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Mob Violence Intrudes into Argentine Penal Code Debate

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All Argentina is now riveted by 12 cases of mob violence precisely when leading Argentine jurists —of all political stripes and from all academic institutions—have drafted a revision to the country’s virtually obsolete 100-year-old Penal Code. Congressional approval of the proposed legal revision is pending.

On March 22, a mob of 50 people in the central city of Rosario killed an 18-year-old masonry worker by kicking his body and head after an unidentified person in the middle of the street screamed that the youth had stolen a purse. Following that brutal event, eleven other cases that left victims either dead or gravely wounded and the perpetrators at large have been reported throughout the country, including one in an upper-class Buenos Aires neighborhood.

The government, social organizations, humanitarian groups, and the Inter-American Commission on Human Rights (IACHR) have called special attention to such attacks amid a virulent rightwing and opposition media campaign against the legislature's penal-code reform. Meanwhile, a debate has emerged about Corte Suprema de Justicia (CSJ) Judge Eugenio Zaffaroni’s legal definition of aggravated homicide. The proposed reform is not well-known outside the legislature.

"It is a permissive code that protects criminals and leaves society unprotected," is the message repeated daily by Deputy Sergio Massa, an angry opposition candidate in presidential elections to be held in October 2015 (NotiSur, Feb. 14, 2014). The Clarín and La Nación newspapers already support the presidential bid of the deputy, a former chief of staff in the administration of President Cristina Fernández de Kirchner.

A participant in the attack on David Moreyra, the mason killed in Rosario, posted the following comment on the Indignados del Barrio Azcuénaga Facebook page: "If we hadn’t carried out justice, the guy would have be freed in 30 days under the new Penal Code." That is what Massa and the papers that support him say.

Legal experts, without exception, agree with Zaffaroni, one of the authors of the proposed reform, that mob lynching is doubly premeditated murder—treacherous, malicious, and punishable with 30 years of prison under Article 80 of the current Penal Code as well as the proposed reform. Television networks, radio stations, and major print media—media controlled by an elite—use a different terminology, choosing various words that can be translated as beatings. La Nación titled an article "Beating criminals." The newspaper Diario Río Negro, referring to a case in that southern province, used the words "a strong beating." For Massa and other rightist political leaders, the cases are of self-defense arising in an environment where the state does not provide protection.

In one of the many academic forums springing up in the wake of the citizen violence, Attorney General Alejandra Gils Carbó asked whether those who kicked David Moreyra to death "are conscious of the crime they have committed and if at any time they considered it better to have one less thief [if Moreyra was indeed one] than dozens of killers on the loose [themselves]." Pointing the finger at the media and rightist leaders, she said, "When a criminal is a young man from a poor..."
barrio, people talk about a violent homicide, but, when those committing the crime are ladies and gentlemen from wealthy neighborhoods, people talk about bringing someone to justice or beatings. Can you have justice when it is based on the idea that some lives are worth less than others?"

The attorney general made the point that "it is inevitable to link these brutal events with the campaign against the penal reform, a campaign of lies and simplistic and false slogans that spark public fear by claiming rapists and violent criminals will be freed en masse. The issue isn't the Penal Code, it's what sort of society we want to have and the sort of cultural change we need."

Issuing a call to the press, Gils Carbó said, "The recent events have put the media's responsibility for the rule of law back on the table. It's bewildering how they try to distort the purpose of justice by lynchings or attempted mob killings."

**Plaza de Mayo protesters urge end of hate campaign**

Las Abuelas de Plaza de Mayo—Argentina’s most emblematic human rights organization—issued a statement calling on the media and political leaders to "be socially responsible," and urging them to "drop their hate campaign," considering that "we have been seeking justice for 36 years and it has never occurred to us to kill those who killed our children (NotiSur, Feb. 10, 2006). They didn’t steal our purses, they stole our children, spouses, siblings, and grandchildren, but we nevertheless have not chosen violence against those in the government who carried out the dictatorship's genocide (NotiSur, Aug. 8, 2003)."

On April 24, the IACHR released a statement in Washington that spoke about the victims as "suspected" criminals and said, "It is of special concern to the Commission that in some of these cases, the victims were adolescents. Also of concern is the perception that young people, especially those who come from traditionally excluded segments of society, pose a potential risk to citizen security." The IACHR statement referenced a previous 2012 declaration that expressed its "concern that these perceptions can translate into regressive trends in the area of juvenile justice."

Gils Carbó agreed with the essence of the IACHR statements, saying, "We’re not talking about a legal debate but of a way of generating mechanisms in which we can support dignity and combat crime with equality, because the truth is that jails are filled with the poor and the legal response to major white-collar crime is deficient."

La Asamblea por los Derechos de la Niñez y la Juventud in Rosario, the town where Moreyra was killed, reported that, to date this year, more than 70 violent deaths have occurred and most have been of "young men from poor neighborhoods."

Zaffaroni spoke both against Massa and the major media. He accused the deputy of being "a lying accomplice" to Moreyra's killers and asked, "What can we expect from a person who, when we honored the victims of the dictatorship [on March 24], went to the US to meet with the right-wing leaders of the Tea Party and with Rudolph Giuliani, a windbag who coaches him in his hardline and zero-tolerance approaches, which he used against terrorists in New York when he was mayor." As for the media, he said that "mob action is the result of a campaign to stigmatize poor youth, turning them into scapegoats, and each scapegoat becomes a target to kill."

The CSJ justice recalled that "hate messages are not protected by freedom of speech because they stigmatize and promote violence against certain groups or religious, racial, ethnic, sociocultural, or political minorities." Zaffaroni agreed with sociologists, media analysts, and other jurists that
these hatemongers use euphemisms like beatings and vigilante justice for what are in reality premeditated murders. Secondly, they never refer to the victim as a person, but instead a "thief" or "criminal" as if that makes the crime against them less serious. Giving the example of someone who supposedly stole a purse being put to death, the judge cited a third aspect: they never analyze the proportionality between the crime and the punishment.

Zaffaroni joined the IACHR by saying, "We must urgently call on both print and broadcast media to reflect because the content of the social order is now being eroded." He said political leaders who don’t speak out against mob lynching are also responsible for the situation. Ultimately, he said, the media can do whatever it wants, but political leaders have another responsibility, they are part of the government even though they talk about an absence of government as if they aren't part of it.

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