

# Introduction to “Shadows of State Terrorism: Impunity in Latin America”

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**O**N THE CUSP OF THE 21<sup>ST</sup> CENTURY, THE LONG SHADOWS OF STATE TERRORISM still haunt Latin America. The memory of predator states that turned on their own citizens is still present for millions of people in the region; and for some, as in Colombia today, political violence and state terrorism are still a reality. Hundreds of thousands lost their lives in the dirty wars of the Cold War era — 200,000 in Guatemala alone — and tens of thousands more suffered barbaric tortures, disappearance, and other forms of state terror. Yet most of the architects and agents of these crimes walk free today; many remain in positions of power.

In this issue of *Social Justice* we have assembled the reflections and analyses of some distinguished Latin Americans who lived through recent military dictatorships and who have grappled with their consequences. By listening to their voices, North American readers will understand state terrorism and impunity in new ways.

As E.V. Walter (1969: 9) once argued, states that employ terror “consciously design a pattern of violence to produce the social behavior they demand” — and their power resides not only in their capacity to alter present behaviors, but also to prevent future behaviors. The Latin American militaries — trained, financed, and usually supported politically by the United States — used counterinsurgency strategies deliberately calculated both to eliminate “subversives” and to “change the mentality” of all citizens. Today the legacy of fear remains a deterrent to full political participation and a sense of citizenship in many Latin American countries. Chilean writer Isabel Allende (1999: 27) compares her country to “an abused child that is always expecting the next blow.” Impunity for past crimes affects the present and the future, profoundly shaping the limits and possibilities of new democracies. Given that, it is a mistake to assume that the dirty war era is a closed chapter in Latin America.

There is an integral link between state terrorism and impunity. We define impunity as freedom from accountability or punishment for state crimes or abuses of power. Without impunity for its agents, a state’s strategies of terror would begin to lose their capacity to shape behavior; its organizational structures and tactics would become vulnerable. Impunity is a fundamental cornerstone of the state’s

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terrorist machinery. Even after transitions from military rule, agents or organizations of the state's coercive apparatus, armored by impunity, can continue to limit democratic dissent and political opposition by maintaining a frightening presence in state and society. Impunity is key for the maintenance of political and social control by the powerful.

The question of impunity for the military regimes that perpetrated state crimes has been a burning issue in Latin America since the early 1980s, when military forces began to relinquish government to civilians throughout the region. Immunity from prosecution was a central demand and a primary condition placed by armed forces upon incoming civilian elites during the region's transitions from authoritarian rule. Impunity was institutionalized by various means: civil-military pacts of transition, executive decrees and pardons, amnesties or other legislation, and military court decisions. These mechanisms reinforced the status of powerful military and security personnel as a caste above the law. Essentially, patterns of impunity were reproduced in new democracies, forming an authoritarian legacy with far-reaching ramifications. One of the subtexts of the 1998 arrest of Chilean General Augusto Pinochet was the fact that the terms of such pacted transitions were implicitly called into question, their legitimacy challenged from a legal and human rights perspective.

The validity and morality of elite pacts were extensively debated in academic, political, government, legal, and human rights circles throughout the 1980s. We were deeply involved in that debate as human rights advocates and as analysts,<sup>1</sup> and we have argued in defense of holding human rights abusers accountable. Clearly, governments are not always able to do so, and we recognize the political constraints to justice that exist and the difficulty of bringing all the perpetrators to account. Yet as Juan Méndez, one of the authors in this issue, has observed, all too often in the early literature scholars adopted minimalist approaches to the question, with expectations that were entirely too limited regarding the possibilities for new democracies to hold abusers accountable (Méndez, 1997). Moreover, when human rights violations reach the level of crimes against humanity, it is impossible to sweep them under the rug.

In this issue of *Social Justice* we take a fresh look at the issue of impunity some 10 to 15 years after the transitions to civilian government. It is possible now to begin to examine the long-term social and political effects of impunity and to reevaluate some of the theoretical arguments of the 1980s. The issue has not been put to rest in Latin America<sup>2</sup> or in the world, where, tragically, crimes against humanity and war crimes continue to be committed. In Latin America, new developments have reopened old wounds in some countries and some significant measures to overcome impunity have been carried out in others. Probably the most riveting development on the international level was the arrest by British police of Pinochet pursuant to an extradition request from a courageous Spanish judge, Baltasar Garzón, on charges of terrorism, genocide, and torture. The British House

of Lords three times upheld the legality of the extradition request. Garzón's action literally transformed the international human rights environment. The issue of impunity has also continued to attract scholarly attention.<sup>3</sup>

The rights of the victims and their families to truth and to reparation are central. As Paz Rojas shows in this issue, victims of state terrorism harbor profound psychological traumas for years afterward that are compounded by impunity. Moreover, the tentacles of impunity affect not only individuals and families, but also whole societies and polities, illuminating the state's relationship to its citizens, as Javier Giraldo points out. The struggle over impunity reveals the nature of the polity and the depth of its transition from authoritarian rule. The persisting power of the national security apparatus and the limits of democratic power are starkly exposed. In an eloquent piece about the arrest of Pinochet, Chilean novelist Ariel Dorfman (1999: 9) wrote,

Pinochet has perversely determined our national agenda, restricted our democracy, and, what is worse, limited how much we dared to remember as a nation, what we dared to think out loud.... Chile must find the moral strength, once and for all, to truly complete its transition to democracy.... The time has come to take back the country he stole from us, the country we allowed him to steal.

In short, impunity raises profound issues of justice and forgiveness, accountability and reconciliation, the limits of democracy and the tensions between the prerogatives of states and the rights of citizens. The struggle to defeat impunity and build the rule of law is complex and ongoing.

### **Obstacles to Justice in Latin America**

During the 1960s, 1970s, and early 1980s, military coups swept through Latin America as U.S.-backed armed forces moved to defeat revolutionary or popular movements demanding the radical restructuring of elitist and exclusionary economic and political systems. The armed forces espoused national security doctrines that reflected antidemocratic and antipopular ideological concepts. They installed repressive systems that transformed the political, economic, and cultural landscape in many Latin American countries, quite unlike previous coups and regimes. A key aim of these states was to depoliticize and demobilize politically active groups and movements of peasants, workers, students and intellectuals, and other mobilized social sectors. These movements were identified not as legitimate political opposition but as subversive threats. The military states carried out widespread human rights abuses via ruthless counterinsurgency strategies, especially in Argentina, Chile, Uruguay, Guatemala, and El Salvador.

During the transition processes in the 1980s, many political leaders (and some influential intellectuals) argued that prosecuting "dirty war" crimes would be too

dangerous to attempt, and that forgiveness was necessary for the nation to move toward a new future. Amnesties and *olvido* (oblivion or forgetting the past) were defended as the only viable means to coax dictatorships to step down, and then to prevent right-wing reversals and establish stable democracies. In effect, impunity was considered the price of a successful transition. Yet power relations remained intact and militaries remained beyond the rule of law. Federico Andreu argues that impunity became a structural element in the process of a particular type of democratization, one “that facilitates, rather than challenges, the machinery of domination of the new world order...based on the free market and global economic integration” (Andreu, 1995: 33).

Yet, simultaneously, a movement against impunity was growing, led by local and international human rights groups and nongovernmental organizations (NGOs) seeking to sanction gross human rights abuses by states and to counter impunity. With the winding down of the Cold War, a new balance of forces was developing in the international arena, more conducive to liberal democracy and human rights and more hostile to military regimes (see, for example, Drake, 1998: 80). Democracy movements were gathering momentum throughout the world and awareness of human rights was increasing. Military sectors did make threats or even stage uprisings to force governments to issue amnesties for human rights crimes of the dirty wars; the Argentine *carapintadas* in the 1980s are a case in point. Given the changing international climate and the dissolution of international and domestic support for military regimes as the 1980s progressed, however, military coups were increasingly unviable. Even the Reagan administration realized that to obtain international support for its policies it had to move away from supporting dictatorships. The administration began to promote a model of limited electoral democracy in Central America and elsewhere, as a means to isolate the Sandinista revolutionary government in Nicaragua, while simultaneously continuing its efforts to overthrow the Sandinistas via the *contras* and to strengthen the anticommunist armies of Guatemala and El Salvador. Systematic human rights abuses committed under the civilian governments in the latter two countries were ignored and impunity for militaries engaged in counterinsurgency operations were upheld. Yet it is important to remember the extent of domestic and international opposition to Reagan policies. Impunity was increasingly challenged as part of the struggle to define the nature of emerging democracies in Latin America and elsewhere.

As militaries withdrew from government, many new civilian administrations in Latin America remained fearful and followed what Leigh Payne (1997: 2, 13) calls “conservative strategies” to placate the militaries and their supporters. As she notes, policies of “moderation, institutionalization, and gradualism...exaggerated authoritarians’ control over the political system and weakened democratic stability.” Concessions to authoritarians compromised new democratic governments and weakened constitutional institutions. Payne concludes that “democratic value

commitments may not endure if democratic governments prove incapable of satisfying popular sector demands for justice....” Democratic governments that seem indifferent to the horrors of the recent past rapidly lose legitimacy. Even more disillusioning are official statements accusing those seeking justice of being obstacles to democracy, persons in pursuit of vengeance. As contributors Juan Méndez and Javier Mariezcurrena wisely point out, justice is not revenge; the whole concept of a system of justice is to provide fair judgment and redress precisely to avoid resort to personal revenge.

For some of those who called for amnesties and *olvido* for human rights crimes, decisions were based on calculations of relative power among sectors of society. It is the case that some governments were too weak to sanction still-powerful security forces. Yet, as Antonio Cassese (1990: 134–137) noted, it is better to admit this openly than to create tortured legal and moral justifications for “forgetting” in the name of democracy or progress.<sup>4</sup> Stabilizing a semi-democratic system is one thing, but democratization is another; to set aside concepts fundamental to liberal democracy, such as equality before the law and judgment of horrific crimes, is to create a flawed system, a shadow of democracy. Moreover, to pardon or amnesty atrocious practices before a process of truth and justice occurs gives the appearance of condoning them. To paraphrase Simon Wiesenthal, blanket pardons represent another triumph for the assassins.

Given that campaigns of terror and dirty wars were utterly calculated pillars of counterinsurgency strategy, we “forget” them at our own risk. Crimes against humanity are, by definition, of concern to the entire international community. To forget would mean failure to confront the meaning of government policies of terror that have caused enormous human tragedy, opening the door to repetition. Impunity devalues the hundreds of thousands of lives snuffed out in the carnage of dirty wars. In Latin America, a vast unrequited need for justice lies just beneath the surface. Challenging impunity is a central issue in the process of building the rule of law; indeed, law enforcement strategies in long-standing democracies are founded on the deterrence theory — that crimes have consequences (Roth, 1999).

The geopolitical reality of U.S. influence and superpower status must be considered in any analysis of impunity. First, U.S. national security doctrines and counterinsurgency training of military and police forces helped to foster politicized and aggressive attitudes in the militaries and messianic countersubversive missions. The “internal enemy” thesis encouraged the militaries to focus on their own citizens as potential national security threats. Second, the attitude taken by U.S. administrations and agencies toward truth and justice now and in the future will have extremely important effects.

Recent events have greatly enhanced our knowledge of the role of the CIA in Guatemala, Chile, and elsewhere in Latin America. The release of Pentagon and CIA training manuals in 1996 and 1997, and the June 1999 release of thousands of declassified documents relating to the Pinochet regime, have provided new

evidence of U.S. responsibility for repressive practices and human rights abuses — although in this country the struggle for truth and accountability is in the early stages. The National Security Archive at George Washington University has played a central role in obtaining declassified documents. Although the Clinton administration has taken important steps toward openness, there is clearly still resistance to full disclosure, especially from the CIA, which continues to withhold files and to protect “intelligence assets” suspected of serious human rights crimes. In fall 1998, for example, the CIA refused a request by the Honduran Human Rights Ombudsman to identify Honduran military officers involved in death squad-style assassination and torture in the 1980s.<sup>5</sup>

Despite barriers to achieving truth and justice, courageous Latin Americans demanding an end to impunity have not been silenced. Human rights organizations, families of the victims and groups such as the Argentine *Madres de la Plaza de Mayo* and *Grupo de Apoyo Mútuo* in Guatemala, members of political parties, lawyers and judges, students and teachers, and other sectors of civil society have emerged as important social forces demanding justice and accountability. Internationally, global human rights organizations and new networks of activists have played a key role, increasingly democratizing a world system once overwhelmingly dominated by states.

### **Cracking the Wall of Impunity**

When in 1987 a few NGOs in New York decided to form the NGO Coalition Against Impunity to bring the issue to the United Nations, we were responding to the emergence of a model of “democratization with impunity” (Andreu, 1995: 35) throughout Latin America and to the difficulties encountered by Latin American human rights groups in opposing amnesties and other mechanisms of *olvido* in their countries. As a result of the work of Coalition members in New York and Geneva (as well as organizations such as Human Rights Watch and Amnesty International), the U.N. increasingly took up the issue of impunity. At the same time, human rights and other NGOs in the United States, Europe, and Latin America worked to raise awareness of the ramifications of impunity by organizing tribunals and fora, many under the auspices of the International League for the Rights and Liberation of Peoples, headquartered in Italy. Between 1987 and 1989, tribunals were held in many Latin American countries, and in November 1989, a Permanent People’s Tribunal on Impunity for Crimes Against Humanity in Latin America was held in Bogotá, with delegates from many countries, to present a picture of Latin America as a whole (Liga Internacional, Sección Colombiana, 1991). By the 1990s, impunity was recognized as a major human rights issue in the United Nations and in human rights fora. But various forms of impunity persisted throughout Latin America.

In Argentina, after two amnesty laws and presidential pardons had absolved military suspects of culpability for dirty war atrocities, the past seemed buried —

until 1995, when a retired navy officer confessed publicly that during the 1970s he had participated in death flights, throwing live prisoners to their deaths into the sea. His admissions sparked new demands for truth and justice in that country, as Méndez and Mariezcurrena discuss in their article. In 1998, Argentine judges arrested nine former high-ranking officers — including former junta commanders — on charges of baby-trafficking by the military during the last military regime, and the Argentine Congress revoked the infamous “impunity laws.” These events would have seemed impossible just a few years ago.

In Bolivia, Chile, Uruguay, and Brazil, apparent acceptance of impunity was revealed to be a suppressed opposition after the arrest of Pinochet. Chile exploded into controversy, with large demonstrations of people both for and against the general. After Pinochet’s arrest, new demands erupted in Bolivia for current President Hugo Banzer to explain his participation in the repression of the 1970s. (Bolivia was also one of the few countries to imprison a former military dictator for human rights crimes, in 1995.) In Brazil, Peru, and Uruguay, demands for an accounting continue to be raised by prominent political figures, human rights groups, and families of the victims.

Over the past decade, many new civilian governments established truth commissions that sought to at least clarify past events, if not necessarily to do justice. These commissions have played an extraordinarily significant role in many cases, documenting state terrorism and exposing societies for the first time to the systematic nature of the horrific abuses carried out (Hayner, 1994; Kaye, 1997). In the case of Argentina, the *Nunca Más* report seems to have “inoculated” society against turning to the military for salvation in crises and changed the political culture. In April 1998, Guatemalan Auxiliary Bishop Monsignor Juan Gerardi presided over a public presentation of the report of the Catholic Church’s Project to Recover Historical Memory (REMHI) in Guatemala City. The report, based on testimonies by thousands of Mayan and ladino victims of repression, documented in graphic detail the dirty war in Guatemala and the destruction of whole communities by the armed forces and associated police, intelligence, and paramilitary organizations. Two days later, Gerardi was brutally murdered, a crime that remains unsolved and unpunished as of this writing and that highlights the persistence of impunity in that country. In February 1999, the Guatemalan Commission for Historical Clarification, set up as part of the U.N.-monitored peace accords, issued a massive report showing that 93% of the atrocities in that country were committed by the army, with U.S. complicity. The Guatemalan struggle against impunity is analyzed by guest editor Raúl Molina Mejía in this issue, and Méndez and Mariezcurrena review the impact of truth commissions in their article.

Truth commissions have exposed the truth about terrible repression in many countries. Yet they have been faulted for focusing on memory and truth to the exclusion of justice. The guilty who admit terrible crimes escape prosecution; the

atrocities experienced by victims go unpunished (Soyinka, 1998).<sup>6</sup> Can truth without justice serve to heal society? What kind of democracy can be built upon a foundation of impunity?

### **Evolving International Law**

Significant international advances have occurred in the legal regime of human rights protection. In 1988, the Inter-American Court of Human Rights heard a landmark case on Honduran death squads (the Velásquez Rodríguez Case) and ruled that the government — even after a transition to democracy — was responsible to compensate the victims. In 1990, a French court held a trial of the notorious Argentine dirty war captain, Alfredo Astiz, despite his absence, and sentenced him to life imprisonment in absentia for his role in the murder of two French nuns. In 1991, the United Nations Truth Commission in El Salvador collected massive documentation of the dirty war in that country. Although military officers escaped prosecution, the Commission's report made clear that the military was responsible for an overwhelming 85% of the violations. In 1993, the U.N. established a war crimes tribunal for Yugoslavia, the first since World War II, and in 1994, set up another to deal with genocidal practices in Rwanda. Spanish judge Garzón issued international arrest warrants in 1997 for 11 Argentine military officers, who now cannot leave the country and are essentially confined to Argentina. After Pinochet's arrest in Britain, six other European states (France, Germany, Belgium, Sweden, Italy, and Switzerland) formulated plans to extradite the general in cases involving their citizens.

The U.N. Commission on Human Rights has produced several noteworthy reports on the issue of impunity. These reports make clear the affirmative duty of states to prosecute human rights abuses. For example, the 1993 report states that “although action to combat impunity has its roots in the need for justice, it cannot be reduced to the sole objective of punishing the guilty.” According to the U.N. study, there are three requirements: punishing those responsible, satisfying the victim's right to know and obtain redress, and enabling the authorities to fulfill their mandate as the public body that guarantees law and order (UNHCR, 1993: 7).

Some voices of those concerned with erosion of national sovereignty have argued that global human rights actions such as the arrest of Pinochet or the formation of an International Criminal Court might be used by great powers to pursue neocolonial policies against Third World enemies. Such concerns are valid, but we believe that, on balance, the globalization of human rights standards regarding torture and mass murder serves the interests of the oppressed and the powerless. There seems to be an emerging consensus worldwide, notably among populations victimized by state aggression, that crimes against humanity must be sanctioned and that agents of states who carry them out can and should be held accountable. Often, victimized populations are too weak to counter powerful ex-rulers who abused human rights and they need international assistance. The



international community seems to be moving toward a universal concept of accountability for human rights crimes and possibly toward a system of universal jurisdiction. These developments can only be positive for the masses of people who suffer under dictators and military regimes.

Unilateral violations of national sovereignty will doubtless continue whether or not human rights covenants are developed and enforced and international institutions are established. The International Criminal Court (ICC) may be a step toward a more impartial form of justice by an independent international body. We present a debate in this issue between Alejandro Teitelbaum of the American Commission of Jurists, who has reservations about the Court, and Helen Duffy of Human Rights Watch/Americas, who is critically supportive of it. We also include selected excerpts from the Statute of the ICC. The international discussion regarding this Court included some 800 NGOs — demonstrating the central role of these organizations — as well as states. Senegal was the first state to fully ratify the treaty establishing the Court; 83 states had signed the Statute for the Court as of July 1999. The United States has worked to oppose it; as Reed Brody of Human Rights Watch has noted, the U.S. government fundamentally fears any international legal mechanism that it does not totally control (Brody, 1999: 7). Some accounts say the Pentagon is the leading force behind U.S. opposition to the Court (*New York Times*, 1999).

People cannot simply forgive and forget mass atrocities, a lesson that should have been learned with the Holocaust. There are new cracks in the wall of impunity that give us hope that authorities who pursue power by any means and exhibit depraved indifference to human life increasingly may be held to account. Moreover, as we have argued, the struggle against impunity is central to the struggles for full democracy — as opposed to limited, militarized, and elitist models — by peoples throughout the world.

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The material in this issue begins with country cases (Part I) to give the reader a sense of the human impact of abuses and impunity. Paz Rojas draws on medical, psychological, cultural, and social fields of knowledge in her study of the long-term effects of impunity in Chile. She analyzes the consequences of torture and impunity upon victims, their families, and the larger society. Javier Giraldo provides a first-hand account of the structures of impunity in Colombia, where major human rights violations are occurring under an elected civilian government. He analyzes some of the cases he was involved in during long years of human rights work, and his concept of a schizophrenic state, combining a state of law with entrenched structures of impunity, is a striking one. Raúl Molina Mejía provides an analysis of the Guatemalan people's traumatic struggle to achieve justice and democracy over the past several decades, and assesses the impact of the Peace Accords and the two major historical reports on the internal armed conflict in that country.

Part II examines national and international responses to impunity, including emerging legal remedies. Juan Méndez and Javier Mariezcurrena present a comprehensive analysis of the complex evolution of national and international law regarding impunity, with useful references to key countries' experiences. Alejandro Teitelbaum contributes a critical view of the proposed International Criminal Court and elaborates his concerns regarding its weaknesses and potential misuse. Helen Duffy provides a supportive view of the Court, arguing that it is a step forward in the struggle against impunity.

In Part III, on historical antecedents of impunity, guest editor J. Patrice McSherry analyzes Operation Condor, a shadowy counterinsurgency alliance among Latin American military regimes that shared extremist national security doctrines and ideologies during the Cold War era. These zero-sum doctrines and ideologies appear to have been an important determinant of state terrorism, as they dehumanized whole categories of people and provided a quasi-religious rationale for their torture and destruction.

Part IV is composed of book reviews by Kimberly Jones, who discusses an important new study by Martha Huggins of U.S. influence upon Brazil's security forces, and Charlene Floyd, who reviews a book by Neil Harvey on the struggle for indigenous rights and democracy in Chiapas, Mexico. Finally, we have included a photo spread of images, mainly from Chile, that illustrate the shadows of state terrorism in that country.

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This issue seeks to add to our understanding of the long-term effects of impunity and to shed light on the relationships among truth and memory, accountability and the rule of law, democracy and social justice. The authors in this issue have been deeply involved in the struggle against impunity. Their voices are all too rarely heard in the United States. We dedicate this issue to them and to all people struggling for truth and justice.

*September 1999*

## NOTES

1. The editors were founding members in 1987 of the NGO Coalition Against Impunity, a coalition of nongovernmental organizations that raised the issue of impunity within United Nations bodies, produced documents and materials, and established an international network concerning the issue with organizations of victims and of human rights activists in Latin America and elsewhere. See also McSherry (1992, 1997) and McSherry and Molina (1992).

2. Thus, we disagree with Alexandra Barahona de Brito when she argues that "the pursuit of accountability for past abuses is more a characteristic of the politics of transition than of consolidation...[and] dealing with the legacies of state repression is a backward-looking, short-lived, and one-off [*sic*] policy issue.... Once it is resolved, be it positively or negatively, it largely disappears from the political map." See Barahona de Brito (1997: 215).

3. Some recent works include Kritz (1995), McAdams (1997), Neier (1998), Roht-Arriaza (1995), and Sieder (1995).
4. He refers specifically to President Alfonsín's several justifications for the amnesties of the 1980s in Argentina.
5. "CIA Withholds Names of Hondurans Suspected in Execution," *Miami Herald* (November 5, 1998).
6. See also "Facing the Truth with Bill Moyers," a public television documentary on the Truth and Reconciliation Commission in South Africa that was broadcast in March 1999.

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