Between National Law and International Norms: The Political Transformation of Human Rights in Argentina, 1955-83

By

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A dissertation submitted in partial satisfaction of the

requirements for the degree of

Doctor of Philosophy

in

History

in the

Graduate Division

of the

University of California, Berkeley

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Spring 2015

Abstract

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This dissertation examines Argentina's late twentieth-century transition from military authoritarianism to democracy in the broader context of the globalization of ideas about international human rights. With a focus on events between 1955 and 1983, I explain how Argentines came to create and support a human rights-based conception of the rule of law and, specifically, the criminal prosecution of their country's former de facto leaders.

I approach this question by reconstructing an aspect of Argentine legal and political culture that has been overlooked in existing scholarship: public debates led by the country's prominent and politically diverse lawyers over constitutionalism, revolution, national security, and universal rights. Integrating national history and the history of globalization, I argue that the remaking of Argentine democracy was part of a late twentieth-century globalization of legal order whereby legal advocates and their nonlawyer allies wielded international human rights norms not to transcend the state, as is frequently claimed, but to transform it. This national transformation, constrained by the political and legal legacies of state violence, ultimately produced a paler version of democracy than many Argentines had once envisioned but one that nonetheless served to restrain the violence of the state against its citizens. Human rights were themselves transformed in the process: a law and politics of resistance to the state became instead the state-sponsored initiative to try perpetrators of "dirty war" abuses, an initiative that continues today, along with resistance to it.

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Acknowledgements

I am extremely grateful to all of the people who helped make this dissertation possible. My research and writing benefited from the insights of an exceptionally supportive group of advisors and mentors. Margaret Chowning, Mark Healey, Saira Mohamed, and Daniel Sargent offered invaluable guidance and perspective, and they did so with incredible patience, flexibility, and good cheer.

Berkeley's intellectual community has shaped and improved my thinking in countless ways. I owe a special debt to the Berkeley Latin American History Working Group and Legal History Workshop for their members' thoughtful feedback and suggestions on individual chapters. Among my fellow graduate students, who have been such great colleagues and comrades, I want to thank in particular my fellow Latin Americanists. I couldn't have asked for a more collegial group of classmates, interlocutors, and friends. Berkeley has fostered my work in others ways too. I am very thankful for the financial support I have been given, including the university's subsidized childcare program.

Institutions outside of Berkeley have also played a crucial role in this project. I am thankful for the research support I received from the Conference on Latin American History James R. Scobie Award and the training provided by the Summer Institute for Conducting Archival Research (George Washington University). I am likewise grateful to all who have commented on my work at multiple conferences, and to the conference organizers who have made these fruitful conversations possible.

During many months of archival research, I relied on the knowledge and patience of many wonderful archivists, librarians, and legal practitioners. I would like to extend my heartfelt thanks to the staff members at Argentina's Archivo Documental del Asamblea Permanente de los Derechos Humanos, Archivo General del Poder Judicial de la Nación Argentina, Archivo Histórico de la Cámara de Diputados de la República Argentina, Archivo Histórico de la Liga Argentina de los Derechos del Hombre, Archivo Histórico del Partido Comunista de Argentina, Archivo Institucional del Centro de Estudios Legales y Sociales, Archivo Intermedio del Archivo General de la Nación, Archivo Nacional de la Memoria, Archivo Oral de Memoria Abierta, Área Centro de Documentación y Archivo de la Comisión Provincial por la Memoria, Biblioteca Nacional de la República Argentina Archivos y Colecciones Particulares, Centro de Documentación e Investigación de la Cultura de Izquierdas en Argentina, and, in the United States, the Jimmy Carter Presidential Library. I am also indebted to the Argentine lawyers who took the time to speak with me about their experiences and insights.

Finally, I want to thank my loved ones: my parents for their bottomless generosity and encouragement (and my mom for her marvelous edits), my friends for their companionship and faith in me, and my husband and daughter for their hugs and everything else.

Berkeley, California
May 2015

Introduction

This is the story of one country's transition from military authoritarianism toward democracy in the context of the globalization of human rights ideas, ideas that reinvented relationships between individuals and their governments. More broadly, this dissertation examines the ideological content of human rights as it was shaped by national power struggles and international Cold War forces in the second half of the twentieth century.[1] Moving from the 1950s to the early 1980s, I seek to explain how Argentines came to create and believe in a human rights-based conception of the rule of law, as exemplified in the criminal prosecution of human rights violators before Argentine courts.

To uncover the Argentine conflicts human rights were a part of, I trace the public debates led by a politically influential and diverse group of people who remained engaged in these conflicts even when other sectors of society were silent: lawyers.[2] My methodology takes its cue from the work of scholars who have highlighted the vital role played by lawyers in the late twentieth-century globalization of human rights and rule-of-law initiatives.[3] Here, lawyers and the legal profession are protagonists, but they are not the primary unit of analysis; instead, their arguments are. Specifically, lawyers' public statements about democracy, violence, constitutionalism, and universal rights are examined over time to open a window into broader public discussions that have been overlooked in existing scholarship.[4] The actors at the center of the study are Argentina's bar associations – conservative and progressive – and the rights advocacy organizations formed by lawyers with affiliations ranging from the political center to the revolutionary left.[5] I use historical analysis to identify changes in the positions of these groups from 1955, when the military overthrew President Juan Perón and his version of the welfare state, to 1981, when democratization and human rights became centerpieces of general political debate, two years before democracy was officially restored. Relying on materials

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[1] For a discussion of human rights definitions that highlights the operation of ideology, see Stephen Hopgood, *The End Times of Human Rights* (Ithaca, NY: Cornell University Press, 2013), Introduction.

[2] For the argument that no human rights consciousness existed in Argentina before the late 1970s, see especially the work of sociologist Sebastián Carassai: "Antes de que anochezca. Derechos humanos y clases medias en Argentina antes y en los inicios del golpe de estado de 1976," *América Latina Hoy* 54 (2010): 69-96; and *The Argentine Silent Majority: Middle Classes, Politics, Violence, and Memory in the Seventies* (Durham, NC: Duke University Press, 2014).

[3] This literature illuminates the professional development and political battles of members of the legal profession in Argentina and other Latin American countries who joined the international human rights movement in the 1970s. Yves Dezalay and Bryant Garth, *The Internationalization of Palace Wars: Lawyers, Economists, and the Contest to Transform Latin American States* (Chicago: University of Chicago Press, 2002); Virginia Vecchioli, "Redes transnacionales y profesionalización de los abogados de derechos humanos en la Argentina," in *Derechos humanos en América Latina: Mundialización y circulación internacional del conocimiento experto jurídico*, ed. Angela Santamaría and Virginia Vecchioli (Bogotá: Editorial Universidad del Rosario, 2008), 41, 44-47; Virginia Vecchioli, "Human Rights and the Rule of Law in Argentina: Transnational Advocacy Networks and the Transformation of the National Legal Field," in *Lawyers and the Rule of Law in an Era of Globalization*, ed. Yves Dezalay and Bryant G. Garth (New York: Routledge, 2011).

[4] By emphasizing lawyers' contribution to the development of ideas about governance, my work offers a distinct perspective from the one Yves Dezalay and Bryant Garth present in *Internationalization of Palace Wars*, where Argentine lawyers are described, in comparison with other national bars, as relatively uninvolved in the theory and practice of state building. Dezalay and Garth, *Internationalization of Palace Wars*, 118.

[5] Argentina's bar associations are comparable in some ways to those in the United States; however, because membership was nonmandatory during the period under study, lawyers' professional affiliations often suggested their political tendencies, a point that is especially highlighted in Chapters 2 and 3 of this dissertation.

collected from state and nongovernmental archives in Argentina and the United States, I analyze evidence of lawyers' work that circulated far beyond the legal profession, including court documents, congressional hearing transcripts, and the publications of lawyers' organizations and human rights groups. Newspapers allow me to situate lawyers' interventions in general Argentine discourse, and I use published sources and secondary literature to present these discussions in the international environment that helped shape them.

In this introduction, I outline my argument, discuss its contribution to existing scholarship, and provide an overview of Argentina's national legal culture and two nascent global trends it was a part of during the period under study: democratization and the proliferation of human rights prosecutions. I close with a description of the chapters that follow. But first, some definitions are in order. By "human rights" I mean especially legal norms – often reflected in national law – that are understood to enshrine universal rights principles, and people's attitudes toward those norms.[6] By "rule of law" I mean the contested concept of the proper relationship between state power and the law, ranging from an emphasis on "law and order" to the promotion of expansive rights protections.[7] And, finally, by "Cold War" I mean the ideological rather than geopolitical dimensions of the conflict between the United States and the Soviet Union, and the violence that these ideological rifts fueled when they were mapped onto the national politics of developing countries. This includes countries like Argentina that were relatively untouched by the dominant geopolitical rivalry of the period. The primary ideological conflicts I am talking about, in addition to socialism versus capitalism, are individualism versus collectivism, revolution versus counterinsurgency, and constitutional democracy versus its alternatives, all with important implications for domestic governance. In the developing world, nationalism framed these conflicts. Argentina was no exception.

Argentina is a highly juridical country whose liberal legal institutions were established in the nineteenth century, strongly influenced by the United States' model of constitutional democracy, and embedded in Argentine national culture. By the second half of the twentieth century, Argentina's constitutional institutions and democracy itself were discredited and dysfunctional. The consequences were catastrophic. Violence became a widely accepted strategy for resolving conflict, producing a decade of unprecedented bloodshed that peaked during the so-called dirty war (1976-1983).[8] Typified by the practice of enforced disappearance, the state of exception became the rule, as it did in other countries of the Global South facing their own fundamental transformations of political order.[9] In other words, the law – disregarded, contradicted, suspended, or superseded – failed to shield citizens from abuses of state power. Yet when democracy was restored, human rights, and individual rights specifically, were a guiding

[6] Philip Alston makes the point that human rights are "polycentric" – constituting ideas, institutions, practices, and more, any of which can be the subject of analysis – and therefore require precise delineation in historical studies. Philip Alston, "Does the Past Matter? On the Origins of Human Rights," review of Jenny S. Martinez, *The Slave Trade and the Origins of International Human Rights Law* (New York: Oxford University Press, 2012), *Harvard Law Review* 2043, no. 126 (May 2013): 2073.

[7] See Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge, UK: Cambridge University Press, 2004).

[8] See Guillermo Mira Delli-Zotti, "Genealogía de la violencia en la Argentina de los años 70," *Historia Actual Online*, no. 20 (October 2009), 52, http://www.historia-actual.org/Publicaciones/index.php/haol/article/view/314/301.

[9] For a theoretical exploration of the state of exception, see Giorgio Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005); Heonik Kwon, *The Other Cold War* (New York: Columbia University Press, 2010), 6.

principle for the reconstruction of the Argentine state: the newly elected president, himself a leader of an Argentine human rights group, convened a commission to investigate enforced disappearances, and, in a move that would make Argentina a human rights trailblazer, perpetrators of abuses were brought to trial.[10] In the decades that followed, human rights continued to shape national institutions and practices, though not without reversals. International human rights treaty provisions were incorporated into a revised National Constitution in 1994, and today, human rights prosecutions continue, reinitiated after amnesty laws and presidential pardons temporarily constrained and rolled back the work of the 1985 "Trial of the Juntas."

A fundamental premise of this dissertation is that none of these developments – or their variants in other countries that experienced them – were automatic. Instead, I contend that the content and legitimacy of human rights must be explained. How did Argentine law's capacity to limit state power disintegrate, and how was it reconstituted in the form of international human rights?

With a fine-grained analysis of this question, I complicate three important conclusions scholars have reached about the modern development of human rights and the rule of law. The first is that the rule of law, in the form of individual human rights, was exported by governmental and nongovernmental entities from the United States and Western Europe to receiving countries, for example in Latin America, in the late twentieth century. In this account, human rights were new and foreign to countries of the Global South.[11] The second of these conclusions is that this export of rights not only transcended national borders but the nation-state itself: Human rights were "supranational."[12] And the third is that this export of rights took hold in receiving countries in large part because, by the end of the 1970s, the revolutionary projects of the local political left had failed and Cold War conflicts had ebbed: Human rights appeared because alternative, revolutionary world visions crumbled.[13] These observations underscore the ways in which modern human rights were deployed by the left to transcend political divisions, and they suggest the powerful impact of the new human rights organizations and institutions established in the 1970s. But they do not address how human rights have become meaningful on the ground beyond leftist circles and as part of broader political change.

The scholarship on the history of human rights has shifted considerably over the past decade, from examinations of the long and deep cosmopolitan origins of human rights to more critical studies that emphasize disjunction over moral continuity. But there has been an important constant: existing literature has focused primarily on the operation of human rights outside of or beyond the nation-state (and its antecedents), as a mode of transnational activism, geopolitics, foreign relations, or international law. Samuel Moyn's work in this vein has been especially influential.[14] Moyn defines human rights narrowly as the supranational mass movement of the late 1970s – a movement that challenged national sovereignty in new ways. This definition leads him to side with disjuncture. He

[10] See Kathryn Sikkink, "From Pariah State to Global Protagonist: Argentina and the Struggle for International Human Rights," *Latin American Politics and Society* 50, no. 1 (Spring 2008): 1–29.
[11] See Dezalay and Garth, *Internationalization of Palace Wars*.
[12] Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Harvard University Press, 2010), 81.
[13] See especially Moyn, *Last Utopia*.
[14] Moyn, *Last Utopia*. See also Moyn's more recent works, including *Human Rights and the Uses of History* (London: Verso, 2014).

argues that modern human rights are distinct from the *national* rights that came before, be they French revolutionary "rights of man," the rights arguments raised within post-World War II anticolonialism and the U.S. civil rights movement, or other commonly invoked examples of early human rights activism. "The true key to the broken history of rights," Moyn tells us, "is the move from the politics of the state to the morality of the globe."[15] In Moyn's analysis, this morality of the globe gained widespread salience because it filled the hole left by the late twentieth-century implosions of left-wing revolution and nationalism. Individual rights stepped in for popular political struggle. But where did these human rights priorities come from, and how did they find such a receptive audience?

The rise of human rights is similarly sudden in Argentina's historiography. Authors have noted the relevant contributions of early twentieth-century Argentine rights advocates, specifically, those of labor lawyers and the country's first human rights advocacy group, which was founded in the late 1930s.[16] But the main focus of the literature is much later, centered on the human rights mobilizations during the 1976 to 1983 military dictatorship. The year 1982 in particular plays a role akin to that of 1977 in Samuel Moyn's analysis, when, Moyn notes, public usage (in English) of "human rights" language increased rapidly.[17] It was in 1982 that the Argentine military, facing a tanking economy and eroding public support, launched its catastrophic invasion of the Falkland/Malvinas Islands, territory that had been seized by the British in the nineteenth century and was long a symbol of wounded Argentine sovereignty. Argentina's humiliating defeat to Britain was the fatal turning point for the dictatorship, as the military government's legitimacy was lost even among more conservative sectors of society. In scholarship on the country's human rights movement and history, the Falkland/Malvinas debacle (like the failed revolutionary utopias in Moyn's work) is often described as the rupture that was needed for human rights to become widely embraced in a society previously ignorant of or indifferent to them.[18]

Scholars' identification of human rights turning points, at the global level or inside Argentina –1977, 1982, or otherwise – is instructive. It reminds us that human rights ideas and practices did not always exist or hold important political weight, and that particular individuals, institutions, and conditions shaped (as they continue to shape) how human rights are understood. But if these moments are conceived of as *starting* points, with no ties to the longer legal and political processes of which they were a part, the mechanisms through which these ideas and practices emerged and garnered legitimacy are obscured. In the Argentine case, the existing literature's emphasis on the persistent lack of public discussion about human rights underscores several important points: the extent of junta secrecy and control over the media and public debate; the ambivalence of many Argentines toward the dictatorship, an ambivalence born of fear of leftist violence and frustration with the repeated failures of previous democratically elected governments;

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[15] Moyn, *Last Utopia*, 43.
[16] The Liga Argentina por los Derechos del Hombre (Argentine League for the Rights of Man) was founded in 1937. See Alison Brysk, *The Politics of Human Rights in Argentina: Protest, Change, and Democratization* (Stanford, CA: Stanford University Press, 1994), 29-31.
[17] Moyn, *Last Utopia*, 4.
[18] See Emilio Crenzel, *The Memory of the Argentina Disappearances: The Political History of Nunca Más* (New York: Routledge, 2011), 33; David Rock, *Argentina 1516-1987: From Spanish Colonization to Alfonsín* (Berkeley, CA: University of California Press, 1987), 384; Kathryn Sikkink, *The Justice Cascade* (New York: W.W. Norton & Co., 2011), 69.

and the literally unbelievable nature of the repression.[19] But puzzles remain. When human rights did emerge in the early 1980s, what did they consist of? Which rights demands got traction with the broader Argentine public and why, and which ones were discarded? Addressing these questions as part of a decades-long process sheds light on the connections between human rights battles and the transformation of the Argentine state.

This approach requires attention to the conjunctions between national developments and the internationally circulating ideas that helped shape them. I therefore draw on the insights of recent transnational human rights histories, including those that focus on the political transformations that national activists – including Argentines – experienced through their transnational activities.[20] Whatever their methods and however wide the geographic reach of their activities, these activists, I posit, were focused primarily on national outcomes: staunching the bloodshed and resisting authoritarianism inside their home countries. In Argentina, these struggles were extensions of older conflicts over the law, the state, and individuals' lives. An analysis of human rights debates as features of Argentina's legal and political history affords the proximity necessary to understand what shaped them and their public reception.[21]

Even in a country like Argentina with liberal roots, and among professionals like lawyers steeped in liberal rights traditions, there was nothing inevitable about the rise, meaning, or endurance of human rights, as my research shows. The country's politically divided legal profession presented a relatively – and surprisingly – unified voice behind individual rights at several points from the divisive 1950s on. A thin and shaky consensus held even in the early 1970s when newly radicalized leftist lawyers – influenced by the Cuban Revolution and by their day-to-day experiences as defense attorneys for detained guerrillas – reinterpreted individual rights and human rights as revolutionary rights. While individual rights advocacy was always a predominantly progressive project (and one tied to advocacy for deep social and economic change), left-leaning lawyers' more conservative counterparts in the legal establishment also spoke up for the same rights. When they did, they invoked traditional national rights, emblematic of the Western Civilization to which Argentina claimed to belong. The traditional left concurred. The Liga Argentina por los Derechos Humanos (Argentine League for the Rights of Man), founded in 1937 at the initiative of the country's Communist Party, focused its advocacy for dissidents in the 1970s on those same individual rights. The Argentine League cited the country's constitutional tradition alongside universal rights principles, even as Communists and other leftists called for a revision of Argentina's Constitution to incorporate the social and economic guarantees of midcentury social constitutionalism.

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[19] See Marcos Novaro and Vicente Palermo, *La dictadura militar (1976–1983): Del golpe de estado a la restauración democrática* (Buenos Aires: Paidós, 2003), 485-486.

[20] See Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998); Patrick Kelly, "'Magic Words': The Advent of Transnational Human Rights Activism in Latin America's Southern Cone in the Long 1970s," in *The Breakthrough: Human Rights in the 1970s*, ed. Samuel Moyn and Jan Eckel (Philadelphia, PA: University of Pennsylvania Press, 2013), 88-106; Vania Markarian, *Left in Transformation: Uruguayan Exiles and the Latin American Human Rights Network, 1967 - 1984* (New York: Routledge, 2005); Vecchioli, "Redes transnacionales"; Vecchioli, "Human Rights and the Rule of Law."

[21] For analyses of human rights activism and its place in Argentina's 1983 democratization, see Brysk, *Politics of Human Rights*; Elizabeth Jelin, "La política de la memoria, el movimiento de derechos humanos y la construcción democrática en la Argentina," in Carlos Acuña, et al., *Juicio, Castigos y Memorias: Derechos humanos y justicia en la política argentina* (Buenos Aires: Nueva Vision, 1995).

In the mid-1970s, this unstable consensus broke down. Lawyers, like other Argentines, interpreted human rights through the lens of increasing political violence, Juan Perón's return to power from exile in 1973, and newly invasive forms of international human rights intervention. Under these influences, many commentators across the political spectrum associated "human rights" with anti-Argentine forces and imperialism. According to this view, human rights posed a threat to national sovereignty and even to the constitutional order. The country's legal establishment relied on Argentina's constitutional state-of-siege tradition to justify the military government's "antiterrorism" campaign. At the same time, a new cadre of human rights lawyers was forming among progressive circles, catalyzed by the Argentine military government's unprecedented use of violence. In particular, the juntas' practice of enforced disappearance – the combination of kidnapping, torture, murder, and denial of involvement or knowledge – sparked the creation of new rights advocacy groups among lawyers, victims' family members, and others. Enforced disappearance was an intensified late twentieth-century version of much older authoritarian practices. In the context of globalizing human rights ideas, the practice's obliteration of the physical and legal person produced a level of grief and frustration that proved catalyzing. In Argentina, human rights thus became the realm of a restricted but varied band of activists, among them lawyers radicalized in the early 1970s and more mainstream lawyers personally touched by disappearance.

Argentine Constitutionalism, Individual Rights, and State Power

The inherent contradictions of the country's legal liberalism, under the pressure of late twentieth-century global politics, go far toward explaining Argentine legal professionals' conflicting and shifting interpretations of universal rights in the late twentieth century. Both lawyers' unity and their divisions can be traced to a tension, embodied in the National Constitution and its interpretation by the country's courts, between individual rights – in particular, physical integrity and liberty rights – and the National Executive's constitutionally sanctioned power to suspend those rights through the declaration of a state of siege, a power repeatedly invoked by de facto and democratically elected governments over the course of the twentieth century. In the second half of the century, this tension gave rise not to the previous cyclical disruptions of institutional normalcy, but a much more consequential crisis of constitutional democracy. Novel conjunctions of national and international ideas about the relationship between national governments and their people fueled this rupture.

As the historian Greg Grandin has shown, the principle of national sovereignty has been tethered to Latin American rights ideas since at least the early twentieth century.[22] Grandin emphasizes what he calls Latin America's "sovereignty-social rights complex," and he describes individual rights, in contrast, as part of the United States' competing rights complex (bound not to sovereignty but to the very intervention that sparked Latin American jurists' prioritization of sovereignty). In late twentieth-century Argentina, where many of the country's advocates promoted rights to liberty, due

[22] Greg Grandin, "The Liberal Traditions in the Americas: Rights, Sovereignty, and the Origins of Liberal Multilateralism," *American Historical Review* 117, no. 1 (February 2012): 68-91.

process, and physical integrity, individual rights were not necessarily pursued in opposition to social and economic rights. But sovereignty concerns were very much raised by this rights advocacy at a time when increasing international human rights activism coincided with national struggles against authoritarianism.

Argentine legal professionals, during most of the twentieth century examined here, studied and practiced a constitutional law based on the country's 1853 Constitution, as substantially amended in 1860. Despite subsequent amendments, the 1853 Constitution remains the underlying structure for the Argentine political system today. The document was produced during a period of constitutional experimentation and influenced by the years of unrest and violence that followed the country's formal declaration of independence from Spain in 1816.[23] The 1853 Constitution embodied the political principles and rivalries that characterized the nation's tumultuous early history.[24] These national origins are emphasized especially by commentators eager to spotlight Argentina's endogenous legal traditions.[25]

While national in scope, nineteenth-century Latin American constitutions were products of similar conflicts over individual rights and governance that resonated across borders. In Argentina and the Americas more broadly – in countries including Peru, Venezuela, Mexico, Chile, and the United States – competing constitutional projects were put forward by liberal, radical, and conservative political sectors.[26] Reflecting the ultimate dominance of conservative models and decades of post-independence warfare, Latin American state of emergency provisions were a conservative contribution that diffused from Chile's authoritarian 1833 model and, at base, drew on the modern state of siege concept forged in the French Revolution (1791-1797).[27] In Argentina, Article 23 of the National Constitution provides that a state of siege may be declared in case of domestic disorder or foreign attack; constitutional guarantees may then be suspended in the affected area.[28] The president alone can make this call in cases of external attacks, for a time period set by the Senate. But unless Congress is in recess, only the Senate has the authority to suspend constitutional guarantees under conditions of internal unrest.[29] "With the 1853 Constitution, Argentina adopted definitive language on regimes of exception…. [T]he fundamental resolution of the conflict between liberty and order had been determined: suspension of constitutional guarantees to preserve order and the intervention of the provincial governments to contain internal uprisings and maintain 'republican'

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[23] For an emphasis on the pragmatic and experimental origins of nineteenth-century Latin American constitutions, and a challenge to the notion that they were born of chaos, see Jeremy Adelman, "Liberalism and Constitutionalism in Latin America in the 19th Century," *History Compass* 12/6 (2014): 508-516.

[24] See Brian Loveman, *The Constitution of Tyranny: Regimes of Exception in Spanish America* (Pittsburgh: University of Pittsburgh Press, 1993), 283.

[25] Ricardo Levene, *Manual de historia del derecho argentino* (Buenos Aires: Kraft, 1952), 9.

[26] Roberto Gargarella, *Los fundamentos legales de la desigualdad: El constitucionalismo en América, 1776-1860* (Madrid: Siglo XXI Editores, 2005).

[27] Brian Loveman notes earlier regimes of exception as well, from the British Riot Act of 1714 back to (at least) the Roman models. Loveman, *Constitution of Tyranny*, 15, 21, 55.

[28] It is important to note, however, that regimes of exception were incorporated into pre-1853 constitutional projects in Rio de la Plata starting in 1811, and they were practiced long before Article 23 was drafted. Brian Loveman dubs the dictatorship of (the self-appointed "Restorer of the Laws") Juan Manuel de Rosas (1829-1852) a "lengthy regime of exception." Loveman, *Constitution of Tyranny*, 280-281. See Griselda Andrea Iglesias, "La inclusión del estado de sitio en nuestra constitución de 1853 y su posterior aplicación en el tiempo," *Revista Electrónica Instituto de Investigaciones Jurídicas y Sociales Ambrosio Lucas Gioja*, no. 5 (2011), 48. The provision remains in force today, though with additional controls added in the 1994 constitutional reform.

[29] Loveman, *Constitution of Tyranny*, 285.

government would be permitted."[30]

Constitutional dictatorship and military intervention in government became common responses to internal conflicts and economic turmoil in Argentina, particularly after the country's first modern military coup of 1930, which would be followed by others in 1943, 1955, 1962, 1966, 1976.[31] In the twentieth century, both constitutional and de facto governments instituted states of siege, and they did so with such regularity and for such long stretches, that departures from constitutional rule became normalized. Between 1930 and 1983, sixteen of the country's twenty-four presidents were military officers, and some three decades were spent under a state of siege.[32]

At the same time, Article 23 explicitly limits the president's ability to act against individuals' liberty and the powers reserved for the judicial branch, providing that "the President of the Republic shall not pronounce judgment or apply penalties on his own. In such case, his power shall be limited, with respect to persons, to their arrest or transfer from one place of the Nation to another should they not prefer to leave the Argentine territory."[33] This prerogative of the political prisoner to leave the country is the "right of option," and its fate would be central to the rights debates described in the final part of this dissertation. Argentina's Constitution thus holds in tension the centralization of power, quest for order, and militarization of governance (holdovers of Spanish colonial administration and elite responses to repeated crises) with the protection of individual rights. While the executive branch was empowered to suspend constitutional guarantees, those guarantees were to be protected during normal conditions, and those protections were broad. For example, the equal rights of immigrants were enshrined, torture was banned, and capital punishment was prohibited for political offenses (but not common crimes).[34]

Many of the individual rights guarantees in Argentina's Constitution, along with the basic structure of government outlined there, were modeled on the U.S. Constitution, though Spanish, French, and British influences were strong as well.[35] From the beginning, this lineage and its interpretation were contentious.[36] What is certain is that the Argentine constitutional system constitutes a hybrid of foreign influence and national characteristics that emphasizes individual rights and democratic rule.[37] The Constitution established a federal, republican, and tripartite system of government, complete with a Montesquieu-inspired separation of powers.[38] Its first section consists of a bill of rights

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[30] Loveman, *Constitution of Tyranny*, 285.
[31] See Brysk, *Politics of Human Rights*, 25; Loveman, *Constitution of Tyranny*, 289-290.
[32] See Brysk, *Politics of Human Rights*, 27-28.
[33] Argentina Constitution, art. 23.
[34] Argentina Constitution, arts.18, 20. For discussion of capital punishment see Marcelo Ferrante, "Argentina," in *The Handbook of Comparative Criminal Law*, ed. Kevin Jon Heller and Markus D. Dubber (Stanford: Stanford University Press, 2011), 20.
[35] See Jonathon Miller, "The Constitutional Authority of a Foreign Talisman: A Study of U.S. Practice as Authority in 19th Century Argentina and the Argentine Elite's Leap of Faith," *American University Law Review* 46: (1997). For an historical treatment of the diffusion of U.S. constitutionalism to countries including Argentina, see George Athan Billias, *American Constitutionalism Heard Round the World, 1776-1989: A Global Perspective* (New York: New York University Press, 2009), 312.
[36] See Alberto F. Garay, "Federalism, the Judiciary, and Constitutional Adjudication in Argentina: A Comparison with the U.S. Constitutional Model," *University of Miami Inter-American Law Review* 22, no. 2/3 (Spring-Summer 1991): 173.
[37] See Garay, "Federalism," 163.
[38] See Rebecca Bill Chavez, *The Rule of Law in Nascent Democracies: Judicial Politics in Argentina* (Stanford, CA: Stanford University Press, 2004), 30.

that includes, in the lionized Article 18, due process guarantees that Argentines have identified as the backbone of the rule of law. As a civil law country, Argentina would be expected to have a relatively weak judiciary and a stronger legislative branch. And while the country's recurring coups and constitutional crises only served to vitiate the judiciary further, a version of the U.S. principle of judicial review was long considered part of Argentine legal tradition. This principle empowers Argentina's high court to judge the constitutionality of congressional legislation and executive action, thereby suggesting – though by no means ensuring – a unique place for the court in protecting the Constitution and the rights it contains.[39]

This power of judicial review was imported from U.S. Supreme Court jurisprudence (and the foundational case of *Marbury vs. Madison* specifically), which has long been understood as constituting persuasive (though not binding) authority for Argentine courts interpreting constitutional provisions modeled on the U.S. Constitution.[40] More broadly, Argentina's 1853 Constitution has been interpreted in the light of Western legal and rights traditions. Habeas corpus, though not originally mentioned in the text itself, is a prime example of one such tradition. The so-called great writ – a centuries-old mechanism to challenge before a judge an unlawful deprivation of liberty by the state – was considered an implied constitutional guarantee before its explicit incorporation into the National Constitution in 1994. Undergirding the narrative that follows are these questions about the character of Argentina's Constitution and constitutional rights, and the democratic institutions best suited to safeguard them.

Democracy's Third Wave and Cold War Violence

The global context for the developments discussed here was what Samuel Huntington termed "Democracy's Third Wave": the process of democratization experienced by some 30 previously authoritarian countries in the 1970s and 1980s, starting in Southern Europe with the Portuguese Revolution, moving to Latin American countries including Argentina, and spreading to Asia and Eastern Europe.[41] The trend left many countries untouched, but it was transformative where it took hold. Defining democracy in minimalist terms as the operation of fair, free, and participatory elections, Huntington observes that, "In 1974 eight of ten South American countries had nondemocratic governments. In 1990 nine had democratically chosen governments."[42] As positive as these events were, they were not the inevitable endpoint of a linear path toward progress. Instead, they marked pivotal moments in what has been – as suggested by Huntington's influential, if controversial, metaphor – the periodic and uneven

[39] See Alberto F. Garay, "La enseñanza del caso 'Marbury vs. Madison,'" *Academia. Revista sobre Enseñanza del Derecho*, no. 13 (2009).
[40] See Garay, "Federalism," 174.
[41] Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman, OK: University of Oklahoma Press, 1991). Huntington defines a wave of democratization as "a group of transitions from nondemocratic to democratic regimes that occur within a specified period of time and that significantly outnumber transitions in the opposite direction during that period of time. A wave also usually involves liberalization or partial democratization in political systems that do not become fully democratic." *Third Wave*, 15.
[42] Huntington, *Third Wave*, 25. Some researchers who have challenged Huntington's barebones, procedural, and dichotomous conception of democracy, nonetheless concur with the general shape of the trends Huntington describes. See, for example, Scott Gates, Havård Hegre, Håvard Strand, and Mark P. Jones, "Why Waves? Global Patterns of Democratization, 1800—2000," paper presented at the SGIR ECPR conference, Torino, September 2007.

development of democracy over the past two hundred years, a process rife with setbacks. For countries in the Southern Cone, as elsewhere (like Spain and Greece), the third wave of democratization constituted not just the establishment of representative rule, but a transition from significant internal political violence – and state-sponsored violence especially – to relative peace.[43]

In parts of the developing world, late twentieth-century democratization was an answer to the bloodshed and political turmoil that had characterized the Cold War there.[44] Unlike the tense peace that reigned in Europe and the United States, the Third World's versions of the Cold War saw national political conflicts fueled and deformed by a left-right binary that (along with military aid from the dueling superpowers) reconfigured political opponents as enemies deserving of extermination. As Heonik Kwon demonstrates, for example, this "other cold war" shook postcolonial Southeast Asia, and the reverberations are felt still today.[45] A cultural glorification of violence – fed on the left by advances like the 1959 Cuban Revolution, and institutionalized on the right in the name of national security – was an important driver of this deadly polarization. But battles to control the state were at its heart.

In the context of Latin America, I follow the lead of scholars including Gilbert Joseph and Greg Grandin to frame the region's Cold War in terms of grassroots political struggles that stretched over the twentieth century and produced periods of revolutionary and counterrevolutionary violence, starting at least by the 1910 Mexican Revolution.[46] As Joseph explains, this Cold War "is not a fight among proxies of post-Second World War superpowers, but an attempt by the United States (and its local clients) to contain insurgencies that challenged post- (or neo-) colonial social formations predicated on dependent economies and class, ethnic, and gender inequality."[47] This was the backdrop for, and back story of, democracy's third wave in places like the Southern Cone: pitched political battles driven by popular discontent, state violence, and conflicting interpretations of U.S. influence.[48]

Under these conditions, the state's relationship to the political dissident morphed. The notion of the protected political prisoner – honored (at least in theory) since the nineteenth century as a noble figure, spared the death penalty in Argentina's Constitution, and long considered worthy of diplomatic asylum in neighboring countries – dissolved as political opponents became mortal enemies.[49]

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[43] According to Huntington, the first global rise of democracy, though tied to the American and French Revolutions, emerged in earnest in the 19th century. It ended with a raft of reversals in the 1920s and 1930s, when many countries were taken over by authoritarian and totalitarian regimes. The second spike in democratizations began as World War II ended and was followed by a "global swing away from democracy" in the 1960s and 1970s. Huntington, *Third Wave*, 196.

[44] See Huntington, *Third Wave*, 196. For analysis of the global manifestations of the Cold War, see Odd Arne Westad, *The Global Cold War: Third World Interventions and the Making of Our Times* (New York: Cambridge University Press, 2005).

[45] Kwon, *Other Cold War*.

[46] Greg Grandin and Gilbert M. Joseph, eds., *A Century of Revolution: Insurgent and Counterinsurgent Violence during Latin America's Long Cold War* (Durham, NC: Duke University Press, 2010).

[47] Gilbert M. Joseph, "Latin America's Long Cold War: A Century of Revolutionary Process and U.S. Power," in *A Century of Revolution*, ed. Grandin and Joseph, 402.

[48] See Greg Grandin, "Human Rights and Empire's Embrace: A Latin American Counterpoint," in *Human Rights and Revolution,* ed. Jeffrey N. Wasserstrom, et al. (Lantham, MD: Rowman & Littlefield Publishers, 2007), 195.

[49] See Lynsay Skiba, "'Asilo Americano' and the Interplay of Sovereignty, Revolution, and Latin American Human Rights Advocacy: The Case of 20th-Century Argentina," *Creighton International and Comparative Law Journal* 3, no. 1 (Fall 2012): 215-231.

The legal realm was an active site of Cold War political battles in the 1960s and 1970s. Authoritarian governments strove to carve out a space outside of the law to repress ever-present "subversion." Leaders often declared national emergencies to justify the suspension of citizens' rights protections and the ordinary operation of the legal system. Or they said nothing at all while they persecuted political opponents clandestinely.[50] At the same time, states frequently made use of their legal systems to repress perceived subversion. In so doing, they helped catalyze a Cold War legal exchange that would link some of the anticolonial struggles, national liberation fights, and revolutionary projects that marked the period. Some of the fiercest critics of liberalism employed liberal legal mechanisms to advance their political objectives. In Argentina, radical leftist and Peronist lawyers borrowed legal strategies from their counterparts in Spain who defended ETA members and in Algeria who represented alleged terrorists. Meanwhile, governments looked to each other for models of anti-Communist legal tools.

When considering democracy's third wave, it is helpful to consider the relationships *between* periods of democratization, the ups as well as the downs. Put another way, the impacts of chronology, memory, and historical change matter in this analysis. How did democracy's first wave – and the ideas and practices it produced – affect the second, and how did the first two shape the third? One perspective on the question can be drawn from Brian Loveman's examination of Latin American national constitutions, which, as noted previously, were drafted in the nineteenth century amid the tumult of new independence and the brutal civil wars that followed.[51] Loveman locates the roots of the region's late twentieth-century authoritarianism in the omnipresent provisions for "regimes of exception" that were incorporated into those constitutions during the first wave of democratization.[52] Invoked by dictators in the 1960s and 1970s, these provisions, which codify and sanction the state's prerogative to depart from the law, laid the foundation for tyranny and unprecedented violence. But as Loveman notes, the constitutions he scrutinizes "reflect the dream of liberty" just as they "contain its negation."[53] The individual rights guarantees contained in nineteenth-century constitutions also created lasting legacies.

What about the new social and economic claims that characterized the second wave of democracy of the mid twentieth century, when the modern welfare state was built? In Latin America, citizens' mounting demands of their governments were transformative and destabilizing. New labor legislation and courts allowed workers to advance their interests, land reform redistributed natural resources, and constitutions incorporated new social rights, in some places markedly improving the economic and

[50] See Kwon, *Other Cold War*, 6; Loveman, *Constitution of Tyranny*.
[51] Loveman, *Constitution of Tyranny*. See also Miguel Schor, "The Once and Future Democracy: Argentina at the Bar of Constitutionalism," in *The Social and Political Foundations of Constitutions*, ed. Denis Galligan and Mila Versteeg (New York: Cambridge University Press, 2013), 561-583.
[52] Loveman, *Constitution of Tyranny*, 5. Loveman describes five types of regimes of exception and notes that they are not unique to Latin America: 1) suspension of specific civil liberties or civil rights for the duration of the crisis or for a particular period of time in part or all of national territory; 2) declaration of a constitutionally stipulated regime of exception (including the state of siege); 4) blanket suspension of the rule (imperio) of the constitution with virtually unlimited dictatorial powers exercised by legislative, executive, or perhaps military authorities; and 5) declaration of martial law.
[53] Loveman, *Constitution of Tyranny*, 5.

cultural status of previously marginalized classes.[54] But the development of mass politics and the expanded powers exercised by popularly elected governments were seen as a threat by national oligarchies, and the ultimate failure of governments to meet their citizens' expectations undermined faith in the democratic process. This erosion of people's support for institutional normalcy helped fuel the political violence that preceded and precipitated democracy's third wave.

According to Samuel Huntington, the tide turned against authoritarian governments in the late twentieth century for a cluster of reasons, their configuration particular to each country affected: economic change, government missteps, the Catholic Church's newfound support for democracy, the influence of other democratizing nations, and external pressure, in particular the pressure exerted by the U.S. and European governments in the name of human rights.[55] But while Huntington highlights the role of a new global human rights consciousness in moving nations toward democracy, he is skeptical about one of its manifestations once democracy was installed: the prosecution of human rights violators.[56] In hindsight, it can be claimed that Huntington, who published *The Third Wave* in 1991, was writing on the cusp of a trend.

The Globalization of Law and the Rise of Human Rights Prosecutions

Nations that democratized in the late twentieth century grappled with a common question that was interpreted in light of the period's globalizing human rights ideas: How should the violence perpetrated by outgoing authoritarian governments be addressed? The options pursued included truth commissions, memorialization, reparations, and lustration – the barring of human rights violators from public office.[57] Perhaps most notably, democracy's third wave also set the stage for a striking rise in the number of human rights prosecutions against national leaders in the late 20th century and early 21st century.[58] Political Scientist Kathryn Sikkink has dubbed this phenomenon the "Justice Cascade."[59] More precisely, Sikkink describes and analyzes "a shift in the *legitimacy of the norm* of individual criminal accountability for human rights violations and an increase in criminal prosecutions on behalf of that norm."[60] These prosecutions have targeted violations of only the most basic individual rights: physical integrity rights. The norms in question, therefore, "include prohibitions on torture, summary execution, and genocide, as well as on war crimes and crimes against humanity."[61]

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[54] For analysis of some of the important limitations of one of these midcentury legal regimes, see Brodwyn Fischer, *A Poverty of Rights: Citizenship and Inequality in Twentieth-Century Rio De Janeiro* (Stanford, CA: Stanford University Press, 2008).
[55] Huntington, *Third Wave*, 46-108.
[56] Huntington argued that prosecutions would likely be advisable only in cases where the outgoing authoritarian government was forced from power in a position of weakness and then only if prosecutions were pursued promptly thereafter, and mid- and lower level military officials were shielded from prosecution. *Third Wave*, 231.
[57] Hun Joon Kim, "Structural Determinants of Human Rights Prosecutions After Democratic Transition," *Journal of Peace Research* 49 (2012): 305.
[58] Kathryn Sikkink, *Justice Cascade*, 24.
[59] Kathryn Sikkink, *Justice Cascade*. This phenomenon has also been coined a "revolution of accountability" by Chandra Lekha Sriram: "Revolutions in accountability: New approaches to past abuses," *American University International Law Review* 19 (2003): 310–429, as cited by Kim, "Structural Determinants," 305.
[60] Sikkink, *Justice Cascade* 5 (emphasis in the original).
[61] Sikkink, *Justice Cascade*, 16.

Both in the offenses charged and in the identify of the defendants – state officials traditionally shielded by the international legal principles of sovereignty and sovereign immunity – the spate of human rights prosecutions that started in the late twentieth century marks a revival of the practices and precedents created at the Nuremberg Tribunals (1945-1949).[62] Modern prosecutions have been pursued in international courts (like the Nuremberg Tribunals and, today, those before the International Criminal Court), hybrid courts (combining national and international procedures) and, as in Argentina, domestic courts.[63] Argentina played a special role in resuscitating Nuremberg's legacy. Sikkink notes that while Greece and Portugal were the first to prosecute state officials for human rights violations – in 1975, a decade before Argentina's first round of trials – it was the Argentine example that diffused globally.[64]

Late twentieth-century democratization and human rights prosecutions developed amid other related global trends with important ramifications for domestic institutions.[65] The globalization of human rights law that scholars date to the late 1970s and 1980s was followed – in regions including Latin America – by a rise in citizens' use of legal tribunals and rights talk to mediate internal political conflict.[66] Closely related to this "judicialization" was a new role for national constitutions, "an assertive interpretation of the constitution that expands or creates new individual rights."[67] Notably, one of the architects of Argentina's human rights trials in the 1980s, Carlos Santiago Nino, has been credited with spreading across South America the legal theory that underpinned this new

[62] Sikkink, *Justice Cascade*, 5; Geoffrey Robertson, *Crimes Against Humanity: The Struggle for Global Justice*, 4th ed. (London: Penguin, 2012).
[63] Sikkink, *Justice Cascade*, 4.
[64] Sikkink, *Justice Cascade*, 87-91. Samuel Huntington, who considered the Argentine experiment with prosecution a failure – leading, as it did, to military uprisings, and, ultimately, two amnesty laws and presidential pardons – did not live to see the restart of prosecutions in 2005, when the Supreme Court found the amnesty laws unconstitutional. Huntington, *Third Wave*, 221-224. Sikkink's vantage is not only more recent (*The Justice Cascade* was published in 2011), it is also more sympathetic; while Huntington was known for his conservative views as well as his incisive scholarship, Sikkink was, in the late 1970s and early 1980s, among the U.S. human rights advocates who partnered with counterparts in countries including Argentina. Sikkink, *Justice Cascade*, 7-9. In her scholarly analysis of events since then, Sikkink has focused on the origins, diffusion, and effects of the justice cascade. My primary interest is in the first of these: the origins of the human rights prosecutorial model, which Sikkink ascribes to the widespread, preexisting domestic model of individual criminal accountability and a propitious balance of power between new and outgoing leaders. "Ruptured" transitions that forced out weakened authoritarian regimes were, in the early cases like Argentina's, most favorable for prosecutions. Sikkink, *Justice Cascade*, 245. See too, with Hun Joon Kim, "Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries, *International Studies Quarterly* 54 (2010): 939-963.
[65] Dezalay and Garth, *Internationalization of Palace Wars*; Javier Couso, Alexandra Huneeus, and Rachel Sieder, eds., *Cultures of Legality: Judicialization and Political Activism in Latin America* (Cambridge, UK: Cambridge University Press, 2010); Lawrence M. Friedman and Rogelio Pérez-Perdomo, eds., *Legal Culture in the Age of Globalization: Latin America and Latin Europe* (Palo Alto, CA: Stanford University Press, 2003); and Diego Eduardo López Medina, *Teoría impura del derecho. La transformación de la cultura jurídica latinoamericana* (Bogotá: Ediciones Universidad de los Andes, Universidad Nacional de Colombia, 2004).
[66] Other characteristic trends noted in this literature include rising numbers of law students and lawyers, more large, U.S.-style law firms (though still not many), an increasing importance of judges (as seen, for example, in their higher pay), and the feminization of the legal professional profession. Friedman and Pérez-Perdomo, eds., *Legal Culture*, 5; Couso, Huneeus, and Sieder, eds., *Cultures of Legality*, 8.
[67] Javier Couso, "The Transformation of Constitutional Discourse," in *Cultures of Legality*, 142. For analysis of the rights versus/and democracy question in the United States, India, Canada, and United Kingdom, see Charles R. Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (Chicago: University of Chicago Press, 1998).

judicial activism.[68]

The late twentieth-century processes of "judicialization" and "constitutionalization" were facilitated by the new role played by the United States – supplanting Europe – as the dominant source of globalizing legal thought and practice. Human rights law became an important component of this legal thought. The 1970s shift of the U.S. Congress and then Carter Administration toward a human rights-focused *foreign policy* – ushered along by ebbing Cold War tensions between the world's superpowers – facilitated the globalization of human rights. But this was not the only realm in which this globalization operated. Human rights law and practice also operated inside national borders, deployed by national actors to remake their respective countries' governmental institutions, drawing on their respective countries' preexisting rights traditions to combat the Cold War violence around them. In Latin American countries, these traditions were born of the earlier legal globalization noted above: the nineteenth-century constitutionalism produced by the political battles that characterized the first wave of democracy.[69]

Following Argentine lawyers toward these global turns, this dissertation suggests the paths that were not taken. By the time the field of transitional justice coalesced in the late 1980s, it was narrowly drawn: justice in post-authoritarian countries – from Argentina to South Africa to South Korea – was conceptualized as institutional legal reform. The goal was to confront past governments' violations of physical integrity rights, not to pursue justice through the kind of structural socioeconomic change that had been the aim of the radical left in the 1960s and 1970s.[70] And yet, in Argentina, violence subsided, and democracy – imperfect and messy – was revived.

The opening chapter explains how Argentine democracy lost legitimacy in the decade following Juan Perón's 1955 military overthrow, with a focus on the presidency of former defense lawyer and Argentine League for the Rights of Man leader Arturo Frondizi. A moment of great hope and anticipation would end in disillusionment. The analysis centers on Argentine lawyers' reactions to Frondizi's system of national security law, the CONINTES Plan, which I situate in two streams of legal globalization: liberal constitutionalism (and its Peronist counterpart, embodied in Juan Perón's 1949

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[68] López, *Teoría impura del derecho*, 125. López assigns an instrumental role to Argentines (Genaro Carrió and Eduardo Rabossi specifically) in the development of antiformalist ideas in the 1960s, ideas that helped pave the way for later constitutionalization. Argentines are presented as having a special affinity for U.S. and British legal theory.

[69] See Duncan Kennedy, "Two Globalizations of Law & Legal Thought: 1850-1968," *Suffolk University Law Review* 36, no. 3 (2003): 631-679.

[70] In part, this was the result of the revolutionary left's failures – military and political – highlighted in Samuel Moyn's work. Paige Arthur, "How 'Transitions' Reshaped Human Rights: A Conceptual History of Transitional Justice," *Human Rights Quarterly* 31, no. 2 (2009): 321-367, 339-343.

While the trajectory I examine traversed and then departed from ambitious, revolutionary legal projects, I do not make any particular claims about the place of human rights in the construction of the neoliberal state. The topic of recent scholarship and commentary, the relationship between late twentieth-century universal rights activism and the simultaneous liberalization of national economies has been described variously as mutually beneficial, problematically contemporaneous, protective (with human rights restraining the excesses of economic globalization), and essentially one and the same. My research does not examine these questions or provide sufficient evidence to come down one side or another. That said, the development and deployment of liberalism is very much at the heart of this study, tracked in the individual rights arguments, democratic commitments, and compromises of one country's lawyers. See Samuel Moyn, "A Powerless Companion: Human Rights in the Age of Neoliberalism," *Law and Contemporary Problems* 77, no. 4 (2014): 147-69. See also Dezalay and Garth, *Internationalization of Palace Wars*.

constitutional reforms and the welfare state they supported) and national security legality (its French version in particular, as applied against fears of the Cuban Revolution's spread through the Americas). In this environment, individual rights were seen as both deeply Argentine and profoundly dangerous. Straddling these two views was the figure of the political prisoner, revered and often protected in Argentine legal and political culture.

Chapter 2 traces the positions of Argentina's legal establishment – which included traditional supporters of the military and representatives of the country's oligarchy – toward constitutionalism, due process, and individual and human rights as the country's failed democracy gave way to political violence and legalistic state repression in the late 1960s and early 1970s. A decade before the emergence of a broad-based and progressive human rights movement, and even as Cold War divisions deepened, Argentina's more conservative legal establishment championed constitutional rights *and* universal rights as part of a national tradition of liberal legalism they sought to save, a tradition that protected political prisoners and other victims of government repression.

The third chapter builds on and runs parallel to the second, demonstrating the surprising extent to which new revolutionary lawyers' organizations, like their conservative peers in the legal establishment, continued to support liberal individual rights even as Argentine (and global) politics radicalized in the early 1970s. With a focus on Argentina's 1971-1973 antisubversion tribunal and leftist lawyers' advocacy before it, I argue that the liberal values that revolutionaries rejected were both threatened by fierce government repression and embodied in the legal tools they used to fight this repression. They imported these tools from other revolutionary settings (like Algeria and Spain) while operating in a legal system still deeply influenced by U.S. constitutional principles and the country's own liberal tradition.

Chapter 4 examines a crossroads for the rule of law in Argentina: the May 25, 1973 amnesty of political prisoners, many of whom had been tried by the antisubversion court discussed in Chapter 3. The prisoner release is typically portrayed – by scholars as well as apologists for the 1976-1983 military dictatorship – as *the* breaking point for the rule of law in modern Argentina, the flawed decision of Juan Perón's weak proxy, President Héctor Cámpora, that taught the country's military that the law could not be trusted to address "subversion" and led to the unprecedented violence of the "dirty war." Instead, I show that the legal and political struggles that led to the prisoners' liberation were part of broader public conflicts about violence, the reestablishment of democracy, and the law. Explicit rights talk ebbed as the opportunities for progressive legal advocacy changed. With the 1973 transition to democracy kicked off by the prisoner release, leftist and Peronist lawyers and their allies shifted their focus and rhetoric from protecting prisoners' rights through a legal system they abhorred to dismantling that system and liberating its prisoners. More conservative actors too were caught up in this process of juridical and political transformation and resistance to it. The drive for power and the embrace of force among those on the left *and* right helped lead to this moment and set the stage for the fragile democracy's demise just three years later, with the military coup of March 24, 1976. By the time the armed forces seized power, widespread political violence and economic turmoil had led many Argentines to accept, and even welcome, another break from constitutional rule.

Centered on three instances of cross-border human rights advocacy – two Argentine lawyers' 1976 U.S. congressional testimony, the New York City Bar

Association's mission to Argentina in 1979, and the Inter-American Human Rights Commission's visit to Argentina, also in 1979– Chapter 5 explores the broader question of the causes and consequences of a changed global landscape for rights activism during Argentina's "dirty war," examining the ways in which the creation of modern international human rights institutions, and lawyer and nonlawyer advocates' strategic use of them, transformed Argentines' ideas about the rule of law. The 1976-1983 dictatorship's unprecedented use of violence – and enforced disappearance especially – was at first met with silence by much of Argentine society. When public debate on the rule of law reemerged, it largely took the shape of *international* human rights battles. These battles divided Argentina's legal profession and people. Lawyers' groups' relatively unified public support for due process guarantees in previous decades gave way entirely by the late 1970s, when the legal establishment spoke of human rights not as a proud Western tradition Argentina was a part of, but as a foreign threat to national security and sovereignty. Progressive lawyers joined new nonlawyer allies and a burgeoning transnational advocacy network to advance human rights. At the same time, victims of human rights abuses and their advocates and loved ones found new venues to speak out against their government's violence.

The final chapter, Chapter 6, examines the transitional period that led to the reestablishment of democracy in 1983, a period when, I contend, Argentine ideas about the place of justice in representative government developed rapidly. I ask how progressive lawyers and their nonlawyer allies used the law during this period, and from 1977 to 1981 in particular, to force the military government to answer their allegations of disappearance and murder, to hold its leaders accountable, and to create the legal foundation for democracy. I trace human rights lawyers' application of the traditional Western and Argentine writ of habeas corpus in years-long Argentine Supreme Court proceedings, *Peréz de Smith, Ana M. et al.,* and abroad, where they proposed a new international treaty at the 1981 Paris Colloquium on enforced disappearance. I argue that these lawyers, active players in the changed international context for human rights advocacy described in Chapter 5, pushed traditional legal remedies to their limit inside Argentina, repurposed them abroad, and conceptualized new ways to use international law to break the silence around enforced disappearance and to establish state responsibility. At the same time the legal establishment and other sectors of society were growing weary of the prolonged state of exception claimed by the military government, these human rights lawyers were building the arguments that would, after the reinstitution of popular rule, allow individual junta leaders to be criminally prosecuted for human rights abuses inside Argentine courtrooms.

The political prisoner was transformed. Instead of celebrating political prisoners as dissidents, public discussion turned towards imprisoning state actors as violators of human rights. The prisoner was no longer a figure of individual conscience resisting the state, but a sign of the public conscience embodied in the state. Many progressive lawyers were also changed: from politically committed criminal defense lawyers to prosecutors for the state. The Epilogue follows these transformations to the present day.

Chapter 1. Terrorism, Torture, and the Rule of Law: Argentine Legal Debates and the Fate of Democracy, 1955-65

"Men achieve dignity by bowing before the law, for this is the way they escape kneeling before tyrants."

-- Message of Argentina's Constitutional Congress, March 7, 1853, and motto on Lawyers' Association of Buenos Aires bulletin, May-June, 1960.[1]

On May 24, 1960, a bomb exploded in a bathroom at the Petit Café. The Buenos Aires restaurant was damaged, but no one was hurt.[2] Three men, all civilians and Peronist activists, were tried for the crime by a military court and sentenced to prison terms of five to fifteen years.[3] Their experiences were not unique. The fate of these men was tied up with those of more than one hundred other "CONINTES prisoners" who had been detained for alleged subversion and placed under military jurisdiction. Despite the country's history of repeated military takeovers, the armed forces' prosecution of civilians in the early 1960s marked a turning point. The military tribunals helped crystallize attitudes toward the rule of law. Almost two decades before the formation of the modern international human rights movement, human rights and the legal limits on state power were debated in the Cold War context of an unstable constitutional democracy.

Just a week and a half before the Petit Café bombing, democratically elected president Arturo Frondizi had announced the implementation of a new security regime. The CONINTES (*Conmoción Interior del Estado*) Plan, in place between March 13, 1960 and August 1, 1961, divided the country into zones controlled by the armed forces, put the police forces under military authority, and – through Decree 2639/60 – created military tribunals to prosecute civilians for offenses deemed threats to national security.[4] In the long wake of President Juan Perón's 1955 overthrow by the military, a working-class resistance movement formed that deployed violence (along with other strategies like labor strikes) to challenge the rollback of victories won under Perón.[5] The CONINTES Plan was a response to armed attacks by these clandestine Peronist groups, which were on the rise since late 1958.[6]

Importantly, Arturo Frondizi's national security laws were built on the juridical foundation Juan Perón himself laid during his presidency. Perón had paired the fulfillment of the social and economic rights for workers with the legally sanctioned empowerment of the executive. Frondizi, from the Intransigent Radical Party, relied on

[1] *Boletín de la Asociación de Abogados de Buenos Aires*, May-June 1960. This publication and all other Spanish-language sources quoted here were translated by the author.
[2] Ruggero, Conrado Andrés sobre actividades terroristas, subversivas, intimidación pública y otras, 1962, expediente 361, cuerpo 1, foja 131, legajo 11505, Archivo General del Poder Judicial de la Nación Argentina.
[3] Ruggero, Conrado Andrés sobre actividades terroristas, subversivas, intimidación pública y otras, 1962, expediente 361, cuerpo 1, fojas 144-151.
[4] See Marcelo Summo and Esteban Pontoriero, "Pensar la 'guerra revolucionaria': doctrina antisubversiva francesa y legislación de defensa en la Argentina (1958-1962)," *Cuadernos de Martí*, year 2, no. 3 (July 2012): 285-305.
[5] See Daniel James, *Resistance and Integration: Peronism and the Argentine Working Class, 1946-1976* (Cambridge, UK: Cambridge University Press, 1988).
[6] See Summo and Pontoriero, "Pensar la 'guerra revolucionaria,'" 293. On the Peronist resistance generally, see James, *Resistance and Integration*.

Perón's legal framework for expanded executive power – paired with a generous interpretation of constitutional state-of-siege powers –as the basis for CONINTES. The results were a democracy under the state of exception and deep disillusionment for many Argentines.[7]

For rights advocates, Frondizi's exercise of executive power was especially disappointing. The man who oversaw CONINTES had been one of them, a celebrated defense attorney and founding member of Argentina's oldest human rights organization. In his inaugural speech on May 1, 1958, Frondizi had promised to uphold human rights: "We will respect human rights because that is what the Constitution and law demand, but also because that respect forms part of our conception of the sacredness of man."[8] As president, Frondizi's apparent about-face constituted a special kind of betrayal to his fellow progressive lawyers. At the same time, the general population was faced with new evidence of the limitations of institutional normalcy.

As later chapters will show, the deterioration of democratic channels for managing political conflict had catastrophic consequences in the 1970s. The minor damage caused by the explosion at the Petit Café gave little hint of what was to come, but it was an early outcome of the intense struggle to resolve repeated economic and political crises within the Argentine version of a liberal constitutional order.

This chapter examines public legal debates about the CONINTES Plan to explain the erosion of Argentines' faith in liberal democratic institutions and the law. As in the dissertation as a whole, the analysis centers on the interventions of Argentina's lawyers and lawyers' groups, persistent participants in these debates who sought to reconcile their liberal legal training with the country's political vicissitudes. Other actors – prisoners and their relatives, members of the government, and military men among them – come to the fore too, as changing sites of repression and advocacy drew nonlawyers as well into this national discussion.

I argue that the CONINTES Plan was a defining moment in the development of Argentine attitudes toward the law and its capacity to restrain state power. Compounding precarious political and economic conditions – Peronism was banned, an influx of multinational corporations had upended labor relations, and Arturo Frondizi's economic policies alienated both labor and anti-Peronists – a civilian, popularly elected government demonstrated that legal form was perfectly compatible with unconstitutional repression, including extralegal violence.[9] All the while, the armed forces pushed a kind of contingent constitutionalism; some sectors of the military paid lip service to the principles of constitutional rule as they undermined the judiciary's ability to protect constitutional rights and positioned themselves to disrupt democracy once again.

Argentine rule-of-law debates in the 1960s (and after) were shaped by two strands of legal globalization. Nineteenth-century constitutionalism, modeled on the United States' system but interpreted in the Argentine context, had long carved out a privileged place for individual liberty, dissent, and even revolution. These principles were embodied

[7] Frondizi declared a constitutional state of siege six months into his presidency, prompted by labor protests against the government's economic policies. He would later extend the measure, which remained in place until he was forced from office. Robert A. Potash, *The Army & Politics in Argentina, 1945-1962* (Stanford, CA: Stanford University Press, 1980), 293-297.

[8] Arturo Frondizi, Discurso ante la Asamblea Legislativa, May 1, 1958, as published by the Fundación Centro de Estudios Presidente Arturo Frondizi, http://www.fundacionfrondizi.org.ar/docs/discursos/12_file.pdf. For discussion of Frondizi's inaugural address, see Potash, *Army & Politics, 1945-1962*, 280.

[9] See Potash, *Army & Politics, 1945-1962*, 377.

in the figure of the political prisoner. In the mid-twentieth century, and especially in the Cold War context after the 1959 Cuban Revolution, a very different notion of dissent and individual rights was drawn from international inputs, and it was joined with Argentine antisubversion mechanisms developed from the beginning of the century. Specifically, legalistic translations of French counterinsurgency strategies and U.S. jurisprudence on subversion were applied in the Argentine armed forces, courtrooms, and in public discourse. Individual rights were seen as deeply Argentine, manifestations of the Western culture with which many Argentine people proudly associated themselves, and as profoundly dangerous, a threat to the constitutional order itself.

With this perspective on Argentina during the 1950s and 1960s, I focus on a period that has received relatively scant treatment in human rights historical scholarship. Most of this literature, including work focused on Argentina, examines the rise of modern human rights organizations and institutions in the 1970s and 1980s.[10] Some existing scholarship emphasizes the post-World War II moment when the United Nations and its Universal Declaration of Human Rights (1948) were created. But the decades in between are often presented as fallow.[11] The Cold War, it is argued, eclipsed 1940s universal rights ambitions until détente cleared Cold War concerns out of the way. In the area of foreign policy, this narrative holds true, but at the level of domestic rights politics, it hardly does, as the Argentine case suggests. There, the Cold War did not so much eclipse human rights as recast popular understandings of them. This chapter's examination of Argentine legal debates from 1955 to 1966 exposes the tensions of an early human rights moment marked by the collapsing legitimacy of the country's constitutional institutions, an ingrained commitment to constitutional rights, and the globalization of ideas about national security and revolution.

This chapter is organized in three sections. The first part outlines the status of the rule of law in Argentina in the mid-twentieth century, with a focus on political violence and two points of tension that marked national politics into the 1970s: liberal constitutionalism, as defined against Juan Perón's statist constitutionalism; and the figure of the political prisoner, whose meaning was likewise shaped by memories of Perón's rule. The analysis then turns to Arturo Frondizi's government, the CONINTES Plan, and, especially, resistance to the plan among lawyers and Argentine society. The second section examines a congressional commission organized to investigate allegations of torture under CONINTES as an important site of debate about politics and individual rights. The final section explores a court case: the Petite Café bombing produced the only CONTINES military trial that made its way to the Supreme Court. Argued by military officers, *Juan C. Rodriguez y otros s/ Habeas Corpus* sheds light on not only the secretive CONINTES system of legalistic repression but also the escalating tensions within the country's constitutional order.

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[10] See for instance Carassai, "Antes de que anochezca"; Brysk, *Politics of Human Rights*; Emilio F. Mignone, *Derechos humanos y sociedad: El caso argentino* (Buenos Aires: Ediciones del Pensamiento Nacional, 1991); Moyn, *Last Utopia*; Areyh Neier, *The International Human Rights Movement: A History* (Princeton, NJ: Princeton University Press, 2012).

[11] Important exceptions include human rights studies of decolonization and the European human rights system, which do examine the 1950s and 1960s. See for instance A.W. Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (Oxford, UK: Oxford University Press, 2001); Roland Burke, *Decolonization and the Evolution of International Human Rights* (Philadelphia, PA: University of Pennsylvania Press, 2010); and Fabian Klose, *Human Rights in the Shadow of Colonial Violence The Wars of Independence in Kenya and Algeria* (Philadelphia, PA: University of Pennsylvania Press, 2013).

The Rule of Law at Midcentury: Violence, Constitutionalism, and the Political Prisoner

This story begins on September 16, 1955, but its roots are much deeper. President Juan Perón was forced out of office and into exile on that date by a military coup, the strikingly named Liberating Revolution (*Revolución Libertadora*). Peronism, and even the utterance of Juan Perón's name, was outlawed.[12] The proscription of such an influential movement and personality increased the power of both, which continued to exercise important influence over Argentine political culture.[13] Over the next eleven years, military rule was interspersed with stints by elected governments, the prohibition on Peronism generally remaining in place.[14] Economic hardship, social unrest, the emergence of guerilla tactics (starting in 1959), and state repression colored the period, as did deepening divisions among Perón supporters and between the military and civil society.[15] In this context, the ways in which Peronism was remembered and reinvented would have some of the greatest impacts on Argentines' beliefs about law and governance.

As in other parts of Latin America, populism was profoundly disruptive to established political, economic, and cultural institutions and practices; in Argentina under Perón, populism challenged and reconfigured an already damaged liberalism. An army officer who first gained national influence as the result of a 1943 military coup he helped organize, Perón was democratically elected to the presidency in 1946. His supporters viewed his rise to power as a victory against the oligarchy that had controlled politics – and built Argentine liberalism – since Independence.[16] Many had a more nuanced argument based on the misdeeds of the nominally "democratic" regimes of the 1930s.

For good reason, the 1930s have been dubbed Argentina's *década infame*, "the infamous decade." The country's first twentieth-century military coup in September 1930 ushered in a period of conservative rule marked by electoral fraud and new forms of state repression.[17] Violence was paired with the degradation of democratic governance; Argentines had plenty of cause to become disenchanted with the liberal order.[18] Juan Perón rose to power in the 1940s against this historical backdrop and the disillusion it had

[12] Hugo Gambini, *Historia del peronismo: La violencia* (Buenos Aires: Vergara, 2008), 21-36.
[13] Pablo Bonavena, et al., *Orígenes y desarrollo de la Guerra civil en la Argentina, 1966-1976* (Buenos Aires: Universidad de Buenos Aires, 1995), 21-22; Eduardo Crawley, *A House Divided: Argentina 1880-1980* (London: C. Hurst & Co., 1984), 262.
[14] In his succinct assessment of the period, David Rock describes the decade from 1955 to 1966 as "a series of failed efforts to destroy Peronism and to erect a civilian alternative that could command majority support. Both military and non-Peronist civilian government seized power but could not retain it; the Peronists were able to topple governments but unable to take power." Rock, *Argentina 1516-1987*, 332. The ban on Peronism held except for brief moments like the 1962 gubernatorial elections, when a Peronist victory would lead to the overthrow of Arturo Frondizi.
[15] See Crawley, *A House Divided*, 175-271; Gambini, *Historia del peronismo*, 108-17, 149; Rock, *Argentina 1516-1987*, 332-346.
[16] See Mira Delli-Zotti, "Genealogía de la violencia," 49-59, 51. For additional background on Argentine liberalism, see Jorge Nallim, *Transformations and Crisis of Liberalism in Argentina, 1930-1955* (Pittsburgh: University of Pittsburgh Press, 2012).
[17] For a synopsis of the 1930s in Argentina with an emphasis on economic aspects, see Rock, *Argentina 1516-1987*, 214-238.
[18] Jorge Nallim explains that the "hegemony" of liberalism in Argentina began to break down in 1930 and would continue to disintegrate in the decades that followed. Nallim, *Transformations and Crisis*, 1-2.

sowed.[19]

For many members of the working classes who made up Perón's base of support, Peronism meant not only concrete gains in real income and benefits, but, critically, inclusion in a national culture from which they had long been marginalized.[20] In an international context that had seen Argentina fall from its position as one of the world's wealthiest countries to a state of economic dependence and instability, Perón also tapped into nationalist sentiment. He presented himself and his "social-Christian" philosophy of *justicialismo* as independent from Cold War divisions and the global powers behind them, describing his approach to governance and the economy as a "third position" that avoided the pitfalls of capitalist individualism and Communist collectivism. In this way, Perón created one of the earliest nonalignment doctrines.[21] He also imprisoned and deported political opponents, cracked down on Communists, shut down newspapers, and was accused by his critics of torture. While his supporters viewed him as a corrector of liberalism's oligarchic, imperialist, and unjust traits, Juan Perón's opponents on the political right and left considered him a usurper of the constitutional order and human rights violator.[22] When viewed as part of Argentine legal history, a different and less polarized interpretation emerges. Juan Perón reframed the role of the law and the order it was created to uphold at a time when sectors of his opposition also backed fundamental constitutional change.[23]

While his opponents painted him as anti-liberal, and liberalism's legitimacy waned further under his early governments (1946-1955), Juan Perón did not discard liberal ideas and forms. Rather, he and his supporters preserved liberal institutions and practices – including the courts, Congress, elections, and the deployment of rights language – within a new conception of the purpose and operation of the law.[24] This was the case even as Perón relied on authoritarian tactics that undermined liberal principles of governance, including the removal of the sitting Supreme Court justices, censorship, and political imprisonment.[25] In this context, liberalism – defined as democracy, freedom, individual rights, the 1853 Constitution, and even human rights, as well as economic liberalism – became for anti-Peronists "a central ideological reference against a regime perceived as a totalitarian creation."[26]

The labor courts that Perón created (starting in 1944 when he was Secretary of Labor) offer an illuminating example of these dynamics. The courts were established to advance the social and economic rights of workers, but they were set up as arms not of the judiciary, but of the executive branch. In fact, Perón created the courts in explicit

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[19] For discussion of the development of the Argentine state's treatment of crime and criminals from the late 1800s through Juan Perón's presidencies in the 1940s and 1950s, see Lila Caimari, *Apenas un delincuente: Crimen, castigo y cultura en la argentina, 1880-1955* (Buenos Aires: Siglo XXI Editores, 2012).

[20] See James, *Resistance and Integration*.

[21] Rock, *Argentina 1516-1987*, 264.

[22] During Juan Perón's early governments, Argentine rights advocates took some of their allegations of government abuses to the United Nations directly, despite the body's limited capacity to respond to such allegations at the time. See Ernest Hamburger to Silvio Frondizi, Division of Human Rights, United Nations, May 20, 1952, Subfondo Silvio Frondizi, Fondo Centro de Estudios Nacionales, Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

[23] See María Estela Spinelli, *Los vencedores vencidos: El antiperonismo y la "revolución libertadora"* (Buenos Aires: Editorial Biblos, 2005), 118, 124.

[24] Nallim, *Transformations and Crisis*, 155-156, citing Eduardo Elena's research on Peronist rights politics.

[25] Nallim, *Transformations and Crisis*, 155-156.

[26] Nallim, *Transformations and Crisis*, 156, 167-169, 180-184. Nallim notes that in August 1950, the anti-Peronist magazine *Sur* dedicated an issue to human rights.

opposition to the judiciary created in 1853, concluding that normal courts were not suited to handle labor disputes and highlighting the inherent conservatism of the judiciary.[27] The labor courts constituted the "ultimate challenge to the liberal state" at the same time they used and reinvented the liberal legal process to advance a vision of justice for workers long shut out of the justice system.[28] To the group that epitomized Argentina's legal establishment, the Lawyers' College of the City of Buenos Aires, Perón's labor courts were precisely the sorts of "special commissions" that the 1853 Constitution prohibited.[29]

Violence

To understand the legacy of early Peronism and its place in Argentina's rule-of-law debates, it is necessary to situate Juan Perón's first administrations (1946-1955) in the longer and geographically broader development of Argentine attitudes not just toward liberalism, but toward violence. While the "dirty war" was still years away, the decade immediately following Juan Perón's overthrow has been identified by scholars as a crossroads in Argentine thinking about force and political conflict, helping establish the preconditions for mass bloodshed through the normalization of political violence.[30]

One strand of influential thought was laid by Perón himself, whose brand of strongman populism transplanted military modes of thought into the political arena.[31] That said, when the armed forces seized power from Perón in 1955, they invoked a preexisting view that military force was a legitimate response to a government deemed illegitimate; the notion had already been put into practice in the pre-Perón and pro-oligarchy 1930 coup. After 1955, anti-Peronists in the military government added another version of the friend-versus-enemy logic to Argentine thought, with Peronists depicted by hardliners as mortal adversaries. The military's violent repression of Peronism and its supporters – in particular the military's summary execution of twenty-seven leaders of a Peronist rebellion in June 1956 – in turn facilitated the acceptance of violent methods among the Peronist resistance.[32]

Transnational ideologies – forged in foreign settings also grappling with the relationship between state power, dissent, and violence – amplified, reconfigured, and

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[27] Juan Manuel Palacio, "El peronismo y la invención de la justicia del trabajo en la Argentina," *Nuevo Mundo Mundos Nuevos*, September 25, 2013, 2, 11, http://nuevomundo.revues.org/65765.
[28] Palacio, "El peronismo y la invención de la justicia del trabajo," 10, 13.
[29] David Leiva, *Historia del Colegio de Abogados de la Ciudad de Buenos Aires* (Buenos Aires: Ad-Hoc, 2005), 75.
[30] Here I follow the lead of historian Guillermo Mira Delli-Zotti, who suggests that we can best understand Argentina's recent history of violence by disaggregating the individual strands of violence that came together to produce a generalized state of violence. Mira Delli-Zotti identifies the following types of violence that would converge in the 1970s: state violence, Peronist violence, guerilla violence (Guevarist), ideological violence, and state terrorism. Rather than the forms of violence Mira Delli-Zotti traces, I focus on the distinct but soon-to-be intertwined *ideas* about violence that influenced how Argentines saw the law. Mira Delli-Zotti, "Genealogía de la violencia," 49-59, 50. See also Luís Alberto Romero, "La violencia en la historia argentina reciente: un estado de la cuestión," in *Historizar el pasado vivo en América Latina*, ed. Anne Pérotin-Dumon (Santiago, Chile: Universidad Alberto Hurtado Centro de Ética, 2007).
[31] According to Guillermo Mira Delli-Zotti, "Perón inverted the terms in which legitimate violence had been conceived until then. He designated the oligarchy as the enemy and installed in society a logic of friend versus enemy, such that political struggle was increasingly charged with the rhetoric of war." Mira Delli-Zotti, "Genealogía de la violencia," 51.
[32] As David Rock notes of the 1956 massacre, "Not since the *caudillos* had military rebellion been punishable by death. The Peronists now had martyrs and an indelible grievance against the government; the incident was unforgettable and unforgivable." Rock, *Argentina 1516-1987*, 336.

sometimes distorted Argentine perceptions. On the political left and right, as in U.S. foreign policy toward Latin America, the 1959 Cuban Revolution was a defining moment. Guevarist theories of violence came to provide inspiration and guidance to Argentina's radicalized left, and helped produce a new brand of revolutionary Peronism by the early 1970s. But in the 1960s, it was Argentine military and civilian government officials who were most visibly affected by cross-border currents of revolutionary thought. French revolutionary war doctrine (developed in the Algerian Revolution) and U.S. National Security Doctrine fueled a conflation of Peronism and Communism as the enemy, building also on Argentine anti-Communism dating from the early part of the century.[33] In line with these counterinsurgency theories, the traditional external military threat was transformed into an internal enemy. Merged with certain Catholic conceptions of violence, these national security ideas – and the methods, training, and aid that accompanied them – would support a generalized use of violence, especially torture, during the "dirty war."[34]

In the early 1960s, counterinsurgency frequently took the form of legalistic repression, combined with physical force. The integration of Cold War politics and the law was happening too at the transnational level since the early 1950s, most notably through the "rule-of-law" work of the left-leaning International Association of Democratic Jurists (IADJ) and the (initially) CIA-funded and anti-Communist International Commission of Jurists (ICJ).[35] Argentine lawyers and their allies would forge ties with both groups.

Constitutionalism

The new National Constitution that Juan Perón pushed through in 1949 was an enduring centerpiece of struggles over Argentina's legal framework and identity. The changes were made in a constitutional convention that was dominated by Peronist delegates. Notably, these delegates came to their positions through national elections that had been generally free of fraud, an important departure from previous practices. Juan Perón's constitutional reform set the terms for future rule-of-law debates, echoing basic Cold War questions about the proper role of the modern state.

The 1949 Constitution was an example of social constitutionalism, a midcentury trend of constitutional reform, especially in Latin America, that imposed affirmative duties on states to ensure the social and economic wellbeing of their citizens.[36] In the

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[33] William Michael Schmidli, "Institutionalizing Human Rights in United States Foreign Policy: U.S.-Argentine Relations, 1976-1980," *Diplomatic History* 35 (April 2011): 356-357; Ernesto López, *Seguridad nacional y sedición militar* (Buenos Aires: Legasa, 1987), 146, 150-51.

[34] See Mira Delli-Zotti, "Genealogía de la violencia," 94, 102.

[35] Dezalay and Garth, *Internationalization of Palace Wars*. For a history of the International Commission of Jurists, see Howard Tolley, *The International Commission of Jurists: Global Advocates for Human Rights* (Philadelphia: University of Pennsylvania Press, 1994).

[36] In a 1966 article, historian Herbert Klein described the new phenomenon of social constitutionalism in Latin America (and its departure from traditional liberal constitutionalism) this way: "In Latin America in the twentieth century, nation after nation has revised its concepts of constitutional law to take into account the whole new realm of state responsibility for the economic and social welfare of its citizens. Beginning most dramatically with the Mexican Constitution of 1917, Latin American states have written into their constitutional charters detailed chapters on the social responsibility of capital, the economic rights of the worker, and the state responsibility for the protection and security of the family and for the physical and mental welfare of all its citizens and classes. In rewriting their national

Argentine example, the revised Constitution modified the country's liberal 1853 Constitution (with 1860 amendments) and its principles of separation of powers, federalism, and individual rights. Although the 1949 changes to the Argentine Constitution included for the first time a national constitutional right to habeas corpus – the traditional legal petition to challenge unlawful detention, and a fundamental individual rights protection – they were largely statist and corporatist in nature. State authority was expanded to advance nationalist aims, establishing the "inalienable national ownership" of natural resources like oil and describing private property as a "'natural right' limited by its 'social function,'" thus empowering the government to expropriate property.[37] New rights provisions in the constitutional charter were likewise predicated on the aggrandizement of the state. In Peronist fashion, and in contrast to the liberal individual rights formulation of the 1853 Constitution, the 1949 Constitution packaged workers' rights provisions as corporate rights bestowed by the government.[38]

The executive branch in particular was bolstered. The 1948 National Defense Law (*Ley 13.234*) had already laid the groundwork for a substantial expansion of presidential power and military activity by suggesting that exceptional powers could be invoked in case of a *domestic* "grave emergency."[39] Under the new Constitution, the president was allowed unlimited reelection.[40] In addition, pursuant to the Constitution's modified Article 29 – which would play a key role in the CONINTES Plan – civilians could be tried by military courts. With the 1949 Constitution, the centralization of power in the person of the president intensified. [41] The president's capacity to repress dissent had multiplied.

The military government that overthrew Perón overturned his Constitution. This was a symbolic act taken to advance a fundamental objective of the Liberating Revolution: the "restoration" of Argentina's democratic republican tradition.[42] The reinstated 1853 Constitution ("to the extent that it does not interfere with the revolutionary objectives [of the de facto regime]")[43], presented by anti-Peronists as the antithesis of the 1949 version, became a newly salient reference point in public debate. Importantly, the military coup that allowed for this juridical reordering had been supported by the legal establishment and left-leaning lawyers, with, for example, Alfredo Palacios – a prominent Socialist member of the Lawyers' College of the City of Buenos Aires – justifying the overthrow as an exercise of the people's right to revolt against

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constitutions, the Latin Americans have deliberately broken with the classic liberal constitutionalism of the nineteenth century and adopted what some have called a 'social constitutionalist' position. This pattern of thought emphasizes the positive role of the state in assuring the welfare of its citizens, and essentially reflects the over-all changes in twentieth-century Latin American political ideology, which has seen the decline of liberalism and the growth of Marxism and indigenismo." Herbert Klein, "'Social Constitutionalism' in Latin America: The Bolivian Experience of 1938," *The Americas* 22, no. 3 (January 1966): 258-276. For a recent and succinct discussion of social constitutionalism in Latin American constitutional history, see Roberto Gargarella, "Latin American Constitutionalism: Social Rights and the 'Engine Room' of the Constitution," *Notre Dame Journal of International & Comparative Law* 4 (2014): 12-13, http://scholarship.law.nd.edu/ndjicl/vol4/iss1/3.

[37] Rock, *Argentina 1516-1987*, 288-89.

[38] Rock, *Argentina 1516-1987*, 288-89.

[39] Subsequent legislation in 1951 would make explicit this executive authority to invoke a "state of internal war." See José Daniel Cesano, "El sistema penal durante el primer Peronismo (1946-1955): a propósito de ciertas interpretaciones," *Horizontes y convergencias* (2009): n54.

[40] Rock, *Argentina 1516-1987*, 288-89.

[41] See Rock, *Argentina 1516-1987*, 288-89.

[42] Spinelli, *Los vencedores vencidos*, 78-79.

[43] Spinelli, *Los vencedores vencidos*, 117.

tyranny.[44] The subsequent abolition of Perón's Constitution was viewed similarly by his opponents in the legal field as the reestablishment of legal order rather than a departure from it. In what would become a pattern, constitutional normalcy was understood in Argentine society more broadly to require a constitutional rupture: a military takeover, a "state of siege," or, in this case, the elimination of the existing constitution.

The Liberating Revolution, though enjoying the support of a broad range of the country's political parties, was beset by contradictions. Its architects set out to restructure Argentina's system of government to prevent future "dictatorships," but they did so in a country where many members of the population still supported Juan Perón and his social and economic agenda.[45] The de facto government jailed Peronists and banned Peronism while emphasizing its commitment to democratic freedoms and justifying its rule in terms of constitutional traditions.[46] In 1957 these contradictions came to the fore in the form of constitutional convention elections. Anti-Peronist groups from across the political spectrum called for the modernization of the 1853 Constitution. Some wanted limits on executive power, a new system of political representation, and bolstered federalism, while others demanded the assertion of Argentina's sovereignty over its oil resources and modifications of landowners' rights and Church-state relations.[47] The government held the elections with an eye to testing the strength of Peronism's support among voters, though the participation of Peronist parties was prohibited. With almost a quarter of voters leaving their ballots blank as instructed by Juan Perón from exile, Peronist support had dropped, but it remained significant.[48] In the end, the constitutional reforms instituted by the constitutional convention were limited. While changes included protections for workers' rights (the rights to strike and to decent housing, among others) and social security benefits, the efforts to remake the Constitution under the Liberating Revolution failed.[49] In this context, a return to the 1853 Constitution was, for many, evidence of a political impasse. But the 1853 model also remained a benchmark for Argentine democracy.

Among Argentina's legal establishment, represented in the country's lawyers' "colleges" (similar to U.S. bar associations but with nonmandatory membership), Juan Perón's 1949 Constitution had embodied anti-liberalism. It was therefore deeply un-Argentine. In January 1956, just months after Juan Perón's overthrow, the Colegio de Abogados de la Ciudad de Buenos Aires (Lawyers' College of the City of Buenos Aires) announced a series of conferences in national newspapers to commemorate the 1853 Constitution and its framers. The Buenos Aires college, associated with traditional and oligarchic interests and the target of harassment by Perón, noted that the deposed government had not permitted the group to celebrate the centennial of the Constitution's creation.[50] The more progressive Asociación de Abogados de Buenos Aires (Lawyers'

[44] Alfredo Palacios, *El pensamiento socialista en la Convención Nacional de 1957* (Buenos Aires: Chiesino, 1958), 36, Centro de Documentación e Investigación de la cultura de Izquierdas en Argentina.
[45] Ricardo Miguel Zuccherino, *Historia constitucional argentina basada en la teoría tripartite del sujeto historiográfico* (Buenos Aires: Lexis Nexus Argentina, 2007), 494-496.
[46] See Spinelli, *Los vencedores vencidos*, 78, 82.
[47] See Spinelli, *Los vencedores vencidos*, 118, 124.
[48] See Zuccherino*, Historia constitutional argentina*, 496.
[49] Zuccherino*, Historia constitutional argentina*, 496-497.
[50] "Un homenaje a la constitución nacional del 53," *La Razón*, January 27, 1956, SM 2245, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

Association of Buenos Aires) also supported the 1853 Constitution against the 1949 reforms. When changes to the Constitution were still being considered, the Association issued a statement condemning the unlimited reelection of the president, noting that international treaties already protected workers' rights, and celebrating the existing (1853) Constitution for its protections of human dignity, so often turned to, the group observed, against the period's abuses.[51] While the Communist Party seized on the 1949 constitutional reform to propose reforms of its own (advocating what it considered a truly "anti-oligarchic and anti-imperialistic" Constitution against Perón's proposed changes), the Socialist Party demonstrated a tendency among more progressive political factions to concur with the legal establishment's defense of the 1853 Constitution.[52] Argentines like the jurist Jorge Alfredo Coll, who opposed the 1949 reforms but supported state involvement in social and economic welfare, argued that there was no contradiction between individual rights and social rights, and that the 1853 Constitution's protections of the former did not undermine the fulfillment of the latter.[53]

The Political Prisoner

Embedded in the 1853 Constitution was a formulation of the individual right to political dissent, even revolution. The political prisoner was enshrined in the document and, like Juan Perón and his 1949 constitutional reform, became a reference point in Argentines' discussions of law, governance, and violence. Under Perón's administrations (1946-1955), legal advocates for political prisoners had criticized the government by defending individual rights for dissidents.[54] They relied heavily on two constitutional articles. Introduced in the 1853 charter during an earlier period of political turmoil and violence, and still in effect today, Article 18 contains due process guarantees, including a prohibition on ex post facto criminal laws and punishment without trial, and the rights to defense and to be heard by a competent tribunal (a "natural judge" rather than an unconstitutional "special commission."). Article 18 also imposes explicit limits on criminal punishment, prohibits torture, and – creating a special category of treatment for political prisoners – bars the state from using the death penalty against those accused of

[51] "Entidades jurídicas y políticas objetan la reforma constitucional," *La Prensa*, August 27, 1948, Subfondo Arturo Frondizi - Fondo Centro de Estudios Nacionales (Subfondo AF - CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

[52] "Por una reforma constitucional antioligárquica y antiimperialista: Posición del Partido Comunista sobre la reforma de la constitución," Suplemento de *La Hora*; "En un Mitin Socialista Objetóse la Proyectada Reforma Constitucional," *La Prensa*, September 5, 1948, Subfondo Arturo Frondizi - Fondo Centro de Estudios Nacionales (Subfondo AF - CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

[53] In the September 15, 1948 edition of *La Prensa*, jurist Jorge Alfredo Coll wrote a lengthy article making this point and arguing against criticisms of the 1853 constitution as an antiquated copy of the U.S. version. Jorge Eduardo Coll, "Reforma de la constitución," *La Prensa*, September 15, 1948, Subfondo Arturo Frondizi - Fondo Centro de Estudios Nacionales (Subfondo AF - CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

[54] The Argentine League for the Rights of Man stressed collective action in achieving the liberation of political prisoners. See for instance Liga Argentina por los Derechos del Hombre, "Navidad sin presos políticos: La acción organizada y unida del pueblo puede lograrlo," November 14, 1953, Archivo Histórico de la Liga Argentina por los Derechos del Hombre.

political crimes.[55] It has been called the constitutional provision that "defines the rule of law."[56]

Like the constitutions of almost all Latin American countries, Argentina's 1853 Constitution also contains a state of exception – or "state of siege" –provision allowing guarantees to be suspended. But here too advocates under Perón's rule, as in the past, emphasized the special protection afforded to political prisoners. Article 23 provides that, in case of domestic disorder or foreign attack, a state of siege may be declared, suspending constitutional guarantees in the affected area.[57] At the same time, Article 23 explicitly limits the executive's ability to act against individuals' liberty – and in the realm reserved for the judicial branch – providing that "the President of the Republic shall not pronounce judgment or apply penalties on his own. In such case, his power shall be limited, with respect to persons, to their arrest or transfer from one place of the Nation to another should they not prefer to leave the Argentine territory."[58]

The special juridical category of the political prisoner articulated in Articles 18 and 23 were elements of an international revolutionary legacy that, inside Argentina, were beginning to crumble by the middle of the twentieth century. It was codified in the form of provisions for more lenient punishments for crimes like rebellion and sedition, and a system of international refuge.[59] As a young defense attorney in the 1930s, Arturo Frondizi had emphasized the special "benevolence" Argentine law afforded political criminals (by virtue of their political ideals), calling Argentine institutions the "children of revolution."[60] In Latin America more broadly, the international legacy that gave rise to these crimes and their legal treatment was particularly vibrant, as embodied in the practice of diplomatic asylum.[61] Discussed by progressive Argentine lawyers as a human right and centerpiece of Latin American law in the early and mid-twentieth century, decades before the modern human rights movement, diplomatic asylum allows individuals to seek refuge in, and safe passage out, of embassies and other extraterritorial sites located in the very countries that consider them threats.[62] The practice was dropped by European countries and the United States in the nineteenth century out of concern for national sovereignty, but Latin American countries largely retained it.[63] A regional

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[55] Argentina Constitution, art. 18.

[56] This was the assessment of one particularly active member of the Argentine League for the Rights of Man, but it was an idea embodied in some more conservative lawyers' arguments as well. See Beinusz Szmukler, "Terrorismo, subversion y derechos humanos," *El Derecho*, 3n3, Archivo Institucional del Centro de Estudios Legales y Sociales.

[57] Argentina Constitution, art. 23. See Iglesias, "La inclusion del estado de sitio," 48.

[58] Argentina Constitution, art. 23.

[59] See Mario Sznajder and Luis Roniger, *The Politics of Exile in Latin America* (Cambridge, UK: Cambridge University Press, 2009), 146-147.

[60] Frondizi made this point while also arguing that his clients were innocent of rebellion. Arturo Frondizi, "Memorial," [1934?], 19-20, in "Proceso por Rebelion Escritos - judiciales, Legajo N.5," Subfondo Presidencia Arturo Frondizi - Fondo Centro de Estudios Nacionales (Subfondo PAF - Fondo CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

[61] See Lynsay Skiba, 'Asilo Americano' and the Interplay of Sovereignty, Revolution, and Latin American Human Rights Advocacy: The Case of 20th-Century Argentina," *Creighton International and Comparative Law Journal* 3, no. 1 (Fall 2012): 215-231.

[62] Carlos Sánchez Viamonte, "El Derecho de Asilo," *Liberalis*, March-April 1952, 50; Luis Carlos Zárate, *El asilo en el derecho internacional Americano* (Bogotá: Editorial Iqueima, 1957), 374. See Jaime Esponda Fernández, "La tradición latinoamericana de asilo y la protección internacional de los refugiados," in *El asilo y la protección internacional de los refugiados en América Latina. Análisis crítico del dualismo "asilo-refugio" a la luz del Derecho Internacional de los Derechos Humanos*, ed. María Laura Gianelli Dublanc et al. (San José, Costa Rica: Editorama, 2004).

[63] See S. Prakash Sinha, *Asylum and International Law* (The Hague: M. Nijhoff, 1971), 25-27; John Bassett Moore, *A Digest of International Law* (Washington, DC: Government Printing Office, 1906), 766-77.

culture of exile developed in which political enemies and thwarted revolutionaries were often able to escape persecution by leaving their countries for a time, sometimes aided by diplomatic asylum.[64]

Argentine jurists were very much engaged in the revolutionary rights culture of the late nineteenth and early twentieth centuries, when legal principles clashed repeatedly with a bloodier reality and an early front of universal rights advocates emerged. In 1889, Argentina ratified the Treaty on International Penal Law, which codified diplomatic asylum among Latin American countries. The context for this legal development, as for legal developments in later years, was shaped by anti-system violence. At the time, it was anarchist attacks that troubled government officials, sparked prosecutions and other forms of state repression (including, prominently, the deportation of alleged subversives under the Residence Law of 1902, Ley de Residencia/Ley 4144), and were accompanied by new forms of rights advocacy. The Italian-born lawyer and anarchist Pietro Gori, having made Argentina his home in exile, used the magazine he founded, *Criminología Moderna* (*Modern Criminology*), to promote international protections for people accused of political crimes. In an article responding to an 1898 international conference organized to coordinate police action against anarchism, Gori invoked the French Declaration of the Rights Man and of the Citizen, calling the right of asylum "the most sacred of rights" and condemning governments' efforts to facilitate the extradition of political criminals as "crimes against liberty."[65]

By the 1930s, Argentine anarchism was in decline, and Communism – and political prisoners accused of Communism – became a primary site of government repression and rights advocacy. State-sponsored violence surged. The federal government created a new anti-Communist police agency, the Sección Especial (Special Section), and torture was frequently alleged. Argentina's earliest human rights group, the Argentine League for the Rights of Man, was created in 1937 in reaction to these conditions, and many of its early members were lawyers with ties to the Communist Party. While crossing party lines in its membership and advocacy, the Argentine League drew on the traditions of Communist International legal assistance that had been offered through the International Red Aid since 1922.[66] This was evident in the League's advocacy for political prisoners, workers' rights, and the right to asylum for dissidents. At the same time, the Argentine League invoked universal rights, thus drawing on an earlier international legal initiative also born of conflict centered on the figure of the political prisoner. In a 1937 survey, what was then the Amnesty Committee for Political Prisoners and Exiles of the Americas (Comité Pro Amnistía a los Presos Políticos y Exiliados de América) asked its members if the group should change its name. The survey's authors suggested "the Argentine League for the Rights of Man," following the lead of the French Human Rights League (Ligue des Droits de L'Homme), which had been founded

[64] See Sznajder and Roniger, *Politics of Exile*, 146-147.
[65] Pietro Gori, "Delitos contra la libertad," *Criminología Moderna*, November 20, 1898, 39-42. For discussion of the conference that prompted Gori's article, see Mathieu Deflem, "'Wild Beasts without Nationality': The Uncertain Origins of Interpol, 1898–1910," in *Handbook of Transnational Crime & Justice*, ed. by Philip Reichel (Thousand Oaks, CA: Sage Publications, 2005), 277.
[66] See Olivier Reboursin, "Derribando algunos mitos: acerca de la Liga Argentina por los Derechos del Hombre en el nacimiento y desarrollo del 'movimiento de Derechos Humanos,'" *La revista del CCC*, no.3 (May-August 2008), http://www.centrocultural.coop/revista/articulo/68/.

in 1898 in reaction to the Dreyfus Affair.[67] The name change went through, and the Argentine League began its work advocating for political dissidents via (what it emphasized to be) the apolitical mediums of human rights and constitutional law. For critics of the League, this invocation of the law was seen – and would continue to be seen – as a cynical use of legalism to advance a subversive, Communist agenda.

The Frondizi Presidency and Plan CONINTES: Democracy, Hope, and Betrayal

In 1958, Arturo Frondizi became the first civilian president to take office after the end of the Liberating Revolution. It was a moment of hope and expectation. Many Argentines – among them Peronists and unions – were optimistic that their new leader could break the country's political deadlock, turn the economy around, and respond to the needs of the working class. His initial actions were promising; Frondizi legalized unions and promoted industrialization. But the president soon found that implementing his economic development plans required quelling dissent and appeasing the military, objectives that proved incompatible with the democracy and progressive rights politics he once embodied.[68]

Even before helping to found the Argentine League, Arturo Frondizi had had a distinguished legal career as an individual rights advocate. During the 1930s, Frondizi garnered public attention for representing political prisoners. A 1933 Radical rebellion failed to overthrow the conservative government in power, and its alleged participants were prosecuted. Arturo Frondizi was celebrated in newspaper coverage for having single-handedly defended more than 160 people accused of these "subversive" activities.[69] As president, Frondizi faced trying economic and political conditions that pushed him closer to the military and further from his roots as a rights advocate.

To secure the presidency, Frondizi had garnered the secret support of the exiled Juan Perón, who had told his followers to vote for Frondizi. The Radical party was divided over Peronism, and Frondizi led the newly (1957) formed Intransigent Radical Party (Unión Cívica Radical Intransigente, UCRI) that sought an accommodation with Peronism and Peronist unions and working-class supporters. The People's Radical Party (Unión Cívica Radical del Pueblo, UCRP), in contrast, wanted nothing to do with Peronism.[70] Frondizi's arrangement with Perón, which included Frondizi's pledge to end the persecution of Peronists, was short lived. In response to a balance-of-payment deficit, Frondizi put in place a stabilization program. Frondizi's austerity measures eroded his political support, and with violent Peronist resistance mounting, the president became more dependent on the military. By 1959, a state of siege was declared (in response to an oil workers' strike), and Juan Perón publicly renounced his deal with Frondizi.[71] In

[67] "Encuesta," *Amnistía, Suplemento Semanal*, November 1937, Subfondo Arturo Frondizi - Fondo Centro de Estudios Nacionales (Subfondo AF - CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina. For background on the Ligue de droit de l'homme, see William D. Irvine, *Between Justice and Politics: the Ligue des droits de l'homme, 1898-1945* (Stanford, CA: Stanford University Press, 2007), 5.
[68] See James, *Resistance and Integration*, chaps. 5-6.
[69] "Proceso por Rebelión. Cartas y otros documentos, Legajo N.5," Subfondo Presidencia Arturo Frondizi - Fondo Centro de Estudios Nacionales (Subfondo PAF - Fondo CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.
[70] Rock, *Argentina 1516-1987*, 337.
[71] Rock, *Argentina 1516-1987*, 337-340.

historian David Rock's estimation, "the president became little more than the Army's puppet." This was an army enthralled with counterinsurgency thinking.[72]

Pressed by the military, Arturo Frondizi created in the CONINTES Plan an Argentine, codified version of French revolutionary war doctrine.[73] Its legal mooring was Juan Perón's aforementioned 1948 Law 13.234, which allowed the president to prosecute civilians under martial law during a domestic emergency. Notably, however, the 1948 law had limited such prosecutions to civilians who had been previously mobilized by the military. CONINTES changed that, expanding the military's legal jurisdiction. At the global scale, the CONINTES Plan was one example of the period's activity in the realm of national security legislation.[74] An Argentine newspaper article published on August 2, 1961 suggested the interest of Argentines in other countries' juridical formulas for combating perceived subversion. The article described a European tour taken by Argentine lawyer Eduardo Augusto García, a conservative politician and former secretary general of the OAS. García's mission was to examine European legal measures against "Communist subversion," initiatives García endorsed for protecting Western Civilization and its central tenets: human dignity and representative democracy.[75]

Under the army's sway and confronting challenging security and political conditions, a former defense lawyer and human rights advocate also turned to foreign models of legal repression. Arturo Frondizi's CONINTES Plan adapted the French antisubversion model for Argentine soil by placing the armed forces in charge of internal policing and civilians under military court jurisdiction.[76] Important in shaping the advocacy launched in reaction to the plan was the bar on civilian lawyers in CONINTES proceedings; the military was placed in charge of defending the people it tried.

Repression under Frondizi's government and the military government (1955-1958) that preceded it reconfigured Argentine rights politics. The Argentine League for the Rights of Man, an opponent of Juan Perón during his presidency, now advocated for the rights of Peronists who, like Communists, were targeted for persecution.[77] With Arturo Frondizi in office and the CONINTES Plan in effect, Peronist lawyers became prominent actors, and new advocacy groups were founded by the legal representatives and family members of CONINTES prisoners. These organizations included the Lawyers' Commission for the Defense of Labor and Political Prisoners and the Commission of Detainees' Family Members (COFADE, Comisión de Familiares de Detenidos), the first organization formed exclusively by those directly affected by state repression.[78]

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[72] Rock, *Argentina 1516-1987*, 340.
[73] Summo and Pontoriero, "Pensar la 'guerra revolucionaria,'" 293.
[74] See Marina Franco, "'Homeland security' as a State Policy in 1970's Argentina," *Antíteses* 2, no. 4 (July-December, 2009): 910; Carlos Zamorano, *Fuerzas armadas y conflictos sociales (La Doctrina Conintes*) (Buenos Aires, Argentina: Liga Argentina por los Derechos del Hombre, 1990).
[75] "Los Progresos de la 'Nueva Europa,'" *Correo de la Tarde*, August 2, 1961, Subfondo Arturo Frondizi - Fondo Centro de Estudios Nacionales (Subfondo AF - CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.
[76] Summo and Pontoriero, "Pensar la 'guerra revolucionaria,'" 293.
[77] See Mauricio Chama, "Activismo social y político, represión estatal y defensa de 'presos Conintes': La experiencia de Cofade (1960–1963)," paper presented at V Jornadas de Historia Política "Las provincias en perspectiva comparada," Universidad Nacional de Mar del Plata, September 29–October 1, 2010, 3, http://historiapolitica.com/datos/biblioteca/vj_chama.pdf 3.
[78] Chama, "Activismo social y político," 5-6.

For its part, the Argentine League for the Rights of Man continued to fight against its public image as an arm of international Communism. In October 1956, national newspapers covered an Interior Ministry investigation into the Argentine League that found the group to be Communist and deceptive in its use of democratic and humanist language. *La Prensa* quoted the government's report at length, which concluded that the "ostentatious" 1937 survey on the group's name was an attempt to appear "spontaneous" and to conceal its true origins in international Communism. The Argentine League for the Rights of Man was, the government report insisted, really an offshoot of a 1935-1936 International Red Aid project that created similar organizations throughout the world in order to attract liberal democrats to their ranks.[79] During Arturo Frondizi's presidency, the Argentine League was banned as an illegal Communist organization, and again the group – and its rights advocacy – was the subject of public debate. In a March 12, 1960 press conference (still a year before the creation of Amnesty International, it should be noted), the group's directors presented a letter they sent to the United Nations regarding Argentina's "human rights" abuses, including the torture of political (and common) prisoners and the closure of newspapers and unions. Referring to the Universal Declaration of Human Rights, the letter asked the U.N. to remind the Argentine government of its commitment to human rights and insisted that the Argentine League was not a Communist organization. After all, noted the Argentine League's leader, the group's founding members included President Arturo Frondizi.[80]

Traditional lawyers' groups also challenged the Frondizi government's repressive measures. Despite many jurists' support for the 1955 coup, the question seems to have been how much of a state of exception was too much. With the CONINTES Plan in place nine months, the Lawyers' College of the City of Buenos Aires demanded institutional normalcy. The college argued in its 1960 annual report that the nation could only become great again if human rights were respected and the balance of powers reestablished.[81] The group made this point in repeated public statements, betraying a frustration with the government's departure from constitutional norms. The group denounced the prolonged suspension of individual rights and state of siege – "an exceptional recourse that is gathering the force of a permanent institution" – and questioned the constitutionality of the CONINTES military proceedings.[82] Notably, some of the attorneys making this point on behalf of the Buenos Aires lawyers' college in the early 1960s would become important government officials during the "dirty war," when the country's departure from the rule of law reached its most extreme.[83]

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[79] "Investigóse a la Liga por Los Derechos del Hombre," *La Prensa*, October 30, 1956; "Otro organismo filocomunista," *La Nación*, October 30, 1956, SM 2316, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[80] "Se denuncia a la UN el avasallamiento de los derechos humanos," *La Razón*, March 12, 1960, SM 2316, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria. See Chama, "Activismo social y político," 6n10. As Mauricio Chama notes, while Arturo Frondizi overturned the much-maligned Residency Law (Ley de Residencia, or Ley 4144), which had been a key focus of the Argentine League and other progressive rights advocates, his presidency oversaw increased repressive activities in a context of labor unrest and anti-system violence.

[81] "Colegio de Abogados: Posición clara contra toda argemiación obligatoria," *Clarín*, December 24, 1960, SM 2245, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[82] "'Indice poco alentador,'" *Noticias Graficas*, May 14, 1960, SM 2245, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[83] The leadership of the Lawyers' College of the City of Buenos Aires included at the time secretary Jorge A. Aja Espil and treasurer José A. Martinez de Hoz. "El Colegio de Abogados y su memoria anual," *La Nación*, December 18, 1961,

Lawyers' constitutional arguments against the CONINTES Plan centered on the principle that civilians should have access to constitutionally competent courts. As covered in national newspapers, the Federación Argentina de Colegios de Abogados (Argentine Federation of Lawyers' Colleges) published its analysis in December 1960, arguing that the use of military tribunals to prosecute civilians with no ties to the military constituted a violation of constitutional provisions including Article 18, specifically its prohibition of "special commissions." The Federation declared that, "the rule of law demands that the individual rights established in the National Constitution be respected."[84] In the view of the progressive and liberal Lawyers' Association of Buenos Aires, the country's legal system was at a turning point. In its analysis of the CONINTES Plan, the Association called on the Supreme Court to determine whether the "natural judge" principle was in fact a fundamental right or whether it could "be sacrificed in light of a reasonable fear of a military assault" or internal unrest. "In other words," the lawyers asked, "if Argentine courts are capable of judging criminals and administering justice, or if the law of force has replaced the force of law."[85]

The Argentine League for the Rights of Man also denounced the CONINTES Plan for its unconstitutional use of "special commissions," and it protested the failure of constitutional challenges to CONINTES to reach the Supreme Court. But the Argentine League went further, situating the CONINTES tribunals within a larger constellation of "antidemocratic" measures aimed at repressing labor unions and Communism, measures that included the state of siege and creation of an anti-Communist investigation commission. At its 1960 National Congress, the Argentine League accused the government of creating "the fiction of terrorism" to impose a "poor imitation of the U.S. system known as McCarthyism. This is the real and dangerous infiltration afflicting the country."[86] And the real terrorism, argued the group, was the CONINTES Plan.[87] The remedy was liberty and general amnesty legislation (also demanded by COFADE) for the CONINTES prisoners.[88]

Congress and the Rule of Law: The Special Investigative Commission on Alleged Unlawful Coercion, 1960-1961

The Special Investigative Commission on Alleged Unlawful Coercion (Comisión Especial Investigadora de Supuestos Apremios Ilegales) was created by Argentina's

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SM 2245, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[84] "La Federación de Colegios de Abogados Realizó su Asamblea: Se pronunció sobre la aplicación del plan Conintes y juzga que alguna de sus dispocisiones son inconstitucionales," *La Prensa*, December 21, 1960, SM 2245, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[85] Asociación de Abogados de Buenos Aires, *Boletín de la Asociación de Abogados de Buenos Aires*, May-June 1960.

[86] Liga Argentina por los Derechos del Hombre, "Navidad sin presos. Amnistia general. Congreso Nacional Ordinario de la Liga Argentina por los Derechos del Hombre," Suplemento Extraordinario del Informativo, no. 30, 13, Archivo Histórico de la Liga Argentina por los Derechos del Hombre.

[87] Liga Argentina por los Derechos del Hombre, "Ley de Amnistia: clamor nacional. El parlamento debe sancionarla de inmediato," Suplemento Extraordinario del Informativo No. 35, Archivo Histórico de la Liga Argentina por los Derechos del Hombre.

[88] Liga Argentina por los Derechos del Hombre, "Ley de Amnistia: clamor nacional. El parlamento debe sancionarla de inmediato," Suplemento Extraordinario del Informativo No. 35, Archivo Histórico de la Liga Argentina por los Derechos del Hombre.

lower house of Congress, the Chamber of Deputies, on April 21, 1960, and it operated through May 1961.[89] It was often referred to simply as the "Torture Commission." The body's president was a lawyer and jurist, Deputy Pablo Calabrese. Calabrese was also a member of Arturo Frondizi's Intransigent Radical Party (UCRI), but his work as the commission's head would position him as a public opponent of the president's policies.

Much of the Torture Commission's work involved finding and attempting to relocate CONINTES prisoners. Incommunicado detentions and unannounced transfers to far-flung facilities were among the chief concerns of prisoners and their relatives and advocates. The Torture Commission received inquiries about specific individuals, relayed them to executive branch officials, and contacted jails and prisons where missing people were thought to be held. In one case from December 1960, a senator from Buenos Aires wrote to the Torture Commission requesting information about the whereabouts of an individual said to have been mistreated in custody and thought to be held at the Caseros jail.[90] Four days later, Torture Commission president Pablo Calabrese sent a letter to the jail's director asking whether the man was in fact detained there, on what legal grounds, and in what physical condition.[91] The commission aimed not only to locate CONINTES prisoners but also to ensure that they were not moved to remote locations away from loved ones, and it had some success. While the Undersecretary of Justice denied the commission's request to move a group of Cordobese prisoners to their home jurisdiction from detention facilities in Viedma, Magdalena, and Rawson – an illustration of the limits of the commission's influence – an earlier request to relocate prisoners from the remote Patagonia prison in Ushuaia was granted.[92] Notably, the commission rooted these relocation requests in humanitarian sentiment and a commitment to peace, taking care to express its opposition to terrorism. In the commission's ultimately unsuccessful request to transfer prisoners back to Córdoba, Pablo Calabrese explained, "This petition, like our earlier request…, would allow the prisoners' relatives to have contact with their family members, the possibility of which we believe will bring greater tranquility to a sector of the population…. While this commission has always condemned acts of terrorism unequivocally…, that does not mean we do not view such a possibility as a humanitarian act…."[93]

In retrospect, and as will be examined in the final chapters of this dissertation, aspects of the congressional commission's strategy look similar to the missions of the international nongovernmental and intergovernmental human rights bodies that would form almost two decades later. In addition to letter writing, the commission conducted

[89] See Osvaldo Barreneche, "Formas de violencia policial en la provincia de Buenos Aires a comienzos de la década de 1960," *Anuario Del Instituto de Historia Argentina*, no. 12 (2012): 12, http://www.anuarioiha.fahce.unlp.edu.ar.
[90] Letter to Pablo Calabrese, December 17, 1960, Comisión Investigadora de Presuntos Apremios Ilegales Notas Recibidas Son 73 fojas, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.
[91] Pablo Cabrese to director of Caseros jail, December 21, 1960, Comisión Investigadora de Presuntos Apremios Ilegales Notas Recibidas Son 73 fojas, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.
[92] Ministerio de Educación y Justicia Subsecretaria de Justicia to Pablo Calabrese, November 14, 1960, Comisión Investigadora de Presuntos Apremios Ilegales Notas Recibidas Son 73 fojas, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.
[93] Ministerio de Educación y Justicia Subsecretaria de Justicia to Pablo Calabrese, November 14, 1960, Comisión Investigadora de Presuntos Apremios Ilegales Notas Recibidas Son 73 fojas, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.

site visits to detention centers.[94] The Torture Commission also gathered information about specific abuses. As the commission's informal name suggests, torture was the primary focus of the body's activities. The "picana eléctrica," the electric cattle prod, was a frequent topic of commission hearings; a decade later, it would become the emblematic instrument of torture during the "dirty war" and a focus of human rights advocates around the world. But during the 1960s, this opposition to torture and related abuses was primarily undertaken inside Argentina, through besieged Argentine institutions.

At a structural level, the Torture Commission applied pressure to a version of the separation of powers, which, especially as modified under Juan Perón's administrations, favored the executive branch. Most obviously, the commission pushed back against executive power by challenging (through legislative channels) the president's exercise of authority. For example, in a letter to the Defense Ministry, Pablo Calabrese asked for military tribunal records, inserting himself in executive branch proceedings as head of a congressional oversight body.[95] But the commission also operated as a kind of satellite court system. Victims of torture and alleged perpetrators were called to testify in hearings whose detailed questioning was designed to uncover facts and assign culpability.[96] The commission's findings were, in turn, requested by civilian judges and even military defense lawyers who were working on CONINTES-related cases.[97] In this way, the Torture Commission acted as a conduit of information to both the civilian and military justice systems. Finally, the commission applied pressure on the president and executive branch by transmitting information to the Argentine public. Far from an insular, bureaucratic initiative, the Torture Commission's work drew media attention, in important measure because of the efforts of rights advocates.

Lawyers and lawyers' groups were among those who spoke out before the Torture Commission, where they were able to bring greater attention to their criticisms of the CONINTES Plan and articulate their interpretations of Argentine rights. Their arguments reached commission members through publications received by the body and direct communications. The commission's records of these communications shed light on the tenuous state of Argentine attitudes toward the rule of law as well as the institutional venues available to assert these claims. According to advocates' accounts, the democratically elected government's legalistic repression incorporated violence and other practices antithetical to Argentine constitutional traditions, thus transforming the law into a charade. At the same time, these constitutional traditions, and the universal rights principles they were understood to embody, remained a touchstone.

Legal professionals who approached the Torture Commission, like their nonlawyer counterparts, asserted that physical abuse was an integral component of the

[94] See for instance letter to Pablo Calabrese, December 5, 1960, Comisión Investigadora de Presuntos Apremios Ilegales Notas Recibidas Son 73 fojas, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.

[95] See Ministro de Defensa Nacional to Pablo Calabrese, May 19, 1961, Comisión Investigadora de Presuntos Apremios Ilegales Notas Recibidas Son 73 fojas, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.

[96] See letter to Pablo Calabrese, May 23, 1961; Policia Federal, Ministerio del Interior to Pablo Calabrese, March 1, 1961, Comisión Investigadora de Presuntos Apremios Ilegales Notas Recibidas Son 73 fojas, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.

[97] Letter to Pablo Calabrese, December 9, 1960, Comisión Investigadora de Presuntos Apremios Ilegales Notas Recibidas Son 73 fojas, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.

CONINTES military tribunals. Torture and the law were not just coexistent but intertwined, and advocates discussed them publicly through political institutions. The Comisión de Abogados por la Defensa de los Presos Gremiales y Políticos (Lawyers' Commission for the Defense of Labor and Political Prisoners) emphasized this point in a flyer that made its way to the congressional Torture Commission in around June 1960.[98] In a letter to the Torture Commission, the Lawyers' Commission demonstrated the scope of abuses by listing the names of more than a dozen CONINTES prisoners who reported mistreatment in detention and descriptions of the alleged abuses.

For two members of this lawyers' group, Gustavo Roca and Lucio Garzón Maceda, this Argentine congressional advocacy would be followed fifteen years later by an appearance before a key U.S. congressional committee (Chapter 5). During the early 1960s, when the site of advocacy was predominantly *domestic* and domestic conditions were amenable, the Lawyers' Commission's strategy of cataloguing abuses, naming alleged abusers, and amplifying these claims through elected representatives reflected a more broadly used practice.[99]

Even military judges were implicated in torture. In the flyer produced by the Lawyers' Commission, the victims were followed by another list of names: those of military officers said to have known about and even witnessed the alleged acts of torture. The next line was set apart from the surrounding text: "A good number of these officials, as is well known, act as judges for the Special Military Tribunal." As will be discussed, some prisoners likewise accused military tribunal members of torture.

In addition to political prisoners and their defense attorneys, a local bar association – and member of the Argentine Federation of Lawyers' Colleges – also contributed to the Torture Commission's efforts and the very active public discussion of inhuman treatment by state actors. The Lawyers' College of La Plata had been a driving force behind a provincial anti-torture body that predated the CONINTES Plan. The Buenos Aires Ad-Hoc Investigative Commission, created by the legislature of the Buenos Aires province on May 15, 1959, had been a response to public outcry about allegations of torture by police officers.[100] Complaints submitted by the La Plata lawyers' college were instrumental in the decision to create the Buenos Aires commission, and a representative of the college was made a commission member.[101] The Ad-Hoc Commission's investigation into torture in the Buenos Aires police department – and a single police station in particular, the *Seccional Segunda de Lanús* – produced testimony and a final report that the national Torture Commission requested and included among its

[98] Comisión de Abogados por la Defensa de los Presos Gremiales y Políticos, "Solicitamos Investigación," n.d., No 168 Córdoba Comunicaciones de Familiares de Detenidos Fojas 7, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.

[99] COFADE in particular circulated and published lists of victims and misdeeds, making torture a prominent and well-documented issue. See Chama, "Activismo social y político." See also Liga Argentina por los Derechos del Hombre, "Las denuncias más destacadas," C.O.F.A.D.E. Denuncia Situación de Detenidos, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.

[100] Provincia de Buenos Aires, Ministerio de Gobierno, Subsecretaria de Justicia, "Actuaciones y conclusiones producidas por la Comisión Investigadora 'Ad-Hoc' Constituida por Resolución No. 554," I; Provincia de Buenos Aires, Ministerio de Gobierno, Resolución No. 554, May 15, 1959, Antecedentes de la cuestión de torturas denunciadas por el colegio de abogados, 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 5, Archivo Histórico de la Cámara de Diputados de la República Argentina.

[101] "Actuaciones y conclusiones producidas por la Comisión Investigadora 'Ad-Hoc' Constituida por Resolución No. 554," II, Antecedentes de la cuestion de torturas denunciadas por el colegio de abogados, 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 5, Archivo Histórico de la Cámara de Diputados de la República Argentina.

documentation.[102] With the national Torture Commission's creation a year later and ongoing nongovernmental organizing efforts on behalf of the CONINTES prisoners, the Buenos Aires Ad-Hoc Commission (and the bicameral Buenos Aires torture commission that followed) constituted a point in a growing cluster of institutions that confronted torture as a feature of Argentine law and its enforcement.[103]

Advocates before the national Torture Commission grounded their denunciations in another, and very different, aspect of Argentine legal tradition. In an August 3, 1960 letter to Pablo Calabrese, the Argentine League for the Rights of Man described torture as an "institutional cancer" that had proliferated since the 1930 military coup, spreading from police forces (namely the anti-Communist Special Section) to the military. But the country's prohibition on torture, the League noted, had a much longer history; it dated back to the Independence period, when the 1813 Constituent Assembly banned such practices and, in a storied move, held a public burning of torture devices.[104] A century and a half later, the departure from Argentina's constitutional order had allowed abuses to grow unchecked: "Torture is the consequence of the constitutional abnormality in the country. Torturers proliferate, are emboldened, and act with impunity in the shadow of an endless state of siege, the CONINTES Plan, unconstitutional laws like Law 13.234…, the proscription of political parties (Communist and Peronist), the closure of organizations and publications (including the Argentine League for the Rights of Man), [and] the operation of special tribunals without the right of defense like those established by the CONINTES Plan…."[105]

Article 18 of the 1853 National Constitution was a frequent and critical point of reference for the lawyers and other advocates who approached the Torture Commission. With it, they demanded both that prisoners be granted physical protection and that they be brought out of the legal shadows. On September 14, 1960, a Córdoba prisoners' solidarity group sent the Torture Commission an urgent telegram: "Imminent transfer of CONINTES Plan prisoners with no knowledge of destination or security justification violates Article Eighteen of the National Constitution and involves torture prohibited by same. We demand prisoners remain where they are and immediate investigation."[106] The Lawyers' Commission was among the groups that demanded such an investigation and

[102] Letter to Pablo Calabrese, June 8, 1961, Comisión Investigadora de Presuntos Apremios Ilegales Notas Recibidas Son 73 fojas, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.

[103] Letter to Pablo Calabrese, June 22, 1961, No 52, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina. The Comisión Bicameral de Estudio de Denuncias de Apremios Ilegales de la Provincia de Buenos Aires (Bicameral Commission on the Study of Reports of Unlawful Coercion in the Province of Buenos Aires) also submitted records to the national Torture Commission.

[104] Liga Argentina por los Derechos del Hombre to Pablo Calabrese, August 3, 1960, C.O.F.A.D.E. Denuncia Situación de Detenidos, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.

[105] Liga Argentina por los Derechos del Hombre to Pablo Calabrese, August 3, 1960, C.O.F.A.D.E. Denuncia Situación de Detenidos, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.

[106] Telegram to Torture Commission/Pablo Calabrese (the message and address on this telegram, which include only "comisión familiares presos," indicates this was from a solidarity group based out of the CGT in Córdoba), September 14, 1960, No 168 Córdoba Comunicaciones de Familiares de Detenidos (Cordoba) Fojas 7, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.

the punishment of the perpetrators.[107] Inverting the relationship between the prosecutor and the prosecuted, these advocates criticized the military trials and mistreatment of CONINTES detainees, and called for accountability.

Advocates went on the offensive through press conferences, in which they detailed government wrongdoing, and by staging legal proceedings of their own.[108] In its August 3, 1960 letter to the Torture Commission, the Argentine League for the Rights of Man described a public relations battle that unfolded between military officials and prisoners' advocates in Córdoba:

> In Córdoba, as a result of documented complaints of torture, the military command convened a press conference meant to demonstrate that the accusations were false. However, the same military command prevented a delegation of lawyers, labor leaders, family members and others, in the presence of journalists, to question the prisoners about these torture allegations. The prisoners, faced with the impossibility of an impartial investigation… handwrote and signed declarations describing the torture they had suffered, which had widespread impact in Córdoba, having been circulated in flyers….[109]

The flyers, which reached the Torture Commission, were signed by the Lawyers' Commission and the Confederación General de Trabajo (CGT) Comisión de Solidaridad (General Confederation of Labor Solidarity Commission), a Peronist labor federation body. As noted on the same flyers and described in in-person testimony before the congressional Torture Commission, the Lawyers' Commission translated its demands into an alternative and activist legal mechanism, organizing "counter trials" "against the CONINTES Plan."[110] Held in public venues like the Córdoba Sport Club – the future site of large labor gatherings in the latter part of the decade – the trials were aimed at "assuring Argentine citizens the right to be judged by the natural judges the Constitution requires and not by the special commissions that the Constitution prohibits."[111] Again, like the ban on torture, the right to be heard by a competent court, or "natural judge," was enshrined in Article 18 and brought to bear on the treatment of political prisoners – and rights politics more generally – through these public demonstrations by prisoners' representatives.

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[107] Comisión de Abogados por la Defensa de los Presos Gremiales y Políticos, "Solicitamos Investigación," n.d., No 168 Córdoba Comunicaciones de Familiares de Detenidos (Cordoba) Fojas 7, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.

[108] Liga Argentina por los Derechos del Hombre to Pablo Calabrese, August 26, 1960, C.O.F.A.D.E. Denuncia Situación de Detenidos, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina. This letter indicates that the Argentine League held a press conference on August 20, 1960 about 45 prisoners being held in Ushaia, including one of advanced age.

[109] Liga Argentina por los Derechos del Hombre to Pablo Calabrese, August 30, 1960, C.O.F.A.D.E. Denuncia Situación de Detenidos, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.

[110] Comisión de Abogados por la Defensa de los Presos Gremiales y Políticos, "Solicitamos Investigación," n.d., No 168 Córdoba Comunicaciones de Familiares de Detenidos (Cordoba) Fojas 7, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina. For discussion of a "contraproceso" organized by COFADE in May 1961, see Chama, "Activismo social y político," 16. Chama explains that the COFADE "prosecution" sought to prove the ties between CONINTES and an unjust economic system.

[111] Agustín Tosco, "The Cordobazo," in *The Argentine Reader: History, Culture, Politics*, ed. Gabriela Nouzeilles and Graciela Montaldo (Durham, NC: Duke University Press, 2002), 367-68.

In their direct communications with the congressional Torture Commission, some CONINTES prisoners spotlighted the divisive politics that surrounded the work of the commission and those who advocated before it. In doing so, the prisoners underscored the complexities of legal politics at the time, tugged in different directions by nationalism, Peronist populism, leftist legal criticism, and constitutionalism. The law was condemned as a feature of Argentina's ills. Yet the criticisms often suggested that there was something profoundly right and Argentine in a functioning judicial system and constitutional guarantees. In June of 1961, a group of prisoners in the Viedma prison staged a hunger strike that brought these issues to the fore.

The Torture Commission traveled to Patagonia to visit the Viedma prisoners, explaining that they were compelled to make the trip by the complaints of torture and poor prison conditions they had received from the prisoners themselves, their relatives, and their attorneys.[112] And the prisoners' attorneys, along with journalists and union representatives from the General Confederation of Workers, were present on June 18, 1961, when a committee of nine prisoners met with the commissioners for a hearing that was transcribed word for word.[113] The lawyers, however, would play a quiet, supporting role in the face-off.[114] The man who opened the prisoners' presentation, ____ O. set the tone:

> More than anything, I wish to highlight and express my gratitude for the attendance of journalists [at today's event.] We can be confident that at least some of what we say will be known by the public because the only court we have faith in is the court of the people [el pueblo], as we have personally proven the fallacy of what are called courts in this country. We don't believe in courts where the prosecutor questions defendants while beating them and the chief justice hits [defendants] as well. This is not a court of the people, nor is it an Argentine court.[115]

The prisoners explained that their hunger strike was a response to institutional failure: the courts, Congress, and Congress's Torture Commission (which had earlier secured their transfer from Ushuaia to Viedma) had failed to protect them or win their liberty.[116] O.'s opening salvo on behalf of the prisoners hinted at the possibility that a truly Argentine, popular judicial system could exist. But there were significant barriers to envisioning such a system.

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[112] Comisión Especial Investigadora de Supuestos Apremios Ilegales, "Versión taquigráfica Viedma, 18 de junio de 1961," June 18, 1961, folio 246, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.

[113] Comisión Especial Investigadora de Supuestos Apremios Ilegales, "Versión taquigráfica Viedma, 18 de junio de 1961," June 18, 1961, folio 246, folio 292, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.

[114] Comisión Especial Investigadora de Supuestos Apremios Ilegales, "Versión taquigráfica Viedma, 18 de junio de 1961," June 18, 1961, folio 258, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.

[115] Comisión Especial Investigadora de Supuestos Apremios Ilegales, "Versión taquigráfica Viedma, 18 de junio de 1961," June 18, 1961, folio 246, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.

[116] Comisión Especial Investigadora de Supuestos Apremios Ilegales, "Versión taquigráfica Viedma, 18 de junio de 1961," June 18, 1961, folio 266, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.

When the Peronist prisoners spoke to the Radical commissioners, they touched on some of most sensitive conflicts in twentieth-century Argentine history. Among the Torture Commission members present in Viedma was Ernesto Sammartino. The Radical deputy is probably best remembered, today as in 1961, for his reaction to the 1946 election of Juan Perón to the presidency. In a sharp distillation of racialized class prejudice, Sammartino had famously referred to Perón's supporters as a "zoological flood" ("aluvión zoológico").[117] The Viedma prisoners jumped at the chance to confront Sammartino and challenge his vision of Perón's legacy. Sammartino insisted, as he had previously, that he was not referring to Peronists generally, but to the "mobs that called for the heads of those fighting for liberty," and he demanded that the prisoners focus their comments on the alleged torture the commission was convened to hear. The prisoners resisted the effort to peel this violence from its political context. They presented torture as a direct outgrowth of anti-Peronist politics. As prisoners' committee member _____ L. asserted, "the reports of what we have suffered and what has happened to us is the final point of the drama."[118] The prisoners' committee went further in its analysis of Peronism and the Argentine legal tradition. Invoking the image of the gaucho and his destruction by nineteenth-century liberal heroes like President Domingo Faustino Sarmiento, they attacked the legacy of liberalism itself.

The prisoners presented both their allegations and themselves as deeply political. In part, this was a question of precision, with the prisoners fighting against being categorized as "Communists" and "terrorists."[119] At a more basic level, the members of the Viedma prisoners' committee struggled to be treated as "political prisoners," linking this title to the repression that landed them in prison and their inability to access justice. A prisoner named _____ R. emphasized this message, calling the designation of prisoners as "common" or "political" one of the committee's "fundamental points." "We are in penal institutions where the armed forces have sent us. Yesterday they prosecuted us with civilian law, today we are in their jails and not civilian jails…. We do not know who… is capable of giving us a little justice…. The director of this prison has worn himself out showing us a decree ("decreto ley") from the President that determines we are common prisoners; the radios and press have heaped all sorts of names on us, likewise saying we are common prisoners."[120]

Peronist militancy combined with liberal legal activism at the Viedma prison hearings. The prisoners' committee presented Argentina's system of government, particularly its legal system, as the antithesis of Peronist precepts. In the prisoners' testimony, the capitol building – known as "The Palace of Laws" – was a seat of the oligarchy where the armed forces were honored with promotions and prestigious foreign

[117] See Rock, *Argentina 1516-1987*, 264.
[118] Comisión Especial Investigadora de Supuestos Apremios Ilegales, "Versión taquigráfica Viedma, 18 de junio de 1961," June 18, 1961, folio 253, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.
[119] Comisión Especial Investigadora de Supuestos Apremios Ilegales, "Versión taquigráfica Viedma, 18 de junio de 1961," June 18, 1961, folio 288, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.
[120] Comisión Especial Investigadora de Supuestos Apremios Ilegales, "Versión taquigráfica Viedma, 18 de junio de 1961," June 18, 1961, folio 295-296, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.

posts despite legislators' criticisms of military misdeeds.[121] The prisoners' complaints struck at the roots of their country's legal traditions, drawing together critiques of militarization, imperialism, and domination by the United States. Argentina's Constitution, the foundation of its legal and political system, was at the center of these critiques. As O. told the Torture Commission, the Argentine Constitution was a "poor translation" of the U.S. version. In almost the same breath, he denounced the role of U.S. aid in the militarization of Latin America, citing, interestingly, Columbia University sociologist C. Wright Mills' 1960 book *Listen, Yankee!*[122] In this analysis, constitutionalism was a mere helpmate of U.S. imperialism.

At same time, the Viedma prisoners' committee condemned the CONINTES Plan in part because it undermined Argentina's constitutional system, making constitutionalism something to defend. The prisoners' words point to the ambivalent condition of relying on a borrowed constitution. Pushing these tensions aside, O. challenged the Torture Commission before him: "…the CONINTES Plan for us means the concentration of public power in the armed forces, or do you not believe that, above the three constitutional branches of government in our country, there exists and dominates the arbitrary…and sometimes bloody and corrupt will of the armed forces?"[123] O. went on to denounce the erosion of federalism caused by the federal government's interventions in provincial affairs. Individual rights protected in the Constitution were also invoked by the prisoners' committee. Committee member _____ P. strained to provide the legal analysis requested of him, but his testimony was nonetheless grounded in the most basic of Argentine legal tenets. It would be "absurd," he said, to analyze the military tribunals juridically; they were a "farce."[124] Juxtaposing the CONINTES proceedings against Argentine constitutional history, P. observed that the military tribunals were akin to the "special commissions" that so worried the congressmen of 1853 that they were prohibited in the Constitution created that year. The individual rights the framers sought to protect were once again in jeopardy, this time from legalistic repression: "We have not been prosecuted by *constitutionally* sanctioned judges, but instead by judges empowered by a *resolution* who have taken advantage of their appointments to give free reign to their passions, rancor, hate, and cowardice.[125]

The Viedma prison hearing ended in an impasse that turned on the question of the liberation of political prisoners and foreshadowed conflicts to come. The Viedma

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[121] Comisión Especial Investigadora de Supuestos Apremios Ilegales, "Versión taquigráfica Viedma, 18 de junio de 1961," June 18, 1961, folio 254, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.

[122] Comisión Especial Investigadora de Supuestos Apremios Ilegales, "Versión taquigráfica Viedma, 18 de junio de 1961," June 18, 1961, folio 249, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina. The speaker misnames C. Wright Mills but is correct about his university affiliation and book title. Notably, the speaker is citing a U.S. publication from the author credited with coining the term "the New Left," just before the New Left forms in Argentina, suggesting the transnational cross-pollination happening among leftists at the time.

[123] Comisión Especial Investigadora de Supuestos Apremios Ilegales, "Versión taquigráfica Viedma, 18 de junio de 1961," June 18, 1961, folio 254, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.

[124] Comisión Especial Investigadora de Supuestos Apremios Ilegales, "Versión taquigráfica Viedma, 18 de junio de 1961," June 18, 1961, folio 265, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.

[125] Comisión Especial Investigadora de Supuestos Apremios Ilegales, "Versión taquigráfica Viedma, 18 de junio de 1961," June 18, 1961, folio 264-265, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina. Emphasis added.

prisoners' committee refused the Torture Commission's proposal for improving prison conditions, which had provisions ensuring tables in cells, access to reading material, cigarettes, and other perceived necessities. The prisoners pledged that they would not eat again until they were free. The event closed with a private meeting between the prisoners and representatives from the General Confederation of Labor.[126]

Despite and alongside the explosive national politics at the center of the Viedma prison hearings, Argentine debate about the CONINTES Plan incorporated suprapolitical, universal rights principles. As the Argentine League for the Rights of Man noted in its letter to the Torture Commission, it was Arturo Frondizi who helped set public expectations on this score when, upon taking office in 1958, he pledged to protect human rights.[127] Beyond legal circles, some union representatives and relatives of political prisoners also demonstrated an appreciation for universal human rights principles in their correspondence with the Torture Commission. In October 24, 1960, prisoners' family members in Mar del Plata wrote a letter to the Torture Commission celebrating "as Argentines the work this body does to defend human rights and constitutional guarantees."[128] Universal rights were often invoked with constitutional rights. COFADE, in an impassioned letter dated December 1960, insisted that both the National Constitution (Articles 18, 16, 28, and 33) and the United Nations Universal Declaration of Human Rights had been violated by the forced and violent relocation of sick prisoners.[129] But despite these entreaties of lawyers and relatives, the CONINTES prisoners remained behind bars. Meanwhile, political conditions worsened.

The Supreme Court and the Rule of Law: *Juan C. Rodríguez y otros s/ Habeas Corpus*

The fragile democracy under Arturo Frondizi ended on March 29, 1962, when the armed forces once again unseated a democratically elected president. Frondizi's collaboration with the military had broken down after he allowed Peronist candidates to take part in that year's gubernatorial elections and expressed support for continued Cuban membership in the Organization of American States.[130] His backing from other sectors had already eroded. With Frondizi deposed, the country's lawyers again weighed in, with the legal establishment – specifically the Lawyers' College of the City of Buenos Aires and the Argentine Federation of Lawyers' Colleges – sounding ambivalent about the

[126] Comisión Especial Investigadora de Supuestos Apremios Ilegales, "Versión taquigráfica Viedma, 18 de junio de 1961," June 18, 1961, folio 300, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.
[127] Liga Argentina por los Derechos del Hombre to Pablo Calabrese, August 3, 1960, C.O.F.A.D.E. Denuncia Situación de Detenidos, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.
[128] Letter to Pablo Calabrese, October 24, 1960, Comisión Investigadora de Presuntos Apremios Ilegales Notas Recibidas Son 73 fojas, Año 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 1, Archivo Histórico de la Cámara de Diputados de la República Argentina.
[129] Comisión de COFADE to Pablo Calabrese, December [n.d.], 1960, 1960 Expte No Plan Conintes a Expte No Apremios Ilegales Caja 4, Archivo Histórico de la Cámara de Diputados de la República Argentina.
[130] Arturo Frondizi also secretly met with Che Guevara in August 1961, a move that further inflamed his relations with the military. See Potash, *Army & Politics in Argentina, 1945-1962*, 338.

military takeover.[131] The Buenos Aires college acknowledged in its public statement on the coup that it had been slow to respond, having taken its time to see how events unfolded. The group agreed that Peronism had to be prevented from retaking power, but it also asserted its role as a defender of democratic principles and individual rights: "This college wishes to make absolutely clear that it does not accept the possibility of the return of an ominous regime [that is, Peronism], of which it was a victim, since that regime means the negation of rights and guarantees established by our Constitution, respect for which we have argued is essential for the preservation of our civil and political system."[132] On October 2, with infighting within the armed forces having been dramatically displayed by September street battles, the Argentine Federation of Lawyers' Colleges held a meeting to discuss the country's "institutional situation." In its concluding statement, the group, like the Buenos Aires college, expressed a contingent interpretation of constitutional normalcy as it sketched out the acceptable limits of the state of exception. When "exceptional circumstances" led to breaks in representative government, it was the responsibility of those who temporarily took power to restore it. In the Federation's estimation, the time had come for all to submit to the "juridical order."[133]

Against this backdrop, on October 24, 1962, Argentina's Supreme Court issued a decision on the CONINTES tribunals. In *Juan C. Rodríguez y otros s/ Habeas Corpus*, the Court heard the case of a single suspect in the Petit Café bombing, Conrado Andrés Ruggero. The battle over Arturo Frondizi's legal treatment of terrorism had finally moved to the country's highest court.[134] As noted earlier, this was something that groups including the Argentine League for the Rights of Man and the Lawyers' Association of Buenos Aires had been pushing for, but there were important obstacles along the way. Arturo Frondizi had overseen the creation of a military justice system cordoned off from the civilian courts.

The question of the civilian court system's relationship to the CONINTES military tribunals had in fact been fought out both publicly and behind the scenes. In June and July 1960, the national legislature considered a proposal to modify Article 28 of the Ley Federal de Emergencia para la Represión de Actividades Terroristas (Federal Emergency Law to Repress Terrorist Activities). The bill would have explicitly allowed CONINTES defendants to appeal to the Supreme Court rather than limit appeals to the highest military court. Meanwhile, the Supreme Court's chief justice convinced the Secretary of the Navy that it was better to provide for an appeal to the Supreme Court (for legal, rather than factual, questions only) than to risk having the CONINTES decree

[131] "La Federación de Colegios de Abogados Reunióse en Cordoba," *La Prensa*, October 3, 1962, SM 2245, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[132] "El Colegio de Abogados dió una declaración," *La Prensa*, May 6, 1962; "El Colegio de Abogados y su última memoria," *La Nación*, December 19, 1962, SM 2245, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria. In its 1962 annual report, the Lawyers' College of the City of Buenos Aires presented itself as a persistent defender of institutional normalcy and constitutional rights, but during a period – characterized by Peronism's reentry into electoral politics in 1962 and the Frondizi government's support for Cuba in the Organization of American States – in which these principles were hard to realize. This is why, the college explained, it waited to comment on the 1962 military takeover.

[133] "La Federación de Colegios de Abogados Reunióse en Córdoba," *La Prensa*, October 3, 1962, SM 2245, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[134] *Fallos*, 254:116.

found unconstitutional.[135] The Secretary of War opposed this approach. In a July 19, 1960 memorandum to President Frondizi, he argued that an explicit appeal to the Supreme Court would, incongruously, provide terrorist suspects more rights than those afforded to members of the military.[136] In any case, the Secretary of War's memo went on, referring to the *recurso extraordinario* (the traditional "extraordinary appeal" process for Supreme Court review), established legal norms already allowed the Supreme Court to review the constitutionality of the CONINTES decree. In the end, Arturo Frondizi looks to have been swayed by the Secretary of War's camp. As published in national newspapers, and citing U.S. Supreme Court Jurisprudence (for the principle that the judiciary cannot review military court decisions), Frondizi vetoed the section of the bill that would have created an appeal to Argentina's Supreme Court.[137] But despite the Secretary of War's assurances, in the absence of an explicit path to a civilian appeal, no CONINTES cases made it to the Supreme Court until *Rodriguez.*

According to Ruggero's military defense lawyer, Captain G., the CONINTES trials hindered access to any kind of justice, military or civilian. G. explained to the Supreme Court in his written briefs that he had been encouraged by his superiors to submit minimally modified, boilerplate filings to the military tribunal rather than review the copious evidence in the case, which had been provided to him just before the proceedings were set to begin. The Viedma prisoners had complained of similar conditions to the Torture Commission, noting that their so-called lawyers were in reality dentists, engineers, and others with no legal training. Despite this environment and, more dramatically, the bomb threat he described receiving as the result of his vigorous defense activities, Captain G. presented a serious defense that, beyond addressing the accusations against his client, asserted the unconstitutionality of the CONINTES Plan.[138] Because the legal representatives for Ruggero's two fellow suspects did not invoke the *recurso extraordinario*, or did not do so early enough in the proceedings, only Ruggero's case made it to the Supreme Court.

Ruggero was accused of placing the bomb that exploded in the café bathroom. He was found guilty and sentenced to twelve years in prison by the Special War Chamber No. 1 (*Consejo de Guerra Especial N.1*). In challenging the military court's decision, Ruggero's lawyer was hobbled by the trying conditions he would relate to the Supreme Court: the refusal of the highest military court to give him a decision on Ruggero's appeal (as required for a *recurso extraordinario* appeal to the Supreme Court), the unannounced transfer of Ruggero to distant prisons, and the military's refusal even to disclose Ruggero's location.[139] In his petition to the Supreme Court, and quoting the

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[135] Memorandum to Arturo Frondizi, "Asunto: Tramitación del artículo 28 del proyecto sobre 'Ley Federal de Emergencia para la Represión de Actividades Terroristas,'" July 21, 1960, Subfondo Arturo Frondizi - Fondo Centro de Estudios Nacionales (Subfondo AF - CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

[136] "Memorandum para información del Excmo. Señor Presidente de la Nación, Producido por el Señor Secretario de Guerra," July 19, 1960, Subfondo Arturo Frondizi - Fondo Centro de Estudios Nacionales (Subfondo AF - CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

[137] "El PE vetó en parte la Ley Contra el Terrorismo." *La Prensa,* August 13, 1960. The U.S. Supreme Court cases cited included *Ex parte Vallandigham*, *Marin v. Mott*, and *Dynes v. Hoover*, for the proposition that military tribunals could not be reviewed by civilian courts.

[138] *Ruggero, Conrado Andrés sobre actividades terroristas, subversivas, intimidación pública y otras*, 1962, expediente 361, cuerpo 2, folio 286, Legajo 11505, Archivo General del Poder Judicial de la Nación Argentina.

[139] *Ruggero, Conrado Andrés sobre actividades terroristas, subversivas, intimidación pública y otras*, 1962, expediente 361, cuerpo 2, folio 260, Legajo 11505, Archivo General del Poder Judicial de la Nación Argentina.

Argentine Federation of Lawyers' College statement on the topic, Ruggero's lawyer argued that his client's Article 18 constitutional right to a legal defense before a competent court had been violated.[140]

A particularly revealing element of the arguments presented by Captain G. and the prosecutor, Captain R., was their discussion of the changing face of the political prisoner. Challenging the notion that defendants in the Petit Café bombing should receive reduced sentences because of the political motivations behind their crime, R. painted the picture of a new and menacing form of violence that did not fit the existing juridical mold: "The classic terrorist of the last century is disappearing…. That romantic assassin of princes and gentlemen…who acted against a tyrant…no longer exists." In his place, R. explained, was a criminal who acted against society. This construction of violent dissent, which the Argentine state had used against anarchists decades before, was now applied to Peronists. Conjuring the then familiar image of a working-class Peronist unionist, R. lamented that "those tough guys in their black leather jackets, imbued with leftist, socially injurious theories cause much more harm to humanity. Their action is no longer directed against an individual. It is aimed against the same society of which they are members."[141]

In his brief to the military court, Captain G. resisted what he considered the problematic use of the "political crime" label. At the same time, he applied the principles that undergirded it. He insisted that his client had committed a political act and – deploying the same argument Arturo Frondizi advanced in a courtroom almost thirty years before – argued that only the leader of the "rebellion" (presumably the unnamed Juan Perón, presented by G. as an exploiter of these young men) should be prosecuted.[142]

Once before the Supreme Court, Captain G. framed his argument in terms of human rights. Echoing the ideas expressed by Argentina's legal establishment, G. presented these rights in opposition to conditions under Juan Perón's rule. He also emphasized the particularly challenging conditions in which he was invoking human rights, marked by violent Peronist resistance. G. relied on analysis that had been offered not long before by a prominent jurist: Alfredo Orgaz, former chief justice of the Supreme Court (1955-1960), law professor, president of Córdoba's lawyers' college, and president of the Argentine Federation of Lawyers' Colleges.[143] In 1960, when Orgaz was made a member of the National Academy of Law and Social Sciences of Buenos Aires, he gave a speech titled "Reflections on Human Rights," which was published as a book the next year.[144] G. cited Orgaz to present his argument about terrorism, human rights, and criminal defense: "I hope no one thinks I am defending terrorists. No, I am defending the human rights that belong to terrorists just as they belong to all men. It is quite easy, of course, to respect our friends' human rights; what is more difficult is respecting the human rights of our enemies. But it is precisely the latter that distinguishes a democratic

[140] *Ruggero, Conrado Andrés sobre actividades terroristas, subversivas, intimidación pública y otras*, 1962, expediente 361, cuerpo 2, folio 307, Legajo 11505, Archivo General del Poder Judicial de la Nación Argentina.
[141] *Ruggero, Conrado Andrés sobre actividades terroristas, subversivas, intimidación pública y otras*, 1962, expediente 361, cuerpo 1, folios 24-25, Legajo 11505, Archivo General del Poder Judicial de la Nación Argentina.
[142] *Ruggero, Conrado Andrés sobre actividades terroristas, subversivas, intimidación pública y otras*, 1962, expediente 361, cuerpo 1, folios 49-52, Legajo 11505, Archivo General del Poder Judicial de la Nación Argentina.
[143] See http://www.academiadederecho.org.ar/antiguos_academicos.php?n=105.
[144] Alfredo Orgaz, *Reflexiones sobre los derechos humanos* (Buenos Aires, Abeledo-Perrot, 1961).

regime from a totalitarian regime."[145] Having noted that the CONINTES Plan was based on Juan Perón's Law 13.234 and "new juridical order," and reminding the Court that the country had recently emerged from a "dictatorship" under Perón's rule, Capitan G. argued that to use "our adversary's methods" was to hand the adversary a victory:[146] "We have escaped a dictatorship during which the essential rights of those of us who opposed its designs and tyrannical proceedings were undermined. [N]ow we have to resist the temptation of using those methods ourselves…."[147] The Article 23 state of siege, argued Captain G., provided a constitutional method for dealing with terrorism.[148] Hanging in the balance, he argued, was not just the fate of Conrado Ruggero, but also the fate of the nation's republican institutions.

The Supreme Court's decision in Ruggero's case captured the contradictions in Argentine legal institutions. It both granted the CONINTES prisoners access to the civilian judiciary and affirmed the executive branch's power to trump the judiciary during states of emergency.[149] Once again, Argentine legal professionals – this time judges – found themselves gauging how much of a state of exception was too much. The majority of the court reasoned that "the state of siege…is not the total suspension of constitutional limitations. In any case, it is not a suspension of the Constitution or elimination of constitutional guarantees. The consequence is that the division of powers persists, and criminal punishment remains the domain of courts of justice." Quoting the International Commission of Jurists, the Court framed the question in terms of the rule of law: "the right of all people, rich or poor, to have access to justice is essential for the realization of the rule of law." At the same time, as a juridical extension of the armed forces' power to confront emergencies, the military could lawfully prosecute civilians suspected to be subversives. But this was acceptable only for so long as the subversive episode persisted. Because no such episode was still in play, and in spite of the continuing state of siege, the CONINTES prisoners should be heard by civilian judges.[150]

Conclusion

Ultimately, the CONINTES prisoners' cases were, in fact, reviewed by civilian judges. In 1963, and continuing a well-established pattern that would have profound consequences a decade later, all remaining prisoners were released under a presidential pardon.[151] But the effects of the CONINTES Plan continued to be felt. As suggested by the allegations made before the congressional Torture Commission and in Captain G.'s Supreme Court argument, law and violence had become difficult to distinguish. In G.'s

[145] *Ruggero, Conrado Andrés sobre actividades terroristas, subversivas, intimidación pública y otras*, 1962, expediente 361, cuerpo 2, folio 301, Legajo 11505, Archivo General del Poder Judicial de la Nación Argentina.
[146] *Ruggero, Conrado Andrés sobre actividades terroristas, subversivas, intimidación pública y otras*, 1962, expediente 361, cuerpo 2, folios 282, 302, Legajo 11505, Archivo General del Poder Judicial de la Nación Argentina.
[147] *Ruggero, Conrado Andrés sobre actividades terroristas, subversivas, intimidación pública y otras*, 1962, expediente 361, cuerpo 2, folio 302, Legajo 11505, Archivo General del Poder Judicial de la Nación Argentina.
[148] *Ruggero, Conrado Andrés sobre actividades terroristas, subversivas, intimidación pública y otras*, 1962, expediente 361, cuerpo 2, folio 318, Legajo 11505, Archivo General del Poder Judicial de la Nación Argentina.
[149] See Zamorano, *Fuerzas armadas*, 30.
[150] *Ruggero, Conrado Andrés sobre actividades terroristas, subversivas, intimidación pública y otras*, 1962, expediente 361, cuerpo 2, folios 354-357, Legajo 11505, Archivo General del Poder Judicial de la Nación Argentina.
[151] *Ruggero, Conrado Andrés sobre actividades terroristas, subversivas, intimidación pública y otras*, 1962, expediente 361, cuerpo 3, folios 442, 443, Legajo 11505, Archivo General del Poder Judicial de la Nación Argentina.

prophetic words about the CONINTES proceedings, "The fear is that these sentences, while temporarily satisfactory to a segment of the population justifiably outraged by vast and criminal terrorist plots, will constitute in coming years a new source of resentment and disruption in the life of the country."[152] The next two chapters will examine the forms this resentment and disruption took.

[152] *Ruggero, Conrado Andrés sobre actividades terroristas, subversivas, intimidación pública y otras*, 1962, expediente 361, cuerpo 2, folio 301, Legajo 11505, Archivo General del Poder Judicial de la Nación Argentina.

Chapter 2. Constitutionalism, the Legal Establishment, and the Argentine Human Rights Tradition, 1966-72

On June 29, 1966, Argentines read about the coup that took place in their country the day before. Four years after the military forced Arturo Frondizi from office, its leaders once again seized power from a democratically elected president. Newspapers published the new junta's message to the nation. The commanders of the three branches of the armed forces explained that Argentina's "transformation and modernization" demanded a break from "formal and sterile legality." According to the military, Argentina's Constitution and the rights it guaranteed were obsolete. Seven years later, the "Argentine Revolution" promised by the military government would end in failure. Along the way, public opinion shifted in deeply consequential ways. Widespread disenchantment with democracy gave way to disillusionment with military rule and even enthusiasm for the reestablishment of institutional normalcy.

Against this volatile backdrop, even as democracy seemed to lose legitimacy, a group of key constitutionalists remained surprisingly constant. As constitutional democracy hung in the balance, part of Argentina's legal establishment, which included some of the country's most conservative lawyers and traditional supporters of the military, held steadfast in their defense of the Argentine Constitution and the rights it protected. Competing approaches were advanced from the hard right, from lawyers of conservative Catholic and nationalist persuasions who worked for the government and operated behind the scenes. But the focus here is on an influential and conservative sector whose pro-constitutionalist stance has been underappreciated in Argentina's human rights history. This chapter thus follows public statements released between 1966 and 1972 by Argentina's largest lawyers' organization, the Federación Argentina de Colegios de Abogados (Argentine Federation of Lawyers' Colleges), and some of its member groups as they reacted to and engaged with the legal and extralegal acts of the military government.

Examining the public interventions of Argentina's legal establishment provides a close-up view of the country's constitutional crisis, the political violence it entailed, and the struggles over the future it provoked. More precisely, such an analysis offers access to a *range* of views, as the legal establishment was neither unified nor entirely consistent on the question of limiting state power – and protecting individual liberty – through the law. Within the legal profession, the Federation, individual colleges, and their respective memberships were not politically homogenous—although, as reflected in the next chapter, some ideologically unified groups of conservative and progressive lawyers did form. Conflicts arose among colleges; the Lawyers' College of the City of Buenos Aires, a major protagonist here, even split from the Argentine Federation of Lawyers' Colleges for a time in the 1970s. But key spokesmen for the legal establishment were nonetheless consistent in their resistance to the military government's interpretations of the law. They also rejected the calls of some rightwing commentators to dispatch constitutionalism and embrace corporatism instead. The future of an enduring legal framework to structure politics and protect individuals was at stake, as in many Latin American countries under military rule during these tumultuous years.

This perspective exposes a surprising moment in the history of international human rights, which existing scholarship most often presents as a project of the political left.[1] The next chapter will examine the human rights mobilizations of leftist lawyers as part of what I argue was, in fact, a broader national debate across the political spectrum. This chapter introduces and underscores that point with its analysis of the parallel and previously overlooked human rights interventions of more conservative sectors of the legal profession. In Argentina, the same legal groups that would so vociferously challenge the emerging human rights movement of the late 1970s – as demonstrated in Chapter 5 – were actually early human rights proponents. Their universal rights advocacy was moored to their constitutional advocacy; they presented Argentine constitutionalism as an outgrowth of the same Western legal thought they credited with producing international human rights protections. The period's constitutional crisis and bloodshed produced a certain vision of universal rights for this group of powerful legal and political figures. Small in scope and support, the limits and fragility of this human rights moment are, however, themselves illuminating. Conservative lawyers' persistent assertions of allegiance to the constitutional order, and their formulation of individual rights to be protected under this order, reflected an important aspect of Argentine liberalism.

After describing attitudes toward democracy, constitutionalism, and Cold War threats among the Argentine public, the analysis turns to the military government's approach to politics and the law, especially as political violence spiked starting in 1969. The breakdown of the rule of law and the bloodshed that went with it produced new and competing forms, practices, and understandings of legality. Thus contextualized, the interventions of the legal establishment in this volatile political environment are examined around four targets of their criticism: the 1966 coup; the 1968 intervention into a provincial court; attacks against defense attorneys; and, related to this anti-lawyer violence and spanning the 1966 to 1973 dictatorship, government repression more broadly, extralegal and legal. These moments and conditions served to crystallize rights arguments among some of Argentina's more conservative lawyers' groups.

Democracy, the Law, and Cold War Argentine Politics

Most Argentines were neither surprised nor particularly troubled by the 1966 coup. Disillusionment with constitutional democracy mounted in the months before the military takeover, stoked by a public relations campaign sponsored by the military.[2] Apart from military propaganda, the operation of Argentine democracy itself served to undermine the public's faith: the country's largest (Peronist) political party was excluded, and participating political parties were weak and divided. The "sterile legality" that the junta disparaged upon taking power was viewed dimly by Argentine society at large.

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[1] See for example Moyn, *Last Utopia*; Markarian, *Left in Transformation*. But also see the work of scholars including Marco Duranti, which examines conservative human rights politics. For example, see Duranti's "Conservatives and the European Convention on Human Rights," in *Toward a New Moral World Order? Menschenrechtspolitik und Volkerrecht seit 1945*, ed. Norbert Frei, Annette Weinke (Weimar: Wallstein Verlag, 2013).

[2] See Robert A. Potash, *The Army & Politics in Argentina, 1962-1973* (Stanford, CA: Stanford University Press, 1996), 194. Notably, Potash had direct, personal connection with many of the future 1966 coup conspirators discussed in this chapter.

Important sectors of the mass media – print and television – participated in the campaign in favor of a military takeover.[3]

Two men played an outsized role in shaping Argentine opinion. As Daniel Mazzei has shown, the magazine columns of Mariano Grondona and Mariano Montemayor strongly influenced public debate in the months running up to the coup. The very different perspectives of these authors, expressed in the news weeklies *Primera Plana* and *Confirmado*, shed light on the distinct but merging attacks on constitutionalism at play in Argentina at the time. Montemayor criticized liberal democracy, promoting instead corporatism as consistent with Western, Christian principles. Grondona, a lawyer by training, was a liberal. But by late 1965, both writers argued that the military, and not the constitutionally elected president, Arturu Illia of the Unión Civil Radical del Pueblo (UCRP, People's Radical Party), should run the country.[4] Illia had entered office following the interim administration of José María Guido, whom the military allowed to replace Arturo Frondizi following his 1962 ouster.

In their treatment of Illia, Grondona, Montemayor, and other commentators painted the picture of a dithering old man without the authority to lead. In reality, the president was at a disadvantage from the start. He had been voted into office in 1963 with only a quarter of the voters behind him. With Peronism proscribed by the military, 19% of the ballots were left blank in protest per the instruction of the exiled and still very influential Juan Perón. At the same time, inflation skyrocketed and labor unrest roiled. The armed forces loomed, watching for signs that military intervention in politics was needed yet again.

As his own position shifted toward support for a military coup by late 1965, Mariano Grondona's columns helped reframe individual rights outside of the normal constitutional order. His argument aimed to erode a central pillar of the Radical party's legitimacy: its proclaimed defense of individual liberties. Grondona reasoned that individual freedom could not be enjoyed in a power vacuum. The country needed a functioning authority if liberty was to be realized, and President Illia, weak and ineffective, was not it. Grondona, reiterating the message of golpista military leader General Pascual Pistarini, identified three preconditions for true liberty: national greatness, order, and efficiency.[5] The modern, professionalized armed forces – and not the hobbled, constitutionally elected government – represented the way forward.

The military itself had been divided on the question of a military coup. In the decade following Juan Perón's overthrow in 1955, the military – aided by civilian advisors and commentators[6] – transformed the constitutional order into a contingency. It did this not by rejecting the Constitution and its rights guarantees altogether, but by embracing them in part and occasionally, depending on political vicissitudes and, especially, the status of Peronism.[7] Though exiled in Spain, Juan Perón remained a

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[3] Daniel H. Mazzei, "Primera Plana: modernización y golpismo en los sesenta," *Realidad Económica* 148 (1997): 72-99; Daniel H. Mazzei, *Medios de comunicación y el golpismo: El derrocamiento de Illia* (Buenos Aires: Grupo Editor Universitario, 1997).

[4] Mazzei, "Primera Plana," 77-79.

[5] Mazzei, "Primera Plana," 80. See Potash, *Army & Politics, 1962-1973*, 174.

[6] See Potash, *Army and Politics in Argentina, 1962–1973*, 3.

[7] Robert Potash has noted that the Argentine public saw the constitutional order and political outcomes as joined. Describing the 1962 coup that unseated President Arturo Frondizi, Potash explains that, "In the general population, the prevailing sentiment was one of powerlessness combined with apathy…. [T]here had been no massive acts of protest against the military's involvement in the political crisis or in defense of the principle of constitutional government.

powerful political figure in Argentina. Two camps formed among the armed forces. While the *colorados* sought to annihilate Peronism through whatever means necessary, including military dictatorship, the *azules* claimed loyalty to the law and a commitment to constitutional democracy. The *azules*, who labeled themselves *legalistas*, sought to reintegrate an acceptable version of Peronism into the political system.[8] Following street clashes and political battles in 1963, the *azules* had established their dominance. On April 1, 1966, in reaction to growing rumors of a coup, legalista leaders released a communiqué reminding golpistas and the Argentine people that this was an Army committed to the Constitution and constitutional rule, and warning against a military government takeover.[9] But membership in the two groups was fluid, and *legalistas* were not above backing a military coup when they determined it was warranted by political conditions. General Alejandro Lanusse was among those who changed sides. With Juan Perón's hold on domestic politics increasingly evident – his chosen candidate won the April 1966 gubernatorial election in Mendoza, his image and voice were once again broadcasted in the country (an allowance granted by the Radical government), and a Peronist victory was predicted for 1967 elections – Lanusse joined the ranks of coup supporters just weeks before the military takeover.[10]

For other military leaders like General Juan Carlos Onganía, and for civilians too, international Cold War politics were decisive in eroding faith in President Illia.[11] Following the United States' anti-Communist invasion of the Dominican Republic in May 1965, Illia declined to send troops to support the subsequent OAS occupation. Some members of the armed forces saw this as proof that Illia was incapable of pushing a strong anti-Communist agenda.[12] As historian Eduardo Saguier has noted, the 1966 coup was meant both to prevent the reintegration of Peronism into Argentina's political system and to drive out the leftist threat that Cuba appeared to presage: "The proscription of Peronism and the leftist threat were framed in the context of a bipolar world marked by the Cold War [and divided] between two antagonistic global blocks."[13] The military itself made this point. Coup supporters in the military described Cold War influences as part of a troubling domestic landscape that required their participation. In a June 6, 1966 document, some coup backers identified four justifications for a military takeover: the Marxist threat, the Peronist threat, the country's "false democracy" that had allowed party

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Indeed, for many Argentines, the distinction between defending this principle and defending Frondizi and his controversial administration was not one they were prepared to make in the heated atmosphere generated by the recent events." Potash, *Army and Politics in Argentina, 1962–1973*, 2.

[8] See Potash, *Army and Politics in Argentina, 1962–1973*, 6-7.

[9] Potash, *Army and Politics in Argentina, 1962–1973*, 171.

[10] Potash, *Army and Politics in Argentina, 1962–1973*, 173; James W. McGuire, *Peronism without Perón: Unions, Parties, and Democracy in Argentina* (Stanford, CA: Stanford University Press, 1997), 146.

[11] See Mauricio Chama, "Movilización y politización: Abogados de Buenos Aires entre 1968 y 1973," in *Historizar el pasado vivo en América Latina*, ed. Anne Pérotin-Dumon (Santiago, Chile: Universidad Alberto Hurtado Centro de Ética, 2007), 9; Michael William Schmidli, *The Fate of Freedom Elsewhere: Human Rights and U.S. Cold War Policy Toward Argentina* (Ithaca, NY: Cornell University Press, 2013), 41.

[12] Mazzei, *Medios de comunicación y el golpismo*, 35, 78-79. When Argentina is considered as part of broader regional Cold War and legal politics, it is interesting to note that one of the factions in the Dominican Republic's civil war – the faction against whom the 1965 U.S.-led invasion was launched – called themselves "Constitutionalists," as they pushed for the reestablishment of the country's constitutional order and legal elections.

[13] Eduardo R. Saguier, *Dictadura, Terrorismo de Estado y Neoliberalismo en la Destrucción de la Cultura Argentina (1966-2001)* (Online), chap. 4, http://www.er-saguier.org/obras/dictadura_y_neoliberalismo_en_argentina/pdf/Capitulo_IV.pdf.

interests to trump national interests, and concern that President Illia would act to weaken the armed forces.[14]

It was in this Cold War context that U.S. government influence on Argentine military grew, with important implications for constitutionalism. The 1960s saw an increase in U.S. training, equipment, and funds flowing to Argentina's armed forces as Washington sought to prevent a repeat of the Cuban Revolution in other parts of Latin America. This U.S. military assistance combined with French counterinsurgency lessons drawn from the Algerian Revolution – and built on Argentina's longer history of antisubversion, anti-Peronist, and anti-Communist initiatives – to create a powerful national security doctrine that would guide the Argentine armed forces in their pursuit of perceived internal enemies.[15] While U.S. ambassador to Argentina Edwin Martin started out expressing support for Argentina's constitutional regime and rejecting the legitimacy of a coup, the Johnson administration, happy to have an anti-Communist ally, would show itself willing to recognize an Argentine military dictatorship.[16] In fact, the fate of constitutionalism among Argentine military leaders was linked to U.S. support for the military. William Michael Schmidli has noted that, "the deterioration of Onganía's constitutionalism corresponded with the rise in U.S.-Argentine military cooperation"[17]

The 1966 Coup, the Death of Politics, and the Birth of a Legalistic Revolution

The 1966 coup, when it finally came, bloodlessly and without protest, was different from those before. This time, the military did not follow the interregnum model of the past, in which de facto authorities reoriented the government and then called elections again. [18] The self-professed "revolutionary" regime gave no timeframe for their planned transformation of the country's institutions.[19] Formal politics was obliterated. In a stark developmental scheme, the regime proclaimed that political normalcy would be instituted only after two preceding stages – economic and then social – were traversed.[20]

The president and vice-president and all governors and vice-governors were removed from office. Congress and provincial legislatures were dissolved and political parties outlawed. General Onganía was declared president and granted both executive and legislative powers, which were extended to his handpicked governors in the provinces.[21] As for the judiciary, although the junta sacked the Supreme Court justices, it initially respected aspects of judicial independence; unlike the governments that came to power in 1949 and 1955, the 1966 junta did not take over the judiciary as a whole or remove sitting judges, and, with only one exception, provincial courts were confirmed.[22] While the 1853

[14] Potash, *Army & Politics, 1962-1973*, 177.
[15] Schmidli, "Institutionalizing Human Rights," 356-357; see too Ernesto López, *Seguridad nacional y sedición militar* (Buenos Aires: Legasa, 1987), 146, 150-51.
[16] See Potash, *Army & Politics, 1962-1973*, 178, 183, 201; Schmidli, *Fate of Freedom Elsewhere*, 41.
[17] Schmidli, *Fate of Freedom Elsewhere*, 40.
[18] See Oscar Anzorena, *Tiempo de violencia y utopía: del golpe de Onganía (1966) al golpe de Videla (1976)* (Buenos Aires: Ediciones del Penasamiento Nacional, 1998), 13.
[19] Potash, *Army & Politics, 1962-1973*, 196-197.
[20] See Antonius C.G.M. Robben, *Political Violence and Trauma in Argentina* (Philadelphia, PA: University of Pennsylvania Press, 2005), 53.
[21] Potash, *Army & Politics, 1962-1973*, 195.
[22] Arturo Pellet Lastra, *Historia política de la Corte (1930-1990)* (Buenos Aires: AD-HOC, 2001), 287; see also Saguier, *Dictadura, Terrorismo de Estado y Neoliberalismo*, chap. 4.

Argentine Constitution technically remained in effect, the junta intended its Statute of the Argentine Revolution to override the Constitution in case of any contradictions.

Law was an imprimatur of, and battleground for, political legitimacy. While disparaging "legality" at the outset, the military government would nonetheless produce torrents of legalistic orders and rhetoric over the course of its seven-year rule. The junta was prolific in lawmaking, implementing some 500 new laws each year, as contrasted with an average of 150 laws passed per year between 1853 and 1966.[23] Many of them were additions to the penal code that targeted alleged subversive activities as well as political associations and ideologies, namely Communism.[24]

The dictatorship's leaders presented themselves as guardians of the law. General Onganía, the first of three de facto presidents, had been known as the General of the Constitution before the coup.[25] Weakened by growing social unrest, Onganía was replaced in 1970 by Roberto Levingston. Finally, in 1971, Augusto Lanusse became president when Levingston proved slow to move on democratization.[26] The military, and the Argentine public, had by that time begun calling for a return to the constitutional order. Lanusse oversaw a proposed negotiated return to democracy – el Gran Acuerdo Nacional discussed in Chapter 4 – while at the same time instituting a new legal framework and creating a new institution for addressing alleged subversion. All of these legalisms were linked to violence: they were undertaken to combat revolutionary violence, almost certainly contributed to the intensification of that violence, and served as cover for state-sponsored violence

After a couple years of relative calm, and with traditional channels for politics stifled, conflict turned violent. In 1969, with street protests spreading – part of the global wave of protest movements that the military government had feared – a new phase in Argentina's history of constitutionalism and political violence was dawning.[27] In the late 1960s, the de facto government's derogation of labor protections and harsh response to student protests against food price hikes sparked new protest.[28] Ongoing labor struggles and police killings of protestors in cities like Corrientes and Rosario ratcheted up the conflict. In May 1969, students and workers in the city of Córdoba joined forces in a massive demonstration, the Cordobazo, which was met with police and military repression. The protestors succeeded in holding the city for two days, and they found widespread support. Smaller uprisings, or "puebladas," took place throughout the country, and – at a time when both the far right and the far left championed revolution – socialist revolution seemed, for some, within reach.[29] On the right, military opinion was divided between those who saw growing tensions in the run-up to the Cordobazo as a major security problem and those who interpreted it as a less serious form of social unrest. The latter camp prevailed. President Onganía rejected calls for the declaration of a

[23] See Deputy Jesús Porto's comments at Cámara de Diputados (Argentina), *Diario de sesiones*, May 26-27, 1973 (Buenos Aires: Imprenta del Congreso de la Nación), 150; see too Deborah Lee Norden, *Military Rebellion in Argentina: Between Coups and Consolidation* (Lincoln: University of Nebraska Press, 1996), 43.
[24] For a list of the regime's criminal law provisions, see Cámara de Diputados, *Diario de sesiones*, May 26-27, 1973, 91-140.
[25] Potash, *Army & Politics, 1962-1973*, 193
[26] Potash, *Army & Politics, 1962-1973*, 310-60. Lanusse also lacked the strong ties to the country's economic establishment that would have bolstered his position.
[27] See Carole Fink, Philipp Gassert, and Detlef Junker, eds., *1968: The World Transformed* (Cambridge, UK: Cambridge University Press, 1998); Saguier, *Dictadura, Terrorismo de Estado y Neoliberalismo*, chap. 4.
[28] Potash, *The Army & Politics, 1962-1973*, 245-47.
[29] See Liliana De Riz, *Historia Argentina: La política en suspenso: 1966/1976* (Buenos Aires: Paidós, 2000), 74.

state of siege and instead, when the Cordobazo broke out, empowered military tribunals to prosecute civilians accused of rebellion and other acts of political violence through Law 18.232.[30]

While the country had experienced significant political violence since its independence, now it seemed as if a switch had flipped. A relatively peaceful and prosperous nation in the mid-1960s became a battleground, with an estimated 22,000 acts of violence perpetrated that left some 9,000 people dead between 1969 and 1979.[31] In fact, the process through which violence became normalized was decades long. A major cause of the bloodshed was the breakdown and delegitimation of the democratic institutions that mediated conflict in the past.[32] Homegrown political thought combined with Cold War ideology to undermine Argentines' faith in the traditional legal order. Increasingly, violence itself was accepted as a legitimate form of politics, a conclusion supported by Peronist and Guevarist ideas on the left, National Security Doctrine thinking on the right, and a potent nationalism espoused by actors across the political spectrum.[33]

The violent acts that resulted were, in turn, assigned juridical meaning, yielding new laws and legal practices in a context of continuing economic problems and public impatience with a military government slow to bring the order and prosperity it had pledged. Commentators as well as some members of the military discussed institutional normalization as the answer. The bloodshed thus continued with the question of democracy in the air. On June 30, 1969, Augusto Vandor was shot to death by unknown assassins. Vandor had been a powerful Peronist union leader who called for "Peronism without Perón," making him a traitor in the eyes of some Juan Perón's loyalists but especially among the new Peronist left.[34] The murder prompted the military government to intensify its repression, with a state of siege now declared. Vandor's death also augured the bloody battles to come between the left and the right within Peronism.[35]

Guerrilla organizations – mostly Peronist but also Guevarist, Trotskyist, and Marxist – targeted the military, Junta collaborators, members of the "oligarchy," and foreign economic interests with bombings, kidnappings, bank robberies, and occupations of military and government establishments.[36] There were important ideological and

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[30] Potash, *Army & Politics, 1962-1973*, 251-54.

[31] Mira Delli-Zotti, "Genealogía de la violencia," 49, citing María José Moyano, "Argentina: guerra civil sin batallas." See also Pilar Calveiro's prologue ("Prólogo") in Santiago Garaño and Werner Pertot, *Detenidos-aparecidos: Presas y presos políticos desde Trelew a la dictadura* (Buenos Aires: Editorial Biblos, 2007), 17; Ariel Eidelman, "La Cámara Federal en lo Penal. La actividad del fuero antisubversivo entre los años 1971 y 1973, paper presented at the V Jornadas de Sociología de la Universidad Nacional de La Plata, La Plata, Argentina, December 10, 2008, 1-2; Potash, *Army & Politics, 1962-1973,* 389-91. For a 1971 report on political violence including torture by police officers as well as guerilla violence, see Alejandro García, *La crisis argentina: 1966-1976. Notas y documentos sobre una época de violencia política,* (Murcia: Universidad de Murcia, Secretariado de Publicaciones, 1994), 143.

[32] Romero, "La violencia en la historia argentina reciente," 30.

[33] See Ernesto Salas, "El falso enigma del 'caso Aramburu,'" *La Lucha Armada*, no. 2 (2005): 62-71; Romero, "La violencia en la historia argentina reciente," 99; Potash, *Army & Politics, 1962-1973*, 389.

[34] See James Brennan, *The Labor Wars in Córdoba, 1955-1976: Ideology, Work and Labor Politics in an Argentine Industrial City* (Cambridge, MA: Harvard University Press, 1994), 166; Paul H. Lewis, *Guerrillas and Generals: The "Dirty War" in Argentina* (London: Praeger, 2002),19-20; Rock, *Argentina 1516-1987*, 351, 358.

[35] McGuire, *Peronism without Perón*, 150.

[36] Pilar Calveiro, "Antiguos y nuevos sentidos de la política y la violencia," *La lucha armada en la Argentina,* no. 4 (2005): 1-19; "Persistencia del terrorismo," *La Prensa*, January 14, 1973; Richard Gillespie, "Political Violence in Argentina: Guerillas, Terrorists, and Carapintadas," in *Terrorism in Context,* ed. Martha Crenshaw (University Park, Pa.: Pennsylvania State University Press, 1995), 223-24; Patricia M. Marchak, *God's Assassins*: State *Terrorism in*

tactical differences among them, but they all supported socialist revolution and armed struggle styled after the Cuban model.[37] The revolutionary left also shared practices and anti-imperialist ideology with right-wing nationalists, a testament to the widespread appeal of nationalism.[38] By the early 1970s, guerrilla attacks would become an almost daily occurrence.[39]

The year 1970 marked another turning point. The May 31 kidnapping and subsequent killing of General Pedro Eugenio Aramburu served as the public debut of the Montoneros, which would soon become a leading armed revolutionary organization. Aramburu had been a key plotter in the overthrow of Perón and had seized power himself in November 1955: he had banned Peronism, ordered executions after the failed revolt of a Peronist general, and disappeared the embalmed body of Evita.[40] The murder of Aramburu was an act with a concrete political objective. Rumors swirled of an electoral deal between some members of the military and (the still-exiled) Juan Perón; General Aramburu was discussed as a leading candidate for president in an arrangement that would legalize a defanged version of Peronism.[41] He was, to many, "the one national figure capable of presiding over a transition to a stable democratically elected government."[42]

In reaction to Aramburu's kidnapping and with Onganía struggling to reclaim his flagging authority, the military government implemented new antisubversion legislation, which included the reestablishment of the constitutionally prohibited death penalty.[43] Law 18.701 specified the crimes that could be punishable by death. These included kidnappings and armed attacks against ships, airplanes, and military barracks.[44] They were political crimes.

A year later, the now president Alejandro Lanusse invoked Armamburu's murder once again as he presented a new legal project against subversion. It was before the Comisión de Homenaje a Aramburu (Aramburu Tribute Commission) that Lanusse announced the creation of a specialized antisubversion court, the Cámara Federal en lo Penal (National Penal Court).[45] In his presentation of Law 19.053, the president offered the court as a modern approach to modern terrorism.[46] Based in Buenos Aires but with nationwide jurisdiction and accelerated procedures, the court was to adjudicate crimes that threatened the basic principles of Argentina's constitutional system or the security of

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Argentina in the 1970s (Montreal: McGill-Queen's University Press, 2003), 94, 341-43; "El ERP aparece como el grupo más activo y audaz en todo el país," *La Opinión*, May 26, 1971, 9.

[37] See Calveiro, "Antiguos y nuevos sentidos," 10; Gillespie, "Political Violence in Argentina," 227.

[38] David Rock, *Authoritarian Argentina* (Berkeley, CA: University of California Press, 1993), xv. Montoneros in particular had a right-wing nationalist lineage.

[39] Potash, *Army & Politics, 1962-1973*, 389; Lewis, *Guerrillas and Generals*, 51.

[40] See Mira Delli-Zotti, "Genealogía de la violencia," 49-59, 52.

[41] *Cristianismo y Revolución*, no. 26 (1970): 14.

[42] Potash, *Army & Politics, 1962-1973*, 292

[43] Potash, *Army & Politics, 1962-1973*, 296

[44] "La pena de muerte puede servir para perseguir y entronizar el despotismo," *La Prensa*, June 22, 1970, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[45] Anthony W. Pereira, *Political (In)justice: Authoritarianism and the Rule of Law in Brazil, Chile, and Argentina* (Pittsburgh: University of Pittsburgh Press, 2005), 121; Potash, *Army & Politics, 1962-1973*, 389-91; Eidelman, "La Cámara Federal en lo Penal," 5.

[46] "Moderna justicia para delito moderno. Cámara Nueva: ya es Ley," *Crónica*, May [date illegible], 1971, Secretaría A y F, Decretos Leyes y Disposiciones, Carpeta 3, Legajo 232, Área Centro de Documentación y Archivo de la Comisión Provincial por la Memoria, Archivo de la Dirección de Inteligencia de la Policía de la Provincia de Buenos Aires.

state institutions.[47]

Law 19.053 replaced and built on a law passed in April 1970, Law 18.670, which had aimed to speed up the adjudication of "extremist crimes" by, among other things, preventing appeals and incorporating oral proceedings in the trial phase.[48] Press accounts explained that the Aramburu murder trial, which was run in accordance with Law 18.670, exposed the limitations of existing prosecutorial mechanisms.[49] The criminal division of the federal appeals court of Buenos Aires sentenced three people to prison sentences of two to eighteen years, but observers of the court did not consider the crime solved.[50] With Law 19.053, the military government retained most of the procedural changes introduced with Law 18.670 (the inability to appeal and inclusion of oral proceedings specifically) while creating a new and separate court system to address alleged subversion.[51] Guided by Justice Minister Jaime Perriaux and others, the government also enacted Law 19.081, which, purportedly expanding the president's Article 23 powers, authorized the National Executive to use the military both to combat subversion and terrorism during states of siege and to investigate the subversive activities under the National Penal Court's jurisdiction.[52] Perriaux described the National Penal Court as an updated version of the Western legality Argentina had always embraced: "It would be easy to say that the ordinary legal system of Argentina and its Western brothers is ineffective and should therefore be abandoned…. It is my firm belief that this solution would be premature and that the Argentine state must respond to the challenge posed by these acts by demonstrating the capacity needed to modernize and streamline its institutions…."[53]

Right-wing repression took extralegal as well as legalistic forms. In reality, these were two sides of the same coin. Reports circulated of government-sponsored disappearances and torture of members of armed revolutionary groups and other Junta critics. Criminal defense attorneys, whom government forces would disappear and murder in large numbers starting in 1976, became targets of violence in the early 1970s.[54] The massive legal infrastructure that the 1966-1973 military government constructed was tangled up with these unlawful acts of violence – and in particular flagrant attacks on key actors in the legal system – that would multiply over the course of the decade and reach full force during the "dirty war."

The year 1970, when General Aramburu was killed, was a turning point for the left too, as the next chapter will show. On December 16, attorney Néstor Martins was kidnapped. This was the first in what would become a pattern of disappearances targeting lawyers and a hint at the new and vast brand of violence the country – and other parts of Latin America – would soon face. More immediately, the Martins and Zenteno case convinced some lawyers on the left of the need to organize.[55] The consolidation of a

[47] Eidelman, "La Cámara Federal en lo Penal," 5-8; Pereira, *Political (In)justice*, 121.
[48] Eidelman, "La Cámara Federal en lo Penal," 3.
[49] "Moderna justicia para delito moderno. Cámara Nueva: ya es Ley," *Crónica*, May [date illegible], 1971, Secretaría A y F, Decretos Leyes y Disposiciones, Carpeta 3, Legajo 232, Área Centro de Documentación y Archivo de la Comisión Provincial por la Memoria, Archivo de la Dirección de Inteligencia de la Policía de la Provincia de Buenos Aires.
[50] Eidelman, "La Cámara Federal en lo Penal," 4.
[51] Eidelman, "La Cámara Federal en lo Penal," 5.
[52] Potash, *Army & Politics, 1962-1973*, 389-91; Eidelman, "La Cámara Federal en lo Penal," 7.
[53] Mensaje de Elevación del Proyecto, *Anuario de Legislación, Nacional y Provincial* (Buenos Aires: 1971), 407.
[54] For mention of state repression against lawyers in 1969, see Mario Kestelboim, "Una experiencia de militancia: la Asociación Gremial de Abogados," *Revista Peronismo y Socialismo*, no. 1 (1973): 87.
[55] See Mauricio Chama, "El derecho como denuncia. Abogados y política en los primeros '70," in *Dossier: El lugar de la 'nueva izquierda' en la historia reciente, PolHis,* year 5, no. 10 (2012): 151.

radicalized, openly politicized sector of leftist and Peronist lawyers would, in turn, shape public opinion about the law's operation. But Argentina's legal establishment also reacted to Martins's disappearance.

Democracy, the Law, and Argentina's Legal Establishment

At the close of that tumultuous year, 1970, a prominent group of lawyers met. The Argentine Federation of Lawyers' Colleges convened in the provincial capital city of La Plata for the 8th National Lawyers Conference. Among the Federation's member organizations were the traditional lawyers' colleges that represented Argentina's elite. These included the Lawyers' College of the City of Buenos Aires.[56] The National Lawyers Conference brought together practitioners and state officials like the military government's Supreme Court justices and Justice Minister Jaime Perriaux.[57] Despite the Federation's proximity to power, vocal critics of the military regime were in attendance. The task that Federation members assigned themselves was controversial and capacious. Far beyond technical juridical issues, the lawyers addressed fundamental questions about their nation's institutional future. What was the legitimate source of political power? Did it reside with the people of Argentina? If so, how could popular sovereignty be restored in the face of political prohibitions and human rights violations? At the center of these debates sat the National Constitution, the freedoms it guaranteed and the possibility of its reform.[58] These debates, in turn, were part of a longer struggle over the political meaning of the law.

The 1966 Coup and Argentine Constitutional Tradition

The Federation and some of its member colleges were among the few public voices raised against the 1966 coup. But the legal establishment was divided. At a Federation meeting held four months after the military takeover, in August 1966, only half (twelve out of twenty-four) of the participating lawyers' colleges supported the issuance of a Federation statement on "the institutional situation" in the country, and the coup specifically. The Lawyers' College of Rosario was among the groups with reservations. As the Rosario college explained in a press release, its leadership concluded

[56] See Chama, "Movilización y politización," 8.
[57] "El encuentro de abogados inicióse en La Plata," *La Nación*, December 5, 1970, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria. Supreme Court Justices were also among the members of groups including the Lawyers' College of the City of Buenos Aires. Colegio de Abogados de la Ciudad de Buenos Aires, *Memoria y balance del ejercicio terminado el 31 de octubre de 1979* (Buenos Aires, 1979) (hereafter cited as *Memoria y balance* with particular year noted), Biblioteca del Colegio de Abogados de la Ciudad de Buenos Aires. For analysis of the ideological makeup of the Court during this period, see Héctor J. Tanzi, "Historia Ideológica de la Corte Suprema de Justicia de la Nación (1966-1973)," *Revista IusHistoria*, October 15, 2007, http://www.ijeditores.com.ar/articulos.php?idarticulo=62025&print=2.
[58] "Opónense abogados a la reforma constitucional," *La Nación*, December 6, 1970, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

that such a statement was unnecessary and, furthermore, that taking a position on the coup would constitute a political act outside of the college's legal competence.[59]

While they were careful to present themselves as neutral on the merits of the coup itself, citing the political nature of the question, the groups of lawyers that did opine advocated adherence to the constitutional order. Their concerns encompassed both Argentina's government institutions and the status of individual Argentines. The protection of individual rights, they argued, was emblematic of the constitutional order and necessary for the advancement and good reputation of the nation. The Federation had expressed this position as rumors of a military takeover spread.[60] In April 1966, the Federation's governing board declared that, "…the maintenance of institutional normalcy is essential for the wellbeing, international dignity, and progress of the Republic, as embodied in the full implementation of constitutional rights and guarantees and the harmonious interplay of the branches of government…. [It] condemns any attempt that would interrupt the constitutional order and impede efforts to resolve the problems affecting the Republic…." The Federation's leaders added that this position was not just rooted in a professional commitment to the legal system, "but also [the product of] a profound conviction that the rupture of legality, as experience has shown, creates new problems…whose severity can provide the pretext for the use of force."[61]

In the wake of the coup, lawyers' colleges from around the country persisted with this message in their public statements, underscoring the protection of individual rights as a question of national interest. Little more than a week after the military takeover, the Lawyers' College of the City of Buenos Aires issued a declaration in which they lamented all breaks with the constitutional order and expressed their hope that the country would return to institutional normalcy. In the meantime, individual rights and guarantees should be protected, argued the group, as this was the only way that the Argentine Revolution would achieve its stated goals of preserving "our civilized and free society and the essential values of our way of life." The ultimate purpose of government, the Buenos Aires college lawyers noted, was the protection of liberty.[62] Against a public discourse in which arguments like Mariano Grondona's were dominant, these representatives of the legal establishment in Argentina insisted that progress required not a break from institutional order but, to the contrary, adherence to the country's constitutional tradition.

The lawyers' characterization of this tradition is striking in light of Argentina's repeated breaks from constitutional rule through military coups *and* the internal contradictions of its constitutional order. As noted previously, Argentina's 1853 Constitution contains individual rights guarantees and, as articulated in Article 23, a "state of siege" provision allowing for those guarantees to be suspended. By the 1960s,

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[59] According to press coverage, the Rosario lawyers' college determined that, if they signed on to a statement about the military coup, they would violate Article 210 of the Ley Orgánica de los Tribunales (Law on the Constitution of the Courts). "Expídense acerca de una declaración los abogados de Rosario," *La Nación*, August 15, 1966, SM 2245, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[60] See Mazzei, "Primera Plana."

[61] "Abogados de todo el país refiérense a las versiones sobre golpes militares," *El Mundo*, April 14, 1966, SM 2245, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[62] "El Colegio de Abogados opina sobre actos de la Revolución: Refierese a la actitud adoptada respecto de la Corte Suprema," *La Prensa*, July 7, 1966, SM 2245, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

the constitutional state of siege (and the suspension of constitutional guarantees it entailed) was long accepted in Argentine Supreme Court jurisprudence, and by sectors of the Argentine society more broadly, as a means to protect the Constitution and democracy.[63]

In reaction to the military dictatorship that took power in 1966, the legal establishment in Argentina emphasized another side of the country's constitutional tradition. In their public statements, the Federation and some individual colleges presented the protection of individual rights as both a national institution and a characteristic of the Western civilization to which Argentina belonged. In addition to denouncing the 1966 coup itself, they voiced concern about an overly broad reading of state of siege powers that would endanger Argentine institutions and individual rights. Their analysis was based on the due process and other individual rights protections enshrined in Article 18 of the National Constitution.

Having supported military takeovers and expanded executive authority in the past, more conservative lawyers' groups saw this constitutional crisis differently. As the Federation's president, Roberto Lasala, argued at a meeting of the group's governing board held two years into military rule, the 1966 revolution – unlike those that preceded it to replace fraudulent, totalitarian, or failed governments – took down a constitutional government just because it was weak and ineffective, and, once in power, not only suspended political parties but prohibited them. This time, Lasala concluded, democracy itself was in jeopardy.[64]

Judicial Protections under Fire

Among the embattled institutions of Argentina's constitutional democracy, provincial courts had enjoyed a reprieve, initially insulated from military interference. Just one month after the Federation's president expressed his concern for the country's institutions, that changed. When, in June 1968, a court in the province of Santa Fe upheld students' right to hold an event commemorating the 50th anniversary of the country's University Reform, the National Executive intervened, taking over the province's judicial system and removing judges from their posts.[65] The government justified its action by invoking Article 6 of the National Constitution, which allows the federal government to intervene in a province to "guarantee the republican form of government or repel a foreign invasion."[66] The government's heavy-handed tactics reflected its fear that the

[63] See Loveman, *Constituting Tyranny*; See Iglesias, "La inclusion del estado de sitio," 48.

[64] "Abogados de todo el país expresan su inquietud ante la situación institutional. Al iniciarse las deliberaciones de la junta de gobierno de la Federación Argentina de colegios de esa rama, hubo reparos a la acción del gobierno." *La Prensa,* May 4, 1968, SM 2245, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[65] "Es criticada la intervención al foro santafecino," *La Nación*, June 9, 1968, SM 2245, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria. The students' celebration was so controversial because the military government had previously intervened in the university system, in violation of the 1918 University Reform. The university intervention was then followed by the military government's intervention in the provincial courts.

[66] Argentina constitution, art. 6; "Es criticada la intervención al foro santafecino," *La Nación*, June 9, 1968, SM 2245, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

event would spark the kind of unrest that had broken out in Paris the previous month.[67] Instead, the judicial intervention incited a rebellion among the legal establishment.

When the junta removed the nation's Supreme Court justices upon taking power, individual colleges and the Federation had spoken out in dissent, voicing concern for judicial independence and the constitutional guarantees that depended on it.[68] Now the military government had violated its own promise to otherwise respect judicial independence. In repeated, hard-hitting public declarations, these traditional lawyers' groups – joining with the Lawyers' Association of Buenos Aires – denounced the government's action and reaffirmed their position that individual rights depended on an independent judicial branch.[69] The complaints started locally and quickly spread. On June 17, the Lawyers' College of Rosario (in the province of Santa Fe) demanded "once again that the provincial Executive Power halt these institutional disturbances," and it called on the Federation to join its statement of condemnation, which the Federation did twelve days later.[70] In its formal declaration, the Federation's governing board exhorted the military government to "protect the sovereignty and independence of the Judicial Power of the Nation and of all of the provinces," thus "ensuring respect for public peace and the sacred rights of citizens."[71] Early the next month, the Rosario college announced a twenty-four-hour lawyers' strike that received national newspaper coverage.[72] This was the same group that, following the 1966 coup, had publicized its decision not to join other colleges in a statement of concern about the military's "revolution."[73] With the National Executive's intervention in the Santa Fe judiciary, a line had evidently been crossed.[74]

At stake, lawyers from Rosario and elsewhere argued, was the judiciary's ability to protect fundamental rights. In particular, they lamented the threat to freedom of association and they did so against government concern for public order.[75] As there was

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[67] Saguier, *Dictadura, Terrorismo de Estado y Neoliberalismo*, chap. 4.

[68] "El Colegio de Abogados opina sobre actos de la Revolución: Refierese a la actitud adoptada respecto de la Corte Suprema," *La Prensa*, July 7, 1966, SM 2245, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[69] "Colegio de Abogados," "Asociación de Abogados," *Clarín*, June 28, 1968; "De la Asociación de Abogados," *La Capital*, June 30, 1968, 2245, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[70] "La Federación de Colegios de Abogados expidióse con respecto al Poder Judicial," *La Capital*, June 30, 1968; "El Colegio de Abogados Señala la 'Desobediencia Policial," *Tribuna*, June 18, 1968, SM 2245, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[71] "La Federación de Colegios de Abogados expidióse con respecto al Poder Judicial," *La Capital*, June 30, 1968, SM 2245, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[72] "Los abogados de Rosarios acordaron un paro laboral," *La Nación*, July 6, 1968; 1192, 1196 SM 2245-2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[73] "Expídense acerca de una declaración los abogados de Rosario," *La Nación*, August 15, 1966, SM 2245, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[74] It should be noted, however, that at least by the end of July 1968, divisions were clear within the Rosario college on the question of the federal intervention in the Santa Fe court system. One newspaper article depicted a scene of rancor at a college meeting in which the leadership declared the question of the intervention closed (the naming of new provincial supreme court justices was a particular topic of discussion). Attending members dissented angrily. "Agitada reunión del colegio de abogados," *Clarín*, July 31, 1968, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[75] "Declaración del Colegio de Magistrados de Salta," *La Prensa*, June 2, 1968; "El Colegio de Abogados Señala la 'Desobediencia Policial,'" *Tribuna*, June 18, 1968; "Su pronunciamiento pídese al Colegio de Abogados de Córdoba,"

no Article 23 state of siege in effect at the time, constitutional guarantees protecting such freedoms technically remained in force.[76] The Lawyers' College of Córdoba noted that the *recurso de amparo*, the traditional constitutional mechanism that Rosario judges had used to uphold demonstrators' right to hold the commemoration in question, was a key tool judges had to safeguard basic rights. If police could simply ignore it – as they did in response to demonstrations in the city of La Plata as well as in Rosario, these rights, tied to judicial independence, would be jeopardized.[77]

Spotlighting the role of courts in Argentina's constitutional system, the Santa Fe intervention added fuel to the legal establishment's demands for a return to constitutional rule. A local incident became a flash point for national and internationally salient questions about the nature of the modern state. As published in *La Nación* in August 1968, the Federation approved a declaration condemning events in Santa Fe and announcing that its next National Lawyers' Meeting would address the "Structure of power and representation in the modern state in relation to Argentine reality":

> The Argentine Federation of Lawyers' Colleges…declares:
>
> That the citizenry in general and lawyers in particular aspire to a permanent institutional order and a...rule of law without interruption….
>
> That in this profound crisis it is necessary for the government to act with clarity and prudence to facilitate a return to institutional normalcy and avoid policies that do not assure the continuation of the Nation's trajectory and preservation of its grand and indispensible juridical traditions.
>
> That [these traditions constitute] the culmination of the democratic, republican, representative, and federal system, within which [the Nation's] development and greatness, its longing for peace, liberty, and justice, and its spiritual and material influence in the world are strengthened.[78]

At the end of December, the Federation looked back, labeling the Santa Fe judicial intervention "the event of great institutional transcendence" that marked the year. In its annual report, covered in the national press, the Federation complained that, "[t]he subjugation of that province's judiciary appeared to destroy the principles that were believed protected, and it raised grave concerns about the protection of individual rights, which cannot be realized without a judiciary that enjoys its inherent attributes: independence, irremovability, and finality." The lawyers asserted that the ability of courts

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La Prensa, June 22, 1968, SM 2245, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[76] Saguier, *Dictadura, Terrorismo de Estado y Neoliberalismo*, chap. 4.

[77] "Dio una declaración el Colegio de Abogados de Córdoba," *La Prensa*, June 26, 1968, SM 2245, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[78] "Un documento sobre el orden institucional. La Federación de Colegios de Abogados dio una declaración," *La Nación*, August 19, 1968, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

to carry out their constitutionally assigned role was essential to peace as the country endured its "revolutionary experience." Judicial independence was situated alongside federalism and the reestablishment of political rights in the Federation's analysis, which the group expected the government to heed: "[W]e trust…that the government will be sensitive to the demands and concerns of the largest organization of Argentine lawyers, which expresses its patriotic desire…for the full return of rule of law in Argentina, which can only be based on popular sovereignty, the principle of representation, the division of powers, and federalism, according to the provisions of the National Constitution…."[79]

These institutional concerns were not only disseminated by the mass media, but also articulated by commentators outside of the legal profession. In a January 1969 editorial titled "Rule of Law" ("Estado de derecho"), the Córdoba newspaper *Voz del Interior* cited and expanded on Federation arguments, referring to the Santa Fe intervention and demanding – in the name of Western and Argentine tradition, and with palpable impatience – a return to institutional normalcy and the popular sovereignty it entailed:

> Two and a half years after the [military takeover], a return to the federalism that our Magna Carta extols remains elusive…. All functions and acts of government must be based on principles that are inalienable to the very essence of the Nation. And if singular events provoke sudden changes and the dissolution of its institutional powers, that in no way justifies that… those who come to restore the laws that "are not obeyed" and to "cure the ills that afflict communities" install themselves in power permanently.

The editorial went on to invoke as a model for the military government nineteenth-century Argentine military hero José de San Martín, who, having won independence for Peru, retired into civilian life.[80] Stable, constitutional rule and the rights guarantees it contained were, according to this view, deeply Argentine aspirations.

Lawyers as Targets of Repression

As criminal defense lawyers increasingly became the victims of government repression and politically motivated violence, the legal establishment again denounced interference in the judicial sphere. Legal process and the right to defense before a court of law were now the issues at the fore, and they were linked to universal rights principles. But other questions burned. The arrest of lawyers representing political prisoners was the military government's response to growing protest and violence as the 1960s gave way to the 1970s. In this heated atmosphere, support for these advocates took on an ideological charge. On the left, lawyers reacted to the detention and disappearance of their peers by organizing and mobilizing in new and consequential ways, as the next chapter will

[79] "La Federación de Colegios de Abogados trata temas actuales," *La Prensa*, December 29, 1968, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.
[80] "Estado de derecho," *Voz del Interior*, January 4, 1969, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

show.[81] But at least some more conservative sectors of the profession were also moved to protest. Among traditional lawyers' groups, fault lines were opening, a sign of deeper divisions that eroded Argentines' faith in the integrity of the law and rights rhetoric.

At first, the threat to legal professionals came in the form of arrests, as noted previously. Following the assassination of Augusto Vandor on June 30, 1969, under a declared state of siege, the military government detained criminal defense and labor lawyers in places including Córdoba, where the historic worker and student protests had erupted only a month before. Lawyers' colleges from Córdoba, San Francisco, Rosario, among others, appealed to the Federation for help. The reply, following a reportedly prolonged discussion, was forceful. The Federation's governing board stated that the detention of lawyers due to the exercise of their profession "imposes a duty to proclaim principles that must not be undermined, whatever the circumstances facing the country." Even under a state of siege, the Federation's board went on, the legal defense of citizens "is sacred and protected by Article 18 of the Constitution, which guarantees the inviolability of individuals' defense and rights." The Federation's comments emphasized the limits of the president's Article 23 state of siege powers in addition to the due process guarantees contained Article 18. "As broad as the president's powers are, they cannot be exercised beyond the true necessity presupposed by the Constitution to temporarily deprive individuals of their constitutional guarantees." Otherwise, the lawyers noted, the state of siege could become an "instrument of tyranny and oppression." The Federation sent a copy of its statement to the Interior Ministry with the demand that the lawyers being held without trial be released immediately.[82]

The problem persisted, as did the resistance of the legal establishment. A month later, the Federation again contacted the Interior Minister and, once again, national newspapers published the group's message. The Federation – representing thirty-four lawyers' colleges, as *La Prensa* noted in its coverage – issued a study on the issue of "the political branch's interference in the right of defense." The study's authors wrote that "[t]he state of siege does not suppose the supremacy of a man or a branch of government; it supposes the supremacy of the Constitution," and they described Article 18 as "the bulwark for individual liberty." Because lawyers' work made possible the protection of people's life, liberty, and property, their "liberty may never be restricted." Through their telegram to Interior Minister General Francisco Imaz, the Federation asked that President Onganía release "the lawyers detained in the exercise of their profession and without cause that would reasonably justify detention under state of siege powers."[83]

The Federation effectively equated lawyers' rights with their clients' rights, not their politics, even when these politics posed a direct challenge to the military government.[84] One of the detained lawyers, Lucio Garzón Maceda, was a labor lawyer

[81] See Kestelboim, "Una experiencia de militancia."
[82] "Por la detención de abogados protesta el colegio profesional," *La Razón*, July 12, 1969, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.
[83] "El estado de sitio no permite al poder político limitar el derecho de defensa," *La Prensa,* August 23, 1969; "Colegios de Abogados: Solicitan la libertad de letrados presos," *Clarín*, August 26, 1969, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.
[84] "Por la detención de abogados protesta el colegio profesional," *La Razón*, July 12, 1969; "El estado de sitio no permite al poder político limitar el derecho de defensa," *La Prensa,* August 23, 1969, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

who had advised several trade unions during the Cordobazo. When he was taken into custody under the state of siege in 1970, the Argentine Federation of Lawyers' Colleges demanded his release in a headline-grabbing move, and the Córdoba Lawyers' College organized a strike to protest his detention.[85] The conservative Lawyers' College of the City of Buenos Aires also spoke out in favor of the right to defense and the respect owed to defense lawyers' work: "Not even a state of siege, which suspends constitutional guarantees to safeguard – not annihilate – the Constitution, can get in the way of that defense or lawyers' work as defenders of the rights and guarantees that are born of the human condition, the principle of popular sovereignty, and the republican form of government."[86]

But the widespread talk of inalienable constitutional norms did not yield perfect agreement about strategies on the ground. More fundamentally, the members of lawyers' colleges did not approach legal advocacy from the same political perspective. In particular, fissures were evident in lawyers' positions toward the political prisoners some represented. In Rosario, the leadership of the local lawyers' college was quick to distance itself from a press conference that had been held at its headquarters in October of 1969. A group of lawyers calling themselves the Comisión de Asistencia Jurídica Permanente a los Detenidos Políticos Gremiales y Estudiantiles (Permanent Legal Assistance Commission for Labor and Student Political Prisoners) had organized the event. Their purpose was to discuss political prisoners, an issue which had come to the fore when the military government cracked down on the massive labor and student protests staged there the month before.[87] In response, the leadership board of the Lawyers' College of the Segunda Circunscripción Judicial (Rosario) published a statement the next day saying that the commission was not an organ of the college and that the college's board had nothing to do with the press conference.[88] The commission's lawyers then submitted a document to the board, signed by some 140 college members, requesting an extraordinary session of the college to take urgent action against unlawful detentions, searches and seizures, and torture.[89] The extraordinary session was indeed held, and following debate pushed by attendees who favored a public censure of national officials, the Rosario college issued a less confrontational statement than some might have desired, but one that nonetheless called for the end of the state of siege, release of political prisoners, and derogation of "repressive legislation."[90]

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[85] "Los abogados piden que se libere al Dr Garzón Maceda," *La Nación*, April 3, 1970, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[86] "El respeto a la garantía de la defensa en juicio," *La Prensa,* April 15, 1970, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[87] "Solicitan una definición al Colegio de Abogados," *La Prensa*, November 3, 1969, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[88] "Abogados," *Crónica*, October 22, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[89] "Solicitan una definición al Colegio de Abogados," *La Prensa*, Nov. 3, 1969, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[90] "La situación de los presos políticos y gremiales," *La Prensa*, December 17, 1969, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

With the disappearance of Néstor Martins in 1970, the threat to Argentine lawyers turned mortal. The country's lawyers' colleges expressed dismay and presented proposals for action that went beyond professional concerns. Three weeks after Martins's disappearance, the Lawyers' College of the City of Buenos Aires published a statement expressing "its alarm, first, for what this episode could mean to the freedom to practice law and above all for the lack of guarantees for the fundamental rights of the human person which, sadly, reflect similar, repeated episodes…."[91] The Argentine Federation of Lawyers' Colleges likewise tied Martins's disappearance to broader threats to human rights. Since his disappearance, the Federation stated more than four months later, "[t]here has been no information about his situation. Widespread opinion links this incident to …[Martins's] regular defense of political prisoners ("detenidos politico-sociales")…. [W]hat is certain is that this incident has provoked public alarm. The Argentine Federation of Lawyers' Colleges understands this alarm very well because of its concern for anything related to the violation of human rights, especially when the victim is a lawyer who was practicing his profession."[92] In a statement that it presented to the country's Interior Minister, the Federation resolved to create a commission to review the records of the Martins disappearance, stating it was not satisfied with the investigation that had been done.[93] These lawyers' groups, defining Martins as the legal representative of political prisoners, chose to frame Martins's disappearance as an affront to *universal* norms and not merely an attack on their profession or a particular political sector.

In addition to releasing statements about Néstor Martins's disappearance, traditional lawyers' groups participated in public actions that delivered their message to the Argentine people and further exposed dissent within their ranks. The Federation was an organizer of these events. Dissatisfied by the military government's investigation into the Martins disappearance, the Federation declared a National Day of Protest and lawyers protest for May 21, 1971.[94] One year later, and still without news of Martins's whereabouts, the Federation asked its member colleges to participate in another National Day of Protest, this one on June 22, 1972. Reflecting the growing attacks on lawyers, the group expressed its preoccupation with the detention of lawyers and raids of their offices, and it resolved to inform the president of the nation and public of "Argentine lawyers' fervent protest against all human rights violations that remain unpunished."[95] As noted in the next chapter, the speeches and public displays put on as part of the National Days of

[91] "Preocupa a una entidad la desaparición del abogado Néstor Martins," *La Prensa*, January 4, 1971, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[92] "Colegios de Abogados piden la pronta normalización del país," *La Prensa*, April 27, 1971, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[93] "Colegios de Abogados: Por el Retorno Constitucional," *Clarín*, April 29, 1971, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[94] "De la Federación de Colegios de Abogados," *La Nación*, April 30, 1971, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[95] "Colegios de abogados piden la pronta normalización del país," *La Prensa*, April 27, 1971; "Actos de protesta de los abogados," *La Nación*, June 22, 1972, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

Protest both united participants from the far ends of the political spectrum and produced fiery confrontations.

Within the legal establishment too, conflicts arose in relation to the National Days of Protest. The Lawyers' College of the City of Buenos Aires released a statement explaining that it would not advise its members to participate in the May 21, 1971 work stoppage. While reiterating its concern about the Martins case, the college explained that a strike would harm the people who relied on lawyers' work. The group also identified another problem. Referring to the attention and resources that had been dedicated to protesting Néstor Martins's disappearance, the College noted the "profuse and costly publicity produced by certain people and entitles who have not shown the same preoccupation for similar incidents." "This makes one worry," the Buenos Aires college continued, "that those behind it, perhaps unknowingly, are responding to ideological motivations from which the college seeks to distance itself."[96]

The Lawyers' College of the City of Buenos Aires was not alone in its worry. By 1972, with antisystem violence and government repression continuing, and the antisubversion National Penal Court in operation almost a year, attorneys for political prisoners gained a newly prominent profile in Argentina. They became both targets of violence and state repression and subjects of controversy.[97] An April 1972 article in *La Nación* announced the resignation of a member of the Lawyers' College of Córdoba who criticized what he perceived to be the group's political bias. The college, he asserted, failed to react to the recent murder of a "respectable" lawyer and the kidnapping of an "important" business leader while it denounced the detention, and even pushed for the release, of those lawyers accused of terrorism and subversion. The article quoted the lawyer's letter to the college's president: "The college will currently be able to satisfy those who profess collectivist ideas and seek to use it as an instrument of revolutionary struggle but not those lawyers who continue to support the supreme juridical values that make the Republic great."[98]

The argument that the law and legal organizations had been corrupted by revolutionary politics was circulating in general popular discourse as well. An editorial in *La Prensa* published a few months later, in September 1972, portrayed a country in which the law's legitimacy was dissolving: "Our country, like others in Latin America, is experiencing a state of violence that some characterize as war, though one with unconventional qualities. One of the parties acts anonymously and without limits on the methods it employs, and with 'tribunals of justice' and 'prisons of the people' where the rights to life, liberty, and defense are denied…. The system they oppose assures them the right of defense in trials for their diverse crimes, and their lawyers frequently secure a reduction of their punishments or probation." The editorial claimed that lawyers representing alleged subversives not only denied the criminal responsibility of their clients and the existence of revolutionary groups, but were themselves tied to these

[96] "Será recordado hoy el doctor Martins," *La Nación*, May 21, 1971, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.
[97] See Chama, "El derecho como denuncia."
[98] "Sobre la actitud de un colegio de abogados," *La Nación*, April 6, 1972. These claims were denied by the college's president: "Declaraciones del titular del Colegio de Abogado de Córdoba," *La Prensa*, April 7, 1972, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

groups. According to the editorial, the lawyers attended political meetings where armed groups' messages were relayed, and they travelled to Spain as members of Peronist lawyers' associations, where "the ex-dictator" (Perón) recognized revolutionary groups as part of the armed Peronist movement.[99] In fact, radicalized Peronist lawyers did constitute an active sector of criminal defense lawyers for political prisoners at the time.[100] For readers of the mainstream daily press, the message must have been clear: The line between law and politics had been erased; legal institutions and the legal profession itself had become instruments for subversion.

Government Repression, Liberalism, and the Legal Establishment's Rights Advocacy

Against mounting cynicism toward the law, Argentina's legal establishment insisted on the preservation of the country's legal traditions, and the individual guarantees they protected. The way they framed these traditions in turned shaped their arguments toward Argentine democracy and universal human rights.

Lawyers' understandings of Argentine liberalism in particular influenced their rights arguments. In fact, the fate of liberalism in the country, and in the world, was the explicit topic of general public discussion during the 1966 to 1973 military dictatorship. In early October 1969, soon after the country's massive street protests, as his hold on power weakened, and with talk of the restoration of democracy in the air, General Onganía gave a speech declaring the failure of liberalism on a global scale. He asserted that Argentina needed new political, economic, and social structures.[101] The Lawyers' College of the City of Buenos Aires responded with alarm. In their public statement, the college explained that the group had an obligation to express its opinion on the subject "in order to fulfill the objectives for which it was created and which had guided its actions over its fifty-year history." While economic liberalism had faded from practice, the college noted, there was another form of liberalism whose survival was critical. The president's remarks suggested that the principles of political liberalism had been forgotten. "If this condemnation [of liberalism] includes our constitutional, political liberalism, which continues in force in more than one country with which we share a common civilization, and on whose principles the Republic [of Argentina] was organized and developed, there is no doubt that the official declarations should cause profound concern…. [T]hey would imply a troubling position and perspective for the country, with the ideas embodied in Argentine history and institutions under threat. [This history and these institutions] secure for man a sphere of liberty against the state." Voicing their worry about the nature of the country's proposed political normalization, the College

[99] "Doble faz en la defensa penal," *La Prensa*, September 30, 1972, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.
[100] Mauricio Chama, "Peronización y radicalización de grupos de abogados en los años ´60 y principios de los ´70," *Cuestiones de Sociología: Revista de Estudios Sociales*, no. 3 (Fall 2006).
[101] "Juicios en favor del liberalismo politíco," *La Prensa,* October 9, 1969, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

stressed that instituting democratic forms without these principles would amount to "turning one's back on the country's history and traditions…."[102]

The Lawyers' College of Buenos Aires and General Onganía represented sides in a larger debate. According to an editorial in *El Litoral,* a major newspaper in Santa Fe (capital city of the province of Santa Fe), "It is fashionable…to make statements against liberalism. Every day one can read disparaging judgments accusing it of the problems afflicting modern societies."[103] Like the Lawyers' College of the City of Buenos Aires, cited in the piece, the editorial distinguished between economic liberalism – suggesting it was dispensable – and political liberalism, which was presented as essential to Argentina's future. What was the content of political liberalism? The editorial was concise on this point: "liberty."

In their objections to the military government's actions, Argentina's legal establishment fleshed out the meaning of individual liberty. Economic interests, in the form of property rights, were certainly part of the discussion. In May of 1967, the Lawyers' College of the City of Buenos Aires spoke out strongly against three new laws pronounced by the military government: "The politico-legal orientation and errors in the formulation of these laws are deeply worrying to men of the law in so far as they are also spokesmen for public opinion… and, as such, have expressed their concerns to the college."[104] The laws in question concerned the president's ability to requisition civilian goods and services for national defense, and to audit retirement pensions. The college's statement expressed support for the purpose of the pension law and pertained largely to property rights in its discussion of the requisition laws. It also resonated with other individual rights concerns. The unbridled power of the state – and of the president in particular – to infringe on individual liberty, and the ever-expanding state of emergency under which it was exercised, was, the college contended, of grave concern. In a veiled reference to Peronism, the college claimed that the three laws "imposed…a government policy incompatible with Argentine civil life and tradition and are reminiscent of the totalitarian authoritarianism that must never return to the Argentine Republic."

When, in August of 1970, the country's president announced that companies working against the interests of the nation would be punished under state of siege powers, the Lawyers' College of the City of Buenos Aires again invoked rights concerns with relevance to sectors of society far beyond business and the oligarchy. In a statement published in *La Nación*, the College insisted that,

> The purpose of the state of siege is the preservation of order. The powers that it confers are meant to safeguard the Constitution. The president is absolutely prohibited from applying punishments except those considered disciplinary

[102] "Juicios en favor del liberalismo politíco," *La Prensa,* October 9, 1969; "Opina el Colegio de Abogados sobre un mensaje oficial," *La Nación*, October 10, 1969; "Liberalismo político, democracia social," *La Nación*, October 11, 1969, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[103] "La reacción liberal," *El Litoral*, December 1, 1969; "Juicios en favor del liberalismo político," *La Prensa,* October 9, 1969, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria. .

[104] "Opina el Colegio de Abogados sobre tres nuevas leyes," *La Nación*, May 20, 1967; "Juicios en favor del liberalismo político," *La Prensa,* October 9, 1969, SM 2245-2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

> actions regulated by legal norms for the military, which also demand the full respect of constitutional guarantees. These essential principles are inherent to the rights and guarantees of the individual and to the organization of public power in all juridically constituted communities.[105]

Along with the state of siege provision and the limits it set on the president's power to punish (Article 23 as well as Article 86), the constitutional articles cited by the lawyers covered due process protections and the ban on the death penalty and torture (Article 18), and the prohibition on the president's exercise of judicial functions (Article 95). The Lawyers' College of the City of Buenos Aires called on a constitutional tradition that hemmed in the executive to preserve the rights of individual Argentines, even during states of emergency.[106]

In addition to the safeguarding of private property, then, the rights arguments presented by traditional lawyers' groups like the Buenos Aires college emphasized the protection of physical integrity against state violence. This was evident following the 1970 kidnapping and murder of Pedro Aramburu, when the military government ramped up its repression of alleged subversives and terrorists. The reintroduction of the death penalty through law 18.701 prompted traditional lawyers' groups to reflect further on Argentine rights legacies. Lawyers' colleges both denounced antisystem violence – expressly condemning the kidnapping of Aramburu– and prioritized a return to the rule of law.[107] On June 5, 1970, *La Prensa* published a statement from the Lawyers' College of Santa Fe reiterating the group's opposition to antisystem violence. At the same time, the college's spokespeople stressed the deep Argentine roots of the ban on capital punishment and the role of state repression in perpetuating violence:[108] "We harbor profound hopes that our words will be heeded, as they are inspired in indisputably Argentine sentiments and are meant to contribute to social peace. It is therefore imperative that the state repeal this repressive law which creates a new element of violence in the country."[109]

What was Argentine about the opposition to capital punishment? Certainly Argentina was a Catholic country, and the Christian roots of opposition to the death

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[105] "Declaración del Colegio de Abogados sobre la decisión de imponer penas," *La Nación*, September 1, 1970, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[106] Two days later, Justice Minister Jaime Perriaux responded (relaying a clarification from de facto president General Roberto Levingston himself) in a letter to the group's president that affirmed the constitutional principles highlighted in the college's statement while standing by a broad interpretation of presidential power under a generously defined state of siege. Jaime Perriaux to Alberto Robredo Albarracín, September 3, 1970, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[107] See for instance "El Colegio de Abogados no aprueba la pena de muerte," *Clarín*, June 19, 1970, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[108] "Objeta la pena de muerte el Colegio de Abogados de Santa Fe," *La Prensa*, June 5, 1970, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[109] "Objeta la pena de muerte el Colegio de Abogados de Santa Fe," *La Prensa*, June 5, 1970; "Pídese que la ley sobre pena de muerte sea derogada," *La Nación*, July 11, 1970, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

penalty were cited by at least one lawyers' college.[110] But politics – and the legal category of political crime in particular – were also implicated. The statement released by the Lawyers' College of the City of Buenos Aires suggested that the national legacy at stake was tied to the traditionally privileged position of political crime, as articulated in the Article 18 prohibition on capital punishment for that category of offense. "[T]o institute [the death penalty] when the country's institutions are in crisis raises the concern that the distinction between political and common crimes could be distorted and serve as a pretext to persecute the citizenry and entrench despotism."[111] For the country's most prominent conservative lawyers' group to make this point is striking, as it spotlighted the historical role of political dissent – and even revolution – in the production of Argentine rights.

Opposition to the death penalty was also presented as a cultural trait of the Western Civilization to which Argentina belonged. The implication was that the reinstitution of capital punishment imperiled the country's identity and its hopes for progress. In July 1970, national newspapers published a statement by the Lawyers' College of La Plata. Reacting to Law 18.701, the group observed that "It does not bode well for efforts to orient our cultural evolution in the canons of Western civilization – in which man maintains his individuality before the state – if measures taken in the name of preserving this intangible principle would deny man the essential attribute of his own life."[112] There were political consequences to bucking this national and Western legal norm, among them a sense among important sectors of the population, including influential "men of the law," that the military government was disregarding their concerns.[113]

Torture was another focus of these lawyers' rights arguments, as it was for their radicalized peers on the left. Its prohibition was an issue tied to claims of Argentine exceptionalism. In a June 4, 1972 *La Prensa* article titled "The Lawyers' College Urges Respect for Human Rights," the Lawyers' College of the City of Buenos responded to repeated and specific allegations of torture. The College presented Argentina as a human rights pioneer that had barred torture since 1813, long before the international community. The group called for an investigation of torture allegations and punishment of any perpetrators. According to *La Prensa*, "The Lawyers' College of the City of Buenos Aires has made a public statement affirming that, 'Forcing someone to testify

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[110] June 29, 1970, "Declaración acerca de la pena de muerte," *La Nación*, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[111] "La pena de muerte puede servir para perseguir y entronizar el despotismo," *La Prensa*, June 22, 1970, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria. The La Plata college likewise noted that the capital crimes listed in the new law constituted "political crimes." "Pídese que la ley sobre pena de muerte sea derogada," *La Nación*, July 11, 1970, For mention of the opposition to the death penalty at this time by the Lawyers' College of the City of Buenos Aires, see Colegio de Abogados de la Ciudad de Buenos Aires, *Memoria y balance*, 1970, Biblioteca del Colegio de Abogados de la Ciudad de Buenos Aires; see also Alberto David Leiva, *Historia del Colegio de Abogados de la Ciudad de Buenos Aires,* 2d. ed. (Buenos Aires: Ad-Hoc, 2005), 85.

[112] "Pídese que la ley sobre pena de muerte sea derogada," *La Nación*, July 11, 1970; "El Colegio de Abogados Platense se Pronunció Contra la Ley que Establece la Pena de Muerte," *Clarín*, July 15, 1970, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[113] "El Colegio de Abogados Platense se Pronunció Contra la Ley que Establece la Pena de Muerte," *Clarín*, July 15, 1970, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

under torture would constitute a return to barbarism and violation of the Constitution. It would ignore the fact that against the omnipotence of the state, the rights of the individual, oppressed and alone, exist with no possibility of defense.' The declaration states that the Argentine Republic can proudly display the humanitarian principles of its juridical tradition, which has proclaimed that human rights have the status of binding positive law."[114]

Finally, Argentina's legal establishment championed rights pertaining to legal process and political activity. At times the political content was an underlying current, as in the case of the death penalty debate; the recognition of political crime as a privileged category implied an accepted place for even criminalized political dissent. In other cases, the political ramifications of these rights arguments were more obvious. When the military government reacted to the Cordobazo and other street protests by instituting military tribunals (through Law 18.232), the Federation decried most loudly not the protestors but the law meant to punish them. In a statement published in national newspapers on June 16, 1969, the Federation equated the new law with the violence it was introduced to quell. Yes, the lawyers noted, the government had the obligation and the right 'to repress, including through military force, the excesses crowds are prone to when…the life and property of the habitants are in danger."[115] But the law placed hard limits on government action. "[T]he acts that we deplore and condemn in no way justify the incorporation of Law 18.232 into positive law, a rushed instrument of power meant to overcome acts of violence with violence elevated to an apparent legality." At the center of the Federation's analysis, once again, was Article 18 of the National Constitution. The Federation complained that the law, by expanding the jurisdiction of military courts, violated Article 18 guarantees to be heard by a "natural judge" and, in a further violation of the Constitution, endowed the president – who was ultimately in charge of the military courts – with judicial functions.[116]

Perhaps more surprising was the legal establishment's opposition to Cold War legal repression. Alleged juridical errors in the military government's decrees and laws aimed at alleged subversives and Communism were a constant theme in statements by lawyers' colleges and their federation. Law 17.401, a 1967 anti-Communism law that advocates on the left – and especially the Argentine League for the Rights Man – condemned, was a particular target for these right-leaning jurists. Yes, the Federation's governing board concluded in a public statement presented to the Interior Minister, the state needed the capacity to create laws to prevent totalitarianism from destroying democracy. But Law 17.401 had to be modified to accord with the Constitution; the law's vagueness, retroactivity, and reversal of the presumption of innocence, and the impediments it created to the accused's access to the legal system were among the serious

[114] "El Colegio de Abogados exhorta a respetar los derechos humanos," *La Prensa*, June 4, 1972; See also "Posición de abogados ante unas denuncias," *La Nación,* June 23, 1972, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria. The Lawyers' College of the City of Buenos Aires, noting international moral norms, denounced torture against lawyers and people accused of crimes, as well as raids of lawyers' offices. The group presented this as its traditional position and cited its past declarations from 1922, 1943, 1952, and 1955.

[115] "Declaración de abogados," *Clarín*, June 16, 1969, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[116] "Pídese la derogación de la ley que creó consejos de guerra: Fijan posición los colegios de abogados," *La Prensa*, June 16, 1969; "Declaración de abogados," *Clarín*, June 16, 1969, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

juridical problems that violated guarantees protected by Argentina's "Magna Carta."[117] By at least 1970, when it presented its concerns to Justice Minister Jaime Perriaux, the Federation was calling for the outright derogation of Law 17.401 and liberty for people being held by the National Executive under this "repressive legislation."[118]

Two points merit mention in light of what would follow. First, the legal establishment used the language of "repressive legislation" repeatedly during this period. This would be the label used by actors across the political spectrum to disparage and delegitimate the military government's legal system as democracy was finally restored in 1973 (Chapter 4). Second, the legal establishment here too used human rights language to challenge these laws. The United Nations Universal Declaration of Human Rights was an explicit reference point. In a statement printed in the national paper *Clarín* in April 1968 – notably as the first international human rights-focused conference was being held in Tehran to celebrate the 20th anniversary of the Universal Declaration of Human Rights – the Lawyers' College of Jujuy spoke out against Law 17.401. Insisting that its pronouncement was in no way political, the college called for the urgent derogation of the law, which violated the national and provincial constitutions and the Universal Declaration.[119] The Lawyers' College of Rosario, in a statement released in late 1970, likewise invoked human rights, alongside constitutional law, as a reason to repeal what it too called "repressive legislation," including laws 18.670 and 18.701 (which, as noted above, had modified the criminal legal process and reinstated the death penalty).[120] The Argentine Federation of Lawyers' Colleges also took a human rights stand against "the so-called repressive laws," explaining in a 1971 declaration that such laws violated "…the declarations, rights and guarantees established in the National Constitution, the Universal Declaration of Human Rights, and emerging legal principles."[121]

At the same time, there were voices from the legal profession demanding more rigorous anti-terrorism legislation and accelerated criminal proceedings in order to protect the "dignity, property, and liberty of Argentine citizens." In a July 1970 statement, the Lawyers' College of Córdoba made this point in a public declaration, recommending a more effective and expedient application of "repressive law." Importantly, the college expressed a belief that this law could be implemented "within the traditional standards of our penal law and Constitution…and without harming the

[117] "Acerca de la ley sobre represión del comunismo," *La Nación*, December 2, 1967, SM 2245, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.
[118] "Solicítase la libertad de varios abogados," *La Nación*, December 13, 1970, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.
[119] "Jujuy. Fija Posiciones el Colegio de Abogados," *Clarín*, April 24, 1968, SM 2245, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.
[120] "Documento Aprobado por la Asamblea del Colegio de Abogados de Rosario," *Clarín*, September 8, 1970, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.
[121] "El levantamiento del estado de sitio reclaman los abogados," *La Prensa*, December 12, 1971; "Pídense la derogación de leyes represivas," *La Nación*, December 13, 1971, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

physical integrity and human dignity of the convicted."[122]

An underlying theme in multiple human rights statements by the legal establishment was a faith in democracy and a rights-based version of the rule of law. These lawyers and commentators insisted that legalistic forms could be decidedly unlawful when judged against the standards of justice found in the Constitution and, as if interchangeably, in international human rights. By hewing to this true legality, rooted in democracy and individual rights guarantees, Argentines could make peace. As the Argentine Federation of Lawyers' Colleges put it: "…Under the full force of the rights and guarantees of the National Constitution and human rights, the republic will be able to forge a path for peaceful coexistence and the functioning of its republican and democratic system."[123] As political violence in the country swelled**,** the Federation maintained this position, reaffirming in a March 1972 statement its commitment to law and human rights, denunciation of violence used to address injustice or achieve order, and concern about "abuses and persecution, kidnappings and torture, crimes against humanity that remain unpunished, imprisonment without due process…." The Federation asked the Argentine people and government to follow the law and respect the essential rights of the human person.[124]

While more conservative lawyers' groups were careful to present their statements as non-political and to denounce violence from all sides, these human rights arguments were nonetheless often deeply political in content, with democracy's role in protecting human rights a persistent message. This point had been made in the run-up to the previously mentioned 8th National Lawyers Conference which, organized by the Argentine Federation of Lawyers' Colleges, was to address institutional conditions in the country. The Federation's president explained that the congress would address conditions in Argentina in light of the country's repeated coups and revolutions "with the objective of correcting possible flaws and move toward sustained democracy capable of ensuring the production of human rights."[125] In the meantime, before the restoration of democratic institutions, Argentines' ability to exercise political rights in other ways was, according to at least some of these lawyers, an issue of universal rights. In reaction to the government crackdown against the labor and student protests in 1969 – and just three days before the Cordobazo – the Lawyers' College of Mendoza published a newspaper announcement. The College noted that the National Constitution guaranteed the essential freedoms of association, petition, and opinion – "inalienable in any civilized community and imperative in the rule of law" – and observed that strikes and street protests were the only

[122] "Recomiéndase establecer más rigor legal contra actos de terrorismo," *La Nación*, July 7, 1970, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.
[123] "El levantamiento del estado de sitio reclaman los abogados," *La Prensa*, December 12, 1971, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.
[124] "Declaración de los colegios de abogados," *La Nación*, March 28, 1972, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.
[125] "El colegio de abogados dio a conocer una declaración," *La Nueva Provincia Bahía Blanca*, August 20, 1968, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

remaining forms in which these freedoms could be exercised.[126] The lawyers who published the announcement did not use the words "human rights" or invoke the Universal Declaration of Human Rights or other international human rights instruments. But they, like many of their colleagues, couched their argument for individual rights and political freedoms in a presentation of universal rights that blurred the borders between international standards and the Argentine Constitution. According to this presentation of the rule of law, the way forward, rooted in universal principles, lay inside Argentina's constitutional framework, where the people's political will – popular sovereignty – could be exercised, and individuals' rights to political expression and physical integrity would be protected.

But some appear to have had their doubts. Not all members of the legal establishment expressed the same level of faith in the operation of constitutional democracy and the universal rights it guaranteed. As described in *La Nación*, the December 1970 National Lawyers Conference featured lively debate over the "source, legitimation, and principle of the division and decentralization of power." At a time when the military government was attempting to amend the Argentine Constitution – something the Federation and individual colleges opposed – committee members approved a report on the topic by the narrowest of margins. With a vote of 23 to 22, the report declared that, "the only legitimate source of political power is the will of the people…. [T]he people's effective exercise of political power requires as an indispensible condition the democratization of the structures of economic, social, and cultural power."[127]

Conclusion

In retrospect, the arguments offered by Argentina's legal establishment about democracy and rights protections seem incongruous. During the "dirty war" (1976 to 1983), the Federation would be a vocal critic of international human rights activism aimed at their country's government, and its most established and prominent member group, the conservative Lawyers' College of the City of Buenos Aires, was a traditional ally of the military and supporter of past coups.[128] But during the 1960s and early 1970s, Argentine rights politics were different. A decade before the country's own broad-based human rights movement formed, and even as Cold War divisions deepened, Argentina's legal establishment championed constitutional rights – and universal rights – as part of a national tradition of liberal legalism they sought to save.

But there was another side to this tradition. It was embodied in repeated – and constitutionally sanctioned – states of siege and in recurring military takeovers. Argentina's legal establishment was part of that heritage as well, having supported – like many Argentines in trying times – past coups as necessary to preserving the nation's

[126] "Colegio de Abogados de Mendoza Declaración," May 26, 1969, *Los Andes*, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.
[127] "Opónense abogados a la reforma constitucional," *La Nación*, December 6, 1970, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.
[128] Colegio de Abogados de la Ciudad de Buenos Aires, *Memoria y balance*, 1979.

institutions. In short, Argentina's legal traditions held in tension competing impulses that conservative practitioners and commentators could embrace: legal constitutionalism and the state of exception, constitutional and otherwise. That many right-leaning lawyers held firm in their commitment to the Constitution amid the turbulence of the late 1960s and early 1970s, and despite their support for past coups and states of exception, raises a fundamental question: why now? Indeed, the timing of this advocacy mattered. The legal establishment's outspokenness on behalf of constitutionalism and individual rights challenged the legitimacy of the 1966-1973 dictatorship and helped define the terms of the political debate that would end the dictatorship. But, as the next two chapters will show, Argentines were nonetheless deeply divided in their attitudes toward violence, political power, and democracy.

Chapter 3. Revolutionary Rights: Law, the Left, and the Construction of Human Rights Advocacy in Argentina's Cold War, 1966-72

On May 31, 1970, the Montoneros announced the verdict against General Pedro Eugenio Aramburu. In its Communiqué 3, the Peronist guerrilla group explained that the "Revolutionary Tribunal" it had convened found the former de facto president – and instigator of Juan Perón's 1955 overthrow – guilty of multiple acts of violence and repression.[1] He would be executed the next day.[2]

As introduced in the previous chapter, the kidnapping and killing of General Aramburu served as the public debut of the Montoneros, one of the major armed revolutionary organizations that formed during the 1966-1973 dictatorship, and it prompted the military government to implement new antisubversion legislation. Having examined the dictatorship from the perspective of more conservative sectors of the Argentine legal profession, the analysis now turns to the political left, including – but most definitely not limited to – the armed left and the legal practices and attitudes associated with it. In public statements about the execution of Aramburu, the Montoneros explained that this act of "Revolutionary Justice" represented a rejection of the justice system imposed by the military dictatorship in power since 1966 and retribution for anti-Peronist violence perpetrated since 1955.[3] These events have a broader significance, however. Beyond the continued controversy and speculation that surrounds them, they were, I suggest, part of a Cold War reconfiguration of law and violence among the left in Argentina, and elsewhere.

The 1966-1973 military government's heavy reliance on decrees, "laws," and courts to quash alleged Communist subversion shaped the landscape for resistance to the regime. Foes of the government did not play a merely defensive role in these legal battles. As the Montoneros' "Revolutionary Tribunal" demonstrated, dissidents also took the law into their own hands. The killing of General Aramburu represented one possible and extreme arrangement of law and violence: a revolutionary group seeking power created its own legal institution and enforced it with bloodshed to advance its political objectives. There were recent precedents for this kind of revolutionary legal reckoning: the tribunals and executions following the 1959 Cuban Revolution surely helped convince some insurgents of the utility of repurposing of liberal legal practices for their own ends.

But inside Argentina, the Aramburu "trial" was an outlier. Other groups on the Argentine left, including those opposed to armed action, also invented legal practices to push their political agendas while carefully engaging with those institutions and practices forced upon them by government repression. The idea that positive political and social change could happen only through force, and outside of these institutions, gained traction during this period; many left-leaning Argentines, like their compatriots across the political spectrum, came to accept violence as a legitimate form of politics. But some on the left denounced physical violence of all stripes, and their criticisms of bloodshed perpetrated in the name of "justice" followed accordingly. One commentator in 1971

[1] Montoneros, Comunicado Nº 3, May 31, 1970, http://www.cedema.org/ver.php?id=222.
[2] See Mira Delli-Zotti, "Genealogía de la violencia," 49-59, 52.
[3] *Cristianismo y Revolución*, no. 26 (1970): 14.

linked the killing of General Aramburu and the My Lai massacre; he insisted both were the product of a (U.S.-exported) disregard for the moral bounds articulated in the 1948 United Nations Genocide Convention and Universal Declaration of Human Rights.[4] It is striking, however, that those – like the Montoneros – who accepted or even committed political violence also engaged in the rhetoric and practice of legality. In fact, efforts were underway to integrate revolution into the law.

This chapter traces these efforts to remake the law in a revolutionary time, and it situates such projects alongside existing and evolving initiatives of more traditional leftist reformers. Juxtaposed with the preceding chapter, it offers the perspectives of Argentine legal professionals whose political projects were anything but establishmentarian, but whose reliance on liberal legal thought and practice created occasional parallels to positions taken by the legal establishment. For radicalized perspectives, the primary focus of the chapter, I examine the work of a lawyers' organization formed of the period's tumult, the Asociación Gremial de Abogados de la Capital Federal (Lawyers' Guild Association). For an approach that was, by design, less radical, I turn to the Liga Argentina por los Derechos del Hombre (Argentine League for the Rights of Man), founded decades before and associated with the Argentine Communist Party. Special attention is paid to legal advocates' arguments about Argentina's 1971 to 1973 antisubversion tribunal and the early human rights debate their experiences helped shape. Both of these topics were hashed out at the August 1972 National Lawyers' Meeting, an event convened by the Lawyers' Guild Association that serves as a focal point in this analysis and window into Argentina's human rights history.

I argue that in this moment of ideological innovations and extremes, as leftist activists around the world wielded the law against authoritarian regimes, violence, street protest, and liberal legal traditions interacted in new ways. In Argentina, this confluence of forces was fed by the international revolutionary swell but was directed squarely at the Argentine state. To an important extent, legal advocates' uses of domestic law and international principles were a manifestation of Argentine rights politics. These politics produced some unexpected results. The liberal values that revolutionaries rejected were both threatened by fierce government repression and embodied in the legal tools they used to fight the repression. Argentine lawyers were not alone; rather, they were part of a transnational legal exchange that paralleled and challenged governments' exchange of (legalistic and extralegal) counterinsurgency strategies. They imported courtroom practices forged in other revolutionary settings while operating in a legal system strongly influenced by U.S. constitutional principles and the country's own long liberal tradition.[5] At the same time, a longer leftist tradition persisted in Argentina (with its own international references) that equated universal rights with continuity and constitutional democracy, not rupture and revolution.

The analysis here challenges a dominant narrative in human rights history scholarship, in which human rights emerged as internationally powerful concepts in the 1970s because Cold War tensions had ebbed and the left abandoned its revolutionary ambitions.[6] Focusing on leftist rights advocacy in the immediately preceding – and quite revolutionary – years, and in a country deeply affected by Cold War bloodshed into the

[4] Miguel de Amilibia, "Washington en el banquillo," *El Defensor*, year 1, no. 2 (June 1971), Archivo Histórico de la Liga Argentina por los Derechos del Hombre.
[5] See Miller, "The Constitutional Authority of a Foreign Talisman."
[6] See Moyn, *Last Utopia*.

1980s, reveals a different perspective. This analysis exposes how human rights were in fact intertwined with domestic manifestations of Cold War ideological conflict and violence. Almost a decade before the Argentine and international human rights movements took hold, human rights were revolutionary.

Democracy, the Law, and Argentina's Traditional Left

The Argentine League for the Rights of Man was a traditional home for progressive criminal defense and labor lawyers. As explained in Chapter 1, the Argentine League was the country's first human rights organization, having formed in the 1930s at the initiative of Communist Party members. While much of the Argentine League's work consisted of defending the rights of persecuted Communists, the group aimed to incorporate and advocate for people from a range of political backgrounds.[7] And it did, using self-consciously nonpartisan universal, constitutional, and democratic rights language in its literature and court submissions, and attracting to its ranks Radicals, socialists, Communists, and Christian Democrats, among others.[8] Though it would take a less radical line than lawyers associated with the New Left during the 1966-1973 dictatorship, the group's members nonetheless confronted and distinguished themselves from the progressive, liberal mainstream of the profession represented by the Lawyers' Association of Buenos Aires.[9] Through symbolic protest, they offered an alternative version of liberal legal norms and practices.

In the 1960s, the Argentine League continued to link constitutional democracy and universal rights in its publications and activities, whatever its members' respective personal positions on an eventual socialist revolution. Individuals' ability to participate in domestic politics – including labor activism – was, for the Argentine League, fundamental to the realization of other rights basic to human dignity, and, the League frequently noted, it was enshrined in the country's Constitution. In its 1964 magazine *Derechos Humanos* (*Human Rights*), the Argentine League described itself as "an institution dedicated to… the defense of constitutional rights and guarantees, and their realization. It is a basic concept that under a rule of law in accord with republican and democratic principles, the human person cannot attain full cultural, moral or economic development without the protection of his individual rights, especially the rights of

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[7] See Chama, "Activismo social y político," 3; Iain Guest, *Behind the Disappearances: Argentina's Dirty War Against Human Rights and the United Nations* (Philadelphia: University of Pennsylvania Press, 1990), 51; Héctor Ricardo Leis, *El movimiento por los derechos humanos y la política argentina*, 2 vols. (Buenos Aires: Biblioteca Política Argentina, 1989), 14; Emilio F. Mignone, *Derechos humanos y sociedad: El caso argentino* (Buenos Aires: Centro de Estudios Legales y Sociales, 1991), 100–101.

[8] See Alison Brysk, *The Politics of Human Rights in Argentina: Protest, Change, and Democratization* (Stanford, CA: Stanford University Press, 1994), 46, 196n58; Mignone, *Derechos humanos y sociedad*, 100; Alfredo Villalba Welsh, *Tiempos de ira, tiempos de esperanza* (Buenos Aires: Rafael Cedeño, 1984).

[9] The Lawyers' Association of Buenos Aires spoke out against the arrest and mistreatment of lawyers, and it pursued human rights advocacy, for example by bringing the Néstor Martins case before the inter-American human rights system. But some of the group's members, like Beinusz Szmukler and Eduardo Barcesat, both prominent members too of the Argentine League for the Rights Man, grew frustrated with the Association's posture toward the 1966-1973 military government. In one episode in 1972, Szmukler and Barcesat expressed their dismay to the Association after newspaper coverage suggested that the Association, in a friendly meeting with the Minister of the Interior, had taken a conciliatory position on torture. Carlos Fayt, *Los abogados y su lucha por la justicia durante los años 70* (Buenos Aires: Ediciones Rap, 2007), 21-26, 221.

association, expression, and assembly."[10] While some scholars today distinguish between "human rights" and the "rights of man," – the former said to refer to supranational rights and the latter associated with rights provided by nation-states to their citizens – the Argentine League used these terms interchangeably. In both formulations the group focused on protecting individuals' rights to participate in political activities protected by the Argentine Constitution, and on defending those people persecuted – in Argentina and beyond – for exercising these rights.[11]

Accordingly, following 1966 coup, the Argentine League's human rights advocacy was aimed largely at the reestablishment of democracy and the defense of political prisoners. These twin themes were captured in the title of a pamphlet published in late 1968: "A Christmas without political or union prisoners. For the realization of Human Rights!"[12] In the same year, the Argentine League organized the National Meeting of Argentines for Democratic Liberties and Human Rights. This was the "International Year for Human Rights," which marked the 20th anniversary of the adoption of the United Nations Universal Declaration of Human Rights and was commemorated around the world (including by Argentina's legal establishment, as described in the previous chapter). The printed program for the National Meeting of Argentines noted this fact, as it laid out an agenda aimed at examining violations of human rights driven by national security ideology and committed through repressive legislation.[13] Both the Universal Declaration of Human Rights and the Argentine National Constitution were cited, the former said to "reaffirm" the rights protected in the latter. The 1968 meeting was meant to launch "a great Movement of national opinion that defends individual rights, human rights, and citizen guarantees of Argentines."[14] In keeping with the Argentine League's quest for pluralism, the event convened union representatives, former Peronist and Radical members of Congress, Communist Party representatives, Socialists, Christian Democrats, and others.[15] The Argentine League presented its demands as so basic that they applied to all humans and so deeply Argentine that they crossed national political divides.

By the late 1960s, persisting in its demands and in keeping with the times, the Argentine League wielded the law a form of public protest. It reclaimed and repurposed democratic legal institutions and practices – while challenging the legitimacy of the military government's use of the law – as part of what it deemed a popular struggle for democracy's return. Thus, in addition to the kinds of revolutionary tribunals that the Montoneros used to dispatch with General Aramburu, the late 1960s and early 1970s saw the creation of legalistic bodies aimed not at exterminating individual political opponents

[10] "Finalidades," Liga Argentina por los Derechos del Hombre, *Derechos Humanos*, January-February 1964, 4, Archivo Histórico de la Liga Argentina por los Derechos del Hombre.
[11] See Moyn, *The Last Utopia*, 12; "Finalidades," Liga Argentina por los Derechos del Hombre, *Derechos Humanos*, January-February 1964, 4, Archivo Histórico de la Liga Argentina por los Derechos del Hombre. Here the Argentine League calls the Universal Declaration of Human Rights the "Universal Declaration of the Rights of Man," Archivo Histórico de la Liga Argentina por los Derechos del Hombre.
[12] Liga Argentina por los Derechos del Hombre, "Navidad sin presos políticos o gremiales. *¡Vigencia de los Derechos Humanos!*", November 1968, Archivo Histórico de la Liga Argentina por los Derechos del Hombre.
[13] "Convocatoria para los Argentinos, Encuentro Nacional de los Argentinos por las Libertades Democráticas y los Derechos Humanos," June 1968, Archivo Histórico de la Liga Argentina por los Derechos del Hombre.
[14] Convocatoria para los Argentinos, Encuentro Nacional de los Argentinos por las Libertades Democráticas y los Derechos Humanos," June 1968, 1, Archivo Histórico de la Liga Argentina por los Derechos del Hombre.
[15] Convocatoria para los Argentinos, Encuentro Nacional de los Argentinos por las Libertades Democráticas y los Derechos Humanos," June 1968, Archivo Histórico de la Liga Argentina por los Derechos del Hombre.

but at exposing abuses by national governments. Argentine League events can be seen as part of a larger project among left-leaning cultural figures and activists to hold national government's accountable for acts of violence through symbolic trials. In 1966, British Philosopher Bertrand Russell's International War Crimes Tribunal was created in Europe to investigate U.S.-perpetrated war crimes in Vietnam, though its subsequent iterations – targeting Latin American countries (1973) and Argentina specifically (1976) – addressed other governments' acts of violence against their own citizens. From its first session in Stockholm, the Russell Tribunal involved a prominent Argentine leftist, writer Julio Cortázar, and the tribunal's creation was covered positively in leftist Argentine publications (while being excoriated as a Communist project by mainstream and more conservative media).[16] In the absence of state-controlled court systems that would allow states to be held to the law, private citizens organized alternative forums.

In 1969, the Argentine League launched a homegrown experiment in popular legal activism that put the law itself on trial. This was just months before the Montoneros submitted General Pedro Eugenio Aramburu to their "Revolutionary Tribunal," and it too constituted a manifestation of popular legal protest. But the Argentine League, which denounced Aramburu's murder, had a very different goal.[17] Like the National Meeting of Argentines the year before, the Symbolic Tribunal against McCarthyism and Law 17.401 was aimed at mobilizing Argentines from a range of political backgrounds to back a democratic alternative to the military dictatorship. Like the Russell Tribunal, the Symbolic Tribunal, founded in December 1969, consisted of a series of meetings held throughout the country in which victims of government abuse provided testimony of state abuses. In the Argentine case, the focus was acts of repression taken under the anti-Communist Law 17.401 introduced in Chapter 2, a major emphasis of the Argentine League at the time.[18] Delegates were also selected at the meetings for a closing session to be held nine months later in Paraná.[19] The tribunal's "jury" was made up of ten members, including Argentine League co-president Antonio Sofía; representatives of groups including the Lawyers' Association of La Plata, the UCRP, the Unión Popular de Rosario, and the CGT de Avellaneda; former public university officials; and the father of a young metal worker and Juventud Peronista (Peronist Youth) activist, whose 1962 kidnapping and murder by police forces had been a symbol of the Peronist resistance.[20] According to the Argentine League's newsletter, *The Liguista,* the closing session provided a dramatic and illuminating end to the project; the tribunal illustrated how collaboration among progressive groups "can contribute to the great movement that the

[16] "Tribunal de Crímenes de Guerra," *Cristianismo y Revolución*, no. 2 (October-November 1966), 22. This New Left publication covered the Russell Tribunal favorably while criticizing the Argentine Communist Party for using the tribunal for its own partisan ends.

[17] "No satisface a la opinión pública la investigación del caso Aramburu," *Propósitos*, July 29, 1970, SM 2316, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[18] Another focal point of the Argentine League's work during the 1966 to 1973 dictatorship was Law 18.234, also a piece of anti-Communist legislation.

[19] Liga Argentina por los Derechos del Hombre, "Las enseñanzas de Paraná," *El Liguista*, October 5, 1970, Archivo Histórico de la Liga Argentina por los Derechos del Hombre.

[20] Liga Argentina por los Derechos del Hombre, "Las enseñanzas de Paraná," *El Liguista*, October 5, 1970, Archivo Histórico de la Liga Argentina por los Derechos del Hombre. See Chama, "Peronización y radicalización," 7. Two Guild Association lawyers, Rodolfo Ortega Peña and Eduardo Luís Duhalde published a book about the case in 1965, which was re-released in 2002: *Felipe Vallese. Proceso al sistema.*

[20] Liga Argentina por los Derechos del Hombre, "Las enseñanzas de Paraná," *El Liguista*, October 5, 1970, Archivo Histórico de la Liga Argentina por los Derechos del Hombre.

country is waiting for, one capable of ending the dictatorship and giving rise to a provisional government that respects human rights and democratic liberties." It was at this final September 1970 meeting that the "jury" announced its "ruling."[21] The Argentine League reported that some 300 delegates and 1,500 audience members were listening.[22] All norms claimed to be superior to the National Constitution were declared illegitimate. As such, Law 17.401 and another anti-Communism measure, Law 18.234, were found unconstitutional, as were all punishments meted out under the laws.[23] While human rights were used to frame the tribunal's objectives, it was domestic law – the Argentine Constitution – that the Argentine League used to test the legitimacy of the military dictatorship's legalistic repression. The session closed with the singing of the national anthem.

Revolution, the Law, and Argentina's New Left

It was the disappearance of an Argentine League member in late 1970 that helped trigger a new kind of legal mobilization in the country around a new kind of political prisoner.[24] The December 16, 1970 kidnapping of attorney Néstor Martins – along with his client Nildo Zenteno, who had tried to protect him – raised concerns among the legal establishment about threats to lawyers and the Argentine legal system, as described in the last chapter.[25] But on the left, Martins's disappearance was interpreted as a call to action and, for some, a call to arms.[26] Martins, a member of the CGTA and Judicial Commission of the Argentine League for the Rights of Man, had been a labor lawyer who represented political and "social" prisoners.[27] His was the first in what would become a pattern of disappearances targeting lawyers and a hint at the new and vast brand of violence the country – and other parts of Latin America – would soon face.

In part in reaction to such violence, and connected to the development of the New Left, the early 1970s saw a sector of the legal profession emerge that embodied the radical politics of the period, as sociologist Mauricio Chama has shown. This radicalized group of lawyers diverged from the moderate Lawyers' Association of Buenos Aires (even while retaining their membership in the Association), as well as from the Communist Party-linked Argentine League for the Rights of Man.[28] They built on their

[21] Liga Argentina por los Derechos del Hombre, "Los tribunales," *El Liguista*, April 20, 1970, Archivo Histórico de la Liga Argentina por los Derechos del Hombre.
[22] Liga Argentina por los Derechos del Hombre, "Las enseñanzas de Paraná," *El Liguista*, October 5, 1970, Archivo Histórico de la Liga Argentina por los Derechos del Hombre.
[23] Liga Argentina por los Derechos del Hombre, "Las enseñanzas de Paraná," *El Liguista*, October 5, 1970, Archivo Histórico de la Liga Argentina por los Derechos del Hombre.
[24] See Chama, "El derecho como denuncia," 151.
[25] The two men had been snatched from a Buenos Aires plaza; no one claimed responsibility. See Atilio Librandi, *Fue. Memorias de un abogado viejo y viejo abogado* (Buenos Aires: Editorial Dunken, 2006), 82.
[26] Asociación Gremial de Abogados de la Capital Federal, "Introducción," December 26, 1973, Subfondo Silvio Frondizi - Fondo Centro de Estudios Nacionales (Subfondo SF - Fondo CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina; "Fue parcial el paro de abogados por Martins and Zenteno," *La Nación*, May 22, 1971, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.
[27] Librandi, *Fue*, 82; Chama, "El derecho como denuncia," 150.
[28] Chama, "Movilización y politización," 21-31; See also Felipe Celesia and Pablo Waisberg, *La ley y las armas: Biografía de Rodolfo Ortega Peña* (Buenos Aires: Aguilar, 2007).

earlier experiences in student activism, labor law, and political prisoner defense.[29] Like Martins, some of these lawyers were affiliated in the late 1960s with the national labor federation that opposed the military dictatorship and played a central role in the Cordobazo, the Confederación General del Trabajo de los Argentinos (CGTA, General Confederation of Labor of the Argentines).[30] The June 1971 kidnapping of another lawyer, FAR leader Roberto Quieto, catalyzed the formal organization of these dissident lawyers; the Lawyers' Guild Association was created soon thereafter.[31]

Though some Communists, socialists, and Radicals were involved in the Guild Association, the group's members were mostly revolutionary leftists and leftist Peronists.[32] Critically, they provided legal representation to members of guerrilla groups, something the lawyers' colleges and Lawyers' Association would not do.[33] And they took a confrontational stance toward the military dictatorship. Weaving together the law and radical politics, the Guild Association published in revolutionary magazines (and in the mainstream press), held courses on topics including "The Marxist Conception of the Institutionalization of Revolution" and "Proceedings before the National Penal Court," and got involved in high profile cases of state repression, including the 1972 "Trelew Massacre."[34] Two years after Martins's and Zenteno's disappearance, with no word on their whereabouts, the Guild Association put its politics on display, explaining that the two men represented for the group "an indestructible commitment to struggle with the people for their liberation." This vision of popular struggle was at the heart of the Guild Association's ambitious mission, which included "gathering legal professionals for the defense of labor interests based on a profound identification with the people's interests"; providing criticism of law and its teaching; combating "all violations of human rights committed in the country"; providing "professional support to all oppressed sectors"; defending people persecuted for political, union, or student activism; and demanding the derogation of all repressive legislation. Perhaps most ambitious of all, the Guild Association set out to construct the doctrinal foundation for "the new law of an emancipated Argentina."[35]

As suggested in the preceding chapter, the kidnapping of Néstor Martins drew some radicalized, moderate, and more conservative lawyers' groups together in protest, in the name of universal rights as well as professional solidarity. The progressive, liberal Lawyers' Association of Buenos Aires highlighted the mobilizing potential of the Martins case, calling it the cause under which the forces of good could fight regressive

[29] Chama, "El derecho como denuncia."
[30] See Chama, "El derecho como denuncia," 150.
[31] See Chama, "El derecho como denuncia," 151; Chama, "Movilización y politización," 26.
[32] See Chama, "El derecho como denuncia," 151.
[33] Chama, "Movilización y politización"; See Chama, "El derecho como denuncia," 151.
[34] Invitation letter, Asociación Gremial de Abogados de la Capital Federal, November 15, 1971, Subfondo Silvio Frondizi - Fondo Centro de Estudios Nacionales (Subfondo SF - Fondo CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina. In August 1972, at the Almirante Zar naval air base in southern Patagonia near Trelew, sixteen political prisoners (members of several revolutionary groups) were shot and killed in retaliation for an earlier prison escape. Guild Association lawyers traveled to Trelew and then held a press conference about what would be dubbed "el masacre de Trelew," the "Trelew massacre." See Chama, "Peronización y radicalización," 21.
[35] Secretaría de Informaciones de Estado, "Origen y Actividades de la 'Asociación Gremial de Abogados' y del 'Foro de Buenos Aires por la Vigencia de los Derechos Humanos," October 23, 1972, Mesa D, "'Asociación Gremial de Abogados' – 'Foro de Buenos Aires por la Vigencia de los Derechos Humanos...,'" Legajo 526, folio 3, Área Centro de Documentación y Archivo de la Comisión Provincial por la Memoria, Archivo de la Dirección de Inteligencia de la Policía de la Provincia de Buenos Aires.

forces.[36] But political differences were glaring. Ideological tendencies were indeed on display on May 21, 1971, the National Day of Protest called by the Argentine Federation of Lawyers' Colleges. At 8pm that night, at the Italian Mutual Aid Association (Unione e Benevolenza), the Commission for the Life and Liberty of Nestor Martins and Nilo Zenteno held a meeting. According to *La Nación*, political violence and revolutionary struggle were among the topics raised, with one speaker asserting the justice inherent in popular violence and a row erupting between PRT members – reportedly cheering Che's name – and representatives from the Federación Universitaria Argentina (Argentine University Federation). Presiding over the event, according to this article, were, among others, lawyers Héctor Sandler and Hipólito Solari Yrigoyen; the men would become key players in the congressional debates of May 1973 (Chapter 4) and, later still, in what would become Argentina's modern human rights movement.[37]

A year later, at the 1972 national day of protest, the Lawyers' Guild Association joined the Federation's call to action. The group organized an event that afternoon inside the Supreme Court building against "the attacks, detentions, police raids, kidnappings, and unlawful harassment suffered by colleagues; for the free exercise of the legal profession and respect of the right of defense" and "against the use of torture by security forces."[38] With federal police posted inside, and a water cannon and military vehicles outside the building's entrance, lawyers filled the large central atrium of the building. Members of the public looked on from the balconies above. A police official's efforts to interrupt the proceedings were stymied as attendees shouted him down, chanting Martins's name. Guild member and event organizer Rafael Lombardi likely captured the spirit of the event insisting that "for every thousand lawyers killed or tortured another thousand will rise up to take their place in the struggle for human rights and against abuses…"[39]

For Guild Association founders, the Argentine constitutional system – the touchstone for the Argentine League – was worn out and derivative. Applying a Marxist analysis, members of the Lawyers' Guild Association rejected what they called "the system's justice," deeming the judiciary a repressive arm of the liberal bourgeois regime that served the dominant classes and oppressed workers and other popular classes.[40] In a letter drafted to solicit membership in the nascent group, its authors highlighted "the obsolescence of institutions created by the Argentine constitutional system and the constant violation of fundamental human rights." Its draft Declaration of Principles proposed a new, independent law for Argentina: "Traditionally our law was copied from what existed in other countries. The application of liberal principles in our society was violent and benefited only the sole sector able to enjoy it: the oligarchy. However, as the

[36] "Un acto do protesta de los abogados," *La Nación*, April 28, 1971, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.
[37] "Fue parcial el paro de abogados por Martins and Zenteno," *La Nación*, May 22, 1971, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.
[38] "Actos de protesta de los abogados," *La Nación*, June 22, 1972; "Hubo incidentes en un acto de protesta de abogados," *La Prensa*, June 24, 1972, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.
[39] "Hubo incidentes en un acto de protesta de abogados," *La Prensa*, June 24, 1972, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.
[40] Chama, "Movilización y politización," 212.

oligarchy lost the capacity to exercise power peacefully, the dominated classes were able to make use of these instruments created for someone else. That was the moment when, from the Constitution down, there was no norm that the system would not violate, yielding the paradox that the norms' creators were their most frequent violators."[41] Like some of their opponents on the far right, these lawyers declared that progress required leaving established legal institutions behind, but they arrived at very different conclusions. Needed were "liberating" structures with "popular content."[42] And yet, as the Guild Association explained, it was the contradiction of liberalism's own rights violations that led these lawyers to use liberal legal tools for the defense of the victims. Human rights concepts, present in Guild Association statements from the beginning, would become a particular subject of controversy as the group sought to mobilize radicalized lawyers more broadly, as they did at the 1972 National Lawyers' Meeting.[43]

The August 1972 National Lawyers' Meeting

The National Lawyers' Meeting was held in the city of Buenos Aires from August 17 to August 19, 1972, four years after the Argentine League assembled its own national gathering around "democratic liberties and human rights." The military dictatorship was now weak and, pushed by economic and political failure, engaged in a process of democratization. But repression continued and the nature of this democratization – the subject of the next chapter – was wildly contested. By 1972, the group that organized the National Lawyers' Meeting was gaining public visibility, and government scrutiny. According to the national intelligence agency, the Lawyers' Guild Association had become a major player, spearheading the kinds of activities that the Argentine League for the Rights and Man and COFADE led before 1971.[44] The Guild Association made itself known to the Argentine people, publishing press releases and holding press conferences every few days to denounce acts of torture, kidnappings, and disappearances.[45]

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[41] Asociación Gremial de Abogados de la Capital Federal, "Proyecto de declaración de principios," n.d., Mesa D, "'Asociación Gremial de Abogados' – 'Foro de Buenos Aires por la Vigencia de los Derechos Humanos...,'" Legajo 526, folio 17, Área Centro de Documentación y Archivo de la Comisión Provincial por la Memoria, Archivo de la Dirección de Inteligencia de la Policía de la Provincia de Buenos Aires.

[42] Asociación Gremial de Abogados de la Capital Federal, membership form, [1971?], Subfondo Silvio Frondizi - Fondo Centro de Estudios Nacionales (Subfondo SF - Fondo CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

[43] The Buenos Aires Forum for Human Rights was a subsidiary of the Guild Association. According to Argentine government intelligence assessments, the forum was created to provide legal defense for "extremist elements," and was the outgrowth of a 1970 Montevideo conference, the Foro Latinoamericano por la Vigencia de los Derechos Humanos (Latin American Forum for Human Rights), where the creation of local forums was reportedly discussed as part of revolutionary solidarity efforts. Mesa D, "Asociación Gremial de Abogados," Legajo 526, folio 3, Área Centro de Documentación y Archivo de la Comisión Provincial por la Memoria, Archivo de la Dirección de Inteligencia de la Policía de la Provincia de Buenos Aires.

[44] Secretaría de Informaciones de Estado, "Origen y Actividades de la 'Asociación Gremial de Abogados' y del 'Foro de Buenos Aires por la Vigencia de los Derechos Humanos," October 23, 1972, Mesa D, "'Asociación Gremial de Abogados' – 'Foro de Buenos Aires por la Vigencia de los Derechos Humanos...,'" Legajo 526, folio 14, Área Centro de Documentación y Archivo de la Comisión Provincial por la Memoria, Archivo de la Dirección de Inteligencia de la Policía de la Provincia de Buenos Aires.

[45] Secretaría de Informaciones de Estado, "Origen y Actividades de la 'Asociación Gremial de Abogados' y del 'Foro de Buenos Aires por la Vigencia de los Derechos Humanos," October 23, 1972, Mesa D, "'Asociación Gremial de Abogados' – 'Foro de Buenos Aires por la Vigencia de los Derechos Humanos...,'" Legajo 526, folios 6-9, Área Centro de Documentación y Archivo de la Comisión Provincial por la Memoria, Archivo de la Dirección de Inteligencia de la Policía de la Provincia de Buenos Aires.

Accordingly, the National Lawyers' Meeting appears to have been well publicized. In the weeks before the event, the Guild Association mailed another round of invitations to potential attendees, and it published a meeting announcement in the national magazine *Primera Plana*, which anticipated some 300 participants from around the country and abroad.[46] The meeting was meant to assemble an alternative slate of legal professionals, one with a "commitment to the Homeland, commitment to the People," and "commitment to Mankind."[47] Topics on the agenda included the persecution of lawyers; repressive legislation and the National Penal Court; the state of Argentine labor law; and the realization of "human, civil, and political rights" in the country.[48]

At the event, meeting organizers described a legal system and nation in crisis. While the Argentine League for the Rights of Man had offered the Argentine Constitution as the answer to the country's ills, these lawyers attempted to create a revolutionary version of the law in line with the Guild Association's founding objectives. Scholars have concluded that these efforts failed to construct a true alternative to existing legal frameworks, but the tension between existing law and radicalized lawyers' revolutionary principles is nonetheless illuminating.[49] On the one hand, this radicalized law was presented as aspirational, requiring a successful revolution for its realization. Invoking Guevarist language, Guild Association lawyers and their allies who convened again a year after the 1972 national meeting explained that the "new law" they desired would "define socioeconomic, cultural, and political relations of the *new man*, in a society without exploitation, in which we as lawyers will not serve as instruments of oppression or international dependence."[50] On the other hand, these were legal professionals who spent their days defending political prisoners; they were in the trenches dealing with present-day abuses. They were not waiting for the revolution. Instead, they infused existing law with revolutionary principles: anti-imperialism, working-class solidarity, armed struggle, *and* (liberal) individual rights.[51] As a group of lawyers from Córdoba argued at the 1972 National Lawyers' Meeting in their written comments, it was the job of the lawyer to side with the working classes in their revolutionary struggle. They explained that representing unions and workers was a concrete way to do this, and they suggested that a central part of this work consisted of defending against the dictatorship's violations of individual rights.[52]

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[46] "Memorando," February 14, 1973, Mesa D, "Asociación Gremial de Abogados," Legajo 526, folio 11, Área Centro de Documentación y Archivo de la Comisión Provincial por la Memoria, Archivo de la Dirección de Inteligencia de la Policía de la Provincia de Buenos Aires**;** Invitation letter, Asociación Gremial de Abogados de la Capital Federal, July 1972, Subfondo Silvio Frondizi - Fondo Centro de Estudios Nacionales (Subfondo SF - Fondo CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

[47] Welcoming remarks, Asociación Gremial de Abogados de la Capital Federal, [August 1972?], Subfondo Silvio Frondizi - Fondo Centro de Estudios Nacionales (Subfondo SF - Fondo CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

[48] Invitation letter, Asociación Gremial de Abogados de la Capital Federal, July 1972, Subfondo Silvio Frondizi - Fondo Centro de Estudios Nacionales (Subfondo SF - Fondo CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

[49] See Chama, "Movilización y politización," 216n28.

[50] Kestelboim, "Una experiencia de militancia," 87-89, 88, quoted in Mauricio Chama, "La defensa de presos políticos a comienzos de los '70: Ejercicio profesional, derecho y política," *Cuadernos de Antropología Social*, no. 32 (2010): 195–217, 212; See too Chama, "Movilización y politización." Italics added.

[51] Rodolfo Ortega Peña and Eduardo Luís Duhalde, "Historia del derecho y liberación nacional," *Liberación y derecho* 1 (1974): 107-108.

[52] Bloque de Abogados de la Agrupación de Abogados de Córdoba, "La tarea de los abogados por la defensa de los derechos humanos," August 1972, Subfondo Silvio Frondizi, Fondo Centro de Estudios Nacionales, Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

Reflecting on their legal education, they observed that, "We have been taught to value abstract human rights enshrined in bourgeois legislation…. But through our legal practice we are faced daily with violations of these rights: arbitrary firings, mass evictions, politically motivated detentions and punishments, torture…. [W]e know that the juridical order serves to defend the landowning class's means of production, and we also understand the degree to which that class violates all individual rights and guarantees. No one knows like lawyers do the incredible extent of the military government's repressive and antidemocratic escalation."[53] While leftist lawyers might have resisted liberal principles in the abstract, their practice as defense attorneys for political prisoners recast those principles as useful legal and political tools.

The National Penal Court

Radicalized lawyers frequently represented clients before the military government's antisubversion tribunal, the National Penal Court (1971-1973).[54] As noted in the previous chapter, the court was based in Buenos Aires but had nationwide jurisdiction and accelerated procedures.[55] Importantly, the court's centralized structure required the transportation of suspects out of what would ordinarily be their home jurisdiction.[56] In the National Penal Court, regime opponents like Guild Association lawyers were afforded a venue to debate the relationship between the law, individual rights, and revolution.

As they plotted their moves before the court, the lawyers at the 1972 National Lawyers' Meeting drew on legal lessons gleaned in far-flung revolutionary struggles. They concluded that trials in Argentina were politicized like never before. To develop this point, they applied the thinking of Spanish lawyers, who published a book in 1971 about the 1970 Burgos trial of ETA members under the Franco dictatorship.[57] According to the *Primera Plana* meeting announcement, at least one Spanish lawyer was slated to attend the Buenos Aires meeting, presumably offering a first-person account of resisting Franco's repression through the law.[58] The Argentine lawyers explained that their Spanish counterparts created a typology of political tribunals applicable to Argentine national security legality. The National Penal Court, the Argentines concluded, fit into the category of ad hoc tribunals outside of the regular legal system, a configuration used by governments whose power was not sufficiently consolidated to rely on the judiciary.

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[53] Bloque de Abogados de la Agrupación de Abogados de Córdoba, "La tarea de los abogados por la defensa de los derechos humanos," August 1972, Subfondo Silvio Frondizi, Fondo Centro de Estudios Nacionales, Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

[54] Chama, "El derecho como denuncia," 151.

[55] Eidelman, "La Cámara Federal en lo Penal," 5-8; Pereira, *Political (In)justice*, 121.

[56] Eidelman, "La Cámara Federal en lo Penal," 5-8; Pereira, *Political (In)justice*, 121.

[57] Kepa Salaberri, *El proceso de Euskadi en Burgos; el sumarísimo 31/69* (Paris: Ruedo ibérico, 1971); Asociación Gremial de Abogados de la Capital Federal, "Juicios Políticos y Estrategias de Defensa en la Argentina de Hoy: Ponencia presentada a la 'Reunión Nacional de Abogados,' por la 'Asociación Gremial de Abogados de la Capital,'" Subfondo Silvio Frondizi, Fondo Centro de Estudios Nacionales, Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

[58] "Memorando," February 14, 1973, Mesa D, "Asociación Gremial de Abogados," Legajo 526, folio 11, Área Centro de Documentación y Archivo de la Comisión Provincial por la Memoria, Archivo de la Dirección de Inteligencia de la Policía de la Provincia de Buenos Aires; Invitation letter, Asociación Gremial de Abogados de la Capital Federal, July 1972, Subfondo Silvio Frondizi - Fondo Centro de Estudios Nacionales (Subfondo SF - Fondo CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

They explained that in such a system, the government would strive to present the court as a legal body, complete with standard constitutional guarantees. But these were, as the Spanish lawyers had emphasized, political tribunals nonetheless. Radicalized Argentine defense lawyers acting before the National Penal Court could capitalize on this, building on the country's longer history of internationally salient legal activism.[59]

In doing so, they imported not only a nuanced understanding of the potential for activism before political tribunals, but also legal strategies used in other revolutionary settings. In particular, they employed methods developed in the context of Algeria's war of independence from France, just as the Argentine military was already relying on French counterrevolutionary tactics. The French Communist lawyer Jacques Vergès – attorney for Algeria's National Liberation Front in the late 1950s – was the architect of these techniques, which Argentine lawyers read about and applied in the National Penal Court, modifying them as necessary to fit the Argentine context.[60] Linking these advocates across borders and national difference was a shared resistance to foreign domination along with a shared experience of legalistic repression. Vergès's ideas, springing from the mind of a fervent anti-colonialist, were utilized by Argentine lawyers who understood their nation's legal system to be "semi-colonial," and saw that condition as embodied in the system's liberal attributes.[61] Vergès argued in a 1972 book he wrote on the topic that in political trials, lawyers could either follow a strategy of "collusion" or one of "rupture."[62] Collusion entailed the lawyer's acceptance of the tribunal's rules and presentation of a technical, legal defense in line with those rules. Rupture was a political defense. As Argentine lawyers described it, the objective of Vergès's rupture strategy was not to prove to the judges the innocence of the accused but instead "to demonstrate to the public the guilt of the system that the judges represent." They explained that, "publicity and the mobilization of national and international public opinion…are weapons of priceless value in rupture trials…. It is the possibility of transcending the semi-penumbra of the courtroom, therefore, that determines the success or failure of these trials."[63] At the 1972 National Lawyers' Meeting, the Guild Association argued that the

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[59] In the early 1930s, an Argentine anarchist organization and the Argentine section of the Socorro Rojo Internacional (International Red Aid, the Communist International's social service organization) produced pamphlets encouraging members to use the courts and propaganda about court cases to advance the groups' respective agendas. Enrique Corona Martínez y Palacio Zino, *La FORA ante los tribunales. Los procesos por 'asociación ilícita' a los sindicatos: panaderos, chauffeurs, y lavadores de autos. Defensa de los doctores Corona Martínez y Palacio Zino* (Buenos Aires: Federación Obrera Regional Argentina. Comité Pro-presos y deportados, 1934), 11-12, 17; "Resolución del III Pleno del C.E. (12-15 Abril 1931) sobre el informe del presidium del comité ejecutivo," in Socorro Rojo Internacional (Sección Argentina), *10 años de S.R.I.* (Buenos Aires: Combate, 1933), 34-35, both found in the Biblioteca del Centro de Documentación e Investigación de la Cultura de Izquierdas en la Argentina.

[60] Jacques Vergès, *Estrategias judiciales en los procesos políticos* (Madrid: Editorial Anagrama, 1972); Asociación Gremial de Abogados de la Capital Federal, "Juicios Políticos y Estrategias de Defensa en la Argentina de Hoy: Ponencia presentada a la 'Reunión Nacional de Abogados,' por la 'Asociación Gremial de Abogados de la Capital Federal,'" Subfondo Silvio Frondizi, Fondo Centro de Estudios Nacionales, Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina; Rodolfo Mattarollo, interview by Vera Carnovale for the Archivo Oral de Memoria Abierta, Buenos Aires, 2003.

[61] Roldolfo Ortega Peña and Eduardo Luís Duhalde, "Justicia del sistema y situación semi-colonial," *Cristianismo y Revolución*, no. 30, year VI, (September 1971): 19-23.

[62] See Chama, "La defensa de presos políticos," 204.

[63] Asociación Gremial de Abogados de la Capital Federal, "Juicios Políticos y Estrategias de Defensa en la Argentina de Hoy: Ponencia presentada a la 'Reunion Nacional de Abogados,' por la 'Asociación Gremial de Abogados de la Capital Federal,'" Subfondo Silvio Frondizi, Fondo Centro de Estudios Nacionales, Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

time had come for lawyers in Argentina to embrace the strategy of rupture before the National Penal Court.[64]

In practice, court documents demonstrate a simultaneous rejection of the court's legitimacy and acceptance of liberal legal strategies. In one case from late 1972, the defense attorney for a member of the guerrilla group Fuerzas Armadas de la Liberación (FAL, Armed Forces of Liberation) made the technical legal argument that the elements of the alleged crime were not proven: there were not sufficient suspects to constitute "illicit association," and this crime could not be proven by a confession alone.

The lawyer in the case was Silvio Frondizi, the brother of former president Arturu Frondizi. He was a law school professor, Marxist, and leading member of the Lawyers' Guild Association.[65] While presenting this technical defense, Frondizi argued that the court was illegitimate. But this was, at least as reflected in a subsequent appeal, a constitutional due process argument and one based on allegations of torture. In other words, while Silvio Frondizi may have been demonstrating the guilt of the system, he was using the system's own rules to do so.[66] The challenge of exposing the illegitimacy of a legal system while availing oneself of the system was recognized by these lawyers calling for rupture. They noted that in Argentina, mixed approaches, incorporating both rupture and so-called collusion strategies, were most often used. This was, in fact, the case.[67] When the perpetrators of General Aramburu's kidnapping and killing were prosecuted by a federal court, for example, the defense attorneys employed a mixed approach.[68] By the August 1972 meeting, however, organizers argued that the time had come to put political activism above legal practice.

Other left-leaning advocates offered a different approach to the National Penal Court. The lawyers of the Argentine League for the Rights of Man advocated utilizing the political power of the law itself. At its December 1971 National Executive Board meeting, the Argentine League described how its lawyers and supporters should approach National Penal Court trials: "Each trial should become a battleground to impose law and justice. In a word, true democracy. This requires two essential conditions: The first, that the defense of each prisoner be taken on by lawyers of different political and ideological beliefs…. The second, that the greatest number of citizens possible be mobilized to be present at each trial, with protests beforehand…."[69] In its newsletter, the League described an April 1972 trial in which a teacher was prosecuted for Communist activity

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[64] Asociación Gremial de Abogados de la Capital Federal, "Juicios Políticos y Estrategias de Defensa en la Argentina de Hoy: Ponencia presentada a la 'Reunion Nacional de Abogados,' por la 'Asociación Gremial de Abogados de la Capital Federal,'" Subfondo Silvio Frondizi, Fondo Centro de Estudios Nacionales (Subfondo SF - Fondo CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

[65] See Horacio Tarcus, *Diccionario biográfico de la izquierda argentina: De los anarquistas a la 'nueva izquierda' (1870)* (Buenos Aires: Emecé Editores, 2007), 225-27; Chama, "El derecho como denuncia," 152.

[66] Decision of the Cámara Federal en lo Penal issued November 24, 1972 and "Reitera recurso extraordinario. Plantea recurso de inaplicabilidad de la ley. Plantea recurso extraordinario por sentencia arbitraria," Subfondo Silvio Frondizi - Fondo Centro de Estudios Nacionales (Subfondo SF - Fondo CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

[67] Asociación Gremial de Abogados de la Capital Federal, "Juicios Políticos y Estrategias de Defensa en la Argentina de Hoy: Ponencia presentada a la 'Reunion Nacional de Abogados,' por la 'Asociación Gremial de Abogados de la Capital Federal,'" Subfondo Silvio Frondizi, Fondo Centro de Estudios Nacionales, Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina; Chama, "La defensa de presos políticos," 205.

[68] Ortega Peña and Duhalde, "Justicia del sistema y situación semi-colonial," 20.

[69] Liga Argentina por los Derechos del Hombre, "Importante reunión de la junta nacional," *El Liguista*, n.d. [1972?], Archivo Histórico de la Liga Argentina por los Derechos del Hombre.

(in violation of Law 17.401).[70] She was ultimately acquitted, the League reported, with hundreds of supporters filling the courtroom during the proceedings, pouring onto the street, and shutting down traffic.[71] Like its Symbolic Tribunal two years before, the Argentine League offered its National Penal Court defenses as organizing tools in the name of constitutional democracy.

Human Rights and Revolution

Even for radicalized lawyers who called for political protest *instead of* legal advocacy at the National Penal Court, the political utility of nonpartisan rights language was irresistible, as demonstrated by the human rights debates that took place at the 1972 National Lawyers' Meeting.

Because radicalized lawyers in Argentina denounced legal liberalism, some were wary of human rights. But they were also engaged with the topic. Radicalized leftist lawyers understood human rights to mean liberal individual rights rather than the collective, popular political struggle they valued. As one participant at the National Lawyers' Meeting asserted, it was not political and civil rights that should be promoted but instead "the rights of the working and exploited people," rights with "social awareness" following the model of 1918 Russia.[72] Moreover, they understood these liberal rights as a veneer concealing violence by the state and imperial forces. In the statement it issued on human, civil, and political rights, the Guild Association explained, "[B]ehind the formal conditions of universal liberty and equality is hidden the monopoly of organized and legalized physical violence…. [I]n our country the liberal state's formulas…serve only to cover up the forms of national exploitation by a foreign oppressor…."[73] These lawyers made clear that only after a successful socialist revolution would human rights be realized, including economic rights like the right to housing.[74]

Despite their harsh criticisms of liberal human rights, however, leading lawyers at the national meeting determined that individual rights advocacy was useful as a near-term strategy. In part, this was a philosophically viable approach in keeping with Marxist teachings. As some of these lawyers suggested, human rights were part of the bourgeois democracy that had to be consolidated before socialism could take hold. In a draft document with suggested talking points for the National Lawyers' Meeting, the unnamed author argued that despite the problems with liberal, individualistic human rights, "[W]e

[70] Liga Argentina por los Derechos del Hombre, *El Liguista*, March 21, 1972, Archivo Histórico de la Liga Argentina por los Derechos del Hombre.
[71] Liga Argentina por los Derechos del Homber, *El Liguista*, April 10, 1972, Archivo Histórico de la Liga Argentina por los Derechos del Hombre.
[72] "Vigencia de los derechos humanos, civiles y políticos," [1972], Subfondo Silvio Frondizi, Fondo Centro de Estudios Nacionales (Subfondo SF - Fondo CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.
[73] Asociación Gremial de Abogados de la Capital Federal, "Vigencia de los derechos humanos, civiles y políticos. Ponencia de la Asociación Gremial de Abogados," [1972], Subfondo Silvio Frondizi, Fondo Centro de Estudios Nacionales (Subfondo SF - Fondo CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.
[74] Asociación Gremial de Abogados de la Capital Federal, "Vigencia de los derechos humanos, civiles y políticos. Ponencia de la Asociación Gremial de Abogados," [1972], 4, Subfondo Silvio Frondizi, Fondo Centro de Estudios Nacionales (Subfondo SF - Fondo CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

fight today for the realization of 'human rights' because we cannot surpass them. This is in sum the same position we have in respect to the democratic bourgeois republic: the day we cannot just reject it but surpass it we will. It is at that moment that we will pronounce a new declaration of rights." In a handwritten note on the document, the author clarified what was meant by "human rights": "…the political rights of man (citizen) and the civil rights of the proletariat and masses exploited by capitalism."[75]

Internationally salient political theory thus explains part of why 1970s radicalized lawyers accepted human rights language. But there was a more pragmatic influence at play: lawyers' on-the-ground experience battling Argentina's existing authoritarian dictatorship through the law. The Lawyers' Guild Association opened the National Lawyers' Meeting with a stark observation: "We are experiencing a total crisis of the law because the law, emptied of all content of justice and liberty, has been placed in the service of those holding power. The world is governed not by the law but by the powerful."[76] This lofty rhetoric had its mundane counterpart in the legal defenses lawyers presented before the National Penal Court, a court they saw as the dictatorship's legalistic farce, where confessions were extracted by torture, constitutional due process requirements were violated, and defense attorneys themselves were kidnapped and murdered.[77] In their concluding resolution, the participants at the National Lawyers' Meeting determined that they would respond to the dictatorship's abuses by promoting their own conception of human rights rooted in social solidarity, and also the individual rights to life, physical integrity, freedom of thought, and due process.

Circumstances pushed these radicalized legal practitioners to defend the individual rights that they viewed as bourgeois. But they did so very much retaining their revolutionary principles. In the human rights debate held at the 1972 National Lawyers' Meeting, a message asserted repeatedly was that the right to revolution was itself a human right, as it had been since the French Revolution. In a draft communiqué on human rights, the lawyers explained, "Confronting crimes of repression, we defend the legitimacy of the revolutionary struggle and support the recognition of the right to revolt…. We affirm…that the fight for democratic rights is meaningful only in the framework of the revolutionary struggle that the working class carries out toward the realization of its historic destiny: a society without exploitation."[78]

This sort of revolutionary human rights argument had international ramifications. Universal human rights could be invoked across borders in the name of national liberation. In the paper he presented at the August 1972 meeting, Eduardo Barcesat – a leading member of the Argentine League for the Rights of Man and constitutional scholar – developed this point. In "The Legitimacy of the Anti-Imperialist Struggle, Social Peace,

[75] "Resumen de la posición a sostener en el congreso de abogados," [1972], Subfondo Silvio Frondizi, Fondo Centro de Estudios Nacionales (Subfondo SF - Fondo CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

[76] Opening remarks by the Secretary General of the Asociación Gremial de Abogados de la Capital Federal, August 1972, Subfondo Silvio Frondizi, Fondo Centro de Estudios Nacionales (Subfondo SF - Fondo CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

[77] Pereira, *Political (In)*justice, 125. Testimony by National Penal Court defendents alleging torture, along with medical findings of torture, can be found in Subfondo Silvio Frondizi, Fondo Centro de Estudios Nacionales (Subfondo SF - Fondo CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

[78] "Proyecto de despacho para la Comisión No. 3: La vigencia de los derechos humanos pasa por la lucha contra la dictadura y el establecimiento de un nuevo poder," [1972], Subfondo Silvio Frondizi - Fondo Centro de Estudios Nacionales (Subfondo SF - Fondo CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

and Repressive Legislation," Barcesat argued that repressive governments, and not the people who strove to unseat them, violated the law by violating people's fundamental rights, and he provided international legal justification for national liberation struggles.[79] Some even suggested that a jurisprudence of international "combatiente" solidarity was developing. This was the assessment of a group of Silvio Frondizi's grateful clients a few months before the National Lawyers' Meeting. They were Bolivian political activists whom Frondizi successfully freed from detention in Argentina. In their thank you note to their lawyer (with a heading indicating it was an open letter), they described an international revolutionary moment that, they asserted, Frondizi furthered with his legal work.[80] Judging from his court document drafts, however, the jurisprudence he advanced was far from revolutionary on its face. He cited U.S. law favoring a broad application of habeas corpus petitions as well as existing international human rights declarations. Here too, liberal legal norms were applied toward revolutionary ends.[81]

Conclusion

Taken together, this chapter and the one that precedes it spotlight unexpected proponents of liberal rights ideas who, during a particularly polarized period, operated on opposite ends of the political spectrum. In Chapter 2, the group in question is Argentina's legal establishment, whose relative conservatism, coziness with power, past support for the military, and future support of the 1976-1983 juntas, would suggest a different position. In this chapter, it is Argentina's radicalized leftist and revolutionary Peronist lawyers. Steeped in Marxist-inspired skepticism about liberal rights and committed to popular, collective revolutionary struggle, this sector of the legal profession would likewise not be expected to promote basic individual rights in those terms. And yet they did, not all of them all of the time, but enough and with enough visibility that these rights ideas merit our attention. So how do we make sense of them?

Both of these segments of Argentina's legal profession shared training in liberal legal thought and practice. But there is more to it than that. While members of the legal establishment spoke out in favor of individual rights when they perceived that their professional interests or national legal and political traditions were threatened, the radicalized lawyers of the Guild Association were responding to considerations that were at once more lofty and more mundane. For Guild Association lawyers who accepted individual rights advocacy as a useful strategy, the decision was both aspirational – tied to the future success of socialist revolution – and concrete – rooted in lawyers' work defending clients before the National Penal Court.[82] Meanwhile, lawyers more often associated with Argentina's traditional left, and the Argentine League for the Rights of Man specifically, continued their decades-long struggle for individual rights protections.

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[79] Eduardo Barcesat, "Legitimidad de la lucha anti-imperialista, paz social, legislación represiva," [1972], Subfondo Silvio Frondizi - Fondo Centro de Estudios Nacionales (Subfondo SF - Fondo CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

[80] "Carta Abierta," April 1972, Subfondo Silvio Frondizi - Fondo Centro de Estudios Nacionales (Subfondo SF - Fondo CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

[81] Silvio Frondizi, "Inicia recurso de habeas corpus. Plantea recurso extraordinario," April 1972, Subfondo Silvio Frondizi - Fondo Centro de Estudios Nacionales (Subfondo SF - Fondo CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

[82] See Ortega Peña and Duhalde, "Historia del derecho," 107-108.

Their goal, not harkening back to a celebrated past or emphasizing revolutionary transformation, was to achieve a democracy in which they and their clients could be safe and welcome participants in the political system.

In fact, all of these lawyers' rights politics were tied to their beliefs about democracy. At a time of intractable political differences and a widespread acceptance of violence as a means to address them, the most pressing question was how Argentina's political system should manage the discord. With the return to constitutional rule in 1973, Argentina's beleaguered constitutional democracy was about to be tested again, as the next chapter will show. Legal professionals' earlier adherence to liberal rights talk and practices would prove incapable of preventing catastrophic breakdown.

Chapter 4. The Rule of Law at a Crossroads: Revisiting May 1973

> *The pacification of the country requires forgetting hatreds and directing energy – consumed until now in fratricidal fighting – toward the enormous task of national reconstruction. Herein resides the first basis of the broad and generous amnesty we propose.*[1]
>
> -- Argentine President Héctor Cámpora, May 25, 1973

On May 25, 1973, the prison gates opened. Some 50,000 demonstrators surrounded the Penal de Villa Devoto in Buenos Aires, demanding the release of prisoners convicted as "subversives" by the newly departed military junta. The protestors were members of leftist and Peronist revolutionary organizations and relatives of the people inside. Behind the prison walls, prisoners had taken matters into their own hands. Burning mattresses and hanging bed sheets emblazoned with the names of revolutionary groups from the windows, they seized the prison.[2] Similar scenes were playing out at other prisons in Buenos Aires and across the country.[3] Protestors' direct action forced the immediate release of 371 prisoners and added momentum to the feverish legal process already underway. The democratically elected president, Héctor Cámpora, issued a pardon and, over the next day and into the night, as their first act reestablishing democracy, Congress passed an amnesty and dismantled the counterinsurgency laws and tribunals put in place under the dictatorship that had ruled since 1966.

This moment has been remembered as a turning point in the history of the rule of law in two different ways. For the revolutionaries and politicians who participated in the prisoner release and legislative debate, as for sympathetic writers later on, this was a stunning victory of mass mobilization. In part, it was. The integration of public protest and governance, and the degree to which lawmakers and radical activists of diverse ideological orientations joined forces to make change – despite intense differences – are of central importance to this story. But the May 25 mass mobilizations have been interpreted most commonly in another light. For many scholars and commentators, they were proof of the violent revolutionary chaos that the armed forces would be forced to stamp out in the military coup of 1976. The events of May 25-27, 1973, stripped of their historical political context, have been presented as an explanation and excuse for the military's use of extrajudicial violence in the 1976-1983 "dirty war."

This chapter challenges the existing scholarship's representation of this moment and the forces behind it. May 1973 was indeed a hinge on which attitudes toward the rule of law turned, but it did not merely provide evidence of disorder, the influence of a small group of revolutionaries, and irresponsible governance. I argue instead that the events of May 1973 exposed *broad* support behind the amnesty, new laws, and the social and political order they represented. Explicit rights talk ebbed (but did not disappear) as the opportunities for progressive legal advocacy changed. With the transition to democracy, leftist and Peronist lawyers and their allies shifted their activities – and their rhetoric –

[1] "El mensaje del Nuevo mandatario," *La Prensa*, May 26, 1973, 8.
[2] "Liberaron a los presos políticos; hubo tumultos en Villa Devoto y en Caseros," *La Nación*, May 26, 1973, 18.
[3] Bonavena, et al., *Orígenes y desarrollo*, 108.

from protecting prisoners' rights through a legal system they abhorred to dismantling the system, liberating its prisoners, and participating in the construction of a new system. More conservative actors too were caught up in this process of juridical and political transformation. Human rights were not the focal point of debates at this pivotal moment, but they were discussed, with lasting consequences.

In the two preceding chapters, I analyzed the surprising convergence of the legal establishment and radicalized lawyers around human rights under the 1966-1973 military dictatorship, with a focus on the antisubversion National Penal Court and related national security legislation. Here I examine the growing rifts inside and between these groups of legal professionals as democracy was reestablished. These rifts also widened among Argentine lawmakers and civil society. While in earlier periods I featured lawyers prominently, reflecting their active role in rights debates when other sectors of society remained relatively quiet, this chapter demonstrates the widespread and vociferous involvement of nonlawyers in the articulation of ideas about political violence and how to quell it. Argentina's rule-of-law struggles, always political but previously waged more narrowly as legal battles, now dramatically spilled over from the juridical realm into politics. As in 1961 (Chapter 1), but to a greater degree, much of the action described in this chapter played out in Congress and in the streets. This time the country was poised to restore rather than discard democracy, and the congressional activity, like the protests surrounding it, was much bolder.

This chapter is organized in four parts. In the first section, I lay out how these days and decisions have been remembered and locate the "political prisoner" as a symbol at the center of the storm. I then highlight the period of transition to democracy, with a focus on the months between January and May 1973. Here I trace the political significance of the amnesty and two accompanying laws during the uncertain and contested process of elections and power transfer. I focus on commentary on the proposed legislation by lawyers and lawyers' groups as well as other civil society members, politicians, and military leaders. Included in this analysis are two moments that crystallized the symbolic political weight carried by these initiatives: the Cinco Puntos declaration by the armed forces in January, and the junta's efforts starting in the same month to criminally prosecute the Peronist block – and Juan Perón himself – for inciting violence and undermining the democratic process. In the third part of the chapter, I return to the events of May 25-27, 1973, analyzing the interplay of popular demonstrations and formal lawmaking that produced the amnesty and dismantling of the Junta's criminal legal system. The final part of the chapter reflects on the development of these debates about law, power, violence, and the state into the ill-fated 1973-1976 democracy, and their relationship to human rights politics.

Two final points before turning to debate about the May 1973 prisoner release. First, like violence, amnesty – a product of, counterpoint to, and proposed solution for violence – has been a recurring theme in Argentina's political and legal history.[4] However much others have insisted on the supposedly unique and instrumental role of the 1973 amnesty in Argentine history, it was part of a larger pattern. Each amnesty law was intended as a one-off, but all twenty-five amnesties passed since 1810 failed to bring

[4] Like revolutionary violence, the use of amnesty legislation was not limited to Argentina during the 1970s. See the Queen's University Belfast School of Law database on amnesties, http://www.qub.ac.uk/schools/SchoolofLaw/Staff/MsNualaBarnes/Amnesties1970s/.

lasting peace.[5] In addition to helping to explain, or at least predict, the May 1973 amnesty's failure to pacify the country, consideration of Argentina's history of amnesties suggests several conclusions useful to understanding the May 1973 laws and their place in the country's rule of law. Amnesties can take a number of forms with an aim to achieving a number of distinct political objectives.[6] Having been involved as proponents or beneficiaries in past amnesties, the leaders of the 1973 amnesty debate were intimately aware of how common amnesties had been and the political alchemy they were meant to perform.[7]

Second, amnesties and pardons are not the same. The National Constitution confers on Congress the power to grant federal amnesties (*amnistías*), which are by definition general – not limited to named individuals – and derogate not just punishments but the underlying crimes in question.[8] In contrast, the president holds the constitutional power to grant pardons (*indultos*), which are conferred on individuals without judicial involvement, and which remove punishments but not the existence of the alleged crimes.[9] One who is pardoned is set free but remains a convicted criminal because the underling offense retains its criminal status. In sum, the choice between amnesty and pardon turns on beliefs about the role of the judiciary versus the political branches in the administration of justice, and understandings of the distinction between illegal and legal conduct.

May 1973 through a "Dirty War" Lens

It is not surprising that people sympathetic to the 1976-1983 military government would blame a short-lived presidency and rushed congressional session for the turn to extrajudicial violence.[10] They are distinct, manageable, and appealing targets. General Ramón Genaro Díaz Bessone, Minister of Planning during the 1976-1983 dictatorship, makes the case starkly: the military government under Alejandro Lanusse (1971-1973) was winning the war against terrorists, and it was doing it through a specialized criminal legal system. Cámpora's amnesty and dissolution of the junta's legal order not only interrupted that judicial process, but forever closed the door on a legal approach to

[5] Alfredo Vítolo, *Amnistías Políticas Argentinas* (Buenos Aires: Desmemoria, 1999), 9.
[6] Compare, for example, Argentina's 1895 amnesty, which for the first time explicitly included military crimes in a broadly written amnesty; the narrowly tailored 1947 amnesty, which focused entirely on military personnel, providing retirement benefits to members of the armed forces who had been pushed out of the military or lost benefits because of their political activities since 1930; and the 1983 amnesty in which the military government (1976-1983) granted itself amnesty. Vítolo, *Amnistías Políticas Argentinas*, 106, 173, 258.
[7] Cámpora and Lanusse both had experiences as political prisoners. See Gambini, *Historia del peronismo*, 85. Lanusse reportedly made reference to his own four-year imprisonment under Perón when challenging the incoming Cámpora administration's recognition of the existence of "political prisoners," a category that Lanusse and the military government rejected. "En severa réplica a una presentación del Frejuli, el jefe del Estado niega la existencia de presos políticos," *La Opinión*, April 1, 1973, 6. I am grateful to Professor Mark Healey and Pablo Palomino for these insights.
[8] Vítolo, *Amnistías Políticas Argentinas*, 23. Provincial legislatures have this role when the crimes amnestied are local rather than federal.
[9] See Interior Minister Righi's discussion of this distinction in "Indultóse a los presos políticos," *La Nación*, May 26, 1973, 18.
[10] See Nicolás Márquez, *La otra parte de la Verdad: La respuesta a los que han ocultado y deformado la verdad histórica sobre la década del '70 y el terrorismo* (Buenos Aires: N. Marquez, 2004). Groups and individuals in Argentina have also debated these issues on the Internet. The 1973 amnesty, dismantling of the National Penal Court, and derogation of the 1966-1973 military government's criminal legal system are frequent targets of criticism.

combating subversion. Portraying the events of May 25-27, 1973 as a legal breakdown, Díaz Bessone explained in his 1988 *Guerra Revolucionaria en la Argentina (1959-1987)* that the National Penal Court and related laws had led to the conviction of almost 600 "subversives." The Court was poised to sentence some 600 additional sentences, Bessone asserted, when the tribunal and its juridical architecture were dismantled. "With recourse to the justice system undone," the general explained, "it was impossible to consider returning to that approach in the future."[11] The military had learned its lesson: the law was too fragile a weapon against an enemy that could manipulate the lawmaking process and reverse the military's gains. This message echoes the dictatorship's official argument, set out in a 1980 report, *El terrorismo en la Argentina*. The amnesty, however cloaked in the language of law and politics, amounted to the freeing of criminal terrorists.[12]

Even some who helped garner unanimous congressional support for the amnesty would distance themselves from that political process a short time later. During the 1976-1983 military dictatorship, a lawyer by training, Radical Deputy Antonio Tróccoli, indicated that his party was not consulted by Cámpora's government about the bills and that his vote in favor was the product of political pressure.[13] The amnesty was pushed aside as a mistake imposed by a reckless president.

Scholars have largely reproduced this political marginalization of the events of May 1973, privileging, however unintentionally, the perspective of the 1976-1983 military government.[14] The argument generally comes in three parts: 1) The May 27 amnesty was the product of a weak president, Cámpora, who was under the thumb of revolutionary forces; 2) It constituted a breakdown of law and order; 3) The armed forces understood from this experience that legally trying and imprisoning subversives was impossible, leading the military dictatorship in 1976 to discard judicial methods in favor of mass disappearances and murder.[15] The dichotomy drawn between law and order on the one side – before the amnesty – and violence and disorder on the other – after the amnesty – is a common theme.

What is missing in existing accounts of May 25-27, 1973 is the political meaning of the amnesty and dismantling of the military government's criminal legal system. Though broadly supported, the measures met virulent opposition from segments of the armed forces and anti-Peronist sectors of society. There were fundamental differences *within* both pro-amnesty and anti-amnesty camps. For backers, the release of political prisoners constituted the triumph of the people – and, for many, Peronism, which had

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[11] Ramón Genaro Díaz Bessone, *Guerra Revolucionaria en la Argentina (1959-1987)* (Buenos Aires: Círculo Militar, 1988), 166.
[12] Poder Ejecutivo Nacional, *El terrorismo en la Argentina* (Buenos Aires: Poder Ejecutivo Nacional, 1980), 7.
[13] Miguel Bonasso, *El presidente que no fue: Los archivos ocultos del peronismo* (Buenos Aires: Espejo de la Argentina, 1997), 483-4.
[14] See De Riz, *Historia Argentina*; Norden, *Military Rebellion in Argentina*, 46-7; Pereira, *Political (In)justice*, 129-30; Lewis, *Guerrillas and Generals*.
[15] Highlighting these three points, political scientist Deborah Lee Norden writes, "Cámpora's association was with more radical, leftist sections of Peronism. Pressured by these groups, Cámpora issued an extensive political pardon to imprisoned guerrillas. By the following day, Congress had lent its support to the pardons, through an amnesty law. In one dramatic gesture, the amnesty eradicated the results of the legal battle against guerrilla warfare. The guerrillas were back on the streets, free to resume organizing. From the perspective of the military, Cámpora's decree had demonstrated police actions to be insufficient in combating terrorist or guerrilla actions. Only by permanently eliminating perpetrators could the military be sure of having terminated the formers' activity." Norden, *Military Rebellion in Argentina*, 46-7.

been outlawed for 18 years – over the violence and repression of the outgoing military junta. Amnesty was portrayed as a necessary first step toward peace after several turbulent years of state repression and bombings, kidnappings, bank robberies, and assassinations by revolutionary Peronist and leftist groups who felt forced to fight fire with fire. And yet the measure would excuse only revolutionary violence, not that perpetrated by military government forces and supporters. The forgiving and forgetting promised by the amnesty would be limited, a reflection of the act's less pacific side. The amnesty was seen by many who sought its passage as a critical move in the process of taking power, a process in which violence acts were accepted methods. The amnesty was a means to legalize and legitimate acts and actors – revolutionary violence and revolutionaries, mass mobilization and Peronists – in the political sphere, transporting them from prisons to Congress and the Casa Rosada.

But not all of the armed groups calling for amnesty intended to put down their weapons after their comrades were free. Peace and power pulled in opposite directions. Members of the military government and armed forces understood this. They were deeply involved in the debate over amnesty and the proposed repeal of the junta's antisubversion laws and institutions, and they recognized what was at stake. Yes, the liberation of several hundred terrorists was deeply troubling and dangerous, especially given the losses that the military in particular had suffered at the hands of armed revolutionary groups. The level of violence perpetrated by these groups against military and foreign business interests should not be downplayed. Fear on the part of members of Congress – fear of continued revolutionary violence, seizures, and chaos – was likely an important factor behind their support for the May 1973 bills.[16]

Based on the substance of the congressional debate and media depictions of the bills, however, I will show that another, more strategic force was at play. For those opposed to Peronism, as well to anyone against the reestablishment of democracy, the amnesty constituted more than a physical threat: it represented the literal reincorporation of Peronism into the body politic and an embrace of terrorism by the highest officials in government.

The amnesty of 1973 was not the product of a single man or fringe radical groups storming onto the scene on May 25, though armed revolutionary organizations played a critical role in the violence and the politics of this period, and the popular mobilizations dramatically accelerated the lawmaking process underway. Rather, it was the outcome of a political struggle shaped by a widely shared understanding of law and violence that blurred the distinction between the two, called into question the "legality" of the military regime, and inspired efforts not just to dissolve an unjust legal order, but also to construct a more just one. This viewpoint calls into question the characterization of the 1973 amnesty as a turn away from the law. That said, despite the hopes of many, violence did not end with the amnesty and reestablishment of democracy. Even former militants have concluded that for armed revolutionary groups, violence had become the end as well as the means; its spiral only accelerated after May 25.[17]

The 1973 amnesty's failure to usher in a new beginning for Argentina is contained in the story of its creation. Among supporters of the liberation of political prisoners untenable conflicts remained. Was amnesty a step toward peace, political

[16] Gambini, *Historia del peronismo*, 271.
[17] See Calveiro, "Antiguos y nuevos sentidos."

pluralism, and democracy or a step toward power through armed conflict? Could Juan Perón's overtures to and lionization of armed revolutionary groups – expressed from Spain where he remained in exile – serve as the foundation for a functioning system of government, or were they an invitation to endless war?[18] The different positions on these issues among amnesty supporters are demonstrated in the language they used to describe the amnesty and political prisoners, and in the debate over whether liberation of political prisoners should come through (congressional) amnesty or (presidential) pardon.

Finally, it is not clear that the events of May 25-27 were as critical a learning moment for the military as they have been presented. As demonstrated in the two previous chapters, the debate between and among government actors and civil society members over the release of prisoners started long before May 25. The armed forces and military government were part of this long-running debate, and they did not always speak with a single voice. The military assigned meaning to the amnesty before a single prisoner was released, independent of the actual course of events. This meaning was one of political illegitimacy; it was linked to efforts to undermine Peronism in the run-up to the March 11 elections and then again on the eve of inauguration, as the military prepared to return power to the same forces from which they had wrested it in 1955. The struggle played out in depictions of the political prisoner, a figure long fraught with symbolic value that would become particularly salient in this period. To supporters of the amnesty, the political prisoner embodied the violence and intolerance of the junta's legal system; to those who opposed amnesty, she/he represented the successful containment of political danger through the law. To release the political prisoner was to allow the enemy to infiltrate politics, a menacing possibility to the armed forces and military government, and one that would provide a pretext for a return to power.

January to May 1973: Elections, Amnesty, and National Transformation

Democracy was a failed concept by the early 1960s, as demonstrated in Chapter 1. But when the *Revolución Argentina* failed to bring the progress and social stability its leaders promised, a return to constitutional rule once again looked promising to many Argentines (Chapter 2). Even before Augusto Lanusse became president in March 1971, he called for a return to "institutional normalcy"; in order to channel support away from revolutionary armed groups, Lanusse determined that the existing ban on politics – and Peronism – had to be lifted.[19] The Grand National Agreement (*Gran Acuerdo Nacional, GAN*), developed with Interior Minister (and Radical from the UCRP) Mor Roig, was Lanusse's proposal for a return to democracy through a broad national alliance, which would include Peronists, Radicals, and any other parties opposed to violence, as well as labor unions and business groups.[20] It was under Lanusse that elections were scheduled for March 11, 1973 and that, for the first time since 1955, the military government

[18] María Laura Lenci, "Cámpora al Gobierno, Perón al Poder: La tendencia revolucionaria del peronismo ante las elecciones del 11 de marzo de 1973," in *La primacía de la política: Lanusse, Perón y la Nueva Izquierda en tiempos del GAN*, ed. Alfredo Pucciarelli (Buenos Aires: Edeba, 1999).
[19] Crawley, *A House Divided*, 344.
[20] See Potash, *Army & Politics in Argentina, 1962-1973*, 361, 364; Rock, *Argentina 1516-1987*, 357. While General Lanusse denied any personal ambitions to run for president, he was widely believed to be acting with such ambitions in mind.

reached out to Perón, recognizing that the success of any presidential ticket depended on the endorsement of "the great absent elector."[21] But while the GAN was a political breakthrough in some respects, it contained an embedded threat. As Eduardo Crawley notes, "neither he [Lanusse] nor the armed forces would tolerate any outcome that represented 'a leap into the void.'"[22]

For progressive lawyers and legal advocacy groups, the Great National Agreement was a sham. In June 1971, a new monthly magazine called *The Defender of Human Rights and Democratic Liberties* (*El Defensor de los Derechos Humanos y de las Libertades Democráticas*) rejected the GAN. The magazine, whose editorial board included lawyers like Argentine League leader and Socialist politician Carlos Sánchez Viamonte and Peronist Raúl Bustos Fierro (who had been a representative to the United Nations for the drafting of the UDHR), lambasted the agreement for taking the formal appearance of democratic institutionalization while, in reality, institutionalizing the repressive military regime.[23] Beyond legal circles too, the GAN was linked to the wrongs of the military dictatorship and larger structural ills.[24] In May 1972, professional and labor groups outside of the legal field, the Buenos Aires Forum for Human Rights, and COFADE joined the Lawyers' Guild Association in signing a public statement decrying the "institutionalization of repression."[25]

True democracy, from the perspective of many left-leaning legal advocates, meant the undoing of the military regime's repressive structures. Demanding authentic democratic institutions, the editors of the June 1971 issue of *The Defender* called for popular sovereignty, the repeal of repressive legislation, the liberation of prisoners, and respect for human rights.[26] Some radicalized lawyers went further. In a 1972 statement issued for the first National Lawyers' Meeting, a new "May 29 Lawyers' Group" (named for the date of the Cordobazo) cited "modern constitutional law" and the "sacred right to rise up against despotism" to support armed struggle as the only way to install a "popular and revolutionary" government.[27] These competing prescriptions for the implementation of popular sovereignty – democracy on one side and armed struggle on the other –

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[21] Crawley, *A House Divided*, 345.
[22] Crawley, *A House Divided*, 344.
[23] "Solo el pueblo podrá forjar la auténtica salida democrática," *El Defensor*, year 1, no. 2 (June 1971): 2, 24, Archivo Histórico de la Liga Argentina por los Derechos del Hombre. For discussion of Bustos Fierro, see Chama, "Activismo social y politico," 5. Viamonte had also been ambassador before the United Nations Human Rights Commission before resigning following the 1966 coup. See Universidad de La Plata, "Carlos Sánchez Viamonte," *Vidas y retratos* (online), http://www.unlp.edu.ar/articulo/2012/9/10/vidas_y_retratos_carlos_sanchez_viamonte.
[24] A flyer (n.d.) produced by the Comisión de Solidaridad con los Presos Políticos (Solidarity Commission for Political Prisoners) announced a roundtable in Tucumán on the plight of political prisoners and denounced repression, torture, and the GAN. Another flyer (n.d.), this one printed by the Movimiento Nacional Contra la Represión y La Tortura (National Movement Against Repression and Torture), also linked the Great National Agreement to repression – national and international – by expressing opposition to "the GAN, the dictatorship, and imperialism." Both flyers available in Subfondo Silvio Frondizi, Fondo Centro de Estudios Nacionales (Subfondo SF - Fondo CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.
[25] "Ellos son torturados y están presos por nosotros – Qué hacemos nosotros para ellos?", May 1972, Subfondo Silvio Frondizi, Fondo Centro de Estudios Nacionales (Subfondo SF - Fondo CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.
[26] "Solo el pueblo podrá forjar la auténtica salida democrática," *El Defensor*, year 1, no. 2 (June 1971): 2, Archivo Histórico de la Liga Argentina por los Derechos del Hombre.
[27] Agrupación de Abogados 29 de Mayo, "Declaración de la Agrupación 29 de Mayo de la Capital y Abogados del Interior," August 1972, Subfondo Silvio Frondizi, Fondo Centro de Estudios Nacionales (Subfondo SF - Fondo CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

reflected divisions in Argentine society that would shape the events of 1973 and their aftermath.

In the bumpy transition period from January to May, as the military junta and civilian politicians finalized negotiations for the return to democratic rule, amnesty for political prisoners was a central theme taken up by nonlawyers and lawyers alike. But the issue had deeper roots. Since the National Penal Court's creation in 1971, *Criterio* noted, "there is practically no political party or movement that hasn't called for the abolition of [the military government's] repressive legislation and the release of political, student, and labor union prisoners."[28] Lawyers' groups were no exception.

The Argentine League for the Rights of Man was among the organizations calling for a "broad amnesty for all prisoners held for political or social reasons" and the repeal of "repressive legislation."[29] Argentine League members who belonged to the Lawyers' Association of Buenos Aires pushed this message in that group as well. In a Lawyers' Association meeting held on March 30, 1973, Argentine League leader Eduardo Barcesat proposed that the Association issue an urgent public statement. Once again, the military government planned to transfer prisoners to a faraway location, this time, another Association member explained, to resist the coming amnesty by using the prisoners as hostages. Barcesat called on the association to demand 1) respect for the life and rights of the detained, 2) passage of a future amnesty law, and 3) the repeal of repressive legislation. While backers of the statement noted that the association had supported these positions previously, the group's board of directors issued a narrower statement demanding that the prisoner transer not take place and that the safety of the prisoners in question be protected.[30]

For some progressive legal commentators on the democratic transition, the national policy questions surrounding political prisoners' fate were human rights questions. With presidential elections nearing, the Buenos Aires Forum for Human Rights, the subsidiary of the Guild Association mentioned previously, sent a letter to Popular Left Front (Frente de Izquierda Popular, FIP) candidate Abelardo Ramos. The Forum asked Ramos to reply to a series of questions about human rights focused on torture, repressive legislation, and the liberation of political prisoners. The new democratic government would face great pressures, the Forum recognized, but human rights – and specifically these universal rights protections attached to political detainees – had to be respected.[31]

While the legal establishment also criticized "repressive legislation," as discussed in Chapter 2, its members' calls for the release of prisoners were generally more narrowly drawn, for example, addressing particular detained lawyers. There were differences too *within* segments of the legal profession. Peronist lawyers in particular were divided on

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[28] "Las libertades públicas," *Criterio*, October 14, 1971, 627.

[29] "Reclaman una amnistía política," *La* Opinión, November 18, 1971; "De una liga," *La Nación,* April 13, 1971, SM 2316, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria. As noted in this newspaper coverage, the Argentine League for the Rights of Man also demanded, among other things, that jobs be restored to those fired for political reasons, and that a national commission be created to investigate torture and other forms of repression.

[30] "Situación de los presos políticos. Nota del Dr. Eduardo Barcesat, Acta No 1.420," as published in Fayt, *Los abogados y su lucha por la justicia,* 18-19.

[31] Foro de Buenos Aires por la Vigencia de los Derechos Humans to Prof. Abelardo Ramos, December 27, 1972, Subfondo Silvio Frondizi, Fondo Centro de Estudios Nacionales (Subfondo SF - Fondo CEN), Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.

the issue, highlighting the generational and political rifts among Juan Perón's supporters. The Lawyers' Center of Buenos Aires (Centro de Abogados de Buenos Aires), founded by Peronist lawyers ousted from diplomatic, academic, and political posts following the 1955 coup, would be critical of the events of May 25, 1973. In a public statement, the center renounced "the use of force and uncontrolled violence to impose impatient solutions that should be implemented juridically," and it blamed the day's unrest on "young adolescents who are unable to comprehend the new era that has opened in the country" with a democratically elected Peronist president once again in power.[32] But this violence, and the legal struggles it was tied to, did not simply erupt from nowhere on May 25.

With the March 11, 1973 presidential elections only weeks away, the fate of the military dictatorship's antisubversion legal system and political prisoners took on new urgency, and a salience far beyond the legal field. Presidential candidates were announced in January, with Héctor Cámpora on the ticket for the new Justicialist Liberation Front (Frente Justicialista de Liberación, FREJULI) block, formed by the Peronist party along with ex-president Arturo Frondizi's new party, the Movement of Integration and Development (Movimiento de Integración y Desarrollo). Cámpora, running on the slogan "Cámpora in office, Perón in power," was understood to be the proxy for Juan Perón, whose residence in Spain disqualified him from running.[33] Though Cámpora was one of five candidates for president, he was an early frontrunner, and a lightning rod.[34] The FREJULI amnesty proposal in particular became a focal point for mounting tensions. Describing the trial of several ERP members accused of participating in the assassination of a military lieutenant general, a February 14 *La Prensa* editorial concluded by expressing its dismay at the amnesty proposal and some supporters' statements that it would "deliver justice" and liberate "our fighters."[35]

Release of the country's political prisoners was a plank of Héctor Cámpora's presidential platform. Cámpora's January publication of *Programmatic Guidelines of the Justicialist Liberation Front* (*Pautas programáticas del Frente Justicialista de Liberación*) asserted the illegality of the junta's antisubversion laws and institutions, and demanded amnesty for anyone subjected to them.[36] The urgency behind the amnesty proposal was summed up in the slogan "With the people's government, not a single day with political prisoners."[37]

Off the campaign trail, the legal struggle to free political prisoners played out courtrooms and in street protests. Lawyers and the junta were locked in battle, with the

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[32] "Dio una declaración el Centro de Abogados, sobre incidents del 25," Crónica, June 6, 1973, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[33] Lewis, *Guerrillas and Generals*, 80.

[34] Also running for president were Ricardo Balbín of the UCR (Unión Cívica Radical, the Peronist party's chief rival), Francisco Manrique of the APF (Alianza Popular Federalista, along with the ARF, the alliance supported by factions of the military), Oscar Alende of the APR (Alianza Popular Revolucionaria), Ezequiel Martínez of the ARF (Alianza Republicana Federal), Jorge Abelardo Ramos of the FIP (Frente de Izquierda Popular), Arturo Frondizi of the MID (Movimiento de Integración y Desarrollo), Julio Chamizo of NF (Nueva Fuerza), and Juan Carlos Coral of the PST (Partido Socialista de los Trabajadores). See William C. Smith, *Authoritarianism and the Crisis of the Argentine Political Economy* (Stanford, CA: Stanford University Press, 1991), 219.

[35] "Lo que sugiere el fin de un proceso," *La Prensa*, February 14, 1973, 6.

[36] Héctor Cámpora, *Pautas programáticas del Frente Justicialista de Liberación* (Buenos Aires 1973).

[37] "Formalizó el gobierno el decreto con 371 indultos, después de las manifestaciones que apresuraron las primeras excarcelaciones," *La Opinión*, May 27, 1973, 6.

former continuing to challenge the legality of the regime's criminal legal system as the democratic transition neared. Many of these struggles centered on the junta's "Maximum Threat" (*máxima peligrosidad)* prison regime, applied against alleged subversives subjected to the legal proceedings discussed in Chapters 2 and 3. In practice, this category of detention meant abbreviated criminal procedure, nearly absolute isolation in prison, and prisoners' great difficulty communicating with their attorneys and visiting with family members. Attorneys fought for access to their clients and challenged the constitutionality of the Maximum Threat system, specifically the use of solitary confinement.[38] As elections neared, there was frequent criticism of conditions facing political prisoners.

Legal advocacy on behalf of political prisoners appears to have had some impact; the Junta answered its critics by presenting its policies as complying with legal standards, both domestic and international. On January 10, the military government announced the promulgation of a law allowing Maximum Threat prisoners one hour a day of outdoor recreation to replace the existing thrice-weekly schedule.[39] In making these changes public, the military government explained that it was acting to bring the Maximum Threat regime into line with United Nations rules.[40] The Junta announced too that Red Cross delegates had visited and that they had confirmed the humane treatment provided in Argentine prisons.[41] But the military government's convoluted regulations to govern attorney visits, together with continued challenges to the Maximum Threat regime brought by lawyers and relatives, cast doubt on the extent to which the January reforms improved things.[42]

In the domestic legal realm, efforts to combat the Maximum Threat system bore some fruit just weeks before Héctor Cámpora took office, spotlighting the rights politics at play. At the end of April, Argentina's Supreme Court held that the Maximum Threat regime constituted a "punishment" under the National Constitution and therefore could not be imposed by the president, as punishment could be imposed only by the judiciary.[43] *La Prensa*, in an editorial on the high court's decision, explained that the paper had always supported the Maximum Threat system due to the growing violence in prisons that had "thwarted security provisions and, as a result…the laws to which [prisoners] are subjected."[44] The newspaper was sure to point out, however, that it had from the beginning expressed concerns that the regime conflicted with some constitutionally protected individual rights, noting with satisfaction that the judiciary had stepped in when needed to correct those excesses, ensuring, for example, sufficient access to defense attorneys.[45]

Although the 1966-1973 junta's decisions to lock up its enemies and implement the Maximum Threat regime might have provided sufficient cause for the politicization of Argentine prisons, historical precedent suggests a longer story. Juan Perón's 1946-1955 administrations launched penal reform efforts expressly aimed at bringing the

[38] "El régimen da visitas a ciertos detenidos," *La Prensa*, February 13, 1973, 11; "Tribunales: Recurso ante la Corte," *La Prensa*, January 18, 1973; "Modificáronse normas del reglamento de detenidos," *La Prensa*, January 11, 1973, 5.
[39] "Modificáronse normas del reglamento de detenidos," *La Prensa*, January 11, 1973, 5.
[40] "Modificáronse normas del reglamento de detenidos," *La Prensa*, January 11, 1973, 5.
[41] "Informó el Ejército sobre reclusos que hacen una huelga de hambre," *La Prensa*, January 7, 1973.
[42] "Modificáronse normas del reglamento de detenidos," *La Prensa*, January 11, 1973, 5.
[43] "En torno de los 'detenidos de máxima peligrosidad," *La Prensa*, April 27, 1973, 6.
[44] "En torno de los 'detenidos de máxima peligrosidad," *La Prensa*, April 27, 1973, 6.
[45] "En torno de los 'detenidos de máxima peligrosidad," *La Prensa*, April 27, 1973, 6.

Peronist revolution to the prisoner.[46] Perón's attack on social injustice extended to the prison yard, identifying precisely this injustice as the cause of the imprisonment of poor and working-class people. Importantly, the reforms Perón had instituted – among them improved diets, more opportunity for exercise, more contact with family members, remuneration for prisoners injured while working in prison shops – and the language of social justice that accompanied them, were granted to "common" and not to "political" prisoners (like Lanusse), who were kept out of public view.[47] While in exile, Perón's perspective turned, helping to bring the political prisoner into the light.

Prison riots, disturbances, and escapes were regular and visible occurrences in the months leading up to the March elections. Judging from some press coverage, the country faced an epidemic, and one that was linked to the elections themselves.[48] News stories told of unrest on the part of both "common" and "political" prisoners, with solitary confinement cited by some prisoners as the cause of their discontent. [49] One prison riot broke out on February 20 at the Caseros jail.[50] Prisoners set mattresses and sheets on fire, broke windows, and threw rocks and sticks; heavily armed federal prison officers were sent to the prison.[51] Police actions are unclear, but several prisoners were injured.[52] Journalists were not allowed into the prison, but prisoners complained through family members of mistreatment and poor food and living conditions.[53] The Federal Penitentiary Service (*Servicio Penitenciario Federal*) issued an official statement suggesting that the riot originated instead from a fight among "common prisoners."[54] In any case, tensions were mounting.

Against the backdrop of unrest in the prisons and beyond, the armed forces struggled to maintain order – and a prominent place in national affairs – as elections neared.[55] On January 24, the armed forces expressed their position on democratization and helped set the terms of the subsequent amnesty debate in a publicly issued statement called the Five Points (*Cinco Puntos*).[56] All three branches of the military signed the

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[46] Lila Caimari, *Apenas un delincuente*, 253.

[47] Caimari, *Apenas un delincuente*, 266. There was a distinctly partisan cast to these highly publicized efforts. Perón appointed as the national prison director Roberto Pettinato, a career penal institution administrator who brought the images, words, and ideas of Perón and Evita into the prisons. Caimari, *Apenas un delincuente*, 250-53.

[48] "Fugas, incendios y atentados," *La Prensa*, March 12, 1973, 6; "Escaparon 14 detenidos de la comisaría de San Martín," *La Prensa*, February 25, 1973, 1; "Grave suceso en un instituto de detención de menores," *La Prensa*, March 25, 1973; "Causó alarma el amotinamiento de dos reclusos en Mendoza," *La Prensa*, April 19, 1973, 8.

[49] "Informó el Ejército sobre reclusos que hacen una huelga de hambre," *La Prensa*, January 7, 1973, 7.

[50] "Amotináronse reclusos en la cárcel de Caseros," *La Prensa*, February 20, 1973, 1.

[51] "Amotináronse reclusos en la cárcel de Caseros," *La Prensa*, February 20, 1973, 1.

[52] "Amotináronse reclusos en la cárcel de Caseros," *La Prensa*, February 20, 1973, 1.

[53] "Amotináronse reclusos en la cárcel de Caseros," *La Prensa*, February 20, 1973, 1.

[54] "Amotináronse reclusos en la cárcel de Caseros," *La Prensa*, February 20, 1973, 1.

[55] Notably, some sectors of society cheered a more active role for the armed forces in internal security affairs at the same time the military was readying its formal extraction from political rule. A January 1973 *La Prensa* editorial, expressing support for a law empowering the National Executive to employ the armed forces on national terroritory, made the case for broader application of the military in internal security affairs. "El proceso preelectoral y la acción antisubversiva," *La Prensa*, January 7, 1973.

[56] The Five Points were the following: "1º) Asegurar su inquebrantable propósito de sostener la continuidad del proceso político y de acatar el pronunciamiento que manifieste la ciudadanía en las urnas exigiendo que todos los que participen en él cumplan la Constitución y las leyes vigentes de aplicación.
2º) Respaldar y sostener en el futuro la total vigencia de las instituciones republicanas asegurando una auténtica democracia que permita el ejercicio de los derechos de los habitantes y el goce pleno de la libertad.
3º) Asegurar la independencia e inamovilidad del Poder Judicial como garantía de la vigencia de los principios, declaraciones y derechos constitucionales.

document, signaling their support of five principles to which they committed themselves and, more critically, to which they pledged to hold the new government accountable.[57] In uneasy tension, the Five Points opened with a declaration of the armed forces' support for republican institutions, "authentic democracy," constitutional rights, and judicial independence, and ended with a promise to retain power as "members of the national cabinet."[58] The new government was instructed to comply with general principles of constitutional rule and, in addition, was barred from promulgating one specific act: "application of indiscriminate amnesties for people prosecuted or convicted for committing crimes tied to subversion or terrorism."[59] Though the armed forces suffered from deep internal divisions, with some segments of the military government even proposing an amnesty plan of their own,[60] the Five Points sent an unequivocal message to the incoming democratic government that rejecting amnesty was a condition for holding onto power.[61]

Against the military's brand of democracy articulated in the Five Points, regime opponents, including progressive lawyers, offered competing visions of popular sovereignty. The Lawyers' Guild Association insisted that the incoming democratically elected government reject the Five Points and that it make no concessions to a military "repudiated in the streets and at the ballot box" that sought to "condition the popular mandate."[62]

The armed forces and their supporters presented the coming presidential elections as perilous. Military officials made the quite justifiable argument that armed revolutionary groups sought to disrupt the elections.[63] And they raised the possibility that the elections themselves could usher in additional violence.[64] Juan Perón, who continued to issue statements supportive of armed Peronist groups while orchestrating his followers' reentry into Argentine electoral politics, was at the heart of these dire

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4º) Descartar la aplicación de amnistías indiscriminadas para quienes se encuentren bajo proceso o condenados por la comisión de delitos vinculados con la subversión y el terrorismo.
5º) Compartir las responsabilidades dentro del gobierno que surja de la voluntad popular como integrantes del gabinete nacional, según la competencia que le fijen las leyes y demás disposiciones, en especial en lo que hace a la seguridad interna y externa, respetando las atribuciones constitucionales para las designaciones de los ministros militares por parte del futuro presidente de la Nación, las que deberán ser realizadas de manera similar con lo establecido en la ley para el personal militar (ley 19101-Art.49 inc.2º) y su reglamentación."
As quoted in "Las decisiones de la Junta de Comandantes," *La Prensa*, January 25, 1973, 1.

[57] See Norden, *Military Rebellion in Argentina*, 44.

[58] "Las decisiones de la Junta de Comandantes," *La Prensa*, January 25, 1973, 1.

[59] "Las decisiones de la Junta de Comandantes," *La Prensa*, January 25, 1973, 1.

[60] "Trataría la Junta un proyecto de ley de amnistía," *La Prensa*, April 24, 1973, 8; "Existirían objetivos políticos en la liberación de detenidos," *La Opinión*, April 13, 1973, 10; "No descartó Mor Roig una posible amnistía de detenidos políticos," *La Opinión*, May 6, 1973, 1.

[61] For Lanusse's reflections on the relationship between the Cinco Puntos and amnesty see Alejandro Lanusse, *Protagonista y testigo: reflexiones sobre 70 anos de nuestra historia* (Buenos Aires: Marcelo Lugones, S.A., 1988), 218-23.

[62] Asociación Gremial de Abogados de la Capital Federal, "Declaración de la Segunda Reunión Nacional de Abogados," *Clarín*, May 20, 1973 (published May 26, 1973), SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[63] "La acción subversiva y los próximos comicios," *La Prensa*, February 22, 1973, 6. Peronists too lent a cautionary note. According to Cámpora, people, presumably anti-Peronists, were working in the shadows to disrupt the elections, "Solicitó el fiscal la extinción del FREJULI," *La Prensa*, Febrary 7, 1973, 1. But see "Hacia la construcción del ejército peronista," *Evita Montonera*, April-May 1973, in which the Montoneros describe their support for the March 11, 1973 elections, citing Juan Perón's endorsement of the process.

[64] See, for example, Lanusse, *Mi testimonio*, 320: In a Febrary 7, 1973 speech delivered at a meeting of the nation's generals, General Lanusse cautioned that agents of subversion and terrorism could be voted into power.

predictions. Junta representatives and allies identified candidates as members of revolutionary Peronist organizations and warned of an infiltration of political parties by these "totalitarian groups" controlled by Perón.[65] The conservative coalition Alianza Republicana Federal (Federal Republican Alliance) issued a public statement in mid-February that, while never mentioning the exiled leader's name, clearly linked election-related bloodshed to the influence of Perón, referring to the re-emergence of "authoritarianism" and "servility" that threatened to place Argentina under the control of a "single boss."[66] The anti-Peronist organizations Comité de Defensa de la República and Concentración Cívica en Pro de la República published menacing newspaper advertisements and statements during this period, warning of the violence that a vote for Cámpora would usher in.[67] Just two days before the elections, General Lanusse would address the nation once again, laying out the momentous choice facing voters: violence or peace, Perón or the armed forces.[68]

The ban on the Peronist movement may have been lifted,[69] but the legality of Peronism – and of Juan Perón – remained hotly contested. In mid-January 1973, the National Executive, through the Ministry of Justice, filed a criminal action against Juan Perón in the National Penal Court, the antisubversion tribunal at the center of early 1970s rights advocacy (Chapter 3).[70] Perón was accused of inciting violence, an allegation based on comments he had made the previous December.[71] This was just the beginning of a series of legal actions that the Ministry of Justice initiated against Perón and the FREJULI coalition over the coming days and weeks.[72] The equation of Peronism with criminality and demands for prosecution of the party were made by groups outside of the federal government and provincial officials. Citing revolutionary chants and laudatory comments made by Cámpora's vicepresidential candidate, Vicente Solano Lima, about armed groups, the Civic Union for the Republic (Concentración Cívica en Pro de la República) issued a statement in January 1973 denouncing the Justicialista party as an "illegal organization" and calling for an additional case to be brought against FREJULI for fomenting violence.[73] They did not need to wait long; in early February, the Minister of Justice instructed the federal public prosecutor and his counterparts in the provinces to file charges against FREJULI for inciting violence through comments made at several public demonstrations and for violating the constitutional principle of representative

[65] "La acción subversiva y los próximos comicios," *La Prensa*, February 22, 1973, 6; "López Aufranc informó sobre recientes hechos terroristas," *La Prensa*, February 20, 1973, 1 (describing a speech given by army general Alcides López Aufranc, who urged listeners, and the media in particular to "be aware of the danger posed to the Republic and its institutions by totalitarian groups that infiltrate political parties.")
[66] "A la convocatoria se responde con amenazas de guerra civil," *La Prensa*, February 16, 1973, 8.
[67] Comité de Defensa de la República, advertisement, *La Prensa*, March 8, 1973, 9; Comité de Defensa de la República, advertisement, *La Prensa*, March 10, 1973, 11; "Denúnciase la apología del crimen y la violación de la ley de los partidos," *La Prensa*, January 26, 1973, 7.
[68] "Mañana se puede ganar o perder todo, dijo Lanusse," *La Prensa*, March 10, 1973, 1; Lanusse, *Mi testimonio*, 324.
[69] Robben, *Political Violence*, 66. "Denúnciase la apología del crimen y la violación de la ley de los partidos," *La Prensa*, January 26, 1973, 7.
[70] "Denuncia por incitar a la violencia colectiva," *La Prensa*, January 18, 1973, 12.
[71] Among the comments attributed to Perón was the following: "If I were fifty years younger, it is not inconceivable that I would be planting bombs and taking justice into my own hands." "Denuncia por incitar a la violencia colectiva," *La Prensa*, January 18, 1973, 12.
[72] "Tres querellas por calumnias e injurias," *La Prensa*, January 25, 1973, 7.
[73] "Denúnciase la apología del crimen y la violación de la ley de los partidos," *La Prensa*, January 26, 1973, 7.

government (*representatividad*) with the slogan "Cámpora in office, Perón in power."[74] This was an all-out assault on Peronism, with the federal prosecutor seeking the legal dismantling of FREJULI.[75] In response, FREJULI attacked the armed forces' commitment to the democratic process. In public statements, the coalition linked the Junta's legal actions to efforts to derail the March 11 elections by any means necessary, including violence, and it laid the blame squarely on the military.[76]

On March 11, Héctor Cámpora won 49.5% of the votes, and FREJULI, despite its legal troubles, was declared the winning party.[77] The topic of political prisoners remained at center stage in the months before the new president's inauguration. *La Prensa* articulated one view, denouncing defense attorneys' efforts to present their clients' actions as political.[78] The newspaper characterized revolutionary violence instead as "irrational terrorism" and "common crime" whose perpetrators should therefore be excluded from an amnesty meant to benefit those charged with political crimes.[79] To do otherwise, warned an April 9, 1973 editorial, was to accept the continued justification – and perpetuation – of terrorism during and after the elections, terrorism spurred on by the exiled Juan Perón.[80]

In discussions of the amnesty, the argument over the political content of revolutionary violence was, in turn, rooted in debates about the origins of violence. For some, like the FREJULI lawyers who published an analysis in early May of amnesty law precedent and proposals, an unjust government was to blame: "Subversion is the consequence of the current political system…. A system that institutionalizes the violence and repression cannot expect another response."[81] According to this view, the 1966-1973 military dictatorship's repression of political activity was unprecedented, so vast that *any* effort to resist it, and not just traditional forms of clandestine political action, was in fact political in nature.[82] While Lanusse and other members of the military publicly rejected the notion that violence originated "from above," the theory was not limited to the political left.[83] Strikingly, the Progressive Democratic Party (Partido Demócrata Progresista), part of the pro-military Alianza Popular Federalista coalition, also described antisystem violence as generated by an unjust and violent government. The "right to resist oppression" transformed "the peaceful citizen into a warrior," and this turn to violence was justified so long as it was aimed at "the reestablishment of the government of the people, constitutional order, and the rule of law."[84] The party's message clarified

[74] The argument was that only those candidates elected to represent the people could exercise the power of government, so bringing Perón to power through the election of Cámpora constituted a violation of representative government. "Al justicialismo se acusará judicialmente," *La Prensa*, February 6, 1973, 1.
[75] "Solicitó el fiscal la extinción del FREJULI," *La Prensa*, Febrary 7, 1973, 1. The Ministry of Justice announced an additional lawsuit on February 16. This one accused FREJULI of making slanderous remarks against the air force in the city of Resistencia earlier that month. "Nueva acción contra el FREJULI," *La Prensa*, February 17, 1973, 5.
[76] "El FREJULI denunció anoche que se busca su proscripción," *La Prensa*, Febrary 21, 1973, 5.
[77] Gillespie, *Soldiers of Perón*, 115; Gambini, *Historia del peronismo*, 262.
[78] "Delitos políticos y crímenes irracionales," *La Prensa*, February 26, 1973, 6.
[79] "El 'fundamento ideológico' del terrorismo irracional," *La Prensa*, March 23, 1973, 6; "El terrorismo siempre es delincuencia común," *La Prensa*, April 9, 1973, 6.
[80] "El terrorismo siempre es delincuencia común," *La Prensa*, April 9, 1973, 6.
[81] "Estudio sobre los alcances y posible aplicación de las leyes de amnistía," *La Opinión*, May 5, 1973, 11.
[82] "Estudio sobre los alcances y posible aplicación de las leyes de amnistía," *La Opinión*, May 5, 1973, 11.
[83] "'La violencia es incompatible con la institucionalización," *La Prensa*, January 23, 1973, 8.
[84] "Son condenados los hechos de violencia," *La Prensa*, April 6, 1973, 9.

that the situation had changed with the March elections and transition to democracy: violence that was once defensible was now criminal. [85]

The weeks following Cámpora's victory at the polls saw constant discussion of the details of the promised amnesty and repeated prison visits by national and provincial legislators.[86] Defense lawyers' and solidarity groups' efforts on behalf of political prisoners were now at the center of the legislative process. A permanent legislative commission was established at Rawson prison in an effort to protect the lives of political prisoners, and the Comisión Legislativa para la Defensa de los Presos Políticos (Legislative Commission for the Defense of Political Prisoners) was founded.[87] Demands for the immediate liberation of political prisoners mounted, with Juventud Peronista (Peronist Youth) legislators, the youth branch of the Christian Popular party, and the Montoneros among those calling for the immediate release of political prisoners.[88] *La Opinión* reported in mid-April that the newly elected government so prioritized the amnesty that a bill was expected in no more than two week's time.[89]

With Peronism's return to power a fait accompli, the junta appeared to shift its strategy from attacking Cámpora and FREJULI as unlawful political actors to criticizing FREJULI's support for political prisoners. On March 30, Lanusse had published a letter responding angrily to FREJULI allegations of "severe" and "inhumane" mistreatment against political prisoners.[90] His argument reflected the junta's official stance: there were no political prisoners.[91] Lanusse asserted that only 23 of the 178 prisoners held by the executive branch had not been tried, and that all were detained because of their "ties to subversive, terrorist, or economically-motivated activities," not their social or political ideas.[92] The General insisted that the proposed amnesty would not happen under his watch.[93] Other members of the military made clear the menace they saw in the proposed amnesty. One general, Elbio Anaya, gave a speech at an April memorial ceremony saying, "if the prison doors are open for the subversive criminals little or no dignity will be left in the lives of Argentines."[94] In the same presentation, reflecting on the recent elections, Anaya did not discount the possibility that "the time [would come] to unsheath our swords once again in the defense of democracy, justice, and liberty."

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[85] "Son condenados los hechos de violencia," *La Prensa*, April 6, 1973, 9.
[86] "Presentan en Córdoba un proyecto de ley de amnistía," *La Opinión*, April 1, 1973, 1; "Existen instrucciones de Perón para que se elaboren las pautas de la ley de amnistía," *La Opinión*, April 4, 1973, 11; "Existirían objetivos políticos en la liberación de detenidos," *La Opinión*, April 13, 1973, 10; "Visitará la cárcel de Rawson una comisión de lesigladores electos," *La Opinión*, April 18, 1973, 1; "Legisladores electos visitaron a detenidos políticos en Devoto," *La Opinión*, May 2, 1973.
[87] "Existirían objetivos políticos en la liberación de detenidos," *La Opinión*, April 13, 1973, 10; "Visitará la cárcel de Rawson una comisión de lesigladores electos," *La Opinión*, April 18, 1973, 1.
[88] "Los legisladores de la juventud peronista fijaron su programa," *La Prensa*, April 19, 1973, 7; "Medidas que el gobierno tendría a consideración," *La Prensa*, April 11, 1973, 1; "La posición de la juventud del partido Popular Cristiano," *La Prensa*, April 22, 1973, 5; *Evita Montonera*, no.1, April 4, 1973.
[89] "Existirían objetivos políticos en la liberación de detenidos," *La Opinión*, April 13, 1973, 10.
[90] "En severa réplica a una presentación del Frejuli, el jefe del Estado niega la existencia de presos políticos," *La Opinión*, April 1, 1973, 6; "Respondió Lanusse a un pedido sobre detenidos," *La Prensa*, April 1, 1973, 1.
[91] "En severa réplica a una presentación del Frejuli, el jefe del Estado niega la existencia de presos políticos," *La Opinión*, April 1, 1973, 6
[92] "En severa réplica a una presentación del Frejuli, el jefe del Estado niega la existencia de presos políticos," *La Opinión*, April 1, 1973, 6
[93] "En severa réplica a una presentación del Frejuli, el jefe del Estado niega la existencia de presos políticos," *La Opinión*, April 1, 1973, 6
[94] "Discrepancias sobre la amnistía en los discursos de dos generales," *La Opinión*, April 13, 1973, 10.

Anxiety spread in April and May. With reports of violence growing, the country appeared to be on the brink of civil war, and military authorities clamped down.[95] A March 24 *La Prensa* editorial noted a spike in assassinations, bombings, and other attacks after March 11. The editorial observed that the elections had only fueled the fire, and Peronist "special formations" were to blame.[96] On April 4, *La Opinión* described a sense of shared optimism among Peronists and non-Peronists alike cut short by the rise in attacks and kidnappings, and especially the assassination of Rear Admiral Hermes Quijada on April 30.[97] In the Villa Devoto prison, attorneys complained that an even more intense regime of isolation was being enforced and they were not granted access to their imprisoned clients.[98] Outside the prisons, the military junta declared a state of emergency, passed a flurry of new antisubversion measures, and reintroduced the death penalty.[99] There were murmurs of a "preventive coup" among some military circles.[100]

Amid the unrest, Cámpora and Lanusse, and the incoming and outgoing members of their governments, held a series of meetings about the transition. Violence and amnesty for "political prisoners" were fundamental issues. Describing the discussions in early May as a "double monologue," *La Opinión* reporter Mariano Grondona – the columnist who had favored the 1966 military takeover (Chapter 2) – explained the leaders' opposing views on violence and their relationship to their opposing views on amnesty: "For Lanusse, the violence challenges the foundations of the constitutional system that the armed forces reconstructed with the March 11 elections…. For Dr. Cámpora, in contrast, terrorist violence is the lamentable but predictable response to the institutionalization of violence since the 1966 military coup and, more generally, since 1955." Lanusse's view would exclude from the amnesty anyone who posed a maximum danger to the Constitution, whereas Cámpora's would favor the broadest amnesty possible; as described by Grondona, Cámpora believed the return of democratic rule on May 25, 1973 would erradicate the primary cause of the violence and usher in a peace of which a comprehensive amnesty was the logical consequence.[101] Grondona went on to observe another practical implication of these competing views of political violence: the future role of the armed forces in governance. Whereas Cámpora understood the civilian government to be the protagonist in bringing peace, the armed forces saw themselves as partners of the incoming civilian government against a common enemy.[102] Grondona observed that a fear of Peronism's threat to the constitutional system, and not just fear of guerrilla violence, lay behind the military government's position.[103]

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[95] "La estrategia seguida por Lanusse en la cresta de la tensión militar," *La Opinión*, May 6, 1973, 8.
[96] "Terrorismo que no cesa," *La Prensa*, March 24, 1973, 6.
[97] "Derogan las medidas de emergencia en todo el país," *La Opinión*, May 19, 1973, 1.
[98] "Denucian restricciones a los presos políticos," *La Opinión*, May 4, 1973, 18.
[99] "Modificaron el clima político los últimos hechos de violencia," *La Opinión*, April 4, 1973, 1; "El Ejército inició una acción antiterrorista," *La Prensa*, April 11, 1973, 1; "Rigen tribunales militares y la pena de muerte," *La Opinión*, May 2, 1973, 11; "Exigen derechos legales para los presos políticos," *La Opinión*, May 6, 1973, 8; "Derogan las medias de emergencia en todo el país," *La Opinión*, May 19, 1973, 1; "Penalidades por alterar normas de convivencia," *La Prensa*, May 6, 1973, 1; "Advertencia y extención de penas, y represión del uso indebido de insignias y uniformes," *La Prensa*, May 5, 1973, 1; "Penas por desobedecer o resistir a personal militar o de seguridad," *La Prensa*, May 4, 1973, 1; "Restricciones para noticias sobre terrorismo y subversión," *La Prensa*, May 4, 1973, 1; "La implantación de la pena de muerte," *La Prensa*, May 2, 1973, 6.
[100] "La estrategia seguida por Lanusse en la cresta de la tensión militar," *La Opinión*, May 6, 1973, 8.
[101] "Aún el tema de la violencia ocupa el escenario político," *La Opinión*, May 5, 1973, 1.
[102] "Aún el tema de la violencia ocupa el escenario político," *La Opinión*, May 5, 1973, 1.
[103] "Aún el tema de la violencia ocupa el escenario político," *La Opinión*, May 5, 1973, 1.

Military leaders did not articulate their opposition to freeing political prisoners in anti-Peronist terms alone. Instead, they argued that the proposed amnesty was the epitome of dangerous policymaking, contemplated by leaders ignorant of the threat posed by guerrilla groups.[104] Speaking with reporters, and expressing a very different view of the Trelew massacre from the one offered by defense attorneys, Rear Admiral Alberto Horacio Mayorga cautioned that the liberation of prisoners responsible for crimes including the killing of a guard at Trelew would constitute a confounding "lack of respect." Mayorga believed this offense was so grave that legislators' support for amnesty would render them the enemy: "If a legislator promotes freeing a murderer, I think the unspeakable must be done to imprison the legislator."[105]

On May 10, 1973, several members of the newly reestablished Chamber of Deputies requested a special session to treat the sole topic of amnesty.[106] Sessions of both the Chamber and the Senate were scheduled for May 26, and the FREJULI legislative block confirmed that the amnesty bill would be introduced by the executive branch when the new government assumed power.[107]

As legislative action on the amnesty progressed, talk of a pardon spread.[108] Among those pushing presidential action to free political prisoners were radical leftist and Peronist lawyers, working alongside prisoner solidarity organizations and labor and students' groups. The Lawyers' Guild Association of Buenos Aires was among the groups that discussed the issue at the May 19-20 "Néstor Martins" Second National Lawyers' Meeting, where participants called for a pardon to circumvent a judiciary that they – like other organizations outside of the legal field – considered "the docile instrument of the dictatorship and monopolies."[109] But this approach had been floated before. The April 1-15 issue of the magazine *Liberación* – whose Solidarity Committee was made up mostly of Guild Association lawyers, and whose editorial board included Córdoba jurist Gustavo Roca – analyzed the issue, noting that an amnesty would require judicial involvement and create needless delay.[110] At a time when prominent defense lawyers for political prisoners, like Hipólito Solari Yrigoyen and Rodolfo Ortega Peña, were among the recently elected national senators and assembly members, the utility of a

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[104] "Críticas advertencias del contralmirante Mayorga al futuro gobierno constitucional," *La Opinión*, May 4, 1973, 1.
[105] "Críticas advertencias del contralmirante Mayorga al futuro gobierno constitucional," *La Opinión*, May 4, 1973, 1.
[106] Cámara de Diputados, *Diario de sesiones*, May 26-27, 1973, 79.
[107] Cámara de Diputados, *Diario de sesiones*, May 26-27, 1973, 79; "Entregaríase el 25 el proyecto de amnistía," *La Nación*, May 15, 1973, 10.
[108] "Nueva propuesta sobre los detenidos políticos," *La Opinión*, April 12, 1973, 13.
[109] The 1972 National Lawyers' Meeting (discussed in Chapter 3) was followed the next year with the "Néstor Martins" Second National Lawyers' Meeting, which brought together radicalized lawyers, prisoners' solidarity groups, and labor and students' organizations. As Mauricio Chama notes, in attendance were some of the new congressmen, like Hipólito Solari Yrigoyen and Rodolfo Ortega Peña, who previously had been prominent defense lawyers for political prisoners. Asociación Gremial de Abogados de la Capital Federal, "Declaración de la Segunda Reunión Nacional de Abogados," *Clarín*, May 20, 1973 (published May 26, 1973), SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memori; Chama, "El derecho como denuncia," 153-4.

Among the organizations explicitly calling for a pardon to avoid judicial involvement was the Peronist Coordination for the Freedom of Political Prisoners (La Coordinadora Peronista para la Libertad de los Presos Políticos). "Legisladores y dirigentes políticos desean influir en la ley de amnistía que se aprobaría el fin de semana," *La Opinión*, May 22, 1973, 16; "*La Opinión*, May 23, 1973, 13.
[110] Chama, "El derecho como denuncia," 152; "Nueva propuesta sobre los detenidos políticos," *La Opinión*, April 12, 1973, 13.

pardon was also discussed in Congress.[111] As demonstrated in the final section of this chapter, one such defense attorney was national deputy Héctor Sandler, a Guild Association lawyer and member of the Human Rights Forum of Buenos Aires who urged that the amnesty bill include a provision recommending a presidential pardon.[112] The ramifications of including a pardon were highlighted on the pages of *La Opinión*, where the amnesty question was called "the first test" of the new administration, and a presidential pardon was presented as a way to satisfy the left and revolutionary Peronists.[113]

With May 25 fast approaching, Interior Minister Esteban Righi strove to convince prisoners' attorneys of the legal advantages of a congressional amnesty rather than a presidential pardon, emphasizing the united political front that would be conveyed through the passage of an amnesty law.[114] But calls for a pardon persisted.[115] By the end of May, the National Executive's amnesty bill was completed and congressional debate was set to begin.[116] While the proposal was kept secret, it was widely believed that the amnesty would cover all "political prisoners" with no limitations.[117] The one unknown was whether the bill would also contain a recommendation for presidential pardon.[118]

Popular Mobilization and Formal Lawmaking, the Prison and Congress: May 25-27, 1973

On the night of May 24, hundreds of people gathered to stake out spots for the festivities planned for the following day. Two enormous posters were hung in the Plaza de Mayo, one for the Juventud Sindical Peronista, a Peronist branch associated with the CGT labor union, and the other for the Juventud Trabajaora Peronista, a leftist Peronist organization. Despite Peronism's obvious fractionalization, the atmosphere was jubilant. The plaza had seen activity all day, with a workers' march ending up there in mid-afternoon. The streets were littered with flyers, most of which called for freedom for prisoners.[119]

At around 5 o'clock on the morning of the 25th, the crowd in the Plaza de Mayo began to swell. Revelers' chants could be heard: "May 25th/Celebration of the people/And with the prisoners/We will rejoice"[120] and "Cámpora, president/Freedom for the fighters (*combatientes*)."[121] By this time, a recommendation for presidential pardon

[111] *La Nación* reported on May 15 that worries about delay – and possible "interpretations that could… 'nullify the spirit of the law'" – had prompted some national legislators to call for a presidential pardon. "Entregaríase el 25 el proyecto de amnistía," *La Nación*, May 15, 1973, 10.
[112] "Legisladores y dirigentes políticos desean influir en la ley de amnistía que se aprobaría el fin de semana," *La Opinión*, May 22, 1973, 16; "Tratará la APR el tema de los presos," *La Opinión*, May 19, 1973, 8; see Chama, "El derecho como denuncia," 152n20.
[113] "Tratará la APR el tema de los presos," *La Opinión*, May 19, 1973, 8.
[114] Garaño and Pertot, *Detenidos-aparecidos*, 56.
[115] "Cámpora entregó el proyecto de amnistía," *La Nación*, May 22, 1973, 1.
[116] "Está elaborado el proyecto de amnistía," *La Opinión*, May 8, 1973, 1.
[117] "Está elaborado el proyecto de amnistía," *La Opinión*, May 8, 1973, 1.
[118] "Está elaborado el proyecto de amnistía," *La Opinión*, May 8, 1973, 1.
[119] "Héctor Cámpora y Vicente Solano Lima asumen hoy el gobierno nacional en medio de un clima de fiesta popular sin precedentes," *La Opinión*, May 25, 1973, 1.
[120] Garaño and Pertot, *Detenidos-aparecidos*, 56; "Asumió el gobierno de Héctor José Cámpora y decretó la libertad de todos los presos políticos," *La Opinión*, May 26, 1971, 1.
[121] Garaño and Pertot, *Detenidos-aparecidos*, 56.

was expected from Congress.[122] But the demonstrators left nothing to chance. *El Descamisado* described the many columns of people, "each with thousands of demonstrators… as if every Argentine were present for the birth of the nation."[123] The crowd continued to multiply, with an estimated 200,000 people there by 9 a.m.[124] Nearby in the Congressional Palace, Cámpora and his vice president, Vicente Solano Lima, were sworn into office.[125]

Cámpora addressed Congress, the nation, and the armed forces.[126] His opening words were self-effacing: he was nothing but a "modest soldier for the nation and Peronism." But the new president's message was anything but meek. Following eighteen years of harsh repression, and the rollback of Juan Perón's social and economic accomplishments, "the hour of Perón" had arrived. Cámpora's praises of Juan Perón and Evita met with applause, as did his denunciation of the 1955 coup that removed Perón from power.[127] In the course of his speech, *La Opinión* reported, he was interrupted by applause 118 times.[128] His tribute to the nation's heroes extended to a new figure alongside Juan Perón and Evita: the armed revolutionary. Cámpora explained that Peronism had persisted after 1955 and was now victorious again owing to the armed resistance of the "juventud maravillosa" that Perón had lauded.[129]

Pushed by repressive dictatorships and the unjust social order they imposed, Cámpora explained, the pueblo had reluctantly taken up arms. [130] The legal infrastructure constructed under Lanusse served only to perpetuate violence. The amnesty, derogation of the junta's penal code reforms, and dismantling of the National Penal Court were the new government's proposals for stopping this destructive cycle.[131] But Cámpora's call to erase the junta's criminal legal system was by no means a renunciation of law or legal institutions. To the contrary, truly legitimate law promulgated by Congress to implement a popular mandate was a necessary tool for peace. Only through such a legal system would "the new juridical order of national liberation" be created and "the right of resistance disappear."[132] Cámpora emphasized the need for new laws, civil and criminal, to protect against economic crimes, the improper exploitation of natural resources, and, generally, to preserve the nation's interests.[133] In an apparent point-by-point retort to the military's Five Points, the president laid out his plan in five points, which he described as an agreement reached by the majority political movement (Peronism) and "and *all* of the national forces"[134]

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[122] "Héctor Cámpora y Vicente Solano Lima asumen hoy el gobierno nacional en medio de un clima de fiesta popular sin precedentes," *La Opinión*, May 25, 1973, 1.
[123] "El 25 de mayo de los descamisados," *El Descamisado,* May 29, 1973, 9.
[124] "Se combinaron el fervor y la imaginería en un día que perteneció a la juventud," *La Opinión*, May 26, 1973, 7.
[125] "Héctor Cámpora y Vicente Solano Lima asumen hoy el gobierno nacional en medio de un clima de fiesta popular sin precedentes," *La Opinión*, May 25, 1973, 1.
[126] "El pueblo habló desde sus carteles," *El Descamisado*, May 29, 1973, 11.
[127] Cámara de Senadores, *Diario de sesiones*, May 26, 1973, 17.
[128] "El Congreso y la Casa de Gobierno fueron epicentros de las ceremonias oficiales," *La Opinión*, May 26, 1973, 6.
[129] Cámara de Senadores, *Diario de sesiones*, May 26, 1973, 18.
[130] Cámara de Senadores, *Diario de sesiones*, May 26, 1973, 19.
[131] Cámara de Senadores, *Diario de sesiones*, May 26, 1973, 28.
[132] Cámara de Senadores, *Diario de sesiones*, May 26, 1973, 27.
[133] Cámara de Senadores, *Diario de sesiones*, May 26, 1973, 35.
[134] The five points Cámpora listed were the following:1) economic independence (tied to Latin American integration), social justice, and an authentic national culture; 2) respect for the guarantees laid out in the Hora del Pueblo, Frente Cívico de Liberación Nacional and the Asamblea de la Unidad Nacional; 3) a political and social truce developed in agreement with workers and business interests; 4) a commitment to respect the National Constitution so that the

By midmorning, the crowd outside filled not only the Plaza de Mayo, but the Plaza Congreso and the long avenue that connected the two, with unions, student groups, and guerrilla organizations (including the Montoneros and ERP) carrying signs to announce their affiliations.[135] For the moment, they were standing shoulder to shoulder. Families with small children were there too.[136] It was, according to *La Opinión* writer Mario Diament, a diverse crowd, "a true microcosm of the nation." Street vendors sold blue and white hats emblazoned with the images of Perón and Cámpora.[137]

Celebration mixed with confrontation. The military parade scheduled for 10 a.m., which Lanusse was to lead, did not stand a chance. Peronist demonstrators confronted military police who fired on their attackers, and the procession came to a halt. About an hour later, violence broke out between Peronist Youth demonstrators and the marines and federal police. The problem started when the former commander in chief of the navy, Admiral Carlos Guido Natal Coda arrived at the Casa de Gobierno. The Peronist protestors there insulted Coda with chants about the shooting deaths of the sixteen guerrillas at Trelew the year before. Marines at the scene responded by attacking the crowd. Protestors hurled a variety of objects at the military and police personnel and were answered with clouds of tear gas. Hostilities were contained, only to ignite again a half hour later, when the band representing the Escuela de Mecánica de la Armada arrived, and was taunted by protestors promising revenge for the events at Trelew. Police fired on the crowd. In all, twelve people received gunshot wounds, some grave. Other incidents of violence were reported at the headquarters of the army commander in chief and an office of the Unión Obrera Metalúrgica. The scene was "extremely tense." A series of loudspeakers carried the voices of government officials attempting to calm the crowds. Cámpora's words rang out." Like a host lamenting a party gone wrong, he asked that "everyone help maintain order so that all can enjoy the celebration."[138] Of course, not everyone was there to celebrate.

After his speech, Cámpora was slated to go to the Casa Rosada, where the three commanders in chief would officially turn over power to the new president. [139] Because of the massive crowds and reports of unrest, the planned presidential motorcade was called off, and Cámpora and Solano Lima made the trip by helicopter.[140] At 1:30 p.m., Lanusse arrived at the Salón Blanco.[141] There, in front of family members of the new government officials and special guests – statesmen from countries including Cuba, Chile, North Vietnam, and North Korea, invited to mark a new direction for Argentine foreign policy – Cámpora and Solano Lima were handed power.[142] Members of Peronist

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judicial order was never again subject to acts of force; 5) and a role for the armed forces in the national reconstruction *within constitutional norms*, a direct retort to the armed forces' demand, likewise expressed in their fifth and final point, that the military share power with the civilian administration through a cabinet position. Cámara de Senadores, *Diario de sesiones*, May 26, 1973, 21-22. Emphasis added.

[135] "El 25 de mayo de los descamisados," *El Descamisado,* May 29, 1973, 9.

[136] "Heridos de bala e intoxicados con gases durante graves refriegas en Plaza de Mayo," *La Opinión*, May 26, 1973, 10.

[137] Mario Diament, "Se combinaron el fervor y la imaginería en un día que perteneció a la juventud," *La Opinión*, May 26, 1973, 7.

[138] "Heridos de bala e intoxicados con gases durante graves refriegas en Plaza de Mayo," *La Opinión*, May 26, 1973, 10.

[139] "Asumió el gobierno de Héctor Jose Cámpora y decretó la libertad de todos los presos políticos," *La Opinión*, May 26, 1973, 1.

[140] "El Congreso y la Casa de Gobierno fueron epicentros de las ceremonias oficiales," *La Opinión*, May 26, 1973, 6.

[141] *El Descamisado*, May 29, 1973, 11.

[142] "El Congreso y la Casa de Gobierno fueron epicentros de las ceremonias oficiales," *La Opinión*, May 26, 1973, 6.

Youth were there too, their comrades clashing with police outside.[143] Meanwhile, approximately 2,000 people, mostly young people carrying ERP posters and prisoners' relatives, met near the Villa Devoto prison.[144] The presence of demonstrators at the prison should have surprised no one, as revolutionary groups had made public their plans.[145]

The crowd outside the Villa Devoto prison soon reached a total of approximately 50,000 people.[146] Members of Peronist groups joined ERP militants, representatives of other leftist groups, and prisoners' relatives.[147] They surrounded the prison.[148] The military and police appeared to give up, overwhelmed.[149] The protestors' voices rang out, demanding the release of the prisoners and denouncing, yet again, the violence at Trelew.[150] According to *La Nación*, by 10 p.m., the demonstrators' partisan slogans had given way to threats to take over the prison. Prisoners at the windows above called back.

In fact, the mobilizations inside the prison preceded those in the streets. On May 23, political prisoners at Villa Devoto – and, according to some accounts, common prisoners too – took action, seizing prison floor by prison floor in a bid for amnesty.[151] They painted sheets with their organizations' insignias and covered the walls with revolutionary slogans invoking Perón and Che Guevara. And they watched Cámpora's inauguration on T.V.[152] In control of the institution, but not yet free, delegates for the prisoners negotiated with the Cámpora administration. Imprisoned representatives from FAR and Montoneros took phone calls from Minister of the Interior Righi, who urged them to calm the increasingly menacing demonstrators outside. Meanwhile, Righi and Cámpora prepared the presidential pardon. Hundreds of miles away at the Rawson prison, in the southern province of Chubut, a similar scene was playing out. Prisoners, in dialogue with politicians and protestors outside, drove the pardon process forward.[153]

The president was forced to act quickly. Faced with a choice between a violent confrontation with the demonstrators and a rapidly issued presidential pardon, Cámpora and his advisors opted for the latter.[154] The pardon had been discussed, debated, and analyzed for several weeks, but it was ultimately issued in an atmosphere of confusion

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[143] *El Descamisado*, May 29, 1973, 11.
[144] "Liberaron a los presos políticos; hubo tumultos en Villa Devoto y en Caseros," *La Nación*, May 26, 1973, 18.
[145] "Héctor Cámpora y Vicente Solano Lima asumen hoy el gobierno nacional en medio de un clima de fiesta popular sin precedentes," *La Opinión*, May 25, 1973, 1.
[146] "Liberaron a los presos politicos; hubo tumultos en Villa Devoto y en Caseros," *La Nación*, 26 mayo 1973, 18; Garaño and Pertot, *Detenidos-aparecidos*, 56; "Indultóse a los presos políticos," *La Nación*, May 26, 1973, 1.
[147] Garaño and Pertot, *Detenidos-aparecidos*, 56.
[148] "Desde el vamos, Cámpora cumplió," *El Descamisado*, May 29, 1973, 8.
[149] "Asumió el gobierno de Héctor Jose Cámpora y decretó la libertad de todos los presos políticos," *La Opinión*, May 26, 1973, 1. *La Nación* likewise described a low, markedly restrained, and even sympathetic police presence. The newspaper told of a moment in which a police car, at first believed by demonstrators to be returning to the prison to reprimand them, left without incident, a police officer's hand emerging from the back window in the characteristic Peronist "v" for victory. "Liberaron a los presos políticos; hubo tumultos en Villa Devoto y en Caseros," *La Nación*, 26 mayo 1973, 18.
[150] "Liberaron a los presos políticos; hubo tumultos en Villa Devoto y en Caseros," *La Nación*, 26 mayo 1973, 18.
[151] "De la razonabilidad hasta el ultimátum en la cárcel de Devoto," *La Opinión*, May 27, 1973, 6; "Indultóse a los presos políticos," *La Nación*, May 26, 1973, 1. For a narrative of these events from the perspective of prisoners, see Garaño and Pertot, *Detenidos-aparecidos*, 57-58.
[152] Garaño and Pertot, *Detenidos-aparecidos*, 57-58.
[153] "Llegaron de Rawson 153 presos indultados," *La Nación*, May 27, 1973, 14.
[154] Bonasso, *El presidente que no fue,* 479.

and fear.[155] At 10:20 p.m. on the 25th, news of the imminent release of prisoners hit the airwaves; Righi and Minister of Justice Antonio Benitez held a televised press conference in which they announced that the president had signed the pardon.[156]

The amnesty bill, and the members of congress who would usher it through, were present throughout the prison protests and pardon process. In announcing the presidential pardon, Righi emphasized that the congressional amnesty was still very much in progress, explaining that Cámpora had already sent the bill to the Senate. Righi underscored Congress's unique role in erasing the criminality of all acts allegedly commited.[157] Deputies inside the prison signed an act making themselves responsible for the release of political prisoners, furiously typing the list of people to be freed. Among the deputies present was the previously mentioned defense attorney Héctor Sandler, whom we will hear from shortly.[158]

La Nación reported that the first prisoners were released from Devoto at 11:21 p.m., though others would suggest that people were freed before the pardon was issued.[159] Within an hour, prisoners were being released from prisons around the country, from Córdoba, Caseros, La Plata, Resistencia and Rawson.[160] Then the rumors started. At around one in the morning at the Devoto prison, with between 2,000 and 5,000 demonstrators remaining, word spread that some seventy prisoners were still being detained by insubordinate guards.[161] Some of the demonstrators tried to pry open the prison gate. Automatic gunfire rang out and tear gas filled the air.[162] In the end, two teenage boys, a member of the Peronist Youth and a member of the Vanguardia Comunista, were dead.[163] There were conflicting accounts of the origins of the first shots, with some naming the demonstrators and others indicating that the shots came from the guard stations around the prison wall.[164]

Headlines describing these clashes intermingled with those announcing the much-anticipated release of political prisoners. Three hundred seventy-one prisoners were pardoned initially.[165] Taking into account the 76 prisoners released by the junta on the 25th with the lifting of the state of emergency, the total was 447.[166] Who were they? News reports indicate that some had been convicted by the National Penal Court while others were tried or awaiting trial in the regular court system. One man, for example, had been accused of auto theft and weapons charges.[167] Others were alleged to have participated in well-known violent actions, like the infamous kidnapping and execution of army general

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[155] See "Formalizó el gobierno el decreto con 371 indultos, después de las manifestaciones que apresuraron las primeras excarcelaciones," *La Opinión*, May 27, 1973, 6.
[156] "Indultóse a los presos políticos," *La Nación*, May 26, 1973, 1; Garaño and Pertot, *Detenidos-aparecidos*, 58.
[157] "Indultóse a los presos políticos," *La Nación*, May 26, 1973, 1.
[158] Garaño and Pertot, *Detenidos-aparecidos*, 58.
[159] "Indultóse a los presos políticos," *La Nación*, May 26, 1973, 1; See Vítolo, 237; "Una inmensa multitud rodeó la cárcel de Villa Devoto exigiendo el indulto," May 26, 1973, 1.
[160] Garaño and Pertot, *Detenidos-aparecidos*, 58.
[161] "Liberaron a los presos políticos; hubo tumultos en Villa Devoto y en Caseros," *La Nación*, May 26 1973, 18; "Graves incidentes hubo en Villa Devoto: 2 muertos," *La Nación*, May 27, 1973, 12.
[162] "Graves incidentes hubo en Villa Devoto: 2 muertos," *La Nación*, May 27, 1973, 12.
[163] Garaño and Pertot, *Detenidos-aparecidos*, 59.
[164] "Graves incidentes hubo en Villa Devoto: 2 muertos," *La Nación*, May 27, 1973, 12.
[165] "Fue sancionada la ley de amnístia," *La Nación*, May 27, 1973, 1.
[166] "Formalizó el gobierno el decreto con 371 indultos, después de las manifestaciones que apresuraron las primeras excarcelaciones," *La Opinión*, May 27, 1973, 6.
[167] "Hubo más libertades de presos políticos," *La Nación*, May 30, 1973, 12.

Pedro Eugenio Aramburu (Chapters 2 and 3). Three of the pardoned prisoners were survivors of the violence at Trelew.[168]

The crowds returned to the streets on May 26th. An estimated 8,000 demonstrators from the Tendencia Revolucionaria Peronista, Montoneros, and Juventud Socialista gathered, this time surrounding the congressional building to ensure passage of the amnesty bill.[169] Other members of the public joined the audience inside, observing – and cheering on – the lawmaking under way.[170] The amnesty bill ultimately taken up by Congress was the one proposed by Cámpora and the executive branch, though several legislators offered competing bills that would influence the final version. And the amnesty bill was joined by two other closely related legislative proposals, also submitted by the executive branch, one designed to dissolve the National Penal Court and the other to repeal most of the junta's penal code reforms. The bulk of the congressional debate centered on the amnesty, though the two accompanying bills were certainly discussed and, moreover, shaped the context in which the amnesty was analyzed and understood. The three bills arrived in Congress – where the Senate considered them first – accompanied by Cámpora's official statements describing each of the proposals and the objectives behind them.

The three bills were designed to clear away the legacy of the junta's regime and replace it with the rule of law. Cámpora characterized the junta's extensive system of legalistic decrees and institutions as a legal void. To fill the void, a commission of jurists and criminologists would be established to develop penal code reforms. To avoid a period of literal lawlessness, not all provisions of the junta's penal code would be erased. Cámpora's bill called on Congress to ratify several parts of the junta's penal code, economic and safety-related provisions on issues like usury and air traffic control.[171]

The congressional debate about the amnesty might seem like an afterthought. The outcome of the May 26 sessions in the Senate and House of Deputies was preordained, with party leaders agreeing by May 25 (if not earlier) that the Senate would vote in favor of the executive branch's bills.[172] And party heads in the House of Deputies agreed to support the Senate's amended versions of the executive's proposals. But a debate was held, and it was important not just to the historical record but also to the politicians involved. Several members of Congress asked whether their comments would be included in the proceeding records, confirming that their words would be remembered. The bills were passed unanimously in both chambers, with repeated episodes of prolonged applause noted in the debate records and glowing language used by senators and deputies to describe the proposed laws. Critics of the amnesty would later point to these enthusiastic interventions as evidence of subversive (or at least terribly misguided) motivations.[173] But the urgency and accord that characterized much of the discussion

[168] "Liberaron a los presos políticos; hubo tumultos en Villa Devoto y en Caseros," *La Nación*, 26 mayo 1973, 18.
[169] "Aprobación unánime de la amnistía y la derogación de los mecanismos represivos," *La Opinión*, May 27, 1973, 1; Garaño and Pertot, *Detenidos-aparecidos*, 60.
[170] The congressional debate over the amnesty and two accompanying bills reflected jubilant common purpose, but there were also signs of schism. *La Opinión* writer Mariano Grondona (discussed in Chapter 2) anticipated both strands of the discussion in a May 12 piece titled, "Consensus Will be Difficult on Amnesty Law." "Será difícil elaborar un consenso en torno de la ley de amnistía," *La Opinión*, May 12, 1973, 8.
[171] Cámara de Senadores, *Diario de sesiones*, May 26, 1973, 71.
[172] Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 147, 156; Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 200.
[173] Díaz Bessone, *Guerra Revolucionaria*, 165-81.

exposed something else: the importance of the trilogy of bills to all of the political parties present, which was likely due in no small part to the political pressure exerted by voters and demonstrators. There were consequential divisions as well; while members of Congress unanimously rejected the legitimacy of the junta and its legal system, they disagreed about the proper configuration of law, power, and legitimacy moving forward.

As critics of the amnesty would point out, revolution and the young militants behind it were the subject of laudatory language in both chambers.[174] Echoing Cámpora's inauguration speech the day before – and Perón's exclamations before that – some senators and (especially) deputies saluted the youth who had taken up arms against the capitalist injustice and unconstitutional repression that had "usurped" rights.[175] They situated Argentina in a global trend of liberation movements that resisted new forms of oppression and were inspired by the Cuban Revolution. As Deputy Ferdinando Pedrini put it, "The world offers an intense panorama of violence, and Latin America, making up two-thirds of the underdeveloped world, cannot find another path toward the institutional transformation and re-humanization that its people desperately fight for."[176] Undergirding these congress members' laudatory view of the revolutionary and revolutionary methods was a shared, and quite old, understanding of the ethics of violence: a belief in the right to resist an illegitimate government. Peronist Youth Deputy Jesús Porto cited jurist and statesman Joaquín V. González for the proposition that "bad governments breed legitimate opposition, giving rise to so-called political crime…. Those deemed political criminals are always abhored by the powerful they oppose and revered by the humble and oppressed they seek to defend."[177] According to Deputy Horacio Sueldo, of the Christian Democratic Party, violence should not be celebrated in absolute terms, but in some cases it was the legitimate means to political transformation.[178]

Violence might have been a global phenomenon, but its source inside Argentina was clear, a point that proved instrumental to debate participants' thinking about the three bills before them. Legislators frequently expressed a belief that violence – physical and socioeconomic – "came from above"; state repression not only justified insurgent violence, but it was the source of violence, and the outgoing military regime's legal system was a key form of – and cover for – this repression.[179] To rid the country of an unjust regime was to rid it of violence. UCR senator and defense attorney Hipólito Solari Yrigoyen asked, "How can the oppressed start the violence if the very existence of the oppressed is in fact the product of violence?"[180] Locating the origins of violence in the outgoing military government allowed members of Congress to shift blame from political prisoners who had themselves used violence, an important move if the prisoners were to

[174] See, for example, Díaz Bessone, *Guerra Revolucionaria*, 173.
[175] Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 99, 192, 196, 204.
[176] Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 195-96.
[177] Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 215.
[178] Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 204-5.
[179] Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 204-5; Cámara de Senadores, *Diario de sesiones*, May 26, 1973, 108, 110, 121. Hipólito Solari Yrigoyen joined several of his colleagues in the senate to introduce a bill that would grant force of law to this assessment of the regime's hollow legalisms. The proposal sought to rename the "laws" implemented by the junta to make clear that they were not actually laws at all, but instead "decretos-leyes," having been decreed by the de facto government and not passed by Congress. Cámara de Senadores, *Diario de sesiones*, May 26, 1973, 75. While the bill was not ultimately taken up during the May 26 debate, its spirit, that is, the rejection of the military government's purported rule of law, permeated the discussion.
[180] Cámara de Senadores, *Diario de sesiones*, May 26, 1973, 108.

be freed and the laws that put them behind bars derogated. The act of blaming the dictatorship thus provided the framework for understanding the trilogy of bills.

It was this notion of the legal invalidity of junta actions – specifically, their unconstitutionality – that bolstered support for amnesty among senators and deputies who were critical of revolutionary violence. This logic distinguishes the motivations of these representatives from some leftist and Peronist Congress members who, while noting the illegality of the junta's so-called legal system, tended to locate the military regime's illegitimacy in its perpetuation of social injustice more than its violations of formal legal norms. Deputy Carlos Luis Acevedo, representing a conservative block of parties, explained his coalition's vote for the amnesty and accompanying laws this way: "[C]onstitutional norms have been violated and that is more than sufficient [grounds] for us to say…that the passage of these laws will return full constitutionality to our criminal justice system."[181] For Acevedo and the parties he spoke for, it was the departure from the established constitutional framework that rendered invalid the junta's laws, institutions, and criminal proceedings. In the Senate, José Martiarena explained that an immediate, comprehensive repeal of all junta legislation would cause chaos for the country's commercial, administrative, and civil institutions, but the penal realm was different; "we must say that de facto governments never have the power to modify statutes affecting criminal sanctions."[182] Why the special treatment for criminal law? Martiarena described the persecution of thousands of Argentines and the medieval practices that were carried out in the junta's criminal legal system, inflicting pain and igniting animosity.[183] The junta's application of criminal law – including the Maximum Threat prison regime – was uniquely violent, destructive, and antithetical to the rule of law.

One of the most striking aspects of the May 26 congressional session was the permeability between the prisons and the halls of Congress. This was especially the case in the House of Deputies, where a special twenty-two-member commission was convened at the start of the meeting to investigate conditions at the Villa Devoto and Caseros prisons.[184] Deputy Héctor Sandler, who had spent the 25th at Villa Devoto with fellow deputies in an effort to facilitate the liberation of political prisoners, proposed the commission's formation. He described increasing tensions in the prisons and explained that the family members of "common prisoners" had complained of inhumane conditions and isolation from lawyers and loved ones.[185] The commission split in two, with half of its members going to Villa Devoto, and the other half to Caseros while the House of Deputies was still in session.

At 3:25 a.m. on May 27, the commission members returned, describing a situation in which prisoners were not only injured and in need of medical help (presumably due to the Devotazo[186]) but were also deprived of basic necessities like blankets, mattresses, and food. No milk had been provided for some twenty days.[187] Common prisoners' fears of

[181] Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 209.
[182] Cámara de Senadores, *Diario de sesiones*, May 26, 1973, 101.
[183] Cámara de Senadores, *Diario de sesiones*, May 26, 1973, 102.
[184] Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 81. For more on the presence of deputies in the prisons, see Bonasso, *El presidente que no fue*, 476.
[185] Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 81.
[186] The *El Descamisado* coverage of the event highlighted this violence, relating that "common criminals" begged the protestors not to leave once the political prisoners were freed, fearing violence from prison officials.
[187] Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 216-17.

retaliation by guards after the political prisoners' departure underscores the tensions and limits of liberation, and provided a foreboding sign of what was to come. But the deputies' report reflected the belief that this state of affairs – the mistreatment of people in prison – was the fault of the 1966-1973 dictatorship and that, with the reestablishment of democracy, it had been left behind.[188] Importantly, the conditions complained of were not limited to those suffered by "political prisoners," people targeted for persecution for challenging the military dictatorship. Instead, the deputies' critiques constituted a broader condemnation of social injustice and prisons' role in perpetuating it.[189]

If people imprisoned by the military government were victims of the state's injustice and illegality, did this mean that everyone in prison deserved to be set free? All parties agreed that this was not the case, but there was still plenty of room for argument. Enthusiastic supporters of the executive branch amnesty bill believed that its subjective requirement of political intent articulated in Article 1 – requiring political, social, labor, or student motives – sufficiently narrowed the scope of the amnesty. [190] Critics from conservative, Radical, provincial, and leftist parties made Article 1 a centerpiece of their assessment of the bill. The discussion turned on three categories of prisoner: common criminals, torturers,[191] and junta members and sympathizers. For members of the Unión Cívica Radical like Senators Fernando De la Rúa and Hipólito Solari Yirigoyen, all three prisoner types should be excluded from the amnesty.[192] From Solari Yirigoyen's perspective, an additional criterion had to be applied such that amnesty benefited only those with altruistic and noble purposes.[193] There were also questions of public safety and order to be considered if an overly broad interpretation of the crimes covered by the amnesty were taken, as UCR deputy Fernando Hugo Mauhum warned.[194] But members of Congress, Mauhum included, decided that this was a risk worth taking.[195]

The other main focus of the amnesty bill's critics was procedural: what branch of government should administer the law? This was a question with profound implications for the shape of the new government. The issue was Article 7 of the executive bill, which,

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[188] Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 217 (emphasis added).
[189] Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 208.
[190] In its most contested subsections, Article 1 called on the courts – except in the case of people tried by the National Penal Court and courts martial, whose amnesties would be processed automatically by the executive branch through the minister of justice – to grant amnesty to people accused or convicted of "a) los [delitos] perpetrados por móviles políticos, sociales, gremiales o estudiantiles, cualquiera sea el bien jurídico lesionado, el modo de comisión y la valoración que merezca la finalidad perseguida mediante la realización del hecho; b) la participación en asociaciones ilícitas…con fines políticos, sociales y gremiales o estudiantiles, cualquiera sea la valoración que puedan merecer; c) los hechos cometidos en carácter de miembros de tales asociaciones, cualquiera sea la forma de comisión y el bien jurídico lesionado…." Cámara de Senadores, *Diario de sesiones*, May 26, 1973, 70.
[191] Deputy Ricardo Ramón Balestra, speaking on behalf of several provincial parties and invoking international law, was most concerned that torturers and people who had committed other such atrocious acts – including crimes against humanity (crímenes contra la humanidad) – would be granted amnesty. Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 211. Members of the leftist Alianza Popular Revolucionaria, among them Deputy Horacio Sueldo, also proposed the explicit exclusion of certain crimes, torture in particular, from the amnesty bill. According to this view, torture was not a political crime; it merited punishment and not amnesty. Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 156. But Article 1 of the executive bill set no explicit limits on the acts covered as long as the intent was political.
[192] Cámara de Senadores, *Diario de sesiones*, May 26, 1973, 104. See too Antonio Tróccoli's comments at Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 197.
[193] Cámara de Senadores, *Diario de sesiones*, May 26, 1973, 110. See too 104.
[194] Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 150.
[195] See, for example, Deputy Rafael Francisco Marino's comments, in which he accepted that some common criminals would be released under the derogation of the junta's criminal laws, at Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 150.

in addition to providing that people prosecuted by the National Penal Court, court martial, or other tribunal outside of the judiciary, and everyone subjected to the Maximum Threat regime would be granted amnesty, indicated that the minister of justice, an executive branch official, would process these cases automatically and immediately.[196] On one side of the debate were Congress members who, seeking the rapid release of prisoners and viewing the judiciary as dilatory and complicit in junta abuses, proposed that the executive branch administer *all* amnesty cases.[197] National Deputy Héctor Sandler offered the bluntest critique of the judiciary, labeling it both undemocratic and closely tied to the junta.[198] On the other side were senators and deputies who championed the principle of the separation of powers and the role of the judiciary within that scheme. Alongside the Radical Party and conservative block, Senator Camilo Muniagurria made the argument that only the courts could administer an amnesty.[199] The solution to this conflict was suggested by Deputy Horacio Sueldo: the amnesty and accompanying laws were politically necessary, though not, perhaps, juridically ideal. About this everyone could agree.[200]

Beyond the doctrinal differences over who would benefit from the amnesty and who would administer it was a more fundamental question: how would the three new laws end the violence and support the country's rebuilding? The congressional debate, though sprinkled with harmony-evoking references to pacification and forgetting, was in reality riven by two diverging paths to peace. One followed the line of constitutional democracy and the other, revolution, or at least a form of popular democracy that pushed against traditional government functions. While some debate participants came down strongly in one camp or the other, most, like President Cámpora, expressed support of both approaches, simultaneously and untenably. The institutional strand was wound around a faith in the pacifying effects of formal democracy and rule of law. Now that Congress had been reestablished and elections held, people did not need to resort to armed resistance to be heard, an argument made by members including Radical Senator Fernando De la Rúa.[201] The bills being debated were central to the recuperation of national institutions that De la Rúa described because they represented the reestablishment of constitutional rule of law, which had been eroded most dramatically by the junta through its criminal legal system. Deputy Carlos Acevedo drew this connection between the trilogy of bills, institutional democracy, and peace, explaining that, "Today we are not only voting for laws that will serve as instruments of national pacification….We are voting for much more. We are voting for national reconstruction…. The law is the way countries today guide the conduct of each and every one of their citizens…. Let us respect its norms and we can rest assured that we will never again vote for amnesty laws."[202]

Amnesty, as the centerpiece of the trilogy of bills, was itself a reminder of the Constitution's primacy, with Congress's amnesty power granted expressly in Article 86.

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[196] Cámara de Senadores, *Diario de sesiones*, May 26, 1973, 70.
[197] Senators Alberto M. Fonrouge and Eduardo A. Paz, for example, called for the Ministry of Justice to administer the amnesty. Cámara de Senadores, *Diario de sesiones*, May 26, 1973, 80.
[198] Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 237-38.
[199] Cámara de Senadores, *Diario de sesiones*, May 26, 1973, 105, 115; Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 209.
[200] Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 204.
[201] Cámara de Senadores, *Diario de sesiones*, May 26, 1973, 106.
[202] Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 210.

FREJULI Senator Martiarena highlighted the constitucional roots of the executive bills: "The executive branch has believed that out of respect for the institutions of the republic a legitimate path to peace had to be sought…. The path has been found in the constitutional norms that authorize the Argentine Congress to pass general amnesty laws."[203] That amnesty was inscribed in the 1853 Constitution and, as several senators and deputies pointed out, had been applied repeatedly throughout the nation's history, rendered it a legitimate feature of Argentine political tradition applicable for the furtherance of democracy.[204]

But what if elections and rule of law were not enough to stop the violence? For some debate speakers, peace required justice and justice, in turn, required revolution. This meant a dramatic reorientation of power, though proponents did not dwell on the methods required. The March 11 elections, and the trilogy of bills under consideration, were a step in that direction. Deputy Carmelo Vinti of the Unión Popular hoped that revolutionary lawmaking might take the place of revolutionary violence. He said that he sought to demonstrate to the nation's youth that "when a deputy uses the post with dignity, honor, and a revolutionary sensibility, it can be many times more effective than a machine gun or bomb.[205] Mere democratic formalism would not suffice. Deputy Vicente Musacchio of the Alianza Popular Revolucionaria used his brief speaking time to make this point: "The mere act of election is not sufficient. The statement of fundamental constitutional principles is not sufficient." Social content needed to be added to these projects. Musacchio called for a reorientation of the economy toward the ends of social justice. He explained that revolution was the way forward, a revolution in partnership with other Latin American countries to do away with oligarchy and bring peace.[206] As a member of Congress elected to office, Musacchio stressed that he was not rejecting democratic institutions, but was instead proposing that their work reflect popular content and procedures.[207] Public demonstrations had driven the legislation before Congress; prisoners freed by Cámpora's pardon participated in the lawmaking necessary to free their comrades still inside.[208] This was true popular governance. Fellow APR Deputy Héctor Sandler likewise celebrated the leading role played by the "popular masses" and liberated prisoners both in forcing the prison doors open and in pushing the amnesty bill forward.[209] This revolutionary message of collaboration and reincorporation was an idea of conflict that cut against Congress members' messages of unity and reconciliation. Precariously trying to hold together both halves of this argument, Deputy Roberto Vidaña, speaking for the FREJULI block, explained that the trilogy of laws "satisfies the Argentine people's desire for peace in justice and reconciliation in liberty…. Today, the world's people hungry for justice understand…that the great division of humanity is between oppressors and the oppressed. This division exists too among Argentines."[210]

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[203] Cámara de Senadores, *Diario de sesiones*, May 26, 1973, 98.
[204] Cámara de Senadores, *Diario de sesiones*, May 26, 1973, 103; Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 196, 197.
[205] Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 208.
[206] Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 202.
[207] Senator Francisco Cerro, highlighting injustices in Argentina's interior, argued that amnesty was a first step toward peace that, to achieve its full effects, required the addition of revolutionary policies and an end to economic dependence. Cámara de Senadores, *Diario de sesiones*, May 26, 1973, 111.
[208] Deputy Rafael Marino likewise emphasized the extent to which Congress's support for the trilogy of bills was the product of popular mobilization. Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 203.
[209] Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 206.
[210] Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 192.

There was another element to the revolutionary argument. Yes, peace would come with the realization of a new and just order, but struggle was needed to get there. As Héctor Sandler went on to say – and opponents of the amnesty and accompanying bills would note angrily – the liberation of revolutionaries from prison meant that they were free to fight again. In contrast to the pacific tone of some of his fellow amnesty supporters, Sandler said approvingly, "This is not an amnesty law but instead a liberation law. I have seen the prisoners leave the jails. No one was prepared to forgive a thing." The fight, Sandler noted, would continue.[211] Among Congress members who had lost patience with revolutionary armed struggle, there was a recognition of the challenge ahead. UCR Senator Carlos Perette, describing the significance of the three bills' passage, highlighted the need for soon-to-be-released armed revolutionaries to contribute to the peacemaking underway: "Of course we understand just rebellions against injustice, and violence against violence…. But we also know that violence cannot bring about anything lasting."[212]

For some members of Congress, the respect for democratic institutions that the amnesty and accompanying bills embodied was a needed departure not just from junta misrule, but from the precedent set by Juan Perón during his 1946-1955 administrations. Peronism's effective return to power through his proxy Cámpora sparked apprehension among senators and deputies who considered Perón to be less than a model democrat. This fear underlay the discussion of separation of powers principles. Invoking the specter of fascism, Deputy Evaristo Monsalve of the Progressive Democratic Party (Demócrata Progresista) explained that his block sought to "defend an authentic republican regime of government, in which the division of powers in accord with the National Constitution is a sacred precept…. We reject, therefore, an overpowering executive branch. We reject a judicial branch subject [to outside forces]…."[213] Monsalve was alluding to the dark side of Juan Perón's legacy, marked by a politicized judiciary and the erosion of rule of law.[214] The trilogy of laws Monsalve supported was a response to this history as well as to the outgoing junta's misrule.

Taken as a whole, the debate over the amnesty and accompanying laws held in tension opposing impulses – peace and revolution, forgiveness and vindication – even as it supported constitutional democracy. These contradictions did not go unnoticed, but they were in no way resolved.[215] Cámpora signed the three bills into law on the morning of the 27th. It was his first act in office, and the official announcement was accompanied by a printed statement to the press: "For the first time in history, the Argentine Congress has passed a law with unanimous support…. The national government's peaceful intentions have been clearly demonstrated with this decision made for the sake of the reconciliation of all Argentines for national reconstruction."[216]

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[211] Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 206.
[212] Cámara de Senadores, *Diario de sesiones*, May 26, 1973, 115.
[213] Cámara de Diputados, *Diario de sesiones*, May 26, 1973, 201.
[214] See Marchak, *God's Assassins*, 63.
[215] Following the prisoner release, the administration of the process became the target of the new government's critics. *La Prensa* coverage of the days after the pardon and amnesty reflect an ongoing struggle for legitimacy. Most striking is an exchange between the newspaper and the Cámpora administration over the question of "common criminals" and whether they were among those freed.
[216] "Promulgóse la ley de amnistía," *La Nación*, May 28, 1973, 1.

1973-1976: Democracy's Demise and Human Rights

Any illusions about the democracy established on May 25, 1973 quickly gave way as political instability, economic turmoil, and violence grew. President Héctor Cámpora held office for only two months before resigning and making way for new elections, which Juan Perón won.[217] His wife, María Estela ("Isabel") Martinez de Perón, was elected vice-president. Peronist and Marxist guerrilla organizations continued to launch attacks after democracy was restored, prompting growing public outcry from the many Argentines who believed the armed groups' reason for being had disappeared with the dictatorship.[218]

Despite the hope many held that Juan Perón could curb the bloodshed and bring his polarized followers into line, Peronism's left and right wings split irremediably, producing more violence.[219] Juan Perón sided with the right. His government relied on parapolice forces to rid the party, and the country, of perceived subversives (armed *and* unarmed).[220] Most notably, Minister of Social Welfare José López Rega headed up the Alianza Argentina Anticomunista (Triple A, Argentina Anti-Communist Alliance). Between 1973 and 1976, the group was responsible for some 2,000 murders as well as other violent attacks.[221] In 1974, Triple A forces kidnapped and murdered Silvio Frondizi, the Guild Association member and defense lawyer featured in Chapter 3.[222]

The bold legal reforms that the incoming democratic government had proposed to combat state repression were reversed. As of January 1974, the penal reform commission called for in the May 1973 legislation still had not been convened.[223] Instead, Juan Perón passed new antisubversion legislation that critics compared to the very decretos-leyes that the new democracy had just derogated months before.[224] As historian Marina Franco has shown, the 1973-1976 democracy instituted forms of law-based and extralegal state repression, and propagated antisubversion thinking that the 1976-1983 dictatorship would retain and augment. Critically, public debate of political violence during this period was transformed, as expressed in media coverage. Franco demonstrates that sympathy with antisystem revolutionary tactics under the 1966-1973 dictatorship gave way to a belief during the 1973-1976 democracy that the Argentine nation was imperiled by a leftist subversive threat.[225] On July 1, 1974, Juan Perón died and Isabel Perón became president. In November of that year, Isabel Perón declared a state of siege that would not be lifted until 1983.[226]

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[217] Between Cámpora's departure and Perón's inauguration, Raúl Lastiri served as interim president.
[218] See Franco, "'Homeland security,'" 887-914, 891-892.
[219] A June 20, 1973 bloody confrontation, the "Ezeiza Massacre," when rightwing Peronist forces attacked leftwing Peronists at a rally to celebrate Juan Perón's return from exile, constituted the emblematic moment in this split. See Franco, "'Homeland security,'" 887-914, 892-894.
[220] See Franco, "'Homeland security,'" 887-914, 893.
[221] See Franco, "'Homeland security,'" 887-914, 895.
[222] See *Diccionario biográfico de la izquierda argentina: De los anarquistas a la "nueva izquierda" (1870-1976)*, edited by Horacio Tarcus (Buenos Aires: Emecé, 2007), 227.
[223] See Asociación Gremial de Abogados de la Capital Federal, "Contra las reformas penales," *Militancia*, January 1974, 33.
[224] Asociación Gremial de Abogados de la Capital Federal, "Contra las reformas penales," *Militancia*, January 1974, 33; See Franco, "'Homeland security,'" 887-914, 896-897.
[225] Marina Franco, *Un enemigo para la nación. Orden interno, violencia y "subversion," 1973-1976* (Buenos Aires: Fondo de Cultura Económico, 2012), 240.
[226] See, for example, María José Moyano, *Argentina's Lost Patrol: Armed Struggle, 1969-1979* (New Haven, CT: Yale University Press, 1995), 40-41.

Following the prisoner release and amnesty, Argentina's lawyers reflected the divisions cutting across their country. While the Argentine League for the Rights of Man immediately called May 25, 1973 a victory of popular will, the Lawyers' College of the City of Buenos Aires saw instead a constitutional democracy in form but not in substance. The College explained that the failure of the new government to protect its people from mounting political violence undermined the state's most fundamental claim to legitimacy.[227] At the same time, the radicalized leftist and Peronist lawyers (among them Lawyers' Guild leaders) who won posts in law schools and government with Cámpora's election – and the possibility to realize national liberation through the "new law" they desired – were also disillusioned.[228] The Lawyers' Guild Association condemned the survival of repressive structures after May 25, 1973 and the state-sponsored violence they perpetuated.[229] Democracy had brought neither peace nor justice.

While rights talk was not, at this time, Argentines' primary vehicle for discussing their country's democratization and hoped-for pacification, human rights debates about relevant foreign conditions helped set the stage for future debates about Argentine conditions during the "dirty war." Perhaps most strikingly in light of what was to come, Argentines *criticized* "human rights." That is, Argentine commentators weighed in on human rights with a rising level of passion and skepticism in the years of fragile and unstable democracy. This was even before Argentina and its 1976-1983 military dictatorship became a primary target of the nascent international human rights movement and human rights began to take on new meaning. But others, including lawyers' groups, persisted in their promotion of human rights. Some of this public discussion marked a continuation of the domestic legal battles described in earlier chapters; the disappearance of lawyer Néstor Martins, for example, was still being discussed in human rights terms after democracy was restored.[230]

But the beginnings of an *international* human rights movement prompted the emergence of newly dominant themes in national press coverage, and two in particular, that helped shape the connotation of human rights. First, the notion that human rights constituted unacceptable foreign intervention emerged as an important narrative, clashing with traditional progressive calls – from groups including the Argentine League for the Rights of Man – for solidarity with foreign victims of rights abuses.[231] This was especially the case in response to international condemnation of the September 11, 1973 coup in Chile, a catalyzing event for those who would become international human rights

[227] Colegio de Abogados de la Ciudad d Buenos Aires, *Memoria y Balance*, 1973, 6; Colegio de Abogados de la Ciudad de Buenos Aires, *Memoria y Balance*, 1974, 6-7; "Pídese la vigencia del derecho y las instituciones republicanas," *La Prensa*, June 29, 1973, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.
[228] See *Liberación y derecho*, year 1, no. 1 (January-April 1974).
[229] Asociación Gremial de Abogados de la Ciudad de Buenos Aires, "Introducción" (No document title), December 26, 1973, Subfondo Silvio Frondizi, Fondo Centro de Estudios Nacionales, Archivos y Colecciones Particulares, Biblioteca Nacional de la República Argentina.
[230] "Declaración de abogados de Santa Fe sobre la violencia," *La Prensa*, December 17, 1973, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.
[231] "Ayudar a nuestros hermanos chilenos es ayudarnos a nosotros mismos," *El Mundo*, September 14, 1973, SM 2316, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

activists *and* for Argentines preoccupied with national sovereignty.[232] In this context, it is notable that the Argentine Federation of Lawyers' Colleges, like the Argentine League, expressed its concern about government repression in Chile, as well as in other Latin American countries. In October 1973, the Federation focused its criticism on the Chilean government's use of the death penalty and military tribunals against people who had been deprived a legal defense.[233]

Second, human rights were criticized as politically partial. Specifically, Argentine commentators assailed an apparent double standard; the international actors issuing human rights critiques, they said, overlooked Communist governments' abuses – including those of Cuba – while attacking anti-Communist regimes like Augusto Pinochet's in Chile. One target of these complaints was the Russell Tribunal, which conducted proceedings on Chile and other Latin American countries in 1974 (and 1975).[234] These themes would persist following the 1976 military coup and, initially at least, limit the appeal and power of human rights among the Argentine population. At the same time, the abstract principles of international human rights continued to resonate, at least for a time, among some of their traditional backers. In 1974, the National Academy of Law and Social Sciences of Buenos Aires (Chapter 1) commemorated the anniversary of the Universal Declaration of Human Rights with a public session.[235] Meanwhile, conditions inside Argentina deteriorated.

Conclusion

The May 1973 amnesty and accompanying laws emerged from Argentines' widely shared understanding of law's ties to violence, but the differences masked by this momentary consensus would ultimately be more consequential. The motivations and meanings of this trilogy of laws are best examined as part of this political, legal, and cultural context that shaped them, a context in which competing understandings of the operation of constitutional democracy converged. From this perspective, the release of political prisoners and derogation of the junta's criminal legal system cannot be categorized simply as the undoing of law and order or a momentous victory of popular mobilization. Instead, faced by multiple interests and uneasy alliances, we are pushed to ask questions that move us beyond this dichotomy: What sort of legal order was undone by these laws and why? Who made up the popular mobilization that demanded and won the laws' passage, and what new order did they have in mind?

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[232] "Posición argentina sobre los derechos humanos," *La Opinión*, October 25, 1974, SM 2426, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[233] "Críticas de los abogados por la violación de los derechos humanos" *La Prensa*, October 31, 1973, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[234] For example, "Objeciones y silencios que definen una conducta," *La Prensa*, September 14, 1974; "Ese Otro Tribunal," *La Nación*, October 29, 1975 SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[235] "El aniversário de una declaración universal," *La Nación*, December 11, 1974, SM 2246, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

The Cámpora government had sought legitimacy through lawmaking based on popular support and mobilization, believing that a democratically constructed legal order would replace violence. Present-day depictions of the May 1973 laws deployed to justify subsequent extrajudicial violence during the "dirty war" reproduce this political application of law and violence rhetoric. Returning to the events, ideas, and struggles that gave rise to these three laws exposes the extent to which the potential of these legislative projects to pacify the nation – like that of the criminal legal system they dismantled – was undercut by a drive not for peace but for power. That same drive stoked the political ambitions of the military, which – once again, and in the name of Western Civilization and order – seized power on March 24, 1976. The result was an unprecedented human tragedy, which, in turn, sparked the emergence of new forms of Argentine human rights politics, as the next chapter will show.

Chapter 5. The "Dirty War": Human Rights as International Intervention, 1976-80

Thirty years after testifying before the U.S. House Subcommittee on International Organizations in September 1976, Lucio Garzón Maceda recalled the hearings with satisfaction and surprise. He felt satisfaction because he viewed the two-day proceedings on human rights conditions in Argentina as the first international defeat of the military junta that seized power six months before, a defeat that contributed to the military government's subsequent loss of U.S. military aid and turned the tide of world opinion. But he felt surprise because he and his fellow Argentine witness and lawyer, Gustavo Roca had never imagined that they would confront the junta from the capital of its most powerful supporter.[1] Three years later, the astonishment was even greater, for both the Argentine military government and its opponents, when the Inter-American Commission on Human Rights (IACHR) proved to be a formidable critic of the junta. The commission—the investigative body of the Organization of American States human rights system, assumed by many to be controlled by cynical U.S. foreign policy interests—became in the 1970s a vocal defender of human rights.[2]

Not coincidentally, lawyers were at the center of both of these exchanges. The international environment for human rights advocacy was changing, and legal professionals were leaders in the process. The mid-1970s saw progressive legal professionals from the Americas and Europe forge new roles and relationships to advocate for human rights beyond their national borders. They were in the vanguard of what was becoming the broad-based modern international human rights movement. Activists' and governments' human rights interventions could be unexpected and were inevitably controversial, invoking universal rights in new settings to challenge the legitimacy of particular authoritarian governments' actions, and, by extension, their hold on power. Domestic rights politics were reconfigured. In Argentina, these dynamics were perhaps no more clearly on display than when the prestigious New York City Bar Association, anticipating the IACHR by just a few months, sent a mission of lawyers to Argentina. The move shocked Argentina's legal establishment and further divided a legal profession long organized along partisan lines, a disruption that mirrored what was happening in Argentine political culture as human rights gained currency outside their traditional realm in the law.

Centered on these three instances of cross-border human rights advocacy – the Argentine lawyers' U.S. congressional testimony, the New York City Bar Association's mission, and the Inter-American Human Rights Commission's visit – this chapter explores the causes and consequences of a changed international landscape for rights

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Some of the material in this chapter was published previously in "Shifting Sites of Argentine Advocacy and the Shape of 1970s Human Rights Debates," in *The Breakthrough: Human Rights in the 1970s*, ed. Samuel Moyn and Jan Eckel (Philadelphia: University of Pennsylvania Press, 2013), and in "Der Wandel des argentinischen Menschenrechtsaktivismus und die Debatten der 1970er Jahre," in *Moral für die Welt? Menschenrechtspolitik in den 1970er Jahren*, ed. Jan Eckel and Samuel Moyn (Göttingen: Vandenhoeck & Ruprecht, 2012).

[1] Lucio Garzón Maceda, "Testimonio: La primera derrota de la dictadura en el campo internacional," in *Argentina 1976–2006: Entre la sombra de la dictadura y el futuro de la democracia*, ed. Hugo Quiroga and César Tcach (Rosario, Argentina: Homo Sapiens Ediciones, 2006), 267. Gustavo Roca died in 1997.

[2] Tom Farer, "The Rise of the Inter-American Human Rights Regime: No Longer a Unicorn, Not Yet an Ox," *Human Rights Quarterly* 19, no. 3 (August 1997): 510–511.

activism in the mid to late 1970s, examining how the creation of human rights institutions, and activists' strategic use of them, transformed Argentines' ideas about the rule of law. The analysis thus shifts from the causes of a failed democracy, examined in the previous chapter, to the ramifications of that failure and progressive lawyers' efforts to confront them as human rights globalized. Scholars have noted the importance of international human rights initiatives in bringing public attention to government abuses in Argentina during this period. It was a time when – despite the country's rights debates and advocacy traditions detailed in previous chapters – secrecy, fear, and acquiescence at first stifled widespread resistance. Political scientist Héctor Ricardo Leis, for example, explains that during the first three years of the dictatorship, the profound silence around human rights violations started to break due to media coverage of events like Patricia Derian's trips to the country as a U.S. State Department human rights official during the Carter administration and the visit of the Inter-American Commission on Human Rights analyzed here.[3] My goal is to explore this process as it unfolded, to understand why and how these foreign interventions shaped thinking inside Argentina.

The 1976-1983 dictatorship's unprecedented use of violence – building on but far exceeding earlier forms of government repression – was at first met with silence by much of Argentine society. When public debate on the rule of law reemerged, it largely took the shape of *international* human rights battles. To be sure, information about human rights at the time was filtered through mass media subject to censorship and government repression.[4] But a new human rights debate was developing. The selected case studies, drawn from the early years of Argentina's 1976–1983 military dictatorship, highlight the construction and operation of some of the key institutions behind this development and, in doing so, illuminate the processes through which modern human rights globalized and became a prominent subject of general public discourse in the wake of the failed 1973-1976 democracy.

Building on my earlier analysis of Argentine lawyers' arguments inside Argentina and through Argentine venues from the 1950s to the early 1970s, I contend that the foreign, intergovernmental, and nongovernmental bodies created in the mid-1970s facilitated broader public awareness and discussion of individual rights by opening new spaces of protest and legitimation for advocates, making the international setting increasingly challenging for governments accused of abuses and domestic rights politics more contentious. In Argentina, the military government – which emphasized its place in the Western world – was forced to talk about human rights as it defended itself against allegations of abuse from internationally powerful institutions.[5] In Argentina's legal field, those radicalized lawyers so active in the events of 1973 and the brief democracy that followed (Chapter 4) were increasingly persecuted and pushed into exile. Argentine

[3] Héctor Ricardo Leis, *El movimiento por los derechos humanos y la política argentina*, 2 vols. (Buenos Aires: Biblioteca Política Argentina, 1989), 19–20; see also Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998), 106; Silvina Jensen, *Los exiliados: La lucha por los derechos humanos durante la dictadura* (Buenos Aires: Editorial Sudamericana, 2010), 12–15; Emilio F. Mignone, *Derechos humanos y sociedad: El caso argentino* (Buenos Aires: Centro de Estudios Legales y Sociales, 1991), 118–119.

[4] Eduardo Blaustein and Martín Zubieta, *Decíamos ayer: The prensa argentina bajo el Proceso* (Buenos Aires: Ediciones Colihue, 1998), 23. See also Diana López Gijsberts and Martín Malharro, *La tipografía de plomo: Los grandes medios gráficos en la Argentina y su política editorial durante 1976–1983* (La Plata, Argentina: Ediciones de Periodismo y Comunicación, 2003).

[5] Alison Brysk, *The Politics of Human Rights in Argentina: Protest, Change, and Democratization* (Stanford, CA: Stanford University Press, 1994), 57; Novaro and Palermo, *Dictadura militar*, 279–280.

domestic human rights politics split between the more mainstream yet still progressive Buenos Aires Lawyers' Association and the country's legal establishment: the Federation of Argentine Lawyers' Colleges and, especially, the Lawyers' College of the City of Buenos Aires.

Rights politics roiled outside the legal profession too. Argentines' engagement with the possibilities of international human rights did not always neatly align with their ideological predispositions. Even relatively progressive Argentines spoke out against international human rights criticism as yet another form of foreign – and especially U.S. – meddling in the country's domestic affairs. A cause of and counterpoint to these negative views was the extent to which the nascent international human rights movement offered advocates alternative avenues for advocacy when domestic rights protections failed. The new role of the United States government in human rights politics in the 1970s, first led by Congress and then by the White House, was indeed a major force behind some of the period's human rights venues. But other state and nonstate actors – lawyers and, increasingly, their nonlawyer allies – crucially shaped the changing environment for rights advocacy and debate.

New Openings for Argentine Human Rights Advocacy

The military government that took power on March 24, 1976 did so with significant public support. For many Argentines, weary of the violence and uncertainty under Isabel Perón's presidency, the coup represented less the suspension of the constitutional order than the promise of its return. Continuing the pattern established in 1930, the military stepped in once again with the promise of resetting the political and legal order. The coup leaders pledged to combat leftist "subversion," restore order, and turn around the troubled economy.[6] Portraying themselves as messianic defenders of Western civilization and Christian traditions, the military government both built on the repressive measures taken by Isabel Perón – for example, keeping in place the state of siege she declared in 1974 – and brutally rolled back the power the urban working class had won under Peronism.[7] Figures from Argentina's legal establishment were among the prominent voices that presented the military coup as a new beginning for the rule of law, an escape from the chaos they blamed on the outgoing Peronist governments. The Lawyers' College of the City of Buenos Aires sounded a hopeful note in its 1976 annual report:

> It seems as if we have awakened from an absurd nightmare; the ills of the country must be…combated through the rule of law ("imperio del derecho") and respect for human liberty and dignity…. It is necessary to restore society's confidence in the law as an efficient instrument ("técnica de control") for the management of human activities…. It is necessary to restore society's confidence in the law, to create in the citizen the certainty that his rights will always have legal protection ("amparo legal").[8]

[6] See Novaro and Palermo, *Dictadura militar*, 17–25.
[7] See Brysk, *Politics of Human Rights*, 35–36.
[8] Colegio de Abogados de la Ciudad de Buenos Aires, *Memoria y balance*, 1976, 9-10.

The College's message suggests the expectations many Argentines held in the wake of the coup.

The military regime proved to be simultaneously hyper legalistic and "antilegal."[9] Over the course of their more than seven-year rule, the ruling juntas vowed to enforce the juridical system while fundamentally distorting it.[10] The result was an "exception within the state of exception"; government officials cited the National Constitution's Article 23 state of siege provisions and obliterated the constitutional limits on those powers through overt and covert means.[11] The military dictatorship dissolved Congress, claiming for itself both legislative and executive powers, and it sought to remake the judiciary into what it deemed an apolitical institution.[12] In one of its first acts, the military government replaced the members of the Supreme Court with justices of its choosing, mostly career judges with ties to the military. The junta also empowered itself to designate, confirm, and remove lower court judges.[13] In addition to determining who would interpret the law and in what forums, the regime fundamentally altered the law itself, creating a vast array of new antisubversion laws, acts, decrees, and other law-like instruments, and subordinating the National Constitution to its own founding statute.[14]

The juntas attacked the legal protections earlier rights advocates used to defend individual liberty and physical integrity. Executive branch detainees' right to seek exile abroad (under the National Constitution's Article 18 right of option) came under de jure and de facto assault, with shattering consequences. In the Southern Cone, while many people managed to flee their countries for far-away locations like Europe, Mexico, and the United States, the century-old regional tradition of exile and asylum for political dissidents – what had previously served as a sort of cross-border pressure valve – was undermined as the Argentine military government coordinated with its counterparts in the region to instead exterminate alleged "subversives."[15] Under the continued state of siege in which many judges accepted the suspension of basic rights, the writ of habeas corpus was likewise targeted; the traditional legal petition to challenge government detention was converted into a "mere formality, rendering it totally ineffective," and the judicial process became "almost inoperative as a means of appeal."[16] The covert tactics that these legalistic moves paralleled, shielded, and advanced catalyzed the formation of a

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[9] Pereira, *Political (In)Justice*; See Victoria Crespo, "Legalidad y dictadura," in *Argentina, 1976: Estudios en torno al golpe de estado*, ed. Clara E. Lida, et al. (Mexico City: El Colegio de México, Centro de Estudios Históricos, 2007).

[10] See Organization of American States (OAS), *Report on the Situation of Human Rights in Argentina*, Inter-Am. C.H.R., O.A.S. Doc. OEA/Ser.L/V/II.49, doc. 19 corr. 1, Chapter I, "The Political and Legal System in Argentina," April 11, 1980, http://www.cidh.oas.org/countryrep/Argentina80eng/toc.htm.

[11] Crespo, "Legalidad y dictadura," 173-174. Notably, the state of emergency during the last dictatorship was in place prior to the coup. The military government of 1976-1983 overthrew the president, Isabel Perón, but preserved the state of emergency she had declared in November 1974 amid increasing political violence and instability (Chapter 4).

[12] Arturo Pellet Lastra, *Historia política de la Corte (1930-1990)* (Buenos Aires: AD-HOC, 2001), 358-359, 361; OAS, *Report on the Situation of Human Rights in Argentina*, Chapter I, "The Political and Legal System in Argentina."

[13] See Pellet Lastra, *Historia política de la Corte*, 361, 401.

[14] See Pellet Lastra, *Historia política de la Corte*, 358-59, 363, 371; Enrique Groisman, *Poder y derecho en el "Proceso de Reorganización Nacional,"* (Buenos Aires: Centro de Investigaciones Sociales sobre el Estado la Administración, 1983), 11-12.

[15] Lynsay Skiba, "'Asilo Americano' and the Interplay of Sovereignty, Revolution, and Latin American Human Rights Advocacy: The Case of 20th-Century Argentina," *Creighton International and Comparative Law Journal* 3, no. 1 (Fall 2012): 215-231.

[16] Comisión Nacional sobre la Desaparición de Personas, *Nunca más: The Report of the Argentine National Commission of the Disappeared* (New York: Farrar, Straus, Giroux, 1986), 386–387.

formidable opponent. The military dictatorship's vast use of extralegal violence — widespread torture, mass murder, and the enforced disappearance of many thousands of people from all sectors of society—compelled the creation of the country's modern human rights movement.[17]

Methods of challenging government abuses changed as increasing repression choked off domestic channels of rights advocacy. Following the 1976 coup, attorneys were increasingly unable to exercise their profession or defend people's rights in court.[18] The 1971 disappearance of lawyer Néstor Martins (Chapter 3), the case that had helped catalyze the organization of left-leaning Argentine lawyers, was the harbinger of a wave of violence aimed at legal professionals, including those affiliated with the Lawyers' Guild Association. This time, a broader-based mobilization of lawyers would result. Identified with their "subversive" clients, hundreds of lawyers were victims of state-sponsored repression, from arrest without charge to kidnapping and assassination.[19] Lawyers and legal organizations were hardly the only targets of state repression, but they were powerful ones; many had prior international connections, and all were endowed with valuable cultural resources, specifically a facility with Western legal norms and practices that could be deployed both inside Argentina and beyond. They would play an important and internationally prominent role in the early work of Argentina's modern human rights movement.[20]

Joining the Argentine League for the Rights of Man, and further expanding the population engaged in rights advocacy, multiple new rights advocacy groups formed during the mid to late 1970s. Law-oriented civil libertarians, family members of political prisoners and the disappeared, and religious activists were at the helm of these groups.[21] With hundreds of thousands of people fleeing the country, Argentines also joined human rights organizations in exile.[22] While united in their application of universal rights to challenge government abuses, Argentina's human rights groups and individual activists differed in their political orientations and approaches to the junta, with some more confrontational and others striving for evenhandedness by speaking out against left-wing as well as right-wing political violence.[23] Geopolitics played a role in shaping relations between these groups; some human rights advocates believed the Argentine League for the Rights of Man was too aligned with the politics of the national Communist Party, which followed the Soviet Union's support for what it considered the "moderate" wing of the military junta.[24] Organizations' tactics also varied. The military's reliance on

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[17] Estimates of the number of disappeared range from 9,000 to 30,000. See John Dinges, *The Condor Years: How Pinochet and His Allies Brought Terrorism to Three Continents* (New York: New Press, 2004), 139–140; Brysk, *Politics of Human Rights*, 36–40.

[18] See *Nunca más*, 412–420.

[19] *Nunca más*, 412–413.

[20] Virginia Vecchioli, "Redes transnacionales y profesionalización de los abogados de derechos humanos en la Argentina," in *Derechos humanos en América Latina: Mundialización y circulación internacional del conocimiento experto jurídico*, ed. Angela Santamaría and Virginia Vecchioli (Bogotá: Editorial Universidad del Rosario, 2008), 41, 44-47; see also Viriginia Vecchioli, "Human Rights and the Rule of Law in Argentina: Transnational Advocacy Networks and the Transformation of the National Legal Field," in *Lawyers and the Rule of Law in an Era of Globalization*, ed. Yves Dezalay and Bryant G. Garth (New York: Routledge, 2011).

[21] Brysk, *Politics of Human Rights*, 7, 48.

[22] See Jensen, *Exiliados*, 20.

[23] See Brysk, *Politics of Human Rights*, 46; Lewis, *Guerrillas and Generals*, 186; Mignone, *Derechos humanos y sociedad*, 101.

[24] See Mignone, *Derechos humanos y sociedad*; Aldo César Vacs, *Discrete Partners: Argentina and the USSR Since 1917* (Pittsburg: University of Pittsburg Press, 1984), 75-76.

clandestine violence made careful documentation of abuses and their scope crucial. The Asamblea Permanente por los Derechos Humanos (APDH, Permanent Assembly for Human Rights), founded in 1975, collected thousands of reports of disappearances from family members.[25] An important innovation came in the form of new styles of protest, most notably the public vigils of the Madres de Plaza de Mayo, whose demands for the return of their disappeared children challenged the military government's purported protection of traditional Christian values of family and motherhood.[26]

Legal channels, though limited, provided a shared path for domestic human rights advocacy under the dictatorship. While the courts regularly denied writs of habeas corpus, activists—like members of the APDH and the Center for Legal and Social Studies (Centro de Estudios Legales y Sociales (CELS)), a group formed in 1979 to go beyond the collective petitions and tempered approach of the APDH—continued to submit habeas corpus petitions demanding information about the detained and disappeared.[27] As explained in the next chapter, advocacy around these cases did not end with unsuccessful outcomes in court but were publicized and repurposed by human rights organizations, a strategy reminiscent of earlier advocacy efforts that was transformed with the globalization of human rights law.[28]

As in the past, Argentine activists created ties with organizations abroad, but in the second half of the 1970s these connections proliferated as part of a new transnational advocacy network bound together by international human rights norms.[29] During the 1976-1983 dictatorship, Argentine lawyers and human rights groups became engaged in a multifaceted, geographically widespread process with expanding opportunities for international denunciation of Argentina's military government through prominent institutions—governmental, intergovernmental, and nongovernmental. At the United Nations, by the end of the decade the Commission on Human Rights was increasingly able to investigate allegations of human rights abuses, first through a problematic confidential process introduced in 1970, and then, more publicly, through the efforts of commission working groups like those established in 1975 to address conditions in Chile and in 1980 to address enforced disappearances.[30] Individual governments also expanded opportunities for the promotion of human rights. In Europe, for example, some countries established human rights advisory committees that brought together nongovernmental organizations and government entities.[31] Argentines inside the country and in exile made use of these openings, traveling to Europe, the United States, Mexico, and elsewhere, providing information to foreign officials and representatives from the newly prominent NGOs of the period (including Amnesty International and the Washington Office on

[25] Mignone, *Derechos humanos y sociedad*, 105.
[26] Brysk, *Politics of Human Rights*, 47–48; Leis, *Movimiento por los derechos humanos*, 19.
[27] Mignone, *Derechos humanos y sociedad*, 105–107; Novaro and Palermo, *Dictadura militar*, 288; Brysk, *Politics of Human Rights*, 43.
[28] See, for example, *¿Por qué el Profesor Alfredo Pedro Bravo sigue detenido?* (Buenos Aires: Asamblea Permanente por los Derechos Humanos, n.d.), 3, Archivo Institucional del Centro de Estudios Legales y Sociales, Fondo Archivo Emilio Mignone, APDH 1978–1995 2.2.2 Inv: 048–1995.
[29] Keck and Sikkink, *Activists Beyond Borders*, 105.
[30] See Ann Marie Clark, *Diplomacy of Conscience: Amnesty International and Changing Human Rights Norms* (Princeton, NJ: Princeton University Press, 2001), 74; Guest, *Behind the Disappearances*, 194–199, 216, 231-232, 439-441.
[31] Keck and Sikkink, *Activists Beyond Borders*, 102.

Latin America), communicating with the media, testifying before United Nations bodies, and soliciting funds from U.S. and European foundations.[32]

The U.S. Congress

The United States became an active site for international human rights advocacy in the 1970s. The civil rights movement, Vietnam, and Watergate raised questions about the abuse of power – especially on the part of the executive branch – and the excessively stark Communist/anti-Communist binary that previously dominated the policy agenda.[33] Motivated as well by revelations of CIA abuses and human rights violations in Latin America, Chile especially, some members of Congress made human rights a foreign policy priority.[34] The House Subcommittee on International Organizations and Movements (later renamed the Subcommittee on Human Rights and International Organizations) and its chairman, Minnesota representative Donald Fraser, played a central role in congressional action by proposing legislation, designing bureaucratic structures, and gathering information across national borders through hearings to inform the development of a new kind of foreign policy rooted in principles of international human rights law.[35] Fraser's subcommittee held more than 150 hearings between 1973 and 1978, providing a platform for more than five hundred witnesses to share their experiences and recommendations on a wide range of human rights issues and national cases.[36]

In addition to the hearings themselves, the policy tools that came out of them were instrumental in facilitating human rights activism. From 1973 to the end of the decade, with the active participation of NGOs including the Washington Office on Latin America, Congress passed legislation linking most-favored trading status, military and economic aid, and loan approvals to countries' human rights records.[37] These laws

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[32] Keck and Sikkink, *Activists Beyond Borders*, 105–106; Guest, *Behind the Disappearances*; and Kathryn Sikkink, "From Pariah State to Global Protagonist: Argentina and the Struggle for International Human Rights," *Latin American Politics and Society* 50, no. 1 (Spring 2008): 1–29.

[33] As Barbara Keys argues in her recent study of U.S. human rights policy, the U.S. government's turn to human rights in the 1970s was also a response to the national trauma caused by Vietnam. Barbara Keys, *Reclaiming American Virtue: The Human Rights Revolution of the 1970s* (Cambridge, MA: Harvard University Press, 2014). For analysis of the U.S. government's policy shift from counterinsurgency to human rights, see William Michael Schmidli, *The Fate of Freedom Elsewhere*.

[34] See Lars Schoultz, *Human Rights and United States Policy Towards Latin America* (Princeton, NJ: Princeton University Press, 1981), 3–4; Cynthia J. Arnson, *Crossroads: Congress, the President, and Central America, 1976–1993*, 2nd ed. (University Park: Pennsylvania State University Press, 1993), 3–13; Cynthia J. Arnson, "The U.S. Congress and Argentina: Human Rights and Military Aid," in *Argentina–United States Bilateral Relations: An Historical Perspective and Future Challenges*, ed. Cynthia J. Arnson (Washington, D.C.: Woodrow Wilson International Center for Scholars, 2003), 83–85; Kathryn Sikkink, *Mixed Signals: U.S. Human Rights Policy and Latin America* (Ithaca, NY: Cornell University Press, 2004), 51–52.

[35] See Sarah B. Snyder, "'A Call for U.S. Leadership': Congressional Activism on Human Rights," *Diplomatic History* 37:2 (April 2013): 372-397; David P. Forsythe, *Human Rights in International Relations* (Cambridge: Cambridge University Press, 2000), 175. See also Schoultz, *Human Rights and United States Policy*, 194; Sikkink, *Mixed Signals*, 49.

[36] John P. Salzberg, "A View from the Hill," in *The Diplomacy of Human Rights*, ed. David D. Newsom (Washington, D.C.: Institute for the Study of Diplomacy, Georgetown University, 1986), 15. See also Sikkink, *Mixed Signals*, 65.

[37] See Schoultz, *Human Rights and United States Policy*, 195–210, 250–266, 281–292; see also Sikkink, *Mixed Signals*, 65, 72; Library of Congress, Foreign Affairs and National Defense Division, *Human rights and U.S. foreign assistance experiences and issues in policy implementation (1977-1978): a report / prepared for the Committee on Foreign Relations, United States Senate, by the Foreign Affairs and National Defense Division,*

reflected Congress members' mounting frustration with the executive branch's failure to respond to their human rights concerns. Military aid in particular became a focal point for congressional action.[38] In 1974, disturbed by the continued provision of U.S. aid to governments abusing human rights, Fraser introduced an amendment, Section 502B of the Foreign Assistance Act, that called on the president, "except in extraordinary circumstances," to reduce or terminate security assistance to governments engaging in "a consistent pattern of gross violations of internationally recognized human rights."[39] As a "sense of Congress" statement, Section 502B was not at first legally binding, but it was one of the most important legislative measures that came out of the first round of Fraser hearings, serving as "the yardstick for the Fraser subcommittee's consideration of human rights policy."[40] Transformed in 1976 into a mandatory requirement, Section 502B would also help link foreign human rights advocates, like Argentines Lucio Garzón Maceda and Gustavo Roca, to the U.S. government.[41]

The willingness of members of Congress to act on foreigners' human rights insights was not just facilitated by new legislative and bureaucratic mechanisms, however. The extensive state-sponsored violence in Latin American countries, recounted by victims in meetings and testimony, moved some senators and representatives to join the activists calling for measures against abusive regimes.[42] Just a week before Garzón Maceda and Roca's congressional appearance, the terror threatening South America struck Washington. Chilean diplomat Orlando Letelier and his U.S. colleague Ronni Moffitt, who were engaged in congressional lobbying efforts aimed at ending U.S. support for the repressive Chilean military regime, were killed in a car bombing on Embassy Row.[43] The involvement of Chilean government agents was immediately suspected, although not confirmed until a year later.[44] The killings, so close in space and time to the hearings on Argentina, must have underscored for members of the Fraser subcommittee the incredible risks exiled human rights activists faced as well as the special role they themselves could play in confronting the carnage.[45]

The September 1976 Hearings Before the Fraser Subcommittee

Before fleeing their country in 1976, Garzón Maceda and Roca were part of the sector of the Argentine legal profession that had challenged abuses during the 1966–1973 military government and the constitutional government (1973–1976) that followed.[46]

Congressional Research Service, Library of Congress (Washington, DC: U.S. Government Printing Office, 1979), 16–29.

[38] See Claire Apodaca, "U.S. Human Rights Policy and Foreign Assistance: A Short History," *Ritsumeikan International Affairs* 3 (2005): 68; Sandy Vogelgesang, *American Dream, Global Nightmare: The Dilemma of U.S. Human Rights Policy* (New York: W. W. Norton, 1980), 128–133.

[39] For earlier congressional efforts to cut military aid over human rights concerns in Latin America, see Schoultz, *Human Rights and United States Policy*, 250–253.

[40] Salzberg, "View from the Hill," 17; Schoultz, *Human Rights and United States Policy*, 253; Sikkink, *Mixed Signals*, 69.

[41] See Apodaca, "U.S. Human Rights Policy and Foreign Assistance: A Short History," 65; Schoultz, *Human Rights and United States Policy*, 254, 258–259.

[42] Schoultz, *Human Rights and United States Policy*, 106–108.

[43] See Dinges, *Condor Years*, 1, 7, 176.

[44] See Sikkink, *Mixed Signals*, 110.

[45] I am grateful to Professor Mark Healey for this insight.

[46] See Chama, "Movilización y politización."

During a period of activism by labor lawyers, Garzón Maceda was an attorney for labor unions.[47] Notably, he was a legal advisor to the unions during the major 1969 riot in Córdoba, the Cordobazo, a watershed moment in popular resistance to the military regime.[48] Gustavo Roca, a leading member of the Lawyers' Guild Association, was prominent in the Guild-led national network of politically engaged defense attorneys and active in leftist politics (Chapter 3).[49] The two shared a law office in Córdoba, where their main clients were labor unions. They also represented political prisoners, including members of guerrilla groups like the Montoneros, work that drew the ire of the military.[50]

After their law offices were repeatedly set on fire and houses raided, the men fled Córdoba. In August 1976 they made their way to Europe, Garzón Maceda to Paris and Roca to Madrid, where they connected with fellow Argentines working to denounce the junta. Garzón Maceda credits one such compatriot with suggesting the unexpected trip to Washington, urging him to meet in London with Amnesty International staff and individuals with good contacts in the United States to prepare to speak with members of the Congress. According to Garzón Maceda, Amnesty staff emphasized the potential impact of direct congressional testimony by a recently arrived Argentine about junta abuses, especially in the run-up to a presidential election that Jimmy Carter was likely to win.[51]

Roca and Garzón Maceda were associated with the Comisión Argentina por los Derechos Humanos (CADHU), an organization that played an early and active role in the international campaigns of the Argentine human rights movement.[52] At the Fraser subcommittee hearings, Roca, a founding member of the group, spoke as a CADHU representative, and together Roca and Garzón Maceda submitted a CADHU report to supplement their oral presentations.[53] Forced out of Argentina by violent political persecution, CADHU members worked in exile.[54] The organization opened offices in Madrid, Paris, Geneva, Rome, Mexico City, and Washington, D.C.[55] CADHU would later be among the NGOs credited with helping secure the cutoff of U.S. military aid to Argentina in 1977 and 1978.[56] In addition to U.S. lobbying activities, CADHU members provided testimony before the United Nations and, as discussed in the next chapter,

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[47] See Potash, *The Army and Politics in Argentina, 1962–1973*, 246n22; José Campellone and Marisabel Arriola, *S.M.A.T.A. 50 años de vida—50 años de lucha* (Córdoba, Argentina: Lerner, 2006), 237.

[48] Lucio Garzón Maceda, "Paso a paso, el Cordobazo," *La Voz del Interior*, Suplemento Temas, May 31, 2009; Carlos Sacchetto, "'El Cordobazo fue una expresión reformista, no revolucionaria," *Clarín.com*, May 29, 2009, http://www.clarin.com/diario/2009/05/29/elpais/p-01928450.htm; Potash, *Army and Politics, 1962-1973*, 246n22; see De Riz, *Historia Argentina*, 74.

[49] Chama, "Defensa de presos políticos," 208; Tito Drago, interview conducted for publication in *Cambio 16*, Paris, France, October 22, 1977.

[50] Tito Drago, interview.

[51] Garzón Maceda, "Testimonio," 234–236; House Subcommittee on International Organizations of the Committee of International Relations (hereafter cited as House Subcommittee), *Human Rights in Argentina*, 94th Cong., 2nd sess., 1976, 11.

[52] See Guest, *Behind the Disappearances*, 66–69.

[53] Garzón Maceda, "Testimonio," 233, 239, 245; Guest, *Behind the Disappearances*, 465n10.

[54] House Subcommittee, *Human Rights in Argentina*, 11, 32; Guest, *Behind the Disappearances*, 66.

[55] See Guillermo Mira Delli-Zotti and Fernando Osvaldo Estebán, "La construcción de un espacio político transnacional," *Historia Actual Online*, no. 14 (2007): 61; Maria Luisa Bartolomei and David Weissbrodt, "The Effectiveness of International Human Rights Pressures: The Case of Argentina, 1976–1983," *Minnesota Law Review* 75, no. 3 (1991): 1016.

[56] Schoultz, *Human Rights and United States Policy*, 106; Delli-Zotti and Estebán, "Construcción de un espacio político transnacional," 60–61. See Arnson, "U.S. Congress and Argentina."

helped to organize a colloquium on enforced disappearance in Paris in 1981.[57] As Iain Guest has noted, "CADHU was not only the best, it was the only source of information on Argentina during the first terrible year of killing. It was hardly surprising that people turned to it for information and ignored the 'political motivation' of its members."[58] Indeed, its ranks included advocates with established histories of challenging Argentina's military governments, including attorneys from the legal teams of leftist organizations,[59] and some sympathetic to guerrilla groups.[60]

In late September 1976, Gustavo Roca and Lucio Garzón Maceda appeared before the Fraser subcommittee in a two-day session on human rights conditions in Argentina. Through an interpreter, Roca spoke on September 28 and Garzón Maceda the following day. Testifying with them were U.S. advocates with firsthand experience in Argentina. While Garzón Maceda has noted the improvisational aspects of his and Roca's appearance before the Fraser subcommittee, he has also shed light on the strategy that comes across in the testimony transcripts.[61]

Together, the presentations by Roca and Garzón Maceda took three steps in calling on Congress to pressure the Argentine state. The first was to challenge the depiction of junta methods as justifiable government responses to leftist violence. Roca and Garzón Maceda insisted instead that these were human rights violations, that is, violations of universally applicable laws that crossed national, and political, lines. Notably, both described the violation of economic and social rights to unionize and make a living. They focused, however, on precisely those violations of civil and political rights at the heart of the subcommittee's work: politically motivated and targeted kidnapping, murder, and torture.[62] While these sorts of abuses had been the focus of leftist lawyers inside Argentina in the years before the 1976 coup, some of whom conceptualized them as "human rights" violations (Chapter 3), they now had resonance with new foreign and international initiatives. Before the Fraser subcommittee, Roca emphasized the attacks against attorneys, and Garzón Maceda those aimed at workers and union organizers.[63] Both suggested that the junta's assaults on these groups reflected an effort to undermine not only the guerrilla forces but the rule of law and democracy itself.[64] In a revealing exchange, Roca addressed the argument that such state action might be a legitimate reaction to leftist terrorism. "It does not matter where the violence comes from. . . . If there is a civil war going on in Argentina, it should be regulated by the accords of the Geneva Convention which guarantee the human rights of soldiers and prisoners, norms which are of course not followed by the Argentine Military Junta."[65]

A second step taken by Roca and Garzón Maceda was to urge congressional action. Both witnesses described violence directed against them personally along with broader patterns of abuse. Credibility, established through professionalism and a law-

[57] Bartolomei and Weissbrodt, "Effectiveness of International Human Rights Pressures," 1016; Schoultz, *Human Rights and United States Policy*, 106; Guest, *Behind the Disappearances*, 49–75; Delli-Zotti and Estebán, "Construcción de un espacio político transnacional," 61.
[58] Guest, *Behind the Disappearances*, 66–69.
[59] Vecchioli, "Redes transnacionales," 41.
[60] Guest, *Behind the Disappearances*, 66–69.
[61] Garzón Maceda, "Testimonio," 240, 248.
[62] House Subcommittee, *Human Rights in Argentina*, 42–43.
[63] Garzón Maceda, "Testimonio," 240, 248.
[64] House Subcommittee, *Human Rights in Argentina*, 31.
[65] House Subcommittee, *Human Rights in Argentina*, 19.

based methodology, was fundamental to these efforts. Roca introduced the work of CADHU: "We have been able to put out a first report, which is serious, responsible, legally formulated, and which has sufficient proof to show that in the Argentine Republic at this moment grave, massive, systemic, and persistent violations of human, civil, political, economic, and social rights are taking place."[66] At stake in Fraser's subcommittee hearings was the continuation of military aid, with Section 502B of the Foreign Assistance Act in effect. Roca and Garzón Maceda testified that U.S. action would have a positive impact and described the sorts of government abuses that would classify as "gross violations of internationally recognized human rights."[67] This strategy of calling for a military aid cutoff, as noted earlier, was one that CADHU would continue to pursue with ultimate success.[68]

The efficacy of these two steps—presenting government violence in Argentina as a violation of human rights, and calling for Congress to cut aid to the junta—might have depended on a third. Their responses to Fraser's questioning suggest that Roca and Garzón Maceda were prepared for suggestions that any political affiliations undermined their credibility as human rights advocates, and the lawyers emphasized their apolitical aims. Given the Argentine junta's habit of labeling human rights advocates "subversives," as well as the lingering Cold War dynamics in the United States, Roca and Garzón Maceda's approach was astute.[69] The men flagged their status as attorneys as proof of their neutrality: "Our only crime, Mr. Chairman," Roca affirmed, "has been for many years to carry out the task of defending human rights in Argentina and to have exercised our right as lawyers in the courts of our country to defend citizens persecuted for political, social, or ideological reasons."[70] The debates sparked by the hearings would reintroduce politics into this moment of human rights advocacy.

Reactions to the Fraser subcommittee hearings in Argentina, as reflected in major newspapers and letters to the U.S. State Department, were swift and, for the most part, harsh. As Roca noted, the Argentine press practiced self-censorship in line with government directives.[71] But the strong criticism visited on Roca and Garzón Maceda cannot be blamed entirely on government influence. A more convincing explanation rests in the polarized political culture of 1970s Argentina, a setting in which the threat of revolutionary violence trumped human rights concerns for people across the ideological spectrum. Far from being universally applicable norms, human rights were presented as weapons wielded by and for subversive forces.

Argentina's military government was quick to denounce Roca and Garzón Maceda. A memorandum from Argentina's foreign ministry dated October 4, 1976, made its way to the State Department with a clear message of rebuke. After noting the long history of good relations between the two countries, it attacked the credibility of Garzón Maceda and Roca, whom it accused of "wide-ranging ideological activity in subversion and labor union activism." The memo concluded, "Independent of whatever judgment could be made about the individuals called to testify, it goes without saying that they lack any of the minimum objectivity and impartiality necessary for their opinions to be taken

[66] House Subcommittee, *Human Rights in Argentina*, 12.
[67] House Subcommittee, *Human Rights in Argentina*, 22–23, 41.
[68] Guest, *Behind the Disappearances*, 67–69.
[69] See Guest, *Behind the Disappearances*, 67–68.
[70] House Subcommittee, *Human Rights in Argentina*, 12.
[71] House Subcommittee, *Human Rights in Argentina*, 16.

into account in a serious investigation." In any case, the memo went on, Argentina was enduring an exceptional period in which the government was going to take any measures necessary to restore internal security.[72] Within weeks of the hearings, the Argentine government charged the men with "promoting political or economic sanctions against the state" and ordered them to stand trial.[73] Roca and Garzón Maceda were indicted in absentia in December 1976.[74]

Jacobo Timerman, who within months would become the junta's best-known political prisoner, also criticized Fraser and his subcommittee.[75] Though his newspaper turned more critical of the military government shortly before he was kidnapped in 1977, the publisher of *La Opinión* had like many Argentines believed that the March 24, 1976, military coup was a necessary step toward restoring order in the midst of political chaos.[76] Timerman wrote to Donald Fraser to express deep misgivings about the direction the subcommittee hearings had taken. In the October 1, 1976, edition of *La Opinión*, Timerman published his letter, in which he asked to be invited to testify so he could provide a more objective perspective.[77] Timerman's accusation of partiality in the subcommittee's selection of witnesses was part of his newspaper's larger criticism of U.S. human rights policy, which centered on the potential cutoff of U.S. aid, the threat such a cutoff would pose to national sovereignty, and the meaning of human rights.

But the messages circulating in the Argentine press were not necessarily blanket rejections of the concept of human rights. Alternative definitions of the term were put forward by commentators who evinced some acceptance of universal rights principles despite criticisms. An article published in *La Opinión* on November 12, 1976, for example, suggests the multiple channels through which human rights were given meaning during this period. Amnesty International sent a mission to Argentina in November 1976, whose members included U.S. Congressman and Jesuit priest Robert Drinan.[78] Jacobo Timerman met with Drinan and offered his own interpretation of human rights in light of the political violence gripping the country. Urging Drinan to propose that Amnesty modify its conception of human rights, Timerman argued that "given the idea sustained

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[72] Memorandum, Argentine Foreign Ministry, October 4, 1976, US Department of State Argentina Declassification Project (1975–1984), 1–2, attachments (hereafter cited as ADP).

[73] Cable, State Department to US Embassy in Buenos Aires, "Sanctions Against Fraser Committee Witnesses," December 8, 1976, ADP, document no. 1976STATE298737.

[74] Cable, US Embassy in Buenos Aires to State Department, "Federal Judge Indicts Fraser Subcommittee Human Rights Witnesses," December 9, 1976, ADP, document no. 1976Buenos07975.

[75] After Timerman was kidnapped by the junta in 1977, his cause was taken up internationally, and by the Carter administration in particular, which helped to secure Timerman's release in 1979. Timerman's account of his imprisonment and torture, translated as *Prisoner Without a Name, Cell Without a Number*, became a bestseller in the United States and played a singular role in publicizing the junta's human rights abuses. See Sikkink, *Mixed Signals*, 134.

[76] See Dinges, *Condor Years*, 138. See also Novaro and Palermo, *Dictadura militar*, 23–25, 285.

[77] Jacobo Timerman, "Una carta al Subcomité," *La Opinión*, October 1, 1976, SM 2426, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria; Cable, U.S. Embassy in Buenos Aires to State Department, "Human Rights Round-Up No. 5," November 10, 1976, ADP, document no. 1976BUENOS07386. But see Guest, *Behind the Disappearances*, 154.

[78] See Guest, *Behind the Disappearances*, 76–86. Amnesty International would continue to apply pressure on the Argentine regime. In 1978, the group launched a campaign with other groups to coincide with the country's hosting of the soccer World Cup.[78] Amnesty International, *Report of an Amnesty International Mission to Argentina, 6-15 November 1976*) (London, 1977), as cited in Association of the Bar of the City of New York, "Report of the Mission of Lawyers to Argentina April 1-7, 1979," (New York: 1979), 19n4, preprinted from *Record of The Association of the Bar of the City of New York* 34, no. 7 (October 1979) (hereafter cited as Report of the Mission of Lawyers to Argentina), Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1979-1985) 4; See Jensen, *Exiliados*, 49–52, 88.

by guerrilla activity . . . that through political crime, no longer individual but collective, the course of the nation may be altered, the concept of human rights not as individual but as collective rights should be created."[79] Timerman's point was that Argentine non-combatants as a group should be understood to possess the right to be safe from terrorist attacks; this was a view that reframed human rights law by criticizing non-state actors rather than the governments traditionally bound by international law. Even the conservative paper *La Nación*, which criticized the Fraser subcommittee, suggested that human rights were of legitimate international concern as long as they were interpreted by international congresses of jurists "above suspicion of political inclination."[80]

Alongside the harsh reactions to Fraser's subcommittee hearings were calls for help from survivors, the families of victims, and advocates speaking on their behalf. One group of family members of prisoners sent the subcommittee a message of their own. In their letter, they described incommunicado detentions and worsening prison conditions. Invoking both Christian values and basic human rights standards, the letter's authors asked the U.S. Congress to put pressure on the Argentine government to stop these abuses.[81] Their message is a reminder that despite the fierce resistance of the junta and members of Argentine society, the Fraser subcommittee hearings—and U.S. human rights policy more generally—was recognized, appreciated, and seized upon by other Argentines compelled to look abroad to make change at home.

The International Legal Profession

When Lucio Garzón Maceda and Gustavo Roca began their international advocacy, other lawyers from around the world were also crossing national borders in the name of human rights. Part of the period's proliferation of transnational advocacy networks, new national and international lawyers' groups were created and old ones were redirected toward the stated goals of protecting universal rights and promoting the rule of law. As highlighted in previous chapters, this was not the first time lawyers came together to promote universal norms in order to constrain the prerogatives of national governments.[82] But in the second half of the 1970s, a new kind of legal mobilization was taking shape. Some of the international lawyers' groups active then, including the International Commission of Jurists (ICJ, founded in 1952), the International Association of Democratic Lawyers (IADL, founded in 1946 by lawyers including United Nations Universal Declaration of Human Rights drafter Rene Cassin), and, discussed here, the International Association of Lawyers (Union Internationale des Avocats, UIA, founded in

[79] "Entrevista con el director de 'La Opinión,'" *La Opinión*, November 12, 1976, SM 2426, Subfondo documental Secretaría de Medios —Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[80] "Verificación de los derechos humanos," *La Nación*, November 11, 1976, SM 2426, Subfondo documental Secretaría de Medios, —Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[81] "Comisión de Familiares" to "La Comisión del Senado de EEUU que Estudia los Derechos Humanos en Argentina," October 1, 1976, ADP. This letter appears to have been destined for the Fraser subcommittee rather than to the Senate ("Senado"), as the subcommittee was the U.S. congressional body investigating human rights abuses in Argentina at the time.

[82] In the late nineteenth century, international lawyers had mobilized to institutionalize international law as a curb on raw state power. Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870-1960* (Cambridge University Press: New York, 2004).

1927), had long called for government power to be curbed by the law and for individual rights to be protected. When the "Legal Cold War" waned in the United States and Europe, lawyers' groups in those regions underwent an important transformation.[83]

The Cold War had produced dueling institutions in the international legal profession. In the late 1940s, the IADL was led by Italian and French lawyers with Communist party ties, and the ICJ was, in Mikael Rask Madsen's analysis, a "CIA-sponsored countermovement" that "sought to regain for the West (the 'free world') the terrain of the great legal principles: human rights, rule of law, etc."[84] The partisan rhetoric was tough. A 1957 book – reviewed in *Foreign Affairs* and at least one U.S. law review – labeled the IADL a Communist front organization; the book's title conveyed the authors' (both lawyers, one Polish and the other Czech) indictment of the group: *Blueprint of Deception: Character and Record of the International Association of Democratic Lawyers*.[85] The "rapprochement" in the United States and Europe of legal human rights factions in the 1960s, characterized by depoliticization and embodied in the creation of Amnesty International in 1961, facilitated new paths for advocacy among Latin American lawyers in the 1970s, as the experiences of Roca and Garzón Maceda attest.[86] Issues like decolonization and economic rights did not fall off the agenda of left-leaning international lawyers' groups, and important political differences persisted, but the intensification and widening of state repression in the region, combined with common, long-held liberal legal commitments, drew many lawyers together in the defense of individual rights.

The détente-era reorientation of the international legal human rights movement[87] featured increased advocacy *on behalf of* lawyers, who were presented as rights defenders and instruments of the rule of law. In the second half of the 1970s, international lawyers' organizations and their national counterparts increased their initiatives for judicial independence and against the persecution of lawyers, including country visits to investigate conditions on the ground. Argentina was an early target of these efforts; in 1975, the International Commission of Jurists released a 1975 report on the conditions facing Argentina's defense attorneys.[88] Three years later, the ICJ founded its Centre for the Independence of Judges and Lawyers (CIJL), a body that observed trials, conducted missions (like its 1979 visit to South Korea), and reported on the condition of legal professionals around the globe.[89] The American Bar Association, whose leaders had previously expressed skepticism of human rights, created human rights committees in the

[83] Mikael Rask Madsen, "Human Rights and the Hegemony of Ideology," in *Lawyers and the Construction of Transnational Justice*, ed. Yves Dezalay and Bryant Garth (New York: Routledge, 2012), 262-263.
[84] Madsen, "Human Rights and the Hegemony of Ideology," 263, citing Tolley, *International Commission of Jurists*, 29, 34, and Dezalay and Garth, *Internationalization of Palace Wars*, 62.
[85] Vladimir Kabes and Alfons Sergot, *Blueprint of Deception: Character and Record of the International Association of Democratic Lawyers* (The Hague: Morton & Co., 1957); Henry L. Roberts, "*Blueprint of Deception*" (capsule review), *Foreign Affairs*, October 1957.
[86] See Madsen, "Human Rights and the Hegemony of Ideology." As Dezalay and Garth point out, however, Amnesty International's efforts at transcending Cold War politics through careful evenhandedness did not prevent the organization from being viewed by some – like Ford Foundation staff members – as a Communist front group. Dezalay and Garth, *Internationalization of Palace Wars*, 70.
[87] I borrow this formulation from Mikael Rask Madsen, "Human Rights and the Hegemony of Ideology."
[88] H. Fragoso, *Report on the Situation of Defense Lawyers in Argentina* (Geneva: International Commission of Jurists, 1975).
[89] Tolley, *International Commission of Jurists*, 219-226.

1970s that focused on abuses in the justice systems of developing countries, where "activists became an endangered species."[90]

This was a significant shift: while prominent U.S. representatives like Eleanor Roosevelt had famously championed human rights in the 1940s, critics, like ABA president Frank E. Holman, issued urgent warnings through the 1950s against human rights-based world governance and, notably, the erosion of U.S. constitutional rights and federalism that they feared would result through a supranational legal order.[91] By the mid-1970s, powerful and prominent lawyers from the United States became leaders in human rights efforts, launching new independent human rights initiatives and organizations like the Lawyers Committee for Human Rights. In the late 1970s, the New York City Bar Association, which revived a moribund human rights committee, staged visits to South Korea and Uruguay.[92] The status of lawyers and the proper administration of justice were in this way made the subject of advocacy by distinguished jurists from one of the world' superpowers. Argentine lawyers were part of the 1970s rise in international human rights organizing among legal professionals.[93] But while the legal profession in the United States and Europe was increasingly united around human rights with the lessening of Cold War divisions, politics inside Argentina pulled the country's legal professionals apart. The New York City Bar Association's visit to the country brought these differences to the fore.

The April 1979 New York Lawyers' Mission

The New York City lawyers' mission visited Argentina between April 1 and 7, 1979. Linking the fate of lawyers to that of liberty, the mission's goal was to "express the Association's concern both for the ability of lawyers to carry out their professional duties free of governmental intimidation, and for the right of all incarcerated persons to humane treatment and fair trials."[94] The delegation was made up of prominent legal figures, including a former federal judge and the mission's chair, Orville H. Schell. Schell was a

[90] Tolley, *International Commission of Jurists*, 219.

[91] Frank E. Holman, "International Proposals Affecting So-Called Human Rights," *Law and Contemporary Problems* 14 (1949); Frank E. Holman, review of *Human Rights and World Order*, by Moses Moskowitz, *ABA Journal* 45 (August 1959): 838-839. Frank E. Holman's opposition to international human rights was part of a broader resistance to international treaty law generally, which critics feared could undermine U.S. constitutional rights and U.S. states' rights, a fear that motivated the repeated efforts to amend the U.S. constitution – through the so-called Bricker Amendment – to limit international treaties (as well as executive agreements) in relation to domestic U.S. law.

[92] The Association of the Bar of the City of New York, "Report of the Mission of Lawyers to Argentina," 19n2, Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1979-1985) 4; Tolley, *International Commission of Jurists*, 219.

[93] Latin American lawyers, like their counterparts in the United States and Europe, organized in the name of human rights in the second half of the 1970s, as demonstrated by the creation in 1979 of the Associação de Advogados Latinoamericanos pela Defesa dos Direitos Humanos (Association of Latin American Lawyers for the Defense of Human Rights), formed in Sao Paulo, Brazil by lawyers from Brazil, Chile, Colombia, Paraguay and Peru. "Declaração da Associação de Advogados Latinoamericanos pela Defesa dos Direitos Humanos," November 25, 1979, Archivo Institucional del Centro de Estudios Legales y Sociales, Otras Organizaciones Caja 2, Asociación de Abogados Latinoamericanos por la Defensa de los DDHH.

[94] The Association of the Bar of the City of New York, "Report of the Mission of Lawyers to Argentina," 2, Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1979-1985) 4.

Wall Street lawyer, ABA Observer to the United Nations, and future Americas Watch chairman.[95]

Though sponsored by the New York City Bar Association and endorsed by the American Bar Association, the mission to Argentina was more than a U.S. bar enterprise. The Lawyers Committee for International Human Rights had first suggested the New York City lawyers' visit and helped prepare the mission's members before their departure. Previous reports by the Geneva-based International Commission of Jurists were among the mission's briefing materials.[96] The New York lawyers' mission capitalized on the human rights turn in the U.S. government, holding a preparatory briefing session with Patricia Derian.[97] Once in Argentina, the mission was joined by a delegation – consisting of one member each from the Italian and French bars – from the Union Internationale des Avocats (UIA), which had previously sought the support of Argentina's legal establishment for its own visit.[98]

The experience of the UIA echoed some of the reactions to Gustavo Roca and Lucio Garzón Maceda's congressional testimony, and it hinted at what was to come for the New York City lawyers. Since at least January 1978, the UIA exchanged letters with the Federation of Argentine Lawyers' Colleges and the country's military government to organize an onsite investigation. The Federation's response was a cold one. Declining to host the UIA, Federation leaders insisted that Argentine lawyers were capable of protecting the rule of law for themselves, rejected what they deemed the "insidious foreign campaign" that had tarred the government, and suggested that Argentine conditions might be too complex "to be understood fully by lawyers from countries like those in Europe, without deep analysis and observation."[99] The New York City lawyers' mission would provoke louder articulations of the same argument.

Though designed to engage Argentina's legal establishment, the structure of the New York City Bar's visit suggested a changing understanding of who held authority in the realm of law. The mission met with "the country's three major bar associations," the Federation, the Lawyers' College of the City of Buenos Aires, and the Lawyers' Association of Buenos Aires, as well as with individual criminal defense and corporate lawyers in private practice and some government officials.[100] But the New York lawyers

[95] The report provided the following description of the other members of the mission: "… Marvin E. Frankel, a former United States District Judge for the Southern District of New York; Harold H. Healy, Jr., former Secretary of the Association [of the Bar of the City of New York]; Stephen L. Kass, Chairman of the Association's Committee on Inter-American Affairs; and R. Scott Greathead, a member of the Association's Committee on International Human Rights." The Association of the Bar of the City of New York, "Report of the Mission of Lawyers to Argentina," 1, Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1979-1985) 4.

[96] The Association of the Bar of the City of New York, "Report of the Mission of Lawyers to Argentina," 4, Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1979-1985) 4.

[97] R. Scott Greathead to Patricia M. Derian, May 24, 1979, Jimmy Carter Presidential Library, White House Central File Subject File, CO-10, C0 8 1/20/77-1/20/81.

[98] The Association of the Bar of the City of New York, "Report of the Mission of Lawyers to Argentina," 2-3, Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1979-1985) 4.

[99] Federación Argentina de Colegios de Abogados to Albert Zurfluh, December 26, 1978, Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1977-1981) 3, 1.1. Abogados, Colegios y Asociaciones Argentinas

[100] The Association of the Bar of the City of New York, "Report of the Mission of Lawyers to Argentina," 3, Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1979-1985) 4.

also held meetings with representatives from some of the recently formed human rights organizations, namely the Permanent Assembly for Human Rights and the Mothers of the Plaza de Mayo. Information gathered from these groups was central to the New York lawyers' conclusions.[101]

Six weeks after leaving Argentina, the New York lawyers submitted their report to the New York City Bar Association's Executive Committee. The report was soon made public, reproduced in the Bar Association's October 1979 *Record*. The New York lawyers' analysis reflected the mission's efforts to span national difference and interpret the legal and political conditions in Argentina. Centered on the detention and disappearance of lawyers, the report presented two distinct categories of harm resulting from the exercise of two distinct but related interpretations of exceptional executive powers.

Though applying a state of siege provision unknown in the U.S Constitution, the New York lawyers appeared at home in their legal analysis of detentions.[102] Against junta arguments that the military government's statute superseded the country's Constitution, the mission made the 1853 Argentine National Constitution its touchstone. This meant operating within the Argentine legal framework for national emergencies articulated in Article 23 (introduced in Chapter 1).[103] Setting up their analysis, the report's authors described Argentina's legal system as possessing due process guarantees at least as vigorous as those provided for in the United States.[104] A constitutional state of siege and the resulting suspension of constitutional guarantees were, accordingly, restricted by law. The New York lawyers determined that the military government's detentions of lawyers, in the 99 cases they documented, exceeded these restrictions: the legal basis for the National Executive (Poder Ejecutivo Nacional, PEN) detentions was "highly questionable," the courts failed to check Executive wrongdoing in this respect, and the Executive exceeded the safeguards written into Article 23 by holding people for such long periods it amounted to punishment (the exclusive realm of the judiciary) and by "negating the unconditional right of option guaranteed by Article 23."

In contrast to their examination of Executive detentions, the New York lawyers' assessment of the disappearance of lawyers pushed them out of the realm of technical legal analysis. The issue was not the proper application of legal standards but whether the law applied at all. In a rebuke to the military government and its claims of protecting "Western Civilization," the report called disappearances "the most starkly brutal human

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[101] The Association of the Bar of the City of New York, "Report of the Mission of Lawyers to Argentina," 3, Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1979-1985) 4.

[102] While the United States Constitution (Article I, Section 9) provides for the suspension of habeas corpus in cases of "invasion or rebellion," it does not explicitly allow the executive branch to suspend broader constitutional guarantees.

[103] The Association of the Bar of the City of New York, "Report of the Mission of Lawyers to Argentina," 3-4, Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1979-1985) 4. The report noted the Argentine Constitution's assignment of roles to particular branches of government, citing Articles 53, 67, and 86, and observed that the junta's seizure of legislative as well as executive powers made these provisions "academic": "The President, with the consent of the Senate, is authorized to declare a state of siege in the event of external attack. However, in the case of internal disorder, the President may declare a state of siege on his own authority 'only when the Congress is in recess, since this is a power belonging to that body.' When the President has declared a state of siege during a Congressional recess, Congress retains the right to approve or suspend it."

[104] The Association of the Bar of the City of New York, "Report of the Mission of Lawyers to Argentina," 3, Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1979-1985) 4.

rights violations in Argentina or, indeed, almost anywhere in the world that seeks to be civilized."[105] Nonetheless, the New York lawyers found that the practice was widely condoned, which was "the most depressing and disappointing aspect of our conversations with Argentine government people." The New York lawyers were deeply disturbed: "One line that soon became familiar, put forth by prominent citizens who support the regime as well as by government representatives, was to stress… the recent history of terrorist violence…. There are, it was stressed, 'excesses' in every war…. It was too bad, but to be expected."[106]

The New York lawyers portrayed Argentina's lawyers as leaders in the public debate about detentions and disappearances. The country's legal profession was also, the report observed, deeply divided; this was a sign of a new and troubling stage in the country's rule-of-law debates. Lawyers' groups' relatively unified public support in the 1960s and early 1970s for due process guarantees – however vitiated by reversals and delays – gave way entirely by the late 1970s. Other sectors of society too came to accept the exercise of extralegal executive power not as the temporary state provided for in the Constitution, but as a mode of governance. One of the New York City lawyers explained that members of the Buenos Aires Lawyers' Association were among the "handful" of "less establishmentarian lawyers" who, "always through the means of lawful procedure," resisted the state's exercise of arbitrary power. The legal establishment, in contrast, was labeled "timid and defensive" in its response to the allegations of state violence and judicial irregularity: "The legal 'establishment' has tended on the whole to accept, even to support, the measures of control taken by the military regime…. They insist on their own devotion to the conceptions of due process, but conclude that overriding necessities have justified the punitive short cuts of recent years."[107]

Lawyers' positions on the military government' political aims indeed fueled divisions within the profession. Several months after the report's release, one expression of legal establishment support for the military regime prompted CELS lawyer (and father of a disappeared son) Augusto Conte to draft an indignant letter to the head of the Academia Nacional de Derecho (National Academy of Law). Conte, cataloging the forms of state-sponsored violence in Argentina and challenging the Academy's position on them, was responding to national newspaper coverage of a meeting between an Academy body and Interior Minister General Albano Harguindeguy that described the Academy's reported applause for the military governments' actions against "subversion."[108] But the result of such conflicts was not simply for some to reject the rule of law and their foes to embrace it. A 1978 declaration by the Argentine Federation of Lawyers' Colleges was a

[105] The Association of the Bar of the City of New York, "Report of the Mission of Lawyers to Argentina," 11, Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1979-1985) 4.

[106] The Association of the Bar of the City of New York, "Report of the Mission of Lawyers to Argentina," 13, Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1979-1985) 4.

[107] Statement of Marvin E. Frankel, Lawyers Committee for International Human Rights, on Involuntary Disappearances and other Human Rights Violations in Argentina before the Subcommittee on International Organizations, Committee on Foreign Affairs, United States House of Representatives, September 25, 1979, 12-13, Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1979-1985) 4, Lawyers Committee for International Human Rights.

[108] Augusto Conte to president of Academia Nacional de Derecho, May 2, 1980, Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1977-1981) 3, 1.1. Abogados, Colegios y Asociaciones Argentinas.

case in point: the statement called for the government to defeat subversion *and* return to the rule of law, the former a precondition – and complication – for the latter. Advocating for criminal defendants' access to an adequate legal defense and "natural judges," and emphasizing the limits on Article 23 state of siege powers, the declaration explained that the federation aimed to "contribute to the institutional normalization of the country and the success of the [military government's self-proclaimed] process of national reorganization," suggesting that the two objectives were compatible.[109] The Federation was simultaneously pressing the military government – explicitly tying due process protections to the "Western Civilization" the junta claimed to advance – and accepting the legitimacy of the government's antisubversion campaign.

The underlying conflict between the New York lawyers and more conservative Argentine lawyers – as between progressive groups and the legal establishment inside Argentina – was a question of timing: Did the fight against political violence require further delay in the long-postponed return to the rule of law? Or, as the Lawyers' Association of Buenos Aires insisted, did the rule of law require the *immediate* restoration of human rights and constitutional guarantees. On this point and others, the New York City lawyers' mission leveled its strongest criticism against the establishment-minded Lawyers' College of Buenos Aires.

While the report credited the Federation of Argentine Lawyers' Colleges for at least working "behind the scenes" for the release of some lawyers and the protection of due process rights more broadly,[110] it depicted the Lawyers' College of Buenos Aires as obstructing progress even as its leaders spoke favorably of the "state of law" and "judicial reform": "The one group that *might* have made a difference [in challenging government misconduct] is the Colegio de Abogados de Buenos Aires, Argentina's most prominent bar association…." The report explained that the Lawyers' College of Buenos Aires was in 'doctrinal agreement' that all citizens – including 'subversives' – should enjoy due process rights and humane treatment. But in practice, "the actual observance of these niceties, we were told, must await a more secure victory over the terrorists, after which restoration of the rule of law would be feasible on a gradual basis…." In the College's August 22, 1978 Declaration, which it provided to the New York delegation, the group praised the military for restoring order "in an irreproachable manner even down to the last technicality" while mildly asserting the need to reestablish the right of option for Executive Branch detainees. The New York City lawyers left Argentina distressed not just at the violence of the military, but at the passivity of their fellow lawyers: "What

[109] Federación Argentina de Colegios de Abogados, "Declaración," April 15, 1978, Archivo Institucional del Centro de Estudios Legales y Sociales, Otras organizaciones Caja 2, FACA – Federación Argentina de Colegios de Abogados. The right to a criminal defense and Article 23 state of siege powers were also among the topics discussed the following year at the October 1979 National Lawyers' Conference (IX Conferencia Nacional de Abogados). Federación Argentina de Colegios de Abogados, "Boletín informativo número siete," October 6, 1979, 1, Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1977-1981) 3, 1.1. Abogados, Colegios y Asociaciones Argentinas.

[110] While the Federation maintained a respectful and diplomatic tone with the junta, it also made its differences with the government known, at least eventually. A private April 1978 federation declaration noted by the New York lawyers mission was in fact made public by the group's leadership months later. The federation's governing body, explaining its decision to publish the statement cited "the absence of results that might mean some type of progress on strengthening the rights to a natural judge, defense, and due process." Federación Argentina de Colegios de Abogados, "Garantías del debido proceso," December 1978, Archivo Institucional del Centro de Estudios Legales y Sociales, Otras organizaciones Caja 2, FACA – Federación Argentina de Colegios de Abogados.

struck us most was the apparent acquiescence in the current state of non-law by significant numbers of our colleagues."[111]

The New York City Bar Association's report traveled inside Argentina and across national borders, further isolating the country from the international legal and political community, and aggravating its legal establishment. A May 28, 1979 article in the *La Prensa* summarized the report's findings for Argentine readers, including the unnerving conclusion that "apparently a significant number of Argentine lawyers had been complicit in the current absence of law."[112] Outside the country, the report's findings were amplified as other non-governmental bodies cited them in their own work. The Lawyers Committee for International Rights relied on the mission's conclusions in its own 1979 report on human rights conditions in Argentina.[113] When some international lawyers' groups, even those not working on human rights, learned of the New York City lawyers' findings, they reacted by distancing themselves from the country. In early May 1980, for example, members of the International Association for the Protection of Intellectual Property cited the report in their efforts to convince colleagues to move the association's planned meeting from its slated location in Argentina.[114]Around the same time, a meeting of the Inter-American Bar Association was relocated from Buenos Aires. To the great consternation of the Lawyers' College of Buenos Aires, whose leadership had offered to host the event, the Inter-American Bar Association postponed the event – for invalid reasons, according to college representatives – and thus frustrated the college's plan to showcase Argentina's progress "toward the rule of law, peace, and the full realization of democracy."[115] Almost exactly three years after Gustavo Roca and Lucio Garzón Maceda appeared in Washington, the New York City Bar Association mission's findings were presented before the same U.S. congressional subcommittee Donald Fraser had led. But much had changed: instead of two persecuted Argentine exiles, now it was a group of respected U.S. lawyers who detailed the mistreatment of Argentine lawyers and called for an end to the military government's abuses.[116]

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[111] The Association of the Bar of the City of New York, "Report of the Mission of Lawyers to Argentina," 18, Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1979-1985) 4.

[112] "Informe de abogados de EE.UU. sobre los derechos humanos en la Argentina," *La Prensa*, May 28, 1979, 3, Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1979-1985) 4.

[113] Lawyers Committee for International Human Rights, "Introducción," June 1979, ii, from Spanish translation of *Violations of Human Rights in Argentina, 1976-1979: A Report* (New York: Lawyers Committee for International Human Rights, 1979), Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1979-1985) 4.

[114] Willem C. van Manen to members of the International Association for the Protection of Intellectual Property, May 5, 1980, Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1977-1981) 3, 1.1. Abogados, Colegios y Asociaciones Argentinas.

[115] Colegio de Abogados de la Ciudad de Buenos Aires, *Memoria y balance 1980*, 15, Biblioteca del Colegio de Abogados de la Ciudad de Buenos Aires.

[116] In his testimony before the committee, Marvin E. Frankel, a practicing attorney, former federal judge, and director of the Lawyers Committee for International Human Rights, described a perilous situation for Argentine lawyers: "It has become desperately dangerous for a lawyer in Argentina to question disappearances, to bring habeas corpus proceedings, and even to be known as a labor lawyer. Only a relative handful continue to risk these kinds of activity in Buenos Aires. Outside the capital and its province, it is virtually impossible to find a lawyer willing any longer to take the risk." Statement of Marvin E. Frankel, Lawyers Committee for International Human Rights, on Involuntary Disappearances and other Human Rights Violations in Argentina before the Subcommittee on International Organizations, Committee on Foreign Affairs, United States House of Representatives, September 25, 1979, 1, 12, Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1979-1985) 4, Lawyers Committee for International Human Rights.

The Lawyers' College of Buenos Aires assailed the New York lawyers' report, offering a dramatically different reading of legal conditions in the country. In a letter directed to Scott Greathead, chairman of the New York City Bar Association's International Human Rights Committee, the College complained that the report "did not account for the true Argentine reality."[117] The College of Buenos Aires was blindsided by the New York lawyers' conclusions, its leadership explaining that they had harbored high hopes because of the personalities who made up the delegation, assurances by Argentina's U.S. ambassador, and congenial conversations during the visit.[118] Having wrongly assumed the mission would share their professional and class perspectives, the Argentine lawyers now expressed their "painful and unforgettable" frustration.[119]

Echoing the earlier arguments made by the Federation of Argentine Lawyers' Colleges against the proposed UIA visit, the Buenos Aires College's assessment of the New York City lawyers' report emphasized Argentina's juridical successes, progress, and difference vis-à-vis its foreign critics. While the legal establishment had expressed its own tepid criticisms against the military government inside Argentina, the harsh judgment of outsiders and international attention it entailed appear to have been too much. The Buenos Aires Lawyers' College held up the operation of the writ of habeas corpus – which it described as a key tool for its members during Juan Perón's 1946 to 1955 presidencies – as proof that, in fact, the country's legal system was functioning well.

> The best evidence of the survival of liberties can be found in the use of "habeas corpus," about which you refer to so frequently. Our country has a record that not even yours – with its virtues and merits – can offer. Since it was recognized in 1853, and despite many "states of siege" and "de facto governments," [habeas corpus] was never suspended. In contrast, your grand president Lincoln did not follow that example, and yet we Argentines continue to see him as one of history's great democrats, understanding that he acted for the wellbeing of the country.[120]

The college cited approvingly federation mechanisms set up to receive complaints of unsuccessful habeas corpus petitions (arguably, evidence of the legal system's dysfunction rather than its success) and, breaking with past support for persecuted criminal defense lawyers, asserted that only those attorneys with ties to subversion encountered problems submitting habeas corpus petitions on behalf of their clients.[121] According to the college, the country had made substantial strides toward the complete reestablishment of the rule of law since the state of war brought by Juan Perón and leftist

[117] Colegio de Abogados de la Ciudad de Buenos Aires, *Memoria y balance 1979*, 6, Biblioteca del Colegio de Abogados de la Ciudad de Buenos Aires.
[118] Colegio de Abogados de la Ciudad de Buenos Aires, *Memoria y balance 1979*, 6, Biblioteca del Colegio de Abogados de la Ciudad de Buenos Aires; see Dezalay and Garth, *Internationalization of Palace Wars*, 52.
[119] Colegio de Abogados de la Ciudad de Buenos Aires, *Memoria y balance 1979*, 6, Biblioteca del Colegio de Abogados de la Ciudad de Buenos Aires.
[120] Colegio de Abogados de la Ciudad de Buenos Aires, *Memoria y balance 1979*, 10, Biblioteca del Colegio de Abogados de la Ciudad de Buenos Aires.
[121] Colegio de Abogados de la Ciudad de Buenos Aires, *Memoria y balance 1979*, 11, Biblioteca del Colegio de Abogados de la Ciudad de Buenos Aires.

subversives. Critically, the college presented a uniquely Latin American variant of law, governance, and individual rights:

> We recognize that it is very difficult for you North Americans to fully understand the existence of 'de facto governments,' 'revolutionary' [governments], and 'national reorganization' [governments] in which the executive branch becomes the legislative branch…. but such governments are a reality in our Latin America, necessary in certain historic moments to protect the most fundamental value[s]… [and] recognized and helped by your country, because between two evils the lesser is chosen….[122]

In sum, the College of Buenos Aires argued that international human rights did not apply in Latin America, at least not as they were interpreted by their New York counterparts.

Tension dwelled too in the Lawyers' College statement on universal human rights. While calling human rights "the glory of a generation," the group also described "the question of human rights" as "the primary source of upheaval" in the country.[123] And it called the Mothers of the Plaza de Mayo – like the other groups that the New York City delegation relied on – an unrepresentative group that organized street protests to provoke the police in order to advance its own propaganda. The human rights groups that provided information to the New York lawyers were not just unreliable, they were a threat—the same argument the lawyers' group had made against Lucio Garzón Maceda and Gustavo Roca when they testified before the U.S. Congress. The College asked ominously, "Has the Commission requested the statutes or list of membership of these associations? Do its members know who provides their funding?" For the College, the report simply echoed the human rights propaganda initiated by "the subversives who live abroad" and disseminated by Amnesty International.

The Buenos Aires Lawyers' College's response to the New York City lawyers' report received glowing feedback from the military government: the president and Minister of Foreign Relations wrote grateful letters to the group. International scrutiny would only grow, however, as intergovernmental bodies, and the Organization of American States in particular, joined non-governmental organizations to ratchet up pressure on human rights abusers.

The Organization of American States

In the 1970s, the Organization of American States (OAS) became a forum in which Latin Americans would advocate for human rights, and through which human rights crossed national borders in the region. OAS member states expressed support for human rights when they signed the 1948 American Declaration of the Rights and Duties of Man, but the inter-American human rights system remained largely unchanged and lacked an enforcement mechanism until the Inter-American Commission on Human

[122] Colegio de Abogados de la Ciudad de Buenos Aires, *Memoria y balance 1979*, 9, Biblioteca del Colegio de Abogados de la Ciudad de Buenos Aires.
[123] Colegio de Abogados de la Ciudad de Buenos Aires, *Memoria y balance 1979*, 14, Biblioteca del Colegio de Abogados de la Ciudad de Buenos Aires.

Rights was established in 1959.[124] Made up of seven experts elected by the OAS General Assembly, the commission was charged, in a vaguely worded statute, with advancing the observance of human rights in the region.[125] The commission's scope of work expanded significantly in the decade following its creation, with commissioners pushing the boundaries of their formal mandate by focusing on particular countries, accepting individual petitions claiming human rights violations, and publishing reports on OAS member states' human rights conditions.[126] The commission's 1965 investigation inside the Dominican Republic set the precedent for another consequential piece of the body's work: its visits to OAS member countries.[127]

After 1965, the legal structure governing the inter-American human rights system began to reflect more accurately the activities of the commission while strengthening its status.[128] The commission's ability to examine individual petitions alleging abuses and address human rights concerns in specific countries was affirmed and subsequently incorporated into the commission's statute.[129] With the 1967 Buenos Aires Protocol, which entered into force in 1970, the commission was made a principal organ of the OAS, and its authority to process individual complaints of human rights abuses and initiate investigations into alleged violations was given legal backing through the OAS Charter.[130] At the dawn of the 1970s, in short, the commission had tools at its disposal—through practice and law—to address alleged human rights abuses that came to its attention.

In the second half of the 1970s, facing a deluge of abuse allegations, the commission became a major player in hemispheric human rights politics.[131] The election of Jimmy Carter to the U.S. presidency was central to this conversion. Carter was a vociferous supporter not just of human rights generally, but of the inter-American human rights regime specifically, signing the legally binding American Convention on Human Rights and urging other OAS member governments to become parties so it would enter into force, which it did in 1978.[132] Small democratic Latin American countries including Costa Rica also helped drive the transformation of the commission, a human rights counterpoint to the clandestine security cooperation practiced by the region's authoritarian regimes.[133] Over the course of the 1970s, the commission published reports

[124] See Robert K. Goldman, "History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights," *Human Rights Quarterly* 31, no. 4 (November 2009): 861; Farer, " Rise of the Inter-American Human Rights Regime," 514–515; David P. Forsythe, *The Internationalization of Human Rights* (Lexington, MA: Lexington Books, 1991), 98–99.

[125] Article 9 of the Statute of the Inter-American Commission on Human Rights, approved by the OAS Council in 1960. See Organization of American States, *Handbook of Existing Rules Pertaining to Human Rights* (Washington, D.C.: General Secretariat, Organization of American States, 1979), 11–12; see also Goldman, "History and Action," 862.

[126] Forsythe, *Internationalization of Human Rights*, 101; see also Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca, NY: Cornell University Press, 2003), 142; Goldman, "History and Action," 867–868; Farer, " Rise of the Inter-American Human Rights Regime," 511.

[127] Goldman, "History and Action," 870.

[128] Forsythe, *Internationalization of Human Rights*, 101; see also Klaas Dykmann, *Philanthropic Endeavors or the Exploitation of an Ideal? Human Rights Policy of the Organization of American States in Latin America* (Frankfurt: Vervuert, 2004), 59–60.

[129] Thomas Buergenthal, "The Revised OAS Charter and the Protection of Human Rights," *American Journal of International Law* 69, no. 4 (October 1975): 831–832.

[130] Farer, "Rise of the Inter-American Human Rights Regime," 514–515; Buergenthal, "OAS Charter."

[131] Farer, "Rise of the Inter-American Human Rights Regime," 512; Jensen, *Exiliados*, 77–79.

[132] Guest, *Behind the Disappearances*, 173; Forsythe, *Internationalization of Human Rights*, 103.

[133] I am grateful to Professor Daniel Sargent for this observation.

on the human rights conditions in countries including Chile, Uruguay, Paraguay, and Argentina, sometimes on the basis of onsite visits—as in Chile in 1974—or, when governments refused to consent to visits, using the information it gathered from afar.[134] Based on the precedent set during its 1977 visit to Panama, the commission gained broad latitude to speak with whomever it chose, wherever it deemed necessary, including inside detention and interrogation centers.[135] In the estimation of Iain Guest, these changes "made the IACHR altogether more effective at fact-finding than the U.N., and thus more menacing to governments like the Argentinean Junta."[136]

The September 1979 Visit of the Inter-American Commission on Human Rights

Three years after the Fraser subcommittee hearings, and just months after the New York City Bar Association mission, Argentina once again came under international scrutiny when the Inter-American Commission on Human Rights visited the country between September 6 and September 20, 1979. Now an organization of fellow governments was turning the spotlight on conditions in Argentina. The commission's investigation and its 1980 report, like the congressional testimony of Roca and Garzón Maceda and report of the New York City Bar Association, sparked intense discussion about the meaning of human rights to the Argentine nation.

In December 1976, just a few months after the Fraser subcommittee hearings, the U.S. State Department began to formulate its plan to ask the junta to allow a commission visit.[137] Internal divisions within the junta, rising domestic dissent, and international condemnation were influential factors leading the Argentine government to permit the visit, but U.S. government pressure was instrumental.[138] At stake were a U.S. Export-Import Bank credit for the construction of a hydroelectric dam in Argentina and the frozen military funds.[139] With both the U.S. and Argentine governments eager to improve bilateral relations, and Argentina seeking a fix for its international isolation, junta leader Jorge Rafael Videla and Vice President Walter Mondale struck a deal in September 1978.[140] The agreement promised Argentina the bank credits and allowed pending military sales to go through in exchange for the junta's invitation to the commission to conduct an unconditioned onsite visit.[141] Strengthening the hand of the U.S. government and OAS in these negotiations was the high profile that Argentina's human rights abuses had garnered due to the work of human rights groups and U.S. embassy officials, chief among them political officer F. A. "Tex" Harris.[142]

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[134] Organization of American States, *Inter-American Commission on Human Rights: 10 Years of Activities, 1971–1981* (Washington, D.C.: General Secretariat, Organization of American States, 1982), 82, 251; Farer, "Rise of the Inter-American Human Rights Regime," 530–540; Goldman, "History and Action," 873.
[135] See Farer, "Rise of the Inter-American Human Rights Regime," 531–532; Organization of American States, *Handbook of Existing Rules*, 42–43.
[136] Guest, *Behind the Disappearances*, 447.
[137] Carlos Osorio, "The Dirty War's Declassified Documents: A New Perspective on Bilateral Relations," in *Argentina–United States Bilateral Relations*, ed. Cynthia J. Arnson, 14.
[138] Jensen, *Exiliados*, 93; Novaro and Palermo, *Dictadura militar*, 279, 300.
[139] See Novaro and Palermo, *Dictadura militar*, 288–290; Osorio, "Declassified Documents," 21.
[140] Guest, *Behind the Disappearances*, 175; Novaro and Palermo, *Dictadura militar*, 290.
[141] Osorio, "Declassified Documents," 19–21; Keck and Sikkink, *Activists Beyond Borders*, 107; Schoultz, *Human Rights and United States Policy*, 311.
[142] Novaro and Palermo, *Dictadura militar*, 294–295.

Nongovernmental advocates sought to make the commission a viable force for change in Argentina. In the United States, the Washington Office on Latin America had pushed the OAS to condemn the junta from the first year of the regime, writing letters, lobbying at meetings, and delivering boxes of affidavits from Argentine religious orders and human rights groups that documented abuses.[143] Emilio Mignone, the lawyer and CELS director who had worked for the OAS in the 1960s (and whose own daughter was among the disappeared), traveled to Washington to provide the commission with documentation of disappearances collected by the APDH.[144] Activists also offered relevant insights into Argentine politics. In an English-language bulletin that reached the U.S. State Department, for example, activists warned of the junta's likely foot-dragging on the visit after the invitation was issued.[145] Inside Argentina, activists distributed literature, published newspaper announcements, and held meetings to shape public opinion and maximize the number of testimonies that the commission received.[146] Groups that collaborated with the commission were subject not only to police surveillance but to judicially sanctioned raids of their offices the month before the visit.[147]

The commission finally arrived in September 1979 and began its work, interviewing government officials, religious leaders, union delegations, political organizations, victims of human rights violations, and others, as well as visiting detention centers.[148] Argentine human rights groups and individual activists helped facilitate the commission's activities. CELS leaders set up interviews for commission members and offered guidance throughout the visit.[149] Representatives from organizations including APDH, the Argentine League for the Rights of Man, and the Mothers of the Plaza de Mayo met with the commission and provided evidence of rights violations, especially cases of enforced disappearance.[150] Activists also worked to connect family members of the detained and disappeared with the commission.[151] The quantity of information that ultimately reached the commission—and the extent of human rights violations it reflected—was staggering, with 5,580 complaints received.[152]

Lawyers' groups were among the professional organizations that the commission met with during its visit, but not all sectors of the legal profession felt heard. The commission held meetings with the Federation of Lawyers' Colleges and the Lawyers' Association of Buenos Aires, but it did not reach out to the Lawyers' College of Buenos Aires, that most prestigious of Argentine bar associations. Leaders of the Buenos Aires College understood this snub as an indicator of the partiality and flawed methodology of

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[143] Interview by author of Joseph Eldridge, December 21, 2011.
[144] Lewis, *Guerrillas and Generals*, 186; Mignone, *Derechos humanos y sociedad*, 112.
[145] Newsletter, Centro de Documentación e Información sobre Derechos Humanos en Argentina, November 1, 1978, December 8, 1976, ADP.
[146] Novaro and Palermo, *Dictadura militar*, 294.
[147] OAS, *Report on the Situation of Human Rights in Argentina*, Chapter XI, "Status of Human Rights Defense Agencies."
[148] OAS, *Report on the Situation of Human Rights in Argentina*, "Introduction."
[149] Mignone, *Derechos humanos y sociedad*, 112.
[150] OAS, *Report on the Situation of Human Rights in Argentina*, "Introduction"; Brysk, *Politics of Human Rights*, 54.
[151] Servicio de Inteligencia de la Policía Federal, "Asunto: Viaje de familiares de DD.TT. desde la Pcia del Chaco hacia la capital federal," September 6, 1979, Área Centro de Documentación y Archivo de la Comisión Provincial por la Memoria, Archivo de la Dirección de Inteligencia de la Policía de la Provincia de Buenos Aires, Colección 10: Visita a la Argentina de la Comisión Interamericana de Derechos Humanos (1979–80), Documento 14391 (hereafter cited as CPM, Colección 10).
[152] OAS, *Report on the Situation of Human Rights in Argentina,* "Introduction," "Activities of the Commission during its on-site observation."

the commission's investigation. Echoing its bitter reactions to the New York City Bar Association's report, the College released a statement when the commission arrived in Argentina explaining that it was among the numerous entities – along with the National Academy of Law and Social Sciences and others – that were not invited to join the dialogue.[153] College leaders, like many Argentines, described themselves as excluded, ignored, and betrayed by this sort of human rights criticism.

On April 11, 1980, the commission released its findings in the *Report on the Situation of Human Rights in Argentina*.[154] It concluded that "numerous serious violations of fundamental rights, as recognized in the American Declaration of the Rights and Duties of Man, were committed in the Republic of Argentina during the period covered by this report."[155] The abuses documented included enforced disappearance and violations of due process, labor, political, and religious rights. While the junta barred distribution of the full report inside Argentina and, through diplomatic machinations, managed to avoid an OAS resolution calling out Argentina by name, it could not hold back the report's revelations or its international impact. The report's findings were presented before the United Nations and national government bodies and publicized in media outlets around the world.[156] Inside the country, CELS managed to distribute copies of the report that Emilio Mignone smuggled in from the United States.[157] The junta responded with its own report. In *Observaciones y comentarios críticos del gobierno argentino*, also released in April 1980, the military government accused the commission of endeavoring to tarnish its reputation rather than promoting human rights.[158] The junta asserted that the commission had failed to take into account Argentina's war against subversion, a war that might have required the temporary restriction of human rights but which had been necessary for the survival of the nation.[159]

Though it rejected the commission's findings, the military government was clearly affected by the commission's investigation. The most tangible effect was on the junta's behavior. On the one hand, disappearances spiked just before the commission's visit, and the junta took steps to undermine the investigation by hiding detainees and demolishing clandestine detention centers.[160] On the other hand, some prisoners—including Jacobo Timerman—were released, and the number of reported disappearances declined following the commission's investigation.[161] One commentator describes the commission's visit to Argentina as "its most successful in terms of results."[162]

Another measure of the commission's visit is the way it, like the Fraser subcommittee hearings and New York City Bar Association mission, influenced debate in Argentina about human rights. Previously quiet members of Argentine society spoke publicly on issues discussed until then only by lawyers and human rights groups. The lines of family members and victims stretching along city blocks to meet with

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[153] Colegio de los Abogados de la Ciudad de Buenos Aires, Statement released on September 18, 1979, as republished in *Memoria y balance 1979*, 15-16, Biblioteca del Colegio de Abogados de la Ciudad de Buenos Aires.
[154] OAS, *Report on the Situation of Human Rights in Argentina*.
[155] OAS, *Report on the Situation of Human Rights in Argentina*, "Conclusions and Recommendations."
[156] Jensen, *Exiliados*, 15.
[157] Mignone, *Derechos humanos y sociedad*, 111.
[158] Argentina, *Observaciones y comentarios críticos del gobierno argentino al Informe de la CIDH sobre la situación de los Derechos Humanos en Argentina (Abril de 1980)* (Buenos Aires: Círculo Militar, 1980), 7.
[159] Argentina, *Observaciones y comentarios*, 22, 59.
[160] Osorio, "Declassified Documents," 22; Brysk, *Politics of Human Rights*, 208n56, citing *Nunca más*.
[161] Jensen, *Exiliados*, 119, 129; Goldman, "History and Action," 873.
[162] See Goldman, "History and Action," 873.

commission representatives made mounting allegations of abuse hard to ignore.[163] But Argentina's military government was working to shape the discussion many months before the commission's arrival. The junta hired a U.S. public relations firm to manage its international reputation, and it produced propaganda for dissemination in the Argentine and international press.[164] The military had already upped its public relations efforts with the 1978 soccer World Cup, seizing on the widely popular event as an opportunity to improve its image in the face of human rights complaints led by groups including Amnesty International.[165] Criticism of the government's human rights record was denounced as part of an anti-Argentina campaign, and Argentines were asked to defend the country against such attacks. Challenging the notion of human rights directly with a play on the Spanish term "derechos humanos," the dictatorship took up the slogan, "Los argentinos somos derechos y humanos" (We Argentines are human, and we are right).[166]

A major theme of public discussion sparked by the commission's visit, and one consistent with the coverage of Roca and Garzón Maceda's testimony before the Fraser subcommittee and the legal establishment's reactions to the New York City Bar Association's report, was the relationship between national security and human rights. This was an issue raised in the press from the time the junta's invitation was issued. As reported in *La Opinión* in June 1978, Argentina's foreign minister complained at an OAS meeting that legitimate efforts taken by South American states to defend themselves from terrorism were being confused with human rights violations.[167] This argument was sometimes itself expressed in human rights terms, with the assertion that the true human rights violations were those committed by "terrorists."[168] The commission addressed this claim directly, with its president explaining that the body's mandate did not allow it to consider acts of violence allegedly committed by nonstate actors.[169] The Lawyers' College of the City of Buenos Aires, in turn, responded with a public statement condemning what it called the commission president's " unacceptable display of partiality" that failed to acknowledge that the government's actions were "essentially defensive and a response to provocations and crimes perpetrated in a bloody and atrocious revolutionary war."[170] By the time the commission visited Argentina, the military government had already declared victory against "subversion," but a counteroffensive launched by the Montoneros in 1979 provided the junta with evidence of an ongoing threat, and junta supporters frequently answered allegations of human rights abuses by pointing to the junta's need to fight terrorism.[171]

The Argentine government and its supporters depicted human rights activists, and

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[163] Jensen, *Exiliados*, 75.
[164] Brysk, *Politics of Human Rights*, 58; Guest, *Behind the Disappearances*, 69.
[165] Jensen, *Exiliados*, 57; Brysk, *Politics of Human Rights*, 58.
[166] See Novaro and Palermo, *Dictadura militar*, 167.
[167] Patrick Buckley, "Al rechazar en la OEA las imputaciones sobre derechos humanos Montes exhortó a combatir el terrorismo," *La Opinión*, June 24, 1978.
[168] Argentina, *Evolución de la delincuencia terrorista en la Argentina* (Buenos Aires: Poder Ejecutivo Nacional, 1980), 12–14.
[169] Newspaper clipping, "Juicios de Vargas Carreño acerca del terrorismo," September 9, 1979 (handwritten date), "Inf. Periodisticas y difusión informes Inicio Actividades CIDH 7.9.79 al 10.09.79 Tomo I," CPM, Colección 10, documento 14458.
[170] Colegio de los Abogados de la Ciudad de Buenos Aires, Statement released on September 18, 1979, as republished in *Memoria y balance 1979*, 15-16, Biblioteca del Colegio de Abogados de la Ciudad de Buenos Aires.
[171] See Novaro and Palermo, *Dictadura militar*, 160; Jensen, *Exiliados*, 106–109.

people who provided the commission with information in particular, as part of the subversive threat.[172] In keeping with this publicly expressed line of reasoning, a police intelligence memo described the collaboration of local human rights groups with the commission as a Marxist plot to seize power through the destabilization of the country.[173] The day after the commission left Argentina, *La Nación* published a statement signed by a long list of business and professional groups expressing their belief that "we were at war. . . . We want the world to know that the decision to enter the fight provoked and imposed by subversion was not the decision of the armed forces. . . . It was the decision of Argentines. . . . And just like any other war, ours had its price."[174] Human rights advocates responded. Demanding government accountability, the religious human rights group Movimiento Ecuménico por los Derechos Humanos (MEDH) explained in a newsletter, "When . . . traveling a path so painful . . . , the relatives (of the disappeared) do not deserve answers that range from 'the disappeared have disappeared by their own doing' . . . to 'this is an undeclared war to prevent the dissolution of Argentine society in which there are no answers to the questions being asked of us.'"[175]

Closely related to the issue of national security in debates about the commission's investigation was the concept of Argentina's sovereignty.[176] So prevalent was this theme that officials at the U.S. embassy in Buenos Aires concluded that it was sovereignty, and not the substance of human rights, that dominated public debate in the weeks before the commission's arrival.[177] Around the same time, in August 1979, a conservative political party, the Unión Conservadora de la Provincia de Buenos Aires, voiced its concerns on the topic in a statement they sent to the country's foreign minister. The group declared its opposition to the commission's visit, insisting that "everything relating to the internal life of the nation . . . is its concern alone and one of the attributes of sovereignty."[178] Human rights advocates addressed this argument as well. After the publication of the commission's report, the APDH argued that in fact there had been no violation of sovereignty since, as it noted accurately, the Argentine government had invited the commission to visit the country.[179]

Reflecting a long history of broad-based resistance to U.S. meddling in the region, sovereignty-based criticisms of the commission's visit underscored the United States' role in making it happen. Commentators across the political spectrum criticized U.S. interference in Argentine internal affairs. A pro-government publication dismissed the commission as a mere appendage of President Carter's policies.[180] Some activists on the

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[172] See Jensen, *Exiliados*, 55–71, 103.
[173] Secretaría de Inteligencia del Estado, "Ambito Subversivo, Situación—Marxismo," September, September 6, 1979, CPM, Colección 10, Documento 14413.
[174] "Pronunciamientos por la visita de la CIDH," *La Nación*, September 21, 1979, SM 2428, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.
[175] Movimiento Ecuménico por los Derechos Humanos, *Informedh Suplemento*, May 1980, CPM, Colección 10, Documento 13242.
[176] See Jensen, *Exiliados*, 64.
[177] Cable, U.S. Embassy in Buenos Aires, August 24, 1979, ADP, document no. 1979BUENOS06961.
[178] "'Visita lesiva' Oposición de Conservadores," *Crónica*, August 17, 1979, SM 2428, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.
[179] Asamblea Permanente por los Derechos Humanos, "Declaración del Consejo de Presidencia sobre el informe de la CIDH," August 7, 1980, CPM, Colección 10, Documento 16664.
[180] Jensen, *Exiliados*, 83.

left denounced the commission's visit as a form of imperialism.[181] These criticisms of the commission, however, did not necessarily result in the outright rejection of the body's involvement in Argentina or its cross-border promotion of universal rights. Worries of creeping U.S. interventionism could coexist with the hope that the commission's investigation might bring positive change. An August 1979 flyer from the Trotskyite group Política Obrera observed that "everyone knows that the OAS is an agency of Yanqui imperialism . . . one of the principle supports of the dictatorship." Yet it went on to express its support for the commission's investigation, citing the need for a unified front against the dictatorship and embracing the position articulated by family members of the disappeared and detained: "The OAS visit, despite its pro-dictatorial purpose, will attract national and international attention to the problem of dictatorial repression and, in this sense, can be utilized as an opportunity to make great progress in the fight for democratic freedoms."[182]

Conclusion

The three moments of human rights advocacy chronicled here contributed to a nascent discussion within Argentina about the 1976-1983 military dictatorship's human rights record. Unlike the Argentine rights debates of prior decades, these new discussions did not grapple centrally with governance, not at first. With loved ones disappearing and democratic institutions dismantled, rights advocates faced an unprecedented national crisis. State violence and the right to be free of it consumed their attention. When powerful foreign governmental and intergovernmental bodies entered the fray on the side of human rights, informed by nongovernmental activists, the setting for debating this violence was transformed. The visibility and influence of the United States Congress, New York City Bar Association, and Organization of American States raised the stakes for both advocates and the junta. Activists refined their demands, amplified their voices, and expanded their audiences through their use of these new venues, making the evidence they provided of human rights violations harder to ignore, even in Argentine media subject to junta controls. Newspapers printed at least some of the human rights groups' paid advertisements, covered their press conferences, and followed closely, if critically, the work of foreign and international bodies like those chronicled here. Human rights groups also distributed their own publications and provided testimony. Activists and family members communicated with U.S. government officials and commission members. Argentina's government found that its capacity to dismiss human rights allegations was diminished in this new environment by the possibility of U.S. aid cutoffs, the withholding of loans, and increased international isolation.

Despite their gains, rights advocates in Argentina would continue to face intense resistance. Human rights interventions from abroad disrupted domestic rights politics, helping to forge a new alliance between progressive lawyers and the period's new national and transnational human rights organizations. The legal establishment was

[181] Emilio Mignone to Boris Pasik, June 3, 1994, Archivo Institucional del Centro de Estudios Legales y Sociales, Fondo Archivo Emilio Mignone, Corresp. Inst. Enviada 2.2.5.2; Mignone, *Derechos humanos y sociedad*; Keck and Sikkink, *Activists Beyond Borders*, 107; Guest, *Behind the Disappearances*, 118–119, 182–183.
[182] Política obrera, "Concretemos la unidad de acción por la vida y libertad de presos y secuestrados políticos y gremiales," August 6, 1979, CPM, Colección 10, Documento 14106.

among the sectors of society that rejected the universal rights arguments these allies advanced. Argentine jurists' largely consistent defense of the constitutional order in the past, however punctuated with silences and reversals, now gave way to rupture. Some of the country's most prominent legal minds now argued for an Argentine legal tradition based not on individual rights protections but on the legitimacy of deviation from those protections – through the Constitution and, increasingly, outside its framework – in the name of security, sovereignty, and national survival.

Silence would linger. The military government, in particular, clung to – and capitalized on – silence as the allegations against it mounted. As the next chapter will show, progressive lawyers and the country's new human rights movement would combine Argentina's liberal legal traditions and modern international human rights in an effort to force the government to answer its citizens, to hold the regime accountable for its clandestine crimes, and to construct a new form of justice for a new kind of democracy.

Chapter 6: Law's Reappearance: Habeas Corpus, International Human Rights, and the Path to Prosecution, 1977-81

"The disappearance of people turned out to be more than its inventors imagined. It has produced the capacity to create indomitable energy out of pain, the energy of dedication to the lives that remain… in the defense of human rights."[1]

-- Augusto Conte, Argentine human rights lawyer and the father of a son disappeared under the 1976-83 military dictatorship

The court official insisted that the file was to be treated like all the others. He demanded that the clerk do as he had always done before: type up a succinct denial to the habeas corpus petition. Don't ask questions. There had been thousands of petitions just like this one, describing a kidnapping by armed men in civilian dress followed by government silence, requesting information about the detentions. Police and military authorities claimed they had no knowledge of the whereabouts of the disappeared. This was, the official maintained, the end of the story. But the state's refusal to acknowledge the detentions could not quiet the victims or their advocates.[2]

In *Oficial 1˚*, performed in 1982 by an activist theater troupe in Buenos Aires, Argentine playwright Carlos Somigliana depicted this scene. As the court official rejected his young employee's pleas to investigate the habeas corpus writ in question, a closet door in the background opened. A cadaver – followed by another, and then another – fell to the floor, filling the theater with the sound of their impact. Behind these proceedings, Somigliana made clear, there were bodies. Decades after it was staged, one human rights activist (and the mother of a disappeared teenage son) explained why Somigliana's play moved her so profoundly: it asserted that the disappeared still retained rights at all.[3] This was a bleak setting in which to contemplate the return of the rule of law and the rebuilding of democracy. And yet, by 1985, Argentine courtrooms were a notable site not of obstruction but of innovation, the locus of a pioneering legal development that helped define the country's transition to democracy: the criminal prosecution of individual junta members for human rights violations.

With a focus on the years between 1977 and 1981, this chapter seeks to explain the legal influences behind Argentines' decision to prosecute former military government leaders for crimes including enforced disappearance. This puzzle has international relevance. Less than a year and a half after the country's reestablishment of popular rule, and following the operation of a truth commission, the Argentine "Trial of the Juntas" helped set off what political scientist Kathryn Sikkink has dubbed the "justice cascade," the worldwide rise in the number of human rights prosecutions that continues today.[4] Building on Sikkink's analysis, I approach this question by tracing Argentine lawyers'

[1] Néstor Vicente, *Augusto Conte: Padre de la Plaza* (Buenos Aires: Galerna, 2006), 50, quoting an uncited 1983 article from the magazine *El Porteño*.
[2] Carlos Somigliana, "Oficial 1˚," in *Teatro Completo, vol. 5* (Buenos Aires: Municipalidad de la Ciudad de Buenos Aires, 1988).
[3] Graciela Fernández Meijide, *La historia íntima de los derechos humanos en la Argentina (a Pablo)* (Buenos Aires: Editorial Sudamericana, 2009).
[4] Sikkink, *Justice Cascade*.

use of habeas corpus from inside their country – where they first applied the traditional Western legal mechanism to try to locate and liberate the disappeared – to the international advocacy arena, where they developed new functions for the "great writ." Following this trajectory, I seek the genesis of Argentine human rights lawyers' prosecutorial strategy in the mechanisms and conditions that shaped their early approaches to state-sponsored violence, criminality, and the courts.

The previous chapter set the stage for this analysis, demonstrating the ways that the novel international human rights interventions of the mid to late 1970s interacted with domestic Argentine rights politics to produce competing understandings of, and attitudes toward, human rights among the Argentine public. International human rights entered general civic debate as a mobilizing and contentious force that raised questions about the relationship of Argentines to their government and the place of Argentina in the world. Now I follow currents from the domestic realm to the international arena. I examine Argentine legal fights and their international projections that, I contend, constituted a vital strand of those nascent human rights debates. Through these legal battles, progressive lawyers developed understandings of justice and the judiciary at a time when the Argentine population was beginning to consider openly the end of military rule and the creation of an alternative.

As the existing literature makes clear, the military's disgraceful defeat in the 1982 Malvinas/Falklands War was critical in undermining the military government's legitimacy, expediting its exit from power, and eroding the armed forces' political influence.[5] However, the regime's military failure did not determine the form justice would take once constitutional order was restored, even though, as Kathryn Sikkink argues, it helped make criminal prosecutions possible.[6] Rather, Argentines, and Argentine human rights lawyers specifically, were grappling with the military government's rule-of-law failures and planning for the turnover of power before the junta's calamitous occupation of the symbolically important islands.[7] This was especially the case by 1981, a transformative year when the country entered a deep financial crisis and discontent with the regime grew across the political spectrum. By then, progressive lawyers had been battling the dictatorship for years. Along the way, they developed alternatives to the regime's notion of law and order.

With the legal establishment having largely ceded the territory of rights advocacy to their more progressive counterparts (Chapter 5), the nascent cadre of human rights lawyers that formed in the late 1970s and early 1980s pushed traditional legal remedies to their limit inside Argentina, repurposed them abroad, and conceptualized new ways to use international law to break the silence around enforced disappearance and establish state responsibility. The reinstitution of democracy was still a few years away, but an important piece of its legal groundwork was taking shape, built by these progressive lawyers out of the remnants of habeas corpus and the legacy of the Nuremberg trials, and reminiscent of the symbolic trials staged by left-leaning activists since the 1960s (Chapter

[5] See Sikkink, *Justice Cascade*, 69; Rock, *Argentina 1516-1987,* 384.
[6] Sikkink, *Justice Cascade*, 69, 81.
[7] Argentina had longed claimed sovereignty over the Malvinas/Falklands Islands following Britain's seizure of the territory in the 19th century. The islands were a potent symbol of wounded Argentine sovereignty and a lightning rod for deep-rooted anti-imperialist sentiments.

3).[8] Liberal individual rights – namely the rights to physical integrity and liberty – that were traditionally valued in Argentina (even as they were violated) were, through the work of human rights lawyers, intertwined with criminal law and the prosecution of crimes against humanity.[9] For their part, more conservative lawyers and their nonlawyer allies backed counter proposals for addressing the period's political violence and making peace.

To reflect the multiple and changing sites of Argentine legal activism and to uncover the rights ideas advocates generated through their use, this chapter is divided into three sections. First, I examine the legal context for enforced disappearance. Then the discussion moves to two initiatives that advocates launched to locate the missing and, eventually, demand accountability. The first of these initiatives was a series of four collective habeas corpus petitions titled *Pérez de Smith, Ana M. y otros* that were filed (starting in 1977) on behalf of disappeared persons whose individual petitions had been denied.[10] The second initiative, whose analysis comprises the third section of the chapter, was the 1981 Paris Colloquium, where Argentine activists joined allies from around the world to promote an international treaty against enforced disappearance. While scholars have identified the importance of *Pérez de Smith* in Argentine human rights history, and some authors and advocates themselves have noted Argentines' role at the Paris Colloquium, these events have not been closely analyzed in the context of the development of national and international rights advocacy.[11]

Habeas Corpus, Enforced Disappearance, and the Role of Argentine Courts

Habeas corpus is a petition submitted to a court to challenge the legality of a deprivation of personal freedom. In theory, the process is straight-forward: the court demands that the government official involved indicate whether the person in question is in fact detained, by whom, and on what grounds. If granted, the writ of habeas corpus calls on the official to release the detainee. With roots in medieval England and a central place in many legal systems, habeas corpus in Argentina had been a traditional tool to protect – through *domestic* courts – individual rights against government abuses. Argentines came to view the writ as a constitutional guarantee, though it was not explicitly provided for in the text of the 1853 Constitution.[12]

As demonstrated in earlier chapters, the "great writ of liberty" was used for decades by Argentine criminal defense and labor lawyers, like those affiliated with Argentina's oldest human rights organization, the Liga Argentina por los Derechos del

[8] For extended analysis of the development of the Nuremberg trials' legacy in the late twentieth century, see Geoffrey Robertson, *Crimes Against Humanity: The Struggle for Global Justice*, 4th ed. (London: Penguin, 2012).
[9] See M. Cherif Bassiouni, *Crimes Against Humanity: Historical Evolution and Contemporary Application* (Cambridge, UK: Cambridge University Press, 2014).
[10] See Juan Méndez with Marjory Wentworthy, *Taking a Stand: The Evolution of Human Rights* (New York: Palgrave MacMillan, 2011), 56; Susana Cayuso, María Angélica Gelli, and Jonathan M. Miller, *Constitución y poder politico: Jurisprudencia de la Corte Suprema y técnicas para su interpretación, Tomo 1* (Buenos Aires: Editorial Astrea, 1995), 57.
[11] See Alejandro Carrió, *La Corte Suprema y su independencia* (Buenos Aires: ABELEDO-PERROT, 1996), 103-104; Crespo, "Legalidad y dictadura," 179; Enrique I. Groisman, *La Corte Suprema de Justicia durante la dictadura (1976-1983)* (Buenos Aires: Centro de Investigaciones Sociales sobre el Estado y la Administración, 1987), 23; Fernández Meijide, *La historia íntima*, 168-170.
[12] *Nunca más*, 387, 396-397.

Hombre (Argentine League for the Rights of Man).[13] It was a mechanism the political right also relied on. Members of the legal establishment, for example, recalled their frequent submissions of habeas corpus petitions when they were on the defensive during Juan Perón's early governments (1946-1955).[14] But by the early 1970s, habeas corpus in Argentina was under attack. Through restrictive laws and continued violence against lawyers, the military government and its supporters sought to discourage habeas petitions.[15] For its part, the judiciary transformed the writ of habeas corpus into "a mere formality," and "the judicial process became almost inoperative as a means of appeal."[16]

The military government preserved the form of habeas corpus and other key traditional legal institutions as it constructed a rambling framework of new decrees, acts, and laws to combat "subversion." But the regime's primary method for dealing with political opponents was decidedly extralegal, or rather, "antilegal."[17] It was also stubbornly resistant to courtroom challenges.[18] In their effort to prevent another May 1973-style prisoner release (see Chapter 3), and to evade the international outrage that followed Augusto Pinochet's public crackdown in neighboring Chile, Argentina's military leaders opted for a lethal and clandestine response to alleged subversives.[19] The practice that would be called forced or enforced disappearance, though not entirely new in Argentina, was employed by right-wing militants and security forces on an unprecedented scale starting in 1974 and especially following the 1976 coup.[20]

Enforced disappearance combines secret, state-sponsored detention and the removal of the victim from the protection of the law.[21] Though its modern origins are often traced to Nazi Germany,[22] during the counterinsurgency campaigns of the 1960s and 1970s, Latin American dictatorships transformed the practice into a region-wide strategy to destroy political opponents and spread terror.[23] There were significant challenges to combating, or even conceptualizing, this particular human rights violation.[24] Because the practice was hidden and denied by the governments responsible,

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[13] See Alfredo Villalba Welsh, *Tiempos de ira, tiempos de esperanza* (Buenos Aires: Rafael Cedeño Editor, 1984). See too Paul Halliday, *Habeas Corpus: From England to Empire* (Cambridge, MA: Harvard University Press, 2010).
[14] Colegio de Abogados de la Ciudad de Buenos Aires, *Memoria y balance 1979*, 10, Biblioteca del Colegio de Abogados de la Ciudad de Buenos Aires.
[15] When lawyers became an important target for enforced disappearance, human rights organizations created habeas corpus templates for family members of the victims to fill out and submit themselves. See Pellet Lastra, *Historia política de la Corte*, 376-377.
[16] *Nunca más*, 387.
[17] Pereira, *Political (In)justice*, Chapter 6; see too Crespo, "Legalidad y dictadura," 165.
[18] See Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998); International Commission of Jurists, "El problema de las personas desaparecidas."
[19] See Pereira, *Political (In)Justice*, page.
[20] See Gabriella Citroni and Tullio Scovazzi, "Recent Developments in International Law to Combat Enforced Disappearances," *Revista Internacional de Direito e Cidadania* 3 (2009): 90.
[21] The definition of enforced disappearance was an issue of considerable international legal debate starting in the early 1980s. Similar legal definitions of the crime are currently articulated in the Inter-American Convention on Forced Disappearance of Persons, the Rome Statute of the International Criminal Court, and the United Nations Convention for the Protection of All Persons from Enforced Disappearance. See generally Anne Marie Clark, *Diplomacy of Conscience: Amnesty International and Changing Human Rights Norms* (Princeton, NJ: Princeton University Press, 2001), 70-100; Susan McCrory, "The International Convention for the Protection of All Persons from Enforced Disappearance," *Human Rights Law Review* 7 (2007): 549-551.
[22] See Brian Finucane, "Enforced Disappearance as a Crime Under International Law: A Neglected Origin in the Laws of War," *Yale Journal of International Law* 35 (2010): 175.
[23] See Clark, *Diplomacy of Conscience*, 70-71.
[24] See Clark, *Diplomacy of Conscience*, 70; International Commission of Jurists, "El problema de las personas desaparecidas."

enforced disappearance evaded domestic legal mechanisms.

During its 1976 to 1983 dictatorship, Argentina stood out even against the dire conditions across the region, becoming the exemplar of enforced disappearance.[25] Over the seven years of dictatorship, as many as 30,000 people went missing, snatched from their homes, places of work, or the street by police or military personnel, never to be heard from again.[26] The victims were taken to clandestine detention centers where they were tortured and, in almost all cases, killed. The government denied involvement or knowledge of the missing people's whereabouts; victims' families and their lawyers filed thousands of habeas corpus petitions to no avail.[27]

The Argentine military government's use of extralegal violence coexisted with the traditional practice of political imprisonment traced in earlier chapters. Over the course of the dictatorship, the government held more than 8,000 political prisoners, with more than 5,000 of those prisoners detained by the National Executive after the March 24, 1976 coup.[28] In a report lawyers for the Centro de Estudios Legales y Sociales (CELS) prepared for the Paris Colloquium, the authors would describe the regime's clandestine system of repression as running "parallel" to the regime's public, legalistic antisubversion structures.[29] But the two forms of repression at times intersected. For one thing, many political prisoners subsequently joined the ranks of the disappeared once officially freed.[30] Legal responses to acknowledged National Executive detentions and disappearances were also linked; advocates' habeas corpus challenges on behalf of political prisoners exposed the state of Argentine rights protections for the disappeared as well.[31]

As was the case under previous governments, both de facto and democratically elected, the 1976-1983 military government justified political detentions with the invocation of the National Constitution's Article 23 emergency powers, having kept in place the state of emergency President Isabel Perón declared late in 1974.[32] And as in the past, lawyers used the habeas corpus petition to test the legality of Article 23 arrests. The venues for these challenges were limited. The juntas employed a combination of federal courts, military tribunals, and discretionary executive powers to repress "subversion" through legalistic means.[33] While military tribunals provided a hearing for the accused, they barred the intervention of civilian lawyers.[34] As for the civilian judicial system, advocates had occasional success before certain lower courts.[35] This is a key point, as it

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[25] See Clark, *Diplomacy of Conscience*, 70.

[26] Estimates of the number of disappeared range from 9,000 to 30,000. See John Dinges, *The Condor Years: How Pinochet and His Allies Brought Terrorism to Three Continents* (New York: New Press, 2004), 139–140; Brysk, *Politics of Human Rights*, 36–40.

[27] *Nunca Más*, 396.

[28] Pellet Lastra, *Historia política de la Corte*, 376-377; Fernández Meijide, *La historia íntima*, 149.

[29] Vicente, *Augusto Conte*, 64

[30] *Nunca más*, 404.

[31] See Brysk, *Politics of Human Rights*, 1, 85.

[32] The juntas also used "actas institutionales," which had no foundation in the Constitution. See Groisman, *La Corte Suprema,*15, 16n8.

[33] OAS, *Report on the Situation of Human Rights in Argentina*, Chapter IV, "The Right to Liberty," "B. Preventive detentions at the disposal of the Executive (Poder Ejecutivo Nacional)."

[34] OAS, *Report on the Situation of Human Rights in Argentina*, Chapter IV, "The Right to Liberty," "B. Preventive detentions at the disposal of the Executive (Poder Ejecutivo Nacional).

[35] See Groisman, *La Corte Suprema*, 8. Sala I of the Cámara Nacional de Apelaciones en lo Criminal y Correctional Federal, in particular, received press coverage for its reversal of habeas corpus denials. See for instance Nelson Domínguez, *La Opinión*, October 25, 1978, SM 2424, Subfondo documental Secretaría de Medios—Departamento

suggests the outer limits of the military government's power in the legal realm, and some assertions of judicial independence. But for at least some Argentines – and despite the fact that its justices were handpicked by the military government – the Supreme Court was "the only means to foster hope of redress for the [period's] daily injustices."[36]

Especially following the implementation in May 1976 of Law 21.312 (originally decreed just before the coup, in February 1976), the Supreme Court was positioned as the country's arbiter of personal freedom. The law provided that National Executive prisoners whose habeas corpus petitions were granted by lower courts would remain detained while the military government appealed, as it inevitably did, all the way to the highest court.[37] One product of the resulting Supreme Court proceedings was that habeas corpus was discussed and debated in national newspapers throughout the dictatorship (as it had been during the year running up to the coup), with editorial boards often supporting strong habeas corpus protections as fundamental to Argentine rule of law. A constellation of Supreme Court decisions provided only a minimal check on executive action and paltry human results. Between 1976 and 1981, only two people were released, and not unconditionally. One of the liberated prisoners was newspaper publisher Jacobo Timerman, whose roles as a human rights commentator, victim, and advocate are highlighted in the previous chapter.[38] Despite their limited reach, the issues raised by these cases contributed to mounting questions about the rule of law, and some tentative answers.[39]

One of the issues examined in political prisoner cases was that of the constitutional limits on the president's emergency powers, specifically the ability of National Executive detainees, under Article 23, to exercise their "right of option" and leave the country. The military government dismantled a lauded, traditional protection for dissidents – a "palliative" against presidential emergency powers[40] – when, in an Institutional Act decreed on the day of the coup (March 24, 1976), and then, five days later, in Law 21.275, the regime suspended the right of option.[41] Lawyers were unsuccessful in their bid before the Supreme Court to establish the incompatibility of junta dictates with the National Constitution.[42] But the Constitution nonetheless remained in force, providing a foothold for rights advocates to insist that National Executive detainees be given the chance to depart Argentina.

A flurry of newspaper articles broadcasted the constitutional and institutional questions posed by the suspension of the right of option. In 1976, press coverage of a particularly controversial habeas corpus case, *Ercoli*, included a lawyer's arguments on

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Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria. In 1981, the military government would further restrict access to habeas corpus proceedings through Law 22.283, which made the Federal Criminal Court the only tribunal empowered to receive habeas corpus petitions.

[36] See Groisman, *La corte suprema*, 15, 41.

[37] *Nunca más*, 397.

[38] *Nunca más*, 396-397.

[39] Though their impact was limited, the *Lokman, Timerman, Zamorano,* and *Ercoli* habeas corpus decisions have been called "leading human rights cases." Gretchen Helmke, *Courts under Constraints: Judges, Generals, and Presidents in Argentina* (Cambridge, UK: Cambridge University Press, 2005), 300n23. For two distinct takes on the operation of the Supreme Court during the dictatorship, see Pellet Lastra, *La Historia Política de la Corte Suprema* and Groisman, *La Corte Suprema*: Pellet Lastra emphasizes the Court's doctrinal advances, while Groisman stresses the limited human results of the Court's decisions.

[40] Carrió, *La Corte Suprema*, 96.

[41] See *Nunca más*, 410.

[42] *Lokman*, *Fallos*, 299: 142.

behalf of his client, a young woman whom the government detained without process and denied the right to leave the country. As documented in one newspaper article, the lawyer directed his comments to Justice César Black, a former judge of the 1971-1973 antisubversion tribunal (Chapter 3). Even assuming that a de facto government had the power to suspend individual rights due to the threat of subversion, the lawyer insisted, such power "could not be …interpreted so broadly as to imply the outright dismantling of individual liberty. If this were the case, we would no longer be living under the rule of law but rather under a regressive dictatorship that would place the country on the wrong side of history and [go against] its democratic tradition."[43]

After the Supreme Court issued its ruling in *Ercoli*, *La Opinión* published commentary on the case in a piece titled "The Debate Transcends the Constitutional Sphere." The author argued to the Argentine people that the *Ercoli* decision – holding that the military government could indeed suspend the right of option as long as the suspension was "temporary," and thus allowing for the continued detention of the petitioner and others like her – extended far beyond a single individual's liberty.[44] It implicated, the writer explained, "the problem of the legal nature of the country's current institutional order, in the extent of limitations on individual rights justified by the fight against guerrilla groups, and in the survival of some fundamental principles of the Argentine juridical framework, like the division and independence of the branches of government, especially the judicial branch."[45] So while, as Gretchen Helmke has shown, the Argentine Supreme Court would begin to issue more habeas corpus decisions against the government as the dictatorship began to lose its grip on power in 1981, earlier decisions in favor of the regime formed part of a broader public discussion that was developing alongside and in reaction to judicial behavior. It was a discussion that cast doubt on the de facto regime's compatibility with Argentine governance and rights traditions.[46]

Political prisoners' habeas corpus cases like *Ercoli* raised a fundamental question about Argentina's constitutional order that would grow as the transition to democracy neared: what was the judiciary's role in adjudicating executive action? Rights advocates insisted that courts had a basic responsibility: they were obligated to judge the "reasonableness" of executive actions taken in the exercise of emergency powers. The Supreme Court eventually agreed. In a 1977 case involving the detention of a prominent lawyer from the Argentine League for the Rights of Man, Carlos Zamorano (imprisoned since 1974), the Court held that while the declaration of a state of siege was a political act outside the sphere of judicial competence, the judiciary was responsible for assessing the reasonableness of the implementation of such states of siege.[47] The *Zamorano* decision would be cited repeatedly in subsequent cases, national press coverage of them, and international advocacy including the Inter-American Commission on Human Rights 1980 Argentina report; the question of reasonableness was an enduring touchstone for

[43] "Aduce el fiscal que la Junta Militar ha sumido facultades de excepción," n.d., [no newspaper name indicated], SM 2424, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.
[44] See *Nunca más*, 411.
[45] Nelson Domínguez, "El debate trasciende al ámbito constitucional," *La Opinión*, [1976], SM 2424, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.
[46] Helmke, *Courts under Constraints*, 128.
[47] *Zamorano*, *Fallos*, 298: 441.

advocates seeking to circumscribe executive emergency powers.[48]

But Carlos Zamorano remained in prison. The Supreme Court, having conducted its "reasonableness" analysis, was satisfied by the military regime's brief assertion of Zamorano's alleged "subversive" activities. Rights advocates criticized the Court's failure to translate promising doctrine into tangible, human results. In an Argentine League pamphlet, Zamorano's lawyer – the prominent and prolific jurist Eduardo Barcesat – published a letter to his client: "Your name is now the name of the legal doctrine of liberty… It is just that you remain behind bars because the court did not know how to (or could not?) apply that doctrine to you."[49] These were the conditions facing advocates who challenged political detentions inside Argentina. The same would confront advocates in their efforts to address disappearances: a Supreme Court unwilling or unable to check executive branch abuses in a meaningful way.

Despite their shared legal tradition of habeas corpus, Argentines were divided on the appropriate legal response to disappearances. Were the disappearances misdeeds to be investigated – or were they the inevitable, and inevitably murky, consequences of combat? Did they require a judge's remedy or a collective decision to accept the "excesses" of war and move on? The lawyers' groups discussed here were split on these questions. The multiple new, broad-based human rights organizations that formed in the mid-1970s (Chapter 5), and the progressive lawyers who joined and helped lead them, made the submission of habeas petitions an important part of their work on behalf of the disappeared, using the process first to demand investigations and then accountability.[50] For them, then, disappearances were indeed misdeeds to be investigated and remedied in the judicial system.

Argentina's legal establishment took a different and more ambivalent approach. As discussed in the previous chapter, the Lawyers' College of Buenos Aires insisted that the state of habeas corpus in Argentina was proof of the legal system's successful operation. The college valued the mechanism of habeas corpus (and its utility under Juan Perón's 1946-1955 governments in particular) and its symbolic value. At the same time, the Buenos Aires college presented disappearances not as a human rights issue to be adjudicated but as an unfortunate product of war and obstacle to the country's normalization and reconciliation. In the group's 1979 annual report, its leadership made the point: "We long for the end of the question of the 'disappeared,' [that] ghostly apparition… that complicates the return to peace we all desire."[51]

This thinking produced a contentious legal measure. The Lawyers' College of the City of Buenos Aires proposed a version of what would become the military government's 1979 Ley de Fallecimiento por Desaparición (Law on Presumption of Death because of Disappearance), a measure designed to declare disappeared people legally deceased.[52] The law also would have provided pensions to surviving family

[48] See for instance Nelson Domínguez, *La Opinión*, October 25, 1978, SM 2424, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria; OAS, *Report on the Situation of Human Rights in Argentina*, Chapter IV.

[49] Liga Argentina por los Derechos del Hombre, "4 años Carlos Zamorano: 'Solamente falta, y nada menos, la LIBERTAD!" n.d., Archivo Histórico de the Liga Argentina por los Derechos Humanos.

[50] Eduardo Barcesat, "Defensa legal de los derechos de la vida y la libertad personal en el régimen militar argentina," in *Represión política y defensa de los derechos humanos*, ed. Hugo Frühling (Santiago, Chile: Academia de Humanismo, 1985), 148.

[51] Colegio de Abogados de la Ciudad de Buenos Aires, *Memoria y balance 1979*, 12.

[52] Ley 22.068. Colegio de Abogados de la Ciudad de Buenos Aires, *Memoria y balance 1979*, 12.

members if it were not for human rights groups' successful legal challenges that quashed it.[53] According to the human rights lawyers who led these challenges, the law undermined habeas corpus protection of the rights to life and liberty.[54] The Buenos Aires lawyers' college articulated a rival rights argument, explaining that the Presumption of Death Law would have allowed surviving family members to exercise "the rights the law affords in terms of parental custody, property, and the reconstitution of the family."[55] The gulf between these two views would remain while, at the same time, both ends of the political spectrum lost faith in the regime's capacity to govern.

In 1981, with the Argentine economy deep in crisis, powerful sectors of Argentine society expressed their discontent with the military government.[56] Business organizations published statements against the government's economic policies.[57] The Church too broke its prolonged silence about state-sponsored violence and issued a statement critical of repression.[58] The legal profession also experienced this shift, its diverse members centering their comments on the rule of law. The country's legal establishment – the Federation of Argentine Lawyers' Colleges and the Lawyers' College of the City of Buenos Aires – and the more progressive Lawyers' Association of Buenos Aires called for the reestablishment of constitutional rule.[59] In the case of the Buenos Aires lawyers' college, a "gradual" transition was advocated; the group warned against replicating the "political catastrophe" of 1973 (see Chapter 4). Other Argentines too began to speak openly about a transition to democracy. Most notably, the country's major political parties came together in 1981, as the "Multipartidaria," to develop a plan for the reestablishment of representative government and the rule of law.[60] The demand for information about the disappeared was part of the Multipartidaria's program. But – in the run-up to what one scholar has identified as the breakthrough year for human rights in Argentina – a more confrontational tack was developing through the work of the country's human rights lawyers, as the *Pérez de Smith* case and Paris Colloquium demonstrate.[61]

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[53] Brysk, *Politics of Human Rights*, 57. The proposed law was also one of the topics human rights groups addressed internationally, as in their communications with the Inter-American Commission on Human Rights during the commission's visit.

[54] "Promueve, demanda, piden declaración de inconstitucionalidad de la norma 22068. Medida de no innovar. Reserva del caso federal," November 9, 1979, Archivo Documental del Asamblea Permanente de los Derechos Humanos, B7.338, 4.

[55] Colegio de Abogados de la Ciudad de Buenos Aires, *Memoria y balance 1979*, 12.

[56] Brysk, *Politics of Human Rights*, 58-59.

[57] Brysk, *Politics of Human Rights*, 59.

[58] Brysk, *Politics of Human Rights*, 59.

[59] Federación Argentina de Colegios de Abogados, "Declaración de San Isidro," August 15, 1981, Archivo Institucional del Centro de Estudios Legales y Sociales, Otras organizaciones Caja 2, FACA – Federación Argentina de Colegios de Abogados; Asociación de Abogados de Buenos Aires, "Declaración de la Asociación de Abogados de Buenos Aires sobre la situación institucional de la República de Argentina," August 12, 1981; Colegio de Abogados de la Ciudad de Buenos Aires, *Memoria y balance 1981*; Leiva, *Historia del Colegio de Abogados de la Ciudad de Buenos Aires*, 85.

[60] Brysk, *Politics of Human Rights*, 59.

[61] Leis, *El movimiento por los derechos humanos*.

Peréz de Smith, Ana M. et al.

On April 11, 1977, a dozen family members and friends filed the first of the *Pérez de Smith* collective habeas corpus petitions – *Pérez de Smith, Ana María y otros s/ efectiva privación de justicia* – on behalf of their missing loved ones and more than four hundred other disappeared people. In subsequent *Pérez de Smith* petitions, the number of petitioners and intended beneficiaries would grow to the thousands, though many relatives were too terrified to come forward.[62] The named petitioner, Ana María Pérez de Smith, was married to a union leader who had been kidnapped soon after leaving their house one day in 1977.[63] A neighbor reported that he saw a group of armed men force Mr. Smith into a Ford Falcon ten minutes from home. Mr. Smith's wife never heard from him again. All of the writs of habeas corpus that Pérez de Smith and her fellow petitioners filed for their missing loved ones garnered the same response of police and military officials: there were no records of anyone detained by that name. And yet, the circumstances under which the victims were seized suggested that some public authority was involved. The tragedies represented by these cases played out in thousands of Argentine households.

The lawyers behind *Pérez de Smith* represented Argentina's distinct human rights groups. Across their differences, these organizations were linked by common members and the common goal of finding the disappeared. According to one human rights activist, the case was "the first attempt to compile information about the disappearances and take coordinated action … with… victims' family members."[64] In their use of the courts, human rights organizations were also connected by a common reliance on liberal legal tools, and habeas corpus in particular. Some of the lawyers who led the *Pérez de Smith* litigation were affiliated with the Argentine League for the Rights of Man, founded in 1937, and some of the groups created in reaction to the right-wing violence of the mid-1970s: the Asamblea Permanente por los Derechos Humanos (APDH, Permanent Assembly for Human Rights, 1975), which led the case; the Movimiento Ecuménico por los Derechos Humanos (MEDH, Ecumenical Movement for Human Rights, 1976); and CELS (Centro de Estudios Legales y Sociales,1980).[65]

The proliferation of Argentine human rights groups in the mid to late 1970s was not just a reflection of the increase in human rights abuses or the failure of traditional institutions like the Church, though these were major catalysts.[66] Rather, as scholars have observed, advocates founded some of the most active organizations in opposition to existing human rights groups, whose approaches they criticized.[67] Among the civil libertarian organizations – the Argentine League for the Rights of Man, APDH, and

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[62] Meijide, *La historia íntima*, 43.

[63] See Ana María Pérez de Smith's July 31, 1985 testimony at the "Trial of the Juntas," in *Diario del Juicio*, no. 28, December 3, 1985, 513-515, available at http://www.memoriaabierta.org.ar/juicioalasjuntas/pdfs/diariodeljuicio/el-diario-del-juicio-28.pdf.

[6464] Meijide, *La historia íntima*, 43.

[65] Brysk, *Politics of Human Rights*, 7, 48; Mignone, *Derechos humanos y sociedad*, 105.

[66] For a succinct discussion of the failure of traditional political and cultural institutions to address state violence under the 1976-1983 dictatorship, see Brysk, *Politics of Human Rights*, 42-45.

[67] Natalia Casola, "Cuando lo 'nuevo' es tan 'viejo' como 'nuevo' lo 'viejo.' El movimiento de derechos humanos durante la última dictadura militar en Argentina. El papel del Partido Comunista de Argentina y la Liga Argentina por los Derechos del Hombre (1976-1983)," *História Oral* 13, no. 2 (July-December 2010): 137-155, 139, citing Raúl Vega, *Las organizaciones de derechos humanos* (Buenos Aires: CEAL, 1985), 22.

CELS[68] – these differences were linked to the questions of state responsibility and accountability.[69] Underlying advocates' diverging approaches to the military dictatorship were their conflicting positions on Communist rights advocacy and guerrilla violence. As discussed in earlier chapters, the Argentine League has always been politically pluralistic in its leadership and formally independent of party ties. But the group began at the initiative of the country's Communist Party and "even though the Argentine League did not have recognized ties with the Communist Party of Argentina, [the party's] influence was decisive."[70] Historian Natalia Casola, like some advocates at the time, has attributed the Argentine League's reticence to denounce disappearances explicitly as *state* terrorism during the dictatorship to the Communist Party's influence on the Argentine League, as the party – in line with Soviet policy – supported (as a "lesser evil") junta members it considered to be the more moderate faction of the military.[71] The Communist Party and the Argentine League both condemned leftist and radical Peronist guerrilla violence. Meanwhile, the military government continued to justify repression and so-called excesses of war by invoking the supposed ongoing threat posed by those guerrilla forces.[72] The Argentine League's association with Communist party politics was an impetus behind the creation of the self-consciously multiparty Permanent Assembly for Human Rights (APDH).[73] In turn, the perception of the Permanent Assembly's caution toward the military government and its measured tone – with the organization making a point to denounce violence on the left *and* right – prompted some APDH members, along with members of Mothers de Plaza de Mayo, to start what they intended to be a more aggressive organization and one that would develop a case for the state's responsibility for abuses, CELS.[74]

Older forms of domestic rights advocacy premised on solidarity with recognized political prisoners broke down during the dictatorship not only because of the military government's reliance on clandestine repression, but also because of the frequent distance between the politics of new advocates – including mothers and fathers belonging to a very different generation of political actors (and counting among their ranks the previously apolitical) – and the political orientations of the victims.[75] The Argentine League continued to emphasize its decades-old role as a defender of political prisoners, and CELS also advocated for political prisoners. But the postures of Argentina's human rights groups were, to an important degree, defined by their stance towards the disappeared, whom they often presented as depoliticized victims.[76]

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[68] Alison Brysk, in her typology of Argentina's human rights groups, uses the label "civil libertarian," along with "family-based" and "religious." Brysk, *Politics of Human Rights*, 45.

[69] See Brysk, *Politics of Human Rights*, 45. As Brysk explains, new groups also formed for reasons including religious difference, as in the case of the Movimiento Judío por los Derechos Humanos (Jewish Movement for Human Rights). Brysk, *Politics of Human Rights*, 51.

[70] Casola, "Cuando lo 'nuevo' es tan 'viejo,'" 143.

[71] Casola, "Cuando lo 'nuevo' es tan 'viejo,'" 145.

[72] By 1979, Argentina's guerrilla groups had suffered military defeat.

[73] Brysk, *Politics of Human Rights*, 46.

[74] Brysk, *Politics of Human Rights*, 47; Mignone, *Derechos humanos y sociedad*, 105-106; The Mothers of Plaza de Mayo (1977) too were created in reaction to existing organizations; their founders were put off by a sense that groups like the Argentine League politicized the search for the disappeared, and at least some did not want to be associated with Communism or subversion. Casola, "Cuando lo 'nuevo' es tan 'viejo,'" 148.

[75] While some of the military government's victims had no ties to radical politics, many others were involved with the period's leftist and radical Peronist armed groups or aligned with New Left ideologies.

[76] See Crenzel, *Memory of the Argentina Disappearances*, 26-28.

Alberto Pedroncini drafted the first *Pérez de Smith* petition.[77] A long-time rights advocate, Pedroncini was a prominent member of the Argentine League for the Rights of Man with experience too on the Argentine Communist Party's National Legal Committee.[78] He was also a leading member of the Permanent Assembly for Human Rights.[79] Other lawyers involved in the case included Emilio Mignone, whose daughter was among the disappeared, and Augusto Conte, who lost a son. Mignone and Conte – simultaneously lawyers and victims – were also members of the Permanent Assembly.[80] They would become founding members of CELS, which was formed after *Pérez de Smith* was filed and as the litigation stretched on. The creators of CELS strove to complement the work being done by existing groups like the Permanent Assembly by, among other things, pursuing individual cases ("leading cases") aimed at developing criminal cases against human rights abusers. In their language – using the term "detained-disappeared" rather than the more ambiguous "disappeared" – CELS members sought to expose those responsible for enforced disappearances.[81] Since detentions are state actions, this shift in vocabulary constituted an assertion of government involvement.

The *Pérez de Smith* cases progressed in tandem with the increasingly confrontational strategies of human rights groups toward the military regime. Together, the groups' lawyers would use the cases to test the judiciary's ability to serve as a human rights venue, mobilize people affected by enforced disappearance, and provide evidence of criminal wrongdoing to the Argentine public and international community. At the most fundamental level, the *Pérez de Smith* habeas corpus petitions questioned the role of the courts, and the Supreme Court in particular, in the Argentine system of government.

Importantly, the *Pérez de Smith* lawyers took their claim *directly* to the country's highest court (rather than before lower courts, as was the convention), thereby stretching the tribunal's original jurisdiction. The lawyers based their Supreme Court filing on a divorce case from the mid-1950s, *Cavura de Vlasov*, which provided the right to a sui generis remedy before the Court (i.e., a remedy outside the Court's traditional jurisdiction) when to do otherwise would create an effective denial of justice.[82] The *Pérez de Smith* lawyers alleged an analogous denial of justice based on the lower courts' failure to properly process habeas corpus petitions.[83] They argued that the disappearance of the

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[77] Meijide, *La historia íntima*, 44.

[78] See mention of Alberto Pedroncini's work as an Argentine League member in Natalia Casola, "Apuntes para una historia política de los derechos humanos en Argentina: El caso del Partido Comunista y la Liga Argentina por los Derechos del Hombre durante la última dictadura militar," in *Actas del IV Seminario Internacional Políticas de la Memoria*, Buenos Aires, 2011, http://conti.derhuman.jus.gov.ar/2011/10/mesa_1/casola_mesa_1.pdf; "Frente militar interno y represión política e ideológica: Fundamentos reales del proyecto de le de 'defensa de la democracia,'" July 21, 1961, 71, Archivo Histórico del Partido Comunista de Argentina, Comisión Jurídica Nacional del PC (Communist Party Juridical Commission document signed by Alberto Pedroncini and others).

[79] Memoria Abierta, "Testimonio de Alberto Pedroncini," http://www.memoriaabierta.org.ar/cgi-bin/memoria/wxis?IsisScript=expando.xis&base=oral&popup=&format=expando&expresion=000271.

[80] Virginia Vecchioli in particular has highlighted the dual identity of Argentina's early human rights lawyers as victims and advocates. See for instance Virginia Vecchioli, "Expertise jurídica y capital militante: reconversiones de recursos escolares, morales y políticos entre los abogados de derechos humanos en la Argentina," *Pro-Posições, Campinas* 20, no. 2 (May-August 2009): 41-57, 45, 48.

[81] Mignone, *Derechos humanos y sociedad*, 60n32, 106; Vicente, *Augusto Conte*, 59-63.

[82] *Cavura de Vlasov*, *Fallos*, 246: 87. Genaro R. Carrió, "Sobre la competencia de la Suprema Corte Argentina y su necesaria y urgente modificación," *Revista del Centro de Estudio Constitucionales*, no. 5 (January – March 1990): 4-43, 29; see Laura María Giosa and Guillermina Zabalza, "Consideraciones sobre la jurisdicción internacional en materia de separación personal y divorcio vincular," *Revista Electrónica Cartapacio de Derecho* 10 (2006): 5-11.

[83] Carrió, "Sobre la competencia," 30.

beneficiaries robbed them of the protection of the court, and that government officials' conduct produced the denial of justice in question.[84]

The lawyers defined the term "disappearance" exceedingly carefully. They did not accuse the military government directly of responsibility for the disappearances themselves, but they provided the Court all the information it needed to put together the pieces. In their petition, they explained that the armed groups that "apprehended" the victims were "*prima facie*" and almost always self-identified as acting on behalf of "some form of public authority," and that the relevant authorities (the National Executive and its subsidiary agencies) inevitably responded to habeas corpus actions by denying that a detention had taken place.[85] But as one lawyer involved in the case noted, lawyers' persistent use of habeas corpus – a petition that challenges state action by definition – was itself an insistence that government officials were involved in the disappearances.[86]

The plaintiffs' lawyers rooted their argument in principles of proper governance, citing one of the military junta's own founding documents.[87] They noted that the state's most fundamental duty was to protect individuals' right to life. If the state proved itself incapable of fulfilling this obligation, and with the national legislature shut down, the federal court system had a duty to act. In making these arguments, the *Pérez de Smith* lawyers emphasized the desirability of an internal solution to rights violations in Argentina: "We believe that Argentine society can and should find within itself the means to overcome any emergency that might undermine fundamental rights."[88] According to this analysis, the Argentine court system could serve as the primary protector of Argentines' rights. Turning the concept of the state of exception on its head, the petitioners argued that the violations of the right to life at issue constituted an exceptional state of affairs that required an expansion of the judicial branch's role. The judiciary should be understood to possess inherent powers, they insisted.[89] These powers – previously ascribed only to the political branches – would in this case allow the Supreme Court to intervene and redress a denial of justice despite the lack of legislation expressly granting it jurisdiction.

Less than two weeks after the first *Pérez de Smith* petition was filed, and over the course of the next three years, the Supreme Court responded to the *Pérez de Smith* cases with decisions that would inspire and frustrate advocates.[90] Because of the continuing

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[84] Carrió, "Sobre la competencia," 30.
[85] See Mignone, *Derechos humanos y sociedad*, 59n32-60n32.
[86] Barcesat, "Defensa legal," 158.
[87] "Copia del escrito elevado a la Corte Suprema de Justicia de la Nación el día lunes 11 de abril de 1977 a las 12.40 hs," April 11, 1977, Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1977-1983) 2, HC Presentaciones/Comunicados.
[88] "Copia del escrito elevado a la Corte Suprema de Justicia de la Nación el día lunes 11 de abril de 1977 a las 12.40 hs," April 11, 1977, Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1977-1983) 2, HC Presentaciones/Comunicados.
[89] "Copia del escrito elevado a la Corte Suprema de Justicia de la Nación el día lunes 11 de abril de 1977 a las 12.40 hs," April 11, 1977, Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1977-1983) 2, HC Presentaciones/Comunicados.
[90] *Pérez de Smith*, *Fallos*, 297:338 (April 18, 1977); *Fallos*, 300:832 (July 20, 1978); *Fallos*, 300:1282 (December 21, 1978); *Fallos*, 302:1680 (November 8, 1979; December 26, 1980). Secretaría de Jurisprudencia de la Corte Suprema de Justicia de la Nación (Argentina), *"Hábeas Corpus,"* (Buenos Aires: Corte Suprema de Justicia de la Nación, 2013), 4, 96-106. See also Germán J. Bidart Campos, "Los poderes implícitos del Corte Suprema y los impedimentos Ad Extra para la administración de justicia," *El Derecho*, March 13, 1979, Archivo Institucional del Centro de Estudios Legales y Sociales, Documentación y denuncia del accionar del terrorismo de estado, Metodología represiva legislación 4, Legislación dictadura.

attention they received from advocates and commentators, the focus here will be on Court's decisions issued on April 18, 1977 and December 21, 1978. The Court denied habeas corpus relief, concluding that it lacked jurisdiction because the facts were not analogous to those in *Cavura de Vlasov*.[91] But the Court, its members no doubt fearing future accusations of passivity, did not throw out the case.[92]

In its first *Pérez de Smith* decision, issued on April 18, 1977, the Court asserted its proper role in Argentine government. Basing its reasoning on this fundamental institutional question rather than finer points of doctrine, the Court noted that its jurisprudence established the principle that during periods of "maximum danger" due to "subversive or insurrectionary activities," the Supreme Court was "the superior organ of the Argentine judicial system…." As the "final interpreter of the Constitution," the Supreme Court "should indicate the precise limits of the exercise" of government power. Then the justices went further. Addressing the National Executive and citing the balance of powers in the function of the rule of law, the Court invoked its "implicit powers" to protect the rights and guarantees of the Constitution; it called on the government to investigate disappearances. If improperly rejected habeas corpus petitions were plentiful, the Court concluded (in what must have been an encouraging nudge to advocates), they would amount to an effective denial of justice, not for any failing of the lower courts, but because judges under such circumstances did not have the data they needed to provide a resolution.[93] As one of the lawyers in the case noted later, the Supreme Court's decision constituted an acknowledgement (albeit a conditional and cautiously worded one) that the disappearances were happening at a time of great uncertainty and generalized silence.[94]

Despite the hope it inspired and the media attention it attracted, the Court's call to the junta to investigate had little immediate impact on the status of the disappeared.[95] Advocates did not hide their growing frustration. A year after their first filing, the lawyers in the case submitted another petition to the Supreme Court describing an utter lack of progress. Their administrative appeals to the National Executive had yielded no response. The lawyers returned to the Supreme Court not simply to repeat their charge that the plaintiffs had been deprived of justice, but to denounce the fact that, without any jurisdiction in which to assert their rights, the plaintiffs had been deprived of nothing less than their condition as members of civil society. They argued that the Court must not deem itself incompetent but should instead demand concrete action of the National Executive: reports on the government's progress in investigating disappearances and information on the outcomes of administrative procedures pursued on behalf of the disappeared.[96] The Court declined. Circumscribing its power to check the executive, the Court concluded that such a demand would amount to a violation of the constitutional separation of powers.[97] For their part, advocates continued to demand information about

[91] Carrió, "Sobre la competencia," 31.
[92] Pellet Lastra, *Historia política de la Corte*, 384.
[93] "Originario Perez de Smith, Ana María y otros s/ efectiva privación de justicia," April 18, 1977, Archivo Documental del Asamblea Permanente de los Derechos Humanos, P. 327-XVII.
[94] Mignone, *Derechos humanos y sociedad*, 105.
[95] Commenting on media coverage of *Pérez de Smith* more broadly, Juan Méndez notes that "Although the courts were slow to act, the four [*Pérez de Smith*] cases produced evidence of the pattern of disappearance, and CELS managed to get the reluctant major dailies to publish that information." Méndez, *Taking a Stand*, 56.
[96] "Petición a la Corte Suprema de Justicia sobre el Derecho a la Jurisdicción y la Protección de La Vida," Archivo Documental del Asamblea Permanente de los Derechos Humanos, May 17, 1978, B7.5 APDH, 2451-68.
[97] *Fallos*, 300: 832.

the disappeared before the courts and in direct communications with the military government.[98]

Some human rights activists hardened their positions. They cast doubt on the Court's motives and, at least in their advocacy aimed abroad, made clear whom they believed responsible for the country's disappearances. In its November 1978 newsletter, the Centro de Documentación e Información sobre Derechos Humanos en Argentina, (CEDIHA, Center for Human Rights Documentation and Information in Argentina) – a group whose publications found their way to the U.S. State Department – described the Court's refusal to demand information from the National Executive as evidence that the Supreme Court had in fact validated ("ha convalidado") the executive branch's clandestine repression.[99]

While Argentina's highest court would not challenge the executive branch's handling of individual cases, it nonetheless persisted in asserting its institutional role in safeguarding individual rights. More than a year and a half after its first *Pérez de Smith* decision, the Court's legal analysis did not change substantially, but its tone did. In its second major *Pérez de Smith* decision, released on December 21, 1978, the Court still denied its own competence to intervene in the particular petitions before it (rejecting once again the applicability of the *Cavura de Vlasov* precedent). By this time, the *Pérez de Smith* lawyers had submitted three habeas corpus petitions to the Supreme Court.[100] They asked the Court to use its now acknowledged implicit powers to demand that the National Executive produce a report on the status of particular disappeared people. The Court declined.

But, in unconditional and more urgent language than before, the Court staked out a place for itself in the defense of fundamental individual rights, and it bolstered the evidence of disappearances.[101] The Court noted that it had been presented with "abundant" evidence from lower tribunals of cases in which judges rejected habeas corpus petitions because relevant government authorities denied any record of the disappeared individuals. The court was bolder than before in its characterization of this situation: this was indeed a denial of justice. The tentative tenor of the earlier decision had given way. An escape from this legal black hole would be possible only if the executive branch investigated the whereabouts of the many missing bodies at the center of the case so that judges could do their job. It was the Supreme Court's role to push the executive branch in this direction. At stake, noted the Court, were fundamental rights – a valuable heritage of the public good – that deserved inviolable guarantees. The rule of law could not exist through the mere existence of general normative structures; it required law's certain application in the community and individuals' access to the courts.[102]

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[98] "Presentación ante la Corte Suprema de Justicia de familiares de 752 personas secuestradas-desaparecidas," Archivo Institucional del Centro de Estudios Legales y Sociales, Terrorismo de estado (1977-1983) 2, HC Presentaciones/Comunicados. Petitioners in this court document refer to a letter submitted (by "tres entidades que asesoran a familiares de secuestrados y desaparecidos") to the Interior Ministry on July 28, 1978. The letter – which garnered no reply – requested a meeting so that the authors might provide any evidence that might be helpful to "the preservation of life" and "strengthening of justice."

[99] Centro de Documentación e Información sobre Derechos Humanos en Argentina, *Informativo*, November 1, 1978, Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1977-1981) 1.

[100] Cayuso, et al., *Constitución y poder politico*, 57.

[101] *Pérez de Smith*, *Fallos*, 300: 1282. See Carrió, "Sobre la competencia," 32.

[102] *Fallos*, 300: 1282.

Legal advocates, jurists, and family members responded to this assertion of authority by the Court with optimism. Some drew lessons of legal strategy from the case: a lawyer (and member both of the San Isidro lawyers' college and Argentine League for the Rights of Man) suggested that civilian attorneys who were shut out of military tribunal proceedings likewise take their clients' cases directly to the Supreme Court.[103] Some used *Pérez de Smith* as an organizing tool. The Permanent Assembly publicized the April 1977 and December 1978 decisions to encourage family members to submit standard habeas corpus petitions at the lower court level and to join its ongoing Supreme Court action. In a September 1978 letter, the Permanent Assembly wrote to relatives of disappeared people explaining that the organization was filing another direct submission to the Supreme Court on behalf of the disappeared. While lawyers were working to draft the new petition, family members were asked to sign on to the case and provide previously submitted habeas materials to the Permanent Assembly, the Argentine League, or the Ecumenical Movement for Human Rights. The letter explained that the new filing would build on the two that preceded it. "The new arguments would be juridical and institutional," the letter explained, "designed to emphasize to the Court's members their function and responsibility in the present historical circumstance."[104] The Permanent Assembly also created a new model habeas corpus form for family members to fill out that incorporated language from the *P*érez *de Smith* decision.[105] To accompany copies of the December 21, 1978 decision, the organization penned a cover letter that described the ruling as "a source of encouragement for the family members of the disappeared…."[106]

At least one family took the Court at its word. A father whose son was disappeared explained that he was inspired to present a Supreme Court case on his son's behalf after reading a newspaper article about the Court's decision. It was the Court's stated commitment to "jealously guard the adequate and effective service" of the justice system that, he explained, gave him the necessary courage. As suggested by this father's experience, encouraging interpretations of *Pérez de Smith* circulated not just among legal practitioners. Through newspaper coverage and commentary – even at a time when the press was hemmed in by self-censorship and violence – everyday Argentines could learn about the operation of domestic legal mechanisms to address the mounting disappearances.

Legal professionals' discussion of the case amplified the Supreme Court's institutional analysis. The liberal Buenos Aires Lawyers' Association issued a public statement calling the December 1978 decision "a consequential pronouncement that constitutes a concrete defense of the principle of legitimacy that must characterize… [the] rule of law."[107] The Association noted approvingly the Court's dissatisfaction with National Executive statements that the disappeared were not registered as detainees; the

[103] Julio José Viaggio, "Los procesos militares y el derecho de defensa," paper presented at the Séptimo Congreso Provincial de Abogados, May 30, 1979, 16, Archivo Histórico de la Liga Argentina por los Derechos del Hombre.
[104] Asamblea Permanente por los Derechos Humanos, "Modelo de recurso de Habeas Corpus," Archivo Documental del Asamblea Permanente de los Derechos Humanos, B7.9.
[105] "Interpone recurso de Habeas Corpus por persona desaparecida, plantea caso federal," Archivo Documental del Asamblea Permanente de los Derechos Humanos, B7.9.
[106] Letter signed by Padre Enzo Giustozzi, February 9, 1979, Archivo Documental del Asamblea Permanente de los Derechos Humanos, C1.18, C1.19, C1.20, C1.21.
[107] "Los fallos de la Corte sobre hábeas corpus," *La Nación*, March 15, 1979; "Opina una entidad de abogados sobre fallos en hábeas corpus," *La Prensa*, March 17, 1979, SM 2424, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

lawyers backed the justices' conclusion that the judicial system could not protect individual liberty under such circumstances. Germán Bidart Campos, a prominent constitutional scholar, also praised the decision for its affirmation of judicial authority. In a law journal article, he described the case as unusually consequential, with an importance "… rarely seen in the jurisprudence of this high court." While the Supreme Court declined to consider the particular habeas corpus petitions before it, Bidart Campos explained that the "surprising and highly beneficial" recognition of its own implicit power to ensure the effectiveness of judicial administration marked a turning point in Argentine constitutional law. Proper functioning of the judiciary amounted to more than a function of government power, stressed Bidart Campos; it was also an individual right.[108]

Some commentators on the political right also reacted positively to the Supreme Court's decisions in *Pérez de Smith*. The conservative national newspaper *La Nación* published an editorial titled "The Importance of the Writ of Habeas Corpus" a month after the first *Pérez de Smith* decision. While the case was not mentioned by name, the holding was described and applauded. The author presented the decision as protecting the fundamentally Argentine institution of habeas corpus.[109]

Among more conservative voices were those who presented the case less as a step in the right direction – toward protecting habeas corpus, the courts, and individual rights – than a vindication of the Argentine legal system. Touted as evidence of the Supreme Court's independence, *Pérez de Smith* was used by the Court, the military government, and the regime's backers to present a "façade" of the rule of law.[110] In its 1979 response to the New York City Bar Association's critical report on Argentina (Chapter 5), the Lawyers' College of the City of Buenos Aires pointed to *Pérez de Smith* (again without naming the case) – along with the operation of habeas corpus more broadly – as evidence of the Supreme Court's efficacy in protecting individual rights:

> Our Supreme Court…does not decide political questions… but it does adjudicate whether [government measures] violate constitutional rights…. [The Court] even, for the first time in its one-hundred-year-old history, officially complained to the Executive Power about the failure to respond to judicial resolutions, basing its intervention on its authority to judge the reasonableness of state action.[111]

Invoking *Pérez de Smith*, the Buenos Aires college reaffirmed the importance of habeas corpus – promoting an image of Argentine legal culture protective of individual rights – while rejecting foreigners' interventions in the name of those rights.

As suggested by the City of Buenos Aires lawyers' college statement, the public relations value of *Pérez de Smith* for the military dictatorship and its supporters had a

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[108] Germán Bidart Campos, "Los poderes implícitos de la Corte Suprema y los impedimentos 'ad extra' para la administración de justicia," *El Derecho*, March 13, 1979, Archivo Institucional del Centro de Estudios Legales y Sociales, Fondo Documentación y Denuncia del Accionar del Terrorismo del Estado, Metodología Represiva Legislación 4, Legislación Dictadura.

[109] "Importancia del recurso de habeas corpus," *La Nación*, May 21, 1977, SM 2424, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[110] Juan Pablo Bohoslavsky and Roberto Gargarella, "El rol de la Corte Suprema. Aportes repetidos y novedosos," in *¿Usted también, doctor? Complicidad de jueces, fiscales y abogados durante la dictadura*, ed. Juan Pablo Bohoslavsky (Buenos Aires: Siglo XXI Editores, 2015), 77-92.

[111] Colegio de Abogados de la Ciudad de Buenos Aires, *Memoria y balance 1979*, 6, Biblioteca del Colegio de Abogados de la Ciudad de Buenos Aires.

striking international dimension. At the time, many Argentine commentators bristled at the human rights critiques lobbed at their country from abroad (Chapter 5). An editorial from the national paper *La Prensa*, published in May 1977, made explicit the connection between *Pérez de Smith* and international opinion. Foreigners' criticisms of Argentina's human rights record were inconsistent and unsubstantiated, the editorial asserted, but if the Argentine government maintained its silence in the face of the Supreme Court's call for information about the disappeared, the country risked further censure by the international community.[112] International legal actors were indeed paying attention. After its seven-day visit to Argentina in 1979 with the American Bar Association and New York City Bar Association (Chapter 5), the Unión Internacional de Abogados expressed its hope that the December 21, 1978 *Pérez de Smith* decision would lead to concrete responses to Argentines' demands.[113]

This sanguine presentation of the case was short-lived. The Lawyers Committee for Human Rights published a June 1979 report citing the *Pérez de Smith* as evidence of Supreme Court refusal to exercise its habeas corpus power, and the 1980 Inter-American Commission on Human Rights report presented the case as proof that Argentina's judiciary was in no position to remedy deprivations of justice.[114]

The military government also weighed in on the *Pérez de Smith* case, its purported devotion to the rule of law only drawing more fire from opponents. In a public letter to the Court's president – published in the major law journals *El Derecho* and *La Ley* – President Videla reacted to the December 21, 1978 decision. Videla professed the military government's commitment to the reestablishment of the constitutional order, the rights protected in it, and the preservation of an independent judiciary, noting that he could not comment on the merits of the case as they fell within the Court's exclusive realm of competence: "The normalization of the country in all areas, with the full and effective operation of the legal system, is a fundamental ("irrenunciable") objective of the National Process of Reorganization…. The National Government is making every effort to reestablish the real exercise of constitutional rights and guarantees.[115]

The *Pérez de Smith* lawyers answered the government's claims and articulated their exasperation. In a July 2, 1979 open letter to the new president, General Roberto Eduardo Viola, the Permanent Assembly for Human Rights and Argentine League for the Rights of Man asked for clarification on a disturbing speech by Viola in which he referred to people who had gone missing forever ("ausentes para siempre") as a consequence of the country's state of "war." In their letter, the organizations quoted at

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[112] "El fiel cumplimiento de normas sobre habeas corpus," *La Prensa*, May 18, 1977, SM 2424, Subfondo documental Secretaría de Medios—Departamento Archivo—Microfilm, Presidencia de la Nación (1934–1990), Archivo Nacional de la Memoria.

[113] "Carta del Presidente de la Unión Internacional de Abogados," April 23, 1979, published in *Boletín de la Asociación de Abogados de Buenos Aires*, May 1979, 2, Archivo Institucional del Centro de Estudios Legales y Sociales, Otras Organizaciones Caja 1, Asociación de Abogados de Buenos Aires.

[114] Spanish translation of Lawyers Committee for International Human Rights, *Violations of Human Rights in Argentina, 1976-1979: A Report*, June 1979, Sect. 1, 6, ii, Archivo Institucional del Centro de Estudios Legales y Sociales, Colección Gestión Institucional del CELS, Terrorismo de estado (1977-1981) 3, 1.1. Abogados, Colegios y Asociaciones Argentinas; OAS, *Report on the Situation of Human Rights in Argentina,* Chapter IV.

[115] "Respuesta del Presidente de la Nación en causa 'Pérez de Smith,'" February 7, 1979, as published in *El Derecho*, March 13, 1979, 3, Archivo Institucional del Centro de Estudios Legales y Sociales, Documentación y denuncia del accionar del terrorismo de estado, Metodología represiva legislación 4, Legislación dictadura; "Trascendente respuesta," *La Ley*, February 21, 1979, Archivo Documental del Asamblea Permanente de los Derechos Humanos, B7.442.

length from the *Pérez de Smith* filing to describe the armed, sometimes uniformed perpetrators of disappearances as acting "prima facie" and almost always by their own admission "in the exercise of some form of public authority."[116] The letter quoted too from the December 21, 1978 Supreme Court decision, juxtaposing the military government's pledged commitment to judicial independence with the Court's exhortations to the government to provide judges with the information they needed to do their work.

Months stretched on without word on the fate of the disappeared, and the *Pérez de Smith* lawyers yet again requested additional action by the Supreme Court. In a September 13, 1979 submission to the Supreme Court, the lawyers complained that nothing had changed since the earlier *Pérez de Smith* decisions were issued. Their arguments were factual more than legal. Not a single person had been saved by filing a habeas corpus petition, and the number of missing had grown.[117] The petition was more confrontational than those that preceded it, criticizing the executive branch not just for its failure to investigate disappearances but for its actions to impede such investigations. The *Pérez de Smith* lawyers did not accuse executive branch officials of perpetrating the disappearances themselves, but they alleged related misconduct. In their filing, the lawyers asserted that the National Executive, far from providing requested information on the fate of the disappeared so judges could exercise their proper role, had seized human rights groups' documentation of the disappearances (justifying the actions with trumped up fraud allegations) and introduced the previously mentioned Presumption of Death Law, a move advocates denounced as an effort to sweep human rights abuses under the carpet. The constitutional institution of habeas corpus, advocates concluded, had been annihilated.[118] Having taken habeas corpus proceedings to their limit inside their country, advocates resurrected the great writ abroad.

The Paris Colloquium on Enforced Disappearance

This meeting concerns that ghostly population, at the same time so close and so far away. Underlying and transcending juridical considerations… it is these people of the shadows we are talking about….[119]

> -- Julio Cortázar, in comments prepared for the Paris Colloquium on enforced disappearance

By the early 1980s, enforced disappearance was the focus of international legal advocacy, having been taken up by the young international human rights movement. The

[116] Asamblea Permanente por los Derechos Humanos and Liga Argentina por los Derechos del Hombre to Roberto Viola, July 2, 1979, Archivo Documental del Asamblea Permanente de los Derechos Humanos, C1.44.
[117] "Solicitan intervención directa de la Corte Suprema para restablecer la jurisdicción del Estado, haciendo cesar una situación de efectiva privación de justicia, respecto de personas secuestradas y luego desaparecidas - fundan su derecho en el Artículo 29 de la Constitución Nacional," [September 1979], Archivo Documental del Asamblea Permanente de los Derechos Humanos, B7.6.
[118] "Presentación ante la Corte Suprema de Justicia de familiares de 752 personas secuestradas-desaparecidas," Archivo Institucional del Centro de Estudios Legales y Sociales, Terrorismo de estado (1977-1983) 2, HC Presentaciones/Comunicados.
[119] "Palabras pronunciadas por el escritor Julio Cortázar," January 1981, Archivo Documental del Asamblea Permanente de los Derechos Humanos, B1.32.

issue was addressed in UN resolutions and by a newly created UN working group, and it was examined in inter-governmental and non-governmental reports.[120] However, as in the realm of domestic law, advocates who worked to combat disappearances at the international level faced daunting obstacles. The Argentine regime responded to monitoring efforts by manipulating inter-governmental human rights and diplomatic mechanisms to keep hidden this most secret of abuses.[121] At the most fundamental level, enforced disappearance remained undefined in international law and did not constitute a crime as such.[122]

Argentine human rights lawyers recognized the limits of existing forms of international advocacy in addressing disappearances. Highlighting the efforts of one of the emblematic international human rights organizations of the period, CELS leader Emilio Mignone described Amnesty International's delayed response to a rights violation that did not fit the organization's traditional prisoner of conscience paradigm. Reflecting on his participation in Amnesty's 1981 International Council Meeting, where enforced disappearance was discussed and novel strategies were ultimately instituted, Mignone explained that the organization's existing methods – sending telegrams to and meeting with state officials – ceased to work when the government simply denied holding the prisoners in question.[123] Argentine human rights lawyers were among the international human rights activists who sought new tools to fight enforced disappearance while they continued to do battle in their country's broken legal system.

Almost four years after initiating the *Pérez de Smith* litigation, some of the advocates spearheading the case traveled to France. Lawyers from the Permanent Assembly for Human Rights, CELS, and the Argentine League for the Rights of Man were among them. At the Paris Colloquium on enforced disappearance, they sought to strengthen and invent international mechanisms to expose and punish those responsible for disappearances. In their arguments and proposals, they demonstrated a new offensive strategy toward their country's military government that differed from the careful tone of many earlier efforts and bore little resemblance to the political prisoner defense work done by past generations of progressive lawyers.[124] This would not be the first time Argentines framed rights abuses in terms of criminal law.[125] And with calls in the early 1970s for the exiled former president Juan Perón to be tried for inciting violence, among

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[120] See Gabriella Citroni and Tullio Scovazzi, *The Struggle Against Enforced Disappearance and the 2007 United Nations Convention* (Leiden, The Netherlands: Martinus Nijh, 2007), 245-247; International Commission of Jurists, "El problema de las personas desaparecidas y el caso de Argentina en particular," July 4, 1979, 2, Archivo Institucional del Centro de Estudios Legales y Sociales, Fondo Archivo Emilio Mignone, Otros org 2.3.4 Inv: 063; Sikkink, *Justice Cascade*, 66.

[121] See, for example, Iain Guest, *Behind the Disappearances: Argentina's Dirty War Against Human Rights and the United Nations* (Philadelphia: University of Pennsylvania Press, 1990), 115-119.

[122] See Clark, *Diplomacy of Conscience*, 70-100.

[123] Emilio Mignone, "Memorandum," August 27, 1981, Archivo Institucional del Centro de Estudios Legales y Sociales, Memos 1; See too Clark, *Diplomacy of Conscience*, 70-100.

[124] Argentine human rights lawyers who were active under the 1976 to 1983 dictatorship have themselves made this observation of a shift in their work from a defensive posture (the defense of political prisoners) to an offensive one (the prosecution of crimes against humanity.) See Librandi, *Fue*.

[125] In 1951, for example, lawyers from the Argentine League for the Rights of Man and Lawyers' Association of Buenos Aires argued for the criminal punishment of police responsible for the kidnapping and torture of student Ernesto M. Bravo, a case that drew the support of more conservative jurists too, like the Lawyers' College of the City of Buenos Aires. Liga Argentina por los Derechos del Hombre, "Orden de prisión dictado por el Juez Nacional de Instrucción del Crimen Dr. Sadi Conrado Massüe…" July 1951, Archivo Histórico del Partido Comunista de Argentina, Legislación; Leiva, *Historia del Colegio de Abogados de la Ciudad de Buenos Aires*, 84-85.

other charges, individual national leaders had been targeted previously for accountability before a court of law (Chapter 4). Now, however, the leaders in question were still in power when advocates, some more explicitly than others, leveled unprecedented allegations and demanded new forms of accountability.

Argentine lawyers' proposal for international accountability responded to the military's stonewalling in domestic courts and with the growing opportunities for human rights advocacy in international and foreign venues highlighted in the previous chapter. The increasingly confrontational stance among some advocates, exemplified by the creation and operation of CELS, was evident in Paris. Two historical legacies also loomed large. The legal doctrine produced at the Nuremberg trials and the impunity produced by Argentina's repeated use of political amnesties (see Chapter 4) provided the lawyers with inspiration as well as examples of what to avoid.

Argentine lawyers' work at the Paris Colloquium was part of their broader redeployment of traditional liberal legal practices in international and foreign forums. Specifically, human rights lawyers expanded the function of habeas corpus petitions, using them outside the country to document mass atrocities, demonstrate the breakdown of the internal legal system, and, critically, prove state responsibility for human rights violations. From the early days of the dictatorship, for example, Argentine lawyers submitted habeas materials to the Inter-American Commission on Human Rights as evidence of abuses.[126] *Pérez de Smith* was one point of contact between the domestic practice of habeas corpus and international human rights advocacy. Documentation of abuses that the *Pérez de Smith* lawyers complained was seized by the government (in their September 1979 court filing) contained case materials they had prepared for the commission's visit scheduled for later that month (Chapter 5).[127] In Paris, advocates further internationalized Argentina's domestic legal clashes.

The Paris Colloquium was held over three days, January 31 to February 2, 1981. The event's official title, used in Colloquium publications, was the "Colloquium on the *Policy* of the Enforced Disappearance of Persons"; the chosen language itself signaled that the organizers understood the problem before them to be systematic, intentional, and official.[128] Illustrating the new spaces for transnational human rights activism available at the time, the proceedings took place in France's seat of parliament. The focus was on conditions in Latin America, where, according to Colloquium participants, enforced disappearance was most prevalent in El Salvador and Argentina. Those in attendance included prominent European and Latin American political leaders, judges, jurists, and cultural figures. The Argentine writer Julio Cortázar (whose earlier political work included involvement in Bertrand Russell's International War Crimes Tribunal, Chapter 3), Brazilian human rights activist Cardinal Paulo Evaristo Arns, and Spanish king Juan Carlos I were all present.[129] Among the Argentine human rights activists in Paris were

[126] OAS, *Report on the Situation of Human Rights in Argentina,* "Introduction," "Activities of the Commission during its on-site observation."
[127] "Deducen Recurso de Amparo…," Archivo Institucional del Centro de Estudios Legales y Sociales, Terrorismo de estado (1977-1983) 2, HC Presentaciones/Comunicados.
[128] Emphasis added.
[129] Those who presided over colloquium sessions included former Supreme Court justice of France Maurice Aydalot, former president of the International Association of Lawyers (UIA) Albert Zurfluh, former leader of the Paris Bar Association and European Court of Human Rights judge Louis-Edmond Pettiti, head of the International Commission of Jurists Niall MacDermott, and president of the International Association of Democratic Jurists (IADJ) Joe Nordman.

members of Mothers of the Plaza de Mayo, who spoke at the event.[130] International nongovernmental organizations like the World Council of Churches were also involved. The sponsoring groups were six international nongovernmental legal organizations, all with consultative status to the United Nations: the International Association of Democratic Lawyers; the International Commission of Jurists (ICJ); the Center for the Independence of Judges and Lawyers (an ICJ initiative); the International Federation for the Rights of Man (of which the Argentine League for the Rights of Man was a founding member[131]); the International Movement of Catholic Lawyers; and the International Association of Lawyers, the same organization that had sent a representative to Argentina with the 1979 New York City Bar Association mission (and that publicly expressed its hopes for change following the *Pérez de Smith* decisions).[132] The Colloquium was organized to examine the geopolitical context in which policies of enforced disappearance were implemented, the domestic and international responses offered by governments and the international community, and proposals for the future.[133]

In a notable sense, the attacks in Argentina on radicalized leftist and Peronist lawyers in the early to mid-1970s (Chapter 3) – or, rather, lawyers' reactions to those attacks – helped set the Colloquium in motion. Argentine attorneys who found refuge abroad helped to organize the event in Paris. Prominent among them was Rodolfo Mattarrollo, a former member of the Lawyers' Guild Association (see Chapter 3) and Comisión Argentina por los Derechos Humanos (CADHU, Argentine Commission for Human Rights, see Chapter 5), groups whose ranks included other prominent and politically active Argentine defense attorneys.[134] Representatives of the Spanish, French, and Belgian branches of CADHU would attend the event.[135] Some of the colloquium's organizers had earlier been vocal critics of lawyers who represented leftist guerrillas; Jacobo Timerman, for one, now joined forces with these lawyers and others to plan the Paris meeting.[136] At the Colloquium, such seasoned advocates participated alongside those who had come to rights advocacy more recently.

From their international vantage point, colloquium participants identified common problems plaguing domestic legal systems in Latin America: gaps in the law, manipulations of the law, and courts' failures to interpret the law. They observed that domestic laws did not contain the specific crime of enforced disappearance and that habeas corpus petitions were not designed to address the vast scope of abuses afflicting the region. Colloquium commentators blamed supreme courts in affected countries for contributing to a violation of human rights by omission; frequently citing states of

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Asamblea Permanente de los Derechos Humanos, "Informe Final. Coloquio Sobre 'La política de desaparición forzada de personas,'" February 1981, Archivo Documental del Asamblea Permanente de los Derechos Humanos, B1.32.

[130] Asamblea Permanente por los Derechos Humanos, "Coloquio: La política de desaparición forzada de personas 31En-1Fe-81," n.d. [1981], 4, Archivo Documental del Asamblea Permanente de los Derechos Humanos, B1.32.

[131] Casola, "Cuando lo 'nuevo' es tan 'viejo' como 'nuevo' lo 'viejo,' 143.

[132] Asamblea Permanente por los Derechos Humanos, "Coloquio: La política de desaparición forzada de personas 31En-1Fe-81," n.d. [1981], 4, Archivo Documental del Asamblea Permanente de los Derechos Humanos, B1.32.

[133] Asamblea Permanente de los Derechos Humanos, "Informe Final. Coloquio Sobre 'La política de desaparición forzada de personas,'" February 1981, Archivo Documental del Asamblea Permanente de los Derechos Humanos, B1.32.

[134] Rodolfo Mattarollo to Emilio Mignone, April 9, 1981, and letter from president of Mouvement International des Juristes Catholiques, September 11, 1980, Archivo Institucional del Centro de Estudios Legales y Sociales, Terrorismo de estado (1981-1982) 7, Coloquio de Paris; Meijide, *La historia íntima*, 169-171.

[135] [No author], draft summary of proceedings of Paris Colloquium, n.d., Archivo Institucional del Centro de Estudios Legales y Sociales, Terrorismo de estado (1981-1982) 7, Coloquio de Paris.

[136] Meijide, *La historia íntima*, 169.

exception in their decisions, the courts too often concluded they lacked jurisdiction to decide cases of enforced disappearance.[137] Participants also explained that, through amnesties and laws like Argentina's Presumption of Death Law, states' political branches – heavily influenced by national security doctrine principles – impeded investigations.

Argentina's legal failures were not unique, but they and the Argentines who sought to combat them played an outsized role at the Colloquium. The country was, according to Colloquium participants, the embodiment of judicial dysfunction.[138] Its representatives in Paris were there to help change that. Among the Argentines who played a leading role were *Pérez de Smith* lawyer Alberto Pedroncini, representing the Permanent Assembly for Human Rights, which he directed. CELS president Emilio Mignone had planned to attend, but the police kept him from renewing his passport, so Augusto Conte went in his stead and spoke at the event.[139] CELS was among the organizations that contributed written reports as well as attendees and speakers.[140] Eduardo Barcesat of the Argentine League for the Rights of Man (and the lawyer for Carlos Zamorano quoted above) was among the slated presenters, and Adolfo Pérez Esquivel of SERPAJ (and 1980 recipient of the Nobel Peace Prize), who also spoke, was the Colloquium's honorary president.[141]

The Argentine participants were, like the *Pérez de Smith* legal team, a politically mixed group, including Radicals, Peronists, Communists, as well as representatives of organized labor.[142] But the "subversion" ascribed to this international human rights advocacy was consistent with earlier blanket critiques of international human rights initiatives by supporters of the military dictatorship (Chapter 5). In addition to having his passport held up, Emilio Mignone received at least two threatening letters before the colloquium. They were signed by groups including the so-called Movimiento Argentino Democrático (Argentine Democratic Movement), which claimed that the event was organized by Argentine terrorists and the international left and warned against collaboration with them.[143] "You, as an Argentine," one such letter said, "have the floor."[144] Others preparing to attend the colloquium, among them Alberto Pedroncini,

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[137] Asamblea Permanente de los Derechos Humanos, "Informe Final. Coloquio Sobre 'La política de desaparición forzada de personas,'" February 1981, Archivo Documental del Asamblea Permanente de los Derechos Humanos, B1.32.

[138] Asamblea Permanente de los Derechos Humanos, "Informe Final. Coloquio Sobre 'La política de desaparición forzada de personas,'" February 1981, Archivo Documental del Asamblea Permanente de los Derechos Humanos, B1.32.

[139] Mignone, *Derechos Humanos*, 55; [No author], draft summary of proceedings of Paris Colloquium, n.d. and Asamblea Permanente por los Derechos Humanos, "Coloquio: La política de desaparición forzada de personas Paris 31 En – 1Fe 81," 5, Archivo Institucional del Centro de Estudios Legales y Sociales, Terrorismo de estado (1981-1982) 7, Coloquio de Paris.

[140] Centro de Estudios Legales y Sociales, "El caso argentino: Desapariciones forzadas como instrumento básico y generalizado de una política," Archivo Institucional del Centro de Estudios Legales y Sociales, Terrorismo de estado (1981-1982) 7, Coloquio de Paris.

[141] Asamblea Permanente por los Derechos Humanos, "Coloquio: La política de desaparición forzada de personas Paris 31 En – 1Fe 81," 5, Archivo Institucional del Centro de Estudios Legales y Sociales, Terrorismo de estado (1981-1982) 7, Coloquio de Paris.

[142] [No author], draft summary of proceedings of Paris Colloquium, n.d. and Asamblea Permanente por los Derechos Humanos, "Coloquio: La política de desaparición forzada de personas Paris 31 En – 1Fe 81," 5, Archivo Institucional del Centro de Estudios Legales y Sociales, Terrorismo de estado (1981-1982) 7, Coloquio de Paris.

[143] Typed note, Movimiento Argentino Democrático, n.d., Archivo Institucional del Centro de Estudios Legales y Sociales, Terrorismo de estado (1981-1982) 7, Coloquio de Paris.

[144] Typed note, Movimiento Argentino Democrático, n.d., Archivo Institucional del Centro de Estudios Legales y Sociales, Terrorismo de estado (1981-1982) 7, Coloquio de Paris.

Augusto Conte, and Graciela Fernández Meijide, also received threats.[145] It was clear that some Argentines would be paying close attention to their compatriots' interventions in Paris.

Once in Paris, and despite the threats, Argentine activists and their international colleagues worked to bolster existing international human rights mechanisms and to create something entirely new: a treaty against enforced disappearance. One of their chief recommendations for existing mechanisms was that the United Nations renew the mandate of the Commission on Human Rights' Working Group on Enforced or Involuntary Disappearances.

In their treaty proposals, Colloquium participants promoted a new international legal conception of disappearances in two ways: by fitting enforced disappearance into post-World War II international criminal law categories (i.e., crimes against humanity and genocide), and by developing methods to establish government responsibility instead of just omission. They noted that the existing international legal framework most relevant to the disappearance of people was the one developed for a wartime setting in international humanitarian law.[146] Colloquium participants explained that enforced disappearance during peacetime had not been addressed within that legal scheme.[147] Two draft conventions were put forward in Paris. One of the treaty proposals was presented by Human Rights Institute of the Paris Bar Association.[148] The other was offered by the Argentine delegation and formally presented by Alberto Pedroncini. Like Pedroncini, other lawyers who signed the draft were also signatories of the *Pérez de Smith* filings.[149]

The Argentine proposal was a product of its sponsors' efforts, and frustrations, to address disappearances in Argentina's courts. Alberto Pedroncini, reflecting on the Colloquium (and addressing deep Argentine concerns that the principle of non-intervention be respected), stressed the extent to which the draft enforced disappearance treaty represented a true and necessary synergy between "internal democratic struggles" in Argentina and international opinion.[150] The proposal's authors described the

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[145] Meijide, *La historia íntima*, 170.

[146] For the argument that the origins of the criminalization of enforced disappearance reside in humanitarian law rather than human rights law, see Brian Finucane, "Enforced Disappearance as a Crime Under International Law: A Neglected Origin in the Laws of War," *Yale Journal of International Law* 35 (2010): 171-197.

[147] Asamblea Permanente de los Derechos Humanos, "Informe Final. Coloquio Sobre 'La política de desaparición forzada de personas,'" February 1981, Archivo Documental del Asamblea Permanente de los Derechos Humanos, B1.32.

[148] Asamblea Permanente por los Derechos Humanos, "Delegación argentina propuesta de convención internacional contra la política de desaparición forzada de personas," "Coloquio: La política de desaparición forzada de personas Paris 31 En – 1Fe 81," Archivo Institucional del Centro de Estudios Legales y Sociales, Terrorismo de estado (1981-1982) 7, Coloquio de Paris; See Citroni and Scovazzi, *Struggle Against Enforced Disappearance*, 255.

[149] In addition to Alberto Pedroncini, the lawyers who signed the draft treaty were Augusto Conte, José María Sarrabayrouse, Guillermo Frugoni Rey, Edgardo Ramón Acuña, Alberto M. Fonrouge, and Emilio Mignone. Asamblea Permanente por los Derechos Humanos, "Coloquio: La política de desaparición forzada de personas Paris 31 En – 1Fe 81," 10, Archivo Institucional del Centro de Estudios Legales y Sociales, Terrorismo de estado (1981-1982) 7, Coloquio de Paris. At the end of the colloquium, and encouraged by a UN functionary in attendance, participants agreed to send both draft treaties to the Commission on Human Rights. Asamblea Permanente por los Derechos Humanos, "Coloquio: La política de desaparición forzada de personas Paris 31 En – 1Fe 81," 5, Archivo Institucional del Centro de Estudios Legales y Sociales, Terrorismo de estado (1981-1982) 7, Coloquio de Paris. See Citroni and Scovazzi, *Struggle Against Enforced Disappearance*, 255; United Nations, Commission on Human Rights, *Report submitted by Mr. Manfred Nowak, independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances,* E/CN.4/2002/71, January 8, 2002, 21.

[150] Liga Argentina por los Derechos del Hombre, "XXI Congreso Nacional Realizado los días 10 y 11 de diciembre de 1982," 101, Archivo Histórico de la Liga Argentina por los Derechos del Hombre.

maddening traits of enforced disappearance that lawyers inside Argentina confronted: the government's silence and absence of effective investigation that made habeas corpus ineffective and the work of judges – "in the exercise of their constitutional role" – impossible.

Two elements of the Argentine proposal in particular reflected Argentine local challenges and Argentine support for international transparency and accountability: reporting requirements and the categorization of enforced disappearance as a crime against humanity. These pieces of the Argentine treaty draft also helped lay the foundation for future domestic prosecutions by alleging government responsibility instead of just omission, and by fitting disappearance into existing criminal law categories like crimes against humanity.

The Argentine proposal featured an international reporting system that would obligate states to inform the UN Commission on Human Rights of any apparent enforced disappearance in their respective jurisdictions. The state in question would then be required to report periodically on the status of the case, beginning with the submission of any habeas corpus petitions filed and the government's response. If the person were still missing at the end of the reporting period, the commission could publish information about the disappearance, including a photograph of the disappeared and the government's response, in two large newspapers inside the country. According to Pedroncini, advocates intended this use of publicity as punishment to undermine perpetrators' objectives and mobilize the public.[151] The habeas corpus petition would be given new life outside national borders, forcing light back into affected countries like Argentina by providing the world with evidence of enforced disappearance and domestic failures to address it.

But the problem of government secrecy and silence remained. How could advocates establish state liability for disappearances before the international community in the face of states' intransigence? The Argentine treaty proposal incorporated a system of presumptions to establish state responsibility for enforced disappearance when governments failed to cooperate with the reporting scheme, and under several other conditions: when governments' investigations were insufficient, when the operations that produced disappearances and/or security forces' failure to respond to them indicated official involvement, when disappearances corresponded in time with the circulation of official repressive doctrines incompatible with the Universal Declaration of Human Rights or international humanitarian law, and when governments kept from their citizens information about any proceedings relevant to disappeared individuals.[152] According to Alberto Pedroncini, the process of circulating the treaty proposal – its presumptions making the connection between a lack of cooperation and culpability – was itself a form of international advocacy, an "active, concrete, descriptive" condemnation.[153] Pedroncini would later cite the *Pérez de Smith* decision and the Argentine military government's refusal to comply with it to explain why these presumptions were necessary and how they would apply in Argentina's case.[154]

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[151] Liga Argentina por los Derechos del Hombre, "XXI Congreso Nacional Realizado los días 10 y 11 de diciembre de 1982," 105, Archivo Histórico de la Liga Argentina por los Derechos del Hombre.
[152] Liga Argentina por los Derechos del Hombre, "XXI Congreso Nacional Realizado los días 10 y 11 de diciembre de 1982," 105-107, Archivo Histórico de la Liga Argentina por los Derechos del Hombre.
[153] Liga Argentina por los Derechos del Hombre, "XXI Congreso Nacional Realizado los días 10 y 11 de diciembre de 1982," 105, Archivo Histórico de la Liga Argentina por los Derechos del Hombre.
[154] Liga Argentina por los Derechos del Hombre, "XXI Congreso Nacional Realizado los días 10 y 11 de diciembre de 1982," 105, Archivo Histórico de la Liga Argentina por los Derechos del Hombre.

At the Paris Colloquium, Argentine human rights groups displayed their increasingly confrontational posture toward their country's military government in other ways too. CELS, in its written submission to the colloquium, blamed the military directly for the disappearances. "El Caso Argentino: Desapariciones forzadas como instrumento básico y generalizado de una política" ("The Argentine Case: Enforced Disappearances as a Basic and Generalized Policy Instrument") was drafted by Augusto Conte and revised and signed by Emilio Mignone for the event. In the report, said to be the first published analysis of the organization of the military government's system of repression, CELS demonstrated that enforced disappearance in Argentina was not the result of excesses, aberrations, rogue actors, or wartime chaos. It was the carefully crafted, central feature of the armed forces' clandestine system of violence, which paralleled the regime's public and legalistic modes of repression.[155] CELS urged the international community to issue a specific declaration condemning this practice in Argentina as a crime against humanity.[156] Inside the country, the report hit a nerve. Alleging that the document contained military secrets, the government raided the CELS headquarters and detained the organization's leaders, among them Emilio Mignone.[157]

In line with the recommendations issued by CELS, the Argentine treaty proposal and the Paris Colloquium conclusions categorized massive, systematic enforced disappearance as a "crime against humanity." The term was first used in the 1945 Nuremberg Charter to describe the most inhumane of acts, and acts to which individual criminal liability attached.[158] The Colloquium's determination was deemed worthy of a headline in *Le Monde*: "The Conclusions of an International Colloquium to Paris: 'The Policy of Enforced Disappearance is a Crime Against Humanity.'"[159] While conduct amounting to enforced disappearance had been prosecuted as a crime against humanity (as well as a war crime) before the U.S. Nuremberg Military Tribunals, it was in the early 1980s that Latin American advocates contributed to the development of this area of international law by promoting the inclusion of enforced disappearance among crimes against humanity during peacetime, and by attacking impunity for perpetrators.[160]

The Argentines in Paris argued that labeling the practice as a crime against humanity had important implications for holding perpetrators accountable. In a draft analysis from the CELS archive, the unnamed author explained that criminal responsibility would fall not only on those who carried out an enforced disappearance, but also on those who instigated the disappearances and those who acted to keep them

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[155] Centro de Estudios Legales y Sociales, "El Caso Argentino: Desapariciones forzadas como instrumento básico y generalizado de una política," Archivo Institucional del Centro de Estudios Legales y Sociales, Terrorismo de estado (1981-1982) 7, Coloquio de Paris; Vicente, *Augusto Conte*, 64-65.

[156] Centro de Estudios Legales y Sociales, "El Caso Argentino: Desapariciones forzadas como instrumento básico y generalizado de una política," 34, Archivo Institucional del Centro de Estudios Legales y Sociales, Terrorismo de estado (1981-1982) 7, Coloquio de Paris.

[157] Vicente, *Augusto Conte*, 66.

[158] Liga Argentina por los Derechos del Hombre, "XXI Congreso Nacional Realizado los días 10 y 11 de diciembre de 1982," 100, 108-109, Archivo Histórico de la Liga Argentina por los Derechos del Hombre; see Faustin Z. Ntoubandi *Amnesty for Crimes against Humanity under International Law* (Leiden, the Netherlands: Martinus Nijhoff, 2007), 39.

[159] "Les conclusions d' un colloque international al a Paris 'La politique de disparition forcée de personnes est un crime contre l'humanité,'" *Le Monde*, Archivo Institucional del Centro de Estudios Legales y Sociales, Terrorismo de estado (1981-1982) 7, Coloquio de Paris.

[160] United Nations, Commission on Human Rights, *Report submitted by Mr. Manfred Nowak,* 27-28; Brian Finucane, "Enforced Disappearance as a Crime Under International Law: A Neglected Origin in the Laws of War," *Yale Journal of International Law* 35 (2010): 176.

secret.[161] Colloquium materials indicate that Argentine participants' reasoning was aimed less at advancing something akin to universal jurisdiction than at undercutting the operation of impunity in forms well known in Argentina's national experience.[162] Enforced disappearance would not give rise to amnesties or political asylum for perpetrators; this point was highlighted in the Argentine proposal and presented as a consequence of the practice's categorization as a crime against humanity.[163] Finally, Argentine lawyers insisted that crimes against humanity were imprescriptible; their prosecution could not be subject to a statute of limitations, a theory that Argentines would eventually apply after the reestablishment of democracy in their efforts to prosecute disappearances domestically.[164] About a year after the Colloquium, at the national meeting of the Argentine League for the Rights of Man, Alberto Pedroncini reiterated the consequences of categorizing enforced disappearance as a crime against humanity (as well as a continuing crime): there could be no statute of limitations on prosecutions and no amnesty or asylum granted to perpetrators.[165] Pedroncini cited the Nuremberg trials generally along with "all international treaties," including the Genocide Convention, to support the assertion that there could be no statute of limitations on crimes against humanity.[166]

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[161] Untitled draft analysis of the Paris Colloquium, Archivo Institucional del Centro de Estudios Legales y Sociales, Terrorismo de estado (1981-1982) 7, Coloquio de Paris.

[162] At the same time, colloquium participants noted approvingly the recent U.S. district court decision *Filártiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980), which held that foreign nationals could sue perpetrators of international human rights violations – in the *Filártiga* case, torture specifically – using *civil* law (the 1789 Alien Tort Claims Act) in U.S. federal court. In their final report, colloquium attendees suggested hopefully that enforced disappearance, as an "aggravated form" of cruel, inhuman, or degrading treatment, might also be litigated civilly in the same way. Asamblea Permanente de los Derechos Humanos, "Informe Final. Coloquio Sobre 'La política de desaparición forzada de personas,'" February 1981, 19, Archivo Documental del Asamblea Permanente de los Derechos Humanos, B1.32.

[163] Asamblea Permanente por los Derechos Humanos, "Delegación argentina propuesta de convención internacional contra la política de desaparición forzada de personas," "Coloquio: La política de desaparición forzada de personas Paris 31 En – 1Fe 81," Archivo Institucional del Centro de Estudios Legales y Sociales, Terrorismo de estado (1981-1982) 7; Untitled draft analysis of the Paris Colloquium, Archivo Institucional del Centro de Estudios Legales y Sociales, Terrorismo de estado (1981-1982) 7, Coloquio de Paris.

[164] Liga Argentina por los Derechos del Hombre, "XXI Congreso Nacional Realizado los días 10 y 11 de diciembre de 1982," 100, 108-109, Archivo Histórico de la Liga Argentina por los Derechos del Hombre; See Naomi Roth-Arriaza, *The Pinochet Effect: Transnational Justice in the Age of Human Rights* (Philadelphia, PA: University of Pennsylvania Press, 2005), 152. Note that the first round of prosecutions in Argentina, in the 1985 "Trial of the Juntas," were based on existing domestic criminal law rather than enforced disappearance. See Paula K. Speck, "The Trial of the Argentine Junta: Responsibilities and Realities," *University of Miami Inter-American Law Review* 18, no. 3 (Spring 1987): 491-534, 494. See also Brian Finucane, "Enforced Disappearance as a Crime Under International Law: A Neglected Origin in the Laws of War," *Yale Journal of International Law* 35 (2010): 174n18, citing Alejandro M. Garro and Henry Dahl, "Legal Accountability for Human Rights Violations in Argentina: One Step Forward and Two Steps Backward," *Human Rights Law Journal* 8 (1987): 283-344, 319-29.

While the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity called for imprescriptibility for crimes against humanity, Argentina would not be a party until 2003. For the argument the imprescriptibility of crimes against humanity recently has been established as a principle of customary international law, see Jan Hessbruegge, "Justice Delayed, Not Denied: Statutory Limitations and Human Rights Crimes," *Georgetown Journal of International Law* 43, no. 4 (2012): Section II.

[165] Liga Argentina por los Derechos del Hombre, "XXI Congreso Nacional Realizado los días 10 y 11 de diciembre de 1982," 108-109, Archivo Histórico de la Liga Argentina por los Derechos del Hombre. The Argentines' argument that amnesties (as well as statutes of limitation) were incompatible with crimes against humanity has, in the 21st century, become a "growing consensus" in international law. Fannie Lafontaine, "No Amnesty or Statute of Limitation for Enforced Disappearances: The Sandoval Case before the Supreme Court of Chile," *Journal of International Criminal Justice* 3 (2005): 480-482.

[166] Liga Argentina por los Derechos del Hombre, "XXI Congreso Nacional Realizado los días 10 y 11 de diciembre de 1982," 109.

The Argentine enforced disappearance treaty proposal did not include provisions for criminal prosecution; its only "punishment" was the publication of damning information. But advocates persisted in pushing their understanding of enforced disappearance as a crime against humanity. Months after their appearance in Paris, Argentine lawyers and activists traveled to Madrid for another colloquium, this one organized by the Council of Europe to discuss human rights in Latin America. There, exiled lawyers repeated the call for enforced disappearance to be categorized as a crime against humanity, while acknowledging that "the road to achieving international criminal penalties for disappearances will be long." Though lacking prosecutorial mechanisms, the Argentine Paris treaty proposal succeeded in framing the Argentine military government's acts in terms of the most egregious crimes, defining enforced disappearance as an internationally recognized offense, and setting out arguments to prevent an escape from justice. In their interventions at the Paris Colloquium, members of the Argentine delegation broke new ground not only in the realm of international law, but also in domestic law and politics through their hard-hitting allegations against their national government. In 1981, democracy was two years away in Argentina, and the first trials of the juntas – an important founding act of the new democracy – would not commence for more than a year after that. But advocates in the very early 1980s were laying the groundwork for lasting criminal accountability for those responsible for enforced disappearances.

Conclusion

Between 1977 and 1981, from the initiation of *Pérez de Smith* through the Paris Colloquium, Argentine human rights lawyers moved increasingly on to the offensive. Shocked by the unprecedented practice of government repression, frustrated by the failure of their courts to intervene, inspired by the doctrine developed at the Nuremberg trials, and informed by their country's long history of both individual rights advocacy and impunity, progressive legal advocates resuscitated the domestic mechanism of habeas corpus and repurposed it abroad. Their initiatives represented efforts to construct but also to reinvigorate venues – namely the Argentine judiciary – in which to protect individual rights. The nature of enforced disappearance, along with advocates' complicated and varied positions toward the political projects of targeted guerrillas, transformed the open legal battles over the political prisoner of earlier decades. The legitimacy of the prisoner's political objectives and the general principle of the right to resist oppression – two concepts that had afforded political prisoners and exiles certain protections in the past, and which progressive defense lawyers had promoted – were now eclipsed by the question of the most basic judicial limits on state power.

Advocates' search for human rights *victims* transformed into a pursuit of accountability for human rights *violators*. Although the criminal prosecution of government officials in Argentine courts would not be possible until after the junta was out of power, legal advocates' activities during the dictatorship helped establish the foundation for these future criminal cases and demonstrated government responsibility for human rights abuses in the domestic and international venues available to them at the

time. In their early responses to the Argentine junta's use of clandestine violence and persistent denials, advocates relied heavily on domestic courts to demand information from the executive branch on the whereabouts of missing people. When those demands were repeatedly unmet, advocates increasingly turned to international channels while at the same time taking a more confrontational stance domestically toward the junta, building proof of government criminal responsibility for the disappearances, demanding justice, and shining the spotlight on the place of domestic courts in Argentina's constitutional order.

Epilogue

A tension runs through the preceding chapters. Argentine lawyers' faith in law's capacity to limit state power appears fragile – sensitive to shifts in politics, violence, and international affairs – but also resilient. E.P. Thompson's reflections on the rule of law are apt. As a Marxist, Thompson was trained to see the law as a tool of the ruling class, and he agreed this was so. But based on his close study of English liberalism, he came to a different conclusion: when powerful people claimed to be bound by the law, they and others grew to believe it, and power was restrained.[1] Thompson explained that, "the rule of law itself, the imposing of effective inhibitions upon power and the defense of the citizen from power's all-intrusive claims, seems to me to be an unqualified human good."[2]

In the case of the legal professionals at the center of this study, their assertions of commitment to the law, or even just their *use* of the law for their own political goals, looks to have had a similar restraining effect on the political right as on the left. They might have supported military coups or armed revolution, but they would often find themselves drawn back, yet again, toward the principles of constitutional democracy and individual rights. These principles, however, were not enough to create a shared or enduring model of governance.

In the 1950s and 1960s, Argentine lawyers' common expressions of public support for constitutional democracy and individual rights – and an understanding that these rights were simultaneously universal, Argentine, and Western – coexisted with diverse and opposing political projects. It was a tenuous coexistence. By the mid-1970s, the legal establishment abandoned human rights as they became the concern of a growing transnational movement that infringed on Argentina's sacred sovereignty. A new configuration of human rights lawyers, partnering with nonlawyer activist allies, took up the mantle of rights advocacy and made use of new foreign and international human rights institutions. The state repression and guerrilla activity that touched much of the developing world during this time had been, in Argentina, grafted atop an already divided society, with Argentines split in their interpretations of the legacies of Juan Perón's early presidencies (1946-1955). All three of these forces – the translation of human rights into international interventions, the rise of political violence, and conflicting views of Peronism's place in Argentina's past and future – contributed to a reassessment of Argentine rights traditions by those professionals trained to preserve them. The contractions inherent in those rights traditions, however, were also key factors.

Legal liberalism in twentieth-century Argentina, as written into the National Constitution and practiced by political leaders, contained both the guarantee of rights and, in the Constitution's oft-invoked state of siege provision, the mechanisms for ignoring those guarantees. This brand of liberalism, not unique to Argentina, was the product of an earlier century's civil strife; it was an assertion of institutional order, centralized power, *and* the fundamental rights of the Argentine people. In this contradictory context, the elasticity of the concepts of individual rights and democracy might have afforded a

[1] Tamanaha, *On the Rule of Law*, 137.
[2] Tamanaha, *On the Rule of Law*, 137.

certain level of resilience (albeit punctuated by crises), but it also permitted deformations of the rule of the law.

More broadly, I have suggested in this dissertation that the remaking of Argentine democracy and the institutionalization of individual rights it entailed was part of a longer, late twentieth-century globalization of legal order whereby legal advocates and their nonlawyer allies wielded international human rights norms not to transcend the state, as is often claimed, but to transform it. This national transformation, constrained by the political and legal legacies of state violence, ultimately produced a paler version of democracy than many Argentines (like the radicalized lawyers featured in Chapter 3) had once envisioned but one that nonetheless served to restrain the violence of the state against its citizens. Human rights were themselves transformed in the process: a law and politics of resistance to the state became instead the state-sponsored initiative to try perpetrators of "dirty war" abuses, an initiative that continues today.

In this epilogue, I follow to the present some of themes revealed by the lawyer-led debates analyzed in the earlier chapters. This brief discussion is not a comprehensive history of events starting where Chapter 6 left off in 1981. Instead, in light of my research, I offer concluding reflections on the ramifications of incorporating international human rights into the Argentine state. In sum, I close my dissertation here with the observation that Argentines have assigned, and continue to assign, a multiplicity of contending legal and political meanings to human rights. The conflicts between these meanings reflect longstanding questions about national institutions including the Constitution, the military, and the judiciary. Today, competing interpretations of 1970s political violence and Peronist rights politics are still linked to these questions.

If 1981 marked a breakdown in the legitimacy of military rule (Chapter 6), the two years that followed can be understood as a process to develop viable alternatives. The military government attempted without success to control this process and evade accountability for disappearances: first in late 1982 with a rejected accord meant to guide the transition, then in early 1983 with the *Documento final de la junta militar sobre la guerra contra la subversión y el terrorismo* (*Final Document of the Military Junta on the War Against Subversion and Terrorism*, which sought to justify and deny "dirty war" violence), and again just before the October 1983 presidential elections with a self-amnesty for acts undertaken in the war against subversion.[3] These junta efforts were roundly denounced by the Argentine public. The country's human rights groups were particularly vocal in the protests against them.[4] And they offered their own proposals for democratization.

The demands of Argentine human rights advocates revealed a rights-based vision of governance emphasizing individual criminal liability for rights violators, the court system's role in ensuring this legal accountability, and the legislature's role in ensuring both political accountability and democratic representation. Among the slogans chanted at demonstrations at the time was this one, highlighting advocates' calls for a state investigation of disappearances, freedom for political prisoners following review of their cases (and situating the old question of political prisoners in a new configuration of rights demands), the prosecution of all perpetrators of state repression before *civilian* courts, and the most fundamental right of all: "This is the democracy we want: truth, freedom,

[3] Brysk, *Politics of Human Rights*, 61.
[4] Brysk, *Politics of Human Rights*, 61.

justice and [the right to] life."[5] To investigate the disappearances, human rights groups called specifically for the creation of a bicameral congressional commission. In the realm of criminal accountability, and repeating the demands of Argentine lawyers at the Paris Colloquium on Enforced Disappearance (Chapter 6), human rights groups demanded the creation of law making enforced disappearance a crime against humanity.[6]

The 1983 presidential elections themselves marked one form of human rights institutionalization. The winning candidate was Raúl Alfonsín. A Radical, he had once been a member of the Permanent Assembly for Human Rights. Like some of his advisors (among whom was a lawyer who worked on the *Pérez de Smith* case.[7]), he was also an attorney with experience defending political prisoners.[8] His campaign pledge to revive habeas corpus no doubt reflected this professional experience. Alfonsín entered office invoking human rights, calling for justice, and spreading hope of peace. Notably, he defeated a Peronist candidate whom voters associated with the violence they longed to leave behind.[9]

Divisions quickly emerged between the new president and human rights groups, and among the groups as well. At issue were competing visions for the operation of human rights mechanisms and their relationship to other government institutions: the executive, legislative branch, the judiciary, and the military. At root were struggles over the relative power of those institutions, as exercised and resisted through human rights language and practices. The military might have been disgraced and delegitimated in the 1982 Falklands/Malvinas War, but, through violence, intimidation, and negotiation, it continued to assert its role in Argentine politics. Instead of the congressional commission demanded by the human rights movement, Alfonsín, for the sake of expediency and control, created a 10-person presidential commission to investigate disappearances (Comisión Nacional sobre la Desaparición de Personas, CONADEP), a body that most in the movement rejected as unrepresentative and impotent.[10] Other human rights advocates accepted and even joined the commission, hoping to expand its work beyond the government's proposed project through their involvement.[11] Alfonsín, who nullified the military's self-amnesty upon taking office, paired CONADEP with military trials, thus satisfying administration desires to placate the armed forces and prevent the judiciary's involvement while frustrating human rights groups' calls for civilian prosecutions.[12]

At the level of ideology, rifts opened too over conflicting interpretations of the recent violence that human rights mechanisms were meant to address. The famous final report produced by CONADEP, *Nunca Más*, began with a prologue by writer Ernesto Sábato that, while forcefully condemning the military government and its responsibility for the disappearances, articulated a different and enduring trope. Applying what has

[5] Sikkink, *Politics of Human Rights*, 64.
[6] Human rights groups also demanded that misappropriated children be found and returned to their families, and that members of the judiciary and police forces be forced to retire. Brysk, *Politics of Human Rights*, 68.
[7] Genaro Carrió was an advisor on the initial filing for *Pérez de Smith*. Subsequently, he served as Alfonsín's lawyer, was named (by Alfonsín) chief justice of the Supreme Court, and was a member of Alfonsín's Consejo para la Consolidación de la Democracia (Council for the Consolidation of Democracy), which "promoted an overall change in institutional relationships through the mechanisms of constitutional reform to stabilize the democratic system." Brysk, *Politics of Human Rights*, 117; Meijide, *La historia íntima*, 44.
[8] Brysk, *Politics of Human Rights*, 66.
[9] Brysk, *Politics of Human Rights*, 61.
[10] Brysk, *Politics of Human Rights*, 69-70.
[11] Brysk, *Politics of Human Rights*, 69-70.
[12] See Brysk, *Politics of Human Rights*, 69.

been dubbed the teoría de los dos demonios (the theory of the two devils), Sábato began by dividing blame between two extremes: "During the 1970s, Argentina was torn by terror from both the extreme right and the far left."[13] This understanding of the country's political violence was advanced by the Alfonsín administration, which stressed "evenhandedness" in its human rights initiatives; upon taking office, for example, Alfonsín decreed the prosecution of top guerrilla leaders along with junta leaders.[14] But, as Sebastian Carassai has shown, the "dos demonios" perspective was also shared by broad segments of the population starting in the 1970s.[15] During the dictatorship, as they struggled against state violence and obstruction, human rights groups like the Permanent Assembly for Human Rights and the Argentine League for the Rights of Man made a point of denouncing *all* forms of political violence. Others were critical of this approach. With the reestablishment of democracy, groups including the Mothers of Plaza de Mayo rejected the Alfonsín administration's embrace of the theory of the two devils as an "implicit justification for the junta's repression and evidence of military pressure on the new president."[16] The Mothers themselves ultimately divided (in 1986) into two separate groups on the question of whether or not to collaborate with the new democratically elected government. This was a question whose answer was influenced in part by individual Mothers' level of identification with missing children's politics and the revolutionary social and economic change some of them had pursued.[17]

The 1985 trials and the recommencement of prosecutions two decades later represented an important break from the law and politics of the 1970s and older politico-legal habits. This was true inside Argentina and on a global level, and it was true in a number of ways. The military trials Alfonsín promoted produced delay and, finally, a decision by the military's highest court that officials' orders in the war against subversion had been justified.[18] An appeal by CELS and other human rights advocates moved the prosecutions to the civilian court system.[19] The resulting trials were historic; never had a Latin American country tried its own leaders for human rights violations committed under an authoritarian government.[20] The charges were based in existing domestic criminal law and included kidnapping and murder.[21] But the trials also reconfigured Argentine criminal law, transforming the old concept of political crime – traditionally applied to individuals' acts against the state – to allow the prosecution of rights-abusing public officials and, eventually, to bar the kind of impunity that repeated amnesties had fostered (Chapter 4). Of the nine junta leaders tried in 1985, five were convicted and given prison sentences ranging from four and half years to life.[22]

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[13] *Nunca más*, 6.
[14] See Brysk, *Politics of Human Rights*, 71; Emilio Crenzel, *The Memory of the Argentina Disappearances: The Political History of Nunca Más* (New York: Routledge, 2011), 36-37; Marguerite Guzman Bouvard, *Revolutionizing Motherhood: The Mothers of Plaza de Mayo* (Wilmington, DE: Scholarly Resources Inc., 1994), 133.
[15] Sebastián Carassai, "Antes de que anochezca. Derechos humanos y clases medias en Argentina antes y en los inicios del golpe de estado de 1976," *América Latina Hoy* 54 (2010): 69-96
[16] Guzman Bouvard, *Revolutionizing Motherhood*, 133.
[17] See Guzman Bouvard, *Revolutionizing Motherhood*, 16; Ana Peluffo, "The Boundaries of Sisterhood: Gender and Class in the Mothers and Grandmothers of the Plaza de Mayo," *A Contracorriente* 4, no. 2 (Winter 2007): 77-102, 94; Karen Ann Faulk, "The Walls of the Labyrinth: Impunity, Corruption, and the Limits of Politics in Contemporary Argentina" (PhD diss., University of Michigan, 2008), 183.
[18] See Brysk, *Politics of Human Rights*, 76.
[19] See Brysk, *Politics of Human Rights*, 76.
[20] Kathryn Sikkink, *Justice Cascade*, 72.
[21] Sikkink, *Justice Cascade*, 72.
[22] Sikkink, *Justice Cascade*, 75; Brysk, *Politics of Human Rights*, 79.

Criminal actions brought by private individuals (rather than the state) expanded the scope of accountability initiatives far beyond what Alfonsín planned, bringing junior officers to court and inspiring resistance in the military and among supporters of the former military government.[23] Following military uprisings and coup attempts, and fearing the collapse of the young democracy, Alfonsín limited and then halted the prosecutions with two laws, the Ley de Punto Final (Full Stop Law) in 1986 and the Ley de Obediencia Debida (Due Obedience Law) in 1987.[24] Alfonsín's successor, Peronist Carlos Menem, went further; soon after taking office he issued presidential pardons for the convicted junta leaders, other military officials, as well as some ex- guerrillas.[25]

Human rights lawyers chipped away at impunity by, among other strategies, seizing on exceptions built into Alfonsín's Full Stop Law and Due Obedience Law (which allowed future prosecutions for select crimes including the misappropriation of children), challenging the amnesty laws and presidential pardons before the Inter-American Commission on Human Rights, and eventually advancing successful constitutional and international human rights arguments.[26] These developments came as the global "justice cascade" gained momentum, most notably with the 1998 arrest of Augusto Pinochet by British police executing a Spanish extradition warrant.[27] Inside Argentina, *Pérez de Smith* lawyer and Paris Colloquium participant Alberto Pedroncini (Chapter 6) was among the advocates who advanced the legal arguments that would, two decades after the return of democracy, allow for the successful – and this time apparently lasting – prosecution before Argentine courts of human rights violators under the 1976-1983 dictatorship.

In the late 1990s, Pedroncini filed a lawsuit to demonstrate that the military junta had systematically stolen children.[28] Such cases on the misappropriation of children relied in part on the theory that these kidnappings were ongoing crimes whose prosecution could not be blocked by a statute of limitations. But they also asserted that the categorization of these acts as crimes against humanity rendered statutes of limitations inapplicable.[29] These and other lawsuits outside the scope of the amnesty laws, combined with damning revelations in Argentine "truth trials" and foreign court decisions calling for the detention of Argentine "dirty war" perpetrators, put pressure on the amnesty laws themselves.[30] Lower courts and appeals courts declared the Full Stop and Due Obedience laws to be illegal under domestic and international law.[31] In 2003, Congress nullified the laws, and in 2005, the Supreme Court found them unconstitutional

[23] Sikkink, *Justice Cascade,* 75-76.
[24] For a defense of these laws from the perspective of one of Alfonsín's colleagues and supporters see Antonio T. Berhongaray, *El Juicio a las Juntas militares: Un ejemplo para el mundo* (Santa Rosa, Argentina: Ediciones Amerindia, 2008), 252-256.
[25] Brysk, *Politics of Human Rights*, 84.
[26] Antonio T. Berhongaray, *El Juicio a las Juntas militares: Un ejemplo para el mundo* (Santa Rosa, Argentina: Ediciones Amerindia, 2008), 252, 254; Gabriel Pereira and Par Engstrom, "The Ebbs and Flows in the Search for Justice in Argentina," in *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives*, ed. Leigh A. Payne and Francesca Lessa (Cambridge, UK: Cambridge University Press, 2012).
[27] Sikkink, *Justice Cascade*, 122; Roht-Arriaza, *Pinochet Effect*.
[28] See Roht-Arriaza, *Pinochet Effect*, 111.
[29] Earlier Argentine court cases concerning the extradition of Nazi war criminals led to a 1995 Supreme Court judgment (*Priebke*) holding that statutes of limitations do not apply to crimes against humanity. Roht-Arriaza, *Pinochet Effect*, 99-100, 111.
[30] Roht-Arriaza, *Pinochet Effect*, 113-115.
[31] Roht-Arriaza, *Pinochet Effect*, 113.

and in violation of international law.[32] CELS brought that successful Supreme Court case (*Poblete*). The CELS lawyers asserted that allowing prosecutions for the kidnapping of children while disallowing the prosecution of those children's parents was inconsistent.[33] The CELS lawyers also insisted that Alfonsín's amnesty laws violated international human rights law. Enforced disappearance, the Court concluded, was a crime against humanity; statutes of limitation therefore did not apply.[34] The prosecutions of "dirty war" crimes continue today, an important focus – but by no means the sole focus – of the groups active during the dictatorship.[35] In the process, the role of the courts in Argentine democracy has continued to change.

Argentina's Constitution was itself remade by the country's experience with violence and the globalization of human rights in ways that, while limited, set the stage for lawyers' future innovations in the courtroom.[36] Part of a wave of Latin American constitutional projects, the 1994 constitutional reform modified Argentina's 1853 foundational text in line with the major rights debates of the twentieth century.[37] Some of the reforms hemmed in the Executive's ability to suspend or deviate from the constitutional order; Article 23, Argentina's state of siege provision, was modified to disallow Congress from granting the executive extraordinary powers.[38] New rights protections were also introduced. International human rights law was integrated into domestic Argentine law, with human rights treaties granted constitutional status. In addition, mechanisms were added to the text of the Constitution for protecting the rights enshrined there, in legislation, and in international human rights law. Habeas corpus, the legal mechanism at the center of Chapter 6 and long considered by advocates an implicit constitutional right, was now explicitly provided for in the National Constitution in cases relating to physical liberty or conditions of detention (including cases of enforced disappearance).[39] Another tool, amparo, was also included in the amendments to allow for court actions against a wide range of rights violations, individual *and* collective.[40]

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[32] Sikkink, *Justice Cascade*, 79.

[33] See Centro de Estudios Legales y Sociales, *La lucha por el derecho* (Buenos Aires: Siglo XXI Editores, 2008), 102-114; See Sikkink, *Justice Cascade*, 78.

[34] Sikkink, *Justice Cascade*, 79. This determination that crimes against humanity had been committed and that international law made such laws imprescriptible had previously been made in a 2004 Supreme Court case, which based its decision on *jus cogens* and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (though Argentina did not ratify the convention until 2003). Pereira and Engstrom, "Ebbs and Flows."

[35] CELS provides ongoing updates on the prosecutions on its website, http://www.cels.org.ar/.

[36] See Pereira and Engstrom, "Ebbs and Flows."

[37] Notably, this constitutional reform in Argentina went through under the same Peronist president, Carlos Menem, who pardoned the junta leaders convicted in 1985.

For a comparative treatment of constitutionalism in Latin America since the 1990s, see Detlef Nolte and Almut Schilling-Vacaflor, eds., *New Constitutionalism in Latin America: Promises and Practices* (Burlington, VT: Ashgate, 2012).

[38] See Janet Levit, "The Constitutionalization of Human Rights in Argentina: Problem or Promise?" *Columbia Journal of Transnational Law* 37 (1999): 281-355, 346.

[39] The reader might recall that Juan Perón's 1949 constitution also constitutionalized habeas corpus, unlike the 1853 version (Chapter 1). In the 1994 constitution, habeas corpus is codified in article 43. See Levit, "Constitutionalization of Human Rights," 311n141.

[40] "When the right which has been harmed, restricted, altered, or threatened related to physical liberty or to a case of illegal worsening in the form or conditions of detention, or in the forced disappearance of persons, the writ of habeas corpus may be imposed by the affected person or by someone else to benefit him; the judge is to resolve the issue immediately, even while there is a state of siege." Argentina constitution, art. 43, as translated in Levit, "Constitutionalization of Human Rights," 311n141. See Centro de Estudios Legales y Sociales, *La lucha por el derecho*, 19.

Through the use of amparo, human rights groups are able to pursue court action based on social, economic, and cultural provisions of human rights law along with the civil and political rights at the center of late twentieth-century human rights activism. CELS in particular has made human rights litigation a centerpiece of its legal *and* political work, from the *Poblete* case mentioned above (part of its *crímenes de lesa humanidad* docket) to cases concerning indigenous rights, labor rights, and the rights to health and housing. "The inclusion of amparo, individual as well as collective, in the constitutional text… has proven very useful in expanding the limits of democratic citizenship."[41] So while many citizens' demands of the incoming democracy in 1983 were focused less on restructuring the social order (a prominent objective in the democratization a decade prior) than on justice, the incorporation of international human rights into Argentina's national legal system has not produced a persistent narrowing of citizens' demands of the state.[42]

What has diminished is the belief in easy political fixes through the suspension of the law. This faith had taken the form of reliance on the military to pause and transcend legal restrictions in order to achieve authentic constitutional rule. It has also taken the form of revolutionary plans to recast the law beyond imperialism and against the existing social and economic order. Today, Argentines very much recognize the complicated links between the law, politics, and human rights even as they continue to argue about them. The executive, and the brand of Peronism it has embodied under President Néstor Kirchner (2003-2007) and current president Cristina Kirchner, seeks to identify itself with human rights, aligning itself with the last dictatorship's victims, promoting the ongoing prosecutions for the dictatorship's crimes, and linking itself to certain human rights organizations.[43] The theory of two devils has, for some Argentines, given way to a different interpretation of Argentina's Cold War violence.

One result has been a new chapter in the longstanding battles over the meaning of human rights this dissertation has analyzed. For the segment of Argentines who continue to rail against perceived impunity for the violence wrought by 1970s "subversion," the naming of lawyers once associated with radical politics to human rights posts in the national government remains a point of contention.[44] But more conservative sectors of society have not renounced human rights altogether.

As expressed in a 2014 *La Nación* editorial, criticisms of Cristina Kirchner's administration and its human rights policies – criticisms that include claims of corruption as well as partisanship – coexist with a stated commitment to human rights that spans the political spectrum: "To speak of human rights is to speak of supreme human values…. The other side of the coin is that all human rights policies must be administered in a transparent and proper manner."[45] The editorial goes on to criticize the Supreme Court for its failure to recognize terrorist violence as crimes against humanity and, especially,

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[41] Centro de Estudios Legales y Sociales, *La lucha por el derecho*, 19.

[42] Emilio Crenzel describes the transformation of Argentines' demands during the Proceso this way: "[T]he individuals and groups who at this time denounced the abuses differed from those in the previous political transition in that they were not clamoring for vengeance nor did they have expectations of changing the social order, but rather demanded justice from the state for the abuse." Crenzel, *The Memory of the Argentina Disappearances*, 33.

[43] See Peluffo, "The Boundaries of Sisterhood," 77-102, 78.

[44] The author has encountered small demonstrations outside of Argentina's Palace of Justice by people demanding the prosecution of lawyers who represented guerrillas in the early 1970s and subsequently became human rights officials in the national government.

[45] "Derechos humanos, dinero, poder y corrupción," *La Nación* (Buenos Aires), December 28, 2014.

to catalog alleged financial misdeeds tied to reparations and other human rights-related initiatives. Alluding to Peronism, the piece ends with a provocative take on the issues of violence, law, governance, and rights politics that this dissertation has sought to historicize: "human rights are not just a rearview mirror to judge the past from a partial and revanchist perspective, but also an agenda for public action intended to eradicate hunger, provide decent housing, educate the next generations, assure health, personal security, access to justice, and genuine employment opportunities without handouts ("dádivas") or clientalism."

In sum, Argentina's human rights debates continue, with the involvement of protagonists from diverse political backgrounds and the invocation of social and economic rights as well as liberal individual rights. The extent to which this rhetoric is matched with support for effective state action to protect and fulfill those rights is another question. In any case, rights language retains its capacity to affect the state's legitimacy. This capacity, in turn, is a product of the historical forces that have determined the content and connotations of rights claims. At times, those forces have entwined individual rights advocacy and broader social justice initiatives. But Argentina's recent implementation of transitional justice, through the country's truth commission and, especially, its human rights trials, has contributed to the separation of individual liberty and bodily integrity rights from economic and social rights claims. One result has been a simplification of history.[46] The decades-long conflicts over democracy and Peronism that produced Argentina's Cold War violence are, of course, *not* adjudicated in the criminal prosecutions of particular officials charged with committing egregious physical violence and related offenses during the "dirty war."

More than a decade after Argentina's first round of human rights prosecutions, one of the lawyers who had conceptualized and promoted them offered a withering assessment. Jaime Malamud Goti was writing before human rights trials were restarted in 2006, but his conclusions remain relevant. Malamud Goti observed that despite the 1985 trials, Argentine society continued to accept forms of state-sponsored violence, including police torture and other abuses. The "rights-based democracy" Malamud Goti and his colleagues sought to promote had been undermined. In fact, he concluded, the trials "may have reinforced the very same authoritarian trends they were designed to overcome."[47] Namely, Malamud Goti pointed to criminal law's bifurcation of the guilty and innocent, arguing that this feature of the law paralleled and aggravated the military dictatorship's bifurcation of Argentine society into enemies and allies.[48]

Malamud Goti's analysis exposes another way in which legal liberalism, and specifically its manifestation in criminal law, has "re-invented" Argentine history.[49] The operation of legal mechanisms has produced perpetrators and victims where there were once political actors engaged in complex struggles over resources and power.[50] And yet,

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[46] Greg Grandin, "The Instruction of Great Catastrophe: Truth Commissions, National History, and State Formation in Argentina, Chile, and Guatemala," *American Historical Review* 110, no. 1 (February 2005): 53.
[47] Jaime Malamud Goti, "Dignity, Vengeance, and Fostering Democracy," *University of Miami Inter-American Law Review* 29, no.3 (Spring-Summer 1998): 418.
[48] Malamud Goti, "Dignity, Vengeance, and Fostering Democracy," 438-39.
[49] Malamud Goti, "Dignity, Vengeance, and Fostering Democracy," 438.
[50] Emilio Crenzel has made a similar point. See for instance Emilio Crenzel, "Memorias y representaciones de los desaparecidos en la Argentina, 1983-2008," and "La víctima inocente: de la lucha antidictatorial al relato del *Nunca más*," in *Los desaparecidos en la Argentina. Memorias, representaciones e ideas (1983-2008)*, ed. Emilio Crenzel (Buenos Aires: Biblios, 2010).

human rights prosecutions in Argentina have provided a sense of justice for family members of the disappeared, and they have created a public record of heinous acts whose secrecy was itself deeply damaging. It may be that what is needed are modifications to the liberal legal forms this dissertation has examined. But law's limits must also be acknowledged. Criminalization and court decisions alone cannot create a political order that defends the rights of all people at all times.

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