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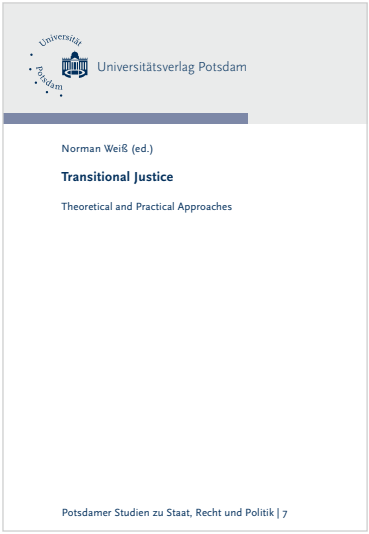

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Transitional Justice and Political Opportunism

Juan Francisco Vásquez Carruthers

Abstract This paper aims to contribute a different approach to transitional justice, one in which political decisions are rocketed to the forefront of the research. Theory asserts that, after a transition to democracy, it is the constituency who defines the direction a country will take. Therefore, pleasing them should be at the fore of the responses taken by those in power. However, reality distances itself from theory. History provides us with many examples of the contrary, which indicates that the politicization of transitional justice is an ever-present event. The first section will outline current definitions and obstacles faced by transitional justice, focusing on the implicit ties between them and the aforementioned politicization. An original categorization of Transitional Justice as a method of analysis will also be introduced, which I denominate Political Opportunism. The case of Argentina, a country that is usually described as a model to export but that after 35 years is still dealing with the consequences brought by the contradictions of using several methods of justice, will then be reinterpreted through this perspective. At the end of the paper, the inevitable question will be posed: can this new angle be exported and implemented in every transition?

1. Introduction

The field of Transitional Justice is commonly traced back to the end of World War II and the Nuremberg trials. In the late 1980s and the beginning of the 1990s, the third wave of democratization and modernization has renewed its understating generating a brand-new array of contemporary scholars and researchers, which in turn expanded and established new jurisprudence. While still developing, a sizable amount of literature can be found where its theorization is refined and broaden. All the way from definitions, aims, failures, and successes, to recipe-like models and good practices aimed at countries emerging from periods of instability can be found in books, journals, and scientific papers. The politicization

of Transitional Justice, an intrinsic characteristic of every process that directly affects its outcome, is, on the other hand, barely described and often ignored. Whether as a result of philanthropic definitions surrounding the redress of human rights abuses or by placing it at the same level as less critical factors, political opportunism becomes the puppeteer behind every process of transition and frequently goes unnoticed. An in-depth analysis of Transitional Justice mechanisms will undoubtedly hint to its causes, influences, and explanations, but in order to identify the behavior of these instruments and have leverage in their outcome, the focus has to be redirected from "what causes different types of Transitional Justice?" to "who in power benefits from them?". This change in focus, which, as developed throughout this paper, entails a change in definition, implies a reality hardly found in contemporary literature: Transitional Justice is a political tool and, as such, it will be used accordingly by those in charge to grip and increase their own power.

This concept can clearly be seen in the main international tribunals, often described as victor's justice, where the political agenda of the Western powers highly influenced (if not decided) the methods of justice chosen after the transition. Take Yugoslavia as an illustrative example. The line appears to blur in mixed models, such as Cambodia, where the force of national politics unwilling to prosecute former members of the Khmer Rouge caused the closure of several cases. In nationally led transitional processes, this argument falls completely into the background.

Classifying Transitional Justice as politically opportunistic does not mean that its usual aims will consequently change and that its relationship to human rights will be forgotten. I do not aim to depict Transitional Justice as an additional area in which human rights take a secondary role and where, by navigating the ocean of politics, the hope of success is lost. Should this be the case, history would prove me wrong before I could even begin. On the contrary, by switching the paradigm and seeing Transitional Justice through a politically opportunistic lens, I aim to provide a new path by which those directly affected by human rights abuses, civil societies, or anyone else who wishes to hold wrongdoers to account have new tools to achieve their aims in a more efficient way. Just like in conventional definitions of the topic, the underlying truth-seeking, accountability, and peace are still at the forefront of this new criteria.

2. Shifting the spotlight

2.1 Rethinking transitional justice

The United Nations defines Transitional Justice as "the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation"[1]. One if its guiding principles is to take into account the political context when designing and implementing Transitional Justice mechanisms. In a 2004 report addressed to the Security Council[2], the Secretary General recognizes the threat arising from States focusing more on the consolidation of power rather than the strengthening of the rule of law. He criticizes the international community for underestimating the extent of political will necessary to support the rule of law in post-conflict States, and remarks that justice and accountability must always be pursued.

In line with this definition, the International Centre for Transitional Justice (ICTJ), one of the leading non-profit organizations dedicated to pursuing accountability for mass atrocities and human rights abuses through Transitional Justice mechanisms, interprets it as a "set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses"[3]. In the aftermath of these transitions, political and legal institutions like parliament, the judiciary, the police and the prosecution service may be weak, unstable, politicized, and under-resourced. Hence, it characterizes Transitional Justice as "legitimate responses to massive violations under these real constraints". Throughout a more thorough description of the concept, the ICTJ recognizes the political implications involved in the process and how they affect its aim.

1 United Nations, 'United Nations Approach to Transitional Justice', United Nations 2010. [online] Available at: https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf.

2 United Nations Security Council, 'The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General', United Nations 2004. [online] Available at: https://www.un.org/ruleoflaw/blog/document/the-rule-of-law-and-transitional-justice-in-conflict-and-post-conflict-societies-report-of-the-secretary-general/.

3 International Center for Transitional Justice, 'What is Transitional Justice?', International Center for Transitional Justice 2018. [online] Available at: https://www.ictj.org/about/transitional-justice.

When examining the limitations of Transitional Justice, Charles Call[4] even considers its politicization as one of the main flaws, a fair price to pay in the name of advancing human rights. In the face of this defect, he argues, the only measure to overcome it is its vociferous denouncement. Other authors, on the other hand, dismiss putting the emphasis on this aspect of the topic. Jeremy Webber[5] considers Transitional Justice as a move from states of injustice to those of justice, from oppressive governments to those that respect the rule of law. He regards focusing solely on the trade-off of justice for political stability as a misconception of the issue. "[…] the problem of regarding law as morally superior to mere politics persists and is particularly acute in the world of transitional justice", says Duncan McCargo[6].

The point in question rising from these (and many other) definitions is the deliberate underlying aspects that are avoided. While it is theoretically coherent to discuss abstractly about these concepts, in reality, one needs to ask: What is justice? What is legitimate? Who decides what generates reconciliation, and when has it been achieved? Undoubtedly, answering these questions means stepping into the realm of the political. Contrary to these approaches, I argue that politicization is inherent in Transitional Justice, and rather than considering it a weakness, it needs to be accepted as a fundamental part of the process. This acknowledgment will eliminate the frustrations deriving from the gap between big-hearted expectations and reality that frequently occurs in post-transitional periods and, as mentioned, provide a new starting point for those seeking recognition and remedy. What is more, accepting this reality will enable them to address the issues by leveraging the right places.

2.2 Political opportunism

By proposing a genealogical analysis of Transitional Justice, Ruti Teitel demonstrated the close ties between the type of justice pursued and the surrounding political conditions. She defines transitional justice as "the

4 Call, 'Is Transitional Justice Really Just?', 11(1) The Brown Journal of World Affairs 2004, 101–113.

5 Webber, 'Forms of Transitional Justice', in Melissa S. Williams, Rosemary Nagy, and Jon Elster, Transitional Justice (2012), 98–128.

6 McCargo, 'Transitional Justice and Its Discontents'. 26(2) Journal of Democracy 2015, 5–20.

conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes"[7]. In her paper, she is able to demonstrate a trend toward an increased pragmatism in and politicization of the law, by breaking down the evolution of Transitional Justice into three stages and analyzing each of them separately. Phase I, post-World War II, aimed at accountability and turned to international criminal law applied to the individual. As Teitel determines, the Nuremberg trials were a justification and legitimization of the Allied intervention in the war. International justice was hence transformed and influenced by the international political context. The decline of the Soviet Union and the end of the Cold War characterize the beginning of Phase II, with transitions occurring in Eastern Europe, South America, and Central America. In this stage, it is crucial to recognize the political dynamics occurring at a national level in order to understand the outcome of this type of justice. The presence of national administered processes turned Transitional Justice into something "contextual, limited, and provisional"[8]. The traditional territory of ethics clashed with that of politics, and with political discourse finding its way into mainstream Transitional Justice ideas, the limits between one and the other were obscured. Universal rights, accountability and the rule of law became undermined by the politicization of new alternatives. Finally, the end of the 20th century, portrayed by violence and political instability, signals the beginning of Phase III. The unequivocal disregard for the rule of law was contrasted by the creation of the International Criminal Court, later accused of political bias and a tool of Western imperialism. Teitel concludes that the mere exportation of ideal rule of law models does not provide sufficient guidance as political and legal circumstances need to be taken into account.

Taking Teitel's analysis as a point of departure, I define transitional justice as:

> *A political tool used in periods of political change in order to confront and redress abuses from previous repressive regimes while consolidating the power of the new one.*

[7] Teitel, 'Transitional Justice Genealogy', 16(1) Harvard Human Rights Journal 2003, 69–94.

[8] Teitel (note 7), 78.

This definition implies that if the chosen mechanism does not achieve, as the main goal, the consolidation of power of the new government, it will be left aside or its importance will be reduced. Moreover, as with any other political tool, power relations play a significant role. In democracies, the constituency, civil societies, the military, and many other relevant stakeholders also hold a significant amount of power (though considerably less than those in the new government do). When their influence is momentous, the transitional justice mechanisms chosen will align with those of their preference. In other cases, many of the decisions taken by the new governments will contravene the will of the masses, as they are not a central actor in the power-holding business.

Following from this definition and with the aim of facilitating the introduction of this new approach to the contemporary analysis of transitions, I propose categorizing transitional justice decisions in two groups:

- Covert politically opportunistic: while not actively recognizing it, they are aimed directly at increasing the power of the new government, disregarding the moral significance and impact on the victims of the previous regime or society at large.
- Overt politically opportunistic: these decisions increase the legitimacy and power of the elected government while corresponding to the aspirations of the community and human right standards.

Setting out to investigate transitions and their latter methods of justice while bearing this perspective in mind will prevent a narrow and idealized definition of justice, enabling an accurate study of reality, a rigorous diagnosis, and the discovery of a new set of alternatives that will aid the human rights movement to positively impact the outcome of transitions.

3. The Argentine Dilemma[9]

> *"I asked myself this question: why does a society allow itself to forget or undervalue its achievements, harassed by the myth of a so-called perfection before which nothing is ever enough?"*
> *Pepe Esliaschev*[10]

The last military dictatorship in Argentina took place between 1976 and 1983, and it is remembered as one of the darkest times in its history. Before relinquishing the government, the Junta leaders enacted what was formally called "National Pacification Law" but informally known as "self-amnesty laws". Evidently, the military recognized that there was a possibility of being prosecuted after they called for elections. This is why this law declared extinguished all criminal actions of any nature that arose from crimes committed with the objective of preventing, averting or putting an end to terrorist or subversive activities. The war against subversion was going to be the main narrative chosen by the military[11].

Other than the distinct escape from future justice, the hypothesis behind this law was that in order to achieve the consolidation of peace and stability needed for a national reconciliation, the recrimination of suffering was not going to bring about a harmonious coexistence nor a national unity. Noteworthy is the fact that all of the parties who fought in the so-called war were covered by the benefits of this law, meaning that the left-wing guerrilla groups were also included. Many soldiers were unsatisfied with this amnesty law, as they were convinced that they had done nothing wrong in the first place. The media, the church and some of the main political parties proclaimed themselves in favor of this law, describing it as a natural step towards reconciliation.

[9] For an in-depth analysis of the events occurred during the government of the Junta, commonly known as "the Dirty War", refer to the selected bibliography.

[10] Eliaschev, *Los hombres del juicio (The men of the trial), Sudamericana, 2011.*

[11] 'Ley de Pacificación Nacional (National Pacification Law)', Información Legislativa y Documental 1983. [online] Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/70000-74999/73271/norma.htm, last accessed 07 November 2018.

3.1 Revisiting the past: Ricardo Alfonsín and the return to democracy

When analyzing the politicization of Transitional Justice in Argentina, the starting point needs to be temporally situated just before democracy was reinstated. To be more precise, a quick look at the political campaigns of the main presidential candidates undoubtedly shows their stand towards justice and truth. Elections were held in August 1983 and the two main candidates, Ricardo Alfonsín and Italo Lúder, had opposite views on how to deal with past abuses. Alfonsín was in favor of repealing the amnesty laws that the Junta had imposed on themselves and campaigned emphatically on that. On the other hand, Lúder declared that, while not in favor this law, repealing it would be legally non-viable. The election was, essentially, a choice between impunity and penalty. Had Lúder won, it is highly likely that Transitional Justice would not have developed in Argentina, at least as fast as it happened under Alfonsín. Though in favor of punishment, Alfonsín's plan was to attribute different levels of responsibility to the different ranks within the military, in order to avoid an endless amount of trials during the newly found democracy. What Alfonsín wanted was some sort of limited Transitional Justice that would not jeopardize the weak transition by producing a military backlash.

Alfonsín was officially sworn in as president of Argentina on December 10th 1983, bringing democracy back to the country after thirteen years of military power. The first law he approved was law number 23040[12], which derogated the self-amnesty law on the grounds of being unconstitutional and null. This was the first step on what would become Argentina's long road towards the path of justice and that would initiate what today is known as "justice cascade"[13].

[12] 'Ley nº 23.040', Información Legislativa y Documental 1983. [online] Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/25000-29999/28166/norma.htm, last accessed 07 November 2018.

[13] Sikkink, 'From Pariah State to Global Protagonist: Argentina and the Struggle for International Human Rights', 50(1) Latin American Politics and Society 2008, 1–29.

CONADEP and the Nunca Más

Five days after Alfonsín started his government, he mandated, by executive decree number 187/83, the establishment of what would generally be known as the first[14] truth commission in the world: The National Commission on the Disappearance of Persons (CONADEP). Led by renowned author Ernesto Sábato, the commission's mandate was to "clarify the facts related to the disappearance of persons that took place in the country"[15]. For this, they were endeavored to receive testimonies and proof related to the events that occurred, determine the fate or whereabouts of missing people, including children, and produce a report after six months of its creation. They were explicitly not allowed to issue any type of judgement on the facts they discovered, as that constituted the job of the judicial power. Hence, their sole duty was to find out the truth about what had happened during the years of military rule.

The commission collected 50,000 depositions and released its final report in September 1984 in the form of a summarized book called "Nunca Más[16]" (Never Again), a term that would later be adopted by human rights organizations and activists as a slogan to fight the impunity that was yet to come. The book became a best seller considerably fast, shedding light on the atrocities committed the previous years.

A list of 8961 disappeared people[17] (even though it suggested the number was much higher because families were reluctant to report disappearances due to the fear of reprisals) and 340 clandestine centers of detention, where people were illegally detained and tortured, was reported. It likewise managed to prove that what had happened was a systematic plan of kidnapping-disappearance-torture and not, as some claimed, sporadic excesses of certain individuals. A file was handed to president Alfonsín which included the names of 1351 repressors from different backgrounds, including members of religious groups. Coordination and collaboration

14 Previous to the CONADEP, there were also truth commissions in Uganda in 1974 and Bolivia in 1982, even though they did not release a final report or achieve the national and global scale that the CONADEP did.

15 'Decreto 187/83', Información Legislativa y Documental 1983. [online] Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/260000-264999/263505/norma.htm, last accessed 07 November 2018.

16 Comisión Nacional sobre la Desaparición de Personas, *Nunca más (Never Again), EUDEBA, 1984.*

17 Even though the CONADEP left the door open for the number of disappeared to be much higher, many human right scholars and human right organizations assure that the final number of missing people is 30,000.

with the military of Chile, Uruguay, Paraguay, Bolivia, Nicaragua, Brazil, Guatemala and the United States was also proven. Throughout the approximately five hundred pages of the book, they managed to confirm the methodology by which the military acted, including accounts of torture, property theft, sexual abuse, rape, the stealing of babies, and murder (both of Argentines and citizens of foreign countries).

The creation of CONADEP was Alfonsín's decision to live up to his commitment towards fighting impunity and Human rights abuses. As an overt politically opportunistic move, it generated an increase in trust and legitimacy towards his government. This is due to the fact that, symbolically, the temporal facet of CONADEP's report represented much more than what its 50,000 depositions pronounced. It was more than pure proof of what had happened. In the Argentine collective mind, never again would silence and darkness serve as a pretext for impunity, as they were now protected by a democratic state.

The 1985 trials

On December 13th 1983, in the midst of demonstrations against the military government, Alfonsín issued two presidential decrees[18] in which he ordered the prosecution of the heads of the first three military juntas and of the guerrilla leaders, fulfilling his presidential campaign's promise. The legal concept of "mediate author" was assigned to the military leaders, meaning that even though they have used a third person as an instrument to achieve their goal (in this case: execution), they still held final responsibility. In fact, the responsibility of the subalterns was reduced, as they were considered to be part of a framework of psychological actions which could have led them to "an error on the moral and legal significance of their actions"[19]. There were, then, three implicit levels of responsibility: the military leaders who were in charge of making decisions and hence mediate authors; the ones who exceeded the orders given by their superiors; and those who were just following orders under the aforementioned psychological framework. Out of these categories, only the first two were to be prosecuted. Therefore, Alfonsín was effectively exempting all of those who had physically executed the kidnappings, torture and/or murders. This detachment of responsibility did not include the cases of property

[18] Decree 158/83 and Decree 157/83.

[19] 'Decreto 158/83', Desaparecidos 1983. [online] Available at: http://www.desaparecidos.org/nuncamas/web/document/nacional/decr158.htm, last accessed 07 November 2018.

theft and kidnapping of children, as those were de facto considered to be excesses to the orders received.

Originally, the trial of the Juntas fell under the jurisdiction of the Supreme Council of the Armed Forces, as military members could only be indicted by a military court. In essence, the military Junta was going to be prosecuted by its own Council and, naturally, what came next was not unforeseen: the military judges were friendly and supportive towards the commanders. After the original period of six months which the Court was assigned, little advancements in the investigation of the crimes committed were achieved. In fact, according to Carlos Arslanian (who was later one of the judges in the Civilian Court that tried the juntas), "instead of investigating and collecting useful evidence to prove the killings and the atrocities, the military was drafting all the ideological backgrounds of the victims"[20]. These delays, lack of will, and clear attempts to politicize the trial, became catalysers in the search for alternative solutions. While the Military Council stalled, a bill was sent to Congress to reform the Military Code, stating, among other things, that the military tribunal would only be allowed to try military offenses and that these offenses could be appealed by the Civilian Court[21]. It is by this avenue that the trial of the Junta leaders ended up in the Civilian Court, something which had not been originally planned by Alfonsín.

The trial officially began on April 22nd 1985, and it was welcomed with skepticism and low hopes. Due to the large number of cases that were taken to Court (more than 10,000), the prosecutor decided to follow the example of the European Council of Human Rights and consider only paradigmatic cases. The number was then reduced to 709, of which 281 were taken into account. The investigation undertaken by the judges reached the conclusion that the Junta leaders gave an illegitimate order that consisted in: detaining any person considered suspicious of having been a part of subversive actions, interrogating them using any necessary method in order to obtain confessions as fast as possible, and choosing either legalization of the person through the Executive Power or murder and disappearance. During the trial, senior army commander Videla was the only one who explicitly opposed to recognising the jurisdiction of the Chamber and, hence, did not present any statements. Every single remark done by the defense insisted that what happened in Argentina had been a war and that, in an attempt to justify themselves, all acts committed by the

[20] Eliaschev (note 10), 54.
[21] The bill was passed as law nº 23049.

military should be considered acts of war. As pointed out by the judges, even if categorized as war, Argentina was a signatory of the Geneva Conventions, which meant that the rules of war had to be followed: torture, murder, and illegal detention were, indeed, not permitted.

The ruling was finally read on December 9th 1985. It stated that each of the armed forces (Navy, Army, and Air Force) had acted independently and, consequently, ruled different sentences to their respective leaders. Out of the nine Junta members on trial, two were given life imprisonment, four were acquitted, and the other three were given different prison times. The sentence was, as well, very critical of the guerrilla forces and condemned their use of violence. Of particular importance was item number 30 of the ruling, which indicated that superior officials and everyone else who held operational responsibility in the actions committed should also be probed for their crimes regardless of the orders received by their superiors. This opened a door for a huge number of low-ranking officials to be investigated and possibly indicted.

The trial and its sentence were far from a stable process. Though a majority of the society was in favor of this process of justice, many were still displeased with its outcome, accusing the judges of enacting impunity. What is more, most politicians did not attend the trials out of fear, as many of the people who opposed them in the first place still held a lot of power within the Argentine community. The extent of this pressure to democracy was such that the recordings of the trials had to be smuggled into Norway as it was feared that, if a new coup was to happen, they were going to be destroyed.

It is essential to mention at this point that, by 1985, the terms "Transitional Justice" and "truth commissions" were not as coined as they are today. President Alfonsín was certainly leading the way with these trials and this was, by far, not an easy task when taking into account that the neighboring countries were still under military dictatorship (Chilean dictator General Augusto Pinochet, for example, did not leave power until 1990).

Full Stop and Due Obedience Law

Fast forward to December 24th 1986, almost a year after the verdict, when the government of Alfonsín sanctioned law number 23492[22]. Known as the Full Stop Law, it mandated the extinction of the criminal actions committed by any person during the military dictatorship who was not summoned to give a statement before sixty days from the moment the law was enacted. This excluded crimes that involved the subtraction and concealment of minors, and identity forgery. To put it simply, any crime that was not under investigation in that sixty-day window would prescribe.

The law was not welcomed by the Argentine public, especially by human rights organizations, who called for protests that gathered between 50,000 and 60,000 people, according to some media outlets[23]. Why then was this law, a political blow to Alfonsín's legitimacy, enacted? As a consequence of item 30 of the sentence, many new investigations began taking place, something that created discomfort among the military. Jorge Torlasco, another one of the judges in the Junta trial, remembers when and under which circumstances the idea of this law came up. After the ruling, he and the other judges were invited to have dinner with president Alfonsín, who said: "Gentleman, I need to have a way to limit this, and that we do not continue for twenty years investigating, processing and putting lieutenants in prison […] I tell you with all sincerity, when I go to bed at night I do not know if the next day I will continue being president of Argentina"[24]. Military pressure was mounting and that called for a review in strategy. It is rather apparent why this law was enacted: out of fear of losing democracy. In a clear example of a covert politically opportunistic decision, Alfonsín had to switch his priority from pleasing his voters to pleasing the military.

However, contrary to its purpose of alleviating pressure on democratic legitimacy, the law had an opposite effect. Instead of giving up under this recent impunity measure, thousands of lawyers rushed to file as many cases as possible before the deadline, becoming a "championship to see

[22] 'Ley nº 23.492', Información Legislativa y Documental 1986. [online] Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/20000-24999/21864/norma.htm, last accessed 07 November 2018.

[23] Prieto, 'Más de 50,000 personas, contra la ley de 'punto final' en Argentina (More than 50,000 people against the "full stop" law in Argentina)', El País 1986. [online] Available at: https://elpais.com/diario/1986/12/21/internacional/535503616_850215.html, last accessed 07 November 2018.

[24] Eliaschev (note 10), 171.

who could prosecute the most people"[25]. It is estimated that around four hundred military personnel were charged during this period. Therefore, democracy would start to be threatened not only by the weak economy inherited from the dark years but also by military uprisings. A branch of the army known as the Carapintadas, in reference to the face paint they wore when appearing in public, exhibited discontent both towards its own military leadership and the civilian government. The pressure they imposed to have their demands met materialized in uprisings and coup attempts.

The first uprising happened in April 1987, a few months after the Full Stop Law was enacted. Many military officers who had been called upon to testify under chargers of torture refused to go and decided to riot, demanding a political solution to the trials without any judicial sentence. The uprisings were not welcomed by the civilian population. Spontaneous manifestations demanded the surrender of those rioting, which forced president Alfonsín to travel personally to negotiate with those participating.

A month and a half later, and only a few months after the Full Stop Law, on June 4th 1987, law number 23521[26] was enacted. Known as the Due Obedience Law, it established a presumption (without admitting proof of the contrary) that at the date when the crimes were committed, every personnel under the rank of colonel acted under due obedience (obeying orders from a direct superior) and hence were not punishable. It was considered that they had acted under a state of coercion and subordination to a superior authority without the possibility to resist or to oppose. Whether this was a reality, it did not matter, as the law clearly stated that it was the presumption that would be taken into account.

When this law was enacted, it seemed as if Alfonsín had yielded to the pressure of the uprising, as the law satisfied many of their demands and reduced the legitimacy of his democratically elected government. However, the division of responsibilities according to the military position was something that Alfonsín had already announced during his electoral campaign. The uprisings were a catalyst for another covert decision that was to come sooner or later. Alfonsín wanted the process to be over and that was the only political avenue left to pursue. The more time that went by, the more affected his credibility could become.

[25] Eliaschev (note 10), 278.

[26] 'Ley nº 23.521', Información Legislativa y Documental 1987. [online] Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/20000-24999/21746/norma.htm, last accessed 07 November 2018.

To add pressure to the mix, a second and third uprising took place in January and December 1988. With claims of saving the honor of the armed forces, their demands outlined amnesty for everyone involved in the previous uprisings and the extension of the Due Obedience law benefits to all of the already processed officers. These uprisings were swiftly contained.

Consolidating democracy

Lastly, though not falling exclusively under the category of Transitional Justice, it is worth mentioning some overt opportunistic decisions taken by the government of Alfonsín to redress the violations and injustices from one of the darkest periods in Argentina's modern history. Concerning international law, many international conventions[27] were ratified by the government, which meant that Argentina officially recognized the competence of their monitoring mechanisms. This added an additional layer to the policies of human rights protection that started after the fall of the Junta.

Nationally, a permanent Sub-secretariat of Human Rights was established as part of the Ministry of Interior, with the aim of continuing the tasks that were started by the CONADEP and working towards the development of human rights. In regard to the involvement of the military in the day to day running of the country, they were removed from their role in internal defense, laws were passed which increased the penalty for participation in military coups, and the budget allocated to them was reduced.

3.2 Forgive and forget: Carlos Menem and the national reconciliation plan

Due to hyperinflation, unemployment and general discontent, Alfonsín stepped down seven months before he was supposed to, which ended in Carlos Menem being sworn into presidency on July 8th 1989. The presidential elections that got Menem in power had one significant difference from the ones in 1983: fear was not a main determinant of the vote be-

[27] The American Convention on Human Rights in 1984, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Cultural and Social Rights in 1986, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1987.

cause democracy was already seen as a secure thing. Therefore, Transitional Justice was not the main focus of the political campaigns. On the contrary, the economy was. Unlike Alfonsín, Menem did not see the military as a pressing issue. He was more amiable to them and received a significant share of their votes. Regardless of this, reports of human rights abuses kept mounting and pressure from the military to be pardoned intensified.

Covert Solutions

Right from the start, Menem understood that the Supreme Court would represent an obstacle if his goals were to be achieved without judicial opposition. This is why in 1990 he decided to reshape its composition, firstly by pursuing the voluntary resignation of the judges, and, once that failed (as only one out of the five resigned), by enlarging the composition of the Court from five to nine members, arguing that they were falling behind in their work. Denying this, the four judges that were left expressed their concern at the loss of autonomy that this change would bring. In reality, appointing these new judges gave the president an automatic loyal majority that would back his impunity measures, something that, as we have seen, was achieved during his mandate.

Albeit lenient on the military, Menem still managed to keep them under control by cutting budgets and reducing its size while, at the same time, raising salaries and allowing them to return to their role in the internal security of the country. Under Menem, impunity measures were taken to a new level, beginning a process of what he called "pacification"[28]. First on October 7th 1989 (only three months after his election) and then on December 29th 1990, Menem granted presidential pardons to several military members, guerrilla leaders and civilians in a move to reconcile and pacify the country. In total, around 1200 people were pardoned, most of whom had been previously sentenced for crimes of murder, torture, and forced disappearance, among others. This included around 400 military members whose trials were still in process, 290 jailed people who were immediately released, and also the leaders of the Junta who had been previously sentenced in the 1985 Trials[29]. Despite national dis-

[28] Aznares, 'Menem justifica el indulto en 1990 a los condenados por la guerra sucia (Menem justifies the 1990 pardon to those condemned by the dirty war)', El País 1995. [online] Available at: https://elpais.com/diario/1995/05/05/internacional/799624808_850215.html, last accessed 07 November 2018.

[29] The presidential decree which pardoned the leaders of the Junta was number 2471/90. For a list of the other beneficiaries check: Decree 1002/89, Decree 1003/

content, Menem was convinced "millions (of people) will surely applaud this step"[30].

It is at this point that one certainly wonders what the reasoning behind a clear covert political opportunistic decision was. Some of the official arguments behind Menem's decision can be found by giving Decree 2741 a quick glance: "permanent reconciliation", "the only solution to heal wounds", and "mutual forgiveness", are some of the expressions found throughout the text[31]. Yet, remembering the time when the pardons were enacted, the trial's prosecutor Julio Strassera emphasized how untrue that statement was, mentioning that social demand for the pardons was absent, including from the armed forces themselves (with the exception of the Carapintadas, who were the minority). Indeed, he considered the pardons a mechanism to favor groups who supported the military and still held a great amount of power, such as the church[32].

Truth is that, as friendly as their relationship could have been, there was still military unrest under Menem's government. On December 3rd 1990, a new uprising threatened peace in the country. This time around, the rebellion had all the indications of a coup attempt. Menem's government was accused of interfering in the military and of being a puppet of the United States' administration. The rebellion was quelled in less than 24 hours but was, by far, the bloodiest one. Less than a month later, the second round of pardons was enacted. Adding these pardons to the list of amnesty laws sanctioned under Alfonsín (Full Stop and Due Obedience), the efforts to prosecute those responsible for what had happened in Argentina seemed to have hit a dead end. From this perspective, Menem's Argentina was choosing to forget and move forward, rather than to remember and convict.

89, Decree 1004/89, Decree 1005/89, Decree 2472/90, Decree 2473/90, Decree 2474/90, Decree 2475/90 and Decree 2476/90, last accessed 07 November 2018.

30 The New York Times, 'Pardon of Argentine Officers Angers Critics of the Military', The New York Times. 1989. [online] Available at: https://www.nytimes.com/1989/10/09/world/pardon-of-argentine-officers-angers-critics-of-the-military.html, last accessed 07 November 2018.

31 'Decreto 2741/90', Educar 1990. [online] Available at: https://www.educ.ar/recursos/129103/decreto-274190-carlos-saul-menem-indulta-a-comandantes-juntas-militares, last accessed 07 November 2018.

32 Eliaschev (note 10), 355.

On resistance

What needs to be understood about covert politically opportunistic decisions is that the "society at large" that is being disregarded will, in most cases, fight back. Argentina is no exception to this rule, though its resistance came from surprisingly different fronts.

In April 1995, only a few months before his re-election for a second term, an unprecedented event happened. General Martin Balza, by then head of the Argentine Army, apologized publicly for the crimes committed by his institution between the period of 1976 and 1983. During prime time, he appeared in a TV show and broke the silence kept by the Army for almost twenty years:

> *"[…] I take on our share of responsibility for the mistakes in this fight between Argentines. […] despite the efforts made by the different Argentine policies, we believe that the desired moment of reconciliation has not yet arrived"*[33]

Balza's words and timing were seen by some as a way to delegitimize Menem before his campaign. Others felt his apologies were genuine. Menem, worried about the spillover effect towards his election campaign, opposed "rubbing salt into old wounds"[34] and, in a defiant tone, challenged people to "march as much as they wanted"[35], a precise illustration of his disregard towards their opinion and lack of influence.

In an era of impunity and with seemingly no alternatives, the Argentine community creatively decided to take matters into their own hands and search for loopholes which would allow at least a glimpse of justice to be done. By reinterpreting the American Convention of Human Rights, to which Argentina was a party[36], lawyers argued that victims had a right

[33] Balza, 'Declaración del General Martín Balza (General Martín Balza's declaration)', Desaparecidos 1995. [online] Available at: http://www.desaparecidos.org/nuncamas/web/document/militar/balza95.htm, last accessed 07 November 2018.

[34] Huser, *Argentine Civil-Military Relations, Center for Hemispheric Defense Studies, 2002.*

[35] Ares, 'Menem descalifica la indignación popular en Argentina por los indultos (Menem disregards popular indignation about the pardons)', El País 1991. [online] Available at: https://elpais.com/diario/1991/01/02/internacional/662770808_850215.html, last accessed 07 November 2018.

[36] The constitutional reform of 1994 modified the hierarchy of norms in Argentina. Article 75 section 22 allocated international treaties a superior hierarchy than national laws. Until then, they were deemed to hold an equal status, with national laws prevailing in case of conflict between the two.

to truth. To put it differently, even though criminal justice could not be accomplished, the truth about the fate of the disappeared was something that the families of the victims could still aim to achieve. The right to truth was then guaranteed by the State via judicial proceedings by Resolution 18/98[37].

The practice of "truth trials" was a legal innovation that came about as a strategy to surpass the limitations established by the impunity laws. Once again, Argentina was leading the way in the Transitional Justice field, only this time it had been the public and civil societies who had conceived an entirely new form of lawfulness, based both on national and international legislation. The process opened new prospects for a past that was on the way to being forgotten.

The first trials took place in 1998 and they were a real innovation: it adopted elements from criminal justice tailored specifically for these proceedings. While the process was very similar to that of a criminal trial, the main distinction was that there were no defendants. By 2014, the bodies of 55 disappeared people had been recognized, of which 44 were returned to their families. Furthermore, an extra 112 were able to be identified by the Chamber[38]. This new Transitional Justice method, which began at the end of Menem's government and lasted many years beyond his rule, represented, for many, a step towards strengthening democratic power. By definition, there were neither sanctions nor arrest warrants after the trials. Forgiveness and reconciliation were not achieved. The truth trials were only a means towards a future goal of accountability.

Other relevant actions

By 1998, with his presidency coming to an end, two moves shook the human rights movement and brought the topic back to the collective mind. Firstly, in March, the Full Stop and Due Obedience laws were repealed. Though Menem originally said that he would veto the process[39], he later

37 'Resolución n° 18/98', Desaparecidos 1998. [online] Available at: http://www.desaparecidos.org/nuncamas/web/juicios/laplata/laplat03.htm, last accessed 07 November 2018.

38 Centro de Información Judicial, 'Cámara Federal de La Plata, Juicio por la Verdad (La Plata federal chamber, Truth trial)', Centro de Información Judicial 2014. [online]. Available at: http://www.cij.gov.ar/nota-14492-CAMARA-FEDERAL-DE-LA-PLATA---JUICIO-POR-LA-VERDAD.html, last accessed 07 November 2018.

39 La Nación, 'Promulgaron la derogación de la ley de obediencia debida (The repeal of the due obedience law has been promulgated)', La Nación 1998. [online] Avail-

changed his position and allowed what would become law 24952[40] to be sanctioned. It did not do much to reduce impunity, as repealing laws has no retroactive effect, but was nevertheless a step celebrated by the human rights movement.

The second act had its roots a year earlier when, in 1997, Spanish judge Baltasar Garzón released an international arrest warrant against the former president and Junta leader Galtieri, based on his involvement in the disappearance of 300 Spaniards[41]. Essentially, after the pardons and with the prosecution halted, many Argentines started seeking justice abroad, and therefore, foreign extradition orders began to appear. Again, a presidential decree was enacted by Menem in order to automatically deny any extradition request[42], arguing that, to begin with, those crimes had already been investigated and those responsible had been convicted, and that giving away jurisdiction would undermine the sovereignty of the country. Capitalizing from historical grievances, Menem added that "we are not going to let them colonialize us judicially."[43]

Lastly, there was an exception to the decade where policies of oblivion emanated directly from the government, and it should be mentioned. In an affable attempt to satisfy the victims of repression and gain their support, Menem's government implemented a policy of monetary reparations soon after he was elected, which included civilians who had been detained by military courts and family members of the disappeared people[44].

able at: https://www.lanacion.com.ar/93948-promulgaron-la-derogacion-de-la-ley-de-obediencia-debida, last accessed 07 November 2018.

40 'Ley nº 24.952', Información Legislativa y Documental 1998. [online] Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/50000-54999/50364/norma.htm, last accessed 07 November 2018.

41 La Nación, 'El juez Garzón libraría una orden de captura sobre Galtieri (Judge Garzón would issue an arrest warrant for Galtieri)', La Nación 1997. [online] Available at: https://www.lanacion.com.ar/64577-el-juez-garzon-libraria-una-orden-de-captura-sobre-galtieri, last accessed 07 November 2018.

42 'Decreto 111/98', Información Legislativa y Documental 1998. [online] Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/45000-49999/49092/norma.htm, last accessed 07 November 2018.

43 La Nación, 'Menem no extraditará a 98 represores (Menem will not extradite 98 repressors)', La Nación 1999. [online] Available at: https://www.lanacion.com.ar/159887-menem-no-extraditara-a-98-represores, last accessed 07 November 2018.

44 A complete description of the reparations systems can be found by reviewing Decree 70/91, Law 24043 and Law 24441.

3.3 Revoking justice: the Kirchner era

From 1999, when Menem was replaced by Fernando de la Rúa, to 2003, when elections were called, Transitional Justice's role operated behind the scenes. While still some truth trials unfolded, the economy still was the main element of conversation. The circumstances that brought Nestor Kirchner to power were far from conventional. Menem decided to run again and, despite the fact that he ended up in first place, he did not get enough votes to automatically succeed. A runoff between him and the runner-up candidate, Nestor Kirchner, was therefore announced. However, after the experience of being head of state for ten consecutive years, Menem's popularity levels were very low. In times when power is decided by the communities' vote, having ruled via covert decisions did not play in his favor. Polls predicted that in a second round, Kirchner would win by a landslide[45]. In a move to avoid embarrassment, Menem decided to pull out of the presidential race, something he was highly criticized for. When the Congress refused to call for new elections, Kirchner automatically became president of Argentina, turning him into the first Argentine president who made it into office with only 22.2% of the votes.

Kirchner took office as president on May 25th 2003. Right from the start, the new government made it clear that it would hold the military responsible for their crimes. To do so, there were several hindrances that had to be dealt with, both legal and political. Only five days after he was sworn, he warned the military to refrain from having a say in his political decisions[46], while also removed many high-ranking officers from their positions[47]. As part of his strategy to remove impunity barriers, his first step was getting rid of influential actors within the military that would oppose his future actions.

45 Goni, 'Menem bows out of race for top job', The Guardian 2003. [online] Available at: https://www.theguardian.com/world/2003/may/15/argentina.ukigoni, last accessed 07 November 2018.

46 Gallo, 'Dura réplica de Kirchner a Brinzoni (Hard response from Kirchner to Brinzoni)', La Nación 2003. [online] Available at: https://www.lanacion.com.ar/499877-dura-replica-de-kirchner-a-brinzoni, last accessed 07 November 2018.

47 Relea, 'El jefe del Ejército argentino asume su cese como el regreso de la intriga a los cuarteles (The head of the Argentine Army assumes his resignation as intrigue returns to the barracks)', El País 2003. [online] Available at: https://elpais.com/diario/2003/05/29/internacional/1054159204_850215.html, last accessed 07 November 2018.

Abolishing legal barriers

The main obstacles to Kirchner's pursuit of justice were, predominantly, of a legal nature. To put it simply: the Full Stop and Due Obedience law, and Menem's presidential pardons. Taking a political route, he decided first to reform the Supreme Court, which still depicted Menem's interests. Unlike Menem, Kirchner was looking to impose a new transparent judge selection method that would limit the President's arbitrariness, creating in that way a trustworthy and truly independent Court. "It is verifiable that at any point in our history the Court has served as an element of political support for the sitting president", said Kircher in June 2003[48]. His ideas resulted in a new process where a prospective judge's commitment to the defense of human rights, democratic values, and moral aptitudes, were a sine qua non condition for its election. Citizens, non-governmental organizations, professional associations, academics, and human rights entities were invited to provide feedback, questions, and recommendations during the selection process[49]. This system led not only to the possibility of having a Court constituted by more suitable judges, but also to an overall increase in its legitimacy. By 2005, the goal of the new government had been achieved: the Court was comprised of pro-Transitional Justice judges.

At the same time, Nestor Kirchner was also paving the way for the annulment of the Full Stop and Due Obedience laws, so that the trials against the military could be reopened. He expressed his views against those laws, calling them "unconstitutional" and "obtained under the extortion of a Coup d'état"[50]. He then declared his support for having Congress annul them. It was in August 2003 that the Argentine Congress declared those laws null and void[51]. Consequently, in September, two cases involving 700 military members were resumed. These measures brought

[48] Kirchner, 'Discurso de Néstor Kirchner para el cambio de la forma de designar jueces (Néstor Kirchner's speech to change the way judges are appointed)', Cristina Fernández de Kirchner 2003. [online] Available at: http://www.cfkargentina.com/discurso-de-nestor-kirchner-para-el-cambio-de-la-forma-de-designar-jueces/, last accessed 07 November 2018.

[49] 'Decreto 222/2003', Información Legislativa y Documental 2003. [online] Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/85000-89999/86247/norma.htm, last accessed 07 November 2018.

[50] Morosi, 'Kirchner, contra las leyes exculpatorias (Kirchner, against the exculpatory laws)', La Nación 2003. [online] Available at: https://www.lanacion.com.ar/515382-kirchner-contra-las-leyes-exculpatorias, last accessed 07 November 2018.

[51] 'Ley nº 25779', Información Legislativa y Documental 2003. [online] Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/85000-89999/88140/norma.htm, last accessed 07 November 2018.

the impunity debate back to the front page, and in June 14th 2005, the Supreme Court, in a landmark ruling (7–1 vote), declared the amnesty laws unconstitutional, an act celebrated by Kirchner right after it happened[52]. The door was once again open for thousands of victims to seek criminal justice.

However, many military members were still protected by Menem's presidential pardons. It was only in 2006 when the courts started reversing these pardons, by reasoning that they contradicted international treaties which Argentina was a party to[53]. Finally, in July 2007, the Supreme Court declared Menem's presidential pardons unconstitutional, citing, in particular, the non-applicability of statutory limitations to crimes against humanity. This removed the last legal impediment in order to prosecute those involved in the crimes committed during the dictatorship.

Apologies

Kirchner's era is filled with cases of overt decisions, and it is not difficult to understand why: as a president-elect with only 22.2% of approval, he was in desperate need of increasing his popular support. In a symbolic move, in 2004 Kirchner turned the Higher School of Mechanics of the Navy (ESMA) into a museum for the disappeared victims. It was rebranded as a space for memory, promotion, and defense of human rights. The ESMA, originally built as an education facility for the navy, was the biggest and most famous clandestine center of detention during the dictatorship. It is estimated that around 5000 people were detained and tortured there, before being sedated and thrown alive into the ocean. Only 150[54] people are known to have survived imprisonment in the ESMA. The symbolism of this move arose not only from the fight against impunity, but also from the fact that in 1998 Menem had tried to demolish the place and replace it with a space where international heads of States would be welcomed to the country. In the end, his plan fell through, as it was highly rejected and

52 Andrada, 'Nos devuelve la fe en la Justicia, dijo Kirchner ("It returns our faith in Justice", said Kirchner)', La Nación 2005. [online] Available at: https://www.lanacion.com.ar/713046-nos-devuelve-la-fe-en-la-justicia-dijo-kirchner, last accessed 07 November 2018.

53 For example, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, which, in a defiant move, had been ratified by Kirchner in 2003. This happened at the same time that the annulment of the Punto Final and Due Obedience laws was being debated.

54 Daniels, 'Argentina's dirty war: the museum of horrors', The Telegraph 2008. [online] Available at: https://www.telegraph.co.uk/culture/3673470/Argentinas-dirty-war-the-museum-of-horrors.html, last accessed 07 November 2018.

criticised by human rights groups. It was during a speech at the museum's inauguration that Kircher apologized to all citizens in the name of the state for having been "shamefully silent for the past twenty years" and ended up affirming: "we want justice"[55].

In conjunction with the inauguration of the museum, Kirchner ordered the removal of the pictures of two of the biggest military repressors, who occupied the presidency of Argentina during the dictatorship, from the precinct where they were being honored. "(…)It is the Argentine people, via the vote and the decision this represents, who decide the destiny of Argentina", Kirchner said during the event[56].

Additional symbolic moves

Right from the start, Kirchner proclaimed himself in favor of finding a mechanism that would allow the extraditions of the military involved in crimes of foreign citizens. In July 2003, he repealed the presidential decrees which forbade them, empowering the judiciary to determine those requests on a case by case basis. What is more, Kirchner's pro-Transitional Justice approach resulted both in additional support for human rights organizations which worked specifically in the fight against impunity, such as Mothers and Grandmothers of Plaza de Mayo, and in new reparations, this time for the children of those disappeared[57].

Lastly, of particular symbolic importance and predominantly ignored in the literature reviewing Argentina's transitional history, is the controversy that surrounded the prologue of the Nunca Más' report. The original prologue, written by Sábato, was frequently accused of alluding to the "theory of the two demons". This rhetorical device, used in political

[55] Kirchner, 'Creación del Museo de la Memoria, Néstor Kirchner en la ESMA en 2004 (Creation of the Museum of Memory, Néstor Kirchner at the ESMA in 2004)', Cristina Fernández de Kirchner 2004. [online] Available at: http://www.cfkargentina.com/museo-de-la-memoria-nestor-kirchner-en-la-esma/, last accessed 07 November 2018.

[56] Kirchner, 'Nestor Kirchner ordena bajar el cuadro del dictador Videla del Colegio Militar de la Nacion (Nestor Kirchner orders to lower the picture of the dictator Videla from the Military College of the Nation)', Cristina Fernández de Kirchner 2004. [online] Available at: http://www.cfkargentina.com/nestor-kirchner-ordena-bajar-el-cuadro-del-dictador-videla-del-colegio-militar-de-la-nacion/, last accessed 07 November 2018.

[57] Kirchner, 'Proyecto de Ley de indemnización y reparación a los hijos de desaparecidos (Draft Law of compensation and reparation to the children of disappeared persons)', Cristina Fernández de Kirchner 2004. [online] Available at: http://www.cfkargentina.com/proyecto-de-ley-de-indemnizacion-y-reparacion-a-los-hijos-de-desaparecidos/, last accessed 07 November 2018.

discourses, describes the Argentine case as one which consisted of two warring factions (the subversives and the military) with equal force. The opening line of Sábato's prologue is mainly quoted as justification for this accusation:

> *"During the 1970s, Argentina was torn by terror from both the extreme right and the far left"*[58]

This prologue was something that human rights organizations were not satisfied with, as it was seen to somehow justify the horrors committed by the military. The controversy arose in 2016, when Kirchner's administration decided to rewrite the prologue. His position can be distinctly seen in the book's new opening page:

> *"[…] it is unacceptable to attempt to justify State terrorism as a sort of game of counteracting violence, as if it were possible to look for a justifying symmetry…"*[59]

Former president Alfonsín lamented the dangerous tendency that Kirchner's government had towards rewriting history and denied that Nunca Más' original report referred to the theory of the two demons.

3.4 The great incognito: Mauricio Macri

The fact that the current[60] government of Mauricio Macri, who took office in December 2015, is still struggling with reconciliation after thirty years of the return to democracy, exhibits how politicized the whole process has been. Right from the start, Macri has had a friendly approach towards the military, something not welcomed by human rights organizations. Stemming from his leniency, he increased their power while giving many jailed repressors the benefit of house arrest. It all culminated in a widespread discontent when, on May 3rd 2017 the Supreme Court applied the bene-

58 Comisión Nacional sobre la Desaparición de Personas (note 16), 7.

59 Clarín, 'Editan el "Nunca más" sin los agregados del kirchnerismo: hay polémica (The "Never Again" is edited without the additions of Kirchner: there is controversy)', Clarín 2016. [online] Available at: https://www.clarin.com/cultura/editan-agregados-kirchnerismo-polemica_0_EJRDRYRN-.html, last accessed 07 November 2018.

60 Macri office's term finished on December 9th 2019.

fits of Law 24390 to the case of Luis Muña, an ex-repressor, effectively reducing the number of years in his sentence.

Law 24390[61], commonly known as 2x1 law, was originally enacted to reduce the population in prisons, which were composed mainly of people in pretrial detention without a final conviction. The law stated that preventive prison could not exceed two years and that any excess time spent on detention after that was to be computed twice and reduced from the final sentence. Though the law was derogated in 2001, the reasoning behind the Supreme Court's decision was the so-called principle of the most benign law, which states that "if the law in force at the time of committing the offense was different from the one that exists when pronouncing the ruling, the most benign one will always be applied"[62]. This case was worrisome for many, as it could become a precedent to all of the other military cases who had already been convicted or whose trials were still in process.

While the first reaction from Macri's party members revolved around respecting the independence of the Court, the boundless rejection from the Argentine public made many of them distance themselves from its decision. Macri's initial silence only helped to increase the belief of his support towards impunity. In an overt move to decrease the negative impact on his government, a new law (27362) was quickly approved which specified that the benefit of the 2x1 law did not apply to crimes against humanity, something that Macri celebrated because "he had always been against any tool that favoured impunity"[63].

61 'Ley nº 24390', Información Legislativa y Documental 1994. [online] Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/776/norma.htm, last accessed 07 November 2018.

62 BBC Mundo, 'Qué es el 2×1, el polémico fallo de la Corte Suprema que favorece a exrepresores y que pone de acuerdo a gobierno y oposición en Argentina (What is the 2×1, the controversial ruling of the Supreme Court that favours former repressors and that makes the government and opposition in Argentina agree)', BBC 2017. [online] Available at: http://www.bbc.com/mundo/noticias-america-latina-39876510, last accessed 07 November 2018.

63 Todo Noticias, 'Macri, 2x1: criticó el fallo de la Corte, pero más al kirchnerismo (Macri, 2×1: he criticized the ruling of the Court, but the Kirchnerismo more so)', Todo Noticias 2017. [online] Available at: https://tn.com.ar/politica/en-mendoza-macri-da-una-conferencia-de-prensa-antes-de-que-el-senado-voltee-el-2x1-represores_791980, last accessed 07 November 2018.

4. Final Thoughts

The centralization of the political aspect within Transitional Justice leads to the conclusion that there are not "good or bad" methods to judge the past. Every decision is the direct result of a power play between actors pursuing their own benefits. At this point, it is relevant to mention that a limited understanding of this approach can impact negatively on those seeking justice, as they are usually at the bottom of the power pyramid. They should not be discouraged. As a matter of fact, I argue the contrary. When working together, civil societies, human rights activists, victims, families, and the community at large can turn the odds to their favour. Democracy can be successfully cemented in a fragmented society as long as the right interests are taken into account. When they are not, the struggle will continue many years after the transition, as the Argentine case demonstrates.

Finally, the suitability of this theory to other situations of transition needs to be addressed. As mentioned at the beginning of this paper, I consider politicization as present in every occasion, whether nationally, internationally, or mixed. Though it should be the focus of other research papers to do an in-depth analysis of other events, a few examples can be briefly acknowledged. Take Uruguay, for instance, a country that spent twelve years under a civil-military dictatorship and chose amnesty and impunity as a solution to achieve reconciliation and settle democracy. However, starting from the mid-1990s and due to the pressure of civil societies accompanied by public support, impunity began to be challenged, which ended up in reparations policies and the derogation of the amnesty laws.

Shifting the attention to Cambodia, the trials prosecuting the crimes of the Khmer Rouge have been defined as a "shocking failure"[64] due to their politicized aspect. When the trials were set up, a compromise between the government of Cambodia and the United Nations resulted in a combined court, composed by both international and local judges. Right from the beginning, government interference was denounced as an obstruction to progress. By 2017, and after more than ten years of work, the trial had only delivered three convictions[65]. This should not be surprising given that

[64] Campbell, 'Cambodia's Khmer Rouge Trials Are a Shocking Failure', Time 2014. [online] Available at: http://time.com/6997/cambodias-khmer-rouge-trials-are-a-shocking-failure/, last accessed 07 November 2018.

[65] Mydans, '11 Years, $300 Million and 3 Convictions. Was the Khmer Rouge Tribunal Worth It?', The New York Times 2017. [online] Available at: https://www.nytimes.com/2017/04/10/world/asia/cambodia-khmer-rouge-united-nations-tribunal.html, last accessed 07 November 2018.

Cambodia's prime minister, arguably the most powerful political figure in the country, is former Khmer Rouge commander Hun Sen. In a meeting at Amnesty International in which the author participated, Dame Silvia Cartwright, former governor-general of New Zealand and one of the international judges who took part in The Extraordinary Chambers in the Courts of Cambodia, illustrated how, among other things, political pressure on national judges hindered the achievement of the trial's goals.

The degree to which the relationship between justice and the political can be easily perceived will vary. In some cases, the link will be explicit. Most of the times, however, it takes in-depth analysis and critical thinking to be able to identify and disclose its influences and effects. Either way, it is imperative that every transitional justice exploration is able to bring this relationship to the fore of the discussion, understating its role as a decision-making puppeteer. Any omission will undoubtedly lead to a limited understanding of reality, which will, in turn, hinder the fundamental goal of transitional justice: reconciliation.

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