




Human rights and democracy in Argentina: challenges for a future agenda

Derechos humanos y democracia en Argentina: desafíos de una agenda de futuro

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On October 17, 2017, the dead body of Santiago Maldonado was found in the Chubut river, where 78 days before the Argentine National Gendarmerie had repressed a protest in which Santiago participated along with the Mapuche community known as *Pu Lof en Resistencia* [*Pu Lof Resistance*], in the locality of Cushamen, Province of Chubut, Argentina. The public debate, the actions of Maldonado's family and social organizations as well as the government's attitude during this period cast shadows and lights over the knowledge gained during democracy and warn about current policies and structural deficiencies. On the one hand, the family maintained a remarkable attitude, showing serenity and determination while demanding Santiago's reappearance alive, the clarification of the facts and justice. The human rights organizations supported the family and resorted to existing mechanisms: they filed a formal complaint, organized a social mobilization, arranged meetings with the authorities, and filed complaints with international organizations. This "know-how" emerged in the last dictatorship and was developed to deal with cases of police violence, repression of protests or land claims during democracy by making the crime visible and demanding authorities to safeguard fundamental rights. These are the procedures conducted by the social actors who pursue the strengthening of democracy.

On the other hand, the government handled the matter in an unjustifiable manner and completely abided by the principles of negationism. First, the government categorically denied the accusations, asserting that what had happened was not what the community and the family claimed that had actually happened (there is no proof that he was even present in the protest rally, he was seen backpacking in Entre Ríos, he crossed the river to hide in Chile, he was seen having his hair cut in San Luis). Second, the government resorted to interpretive denial to explain the facts, acknowledging that something had happened but not what seemed to have happened (he tried to cross the river and his companions left him behind, he was wounded or killed during a Mapuche attack to a stallholder). This course of action included renaming the facts (the Gendarmerie complied with the law; the Gendarmerie had taken action in a routine procedure against a crime; it was a confrontation) and discrediting Maldonado (he was a member of the terrorist group known as Ancestral Mapuche Resistance [*Resistencia Ancestral Mapuche*], the Mapuche had buried his body to impose the accusation; those who

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say it was an enforced disappearance are only intending to politicize the matter, the human rights organizations claim that it was an enforced disappearance just because they oppose the government). Finally, the key message was that the events were justified, as the authorities and the National Gendarmerie had acted accordingly in response to an extreme threat (the terrorism of the Ancestral Mapuche Resistance group, the violent methods) and in pursuit of the common good (social peace, freedom of movement in routes). The ultimate goal was to pretend that the conflict had been normalized. Then, the dead body of Santiago Maldonado was found and, based on the evidence of the experts' reports, it was concluded that "he had drowned," and the case was not considered a disappearance followed by death as a result of a violent and illegal repression.⁽¹⁾

However, he had gone missing and the chant "Where is Santiago Maldonado?" became the rallying cry of society in response to the most extreme form of violent exercise of power known by the countries, which have suffered dictatorships and have memory of it, serving as a sounding board against State crimes. In the last four decades, human rights have shaped democracy in Argentina in such a way that they have been an essential topic in most social debates regarding political, economic and institutional issues. These rights have been an emblem of resistance, a core concept for political action, a rallying call for mobilization, an important element in the resolution of conflicts and a State policy. An outstanding feature of the current situation is that human rights have been seriously harmed, both symbolically and in terms of their acknowledgement by State policies. At present, those who understand human rights as obstacles hold considerable power resources, which help them hinder the legitimate exercise of human rights. This reality, despite assuming different features depending on the particular processes of each nation, is developing globally.

In this context, it is essential to adopt a long-term reflexive stance with regard to this relationship between democracy and human rights in order to get hold of elements necessary for the drafting of a new agenda, both for the present and the future. Where are we standing now? Which is the human rights agenda for the years to come? What role may the academic field play in that agenda? Which is the knowledge necessary to develop it? Which experiences will be taken into account to implement this agenda in the future?

In Argentina, the memory of rights under *the rule of law* is tightly related to the experience of the last military dictatorship and its legacy for the democratic system. Although in the last years older periods in the history of State crimes and resistances were extensively addressed, it was during this last period that a series of decisive aspects for institutional creation, such as the most extreme expression of State terrorism, the mass enforced disappearance of people and the most inhumane methods, but also the formation and consolidation of the human rights movement, have been recognized. This issue is new, not only for a particular nation but for the entire world. Based on history and memory, activism and the scholar and academic fields have revisited many classic issues regarding citizenship, sovereignty or political rights with the aim of understanding and dealing with the violence exercised by the State from a human rights approach. Moreover, thanks to the active participation of multiple thinkers, there has been an advance in the recognition of new rights and the integration of the perspectives of those rights into the development of public policies. This extension of rights has not been linear or gradual; on the contrary, it emerged from an agenda created, at times, for resistance, at others, for the maintenance of existing rights and, occasionally, for the extension of the concept of rights and their fulfillment.

In retrospect, we can see that democracy in Argentina was founded, called into crisis, questioned and rebuilt, to a greater extent, by discussing the matter of rights: from resistance to dictatorship, when the enforcement of these rights meant both literally and symbolically one's own life, to the first institutional transition when rights were fundamental to reestablish the law as political consensus and the institutions as tools for the resolution of social conflicts.

This relationship between democracy and rights underwent a delegitimization process during the implementation of neoliberal policies, although human rights were one of the ways to confront them. This controversial context has been shaped around specific axes such as human rights international law (the incorporation of international treaties into the Argentine Constitution, the implementation of international standards in Argentine courts, the arduous efforts of activism before the Inter-American System and the United Nations System, among others); the achievements in the battle against impunity (the passing of remedial laws, the recognition of the right to truth, the efforts conducted by the National Commission for the Right to Identity [*Comisión Nacional por el Derecho a la Identidad*] to identify the grandchildren stolen during the dictatorship and the first initiatives to keep record of what happened in that period); the efforts to visibilize the problems and to demand justice in those cases of police brutality and the recognition of economic, social and cultural rights. This function of resistance persisted until the crisis of the year 2001, when human rights became an ethical reference to the few things that remained standing, such as the sense of community and solidarity and the memory of the struggles undergone; those things that would later become key in institutional reconstruction and to the legitimacy of the State, the policies and politics.

At an international level, the relationship between democracy and human rights has its own history, which is tightly related to Argentina's activism and politics. An example of this is the unquestionable relevance of the role played by several Argentine human rights organizations in the passing of the International Convention for the Protection of All Persons from Enforced Disappearance⁽²⁾ by the United Nations (UN), which was ratified by Argentina through Act No. 26298, passed on November 14, 2007.⁽³⁾ These organizations continued working on the law until it came in force in 2010. The first efforts for the passing of this law were made in the 1980s by recognized leaders such as Marta Vásquez from the Mothers of the Plaza de Mayo organization [*Madres de Plaza de Mayo*], who denounced in international forums what was happening from the very beginning. Since 1976, the Inter-American Commission on Human Rights (IACHR) has recorded complaints, not only of enforced disappearances but also of political imprisonment and violation of the right to religious freedom. The phenomenon of *planned and systematic enforced disappearance* reached the General Assembly of the UN in the mid-1970s. Between 1978 and 1979, the General Assembly, the Economic and Social Council and the Subcommission on Prevention of Discrimination and Protection of Minorities expressed their concern over the disappearances and the lack of information provided by the authorities and requested the UN Commission on Human Rights to take action. In 1980, the Commission created the Working Group on Enforced or Involuntary Disappearances. Theo Van Boven, a Dutch jurist and a member of the UN Commission on Human Rights, stated that the Argentine case had great significance, although complaints of enforced disappearances had been lodged by several countries.⁽⁴⁾

The influence of the Argentine human rights movement is even more paradigmatic in the Inter-American System of Human Rights (IASHR). In part, this is probably due to the fact that Latin America shares a tragic social and political history of atrocious crimes, subsequent judicial processes characterized by impunity, and the building of social networks to face those crimes. The first challenge of the IASHR was to tackle the problem of the systematic and massive violations committed by States involved in terrorism or armed conflicts and to safeguard the victims as the last resort for justice against the local powers.

In connection with the transitions of the political systems, Argentina had an early transition in 1983, while at regional level this process continued until well into the mid-1990s and even in exceptional regimes, such as that of Alberto Fujimori in Peru and the peace process in Colombia, which continues up to the present. These processes were key in recognizing the necessity of dealing with the crimes of the past and reinforcing the principles related to the rights to justice, truth and reparations to the victims, restricting the amnesties granted^(5,6,7,8,9,10) and

establishing standards for the reconstruction of society based on a system of rights, strictly safeguarding the freedom of speech and prohibiting prior censorship, abolishing military courts on civil or human rights matters, guaranteeing the *habeas corpus* remedy, fulfilling procedural guarantees and the strict standards of due process, preserving constitutional order and the separation of powers, fixing the scope and limitations of the death penalty and promoting gender equality, among others.

The stability of the political system later exhibited a setting of democracies with high levels of social inequality and exclusion, and with inefficient systems which could not guarantee rights in violent institutions (such as the police and penitentiaries). In this context, the IASHR has been a space to demand rights and establish standards for the realization and validity of human rights at national level, from an approach that focuses on the structural conditions that contribute to their violation. This function has developed from both the impact on local court decisions and the guidance based on the rights-based approach that characterizes several public policies.

However, democracy brought about patterns of structural human rights violations, which are as serious as those of prior periods but cannot be analyzed using the same tools of analysis or the same activism resources. These States are governed by legitimately elected authorities and they are not organized around a system of repression or systematic violation of rights; nonetheless, they neither revert nor deter arbitrary practices within their institutions nor take action to investigate and punish such practices.⁽¹¹⁾

Some historical experiences reflect on the importance that a joint agenda articulated with both the human rights organizations and the academic field had for the analysis of this type of structural patterns. Since the 1980s, for example, police violence represents a compelling problem for large sections of the population. The joint efforts of researchers and activists have varied but have never ceased, producing a great part of the knowledge necessary to understand the particular forms adopted by the exercise of police power, its relationship with daily life and the different police modalities of intervention in the resolution of conflicts, the different forms of sociability and the experiential dimension of the differential distribution of violence and legalities, constructing statistical information or analyzing the reasons why this violence is accepted and naturalized. This type of knowledge produced in a context of alliances such as the National Campaign against Institutional Violence [*Campaña Nacional contra la Violencia Institucional*] had an impact on many public debates, as a result of which a bill for increasing penalties was proposed.

The possibility of advancing in the field of rights, sometimes required several actors networking, carrying out analyses involving different approaches and constructing complex proposals including interdisciplinary knowledge with the aim of generating a collective action to confront the State. The process to adopt Law No. 26522 on Audiovisual Communication Services⁽¹²⁾ [*Ley de Servicios de Comunicación Audiovisual*] is an example of this, along with those cases where coalitions of different organizations, institutions, universities and other social actors took part in the process of rule elaboration.

In many of such processes, the academic field has been a central actor in defining concepts and constructing consensus around such concepts. It has consolidated itself as a relevant actor in the debate with public authorities, by providing solidity and professional expertise, but also by legitimizing the demand. Some universities, such as Universidad Nacional de Lanús (UNLa), were created in accordance with the distinctive principle of value education, and that is exactly how they have also defined their role in practice.⁽¹³⁾ For instance, with regard to the abovementioned Law on Audiovisual Communication Services, UNLa had participated in the public hearing before the Argentine Supreme Court of Justice, upholding the huge job done in reaching social consensus against the attacks which had judicialized it.

In the current context, how should we set a human rights agenda, for the medium and long term, premised on the relationship between the production of knowledge and the public agenda? We should look back in our history, conduct evaluations, and make diagnoses of longer periods, take into account far-reaching trajectories and develop more complex perspectives.⁽¹⁴⁾ Research, thought, and intellectual debate are not isolated spaces; on the contrary, they set up the public scene along with other fields. The maintenance or creation of programs, specialized publications, spaces for the formation of researchers, among others, will promote thought or provide tools that can be used by social organizations to improve the way they perform their tasks so that public debate may be built on the complexity that it seems to lack. Lastly, it would be interesting that the potentialities and problems of the networks and alliances already organized were taken into consideration in the discussion of such agenda, so that they could be provided with new goals and contexts.

Such an agenda will certainly strengthen the relationship between democracy and human rights. The recovery of the “know-how” of social and human rights movements articulated with the academic field, the preservation of university knowledge to teach values such as equality and commitment, and the utilization of existing interdisciplinary knowledge about this matter will be fundamental grounds for this debate.

A month after the dead body of Santiago Maldonado was found, the Argentine Naval Prefecture raided another Mapuche community in the province of Neuquén, where they shot and killed Rafael Nahuel, a 22-year-old young man who worked in a blacksmith shop. The government once again presented the events as a “confrontation.” In times of democracy, the government’s messages of denial are subtler and modify the public agenda by adjusting or adapting reality to their own interests. The conflicts in the lands of the native peoples have existed throughout the country for many years. Situations of discrimination, arbitrariness, and violence are increasingly repeated; however, since 2016 the Executive Branch has imposed the policy of treating the Mapuche as a terrorist organization, spreading the idea that they are a threat that must be crushed at all costs. In this context, the debate about using the Armed Forces for internal security is readdressed. This death in the context of a violent and illegal repression may resignify the debates around the disappearance and death of Santiago Maldonado. In the future, it will be essential to intensify the discussions about the structural patterns that generated this violence. That is the path to be followed in the ongoing task of building the memory of those many others whose rights had been denied.

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