

Justice Delayed? The Impact of Time on the Trials of Gross Atrocities

Robert L. Bernstein International Human Rights Fellowship Symposium

April 3 – 4, 2008

Orville H. Schell, Jr. Center for International Human Rights

Yale Law School

127 Wall Street, New Haven, CT

Argentina and Chile have recently carried out trials of officials responsible for human rights offenses in the 1970s and 1980s. In Cambodia, the first defendants are in the custody of the special court set up to try the top leaders of the Khmer Rouge, who ruled the country from 1975 to 1979 and are accused of being responsible for the deaths of some 1.7 million Cambodians.

Despite nearly universal praise from human rights activists and scholars, these trials raise difficult questions. Does the passage of time impose limits on the ability to do justice? Or, to the contrary, does delay open up possibilities for achieving justice? Do younger generations perceive and experience justice differently than their parents? How does each of these generations come to terms with the country's story? Is the function of the criminal trials justice for victims or education of the young? Is there some amount of time after which the reasons for seeking justice against individual perpetrators diminish so much that they no longer justify prosecution?

The symposium will bring together advocates, journalists, and scholars to discuss these questions of time and justice and to bring their insights to bear on the overarching question: Is there a "right time" for justice? We will look to Argentina as a case study and examine more generally how time may enable or hobble justice for mass atrocities.

Thursday, April 3

6:00 p.m.
(Rm. 127)

Robert L. Bernstein International Human Rights Lecture
Kenneth Roth, Executive Director, Human Rights Watch

Friday, April 4

10:00 a.m. Discussion with Current Bernstein Fellows
(Faculty Lounge)

The two current Bernstein Fellows will talk about their work. **Nick Robinson** ('06) is spending his fellowship year in India working with the Human Rights Law Network developing resources to further the right to water. Through interviews and other research, Nick is writing a report examining the most critical factors threatening the right to water in India. He is also supporting litigation that promotes this right in India. Working with Refugees International, **Katherine Southwick** (>05) is researching the causes and consequences of statelessness in several countries and is working with local partners to develop, advocate for, and implement legal remedies.

12:00 p.m. Lunch
(Faculty Lounge)

1:00 p.m. **Delayed Justice for the Crimes of Argentina's Dirty War**
(Room 127)

From 1976 to 1983, Argentina was ruled by a brutally repressive military dictatorship. An estimated 14,000 people were "disappeared." Following the military's collapse, the newly elected democratic government successfully prosecuted a handful of top military officials. However, in the late 1980s, a series of amnesty laws and pardons introduced in response to military pressure ended the prosecutions. The Argentine Supreme Court found these measures constitutional. Since then, most of the perpetrators of atrocity have remained free. In 2005, however, the Supreme Court declared the amnesty laws unconstitutional, effectively reopening a sweeping process of criminal prosecutions to bring the participants in the country's Dirty War to justice. In July 2007, the Supreme Court also overturned many of the pardons granted to military leaders. Argentina has come full circle – no military officials are beyond the reach of criminal prosecution.

- **Carmen Argibay**, Justice, Supreme Court of Justice of the Nation, Argentina
- **Carlos Rosenkrantz**, Professor and President, University of San Andres, Buenos Aires
- **Catalina Smulovitz**, Professor and Director, Department of Political Science and International Studies, Torcuato Di Tella University, Buenos Aires
- **Horacio Verbitsky**, President, Center for Legal and Social Studies, Buenos Aires, investigative journalist, and author, *The Flight*
- **Owen Fiss**, Sterling Professor of Law, Yale Law School (moderator)

3:15 p.m.
(Room 127)

Justice for Mass Atrocities and the Problem of Time

The full-circle process that Argentina has experienced highlights a series of important legal, political, and social questions for countries that have experienced mass atrocities: Can the passage of time diminish resistance to criminal justice by those associated with the old regime? Does delay allow for building the institutional structures necessary to prosecute and punish? Should these considerations trump standard rule-of-law principles – for example, prohibitions on the retroactive application of criminal law, rules to minimize evidentiary problems resulting from the passage of time, *res judicata*, and *non bis in idem*? Does it matter that former officials acquired legal rights under an amnesty or a pardon? What if those rights have been declared constitutional by the nation's courts? From a social, psychological and moral perspective, is there a “right time” for justice?

- **Mark Drumbl**, Class of 1975 Alumni Professor of Law and Director, Transnational Law Institute, Washington and Lee University School of Law
- **Thane Rosenbaum**, John Whelan Distinguished Lecturer in Law, Fordham Law School, and author, *The Myth of Moral Justice* and novels and essays about post-atrocity memory and legal relief and restitution.
- **Ronald Slye**, Associate Professor of Law and Director, International and Comparative Law Programs, Seattle University School of Law, and Honorary Professor, University of the Witwatersrand School of Law, South Africa
- **Robert Sloane**, Associate Professor of Law, Boston University School of Law, and 2000-2001 Bernstein Fellow (moderator)

5:30 p.m. **Reception and Introduction of 2008-2009 Robert L. Bernstein Fellows**
(Alumni Reading Room)

Kristina Scurry Baehr ('08), The Carter Center

Alisha Bjerregaard ('08), Global Rights: Partners for Justice

Matiangai Sirleaf ('08), International Center for Transitional Justice