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978-1-107-11419-7 - The Economic Accomplices to the Argentine Dictatorship: Outstanding Debts

Edited by Horacio Verbitsky and Juan Pablo Bohoslavsky

Excerpt

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Introduction

State Terrorism and the Economy: From Nuremberg to Buenos Aires

Horacio Verbitsky and Juan Pablo Bohoslavsky

The year 2015 marks thirty-two consecutive years without a coup d'état interrupting Argentina's democratic institutional process. This had not happened before in two centuries of republican existence. Thus, more than recovering democracy, as was the preferred formula in 1983, what is commemorated today is its foundational experience. The demand for memory, truth, and justice was one of the common threads running through that process, which experienced advances and setbacks until, in 2001, the impunity laws and decrees were declared null by the courts and the proceedings that had been interrupted from 1987 to 1990 after the military uprisings were resumed.

As of August 2014, 506 convictions and 90 acquittals or dismissals had been handed down in the trials conducted throughout the country, according to the figures from the Center for Legal and Social Studies. This proportion reveals them to be true acts of justice in which nobody has been convicted without proof. In all these cases the defendants were either direct perpetrators of crimes against humanity committed in the 1970s and 1980s or they were armchair perpetrators of such crimes. Among those convicted are military officers, policemen, agents of other security forces, a civilian minister of the terrorist state, and a Catholic priest.

Although the structural economic causes of the dictatorship, the repression of workers, and the consequences of the economic policies implemented during that period have all been subject of attention and study since the return to democracy, it has only been in recent years that the focus has been placed also on the role and possible responsibility (whether political, criminal, or civil) of the individuals, bodies, and companies that supplied goods and/or services to the dictatorship or obtained benefits from it while they provided political support in return, thus consolidating the regime and facilitating the execution of its criminal plan.

The views and conclusions presented in this introduction are solely those of the authors and are in no way intended to reflect those of the institutions with which they are affiliated.

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The term “military dictatorship” is being increasingly abandoned in favor of other more complex terms that more closely reflect the reality of a bloc that was formed by civilian, military, business, and Church elements. Businesspersons who are criminally prosecuted for contributing to the disappearance of their workers,¹ victims who sue the banks that financed the dictatorship,² economic actions filed in labor courts for detentions in the workplace that resulted in disappearances and are declared not subject to statutory limitations,³ sentences that call for investigating the editorial complicity of newspapers,⁴ effective prosecution requests against media entrepreneurs for having carried out information manipulation campaigns in connivance with the government’s repressive plans,⁵ prosecutions for extortion of businesspersons and the seizing of their property,⁶ the state investigation into the Papel Prensa case,⁷ and the establishment under the National Secretariat of Human Rights of a special unit for the investigation of crimes against humanity motivated by economic interests⁸ and an office for the coordination of human rights, memory, truth, and justice policies within the National Securities Commission (Comisión Nacional de Valores, CNV)⁹ are some of the signs of this new tendency.¹⁰

What changed in Argentina to explain this recent and astonishing growth in interest and efforts in holding economic accomplices accountable? The answer contains both global and domestic factors.

At the international level, the jurisprudence of the Nuremberg International Military Tribunal was clear with respect to the responsibility of the entrepreneurs who had provided goods and services to the Nazi state machinery:

[T]hose who execute the plan do not avoid responsibility by showing that they acted under the direction of the man who conceived it... [That person] had

¹ See the cases of Blaquier (Ingenio Ledesma) in Chapter 13 and Ford and Mercedes Benz in Chapter 11 in this book.

² On this action, see Chapter 7.

³ On the Ingegnieros ruling, see Chapter 12.

⁴ For example, these sentences ordered the investigation of the role played by *La Nueva Provincia* in featuring information on alleged military clashes with supposed subversive elements during the dictatorship. Tribunal Oral Federal de Bahía Blanca, “Bayón, Juan Manuel y otros s. privación ilegal de la libertad agravada,” sentence of September 12, 2012.

⁵ On the directors of the newspaper *La Nueva Provincia*, see Diego Martínez, “Un engranaje más dentro del plan criminal,” *Página/12* (Buenos Aires), May 11, 2013, and “Hechos que muestran complicidad con la dictadura,” *Página/12* (Buenos Aires), May 12, 2013.

⁶ See Chapters 18, 19, and 20.

⁷ Secretaría de Comercio Interior, Resolution 126/10.

⁸ Decree 3216/10.

⁹ Comisión Nacional de Valores, Resolution 594/11.

¹⁰ Between August and October 2012, the School of Economic Sciences of the University of Buenos Aires held a conference on economic power and state terrorism (“Poder económico y terrorismo de Estado”) that examined the consolidation of that same tendency.

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to have the co-operation of statesmen, military leaders, diplomats, and business men. When they, with knowledge of his aims, gave him their cooperation, they made themselves parties to the plan he had initiated. They are not to be deemed innocent ... if they knew what they were doing.¹¹

However, after the trials of the immediate postwar, issues associated with the responsibility of non-state individuals in human rights violations entered a cone of silence in international law. The reason for this silence was the prevailing paradigm that the beast of human rights was in the state itself, not outside it. Another influencing factor in this was the start of the cold war, with its call to forget the responsibilities of significant sectors in the new alliances.

The end of the cold war and the beginning of what is known as the process of globalization, shaped by the growth of transnational corporations, highlighted the power and immense capacity for harming human rights that lay outside the state. That explains, to a great extent, why in the past ten years the international community has moved forward in gradual agreements for the application of human rights standards to companies. The adoption in 2011 of the Guiding Principles on Business and Human Rights (Ruggie Report) by the United Nations Human Rights Council marked the formal crystallization of that process.

Also, the more recent truth commissions have begun to consider both the economic problems that underlie armed conflicts and authoritarian regimes and the behavior adopted by businesspersons during those periods. This is the case of the commissions in Kenya, Liberia, Sierra Leone, South Africa, and Timor-Leste.

This trend in international law was furthered by the hundreds of judicial actions brought in dozens of countries with the aim of holding companies accountable for their involvement in or facilitation of human rights abuses.¹² U.S. jurisprudence, in application of the Alien Tort Claims Act (ATCA),¹³ has played a reference role in this subject, having found companies guilty for violating human rights abroad. Academia has also done its part, with business and human rights becoming one of the major issues of contemporary debate in international law.¹⁴

¹¹ The Nuremberg Trial (*United States v. Goering*), 6 F.R.D. 69, 112 (Int'l Mil. Trib. at Nuremberg, 1946). See, more extensively, F. Nicosia and J. Huener (eds.), *Business and Industry in Nazi Germany* (New York and Oxford: Berghahn Books, 2004).

¹² C. Hutto and A. Jenkins, "Report on Corporate Complicity Litigation in the Americas: Leading Doctrines, Relevant Cases, and Analysis of Trends," in *Human Rights Clinic* (Texas: University of Texas, 2010).

¹³ On this U.S. law, see Chapter 9.

¹⁴ See, for example, A. Clapham, *Human Rights Obligations of Non-State Actors* (Oxford: Oxford University Press, 2006); and, more specifically in the field of transitional justice, S. Michalowski (ed.), *Corporate Accountability in the Context of Transitional Justice* (London: Routledge, 2013); D. Sharp (ed.), *Justice and Economic Violence in Transition* (New York: Springer Publications, 2013).

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In the past few years, the tailwind of international law has shifted the course toward non-state actors, thus encouraging the widening of the rings of responsibility to include economic accomplices, and that tendency has reached Argentina.

At the national level, the establishment of the National Commission on the Disappearance of Persons (CONADEP) in 1983 (which was the world's first truth commission) produced a double "process of osmosis between Argentina and the international human rights system," which intensified after the resumption of trials in the first decade of the twenty-first century. On the one hand, Argentina's political processes and domestic judicial production "influenced the evolution of the international human rights system." On the other hand, the country has developed a great receptivity to approaches originating from other parts of the world.¹⁵

The trials against military and police perpetrators are a consolidated reality. As the president of the Supreme Court of Justice, Ricardo Lorenzetti, said: they are part of the social contract of Argentines,¹⁶ so that it is difficult to imagine new scenarios of amnesty and impunity. In this way, the fact that the most severe and cruel behaviors have found their way to justice makes it possible to expand the scope and analyze the context in which those crimes were committed, focusing on civilian, economic, and Church accomplices, whose contributions *enabled, facilitated, or improved the efficiency* in the commission of such crimes.¹⁷

At the same time, the gradual – but insufficient – systematization of information and investigations on the role played by numerous companies has led to the development of novel ideas and perspectives regarding economic complicity.

Are economic actors relevant in the framework of authoritarian regimes? In a context in which fundamental human rights are systematically violated, democratic deliberations are, by definition, silenced. In a sense, there are some certainties, from the perspective of rational choice, about how such a regime will behave: it will try to stay in power by guaranteeing privileges for the elites and/or the military.¹⁸ For that purpose it has two instruments available, and its success will depend on the interaction and balance between the two.

On the one hand, authoritarian governments can assign civil and political freedoms, yielding to the demands of greater democratization, or denying them by repressing. On the other hand, they can also assign – or deny – economic resources

¹⁵ See P. de Stefani, "La contribución de Argentina al afianzamiento internacional de los derechos humanos," conference delivered at University of Padua, April 22, 2012.

¹⁶ R. Lorenzetti and A. Kraut, *Derechos humanos: justicia y reparación* (Buenos Aires: Sudamericana, 2011), pp. 9–10.

¹⁷ International Commission of Jurists, *Corporate Complicity & Legal Accountability*, Geneva, vol. I, 2008, pp. 8 and ff.

¹⁸ G. O'Donnell, "Reflections on the Patterns of Change in the Bureaucratic-Authoritarian State" (1978) 13 *Latin American Research Review*, 6.

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with the aim of purchasing loyalties in key economic and political sectors. Using these instruments – effective repression and the purchasing of loyalties – requires means.¹⁹

Contributing to the regular and efficient operation of a regime that commits systematic human rights abuses entails helping that regime attain its main objective: perpetrating the crimes in line with the political and economic purposes of the organization. In this sense, with the argument that a shortage of resources hinders and limits the criminal action that is sought to be prevented, the United Nations Security Council applies economic sanctions. In fact, the government of the United States, during the Jimmy Carter administration, repeatedly denied the granting of financial aid to Argentina's military junta because of the systematic human rights abuses that were being committed in the country.²⁰

The explanation of the role of economic actors in authoritarian contexts from the theory of rational choice must be complemented with an interdisciplinary historical and analytical narrative – as is developed in numerous chapters in this book – of the link between the criminal state and the economy during the Argentine dictatorship. The nature of that link was determined by the (imposed) supremacy of the armed forces over the constitutional order and their will to remain in power and seize the resources that such an enterprise required, but that did not prevent sectors of the economy from forging the scenario of the coup and its economic plan, from treating the military as their equals or ordering them at times, or even from co-participating in coercive state power to repress and commit criminal acts, as is shown in Part V of this book.

In 2012, in the criminal trial that investigates the complicity of the owners and executives of the sugar mill Ingenio Ledesma in the disappearance of numerous workers, the judge clearly explained that

the jailing, torturing, murdering, and disappearing of individuals by the security forces during the last civilian-military dictatorship were, thus, not only motivated by the desire to preserve a given ideology, but rather the purpose of the illegal repression was to establish and defend an economic model with neoliberal overtones that would be free of threats from labor demands and claims.²¹

This statement by a court reveals the intricate relationship that existed between the activities and interests of the state and those of certain economic sectors. This poses the need to develop and apply a political, economic, and legal theory that is

¹⁹ See B. Bueno de Mesquita et al., *The Logic of Political Survival* (Massachusetts: MIT Press, 2003), and R. Wintrobe, *The Political Economy of Dictatorship* (Cambridge: Cambridge University Press, 1998).

²⁰ M. Griesgraber, "Implementation by the Carter Administration of Human Rights Legislation Affecting Latin America," PhD thesis, Georgetown, Georgetown University (1983), pp. 227–241.

²¹ Juzgado Federal de Jujuy no. 2, November 15, 2012, order initiating criminal proceedings, p. 92.

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sophisticated enough to capture the nuances presented by the various relationships established between businesspersons and state officials. Mounting a criminal organization to kidnap businesspersons and seize their property, instigating and implementing social exclusion policies, requesting and facilitating the disappearance of employees, granting loans to the regime, and benefiting from the government's exchange policy are not the same thing. Co-perpetrators, partners, instigators, conspirators, direct perpetrators, accomplices, and beneficiaries are some of the possible forms that can embody such material relationships, and which in this book are included under the generic term "economic accomplices," but only for the sake of expository simplicity.

Identifying and exposing the true and specific role played by economic actors poses a challenge that exceeds the legal sphere. It involves questioning the static and monolithic notion of state²² toward capturing the public-private interrelations and interdependencies woven together during the authoritarian period, so that the meaning of the expression "state terrorism" properly reflects that public-private web.

In any case, even in international criminal law, a holistic approach is applied in the prosecuting of authoritarian regimes and their legacies. As noted by the recently appointed International Criminal Court Prosecutor Fatou Bensouda:

When prosecuting crimes against humanity, we must consider all elements and focus on all the actors involved: political and military leaders, perpetrators, and even those who financed such crimes. In principle, they too are responsible and must be held accountable for the civilian victims they contributed to create with their support to systematic plans against civilian populations.²³

Moreover, transitional justice in Argentina has evolved to a point that it is possible to recognize that not taking into account the economic factors that contributed to maintain a dictatorship poses a certain danger of historical blindness that can result in an amnesia that compromises the promise of *never again*. Addressing only the political factors of a period of repression and omitting the economic dimension promotes the risk that – because they have not received any kind of penalizing signal from the law, and very especially when the activity has been profitable – those same economic factors will again facilitate the emergence and maintenance of a similar regime in the future.

²² On this discussion on the very notion of the state with respect to the Nazi regime and the role of businesspersons, see D. Lustig, "The Nature of the Nazi State and the Question of International Criminal Responsibility of Corporate Officials at Nuremberg: Revisiting Franz Neumann's Concept of Behemoth at the Industrialist Trials," (2011) 43(4) *New York University Journal of International Law and Politics*, 965.

²³ "Aquellos que financiaron crímenes de lesa humanidad deben rendir cuentas," *Perfil*, July 22, 2012, available at www.perfil.com/ediciones/internacionales/-20127-696-0077.html.

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This book intends to contribute to a more complete historical narrative about what happened under state terrorism in Argentina, countering the idea that it was a plan of a handful of senior and junior officers of the armed and security forces who carried out a mass murder campaign on their own. State terrorism rested on a political and economic plan that had its winners and losers, as noted by Eduardo Basualdo in Chapter 5. This end result was a reflection of a web of economic relations that is explained in detail by the authors and which converged in the abrupt and antidemocratic interruption of the import substitution model. The government obtained economic support (and political support connected with the economy) precisely from those who benefited both from economic advantages granted by the dictatorial state (subsidies, tax exemptions, elimination – even physical – of business competitors, corrupt business deals, privatizations, etc.) and from the market conditions generated by the repression of certain sectors of society.²⁴

This scheme of reciprocal supports and benefits was acknowledged by Alfredo Martínez de Hoz himself, the man who served as economy minister from 1976 to 1981, who openly explained:

The Armed Forces are the pillar and mainstay of the current process. I can say that my administration has received all sorts of support from the Armed Forces, as is to be expected because this economic program was approved by the Armed Forces before they assumed power, and I am carrying out a program approved by the Armed Forces.²⁵

The profound regressive redistribution of income implemented to the detriment of the working class (with the participation of wage-earners dropping from 43 percent in 1975 to 22 percent in 1982)²⁶ and the reshaping, downsizing, and concentration of the industrial sector that occurred under the dictatorship were made possible through the effective repression of the labor movement. The workers who survived had to perform their tasks for a meager wage, literally with guns to their heads. The militarization of Argentina's large industries and the ensuing systematic repression applied with the aim of disciplining workers and their representatives entailed not just collusion but an active involvement from the companies, which, in turn, benefited enormously from the curtailment of labor rights. The goal was not merely to eliminate the *internal enemy*, but also to refound a model of production based on

²⁴ On the corporate liberalism that characterized the Argentine dictatorship, see A. Pucciarelli (coord.), *Empresarios, tecnócratas y militares. La trama corporativa de la última dictadura* (Buenos Aires: Siglo XXI, 2004); on the privileged spaces of accumulation during the dictatorship, see A. Castellani, *Estado, empresas y empresarios. La construcción de ámbitos privilegiados de acumulación entre 1966 y 1989* (Buenos Aires: Prometeo, 2009).

²⁵ Ministerio de Economía, *Memoria 29-3-1976/29-3-1981*, vol. 1, Buenos Aires, 1982, p. 95.

²⁶ E. Basualdo, *Estudios de historia económica argentina. Desde mediados del siglo XX a la actualidad* (Buenos Aires: Siglo XXI, 2006), p. 122.

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the violent dispossession of workers. Economic think tanks and business associations attempted a technical, political, and institutional defense of that economic and criminal machinery, whose social, economic, legal, and political repercussions are still vividly felt today.

Although there is an increasingly stronger tendency in the transitional justice agenda toward picking up economic accomplices on its radar, there is a heated debate among academics over whether violations of economic, social, and cultural rights should be incorporated into the processes of transitional justice, and if so, how. These are two delicate questions, as they exceed the issue of holding non-state accomplices responsible and the economic contextualization of such behaviors. In fact, both questions may demand legal definitions regarding what the best political and economic system is for preventing and repairing economic, social, and cultural rights violations (economic violence).

While it is unacceptable for the mechanisms of transitional justice to be blindly determined by the supposed “spillover effect” of the economic measures of liberalization, it is no less true that the discussion regarding economic, social, and cultural rights must not be resolved exclusively with arguments of legality and efficiency, because that reduces the political and democratic debate around the economy to its minimum expression.²⁷

The approach proposed in this book emphasizes the legal responsibility of economic actors that contribute to authoritarian governments and considers the socioeconomic dimension of that same period toward:

- (1) fully understanding the relationship that existed between corporate behavior, the regime’s economic policy and its consequences, the consolidation of the regime, and the crimes committed by the regime;
- (2) identifying the socioeconomic problems and tensions that fueled the conflict and which can be reproduced even under democratic rule;
- (3) designing proper instruments for holding economic accomplices responsible; and
- (4) ensuring any current institutional conditions that may facilitate discussion in the framework of a democratic government capable of responding and delivering effective solutions to today’s structural socioeconomic problems, which may be a legacy of – and an explanation for – the authoritarian period.

²⁷ Similarly, it could be argued that the liberal notion of rule of law that informs the modern paradigm of transitional justice could condition, at times, the self-determination of the country in question. On this subject, see extensively H. Franzki and M. C. Olarte, “Understanding the Political Economy of Transitional Justice: A Critical Theory Perspective,” in S. Zistel et al. (eds.), *Transitional Justice Theories* (London: Routledge, 2013).

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In addition to this Introduction, the book is divided into eight parts. In Part I, Naomi Roht-Arriaza explores, in Chapter 1, the reason for the marginalization of considerations regarding distributive justice, economic, social, and cultural rights, economic complicity in the conceptualization of transitional justice, and why this has been changing in recent years.

The reasons for that marginalization are to be found in the fact that in its origins transitional justice was limited to the protection of civil and political rights. There was also a strategic decision to use the international mechanisms for the protection of human rights available at that time, to focus on criminal trials against the state perpetrators of the crimes, to break the silence surrounding the crimes, and to not antagonize the liberal economic policies of the 1990s. However, as Roht-Arriaza explains, the persistence of the socioeconomic problems underlying authoritarian periods, the growing economic, social, and cultural rights demands, the greater human rights focus on non-state subjects, and the convergence of agendas leading to look for the roots of current economic struggles in the failure to adequately confront the past are all factors that explain transitional justice's increasing attention to the economic dimension.

In Chapter 2, Leigh Payne and Gabriel Pereira take a comparative perspective to analyze the innovative advances on the subject of responsibility for corporate complicity that are currently observed in Argentina with the aim of determining if that model could be used in other countries in transition. With this in mind, they seek to build a theoretical framework that will connect the field of corporate responsibility for human rights violations with the more general field of transitional justice. To that effect, they ask why and how corporate responsibility became a new focus of transitional justice, and where and how that same transformation is happening, using to that end an extensive database on which they have been working along with other researchers for some years. They conclude that the most novel factor observed in Argentina is the creation, involvement, and synergy of a series of state agencies that traditionally do not participate, at least not so actively, in this kind of cases. They note, however, that this is a preliminary conclusion and that further research is necessary to develop firmer conclusions with respect to how the Argentine model could be used by other countries.

Part II presents the intellectual framework and the international geopolitical dimension of economic complicity. In Chapter 3, Mariana Heredia analyzes the responsibility of economic ideas and those who produce them, and concludes that numerous liberal intellectuals – in particular economists – and the research centers that gathered them formed the symbolic columns of the regime, first instigating the coup d'état and then supporting the dictatorial government. By contributing economic ideas – even conflicting ideas – to the public debate and for government

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action, they sought to legitimize a social exclusion plan that benefited only a small sector of the economy, based on the repression of the majority of the population.

In Chapter 4, Jorge Taiana explains how the international geopolitical scenario determined the foreign military, political, economic, and financial aid received by the dictatorship. The evolution of world economy, the cold war, and the National Security Doctrine, in line with the dictatorship's economic and military strategy, contribute to unravel the reasons, the complexities, and even the contradictions of the external supports – and rejections – received by the Argentine dictatorship.

Part III seeks to prove two points. First, the rational connection that existed between the means used by state terrorism (economic policy and repression) and the economic model planned and imposed during that period. Second, the fact that micro-behaviors (both economic and criminal) had their quantitative and macroeconomic correlate. In Chapter 5, Eduardo Basualdo describes the economic and social tensions that preceded the coup and the way in which the new model imposed a pattern of capital accumulation based on financial valorization, deindustrialization, economic liberalization, and displacement of workers.

In Chapter 6, Alfredo Calcagno explains the handling of public finances during the dictatorship, and concludes that these were intrinsically tied to the imposed country project: regressive tendencies were introduced in the structure of both spending and income, after reshaping Argentina's economy and society, pushing back the integrating role of the state to consolidate the predominance of the (national and foreign) financial sector and large economic groups.

In Chapter 7, Juan Pablo Bohoslavsky studies the role of foreign financing in the consolidation of the regime, which facilitated both the purchasing of loyalties of key national political and economic sectors and the funding of increasing military spending used primarily for repression.

Part IV analyzes in depth the legal implications entailed by economic contributions to the commission of gross human rights abuses. Chapter 8 provides a summary of the report on “corporate complicity and legal accountability” produced and issued in 2008 by the International Commission of Jurists (ICJ), which crystallized international standards on this subject.

In Chapter 9, Juan Pablo Bohoslavsky examines whether contributing to human rights abuses is considered unlawful from the perspectives of international law and domestic law. He also looks at the factual and legal conditions under which economic accomplices can be held responsible in civil courts and suggests that the real and foreseeable effects of corporate contributions – rather than the intrinsic nature of the service provided – must be the guiding criterion for prosecuting complicit behavior.

In Chapter 10, Juan Pablo Bohoslavsky, Agustín Cavana, and Leonardo Filippini examine the effects of the passage of time on the possibility of bringing civil actions