Virtuous justice, and its price in truth in post-dictatorial Argentina

Claudia Hilb

'What happened? Why did it happen? How could it have happened?" These are, says Hannah Arendt, "the questions with which my generation had been forced to live for the better part of its adult life".[1] These are also, the questions which *my* generation — the generation of the victims of the Argentine military dictatorship and of the radical leftist militants of the 1970s — has been forced to live with for the better part of its adult life. These questions, along with the difficult task of formulating answers to them, are what I would like to briefly address here.

Toward that end, I will focus my attention on the contrast between justice and truth, citing as a counterpoint what I consider an example of truth's disclosure: South Africa's Truth and Reconciliation Commission. I will again argue that in Argentina the emphasis upon justice entailed, viewed twenty-five years later, a certain sacrifice, a certain loss of truth. In what way did the persecution of justice bring with it a loss of truth? But also, is it possible, or even desirable, to attempt to restore what has been lost, to recuperate a more complete truth? Or is this loss simply a price that must be paid?

In Argentina, the new beginning, a rupture with the past terror at the hands of the Junta, took shape around the trials of the highest echelons of the military. In 1983, the government of Raúl Alfonsín had barely assumed office when it ordered the formation of the National Commission on the Disappearence of Persons (CONADEP), composed of prestigious individuals from Argentine academia and culture. In just nine months (December 1983 to September 1984), after an exceedingly thorough preparation, CONADEP brought together testimony regarding almost nine-thousand disappearances,[2] the organisation of concentration camps, the functioning of the policy of disappearance, torture and assassination.[3] CONADEP's results, published under the title *Nunca Más* (or Never Again), formed the basis for the case against the Juntas.[4] The prosecution selected 709 cases upon which it based

[1] Hannah Arendt, *The Origins of Totalitarianism* (New York, San Diego, London: Harcourt Inc., 1951): xxiv, [preface to part three].
[2] More precisely, 8961. See Emilio Crenzel, *La historia política del Nunca Más* (Buenos Aires: Siglo XXI, 2008): 115.
[3] See Graciela Fernández Meijide, *La historia íntima de los derechos humanos en la Argentina (a Pablo)* (Buenos Aires: Sudamericana, 2009).
[4] The 1st edition of *Nunca Más* in November of 1984, sold out in two days. 500,000 copies have been sold to date. See Crenzel, *La historia política del Nunca Más,* 131.

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its indictments against the nine Commanders of the Armed Forces, who ruled the country in three successive juntas between 1976 and 1983.[5] In addition to providing such legal groundwork, CONADEP also provided Argentine society with a sobering and horrifying account of "what happened", a description which would make it impossible to deny the levels of barbarism reached by the Juntas.

The evidence provided by CONADEP, combined with the harrowing courtroom testimony of its victims, brought about the historic Judgement Against the Juntas, with life sentences for two of the nine generals, lesser sentences against three others, and the acquittal of the remaining four. Except for a few rare cases, neither before, during, nor after the trial were there any contributions on the part of the perpetrators that might have helped to understand "what happened".[6] Their voices were not necessary, not at least in order to convict them (both morally and legally). The voices of the victims, along with those of the representatives of the rule of law, the text of *Nunca Más*, and the judgement itself had unequivocally established a truth sufficient enough to condemn (again, both morally and legally) those responsible (the unprecedented criminal acts of the dictatorship, the state-sanctioned policy of massive disappearances, systematic torture, the theft of children born in captivity).

"What happened" has remained an established fact to the extent that since then it has been impossible to deny (at least publically) the criminal and evil character of the Dictatorship's actions.

By contrast the path taken in South Africa was quite distinct. The Truth and Reconciliation Commission's task was to listen to both the victims *and* the perpetrators of horrendous human rights violations. First came the testimonies of the victims or their families. Then came the victimisers seeking amnesty. No criminal could know with certainty, *a priori*, whether he or she would be named in an indictment. Those who did not seek amnesty and who were subsequently indicted, or those who did seek amnesty and did not, in the judgement of the Commission, give a full and exhaustive account, would then be subject to the full penalty under ordinary law. All of the "gross violations" of human rights were included in this dispensation, no matter which side committed them.[7]

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[5] Fernández Meijide, *La historia íntima de los derechos humanos en la Argentina,* 300. Of the 709 cases presented, says Fernández Meijide, the Tribunal decided to examine 280. Crenzel (*La historia política del Nunca Más,* 138) gives the figure of 711 cases. The indictment of the prosecutors would try to prove the direct responsability of the Chief Commanders; see Carlos Nino, *Juicio al Mal Absoluto* (Buenos Aires: Emecé, 1997): 136, ff.

[6] Carlos Nino (*Juicio al Mal Absoluto,* 136, ff) correctly shows this, especially of the circumstances in 1984 or 1985, when newspapers would have been willing to give generous compensation for such confessions.

[7] Philippe-Joseph Salazar, ed., *Amnistier l´Apartheid. Travaux de la Comission Vérite et Réconciliation. Sous la direction de Desmond Tutu* (Paris: Seuil, 2004): 27, (bilingual edition).

The South African solution was based on the fact that those with the most to gain from telling the truth were the criminals themselves. This is perhaps the most inspired aspect of the South African approach, as well as the substratum underlying reconciliation: the final dénouement engendered a common interest of both victims and victimisers in the search for a broader truth.[8] So as not to run the risk of going to prison, the criminals were required to give exhaustive accounts of their crimes in the presence of the victims or their families.[9] Neither pardon nor remorse were conditions for amnesty. But there were on occasions both pardons and remorse.

As the manner in which the amnesty program created a community of common interest between victims and victimisers in favour of more complete exposure of the truth seems surprising, this surprise might allow us to shed light on the incompleteness which still hangs over the violence suffered by Argentine society regarding "what happened". In this case, the silence of the perpetrators, their self-interest in maintaining silence, blocked any possibility of knowing the fate of victims, of recovering their bodies, and above all, of finding the children stolen by their parents' murderers. While in South Africa the appearance of the perpetrators before the TRC for the purpose of exposing the whole truth did in many cases make it possible to know with certainty the fate of the victims so that their families could recover their remains; what was achieved in this regard in Argentina (exhumation in clandestine cemeteries, the appearance of young people expressing doubts about their identity to the associations of victims' families), was almost always the result of slow, painstaking work on the part of those organisations allied with victims of state violence. Today, much is still unknown.

The South African program sheds light on the primary price paid by truth in Argentina: the silence of the perpetrators necessarily resulted from the judicial focus, characteristic from the start of the new beginning inaugurated by the restoration of democracy. Who among the military or its accomplices would be interested in talking, willing to pay the price not only of ostracism from their peers, but also of facing prosecution? And though doubt might have eaten away at some, this doubt ended up dissipating when at last one of them, Scilingo, spoke. Freely giving testimony, first in Argentina and then in Spain, Scilingo was finally tried under Spanish law.[10] At that time, no one said (at least not publicly) that this sentence would put an end to the possibility of more confessions by other military figures involved in the terror. No one suggested then that the door left ajar by Scilingo's confession had

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[8] See Barbara Cassin, "Amnistie et pardon: pour une ligne de partage entre éthique et politique", in *Le genre humain 43, « Vérité, Réconciliation, Réparation »,* Barbara Cassin, Olivier Cayla and Philippe-Joseph Salazar, eds. (Paris : Seuil, November 2004): 37-57, [50-51].

[9] On the curative effect of storytelling see Cassin in *Le genre humain 43,* and Salazar, « Une conversion politique du religieux », also in *Le genre humain 43*: 59-88.

[10] Spanish law gives to Spanish tribunals universal jurisdiction over crimes against humanity, genocide or terrorism wherever they might have occurred in the world.

been firmly shut by the trial in Spain. Neither did anyone warn that a perfect opportunity to force the door open had been lost, that it might have been possible to gain access to more information — the fate of prisoners, the location of bodies and the whereabouts of the children abducted in captivity.

Justice and punishment for the guilty: this was also the undisputed rubric under which the laws of Full Stop and Due Obedience (1987) were annulled by the Congress in June of 2005. At no time was consideration given to any outcomes other than judgement and sentencing. No one (again, at least not publically) imagined that reopening the cases might offer another opportunity to get a more complete truth from the mouths of those accused. While in 1985 the Argentine trials had set a new precedent, with only Nuremburg and a few other cases providing the jurists and politicians with material for reflection and comparison, in 2005 such material was abundant. Yet the South African case served as a lesson that no one knew how to heed (if they had even wanted to). No one imagined proposing even the possibility of a reduction in sentencing, not to mention absolution, for those who provided factual evidence about "what happened". Once more, no one considered that a clarification of the facts on the part of the perpetrators might be, in effect, at least as valuable as insisting on punishing by example. The South African lesson was ignored.

Why was the South African option, which exchanged truth for amnesty or sentence reduction so unimaginable, even twenty years later? The attempt to respond to this question sends us down more than one path. One of those paths brings us to the fact that from the beginning the appearance before the court of those responsible for state terror was (even with all its difficulties) a primary component of the policies of the democratic government of Raúl Alfonsín, and that judgement and punishment for the guilty was the only option acceptable to the representatives of the victims. Punishment before the law was the basis upon which Argentina closed the wound of political evil and around which a new beginning took shape, with all of its value and virtue, but also with a price paid in truth due to the inhibition of confessions.

The emphasis upon justice, in which the overriding concern was the fact that there had been victims on the side of society, and perpetrators on the side of state power, a concern which condensed the multiple coordinates of a story that had ended in atrocity into one indisputable truth — that the barbarism of state terror should never be repeated, *nunca mas* — effectively blocked the reappearance of these questions: Why did it happen? How could it have happened? This blockage is the second path I would like to turn to now.

Referring specifically to the Argentinean case, Andreas Huyssen states that there can be "a kind of forgetting which is necessary for cultural,

legal, and symbolic claims on a nation's political memory."[11] The condensing of the sense of "what happened" provided by *Nunca Más* and the trials into the figure of the disappeared, the passive victim of state terror permitted "all of Argentine society, including both those that did not participate as well as those who benefited from the dictatorship, to meet around a new national consensus: the clear separation between those that had committed crimes, on the one hand, and the victims, on the other — the guilty and the innocent."[12] "Even politically desirable forms of forgetting will yield results that distort and erode memory."[13]

The CONADEP report and trials contributed to a crystallisation of meanings which when confronted by the need to judge and put an end to the terror, inevitably simplified the complexity of what had taken place: criminals guilty of state terror against innocent victims were being judged. Telling the story in terms of the guilty (the military) and the innocent (their victims), was eventually superseded by another story: that of the "bad" (the military and those that supported it) and "the good" (those who opposed them). But despite whatever weight of truth one might have attributed to them, these stories fell far short of taking into account a more complex truth,[14] one that would have to maintain as a common legacy the conviction that there had occurred in the military of Argentina something which should never occur again, *nunca más* — that is, a radical form of evil in the shape of torture centers, disappearances, and death — without simplifying the answer to the question of "why did it happen" in terms of the sudden arrival of evil falling upon the innocent and the good.

Is the distortion that Huyssen refers to necessary? Is it not possible to contribute to the pursuit of a more complete truth without by the very act of doing so disturbing the consensus about the radical nature of this evil?

My generation was the main victim of a radical evil. It was not the perpetrator. But the armed youth organisations of the Left do bear a responsibility in the advent of state terror, as they did contribute to making possible its advent insofar as it represented the culmination of a long period of banalisation and legitimation of political violence and assassination. State terror was not its necessary consequence (radical evil is never a necessary consequence), but this banalisation of violence set the conditions that made

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[11] Adreas Huyssen, "Resistencia a la memoria: los usos y abusos del olvido público", Conferencia, Porto Alegre, INTERCOM, 2004. Please consult www.scribd.com/doc/20389040/Huyssen-Andreas-Resistencia-a-la-Memoria-los-usos-y-abusos-del-olvido-publico.

[12] Huyssen, "Resistencia a la memoria", 6.

[13] *Ibid.* 3.

[14] See Claudia Hilb, "La responsabilidad como legado", in César Tcach, comp., *La política en consignas. Memoria de los setenta* (Rosario: Homo Sapiens, 2003). In this area, the works of Hugo Vezzetti are indispensable: see Hugo Vezzetti, *Pasado y Presente. Guerra, dictadura y sociedad en la Argentina* (Buenos Aires: Siglo XXI, 2002) and *Sobre la violencia revolucionaria. Memorias y olvidos* (Buenos Aires: Siglo XXI, 2009).

it possible. Twenty-five years later, to rest upon the consensus generated by the extraordinary accomplishments of CONADEP and the trials is to refuse to discuss our responsibility for the world in common in which that violence was made possible. Behind the reluctance to go beyond the necessary simplification of collective memory hides the resistance to rethinking about how some of the victims, how a strong, radicalised, leftist movement, might have contributed to the arrival of evil.

CONADEP and the trials — exemplary, historic — must not serve as an excuse for avoiding reflection upon the responsibility borne by these radicalised forces and those who participated in them. Said otherwise, by insisting on justice, we recognise the legacy of the best of our recent history, although we must make sure that this insistence does not harbour the refusal to assume our own responsibility, the refusal to examine the story of the guilty and the innocent, the evil that besieged good. We must avoid this concealment so as not to repeat the arrogance of those who believed themselves to be the very incarnation of good. And for that it is necessary to reopen the questions of *Why did it happen? How could it have happened?* Not in terms of Justice, but in terms of an inquiry into the truth, so as to foster a proliferation of accounts.

The South African example is, once more, illuminating. The TRC regarded as equal all acts which were considered "gross violations of human rights," whosoever might have committed them, on either side. At the same time as it declared the intrinsically evil and criminal nature of the apartheid regime, the provisional Constitution of 1993 also established a commission which would treat as equal all crimes committed either for or against it. The South African resolution affirmed the equality of victims and of victimisers, an equality between *acts* of "gross violations of human rights", without however postulating even for an instant that it should declare itself neutral or indifferent as regards to the *cause* defended by this or that individual or to the morality of his struggle. Identifying Evil as such, although it provides a framework, does not exhaust the search for truth. The overcoming of evil required a new beginning in which its participants (above all on the pro-apartheid side, but also on that of the anti-apartheid militants) might individually and publically take responsibility for their actions: the new beginning would have to be established taking on the burden of the past, a past marked by evil. Stated otherwise, with evil's outline — apartheid — traced, we find ourselves before a collective assumption of responsibility for the future, based upon the recognition of everyone's past responsibility. Once more, the South African example opens an arena for re-encounter: those who participate in it will be the founders of a new beginning.[15]

[15] The word "perpetrator" is understood as "that which commits the crimes" and that which "acts as father". In their participacion in the arena of construction of truth about the past, perpetrators also become founding fathers. See Philippe-Joseph Salazar, "Perpetrator ou De la citoyenneté

In Argentina, the trials imposed a consensus that is now our common legacy: the dictatorship of 1976-1983 perpetrated evil, and this evil must never happen again, *nunca más.* But here again, we propose that the term evil does not exhaust the work of truth, and this work should not leave unscathed those of us who participated in the political movements of the 60s and 70s. There are important differences between the Argentine and South African situations: among these it shall be said that the horrible acts committed in the fight against apartheid can be viewed as having taken place in the framework of the fight against evil. Holding up this mirror in Argentina, the responsibility of the radicalised, armed, political forces, the very same that suffered the greatest number of victims at the hands of state terror, should not be framed in terms of the fight *against* the state terror. Rather, it must be addressed in its relation to the *subsequent advent* of the terror. The participation of the anti-state forces in the violence cannot, thus, be justified in terms of the fight of good against evil, if for evil we understand the state terror unleashed by the military dictatorship in 1976.

Given the challenge of preserving the line of demarcation between the violence of the Left and the subsequent terror unleashed by the state, given the challenge of opposing itself to those who would seek to equalise insurgent violence and state terror, the assumption of responsibility for political violence on the part of the Left must pass through a very narrow straight indeed. But this responsibility in preparing the conditions that may have made possible the terror of the state makes even more urgent, in our view, the willingness to accept its weight. The South African example shows that accepting responsibility does not entail a blurring of the line beyond which lies radical evil, that which *nunca más* must be allowed to happen. As Michael Walzer puts it, the common legacy of a "never again", *Nunca Más*, should be viewed as our "thin memory", that which — its differences notwithstanding — nourished our democratic re-founding. But it is our responsibility, as yesterday's participants and as today's intellectuals, to contribute to the development of "thicker" memories, memories that restore the complexity and clarify the shadows and moral dilemmas of those who, believing themselves to be working for the good, contributed to the onset of evil.

Perhaps it is the very virtue of the trials against the Juntas which has made the emergence of truth so difficult in Argentina: in the first place, in the form of confession on the part of the direct participants in state terror, and in the second place, as an attempt to understand, to develop the more complex truths, in which the magnitude of evil does not block reflection upon "how it could have happened". Reconciliation, pardon, and remorse — so much present in the South African process — are all but prohibited in the Argentine

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criminelle", in *Rue Descartes* 36, *Philosophies Africaines : traversée des expériences* (June 2002): 167-179.

debate. I do not deny the difficulty posed by these terms. Nor am I unaware of the danger of confusing their moral or religious character with their political significance. For my part, sustained as I am by those who, with sensitivity and intelligence, have reflected upon this in the shadow of the Nazi horror, I tend to believe that pardon, with respect to its *political meaning*, must go hand-in-hand with atonement.[16] Only where there is a common acceptance that what happened should never have happened, where there is then remorse for having contributed to what happened — only then is it possible to imagine the foundation of a common space for reconciliation. I venture the hypothesis that reflection on these notions in political terms can become possible only if a shared arena between those who can forgive and those who can feel remorse can be found. But the very existence of this shared arena, its creation, supposes one way or another a common interest (inter-est, inter-being). This interest was achieved in the Truth and Reconciliation Commission of South Africa, and is absent from the Argentine resolution emphasising justice.

Finally, this leads me to ask whether the rejection of the terms remorse, pardon and reconciliation in the Argentine debate might not show the traces not only, as we want to believe, of our opposition to erasing the marks of guilt and innocence, of murderer and victim, but also of our inability to build alongside justice that space of common inter-est, where the truth, the facts, and our responsibility for them might unfold. The scene of the trials, for all of its extraordinary accomplishments, has forestalled the possibility of remorse and forgiveness between people. It has hindered the exposure and recognition of individual responsibility. Just as justice gave us the new beginning in the form of *Nunca Más*, perhaps today it might be possible for us — participants yesterday and today — to contribute a new variation on that beginning, a new variation on that history. Perhaps it might be possible that, twenty-five years later, our emphasis upon justice might no longer take its toll on truth. Of course this is about historical truth, but it is also about putting an end to the unbearable, unacceptable continued silence of the perpetrators. Putting an end to this silence might depend upon a variation — one to whose fragile possibility this text hopes to contribute.

Translated from the Spanish (Argentina) by Richard Shindell

University of Buenos Aires

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[16] See Vladimir Yankélevitch, *Le pardon* (Paris: Aubier, 1967); Hannah Arendt, *The Human Condition* (London and Chicago: Chicago University Press, 1958); Hannah Arendt, *Eichmann in Jerusalem* (New York: Penguin, 1963); Hannah Arendt, *Responsibility and Judgment*, Jerome Kohn, ed. (New York: Schocken Books, 2003); Jacque Derrida, *Pardonner: l'impardonnable et l'imprescriptible* (Paris, L'Herne, 2005), and "Versöhnung, ubuntu, pardon: quel genre?" in Cassin, Cayla and Salazar, *Le genre humain* 43, 111 – 158.