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## **Beyond Transitional Justice**

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**KATJA SEIDEL**

**Practising Justice in Argentina: Social Condemnation,  
Legal Punishment, and the Local Articulations of Genocide<sup>1</sup>**

The auditorium of the Federal Court of Buenos Aires is filled with people attending the ESMA trial of the perpetrators of the 1976–1983 military dictatorship. Today we will hear the testimony of Ricardo. His parents were disappeared and killed in 1977 and, aged just 14 months, he too was kidnapped and given to a military family. Alongside of me are approximately 40 of Ricardo's friends, the majority of whom are the children of disappeared and activists in the association H.I.J.O.S. – Children for Identity and Justice, against Oblivion and Silence.

During Ricardo's moving testimony various people in the audience burst into tears, and an atmosphere of grief and companionship fills the room. Towards the end of his testimony, after more or less two hours, Ricardo becomes increasingly forceful. He directs his words to the audience, turning his testimony into a political performance. Ricardo speaks of the perpetrators in derogatory terms, as 'ratas' (rats) and 'mierdas' (shitty people).

To my astonishment he is allowed to talk on like this, without interruptions, as if testimony should allow for traumatic relief. He concludes by asking the judges: "How can a society live with this injustice? – Because we have to live together with these types in one society! – How, as they are responsible for a genocide?" (Field-notes, June 2010).

This testimony given by an activist or *militante* of H.I.J.O.S., shows a wide range of emotions, stretching from hope to despair. It speaks of doubts, poses questions and shows his own ideology and self-empowerment. But it also represents 'history', a history remembered as 'genocide'. When I began my fieldwork<sup>2</sup> on the struggle for justice in the aftermath of state terror in Argentina in spring 2010, I was astonished by the frequency with which I heard the term genocide – in the streets, the newspapers, in many recent

publications, and even within the justice system. Recalling my knowledge of Rwanda, Cambodia, and the Shoah, I was initially puzzled by the uneasy relation between the concept 'genocide' and the signified event, namely, Argentina's last military regime with its 30,000 political disappearances.

My interest in the current Argentine practices of transitional justice grew as new connections raised more questions about the local application of international legal conventions in Argentina. Legal anthropologist Sally Merry (2000) stresses the importance of analysing local articulations of transitional justice models, which she calls the 'process of vernacularization'. This process of transmission is highly complex as it involves the mediation, translation and modification of transitional justice idioms as well as a variety of actors such as human rights groups, mediators, international organisations and local legal systems. As 'frictions' (Tsing 2004) and conflicting interpretations are involved in the process, it is important to connect the legal level to the everyday social practice of societal agents and to look at the ways in which justice is experienced, perceived, and produced in a specific locality, ranging from the kitchen table discourse, to the media, to the court-rooms and street manifestations, as well as the international organisations (see also Hinton 2010: 1).

I do not intend to hand down judgement on whether or not it is appropriate to use the concept of genocide, nor do I question the legitimacy of the term in describing the human rights abuses that took place in Argentina. Rather, I aim to analyse the ways in which 'genocide' became part of Argentina's symbolic inventory and how its contribution to a popular and legal discourse facilitates a reconfiguration of collective memory and juridical practice.

In order to contextualise this current development, I will retrospectively reflect on previous attempts of promoting justice, accountability and appropriate punishment, as well as efforts for truth and reconciliation in the southern cone of Latin America. My focus in this historical overview will be twofold: firstly, I show, that the use of the term 'genocide', even though it appears to be a recent concept for Argentina, reveals a long-established yet emergent historical consciousness within collective memory and juridical processes. Secondly, I describe the inter-connections between the civil rights movements, social scientists' influence on 'transitional justice', and the practices of the local legal system. As a final step, I will examine the discourse of

genocide by unpacking not only the local impact but also the possible retro-active effects of these developments at an international level.

### **I. State terror and the construction of ‘subversion’**

On March 24, 1976 a *coup d'état* brought to power a military junta composed of Jorge Videla, Emilio Massera, and Orlando Agosti. The coup overturned Isabela Perón's government, which was marked by a growing atmosphere of uncertainty and fear generated by the seemingly uncontrollable violence of various armed left-wing guerrilla groups and revolutionary forces such as ‘Montoneros’ or ‘ERP’. The Junta promised to end the daily violence and to restore security and order. Their coming into power was thus at first welcomed by a majority of Argentines, especially as the society had long become familiar with the unholy alliance of military power and politics. In his inauguration speech, Videla articulated the motivation behind the military coup: “The armed forces, in fulfilment of an indispensable obligation, have assumed the leadership of the state. [...] This decision pursues the goal of putting an end to misrule, corruption and the subversive flagella, and is only directed against those who have committed crimes and abuses of power. It is a decision for the *patria*<sup>3</sup> [...] Therefore, at the same time as the fight against subversive delinquency will continue without a rest, open or concealed, all demagoguery will be banished” (Videla et al. 1979, Translation K.S.).

A few days after the coup, Videla announced the ‘Process of National Reorganization’ aimed at the construction of a society built upon an ideology of Western and Christian values and a neo-liberal economic system. The new discourse openly proclaimed the need to ‘heal the national body’ by eradicating all subversive forces and served to legitimise the state terror that was implemented thereafter. Rear Admiral Guzzetti in 1976 articulated it this way, echoing the Nazi germ theory: “The social body of the country is contaminated by an illness that in corroding its entrails produces antibodies. [...] As the government controls and destroys the guerrilla, the action of the antibody will disappear. [...] This is just the natural reaction of a sick body” (Feitlowitz 1999: 33). Presented in such a way, the killing of individuals is not a criminal act or matter of moral

ethics but simply an action to ‘cure’ a sick nation or to clean society from its contamination (see Hinton 2002: 19).

The production of enemy groups and the legitimising discourses enacted by totalitarian regimes together involve a variety of different strategies such as propaganda speeches, dehumanisation, body analogies and other ‘scientific’ explanations in order to construct difference and essentialised ethnic categories (Arendt 1962). Basing his approach on the Cambodian Khmer Rouge regime, Hinton examines the production of a clear distinction between us and them, friend and enemy, true citizen and traitor as necessary preconditions for genocidal regimes to succeed. ‘Manufacturing difference’ thus crystallizes disparity as it methodologically and imaginatively eradicates all kinds of what normally are more complex and fluid forms of identity (see Hinton 2005: 211).

In Argentina a “Manichaeian discourse of cultural differences” (Robben 2009: 6) was implemented that supported a good and evil essentialisation of ‘us’ and ‘them’ categories, built upon the term ‘subversion’. By means of propaganda, the spreading of rumours and false information, fear and doubt were systematically inflicted upon society producing the ever more common saying *por algo será* – ‘it must have been for something (that he/she/they did wrong)’ in order to cope with yet another story of a disappearance. Videla put it this way: “The enemy is not only a terrorist with a weapon or a bomb [but] anyone who spreads ideas which are contrary to our western and Christian civilization” (cited in Feierstein 2006: 153). Hence, political opposition, trade unionists, students, and other civilians, all apparently suspect of delinquent activities, were persecuted by the regime in order to “completely eradicate subversion, making it impossible for Marxism to make a comeback in the country in the future” (Menendez cited in The Ledger 1979).

As a result, Argentina was paralysed for seven years by a ‘culture of terror’ (Taussig 1987) perpetrated by a brutal military regime. The announced ‘Process of National Reorganization’ became the epitome for one of the worst dictatorial regimes in the southern cone of Latin America. The military apparatus employed a clandestine system of repression, dividing the country into zones and sub-zones with approximately 350 secret detention centres all over Argentina (Feierstein 2000). According to Human Rights Groups some estimated 30,000 people were

tortured, kidnapped, murdered or ‘disappeared’ as a consequence of the announced ‘war against subversion’.

## **2. The return to democracy: efforts for truth and justice**

By 1983 the military regime had finally come to an end and the Argentine people celebrated the return of democracy under the civil government of President Raúl Alfonsín. The new government immediately initiated the process of social restoration, set up the National Truth Commission on the Disappeared, known as CONADEP, and opened trials against hundreds of military men and guerrilla forces.

In 1984, Alfonsín’s government established a military tribunal, later known as ‘the Argentine Nuremberg’, to prosecute the nine leading figures of the former military government. During the trial, attorney Julio Strassera and his assistant, Luis Moreno Ocampo, accused the junta members of a systematic and organized plan of persecution and extermination carried out throughout Argentina. In their final speech, the public prosecutors were the first to use the term ‘genocide’ before a court: “The Argentine Community but also universal juridical consciousness have entrusted me with the just mission to present myself before you to claim justice. Technical and practical reasons such as the absence of a specific type of penalty law within our national legal rights which fully describes this form of delinquency that we are judging here today and the impossibility to consider one by one the thousands of individual cases, have induced me to exhibit over a period of 17 dramatic weeks of hearings only 709 cases, which by no means exhaust the appalling number of victims, which caused, what we could denominate the worst genocide of the recent history of our country” (Strassera quoted in the documentary *El Nuremberg Argentino*<sup>4</sup>, Translation K.S.).

In 1985, the tribunal convicted the main perpetrators and leading figures of the authoritarian regime, and sentenced five of them to life imprisonment. The judgement did not mention ‘genocide’. However, the judges concluded that there was a systematic plan behind the crimes committed by the armed forces which was based on the intention to economically and ideologically reorganize the Argentine society, a judgement which was a juridical statement of lasting importance and influence.

At the same time, during the first commemoration march of the coup, human rights groups voiced the need for truth and the legal punishment of the perpetrators. They raised their voices, pointing towards a comparison with the genocidal practices of the National Socialist regime while expressing the wish for retributive justice, singing: “*Como a los Nazis les va a pasar, a donde vayan los iremos a buscar!*” (Just like to the Nazis it will happen to them, wherever they go we will go looking for them!). This well known slogan is still frequently heard nowadays and asserts the belief that massive human rights violations will not go unpunished.

### **3. Times of impunity: the failure of institutionalised jurisdiction**

“Reconciliation, if it is not preceded by true justice, is a vulgar shady deal between criminals.” Thomas Aquinas

In the immediate aftermath of the military regime, legal rehabilitation, accountability and truth seemed to be achievable goals, but this initial phase of implementing justice was soon brought to an end. As more and more complaints (by then over 2,000) were filed against more than 600 defendants (Robben 2005: 331), President Alfonsín, fearful of antagonizing the still powerful armed forces, passed the two amnesty laws, namely ‘Full Stop’ (Ley Punto Final 1986) and ‘Due Obedience’ (Ley Obediencia Debida 1987). Due to their limitations of time and responsibility these laws greatly reduced the legal accountability of members of the military.

The succeeding government of Carlos Menem supported a version of history as a war between revolutionary forces and the military, introducing thereby the ‘theory of two demons’, which acted on the assumption of an apparently equal dispersion of guilt and responsibility on both sides. In the name of national reconciliation and peace, the newly elected president pardoned hundreds of convicted officers and guerrillas in 1989 and released the imprisoned junta members one year later (Soledad Catoggio 2010: 9; Robben 2010: 188).

This meant, as the Argentinean social scientist Soledad Catoggio (2010: 13) puts it: “In the midst of these conflicting versions, the battle for meaning was won, temporarily at least, by the interpretation which went

down in history as the ‘theory of two demons’. This saw the whole society as the ‘victim’ of two twin evils: guerrilla violence and state terrorism”. With the discharge of the prisoners and the amnesty laws mentioned above, a decade of impunity began in which all possibilities for juridical accountability and legal prosecution of the members of the security forces were suspended. The process of the local prosecution of perpetrators for crimes against humanity was only taken up again in 2001 with Judge Cavallo’s judgement, which declared the laws ‘Full Stop’ and ‘Due Obedience’ unconstitutional for the first time (ibid.: 14).

#### **4. H.I.J.O.S.: popular resistance and creativity as empowerment**

For many years the juridical framework of impunity ruled official politics in Argentina. Still, opposition to the imposed silence and to reconciliation without justice were kept alive on a socio-political and international level.

In 1995, Adolfo Scilingo, a former Argentine naval officer, came forth confessing his participation in the systematically organised death flights ordered by the military regime. According to his testimony, unlawfully imprisoned and ‘disappeared’ people were dazed by injections, put into small planes and flown out off the coast of Argentina. There they were thrown to their deaths into the Rio de la Plata, to die without evidence (Verbitsky 1995). Scilingo’s confession generated social outrage as details of the brutal methods of the former regime in killing and torturing its enemies were admitted for the first time by a perpetrator. As one consequence of this avowal, Judge Baltasar Garzón made use of the doctrine of universal jurisdiction and decided to process 98 Argentinean ‘Dirty War’ perpetrators in Spain for crimes of genocide, torture, terrorism and other offences. By 1998 he opened the trial against Adolfo Scilingo, who in 2005 was sentenced to 640 years of prison (TRIAL 2011). The work of Judge Garzón is still regarded today as an important stepping-stone in the fight against impunity and for the legal punishment of the human rights violations committed by the military dictatorship.

Locally however, the trigger of Scilingo’s confession and the atmosphere of public discontentment with the still widely felt impunity and distrust in state institutions gave birth to a new wave of human rights protests. Within

the same year, the association H.I.J.O.S. came into being, extending Argentina's list of human rights organisations with its reference to kinship ties (such as the 'Mothers' and 'Grandmothers of the Plaza de Mayo').

In the period up to and including 1995, many young adults all over the country, each of them affected by the loss of a family member, came together in search of a trusted circle of friends who would understand their loss and the meaning of 'absence'. The children of the disappeared first met during human rights protests, at the Thursday marches of the *Madres de Plaza de Mayo*, at university, or simply at a friend's party. To meet their common needs, they began to organise their own meetings. There they exchanged their experiences and life-stories and as a group began to gather more information on their parents' lives, ideals, and forced disappearances (Interview Peer group H.I.J.O.S. 2011).

In 1995, H.I.J.O.S.' first annual national meeting officially established the new Argentinean association. Within the course of one year this egalitarian social network counted more than 600 activists, with branches all over Argentina but also abroad, such as H.I.J.O.S. France, H.I.J.O.S. Mexico, and H.I.J.O.S. Madrid. Today, the association might best be described as an 'open population' of activists, as its members come from a variety of backgrounds and include "children of disappeared, murdered, exiled, and imprisoned parents or any other person who wants to be part of the association" (Interview Matías 2010).

Members of H.I.J.O.S. do not necessarily agree upon political standpoints, but they share the common goal of keeping the spirit and ideals of their parents alive and of seeking participatory democracy built upon justice, historical consciousness, dignity, and truth. Their web-page contains the following lines: "We recall the spirit of the struggle of our parents: because they wanted to change the society, they wanted that things would have been different, and that's why they have taken them. Our parents fought so that we could work with dignity, so that we all could study [...] They fought for a better life!" (Hijos-capital 2011a).

During H.I.J.O.S.' weekly meetings, the shared anger against the national impunity that protected all former perpetrators who killed, tortured, and disappeared thousands of people and harmed their own generation led to their dictum: "We don't forgive, we don't forget, and we don't reconcile!" (Hijos-tucumán 2011). In cooperation with GAC (Grupo de Arte Callejero),

a group of non-conformist artists, they designed their emblem, an altered regulatory traffic-sign consisting of a white round disc with a red circle framing a military hat and displaying their demand: *Juicio y castigo* – ‘judicial proceeding and punishment’.

#### **4.1 Escrache: social condemnation and the practice of popular jurisdiction**

As all institutionalised paths for legal penalisation were closed in the 90s, H.I.J.O.S., in an attempt to break the imposed silence and to stand up against impunity, decided for a different practice of social condemnation. They invented a far-reaching, symbolic, non-state jurisdiction: the *Escrache*. *Escrache* is a slang word, meaning “to make evident, reveal in public, make visible” (Hijos-capital 2011b). The intention is to reveal knowledge about the perpetrators and to socially and symbolically mark the murderers and *genocidas* (perpetrators of genocide) in order to ostracise them in their own neighbourhoods. “By means of social condemnation we work to achieve legal condemnation which puts into prison the murderers responsible for this genocide” (hijos-capital 2011a).

This form of collective justice, grounded in months of research and preparation work, is realised in cooperation with ad hoc working-groups (*Mesa de Escrache*), including local human rights organisations, social movements and individual volunteers from the neighbourhood, and is described as a form of social activism that allows for a narration from below. From their own lived experience, participants express the opinion that performing the *Escrache* means practising a politics of memory and self-empowerment, as it enables the citizens to renew their local district and the social bonds that have been violated by the terror (see Colectivo Situaciones 2004).

Members of H.I.J.O.S. and the *Mesa de Escrache* then start the *Escrache* by handing out flyers that display the photograph and phone number of the person concerned and inform the people of the quarter about the background of the perpetrator who is to be condemned. About a week later, the work culminates in the *Escrache* itself, where a group of people, sometimes reaching thousands, march through the neighbourhood of the addressed perpetrator towards his place of residence. The social denunciation includes the installation of street-signs indicating the address of the perpetrator (e.g. “In five hundred metres – Rafael Jorge Videla – *genocida* – Cabildo 639”),

the announcement of indictments by megaphone, and the spray-painting of the house of the murderer, *genocida*, or torturer.

In so doing, the *Escrache*, as described by participants and activists, displays a dynamic of collective power by a realisation of justice on a social level. According to H.I.J.O.S., the public and civil denunciation of the *Escrache* raises awareness for the mostly still unknown identity of the perpetrator, symbolically and publicly stigmatising the *genocida* who lives peacefully, exempt from juridical punishment: “*Si no hay justicia, hay Escrache!*” (If there is no justice, there is *Escrache!*) (GAC 2009: 60). By 2003 more than 60 *Escrache* have been undertaken all over Argentina.

Being met by the *Escrache* changes the lives of the concerned oppressors. In many cases the marked murderers had to leave their houses and move to another part of the city as a consequence of the public shaming (Interview Rolando 2011). The case of Jorge Rafael Videla provides a good example for this, as the *mesa de Escrache* followed him from home to home and, over the years, ostracised him three times in different locations.

Not surprisingly, the practice was frequently met with resistance. I was told that in some cases the protest march was even kept away from its target subject. Such was the case of the *Escrache* performed in San Miguel de Tucumán in 1998 against the *genocida* General Antonio Domingo Bussi, at the time the democratically elected governor of the Province of Tucumán. On the appointed day, all streets leading to the centre were blocked by heavily armed police forces, who prevented the 300 activists from proceeding towards the central square of the city, where the final act of the *Escrache* should have been performed in front of the government building (Fieldnotes 2011; Interview Sara 2011). This was a devastating experience for the local activists, as it showed the continuum of structural violence and the consequences of impunity after genocidal regimes. According to a founding member of H.I.J.O.S. Tucumán, it was therefore even more important to her to see Bussi face trial in 2008 and watch him enter the court room, officially accused of murder and torture (Interview Clara 2011). Today, Antonio Domingo Bussi has been sentenced to life imprisonment for the crimes of illegal deprivation of liberty, torture and homicide (Sentencia 2008).

Nevertheless, the political non-state practice of bringing justice “to the doorstep of amnestied torturers and pardoned repressors”, as Robben (2010: 188) called it, had an enormous impact on society. The process of aware-

ness building through powerful slogans, knowledge transfer, street manifestations, and radio broadcasts directed the collective historical consciousness and its corresponding narrative. The constant use of the term *genocida* strongly influenced the societal discourse and the legal perception and handling of these dark times. Thus, H.I.J.O.S. demands ‘carcel perpetua’ (imprisonment for lifetime) in a state-run prison and a legal platform for the victims to tell the truth and to be heard.

Since the opening of the trials under the Kirchner government and the possibility to legally convict the perpetrators the work of H.I.J.O.S. has therefore changed in many aspects (Interview Alan 2010). Members of the association started to believe that the perpetrators would finally see punishment. For them, the trials are of central importance, as members of H.I.J.O.S., who emphasize that they are ‘not like them’, never sought revenge but always fought for legal punishment and fair trials in front of a civil court. The practice of *Escrache* will continue in some cases of ongoing injustice, but supporting the juridical work and giving testimony, publicly, in front of a judge and the accused perpetrators, just as the example of Ricardo’s witness statement shows, have now become the focus.

## **5. A new era: the trials for crimes against humanity**

With the advent of the millennium, Argentina saw a new era. When Nestor Kirchner was elected president in 2003 he promised to change the course of the country’s dealing with the past. In an important early symbolic act of his government he ordered the taking down of the portrait of Videla from the gallery in ‘Campo de Mayo’, a military base in the outskirts of Buenos Aires. This gave back confidence to the Argentine people and displayed the new government’s true intention to take human rights seriously and to put an end to impunity.

In 2005, with the conviction in the trial ‘Simón’ (Sentencia 2005), the Supreme Court of Buenos Aires declared unconstitutional the laws ‘Full Stop’ and law ‘Due Obedience’, and ruled that human rights abuses committed by the military regime between 1976–1983 shall be considered crimes against humanity, turning them into criminal acts not protected by the statute of limitations. This judgement was the starting signal for

the nation-wide prosecution of former military officers in the federal courts of Argentina.

These trials for crimes against humanity – including homicide, torture, the appropriation of minors, and the intentional extermination of a group of people – are the current focal point of Argentina's fight against impunity, as the perpetrators, murderers and torturers, economic collaborators and high-ranking organisers of the 'Argentine Genocide' are being tried locally, by their own successor-government, for their human rights violations. Hundreds of victims, survivors, and witnesses give their testimonies and turn their memories and suffering into legally valid evidence.

According to up-to-date information from CELS, more than 1600 people are currently accused, processed and/or tried for crimes against humanity committed during the Argentine Genocide (CELS 2011). Since 1985, Argentina has brought on cases against 217 perpetrators, of which 196 were found guilty and 21 were absolved. The yearly increase in legal convictions and cases is remarkable. Up to the year 2009, the convictions secured did not outnumber 98, whereas in 2010 alone 19 trials concluded and more than 119 convictions were secured (Unidad Fiscal 2010a, 2010b), which means they more than doubled in 2010. This is a juridical improvement not least thanks to the work of the governmental institution 'Unidad Fiscal de Coordinación y Seguimiento de las Causas por Violaciones a los Derechos Humanos durante el Terrorismo de Estado', presided over by Jorge Auat and Pablo Parenti, which was created in 2007 in order to assist, homogenise, and monitor these legal processes (MPF 2010).

### **5.1 Crimes against humanity vs. genocide: international legal concepts and the anthropological view**

When talking about the struggle for justice in the context of crimes against humanity and genocide in Argentina, it is important to spend some time on the core definitions and differences between the two concepts.

After World War II, a long and still ongoing discussion attempting to achieve a definition of genocide, started on an international level. Agreement was reached in 1948 and the definition of genocide both in Article 2 of the *UN Convention on the Prevention and Punishment of Genocide* (UNCG 1948) and in Article 6 of the *Rome Statute* (Rome Statute 1998) reads as

follows: “Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such. a) killing members of the group b) causing serious bodily harm to members of the group c) imposing conditions on the groups calculated to destroy it d) preventing birth within the group e) forcibly transferring children from the group to another group” (UNCG 1948: art2).

For a distinction between crimes against humanity and genocide it is the ‘special intent’ that most legal scholars point at, meaning that murder, extermination, and other atrocities are directed against members of a specific group with the “specific intent to destroy in whole or in part that group as such” (Schabas 2004: 39). The above given analysis of the ‘Process of National Reorganization’ in Argentina and the promoted war against subversion (both physically and psychologically) makes it hard to deny the junta’s ‘intention’ behind the terror, with all the practical implications of systematically organized secret detention centres, death lists, torture, and other forms of persecution of apparently ‘subversive’ men, women, and children.

Criminal punishment for the crime of genocide also implies the specific character of group persecution and continuous violent acts against a group as such (contrary to crimes against humanity, by which the perpetrators can be tried for crimes directed against individuals or random groups). However, due to the narrow phrasing of the genocide definition, only four groups are recognised by the UN Convention: national, ethnic, religious, or racial groups. Political groups or social collectives have been left out from the treaty, mainly due to the political motives of some countries members of the Convention (see also Jones 2010; Shaw 2007; Schabas 2004, 2009). The definition of group identity is hence a central obstacle for lawyers and judges willing to apply the concept of genocide to the Argentinean state terror of the 70s.

### ***The ‘subversive’ – a political collective?***

If linked by anything at all, the persecuted individuals said to form part of the ‘subversive’ group during the 70s in Argentina are connected by a shared political belief and revolutionary ideology in a just and more equal distribution of economic power and political rights. As these demands are of a political nature, the international convention does not encompass this case.

However, as we will see in the following examples, the definition of group membership recognised in the convention, has been met by other criteria (such as ‘a national group in part’, Interview Feierstein 2010) and might be countered by the evolution of the term or by other legal precedents.

The narrow definition of groups in the UNCG has often been criticized, especially at the tribunal for Rwanda, as it excludes the fluidity, openness, and constructed character of ethnic and other collective identities and fails to recognize that all too often ‘membership’ and ‘identity’ are defined as such by the perpetrator (see ICTR 1998). For the last quarter of a century, anthropologists have repeatedly addressed this question and presented alternative definitions for group persecution. One of them, first coined by Steven Katz in 1994 and later adopted by Adam Jones, addresses the crime very accurately, without modifying the international definition of the UNCG too much. “[Genocide is] the actualization of the intent, however successfully carried out, to murder in whole or in part any national, ethnic, racial, religious, political, social, gender or economic group, as these groups are defined by the perpetrator, by whatever means” (Jones 2010: 18). Just as the definition put forth in the UNCG, this alternative definition recognises the intention as the core characteristic of genocide, referring to an organized and systematic plan of persecution of a group or collective, but manages to make use of a more fluid approach to identify the affected collectives.

### ***Genocide and the collective memory***

When it comes to the punishment and penalties of the accused perpetrators, a comparison of ‘crimes against humanity’ and ‘genocide’ shows no difference. Both concepts are internationally recognized, do not fall under the statute of limitations, and allow for the prosecution of crimes such as murder, torture, appropriation of children, and other human rights violations. However, qualitatively speaking and with emphasis on historical consciousness building and on the symbolic capital gained for the collective memory during retributive justice, they display an unequal impact for the victims of state terror. Argentina’s military still presses for a representation of the violence as a necessary war against subversion, which happened to produce ‘excesses of war’ (Fieldnotes 2011). Achieving recognition of the state terror as genocide, labelled by the International

Tribunal for Rwanda as “the crime of crimes” (Schabas 2004: 37), provides precious social capital in countering these arguments.

Today, in Argentina, the recognition of the disproportionate use of violence by the military government seems to be widespread on a socio-cultural level, as can be seen in street demonstrations, human rights organisations’ speeches, and in the media. Newspapers using headlines such as “The Argentine Genocide” (Pagina12, 4.II.2007, Translation K.S.) or “Prison is the only possible place for a mass-murderer [*genocida*]” (Pagina12, 8.II.2010, Translation K.S.), help underline that view.

Still, when it comes to genocide, not everyone in Argentina agrees upon a description of the state terror as genocide, be it because of political discontentment or out of concern for the endeavour to heal society. Recent insight by genocide scholars and their ‘on the ground’ research also shows that a narrative of genocide runs the danger of repeating genocidal practices on a symbolic level through its clear categorisation of victim and perpetrator, leaving little to no room for people from the ‘grey zone’ (e.g. Burnet 2009; Sanford/Lincoln 2009; Feierstein 2009). Therefore, the realization of legal punishment and social condemnation of genocide might be criticised for putting a further hold on the attempt to achieve reconciliation and the healing of social bonds (Daly/Sarkin 2007; Huyse 2008).

## **5.2 Judgements in “the frame of genocide” – the ‘Etchecolatz’ and ‘von Wernich’ cases**

Daniel Feierstein argues in an interview in the newspaper *Pagina12* (4.II.2007, Translation K.S.): “The law is as much the possibility for punishment as it is the possibility to construct a discourse of truth”. In so doing he repeats Foucault’s notion of the law as the ‘producer of truth’ (Foucault 1993), a claim that was supported by the sentence of the Federal Court of la Plata in 2006 where ‘genocide’ first appeared in a national judgement against the military dictatorship (Verdict 2006).

The judgement constituted a precedent. It was delivered by the Argentine judge Rozanski, who in 2006 presided over the trial against ‘Etchecolatz’, a former Argentine Head of Police in greater Buenos Aires and commander of various clandestine detention centres. The judges Lorenzo, Rozanski, and Isaurralde convicted the 1929 born Miguel Osvaldo Etcheco-

latz for crimes of wilful homicide, illegal deprivation of liberty and the application of torture, and sentenced him to lifetime imprisonment in a public prison. The Argentine Penal Code does not include the instrument of 'genocide' in its penalty code as such. Therefore, the judgement concluded that these crimes shall be considered 'crimes against humanity' but included the important amendment "committed in the frame of the genocide that took place in the Republic of Argentina from 1976–1983" (Verdict 2006).

On a societal level, this judgement was remarkable. On September 20<sup>th</sup>, 2006, the daily newspaper *Clarín* (20.9.2006, Translation K.S.) wrote: "For the first time, a jury constitutes, that these crimes were committed 'in the frame of the genocide that was perpetrated in Argentina between 1976 and 1983. This means, that these crimes were part of a systematic plan of extermination'". In this sense, the meaning of the conviction is most important in its effects on the level of the group-consciousness and discussion produced.

In order to understand the sentence, it is necessary to look at the reasons given for the judgement, wherein the judges devote a large part of the text to the discussion of genocide. The arguments range from legal documents and former trials to social scientific and philosophical understandings of genocide. Rozanski starts with Resolution 96(I) of 1946, the first international draft document on the crime of genocide, which still included both 'political groups' and persecution for 'political motives' (UNGA 1946). Furthermore the judgement devotes two pages to the trials initiated in Spain by Baltasar Garzón, who at that time argued for the recognition of the Argentine state terror as genocide.

Rosanzki also recalls the reasons set out in the judgement of the trial against the nine Junta members read in December 1985 (Sentencia 1985), in which the system that was put in practice was legally accepted as substantially the same throughout the Argentine territory, and as being prolonged in time and enacted in a generalized form right from the very start (Sentencia 2006: 262). In the judgement he also makes use of other sources such as the CONADEP report (CONADEP 1984) and the 'trials for truth' to give credence to his main argument: the crimes committed in the context of the military regime all form part of a systematic and organised plan of extermination of a specific part of the Argentine society with the goal of reorganising the this society economically and socially. According to the judges, it

is an “ethical and juridical obligation to recognize that a genocide took place in Argentina” (Sentencia 2006: 256). They further insist that the legal recognition of that ‘context’ in the judgement as a truth “is of decisive importance for the construction of the collective memory” (ibid.).

After this first legal recognition of the Argentine state terror as genocide in 2006, Judge Rosanzki repeated this legal semantic a year later in the ‘von Wernich’ judgement (Sentencia 2007). In 2007, the Catholic priest Christian von Wernich was convicted for his complicity in the crime of torture, arbitrary arrest, and extra-judicial execution, again, as the judgement reads, “in the frame of a genocide”. To bolster their conviction, this time the judges used the work of the Argentinean social scientists Daniel Feierstein and Mirta Mántaras. The argument concludes that the persecuted ‘group’ in question “did not in fact exist beforehand, but was constructed by the agents of repression themselves to include any individual who opposed the economic plan brought in by the military or was suspected of seeking to obstruct the aims of the government” (Sentencia 2007 cited in Soledad Catoggio 2010: 16). In this way, the anthropological theoretical notion of ‘manufactured’ or ‘constructed’ group identities as an alternative way of defining genocide entered the juridical process in Argentina.

### **5.3 Challenging international definitions**

Juan Méndez, former political prisoner and victim of torture in Argentina from 1975 to 1977, and today President of the International Centre for Transitional Justice and UN Special Adviser to the Secretary-General on the Prevention of Genocide, commented on the La Plata judgements with enthusiasm: “The ‘Etchecolatz’ and ‘von Wernich’ judgements represent a good evolution. They were not found guilty of genocide but of crimes ‘in the context of a genocide’. For the penalty this ‘context’ will not affect anything. But the judgements achieve recognition of the character of the repression in Argentina. To give it the name genocide, valid within the Argentine law although not for the international law, will amend a tendency, and one day, one will be able to use it” (Méndez in Pagina12, 4.II.2007, Translation K.S.).

As the UNCG definition provides recurring obstacles to the use and application of the convention, political discussion over the inclusion or exclusion of social and political groups, as well as the question of redefining

the term 'group' itself, persists on an international level. Due to the effects of Customary law, the current development in Argentina's juridical practice might therefore have an important impact on the discussion and applicability of the Convention on an international level in the near future.

By January 2011, eleven trials for crimes against humanity were in process in Argentina and seven more were announced to start in 2011, amongst them another mega-trial likely to influence the discourse on genocide once again. The trial, called 'Plan sistemático', which treats the illegal abduction and theft of children of the disappeared, had its opening session in March 2011. H.I.J.O.S. already announced on its website: "This systematic plan of appropriation of minors, which took place during the bloodiest dictatorship that Argentina had to endure, is one of the motives, even though not the only one, to confirm that in Argentina there had been a genocide" (Hijos-capital 2011c, Translation K.S.).

## 6. Conclusion

"One gains power over the nightmare by calling it by its real name."  
(Buber 1958)

When looking at the transitional justice dynamics unfolding in Argentina today, one cannot but realize the strong interconnectedness of human rights movements, civil society's discourse, and the legal processes that take place. The intense struggle for justice by social and human rights movements in Argentina, such as the practice of *Escrache* performed by H.I.J.O.S., echoes in the current practices of state justice. The creativity displayed in this form of 'popular condemnation' helped to shatter a culture of impunity and pressed for a realisation of governmental responsibility.

The constant use of the word *genocida* helped shape the collective consciousness and is now repeated in the media and social sciences. Remembering the 70s is still contested within the Argentine society. However, talking about the last dictatorship as 'the Argentine Genocide' seems to have become internalised in the collective memory of most Argentine people, thereby rejecting any discourse of 'two demons' or 'civil war'.

Current court decisions are hence another step to support this view, as they recognise genocide as the ‘frame’ or ‘context’ for these crimes on a legal level. Furthermore, national Argentine juridical practices and the reasoning and arguments put forth by social scientists, judges, and lawyers in their allegations and judgements, might contribute to the discussion on and support for a revision of the restrictive legal definition of genocide as put forth in the Rome Statute and the UNCG in the near future.

As such, the innovative adoptions of cosmopolitan law in Argentina reflect a localisation of international legal instruments, as the Argentine justice system now makes use of but also challenges international conventions and definitions. Thereby, they offer possibilities for an emancipation from international organisations, which all too often act according to the political will of powerful countries. In that sense, the continuum of a model of truth and reconciliation to the framing of the Argentine state terror as genocide provides a remarkable example of legal subjectivity and shows the changing practices of ‘local justice’ in Latin America.

- 1 This research was facilitated by funds from the John and Pat Hume Scholarship/NUIM. I would like to thank Lisa Seiden for her support and friendship and the people in Argentina, especially the members of H.I.J.O.S., who make this research possible. Also, I am deeply grateful to Mark Maguire, Fiona Murphy, and Antonius Robben for their helpful suggestions on the article.
- 2 This paper is based on my ongoing research and five and a half months of anthropological fieldwork in Buenos Aires and San Miguel de Tucumán (May/June 2010, February to May 2011), in which I conducted 38 interviews, including semi-structured, biographic/narrative, and expert interviews with human rights activists, lawyers, judges, family members of accused perpetrators, survivors, current and former members of H.I.J.O.S., and Austrian-Jewish Holocaust child survivors. Participant observation was carried out at the Federal Criminal Courts of San Miguel de Tucumán, Comodoro Py 2002 and San Martín (Buenos Aires), as well as at reunions of H.I.J.O.S, the pronouncements of the judgements of four trials, and various protest and memorial marches. Furthermore, I made photographic and video documentation, engaged in local archival research, participated in numerous informal talks and undertook visits to four former clandestine detention centres.

- 3 Native or adoptive soil arranged like a nation, to which the human being feels tied by juridical, historical and affective ties (Dictionary of the Spanish Language; Real Academia Española).
- 4 El Nuremberg Argentino. Documentary by Miguel Rodríguez Arias and Carpo Cortés. Argentina 2004.
- 5 All names of interview partners are rendered anonymous, with the exception of D. Feierstein.

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### Fieldnotes and Interviews<sup>5</sup>

- Fieldnotes, conducted by Katja Seidel, May–June 2010, February–May 2011.
- Interview Peer group H.I.J.O.S. (H.I.J.O.S. Tucumán/Santiago del Estero), San Miguel de Tucumán, 22.2.2011.
- Interview Alan (H.I.J.O.S. Capital), Buenos Aires, 18.6.2010.
- Interview Clara (H.I.J.O.S. Tucumán), San Miguel de Tucumán, 26.2.2011.
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- Interview Rolando (H.I.J.O.S. Capital), Buenos Aires, 26.4.2011.
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### Abstracts

The article analyses contemporary practices of transitional justice in the aftermath of Argentina's last military dictatorship and offers insights into the local articulations of international legal conventions. Focussing on the concept of genocide, the author presents two examples of her ongoing research. The first explores the non-institutional, symbolic jurisdiction entitled *Escrache*, a collective practice developed by H.I.J.O.S. to ostracize amnestied *genocidas* (perpetrators of genocide) in their own neighbourhoods. The second example presents the national trials reopened in 2005. Two recent judgements in which perpetrators were convicted for crimes

‘committed in the frame of genocide’ illustrate the innovative application and effective localization of cosmopolitan law. Taken together, the article examines the way in which social agents address the legacy of past violence and contribute to the symbolic inventory of collective memory and juridical practices.

In ihrem Artikel analysiert die Autorin die Bedeutung der zunehmenden Artikulation des letzten Staatsterrors als „Argentinischer Genozid“. Anhand zweier Beispiele aktueller Praktiken von Übergangsgerichtsbarkeit wird aufgezeigt, wie internationale rechtliche Konventionen auf lokaler Ebene effektiv umgesetzt und internationale Normen und Definitionen herausgefordert werden. Das erste Beispiel beschreibt die nicht-institutionalisierte symbolische Rechtssprechung der *Escrache*, eine von der Organisation H.I.J.O.S. entwickelte kollektive Praxis, um straffreie *genocidas* (jene, die einen Genozid begangen haben) in ihrer eigenen Nachbarschaft zu ächten. Das zweite Beispiel beschäftigt sich mit den 2005 wieder aufgenommenen Prozessen, in welchen Richter den „Strafbestand des Genozids“ in ihre Urteile inkorporieren. Der Artikel zeigt somit auf, wie soziale Akteure das Vermächtnis vergangener Gewalttaten aufgreifen und sowohl zur Entwicklung eines veränderten historischen Bewusstseins als auch zu einer neuen juristischen Praxis beitragen.

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