based on deep political and economic exclusion. What made the unions dangerous was not their adhesion to communism, but the way they sustained critiques of the economic model. This modality is characterized by its independence (or autonomy) and its ability to group together (or articulate) different social sectors. Although the militants from the Salvadoran Communist Party participated effectively in these organizations, the members of the mobilized sectors were more numerous than the members of this party. It was the breadth and variety of support that enacted a change regarding previous political practices. It also constituted a serious warning to the military governments and an unavoidable record for the mass fronts that would appear later.

End Notes

1. For interesting nuances and details on this topic, see Ching, E., Lopez Bernal, C. y Tilley, V., *Las masas, la matanza y el martinato en El Salvador* (San Salvador: UCA Editores, 2007).
2. Turcios, R., *Autoritarismo y modernización El Salvador 1950-1960* (San Salvador: Dirección de Publicaciones e Impresos, 2003).
3. Guerra Borges, A., *La Integración de América Latina y El Caribe* (México: Instituto de Investigaciones Económicas, UNAM, 1997).
4. The interregional commerce was 3.3% of the exports in the 5 countries in 1950. In 1968, it was over 25%. Central American Gross National Product increased at an annual rate of 6.2% between 1961 and 1968 (Rouquie, A., *Guerras y paz en América Central*, México: Fondo de Cultura Económica, 1994). The industrial investments doubled between 1962 and 1967 (Lizano, E. "El proceso de integración económica" en Torres Rivas (coord.) *Centroamérica*, hoy. México: Editorial Siglo XXI, 1975).
5. Rouquie, A. *Guerras y paz*.
6. Menjívar, R. *Formación y lucha del proletariado salvadoreño* (Costa Rica: EDUCA, 1982).
7. Rouquie, A. *Guerras y paz*.
8. The 1963 electoral reform signaled the change of the traditional electoral system, where the winning party of each department took all the places in the Legislative Assembly. The reform instituted a proportional system that eventually allowed access to non-ruling parties, as shown in the table below.

Legislative assembly	1950	1952	1954	1956	1958	1960	1961	1964	1966	1968	1970
Official party (PRUD/PCN)	100%	100%	100%	100%	100%	100%	100%	62%	60%	52%	65%
Christian democracy (PDC) (most important opposition party)								27%	29%	37%	31%
Other parties (PAR, PPS, others)								12%	12%	12%	4%

9. Baloyra, E., *El Salvador en transición* (El Salvador: UCA Editores, 1984).
10. Between 1964 and 1968 the non-ruling parties' places were more numerous than the pro-government parties. (Rojas Bolaños, "La política", en Perez Brignoli, H., *Historia General de Centroamérica. De la posguerra a la crisis (1945-1979)* [Tomo V] (Madrid: FLACSO, 2003).
11. According to Cayetano Carpio, who was a referent on labor confederations and also the General Secretary of the Communist Party (PCS) between 1964 to 1970, "The management sector...took the opportunity that the Labor Code from 1963 gave and inserted regulations that made impossible to legally make use of the constitutional right to strike in El Salvador; no strike could be legal according to the Code". Carpio, S., *La huelga general obrera de abril* (San Salvador: Editorial Farabundo Martí, 1980).
12. The Cuban situation had the greatest impact at that moment; particularly the declaration provided by Fidel Castro in December 1961 about the socialist orientation of the revolution.
13. Dunkerley, *The Long War: Dictatorship and Revolution in El Salvador* (Londres: Junction Books, 1983).
14. Years later (1966) Robert McNamara explained the reasons for this change: the difficulties in the external relationships were caused by an open intervention along with the local forces' knowledge about geographic and psychological aspects. Also, the training costs were reduced if we compare a Central American soldier with a North American one. According to Dunkerley's calculation in 1983, a Salvadoran's training cost 10 times less than that a North American's.
15. For an extended analysis of the initial phase of the National Guard and other repressive organizations in the beginning of the 20th century, see Alvarenga, P., *Cultura y ética de la violencia: El Salvador, 1880-1932* (San Salvador: Dirección de Publicaciones e Impresos, 2006).
16. Gordon Rapoport, S., *Crisis política y guerra en El Salvador* (México: Editorial Siglo XXI, 1989).
17. Chávez Velasco, W., *Lo que no conté sobre los presidentes militares* (San Salvador: Índole Editores, 2006), p.121.
18. Gordon Rapoport, S., *Crisis política y guerra*.
19. Dunkerley, *The Long War*.
20. Vilas, C., *Mercado, Estados y revoluciones. Centroamérica 1950-1990* (México: Universidad Nacional Autónoma de México, 1994).
21. For a testimony of the relationship between ORDEN and peasantry population, see López Vigil M., *Don Lito de El Salvador: habla un campesino* (San Salvador: UCA Editores, 1987).
22. Valle, V., *Siembra de vientos. El Salvador 1960-1969* (San Salvador: Centro de Investigación y Acción Social: 1993), p.18.
23. The PAR (Renewal Action Party) was founded in 1948 by right-wing leaders and occupied in 1965 by left-wing leaders that included communist militants. It was the first one to propose and discuss the agricultural reform, ending the taboo on this matter that had been in place since the massacre of 1932. PAR was aware that they had no chances to win but they use the 1967 campaign as an opportunity to promote their proposals.
24. Menjívar, *Formación y lucha*.
25. Gordon Rapoport, *Crisis política y guerra*.
26. The cover reads: "Rivera looks for a solution to the strike." The picture shows President Rivera having a caring conversation with the union representatives, 5 days before one of these sectors organized a progressive strike. Newspaper: *La Prensa Gráfica*, 21/04/1967.
27. The military that supported this authoritarian and developmental program believed that the formation of a broad social base along with the companies' support would allow them to undermine the power of the oligarchy. They later wanted to maintain El Salvador in the agro-export stage. When the autonomous unions started to compete successfully for the social base the government plans and measures became more difficult to implement.
28. Almeida, P., *Waves of protest: popular struggle in El Salvador, 1925-2005* (Minneapolis: University of Minnesota Press, 2008).
29. The registry shows 971 events occurred between 1967 and 1972 where 30% were strikes, 21% were requests, 17% were protests and 3% were the occupations of buildings. (Almeida, P, *Waves of protest*). Also see Gordon, *Crisis política y guerra*.
30. For example: "Comisión de Garroteros" (big stick commission) described by Carpio, *La huelga general*.
31. Almeida, *Waves of protest*.
32. Pirker, K., "Radicalización política y movilización social en El Salvador: los frentes de masas" en Molinari, Lucrecia (ed.),

- Observatorio Latinoamericano, Dossier El Salvador [on line] vol. 9., noviembre de 2012. [Access 15/11/12] <http://iealcsociales.uba.ar/publicaciones/observatorio-latinoamericano/>.
33. See description of ASI's actions in Carpio's chronicle (Carpio, S., La huelga general).
 34. In October 10th, 1980 the 5 groups, PCS, FPL, ERP (Popular Revolutionary Army), RN (National Resistance) and PRTC (Central American Revolutionary Party of Workers) combined to create FMLN.
 35. Some of the most important studies of the 1970s mobilizations published at that time were Álvarez Solís, A., M. López Vigil y J. Morales, *El Salvador: la larga marcha del pueblo (1932-1982)* (Madrid: Editorial Revolución, 1982), Lungo, M., *La lucha de masas en El Salvador* (San Salvador: UCA Editores, 1987), Menéndez Rodríguez M., *El Salvador: Pueblo contra oligarquía* (México: Universidad Autónoma de Sinaloa, 1981) y Menjívar, *Formación y lucha*.
 36. The supremacy of the pro-government unions was reversed in 1967. By 1971 this group had only 42% of the unions, and this was further reduced to 19% in 1976. Dunkerley, *The Long War*.
 37. Comisión Organizadora de Brigadas Obreras, *El movimiento obrero en El Salvador, 1920-1977* [document], s.l., agosto de 1977)
 38. The mass fronts developed a strong connection to the guerrillas by the end of the 1970s. They became very important to the survival of the revolutionary organizations. For an analysis of the Mass fronts, see Pirker, K. *La redefinición de lo posible: Militancia política y movilización social en El Salvador (1970-2004)*. Unpublished doctoral thesis, Universidad Nacional Autónoma de México, Colegio de Estudios Latinoamericanos, México, 2008.
 39. Pirker, *Radicalización política*.
 40. Webre, S., *José Napoleón Duarte y el Partido Demócrata Cristiano en la política salvadoreña, 1960-1972* (San Salvador: UCA, 1985).
 41. Ramírez Fuentes, J., *El discurso anticomunista de las derechas y el Estado como antecedente de la Guerra Civil en El Salvador (1967-1972)*. Unpublished thesis, Universidad de El Salvador, Facultad de Ciencias y Humanidades, El Salvador, 2008.
 42. Newspaper *La Prensa Gráfica*, 7/7/1967
 43. Newspaper *La Prensa Gráfica*, 22/8/1967
 44. Quoted by Monteforte Toledo, M., *Centro América: subdesarrollo y dependencia* (México: Instituto de Investigaciones Sociales, Universidad Nacional Autónoma de México, 1972), p.192.
 45. Gordon Rapoport, *Crisis política y guerra*.
 46. "ANDES June, 21st is inviting all teachers, workers, students, parents, and the public to a protest that will be performed today to lay flowers on the workers Saul Santiago Contreras and Oscar Gilberto Martinez Carranza's graves considering it's been one year since their deaths fighting for the people." Location: Plaza de la Dignidad Magisterial 'Saul Santiago Contreras'...'For Teachers dignity.' *La Prensa Gráfica*, 1/03/1969.
 47. Newspaper *La Prensa Gráfica*, "Preventive plan by Military Authority", 30/08/1967.
 48. Ibid.
 49. Siegel, D. y Hackel, J., "El Salvador: la nueva visita de la contrainsurgencia", en Klare, M. y Kornbluh, P. (coords.) *Contrainsurgencia, proinsurgencia y antiterrorismo* (Buenos Aires: Editorial Grijalbo, 1990).
 50. Torres Rivas, E., "Centroamérica: Guerra, transición y democracia". *Revista Iztapalapa*. vol. 2, núm. 20, 1990, p.58.
 51. See the description of the union scene provided during the falling stage by Carpio, S., *Las corrientes sindicales en El Salvador*. *Revista La Universidad*, Revista bimestral de la Universidad de El Salvador, núm. 6, 1969.
 52. Álvarez Solís, López Vigil y Morales, *El Salvador: la larga marcha*; Lungo, *La lucha de masas*; Menéndez Rodríguez, *El Salvador: Pueblo contra oligarquía*; y Menjívar, *Formación y lucha*.
 53. A very clear example is White, A., *El Salvador*, (San Salvador: UCA Editores, 2001) and Anaya Montes, M., *La segunda gran batalla de ANDES 21 de Junio* (San Salvador: Editorial Universitaria de El Salvador, 1972).
 54. This type of goals is analyzed by Feierstein, D., *El genocidio como práctica social: entre el nazismo y la experiencia argentina* (Buenos Aires: Fondo de Cultura Económica, 2007). See especially his concept of 'reorganizational genocide'.

Narrative Strategies of Post-Genocide Argentine Filmmaking: The Decade of the 1980s

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Summary: *This work is part of a broader study. This article analyzes Argentine films about the genocide perpetrated by the country's last military dictatorship (1976-1983). The focus is on the films produced during the 1980s, specifically those made between 1984 and 1989. Generally these films have been analyzed from an aesthetic perspective, or else from a chronological standpoint that connects their historical context to the design aspects of individual films, their mise-en-scène. Central to this latter approach has been what is termed a prevailing "theory of the two demons". This approach is generally valid, however this article posits that in their narrative strategies— that is, their plots, ideas, and stories— Argentinean films from the late-1980s present a wealth of elements that exceed such narrow theorizing, in the process enabling comparisons and contrasts with other studies of the country's genocide.*

Keywords: *Argentina, films, representations of genocide, narrative strategies.*

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Introduction

Film does not exist on the periphery of its time. Today, it observes and passes judgment on the course of world events. In the social sciences, film has become a valid tool for studying society.¹ According to Robert Rosenstone,² a leading scholar working on the relation of history and film and who wonders what can be known and understood historically in cinema, there are many questions concerning cinematic depictions of the genocide perpetrated by Argentina's military dictatorship between 1976 and 1983. Like Rosenstone, this author perceives films as documenting and circulating understandings of, and therefore judging, the world of the past. Though the business of cinematic analysis can be approached in different ways, this article will concentrate primarily on cinematic narrative. More specifically, this article will appropriate an analytic model suggested by one of the most important studies of the relationship linking film to the genocide of the Jews, Annette Insdorf's *Indelible Shadows*. Like Insdorf, though with reference to films about Argentina's last dictatorship, filmmakers' narrative strategies expressed in a variety of films from the 1980s will be considered, paying special attention to the recurrence in them of specific visual motifs and narrative themes.³

Cinematic production of the later 1980s has been pushed into the background of critical analysis in recent years; partly as the result of the rise of a certain view according to which films produced in the early years of Argentinean democracy remain overly indebted to what has been termed the 'theory of the two demons'.⁴ In other words, it has become commonplace to view cinema of this period as ambivalent in its moral equation of the crimes of the state with efforts to resist the dictatorship.⁵ Though many criticisms of these films can be (and have been) made with respect to their avoidance of politics and flawed presentation of the victims of violence,⁶ this article will address the successes of these films.

Thus, I propose departing from the more usual 'two-demons' view in order to obtain critical distance sufficient to buttress a more nuanced and substantial account of late-1980s Argentinean cinema. In Argentina, it is well known that the Unión Cívica Radical⁷ government generated the 'theory of the two demons' in order to explain political violence during the preceding years of dictatorship in a manner intended to forestall potentially catastrophic demands for retribution, and certainly this view penetrated many works of art, including films.⁸ Nevertheless, it must be remembered that all films appropriate social discourses and then supplement and alter them using the vast array of narrative conventions and formal techniques available to their makers. In accordance with the possibilities inherent in the medium, film writes history, questions it, and re-presents it.⁹ But as Rosenstone asks "what historical reality do these films re-construct? What meanings do these historical realities hold for us?"¹⁰

Some Explanations Regarding Analytical Strategies

In the chronological framework of the Argentine genocide developed by Daniel Feierstein,¹¹ ‘symbolic enactment’ occurs last, and manifests itself in struggles over memory, trials, denials, and ways of working through trauma. Clearly, filmmaking and the particular cinematic works discussed in this article contributed to these symbolic processes. Yet it remains important to think about the many levels of social development or dysfunction in a post-genocide society, and to identify what the effects of genocide were in the past and are in the present. If what Feierstein terms a “reorganizing genocide”¹² seeks a transformation in social relations, we must look at how these new relations are portrayed. In the case of filmmaking, as Claudia Gilman, author of *Entre la Pluma y el Fusil*, has argued, the Argentinean dictatorship served to terminate the film experiences produced between 1960 and 1970. In the dictatorship’s wake these experiences could not be repeated, not only because the filmmakers disappeared or were exiled, but also because of changes in modes of film production and in the use of political films.¹³ The films of Fernando Pino Solanas are emblematic in this regard. Upon returning to Argentina from exile in 1983, Solanas threw himself into making fiction films under the democracy (¹⁴), but he did not return to political-documentary filmmaking until relatively recently, early in the twenty-first century. Likewise the turn toward neoliberalism begun under the dictatorship (1976-1983) brought with it substantial changes in political and economic practices, as well as in social relations. On a more micro level, the dictatorship’s promotion of an atmosphere of distrust among citizens seemed to be one of the most effective ways to close off cooperative or friendly social relations. It was not possible under such conditions to build a critical or anti-establishment consensus, or to marshal a broadly collective dissenting political will, leaving self-exile, such as Solanas chose, one of the few viable political options left open to people individually. The terror and fear omnipresent during genocide does not vanish and is not overcome when the regime responsible for it ceases to be. Fear not only paralyzes, it also produces debilitating and enduring uncertainty. Art in general, and film in particular, is one of the available ways of exorcising this fear, of coping with the past, and of achieving some kind of catharsis.¹⁵

Just as Jordi Balló has developed an account of cinematic visual motifs in his book *Imágenes del Silencio*, this analysis approaches narrative motifs not just as story elements and elements of style but as a means of coordinating and grouping different film texts. These motifs, in their repetition and evolution within individual works and distribution across works of cinema, do more than just tell; they also show something. Three motifs are of particular concern here: (1) the camp; (2) killers and their accomplices; and (3) victims. This analysis of these motifs, which does not claim to include all the films produced in the relevant period, nevertheless allows for the comparison of several films which, taken together, reveal a great deal about atrocity’s post-memory and lingering effects.

“The camp”

Though ‘the camp’ was an essential part of the methodology of the kidnapping-torture-disappearance-death process employed by the Argentinean junta, there are actually very few films with plots set in these carceral spaces. Sometimes the camps are mentioned, and at other times they are filmed from the outside, but rarely are their interiors revealed. One possible reason for this absence has to do with the fact that, unlike with the Holocaust, where there is abundant visual material documenting the specifics of concentration camps both during and immediately after their operation, in the case of Argentina there is none. No visual or cinematic record of the camps and detention centers used during the dictatorship exists. The images that have reached us come from the time when these sites were already destroyed or else were being used for other purposes. Consequently, much of what we imagine regarding incarceration by the military regime derives from other modes of representation such as the oral testimony of perpetrators and survivors.

The term ‘the camp’ is used here in discussion of representations of the Argentinean dictatorship to refer to a disciplinary technique, a device for social indoctrination. Surviving the camp is shown by filmmakers to be part of the logic of spreading and proliferating the horrors of the repressive state, as is seen, for example, in my subsequent discussion of the freeing of Pablo Díaz in *La noche de los lapices* (Héctor Olivera, 1986), or in the threat to have the protagonist Sixten witness a torture session in *Los dueños del silencio* (Carlos Lemos, 1987), a scene that is similarly depicted in Alberto Fischerman’s *Los Días de Junio* (1985).

‘The camp’ represents the site of the cancelation of identity, perception, and mobility; it is the place in which “the most absolute *conditio inhumana*”¹⁶ is realized. ‘The camp’ is at the heart of what Giorgio Agamben terms a ‘state of exception’, a zone of profound vulnerability and exposure to violence wherein there

is no distinction between exterior and interior, exception and rule. In turn, within the camp there arises a new and extraordinary logic, complete with its own lexicon and 'rituals'. The population of Argentina's camps, in addition to persons who were kidnapped and disappeared, was comprised of perpetrator groups known as *patotas* (gangs) or *grupos de tareas* (task force), groups that carried out torture. Due to their physical proximity to the world existing 'on the other side of the wall', these camps were only able to exist in "a society that chose not to see, because of its own powerlessness, a society that had disappeared, as crushed as the kidnapped persons themselves."¹⁷ Let us recall the words uttered by Argentinean writer Osvaldo Bayer as he is walking through the streets of his neighborhood in Carlos Echeverría's documentary film *Cuarantena* (1984). While watching some children playing on the sidewalk, Bayer observes that behind the quiet facades of the surrounding buildings, "we have forgotten that the worst also occurred there: crimes, shouts, kidnappings, terror, and indifference".

Given the lack of actual images of the Argentine camps, the spectator who has not been exposed to any direct visual references to camp space can only imagine it. In Argentinean atrocity cinema this imagining is evoked through three different means or strategies: through images of absence; the depiction of actions inside 'the camp'; or the metaphorical evocation of 'the camp'. For example, in the section of Rodolfo Kuhn's documentary *Todo es Ausencia* (1984) devoted to Hebe de Bonafini, she and the viewers survey the remains of La Cacha, a concentration camp located near Olmos Prison where one of Bonafini's sons spent more than two years. The camera pans the area and we see only ruins, empty buildings, clumps of grass and groves, in an exercise of visual free association that encourages comparison with Alain Resnais' use of color footage in his landmark Holocaust documentary *Night and Fog* (1955). The title of Kuhn's documentary (*Everything is Absence*) is consistent with what Bonafini shows us: absence and remnants; the remains of La Cacha are silent witnesses to the torture and death that occurred there.

The flawed *La Noche de los Lápices*, Héctor Olivera's 1986 dramatization of a nonfictional account of events comprising the so-called 'Night of the pencils', during which seven students were abducted after protesting a rise in bus fares in the city of La Plata, was the first film, and for a period of ten years the only film, to shoot a great part of its dramatic action in the interior of a re-created camp. Thus it enables viewers to observe the state's methods of torture and confinement almost in their totality,¹⁸ from kidnapping through to liberation, at least in the case of protagonist Pablo Díaz, who, unlike his less fortunate companions, was transferred to legal detention and later released. This film clearly develops an account of the logic of 'the camp': we observe the wiping out of individual identity, and also the constraints placed on detainees' perception and mobility; the young people are blindfolded and immobilized, semi-naked and dirty. The 'initiation' through torture is also seen in this film. The violence of the act itself does not become entirely explicit, but viewers do see the *parrilla*¹⁹ as well preparation of an electric cattle prod, and are shown the experts in torture who get to decide whether the prisoners will live or die. One of the torturers says: "You're going to live if I want you to, do you get it?" Meanwhile, the authorities bring in a friend of Pablo's to make him 'betray' information about his companion. Trails of smoke rising at exactly the moment when Pablo enters the camp serves to emphasize the feeling that the place is gloomy and hellish. Inside, the people who have been kidnapped meet kind and evil guards, are visited by a priest, and then are taken to a partially mock execution where a kidnapped *Montonero* is shot. Although the appropriation of babies is not a topic that the film deals with in depth, one of the girls depicted is pregnant, and we are given to understand that when she gives birth she will be 'transferred' and her baby taken from her. Inside 'the camp', in spite of the brutalization that has been brought about, the young people, especially Pablo, manage to establish mutually supportive relationships, primarily relating to food. There is even talk of the future of Pablo and Claudia, contrary to the wishes of the former, and this is shown to every day functioning as a means of resistance and personal (if imagined) escape from the rigors of incarceration. The wide circulation of Olivera's film and its use in schools and universities allowed large audiences for the first time to witness state abuses in its camp system from inside. Along the way, the film helped to establish the conventions and iconography used in subsequent representations of the concentration camp during Argentina's genocide.

In Carlos Lemos' 1987 *Los Dueños del Silencio*, 'the camp' signifies primarily as a disciplinary mechanism. The film's protagonist, Sixten, is a Swedish journalist who has come to Argentina to investigate the disappearance of a woman who is a citizen of Sweden. Loosely inspired by the Hagelin case,²⁰ Sixten pretends to be a businessman and manages to obtain an introduction to a group with a list of the names of disappeared persons which, using Sixten as an intermediary, they intend to deliver to Swedish authorities. The group includes the father of the Swedish girl, as well as a priest. Running parallel to Sixten's quest, a blond

military man identified as the Captain in charge of 'the School', a clear reference to ESMA (the Navy School of Mechanics that was used as a well-known concentration camp), suspects that the arrival of this foreign businessman is a front. He sets about determining Sixten's real identity, and eventually follows and kidnaps him. Once in 'the School', the Captain shows the facilities to Sixten: not much of 'the camp' is seen, only offices and a few bedrooms, one of which, empty, contains a parrilla. There the Captain shows him an electric prod and teaches him about the procedures used to forcibly extract information. Sixten watches and recognizes the Captain's veiled threat. Nevertheless, Sixten manages to obtain the list of names and prepares to leave the country. At this point, he is abducted to 'the School', and there led to a room in which several persons are shackled and blindfolded, including a girl belonging to the resistance group with which Sixten has had contact. The Captain demands the list; Sixten claims to know nothing about it. The girl is then taken to be tortured and Sixten is forced to witness it. The film cuts to a task group searching the hotel where the Swede is staying and shows them finding the list. Sixten returns to his country, and because of his confession about the lists, the entire group collapses. In this way Lemos shows his viewers how the camp functions as a disciplinary mechanism. The terror it elicits is increased not only through its impositions on victims' bodies but also on the demands it places on people's minds, on its exploitation of fragile psychologies. When Sixten is forced to witness the torture session he has been degraded on both a tangible level and a symbolic level.

Juan Carlos Desanzo's *Los Días de Junio, En Retirada* (1984) and Rodolfo Kuhn's *El Señor Galíndez* (1984), offer us similar cinematographic interpretations of Argentinean camps. In *Los Días de Junio*, friends are blindfolded when taken to a detention center. On the one hand, the friends 'confess' to each other about their inaction against the dictatorship; on the other, sharing this extreme situation sustains their friendship. When they realize that there is nobody else in 'the camp', that the task group responsible for bringing them and beating them is not there either, they then try to escape. The friends soon realize that the site has been abandoned, and that it lies right in the midst of the city, indeed next to the bookstore belonging to one of the friends. In this way, *Los Días de Junio* informs us of the close proximity of these camps to the goings on of everyday city life.

El Señor Galíndez, based on a play by Eduardo Pavlovsky,²¹ can be read as a diptych, a companion piece to another film made by Kuhn, the documentary *Todo en Ausencia* in which relatives of the disappeared discuss their feelings about what has happened. Pavlovsky's text was set on 15 January 1973, and made a clear allusion to the previous dictatorship, conducted by General Agustín Lanusse, after the *Proceso de Reorganización Nacional*.²² The language in the text takes on a euphemistic nuance, and that was Kuhn's intent. The carceral space in question lies in the basement of a large house in the middle of nowhere. The house is lost in the middle of a forest, and two torturers come to work there. When Galíndez notifies them by phone that they will soon have to begin their brutal work, Kuhn utilizes a technique described by Pavlovsky as follows: "the setting was transformed from an ordinary room into a torture area".²³ That is, in its audiovisual staging, in a more metaphorical form, Kuhn recreates the torture chamber as a clear allusion to the lexicon of genocide: the torture chamber becomes a real *quirófano*, an operating room.

A similar staging inspires Juan Carlos Desanzo's 1984 crime drama *En Retirada*. In the film, *El Oso* (The Bear, played by Rodolfo Ranni),²⁴ a member (ex-member?) of a task group that during the fall of the regime must "be guarded", returns to his village where he reencounters an old girlfriend. Days later, he sees her with another man. He later breaks into her house, removes a mattress from a bed in the bedroom, strips the woman, and ties her to the bed, thus creating a parrilla in the everyday setting of a home where the windows face outward. The bedroom of a family home is thus cinematically transformed into 'a camp'. *El Oso* continues on with the process: he beats his ex-girlfriend, turns on the radio, and breaks a table lamp to use as a cattle prod, thereby forcing her to talk. Then he heads to the mechanic's workshop where the supposed lover works and shoots him at point-blank range. In this way *En Retirada* suggests to us that the methods of terror function even outside of space of 'the camp'.

In Luis Puenzo's award-winning *La Historia Oficial* (1985), 'the camp' is not present in images, nor may it be found in metaphorical allusions. Instead, 'the camp' appears in the story of Ana. The film, which takes place in the final months of the military regime, puts into images and words the situation of the survivors. In one sequence, Ana, a woman just returned from exile, tells her friend Alicia about the operation in her house, then about the taunts and tortures suffered in the camp, about what was done to the pregnant women.²⁵ Although the dialogue occurs while the friends are drinking alcohol, the delivery of Ana's story approaches the giving of testimony. Facing Ana, Alicia only asks her whether she made the corresponding denunciation. This scene, therefore, shows us two suggestive elements: first, the the survivor's problem, which include a lack

of people who want to listen to them, and disbelief of their story; second, the evocation of 'the camp' and the methods of genocide through the words of Ana.

In Carlos Echeverría's documentary *Juan, Como si Nada Hubiera Sucedido* (1987), a documentary about Juan Herman, the only abducted in the Patagonian city of Bariloche, the appearance of 'the camp' is presented in a similar way, through attention to the spoken word. Echeverría uses the stories of various witnesses as the basis for creating visual images; in this way, starting from the present, the camera travels to the places where Juan himself went, showing us how the city of Bariloche (and indeed the entire country) continued its daily life while concurrently on the streets there was kidnapping and murder. Even though the film's coverage of the trial in the Herman case does not contribute enough knowledge about Juan's fate, a documentary report is given by Miguel Ángel D'Agostino, a survivor of the concentration camp known as El Atlético.²⁶ It is in Miguel's narrative that 'the camp' appears; he tells viewers the details of daily life in 'the camp' and also relates what became of Juan. Utilizing a technique similar to that employed in *Bariloche*, while D'Agostino speaks we see images of a controlled-access highway and the remains of the place where El Atlético operated. In a similar way to *Todo es Ausencia* and *La Historia Oficial*, the story serves us as a substitute, that is, as a means for imagining 'the camp'. The images of the debris, the remains, added to the stories of the people bearing witness, offer us a way to channel our imagination so that we realize what occurred in those ruins; thus the highway ceases to be a mere highway, as does the abandoned structure.

Killers/Complices

What causes and leads a government to engage in genocidal practices? How is a policy of extermination made viable and normalized? How, in the words of Lifton and Markusen,²⁷ is a genocidal mentality brought about? Insight into the answers to these questions may be found in Miguel Pérez's documentary *La República Perdida II* (1986), which develops an account of the genocidal ideology asserted in the National Security Doctrine.²⁸ Likewise, Jorge Denti's film *Malvinas: Historia de Traiciones* (1984) not only analyzes the military conflict between Argentina and Britain in the South Atlantic, but considers it a continuation of the genocidal practices and social and economic reorganization of the country more generally.

Thus the conformation to the genocidal mentality is found in numerous players among the perpetrators. *La República Perdida II* takes pains to provide images of the ideologues: the military leadership of the first two Military Juntas, as well as establishment figures from the Argentine rural and financial sectors. Fictional cinematic works, however, tend to present other types of perpetrator: the bureaucrats and the executing arm, "the arm that obeys a voice that thinks."²⁹ It is a hierarchy under which the lower one descends, the closer one comes to a crime involving bloodshed.

Systematic extermination requires not only experts in death but also other kinds of specialists, such as doctors, many of whom may be counted among the perpetrators. The personality of these specialists also can be thought of in terms of their propensity for "amoral reasoning": their tendency toward rational calculation and a preoccupation with efficiency, which in turn eclipses all subjective and ethical concerns. Argentinean films made in the 1980s have revealed, in a way that is unmatched, the complexity of the perpetrator, allowing us to see (and think about) the different kinds of perpetrators. Lifton argues that that genocide is changed into an absolute form of murder in the name of healing³⁰. At the same time, the psyche of the perpetrator has been conditioned by language, thanks to the use of euphemisms, as well as by the splitting of the personality, not into two identities but "into two functioning wholes, so that a part-self acts as an entire self."³¹

In the film adaptation of *El Señor Galíndez*, the action not only takes place in 'the camp', in the operating room, but also in the home of Beto, one of the torturers. The perpetrator's 'split personality' proposed by Lifton gains a richer meaning in this film, for Beto has a family, a wife and a child. We see that he is concerned about his daughter's health and education; clearly he is an affectionate father. He even phones from 'the camp' itself to make sure everything is all right at home, asking to speak to his daughter so that he can say goodnight to her. Euphemism is used in a recurring way by the torturers; they speak of "parcels" and of "the job" they must do. Beto and Pepe, the other torturer, clearly belong to the lower part of the hierarchy of perpetrators. The calls of Galíndez—whom we neither see nor hear, we only know that he calls on the phone—function as the voice that thinks, with the pair of torturers serving as the arm that obeys. Even though both express certain doubts regarding their task, periodically the voice urges them to fulfill their mission, thus reaffirming the importance of the task to be performed. Eduardo is the new man who has come to complete his education and join the team; he claims to have read all Galíndez's manuals and mentions, looking at the camera, "the enormous effort of vocation that our profession involves. Only with faith and will can one achieve the mental

adaptation necessary for the success of our task; faith and skill are key for a group of men privileged with an exceptional mission.” Here the amoral reasoning of the torturers is captured both in dialogue and in the actions performed by the actors. It is clear that their amorality does not merely reveal them to be obedient lackeys; on the contrary, the revelation of their split personality helps us to understand the way perpetrators manage to protect themselves psychologically. In other words, perpetrators are more than simply blindly obedient. Beto and Pepe are aware of the power they possess and the purpose for which they use it: “you have to think that for each job well done, thousands are left paralyzed by fear”, they tell Eduardo— a very clear allusion to fear as a technique, a method to achieve a result.

Similarly, they are convinced of the public service they offer, based on one of Galíndez’s manuals: “the values of society must be preserved, the homeland, the family, and property”. Another interesting dialogue between the two specialists concerns their job future: Beto is studying accounting, with a view to other work horizons, since he has “a family to support”. He senses that the work they are currently dedicated to will not last forever; on the other hand, Pepe suspects that, given the important social function they are performing, they will never leave this job. Certain scenarios that will be returned to later by other films are suggested here: on one hand, the ‘unemployed workforce’, as will be seen in *En Retirada*; on the other, Beto’s foresight in “expanding his work horizon” is something we see in the appearance of an airline pilot who was also a pilot on the death flights.³² Thus, *El Señor Galíndez* exhibits certain elements of the psychology of the perpetrator: the torturer as worker and as expert, even as bureaucrat.³³ Similarly, the filmmaker exhibits part of what Helen Fein called the ‘universe of obligation’, “the circle of individuals with reciprocal obligations to protect each other whose bonds arise from their relation to a deity or sacred source of authority”.³⁴

As mentioned previously, *La Noche de Los Lápices* was the first film to locate its action inside a ‘camp’. This film exposes methods of genocide and thereby exposes the killers. Not only is the task-group that kidnaps presented to the viewer, but also a group of torturers and their behavior. Simultaneously, there is a judge who orders and conducts the questioning; thus a part of the descriptions of modern genocide is on show: a division of labor that is likened, to a lesser degree, to the scale of industrial production. Also as part of the generic structure of the film— elements which will be addressed infra— the perpetrators here are described as being absolutely evil, verging on sadism, which deprives this film of the psychological complexity displayed in Kuhn’s movie.

En Retirada presents us with various suggestive elements for analyzing the perpetrator. This film locates its action in the final months of dictatorship, the task groups have been urgently requested “to protect themselves”: now it is the turn of democracy, says Arturo to El Oso; thus the film tells us of El Oso’s plans to retire. The film proposes two possible options for these withdrawals, first, the route taken by Arturo, who now runs a pawn shop, suggesting that the business of the perpetrators is based on the objects of value taken as spoils during the operations. Arturo is also El Oso’s boss, leaving us to wonder whether he is a mere civilian or someone who also belongs to the security forces. Despite everything, he is higher ranked within the security forces than El Oso. After the dictatorship ends, Arturo is now a businessman. In turn, El Oso, who is recognized by a man as the person who kidnapped and tortured his son, is located lower on the hierarchy of the perpetrators: he is the hand that obeys the orders. Thus El Oso is unable to leave the past behind. If Beto in *El Señor Galíndez* had a split personality, an amoral way of reasoning, El Oso repeats his work philosophy in his daily life, as mentioned above when discussing the narrative strategy of the camp. Despite the warnings from his boss, El Oso cannot go into retirement. He is unemployed, he no longer wants money, and yet there is only one thing he knows how to do. Thus, as an act of rebellion, El Oso tries to sell his story to the press, but the press does not want stories, it wants images, faces. At the same time, El Oso does not know that his peers are watching him, with their actions culminating in his murder in pursuit of preserving the pact of silence.

“You want me to talk? You want to have the scoop? Is this an interrogation?” These are some of the words exclaimed by the former Colonel, now Brigadier General (retired), Castelli in Juan, *Como si Nada Hubiera Sucedido*. This military man, among the many interviewed for this documentary, claims that he doesn’t know the fate of Juan Herman, despite having been a member of the top military authority in the zone in which Herman was abducted during the dictatorship.³⁵ Nevertheless, in front of the cameras he denies all knowledge of the case. Even though the film can neither penetrate nor break the pact of silence, it manages to put into images the face of one of the perpetrators, who was in charge of the military zone to which Bariloche belonged. Juan thus presents us with the face of the military hierarchy during this era; and lest we see only a man in ordinary clothes while he gives his testimony, we see at the same time photographs in which he is dressed in uniform or in fatigues. It is worth remembering that this man was part of Operation Independence.³⁶

The same is true of Colonel Zárraga, the principal figure in the political repression in Bariloche during the years of 1976 and 1977, who headed all the security forces in the zone. In the interview of this colonel, two types of testimonies follow: the first, in which he answers by using a rather rigid vocabulary and even a rigid posture, he asserts that the Herman case “was a surprise, because it was the only incident whereby the investigations yielded negative results... I can't give details because I don't know them. I don't know the father.” The statements clearly reflect the pact of silence. In turn, when Zárraga thinks that the camera has been turned off and Esteban Buch, the journalist who made the investigation, is asking him about the reasons for the kidnapping, he alleges that it could have been another force or possibly “the people themselves where he was put”. He also states that he knew the young man, since Dr. Herman (Juan's father) was well known in Bariloche, and also that he was informed of the case while at a party with Colonel Castelli. Yet he also asserts that “no other type of operation was carried out in Bariloche, therefore, thank God, I am not on any list”. Thus we are witnesses to the colonel's contradictions, as the camera manages to weaken the perpetrators' pact of silence.

If in *La Noche de Los Lápices* the perpetrators were presented to us as evil beings, in *Los Dueños del Silencio* the torturers are shown from a similar perspective as the torturers in *El Señor Galíndez*, that is, as human beings. In *Los Dueños del Silencio*, the Captain, too, has a family, and he is presented to us as an affectionate father, concerned about his daughter's birthday party. Even though the Captain participates in the operations and the kidnappings, and is the one who kills a Swedish teenager on the street, both he and his second-in-command are not presented to us as “monsters”, but as people pursuing a political plan. Just at the end of the film, when archival images are used to condemn the amnesty laws of 1986 and 1987, we see the Captain on horseback, in slow motion, next to two women, a clear metaphor for ‘freedom’. This ‘freedom’, which in truth we ought to call impunity, is also demonstrated in the way in which the character's psychology of *El Oso* develops in *En Retirada*.

Genocide, like every other crime, has complex causes and provides a host of benefits for perpetrators. Therefore, analyzing genocidal practices in film plots entails delving into these issues as well. Genocide requires, besides executioners, planning, tools, mechanisms of subjugation, and especially accomplices;³⁷ people who do not get their hands dirty and nevertheless are the ones who contribute to developing the genocidal mentality: intellectuals, economists, lawyers, journalists. How do we see the figure of the accomplice in the corpus of films dealt with here?

In *Toda es Ausencia* (Rodolfo Kuh, 1984) the camera accompanies Marta,³⁸ one of the protagonists and a Mother of Plaza de Mayo (an anti-government civil society group), to a church. She refers to the impassioned speeches and homilies of Monsignor Victorio Bonamin, the military bishop, and of Miguel Medina, the vicar general of the Army. Marta does not speak to the camera; she talks to a Spanish priest, and she supports, and denounces, the Church as an accomplice in genocide: “I don't mean the Church, but rather the ecclesiastical hierarchy of the priests and nuns, complicit in every aspect of the dictatorship.” Coming from a Catholic and conservative family, Marta expresses her disappointment with the Catholic Church in Argentina, and tells how, in Rome, Cardinal Primatesta was unwilling to receive her because he did not want her to involve him in the complaints and to be associated with her. Similarly, Archbishop Pio Laghi said to her: “either they're very tortured and the military is not going to release them, or they're dead”.

As images of the Argentine ecclesiastical hierarchy and the members of the military junta follow one another on the screen, Marta says, “so, the genocide is not being carried out from night to morning, and they alone (...) it's the society, the Church (...) all those who could do something for my husband, did nothing.” With great sadness, Marta asks the priest what to do so that she can accept all this. She speaks out against the Catholic inmates who were in the concentration camps, saw how people were tortured, and were silent: “this complicity of the Church is terrible.” In the scene where Alicia, the protagonist, talks to a priest in *La Historia Oficial*, we see a similar situation. There she demands that he tells the truth about her adopted daughter; a truth that he already knows, as he is familiar with her daughter's origin, but does not want to talk about. The visit of a priest to the camp in *La Noche de Los Lápices* is not a minor effort involving a complex labyrinth of complicity, nor are the facts stated and presented in images in *La República Perdida II* regarding a sector of the Church headed by Monsignor Victorio Bonamin, who says, “the coup was an act of providence and, as time passes, it will be seen that it was a work of God”. It is this same film, also, that presents the financial sectors and the Argentine rural society as accomplices.

In *La Noche de Los Lápices*, we also see Claudia's mother attempting to find information about her missing daughter, file the appropriate report with law enforcement, and being turned down by the police commissioner. The mother asks to speak with a bishop, who refuses to receive her and also claims to have

forgotten the favors done him by Claudia's father in past years. Finally, it is the monsignor's secretary who receives her and tells her "that she should accept it with Christian resignation", and that she will not see her daughter again.

Yet we must not think of the accomplices as being exclusively in the ecclesiastical hierarchy. In *La Historia Oficial* a new kind of accomplice is introduced: the businessman. In this film this figure is embodied in Alicia's husband, Roberto. During the film, Roberto's own father, in a scene where they share a family lunch in a noticeably tense atmosphere, accuses his son of being an accomplice: "the whole country went downhill, only the bastards, the thieves, the accomplices, and my oldest son moved up". In exchange, Roberto asserts that what his parents said is "anarchist crap. They want to make me feel guilty because I'm not a loser." At that same lunch, Enrique, Roberto's brother, takes exception to the 'war' to which Roberto alludes, asserting that the costs are going to be paid by "kids like mine (...) by not eating and not being able to study. What are you going to pay!" Roberto's complicity does not end with the support from the economic sector, which he represents. Roberto has contacts with a general, and it is with this general that Roberto does business. Roberto is one of those who have benefited from the genocide, Roberto is an indirect perpetrator, and it is thanks to his contacts that he brings Gaby, his little daughter, home one day. The character of Roberto personifies the backing and the complicity of certain sectors of civil society with the armed forces in carrying out the genocide. In this way, in the seizure of that infant, Roberto is transformed into an accomplice and performer of genocide, putting into practice one of the aspects theorized by Raphael Lemkin at the time the genocide was conceived of and planned: destruction of identity and imposition of a new identity.³⁹

In the character of Barbieris in *Juan, Como si Nada Hubiera Sucedido*, we see the support of certain financial and industrial sectors that become complicit in the genocide. Barbieris, owner of a travel agency, held the position of quartermaster during the military intervention. The economic elite of Bariloche, chiefly concentrated in tourism, were a fervent supporter of military governments. Economic and political interests are brought together in the Association of Hotels and Travel Agents (of which Barbieris was president) and in the Chamber of Commerce and Industry. The government always favored these associations (and this means during the different dictatorships) at the times of involvement of unions, above all the gastronomic workers' union. Esteban, the investigator of the documentary, confirms that Barbieris never showed solidarity with the Herman family. In fact he rejected the Herman family, in a straight cut, during the interview. We see photographs of Barbieris as quartermaster, hand in hand with Colonel Castelli.⁴⁰ The circle closes: the inhabitants of Bariloche preferred tourism to knowing what happened to one of their sons.

Victims

The debates with respect to the representation of victims, especially in the 1980s, have been addressed from different points of view. The criticisms were based on the depoliticizing of the victims' identities and also on the spreading of the 'theory of the two demons', as mentioned in the introduction to this article. Therefore, the present narrative strategy will be divided into two parts. The principle of 'reorganizing genocide'⁴¹ seeks not only to exterminate bodies but also to remodel social relations by means of terror, destroying all possibility of independent and anti-establishment relations, and establish a hierarchical society that is ideological, religious and cultural. Political and social activists, intellectuals, and trade unionists were systematically persecuted and murdered for the purpose of dissolving past experiences by exterminating the individuals who personified critical, anti-establishment, and supportive caring social relations. There also was an attempt to use terror and annihilation to end those relations as a whole.

One of the theories this author has presented elsewhere⁴² has to do with films that begin either with the extermination phase already in progress or evolving at a later date. Thus, many of the film productions put aside economic, political, and social processes and conflicts, not only those of the 1970s, but those of the previous decade as well. In considering this mode of emplotment, we see that the focus is placed primarily on repression. However, we can find some films such as *La Noche de Los Lápices* or *Sentimientos: Mirta de Liniers a Estambul* (Jorge Coscia and Guillermo Saura, 1987), that begin the story during the last months of the Peronist government. The former focuses on the campaign of the high school students for a secondary school bus pass. The latter focuses on the atmosphere that existed at the university, due both to political activism and to the first signs of persecution inside the lecture halls. On the same theme, *La República Perdida II* begins with the death of General Juan D. Perón, establishing with his demise the end of an era.

Despite the criticism regarding the political identity of the victims, I argue that re-politicization rather than de-politicization evolves in the films plots. That is, the treatment of the political or activist identity of the

victims produces a new politicization, the result of the new political practices ensuing from the practice of genocide. In the various films chosen here for analysis, the political aspect, and the site of political practice in general were toned down. The students in *La Noche de Los Lápices* belong to UES, the Union of Secondary School Students, and to Guevarist Youth as well.⁴³ We observe, in these films, the campaign for the secondary-school bus pass, the literacy efforts by the young people and their attempts to set up canteens and do grassroots organization. Pablo Díaz, one of the protagonists and the only survivor of his group, himself hands out flyers about Che Guevara in the slum. Likewise, from the posters of Eva Perón⁴⁴ that some of them have in their rooms, we can infer their backing of the Peronist Movement and even, given the way in which her standing was restored by the Montoneros,⁴⁵ their agreement with that group.

In *Todo es Ausencia*, Marta Bettini tells us about her son, Marcelo, who “consistently carried out the celebrated social doctrine of the Church. They shared with the poor. My children, like so many students at Marist schools, were sacrificed in those days for their faith, for their conviction that they were doing what they ought to do. What we were not capable of doing. We admired them for that commitment.” The commitment referred to by Marta centers on social work and political activism in the slums. In that same film, Hebe de Bonafini⁴⁶ talks about the activism of her disappeared children. There, she says, “when my son [Jorge] was 16, he asked me the first question: Mama, what is it that we have to give? From that moment on, I started to see other things. My children got involved in activism, and there were many needs.” In Jeanine Meerapfel’s *La Amiga* (1988), a film about the inception of the Mothers of Plaza de Mayo, María’s son is kidnapped in the slum where he was an activist. The father of Juan Herman, in *Juan, Como si Nada Hubiera Sucedido*, states that his disappeared son “was interested in social problems, was concerned, and would have liked to solve them if it was in his hands. At the university, he probably was active in the movements that were seeking greater social justice. He went to slums and saw things with his own eyes. He didn’t want to stay with the newspapers; he wanted to see for himself. And always from the perspective that defended the rights of the ordinary people and the possibility that people might have a better life.” The father’s words are complemented by the testimony of Eduardo, a school friend of Juan’s; he confirms that “after Perón’s return, there started to be factions with a new ideological direction, and at that moment both Juan and I felt a sense of identification with what the JP [Peronist Youth] was”.

Some of the changes in social relations among the friends in *Los Días de Junio* have already been mentioned above. Turning to the victim as narrative strategy, in this film a brief mention is made of the Peronist affinities of one of the characters, and also of the socialism linked with the figure of Alfredo Palacios.⁴⁷ Nevertheless, when the flag that symbolizes their friendship is prepared, it has a five-pointed star at its center. Even though it refers to the fact that at that time there were five friends, this star also evokes the star of the ERP, the leftwing People’s Revolutionary Army.

Criticisms, Outcomes and Conclusions

Analyzing the films produced immediately after the perpetration of genocide has its difficulties because of the immediacy to the event and the short time to elaborate, both in a social and artistic way, the consequences of the genocide. There have been important academic works about this topic; however, in this article, an analysis has been attempted, very concisely, of the first productions from the perspective of the genocide studies.

Let us dwell for a few moments on the case of the Holocaust, which took several years to be brought to the ‘big screen.’ Even though the first films about the Nazi concentration camps were made primarily after the war ended (although some had been produced even during the war), movies such as *Ostatni Etap* (Wanda Jakubowska, 1948) or *The Search* (Fred Zinnemann, 1948) develop their stories without mentioning the Holocaust. The former, filmed in Auschwitz, tells the stories of a group of Polish women in the camp, among whom Jewish women were the majority of the prisoners; the latter tells the story of a boy who has been liberated from a camp and, with a soldier’s help, is looking for his family. These two examples illustrate the difficulty of expressing through cinematography a process of genocide in the moments following the end of the extermination. This example conveys the limitations and contributions of the cinema to the process of coming to terms with the events of genocide or mass atrocity, and to the debate about these recent pasts. That is why we must distinguish between the production of the film and the uses and distribution of these films. In a recent interview included with the DVD edition of *La Noche de Los Lápices*, Héctor Olivera, the director, states that what motivated him to make the film was not his familiarity to the topic; rather, while reading the book by the same name, he noted that there was material for a film. He says it was his “product instinct” that

inspired him. At the same time, this film has been used in different schools and educational establishments for didactic purposes that may be different from the purposes the director had in mind. That is, the way a film is circulated, used, and adapted can often differ from the intentions of its creator; thus different interpretations arise each time and at each place. As Peter Burke⁴⁸ states, before studying the film as a document, you have to study the director.

Regarding the form in which the 'theory of the two demons' was presented, an examination of the way in which it was presented is warranted, since there are several points of view to keep in mind when this interpretation is put forward. The 'theory of the two demons', as an attempt to explain the facts, has two foundations: first, the decrees of the democratically elected President Raúl Alfonsín, who promoted criminal prosecution of the upper echelons of the anti-government armed groups along with the leadership of the armed forces; and second, the prologue of *Nunca Más*, the final report of the CONADEP (National Commission on the Disappeared Persons) truth commission that equated left-wing violence with right-wing violence. In both cases, the left and right are equally demonized and society is positioned as an innocent victim overwhelmed by these two demons.

This interpretation can be considered in various ways. In the case of filmmaking, we see very good 'good guys' and very bad 'bad guys' (especially evident in *La Noche de Los Lápicos*). Olivera's instinct is illustrated by certain dramatic codes; that is, in order for the drama to gather strength, one of the basic rules of screenwriting is to consider the character of the protagonists. This principle is used as a means for achieving emotive effect, in order for the viewers to identify with the young characters. The same principle can be attributed to *La Historia Oficial* where the melodramatic form is adopted. These features are due to the fact that film does not show us history in a macro form and with the aim of historical 'objectivity', but by means of the avatars of individuals, men or women, who "are made to seem important because they have been singled out by the camera and appear before us in such a large image on the screen".⁴⁹ Personification, which also motivates identification on the part of the filmgoer, is converted into a device for dealing with more general problems; in the resolution of the individual problem, the historical problem is resolved. Given that a film cannot reveal historical totality, what do certain personifications enable us to tell and show about historical processes? Many of the dramatizations of the characters and their ways of speaking and acting arise more from the diegetic mode of the cinema, the story-world created by each film, than from an intention to reproduce the past with accuracy.

Returning to the analysis relative to the depoliticization of identities, there are various elements to consider. In the 'theory of the two demons', as presented in the documents quoted, and the 'innocent victims' and the society unaware of the facts, a 'demon of the left' was established. Historically, the left-wing armed organizations have no place in the stories of the films analyzed above. Instead to make more complex the activism of the 1970s, the films portray the activism by telling about the work in slums or referring to particular demands such as the campaign for the student bus pass. The closing of an era is clear in the case of film; by not referring to the immediate past, the stories are completely de-historicized, declining all mention of social, national, and continental struggles. In many films, such as *Los Días de Junio*, references to the past are cast as 'illusions', the illusions that used to exist. That is, political plans and social movements are reduced to simple 'illusions' and utopias.

In conclusion, in 1980s Argentine cinema, filmmakers present us with a wide range of actors - perpetrators, accomplices, and victims - allowing us to study various ways of understanding the recent past in a post-genocidal society. With many of these films produced more than twenty years ago, the films analyzed here can be regarded as documents of the early years of the democracy and the climate of that time, or as clear efforts to deal with the recent past. Thus, there is no film that has an unambiguous story. The films in this group form a mosaic, and it is in their association, and their distinctiveness, that we can study the practice of genocide. Clearly, the production of films, the practice of art, also has responsibilities; outside of the motivations that each director may have for pursuing a certain film project, s/he is not relieved of responsibility for the narrative that is placed in circulation: "all filmmakers, or almost all, make their movies thinking that an audience will see and accept them (...); put differently, the filmmaker is necessarily aware of his inclusion in society and of the responsibility that this entails."⁵⁰

One could think that many of the films crafted during this era were positioned in the political correctness of their time, without questioning the 'official' readings referring to the 'innocent victims', while others, perhaps more in the documentary style, take positions against this, seeking to redeem a militant activism and a political plan. Let us recall that behind the production of a film there are a great many interests and

motivations in play; nevertheless, the films presented here recorded different aesthetics and modalities that later would be continued, responded to, or refuted in subsequent productions.

As well as the criticisms that have been made, we must remember that a film is never a comprehensive reiteration of the past; a motion picture is an interpretation, a condensation, an approximation as well as an evocation. The 'silver screen' can only suggest what happened. Therefore, the principles mentioned above must always be kept in mind in the analytic task. That is why, when studying film productions, one must understand them not only as a consumer product or a work of art. Movies are also, according to Peter Burke, only partly historical documents, and as such they always must be compared and contrasted with other sources. The historical film, or period drama, must become part of the body of knowledge of the subject, must be discussed along with other pre-existing texts, and must also generate controversies with the aim of inspiring new inquiries. As Marc Ferro has noted,⁵¹ we know that film can be a valuable "revealing agent", making various areas of reality visible on the screen, even some areas that the director himself does not see or is unaware of— hence the need to compare and contrast film with other sources and social theories. In that sense, this article has attempted to add strength to such an overview.

End Notes

1. Classical authors, like Marc Ferro or Pierre Sorlin, have studied the historical film. However, from a sociological perspective, all kinds of movies, as a product of a symbolic and social imaginary, can be studied.
2. Robert Rosenstone, *El pasado en imágenes* (Barcelona: Ariel, 1997).
3. Annette Insdorf, *Indelible Shadows: Film and the Holocaust* (Cambridge: Cambridge University Press, 2002).
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.
5. Mariana Amieva, Gabriela Arreseygor, Raúl Finkel, and Samanta Salvatori, "Cine y memoria (1983-2006)," in Sandra Raggio and Samanta Salvatori, eds., *La última dictadura militar en Argentina* (Rosario: Homo Sapiens, 2009).
6. Federico Lorenz, "Tomala vos, dámela a mí," *La noche de los lápices: el deber de memoria y las escuelas*, in Elizabeth Jelin and Federico Lorenz, eds., *Educación y memoria. La escuela elabora el pasado* (Madrid: Siglo XXI, 2004).
7. Founded in 1891, the Radical Civic Union is one of the oldest Argentinean political parties. In 1916 it won the first presidential elections with universal suffrage under one of its celebrated leaders, Hipólito Yrigoyen. In October 1983, the party won the presidential election with the formula Raúl Alfonsín - Victor Martínez.
8. The prologue to *Nunca Más*, attributed to Ernesto Sábato, states that "to the crimes of the terrorists, the Armed Forces replied with a terrorism infinitely worse than the one being fought against (...). As for the society, the idea of vulnerability was taking root, the dark fear that anybody, however innocent he might be, could fall into that endless witch-hunt." Conadep, *Nunca Más* (Buenos Aires: Eudeba, 1984).
9. Films also signify, by virtue of the uses made of them, in light of the specifics of their distribution and reception, as for example with the 'pedagogical' work done by Gillo Pontecorvo's *La battaglia di Algeri* (1966) in Argentine military schools.
10. Rosenstone, *El pasado*, p. 46.
11. Daniel Feierstein, *El genocidio como práctica social* (Buenos Aires: FCE, 2007).
12. "The reorganizing genocide operates towards the interior of a society already constituted, a preexisting nation-state, and it seeks to refund social relations, the links, codes, daily life and the political mediations, in sum the concrete exercising of power in said society." Feierstein, *ibid.*, p. 100.
13. For "use" I mean the use of film as political space for discussion and debate. In short, film serves as a revolutionary tool.
14. The premiere in 1984 of Solanas' film *Los hijos de Fierro*—filmed in 1975—did not signify the comeback of the Grupo Cine Liberación. The Grupo Cine Liberación (Liberation Film Group) was an Argentinean film movement founded during the 1960's by Fernando Pino Solanas, Ocatvio Getino and Gerardo Vallejo. The Group intervened in political debates of the period and published a series of articles about the 'third cinema' and cinema and the revolution, among others. It was linked with Peronist left, and its most famous work is the film "*La hora de los hornos*" (The Hour of the furnaces).
15. Lev Vygotsky, *Psicología del arte* (Buenos Aires: Siglo XXI, 2003).
16. Giorgio Agamben, "¿Qué es un campo?" in *Medios sin fin* (Valencia: Pre Textos, 2001).
17. Pilar Calveiro, *Poder y desaparición* (Buenos Aires: Colihue, 1998), p. 147. [author's translation]
18. In the recent film *Garage Olimpo* (Marco Bechis, 1999), a reconstruction of the 'death flights' may be seen rendered in images.
19. A traditional Argentine grill used for cooking meat. In the lexicon of the perpetrators, *parrilla* refers to the metal table on which the detainees were laid out to be tortured. Feitlowitz, *A lexicon of terror. Argentina and the legacies of tortures* (New York: Oxford University Press), p.57.

20. Dagmar Hagelin was an Argentine-Swedish teenager who was kidnapped by a task group commanded by Alfredo Astiz and then taken to ESMA. Her case had international consequences. To this day, the young woman continues to be among the disappeared.
21. Pavlovsky is an important playwright, actor and Argentine psychiatrist; he is the creator of the psychodrama in Latin America.
22. The National Reorganization Process was the name used by its leaders for the military dictatorship that ruled Argentina from 1976 to 1983. It is suggestive to declare in the group's own name the reorganization intentions of the leaders; moreover their objective wasn't to transform a particular group but the entire nation.
23. Eduardo Pavlovsky, *El teatro de Eduardo Pavlovsky. El Señor Galíndez y Pablo* (Buenos Aires: Ediciones búsqueda, 1986).
24. The repressors and the concentration camp personnel used to use animal names as nicknames.
25. It is important to remark that the actress who interpreted Ana is Chunchuna Villafaña. In 1976, after the coup, Villafaña was threatened and went to exile with her husband, the director Pino Solanas. La historia oficial was her first movie made after her comeback.
26. El Atlético (The Athletics) was a center of detention and torture that operated in the city of Buenos Aires. This center operated from mid-1976 until December 1977. In late 1979 the building was demolished to construct a highway.
27. Robert Lifton and Eric Markusen, *The Genocidal Mentality* (New York: Basic Books, 1990).
28. The National Security Doctrine was a strategy prepared by the United States government for Latin America during the Cold War. It focused on identifying and destroying internal 'enemies' as part of the struggle against communism.
29. Yves Ternon, *El estado criminal. Los genocidios en el siglo XX* (Barcelona: Peninsula, 1995), p. 121.
30. Robert Lifton, *The Nazi Doctors* (New York: Basic Books, 2000), p. 491.
31. Robert Lifton, *idem*, p. 418.
32. On the Poch case, see *Página/12* for September 24, 2009, <http://www.pagina12.com.ar/diario/elpais/1-132314-2009-09-24.html>.
33. Years later, in Garage Olimpo, the workers at the camp clock out when they finish their work hours.
34. Helen Fein, cited in Zygmunt Bauman, *Modernidad y Holocausto* (Madrid: Sequitur, 1997), p. 49.
35. During the last dictatorship, Argentina was divided in five military zones. Every zone was under the mandate of an Army Corps.
36. This operative was carried out in 1975, during the democratic government of Isabel Perón, in order to repress the ERP (Ejército Revolucionario del Pueblo) in the Argentinean northern province of Tucumán.
37. Ternon, *El estado criminal*.
38. Between 1976 and 1977, Marta Bettini suffered the kidnapping of her mother, her husband, her son and her son-in-law.
39. Raphael Lemkin, *El dominio del Eje en la Europa ocupada* (Buenos Aires: Prometeo-Eduntref, 2009).
40. Another film by Carlos Echeverría, *Pacto de silencio* (2004), centered on the case of the former Nazi Erich Priebke, shows us, in archival film images, ceremonies and events at which Barbieris, Castelli and Priebke embrace each other.
41. Feierstein, *El genocidio*.
42. Lior Zylberman, 'El desaparecido en el Nuevo Cine Argentino', paper presented at the Second International Conference Analysis of Genocidal Social Practices, Buenos Aires, 2007.
43. A youth movement inspired by the ideas of Ernesto Che Guevara.
44. Eva Perón or 'Evita', was the second wife of Argentine president Juan Domingo Perón. She spread the Peronist ideals through her work in the Eva Perón Foundation during the first government of his husband (1946-1952). She died at the age of 33 in 1952.
45. Montoneros was a Peronist armed political group, active in the 1970s, that outnumbered other political organizations.
46. Hebe de Bonafini is the President of the Association of Mothers of Plaza de Mayo.
47. Alfredo Palacios (1880-1965) was an Argentine socialist politician. In 1904 he was elected in the Parliament, becoming the first socialist in the Argentine Congress and in the Americas. Palacios helped create many laws regulating working hours and others benefits for workers.
48. Rosenstone, *El pasado*, p. 50.
49. Jacques Aumont, *Las teorías de los cineastas* (Barcelona: Paidós, 2004), pp. 115-116.
50. Ferro, *Historia contemporánea*.

Genocide on Trial: Case Note and Extracts of “Circuito Camps” Judgment¹

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Note: Since 2006, several Argentine courts have tried the crimes committed during the 1976 dictatorship. While in most countries these crimes are usually tried by International Tribunals or by Mixed Jurisdiction Tribunals, in Argentina national courts have been responsible of this task. We will analyze a judgment that considers that these crimes entail the commission of the crime of Genocide.

The public trial for crimes committed during the civilian-military dictatorship in Argentina (1976-1983) in the network of clandestine detention, torture and extermination centers (“clandestine centers”) known as the “Camps Circuit” began on September 12, 2011. The trial was conducted by Federal Criminal Oral Court No. 1 of La Plata, composed of Judges Mario Portela and Roberto Falcone and presided over by Judge Carlos Rozanski. After hearings lasting over a year, the judgment was read out before a packed courtroom on December 19, 2012, and the reasoning of the judgment were made known on March 25, 2013.

Although the existence of genocide in Argentina had been recognized in several previous judgments,² this was the first case in which the offenses were described as genocide at the unanimous request of the prosecution and the various complainants. In the words of the Court’s judgment: “Whereas the conduct of the accused, being clearly intended to exterminate a national group, entails the commission of the International Crime of Genocide (as defined by Article 2 a, b, c and e of the Convention on the Prevention and Punishment of the Crime of Genocide, which was ratified by Decree 6,286, in accordance with Art. 118 of the Constitution), a sentence for that offense is appropriate in each case. Notwithstanding the foregoing, by majority, in order not to violate the principle of congruence because the defendants were not investigated for this crime, which was only introduced in the allegations, it is appropriate to apply the categories of crimes and the penalties provided for in domestic law, all of which constitute crimes against humanity, with the full Court in agreement with the latter categorization” (p. 1746)³.

Since the reopening of trials for dictatorship-era human rights violations in 2003, other rulings had already acknowledged that these crimes were committed “in the context of genocide”. The decision of the Federal Criminal Oral Court No. 1 of La Plata agreed with the petitions of the complainants and the prosecution. According to the Court, crimes of genocide took place because they were committed against a national group, and due to the systematic crimes of homicide, illegal deprivation of liberty, aggravated torture, abduction, detention and hiding of minors and the falsification of their identities, each of which was proven at the trial.

Judgment was delivered for crimes committed in the network of clandestine centers known as the “Camps Circuit”, named by the survivors after the former police chief of Buenos Aires province, General Ramón Camps,⁴ under whose command these clandestine centers operated. The systematic nature of these crimes was confirmed by the fact that each establishment had ‘functional relations’ with the rest, although they did not always followed a common pattern. The judgment exemplified the way the circuit functioned: “Based on the above, we can trace a pattern of the way the so-called ‘Camps Circuit’ worked within the overall design or framework of repression: once they had been kidnapped, the victims were housed in the Investigation Squad (operations center), then transferred to the Arana Detachment (which [...] functioned as a torture and extermination center), and finally taken to the 5th Precinct (a holding center for detainees)” (p. 305).

This circuit functioned in nine districts of Greater Buenos Aires and the city of La Plata (capital of Buenos Aires province) and comprised at least 29 clandestine centers. The trial concerned crimes committed in the 5th Precinct of La Plata, the Investigation Unit of La Plata, the Arana Detachment, the Police Substation of Don Bosco (known as ‘Puesto Vasco’ or ‘Basque Center’), the Tactical Operations Center I in Martinez and the San Justo Brigade.

The accused were tried for the kidnapping and torture of 280 persons, many of whom are still missing, and 37 homicides that were proven through the participation of the Argentine Forensic Anthropology Team⁵, who

found and identified the remains of hundreds of disappeared persons, for which the team was commended by the Court. The accused were not only tried for crimes committed within the detention centers, but also for an attack on the 'house on 30th Street' in the city of La Plata, where the Montoneros organization⁶ had a clandestine printing press. During this attack, three people were murdered and baby Clara Anahí Mariani Teruggi, the three-month-old granddaughter of a founder of the Grandmothers of Plaza de Mayo, was abducted. Clara has never been found, so, in the opinion of the presiding judge Carlos Rozanski, the crimes of kidnapping and falsifying the child's identity are still being perpetrated. Referring to the permanent nature of certain crimes, Judge Rozanski considered that the abduction and identity theft continue to be committed until the victims regain their true identity.

The case opened with twenty-six defendants, three of whom died before judgment was delivered (Ibérico Saint Jean⁷, the former de facto governor of Buenos Aires Province from 1976 to 1981, Alejandro Arias Duval, and Rubén Páez). Of the remaining twenty-three, sixteen were sentenced to life imprisonment and the rest were sentenced to between two and twenty-five years. Some of the accused were acquitted of certain crimes because their responsibility had not been proven. Among the accused to be tried were Jorge Antonio Bergés and Jaime Lamont Smart. The former was a police physician in the Province of Buenos Aires and was accused of delivering babies in clandestine centers, participating in the torture of detainees, and the appropriation of minors. Smart was a lawyer and Minister of Government of the Province of Buenos Aires between 1976 and 1979, and was the first civilian official⁸ of the dictatorship to be convicted of first-degree murder, illegal confinement and torture, on 43 counts. His conviction allows a deeper understanding of the relations between civil society and the military power of the dictatorship: "The consummation of the crimes described here would not have been possible without the indispensable and unavoidable assistance of the Minister, providing material and financial resources and police forces from the province. That is to say, Smart made the entire administrative structure of his ministry available for the genocidal plan" (p. 1431).

It is important to note the role of testimony in these trials, at which about 400 victims, both survivors and family members gave evidence. Moreover, for the first time, the hearings included video recordings of previous statements by Adriana Calvo, former president of the Association of Former Detainees and Disappeared, who died in 2010, and Jorge Julio López, a survivor who testified at the trial of Miguel Osvaldo Etchecolatz⁹ in 2006 and disappeared shortly afterwards without trace. The López case is unique in present-day Argentina and remains unsolved.

Grounds of the judgment

In order to understand the reasons why the 1976-1983 dictatorship was established, the Court reconstructed the modus operandi of the National Reorganization Process, as the military who took power named it. In describing the historical context, the Court took into account the situation prior to the coup of March 24, 1976: "Twenty-seven South American countries endured coups throughout the twentieth century. Argentina was not immune to this phenomenon, and there were breaks in constitutional government in 1930, 1943, 1955, 1966 and 1976." (p. 240) The grounds included a survey of the historical development of the country since the overthrow of Juan Domingo Perón in 1955 until his death during his third presidency in 1974, when power passed to his wife María Estela Martínez de Perón, under whom the Armed Forces took on an increasingly bigger role in repressing protest movements: "... on February 5, 1975, Decree No 261 was promulgated ordering military operations to neutralize and / or annihilate the action of subversive elements acting in Tucumán province (known as "Operation Independence", and considered to be the first stage of annihilation using State structures)" (p. 243).

Reference was also made to the existence of documents and manuals - many of which were incorporated as evidence at trial - on how to carry out 'counterinsurgency operations', showing long-standing planning for just such a scenario: "After the repression carried out under Operation Independence, the army already had secret counterinsurgency operations manuals, like RC-9-1, known as "Operations against subversive elements" (used as a trial exhibit). This book was an outright doctrine of extermination. Among the most relevant chapters we quote Chapter IV, Section I "Guidelines" which explains that 'combat power should be applied with the utmost violence to annihilate subversive criminals wherever they are ... Military action is always violent and bloody, but it must be justified and supported by psychological operations'; 'the guiding concept is that the subversive delinquent wielding weapons must be destroyed, because when the Armed Forces undertake operations against these criminals, they should not interrupt the fight or accept surrenders' (Art. 4003 para. I of the Manual)" (p. 244).

The grounds on which the Court described these crimes as genocide took into account both international law and the Argentine Armed Forces own directives. It historicized the concept of genocide from the pioneering work of Raphael Lemkin to more recent research, both international and national, selecting several arguments of the judgments of the Nuremberg Tribunal and the International Criminal Tribunal for Rwanda. In this way, the judges drew a comparative analysis of the Nazis' 'Final Solution' and the Argentine case: "The military junta organized a perfect block of forces coordinated by multiple directives (Navy Directive No. 1, "S"/ 75 and Placintara / 75; Army Directives No. 404/75, 504/77 and 604/79; Aeronautics, Capacity Plan / 75) to remove an "enemy" constructed by the Junta, created by the Junta's own rise to power, the "hostis judicatus." The enemy was eliminated employing methods amazingly similar to those of the "Final Solution" (Endlösung der Judenfrage) used for the systematic genocide of Jews in Europe" (p. 266)¹⁰.

By comparing the Argentine experience with other exterminations, such as those of the Armenian and Jewish people, the Court stated that "As mentioned in this Court's previous judgments, it is not a question of competing over which nation has suffered more or which community has borne the greatest number of victims. It is, rather, a matter of correctly identifying phenomena that, despite contextual differences and variations in time and space, show a similarity that must be acknowledged." (p. 1714)

While comparisons were made with other historical processes in which genocide was perpetrated, the Court emphasized the particularities of the extermination perpetrated in Argentina: "In our country the coup leaders imposed their own style of genocide. Through the annihilation of the opposition they aimed to refound society and give birth to a new one. Daniel Feierstein calls this «reorganizing genocide»; 'the Argentine genocide can be thought of as one of the most successful and cost-effective instances of «reorganizing genocide» in terms of destroying and rebuilding the social fabric. An interesting innovation is that, unlike earlier genocidal processes or even other military dictatorships in the region, this self-styled «National Reorganization Process» was a novelty in relation to both other military dictatorships and previous genocidal processes. The reengineering was designed to restore «Western and Christian values» to society, The annihilation in Argentina was not spontaneous, it was no accident, it was not irrational: it was the systematic destruction of a «substantial part» of the Argentine national group with the aim of transforming it as such, redefining its way of being, its social relationships, its destiny, its future"(p. 268).

The Court emphasized that this 'reengineering' work placed particular emphasis on government propaganda, and control of the media and the education system. "One of the practices carried out for this purpose was the systematic burning of books. "The purging fire,' as some call it, reached several libraries in Córdoba, where books by Pablo Neruda, Julio Godio and Leon Trotsky, among others, were burned (...) [and] the Constancio Vigil public library in Rosario where several thousand of its 55,000 books were burned (the library's Executive Committee was kidnapped in 1977) and [the publishing company] Centro Editor de América Latina (CEAL) lost nearly a million and a half books and booklets. And again the Nazi analogy is clear" (p. 283).

In giving its reasons for describing as genocide the offenses the accused were convicted of, the Court took as precedents the first trials of the members of the military junta conducted shortly after the return of democracy. In these it had been demonstrated that "the system implemented - kidnapping, interrogation under torture, clandestine and illegitimate deprivation of liberty and, in many cases, the elimination of the victims - was substantially the same throughout the territory of the Nation and prolonged over time." (p. 1712) The systematic nature of the repression was also demonstrated in a trial conducted in 1986 in which cases from the "Camps Circuit" were heard: "This description given by the Court in the decision we have just cited together with the other descriptions of the same elements recorded there and those then developed in Case 44 in which Etchecolatz was convicted on 91 counts of torture, marked the beginning of a formal, deep and official recognition of the extermination plan carried out by those governing the country during that period" (pp. 1712-1713).

The Court also took into account its earlier decisions in Cases 2251/06 (Etchecolatz, Miguel Osvaldo s/ homicidio calificado) and 2901/09 (Dupuy, Abel David y otros, s/homicidio, tormentos, privación ilegal de la libertad), where it had already made clear that it understood that genocide had been committed in Argentina during the civilian-military dictatorship. It also considered as precedents, judgments for crimes committed in other detention centers.

In this trial, the crime of genocide was understood as follows: "genocide is the denial of the right of existence of entire human groups, just as homicide is the denial of the right to life of individual human beings" (p. 1710). The judgment applied the United Nations Convention on the Prevention and Punishment of the

Crime of Genocide, which acknowledged the disputes that surrounded its interpretation and its exclusion of political groups as protected groups: “an interesting question has arisen as a result, especially with regard to what happened in our country during the civilian-military dictatorship that began in 1976, the question of whether the tens of thousands of victims of state terrorism did or did not form part of the so-called ‘national group’ referred to in the Convention. (...) the answer must be affirmative, beyond the legal qualification that has been given to the facts in that case or in this for the purpose of imposing the conviction and sentence” (p. 1712).

The Court explained its understanding of “national group” when it stated that “... the term ‘national group’ is perfectly valid for defining what happened in Argentina, since the perpetrators intended to destroy a given set of social relations in a State in order to produce a change substantial enough to alter the life of the whole. Given the inclusion of the term “in whole or in part” in the definition of the 1948 Convention, it is clear that the Argentine national group was annihilated “in part” and that this part was substantial enough to alter the social fabric of the nation itself” (p. 1713).

After reading the sentences, the Court also considered other issues. One suggestion it made was that, due to the repeated references of various plaintiffs to sexual offenses committed in the clandestine centers mentioned in the judgment, and “taking into account recent case law and doctrinal developments, which consider that these crimes were sufficiently independent to be considered as part of a systematic plan of repression and therefore not subject to statutes of limitation, as well as the various testimonies received that bear witness to these criminal acts, we understand that it falls to us to convey to the aforementioned Federal Courts the need expressed by the prosecution that sexual offenses committed within the framework of crimes against humanity, should be investigated within the framework and context in which they were committed” (p. 1739). The Court also urged the provincial Executive to close police stations that functioned as Clandestine Detention Centers so that they can become ‘sites of memory’.

It is suggestive that the final observation of the Court is dedicated to the newspaper *La Nación*.¹¹ Throughout the course of the trial, this morning broadsheet published several editorials and news stories about the hearings. The Court found that these publications reflected the facts fallaciously, “in an attempt to improve the procedural position of one of the accused” (p. 1744), and alleged that this publication was the medium used to convey threats against two members of the Court so as to influence the final judgment. Although no legal action has been taken, the judges’ comments show the significance and importance of this trial as well as media interference in the judicial system.

Furthermore, testimony given at trial provided important information on the forced transfer of Argentina’s only newsprint company, *Papel Prensa*, after the kidnapping of owners of the company and their families, some of whom are still missing.¹² The Court sent these statements to the court that is handling the *Papel Prensa* Case.

The Court also ordered separate recordings of testimonies obtained during the trial to be sent to other courts to be incorporated into various ongoing cases. It urged investigation into the involvement of other areas of civil society, such as the Church and the judiciary, for example, to assess “the alleged responsibility of Emilio Grasselli, secretary to the Military Vicar-General, and of officials at the San José Seminary in La Plata” (p. 1781). The San José Seminary was mentioned in the testimony of several survivors of the 5th Precinct as a place that provided food for detainees held in this clandestine center. This is just one of many examples of the weight that the Court gave to their testimony as proof: “These hidden actions [referring to the clandestine nature of the detention centers] mean that in many cases the documentary evidence of the crimes committed is flimsy, and testimonial evidence acquires significant importance. It is almost laughable to pretend that orders or instructions to violate human rights would have been placed on record in unclassified or public documents” (p. 286).

To conclude, we believe that this Court views justice not merely in terms of punishment. It also takes into account the social effects that go beyond the scope of the judgments of courts, defining law as a producer of truth. Therefore, the Court mulled over the importance of considering the distinctive characteristics of the offenses prosecuted in this trial to contribute to a deeper understanding of the past. That is why the Court highlights the State’s responsibility to accept that in Argentina there was not just a succession of isolated events but that these crimes were part of a larger project characterized as genocide. To illustrate this point, the court stressed the need to “understand the difference in context between the theft of a watch in public, with a stay in a secret detention center during the civilian-military dictatorship, [which is] essential to understanding not only the legal significance to be given to the stories and collected evidence, but to properly analyzing the rest of the offenses covered here, including disappearances and murders” (p. 325).

Judgment Extract: "ALMEIDA, Domingo y otros s/ Inf. arts. 80, 139, 142, 144, 146, 45, 54 y 55 del C.P."**The crime of genocide**

In their pleadings, both complainants and prosecutors alluded to the facts ruled on in this trial, describing them as committed in the context of genocide. This Court, both in its previous and current composition, and recently when sentencing in Case 2901 (Dupuy), made its position clear that in Argentina a genocide took place during the civilian-military dictatorship. Once again, it is worth recalling briefly the historical circumstances in which the concept of genocide came to be incorporated [into international law] and then partially incorporated into the respective [Genocide] Convention.

After World War II, an international debate began on the most appropriate way of defining the concept of genocide. A milestone in that debate, which has continued until this day, was the Convention on the Prevention and Punishment of the Crime of Genocide adopted by the United Nations in December 1948. The Convention, in turn, has an antecedent that cannot be overlooked because of its implications for the conclusions of this Court in today's ruling. As a result of the events occasioned by Nazism, the United Nations, in Resolution 96 (I) of December 11, 1946, invited the Member States to enact the necessary legislation for the prevention and punishment of genocide.

The resolution states: "Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations. Many instances of such crimes of genocide have occurred when racial, religious, political and other groups have been destroyed, entirely or in part." It goes on to say: "The General Assembly, therefore, [...] Affirms that genocide is a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices— whether private individuals, public officials or statesmen, and whether the crime is committed on religious, racial, political or any other grounds—are punishable."

It is clear from this transcription—and particularly relevant to this point—that in the resolution cited, the international community, horrified by the knowledge of the crimes committed by the Nazis during World War II, did not hesitate to include "political and other groups" [sic] in the first paragraph transcribed, followed by "... political or any other grounds." [sic]

Moreover, Article 2 of the first draft of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide stated that: "In this Convention genocide means any of the following deliberate acts committed with the intent to destroy a national, racial, religious or political group, on grounds of the national or racial origin, religious belief, or political opinion of its members: (1) Killing members of the group; (2) Impairing the physical integrity of members of the group; (3) Inflicting on members of the group measures or conditions of life aimed at causing their deaths; Imposing measures intended to prevent births within the group." As can be observed, this draft referred to political groups as well as to the political opinions of a group's members.

However, due to the prevailing political situation in some States, the Convention approved in 1948 defined the crime as follows: "genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such: a) Killing members of the group, b) Causing serious bodily or mental harm to members of the group, c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; d) Imposing measures intended to prevent births within the group; e) Forcibly transferring children of the group to another group."

In this new version, it can be observed that both political groups and political grounds were excluded from the new definition. Subsequently, an interesting question was raised about what happened in our country during the civilian-military dictatorship that began in 1976 and, in particular, whether the tens of thousands of victims of state terrorism are members or not of the so-called "national group" referred to in the Convention.

As stated in those cases following the judgment delivered in the "Etchecolatz" case, 2251/06, and ratified in the recent Dupuy case mentioned above, an affirmative answer is warranted since the events in our country in the period in question must be categorized as genocide, beyond the legal qualification that has been given to the facts in that case or in this for the purpose of imposing the conviction and sentence. The foregoing statement derives from the analysis that follows and is the result of the use of elementary logic.

In a historic ruling in Case 13/84, the trials of the military junta leaders, the mechanics of mass destruction implemented by those calling themselves the "National Reorganization Process" was considered to have been proven.

As stated in Case 13/84, in which former members of the military juntas were convicted: “The system implemented—kidnapping, interrogation under torture, clandestine and illegitimate deprivation of liberty, and, in many cases, the elimination of the victims—was substantively the same throughout the territory of the Nation and was prolonged over time.”

This definition was reproduced in the judgment delivered on December 2, 1986 by the National Criminal and Correctional Appeals Chamber of the Federal Capital of Argentina, in Case No. 44, and both were included in the trial by being read aloud. In addition, it later became clear in the same Case 13 that this “system” was widely adopted from March 24, 1976 onwards (Chapter XX, Case 13/84).

This description given by the Court in the decision we have just cited together with the other descriptions of the same elements recorded there and those then developed in Case 44 in which Etchecolatz was convicted on 91 counts of torture, marked the beginning of a formal, deep and official recognition of the extermination plan carried out by those governing the country during that period.

It is precisely this acceptance of both the facts and the Argentine State’s responsibility for them that gives rise to a process of “truth-production.” The latter must include recognition of the fact that genocide took place in our country and that crimes against humanity did not occur as isolated events but were part of a bigger plan. As to whether what happened in our country should be framed in the concept of “national group” in the wording finally adopted in Art. II of the Convention, this Court has already ratified its affirmative position in the Dupuy judgment.

However, it should be remembered that as mentioned by Daniel Feierstein, a renowned expert on the subject: “...the term ‘national group’ is absolutely valid for analyzing what happened in Argentina since the perpetrators set out to destroy part of the social fabric in order to produce a sufficiently substantial change so as to affect the State in its entirety: ‘Given the inclusion of the term ‘total or partial’ in the definition of the 1948 Convention, it is evident that the Argentinean national group has been annihilated ‘partially’ and to a sufficiently substantial extent as to alter the social fabric of the nation... the annihilation in Argentina was not spontaneous, was not fortuitous, was not irrational: this was the systematic destruction of a ‘substantial part’ of the Argentine national group, with the intention of transforming it as such, redefining its way of life, its social relations, its destiny, its future’” (Daniel Feierstein / Guillermo Levy. *Hasta que la muerte nos separe. Prácticas sociales genocidas en América Latina*, [Till death do us part. Genocidal Social Practices in Latin America] Ediciones Al margen. Buenos Aires, 2004, p. 76).

Our understanding, in the light of what has gone before, is that as expected we are dealing not with a mere succession of crimes, but rather with something significantly bigger that is appropriately termed “genocide.” However it needs to be made clear that this cannot and should not be interpreted as a disregard for the important differences between what happened in Argentina and the exterminations that claimed the lives of more than a million Armenians (in the first genocide of the twentieth century, which began in 1915), or the millions of victims of Nazism during World War II, or the slaughter of a million people in Rwanda in 1994, to cite just a few notorious examples.

As mentioned in this Court’s previous judgments, it is not a question of competing over which nation has suffered more or which community has borne the greatest number of victims. It is, rather, a matter of correctly identifying phenomena that, despite contextual differences and variations in time and space, show a similarity that must be acknowledged. Indeed, as Feierstein concludes in discussing the reasons why different historical processes can be identified in the same terms, “...using the same concept does imply arguing the existence of a common thread originating in a technology of power in which the ‘negation of the other’ is taken to extremes: physical disappearance (of their bodies) and symbolic disappearance (the memory of their existence)” (op cit p.88). In a more recent paper, the same author conceptualizes a type of genocide he calls “reorganizing genocide”, which he derives from the experience of Nazism, and which is appropriate for analyzing this issue. He notes that one of the distinctive features of this variety of genocide is the use of concentration camps, which serve as a fundamental tool in the process.

Referring to what happened in our own country, Feierstein says: “the Argentine genocide – although much smaller in scale - can be thought of as one of the most successful and cost-effective instances of ‘reorganizing genocide’ in terms of destroying and rebuilding the social fabric. An interesting innovation is that, unlike earlier genocidal processes or even other military dictatorships in the region, this self-styled ‘National Reorganization Process’ a novelty in relation to both other military dictatorships and previous genocidal processes” (Daniel Feierstein. *Genocide as a social practice: From Nazism to Argentina*, p. 356. Fondo de Cultura Económica. Buenos Aires 2007). He also noted that a new feature of this type of genocide is

that it sets out to transform social relations within an existing nation state, but in a manner so profound that it succeeds in changing the way society functions (p. 358).

That “reorganizing” intention of the modern genocide model can be found in some of the many declarations made to the press during the years of the (National Reorganization) Process by its leaders. A small sample of these should be sufficient to lend weight to the concept described.

“Once the sense of nation, neighborhood, friendship and brotherhood had disappeared, everything gradually became cloudy and dirty. It ended up in the mud and in the mud, men fought out of love for God, Country and family. It is love that prioritizes and legitimizes the actions of the soldiers (...). In the war we are fighting, love for the social body that we want to protect has been paramount in all our actions. Because, ultimately, Marxism is the modern heresy and what we are seeing is the most recent action in the constant war between Good and Evil” (p. 21) Camps, Ramon J. A. Caso Timerman, Punto Final, (Timerman Case. Full Stop.) Editorial Tribuna Abierta, 1982.

“Subversion means subverting values, the guerrilla being only one objective consequence of this. When values are disrupted, there is subversion (...) In addition to combating subversion, we need to govern, and government begins by clarifying the traditional values of our way of life” (Videla, Jorge Rafael in La Prensa, May 13, 1976).

“The fight will take place in all fields, in addition to the strictly military one. Destructive and anti-national action in culture, in the media, in the economy, in politics or in trade unionism will not be tolerated” (Videla, Jorge Rafael in La Prensa, July 8, 1976).

“[It’s good that we see ourselves] for what we are, a constituent part of a transcendent phenomenon that goes beyond us as a nation [...] Over the past thirty years a true world war has been developing, a war that has man’s spirit as its battleground of choice [...] In the midst of this war of cultures and countercultures, Argentina has been going through a time of acute weakness in its social controls, and every act of illicit seduction that has been committed against the people, every distortion, every lie, has increased the growing sense of disappointment through which, eventually, the destructive gospel of totalitarianism could be expected to seep [...] Words, betraying their meanings, have disrupted our ability to reason and even the Word of God has been used by these murderers to invent a theology justifying violence [...] We have to win back the West. But what is the West? No one will find it on the map. The West is now an attitude of the soul that is no longer tied to any geographical place.” (Massera, Emilio E., in La Prensa, May 16, 1977).

“Within our way of life, nobody is deprived of freedom just because they think differently; but we consider it a serious crime to attack the Western and Christian way of life and try to change it for one that is completely alien to us. The aggressor in this type of struggle is not just the bomber, the gunman or the kidnapper. At the intellectual level, it is anyone that tries to change our way of life by promoting subversive ideas; in other words, who tries to subvert, change or disrupt [our] values [...] A terrorist is not just someone who kills with a gun or a bomb, but anyone who spreads ideas that are contrary to Western and Christian civilization” (Videla, Jorge Rafael in La Prensa, December 18, 1977).

“The March 1976 document clearly defined Argentina as a bulwark of Western Christian civilization. This definition, which is based on the assertion of its own values, is not conditioned by the haphazard and erratic attitudes of other Western nations. For us, the West is a historical becoming rather than a geographical location. A becoming born in Greece and projected through Rome, and fertilized by the Catholic religion. The West is to be found wherever ideas of freedom and faith in Christ govern men’s actions” (Brigadier O. Agosti, in La Prensa, August 11, 1978).

“It would be absurd to suppose that we have won the war against subversion simply because we have removed the armed threat [...] Residual elements of subversion are now appearing in religious, political, educational, economic, cultural and employment spheres” (Suárez Mason, Carlos, in La Prensa, July 7, 1979).

[The guidelines of the National Reorganization Process] “will ratify the clear definition of Argentina as a Western Christian nation. For the Argentine nation has been rooted since its origin in that civilization. Our

society is united by broad agreement on love of God, homeland, freedom, family, property, justice, peace, law and order” (Brigadier General Graffigna in *La Prensa*, August 11, 1979).

“I came here from my country, which had just emerged from a long war against the enemies of the nation, against the constant enemies of our civilization, from a war in which I participated intensely by the grace of God” [...] [The subversive act] “without God, without family, without freedom, without hope, without the concept of the beginning and end of Creation, with Satan at their head” (General Omar Riveros, in *Le Monde Diplomatique* (in Spanish), October 14, 1980 (Speech to the Inter-American Defense Board).

“The nation is a shared sentiment that goes beyond abstract organizations and formal issues. A common destiny [...] We will argue that the nation is a living symbol of identity and of the solidarity of human existence, the full synthesis of a culture and a style. That is why we can speak of a “Western nation” (Camps, Ramon J., in *La Prensa*, January 30, 1981).

“Almost without our realizing it, Marxist ideology grew without restraint, developed all its mechanisms, and invaded our lives. There was no leadership to stop it, or demagoguery able to prevent the takeover of power, institutions and even Argentine customs. In this context of ideological lawlessness, crisis of intelligence and absence of power, and faced by an all encompassing threat to our spiritual unity, the military carried out the National Reorganization Process” (Camps, Ramon J., in *La Prensa*, May 17, 1981).

Let it stand as a warning that those who expressed these thoughts have been convicted or accused of crimes against humanity. The above quotations (from the book “Censura, autoritarismo y cultura: Argentina 1960-1983.” (“Censorship, Authoritarianism and Culture: Argentina 1960-1983.”) Andrés Avellaneda. CEDAL, 1986) and whose main ideas have emerged once again in the development of this trial [sic]. It is hard to find a more perverse example of a “reorganization” plan than the theft of children from their families of origin and their delivery to families who agree with the ideology of genocide (Article 2 paragraph e) of the Convention on the Prevention and Punishment of the Crime of Genocide) [sic].

It should be noted in this regard that the evidence collected in this trial, also taking into account the cases tried previously (Bergés - Etchecolatz by this Court; and Case No. 1,351 NICOLAIDES Cristino and other, abduction of minors; Case No.1499 VIDELA Jorge Rafael “deleting the civil status of a minor;” Case No. 2963/09 “Bianco Norberto Atilio, infringement of Arts. 139, 146 and 293 of the Criminal Code;” Case No. 8405/97 “Miara Samuel, supposition of civil status;” Case G. 1015; L. XXXVIII, “Gualtieri Rugnone de Prieto Emma Elidia and other, subtraction under 10 years; - Case 46/85- No”, Art 11. / 08/2009 Supreme Court, “Rei, Victor Enrique and other, abduction of minors under 10 years - Art. 146 -;” “Chamber of Criminal Appeals 10/6/10, and Case 9569;” RIVAS, Osvaldo Arturo and other, appeal,” Division II of September 8, 2009 - of the Second Division of the CNCP), it is now undisputed that at the time of the events, in a systematic way as part of the plan of extermination conducted by the civilian-military dictatorship in question, the situation described under subparagraph e) of Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide has also arisen.

In accordance with the aforementioned article and paragraph: “In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such: ... e) Forcibly transferring children of the group to another group.” [...] Dr. Portela and Dr. Falcone explain that it is impossible to include this offense in the decision-making as that charge was not introduced by the prosecution at the appropriate procedural time. [...]

On those grounds, the Federal Oral Criminal Court No.1 of La Plata RESOLVES: [...]

SECOND:

1. TO DECLARE that the crimes committed by PUBLIC OFFICIALS under the protection of an ORGANIZED and CLANDESTINE POWER APPARATUS constitute CRIMINAL OFFENSES of “BREACH of SPECIAL DUTY of CARE.” Having established this classification, ALL THOSE with a SPECIAL DUTY of CARE regardless of any quantitative description of their contribution to crime, must be held accountable as DIRECT AUTHORS of the crimes for which they are finally convicted.

2. CONSIDERING that the conduct of the accused, being clearly intended to exterminate a national group, entails the commission of the International Crime of Genocide (as defined by Article 2 a, b, c and e of the Convention on the Prevention and Punishment of the Crime of Genocide, which was ratified by Decree 6,286, in accordance with Art. 118 of the Constitution), a sentence for that offense is appropriate in each case. Notwithstanding the foregoing, by majority, in order not to violate the principle of congruence because the defendants were not investigated for this crime, which was only introduced in the allegations, it is appropriate to apply the categories of crimes and the penalties provided for in domestic law, all of which constitute crimes against humanity, with the full Court in agreement with the latter categorization.

End Notes

1. The case name of the judgment of Camps Circuit (Circuito Camps) is "ALMEIDA, Domingo y otros s/ Inf. arts. 80, 139, 142, 144, 146, 45, 54 y 55 del C.P."
2. For example, several other courts have also construed these crimes as genocide: the Case N° 1914 "FIOCHETTI y acumulados": "F"-07-TOCFSL, caratulados: "F. s/ Av. Delito (Fiochetti, Graciela)" y sus acumulados Expte. 771-F-06 "Fiscal s/ Av. Inf. Art. 142 bis del Código Penal" (Pedro Valentín Ledesma); Expte. 864-F-06 "Fiscal s/ Av. Infr. Art. 142 bis del Código Penal" (Santana Alcaraz) y Expte. 859-F-06 "Fernández, Víctor Carlos denuncia apremios ilegales" on March 12, 2009 at San Luis, Province of San Luis.; the Case N° 2965/09 "ALONSO Omar -HERZBERG, Juan Carlos s/ inf. artículos 139, 146 y 293 C.P." on December 14, 2010 at La Plata, Province of Buenos Aires; the Cases N° 1.960/10 "HARGUINDEGUY, ALBANO EDUARDO Y OTROS S/INF. ART. 151 Y OTROS DEL C. PENAL" and N° 1.991/10 "DIAZ BESSONE, RAMÓN GENARO Y OTROS S/ INF. ART. 141 Y OTROS DEL C. PENAL"; y N° 2138/ 11 caratulada: "VALENTINO, JUAN MIGUEL Y OTROS S/ INF. ART. 141 Y OTROS DEL C. PENAL" on December 27, 2012 at Paraná, Province of Entre Ríos.
3. Extracts from the judgment are quoted here in italics followed by the page numbers. For the complete judgment (in Spanish), see: <http:// analisispracticascgenocidas.sociales.uba.ar/files/2013/04/SENTENCIA-CAUSA-2955.pdf>
4. Ramón Camps was an Argentine army officer who reached the rank of Brigadier General. He was the chief of police of the Province of Buenos Aires and, from 1977 to 1979, head of the Argentine Federal Police. With the return of democracy, Camps was charged and convicted, between 1984 and 1986, for torture followed by murder, anti-Semitism, kidnappings, disappearances, murders, child abductions. In 1990 he was pardoned by President Carlos Menem, and released. Camps died in 1994.
5. For more information regarding the role of this team: <http://www.eaaf.org/>
6. Montoneros was a Peronist armed political group, active in the 1970s and outnumbered other political organizations. They were relentlessly persecuted by the civil-military dictatorship.
7. Ibérico Saint Jean was an Argentine army general. He was the de facto ruler of the Province of Buenos Aires between 1976 and 1981. On one occasion, in 1977, he declared: "First we will kill all the subversives, then we will kill their collaborators, then their sympathizers, then those who remain indifferent, and finally we will kill the timid."
8. We would like to point out that other civilians were also being tried for their actions during the dictatorship, including the then Economy Minister José Alfredo Martínez de Hoz, prosecuted for his role in the kidnapping of businessmen. Under house arrest since 2010, he died in March 2013 without being sentenced. For more information (in Spanish), see <http://www.pagina12.com.ar/diario/ultimas/20-215954-2013-03-16.html>
9. Deputy Commissioner in charge of the Directorate General of Investigations of the Buenos Aires provincial police, with power over life and death. He was sentenced to life imprisonment in this trial.
10. Further information on these issues can be found in: Feierstein, Daniel, *El genocidio como práctica social. Entre el nazismo y la experiencia argentina* (2007 Fondo de Cultura Económica: Buenos Aires); and Paoletti, Alipio, *Como los nazis, como en Vietnam: los campos de concentración en la Argentina* (1987 Madres de Plaza de Mayo: Buenos Aires).
11. La Nación is an Argentine broadsheet. It has been published since 1871 and is characterized by its conservative line. La Nación was allegedly involved in the case of the newsprint paper mill Papel Prensa expropriated during the military dictatorship and later acquired by the newspaper Clarín. In this case, General Camps had an operational role in the kidnapping and torture that allegedly led to the expropriation.
12. Translator's note: Papel Prensa was bought in 1973 by David Graiver, the banker of the Montoneros guerrilla group for whom Graiver reportedly laundered US\$17 million from illicit activities, principally kidnapping. Graiver himself died in a plane crash in Acapulco in 1976. His widow, Lidia Papaleo, returned to Argentina on September 16, 1976 and was ordered by the dictatorship to sell her family's stake in Papel Prensa. She was also coerced by the Montoneros, who sought to recover the US\$17 million managed by Graiver. A military tribunal sentenced Papaleo and Graiver's brother and father to 15 years' imprisonment, though an appeals court later cleared the defendants of all charges. Lidia Papaleo declared in 2010 that she had been coerced in 1976 into selling her shares in Papel Prensa, but shortly afterwards changed her testimony, stating that she had only been pressured but not threatened. She also declared she had been paid US\$7,000 for her shares before being illegally detained by Miguel Etchecolatz and Ramón Camps on March 14, 1977. Unfortunately, this case has been compromised by the current government in its campaign to stifle press freedom after Clarín and La Nación supported a massive farmers strike in 2008. None of this, of course, exonerates Etchecolatz and Camps from other crimes of genocide.

Totally Unofficial: The Autobiography of Raphael Lemkin,
edited by Donna-Lee Frieze, Yale University Press, 2013, 328 pp.

Reviewed By Douglas Irvin-Erickson
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In 1951, the towering public intellectual Hannah Arendt summarily dismissed Raphael Lemkin's accomplishments. In "all of the societies formed for the protection of the Rights of Man", Arendt lamented, the humanitarian laws after the war "were sponsored by marginal figures—by a few international jurists without political experience". When he died in 1959, Lemkin left around twenty thousand pages of writings unpublished. A New York Times obituary eulogized him and attributed his early death to the strain of his "crusade" to abolish genocide from the world. It was an unrequited passion, indeed. Lemkin coined the word genocide and led a movement in the United Nations to outlaw it. Yet there was not a single publisher willing to publish his writings for fear that the topic of genocide was too limited and the potential audience too small.¹ His papers and manuscripts were carted off to a cousin's basement, unceremoniously. They would eventually make their way into archives, more out of historical propriety than a sense that they were the writings of a seminal jurist. As Arendt summed it up, the effort to enshrine genocide and human rights in international law bore "an uncanny similarity in language and composition to that of societies for the prevention of cruelty to animals" which "no statesman, no political figure of any importance could possibly [take] seriously".²

Arendt had a point. The drafting process of the UN Genocide Convention removed much of Lemkin's first proposals. Interests trumped principles, despite Lemkin's protestations.³ Hersch Lauterpacht announced that the Universal Declaration of Human Rights was a defeat of the very principles it proclaimed to uphold. These documents were so ineffectual for so long that some scholars have suggested that current humanitarian laws and human rights discourse should be dated to the 1970's, not Lemkin's generation.⁴ Arendt overstated her case, however, when she dismissed the intellect of the jurists who wrote the century's humanitarian laws. Granted, Lemkin did not develop a philosophical system from which he derived the concept of genocide. He was, nevertheless, systematic.⁵ Thanks to the dedicated work of Steven Leonard Jacobs and Donna-Lee Frieze, Lemkin's works are being brought out of the archive and into print for the first time, allowing the depth and subtlety of Lemkin's ideas to finally be known.

Jacobs' edition of Lemkin's core writings on genocide (*Lemkin on Genocide*, Lexington Books, 2012) has been reviewed smartly by Adam Jones.⁶ The author refers the reader to Jones's essay, which makes clear that Jacob's volume is a landmark in the field of genocide studies and human rights. Turning our attention to Frieze's contribution to scholarship, it must be said that her edition of Lemkin's autobiography *Totally Unofficial* is nothing short of remarkable. The publication of the book fills a void in our understanding of how the UN Genocide Convention was drafted and enacted. Lemkin's first hand accounts make clear that the movement to outlaw genocide was, in fact, a movement. The passage of the law depended greatly on the pressure that Lemkin's colleagues leveraged on the delegates in the UN and the statesmen of UN member states. In this cause, Lemkin enlisted a legion of supporters acting as private citizens: poets, statesmen, artists, religious leaders, scientists, professors, and civil society leaders.⁷

The only qualm this reviewer has is that the publisher decided to bring out the book as a trade book. This might sell more copies and bring Lemkin's name to a wider readership—which is good. Yet one cannot escape the absence of a scholarly introduction. Frieze, however, was not to be undone. Her expansive knowledge of Lemkin's life and ideas finds its expression in her notes, making her edition a work of scholarship in the highest degree. For instance, she breaks new ground to trace the influence of Martin Buber's theology on Lemkin's explanation of the Jewish response to the Nazi genocide (p. 244, n. 2). In countless places, she provides erudite commentary on Lemkin's literary and philosophical allusions, which are easily missed yet absolutely necessary for understanding the full implications of Lemkin's text. For instance, Lemkin's quick mention of "the Frenchman Focillion" might seem fleeting, but for the student of ideas it is important to know that it was an art historian who gave Lemkin his definition of a nation, not a jurist or a political philosopher (p. 166; p. 255 n. 19).

As the introduction explains, for as much as “Totally Unofficial” was his own autobiography, Lemkin actually thought of the book as a “biography” of the Genocide Convention. From the first pages, he tells us that his family’s existence in the Russian Empire was made all the more precarious because Jews were forbidden from living on farms or in villages. In a section titled “Buying the Right to Live”, he recalls that the family was compelled to pay a prohibitive tenure to the owner of the farm, as well as a large bribe to the local police official, whom the children learned to fear “as a symbol of our bondage” (p. 12-13). In the context of pogroms and antisemitism, Lemkin tells us that he developed a deep sensitivity to injustice and violence from a very young age. The peoples of this region, he repeats frequently, were well acquainted with the consequences of living on the edge of empires. They saw bloodshed and upheaval. They knew purges and persecution. His life work on the Genocide Convention, he writes, was derived from his childhood experience of trying to survive and understand antisemitism and the violence of his world.

In locating the origins of his life’s works in his childhood, Lemkin ascribes the end to the beginning. His writings therefore employ an implicit teleology that is troublesome to the scrupulous reader looking for a historiography of the Genocide Convention. More importantly, the teleology naturalizes his life’s work and suggests that the course of his life was the only course possible. The claim actually undercuts one of the central points he tries to make in the final chapters. The success of the convention, he tells us, rested on whether or not his movement could convince, one by one, the “smaller” states of the merits of the law in order to outmaneuver British, French, US, and Russian opposition. The passage of the convention was not preordained.

The reader senses immediately Lemkin’s despair when Sir Hartley Shawcross, the British attorney general, hollers across the room “Nuremberg is enough! A Genocide Convention Cannot be adopted!” “There was an ominous silence among the delegates”, Lemkin wrote: “I sat with a sunken head at a luncheon table on the terrace of a small café near the Palais de Chaillot. It was an Indian summer, caressingly warm. The sun was shining, but it could not reach my frozen inner self” (p. 157). The next morning, Lemkin was in the office of the Lebanese prime minister asking for support in the hopes of gaining an ally on the drafting committee. Sensing that the British would seek the support of New Zealand to oppose the convention, Lemkin moved immediately to the office of the Prime Minister Peter Fraser, winning his trust and earning the approval from members of his delegation. A day later, Pakistan joined the coalition alongside India. In the words of their delegate Begum Ikramullah, the Genocide Convention “is written with the blood and tears of more than one million Moslems who perished through genocide during the partition of India in 1947” (p. 159). Describing the woman’s beauty and stature standing dressed in a sari, Lemkin writes: “I watched the faces of the delegates when she spoke. It was as if an angel had entered this drab room and touched them with its wings. I saw a sign of preoccupation on the face of Sir Hartley, but I was so elated that I even liked him at that moment. I thought how true was the saying of the ancient Greeks, that only a wounded physician can heal. Here was a delegate speaking for a wounded people, brining these sufferings within the context of present history” (p. 159-160).

Since the manuscript was far from finished, Lemkin failed to include much of the historical context surrounding his account of the passage of the convention. Here is where Frieze is at her best. Rather than taking Lemkin’s account as fact, we find Frieze interrogating Lemkin’s memory of dates, persons, and accounts against the historical record; she points out, among other things, his anachronistic use of the word “holocaust” in conversations he dates to 1942 (p. 247, n 6). But of special importance is the way Frieze makes extensive use of Lemkin’s papers and letters to augment Lemkin’s accounts of the conversations and conflicts he had as the Genocide Convention was being drafted. For instance, she charts the positive exchange between Lemkin and Norwegian Minister of Foreign Affairs Erik Dons (p. 258, n. 3), and she clarifies the opposition to Lemkin’s idea of cultural genocide made by the Chairman of the UN Legal Committee for the Genocide Convention, Ricardo Joaquín Alfaro Jované (p. 249 n. 6). These are only a few examples among many others.

Frieze’s ability to assemble Lemkin’s autobiography into a readable narrative should not be overlooked. The manuscript, as Lemkin left it, was far from publishable. The first challenge was that it exists in several drafts, which are rarely paginated reliably and almost never dated. This makes it difficult to ascertain, from time to time, which versions of text Lemkin considered to be the more completed versions. Complicating matters is that the drafts sometimes match each other, but oftentimes diverge drastically. Many of the revisions Lemkin penciled into the manuscript have faded, but where they are readable another question is raised. Does the editor include these in the final version of the text? What about the places where Lemkin redacted important details or charming turns of phrase? Nor is it all together obvious how Lemkin intended the text to be structured, as the archives include several versions of a table of contents. How should his sweeping descriptions of memories interspersed with narrative fragments and vignettes be dealt with? The editing rules

Frieze applied are somewhat similar to the principles of eclectic textual criticism, where the scholar, presented with multiple versions of a text, considers the variants in each and tries to identify what the author's intentions might have been. The difference, of course, is that such analysis assumes that an original text at one time existed from which the eclectic copies were made. In Lemkin's case, the finished version remains unwritten.

The book will make a valuable addition to the library of genocide scholars, as well as anyone interested in the history of human rights in the twentieth century. It is a must read for those studying the passage of the Genocide Convention at the United Nations. That Frieze could so carefully assemble *Totally Unofficial* into a flowing and illuminating narrative is a gift to generations of scholars to come.

End Notes

1. Tanya Elder, "What You See Before Your Eyes: Documenting Raphael Lemkin's Life by Exploring His Archival Papers, 1900-1959," *Journal of Genocide Research* Vol. 7 No. 4 (2005): 469-499.
2. Seyla Benhabib is right to observe that Arendt was referring to Lemkin. See Benhabib, "International Law and Human Plurality in the Shadow of Totalitarianism: Hannah Arendt and Raphael Lemkin," in *Politics in Dark Times: Encounters with Hannah Arendt*, edited by Seyla Benhabib (Cambridge: Cambridge University Press, 2010), pp 219-46. Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt, Brace and Jovanovich, 1979), 292.
3. Leo Kuper, *Genocide: Its Political Use in the Twentieth Century* (New Haven: Yale University Press, 1982). See also William A. Schabas, *Genocide in International Law: The Crime of Crimes*, 2nd ed. (Cambridge: Cambridge University Press, 2009).
4. Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge: Harvard University Press, 2012).
5. Douglas Irvin-Erickson, "Genocide, the 'Family of Mind' and the Romantic Signature of Raphael Lemkin," *Journal of Genocide Research* Vol. 15, No. 3 (2013): 273-296.
6. Adam Jones, "Book Reviews: Lemkin on Genocide," *Journal of Genocide Research* Vol. 15, No. 2. (2013), 233-245.
7. Richard Falk, *Achieving Human Rights* (New York: Routledge, 2009).

Tombstone: The Great Chinese Famine 1958-1962, **Yang Jisheng, New York: Farrar, Straus and Giroux, 2012, 629 pp.**

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Mao Zedong's attempt to rapidly modernize China in the late fifties and early sixties stands as one of the greatest human-made catastrophes in history. In the span of less than four years, China's leaders sought to transform the economy through the massive relocation of resources and people. Mao believed that the traditional agricultural economy based on small privately owned plots tilled by peasants was regressive, and held back the revolutionary potential of significant economic and thus political advancement. He collectivized farming, forced the creation of backyard furnaces to increase steel production and seized food from peasants to feed the cities. This so-called "Great Leap Forward" led to economic collapse, mass starvation, political terror and millions of deaths.

Yang Jisheng's book, *Tombstone: The Great Chinese Famine 1958-1962*, is an impressive and humane work of scholarship that significantly deepens our knowledge of the Great Leap Forward. The title comes from the author's desire to erect a tombstone for the 36 million who died in the famine and for the totalitarian system that caused their deaths. Most poignantly, the book is meant to serve as a tombstone for the author's father, Yang Xiushen, who died from starvation during those terrible years.

Yang's book was published in Chinese in 2008 in two volumes, totaling 1,200 pages. That work was republished eight times in two years, and is now finally available in English in an abridged version (though still quite hefty at over 600 pages), ably translated by Stacy Mosher and Guo Jian. *Tombstone* has been reviewed widely in the English press and is the recipient of the 2013 Raphael Lemkin Award given by the Institute for the Study of Genocide, for best book on genocide and mass atrocities. The attention it has received is well deserved.

The book's strengths come from access to a wide array of sources that have only recently been made available, and only sporadically. Yang was a high-ranking journalist who traveled widely in China and over several years was able to access dozens of archives across the country, many with secret government reports on the consequences of the famine and state repression. Although the general contours of the killings and famine have been well known for a long time, Yang has marshaled a wide array of provincial and municipal sources to show how the famine unfolded over time and across regions. This gives us a significantly more nuanced view of this catastrophe than earlier studies, which tended to look at macro level processes and had relatively little access to regional archives. His book is tightly argued and clear, and will become a reference work on this terrible crime.

Tombstone begins with a general sketch of the famine and then moves on to analyze how the famine developed regionally. The final chapters of the book return to the overall causal model and present the author's evidence for his findings. Yang identifies two main clusters of causes for the mass deaths: institutional and ideological. The institutional causes the author presents are a standard "regime type" explanation familiar to political scientists: Yang argues that the totalitarian state under Mao's absolute rule prevented the emergence of checks and balances on centralized control, and the state became a conduit of Mao's violent fantasies of radical utopia. Specifically, power was concentrated at the top, with Mao – "China's Last Emperor," in Yang's terms (483) – the supreme authority and prime author of policy. The state enjoyed a monopoly over economic resources and enormous coercive capacity to achieve Mao's goals. A strong centralized planning economy, where the basic means of survival (food, shelter) were controlled and distributed by the state, ensured that autonomous civil society would not develop and that power would remain based in the highest echelons of the Communist Party.

State control was further enhanced by totalitarian ideological control, or a "unified propaganda mechanism" (492) that sought to shape not only citizens' behavior but also their thoughts. Yang focuses on the propaganda directive known as the General Line, which called on the masses and the Communist Party to "go all out, aim high, and build socialism with greater, faster, better and more economical results" (87). His discussion of the ways in which Great Line propaganda and state terror worked hand in hand during the

famine are some of the most chilling passages in the book, and captures the madness of twentieth century totalitarianism.

Institutional and ideological factors are the main causes of the famine, but it did not unfold uniformly across China. Yang identifies Henan province as the “epicenter of the disaster”. Located south of Beijing and west of Shanghai, Henan’s residents faced the full brunt of state power. Local and state officials redirected grain and other foodstuffs away from already impoverished rural areas to the cities, and enforced policies of food acquisition through murder and terror. Anti-hoarding campaigns regularly resulted in mass beatings and executions, as any sign of resistance to government policy, however feeble, was perceived as a threat to state power and communist self-sufficiency. Starvation became rampant; one commune “had not a single living elm tree, all had been stripped bare of their leaves and bark by starving peasants” (37).

Yang meticulously chronicles how some areas were hit harder than others. Some provinces, such as Anhui, Sichuan, Guizhou and Henan suffered extremely high rates of “unnatural deaths” (that is, direct killing or death through starvation). Other provinces, such as Zhejiang and Shanxi, had lower death rates (though certainly high in comparison to other peacetime societies). Yang attributes the variation in death rates to two main factors. The first factor concerns the relative influence of Maoism on provincial authorities. Officials who were ardent Maoists tended to be zealous in the implementation of food policies, and these officials in turn were promoted to positions of greater authority. This was clearly the case in the provinces that suffered high levels of direct killings and starvation. Second, the famine was especially widespread where provincial food procurement quotas were high and sales of grains to rural areas were low. In Sichuan and Anhui, for instance, high expectations of food production for city consumption led to mass starvation, as there was little food left to distribute among the rural population. These two factors – zealous government officials and impossible procurement quotas – provide an explanation of why some areas were strongly impacted upon, while others were less so.

The numbers of deaths are horrific. Yang estimates that about 36 million people died during the famine, higher than earlier estimates of 28 to 30 million put forth by researchers such as Roderick Macfarquhar, Douglas Fairbank and Denis Twitchett, but lower than historian Frank Dikötter’s recent estimate of 45 million in *Mao’s Great Famine* (2010). Yang adds, “because starvation also caused a drop in the birth rate, there was also an estimated shortfall of 40 million births during those days” (13).

Yang’s book is not without faults. The general theoretical argument about totalitarianism could use greater elaboration, though as new sources and archives are opened it will be refined and possibly contested. In particular, some of it reads like earlier historical works on Nazi totalitarianism, which rarely provided a good sense of the complex ways in which ordinary people navigated state terror and instead painted repression with a broad brush. Yang’s work isn’t reductive in that way, but future historians will need to fill in the gaps. These shortcomings are understandable: a strong theoretical argument requires strong empirics, and people like Yang are still assembling the fine-grain evidence on the case of China.

Yang is not the first scholar to reinterpret the famine: Jung Chang and Jon Halliday’s *Mao: The Unknown Story* (2006) reached a similar conclusion to *Tombstone*, and Dikötter drew on some of the same sources as Yang to trace the ways in which local and national food policy interacted to result in mass starvation. Yang and Dikötter are at the forefront of a new wave of scholarship aimed at generating moral reflection and debate about the terrible legacy of Maoism through careful and meticulous research. Furthermore, they have advanced scholarship on the Great Leap Forward; whereas some earlier works treated the famine as a natural catastrophe exacerbated by policy mistakes, Yang, Dikötter and other researchers such as Zhou Xun have provided overwhelming proof of the distinctly volitional and intentional dimensions of the famine.

Tombstone is particularly impressive because it draws on such a wide range of sources, and state authorities have already taken notice of the threat it represents to the official interpretation of the Mao years. Indeed, pro-government apologist works have begun to appear, most notably *Someone Will Always Tell the Truth: Concerning the Death of Thirty Million by Starvation*, by Yang Songlin, who puts the number of deaths at 3.5 - 4 million and directly criticizes Yang Jisheng for undermining state legitimacy with the publication of *Tombstone*.

In some ways, *Tombstone* is similar to Robert Conquest’s early path-breaking works on the Soviet famines in the Ukraine, which raised the bar on research about Stalinism. In that case, we had to wait for the dissolution of the Soviet Union to access hidden archives. We are still far from that situation for China, but Yang’s book similarly raises the bar for research on the Great Leap Forward. It is also a moving testament to that terrible period in China’s history.

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Antonio Miguez (1979) gained his PhD (2006) in Contemporary History from University of Santiago de Compostela (Galicia-Spain). He was visiting fellow in The Cañada Blanch Centre for Contemporary Spanish Studies (The London School of Economics and Political Science, London) and Centro de Estudios sobre Genocidio (Universidad Nacional de Tres de Febrero, Buenos Aires). His research interests centre upon the repression carried out by the Franco regime during and after the Civil War of 1936-1939, developing the idea that the application of a complex conceptualization as genocide, crimes against humanity or war crimes could help us to understand deeply the many facets of the phenomenon of violence studied. He participated in many research projects about the question of the mass state violence in Spain, and he is the principal investigator of two research projects about ordinary people, perpetrators and the Francoist violence within HISTAGRA Research Group. Among his recent publications are *La construcción de la ciudadanía a través de los movimientos sociales* (2008), "O que fixemos en Galicia", *Essay toward the concept of genocidal practice* (2009) and *Xenocidio e represión franquista en Galicia (Genocide and Francoist Repression in Galicia)* (2009), *A Concise History of Galicia* (2012). From 2012 on he is a Marie Curie Fellow at the Contemporary and American History Department of the University of Santiago de Compostela.

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Luciana Rosende has a degree in Journalism, obtained at the School Workshop Agency (TEA), and is developing her undergraduate thesis for her Degree in History at the Faculty of Philosophy and Literature at the University of Buenos Aires (FFyL, UBA). She participates in the research project "The concentration camps in Argentina as national reorganization devices. Step 1: Atlético-Banco-Olimpo, Campo de Mayo and Circuito Camps", led by Dr Daniel Feierstein at the Faculty of Social Sciences at the University of Buenos Aires (FCSoc, UBA). She attended seminars in Oral History and published, co-authored with Julia Rosenberg, "The Chilean road to socialism through the eyewitness account", in the *Journal of Historical Studies Chilean Corporation*. Along with Werner Pertot, she is co-author of the book *Days without Lopez. The missing witness in a democracy* (Buenos Aires: Planeta Editorial, 2013), an investigation into the case of a survivor of the network of the concentration camps called Circuito Camps, who was a complainant and gave testimony at the trial in which perpetrator Miguel Osvaldo Etchecolatz was sentenced to life imprisonment in 2006. During the trial, López was again abducted and disappeared; the crime remains unsolved.

Ernesto Verdeja is an Assistant Professor of Political Science and Peace Studies at the University of Notre Dame, United States. His interests include the causes of large-scale political violence (genocide, war crimes, crimes against humanity), transitional justice, forgiveness and reconciliation, trials, truth commissions, official apologies, and reparations. He is the author of *Unchopping a Tree: Reconciliation in the Aftermath of Political Violence* and coeditor of volumes on peacebuilding and social movements, the field of genocide studies, and the international politics of genocide. His current work is on the causes of genocide and early warning and risk assessment models. He also co-directs a project mapping state security force structures around the world. Verdeja serves on the boards of the International Association of Genocide Scholars and the Institute for the Study of Genocide. His website is at everdeja.weebly.com.

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