

**Negotiating Democracy:
Government Response to Argentine Human Rights Organizations**

Draft

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Human rights organizations (HROs) in Argentina are participating in a public debate regarding the rights that are deemed integral to democracy. While the debate takes place both with the state and society, this paper will focus on the process of negotiation between HROs and the state. It is the position of this paper that HROs in Argentina are framing negotiations with the state regarding the rights to be considered essential for democracy in terms of the integrity of the family. The choice to frame debates in terms of the family results from the large participation of women in HROs. That is, the negotiations regarding the defining of rights in Argentina is gendered.

The framing of contention by HROs in their negotiations with the state is key to the analysis in this paper and draws upon the work of a number of social movement theorists. Collective action frames are defined by David Snow and Robert Benford as

interpretive schemata that simplifies and condenses the ‘world out there’ by selectively punctuating and encoding objects, situations, events, experiences, and sequences of actions within one’s present or past environment. ... [They] underscore and embellish the seriousness and injustice of a social condition or redefine as unjust and immoral what was previously seen as unfortunate but perhaps tolerable. (1992:137).

That is, collective action frames are the ways in which social movements make their positions persuasive. The process of framing is explained by Snow and Benford (1992) to be a dynamic process that emerges through “the course of interactive processes.” The “interactive processes” are identified as “the struggle over the production of ideas of meanings” (p.136). The result of this struggle is the collective action frame. Collective action frames have been identified by Resource Mobilization (RM) and Political Opportunity Structures (POS) scholars to be important to the organization of social movements and their ability to gain support (Klandermans, 1997; Tarrow, 1998; Snow and Benford, 1992). For example, Sidney Tarrow suggests that collective action frames contribute to movements’ ability to create political opportunities for success (1994:96). In this context, success is understood as the fulfillment of a change aspired to by the social movement organization (SMO).¹ In the case of HROs in Argentina, success is the state providing and enforcing the rights demanded by the HROs.

The dynamic struggle over the defining of meaning shares a great deal of common ground with those scholars of social movements who emphasize identity, symbols and meaning. Like RM/POS theorists, New Social Movement (NSM) theorists such as Alberto Melucci, Sonia Alvarez, Evelina Dagnino and Arturo Escobar argue that social movements are in a struggle for control over the production of meaning. Alvarez, Dagnino and Escobar (1998) refer to this process as the “cultural politics.”² For NSM

¹ There are many definitions of SMO success. Craig Jenkins identifies six types of success: 1) meeting stated goals; 2) being recognized by opposition as representing a legitimate set of interests; 3) providing benefits to members; 4) creating changes in power relations; 5) realizing a program of reform of society; and, 6) improving the SMOs self-image (1983:543-544). Claus Offe’s identifies three types of success: 1) substantive, when economic and political elite respond to NSM demands; 2) procedural, when changes are made to modes of decision-making; and, 3) political, when recognition and support are granted by associations, political parties and the media (institutional actors) (1987:94).

² Alvarez, Dagnino and Escobar use the work of Glen Jordan and Chris Weedon (1995) to define cultural politics as “the legitimation of social relations of inequality, and the struggle to transform them ... Cultural

theorists, the result or end point of cultural politics is not a collective action frame but a change in who has the power to define meaning. In the case of HROs in Argentina the issue is who has the power to define the meaning of democratic citizenship.

While I agree with NSM theorists that the end goal of social movements is the changing of power structures – perhaps particularly cultural power structures – I also believe that the collective action frames used by social movements to achieve this end must be understood more fully. What is the collective action frame used? How does both the state and society respond to the collective action frame (that is, how persuasive is it?), and finally, if successful, what type of change in power structures is likely to emerge with the use of a particular collective action frame? It is the last question that moves beyond the present literature on framing, to address issues of identity, symbols and meaning raised by NSM theory.

The Collective Action Frame Used by HROs in Argentina

Sidney Tarrow argues that one of the greatest challenges for social movements is framing contention in such a way that the symbols used are familiar but dynamic (1998:107). That is, the symbols used by SMOs must be rooted in the history of the country but at the same time contain a transformational power. In Argentina, the family, as a reason for the protection of human rights, does exactly this. The justification for the protection of rights based on the family reflects a long history of Argentine nationalism that identifies the family as the building block of the nation. While liberalism has been debated in Argentina since the country's independence from Spain, the theory has never become rooted. The family, not the individual, has remained of primary importance.

Tarrow (1998, 1994), Klandermans (1997) and Snow and Benford (1992) explain a “master frame” to be a collective action frame that “animate[s] an entire social movement sector” rather than one social movement; collective action frames are used by a single social movement. The example given of a commonly used master frame is the issue of rights. The persuasive power of this frame, although not explicitly stated, is assumed to be that these rights are based in a strong cultural-historical commitment to the importance of individual rights within liberalism. Whereas the rights demanded appear to be collective – that is, they pertain to women, African-Americans, gays, etc. -- the implicit persuasive claim made is that these groups merit rights because each individual within the group deserves the same or equivalent rights as individuals who do not find themselves within these identity groups. The assumption of a common commitment to liberal individualism is difficult to extend to countries that do not have an historical commitment to liberalism. The master frame of rights used by Argentine HROs must be understood as also framed within an understanding of the need to protect the rights of individuals *because of the impact it has on the family*. That is, the collective action frames used by Argentine HROs are important not only as an organizational tool for “success” (the fulfillment of human rights obligations by the state) but also for the development of a particular form of democratic citizenship that may be non-liberal.

In attempting to apply the theoretical work on framing to the Argentine HRM, I take the master frame to be rights (a dynamic concept) based on the primacy of the family (a familiar concept). This master frame has the potential to be used by other social

politics fundamentally determine the meaning of social practices and, moreover, which groups and individuals have the power to define these meanings...” (1998:5).

movements, an issue I will explore in another paper. A collective action frame is assumed to be a singular frame used by one movement, in this case the human rights movement (HRM). However, the vague concept of the family leads to the adoption of the same master frame by various HROs with different presentations of what the family means. For the sake of clarity, I will refer to these different presentations of the family as different collective action frames.

The HRM is very large. Over 200 HROs were involved in the organization of the 2001 demonstration commemorating twenty-five years since the last military coup. I have chosen to focus on a comparative analysis of the ten most prominent HROs, self-identified as the “Historical” HROs. The Historical HROs consist of five organizations of family members of victims of the last dictatorship (the “Affected” or “Afectados”) and five organizations that have worked in solidarity with the Affected organizations since the disappearances began (the “Solidarity” organizations) (See Table 1). These organizations are viewed as the unofficial leadership of the HRM.³

TABLE 1: THE HISTORICAL HUMAN RIGHTS ORGANIZATIONS IN ARGENTINA

AFFECTED	SOLIDARITY
Mothers of the Plaza de Mayo – Founding Line (MPM-LF) ⁴	Argentine League for the Rights of Men (La Liga)
Association of the Mothers of the Plaza de Mayo (AMPM)	MEDH ⁵
Grandmothers of the Plaza de Mayo (Abuelas)	APDH ⁶
HIJOS ⁷	SERPAJ ⁸
Families of the Disappeared and Imprisoned for Political Reasons (Familiares)	CELS ⁹

It is clear that the most persuasive “master frame” coming from the HROs is the relationship between human rights and the family. The HROs that are able to use this frame most effectively are the Affected HROs due to the emotions evoked by people, especially mothers and grandmothers, speaking of the loved ones they have lost.

³ For the sake of simplicity I use the term HROs in this paper to refer to the ten HROs I am analyzing, not the HRM as a whole.

⁴ The Mothers of the Plaza de Mayo split in 1986 due to internal disputes regarding particularly leadership and reparation.

⁵ Movimiento Ecueménico por los Derechos Humanos (Ecumenical Movement for Human Rights).

⁶ Asamblea Permanente por los Derechos Humanos (Permanent Assembly for Human Rights).

⁷ Hijos por la Identidad y la Justicia contra el Olvido y el Silencio (Children for Identity and Justice Against Forgetting and Silence).

⁸ Servicio Paz y Justicia (Peace and Justice Service).

⁹ Centro de Estudios Legales y Sociales (Centre for Legal and Social Studies).

Solidarity HROs have tended to support those Affected HROs with the most persuasive collective action frames. That is, how the Affected HROs define the family in their collective action frame has an important impact on the response they achieve from the state and the support they gain from the Solidarity HROs. Table 2 summarizes the concepts of the family used by the Affected HROs.

Table 2: Concepts of the Family Used in Collective Action Frames of Affected HROs

	Concept of the Family used in Collective Action Frame
Assoc. Mothers of the Plaza de Mayo	Mother-Child
Mothers of the Plaza de Mayo – Founding Line	Mother-Child
Familiars	Spouses, parents, grandparents, aunts, uncles and children of the disappeared.
Grandmothers	Grandmothers-Grandchildren
HIJOS	Parents-Child

It is clear that all the Affected HROs, with the exception of the Abuelas incorporate the disappeared as an integral component of the family presented in their collective action frame. The definition of the family used by the Mothers in their collective action frame focuses on the relationship between the mother and her child/children (used in almost all their publications). The Familiares define the family in their collective action frame as the spouses, parents, grandparents, aunts, uncles and children of the disappeared (Familiares, “Acerca de la Ley 24.411,” 1998). HIJOS, created in 1995, define the family in their collective action frame in terms of their relationship with their disappeared parent(s) (HIJOS, Sept. 2000:12; HIJOS, Sept. 2001:25). In all cases, the focus is on the disappeared.

In contrast, the Abuelas frame their demands for the return of their grandchildren and justice against those who stole them, in terms of a different definition of the family than the Mothers, Familiares or HIJOS. The Abuelas use a definition of the family that emphasizes the relationship between the grandmothers and their missing grandchildren. While the parents who disappeared are mentioned, the emphasis is on uniting what is left of the family.

In a 1983 interview in a SERPAJ publication, a non-identified member of the Abuelas responded to a question regarding the relationship between the missing grandchildren and the family. The interviewer, Raúl Aramendy, emphasized in his question the importance of the family in Argentina. Aramendy states, “[the family] is a value recognized by the whole population, the government continually speaks of the family, the churches continually advocate the unity and preservation of the family, in general the majority of schools of thought defend the family...” (SERPAJ, 1983:11). The Abuelas respond by identifying the family as the “whole family,” the grandparents who are looking for the children and grandchildren, the child that has been prevented from living with its legitimate family, not permitting the child to grow up in his/her religion, “for us this is the destruction of the family” (Ibid). Democracy is directly linked

to the family as the Abuela asks “What can one hope for from someone who thinks that destroying the family, hiding children, negating their identity, will lead to *a democracy, an ideal family?*” (emphasis added, Ibid). Regarding those who adopted the stolen children the Abuela argues that these people “are lying to themselves with respect to the concept of the family” (Ibid).

A number of points make the concept of the family put forth by the Abuelas distinct. First, the “family” is understood to include more than the mother-child bond emphasized by the Mothers of the Plaza de Mayo. Second, the traditional understanding of the family as intimately tied to religion is maintained. Third, the issue of the relationship between the mother and her child’s or children’s questionably “subversive” activity is avoided, placing the emphasis on the missing grandchildren. Finally, as the state has done consistently throughout Argentine history, the family is argued to be reflective of the type of regime the country lives under, in this case a democracy is equated with the “ideal family.”

The different collective action frames used by the Affected HROs have both facilitated and impeded negotiations between the state and HROs regarding what rights are established as essential components of democratic citizenship. Since the process of negotiation is an interactive and dynamic process the following section will assess the success of the different collective action frames in the courts between 1983 and 2002.

Negotiating Rights: State-HRO interactions in court, 1983-2002

Operationalizing *how* collective action frames are influencing the development of democratic citizenship is challenging. Citizenship can be understood in myriad ways. For this paper, I will limit the definition of citizenship to the establishment and enforcement of democratic rights. The persuasive power of collective action frames on the development of democratic citizenship will be understood as the correlation between the justification of the family as the basis for rights and the successful establishment and enforcement of rights by the state. That is, what legal rights have HROs achieved and are they enforced? Why have these and not other rights been achieved? The focus of the analysis and most of the HROs is on the legal recognition and enforcement of human rights as it pertains to the abuses that occurred during the last dictatorship.¹⁰

The state is an ambiguous term, especially in Latin America. Joel Migdal’s definition of the state captures some of the ambiguity inherent in the term.

The state is a field of power marked by the use and threat of violence and shaped by (1) *the image of a coherent, controlling organization in a territory, which is a representation of the people bounded by the territory*, and (2) *the actual practices of its multiple parts* (2001: 15-16, author’s emphasis).

As has been noted by many scholars of Latin America, one of the major weaknesses of the state in the region is that it often does not have the ability or authority to implement and enforce laws or rules that regulate the use of violence, particularly outside the

¹⁰ HROs have been pursuing human rights abuses that have occurred since the dictatorship and have been linking socio-economic issues with their pursuit of human rights. These issues will be addressed in a separate paper.

national capital.¹¹ The weak ability of the state to regulate violence comes partly from the discrepancy noted by Migdal between the possibly coherent *image* of the state and its actual heterogeneity. That is, the “multiple parts” of the state do not necessarily agree on how politics should be practiced. In particular, there is no agreement regarding the degree to which the state should pursue and practice liberal democracy and who constitute state actors. For example, Guillermo O’Donnell (1998) has argued, there is little horizontal accountability in Latin American states. That is, the judiciary, executive and congress do not always check each other’s power. Moreover, as Patrice McSherry (1997) and others have argued, the military continues to wield significant power over the government. Finally, and further highlighting the ambiguous nature of the state in Latin America, questionably non-state national and international economic actors hold a tremendous amount of weight in government policy decisions (Teichman 2001). In analyzing state-HRO relations in Argentina, it is important to be clear to identify which branch of the state HROs are negotiating with and where the negotiation process is taking place.

Ultimately, the HROs are negotiating with the government. However, since negotiations between the state and HROs regarding democratic citizenship focus on the defining of rights, the enforcement of rights, and the development of horizontal accountability, the courts are a key site of negotiation. The analysis of negotiations between HROs and the state will focus on the interaction between the Historical HROs and the courts (national and international). As part of the state, the national courts are subject to the limitations posed by a weak state – especially excessive executive power and an influential military -- and these limitations will be considered.

By focusing on this site of negotiation from 1983-1989, 1990-1999, and 2000-2002, I will highlight the following two issues. First, I will highlight the negotiations and compromises made by the state and HROs emphasizing the dynamic nature of state-society relations. Second, I will highlight the relative persuasive power, *vis-à-vis* the state, of some collective action frames within the master frame of rights and the family over others.

Justice and the Retraction of Justice: 1983-1989

The transition to electoral democracy in 1983 inspired hope for many Argentines. The newly elected president, Raúl Alfonsín, had been active in the human rights organization APDH during the dictatorship, and it was initially thought that he was committed to seeking justice for human rights violations. Rather than going to the courts themselves, HROs believed the new democratic government would take three key actions. First, the disappeared would be brought back alive. Immediately upon election the Mothers of the Plaza de Mayo met with President Alfonsín and he agreed with the Mothers that there existed disappeared people who were alive and he committed himself to finding them (MPM, 1999:27-28). Unfortunately, the disappeared did not return

¹¹ Diane Davis (1999) argues that the state-society dichotomy commonly used in social movement theory is transplanted from North American and Europe. Davis argues that in Latin America it is more accurate to speak of elite-masses relationship and their relative “space” to the state (space is defined geographically, institutionally, by class and culture). While Davis provides a strong argument, I have chosen to maintain the state-society dichotomy while recognizing their respective heterogeneity.

despite Alfonsín's efforts. Second, it was expected that the military's self-amnesty would be nullified. On 13 December 1983, Alfonsín passed Decree 158 that called for the trial of all people in charge of the military regime, and subordinates who went beyond their orders, for human rights crimes. Decree 158 replaced the self-amnesty law passed by the military government. Finally, it was expected that those responsible for the human rights abuses of the dictatorship would be charged. Trials against those who committed human rights abuses began in 1985.

The Mothers of the Plaza de Mayo played a central role in negotiations with the state regarding human rights during the first few years of democracy. It was still thought that their children could be brought back alive and it was still thought that those people responsible for their disappearance would be brought to justice. The focus was on uniting families (mothers-children) and bringing justice against those whom forced them apart.

Prior to the trials against the military, Alfonsín established the Comisión Nacional Sobre la Desaparición de Personas (CONADEP, established 15 December 1983). CONADEP played an important role in collecting the information necessary for the subsequent trials. All the Historical HROs, with the exception of the Mothers (and HIJOS, because they did not exist yet) agreed to provide information to the commission.¹² The CONADEP report, *Nunca Más* (published in November 1984) provided an important basis from which to judge the trials that began on 22 April 1985. According to CONADEP, 1,351 people were reported as responsible for human rights violations during the last dictatorship. Almost all of those identified as responsible (1,195 people) were processed under the Military Justice Code (Código de Justicia Militar) in civilian courts. Only seven of the accused were ever sentenced (Familiares, "Qué es la impunidad?", 2000).

One of the greatest challenges in negotiations between the state and society in Latin America, and particularly Argentina, is that the state is amorphous. While Alfonsín's intention may very well have been to have all those military officers responsible for human rights abuses sentenced by the courts, thereby strengthening institutional democracy and civilian control of the military, the military continued to wield a significant amount of power over the government. Not only were there three attempted coups during Alfonsín's term in office,¹³ but as Patrice McSherry argues the structural legacy of the Process of National Reorganization – that is, the armed and security forces, intelligence organizations, and the judiciary -- remained intact (1997:2).

Pressure from the military led the government to compromise its initial position on human rights. In December 1996, Alfonsín announced the legislation known as *Punto Final* that placed a sixty day limit on penal action against those reported to have participated in human rights violations during the dictatorship. Only 450 cases against generals, leaders, officers, sub-officers and police were permitted (García, 1995:263).

¹² The Mothers did not trust the commission because it was appointed by the government and was not composed of elected officials (MPM, 1999: 30).

¹³ Some argue these were not coups but rather internal disputes within the military. Internal disputes were certainly a component of the issue. The SERPAJ publication *Paz y Justicia* explained in 1988 that two of the four objectives of the three attempted coups concerned changing the leadership of the military and increasing salaries (SERPAJ, 1988b: 3). However, the other two common objectives were to have an amnesty law passed and to suspend the judicial processing of human rights violations that occurred in the past (Ibid).

Rather than calming the military, *Punto Final* led to increased military resistance and rebellion. In response, Alfonsín passed the Due Obedience law through Congress gaining its approval on 5 June 1987. Due Obedience provided all leaders and officials that actively participated in the “antisubversive struggle” up to the level of lieutenant colonel, exemption from responsibility and excused them from all charges, including kidnapping, torture and homicide. The exemption was based on the actions having been taken due to obedience to orders from superiors (García, 1995:265). Of the 1,195 military personnel who had been processed for abuses of human rights, 730 benefited from *Punto Final* and 379 were de-processed as a result of the Due Obedience law. Another 43 people were de-processed by the Supreme Court. The Pardons decreed by President Carlos Raúl Menem in 1989 led to another 38 who had been processed by the courts to be deemed exempt from punishment (in addition to 280 officers involved in issues concerning the Malvinas war and the attempted coups in 1987 and 1988) (García, 1995:270). In December 1990, President Menem decreed further pardons for top level military officers, freeing six officers, five of whom had fixed sentences (Ibid) (See table 3).

Table 3: Impact of the Amnesty Laws

Number of human rights violators identified by CONADEP.	1, 351
Number processed in the courts beginning in 1985.	1,195
Number benefiting from <i>Punto Final</i> in 1986.	730
Number benefiting from Due Obedience in 1987.	379
Number de-processed by the Supreme Court.	43
Number benefiting from 1989 Pardon.	38
Number benefiting from 1990 Pardon.	6
Number charged for human rights abuses.	0

The amnesty laws had an important impact on the HROs and the manner in which they pursued justice for human rights abuses. The amnesty laws did not change the collective action frames of the HROs, rather the laws affected the collective action frames to which the state could legally respond. Consequently the state prioritized negotiations with some HROs over others.

Two gaps in the amnesty laws led to two important changes in the priority given to some human rights claims. First, the stealing of babies was not covered under the amnesty laws. The exemption meant that the courts could still be used to locate and find justice for the grandchildren of the Abuelas de Plaza de Mayo. Second, it became increasingly possible for HROs, unable to pursue cases of human rights abuses nationally, to do so at the international level.

The collective action frame used by the Mothers of the Plaza de Mayo and Familiares, emphasized the return of the disappeared and justice against those who caused their disappearance based on the destruction of the family (including the disappeared) that it caused. By the late 1980s, it was clear that the disappeared were not going to return and that justice for those disappearances, at least at the national level, was not going to happen through the courts.

The most significant change in negotiations on rights between the state and HROs was the new focus taken at the end of the 1980s on the stealing of babies. Since the collective action frame used by the Abuelas was focused on uniting the family (grandchildren with grandmothers) and de-emphasized justice for the disappeared, the state was best able to continue negotiations with the Abuelas. That is, the collective action frame used by the Abuelas gained persuasive strength vis-à-vis the state after the amnesty laws were passed.

The Abuelas met with President Alfonsín for the first time in 1986 (the year of the first amnesty law) and then again in 1988 (Abuelas, 1999:17). Nothing resulted from these meetings. However, the Abuelas were able to forge alliances with the national Sub-Secretary of Human Rights (SSDH, established out of the CONADEP commission), the Durand Hospital, and the Province of Buenos Aires' Ministry of Social Action to facilitate the development of a proposal for a national bank of genetics data. Alfonsín used the project as the basis for law No.23511 (passed 11 May 1987) which established the National Bank of Genetics Data. The Genetics Bank has provided important information for the Abuelas that has assisted them in locating their grandchildren and pursuing court cases against those whom stole them.

No military rebellions have been reported to be associated with the locating of grandchildren or the prosecution of those involved in the stealing of them. The reason for the limited response of the military may be due to the manner in which the collective action frame of the Abuelas conceptualizes the family. The military has always agreed that the children of the disappeared (if under the age of twelve when the parents disappeared) were innocent victims of their parents subversive behaviour. The concept of the family used by the Abuelas emphasizes this innocence. Moreover, the link between a child's connection with their true family and their connection with religion advocated by the Abuelas, is also supported by the military.

However, for those HROs unable to pursue justice for human rights abuses nationally, the internationally arena appeared to be promising. In July 1988 the Inter-American Court on Human Rights (henceforth referred to as the Inter-American Court) charged the State of Honduras for violating its obligation to respect and guarantee the right to personal integrity and the right to life in the disappearance of 100-150 people from 1981-1984. The Court ordered the Honduran State to pay monetary compensation to the family of a student leader, Angel Manfredo Velásquez Rodríguez, one of the disappeared (SERPAJ, 1988a:14). The 1988 Inter-American Court decision was precedent setting, permitting hundreds of cases from Argentina eventually to be heard. The Solidarity HROs assisted the Affected HROs in pursuing court cases at both the national and international level.

The Menem Years: 1990-1999

The amnesty laws of the late 1980s and early 1990s led to a further split in the site of legal negotiations between the state and HROs regarding the minimum legal protection of human rights needed in a democracy. That is, negotiations between the state and HROs took place at the national level and through international channels. First, the rise of the courts as a means for seeking justice for the stealing of babies continued and was aided by the state's establishment of commissions that work directly with the Abuelas. Moreover, the emergence of the HRO HIJOS (children of the disappeared) in 1995, further assisted the Abuelas. Second, those HROs interested in seeking justice for the disappeared, and not only the children of the disappeared, found international courts increasingly helpful in the 1990s. Not only did the Inter-American Court continue to offer important support for HROs negotiating with the state, but court cases against those responsible for human rights violations during the dictatorship began to be held in Italy and Spain. These court cases put further pressure on the Argentine government.

As already explained, the collective action frame used by the Abuelas emphasizes the importance of protecting the family while avoiding the issue of whether or not the state recognizes the disappeared as subversive or not. The exemption of the stealing of babies from the amnesty laws provided an important opening for negotiations with the state. Since the Abuelas had gained this opening, other HROs rallied behind them in the hopes of using this space to its full advantage. Notably, CELS, APDH, and MEDH all assisted the Abuelas in court cases involving the stealing of babies. CELS played an important role in assisting the Abuelas due to their legal expertise (it is an HRO led primarily by lawyers), strong financial backing, and significant media and international connections. As the children of the disappeared entered their 20s, some joined together to form the organization HIJOS. HIJOS have also assisted the Abuelas in the court cases.

Initially, court cases were held to permit children and grandparents to have genetics tests done to verify that they were indeed related. To assist the identification of family members and side-step legal proceedings,¹⁴ the state established the Comisión Nacional de Derecho a la Identidad (CONADI). CONADI was created as a direct result of a meeting the Abuelas had with President Menem in July 1992; CONADI was established in November 1992 (interview, Claudia Carolotto, Nov.2, 2000). CONADI works directly with the Abuelas and the National Bank of Genetics Data to identify disappeared children. The Commission's technical director is the daughter of the President of the Abuelas, Claudia Carolotto, and all the administrative staff has worked in HROs (Ibid). With the creation of the CONADI, the court cases pursued by the Abuelas, CELS, APDH, and MEDH began to focus on seeking punishment for those who stole the children. By 2001, more than a dozen high ranking military officers had been charged for stealing children, including members of the military juntas (CELS, 2001: 34).

Also in the 1990s, the pursuit of human rights in the international courts became increasingly important. As explained previously, the first international opening for justice in cases of human rights abuses came in the Inter-American Court. CELS states that the Inter-American Court is the "mechanism of international protection" most used in

¹⁴ A 1990 Supreme Court decision to deny a claimant a genetics test may have also influenced the government's decision to establish CONADI. However, due to a lack of government action, the Argentine Supreme Court decision was taken to Inter-American Court by the Abuelas in 1996 (CELS, 1999: 375-376).

Argentina (CELS, 1999: 362). By the early 1990s, 270 court cases had taken place in the Inter-American Court against the Argentine state for illegal detention alone. The Court's decision was that the Argentine State was required to financially compensate ex-political prisoners. In 1991, the Argentine government compensated all 270 ex-political prisoners who had pursued international court cases. Recognizing that the selective compensation was not sufficient, the government established a 1992 law of reparation that permitted the compensation of all ex-political prisoners who came forward to claim it. By 2000, approximately 12,800 ex-prisoners had claimed reparation (interview, SSDH, Dec.18, 2000). Ex-prisoners are compensated \$76.66 per day in jail (interview, SSDH, Oct. 4, 2000). In 1994, financial reparation was extended to families of the disappeared who could receive \$240,000 per loved one who disappeared if the person was recognized by the state as disappeared under the law 24.321. Law 24.321 provides families a certificate of "forced disappearance" (interview, SSDH, Oct.4, 2000).

Reparation was an important "success" of the use of the Inter-American Court. However, the reparation has been very controversial within the human rights community. The AMPM strongly believes that reparation is the state buying itself out of the responsibility for providing justice for what happened. The state can compensate families without recognizing that the disappeared were not subversives or terrorists. AMPM argues that reparation is like prostitution, that it is selling the bodies of their children (AMPM, "Nuestras Consignas," flier). The other HROs take a more moderate position that reparation is some recognition by the state that what happened was wrong. Moreover, it is felt that some ex-political prisoners and families of the disappeared need the reparation money. However, all HROs agree that reparation is not sufficient justice and does not ensure that the abuses will not occur again. That is, reparation is an attempt by the state to compromise with HROs regarding the protection of the family without providing the enforcement of rights.

The Inter-American Court was not the only international court used by HROs in the 1990s. Beginning with the court cases in Italy and later Spain, families of citizens of other countries who disappeared during the dictatorship began to find legal support from their countries against violators of human rights from the last dictatorship.

In Italy there were two major court cases. The first began in 1987 (although it was put on pause until 1990), and involved the families of 8 Italian citizens who disappeared in Argentina during the last dictatorship. Two of the disappeared were, President of the Abuelas de Plaza de Mayo, Estela Carolotto's daughter and grandchild. The second court case began in 1999 and involved the families of Italians who disappeared during the dictatorship under the Condor Plan. The disappearance of a total of 10 Italian citizens was pursued (8 from Uruguay who disappeared in Argentina, 2 from Argentina who disappeared in Paraguay, and 2 from Argentina who disappeared in Brazil). (All from an interview with a woman involved in the first court case, Nov.1, 2000).

The Argentine government's response to the Italian court cases was somewhat mixed. According to a woman involved in the first court case (her husband had disappeared and he was an Italian citizen), the Menem government provided at least her airfare to testify in the trial (interview Nov.1, 2000). Yet, CELS reports that when official support was required of the Argentine government they were less forthcoming. In 1994, the Italian judges attempted to obtain evidence from the Argentine government.

In response, Menem passed an Executive Decree against collaboration with foreign judges (CELS, 2001: 42-43).

Since 1996, Spanish courts have been working to charge Argentine military officers for the crimes of terrorism and genocide. According to Spanish legislation and its interpretation by Judge Baltazar Garzón, the Spanish court can charge anyone for crimes against anyone regardless of nationality. On 2 November 1999, the Court of Law began to process 98 Argentine military officers for being involved in crimes of genocide and terrorism. Forty-eight military officers were charged by 30 December 1999, and a call for their extradition was issued (CELS, 2001: 46). While in Italy it is possible to hold trials and sentence people who do not appear in court (allowing for the extradition to take place at a later date), Spanish courts require that the person charged be present at the hearing (interview Nov.1, 2000).

Possibly due to mounting international pressure to provide legal protection for human rights, the Argentine government incorporated international treaties on human rights into the Argentine Constitution during the 1994 Constitutional reforms. The international treaties were given legal superiority over national laws. The constitutional incorporation of international human rights treaties provided HROs with a stronger basis for demanding the nullification of the amnesty laws – an issue that achieved significant successes near the end of the 1990s.

De la Rúa and beyond: 2000-2002

Work done by HROs in both national and international courts came to together in an important way in the first few years of the new millennium. Likely one of the most significant national court decisions made since the implementation of the amnesty laws was the 6 March 2001 decision made by the Federal Judge Gabriel Cavallo that declared the amnesty laws unconstitutional. An analysis of how this decision was arrived at, and the consequences of it, reveals how the different sites of negotiation between HROs and the state came together.

In Argentina, the Abuelas and CELS were working on a case involving the stealing of a baby. Claudia Victoria Poblete was disappeared at 8 months of age with her mother on 28 November 1978. Her father was taken away the same day, and as a family they were brought to the clandestine detention centre known as “El Olimpo.” Claudia was taken from her parents (who disappeared) and was raised by Colonel Ceferino Landa. As a result of the work of the Abuelas, Claudia recuperated her identity in 2000 (Página/12, March 6, 2001, p.19). With the legal help of CELS, the HROs charged those responsible with stealing Claudia for her disappearance. The accused were Julio Simón (a.k.a. “El Turco Julián”) and Juan Antonio Del Cerro (a.k.a. “Colores”). In addition, CELS added to the case a request that these military officers be charged with disappearing Claudia’s parents. Since the latter cannot be done under the amnesty laws, CELS asked the court to consider international law and find the amnesty laws unconstitutional (Ibid). In particular, CELS drew the attention of the court to the superiority of international treaties made effective by the 1994 Constitutional reform, including the International Human Rights Pact, the Conventional Against Torture, the American Declaration of the Rights of Man, and the American Convention on Human Rights (Ibid).

Of particular importance was the decision made by Inter-American Court regarding amnesty laws in Peru. In 1991, there was a massacre in Barrios Altos, Peru (a suburb of Lima) that left 15 people dead and four injured (Página/12, March 26, 2001, p.10-11). The Peruvian courts found five army officers responsible for the massacre. In response, the Peruvian Congress passed an amnesty law that prevented the military officers from being sentenced. The families of the victims and Peruvian human rights organizations took the case to the Inter-American Human Rights Commission and the case was tried in the Inter-American Court. The Inter-American Court decision was that the Peruvian amnesty laws should be nullified (Ibid). The 14 March 2001 Inter-American Court decision states that “‘the serious violations of human rights such as torture, summary executions (extra-legal or arbitrary) and forced disappearance’ are not prescribed by the law and are not subject to amnesty.” (Página/12, March 28, 2001, p.13).

Judge Cavallo not only made mention of the hierarchy of the international treaties in Argentine courts as a result of the 1994 Constitutional reform, but also made reference to the court case in Spain regarding Argentine and Chilean military leaders accused of human rights abuses. Using the same legal interpretation as the Audiencia Nacional de España to confirm Judge Baltasar Garzón’s verdict, Cavallo stated that what had occurred were “acts of genocide” (Página/12, March 6, 2001, p.19). Cavallo was the first Argentine judge to speak of genocide (Ibid). When Cavallo’s verdict went to the Argentine Supreme Court, the Court asked for a copy of the Inter-American Court verdict on the Peruvian amnesty laws. The Supreme Court concluded that “Even before the 1994 reform that gave constitutional hierarchy to the American Convention of Human Rights, the Supreme Court of Justice had stated that its articles had obligatory application in Argentina” (Página/12, March 28, 2001, p.13).

The consequences of the Cavallo decision have been significant both in terms of the response of the military and subsequent trials. The immediate response of the head of the army, Ricardo Brinzoni, was to speak with the minister of defense (then Ricardo Lopez Murphy) and then President De la Rúa. Brinzoni stated on the radio that “the possibility of nullifying the laws of Due Obedience and *Punto Final* appeared to him to be a ‘regression’ because — he provocatively justified — ‘they [the amnesty laws] contributed to Argentine society living in a period of relative calm’” (Página/12, March 6, 2001, p.19). Perhaps because the military did not put adequate pressure on the government, or perhaps because the state became preoccupied with the economic meltdown of December 2001, more judges have come out in favour of the decision that the amnesty laws are unconstitutional.

On 10 July 2002, the Federal Judge Claudio Bonadío ordered the arrest of the ex-military president Leopoldo Fortunato Galtieri, as well as 41 retired military and police officers for the disappearance of Montoneros returning to Argentina in the early 1980s (Clarín, July 11, 2002). Many of those accused had benefited from the Argentine amnesty laws that the Judge Bonadío had also declared unconstitutional in a previous court case (Página/12, July 11, 2002; Clarín July 25, 2002). Since some of the victims disappeared in other Southern Cone countries, it is possible that both Jorge Rafael Videla and Leopoldo Galtieri will be tried together for their collaboration in the Condor Plan. The Federal Court defines the Condor Plan as “the relationship established between governments and intelligence services in various countries [Chile, Argentina, Uruguay, Paraguay, Brazil and Bolivia] whose principle objective was to share information and

cooperate in the illegal persecution of opposition” (Clarín, July 25, 2002). The military continues to express its concern regarding the continuation of trials for human rights abuses from which they were previously exempt (e.g. *Página/12*, October 13, 2002).

In the 1990s, the state was *de facto* legally restrained in its negotiations with HROs in the courts. Only the Abuelas were able to use the national courts due to the compatibility of the definition of the family presented in their collective action frame with the amnesty laws. The state celebrated their ability to negotiate with one of the HROs and sought at the beginning of the new millennium to nominate the Abuelas for the Nobel Peace Prize (see for example *Página/12*, December 27, 2000, and January 3, 10 and 11, 2001). However, the Cavallo decision has opened national courts as a site of negotiation between all Affected HROs and the state. While the other Affected HROs have a more controversial definition of the family, they have also gained significant strength from international court decisions. While the government has yet to nullify the amnesty laws, the courts appear to be proceeding on the basis that the amnesty laws are unconstitutional.

Drawing on international law and court cases, the national courts are less affected by the manner in which the demands for rights are framed by HROs. Other branches of the state – especially the government and the military – *are* concerned with the collective action frame used by the HROs. The development of horizontal accountability, in particular increasing the relative strength of the judiciary compared to the military, will have an important impact on the influence of HROs’ collective action frames on the establishment of legal protection for human rights.

Conclusion

Consistent with history, the Argentine State has yet to make a clear commitment to the enforcement of democratic rights. The government is pressured by the military to prioritize Hispanic political practices over liberal democracy. At the same time, the government is under increasing pressure from the judiciary and international courts to pursue the enforcement of democratic rights. The collective action frames of HROs present a possible middle ground. The HROs emphasize the necessity of democratic rights and their enforcement, while simultaneously advocating the primacy of the family that is central to Hispanic modes of doing politics.

The incorporation of the concept of the family by HROs is complicated. The concept of the family has many definitions and some are more encompassing than are others. It appears that the definition of the family used by HROs that the state (in particular the government and the military) is most able to agree on is the definition of the family used in the collective action frame of the Abuelas. The potential consequences of the state’s preference for a definition of the family that glosses over whether or not the disappeared were subversive are significant.

First, the military’s war against “subversion”¹⁵ is implicitly condoned by focusing attention on the stealing of children as *the* unacceptable excess of an otherwise justifiable

¹⁵ The definition of subversive is very broad. Defined by the Argentine military regime, subversives include terrorists identified by General Videla as “not just someone with a gun or a bomb but also someone who spreads ideas that are contrary to Western and Christian civilization” (quoted in Navarro, 1989:244). One military general was reported to have said, “First we will kill all the subversives; then we will kill their collaborators; then their sympathizers; then those who are indifferent; and finally we will kill all those who

“civil war.” Second, the rights deemed necessary to maintain the integrity of the family can be understood as conditional. The family can be altered from a children-parents-grandparents concept to a grandchildren-grandparents concept if the parents are deemed by the state to be “subversive.” Finally, if the family is the building block of the nation and the state is interested in defending the nation or developing a certain type of nation, then the family is likely to be affected. The family is especially vulnerable if rights are conditioned on the type of family deemed acceptable by the state (that is, one that excludes “subversives”).

It is possible that the use of international courts by HROs may put pressure on the state, beyond the judiciary, to prioritize liberal democratic rights. An increased emphasis on liberal democratic rights by the state may be able to provide the protection of the family sought by HROs, without conditions. Moreover, if the state is able and willing to place more weight on democratic rights then it may be able to subordinate the military to the judiciary.

It is clear that the defining and enforcement of rights in Argentina is being shaped by important debates between the state and HROs regarding the relationship between rights and the family. While the state and HROs agree that rights are needed in order to protect the integrity of the family, the scope of rights and the accepted concept of the family remain contentious.

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are timid” (quoted in Snow, 1996: 83). The definition of subversive is flexible and its future meaning could vary.

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