
The La Tablada Attack and the Erosion of Civil Rights in Argentina

David M. K. Sheinin
Trent University

Abstract: On January 23, 1989, 42 operatives of a revolutionary group, the *Movimiento Todos por la Patria* (MTP), attacked the General Belgrano Mechanized Infantry Regiment No. 3 at La Tablada in the province of Buenos Aires. This article analyzes the accusations of human rights violations committed by the armed forces and the police on the attackers in the aftermath of the assault; the skeptical Argentine government's response to those allegations before the Inter-American Commission of Human Rights (IACHR); and the commission's conclusions in its 1997 report. It discusses these developments considering a long-term degradation of civil rights in Argentina, and thus, of the meaning of citizenship itself. The report posed electrifying questions in a country grappling with a nascent democracy and the stalled prosecution of dictatorship human rights abusers. A decade and a half into Argentina's longest period of democratic rule in more than half a century, the IACHR report posed and answered a question that remained glaringly unanswered in Argentina: At what point does a democratic state assume responsibility for the human rights violations of the institutions it governs, notably the police and the military?

Keywords: Argentina, human and civil rights, democracy, La Tablada, Movimiento Todos Por la Patria

On January 23, 1989, 42 operatives of the *Movimiento Todos por la Patria* (MTP) revolutionary group staged an attack on the General Belgrano Mechanized Infantry Regiment No. 3 at La Tablada, Buenos Aires province. In the ensuing fight, 39 insurgents and soldiers were killed. The leader of the MTP, Enrique Gorriarán Merlo, had led the Ejército Revolucionario del Pueblo (ERP), one of the most effective armed insurgencies of the 1970s. His explosive reappearance on the national political scene was not the only chilling anachronism of that day. The assault was eerily reminiscent of dozens of similar attacks on military and non-military targets by leftist revolutionaries during the 1970s that had contributed to massive political destabilization in Argentina in the lead up to the 1976 military coup d'état. The ostensible motive for the attack was the MTP's fear of a new military takeover of the civilian government. Some found that reasoning delusional. However, only six weeks before La Tablada, Colonel Mohamed Alí Seineldín had

launched a failed coup attempt at the Villa Martelli military base, one in a sequence of such risings after the return of democracy in 1983 (Lofredo 1996).

As television stations began carrying news of the attack as it unfolded, Argentines at first believed that the attackers were yet another group of disgruntled military officers trying to reinstate military rule. The larger context was a growing sense of disillusion in Argentina with the government of president Raúl Alfonsín, which had been unable or unwilling to prosecute the clear majority of soldiers accused of dictatorship crimes. Fascinating as they are, this article is not concerned in the first instance with the motives for the attack or the political ramifications of a brief, isolated throwback to 1970s violence in a climate of mounting economic uncertainty in the late 1980s, seemingly reminiscent of the preceding decade. Rather, it focuses on a specific set of events during the assault, their reading by the Argentine government before the Inter-American Commission on Human Rights (IACHR), the commission's judicial rendering in a 1997 report, and what all of it says of the long-term degradation of civil rights in Argentina— or the rights of citizens and thus, the meaning of citizenship itself.

As armed conflict unfolded over 30 hours on January 23–24, more than 3,000 soldiers and police officers staged a counter-attack. Once the insurgents had been defeated and the dust had settled accusations and counter-accusations of criminality and international law violations quickly followed. Eduardo Navascues, a member of the Third Infantry Regiment accused his MTP captors of torture. In 2004, the retired non-commissioned officer José Almada alleged that members of the *Secretaría de Inteligencia del Estado* (SIDE) (the sinister federal intelligence unit with strong dictatorship ties) of having tortured two MTP prisoners during the recapture of La Tablada. More serious still, human rights groups and MTP operatives who survived the attack denounced the summary execution of four MTP operatives after the MTP had ostensibly offered to surrender their positions, the disappearance of six more, and the use of white phosphorous by the military in the counter-attack, a chemical weapon banned by international law (Amnesty International 1990).

On October 5, 1989, the Federal Court of Appeals for San Martín convicted 20 MTP insurgents to prison sentences ranging from 10 years to life. MTP survivors appealed to the Supreme Court, which rejected the plea two years later, and then to the IACHR. The 1998 commission report on the La Tablada attack was a mixed bag of conclusions that, nonetheless, held the Argentine state responsible for the torture and extrajudicial killing of MTP captives after

fighting on the base had ceased. As a matter of international law, much of commission deliberations and reasoning hung on whether the attack was a civil insurgency or a military conflict, and at what point in the 30-hour struggle hostilities had come to an end. The case immediately became a significant precedent in international law. In its findings, the IACHR justified its consideration of human rights law (especially, the provisions of the American Convention on Human Rights), but in addition, humanitarian law (a new development for the commission). At the time, the Colombian government, which had bristled at a similar IACHR citation of humanitarian law in the 1997 case of *Avilán v. Colombia*, was among several observers arguing forcefully that humanitarian law was beyond the IACHR mandate (Avilán 1998).¹

International humanitarian law applies to armed conflict and occupation. Its origins are in The Hague Regulations on Laws and Customs of War (1907) and in the four Geneva Conventions (1949). Humanitarian law governs the treatment of those no longer participating in hostilities, and considers limits on warring parties in methods and means of warfare. Human rights as a matter of international law date to the United Nations Universal Declaration on Human Rights (1948). They arose in response to the carnage of the Second World War and a shared international sense of rights to which all people are due. Never legally binding, human rights have a more complicated past in Argentina than does humanitarian law which first came up in the IACHR in 1997 (Tabak 2016).

Because they are more ambiguously and broadly formulated, human rights are inherently more subject to legal interpretation and change over time. Before 1973, they were largely unknown outside diplomatic and juridical communities, and never applied by a court in Argentina. At the same time, though, much of what we now understand as human rights were entrenched under other rubrics in popular culture, as a matter of law, and in foreign policy. These included the 1947 Declaration of the Rights of the Worker by President Juan D. Perón, Argentina's Declaration on Social Justice at the Ninth Pan-American Conference (1948), and many components of the 1949 Argentine constitution (Vittone 1954). It was not until after Amnesty International and newly organized human rights groups in Argentina began to challenge military rule in Chile and Argentina

¹ This case concerned the death of Arturo Ribón Avilán and 10 others during an armed confrontation between the revolutionary Colombian group, M-19, the Army, and police intelligence units on September 30, 1985. An M-19 unit was distributing milk in Bogotá when the Army roped off the neighborhood. The M-19 members fled but were caught by Army operatives, which led to a firefight.

in the 1970s that human rights became both popularly understood in that context and a matter of political debate. With the return of democracy in 1983, human rights were included as a central problem in civic education classes in Argentine schools. This was one component of a popular linkage of democracy to human rights that has persisted to the present (Siede 2016).

In considering the La Tablada case, the IACHR found that Common Article 3 of the Geneva Conventions trumped attention to human rights law during hours of violent conflict. “Despite its brief duration,” the IACHR report argued, “the violent clash between the attackers and members of the Argentine armed forces triggered application of the provisions of Common Article 3, as well as other rules relevant to the conduct of internal hostilities” (Abella 1998, paragraph 156). Stated otherwise, the assault on and recapture of the barracks were both military acts. As such, in considering potentially violent abuses and excesses on both sides, human rights (which applied to civilian conflict) were less relevant than humanitarian rights which governed military confrontation. “When civilians... assume the role of combatants by directly taking part in the fighting,” the report continued, “...they thereby become legitimate military targets.... Thus, by virtue of their hostile acts, the Tablada attackers *lost* the benefits of [civilian legal protections]... against the effects of indiscriminate or disproportionate attacks pertaining to *peaceable* civilians” (Abella 1998, paragraph 178).

The IACHR concluded, however, that while the insurgents had been legitimate military targets during hostilities, in the same reading of humanitarian law, once wounded or captured, or once they had surrendered, the provisions of Common Article 3 had guaranteed their protection by the Argentine state. In addition, the commission found insufficient evidence that the Argentine military had used an incendiary weapon. Moreover, even had such evidence been found compelling, the report noted that in 1989, there had been no explicit applicable prohibition on the use of incendiary weapons on internal armed conflicts in Argentina. “In this connection, the Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons annexed to the 1981 United Nations Conference on Prohibitions or Restrictions of Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious and to Have Indiscriminate Effects (‘Weapons Convention’), cited by petitioners, was not ratified by Argentina until 1995” (Abella 1998, paragraph 187).

In a strong blow to the MTP petitioners and the human rights organizations that supported them, the IACHR found insufficient evidence that the military had turned down an offer of

surrender. “The killing or wounding of the attackers... were legitimately combat related and, thus, did not constitute violations of the American Convention or applicable humanitarian law rules” (Abella 1998, paragraph 188). Nevertheless, the commission held the Argentine government responsible for the military’s extra-judicial execution of nine MTP prisoners. It concluded further that state agents had tortured all survivors of the insurgency (Abella 1998, paragraphs 160-62).

In the context of how Argentines had been grappling with the last dictatorship (1976–1983) regarding the return to democracy, human rights, a pioneering national truth commission, the prosecution (then the pardoning) of military junta leaders, and a host of related problems, the IACHR report posed electrifying questions. Had they been considered by the federal government, they might have prompted a widespread judicial, political, and popular rethinking of several problems central to democratization and reckoning with military rule. The most significant finding was the IACHR characterization of the events of January 23–24 as a military conflict. As the national legislature and the court system continued to grapple with the legacy of 1970s leftist insurgencies, there were now international judicial grounds for the reconsideration of the 1975 ERP attack on Monte Chingolo,² among dozens of other deadly clashes between revolutionaries and the armed forces, as military conflicts. Moreover, a decade and a half into Argentina’s longest period of democratic rule in more than half a century, the IACHR report posed and answered a question that had remained glaringly unanswered in Argentina: At what point does a democratic government assume responsibility for humanitarian and human rights violations of the institutions it controlled, notably the police and the military? (Moir 2003: 189–190; Iguyovwe 2008: 765–766).

Despite that the commission had found a democratic Argentine government responsible for extrajudicial killings and that during the 1980s, that same government had positioned itself as a human rights leader in the international community, the impact of an IAHRC report on the Argentine judiciary and polity was nil. There are two likely reasons for that underwhelming impact. First, by the time the report was released, almost a decade after the attack, the implications of the event it chronicled had long been outpaced by political and social change. Not only were there no further military coup attempts after 1989, but the administration of President Carlos Menem (sworn in shortly after the La Tablada assault) had decimated the political strength of the armed forces by

² The attack on the military base at Monte Chingolo was perhaps the most formidable leftist revolutionary act in 1970s Argentina. It left over 100 dead, made Gorriarán Merlo famous as a Latin American revolutionary leader, and likely contributed to the timing of the 1976 military coup d’état (Plis-Sterenbergh 2003).

removing their control of military industrial concerns, reducing the earnings of officers, and in other ways. Second, the Menem presidency was characterized in part by what some considered a disinterest in human rights—though what was perhaps more accurately, a political position at odds with dominant ideologies and politics of human rights in Argentina (Cerruti 2013; Roniger & Sznajder 1999: 16)

The negligible impact of the report is also a symptom of a long-term development in Argentine law and politics, the degradation of civil rights. Civil rights had been entrenched in the 1853 constitution as a classical liberal defense of personal liberties, private property, and the protection of the individual against an overly intrusive state. Almost from the outset, Argentines identified weaknesses in those protections, including multiple limitations on the right to vote. The rise of the labor movement and the emergence of *peronismo* can reasonably be understood in part as a reaction to those failings, as can the promulgation of the 1949 constitution and its protections of social security, the rights of children, and public health as *social rights*. Many Argentines viewed social rights as superseding the limitations of civil rights. The degradation of civil rights followed in the weakening of the democratic institutions whose first responsibility was the protection of those rights. These included democratic governance, beaten down by military intervention, and a widening perception after 1950 that the police, the courts, and other democratic institutions were failing in their capacity to represent the rights of citizens. That process was accelerated when the military government that came to power in 1976 used constitutional guarantees to defend the *de facto* regime (Garin 2012; Sheinin 2012, chapter 4).

Argentine memories of the Raúl Alfonsín presidency during the 1980s and the Carlos Menem presidency during the 1990s have formed around very real differences. The former is associated with a defense of human rights, the prosecution of dictatorship leaders, and economic collapse. The latter is remembered for Menem's abandonment of a traditional foreign policy distance from the United States and neo-liberal economic policies that included the sell-off of state-owned companies at bargain-basement prices. Even so, they had in common a politics of civil rights and the courts that dovetailed with dictatorship positions in several key areas. Argentina structured its response to the MTP petitioners before the IACHR in a manner that drew on dictatorship approaches to civil rights—starting with the idea that harsh, brutal responses to insurgencies marked the exercise of a constitutionally protected set of civil rights of all citizens. In the defeat of a dangerous insurgency, so the argument went, extraordinary judicial and police

means were necessary that could compromise some rights in the short term as a defense of constitutionally guaranteed rights in the long term (Lorenzetti 2011: 104–113; Rapoport 2016).

Dictatorship to Democracy: The Abrogation Civil Rights

The Alfonsín administration marked a sharp change from dictatorship. Yet, even though human rights became a stated legal, political, and foreign policy emphasis, the government occupied a foggy position on rights. Despite the formation of a successful truth commission and the unprecedented prosecution and incarceration of military leaders for their roles in rampant human rights abuses, the new democracy prolonged and made use of dictatorship rights-related legal norms that had been the subject of severe criticism by Amnesty International and other rights organizations. There were secret negotiations with the armed forces. A 1984 legislative bill, for example, supported by the administration, would have reformed the Military Code of Justice to end the prospect of civil court prosecutions of soldiers accused of rights violations. It would also have permitted the Nuremberg “following orders,” due obedience defense. Backed by the Argentine Chamber of Deputies, the project was opposed and defeated by the Senate (which unlike the Deputies, was outside the control of Alfonsín’s Radical Party) (Verbitsky 1987: 51–55).

More important, while the Alfonsín administration fought *golpista* tendencies within the armed forces and the longstanding acceptance in much of Argentine society that the military functioned as a political arbiter of last resort, military authority lasted into the 1980s. This was due in part to the government’s dependence on constitutional interpretations, military decrees, legal precedent, and laws implemented during the recent dictatorship. That dependence on dictatorship law legitimized the weakening of civil rights under military rule as judicially credible, which in turn weakened Alfonsín’s own efforts (in conjunction with the ongoing threat of a military rising and economic decline) to clearly distinguish democracy from military rule on the question of civil rights (Sheinin 2012).

In the right to gather, to worship, and to express oneself freely, the constitution guarantees civil rights, as it does in the protection of political rights in the freedom to vote and in representative government. After the 1976 coup d’état, the military advanced a civil rights narrative on the constitutional legitimacy of military rule that went as follows: The military had overthrown the government in defense of the constitution and its civil liberties protections, particularly article 14

which protects free speech and free worship (Noia 1985; Guest 1990: 13–15). The legitimacy of the dictatorship derived from a constitutional response to exceptional leftist insurrection. Article 23 called for a state of siege in times of internal upheaval. “For more than a century the country had never found itself involved in an international conflagration; consequently, it had never suffered a foreign attack or internal chaos equivalent to the current threat from terrorist subversion” (Respuesta del Gobierno 1979).

The military narrative on its having built the coup d’état on constitutional pillars in its supposed defense of civil rights against leftist terrorism was all at once ludicrous and historically credible. Argentine history had regularized military rule to the extent that through the late 1970s, many of those who decried dictatorship understood it as a functional requirement to restore democratic order in the aftermath of crisis. In fact, before 1983, no persistent, effectual legal or political opposition had ever countered military governance as unconstitutional (Rinesi 2016).

Three of many cases highlight the willingness of post-1983 democratic governments to rely on dictatorship definitions of civil rights and the military narrative of a constitutional justification for judicial excess. Each suggests a disturbing legacy of authoritarian rule after 1983. In 1976, military operatives kidnapped Jacobo Isaac Grossman. Convicted of weapons possession, kidnapping, and extortion, Grossman was sentenced by a military court to 39 years in prison. With the collapse of military rule, Grossman petitioned for his release. Almost certainly, because the new democratic government believed—as had the dictatorship—that Grossman belonged to the Montoneros guerrilla group, it denied the petition even though the dictatorship had used fraudulent means to convict. The Alfonsín administration drew on dictatorship intelligence that had identified Grossman as a terrorist. One example of the falsified evidence base on which the dictatorship, and now the democratic government drew to keep Grossman in jail were court documents indicating his having been seized by the military on 6 July 1976—two days *before* one of the crimes of which he was later convicted. In failing to rescind the sentence, the Alfonsín government breached its own legislation vacating sentences for those wrongfully convicted before 1983. Convinced that Grossman was a terrorist, Alfonsín administration officials effectively reaffirmed the military narrative on rights by leaving him in prison (Rosenthal 1987; Secretaría de Inteligencia del Estado 1976)

In a similar case, in 1985 former Air Force corporal Osvaldo Antonio López petitioned the IACHR that the Alfonsín administration had violated his human rights. In 1987, the commission

found in his favor, declaring him a political prisoner. Argentina had unsuccessfully refuted López in a manner reminiscent of its position on Grossman; it relied entirely on legal arguments elaborated by the dictatorship beginning with a 1976 judgment by the Appeals Court of La Plata. On April 29, 1976, the Air Force declared it had found photos and diagrams showing jet fighter locations hidden in six aircraft at a Morón, Buenos Aires air base. Suspecting a leftist plot, authorities determined that López had been on the base at the time the documents had been found. He would show at trial, though, that he had never been unaccompanied during his shift and that the night before, a base door had been left *open* with nobody on security there. The court dismissed the case (López 1987).

A year later, armed assailants kidnapped López who was held for a week at an illicit detention center. He escaped, then turned himself in and was tortured. He confessed to having placed a bomb in the jet (though no bomb was ever found) and to having passed sensitive information on to ERP. Beyond the confession under duress, there was no evidence to establish López's guilt. A military court sentenced López to 24 years in prison for illicit association and the disclosure of state secrets. In 1985, in an IACHR petition, López cited Argentine Law 23,049 (1984), which retroactively confined the jurisdiction of military tribunals to accused soldiers. An Air Force corporal during the dictatorship, López reasoned that his forced confession and other aspects of his prosecution made his case comparable to those of civilians under dictatorship. Law 23,049, then, was relevant to his situation. The Argentine government responded by upholding the legality of his prosecution by the military (López 1987; Gregorio-Cernadas 2016).

As in the cases of López and Grossman, with regard to José Siderman, the post-dictatorship government had a keen interest in upholding dictatorship judicial process. In the case of Siderman, though, the interest was financial and was shared by the Alfonsín and Menem administrations. Explicit to the Alfonsín administration strategy on Siderman was the avoidance of any payment to the family for actions taken by the military government. That strategy was followed to the letter by the Menem administration. This is evident in the latter's prosecution of the case on precisely the same legal basis left by Alfonsín. On the night of the 1976 coup d'état, men in masks had kidnapped Siderman from his home in Tucumán. He was held and tortured for a week. The incoming military had targeted Siderman in advance (as they had others) with the knowledge that he likely had property worth stealing. Blindfolded during his captivity, Siderman heard his kidnapers giving and acknowledging military orders. On his release, Siderman left Argentina,

which prompted members of the military government of Tucumán province to seize Siderman's belongings. Military officers issued a backdated extradition order for fraud, doctored deeds to 127,000 acres of land, took control of a corporation Siderman headed, and executed the accountant left in charge to run Siderman's affairs (Ministerio de Relaciones Exteriores 1981).

In 1982, the Siderman family sued the Argentine government in U.S. federal court for torture, the expropriation of property, and 16 other causes of action. Siderman finally won a \$6 million out-of-court settlement in 1996. Through the 1980s and mid-1990s, to avoid a payout, Argentina denied evidence presented in court that the military governor of Tucumán, General Antonio Bussi, had sponsored the kidnapping, torture, and robbery of Siderman. Legislation passed after 1983 voided dictatorship decisions by civilian courts under the threat of military intervention and violence. Even so, through 1996, Argentina upheld a 1980 ruling by the First Federal Court of Tucumán calling Siderman's claim for damages unfounded. Argentina determined that properties seized by Bussi and his allies for personal gain had been confiscated for the public good. Moreover, democratic Argentina accused Siderman of having obtained a counterfeit police certificate of good conduct fraudulently; Siderman had purchased the forgery after his kidnapping in 1976 in order to escape the country. Argentina only settled with the Siderman family in 1996 when its chief counsel estimated that it had spent \$700,000 on the case since 1983 and that litigation expenses would continue to escalate exponentially. In short, the government cut its losses in the \$6 million payout (Ministerio).

Argentina Before the IACHR: La Tablada

The Grossman, López, and Siderman cases demonstrate the democratic government's willingness to allow dictatorship legal precedent and procedure to shape its policy when expedient and, consequently, to contribute to the denigration of the civil rights of each of the three—and of Argentines more generally. Argentina's response to the La Tablada MTP survivors before the IACHR (Abella 1998) demonstrated that same tendency to depend on dictatorship precedent to set the constitutional parameters of state-sponsored violence. Only this time, in the context of an armed attack that left 39 dead, the stakes were much higher.

The underlying position of the Argentine government was the same as that of the dictatorship in justifying the 1976 coup d'état; the constitution provided for the temporary suspension of civil rights in the face of a military attack. The petitioners argued that the president

had no authority to order the military to retake the base. The government countered that the constitution gave the president the authority to intervene because the insurrection was a military operation. In response to a criticism by the petitioners and the IACHR that it had failed to properly investigate the allegations of the petitioners, the Argentine state argued that “if it had considered the offenses alleged as shown and determined the responsibilities on the mere basis of the seriousness of the allegations,” it would be violating the constitution, domestic legal norms on criminal procedure, and the American Convention on Human Rights. That argument drew directly on a dictatorship body of legal reasoning that distinguished between those detained by the government in the 1970s through the legal system, the Poder Ejecutivo Nacional (or PEN, the National Executive Authority) and those kidnapped and disappeared illicitly. In the latter case, the dictatorship refused international and domestic requests to investigate disappearances that had not taken place (No. 65/8).

A central claim of the petitioners was that by the provisions of the 1984 Defense of Democracy Act (Law 23,077), the trial and convictions of MTP attackers were invalid. The Federal District of Morón had investigated the case while the Federal Court of Appeals for San Martín had heard proceedings, convicted the accused and issued the sentences. The petitioners argued that evidence was gathered illicitly in the procedure. Much of the evidence used by prosecutors was assembled by the armed forces, a breach of legal provisions blocking a law enforcement role for the military. Moreover, the court also admitted evidence gathered by right-wing extremist groups with links to reactionary factions in the armed forces. One such group, the Liga Católica Argentina Pro Campaña Latinoamericana de Ayuda al Drogadependiente (The Argentine Catholic League in Support of the Latin American Campaign for Drug Addicts or Prolatín), led by the Catholic priest, Luis Moisés Jardín had unusual access to MTA arms and documents discovered after the attack. That material too was entered evidence during the trial (Méndez 1991: 76–77).

Jardín’s documents held information on purported MTP plans to commit several crimes, including politically motivated killings. There was no information provided at the trial on who had provided him the documents; Jardín exercised his legal right to maintain the secrecy of confession (Abella 1998, paragraph 51). In addition, by the provisions of Law 23,077, defense attorneys at the trial were denied access to evidence in the case and were not permitted to challenge the authority of expert witnesses identified by the state.

According to the petitioners, the Defense of Democracy Act permitted this illegal evidence gathering in the case as well as a range of other procedural improprieties. The presiding judge in the case, Gerardo Larrambeberé, had reached the La Tablada site at 11:30 AM on January 24, 1989 to assemble evidence and verify details in the case. He did neither effectively. “This judge confined himself to a kind of ‘guided tour’ in which he saw what the army showed him, walked where the army allowed him to walk, and also *allowed* the army to gather weapons, equipment and other materials” (Abella 1998, paragraph 39). The petitioners identified an abdication of jurisdictional responsibility by Larrambeberé in his not having taken charge of collecting and handling evidence on site. Moreover, the judge restricted his investigation to walking through sites pointed out to him by military officials present. As a result, among many procedural problems engendered, information regarding the deaths and wounds suffered by the insurgents was removed from evidence files before the trial (Abella 1998, paragraph 40).

The petitioners argued that they were not tried in an appropriate court. The trial was carried out under special circumstances established by Law 23,077 that established an *ad hoc* criminal process by which there was no appeal of judgment other than a filing to the Supreme Court. The American Convention on Human Rights guarantees more than one level of appeal. The petitioners argued in addition that the trial was “political and repressive” (Abella 1998, paragraph 43). Applying National Security Doctrine language, the petitioners argued that the attack should be considered “low intensity conflict.”

The petitioners reprised a contention from the trial that the attack was not a “rebellion” in the sense identified by article 226 of the Argentine Penal Code (the implication being that there was no unique, militarized nature of the La Tablada assault that might have warranted the invocation of Law 23,077). The petitioners claimed to have been motivated by the constitution itself and its defense, in the face of the threat of a military coup d’état. They argued further that a “rebellion” required a military structure on the part of the MTP that was lacking, and the objective of disarming the function of the constitution (also lacking). Finally, they claimed it “unthinkable that 40 persons could achieve such a result” (Abella 1998, paragraph 48).

The unusual nature of the trial and its procedural irregularities were reminiscent of the dictatorship. One of those suspected of having been killed by the military after the surrender of the MTP was Berta Calvo. The explanation for her death during pre-trial hearings came from an army officer who indicated that she had surrendered with severe wounds. Walking with her hands in the

air, there was gunfire from behind a closed door that killed her. The court did not question the unusual circumstances of Calvo's death nor any follow-up investigation by the state. Whether an intentional cover-up by the state or simply appalling procedure, autopsies on those killed after the cessation of hostilities were poor, in part because bodies remained outside in the summer heat for over a week. The coroner then received boxes holding the remains of more than one person (Abella 1998).

In 1988, the Argentine House of Deputies passed the Law of National Defense (Law 23,554) making clear that the state could only use military force in repelling attacks of *external* origin (Pion-Berlin 2001: 154–155). One provision of the law prohibited the armed forces from intelligence gathering on domestic matters, which is precisely what happened during the 1989 trial and the admission of evidence. By Law 23,554, all testimonial and expert documents provided by the armed forces became invalid and as such, a violation of the civil right to a fair trial and guarantees of fair legal process.

In finding the accused guilty, the court had not investigated what each insurgent had done on his or her own. MTP operatives, then, who had never entered the army barracks on January 23, 1989, were convicted of the same crimes as the attackers. The strangest of these cases concerned Juan Antonio Puigjané, a Capuchin friar and member of the MTP. Despite having not taken part in the attack, he was taken into custody, tortured, and sentenced to 20 years in prison (O'Donnell 1998). Moreover, the petitioners claimed that the Argentine state violated the American Convention on Human Rights by killing and torturing with excessive force and by failing to prevent unnecessary violence. There was a violation of article 24 of the American Convention in that military personnel engaged in criminal acts equivalent to those of which the MTP attackers had been convicted had been given different treatment under the law in the past.

To justify its having invoked Law 23,077, the Argentine government presented it as one of a package of legislation adopted to prevent a recurrence of military dictatorship. However, its juridical precedent in Argentina was one that Argentine and international human rights groups had fought—the use of military tribunals by the dictatorship to try civilians accused of “extraordinary” crimes. Like military tribunals under the dictatorship, the courts established by Law 23,077 functioned in a manner that denied constitutionally guaranteed rules of evidence gathering, encouraged an unreasonable participation of military authorities, and denied regular channels of appeal. The state responded to the MTP petition before the IACHR in language whose purposeful

ambiguity was reminiscent of equivalent dictatorship approaches to judicial proceedings. Law 23,077 was meant to help build a judicial order “consistent with the republican system of State as embodied by Article 1 of the National Constitution” (Abella 1998, paragraph 77). In the uncertain political climate of early 1984, the Argentine government had in mind the possibility of a resurgence of both military *golpistas* and the leftist insurgencies of the 1970s.

In vague terms, Law 23,077 targeted aggravated illicit association for those taking part, as well as cooperating or aiding in the formation or maintenance of an illicit association organized to commit crimes that might put at risk the constitution. There was an equally ambiguous mathematical component to the assessment of a threat. To meet the bar of criminality, such an organization would have to have at least two of the following features: at least 10 members, a military organization, a cellular structure, weapons of war or powerful explosives, operation in one or more political subdivisions of the country, one or more officers/non-commissioned armed forces officers, well known ties to similar organizations, or the assistance/direction of public officials. In other words, an organization that were to operate in the province of Catamarca and that consisted of twelve individuals could on those grounds alone be categorized an illicit organization dedicated to criminal insurrection and charged (Abella 1998, paragraph 77).

The way Law 23,077 altered how the criminal code was to treat the crime of rebellion was also ambiguous, opening the door to judicial impropriety. A sentence of 5 to 15 years in prison was determined for those who “rise up in arms to change the Constitution, depose any of the public powers of the national government, exact from it any measure or concession or impede, *even temporarily, the free exercise of its constitutional powers or its formation or renovation in legal terms and times*” (Abella 1998, paragraph 78). In this regard, the state claimed to have found documents at MTP offices showing that the insurgents planned to alter the constitution and to overthrow the president, though neither objective was explicitly stated in any document before the San Martín court or the IACHR. Moreover, documents found at MTP headquarters, were collected by military intelligence in a process that, when introduced into their trial proceedings, had denied the defendants their civil rights as outlined in laws that barred the military from playing such a role.

The state’s response to the petitioners’ multiple claims of civil rights violations in the Argentine trial process was terse, ambiguous, and equivalent to vague language the dictatorship had used in dismissing criticisms of its human rights record. Procedure “adopted under Law 23,077,” the Argentine government argued, “is responsive to most modern legislative techniques

and chooses at the international level implementation of the oral trial, the procedure that normally signifies, because of its immediacy, the possibility of holding hearings in a public manner and a one-level trial (Abella 1998, paragraph 83). In dismissing the petitioners' appeal of their sentences and court irregularities, the state invoked a tautology citing the opinion of the federal Attorney General (that is to say, an agent of the state itself). The Attorney General rejected, for example, the arbitrary introduction and consideration of evidence at the original trial.

There were other tautological flaws in the state's case before the IACHR. The state disallowed the petitioners' claim that the judge and federal court which took up the case—by the provisions of Law 23,077—were invalid by simply citing Law 23,077. On the better treatment that military officers received—specifically in reference to the 1987 due obedience law (Law 23,521)—the state simply cited the due obedience law and noted that it applied to questions that predated the restoration of democracy in 1983. In reference to president Carlos Menem's pardons of military personnel convicted in the 1980s for their roles in the dictatorship, the state pointed out simply that the pardons fell under presidential authority according to the constitution. The pardons in question were exceptional and as such, entirely discretionary (as though a discretionary authority removed its relevance as a judicial precedent).

Bringing to bear the multiple categories in Law 23,077 that could be used to determine a military rising, the state cited an interview Enrique Gorriarán Merlo gave on 17 May 1995. While his comments could be used to check off several of the stated categories identifying a military rising by the terms of Law 23,077, they negated none of the petitioners' rights claims before the IACHR. Gorriarán Merlo stated that attack organizers had believed that had they been successful in capturing the military post, Argentines would have responded positively to a call for mobilization "to demand that the government change its economic policy and take a firm stand against military pressures" (Abella 1998, paragraph 110). While the state read those remarks as a potential incitement to government overthrow, the language could also have meant a popular mobilization of the sort Argentines had routinely organized since the return of democracy—popular protests in front of the national congress. Whatever their meanings the comments were scarcely evidence of an intent to subvert the constitution.

Conclusion

When federal judge Gerardo Larrambebere arrived on the bloodied scene to begin his investigation of the events that had transpired, Alberto Nisman served as his assistant. Nisman was tasked with assessing the evidence of the disappearance of two of the attackers detained by the military, Iván Ruiz and José Díaz. Larrambebere never indicted any soldiers for those crimes. Moreover, Nisman accepted the improbable military version of events—the evidence gathered by military intelligence about which petitioners to the IACHR had objected. After eight hours of fierce combat on the base, unarmed and badly injured, Ruiz and Díaz had supposedly fled by leaping from a building engulfed in flames, and then run from the base unobserved, while encircled by hundreds of police and military operatives guarding the site.

In 2012, Nisman agreed that the military had lied to him in 1989 about Ruiz and Díaz. It remained unclear, however, what he had known at the time about a military cover-up of a possible execution of the two men and how that had been reflected in trial proceedings. In a peculiar comment that confirmed what some saw as his calculating, cold personality, Nisman stated that during his 1989 investigation, “there were those who held that, obviously, [the military] took [Ruiz and Díaz] out and killed them. And there were those who didn’t believe that for a moment. Some said that... it was rather clear that the two had died in combat. I can’t say that it was exactly fifty-fifty one way or the other, but legally it came to that” (Budassi 2016). By taking the armed forces at their word even as he had serious doubts about the fates of Díaz and Ruiz, then offering his listless, fifty-fifty non-explanation 23 years later, Nisman sided with an Argentine judiciary that had tended after 1987 to side with military institutions linked to human rights violations. That may have advanced his career prospects in the conservative judicial climate of the early 1990s. In 1994, Nisman was made prosecutor in the Federal Court of Appeals of San Martín (Budassi 2016).

The IACHR reached a different set of conclusions, though, in the end, Nisman’s quick rise in the 1990s Argentine legal establishment may have reflected one of those findings: In its actions, and under democratic rule the state is represented by the government, its judiciary, and its armed forces. A government cannot reasonably distance itself from responsibility for the latter two. The IACHR found reasonable grounds to believe that the state had executed those alleged to have disappeared in the aftermath of fighting even though the petitioners had not presented sufficient evidence toward that. In that finding, the commission set aside the hypothesis on the relationship

between the federal government, the military, and the constitution that had prompted Law 23,077 in 1984. That key hypothesis had held that the government was at odds with, not responsible for the armed forces and their excesses. That belief had also shaped a pro-human rights political consensus in urban, 1980s middle-class Argentina, in the shadow of attempted military coups d'état and ongoing military plotting. For the IACHR, the government represented the state and the armed forces were an arm of the state. Whether the intent of the government or not, what followed the 30-hour attack in the torture and killing of MTP members—and in the flawed legal procedure on evidence and in other areas dictated by Law 23,077—had marked a violation of MTP attackers' constitutional and civil rights. Represented in the first instances by all branches of the federal government and their institutional agents, including the police and the military, the state was responsible for that civil rights breach.

The commission concluded further that 20 MTP members had been tortured by the state. It found that the Argentine state had had the obligation to investigate allegations of human rights violations. It failed to do so as it did to oversee the autopsies of those killed during the attack. Autopsies were so poor, the commission concluded that they lacked basic information on whether injuries, fractures, and burns had preceded or followed death. Moreover, the commission found that autopsies on the bodies of MTP members had been carried out less meticulously than those on soldiers also killed during the attack. The state “failed in its obligation to carry out an exhaustive, impartial, and conclusive investigation into the serious allegations” of rights violations (Abella 1998, paragraph 243). Additionally, the criminal procedure identified by Law 23,077 in this case marked a violation of the petitioners' civil right to an appeal.

That the IACHR report had no impact on Argentine police forces, the judiciary, or government policy points to the ongoing failure of the Argentine state to create the sort of chasm between itself and dangers military authority in civil society that had been intended in Law 23,077, and in other legal and policy changes in the 1980s. The political scientist Mercedes S. Hinton argues that the hundreds of human rights violations under democracy by the Buenos Aires provincial police (the *Bonaerense*) and by other police forces represent the tenuousness of the state's control over its instruments of coercion (Hinton 2005: 75). In fact, and as the IACHR report argued in 1998, it was and is not so much a question of tenuousness of control as that when state institutions commit rights violations under democracy, they do so as agents of the state. What

remain tenuous are the basic rights of citizenship when police or military abuses are normalized under democracy, and when the judiciary has no sustained means to confront those abuses.

References

No. 65/8, Directive, Executive Office 1981 Estructurar los actos destinados a afirmar la presencia argentina en el exterior. Adoptar una política agresiva sobre derechos humanos, atacar y no defendernos. 30 March 1981, 202, Archive of the Argentine Foreign Relations Ministry, Buenos Aires.

Abella 1998 Juan Carlos Abella v. Argentina, Report No. 55/97, Case 11.137, Inter-Am. C.H.R. 271, OAS/ser. L/V/II.98, doc. 6 rev.

Amnesty International 1990 *Argentina: The Attack on the Third Infantry Regiment Barracks at La Tablada: Investigations into Allegations of Torture, Disappearances, and Extrajudicial Executions*. New York: Amnesty International.

Avilán v. Colombia 1998 Report No. 26/97, Case 11.142, Inter-Am. C.H.R. 444, OAS/ser. L/V/II.98, doc. 6 rev.

Budassi, S and Fidanza, A 2016 El Rompecabezas Nisman. Anfibia, [online access at <http://www.revistaanfibia.com/cronica/el-rompecabezas-nisman/> last accessed 28 February 2017].

Cerruti, P 2013 Seguridad pública y neoconservadurismo en la Argentina Neoliberal: La construcción social de la 'inseguridad' durante los años noventa: 'Combate a la delincuencia,' 'Tolerancia cero,' y 'Mano dura,'" *Revista de Sociología y Política*, 21(48): 143–160.

Garin, JA 2012 *Manual popular de derechos humanos*. Third Edition. Buenos Aires: Ediciones Ciccus.

Gregorio-Cernadas, M 2016 *Una épica de la paz: La política de seguridad externa de Alfonsín*. Buenos Aires: Editorial Universitaria de Buenos Aires.

Guest, I 1990 *Behind the Disappearances: Argentina's Dirty War Against Human Rights and the United Nations*. Philadelphia: University of Pennsylvania Press.

Hinton, MS 2005 A Distant Reality: Democratic Policing in Argentina and Brazil. *Criminal Justice*, 5(1): 75–100.

Iguyovwe, R 2008 The Inter-play between International Humanitarian Law and International Human Rights Law. *Commonwealth Law Bulletin*, 34(4): 749–789.

Inter-American Commission of Human Rights 1998 1997 Annual Report of the Inter-American Commission on Human Rights, Inter-Am. C.H.R. OAS/Ser. L/II.98, doc. 7 rev.

Lofredo, J 1996 Herejes y alquimistas. Grupos radicalizados en la Argentina. *Nueva Sociedad*, 146: 48–56.

López 1987 Osvaldo Antonio López, Case 9635, Inter-Am. C.H.R. 32, OAS/ser. L/V/II.71, doc. 9, rev. 1.

Lorenzetti, RL and Kraut, AJ 2011 *Derechos humanos: justicia y reparación*. Buenos Aires: Sudamericana.

Méndez, JE 1991 *Truth and Partial Justice in Argentina: An Update*. Washington: Human Rights Watch.

Ministerio de Relaciones Exteriores 1981 José Sideman. 1 July 1981, 202, Archive of the Foreign Relations Ministry, Buenos Aires, Argentina (AMREC).

Moir, L 2003 Decommissioned? International Humanitarian Law and the Inter-American Human Rights System. *Human Rights Quarterly*, 25(1): 182–212.

Noia, AI 1985 Assessor, Secretariat of Justice, Ministry of Education and Justice, Argentina, to Antonio Castagno, Director, Political Technical Legislation, Sub-Secretariat of Legislative Affairs, Ministry of Education and Justice, December 20, 1985, 1561, AMREC.

O'Donnell, M 1998 El sacerdote Puigjané salió de la cárcel. *La Nación*, 13 June 1998. [online access at <http://www.lanacion.com.ar/99863-el-sacerdote-puigjane-salio-de-la-carcel> last accessed 28 February 2017].

Pion-Berlin, D 2001 Civil-Military Circumvention: How Argentine State Institutions Compensate for a Weakened Chain of Command. In: Pion-Berlin, D, ed. *Civil-Military Relations in Latin America: New Analytical Perspectives*. Chapel Hill: University of North Carolina Press. pp. 135–161.

Plis-Sterenber, G 2003 *Monte Chingolo: La mayor batalla de la guerrilla argentina*. Buenos Aires: Planeta, 2003.

Province of Buenos Aires, Argentina 1957 *Artículos de la Constitución Nacional de 1853. Objeto de la reforma*. La Plata: Honorable Junta Consultiva de la provincia de Buenos Aires.

Rapoport, M 2016 Andrés Cisneros: El pragmatismo de las relaciones especiales con Estados Unidos, 1992-1996. In: Rapoport, Mario, ed. *Historia oral de la política exterior argentina (1966-2016)*. Buenos Aires: Editorial Octubre. pp. 701–742.

Respuesta del Gobierno de la República Argentina a la Comisión de Derechos Humanos en material de Comunicaciones sujetas al procedimiento de la Resolución 1503 (XLVIII) del ECOSOC (Consejo Económico y Social, Naciones Unidas). December 28, 1979, 123, AMREC.

Rinesi, E 2016 Los cambios en los modos de conceptualizar los derechos humanos, 1980-1998. In: Biagini, HE and Oviedo, G, eds. *El pensamiento alternativo en la Argentina contemporánea. Tomo III (Derechos humanos, resistencia, emancipación (1960-2015))*, Buenos Aires: Editorial Biblos. pp. 287–298.

Roniger, L and Sznajder, M 1999 *The Legacy of Human Rights Violations in the Southern Cone: Argentina, Chile, and Uruguay*. New York: Oxford University Press.

Rosenthal, MM 1987 Morton M. Rosenthal, Director, Department of Latin American Affairs, Anti-Defamation League of B'nai B'rith, to Enrique J. A. Candiotti, Argentine Ambassador to Washington, 6 March 1987, 416-8, AMREC.

Secretaría de Inteligencia del Estado 1976 Complementar Informe S/detención de posible agente adscrito al servicio secreto israelí, 9 July 1976, 416-8, AMREC.

Sheinin, DMK 2012 *Consent of the Damned: Ordinary Argentines in the Dirty War*. Gainesville: University Press of Florida.

Siede, IA 2016 *Peripetias de los derechos humanos en el currículo escolar de Argentina*. Buenos Aires: Editorial Universitaria de Buenos Aires.

Tabak, S 2016 Ambivalent Enforcement: International Humanitarian Law at Human Rights Tribunals. 37 Mich. J. Int'l L. 661. [online access at <http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1342&context=mjil> last accessed 28 February 2017].

Verbitsky, H 1987 *Civiles y militares: memoria secreta de la transición*. Buenos Aires: Contrapunto.

Vittone, JC 1954 Argentine Ambassador to the Organization of American States, Actuación de la Argentina en el Consejo Interamericano Económico y Social, 8 April 1954, 554, AMREC.