Struggling with the past: the human rights movement and the politics of memory in post-dictatorship Argentina (1983-2006)

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2. The democratic transition: dealing with the human rights legacy of the military dictatorship

On 10 December 1983, Raúl Alfonsín, the presidential candidate of the Radical Party, assumed the presidency of Argentina, marking the transition to democracy after seven long years of military dictatorship. Alfonsín's campaign combined a strong plea for democracy as the solution for Argentina's economic, social and political problems with a promise to deal with the human rights violations, investigating the truth and prosecuting the culprits. His promise on dealing effectively with the human rights legacy of the dictatorship reflected the centrality of demands for human rights in the period leading to the transition to democracy. Much of this centrality can be attributed to the human rights movement that emerged in response to the gross violations committed by the military regime, and which played a central role in bringing down the military dictatorship. In the months preceding the transition, the movement was able to install and keep its demands for truth and justice on the public agenda. As a consequence, the armed forces were unable to – at least temporarily – secure impunity for their crimes. Human rights became, as one author put it, 'one of the sacred elements of the transition' (Lorenz 2006: 211).

The transition to democracy marked the beginning of a debate within Argentine society over how to deal with the legacies of the military dictatorship. This debate was part of a strong societal and political need to establish a radical break with the recent past, which was associated with political violence and authoritarianism. It was also characterized by a negotiation process involving human rights organizations and the government, which was in its turn conditioned by real and perceived pressures from the armed forces. The truth commission and the trial of the juntas that resulted from these negotiations constituted important foundational acts for Argentine democracy, establishing the moral foundations for the new democratic order, and symbolically breaking with a past of authoritarianism. But they were also foundational in another way, producing a historical interpretation of the military dictatorship that became firmly institutionalized, and that has profoundly marked the debate over the recent past right up to today.

This chapter will discuss the initiation of this debate within Argentine society. How have the first accountability measures in the realm of truth and justice affected the ways in which Argentine citizens collectively made sense of the recent past in the immediate aftermath of the dictatorship? The first part of the chapter will discuss the emergence of human rights organizations and their development into a movement capable of mobilizing large numbers of citizens in the transition to democracy. The second part will analyse the accountability process initiated under the Alfonsín administration, focusing on the negotiations between the military, the government, the judiciary and the human rights movement over how much of the recent past to acknowledge and punish, and what to remember. The last part of the chapter, then, will evaluate the measures that resulted from this negotiation process, analysing the interpretations of the past that they conveyed, and how they shaped the terms of the debate over the recent past in these first years of the transition.
Human rights in the transition from dictatorship to democracy

This section deals with the question of how the human rights issue acquired its centrality in the period of the democratic transition. As we will see, the answer to this question lies both in the ability of the human rights movement to take advantage of and create political opportunities, and in the role played by the armed forces. Although the movement displayed significant diversity, it was able, during the military dictatorship and in the period leading to the transition, to act as a unified actor mobilizing for the very basic right to life. The loss of a loved one proved a powerful binding element among the relatives of the disappeared, and formed a strong motivation to take action. Much of the strength of the movement derived from the emotional commitment of those who participated in it. Another advantage came from its social composition: many of the participants in the movement sprung from the middle- to upper classes, and had the skills and contacts, especially outside Argentina, to draw public attention to the disappearances. The various attempts of the military regime to close the subject and declare the disappeared dead only intensified the demands for truth and justice of the movement. By 1982, the fading support for the military regime due to the economic crisis and the defeat in the Malvinas War offered the movement important opportunities to push forward demands for disclosure of the truth and trials.

‘Where are the disappeared?’: the emergence of a human rights movement

The human rights movement that played such an important role in the transition to democracy was composed of a wide range of organizations, some of which had already emerged before the military dictatorship. The oldest of these organizations was the Liga Argentina por los Derechos del Hombre (Argentine League for the Rights of Men, Liga) created in 1937 to protect prosecuted political activists, mainly members of the Communist Party, and to support the leftist groups opposing Franco in the civil war in Spain. With the increasing repression from 1974 onwards, they widened the scope of their activities, helping relatives of the disappeared and political prisoners to organize (Interview GR 20.10.2003). In the same period, a number of other organizations were also created: SERPAJ, APDH and MEDH. The Servicio Paz y Justicia (Peace and Justice Service, SERPAJ) was initially founded as a pan-Latin American movement in 1971, and pursued the goal of social justice based on the liberation theology and the principles of civil disobedience developed earlier by Gandhi and Martin Luther King. The Argentine section of SERPAJ was created in 1974, and Adolfo Pérez Esquivel became its new leader. At the end of 1975, the Asamblea Permanente por los Derechos Humanos (Permanent Human Rights Assembly, APDH) was created as a pluralist organization including members of various political parties, representatives of several religions and well established Argentine intellectuals. The Movimiento Ecuménico por los Derechos Humanos (Ecumenical Movement for Human Rights, MEDH), representing different currents within the Church, was founded in February 1976 (Brysk 1994: 50-1; Jelin 1995: 105).

All these organizations saw their activities increase dramatically after the military coup. They were soon joined by a new actor that would become increasingly visible – the relatives of the disappeared. Fathers, mothers, brothers and sisters of the disappeared started a desperate search for their relatives, which led them to official institutions such as the police, cartels, government buildings, churches and human rights organizations. They would go to any place where they hoped to find information. Existing human rights organizations
stimulated them to organize collectively. The Liga contributed to the creation of the first organization of relatives, Familiares de Desaparecidos y Detenidos por Razones Políticas (Families of Disappeared and Imprisoned for Political Reasons, Familiares), in September 1976, bringing people in contact with each other and providing them with a place to meet (Interview GR 20.10.2003). Similarly, Susana, member of APDH, recalls that mothers of the disappeared used to come to the APDH for legal assistance, and that they would encourage them to organize (Interview SPG 20.12.2004). In April 1977, the Madres de Plaza de Mayo (Mothers of the Plaza de Mayo, Madres) were created. In October 1977, a group of mothers whose daughters had been pregnant when they were abducted detached themselves from the Madres and created the organization Abuelas de Plaza de Mayo (Grandmothers of the Plaza de Mayo, Abuelas) to concentrate on the search of their missing grandchildren.

There were some important differences between the organizations of relatives and the human rights organizations that were created before the coup. The most important one was the collective identity within these groups. For the organizations of relatives, victimhood constituted the basis for collective action. In this context, scholars have stated that the dictatorship created a new sort of family, based on the shared experience of disappearance and resistance, and expressed by the relatives in terms of ‘brotherhood’ (Filc 1997; Vecchioli 2005). The experience of losing a relative was seen as not being transferable to others and as an important binding element among the victims. Thus, according to Madre Matilde Mellibovsky, ‘only and solely [a Madre] can understand another Madre’ (quoted in Vecchioli 2005: 244). But a shared experience of loss and suffering was not sufficient to become a Madre. The choice to undertake action in the face of despair was considered an important additional element that differentiated the members of Madres from other mothers of the disappeared. In the testimonies of Madres there are frequent references to other mothers who were not able to mobilize and who remained in their homes out of fear or desperation. These mothers are generally presented as depressed and easily inclined to believe the military discourse, as in the following quote of one Madre: ‘There are mothers, who are not those who militate, who are those who stayed in their home, and who still believe what the military said, that “no, they were not disappeared but had gone abroad”’ (Interview CLA 21.10.2003).

The other human rights organizations mobilized according to political, religious and professional identities. These organizations included many victims, but these persons chose not to mobilize along the lines of victimhood. The organization Centro de Estudios Legales y Sociales (Centre for Legal and Social Studies, CELS) is a good example in this context. The organization was officially founded in 1980 by a group of lawyers and professors who had been participating in APDH, but had already started to function informally in 1978 (Veiga 1985: 87; Mignone 1991: 106). Four of its five founding members had a disappeared child and the son of the fifth one was a political prisoner.14 But they chose to mobilize according to their professional background as lawyers and academics instead of focussing on their identity as victims of the dictatorship. The same was true for the various victims that participated in the human rights organizations that had emerged in the years before the military coup.15 This difference has led scholars and other observers to divide the human rights organizations into organismos de afectados (organizations of ‘affected’) and organismos de

14 The founding members of CELS were the lawyers Emilio Mignone, Gustavo Conte, Alfredo Galleti, Boris Pasik, and the physician Federico Westerkamp (Bruschtein 2002: 71-2).

15 Graciela Fernández Meijide, member of the APDH, had lost a child, and both Alfredo Bravo, president of APDH, and SERPAJ’s leader Adolfo Pérez Esquivel were abducted and suffered torture and detention.
no-afectados (organizations of ‘non-affected’). I will refer to them as ‘organizations of victims’ and ‘solidarity organizations’.

The different motivations to engage in collective action also led to different strategies of mobilization. The organizations of victims, especially the Madres and Abuelas, constructed an image of ‘ideological neutrality’ (Robben 2005: 306), presenting themselves as housewives who irrupted on the public scene as a consequence of the disappearance of their child. Many mothers were indeed housewives who had previously remained confined to the private domain of the home. Several of them even had little knowledge of the political activities of their children. However, it was also a strategic choice for it was more difficult for the military to attack them if they emphasized that they were just mothers. In a context in which their children were accused of being ‘subversives’, they appealed to values such as family ties and the need to protect the private sphere, and distanced themselves from anything that might give the impression that their struggle was political. Those mothers who did have a militancy previous to their participation in Madres, often did not mention it.16 The Madres and Abuelas thus established a boundary between the moral cause of the relatives searching for their disappeared, and politics as associated with the domain of interests. The solidarity organizations, on the contrary, valorized political affiliation, professional background and public functions and mobilized them for the purpose of collective action. Members of these organizations drew upon their previous affiliations and networks to organize their activities (Vecchioli 2005: 250-4).

Organizations of victims and solidarity organizations also developed different means to denounce the disappearances. The organizations of victims were less institutional in their approach, and their actions were oriented towards demanding the government to provide information about the fate of the disappeared, and breaking the silence on the disappearances. The Madres acquired the greatest visibility because of their ability to realize powerful symbolic actions. Their most vital action was their weekly gatherings on the Plaza de Mayo to denounce the disappearances. These gatherings gave them the surname las locas, the madwomen. Going to the plaza became their main act of resistance. The Plaza de Mayo became the central meeting place of the Madres, where they expressed their sorrow and their anger about the disappearances. In their accounts of their own history, the plaza is both the place where they met with equals, other mothers who shared similar feelings of despair, and where a common experience was built which also strengthened their identity as a group. From the end of 1977, the Madres also started to use white headscarves as a distinctive identity marker. The white scarf proved a strong symbol marking their identity as mothers of a disappeared child, while it was at the same time a means to denounce the disappearances. It reinforced a sense of collective identity inside the group, defining who pertained to the organization and who did not, and provided a powerful message to the outside world.17

16 This differentiated Madres and Abuelas from Familiares. This organization was not only composed of relatives of the disappeared, but also of relatives of political prisoners, which gave them an explicit political character. Furthermore, they also always vindicated the political identity of their beloved ones. This political dimension is even included in their name: ‘Families of Disappeared and Imprisoned for Political Reasons’ (Interview MG1 08.04.2003 – my emphasis).

17 For an overview of the history of the Madres, see: Guzmán Bouvard 1994. See especially pp. 65-92 for the first steps towards mobilization. For insights into how the Madres themselves recall this first period of resistance, see: Asociación Madres de Plaza de Mayo 2003.
The solidarity organizations, on the other hand, often had a more institutional approach. Their activities were twofold. Firstly, they provided victims with legal assistance, and sometimes, as in the case of the MEDH, also with spiritual and economic support (Mignone 1991: 106). Secondly, they documented the disappearances and searched for remnants of legality within the juridical system (Jelin 1995: 107). The APDH and the Liga systematically collected information on each individual case of disappearance, creating evidence on the repression. These organizations also provided the relatives with legal assistance in the presentation of habeas corpus writs. These later constituted a huge body of evidence on the disappearances. With this documentation, human rights organizations could also publish lists of the disappeared in the newspapers, a means to draw public attention to the disappearances. CELS ultimately managed to gather a broad set of documentation, which enabled the organization to show that the repression had been planned by the armed forces. On the basis of this documentation, it introduced the notions of genocide and state terrorism to refer to the violations committed under the military dictatorship (Veiga 1985: 93; Mignone 1991: 105; Cohen Salama 1992: 45).

CELS, together with the Madres, explicitly accused the military government of the disappearances, but this confrontational attitude was not shared by all the human rights organizations, especially not in the first years of the military regime. In the case of the APDH and the Liga, party affiliation sometimes conditioned their actions. This led them to be more cautious in denouncing the military regime. Between 1978 and 1979 there were heated debates, especially with and within these two organizations, on the extent to which the government was involved in the repression. One of the central discussions in this context was whether in Argentina one should speak of desaparecido (disappeared) or detenido-desaparecido (detained-disappeared). The notion of desaparecido was less accusatory than the concept of detenido-desaparecido, which directly incriminated the state. This notion was introduced by one of CELS’s founding members, Emilio Mignone, who was then a member of the APDH. The refusal of the other members of the APDH to embrace this concept was one of the reasons for the creation of CELS (Veiga 1985: 93).

In spite of these differences, all the human rights organizations suffered equally from threats and attacks. The offices of the APDH, Liga, MEDH and CELS were sacked on several occasions and their leaders arrested (Mignone 1991: 57, 104; Cohen Salama 1992: 48). The Madres were to pay a particularly heavy price for their confrontational attitude. Their

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18 A habeas corpus writ is a warrant to bring a prisoner to court. It is a legal action through which a person can seek relief for unlawful detention, and is intended to protect individuals against arbitrary state detentions. According to Garro and Dahl (1987: 294), in the Argentine context ‘Habeas corpus failed as a remedy against arbitrary governmental action not because of the way in which the text of the law was drafted, but because it was deliberately made ineffective by the executive’s refusal to cooperate with the judiciary. In a majority of cases, military-, police- and prison authorities claimed not to know the whereabouts of a person when asked to give information in court. Not surprisingly, judges found it difficult or impossible to locate or rescue a single one of those who had disappeared’.

19 This was especially the case for the members of the Communist Party. The Argentine Communist Party supported junta leader Videla. Following the characterization of the regime made by the Soviet Union, it argued that the disappearances were the work of the duros, the hardliners within the armed forces. Videla was supposed to be one of the blandos, the softliners, and should therefore be supported in order to prevent a takeover by the hardliners within the military government (Gelman and La Madrid 1997: 221). The support of the Communist Party would continue to be a problem within the human rights movement, because the members of the party participating in the APDH and in the Liga would consistently oppose direct confrontation with the government (Jelin 1995: 110-1).
presence on the Plaza de Mayo profoundly irritated the military, who had not expected such a strong counter reaction from the relatives of the disappeared, and the Madres were frequently harassed while walking around the pyramid, and sometimes arrested. During the course of 1977, navy officer Alfredo Astiz infiltrated the group. He offered his collaboration under the pseudonym of Gustavo Niño and was received with open arms. This resulted in the abduction, in December 1977, of a large group of relatives and collaborators of the Madres in operations realized in the Church of Santa Cruz and in private homes. Among them were the three Madres Ester Ballestrino de Careaga, María Ponce de Bianco and Azucena de Villaflor, the first president of the Madres, as well as two French nuns, Alice Dumon and Léonie Duquet. All remain disappeared and have been seen in the ESMA (Guzmán Bouvard 1994: 77-9; Asociación Madres de Plaza de Mayo 2002: 15).

In this confrontation with a common enemy, the human rights organizations increasingly operated as a movement and received substantial support from abroad. The repressive context and the isolation in which they were compelled to operate in the first years of the dictatorship created a relative sense of unity among a highly heterogeneous group of actors (Jelin 1995: 105-7). They jointly attempted to break the silence in their own country through the publication of lists of the disappeared in the newspapers, and by turning to international organizations and solidarity outside the country for help. Several human rights activists had contacts in Europe and the United States and used them to spread information on the disappearances in Argentina. They found support from human rights groups of Argentines in exile in Europe, the United States and in other Latin American countries, who played a crucial role in creating international awareness about the disappearances in Argentina. As people fled the country, they found their way to the offices of international human rights institutions and reported on the situation in their country.

The Argentine case was already being closely watched by international organizations such as Amnesty International due to earlier accusations of human rights violations under the Peronist government, and due to the dramatic example of the military coup in the Chile of Pinochet. In November 1976, Amnesty International was able to send a commission to Argentina to investigate the disappearances. They published a report a year after the coup, in March 1977, which was extremely critical of the situation in Argentina. Between 1977 and 1979, the Assistant Secretary of State of the United States, Patricia Derian, also confronted the regime with the human rights violations. The Secretary of Politics of the American Embassy, Tex Harris, offered the relatives of the disappeared support and tried to obtain information about the fate of the disappeared. With the World Soccer Championships in June 1978, international attention definitely turned towards the human rights violations in Argentina. Hundreds of journalists visited the country, many of them with a second 'human rights agenda', and interviewed the Madres on their weekly walk around the pyramid. In the months previous to the Championships, the international media had been full of information on human rights violations in Argentina, and solidarity committees outside Argentina had tried to organize an international boycott. They did not succeed, but did manage to focus attention on the human rights violations (Baud 2001: 101-11; 143-58).

In July 2005 the Equipo Argentino de Antropología Forense (Argentine Forensic Anthropology Team, EAAF) identified the bodies of Azucena de Villaflor, Esther Ballestrino de Careaga and María Ponce de Bianco (Página/12, 09.07.2005). Two months later they also identified the body of Léonie Duquet (Página/12, 30.08.2005).

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'The disappeared are all dead': the armed forces and the human rights issue

The accusations of human rights violations infuriated the military. Their first reaction was denial. They also accused Argentines living in Europe and the United States of fomenting an anti-Argentine campaign. According to Feitlowitz (1998: 35), 'one could fill an entire volume with their bellicose statements on the subject'. In this context, Abós (1984: 30) points to the importance for the junta of being accepted as part of 'western, Christian civilization':

In spite of the harshness of its dictatorial practice, the discourse of the so-called 'process of national reorganization', authentically schizophrenic, exalted the values of democracy as their own. Given the fact that they auto-qualified themselves as defenders of the occidental values, the criticisms coming from the Occident sounded in the ears of the dictatorship as authentic gunshots.

As international pressures intensified, they saw themselves obliged to react to the accusations of human rights violations. Alarmed by the evidence on the disappearances, the Inter American Commission on Human Rights (IACHR) had asked to visit the country in February 1978 but the government had refused. But after the World Soccer Championships, the military junta felt strengthened by the massive display of nationalistic fervour during the Championships. In October 1978 it sent the commission an invitation (Palermo and Novaro 2003: 167).

The visit was scheduled for May 1979, but the military government managed to delay it until September. During these months, the military transformed some of the secret detention centres that might be visited by members of the commission. They reorganized the ESMA, and several detainees were transported to a nearby island during the visit of the commission (Feitlowitz 1998: 219). Furthermore, the delay gave them time to organize a campaign to re-boost the image of the junta. In what Feitlowitz (1998: 35) calls a 'war of words' they gave their own vision on human rights: 'We Argentines are human, we Argentines are right – Los argentinos somos derechos y humanos'. During the visit of the commission, they wrote the slogan on a banner at the airport, it appeared on shop windows and in offices, and on private cars and taxis. Two worlds collided when employees of the Ministry of Interior wearing signs with this same text demonstrated on the Plaza de Mayo and ran into the relatives of the disappeared wearing their pictures with the text: ‘¿Dónde están?, Where are they?’ (Feitlowitz 1998: 36). A few days before the visit of the commission, the offices of the APDH, MEDH and the Liga were sacked and three thousand files on the disappearances that were to be handed over to the commission were stolen (Guest 1990: 176; Cohen Salama 1992: 48).

In spite of these incidents, the visit of the IACHR, which took place between 6 and 20 September 1979, proved a turning point. The members of the commission were persistent and found ways to go beyond the official version of the facts. Furthermore, relatives were ready to wait for hours to testify before the commission, despite an aggressive campaign of the junta to dissuade them, including the presence of provokers trying to intimidate the witnesses (Interview MM 15.11.2006). The report of the IACHR documented 5,580 cases of disappearances, and gave many details about the human rights violations (Guest 1990: 177). The conclusions of the report ended up backing the denunciations of the human rights movement and accused the government: ‘By action or omission of the public authorities and their agents […] during the period that this report deals with – 1975-1979 – numerous and grave violations of fundamental human rights were committed’ (quoted in Cohen Salama 1992: 49). The human rights organizations played a crucial role in the investigation, providing the commission with information and contacts. When the report came out, the regime
prohibited its circulation in Argentina, but human rights activists were able to introduce copies clandestinely (Mignone 1991: 110-1).

A few months before the visit of the IACHR, the junta had also started to give some answers about the fate of the disappeared. International pressure and a growing body of evidence made denial of abductions and disappearances impossible. The military declared that all the disappeared were dead. They argued that Argentina had been at war, that this war had required unconventional means but that a military victory had been achieved at the end of 1977. The ‘war against subversion’ now belonged to the past, where it should remain (Acuña and Smulovitz 1995: 38-40). In his discourse on the Day of the Army, on 29 May 1979, the Commander in Chief and future President General Roberto Viola declared: ‘It must be understood that here there has not been – it could not have been in a country historically pioneer in human rights – any violation of human rights. Here there has been a war, savage violence unleashed by terrorism, confronted decisively and overcome by the armed forces’ (quoted in Cohen Salama 1992: 46). This declaration was followed by a proposal to declare the disappeared dead and three law proposals to resolve the legal problems that had emerged as a consequence of the disappearances (Cohen Salama 1992: 48).

These declarations from the armed forces profoundly shocked the human rights organizations and the relatives of the disappeared. Ilda, mother of two disappeared, recalls that: ‘Emilio Mignone, who was one of the lawyers of CELS, he said: “they killed them, they killed them”. And well, this was when I… I remember I went back home…crying terribly. Because that was the first time that I could even conceive of the idea that they had killed them’ (Interview IM 11.11.2004). The declarations also spurred their indignation because they were framed in terms of a ‘war’ and because the armed forces did not assume any responsibility for the disappearances. In the subsequent period there would be more public declarations about the fate of the disappeared, not only from the military but also from politicians. In April 1980, Ricardo Balbín, the president of the Radical Party, stated that the disappeared were all dead: ‘We all know that the disappeared are dead, but a country cannot handle itself with ghosts. It has to handle itself with realities, however hard they might be. We prefer mothers crying over their dead and not begging, like now, for an answer from those who should give an answer but deny it because they can not give it’ (quoted in Cohen Salama 1992: 51). The Madres reacted with a letter stating that they were not begging for an answer, but were ‘demanding [an answer] in the name of the most elementary justice, because that is what corresponds’ (quoted in Cohen Salama 1992: 51).

Balbín made his declarations in a context in which the military government had initiated a dialogue with the political parties to negotiate a possible transition. The attempts of the military to close the subject, and the declarations of Balbín, who evidently had ambitions to succeed the military after the transition, preoccupied the human rights organizations. They feared a civic-military pact that would confine the crimes committed during the dictatorship to silence and oblivion. This enhanced their combativeness. The Madres, who had been obliged to withdraw from the Plaza de Mayo due to police repression, decided to return to the square (Guzmán Bouvard 1994: 98). The self-confidence of the human rights movement was boosted when, in October of 1980, the president of SERPAJ, Adolfo Pérez Esquivel, received the Nobel Prize for Peace. Pérez Esquivel decided to share the prize with the other human rights organizations. Furthermore, in his media interventions, he explicitly supported the Madres, thus legitimizing their struggle, and demanded openness and revelations on the disappearances (Jelin 2001: 78). It was in this context that the Madres came up with
the slogan *Aparición con vida* (Appearance alive). This slogan was meant to reaffirm their opposition against any attempt to declare the disappeared dead. It was both an emotional and a political statement. While at that time it was evident that most of the disappeared were dead, relatives still hoped to see their beloved ones alive, hopes that were fuelled by the liberation of some of the disappeared. But if they were not alive, someone had killed them, and people had to be made accountable. These were the thoughts behind the slogan Appearance alive. It was soon followed by the demand of *Juicio y castigo a todos los culpables* (Justice and punishment for all the culprits).

The Nobel Prize symbolized the important international support for the struggle of the Argentine human rights movement. In Argentina, it marked the beginning of a period of growing public attention for the movement and its demands. In April 1981, when the Madres celebrated their fourth anniversary, two thousand persons accompanied them on the Plaza de Mayo despite the official ban on demonstrating and congregating on the streets (Sondereguer 1985: 19). In October 1981, another demonstration was organized and numerous members of the political spectrum participated. On 10 December 1981, the Madres organized the first *Marcha de la Resistencia* (Resistance March). It was conceived as an extension over twenty-four hours of their Thursday afternoon marches around the pyramid of the Plaza de Mayo. From then on, this Marcha de la Resistencia would be repeated every year in December. While other human rights organizations were at first sceptical about ‘this policy of staying on the plaza’, some of them joined the Madres on the second day of the march. As a sign of changing times, the presence of the Madres on the square also received wide media coverage (Asociación Madres de Plaza de Mayo 2002: 15-20).

Meanwhile, cohesion within the armed forces was weakening. In a context of economic crisis and mismanagement, General Viola replaced General Videla in March 1981. His stay in power was to be short-lived, giving way to an internal coup in December 1981 that brought General Galtieri to power. Increasing opposition and public protest against economic policies and the repression marked Viola and Galtieri’s presidencies. In July 1981, all Argentina’s major political parties joined forces and issued a call and programme for return of civilian rule, creating the *multipartidaria* (Brysk 1994: 58–9; Acuña and Smulovitz 1995: 44; Palermo and Novaro 2003: 372). The labour movement was also becoming increasingly active. In November 1981, it organized a march to the Church of St Cayetano – the patron saint of labour – with the slogan: ‘Peace, Bread and Work’. The movement managed to gather ten thousand people despite the heavy police operation. Massive firing of employees and growing unemployment stirred further protests in the factories during the first months of 1982. These contentious actions reached a climax on 30 March 1982, when a massive workers protest on the Plaza de Mayo was violently repressed (Abós 1984: 80–6).

A few days later, however, indignation about the repression vanished after the news spread, in the early morning hours of 2 April 1982, that the armed forces had disembarked on the Malvinas (Falkland) islands in the South of Argentina. They were to recover Malvinas from the British, who had occupied the islands since 1833 (Lorenz 2006: 23). The British responded to the invasion by sending their troops to the islands, marking the beginning of the Malvinas War. Giving way to deeply rooted feelings of nationalism, people from all layers of Argentine society spontaneously gathered at the Plaza de Mayo to express their support (Romero 1994: 317). In the months that followed, thousands of civilians sent chocolates and warm clothing to the soldiers fighting on the islands in the harshest conditions, hoping for a victory. Even exiles who had fled the repression in the country supported the war (Lorenz 2006: 44). The
invasion itself ended in a disaster. In the first weeks of April approximately ten thousand soldiers and officials occupied the islands, fifty percent of whom were civil conscripts who had completed their military service or had only served three of the twelve obligatory months. There were almost no detachments of professionals (officials and sub-officials). The conscripts were very young, ill-prepared, and ill-equipped to fight in a war. Harsh physical punishment was applied to impose discipline (Lorenz 2006: 146–7). For two months the media created the illusion that Argentina was winning the war, until this proved unsustainable. On 14 June 1982, the armed forces surrendered to the British. Of the more than 1,200 dead and wounded, many of the victims were conscripts (Palermo and Novaro 2003: 451–6).21

The defeat in the Malvinas War dealt a final blow to the regime, and initiated a long process of transition to democracy. The defeat debilitated the negotiating position of the armed forces and accentuated internal divisions, an element that was crucial to the initiation of the transition process (Catterberg 1989: 19; Acuña and Smulovitz 1995: 45). After the defeat, Galtieri resigned and General Bignone succeeded him, assuming the presidency on 1 July 1982. He lifted the ban on political activity, and his main objective was to conduct the transition to democracy. In February 1983 he announced elections for October of that year (Tedesco 1999: 51–2). The acceleration of the transition process after the defeat caught political parties by surprise. The main political parties were themselves in a process of transition, and according to Tedesco (1999: 53), in 1982 ‘not yet ready to govern’. The Peronist Party was still suffering the consequences of the period of government from 1973 to 1976, and the Radical Party was undergoing important transformations after the death of its leader Ricardo Balbín in September 1981. Therefore, they let the armed forces organize the transition process, demanding solutions for the most pressing concerns of the moment: the human rights legacy, the corruption and the huge external debt that political parties were extremely reluctant to inherit (Acuña and Smulovitz 1995: 47).

Marching for life: mobilizations for political democratization and human rights

The transition process took more than a year, from mid-1982 until the elections in October 1983. This period was characterized by high levels of mobilization. The lifting of the ban on political activity in July 1982 led to massive political affiliation. The labour movement also organized numerous protest actions against the economic crises. Civil society was re-emerging after a long period of darkness. Internal commissions started to reorganize in the factories and other places of work, and different groups emerged that organized around specific issues such as the housing conditions. Cultural activities were also blossoming again, through initiatives such as Teatro Abierto22 or series of rock concerts organized in 1982. Even

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21 For an account of how the Malvinas War has been processed in national memory, see: Guber 2004 and Lorenz 2006.
22 Teatro Abierto was a cultural movement created in July 1981 by a group of theatre artists, among them Osvaldo Dragún, Carlos Somigliana and Roberto Cossa. The slogan was Teatro abierto en un país cerrado (Open theatre in a closed country). The initiative had far more success than expected, and twenty-one authors and directors, and 150 actors, as well as technicians, stage designers and musicians participated in it. None of the contributors received a remuneration, and the seats were half the price of that of the cinema. The first cycle was inaugurated on 28 July 1981 and was a huge success, but also met with repressive measures. The theatre in which the cycle took place later caught fire. The reasons for the fire were never clarified, but it was generally assumed that it was a repressive measure by the military. The cycle was reproduced in subsequent years. See APDH and Gobierno de Buenos Aires, Memoria y dictadura. Un espacio para la reflexión desde los derechos humanos (Buenos Aires 2001) 30–1.
the mass media started to filter news and critical comments about the military regime. According to Romero (1994: 326), ‘in some way, society was experiencing a new spring’. In general, it was a period characterized by a strong rejection of any sort of violence, and less confidence in broad, all-encompassing solutions.

It was in this period that the human rights issue definitively acquired its centrality. The demands for ‘Appearance alive’ and for ‘Justice and punishment for all the culprits’ constituted a rallying cry in all the mobilizations for political democratization. The human rights movement developed into a powerful actor, capable of mobilizing large numbers of people against the military dictatorship (Sonderegger 1985). A crucial element in the success of the movement was its appeal to universal moral values that stood above political affiliations and preferences. This had several advantages. In the first place, during the military dictatorship, it was a way to frame demands for democratization in a context in which political opposition was impossible (Panizza 1995: 169). It was also a means to appeal to international solidarity at a time that human rights were being considered increasingly important (González Bombal 1995: 215). Finally, it enabled people of different ideological orientations to unite. The human rights discourse was able to rally both those who vindicated the revolutionary ideals of the victims, and those who thought that guerrilla combatants should be brought to trial (Palermo and Novaro 2003: 491).

As a consequence, the human rights movement was able to play a fundamental role in reshaping the political agenda of the transition (Brysk 1994: 21). Human rights and the struggle for their defence became one of the core elements of the transition. At the societal level, the importance attributed to human rights was expressed through the widespread participation in the human rights movement, and in the creation of human rights commissions in unions and in professional and student organizations (Jelin 1995: 125). At the political level, it was reflected in the fact that it became the major issue in the negotiations between politicians and the military leading to the transition. But the impact of the movement was not limited to installing human rights on the public agenda. The movement also produced a significant impact on political culture (Leis 1989a: 18; Peruzzotti 2002: 86). Romero (1994: 325) formulates this contribution as follows:

> The human rights organizations did not only collocate the issue of human rights at the centre of the debate, putting the military on the defensive, but they also imposed on the entire political practice an ethical dimension, a sense of engagement and a valorization of the basic agreements of society above political affiliations, which, in the context of previous experiences, was truly original.

However, another element that contributed to the centrality of the human rights issue, was the insistence of the armed forces on securing impunity for their crimes (Acuña and Smulovitz 1995: 47). In an attempt to definitively close the subject, on 28 April 1983, they issued the ’Final document of the military junta on the war against subversion and terrorism’ in which they defended the repression, stating that ‘whatever action was taken was the result of carrying out orders that were part of the service’ (quoted in Palermo and Novaro 2003: 502-3). The document recalled that it was Isabel Perón who had ordered the annihilation of the guerrillas, first in Tucumán and later in the rest of the country, and stated that the characteristics of ‘terrorist action’ required extraordinary procedures. Reiterating earlier declarations, the document insisted that those who appeared on the lists of the disappeared and who were not in exile or in hiding in the country, should be considered dead, even when
it was impossible to define the moment of death or to localize the whereabouts (Palermo and Novaro 2003: 503). On 24 September 1983, a month before the elections, the armed forces passed the ‘Law of National Pacification’, securing amnesty for the crimes committed over the previous nine years. Both the ‘Law of National Pacification’ and the ‘Final document’ were vehemently repudiated by the human rights movement and most political parties (Rock 1987: 386; McSherry 1997: 109; Tedesco 1999: 52). The attempts of the military to secure impunity merely intensified demands for justice.

Raúl Alfonsín was the presidential candidate who best perceived the generalized demand for accountability for the crimes of the dictatorship. During his campaign, he promised to restore legality and the rule of law23 through the resolution of the human rights question (Wynia 1992: 132; Acuña and Smulovitz 1995: 49). In a reaction to the ‘Final document’ of the military, he stated that the crimes committed ‘will not only have to be judged by history, but also tried by regular civilian courts’ (quoted in McSherry 1997: 110). Reacting to the rumours about the ‘Law of National Pacification’, he stated: ‘An amnesty law dictated by the actual military government will be declared unconstitutional by the future judges’ (quoted in Acuña and Smulovitz 1995: 49). He also presented himself as the only truly democratic alternative. Radicalism, he stated, would initiate ‘a hundred years of democracy’, breaking with the cycles of military and civil governments. The Peronist Party (the Partido Justicialista, PJ), the principal rival of the Radical Party (the Unión Cívica Radical, UCR) in these elections, was presented as the party that would lead to a repetition of the (authoritarian and violent) past (González Bombal and Landi 1995: 159).24

As for the Peronists, they thought that they could continue to practise politics in the way they had done before the dictatorship. Contrary to Alfonsín, who proposed to rebuild a new constitutional order, they interpreted the democratic transition as one more period of political opening as they had experienced in 1973. They were so sure that they would win the elections that they were not really preoccupied with the accusations of a military-union pact made by Alfonsín in April 1983.25 For historical reasons – the Peronist Party had never lost an election in which they had been allowed to run – they counted on the victory. Therefore, Italo Luder, the presidential candidate, considered that it was unnecessary to win over the votes of those who were demanding accountability for the human rights violations, and preferred to preserve a good relation with the armed forces (Acuña and Smulovitz 1995: 48–9).

The Peronist candidate disregarded two fundamental aspects of the general climate of the transition: the rejection of old (violent) political forms, and the importance attributed to the rule of law and accountability for the human rights violations committed under the

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23 The rule of law entails ‘the universal and impartial application of legal norms’ (Nino 1996: 48).
24 The image that Alfonsín presented of his political party as being free from connections to the past did not, however, correspond to reality. In fact, both the Peronist Party and the Radical Party collaborated with the military regime and provided most of the personnel of the municipalities (Palermo and Novaro 2003: 21). It was true that the Radical Party had gone through an internal renovation after the death of its previous leader Ricardo Balbín, but there were still strong conservative currents within the party.
25 In April 1983, Alfonsín denounced a secret deal between Peronist unionists who had been associated with Isabel Perón’s government, and several generals (the so-called pacto sindico–militar or military-union pact). He accused them of organizing an anti-democratic conspiracy, and of negotiating on the human rights question. Although there was no serious evidence for the deal, Alfonsín did manage to convince the media as well as other politicians. This accentuated the contrast between himself as the incarnation of a new political order, and the Peronist Party as dominated by right-wing unionists who also played a central role in the political violence of the 1970s (Rock 1987: 388–9; Palermo and Novaro 2003: 532).
military regime. In this context, González Bombal (1995: 200) states: 'The originative source of legitimacy of democracy was precisely its substantive difference from everything that was associated with the immediate past'. The internal factionalism of the Peronist Party and the overwhelming influence of the right-wing trade unions in the party brought back memories of the 1970s which people wished to leave behind. Luder was unable to convince the electorate that he would be able to manage the different factions within the movement and the omnipresent trade unions (Tedesco 1999: 54). The burning of a coffin with symbols of Radicalism during the closing campaign of the Peronist Party was received badly by the voters. Luder gave the image of a candidate who was depending on certain politicians and unionists whose image had strongly deteriorated in the eyes of public opinion and even within the Peronist movement itself (Palermo and Novaro 2003: 536-7).

When elections were held on 30 October, the UCR won 52 percent of the votes, and the PJ forty percent. The Radical Party also obtained a majority in the Chamber of Deputies. In the cities, Alfonsin’s majority was overwhelming: in the capital, Buenos Aires, he even won 64 percent of the votes against 28 percent for Peronism (Palermo and Novaro 2003: 538). In most of the provinces, particularly the poorest ones, Peronism won, giving them a majority in the Senate. But it was clear that part of the Peronist electorate had gone over to Alfonsín. Although most of the votes for the Radical candidate came from the higher- and middle classes, they also managed to capture a significant number of votes among the lower classes, who would traditionally vote for Peronist candidates (Catterberg 1989: 54; Tedesco 1999: 54; Palermo and Novaro 2003: 538). As Catterberg (1989: 106) states, the election of 1983 marked a profound rupture in electoral behaviour. Alfonsín’s government was inaugurated on 10 December 1983, the anniversary of the signing of the Universal Declaration of Human Rights.

Disputes over the accountability process

Alfonsín’s promise to deal with the human rights violations greatly contributed to his victory, but it soon became clear that his programme did not go as far as the human rights movement wanted. There were some very fundamental differences on how both conceived the issue. The main difference lay in the fact that Alfonsín wanted to punish human rights violations while at the same time including the armed forces in the democratic game. He thus wanted to avoid attributing responsibility for the repression to the institution as a whole. He also feared strong reactions from the armed forces. Therefore, political considerations prevailed over ethical ones. According to one of his closest advisors, his vision of justice was not retributive26 but forward-looking and oriented towards protecting the future social order (Nino 1996: 110). The human rights movement, on the contrary, stated that the institution as a whole was responsible for the violations, and that as many persons should be punished as necessary. They argued that ‘the future of Argentine society requires a subordination of the military to civilian justice’ (Mignone et. al. 1984: 149), and that punishment of the culprits was essential to achieve this subordination. These fundamentally different conceptualizations of how to deal with the armed forces became manifest as the accountability process started to unfold after the transition to democracy. The following section will show how these differences played out and shaped the accountability process.

26 Retribution implies that there is a moral debt owed to the victims that should be repaid (Osiel 1997: 166).
Establishing the truth: what truth and who should be in charge?

One of the first concerns of human rights organizations, and a necessary step towards initiating a process of legal accountability, was to investigate the repression. Although the human rights organizations had gathered numerous testimonies, corroborated and reinforced by the report of the IACHR, the veil of secrecy that had covered the repressive practices of the regime demanded a thorough investigation of what had happened. Orders were generally given orally, and much of the written documentation was destroyed. The Federal Police, for instance, destroyed all files on ‘anti-subversive’ operations. It was also discovered later that President Bignone had ordered the destruction of the documentation on the plans of the repression (Nino 1996: 80). Furthermore, the acts of repression had mostly been realized clandestinely. Thus, as Osiel (1986: 145) remarks, ‘kidnappers drove unmarked cars; torturers wore no uniforms and employed pseudonyms; victims were kept blindfolded; detention centres were often established on private rather than public property’. The bodies of the victims were disappeared, leaving no evidence of the crime, and several buildings that had been used as secret detention centres were destroyed. The military and police remained silent about the repressive practices, and over time very few of them broke this ‘pact of silence’.

Expecting resistance from the military and police with regard to submitting information about the violations committed, the human rights movement pleaded for a bicameral legislative commission (Brysk 1994: 68). Such a commission would have the power to subpoena witnesses and compel testimony, thus having greater access to information in the hands of the military (Mignone et al. 1984: 126). Furthermore, the human rights organizations considered that a bicameral legislative commission could become an important means to pressure for justice (Jelin 1995: 128). But Alfonsín objected this proposal, because, according to Nino (1996: 72), ‘he believed that a commission linked to Congress would give legislators an unhealthy opportunity to compete in lambasting the military, and as a result create an extremely tense situation’. Instead, he promulgated a decree on 15 December 1983, creating the National Commission on Disappeared Persons (CONADEP). The commission was an executive commission under the supervision of the Ministry of the Interior, and its main task would be to investigate the fate and the whereabouts of the disappeared. The commission had jurisdiction to hear complaints from victims and pass it on to the judiciary, and to receive voluntary testimonies and documentation from private citizens (Nino 1996: 72). However, it could not compel witnesses to testify, and thus had to rely on the voluntary testimonies of victims and of a small group of military and police personnel (Mignone et al. 1984: 126).

The presidential decree that created the CONADEP caught the human rights organizations by surprise, as they were lobbying actively among legislators for the bicameral commission. Alfonsín invited several representatives of the human rights organizations to become part of the commission, among them the Nobel Prize winner Adolfo Pérez Esquivel, who was offered the presidency. Pérez Esquivel refused, but several members of the APDH accepted the invitation. They decided to drop their demands for a bicameral commission and to integrate into the truth commission, with the purpose of pushing the presidential mandate as far as they could. Members of this organization also provided much of the staff of the
commission (Brysk 1994: 69–70).27 Organizations that opposed the CONADEP also ended up collaborating in the compilation of information and testimonies. The strongest opposition came for the Madres, who continued to demand a bicameral commission (Jelin 1995: 130; Nino 1996: 73, 78). Still, many individual members of Madres ultimately did collaborate, testifying and handing over photographs and other relevant documents (Hayner 2001: 34).

The collaboration of the human rights organizations with the CONADEP highly contributed to the quality of the report that resulted from the investigation (Cohen Salama 1992: 103). It was called Nunca más (Never again) and presented 8,961 cases of disappeared people, recalling that ‘this number can not yet be considered definitive, because the CONADEP has ascertained that many of the cases of disappearances were not denounced’ (CONADEP 2003: 479). It also documented in detail the location and organization of 340 clandestine detention centres. Its authors clearly assessed that the repression was a systematic and well-planned integral part of the ‘Process of National Reorganization’. The report was first presented to the public through a television programme in July 1984. In September of that same year, it was officially handed over to the President.28 A broad demonstration attended by human rights organizations, political parties, social organizations and independent people was organized for the occasion (Jelin 2001: 86). On 28 November 1984, the book Nunca más was published.29 In order to continue the work of the CONADEP, Alfonsín also created an Under-Secretariat of Human Rights. Its first Secretary, Eduardo Rabossi, had been a member of the CONADEP (Cohen Salama 1992: 152–3).

In the months preceding the publication of the Nunca más report, several debates took place. There were discussions on the numbers of secret detention centres, how many denunciations the CONADEP had received, and to what extent this reflected the number of disappearances that had occurred. But the issue that generated most controversy was the decision of the commission not to include the list of repressors in the final publication. The commission had gathered data on 1,352 persons accused in the thousands of testimonies heard. Two weeks before its publication, the magazine El Periodista de Buenos Aires published the complete list. It included several religious leaders, among them the Papal Nuncio Pio Laghi. The Vatican immediately questioned the accusations and the government stated

27 The members the CONADEP were: Ricardo Colombres (APDH, lawyer), René Favaloro (cardiologist), Hilario Fernández Long (engineer), Carlos T. Gattinoni (APDH, Methodist bishop), Gregorio Klimovsky (APDH, philosopher), Marshall T. Meyer (APDH, Rabby), Jaime de Nevaes (APDH, Catholic bishop), Eduardo Rabossi (APDH, lawyer), Magdalena Ruiz Guiñazú (journalist) and Ernesto Sábato (writer), the latter being the president of the commission. The commission was constituted of five secretaries: the Secretary of Denunciations, in charge of Graciela Fernández Meijide (APDH); the Secretary of Documentation and Data Processing, headed by Daniel Salvador, the Secretary of Procedures, headed by Raúl Aragón (APDH), the Secretary of Legal Issues, headed by Alberto Mansur, and the Administrative Secretary, headed by Leopoldo Silgueira. The commission was also supposed to include three representatives of each of the Chambers of the National Congress but only the Chamber of Deputies sent three representatives, of the UCR. The Peronist Party, which had a majority in the Senate, refused to send representatives (Nino 1996: 73; CONADEP 2003: 444; Memoria Abierta, ‘Muestra gráfica. XX años del Nunca más’, 2004).

28 This decision was taken after a fierce discussion within the commission between those members representing the position of the human rights organizations, who wanted to hand over the information gathered to civilian courts, and the members of the commission representing the position of the executive power who wanted to hand in the information to the executive (Jelin 1995: 130).

29 For the chronology of these events, see: Feld 2002: 150-1. See also Memoria Abierta ‘Muestra gráfica. XX años del Nunca más’, 2004.
that this was not the list it had received on 20 September. Ernesto Sábato, the president of the CONADEP, denied the accusations against Pio Laghi. Furthermore he added that being mentioned on the list that had been handed over to the President did not imply guilt. Ultimately, the list was not included in the publication, revealing the limitations of the commission. The book immediately became a bestseller. The first edition of 40,000 copies was sold out on its first day of release and 150,000 copies were sold in the first eight weeks (Granovsky and Ciancaglini 1995: 20; Hayner 2001: 34). The work of the CONADEP ended up achieving far more than both the government and the human rights movement had expected, and became a benchmark of truth (Acuña and Smulovitz 1995: 54).

**Differences within the human rights movement**

In this period, internal differences within the human rights movement about how to deal with the democratic government became increasingly visible. The Madres adopted the most confrontational attitude. As the first mass graves were exhumed by the government in 1984, and the CONADEP commission started to investigate the fate of the disappeared, they upheld their demand for ‘Appearance alive’. When the *Nunca más* report was published, they rejected it, seeing it as an attempt by the government to declare the disappeared dead without making anyone accountable (Guzmán Bouvard 1994: 135-7; Duhalde 1999: 144). One Madre formulated the critique as follows:

 Fundamentally, CONADEP took declarations which had already been made by the human rights organizations. […] The book was paralysing because they describe all this horror and they don't give a way out. The assumption is that the desaparecidos are dead and the story is over. They didn't want to publish the list of torturers and murderers who had been named in the testimonies. But it was leaked onto the press and some newspapers published it. They kept the report well guarded in the President's safe. (Quoted in Fisher 1989: 131)

As the Madres became more critical of the government, Alfonsín started to discredit them in the media, calling them ‘anti-democratic’ and accusing them of destabilizing the fragile constitutional democracy with their criticisms (Guzmán Bouvard 1994; Brysk 1994). But their position also led to clashes with the other human rights organizations, who argued that with the return of a democratic government, demands should be formulated in a less confrontational way.

Besides differences on how to deal with the democratic government, there were also differences on whether one should support the exhumations of corpses or not. Evidence of the existence of bodies buried as Nomen Nescio (name unknown, NN) was found as early as 1979, with the visit of the IACHR (Cohen Salama 1992: 35). In 1982, a mass grave was found in the park cemetery of Gran Buenos Aires, in the locality of the Grand Bourg. Eighty-eight unmarked graves were found containing four hundred unidentified bodies (Cohen Salama 1992: 60-1). Similar discoveries continued in the years that followed and would be treated extensively in the press, leading to what has also been called the ‘show of horror’, the constant exposure in the press of pictures and information on the exhumations of corpses (Cohen Salama 1992: 73; González Bombal 1995: 156). The discoveries of mass graves were generally welcomed by most of the human rights organizations, because they considered that they

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would contribute to revealing the truth about what happened to the disappeared and would be of great use in the search for justice (Robben 2000: 91). But it soon became clear that while graves were being opened with the purpose of exhuming the corpses, very few bodies could really be identified. The exhumations were carried out in a chaotic and irresponsible way, which entailed the risk of precious information getting lost. This raised the question of how necessary it was to open the graves (Guzmán Bouvard 1994: 142).

Most of the human rights organizations disagreed with the methods employed by the government to exhume the human remains, but acknowledged the advantages of identification. As Robben (2000: 94) states, ‘exhumations supplied evidence for legal prosecution, provided historical testimony of the human rights violations committed by the military, gave forensic proof about the birth of children by pregnant disappeared, and allowed surviving relatives to begin their process of mourning’. Through contacts they had established earlier on with scientists in the United States, Abuelas heard that the techniques of forensic anthropology could determine whether a woman who had been abducted while pregnant had given birth before her death. In 1984, on the demand of Abuelas, the CONADEP invited a team of scientists, including the forensic anthropologist Clyde Snow, who started to work on the exhumations together with Argentine students of anthropology (Cohen Salama 1992: 120). In 1986 these students founded the **Equipo Argentino de Antropología Forense** (Argentine Forensic Anthropology Team, EAAF), which is still the main organization working on the exhumation of corpses in Argentina, and has acquired worldwide relevance over the last twenty years.

The Madres, however, decided that they would not accept the exhumations of the corpses, despite the emotional burden this implied. They saw the exhumations as a means employed by the government to declare the disappeared dead and to close the subject. They considered that it was more important to identify the assassins than the victims, and that the exhumations were a way of instilling terror into the population and diverting attention away from establishing responsibilities. They also criticized the fact that many of the exhumations were ordered by judges who had also served under the military dictatorship. But the negative response of the Madres was also linked to a particular conception of collective action in which individual needs were always subsumed to the collective struggle. The Madres stated that if the disappeared had been buried in a grave together with other victims, they should be left there with their companions. In a similar vein, they stated that searching for the remains of their own disappeared son or daughter would break the solidarity among the group because it would make the search individual (Guzmán Bouvard 1994: 151). Furthermore, they considered that the open wound that was a consequence of the

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31 Thus in an interview in 1984, Hebe de Bonafini stated that with the exhumations of corpses the government intended to ‘transform the mothers of the disappeared into mothers of the dead. And with this, close the problem of the disappeared’ (Diario de las Madres, December 1984).

32 In a statement by the Madres published in October 1984 to explain their position on the CONADEP and the Nunca más, they also referred critically to the issue of the exhumations stating that: ‘With the massive exhumation of corpses, its posterior alleged identification and delivery to its alleged relatives, they will stop being “disappeared” and will be simple cases of homicide, without determining the circumstances of fact, reason, and the way in which the deaths occurred and without individualizing those who, in direct or indirect ways, participated in these abhorrent crimes’ (quoted in Leis 1989b: 166).

33 Juanita, Madre of the Plaza de Mayo, explained this in the following terms: ‘The reason for the rejection was out of respect for the children, because they were buried in mass graves, with the disappeared companions, and therefore it is sacred for us not to touch the graves’ (Interview JP 01.04.2003).
disappearance of their child fuelled their struggle and combativeness. They thought that if they found the corpse of their child, they would be able to partly close the wound and would no longer feel the need to struggle. They thus decided to leave the wounds open, so that ‘the assassins will be condemned, as they deserve to be, and that what has happened will not happen again’ (quoted in Robben 2000: 92).

The institutional position of the Madres on the exhumations ultimately led to the separation in 1986 of one group of mothers. They rejected the uncompromising attitude towards the Alfonsín government and had problems with the leadership style of the president of the Madres, Hebe de Bonafini. Hebe de Bonafini had been the elected president since the disappearance of the charismatic founding mother Azucena de Villaflor in 1977. But one group of mothers was unhappy with what they saw as an authoritarian style, and this coincided with disagreements on the institutional position adopted by the Madres towards the exhumations. In 1986, this group composed of a dozen of Madres decided to quit the organization after having lost the elections to vote a new leader. They reorganized and called themselves Madres – Línea Fundadora (Mothers – Founding Line, Madres LF) because several of them had been among the first Madres to go to the Plaza de Mayo.34 There was also a class element involved in the separation, as most of the mothers who remained with Hebe de Bonafini were working class women, whereas those who left the organization were from the middle- and upper classes (Brysk 1994: 245; Guzmán Bouvard 1994: 162-3; Font 2000: 96-7). Madres LF generally adopted more moderate attitudes, and aligned with the rest of the human rights organizations. The majority of the Madres that stayed in the Asociación Madres de Plaza de Mayo (Association Mothers of the Plaza de Mayo, Asociación Madres) assumed more radical positions which contributed to them becoming increasingly separated from the rest of the human rights movement.

**Full legal accountability or exemplary justice?**

Despite these differences, the human rights organizations were united in their approach to justice. They demanded that all the culprits be punished, regardless of their rank within the security forces, and for the immediate annulment of the self-amnesty of the military. They also stated that they should be judged by a civilian court instead of a military court and pressured for a systematic retirement of members of the judiciary who had been in function during the military dictatorship (Bartolomei 1994: 25).35 Human rights organizations also demanded the replacement of policemen who had served under the regime, as well as the reform of the institution. With regard to the armed forces, it was insisted that a structural reforming of the military institution was required, including a reduction in the military budget, the dismantling of the repressive apparatus, and the displacing of those members who had been involved in the repression. They also demanded the immediate release of

34 A small group of Madres had already left earlier, in disagreement with the position that Madres adopted against the CONADEP and with the leadership style of Hebe de Bonafini. Together with some fathers of the disappeared, several of them later reorganized and created the Fundación Memoria Histórica Social Argentina (FMHSA) in 1987, which focussed on the construction of memory (Interview IM 11.11.2004).

35 The military had replaced most of the judges sitting at the time of the coup, drawing many of these new judges directly from the ranks of retired officers. These judges had shown little willingness to initiate investigations on the disappeared. This was also evident from the lack of progress made in the criminal prosecutions for human rights abuses that were initiated by victims in the final months of the dictatorship (Mignone et. al. 1984: 123-4).
all political prisoners inherited from the military dictatorship as well as the return of the children born in captivity. Finally, they wanted forced disappearance to be declared a crime against humanity (Brysk 1994: 68; Acuña and Smulovitz 1995: 56).

Alfonsín responded to these demands in different ways. Within the judiciary, the judges of the Supreme Court were replaced, as well as judges in politically sensitive courts, principally the Federal Criminal Court of Appeals of Buenos Aires, which would play a crucial role in responding to human rights violations (Nino 1996: 67). The new judges appointed had also served under the dictatorship, but were promoted to the Federal Court of Appeals under Alfonsín (Garro and Dahl 1987: 321-2). Alfonsín's policy was to confirm the judges who had worked during the military dictatorship, unless there was clear evidence against them. Ninety percent of the judges were confirmed in their positions (Brysk 1994: 114; Bartolomei 1994: 18). Alfonsín also removed the police and the gendarmerie from army control, and the prefecture from navy control. Furthermore, each corps of the armed forces became directly accountable to the President through the Minister of Defence. The head of each branch was changed from a commander in chief to an advisory chief of staff. The Minister also took over control of the production of arms, which was an important source of income for the military. Finally, the military budget was reduced to half its original amount, and staff was reduced at all levels of the armed forces (Nino 1996: 73; McSherry 1997: 119).

In the field of legal accountability, Alfonsín promised to annul the self-amnesty of the military. But he also believed that the trials should be limited, that the armed forces should not be accused as an institution, and that a military court should be in charge of the prosecution. He thought that leaving this responsibility to a military court would have the advantage of fulfilling his electoral promises of prosecution of the guilty, without the armed forces becoming his enemy (Acuña and Smulovitz 1995: 51). According to Osiel (1986: 149), Alfonsín thought that ‘through a gradual process of re-education and renewal, it might be possible to cultivate a new generation of military leaders staunchly committed to democratic principles’. From this same perspective, he stated that both state terrorism and guerrilla actions should be brought to trial. This was meant as a signal to the armed forces that the government was not organizing an ‘anti-military’ campaign, but was judging both groups that it considered guilty of provoking the political chaos and violence in the country (Acuña and Smulovitz 1995: 51). The importance Alfonsín attributed to maintaining a good relation with the armed forces became more pronounced over time, and expressed itself among other things through a shift in language: whereas during the transition the human rights issue was referred to in terms of elucidating ‘the human rights violations’, it increasingly came to be referred to as ‘the military question’ (Jelin 1995: 126).

In order to effectively limit the trials, Alfonsín developed the concept of the three levels of responsibility according to which human rights crimes should be judged. These levels distinguished between those who gave the orders, those who carried them out, and those who committed excesses. Alfonsín’s objective was to instigate processes against the first and last groups, exempting the second group on the principle of Due Obedience (Mc Sherry 1997: 111). Furthermore, he proposed channelling all prosecutions through the Supreme Council of the Armed Forces, the highest appellate tribunal of the armed forces. In order to do so, he submitted a project to the Congress to reform the Military Juridical Code. In this project, he proposed modifying the Code to make it possible for military courts to conduct

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36 I will return to this later in this chapter.
the processes against the military and police officers accused of human rights violations. He also introduced an article that would exempt those who had responded to orders from prosecution (Mignone et. al. 1984: 125-6). Simultaneously, he ordered the juridical prosecution of three of the four military juntas for criminal offences such as the illegitimate privation of liberty and torture (decree 158/83). He also emitted decree 157/83 that ordered the penal prosecution for illicit association, attacks to the public order and peace of the guerrilla leaders who had survived the repression (Acuña and Smulovitz 1995: 51; Ciancaglini and Granovsky 1995: 18; Moyano 1995: 91).37

However, pressures of the human rights movement and the stubborn attitude of the armed forces, changed the panorama. All human rights organizations, and politicians from the opposition ranks, criticized the decision to let the Supreme Council take charge of the human rights abuses, expressing doubts about its impartiality (Garro and Dahl 1987: 319). They successfully pressured for changes in the law project presented by Alfonsín. The principle of Due Obedience was removed and a reform was introduced stating that a civil court would take over the cases if the military court was not able to resolve them within a certain period of time (Mignone et. al. 1984: 154; Bartolomei 1994: 291; Duhalde 1999: 148; Feld 2002: 14). The Supreme Council let the first deadline in June 1984 elapse, and was granted two extensions, setting the ultimate deadline on October 1984. Alfonsín’s policies were further complicated when the Supreme Council issued a report stating that no limit of time could be applied to such a case. In the report, they questioned the credibility of the testimonies of survivors, and pronounced, without a trial, that the orders given by the juntas had been correct and legitimate. If there had been excesses, those who had committed them should be judged (Mignone et. al. 1984: 139-41; Duhalde 1999: 148). The Federal Criminal Court of Appeals concluded that the Supreme Council of the Armed Forces was not competent enough to lead the process, and took over the case, thus initiating the historical Juicio a las juntas, the Trial of the juntas (Feld 2002: 15).

**Exemplary justice: the trial of the juntas**

The public trial against three of the four juntas began on 22 April 1985, and included 709 cases of murder, unlawful deprivation of freedom, torture, robbery, etc. (Bartolomei 1994: 291). The prosecutors selected their cases on the basis of the material gathered by the truth commission (Cheresky 1992: 24; Hayner 2001: 89,93-4). The selection criteria were that the cases should ‘cover a variety of victims from different sectors of society, the most important detention centres of the country, the periods during which each of the juntas held office and all three of the armed services’ (Bartolomei 1994: 286). In this way, they would prove the systematic character of the repression. The prosecutors frequently turned for help and extra

37 These included Mario Firmenich, Roberto Perdía, and Fernando Vaca Narvaja of Montoneros, and Enrique Gorriarán Merlo of the ERP. The former guerrillas were all living in exile, and thus escaped immediate prosecution (Moyano 1995: 91). However, the number one leader of the Montoneros, Mario Firmenich, turned himself in at the Argentine consulate in Rio de Janeiro, Brazil in 1984. The government of Alfonsín immediately started extradition procedures. Back in Argentina, Firmenich was tried in 1987 and given a thirty-year sentence (Moyano 1995: 191). In 1985, the judge Miguel Guillermo Pons would send out another order of capture for former members of the guerrilla organizations. This order included rank and file members such as Osvaldo Lowey, Jorge Goya, Lili Mazzafredo, Oscar Bidegain and others. As a consequence of hasty work, some of those included in the order had already been included in decree 157, as was the case for Rodolfo Galimberti, and others were disappeared, such as Jorge Gullo, Adriana Lesgart and Norberto Habegger (Larraquy and Caballero 2000: 394-5).
information to the human rights organizations, who actively collaborated in numerous ways, by locating witnesses, testifying, and helping to establish patterns of repression. The assistant prosecutor Luis Moreno Ocampo stated that ‘without the human rights organizations, there couldn’t have been a trial’ (quoted in Brysk 1994: 78). The trial was held before a panel of six judges appointed by the government. The junta members were not charged for ‘genocide’ or ‘crimes against humanity’, for these were crimes that were not specifically defined in Argentine criminal law. They were charged for criminal offences such as unlawful deprivation of freedom, torture, robbery and other crimes committed in the context of the repression (Garro and Dahl 1987: 302-3; Bartolomei 1994: 286; 291).

The trial lasted from April to December 1985, hearing 833 witnesses from the most varied backgrounds over 78 days of testimony. Images of the trial (without sound) were broadcast on the television news each night. In order to guarantee transparency, it was conducted through public and oral audiences open to the public and the press. This was unprecedented in Argentine jurisprudence (Feld 2002: 16). A newspaper of the trial (El diario del juicio) was published on a daily basis, spreading information on the most important testimonies of the day. The trial took place in a general atmosphere of military pressure and rumours of a coup. Witnesses, judges and prosecutors in the trial were threatened. Thus, according to McSherry (1997: 176), ‘in two months in 1985, there were 21 violent attacks and 1,500 bomb threats. Elementary schools, Radical Party offices, synagogues, popular cafés, and government officials’ houses were targeted by anonymous persons on almost daily basis. Telephone messages warned the public of impending attacks, sparking widespread fear and anxiety’. Military leaders disqualified the trial as being no more than a leftist manoeuvre. The Army Chief of Staff, General Héctor Ríos Ereñú, stated that only an amnesty law could make Argentina a great nation. Former President Frondizi, closely allied to the military, called the trial a ‘political show’ (Nino 1996: 84). During the trial, the defence of the junta leaders on various occasions referred to the witnesses as ‘the detained’, or ‘the subversives’ (Fisher 1989: 141; Brysk 1994: 77; Mc Sherry 1997: 177).

The hearings ended on 14 August 1985, and on 11 September the prosecution presented its plea. Public Prosecutor Julio Strassera started his plea by qualifying the repression as the ‘major genocide recorded in the young history of our country’, and by stating that he was not alone in his demand for justice, for he was accompanied by the ‘more than 9,000 disappeared that left, through the voices of those who were lucky enough to come back from the shadows, their silent but therefore no less eloquent accusatory testimony’ (quoted in Ciancaglini and Granovsky 1995: 145). The prosecution deconstructed the argument that Argentina had been at a state of war, and added that, even according to the laws of war, violations had been committed. It argued that the junta leaders were the authors of a systematic and criminal plan to eliminate the opposition and that they were responsible for murder and torture by acts of commission and by omission (Nino 1996: 85). Strassera demanded life imprisonment for five of the nine junta members, and ten to fifteen years for the other four, ending his plea dramatically with the words ‘Gentlemen Judges: I want to give up any pretension of originality to close this warrant. I want to use a phrase that does not belong to me, because

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38 These judges were Jorge Torlasco, Guillermo Ledesma, Andrés D’Allesio, Ricardo Gil Lavedra, Jorge Valerga Aráoz, and the President of the Criminal Division León Arslanián (Garro and Dahl 1987: 322).

39 For a discussion of how the decision to broadcast the trial without sound was adopted and what motivated that decision, see: Feld 2002: 33-8.

40 For a chronicle of the trial, see: Ciancaglini and Granovsky 1995.

The defence started on 30 September 1985, and followed different lines of argumentation. One argument contended that the crimes had been committed ‘in execution of legal duty’, following the annihilation decree signed under Isabel Perón in 1975. Another argument invoked the legal defence of necessity, stating that the ‘war against subversion’ had been a necessary reaction to an unprecedented threat. Similarly, a third line of argument held that there had been a violent attack of ‘subversive elements’ and that the armed forces had acted in self-defence. Finally, the defence argued that Argentina had been in a state of war, which demanded unconventional means and in which operations were not bound by rules (Garro and Dahl 1987: 325). The defences also questioned the legality of the trial. Videla’s public defender questioned the trial for being political and cast doubts on the testimonies of the victims. He dismissed the testimonies of the persons who had testified for CONADEP and which constituted the main evidence of the prosecution by calling the CONADEP a centre for fabricating evidence. Similar questioning came from Viola and Massera’s defenders. Massera’s defender claimed that the trial was a conspiracy to destroy the armed forces. Massera himself argued later in a public statement that he did not need to defend himself for having won the ‘war against subversion’. He stated that the fact that he and other junta members had been brought to trial showed that ‘subversion’ had won the psychological war, but that the armed forces would defeat them again (Nino 1996: 85–6).

On 9 December 1985, the Court of Appeals presented its decision. The Court systematically deconstructed all the arguments of the defence. The judges recognized that the massive and illegal repression that had been committed had been organized from the highest command structures. It also rejected the argument that Argentina had been at war. The means employed were considered worse than what it sought to combat, and the threat of ‘subversion’ had been far less imminent than argued by the defence. They stated that the author of a crime is the one who controls events, and therefore the juntas could be held accountable for acts they had not themselves committed. The evidence had shown that the commanders controlled the state apparatus that had produced the crimes (Garro and Dahl 1987: 327). The Court proclaimed that ‘the defendants had contributed to the crimes not only by giving the directives but also by facilitating their execution’ (Nino 1996: 86). However, it did not recognize the argument of a coordinated planning of the repression by the junta leaders. The judges insisted on assigning individual responsibility to each commander in chief and not to the juntas as a collective entity. Thus, although they recognized the fact that from time to time there had been cooperation, ‘it does not follow that the operations were conducted by a higher authority than that of each commander in chief’ (quoted in Nino 1996: 88).

This explains why the sentences turned out to be lower than those demanded by the prosecution. Only five of the nine convicted generals were found guilty, and only junta leaders Massera and Videla were condemned to life imprisonment. Viola received a sentence of seventeen years, and Lambruschini was given eight years. Finally, Agosti was given just four and half years. The other four members of the juntas were acquitted (Guzmán Bouvard 1994: 160; Ageitos 2002: 180, 185). The verdicts disappointed the human rights organizations and the victims. Hebe de Bonafini left the courtroom out of protest after hearing the first absolution (Asociación Madres de Plaza de Mayo 2003: 35). She called the verdict ‘a terrible and tragic fraud perpetrated on the Argentine people’ (quoted in Fisher 1989: 141). However,
the sentence also included a key provision, *Punto 30*, that went directly against Alfonsín’s attempt to limit the trials and also pointed at the growing independence of the judiciary (Acuña and Smulovitz 1995: 58). *Punto 30* stated that the trials had uncovered evidence implicating many more repressors, and the courts were legally required to investigate these crimes (Brysk 1994:79). Furthermore, the Court also suggested that not all the subordinate officers could be exempted from punishment on grounds of Due Obedience (Garro and Dahl 1987: 328). This paved the way for proceeding with the numerous cases that were pending, and that had been brought in by victims and their relatives since the end of the military dictatorship.41

**Evaluating the accountability process**

The transitional justice measures that were adopted under the Alfonsín government were generally perceived both inside and outside Argentina as important steps forward in the accountability process. However, there were also criticisms, which grew stronger over the years, and which were mostly directed at the historical interpretation that underlay the measures. According to this interpretation, Argentine society was presented as a victim of a confrontation between two forces, the guerrillas and the military. The military dictatorship was the product of an authoritarian political culture in which the military and guerrillas shared equal responsibilities. The human rights programme of the government was supposed to establish a break with this authoritarian political culture and to replace it with a culture based on the rule of law. This vision became the dominant historical interpretation of the events of the recent past. It had a number of implications for how Argentine society reflected upon the period of the military dictatorship, how responsibilities were established, and what facts of the past were shared or, on the contrary, silenced in this period. This section will explore the different consequences for the public reflection on the recent past of the way the accountability process was implemented under the Alfonsín government.

**From ‘war against subversion’ to human rights violations**

Although several of the human rights organizations, especially the Madres, have been critical of Alfonsín’s policies for dealing with the legacy of human rights violations, his measures have been both nationally and internationally applauded. Sikkink and Booth Walling (2006: 305-6) for instance point to the uniqueness of the CONADEP report and the trial of the juntas when placed in an international context. They recall that the CONADEP was ‘the first important truth commission in the world, and provided a model for all subsequent truth commissions’, and that the report was the first to be published and available to a broader public. Its title, *Nunca más*, became a slogan adopted by transitional justice movements all over the world. Similarly, referring to the trial of the juntas, they recall that ‘no previous trials

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41 By mid-1984, two thousand criminal complaints against military officers had been brought in by private parties (Garro and Dahl 1987: 311).
of the leaders of authoritarian regimes for human rights violations during their governments had ever been held in Latin America’.42

Many observers in Argentina, including human rights activists, have also made positive evaluations of the transitional justice instruments implemented under the Alfonsín government. In the first place, they point to the fact that the Nunca más report and the trial of the juntas have obliged Argentine people to confront their past, and have created consciousness concerning the human rights violations (Jelin: 1995: 135). The trial, even more so than the CONADEP report, had a profound impact on the Argentine public because of the public hearings in which, day after day, the victims recounted the horrors they had gone through. At the time, the philosopher José Pablo Feinmann reflected on the impact of the trial in the following terms:

The CONADEP report reached many Argentines. But only many. This trial floods the Republic. It penetrates the houses, the bars, all the institutions. Nothing can resist it... [...] The testimonies succeed each other. The testimonies are there. They are not a number, a statistic. They occupy their place and talk to the judges. They narrate indescribable events. But they narrate them. Their voice breaks. Some cry. They are tangible beings. Every day, Argentina receives these testimonies. (Quoted in Feld 2002: 44)

Secondly, both measures were of great importance for permitting the construction of juridical proof about the human rights violations, the construction of a database of information that demonstrated the systematic character of the repression. In more conservative parts of the country, where the discourse of the ‘war against subversion’ still has a strong hold, the Nunca más is a powerful instrument against denial.43 In this context, Acuña and Smulovitz (1995: 58) state that the trial became ‘the space in which the juridical logic, through transforming the data of history into proof, ended up producing the legitimate information about what had happened in the last years in Argentina’.

The measures have also played a crucial role in de-legitimizing the voice of the military in favour of those of the victims. Both the Nunca más and the trial deconstructed the argument of the armed forces that the repression was inevitable in the ‘war against subversion’. The Nunca más and the trial presented the Argentine public with the evidence that what had happened in Argentina should be understood as crimes against humanity, putting it on the same level as other experiences of ‘administrated massacres’44 of the twentieth century, particularly the Holocaust (Vezzetti 2002: 18). In this context, González Bombal (1995: 214-5) rightfully points to the fact that the deconstruction of the ‘war paradigm’ used by the military to justify their crimes, started with the actions of the human rights organizations. Through their accusations they strongly contributed to de-legitimating this justification of the

42 In this context, Sikkink and Booth Walling (2006: 306) point to the fact that in Bolivia the Congress did initiate ‘accountability trials against high ranking members of the military government of General García Meza in 1984, but the proceedings did not begin until 1986, and the decisive phase of the trial occurred from 1989-1993’. Globally, the Nuremberg trials and the Tokyo trials after the Second World War and the trials of the colonels in Greece in 1974 can be seen as antecedents.
44 I follow Osiel’s (1997: 9) definition of administrative massacres: ‘Administrative massacre [...] entails large-scale violation of basic human rights to life and liberty by the central state in a systematic and organized fashion, often against its own citizens in a climate of war – civil or international, real or imagined’.
repression. The trial of the juntas, then, was the culmination of this ‘profound transformation of meaning’, as González Bombal formulates it. For the victims, the *Nunca más* and, even more so, the trial meant that their voices acquired legitimacy after having been distrusted and silenced during the dictatorship. In this sense, both the trial and the *Nunca más* implied an ‘ethical rescue of the victims’ (Vezzetti 2002: 23).

The trial of the juntas also played an important role in consolidating the democratic regime and the rule of law. In the first place, it showed the capacity of the democratic government to subordinate military power to civilian rule. This reinforced the credibility of the new democratic system. According to Cheresky (1992: 24), this was even one of the core achievements of the accountability measures adopted by the Alfonsín administration. Through applying equal treatment before the law against those who had previously abused their powers when they were occupying state structures, the credibility of the democratic government was reinforced. Acuña and Smulovitz (1995: 99) also point to the fact that the punishment had an exemplary function and a dissuading effect on the armed forces which could not be entirely reversed by the impunity laws that would follow in 1986 and 1987. According to them, the investigation of the crimes and the subsequent verdicts meant a significant cost for the armed forces, which explains the subordination to constitutional power. Secondly, at a broader societal level, the CONADEP and the trial of the juntas contributed to a cultural shift, in which the rule of law was seen as the guarantor of democracy. They were instrumental in establishing what González Bombal (1995: 195) calls a ‘a new principle of culture “Never again (Power without Law)”’.

**The ‘theory of the two devils’ and the de-politicization of the past**

But many human rights activists, relatives of the disappeared and scholars have also been critical of the accountability process and pointed at its limitations. They have criticized the attempts of Alfonsín to limit the trials and the disappointing sentences against the junta leaders. But mostly, they have been critical of the historical interpretation that underlay the human rights programme of the government, which they considered either untrue or a simplification of the complex political and social dynamics of the 1970s. Alfonsín’s advisors, mainly lawyers and philosophers of the University of Buenos Aires, saw the military dictatorship as part of a pattern in Argentine history that was characterized by a recurrent appeal to military rule, and an authoritarian political culture (Nino 1996: 61). One of Alfonsín’s advisors, Malamud Goti (2000: 53), spoke of a ‘dictatorial mind’ chronic to Argentine history, and of a ‘deeply rooted bipolar logic of “friends and enemies”’ that profoundly marked politics before and during the military dictatorship. Similarly, Nino (1996: 44–50) identified four recurrent trends in Argentine history, which he called ideological

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45 Concretely, it gave way to the creation of a new organization of victims of the repression, the *Asociación de Ex Detenidos Desaparecidos* (Association of Ex Detained Disappeared, AEDD). I will return to this in chapter five.

46 These laws will be discussed in chapter three.
dualism, corporatism, anomie, and concentration of power. According to him, these four trends paved the way for successive dictatorial regimes culminating in the last military dictatorship, and set the stage for massive human rights violations perpetrated by the military government between 1976 and 1983 (Nino 1996: 49).

The more problematic dimension of the official historical interpretation, however, was that it compared the actions of the guerrilla organizations to those of the armed forces and reduced the complex social and political process that had led to the military dictatorship to a confrontation between these two armed factions. According to Alfonsín and his advisors, the guerrilla and the military shared a ‘common ruthlessness and hatefulness, a persistent inclination to view enemies as less than human and therefore subject to violent suppression whenever this served the interests of one’s party or faction’ (Osiel 1986: 158). They argued that there had been ‘two terrorisms’, on the side of the military and on the left, who were ‘one side of the same coin’, in the words of the Minister of Interior Troccoli (Osiel 1986: 158). This interpretation was explicit in the prologue of the Nunca más report, stating: ‘During the decade of the 1970s, Argentina was convulsed by a terror that came as much from the extreme right as from the extreme left, a phenomenon that has occurred in many other countries’ (CONADEP 2003: 1). Both terrorisms were considered responsible for the generalized situation of illegality that had been characteristic of the military dictatorship. This reasoning, in which the military dictatorship was reduced to a conflict between two groups in confrontation with each other, became known as the Teoría de los dos demonios (Theory of the two devils) (Cohen Salama 1992: 99).

The human rights programme of the government was designed in accordance with these ideas. In the first place, it was meant to break with ‘historically rooted “insidious cultural patterns”’ (Grandin 2005: 4), replacing them with a culture based on the rule of law. In order to do so, it was necessary to construct a dispassionate account of the repression, which would in no way permit a vindication of the political ideals and collective struggles that had prevailed in the period leading to the military dictatorship. Such a dispassionate account was best represented through the ‘impartiality and transparency of court procedures’ (Grandin 2005: 5). The intervention of the judiciary through the trial of the juntas was a means to de-activate the narratives that had legitimized past actions. The task of the judiciary was to establish responsibilities, identifying the perpetrators and the victims of violations. Political motives on both sides were irrelevant in this account. This enabled both the narrative of the ‘war’ of the armed forces, and the political cause that had motivated the actions of many of the disappeared to be de-activated (González Bombal and Landi 1995: 165). The Nunca más report responded to a similar logic. The report focussed on individuals whose rights had been violated, but omitted the political motivations of both victimizers and victims, with the

47 Ideological dualism, in Nino’s (1996: 44-9) account, refers to the clash between two world views, liberal and conservative forces, that characterized Argentine history. These tensions were enhanced by the fact that in Argentina liberalism was not necessarily democratic. Both supporters and enemies associated it with the defence of capitalism, and with a minimum of concern for the rights of the weakest sectors within society. Corporatism is a means of controlling sectors of society through the state apparatus. It can be either inclusionary (as was the case under Perón) or exclusionary (as was the case for the successive military regimes). In Argentina, corporatism has characterized the armed forces, the Catholic Church, the trade unions and certain economic groups and entrepreneur’s associations. Anomie stands for ‘a disregard of social norms, including the law’. Finally, the concentration of power refers to the concentration of power in the province of Buenos Aires, as well as to the concentration of power in the presidency at the expense of the legislative and judicial branches.
exception of unionist vindications (Taylor 1994: 193; CONADEP 2003: 375-8). The historical context offered merely consisted of recalling the political chaos and political violence of the 1970s, without analysing the origins and motives of this political violence (Crenzel 2004: 66).

But just as important as establishing a break with the authoritarian past was the moral and juridical condemnation of those who were seen as the main culprits: the armed forces and the guerrilla organizations. The armed forces were punished through the trial of the juntas. But several measures were also aimed at establishing the responsibility of the guerrilla. The first one was the decision to prosecute not only the juntas but also the guerrilla leaders. A moral condemnation was further expressed through the previously mentioned prologue of the Nunca más. Alfonsín’s decision to confirm the sentences given to political prisoners under the military regime was another means of establishing responsibilities. Most of the thousands of political prisoners of the military dictatorship were released during the period 1982-1983. But several hundreds still remained in prison after the democratic transition, despite the fact that they had been, in Brysk’s (1994: 85) words, ‘either illegally arrested, tortured, denied due process, judged by military tribunals, held under state of siege provisions, or charged under Proceso-era codes, and all had experienced inhuman conditions of imprisonment’. Human rights organizations constantly applied pressure to get them released, and the political prisoners themselves initiated a hunger strike demanding that their cases be reviewed and they be instantly released. But the most they achieved was that the bad conditions during the military dictatorship were acknowledged through a commutation of sentences. Their cases were not revised, but the years in prison during the dictatorship would count double. The commutations led to the liberation of all but fourteen of the prisoners (Brysk 1994: 86; Veiga 1985: 86).

The official interpretation of the recent past and how to deal with it was mostly a reformulation of a number of ideas already circulating in society. As we saw in previous sections, there was a strong societal demand for legal prosecution of the perpetrators of human rights violations. In this context, Crenzel (2004: 67), following philosopher Alejandro Kaufman, speaks of a ‘punitive paradigm’ that predominated in the 1980s. This punitive paradigm was accompanied by a strong rejection of the illegality and violence that were associated with the 1970s, and a revalorization of the rule of law. Similarly, the theory of the two devils was not an invention of Alfonsín but drew upon visions that were already circulating in society (Vezzetti 2002: 121). Its origins lay in the discourse of the military on the need to combat subversion, a discourse that became firmly entrenched in society. When the military came to power, there was evidently a certain consensus within society about the need to repress the guerrillas. It was only gradually that society started to express indignation about the disappearances, when cases became known of people who did not fit into the stereotypes circulating on the guerrillas (Ciancaglini and Granovsky 1995: 89). But even then, this did not lead to a vindication of the guerrillas. Rather, it led to a rejection of both the guerrillas and the illegal repression (González Bonibal 1995: 206). In the 1980s, the guerrillas were still largely seen as terrorists, and the general opinion was that they should not have been killed but tried in court (Robben 2005: 323; 416). Thus, the official interpretation of the recent past can be seen as a synthesis of existing interpretations. But its implementation

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48 Human rights organizations continued to demand the release of these political prisoners, each case being brought to the Supreme Court for revision. Ultimately, all the cases were reopened, but eight of the fourteen prisoners ended up serving their complete sentences.
through official policies transformed it into ‘official memory’. As such, it came to shape the contours of the debate over the past, establishing a number of boundaries on what could and could not be said.

Adjusting the narratives of the past to the needs of present

The dominant interpretation of the recent past and how to deal with it had a number of consequences for the public debate on the 1970s. In the first place, the suggestion that those who had been members of guerrilla organizations shared a degree of responsibility in the military dictatorship had the effect of creating hierarchies among the victims. In this hierarchy, those who had no political record at all were ‘greater’ victims than those who had participated in guerrilla activities and had been conscious of the risks involved. The necessity to demonstrate the magnitude of the crimes and to show its indiscriminate character led to emphasizing those elements that proved the ‘innocence’ of the victims (Lorenz 2004a: 102). González Bombal (1995: 206) reflects on the general state of mind during the transition to democracy in the following terms: ‘In particular, the preoccupation revolved around the possible mistakes and irreparable injustices committed in the repression. In this sense, the information on children, pregnant women, the elderly, that is to say, those we could denominate as being the “hyper victims”, was considered beyond the admissible’. These elements were also present in the Nunca más report. In the prologue of the report for instance, the authors recalled that most of the victims were ‘innocent of terrorism’: ‘All were mostly innocent of terrorism or even of pertaining to the combatant staff of the guerrilla, because these fought back and died in the confrontation or committed suicide before surrendering, and few arrived alive at hands of the repressors’ (CONADEP 2003: 10; Lorenz 2004a: 102).49

This differentiation between ‘innocent’ and ‘guilty’ victims had important implications for what was revealed and what was not revealed about the identity of the victims. It led to systematic attempts by relatives and human rights activists to disconnect the victims from any kind of political activity which could make them ‘guilty’. In practice, although indeed few of the victims were combatants, most of them were politically involved and connected in some way to the revolutionary organizations of the left (Palermo and Novaro 2003: 488; Gasparini 2005: 98).50 Nevertheless, relatives consequently remained silent about the political activities of the victims. During the military dictatorship, especially in the initial years, this was a matter of life and death. After the transition, the prevailing perception that the guerrillas shared responsibility in the political violence of the 1970s caused human rights

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49 The commission refers to the widespread practice of the Montoneros of carrying a cyanide capsule, which they could take in the case of abduction. Committing suicide was seen as a way to escape torture, considered necessary in order to preserve the organization.

50 According to Palermo and Novaro (2003: 488): ‘In an immense majority, the disappeared had been members of the armed organizations of the revolutionary left, armed or disarmed, Peronists or not. Moreover: except for the kidnapped of unionist origin, the proportion of victims effectively related to the guerrilla groups (although with different grades and with very varied responsibilities) was without doubt very high. Beyond the differences that could exist on this matter, depending on the social milieu of the victims, all of them were enrolled militants, and not youngsters who incidentally appeared in some agenda. There were also these kinds of victims, as well as relatives and friends demanding for the victims, occasional witnesses of some abduction, journalists and lawyers engaged with human rights. But the condition of innocence of those kidnapped had little to do with not being connected to the organizations identified as “subversive” or “terrorists” by the regime, and until little time before by many of the new exegetes of innocence’.
activists, relatives and survivors to remain silent about the political activities of the victims. This was reinforced by the constant attempts of the armed forces to justify the disappearances, claiming that Argentina had been at war and that all disappeared had been ‘subversives’.

In an interesting account of one of the most powerful symbols of the indiscriminate character of the repression, known as the Noche de los lápices (Night of the pencils), Lorenz (2004a) shows how this construction of ‘innocent victims’ took place. The Noche de los lápices refers to the abduction and disappearance of nine high school students in the city of La Plata between 16 and 19 September 1976, of whom six remain disappeared. The episode attracted public attention for the first time when Pablo Díaz testified at the trial of the juntas. Díaz was one of the first witnesses to testify, and in his testimony, which Lorenz (2004a: 104-5) qualifies as a ‘foundational moment’, the operative of 16 September appeared intimately connected to the activities undertaken by these students to obtain a special ticket for secondary school students. The consequence was that in the public representation of the event, what remained was the abduction of a group of adolescents that had a non-political demand, of a unionist character (the student fare), and that few considered inadequate. In this narrative, the political militancy of the students that coexisted together with their unionist activity (they were all members of grassroots organizations supporting Montoneros and the PRT-ERP) was put aside, remaining generally unmentioned. This version was also reproduced in the book published in 1986 and in the film premiered in September of the same year. Pablo Díaz collaborated intensely on both products.

According to Lorenz (2004a: 112), both the book and the movie played a crucial role in consolidating an interpretation of the events of the Noche de los lápices in which the innocence of the youngsters was a central theme. Pablo Díaz himself reflected on the consequences of his depurated version of the facts in the following terms:

[I feared] that because of the fact of having militated politically in some organization that adhered to the guerrilla organizations, they would separate me from the prejudices. This should not have happened to the kids of the pencils, but to those who were from guerrilla organizations! No, no, no, none of this should have happened to anybody. […] I think I went through a process that was similar to that of many Madres: ‘no, my son was innocent’. […]

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51 Both the film and the book that were made of this episode only speak of one survivor, Pablo Díaz, and the abductions of the two other students, Emilce Moler and Patricia Miranda are not included in the story. The story of the Noche de los lápices was based on the testimony of Pablo Díaz. Several years passed before Emilece Moler and Patricia Miranda were able to tell their stories (Lorenz 2004a: 100).
52 On the question: ‘What relation did you explain that you had with the other boys and girls that had been detained?’ Pablo answered: ‘Because of the student fare, because of the demand that we had gone to make and because of the relation of the group with the Coordinator of Secondary School Students that existed in the city of La Plata, we were various kids of secondary schools all between fourteen and eighteen years old, and we had gone to the Ministry of Public Works, at that time it managed the transport and we started seeing each other. By sight, we did not really know each other as such, later, when I met them in various camps where I have been, I started relating all this, and later because of the interrogations I undergo’ (quoted in Lorenz 2004a: 104).
53 This vision is well illustrated through the following quote from the magazine La Semana in 1985, in Lorenz (2004a: 103): ‘For staging a soft student protest, a group of adolescents of 16 and 17 years was abducted, tortured and disappeared. […] It was certainly one of the most horrendous and absurd crimes of the Process’ (emphasis of Lorenz).
This interpretation remained, and I feel responsible for what I have done. No, obviously, I talked about the student fare, but the consciousness was initially political, to come to the struggle for the student fare. We decided this politically within our organizations. (Quoted in Lorenz 2004a: 106)

Díaz’s account also shows that concealing the connections of the disappeared with revolutionary politics was often a conscious choice of survivors and relatives, to avoid the stigmatization of the guerrilla that still prevailed.

The concealment of the political activity of the disappeared was reinforced by the focus on punishment and legal prosecution of the culprits. Human rights activists, lawyers, journalists and relatives of the disappeared all aimed at demonstrating the magnitude of the repression. The denunciation of the atrocities committed during the dictatorship strongly prevailed over the debate on the historical and political situation that had made the crimes possible. According to Crenzel (2004: 67), this focus on denouncing the human rights violations:

…diverted attention from the social and political process constituent of the dictatorship and the disappearances. It overshadowed the reflection on the consensus that the military dictatorship achieved, on the social identities that supported it and envisioned it as the means to restore the disrupted ‘order’ and ‘security’ and to whom the dictatorship granted legitimacy for its own exercise of authoritarian practices.

The lack of reflection on the social and political dynamics and responsibilities behind the repression was reinforced by the choice for human rights reporting as the means to produce historical knowledge on the dictatorship. In this context, scholars have pointed to the limitations of the kind of knowledge produced through human rights reporting, as it focuses on the facts of the repression and does not address the question of why the violence happens (Tate 2007: 301-2).

The theory of the two devils reinforced this lack of reflection on these issues, as it provided societal actors with an excuse to avoid a debate on their responsibilities in the military dictatorship. Yet the military regime did benefit from important civilian complicities. These complicities consisted of political support for the military regime, but also of active participation of individuals in the repression. These individual cases have been extensively documented in the Nunca más, various testimonies implicating individual members of the Catholic Church, leaders of the unions, business leaders and members of political parties in the repression. None of these societal actors were prepared to acknowledge their share of responsibility in the military coup. As the military dictatorship came to its end, they started to distance themselves from the military regime, making explicit that they would not share the costs of the repression. In this context, Palermo and Novaro (2003: 501) speak of a ‘turn to the neutrality of sectors which, to a greater or lesser extent, had supported them (the armed forces)’. Duhalde (1999: 88) has reflected in critical terms on the attitude of civilians who supported the coup and were all too happy to attribute all responsibilities to the armed forces and the guerrilla:

54 In this sense, there is an evident tension between the prologue of the report, which reproduces the idea of a society caught between two external forces, and the corpus of testimonies that clearly demonstrates civilian complicities (Crenzel 2004: 67).
The mythical discourse following the fall of the dictatorship [...] tried to show that the military acted as an ‘occupational force’ towards civil society, reducing the cruel phase lived through to a confrontation between military and civilians. In this way, society as a whole, after the bath in the democratic Jordan, exonerated itself from any responsibility towards the proceso.

For these sectors, the theory of the two devils was an ideal excuse to close the subject.

A number of other elements contributed to these responsibilities being concealed. In the first place, the government also wanted to avoid a debate on civilian responsibilities because it did not suit Alfonsín’s vision that trials should be limited and should have an exemplary function. By focussing on one single civil actor, the guerrilla, Alfonsín could avoid the prosecution of other civilians who had collaborated with the dictatorship, which he feared would lead to thousands of trials (Osiel 1986: 154). Secondly, the debate on civilian complicities was further complicated by the fact that the military defence precisely used the argument of civilian complicity to diminish the responsibility of the armed forces in the repression. During the trial of the juntas, it painfully recalled the support of leaders of the Peronist Party as well as that of other political parties, of the Catholic Church hierarchy, of economic groups, the unions, the media and many ordinary citizens. All these societal actors welcomed the coup in the hope that the military would ‘restore order’ in the chaos which was perceived to come from the right and from the left (Osiel 1986: 171). Therefore, in those years even the human rights organizations preferred to concentrate responsibilities on the armed forces. The result of these mechanisms was that no prosecutions took place against these civilians, neither was there an internal debate or recognition of the major civil actors who openly supported – and benefited – from the dictatorship.55

As for the more diffuse groups within civil society – the ordinary citizens who had accepted the propaganda of the military and looked the other way when abductions had taken place – they preferred to see themselves as victims than to reflect upon their role during the dictatorship. The most common attitude was denial. When the information on the repression became exposed in the media, in the Nunca más report and the trial, many were shocked, and stated that they had not known about the abductions and disappearances. In one of the first films on the military dictatorship, La historia oficial (1985), the main character, Alicia, wonders, when she hears about the disappearances: ‘But, would it be true?’ Alicia’s disbelief resonates through other testimonies recollected in the period 1984–1985 among ordinary citizens: ‘We used to talk, but we could not convince each other of something so immoral. It was only from Malvinas that I realized; we learned about it after 1980, 1981. There were comments, but they were covered up; I heard about the disappeared in the queue voting for Alfonsín’ (González Bombal 1995: 205).

Arguably, it seems that the theory of the two devils fitted the needs of a society that was reconstructing itself and preferred to look ahead than backwards. The tendency at all levels was to reject anything that reminded one of the 1970s. In the new conception that predominated from 1983 onwards, the defence of democracy and institutions, and of political and civil rights, was considered more important than the ideals of social justice that had prevailed in the 1960s and 70s, especially within the Peronist experience (Cheresky 1992: 14). Thus many intellectuals and politicians who had previously sympathized with the revolutionary ideology turned their backs on these ideas and embraced a vision of democracy.

55 For a study of the role of civilians in the military regime see also: Baud 2001.
that was firmly opposed to the values predicated in the 1960s and ’70s. Among Alfonsín’s closest advisors were a group of intellectuals who had sympathized with the revolutionary ideas of the 1960s and ’70s and now embraced a democratic discourse constructed in opposition to the 1970s characterized as a period of chaos and factionalism (Palermo and Novaro 2003: 511). There was little reflection on which aspects of the traditions of the previous period were rejected or maintained. The general tendency was to ignore the connections between the democracy of the 1980s and previous political experiences, thinking of the past mainly in terms of ruptures instead of continuities (Pittaluga 2006: 37-8).

Conclusion

In this chapter I have argued that human rights and the struggle for their defence became crucial in the transition to democracy. In this period, the human rights movement put the massive character of the human rights violations to the fore, demanding the protection of human rights. Appealing to human rights was also a strategic choice in an international context in which the human rights language was becoming increasingly powerful. The appeal to universal values such as the right to life and the right to protection against torture and arbitrary detention in the context of gross violations of these fundamental rights unified people of very different orientations. The continuous attempts of the military to secure impunity for their acts only enhanced demands for accountability of the crimes committed. Demands for truth and justice and a generalized rejection of authoritarianism and of the absence of legality strongly shaped the character of the democratic transition.

Alfonsín, the presidential candidate of the Radical Party, won the first post-dictatorship presidential elections in October 1983. He promised human rights trials and a democracy based on the rule of law. However, anticipating pressures from the military, he attempted from an early stage to limit the trials in numbers and in duration. His legal strategy was designed around one major concern: the inclusion of the armed forces in the new democratic order. Therefore he wanted to avoid the armed forces being accused as an institution. The armed forces, however, closed ranks and refused any trial for human rights violations. The human rights movement, on the other hand, thought that Alfonsín did not go far enough in his policies to deal with the past. The accountability process initiated under Alfonsín ended up being a compromise between these opposed demands. The CONADEP was only supposed to investigate the fate of the disappeared and had limited powers, but with the collaboration of the human rights organizations it managed to provide a thorough investigation. As for the process of legal accountability, Alfonsín’s attempts to limit the trials were thwarted by the human rights movement and by an increasingly independent judiciary. The inclusion in the sentence of Punto 30, that paved the way for new prosecutions, was a clear sign of this growing independence.

These first accountability measures were important foundational events for the new Argentine democracy in several ways. They made denial of the human rights violations impossible, deconstructed the argument of the armed forces that Argentina had been at war, and confronted Argentines with their own past. Simultaneously, the trials and the Nunca más were also foundational in other ways. Both measures conveyed a master narrative,

56 These included Juan Carlos Portiantiero, Pablo Giussani and Emilio de Ipola.
which suited well the political and cultural moment of the transition. They simultaneously reformulated and implemented visions and interpretations of the past that were circulating in society at the time. The past was understood in terms of a confrontation between two groups, the guerrillas and the armed forces, although it was recognized that the armed forces bore the greatest responsibility for having operated using the state apparatus. Society had become a victim of these two forces. This narrative framework, which came to be known as the ‘theory of the two devils’, contributed to a lack of debate on civil responsibility in the military coup and the repression. It also led to an interpretation of events that made a distinction between ‘innocent’ and ‘guilty’ victims, which reinforced the concealment of the political identity of the disappeared.

The effects of the theory of the two devils were enhanced by the juridical language in which the past was framed, speaking of human rights violations, victims and perpetrators rather than of political actors and projects. While this had the advantage of deconstructing the military discourse and de-politicizing a highly politicized past, it also had consequences for the debate, and the understanding of the military dictatorship as part of a historical continuum. Both processes led to a general vision that recognized the human rights violations but provided no thorough reflection on the backgrounds and origins of these violations. It left aside reflections on what motivated both the widespread adherence to revolutionary projects on the left, and the harsh repression from the right, and presented the new democratic order as radically different from previous experiences. In practice however, Argentine democracy, far from being able to establish the radical break with the past that was envisioned, showed numerous continuities in both actors and policies. Despite criminal prosecutions, many former torturers walked free on the streets and often still integrated both the police and the armed forces, even gaining promotion despite a human rights record. Political and economic actors who had been accomplices of the dictatorship continued to influence policies under the democratic regime, and economic policies were very much in line with those that had prevailed under the military regime. These continuities would become more evident in the second half of the 1980s and the 1990s. The consequence of this unfinished and unsatisfactory accountability process was the initiation of a struggle for truth, justice and memory that still persists today. It is this struggle that will be described in the next chapters of this book.