

## TORTURE IN LATIN AMERICA

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The use of torture in Latin America is a long, sad history of savage barbarity but also of deliberate, cold cruelty and the hypocrisy of denial. History should record not only the specific attacks against human dignity perpetrated by vicious, pathological sadists but also the calculated decision made to promote or tolerate their use, by military, political, judicial, or other "leaders" whose awareness of the immorality and illegality of the practice is evinced by their refusal to acknowledge it.

Such a history would also be incomplete without reference to the heroism of those who refused to be broken, who protected their friends and colleagues even at the risk of their own horrible deaths. It would be especially incomplete if we neglected to mention the many courageous individuals and organizations of civil society that have dedicated efforts to denounce torture, to insist on accountability, and ultimately to ban the practice.<sup>1</sup> It is precisely because torture has been such a tragic fact of

life that Latin America is a region where support for international efforts to eradicate torture enjoys widespread appeal.

Undoubtedly, torture became systematic and pervasive during the military dictatorships of the 1970s and 1980s, but it would be a mistake to trace its origins only as far as this dark era. In fact, torture was used by dictatorial governments as well as elected but authoritarian governments throughout the twentieth century, especially against political opponents (whether or not they embraced violence as a means to achieve political objectives). Socialist, communist, or anarchistic trade union leaders were especially at risk. It was extensively used in many countries against suspects of common crime, to the point that it became the standard operating procedure in the investigation of criminal offenses.

In the current democratic era, torture continues to be used, albeit in a less systematic fashion and perhaps with less intensity and cruelty than during the "dirty wars" against a perceived political enemy. There is now less need to destroy cells and organizational structures, and less fear that the victim of torture is an intelligent, dedicated revolutionary that knows how to "beat the system" if the torment remains at a bearable level. But torture continues to be the shortcut to the clarification of crimes, and police interrogators are more interested in immediate media-focused results than in successful prosecutions with scientifically gathered evidence.

They are also relatively immune from prosecution for torture, because prosecutors and judges believe the practice is so pervasive that it may be unfair to isolate a few cases. Judicial officials may also look the other way because the whole framework of criminal justice is heavily dependent on the police for even its meager successes in fighting crime. Impunity for torture may have begun in the dictatorial era, but it remains constant in the democratic era, despite a few valiant efforts and some signal successes in recent times. It must be recognized, however, that cases of torture do receive media attention in the democratic era,

and that the exercise of free expression has yielded some useful instruments in fighting against torture. In that respect, it is highly probable that torture is now less intense and probably less systematic than during the military dictatorships. But it is still widely used, especially if the victim belongs to the poorer and marginalized classes, where cruel and inhuman treatment is less likely to arouse sentiments of solidarity or scandalize public opinion.

The failure of democratic institutions to do something about torture (in some cases, the deliberate complicity of demagogic politicians with irresponsible calls to *mano dura*, translated as free rein for police violence) has reached crisis levels. Citizen insecurity is the largest threat against democracy in Latin America today, and the source of streaks of authoritarianism that cloud the democratic debate, even as their failure at crime control is visible to all.

In August 1975, I was arrested by the Police of the Province of Buenos Aires and subjected to torture. Isabel Perón had succeeded her husband, General Juan Perón, after his death on July 1, 1974, and her government unleashed harsh repressive forces, both legal and illegal, the latter in the form of notorious death squads. In November 1974, she had established a state of siege (or state of emergency). On a dark winter night I was detained when I walked into a stakeout in a distant western suburb of Buenos Aires. My captors handed me over to an elite interrogation unit known as SIPBA (Intelligence Service of the Police of the Province of Buenos Aires). By then I had been handcuffed and blindfolded, and over the next two days I was transported by car to several different places in the suburbs, where I was interrogated under beatings and application of the electric prod (*picana*). I received five sessions of the electric prod in the course of what I judged to be about twenty-four hours, always by the same torturers and interrogators. By their voices, I guessed there were at least five and maybe up to ten of them, with distinct roles. I re-

ceived very heavy blows all over my body, but they were not nearly as painful as the passage of electricity. They stripped me naked and tied me, spread-eagled, to a table or hard bed, and applied the *picana* to my genitals, my feet, my torso, my mouth, the back of my head, and my limbs and sides. For one of the five sessions, they placed me facing down and applied the prod to all those body parts plus my anus.

The *picana* was originally created to be a cattle prod, and when it is used on cattle, it is powered by batteries. However, the prod used by police in interrogation is smaller and more flexible. The machine makes a whizzing sound before it is applied, and the operator seems to be able to regulate the intensity or voltage of the discharge. The pain I suffered with each discharge was so intense that my whole body tensed up; many muscles ached for several days after my treatment. When applied in the mouth, face, or head, the shock creates the sensation of a blackout. Needless to say, I screamed at the top of my lungs; the interrogators assured me that no one could hear me. The torturer would let up intermittently to allow the interrogator to ask a question and me to answer. If the answer was considered inadequate, the prod was applied again, sometimes in a more sustained fashion. If I answered something they thought was a lead (as when I admitted to doing legal work on behalf of persons arrested like me) torture became even more intense.

In addition to physical torture, I was subjected to psychological pressure as well. My interrogators and torturers, as well as those charged with moving me from place to place, talked to me all the time, insulting me and my family and friends, threatening to inflict all kinds of harm. At least twice they pretended they were executing me by placing a gun to my head and clicking the trigger. All of this paled in comparison to the physical torture, except when they talked to me about my children (then three and four years old) and told me they would torture them in my presence. As it happened, they had not gone to my house; under the



circumstances, however, I was under great uncertainty as to whether they would act on their threats or not. Amid the transfers I was twice examined by police doctors, mostly to make sure that I was not about to perish and could still undergo more torment. I was later dumped in a cell and left there for what seemed like another day or two, during which I had nightmares. They did not allow me to use the bathroom, and refused to give me water or food. Eventually they took me out again for a long drive, and delivered me to other officers in the Eighth Precinct of La Plata, some forty-five miles from where I had been arrested. The Eighth Precinct told a federal judge that I was being held there. I was held incommunicado for another eight days, but finally the judge interviewed me and allowed my family to bring clothes and food. At that precinct I was not mistreated; I was then transferred to the Unit 9 penitentiary, also in La Plata, where I would be held for the following eighteen months.

I was charged with car theft and possession of weapons, but the federal judge who interrupted my torture also cleared me of those charges, citing lack of evidence: the car owner did not recognize me even in a highly suggestive lineup, and the police reported that the weapons had been destroyed. Although the judge dropped the charges, the government of Isabel Perón held me in administrative detention under the state of siege. I tried to exercise the "right of option" contemplated in the Argentine Constitution (which states that a person held by the executive branch during a state of siege can choose to leave the country), but the government delayed the response for months, and in March 1976, when the military ousted Isabel Perón, one of the Junta's first decrees was to suspend the "right of option" altogether. I was allowed to leave the country into exile only twelve months later, in 1977, and only after intense pressure from abroad.

At Unit 9 I was placed with other political prisoners. As we shared notes about the treatment each of us had received before our detention

was "legalized," it became apparent that virtually everyone had been tortured, and most of us with the electric prod. Some also experienced the *submarine* (holding one's head in water until the lungs feel like they will explode) or were burned with cigarettes, and all of us were beaten, with fists and sometimes with clubs. Through our families, we were in touch with the women inmates at the cellblock for political prisoners in Olmos, near La Plata. We learned that the female political prisoners had conducted an informal statistical assessment of mistreatment which revealed that in a few months in 1975 and early 1976, more than one hundred young women were taken to Olmos. Virtually all of them had been sexually abused during their interrogation, with the electric prod also as the preferred instrument of torture.

Comparing what had happened to other political prisoners revealed that the treatment to which I was subjected was the most commonly applied to persons in my situation, with the following exceptions. First, my family—with the help of my fellow lawyers—moved very quickly to inquire about my whereabouts, and within hours a writ of habeas corpus had been filed and a federal judge was directing inquiries to the police. This explained the need to move me from detention center to detention center, and probably also the five *picana* sessions in one day (on average, prisoners were held in secret detention for about a week, and subjected to two *picana* sessions a day). At the time, there were some judges who still lived up to their responsibility to control the police, and if they found an unregistered prisoner in a precinct, some police officers would be in trouble, especially if the unregistered prisoner bore signs of torture. It must be said that after the 1976 coup d'état, these already weakened protections against abuse were eliminated: the practice of disappearances was meant to shield detentions from any scrutiny, thus allowing torture to proceed without limits in time or in methods, including murder and secret disposal of the bodies. Federal Judge Carlos Molteni, who had intervened in my case (and who had similarly honor-

able attitudes in many other cases) was arrested by the military on the day of the 1976 coup and held in Unit 9 for several years.

Second, I was arrested alone and not with other detainees. This meant that the interrogators could not play any other prisoner's statements or alleged statements against me. In fact, my interrogators had seemingly stumbled into my arrest and did not know what to ask me. They soon found through their files on me that, as a lawyer, I had participated in charges against the police, which made them particularly vengeful. But they had few if any clues as to recent contacts, so in spite of the pain, I was mercifully able to withstand the interrogation without offering any leads that might cause problems for others.

When security forces are allowed free rein, as in Argentina in the 1970s, they torture not to prevent harm or to gather evidence but to develop leads that might guide them in destroying the structures of the guerrilla organizations they are fighting. This means they will routinely torture every person they capture, without regard to guilt or innocence or to their significance as potential intelligence yields.

This belies the assumptions of those who advocate a "ticking bomb" exception to the prohibition of torture. Even if the security forces start with a relatively restrained approach regarding who will be tortured, the lack of results soon forces them to go into fishing expeditions. Since they are not in a position to know which of the persons they hold knows where the supposed bomb is placed, they end up torturing many in the off chance that at least one will give up some useful information. In turn, if the torture victim can sense the interrogator has no clue, it is relatively easy for him or her to withhold the information (as I was able to do on matters of much less importance). Torture is not just a means to obtain information; in order to be "effective" it must be a program for the destruction of the personality of the victim, and it must be widespread and systematic so as to spread fear in the population. In real life, those who advocate a ticking-bomb exception to the prohibition of

torture must know that they are advocating opening the floodgates to torture of limitless cruelty and to the debasement of security forces asked to act in betrayal of the honorable traditions of their profession.

Lawyers who defended political prisoners, as I did in the 1970s, were a distinct target of "legal" and illegal repression.<sup>2</sup> At last count there are about 130 attorneys counted among the *desaparecidos*: those captured after the March 1976 coup and sent to secret detention and torture centers, never to be heard of again. At least ten of them were members of the informal network of lawyers that worked with me in 1975, including Roberto Fassi, the lawyer who represented me in court proceedings and secured the dismissal of the charges against me. There are more than 100 attorneys who, like me, were eventually "legalized" and spent months and years in administrative detention without charges. The number of those lawyers who left the country before being caught and then spent years in exile is impossible to determine but probably runs in the hundreds as well.

Given the scale of the use of torture in those years, a conclusion is inescapable: the tragedy of torture, arbitrary arrest and disappearances could only happen because of a total and deliberate breakdown in the rule of law. The "Western, Christian" government of the Armed Forces was considered "authoritarian" as opposed to "totalitarian" by its sympathizers in the United States at the time, presumably because it championed open markets and aggressively courted foreign investment.<sup>3</sup> In its exercise of authority, nevertheless, it was as totalitarian as any Nazi or Stalinistic regime: it controlled the press, often by the most brutal means, and made sure the judiciary was fully compliant with the regime's wishes.<sup>4</sup> The use of more than 300 secret detention and torture centers throughout the country was possible only when judges ceased to exercise their duty to entertain writs of habeas corpus and conduct unannounced inspections in police precincts and military installations.



Although habeas corpus was not technically suspended during the state of emergency, thousands of requests went unheeded, and the Supreme Court handpicked by the military failed to order the courts below to act as a counterweight to the repressive apparatus.

To be sure, this breakdown did not happen suddenly, nor can it be traced to an official institutional act of the Junta. In March 1976, the Junta dismissed a high proportion of federal judges, including all of the Supreme Court members and key appellate judges. All new appointees were made to swear by the new institutional order. After that, there is not a single case of an attempt by a judge to inspect premises under the control of security forces, and there are many cases of actual refusal to do so. But it is also true that rule-of-law protections against arbitrariness had been seriously eroded during the Isabel Perón regime, and the deterioration can probably be traced to even earlier periods in Argentine public life. On the other hand, a strong military government that vowed to step in to restore order did exactly the opposite: it destroyed the last remnants of checks and balances against despotism.

At the time, large segments of "respectable" public opinion cheered the armed forces on, even while liberal and democratic voices were silenced on the premise that they only aided and abetted subversion. Pro-government media outlets offered space to church leaders, "moderate" politicians, and leaders of establishment organizations of civil society, although in all of those categories there were also courageous voices that challenged the conventional wisdom. Support for torture and illegal repression was couched in muted or diplomatic language; public opinion on the issue was framed by arguments like the ticking bomb exception and appeals to extraordinary measures in extraordinary times. Just like in the post-September 11 period in the United States, government leaders and framers of opinion contributed to the creation of an atmosphere where torture and disappearance were tolerated and even encouraged, and where efforts to curb abuses were made unthinkable.

The atmosphere of permissibility was consciously and deliberately created, even while the leaders made certain no traceable "orders" were left as evidence. Perhaps they thought "plausible deniability" could be limited to exceptional cases and that covert operations are, after all, part of modern statecraft. In fact, they created a monster that grew while always being susceptible to control. The pervasive use of torture and the fear thus created among large sectors of the population, especially the least powerful, has left long-lasting wounds in the fabric of society. That is why it is important today to expose and stop the practice by U.S. forces of using "ghost detainees" and "extraordinary renditions" of prisoners to places where they can be tortured.<sup>5</sup> In Argentina in the 1970s, as now in the U.S.-led "war on terrorism," higher-ups shielded their subordinates from controls and inspections and, when pressure became strong, occasionally delivered up some scapegoats to try to show that the problem was limited to "excesses" committed by rogue elements without institutional significance.

The impunity that the armed forces created for themselves eventually led them to mistakes like the invasion of the Falklands-Malvinas Islands and the disastrous war with the United Kingdom that followed. This and other missteps forced the Junta to a dishonorable "forward escape" and a hasty transition to democracy in 1983. Argentine society led exemplary investigations into the repression of the dictatorship, starting with the commission on the disappeared led by writer Ernesto Sabato, which produced a stunning report in 1984, and the historic trial of Junta members that captured the public's attention in 1985 and 1986 and ended in life sentences for Videla and Admiral Emilio Massera, the head of the navy. Pressure from the military, including four attempted coups against the democratic order, forced the newly democratic regime to backtrack and pass pseudo-amnesty laws and presidential pardons. In 1991 it appeared that impunity would again prevail, but the relatives of

the victims and the Argentine human rights organizations never abandoned the struggle. In the 1990s, the overwhelming majority of public opinion gave its support to the agenda for truth and justice. Eventually, citing international standards, courts found ways to declare that the amnesty laws were contrary to the country's treaty obligations. They initiated "truth trials," by which several federal courts received testimonies and gathered documentation to establish the fate and whereabouts of disappeared persons. Later, some courts declared the pseudo-amnesty laws unconstitutional and reopened criminal prosecutions against several well-known perpetrators of abuses.<sup>6</sup> At the time of this writing, there are dozens of notorious torturers and abductors in custody, including Videla and Massera. In one early case that has arrived at a conviction, police commissioner Miguel Etchecolatz, formerly head of SIPBA, was sentenced to twenty-three years in prison. He petitioned to be allowed house arrest because of his age (he is seventy-one years old), but the sentencing judge has initially denied that request citing the enormity of the crimes he committed. I have reason to believe, though no hard evidence, that Etchecolatz was the leader of the unit that tortured me in the 1970s.

The impetus for truth and justice is alive elsewhere in Latin America as well, in spite of the passage of time. In November 2004, President Ricardo Lagos of Chile received the report of a national commission on torture, based on testimony by more than 35,000 victims. The report complements the historic findings of the Commission on Truth and Reconciliation, also known as the Rettig Commission, which in 1991 described in painful detail more than 3,000 disappearances and arbitrary killings by the Pinochet security forces.<sup>7</sup> The current chief of the Chilean army has admitted "institutional responsibility" for the illegal and immoral practices of the Pinochet era. In Uruguay and Brazil there has been little official acknowledgment of illegal repression, except in some pointed cases or via the offer of reparations to victims. On the

other hand, in both countries civil-society organizations have produced exemplary investigations and well-publicized reports that have contributed to awareness of the recent past in vast sectors of society.<sup>8</sup> In Peru, a report issued in 2003 by that country's Truth and Reconciliation Commission has contributed enormously to the literature of transitional justice and to the practice of nations overcoming legacies of abuse. In Mexico, the government of Vicente Fox has named a special prosecutor to investigate the 1968 and 1971 mass killing of student demonstrators and the practice of disappearances in Guerrero in the late 1970s. The United Nations lent support for landmark studies by truth commissions for El Salvador and Guatemala.

Truth-telling has been difficult but is now largely recognized as necessary, not only in Latin America but in many other regions as well. Prosecutions for human rights abuses are much harder, but they have also received a boost by legal developments in the international community, such as the creation of an International Criminal Court through the Statute of Rome of 1998, a treaty that has quickly obtained nearly 100 ratifications. The international community has also contributed to the legitimacy of prosecutions for egregious human rights abuses through the creation of several ad hoc and hybrid courts for the former Yugoslavia, Rwanda, Sierra Leone, Kosovo, Cambodia, and East Timor. Democratic countries like Spain, Belgium, France, Germany, Italy, Denmark, and the United Kingdom have demonstrated willingness to open their courts to the prosecution of crimes committed in other countries through the principle of universal jurisdiction.

Impunity needs to be broken in order to establish a firm basis for the construction of a democracy that is stable and long-lasting. Citizens must be able to trust their institutions, especially those created primarily for their protection. One of the major challenges of democracy in Latin America today is the perception of rising crime and citizens' insecurity. A principal handicap that Latin American democracies face in con-



fronting this problem is the lack of disciplined, professional police forces that the citizenry can trust. There are many and varied reasons to explain why police forces are corrupt, inefficient, and prone to committing crime or protecting criminals. In varying degrees, however, it is also true that in all countries the police have been called upon, at one time or another, to participate in "dirty war" tactics under the direction of the armed forces. That experience has bred a sense of contempt for internal and external controls, and a belief that silence and complicity offer better rewards than whistle-blowing.

This context, in which police are feared and distrusted by the citizenry, makes it harder to obtain information and cooperation in solving crimes. Relations between law enforcement and the communities they are supposed to serve have broken down beyond repair in large areas of the Americas. As poverty, unemployment, and the widening income gap grow, young Latin Americans are driven to crime; the police respond with greater brutality. This in turn endangers individual policemen, since criminals prefer not to be caught and tortured and so they resist arrest and will often murder police officers to do so. To be sure, demagogues in the political system exacerbate the problem by getting elected to office with calls for *mano dura* (hard hand), anticrime tactics that inevitably fall into the simplistic solution of "letting the police-force do its work" and looking the other way at police abuses. There have been encouraging attempts at police reform in many Latin American countries, but the road toward a police force worthy of democratic institutions will be long and full of obstacles, not the least of which are those inherited from the years of illegal repression.

In the end, however, the growing respect for human rights among Latin Americans will win the day. It will not happen "naturally"; in fact, it will take hard, persistent work from civil society and among democratic leaders. Democracy faces many challenges in Latin America, and the legacy of human rights abuse is not the only one (and in some coun-

tries perhaps not the most salient). Dealing with the past, however, is essential to breed confidence in institutions so they can deal effectively with all other challenges. The eradication of torture is, therefore, not just an absolute demand of justice for the victims but also a moral and practical imperative for the present and the future.

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