

AN ORESTEIA FOR ARGENTINA:  
BETWEEN FRATERNITY AND THE  
RULE OF LAW



*Martin Böhmer*

*Why has it been so extraordinarily difficult for Argentina to establish a reliable rule of law, from the beginning of its formal existence almost until the present? How, in turn, can the more promising changes that have recently taken place be explained and understood? These are the questions that concern Martin Böhmer in this essay.*

*He approaches them by way of several different kinds of material: straight-forward political history; folk stories and folk songs; the analysis of the ritual that is acted out, even today, when an automobile driver is stopped by the police for speeding; careful readings of stories by Borges, including the famous “Pierre Menard, Author of the Quixote”; and an application of Aeschylus’ great Oresteia to the cultural circumstances of Argentina today. His object is to understand both the cultural forces that have inhibited the development of the rule of law and the nature, force, and meaning of important changes that have taken place since the reestablishment of democracy. This essay may also serve as an instance of a kind of cultural analysis that might have great value in the examination of other political and national systems.*

... the horrible way in which our worst reality  
strives to copy our best fiction.

CARLOS GAMERRO<sup>1</sup>

RADICAL EVIL

Argentina’s own rendezvous with the empire of force can be described, in the peculiar, already canonical language of post-Holocaust Western thought, as an event of radical evil.<sup>2</sup> For almost a decade, the Argentine

state used its monopoly of force to secretly kidnap, torture, and eventually kill tens of thousands of Argentines. We Argentines even coined our own word for them: *desaparecidos*. Videla, the military dictator, defined it in his own cynical words at a press conference: “It is a mystery, a disappeared, a nonentity, it is not here” (Es una incógnita, es un desaparecido, no tiene entidad, no está).

The peculiarity of this event in our history is related to its illegality. In effect, the strategies of our dictatorship were illegal, even within the framework of norms imposed by the regime. There were no Nuremberg Laws in Argentina, no written orders, no procedures to impose death penalties. The crimes were performed clandestinely, in the dark, mostly at night, far from courts and judges; and they were denied in public by the same people who gave and carried the orders. In this sense, Argentina’s incarnation of radical evil was inscribed in an old tradition of disobedience and anomie, the ever-present lack of the rule of law.

In what follows, I will try to trace the origins of disobedience in Argentina through its politics, law, and literature. I will argue that the political project that created our nation-state was built on the exclusion of a large part of Argentina’s population, thus imposing an authority that was (or was perceived as) illegitimate. I will also show that those who were left out of politics resisted violently but also in an illegitimate fashion. This tragedy of illegitimate force against illegitimate force is also played out in our literature, and I will use some of Borges’s stories and his critics’ appraisals to claim that our language also plays an important role in creating this tragic political environment. This essay will trace the emergence of an incipient rule of law with a different way of adjudicating, drawn from Borges’s stories and recent political and legal developments.

## TWO STORIES

A comparison of two stories of similar circumstances illustrates some of the cultural forces working against the rule of law in Argentina today. Here is the first story: When a driver runs a red light in Argentina and is stopped by the police, a dialogue begins. This exchange develops with the predictability and certainty of a script that everybody knows. The dialogue goes like this:

Police: Good afternoon. Documents, please.

Driver: Good afternoon. Here they are . . .

Until here, this is an indispensable exchange. Although legal norms indicate that this dialogue should not exist, good manners ensure it does.

According to the law, what should follow is silent police action: to write the ticket imposing a fine and give a copy to the offender. Excuses or justifications must wait for the hearing in front of a judge. Nevertheless, surprisingly, the exchange continues, in general with the policeman making a statement that takes the situation away from the institutions that define his role, away from the law.

This extension of the dialogue, this excess material, leads inevitably to the offer and acceptance of a bribe. The dialogue continues:

Police: You ran a red light.

Driver: Yes, what happens is that . . .

Here an excuse is presented, such as “I was arriving late to look for the children,” “It was yellow,” or “Nobody was trying to cross,” which could make room for a more or less extensive exchange about its soundness. The excuse, however, is not effective at stopping the dialogue or helping the driver to avoid the sanction.

Police: I will have to fine you.

This description of the legal obligation of the policeman is simultaneously a threat of a sanction and an invitation to continue the dialogue. The announcement of the sanction does not necessarily imply its enforcement. Thus, the phrase becomes an invitation that allows the following question to arise:

Driver: How can we fix it?

This is an ambiguous question. It could be the ratification of an agreement that began the moment in which the dialogue extended beyond what is legally necessary and that will lead inevitably to the bribe. It could also imply a resigned acceptance by the victim of the illegal coercion. Or it could be, as the use of the plural (“we”) seems to suggest, the acceptance of be-