

# **Interdependence between Human Rights, Research on Historical Memory and Archives in Argentina**

Anna Szlejcher

## **Abstract**

Latin America consists of societies with different historical situations which in some cases are trying to recover from a traumatically silenced past and meet the claims of post-dictatorial societies. The complex evolution of society in Argentina, together with the transformation of the socio-political regional and international panorama, has generated interpretative challenges that are still under debate. This highlights the special importance of human rights and open archives for documentation of crimes against humanity in times of dictatorship and stratocracy and the importance of research on historical memory and the role of archives. Yet the image of Archives often appears tied to institutions that are more part of the establishment than to citizens, who should be the primary beneficiaries of archival institutions. Citizens seem unaware of the value of Archives as a public good and as an essential element to in a free society.

We can work to overcome the constraints and silences in the archives by taking advantage of technology to provide ease of access; and by using new historiographical methods which expose the meaning of past events to historical consciousness, enabling the possibility of “thinking the Archive as an area under construction”. But what does this mean for professional practice? First, we have to agree that the Archive can not only be used, but that it also must be expanded with the entry of new parts, such as oral histories or documentary series, and that it is only meaningful if it is widened and also guarantees the possibility of referral. Archives are alive only if they consulted. This paper argues the case for open access to archives and a law ensuring citizens’ legal rights of access to archives in Argentina.

# **Interdependence between Human Rights, Research on Historical Memory and Archives in Argentina**

## **1-Introduction**

How could we achieve a better world, beginning with our people, in moments of humanity when technology has eliminated the old categories of time and space and has shattered many of the bureaucratic structures of the past?

In Latin America, the phenomenon that we have just stated, is part of the patterns of societies with different modulated specificities and rhythms, related to different historical situations, or – international or regional- recovery of a traumatically silenced past and the claims of post-dictatorial societies.

Specifically referring to my country, Argentina, I can say that the complexity of the evolution of society, together with the transformation of the socio-political regional

and international panorama, generated interpretative challenges that are still in debate. The so-called "democratic transition"<sup>1</sup>, caused changes in the paradigms of interpretation with the incorporation of the key of human rights as inalienable and the allocation of the State as the institution responsible for the guarantee and respect thereof. Novaro (2009) and Suriano (2005)

A multitude of different approaches have been revolutionizing historiography analysis while developing various processes of construction of identities while imagined traditions have been recognized as another legitimate source of knowledge.

Ever since institutions of the most diverse memberships throughout the country, with international public and private funds, implemented programs, invitations to conferences, seminars and publications. Among others we can mention "Memoria Colectiva y Represión: Perspectivas comparativas sobre el proceso de democratización en el Cono Sur", under the auspices of Social Research Council; Recent History Programs, and Oral History Programs, of the National Universities and their respective research institutes. In our case, we should mention the Research Centre of the Faculty of Philosophy and Humanities (CIFYH)

In Buenos Aires, in the decade of the 80 in the Historical Institute of the City of Buenos Aires, were generated productive interaction spaces, bodies of production, validation and legitimating of knowledge, which were scopes of ambiguous boundaries, junctions of dynamic exchanges between Academic, State and Human Rights Organizations.<sup>2</sup>

In the analysis of this special case, we can highlight the fruitful exchanges in the "Museum of Memory" (2000).

I must clarify that the historical theme they are trying to convey, is linked to the tenets of the ambiguous definition of "recent history" and the complexity of cultural practices which emerge from this definition, such as stocks and efforts exerted on and from a vast variety of assets, which are still in definition and construction stages, as the assigned managers- in a large majority- are at the same time actors and witnesses "bearers of memories".

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<sup>1</sup> LESGART Cecilia (2003) *Usos de la transición democrática, Ensayo, Ciencia y Política en la década del 80*. Rosario: Homo sapiens.

<sup>2</sup> JELIN Elizabeth (2004) *Los derechos humanos y la memoria de la violencia política y la represión: la construcción de un campo nuevo en las ciencias sociales*. In: *Estudios Sociales N ° 27, Revista Universitaria Semestral*. Universidad Nacional del Litoral, Año XIV, segundo semestre 2004, Santa Fe, Argentina, p. 91-114.

The construction of these assets with the leadership of the State's action, involves a complex circulation of ideas and projection of interests, both in the adoption of strategies of production and execution of the memory spaces for the Promotion and Defense of Human Rights, and also in the conditions of the policies of cultural management, when applied to a given selection of values to provide for its preservation and its circulation, according to the evolution of communicational strategies adopted in the context of a comprehensive policy. (Ballat Hernández and Tresserras (2002:15-25)

ESMA (Escuela de Mecánica de la Armada), is the most paradigmatic example of these resignified “primary spaces” which come from our heritage, and which have already been established as an indelible mark of a complex and traumatic past. In this particular case, I highlight state terrorism and its consequences, whose definition is still in judicial process. And simultaneously, an aid to set out and to circulate some cultural performances, a result from the selection and adoption of forms of communication and of diverse discursive practices used. At the same time, they are pedagogical instruments for the transmission of social memories for future generations, in accordance with the new term “restored democracy”. (Murilo de Carvalho, 1997:17-18).

It is in the conformation of these heritages -determined and established by the exercise of power at different levels and strata (national, provincial and municipal) – where landslides, transferences and ideological exchanges converge and refer to various projects of organizations and actors that inspire the construction of cultural identities and the consolidation of the collective memory.

The core theme of these new institutions and the time span they cover, becomes possible because of the guidance of the demands of the human rights movement, by the multiplicity ways of circulation and production of knowledge and by the effect of the debates and controversies about the concept of Heritage, Memory and the status they acquired as credible witnesses in court areas.<sup>3</sup>

The first organism of denunciations bearing the expression "Human Rights" in its name was created in 1975: It was the APDH (Permanent Assembly of Human Rights). It drew up the payroll of missing people and centralized the work of the complaints register. Later, its files were the basis to make preparatory lists for the visit

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<sup>3</sup> JELIN Elizabeth (2004) *Dictadura y Democracia (1976-2001)* Nueva Historia Argentina. Tomo 10. Sudamericana. Buenos Aires, Argentina, p. 527.

of the Inter-American Commission of Human Rights of the OAS in 1979. The organism also published a payroll of 5566 cases of “detenidos-desaparecidos”.

In April 1977, and due to the intensity of repression, agencies to aid "affected and their families in their search” began to be created. The most prominent association still is " Mothers of Plaza de Mayo”. The Mothers began their task carrying out peaceful public demonstrations, where they demanded to know the whereabouts of their abducted children. As time passed, they were nourished with more adherents, and every Thursday, they repeated their most visible activity: the walk around the Plaza de Mayo wearing white head scarves embroidered with the names of their children.

Mothers accompanied Adolfo Perez Esquivel to Sweden to receive the Nobel Peace Prize that was awarded to him in recognition for promoting an international campaign against the atrocities committed by the military regime. The Nobel Prize Award, constituted the most explicit international recognition to the struggle for human rights in Argentina.<sup>4</sup>

Perez Esquivel nurtured his archives about the fate of many missing people with documents provided by their own relatives.

At that time, the Mothers coined the term "APPARITION WITH LIFE”, slogan that has transcended time and is still used to summarize their claims.

Ever since 1980 and 1981, there is a conjunction of the struggle for human rights with the demand of justice. The claim was to link peace with justice and truth. In November 1983, President-elect Raul Alfonsin received the Mothers of Plaza de Mayo, who sued him in fu future government, will ensure that the documentary evidence of clandestine detention centers, and would not to leave the country.

In Argentina, the struggle for the defense of human rights was a fundamental element in the consolidation of the emerging democracy.

In December 1983, the same President Alfonsin announces the creation of the National Commission on the Disappearance of Persons: CONADEP, which would be responsible for conducting the investigation of crimes committed during the dictatorship.

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<sup>4</sup> JELIN Elizabeth (2004) *Dictadura y Democracia (1976-2001)* Nueva Historia Argentina. Tomo 10. Sudamericana. Buenos Aires, Argentina.

The Association of Mothers witnessed providing photos and other documents necessary to prove the disappearances and to substantiate the trials that then would go to civil courts to decide.

The publication of the book “NUNCA MAS” (Never Again) gave visibility to those testimonies gathered in the report of the CONADEP. With the aid of its evidence, the trial served to incriminate the military junta, and was the moment of greatest impact of the human rights struggle in Argentina

The substantiation of the legal trial, it was not easy. It had to be based on the testimony of victims, as the records and military records were not available.

In 1992, the “Comision Nacional por el Derecho a la Identidad” and the “National Genetic Database” were created to carry on tests to identify affiliation in order to restitute abducted or born in captivity children to their biological families.

In April 1996, the Spanish judge Baltasar Garzon, supported by the material collected by the CONADEP, began proceedings to prosecute Argentinean military who served during the last dictatorship.

Historical understanding of the dynamics of this specific space, would become so in the recognition that is the product of practices of the established power and its confluence with civil society, which is held in recognition of its specificity as a cultural institution jointly with the preservation and restoration of tangible assets (documentary and its building complex), pedagogical activities and commemorative evocation.

Thus, the space proposes a many-sided and plural memory, which shares the same symbolic territory with other institutions such as the Archive of Memory of the city of Cordoba.

What is meant by past events appears as tangible, visible and exposed to historical consciousness and becomes an object of management whose testimonies are retained as documentary sources -oral and written- with the purpose of transmitting and displaying the pierced traditions, the historiographic narrative, and what was made invisible through oblivion.

The evolution of space-monument “ESMA” and the “Memory Archive” are related not only to the discourse of “preserved” today, but also with history in relation to the different stages of society and other preexisting "memories". They have a complex conformation of a shared symbolic order and they are products of the trade and confluence of a variety of institutions that promote a sense of belonging and the visibility of certain actors involved in the defense of human rights.

## **2-Research and historical memory: the value of Archives.**

The image of Archives appears more tied to institutions that are part of the establishment than to civil society, although it is society, which in fact receives the benefits of such institutions. Citizens seem not to recognize the value of Archives as a public good and as an essential element to society.

The task of the archives involves ethical and political aspects. It not only implies the control and condemnation of looting or destruction of assets, but it also includes actions to eliminate the persistence of certain inner noxious dynamics that sometimes endanger the public character of funds. The reliable archive should not only be protected and tidy, but should be an effective public sphere, radically alien to any arbitrary use. They are institutions that should –once and for all – be regarded as areas under continuous construction.

But, what does “thinking the Archive as an area under construction” mean?

First, we have to agree that the Archive is something that is used, but that it also must be expanded by the admittance of new parts or documentary series, and that it is only meaningful if it is widened and also guarantees the possibility of referral. Archives are alive only if they consulted.

Having in mind what I previously said, we wonder: Why a law on Access to Information in Argentina should be passed?

We must note that in Argentina, there is a cultural impediment against the rule of law and a culture of openness to the right of access to information.

There is a new vision within the legal discipline, strengthened by the constitutional reforms approved in 1994 and that were crucial for starting a process of clarification of this core issue of the access to public information.

In Argentina, information about governmental actions was traditionally understood as an obligation emanating from the State, to make known the results of the decisions of the constituted powers; as a must of the republican form of government, but not subject to the exercise of a human right of citizens in general, or a citizen in particular: the right everyone has to have the information according to their needs or to special concerns. Emphasis is placed on the publication of the recently promulgated laws or the decrees that are issued. Advertising is just to make known and especially to

legitimize the acts of the state. This view still stands, but does not meet the current requirements of modern society.<sup>5</sup>

The paradigm of advertising the acts of government is normally focused in official bulletins, although it is common knowledge that the publication of something in these newsletters is the best way to hide something else. Not only that, they are usually printed belatedly and of course they never publish the secret decrees of the Executive, this argues against their reliability and effectiveness.

### **3-Human rights**

The declarations of human rights, whether global, regional or internal to a given country, are a basic postulate of social co-existence that is proposed as a "political premise of life in society".

Its origin is not in the law, but in the political conception of a human community pleasant to human beings and respectful of their dignity. It is certainly ultimately linked to the ideas of ethics and justice, and in a concrete way, constitutes the shape that human beings want to give to the society they live in.

In the 1994 reform, 11 international instruments on human rights (statements or agreements) with institutional hierarchy were added. Art. 75 include "approve or reject treaties concluded with other nations and international organizations and pacts with the Holy See." These treaties and agreements take precedence over national laws.

### **4- Right to access to information**

Why is it important? What is its relationship to the research process?

To be able to clarify this issue, first of all, we have to say that all human rights can be broken down to three categories if considering the constitution of their internal structure: subject, object and powers.

If you study the right to information from this perspective we come to the conclusion that:

- The subject of right to information is a universal subject: it is conferred to all men in the same way. No one can speak of exceptions.

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<sup>5</sup> SZLEJCHER Anna. *El acceso a la Información: Estrategias para enfrentar los desafíos y oportunidades*. In: Documento em revista. Año 1. Edición nº 1. Noviembre 2009. Brasil, p 34-38.

- Its object is information. The right to information is the good to be protected and secured. Its accuracy should be ensured, so that citizens can feel protected and integrated in their social life, in what constitutes the community.
- The powers are the possibilities of actions of the subject. They are what give life to the rights issue. This is the reason why it is said that they form its content, and they denote their particular way of being. (Azurin, Ana. pp53-54)

Needless to say that the origin to the right to information dates back to the immediate international reaction to the atrocities committed during the Second World War and are a direct result of the creation of the United Nations Organization, which is the natural venue for the elaboration of international conventions.

Argentina's Constitution, in Article 38 of Chapter Two outlines the New Rights and Guarantees. Among them, we must highlight those given to political parties as well as references to legal security when accessing public information and disseminating ideas.

Our constitution has paid special attention to an important aspect of the right to information, which is the petition of *habeas data*, or the right to access to information about oneself, either when in the hands of public or private entities, or when necessary, to update or correct this information. For example, Article 43 poses that

*Any person may bring this action (of habeas data) to take cognizance of the data about himself and its purpose, of the information which may appear in public or private records or databanks that provide reports, and case of falsity or discrimination, to require their suppression, confidentiality or updating. Besides that, the secrecy of journalistic sources of information must not be affected.*

## **5-TIC**

The advancement of information technologies and communication provides excellent opportunities to increase access to records that have traditionally been available only in the archival institutions where they were preserved. We should consider that the technologies of information and communication, in the last 50 years have evolved in such a way that they have eliminated the barriers of time and space.

In Argentina, the right to truth has been a leading issue because of what happened during the military dictatorship and the difficulties that existed for years in

moving forward with the trials (Due to amnesty laws and so on). So, the Truth Trials began to take place, but they could not attribute criminal liability. They helped to determine what happened during the dictatorship, because there were thousands of missing persons and families claiming about what had occurred with bodies.

## **6-Reality in Argentina**

In my country there is no national law on access to public information. We only have the "Decree 1172/2003, which includes various aspects related to General Regulations in Public Hearings; for the Advertising Management within the Executive Branch; of Access to Public Information for the Executive Branch, and for Public Hearings in Regulatory Public Services Agencies.

In the province where I come from, we have the 8835 law called Carta del Ciudadano or Citizens Charter.

I would like to highlight a few of its relevant aspects. For instance, the one where the State promotes and ensures public participation and control, or fosters private initiative, timely information and transparency of public management, as well as the constant rendering of accounts and the full responsibility of officials.

Our capital city, Buenos Aires has recently approved laws related to the right of access to information. Thus, the law n ° 104, determines that every person is entitled to receive complete, truthful, accurate and timely information of any public organism of the city. It also regulates exceptions, prescriptions, and funds to be used for their effective implementation.

And also, it is important to remark that, some NGOs have worked on trying to obtain access to certain police summaries, especially in those cases where police personnel have been responsible for violent actions.

The new optics on the topic also implies the need that the information be provided with appropriate technology to allow to access to it with maximum speed and as many channels as possible.

TIC is, according to Escobar de la Serna, a great power-sharing mechanism, and for that reason, it promotes and guarantees freedom.

If information is power, no one can monopolize it. Censorship will not be possible either.

This helps to boost control over the function of the state, and also improves the quality of government and optimizes its dynamics.

The act of maintaining secrecy over the information of public interest should be exceptional and should be a mere suspension of the right of access to public information.

For all the above mentioned reasons, it is of utmost importance to have specific laws to regulate in the most appropriate way the actions the state has to take to ensure access to information, with no costs or restrictions that may violate its guarantee.

The right to request information should be articulated with other values and interests for the common welfare. For instance, the right of privacy to be protected and in certain circumstances, industrial, commercial, scientific, financial or technological stealth, in international negotiations, in national defense issues, or for information protected by professional secrecy.

A quite large segment of society has discovered the immense power that gives the access to public information at the time of their self defense and the democratic republican system as well.

With that landmark, this same society, tries to restrict the possibility of using “Decrees of necessity and urgency” and the managing of “Reserved funds”, which are always unaccountable.

In Argentina, a country of neo-roman tradition of written law, the existence of the norm for the full exercise of those rights is essential. The right to public information must be incorporated not only with legal but also with constitutional status.

#### Final Words

We have walked a long way in the search for truth and justice. Archives of most various kinds have been essential aids to approach the objective. There still remains a long way to go. The clamor for “NEVER AGAIN” must guide our work. From our social role as archivists we must strongly commit to ensure the protection of memory.