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The Death of a Public Intellectual

by
Owen Fiss

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Carlos Santiago Nino
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Tribute

The Death of a Public Intellectual

Owen Fiss[†]

In 1976 the military seized power in Argentina and, in the name of maintaining order and combating left-wing terrorism, established a heartless and brutal dictatorship that was without parallel in Argentine history. The reign of terror included kidnapping, torture, rape, and murder, and led to the death or disappearance of some 9000 persons suspected or accused of being subversive. In the early 1980's, the generals sought to counter a decline in their support by trying to retake the Malvinas Islands from the British by force, but they failed in that endeavor and were soon defeated at the hands of Margaret Thatcher. Embarrassed by this turn of events and burdened by a deteriorating economy, the generals then decided to relinquish power and call for national elections, always assuming that the presidency would be won by the candidate—a Peronist—who promised to leave them alone.

The election was held in October 1983 and, to the surprise of many, certainly the generals, the Radical Party candidate, Raúl Alfonsín, won. He had campaigned on a platform that promised to bring to justice those responsible for the human rights abuses of the past seven years and he was true to his word. In the spring of 1985, the leaders of the junta were put on trial before a civilian tribunal in downtown Buenos Aires. The spectacle that then ensued absorbed all the energy of the nation, and was an extraordinary event in the history of Argentina and, for that matter, the world. It was not the first time that a successor government put the leaders of a previous regime on

[†] Sterling Professor of Law, Yale University.

trial for human rights abuses, but it was one of the very few times that such a feat was attempted without the assistance of a conquering army.

In the midst of that trial, I, along with a small group of lawyers and philosophers from the United States and England (Ronald Dworkin, Thomas Nagel, Thomas Scanlon, and Bernard Williams), was invited by the government to come to Argentina. I immediately accepted and began to prepare for the trip with a certain measure of eagerness, although, to be perfectly frank, I did not have the least idea what lay in store for me. I did not know the language, I hadn't a clue about the legal system, and my impressions of Argentine history were based entirely on a quick read of Joseph Page's then-recent book on Perón. Among close friends, I was at a loss to explain the purpose of the trip. I also found it difficult to form a concrete picture of our host and the person who had conceived of this odd academic junket—Carlos Nino. When I innocently inquired of Thomas Nagel and Samuel Isaacharoff—the two I always assumed were most responsible for this extraordinary turn in my life—they simply described Carlos as an advisor to the President.

My own image of a presidential advisor was shaped during the Watergate era. At that time I was working for the Committee on the Judiciary for the House of Representatives, which was trying to determine whether there were grounds to impeach President Nixon. I spent a great deal of my time during the summer of 1974 inquiring into the activities of two of the most notorious presidential advisors in American history, John Ehrlichman and Robert Haldeman—dour, cynical political opportunists, who were intensely faithful to Richard Nixon the man, but not to the nation nor even to the office they served. Some ten years later, on that first plane ride to Buenos Aires, interrupted by a short stop on the beach in Rio, I kept wondering who this advisor to President Alfonsín might be. How far would he fall from the American standard? Little, little did I know.

At our first meeting, Carlos bubbled with conversation. There was a warmth and openness that immediately drew me to him. He was curious about his visitors, attentive to their every need, and always in the best of humor. He loved to tease and joke. He seemed to be the embodiment of life itself. These personal qualities immediately distinguished him from his American counterparts (I'll put to one side the chaos and confusion that seemed to emerge spontaneously from his desk). Even more significant was Carlos' love of philosophy. I found in Carlos Nino an advisor to the President who loved ideas—big ideas, abstract ideas, deep ideas, sometimes even strange ideas, but always ideas—and who, by his devotion to speculative thought, distanced himself from everything American, not just the Ehrlichmans and Haldemans of the world, but even our most honorable officials.

Carlos believed in moral truth. He believed that there were certain principles that were right, and others wrong, and that these principles could be

used by an individual or a nation for choosing the proper course of conduct. These principles were set forth in *The Ethics of Human Rights*, first published in Spanish in 1984, revised and published in English in 1991. This belief of Carlos' in the objectivity of ethical judgments was entirely admirable, and also much to my liking, but at times difficult to reconcile with the two other ideas that were foundational for him—a belief in deliberative democracy and the rule of law. What value can democratic politics have if there is an objective moral truth? The same question could be asked about law.

Carlos was not the first philosopher who made his career by embracing a number of contradictory propositions, but like the very best, he openly confronted the contradictions and tried to reconcile them. He was always so honest. The result was his epistemic theory of democracy, which assigned a value to democratic politics because it enlarged the range of interests that would be taken into account in the formulation of public policy. He spoke movingly of “the difficulty each of us has in representing vividly the situations and interests of people very different from ourselves” and saw the democratic process as a means of transcending those limits and achieving a measure of impartiality. For Carlos, democracy was a surrogate of the informal practice of moral discussion and, in a fallible world, democracy was the best means available for discovering moral truth. Similarly, he embraced law as an indication of moral truth and gave it a value insofar, and only insofar, as it was the product of democratic deliberation.

Theories like this are grist for the classroom and academic journals. Indeed, Carlos explored these ideas for over a decade in countless articles in academic journals and in one of his final books, *The Constitution of Deliberative Democracy*. Remarkably, Carlos did not confine these inquiries to the academy. He also pursued them when he served the President. Carlos conducted his meetings within government as though they were graduate school seminars, analytically tough, but also speculative and broadly inquisitive. He assumed that every participant—even the President—had just put down Kant or Kelsen.

During that initial visit to Argentina, Carlos made certain that the visitors from abroad met the President and I can remember that first meeting with great vividness. I was struck by the affection and mutual respect that held them together; the President treated Carlos as a beloved son. But even more striking was the scope of discussion between the two, which ranged broad and far, and eventually settled on the work of Joseph Schumpeter, the great political economist who made his career during the first half of this century. In the presence of a few interlopers, Nino and Alfonsín sat around a conference table at the Casa Rosada at this dramatic moment in Argentine history, speculating about the inadequacies of Schumpeter's theory of democracy. Perhaps such discussions occurred in the councils of power during the days of Madison and Jefferson. I tried to imagine that kind of conversation occurring within the

Oval Office in our time—in the early 1970's, in the 1960's, or even today—but found myself simply unable to do so.

In this devotion to philosophy, Carlos distinguished himself from the typical American public servant, but his engagement with practical politics distinguished him from most philosophers of his stature in the academic world. It was not just that he was prepared to address public affairs, which might now be commonplace in the American academy, but he was also prepared to act on his theories. Philosophy was an integral part of his effort to make the world just.

When the military seized power, Carlos was not politically active. He lived wholly in the kingdom of ideas. This did not insulate him from the reach of the dictators, who were prepared to kill those who did no more than espouse unorthodox ideas. As a result, Carlos spent some of the time of the dictatorship living abroad, in England, Venezuela, Mexico, the United States, and Germany. He feared that one day the military would force him to abandon Argentina permanently, and that he would have to adopt one of his temporary refuges as "home."

By June 1982, however, the generals began to stumble: They lost the Malvinas War with Great Britain, and, as news about the generals' humiliating defeat came to light, public unhappiness with the regime grew. Carlos saw a faint opening and entered the realm of action, determined to restore democracy to his country.

In July 1982, still a year before the junta relinquished power and decided to call for elections, Carlos began meeting informally with a group of lawyers and philosophers who shared his commitments. This group included some of the most distinguished figures in Argentine intellectual life. Among its members were Genaro Carrió, who later became Chief Justice of Argentina, Eugenio Bulygin, later the Dean of the Universidad de Buenos Aires and judge of the federal court of appeals; Eduardo Rabossi, a professor of philosophy and the Undersecretary for Human Rights during the Alfonsín Administration; Martín Farrell, a noted legal philosopher and judge; and Jaime Malamud Goti, who later served Alfonsín as an advisor and then became Solicitor General of Argentina. Like Carlos, these individuals were committed to restoring democracy to the country and were willing to run all the risks that entailed. Even more remarkable from the perspective of the cloistered American academy, they were also prepared to participate in partisan politics to achieve their purposes.

The first meeting of this group had its difficulties—Carlos lost the address and he, along with Eduardo Rabossi, raced up and down Avenida Pueyrredón frantically trying to find the apartment where they were to meet. From the start the group turned to the Radical Party, for it had been the traditional bearer of liberal values in Argentina, but they wanted to meet with various contenders for the leadership of the Party for the purpose of deciding which one might

best serve the democratic cause. They made one false start, but felt they had struck solid gold when they were introduced to Raúl Alfonsín. The feeling was reciprocated. President Alfonsín made this group part of his inner circle, and affectionately referred to them as "the philosophers." Carlos began his political life as a member of "the philosophers," advising Alfonsín in his quest for the leadership of the Radical Party and in his campaign for the presidency. Later Carlos served as the President's advisor on human rights, then as the director of a commission devoted to constitutional reform.

For the philosopher king, the field of action is merely a means to actualize his ideas. For the public intellectual, as Carlos was, the causality flows in both directions. His ideas were shaped by actions just as his actions were shaped by his ideas. Carlos' intellectual agenda reflected the needs and crises of Argentina and all the other countries that summoned him; he constantly reformulated and refined his theoretical views in light of lived experience. He spoke to the world, but also was part of it.

In opening oneself to the world in this way, the public intellectual always stands in danger of being corrupted. He can easily put to one side the entrapments of petty politics, or the desire for personal advancement—never a temptation for Carlos. The real danger is that the public intellectual may forget the duality of his commitments—that he is committed to the world of thought as well as to the world of action. He may compromise his devotion to the truth in all its fullness, because he is anxious to get on with the project of which he has become a part. This was Carlos' burden. We talked about it on countless occasions and it weighed heavily upon his soul.

The great, great public event of his life was indeed the trial of the leaders of the junta that occurred in downtown Buenos Aires in the spring of 1985, the occasion of my initial visit, and his involvement in that event left its mark on *Radical Evil on Trial*, a book that Carlos wrote with great gusto and passion in the months immediately before his death. One cannot read a page of it without sensing that Carlos was moved in his writing by his profound belief in the justness of the Administration's cause and the need he felt to explain the basis of that belief.

The original strategy of the Administration was to focus on the leaders of the junta. Judgment was entered against fifteen of the highest-ranking officers in December 1985, but in time the swath of the prosecutors, not fully in the control of the executive, broadened. In the first few months of 1987, there was a sudden upsurge in the number of indictments, partly in response to a new law passed by Congress that closed off the time for new indictments. By the spring of 1987, more than 400 officers, including many from the lower and middle echelons, stood indicted. Dissension within the ranks grew and in April 1987, just before Good Friday, a number of garrisons openly rebelled, requiring the personal intercession of Alfonsín to restore order on Easter Sunday. No one knows exactly what transpired in the negotiations between

Alfonsín and the leaders of the rebellious forces on that day, but in May 1987, President Alfonsín proposed to Congress a law that would insulate the middle- and lower-level officers from prosecution for many human rights abuses, including torture. The intent was to create an irrebuttable presumption that those officers acted in accordance with higher orders and thus, according to Argentine law, were not answerable for their misdeeds.

Carlos was upset by this turn of events and was unable to hide his sense of disappointment from the President. Carlos' exuberance knew no limits and my hunch is that Carlos responded to the President's initiative with one of his favorite expressions, "Incredible." The President asked if his opposition to this new law was based on moral grounds. Carlos answered in the negative, and then, very much the teacher, reminded the President that he, Carlos, was not a retributivist. No, Carlos said, his opposition to this new law was based not on retributivist theories of punishment, which he felt would require every single wrongdoer to be punished, but rather on a fear that the new concession would only escalate into an endless series of demands by the military. In that case, Alfonsín replied, the decision was a matter of political smell, and whose sense of smell, the President affectionately inquired of Carlos, should I follow, yours or mine? Carlos, being true to his beliefs but at the same time trying to define the limits of his involvement with the Administration, answered, "Yours, of course. After all, the people elected your nose, not mine."

During the waning years of the Alfonsín Administration, Carlos was exhausted by the day-to-day involvement with the business of government. He hungered for the freedom that rightly belonged to him as a professor at the Universidad de Buenos Aires and as a regular visiting professor at Yale. Yet his commitment to the world of action did not lessen. Outside of government, he helped build the Centro de Estudios Institucionales, an independent research institution in Buenos Aires that was to provide a home and base for a new generation of Argentine intellectuals. He also continued to worry about constitutional reform in Argentina and elsewhere.

Carlos died at the end of August 1993, at the age of forty-nine. He was on his way to Bolivia for the second reading of the Constitution that he helped draft for the country, when, arriving at La Paz airport, so high in the mountains, he suffered a fatal heart attack. On earlier occasions the altitude greatly affected him, and he approached this trip with a certain measure of trepidation. On the day after he died, I received this much-delayed message from cyberspace, forcing me to relive his death once again: "Tomorrow I am going for three days to Bolivia. The new deputies need to know what is inside the Constitution because they must decide whether to give to it the necessary second reading. I hope that the highness does not affect much my explanations."

Why, why, Ernesto Garzón Valdéz once asked me, trying to make sense of this enormous tragedy, did Carlos ever go to Bolivia? When Ernesto first

posed that question to me in his home in Bonn I sat in silence. Nothing I could say could adequately respond to the grief we were both feeling. But there can be no doubt about the answer. Carlos was impelled to go to Bolivia, and to Germany, Czechoslovakia, Colombia, and countless other countries, by the same sense of civic obligation that drove him in Argentina, and now embraced all the world.

In August 1994, a year after his death, I was in Buenos Aires once again. Carlos was nowhere and yet he seemed to be everywhere. I cannot be in that magical city for a moment without thinking of him. I could see him in the smiles of his sons, Mariano and Ezequiel. I could see him in the eyes of his wife, Susana, and remembered how deeply he loved his family and how much he enjoyed their times together—in their apartment in the mornings before he walked to his office, in their country house, or on their vacations in Córdoba, Brazil, or even Hamden. I could also see him in the public debates of the day.

Politics is the lifeblood of Buenos Aires. Public debate does not await some precipitating event. Yet in July 1994, weeks before my visit, a bomb had exploded in front of a Jewish organization, not far from where the Centro was located, killing a hundred people. The country was once again taking stock of itself. Like myself, Carlos was a Sephardic Jew, and soon after we met we became enmeshed in broad-ranging discussions about the role of anti-Semitism in Argentine society. Those early conversations were prompted by Jacobo Timerman's book, *Prisoner Without a Name, Cell Without a Number*, which described in painful detail Timerman's imprisonment by the junta and the anti-Semitism that seemed to inflame his jailers. Always the believer in the essential goodness of people, and so in love with Argentina, Carlos tended to minimize the presence of anti-Semitism. I wondered what he would say now.

Anti-Semitism was not the only issue on the public agenda. As the country tried to recover from the bombing and to make sense of that tragedy, a convention opened in Santa Fé for the purpose of amending the Argentine Constitution. During his presidency, Alfonsín pushed for constitutional reform, but was blocked in his efforts by the Peronists. Alfonsín's term came to an end in 1989, and the elections of that year brought to power a Peronist, Carlos Menem, who soon found himself uncomfortable with the provisions of the Argentine Constitution regarding the presidency. The Constitution provided for a six-year term but with no opportunity for immediate reelection. In November 1993, shortly after Carlos Nino's death, President Menem, anxious for a second term, pushed for a convention and the Radical Party, still headed by Alfonsín, saw this as an opportunity to achieve some of the reforms they had sought earlier. The result was the Santa Fé convention of August 1994.

Carlos had worked for constitutional reform, both in the Alfonsín Administration and afterward. It was therefore difficult for his family and friends to accept the fact that the convention he had labored so long to bring into being was now being held—in his absence. Yet, in truth, his ideas were

present and for those who cared to look, Carlos could be seen in the person of Jorge Baraquire, Gabriel Bouzat, Marcela Rodriguez, Carlos Rosenkrantz, or Augustín Zbar, a number of the young people he had trained and inspired at the Universidad de Buenos Aires and the Centro—*los jóvenes*. They had become the advisors to Alfonsín, who led the Radical Party delegation in Santa Fé. Now and then, facing some fork in the road, Alfonsín would turn to one of *los jóvenes* and ask wistfully, "I wonder what Carlos would say."

All the political battles of the Santa Fé convention were hard fought, and there is no easy way to assess the outcome. The good was often mixed with the bad. Not all would have been to Carlos' liking, but in the end, there seemed to be a lot of the good, and I think it fair to say that those provisions enhancing the protection of human rights, limiting the executive power, and establishing a mechanism to coordinate the work of the executive and legislative branches seemed to vindicate Carlos' vision and to memorialize all that he had worked for.

Soon after the close of the convention, I received a letter from President Alfonsín. In it, he reminisced about his earlier visits to Yale, while Carlos was teaching here, and praised Carlos for laying the groundwork for the human rights policy of his Administration—which he described as one of his "proudest accomplishments." Then the letter ended with this paragraph:

If the Argentine Constitution of 1994 has an intellectual author it is Carlos Nino, who during my government, as Coordinator of the multipartisan Commission for the Consolidation of Democracy, laid the groundwork which permitted those of us who labored in the Constitutional Assembly to come up with most of the ideas and proposals that are enshrined in that document. Carlos was a maker of ideas that worked; his life was too short, but it was also bright, full and good; he is missed.

On the very last afternoon of my trip to Buenos Aires in August 1994, I returned to El Café de Paso for lunch. It is a restaurant in Parte Once, the Jewish Quarter in Buenos Aires, just a few blocks from the site of the bombing and the former offices of the Centro. The cafe was Carlos' favorite luncheon spot. I had made one of my usual trips to Argentina in August 1993, and in the course of that trip Carlos made certain that we had lunch there before the time came for us to say goodbye. The cafe is a Sephardic restaurant, and we spent hours and hours eating *bohíos* and reminiscing about the kitchens of our mothers, and, of course, talking about justice. Two days later, I left for Chile and Carlos prepared to leave for Bolivia. This August, when I once again returned to El Café de Paso, Carlos was not with me. His absence was painful, and here I am referring not just to the personal pain, which was greater than words could describe—I came to love Carlos like the brother I

never had—but a public pain. I knew that there was so much work to do, not just in Argentina but in all the world.

Although Carlos was not with me, I was not alone. I had brought *los jóvenes* to Carlos' luncheon spot, not just the Argentine *jóvenes*, this time Martín Böhmer and Roberto Saba, but also a number of Americans who were there as part of an exchange program Carlos helped establish between Yale and the Centro—Victoria Graff, Julian Kleindorfer, Janet and Ken Levit, and Linda Rottenberg. Having *los jóvenes* with me helped, it helped a lot. Glancing around the table, I realized that Carlos had introduced them to books and ideas that they had never heard of, nor even dreamt of, and that he had broadened their vision in just the way a teacher should. I knew Carlos would live on through his teaching and the institutions he built and shaped. Even more, I realized that Carlos had created for himself a unique form of life and that by his example he had showed *los jóvenes*—no, showed all of us—how we might make our way in this world and perhaps, if the gods are kind, achieve the endearing nobility that so belonged to him.

*Carlos Santiago Nino:
A Selected Bibliography*

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