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**HOW STATES RESPOND TO THE HUMAN RIGHTS VIOLATIONS OF A PAST
DICTATORSHIP:
THE CASES OF ARGENTINA AND CHILE**

An Honors Thesis
Presented to
The Faculty of the Human Rights Studies Program
Trinity College

In Partial Fulfillment
of the Requirements for the Degree of
Bachelor of Arts

by
Michaela S. Drucker

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INTRODUCTION

“The respect for human rights is nowadays not so much a matter of having international standards, but rather questions of compliance with those standards.”

(Michelle Bachelet, Former President of Chile)

The Southern Cone—Argentina, Brazil, Chile, Paraguay and Uruguay—endured some of the most devastating dictatorships in world history. Thirty-thousand men, women, and children disappeared during the Argentine dictatorship while the Chilean population faced 17 years under Augusto Pinochet’s commanding military rule. While 30 years have passed since the end of these long-lasting dictatorships, the effects linger in the lives of the victims, their family members, and the societies as a whole.

Extensive and gruesome human rights violations occurred throughout the institutionalized state violence during these dictatorships. Some examples include the illegal kidnapping and detention of individuals, physical torture, sexual abuse, psychological manipulation, disappearances, and executions. The abuse continues to the present day as countless individuals live with the perpetual mental anguish of unanswered questions regarding the whereabouts of loved ones and, in the case of Argentina, the lost children of those captured.

When the dictatorships ended in Argentina and Chile, in 1982 and 1990 respectively, the first civilian governments faced many challenges of confronting these abuses. As will be highlighted throughout this paper, the governments had drastically different approaches to this task as a result of varying circumstances, history, societal responses, and international pressures. Using Argentina and Chile as case studies, this essay will articulate such differences, propose and analyze certain hypotheses that might explain the distinctions, and provide a comprehensive

answer to the question: Why do civilian governments of newly democratic countries respond differently to the human rights violations that occurred during their dictatorships?

Newly democratic countries respond to the human rights violations that occurred during its past dictatorship according to a variety of factors, specifically the severity of violence during the dictatorial period, the type of transition to democracy, the legal status post-dictatorship, the power of the executive, international pressure, and the justice policies elsewhere. Therefore, this paper ultimately argues that countries vary in their responses as a result of differences in any one of these variables. This thesis also acknowledges that other factors not evaluated may also impact the responses of governments.

LITERATURE REVIEW

Scholars have debated similar questions regarding how countries transition from periods of authoritarianism to democracy, specifically after dictatorships; the type of democracy that emerges; the potential paths to justice after human rights violations during these periods; and the influence of the international community in searching for justice. One must first understand the previous literature and findings of scholars in order to analyze specific cases.

Type of Transitions

One important factor in this field of study regards the type of transition to democracy. Guillermo O'Donnell divided the possibilities in two: with a pact, also called a consensus, or without a pact referred to as by force or collapse.¹ A transition by consensus implies one where the ruling armed forces negotiate their terms for their exit from power with the civil society and

¹ Daniel Mazzei, "Reflexiones sobre la transición democrática argentina," *PolHis* 4, no. 7 (2011): 11.

political parties that will soon retake the government. Therefore, by contrast, the armed forces do not have this ability in a transition by collapse.

Many scholars have expanded on this duality, discussing the implications of this division and what might influence which path a departing dictatorship takes. Daniel Mazzei and Carlos Santiago Nino emphasize the etiology, or “the types of factors that ignite the transition process,” as important to distinguishing the modality or which transition occurs. The etiology of a transition may be endogenous or exogenous depending on the factors—internal or external—that triggered the democratization.² Mazzei states, “A transition by collapse is produced... after an external military defeat or after a profound internal crisis of the authoritarian regime,” signifying mainly exogenous factors.³ Scholars have discovered that transitions via consensus result in “a continuity of the structures, elites, and political practices of the authoritarian regimes” who can then help rebuild the new democracy and “direct the pace of transition and preserve the prerogatives they have obtained” whereas transitions by collapse result in a defeated armed forces with little to no power who must work within the newly created system.⁴

Regarding a transition by consensus, Michael Albertus and Victor Menaldo discuss the benefits of creating a constitution to negotiate the authoritarian regime’s terms of removal. As mentioned above, scholars argue that a consensus transition results in minimal prosecutions because of the continued existence of the authoritarian elites in institutions. These authors further articulate this argument regarding the decreased likelihood of punishment of dictators when the

² Carlos Santiago Nino, *Radical Evil on Trial* (New Haven: Yale University Press, 1996): 107.

³ Daniel Mazzei, 11.

⁴ Daniel Mazzei, 11; David Pion-Berlin and Craig Arceneaux, “Tipping the Civil-Military Balance: Institutions and Human Rights Policy in Democratic Argentina and Chile,” *Comparative Political Studies* 31, no. 5 (October 1, 1998): 636, <https://doi.org/10.1177/0010414098031005004>; Carlos H Acuña and Catalina Smulovitz, “Adjusting the Armed Forces to Democracy: Successes, Failures, and Ambiguities in the Southern Cone,” in *Constructing Democracy: Human Rights, Citizenship, and Society in Latin America*, ed. Elizabeth Jelin and Eric Hershberg (Boulder, Colorado: Westview Press, 1996), 33.

new government inherits constitutions from the prior regime: “once a constitution is promulgated, the commitment to former elites’ interests can be ensured through several channels: over-representing holdover elites in political institutions, inducing political gridlock, imposing military veto power over policy, and enshrining elite dominance over local politics.”⁵ This effectively prevents the former dictatorial elites from prosecution and enshrines their power in the new democracy, making any meaningful change to the system more difficult.

Additionally, the role of the military in the new democracy greatly depends on the etiology and modality of the transition. Carlos Acuña and Catalina Smulovitz address the direct effect of the relative success of the military regime during the dictatorship and its role after: “the process of political struggle that took place before, during, and after the dictatorship determined the way in which the Armed Forces were eventually integrated into the democratic system.”⁶ Furthermore, Charles Call discovers a deeper connection between the mode of transition and the internal security reforms that result. Armed forces have many incentives to remain in power such as to block prosecutions of its members, avoid loss of access to bribes and illicit incomes, and to defend itself from perceived internal threats, however; their ability to do so depends on whether or not the country experienced a “war transition”—a “democratic transitions where the armed forces are strategically defeated by an enemy army or forced to negotiate an end to war.”⁷ Call argues for the weakening of the military as a necessary condition to introduce the broadest reforms to security, which most frequently occur after a war transition.⁸ This argument enforces

⁵ Michael Albertus and Victor Menaldo, “Dealing with Dictators: Negotiated Democratization and the Fate of Outgoing Autocrats,” *International Studies Quarterly* 58, no. 3 (September 2014): 551, 552, <https://doi.org/10.1111/isqu.12128>.

⁶ Carlos H Acuña and Catalina Smulovitz, 1996, 33.

⁷ Charles Call, “War Transitions and the New Civilian Security in Latin America,” *Comparative Politics* 35 (November 1, 2002): 1, <https://doi.org/10.2307/4146925>.

⁸ Charles Call, 1, 21.

the transition literature as it emphasizes the complicated and negative effect of a persistent military presence after the dictatorship ends without transition by collapse.

Further, David Pion-Berlin and Craig Arceneaux articulate another way to analyze the effects of the different modes of transition. They believe a complete understanding of the transitions and the governments' responses cannot exist without analyzing the institutional arrangements that remain. The relative concentration of decision-making authority combined with the relative autonomy of decision-makers from opposition pressure will determine the success of the justice programs. The higher the concentration of decision-making authority—"the number of actors/units involved in formulating and implementing policy"—the more a single-actor can impose his or her preferences, specifically regarding transitional justice policies, and the less likely a manipulative opportunity arises for the military to counteract such efforts, meaning the decision-maker can avert the negative effects of decentralized power.⁹ Decision-making autonomy refers to "an institution's capacity to act independently by insulating itself from unwanted, external pressures," specifically from the armed forces.¹⁰ An institution with autonomy can more easily protect itself from military opponents. Figure 1 demonstrates the matrix through which Pion-Berlin and Arceneaux analyze the relative authority and autonomy to determine the success of policies and effectiveness of military intervention.

⁹ David Pion-Berlin and Craig Arceneaux, 640.

¹⁰ David Pion-Berlin and Craig Arceneaux, 640.

		<u>Concentration of Authority</u>	
		High	Low
<u>Decision-Making Autonomy</u>	High	A. High Success	B. Moderate Success
	Low	C. Moderate Success	D. No Success

Figure 1: Policy outcomes and institutional design (Pion-Berlin and Arceneaux)

Moreover, power-balance theory expands on the type of transition distinction and its effect on prosecutions. This theory determines the occurrence—and success—of trials as a result of the “balance of power that exists between the old and new elites immediately after a transition.”¹¹ Accordingly, the theory proposes that transitions with a pact will have less success than those that collapsed—and even less than regimes ousted by force—as a result of the change in and level of coerciveness of the new government, diminished strength of previously powerful elites, removal of the past-regime from dominance, acceptance of accountability by the new government, and the ability to make substantial alterations to the country.¹² In a 2012 study, Hun Joon Kim finds that the power balance between old and new elites does not generally affect a

¹¹ Hun Joon Kim, “Structural Determinants of Human Rights Prosecutions after Democratic Transition,” *Journal of Peace Research* 49, no. 2 (March 1, 2012): 307, <https://doi.org/10.1177/0022343311431600>.

¹² Carlos Santiago Nino, 118, 119; Daniel Mazzei, 13; Hun Joon Kim, 307; Kathryn Sikkink and Hun Joon Kim, “The Justice Cascade: The Origins and Effectiveness of Prosecutions of Human Rights Violations,” *Annual Review of Law and Social Science* 9, no. 1 (2013): 277, <https://doi.org/10.1146/annurev-lawsocsci-102612-133956>.

state's decision to prosecute human rights trials; however, he discovered that countries that experienced a transition by collapse were 2.4 times more likely to use prosecutions, only in the first four years after the transition, than countries that did not face a ruptured transition.¹³

Democracy

The term “transition to democracy” emphasizes the end goal: democracy. Manfred Schmidt accurately states “‘Democracy’ is the collective term for a wide variety of regimes,” meaning many definitions and typographies exist.¹⁴ Abraham Lincoln's famous definition of democracy as “government of the people, by the people, and for the people” can only begin to define this term.

Scholar Robert Dahl considers the defining feature of a democracy as “the quality of being completely or almost completely responsive to all its citizens,” whom he considers as political equals.¹⁵ Therefore, its citizens must have the uninhibited ability to “1) formulate their preferences, 2) signify their preferences to their fellow citizens and the government by individual and collective action, and 3) have their preferences weighed equally in the conduct of the government, that is, weighted with no discrimination because of the content or source of the preference.”¹⁶ Table 1 defines the institutional guarantees that Dahl articulates that align with the three opportunities.

¹³ Hun Joon Kim, 312.

¹⁴ Manfred G. Schmidt, “Political Performance and Types of Democracy: Findings from Comparative Studies,” *European Journal of Political Research* 41, no. 1 (2002): 147, <https://doi.org/10.1111/1475-6765.00007>.

¹⁵ Robert Alan Dahl, *Polyarchy: Participation and Opposition* (Yale University Press, 1973): 2.

¹⁶ Robert Alan Dahl, 2.

Table 1: Some Requirements for a Democracy among a Large Number of People (Dahl)

For the opportunity to:	The following institutional guarantees are required:
I. Formulate preferences	<ol style="list-style-type: none"> 1. Freedom to form and join organizations 2. Freedom of expression 3. Right to vote 4. Right of political leaders to compete for support 5. Alternative sources of information
II. Signify preferences	<ol style="list-style-type: none"> 1. Freedom to form and join organizations 2. Freedom of expression 3. Right to vote 4. Eligibility for public office 5. Right of political leaders to compete for support 6. Alternative sources of information 7. Free and fair elections
III. Have preferences weighted equally in conduct of government	<ol style="list-style-type: none"> 1. Freedom to form and join organizations 2. Freedom of expression 3. Right to vote 4. Eligibility for public office 5. Right of political leaders to compete for support <ol style="list-style-type: none"> a. Right of political leaders to compete for votes 6. Alternative sources of information 7. Free and fair elections 8. Institutions for making government policies depend on votes and other expressions of preference

Using these indicators, Dahl categorizes regimes using two dimensions: public contestation and inclusiveness (or electoral participation), see Figure 2. Dahl describes an exclusive regime with little opportunity for contestation as a closed hegemony.¹⁷ Should a regime liberalize and move along path one to more contestation, it becomes a competitive oligarchy whereas moving along

¹⁷ Robert Alan Dahl, 7.

path two increases the popularization of the regime and develops into an inclusive hegemony.¹⁸

According to Dahl, a regime becomes closest to a democracy with full inclusiveness and full public contestation; however, he uses the term “polyarchy” to avoid over-generalizing as he understands other factors contribute to this democratic designation.¹⁹ This categorization of democracy by Dahl forms the basis of many other definitions as it outlines democratic norms and how to evaluate them.

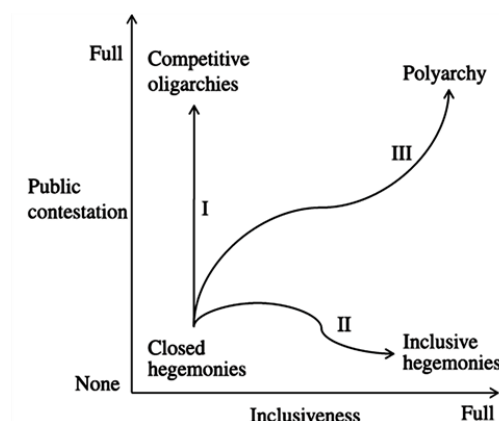


Figure 2: Liberalization, Inclusiveness, and Democratization (Dahl)

Other scholars have based their definitions of democracy on that of Dahl. Mike Alvarez, et al. take a minimalist approach in defining democracy: “a regime in which some governmental offices are filled as a consequence of contested elections.”²⁰ Contestation implies that the opposition has some chance of winning office in an election and has three features: 1) ex ante uncertainty—some positive probability that at least one incumbent can lose in an election cycle, 2) ex post irreversibility—the winner of an election will assume office, and 3) repeatability.²¹ Alvarez et al. define a regime as a democracy if the people elect the chief executive and the

¹⁸ Robert Alan Dahl, 7.

¹⁹ Robert Alan Dahl, 8.

²⁰ Mike Alvarez et al., “Classifying Political Regimes,” *Studies In Comparative International Development* 31, no. 2 (June 1996): 4, <https://doi.org/10.1007/BF02719326>.

²¹ Mike Alvarez et al., 5-6.

legislature and if more than one party exists.²² Further, Mainwaring, Brinks, and Pérez-Liñán pose a narrower yet still minimalist definition of democracy: “a regime (1) that sponsors free and fair competitive elections for the legislature and executive; (2) that allows for inclusive adult citizenship; (3) that protects civil liberties and political rights; and (4) in which the elected governments really govern and the military is under civilian control.”²³ This definition of democracy aligns more so with Dahl because it requires more of a regime to not only have political contestation but also provide certain rights and be free of military pressure. Acuña and Smulovitz pose a third definition using an intermediate approach evaluating “the degree and scope (maintenance/variation) of military *prerogatives*” and “the degree and level of military *contestation* of civilian decisions,” categorizing regimes as democratic if they have low or middle levels of military prerogatives and low levels of military contestation.²⁴ This definition approaches democracy more so in terms of the presence, or lack thereof, of the military, a different yet related approach to that of Dahl.

Arend Lijphart thus defines democracy using the words of Abraham Lincoln as “government by the people or, in representative democracy, government by the representatives of the people” and “government in accordance with the people’s preferences.”²⁵ Using this definition he articulates two distinct types of democracy that answer the pivotal questions, “Who will do the governing and to whose interests should the government be responsive when the people are in disagreement and have divergent preferences?”²⁶ The first type titled the

²² Mike Alvarez et al., 7-8.

²³ Scott Mainwaring, Daniel Brinks, and Aníbal Pérez-Liñán, “Classifying Political Regimes in Latin America 1945-1999,” *Studies in Comparative International Development* 36, no. 1 (March 2001): 38, <https://doi.org/10.1007/BF02687584>.

²⁴ Carlos H Acuña and Catalina Smulovitz, 34.

²⁵ Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, Second Edition (New Haven: Yale University Press, 2012): 1.

²⁶ Arend Lijphart, 2.

Westminster or majoritarian model answers this question promoting the majority's wishes while the consensus model, his second category, advocates for as many people as possible.²⁷ Lijphart differentiates the two types on a basis of 10 indicators. Table 2 demonstrates the differences between the majoritarian and consensus democracies.

Table 2: Classifications of the Majoritarian/Westminster and Consensus Models of Democracy (Lijphart)

Majoritarian/ Westminster	Consensus
High concentration of executive power in one-party and bare-majority cabinets	Executive power-sharing in broad coalition cabinets
Cabinet dominance	Executive-legislative balance of power
Two-party system	Multiparty system
Majoritarian and disproportional system of elections	Proportional representation
Interest group pluralism	Interest group corporatism
Unitary and centralized government	Federal and decentralized government
Concentration of legislative power in a unicameral legislature	Strong bicameralism
Constitutional flexibility	Constitutional rigidity
Absence of judicial review	Judicial review
Central bank controlled by the executive	Central bank independence

Scholars have debated the efficacy and strength of the comparative regimes for decades. Before World War II, scholars viewed majoritarian democracies “as more stable, fitter for survival even under adverse circumstances..., and better at problem solving;” however, this belief has switched in the 1970s with more arguing for the comparative strength of consensus democracies, specifically in “softer” political issues.²⁸

Many scholars have extrapolated on the majoritarian-consensus typography and applied it to specific regions or circumstances, including Kestler et al. who operationalize the distinction in Latin America. Using five of the 10 measures—party systems, concentration of executive power,

²⁷ Arend Lijphart, 2.

²⁸ Manfred G. Schmidt, 148–49.

executive-legislative relations, electoral systems and interest groups—the authors evaluate the practices in 10 Latin American countries to determine the type of democracy. They discover less stability in institutional patterns in their sample than Lijphart’s original findings, which they contribute to the impact of informal institutions due to increased clientelism. Including informality into the analyses, Kestler et al. find that countries have progressively adopted more majoritarian patterns.²⁹

Despite some differences, all of the definitions above imply a representative democracy. O’Donnell defines another type of democracy—delegative democracies—as those who fit Dahl’s criteria for a polyarchy and have persisted however have not secured themselves as representative democracies as a result of “neither institutional progress nor much governmental effectiveness in dealing with their respective social and economic crises.”³⁰ Representative democracies have engrained institutions that “provide a crucial level of mediation and aggregation between, on one side, structural factors and, on the other, not only individuals but also the diverse groupings under which society organizes its multiple interests and identities” whereas delegative democracies “rest on the premise that whoever wins election to the presidency is thereby entitled to govern as he or she sees fit, constrained only by the hard facts of existing power relations and by a constitutionally limited term of office.”³¹ In other words, a representative democracy has certain institutional parameters that have developed over time that do not yet exist in a delegative democracy. O’Donnell describes delegative democracies as “strongly” majoritarian and individualistic however with “weak institutionalization and, at best,

²⁹ Thomas Kestler, Juan Bautista Lucca, and Silvana Krause, “‘Break-In Parties’ and Changing Patterns of Democracy in Latin America,” *Brazilian Political Science Review* 10, no. 1 (2016), <https://doi.org/10.1590/1981-38212016000100004>.

³⁰ Guillermo A O’Donnell, “Delegative Democracy,” *Journal of Democracy* 5, no. 1 (1994): 56, <https://doi.org/10.1353/jod.1994.0010>.

³¹ Guillermo A O’Donnell, 59.

is indifferent toward strengthening it.”³² This new categorization of democracy tends to emerge after transitions, which O’Donnell found in Latin America and other post-communist, Asian, and African countries.

Another classification for democracy depends on the selection manner of the executive and legislative and how the two bodies interact to form policy. Parliamentarism and presidentialism represent the two main classifications. In a parliamentary system, the executive “is selected by the assembly” and “remains in office subject to legislative confidence” whereas the “chief executive is popularly elected; the terms of the chief executive and of the assembly are fixed, and not subject to mutual confidence; [and] the elected executive names and directs the composition of the government and has some constitutionally granted lawmaking authority” in a presidential system.³³ John Carey states that the root of distinction between the two system predicates on the origin and survival of these two branches: parliamentarism usually results in fused powers where the executive and assembly have power to dissolve the other based on mutual dependence while the two branches under presidentialism have distinct electoral processes.³⁴ Carey defines hybrid regimes as the third category where “the president is popularly elected, and is endowed with meaningful powers [and] there also exists a prime minister and cabinet, subject to assembly confidence.”³⁵ Hybrid regimes can exist along a spectrum between presidentialism and parliamentarism.

Many scholars have evaluated and compared the two dominant systems attempting to determine which regime type has most success and, within the context of the plethora of newly

³² Guillermo A O’Donnell, 60, 62.

³³ John M. Carey, “Presidential versus Parliamentary Government,” in *Handbook of New Institutional Economics*, ed. Claude Ménard and Mary M. Shirley (Berlin: Springer, 2008), 91.

³⁴ John M. Carey, 92.

³⁵ John M. Carey, 92.

democratic states in the 1980s and 1990s, has less risk of breakdown. Scholars, namely Juan Linz, argued that parliamentarism provides democratic stability in ways not present in presidentialism as well as advocated for the democratic norms such as voter participation and protection of minorities.³⁶ However, the actions of the newly democratic regimes in Latin America and around the world do not fully represent the scholars' optimistic view of parliamentarism. According to Carey, a majority of the countries maintained a powerfully, elected president; however, they granted assemblies with substantial confidence authority over some part of the executive.³⁷ The distinction of parliamentarism and presidentialism then possibly affects the longevity of democracy.

Furthermore, Manuel Garretón discusses ways to approach democratic consolidation. He argues that a state must address the authoritarian enclaves in order to complete its transition. The new regimes inherit four enclaves from its dictatorial predecessors: 1) human rights violations; 2) an institutional legacy of democratic norms that limit democratic practices; 3) political actors, organizations, and social sectors linked to the military; and 4) a generalized presence of antidemocratic or authoritarian values, mentalities, and attitudes.³⁸ Therefore, the governments must determine an approach to treat these authoritarian enclaves comprehensively in order to develop into a democratic regime. Garretón outlines two logics that regimes can adopt to address these issues: 1) ethical-symbolic logic, which advocates for the reconstitution of the situation that existed prior and demands truth, the dissemination of information about the crimes, trials and punishments of those responsible, and reparations for the victims and 2) politico-statist logic

³⁶ John M. Carey, 94; Manfred G. Schmidt, 154.

³⁷ John M. Carey, 97.

³⁸ Manuel Antonio Garretón, "Human Rights in Democratization Processes," in *Constructing Democracy: Human Rights, Citizenship, and Society in Latin America*, ed. Elizabeth Jelin and Eric Hershberg (Boulder, Colorado: Westview Press, 1996), 40.

which searches for the maintenance of a democratic regime that inherently resolves the human rights issue and prevents similar ones in the future.³⁹ Following the multiple definitions of democracy and its types, Garretón proposes that states must first repair themselves from the effects of the dictatorial regimes before reaching democracy status.

Transitional Justice

Another definition necessary to evaluate the differences between the two countries' responses relates to the study of transitional justice. The use of "transition to democracy" to describe the ending of an authoritarian regime as opposed to "regime change" or "transfers of power" emphasizes the stated goal of democratic reform; the end of modernization theories that heavily focused on socioeconomic conditions; a reformation of the formerly Marxist term "transition" once connoting social reform to a focus on political reform; and a decline of the radical Left in favor of increased human rights norms.⁴⁰ This term also expresses its goal of "some measure of justice for victims of state crimes."⁴¹ Transitional justice has become a widely popular field of study regarding the process of consolidating democracy after authoritarianism, especially during the third wave of democratization. Accordingly, Paul van Zyl, the Executive Secretary of South Africa's Truth and Reconciliation Commission, declared transitional justice "an attempt to build a sustainable peace after conflict, mass violence, or systemic human rights abuse,"⁴² and José Zalaquett, a prominent human rights lawyer and former adviser to Chilean President Patricio Aylwin, emphasized the need of transitional justice to put the "existing moral

³⁹ Manuel Antonio Garretón, 41.

⁴⁰ Paige Arthur, "How 'Transitions' Reshaped Human Rights: A Conceptual History of Transitional Justice," *Human Rights Quarterly* 31, no. 2 (2009): 337-340, <https://doi.org/10.1353/hrq.0.0069>.

⁴¹ Melissa Nobles, "The Prosecution of Human Rights Violations," *Annual Review of Political Science* 13, no. 1 (2010): 166, <https://doi.org/10.1146/annurev.polisci.040108.110013>.

⁴² Paul van Zyl, "Promoting Transitional Justice in Post-Conflict Societies," in *Transitional Justice: Handbook for Latin America*, ed. Félix Reátegui (New York: International Center for Transitional Justice, 2011), 45.

order...back in place.”⁴³ While scholars contemplate the origins of transitional justice, most agree on the definition as measures undertaken by emerging democracies.⁴⁴ Accordingly, transitional justice serves two main purposes: “to respond to the experiences of suffering of the past; and to prevent similar suffering in the future” through prosecutions, reparations, reformations to institutions, truth, and reconciliation.⁴⁵ This large field has subsections within that address its goals and effects, specifically the importance of the rule of law, transitional advocacy networks, diffusion theory, and the resulting justice cascade.

The rule of law presents as a long-term goal of transitional justice. It requires the actionable limiting of government and the acknowledgment on part of the executive of the binding nature of the law as well as implies accountability and an existing social contract. Pilar Domingo states, “The degree of rule of law to some extent is a measure of the degree to which states live up to the promises of the bill of rights.”⁴⁶ The judiciary comprises a pivotal role in transitional justice. Legitimate prosecutions rely on an unbiased, impartial, and fair judiciary to arrive at the truth and determine the culpability of all those involved. Scholars have found that judicial reforms focusing on strengthening the rule of law—specifically judicial independence and the establishment of judicial council—have successfully swept through Latin America.

⁴³ Naomi Roht-Arriaza, “The Need for Moral Reconstruction in the Wake of Past Human Rights Violations: An Interview with José Zalaquett,” in *Transitional Justice: Handbook for Latin America*, ed. Félix Reátegui (New York: International Center for Transitional Justice, 2011), 164.

⁴⁴ Paige Arthur, 331.

⁴⁵ Paul van Zyl, 45.

Pilar Domingo, “Accountability, the Rule of Law and Transitional Justice in Latin America,” in *After Oppression: Transitional Justice in Latin America and Eastern Europe*, ed. Vesselin Popovski and Mónica Serrano (Tokyo, Japan: United Nations University Press, 2012): 45.

⁴⁶ Pilar Domingo, 43.

Further, *de facto* judicial independence has shown to result in more respect for human rights, specifically physical integrity rights.⁴⁷

The legal status, as argued by Nino, follows as an important component of the rule of law and transitional justice. A continuous legal status means “a new legal system emerges from the old one, adhering to preexisting rules for the creation of new laws” whereas “democracy is founded on an entirely new constitution with no link to the old legal system” in a ruptured transition.⁴⁸ A third possibility exists as well: restoration—“the new democracy is found on an old constitution, once in force but suspended or abrogated by the authoritarian regime.”⁴⁹ Logically, Nino emphasizes the increasing levels of difficulty for justice, with legal rupture as the smoothest, restoration with an intermediate degree of difficulty, and the continuous transition most difficult.⁵⁰ The maintenance of certain judicial features, specifically lack of judicial independence or existence of biased judges from the authoritarian regime inhibit democratic progress and the ability to adequately prosecute perpetrators of human rights.

Transnational advocacy networks (TANs) comprise another component of transitional justice where individuals from domestic and international nongovernmental organizations, civil society groups, and international organizations collaborate on specific issues to promote ideas, norms, and policies, specifically trials. Kim’s study finds, “a state with strong domestic and international organizations advocating human rights and individual criminal accountability is likely to use human rights prosecutions more frequently and persistently.”⁵¹ Domestic advocacy increases the likelihood of prosecutions by 4.3 times and international pressure increases it by

⁴⁷ M. Rodwan Abouharb, Laura P. Moyer, and Megan Schmidt, “De Facto Judicial Independence and Physical Integrity Rights,” *Journal of Human Rights* 12, no. 4 (October 2013): 383, <https://doi.org/10.1080/14754835.2013.812461>.

⁴⁸ Carlos Santiago Nino, 108.

⁴⁹ Carlos Santiago Nino, 108.

⁵⁰ Carlos Santiago Nino, 120.

⁵¹ Hun Joon Kim, 314.

2.4 times; however, when international and domestic pressures combine, he finds countries 10 times more likely to prosecute.⁵² Interestingly, he finds that domestic advocacy fuels high-level prosecutions whereas international pressure largely influences low-level prosecutions.⁵³ The TANs also exist as the pillar of the boomerang model, outlined by Keck and Sikkink, whereby members of a state bypass their own government and appeal to regional NGOs and TANs to pressure their state to make the desired human rights changes.

Transitional justice also includes diffusion theory. According to Kim, “diffusion occurs when the decision to proceed with a human rights prosecution in one country is influenced by previous choices of other countries with an authoritarian past.”⁵⁴ The diffusion could occur simply due to geographic proximity and/or through cultural similarity. Kim finds, “a state is more likely to initiate and repeatedly use human rights prosecutions if similar prosecutions had already been used by its neighbors,” with more success with diffusion through cultural similarity (four times greater) than solely geographic proximity.⁵⁵ Language and religion present the most common shared cultural factors that influence diffusion.⁵⁶

Kathryn Sikkink discovered the justice cascade or the “rapid and dramatic shift in the legitimacy of the norms of individual criminal accountability for human rights violations and an increase in actions (such as trials) on behalf of such norms.”⁵⁷ The practices and norms of transitional justice have dramatically increased and spread globally. Kim and Sikkink describe the spread as the “outward and upward [transmission] through horizontal diffusion from one country to another and then via bottom-up vertical diffusion from individual countries to

⁵² Hun Joon Kim, 314.

⁵³ Hun Joon Kim, 314.

⁵⁴ Hun Joon Kim, 308.

⁵⁵ Hun Joon Kim, 314.

⁵⁶ Hun Joon Kim, 315.

⁵⁷ Kathryn Sikkink and Hun Joon Kim, 270.

intergovernmental organizations and international NGOs.”⁵⁸ The cascade relies on TANs who “pioneered the strategies, developed the legal arguments, often recruited the plaintiffs and/or witnesses, marshaled the evidence, and persevered through years of legal challenges” as well as worked globally to spread the efforts and pressure the countries to change.⁵⁹ Lutz and Sikkink acknowledge that the efforts of the TANs had success as a result of the shift in norms to understand and protect human rights, especially those against torture and disappearance and for democratic governance.⁶⁰ Many scholars argue that the justice cascade expanded as a result of the actions in Latin America, specifically Argentina.

HYPOTHESES

This paper proposes various hypotheses based off the research of other academics in this field of transitional justice:

- 1) higher levels of atrocities and abuses will be more motivating to justice and accountability than lower levels;
- 2) internal and external factors that result in a transition by collapse will result in more immediate actions for justice than factors that end in a consensus transition;
- 3) a country with a continuous legal structure, and therefore, closed judiciary, will have a slower justice process than those with a ruptured or restored system with less dictatorial influence on the judicial branch;

⁵⁸ Kathryn Sikkink and Hun Joon Kim, 278.

⁵⁹ Ellen Lutz and Kathryn Sikkink, “The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America International Human Rights Law in Practice,” *Chicago Journal of International Law* 2, no. 1 (2001): 2.

⁶⁰ Ellen Lutz and Kathryn Sikkink, 3.

- 4) higher levels of decision-making autonomy and authority of the president will result in greater success of transitional justice policy outcomes than those with lower levels of either;
- 5) greater levels of international pressure, stemming from transnational advocacy networks, will incentivize domestic action more so than in cases without such pressure; and
- 6) countries geographically proximate and/or culturally similar to another country with transitional justice policies will be influenced more than those not such connected.

The severity and quantity of human rights abuses could potentially affect the search for justice as a result of the moral contentions and emotions that arise. Nino states, “the more heinous the human rights abuses, the more likely that the attempt to punish them will succeed.”⁶¹ This seems likely as people tend to believe murderers and torturers deserve repercussions. Further, the higher number of people tortured or killed will directly impact the amount of people affected and, therefore, the number of individuals searching and fighting for justice. As Argentina and Chile had some of the worst torture practices during their respective dictatorships, this hypothesis would explain why both countries had trials to prosecute those responsible for the grave human rights abuses that occurred.

The second hypothesis relates to the discussion of etiology and modality analyzed by many scholars. This paper determines that the etiology effects the modality, which influences the responses to the human rights violations. Chile represents an example of an authoritarian regime that ended due to endogenous factors: the 1988 plebiscite called for by Pinochet’s 1980 Constitution. This resulted in a pacted transition to democracy, meaning the military would still

⁶¹ Carlos Santiago Nino, 121.

maintain a certain degree of power after leaving. Even though Pinochet lost the vote in 1988, he remained the Commander in Chief of the Army and retained many of his political powers as well. On the other hand, the economic crisis, the increase in number and strength of the human rights social movements, the division within the armed forces, and the military loss in the Falkland Islands represent the endogenous and exogenous factors that led to the Argentine Junta's failure. The Argentine case, therefore, represents a transition by collapse. As stated by Carlos Santiago Nino, "The collapse of the Argentine military regime, triggered both by external and internal factors, created in its wake a certain balance of power which was partially determinative of the course of retroactive justice."⁶² As the Junta lost its power, it did not have the same benefits as seen by Pinochet in Chile. This paper argues that the difference in factors that resulted in the transition and the mode itself greatly impacts the ability for justice—with those by collapse more likely to adopt transitional justice policies— at least in the short run. Accordingly, Argentina's collapse made the response for justice much quicker than that of Chile.

As an effect of the type of transition, this paper suggests that the legal status also impacts the likelihood of prosecutions. Due to the terms of the 1988 plebiscite and transitional negotiations, the Chilean judicial system and judges remained closely tied to the Pinochet regimes—an example of a continuous legal status. Argentina, however, presents as an example of legal restoration. The country reinstated its original Constitution; however, policies enacted by the authoritarian regime also remained. Article 18 of the 1853 Constitution prohibit ex post facto criminal legislation and when combined with article 2 of the Penal Code that states that the defendant must receive the most favorable law to them, the self-amnesty law of the dictatorship appeared to protect the regime.⁶³ The availability of the judicial system can, therefore, determine

⁶² Carlos Santiago Nino, 108.

⁶³ Carlos Santiago Nino, -21.

the judicial system as a path for transitional justice. As the judicial system in Chile remained heavily influence by Pinochet influence beginning years of the transition, prosecutions had a considerably smaller chance of success than in Argentina.

Similarly, the availability of institutions remains important to enact transitional justice policies. Following the argument of Pion-Berlin and Arceneaux, an executive with high decision-making autonomy and a high concentration of authority will have a greater opportunity to promote such policies. According to the authors, Raúl Alfonsín, President of Argentina, had high decision-making autonomy but a low concentration of authority as the judiciary system had high levels of independence, making for moderate success in Alfonsín's policies.⁶⁴ President Patricio Aylwin of Chile had mixed success in his two part plan as he had high levels of autonomy and authority for his first phase of an inquest into the abuses but for his second phase of naming the abuses, he relied on the judiciary and Congress who still had strong ties to Pinochet.⁶⁵ This paper indicates that the autonomy and authority of the executive hold importance for the success of justice policies.

International pressure greatly influences the actions of states. Many scholars emphasize the role of TANS in incentivizing prosecutions of human rights abusers. This paper argues that international organizations and their actions, specifically those of TANS, will influence the specified states to act in favor of transitional justice policies. The paper further assumes the importance of nationals abroad in truth bearing and motivating TANS to pressure the states. Specifically, the acts of Spain and England forced Chile to evaluate their actions, or lack thereof, regarding transitional justice and criminal trials. Further, the protests in London and Chilean

⁶⁴ David Pion-Berlin and Craig Arceneaux, 651.

⁶⁵ David Pion-Berlin and Craig Arceneaux, 656.

communities abroad collaborated to bring awareness of the demands and desires for justice that the Chilean government could no longer ignore.⁶⁶

Lastly, this paper considers the diffusion theory as highly motivational for transitional countries to pursue criminal trials. As stated above, Kim discovered that countries geographically close and culturally similar will be influenced by the actions of other states. Latin America, a largely Spanish-speaking and Catholic region, would therefore seem the most likely region to have trials as a result of diffusion. As the two case study countries share geographical proximity as well as similar language, religion, and culture, this paper assumes a connection. With the Chilean process occurring after the Argentine, this paper considers the diffusion theory and the effect that the trials in Argentina had on the latter case.

⁶⁶ Naomi Roht-Arriaza, *The Pinochet Effect: Transnational Justice in the Age of Human Rights* (Philadelphia: University of Pennsylvania Press, 2005), 39.

METHODS

*“Everything I did, all my actions, all of the problems I had I dedicate to God and to Chile,
because I kept Chile from becoming Communist.”*

(Augusto Pinochet, Former Dictator of Chile)

This thesis utilizes a comparative case study analysis of two countries—Argentina and Chile—with many similarities yet startling differences to understand on a broader level what results in differing responses to the human rights violations that occur during dictatorships. Following the hypotheses set forth earlier in the essay, the analysis will focus on certain variables that operationalize the premises and allow for the requisite comprehensive analysis.

First, the paper must articulate the periods of dictatorship, transition to democracy, and resulting government. Many data projects have analyzed periods of democracy and authoritarianism. Freedom House classifies countries as free, partly free, or not free depending on the presence and degree of political rights and civil liberties.⁶⁷ The Polity IV Project analyzes democracy and autocracy to create a polity score. Polity IV has a three-part definition for institutionalized democracy: 1) “the presence of institutions and procedures through which citizens can express effective preferences about alternative policies and leaders,” 2) “the existence of institutionalized constraints on the exercise of power by the executive,” and 3) “the guarantee of civil liberties to all citizens in their daily lives and in acts of political participation.”⁶⁸ Countries receive a score from 0 (no democracy) to 10 (democracy). Similarly, autocracy, the “restrict[ion] or suppress[ion of] competitive political participation,” has a 0 (not autocratic) to 10 (autocratic) range. The Polity2 score combines these two variables to determine

⁶⁷ Freedom in the World, “Country and Territory Ratings and Statuses, 1973-2019” (Freedom House, 2019), <https://freedomhouse.org/report-types/freedom-world>.

⁶⁸ Monty Marshall, Ted Robert Gurr, and Keith Jagers, “Political Regime Characteristics and Transitions, 1800-2018,” Polity IV Project (Center for Systemic Peace, 2019), <http://www.systemicpeace.org/polityproject.html>.

the level of autocracy or democracy in a given country, ranging from -10 (strongly autocratic) to 10 (strongly democratic). Additionally, the Democracy and Dictatorship dataset defines democracy as the presence of certain variables such as effective executive and legislative elections, a closed legislature, and the legality and presence of multiple parties.⁶⁹ If a country receives certain scores on these measures, they classify the country as a democracy. The Transitional Justice Research Collaborative (TJRC) also codified countries as democratic or autocratic.

Further, many of the hypotheses consider the amount of justice; therefore, this paper must operationalize this term. This thesis considers justice as the presence of human rights trials, especially considering both studied countries had at least one truth and reconciliation commission. Country reports publicize data on prosecutions, which this paper will consider. Also, the TJRC measured prosecutions and verdicts of the countries and regions as well as guilty verdicts. The first TJRC variable measures the number of prosecutions in a given year while another adds the prosecutions of previous years to arrive at a lagged sum. A lagged sum also exists for the number of guilty verdicts. This paper will analyze the data from TJRC to determine as well as the information from the country reports to measure the degree of justice in each country over time.

The first hypothesis discusses the heinousness of human rights violations. The Cingranelli-Richards (CIRI) Human Rights Data Project examined such information, evaluating countries' behaviors regarding extrajudicial killings, disappearances, torture, and political imprisonment, culminating in an overall physical integrity rights index.⁷⁰ According to the

⁶⁹ José Antonio Cheibub, Jennifer Gandhi, and James Raymond Vreeland, "Democracy and Dictatorship Revisited," *Public Choice* 143, no. 2–1 (2010), <https://doi.org/10.1007/s11127-009-9491-2>.

⁷⁰ David Cingranelli, David L. Richards, and K. Chad Clay.

prevalence of such actions, countries receive a 0 for the frequent practice (50 or more), 1 for occasional practice (1-49), and 2 for no practice or unreported.⁷¹ The physical integrity rights index combines the scores of these four indicators and scores countries from 0 (no government respect) to 8 (full government respect).⁷² Keith Schnakenberg and Christopher J. Fariss created another system—Latent Human Rights Protection—to evaluate respect for human rights, especially physical integrity rights. These scores represent standard deviations from zero (5.4 to -3.8), with the higher numbers signifying more protections for these rights. The Political Terror Scale (PTS) codifies information from human rights reports from Amnesty International, the U.S. State Department, and Human Rights Watch and analyzes such data based on a 5-level terror scale from 1, which means “torture is rare or exceptional,” to 5, which signifies that “terror has expanded to the whole population”—a score of 0 means data not available.⁷³ Further, this thesis will also examine the reports issued regarding such topics, including *Nunca Más* (Never Again), the Rettig Report, and the Valech Report.

The second hypothesis relies on the history of the countries, examining the internal and external factors that led to the transition. This paper trusts scholarly analysis of such unquantifiable actions.

Next, the third hypothesis analyzes the legal/judicial structure of the country. This requires an analysis of the availability of the legal system to trials of perpetrators from the prior

CIRI defines these variables: extrajudicial killings as “killings by government officials without due process of law”; disappearances as “cases in which people have disappeared, agents of the state are likely responsibly, and political motivation may be likely”; torture as “the purposeful inflicting of extreme pain, whether mental or physical, by government officials or by private individuals at the instigation of government officials” and political imprisonment as “the incarceration of people by government officials because of: their speech; their non-violent opposition to government policies or leaders; their religious beliefs; their non-violent religious practices including proselytizing; or their membership in a group, including an ethnic or racial group.”

⁷¹ David Cingranelli, David L. Richards, and K. Chad Clay.

⁷² David Cingranelli, David L. Richards, and K. Chad Clay.

⁷³ Mark Gibney et al., “The Political Terror Scale 1976-2018” (Political Terror Scale, 2019), <http://www.politicalterroryscale.org/>.

dictatorship. Therefore, the paper will evaluate measures of judicial independence to determine the accessibility of the judicial system. CIRI codes states in terms of the “extent to which the judiciary is independent of control from other sources, such as another branch of the government or military”: 0= not independent, 1=partially independent, and 2=generally independent.⁷⁴

Another measure of judicial independence comes from Linda Camp Keith and scores countries identically to CIRI’s dataset.⁷⁵ Drew A. Linzer and Jeffrey K. Stanton have another dataset that measures *de facto* judicial independence, which scores countries from 0 to 1, with 1 representing higher levels of judicial independence.⁷⁶

The next hypothesis compares the autonomy and authority of the president to gauge the ability to execute transitional justice policies. This hypothesis builds on the prior one, as the structure and independence of the judiciary will impact that of the executive. Further, this paper will analyze the executive constraints measure of the Polity IV dataset. This measure “refers to the extent of institutionalized constraints on the decision-making powers of chief executives.”⁷⁷ “Accountability groups”—advisors in monarchies, the military, an independent judiciary—may impose such limitations on the executive. The score ranges from 1—unlimited authority—to 7—executive parity or subordination.⁷⁸ This score, however, does not articulate the type of accountability group, meaning the score cannot explain the pressures facing the executive. For example, the legacy of a dictator in the legislative or judiciary does not differ from an equally powerful yet balanced and democratic legislature. Therefore, this paper considers the types of

⁷⁴ David Cingranelli, David L. Richards, and K. Chad Clay.

⁷⁵ M. Rodwan Abouharb, Laura P. Moyer, and Megan Schmidt, 376; Leigh A. Payne et al.

⁷⁶ Drew A. Linzer and Jeffrey K. Staton, “A Global Measure of Judicial Independence, 1948–2012,” *Journal of Law and Courts* 3, no. 2 (September 2015): 223–56, <https://doi.org/10.1086/682150>.

Data received from <https://doi.org/10.7910/DVN/L716E8/FXLPLH>.

⁷⁷ Monty Marshall, Ted Robert Gurr, and Keith Jagers.

⁷⁸ Monty Marshall, Ted Robert Gurr, and Keith Jagers.

groups exerting constraints and whether or not these constraints occur organically as in a democracy or remain from as a post-dictatorial regime.

International pressure exists in many forms; however, this paper focuses on pressure from individuals and transnational advocacy networks. Exiles from Argentina and Chile formed strong groups that actively opposed the dictatorships and demanded justice. Further, the efforts of the Spanish government and judicial system to prosecute Pinochet using universal jurisdiction contributes to the international pressure studied in this paper. This thesis also analyzes reports from international organizations. These organizations such as the United Nations (General Assembly, Security Council, and the Office of the High Commissioner for Human Rights), Amnesty International, Human Rights Watch, and the Inter-American Commission on Human Rights work with smaller non-profit organizations and non-governmental organizations as part of TANs. Reports and resolutions by these international organizations will emphasize the degree of the presence of TANs and their responses to the actions of the dictatorships and civilian governments.

The last hypothesis following diffusion theory relies on statistical information of transitional justice policies enacted in geographically proximate or culturally similar countries. As mentioned throughout this thesis, Argentina and Chile—neighbors in South America—have many cultural similarities and as Argentina transitioned before Chile, my last hypothesis would posit that Argentina influenced Chile if the former had trials and prosecutions. Along with the prosecutions data from TJRC, the Collaborative also recorded the percentage of countries in a region that experienced prosecutions in a given year. This paper will use the data compiled by the TJRC and other in-state reports to evaluate the existence of prosecutions and guilty verdicts to determine the validity of the diffusion theory.

CASES

Many countries have undergone transitions to democracy in the late 20th and early 21st centuries, meaning many possible examples exist to examine the question proposed in this thesis. However, this paper will compare and contrast Argentina and Chile. The many cultural, historical, and geographical similarities of these two countries allow for a specified analysis of the post-dictatorial governments' responses and, therefore, make strong case studies.

Argentina and Chile belong to the same geographical region of the Southern Cone. These countries also share similar cultural practices and historical roots. Further, all of the Southern Cone countries suffered coup d'états by military groups around the 1970s, resulting in devastating institutional military dictatorships. Among the entire region, the dictators believed in the *Doctrina de Seguridad Nacional* (DSN)—Doctrine of National Security—which articulated a fight against the threat of communism and defined the “ideological frontiers” and “internal enemy” to which the dictatorships must fight against to protect their countries.⁷⁹ This common construction and ideology among all of the dictators aligned with that of the United States. The United States played a large role in instituting and maintaining the dictatorships in the Southern Cone, especially within the Cold War context that cemented the anti-communist directive.

The overlap in timing and interests intersects with the Plan Condor that unified the dictatorial regimes of the region. The Chilean secret police, the *Dirección de Inteligencia Nacional*—Directorate of National Intelligence—(DINA), spearheaded the effort to collaborate with the other military powers in the region as well as the United States to share information about insurgent individuals and groups, facilitate the capture of political prisoners who had

⁷⁹ Waldo Ansaldi, “Juegos de Patriotas. Militares y Políticos En El Primer Gobierno Posdictadura En Bolivia, Brasil y Uruguay,” in *Los Años de Alfonsín. ¿El Poder de La Democracia o La Democracia Del Poder?*, ed. Alfredo Pucciarelli (Buenos Aires: Siglo XXI, 2006), 31.

escaped their countries of origin to neighboring countries, and organize operations against the political enemies.⁸⁰ Plan Condor ensured similar actions be taken by all regimes, contributing to the mass human rights violations that occurred throughout the region.

Despite all of these similarities between Argentina and Chile, they had a variety of differences as well. The Argentine regime named itself the *Proceso de Reorganización Nacional* (*Proceso*)—Process of National Reorganization—which lasted from 1976 to 1983 and had four presidents: General Jorge Rafael Videla (1976-1980), General Roberto Eduardo Viola (1980-1981), General Leopoldo Fortunato Galtieri (1981-1982) and General Reynaldo Bignone (1982-1983). On the other hand, General Augusto Pinochet had control over Chile from the coup d'état on September 11, 1973 until the end in 1990. Further, scholars have found that the Argentine economy collapsed while the Chilean economy thrived under the Chicago Boys' libertarian policies. This influenced public attitudes toward the regimes which impacted the relative success and permanence of the dictators. The details and timelines of each country will help in the understanding of the actions of each country during their transitions to democracy and in the years that followed as well as provide the basis for the data analysis in the following chapter.

Argentina

On March 24, 1976, the armed forces overthrew the democratic government of María Estela Martínez de Perón, beginning the reign of the Military Junta. The armed forces in Argentina had decided to share the power, granting each of the three sectors—army, navy, and air force—equal control and different responsibilities. This division attempted to appease any

⁸⁰ Ministerio de Educación de la Nación Argentina, *Pensar La Dictadura: Terrorismo de Estado En Argentina Preguntas, Respuestas, y Propuestas Para Su Enseñanza* (Buenos Aires: Educación y Memoria, 2010).

potential intra-military conflict.⁸¹ Aligning with the DNS, the Junta relied on inflicting fear and terror into the country and had decided that “repression of terrorism was to be clandestine.”⁸² Each sector of the armed forces had assigned its own groups of individuals in charge of the torture centers with full autonomy to “detain, torture, and decide the destiny of the prisoners.”⁸³ State-run terrorism dominated the country as countless individuals suffered torture in secret, defining the first phase of the Argentine dictatorship of “violently subordinat[ing] society to state control.”⁸⁴

El Proceso also implemented a new neoliberal economic system, similar to that of the Chicago Boys in Chile. This shift along with other attempts to solidify their political standing in the country and the world represent the second phase of the Junta as articulated by Acuña and Smulovitz, “to craft the future political order.”⁸⁵ The year 1979, however, greatly debilitated the regime. First, the economy started to collapse with a large external debt, a falling investment rate, a recession, and rising inflation rates.⁸⁶ Then, a visit by the *Comisión Interamericana de Derechos Humanos* (CIDH)—Interamerican Commission on Human Rights—questioned the validity of the Junta in its revealing report. Videla attempted to use this visit to construct a narrative that the repression used by the Junta targeted the threats to the country; however, the report criticized the regime and articulated to the national and international communities some of the realities in the country at that time. “The report ended up legitimizing both internally and externally the claims of the human rights organizations,” adding to the momentum of many

⁸¹ Carlos H Acuña and Catalina Smulovitz, 1996, 15.

⁸² Carlos H Acuña and Catalina Smulovitz, 1996, 15.

⁸³ Carlos H Acuña and Catalina Smulovitz, “Militares en la transición argentina: del gobierno a la subordinación constitucional,” *Historizar el pasado vivo en América Latina*, Argentina: el tiempo largo de la violencia política, 1995, 12.

⁸⁴ Carlos H Acuña and Catalina Smulovitz, 1996, 14.

⁸⁵ Carlos H Acuña and Catalina Smulovitz, 1996, 14.

⁸⁶ Carlos H Acuña and Catalina Smulovitz, 1995, 29.

human rights organizations in the country, namely the *Madres y Abuelas de Plaza de Mayo*—Mothers and Grandmothers of the Plaza de Mayo—and the *Asamblea Permanente por los Derechos Humanos*—Permanent Assembly for Human Rights.⁸⁷ As the human rights organizations gained strength and power and the economy continued to deteriorate, the tensions within the armed forces rose. General Viola replaced General Videla in 1980 as an attempt to stabilize the regime; however, this endeavor failed, and a palace coup resulted in General Galtieri assuming power. The search for stability articulated the intra-military tensions and presented as a warning sign for impending struggles.

On April 2, 1982, the Military Junta waged a war against the United Kingdom to recuparate the Falkland Islands from British control. A long-standing controversy between Argentina and the United Kingdom revolve around the ownership of the islands, as the Argentines believe that they should control the land. The original intent of the Junta “was a symbolic demonstration” in an attempt to unify the country and regain their power around a state-wide belief of the Argentine right to the Falkland Islands; instead, Argentina suffered a tremendous loss within a 73-day period.⁸⁸ However, the defeat on the Falkland Islands created an opportunity for the country to question the regime.⁸⁹ The Falkland Islands War, therefore, “can be considered as the beginning of the end of the dictatorship” as “Falklands was the tragic extreme to which [the people] were dragged after long periods in which death had become almost a habit.”⁹⁰ This loss invigorated the people to question the regime and fight against it.

⁸⁷ Carlos H Acuña and Catalina Smulovitz, 1995, 26.

⁸⁸ Catalina Smulovitz, Personal Interview, April 26, 2019.

⁸⁹ Federico Guillermo Lorenz, “Historizar El Pasado Vivo En América Latina,” *Historizar El Pasado Vivo En América Latina*, Argentina: el tiempo largo de la violencia política, 2006, http://www.historizarelpasadovivo.cl/es_resultado_textos.php?categoria=Argentina%3A+el+tiempo+largo+de+la+violencia+pol%EDtica&titulo=Testigos+de+la+derrota.+Malvinas%3A+los+soldados+y+la+guerra+durante+la+transici%F3n+democr%EDtica+argentina%2C+1982-1987.

⁹⁰ Marina Franco, “La ‘transición a la democracia’ en la Argentina frente a las cristalizaciones de la memoria,” *Caravelle*, no. 104 (2015): 2, <https://doi.org/10.4000/caravelle.1602>; Federico Guillermo Lorenz: 44.

Further, the regime had lost so much of its power, it no longer had the ability to negotiate an exit—the political parties did not want to collaborate with a collapsing regime.⁹¹ After the tremendous loss in the Falkland Islands, the Junta found itself completely debilitated and recognized a need to protect itself as the end of their reign approached.

The *Proceso* began to enact decrees and laws with the aim of self-preservation in the uncertain future. The first act occurred on April 28, 1983 when the Junta published the *Documento Final de la Junta Militar sobre la Guerra contra la Subversión y el Terrorismo* (*Documento Final*)—Final Document of the Military Junta on the War against Subversion and Terrorism—and the *Acta Institucional*—Institutional Act. These documents defended the Junta’s actions as necessary to fight against the “rural guerilla” as well as stated that “many of the disappearances are a consequence of the way the terrorists operated.”⁹² The Final Document acted as a final opportunity for the Junta to advocate for the legitimacy of their government. The Institutional Act had a similar objective: “All operations against subversion and terrorism carried out by the security, police, and prison forces...were carried out in accordance with plans approved and supervised by the high-level organic officers of the Armed Forces and by the Board Military from the time of its constitution.”⁹³ These documents emphasized the obligation of such actions as part of military service and, therefore, those individuals could not face punishment. These first actions of the Junta clarified its goal of redeeming itself, describing its actions as favorable and aligned with anti-communist motives, and avoiding future condemnations.

⁹¹ Ines Nercesian, Personal Interview, May 8, 2019; Carlos Santiago Nino, 61.

⁹² Junta Militar, “Documento Final de La Junta Militar Sobre La Guerra Contra La Subversión y El Terrorismo” (Fuerzas Armadas, April 28, 1983).

⁹³ Junta Militar, “Acta Institucional de La Junta Militar” (Junta Militar, April 28, 1983).

A couple months after the Final Document and Institutional Act and before the October 1983 elections, the Junta published Law N22.924 or the *Ley de Pacificación Nacional*—Law of National Pacification or Self-Amnesty Law—which “granted immunity to suspects of acts of state terrorism, as well as to all members of the Armed Forces, for crimes committed between May 25, 1973 and June 17, 1982.”⁹⁴ This effort by the Junta presented a last attempt to assure a future without trials and judgements; however, the armed forces did not all agree that this constituted the next logical step. Some believed that they had not committed any acts requiring a pardon while others opposed a potential amnesty for the subversives.⁹⁵ Therefore, the first article guarantees immunity for acts taken by the armed forces while the second and third exclude the members of “illicit terrorist or subversive associations.”⁹⁶ These final three actions of the Junta demonstrate their desired legacy of a respected military regime protecting the country by any and all means necessary against communist subversives and, therefore, should not face punishment.

Without any other options, Argentina had its first democratic presidential elections after the Junta’s reign on October 30, 1983. Raúl Alfonsín, the Radical Party candidate won with 52% of the votes. Throughout his campaign, Alfonsín advocated for human rights issues and the need to try the perpetrators of the violations that had just occurred. He created and identified three categories of perpetrators: “those who planned the repression and gave the accompanying orders; those who acted beyond the scope of the orders, moved by cruelty, perversity, or greed; and those who strictly complied with the orders.”⁹⁷ His outspoken belief in human rights and his willingness to take action helped secure his win. However, once in office, Alfonsín had to

⁹⁴ Carlos H Acuña and Catalina Smulovitz, 1996, 16.

⁹⁵ Marina Franco, 4-5.

⁹⁶ Presidencia de la Argentina, “Ley de Pacificación Nacional. Medidas Políticas y Normativas Tendientes a Sentar Las Bases de La Definitiva Pacificación Del País,” Pub. L. No. N22.924 (1983).

⁹⁷ Carlos Santiago Nino, 63.

balance the sanctioning of members of the armed forces who had committed the crimes and the incorporation of the military into the new government.⁹⁸

The newly democratic government believed in the importance of trials to “reestablish the credibility of the Argentine state and consolidate democratic institutions” as “some form of accountability was necessary, not only from a human rights standpoint, but also to affirm the core tenets of liberal democracy.”⁹⁹ Alfonsín began an “unrestrained search for the whereabouts of those who disappeared,” which took the form of the creation of the *Comisión Nacional sobre la Desaparición de Personas* (CONADEP)—National Commission on Disappeared Persons.¹⁰⁰ CONADEP investigated the whereabouts of the thousands of disappeared persons and published its report *Nunca Más*—Never Again—in 1984. The report detailed “the general process by which the military deprived civilians of their human rights: abduction, detention in clandestine centers, torture, and, in many cases, murder” and approximated 8,960 unaccounted for persons.¹⁰¹ This number has since been raised to 30,000.

Alfonsín also articulated three principles regarding punishment: “1) Both state and subversive terrorism should be punished. 2) There must be limits on those held responsible, for it would be impossible effectively to pursue all those who had committed crimes. 3) The trials should be limited to a finite period during which public enthusiasm for such a program remained high.”¹⁰² These principles largely influenced Alfonsín’s actions.

In December 1983, Alfonsín published Decrees 157/83 and 158/83, called *la teoría de los dos demonios*—the theory of the two demons—which allowed for the prosecution of military

⁹⁸ Carlos H Acuña and Catalina Smulovitz, 1996, 17.

⁹⁹ Jo-Marie Burt, “Challenging Impunity in Domestic Courts: Human Rights Prosecutions in Latin America,” in *Transitional Justice: Handbook for Latin America*, ed. Félix Reátegui (New York: International Center for Transitional Justice, 2011), 290.

¹⁰⁰ Carlos Santiago Nino, 67.

¹⁰¹ Carlos Santiago Nino, 80.

¹⁰² Carlos Santiago Nino, 67.

officials and guerilla members. By condemning both the military and the guerilla, he attempted to appease all sides, showing no favoritism or targeting. Decree 157 ordered the arrest and prosecution of seven guerillas including Mario Eduardo Firmenich, Fernando Vaca Marvaja, Roberto Cirilo Perdía, and Enrique Heraldo Gorriarán Merlo while Decree 158 called for the arrest of Lieutenant General Jorge. R. Videla, Brigadier General Orlando R. Agosti, Admiral Emilio A. Massera, Lieutenant General Roberto E. Viola, Brigadier General Omar D. R. Graffigna, Admiral Armando J. Lambruschini, Lieutenant General Leopoldo F. Galtieri, Brigadier General Basilio Lami Dozo and Admiral Jorge I. Anaya.¹⁰³ He also sanctioned Law N23.040, which repealed the Self-Amnesty Law. Law N23.040 states annulment of law N22.924 and emphasizes that the self-amnesty law has no legal effect for the prosecution of the emerging criminal, civil, administrative and military responsibilities of the facts which it seeks to cover.¹⁰⁴ These decrees and law supported his first goal of punishing both state and subversive terrorists.

He also sanctioned Law N23.049 which granted modifications to the Military Justice Code. Alfonsín had worked to reform and reconstitute the courts and had planned to use military courts for high-ranking members of the armed forces and civil courts for those responsible for human rights violations; however, Law 23.049 changed this plan. On February 13, 1984, Congress passed the Reform of the Military Code which allowed military trials to appear before civil courts upon appeal as well as articulated the first concept of due obedience, referring to the three categories of perpetrators mentioned above.¹⁰⁵ This law addressed his second goal of reasonable limits of prosecutions.

¹⁰³ Presidencia de la Argentina, “Decreto 157 de 13 de Diciembre de 1983,” Pub. L. No. 157/83 (1983); Presidencia de la Argentina, “Orden Presidencial de Procesar a Las Juntas Militares,” Pub. L. No. 158/83 (1983).

¹⁰⁴ Presidencia de la Argentina, “Ley de Pacificación Nacional. Derógase Por Inconstitucional y Declárase Insanablemente Nula La Ley de Facto N22.924,” N23.040 § (1983).

¹⁰⁵ Presidencia de la Argentina, “Código de Justicia Militar,” N23.049 § (1984).

While trials for the Junta occurred in the military courts in 1983, sufficient action did not result; therefore, on April 22, 1985, the trial of the Juntas began. On December 9, 1985, the civilian Court of Appeals found Emilio Massera, Jorge Videla, Roberto Viola, Armando Lambrushini and Orlando Agosti guilty. The members received varying sentences with Videla and Massera receiving life imprisonment and permanent disqualification from holding public office.¹⁰⁶ These trials, however, had enormous social and political consequences. A series of military uprisings ensued, forcing Alfonsín to promulgate two more laws. On December 24, 1986, Congress passed the *Ley de Punto Final*—Full Stop Law—which put a two-month limit for filing new claims on criminal activity as outline in Law 23.049.¹⁰⁷ This attempted to appease the armed forces; however, the uprisings continued. A rebel group of military members, named the *carapintadas*—painted faces—began rioting in the *crisis de Semana Santa*—Easter Rebellion. On April 14, 1987, the *carapintadas* painted their faces as symbols of wartime, origination of the name, and protested until Alfonsín met with them on April 19, Easter Sunday. Alfonsín published the *Acta de Compromiso Democrático*—Act of Democratic Compromise—, which further outlined the importance of recognizing different levels of responsibility in the actions of the past.¹⁰⁸ This created the path for the *Ley de Obedencia Debida*—Due Obedience Law—which passed Congress on June 8, 1987. The Due Obedience Law stated that individuals following the orders of their supervisors cannot receive punishments. These last two laws demonstrated the efforts of Alfonsín to prosecute the armed forces and integrate them into the new democracy. Weeks after passing the Due Obedience Law, the Supreme Court ruled the law constitutional, finding that the Court cannot review the law of a co-equal branch of government

¹⁰⁶ Carlos Santiago Nino, 89.

¹⁰⁷ Carlos Santiago Nino, 93.

¹⁰⁸ Carlos H Acuña and Catalina Smulovitz, 1995, 51.

“so long as the act was reasonable,” should not commandeer the legislature’s political role of deciding appropriate measures, and the legislature has the ability to decide not to penalize certain actions.¹⁰⁹ However, the success of the Due Obedience Law reached its peak in the judicial system, as politically and socially it did not assist the Radical Party in the 1987 provincial and parliamentary elections.

In the time between the 1987 laws and the next presidential election in 1989, the *carapintadas* had begun to rebel again. On January 15, 1988, a military judge ordered the preventative imprisonment of Lieutenant Coronel Aldo Rico; however, he escaped and rebelled against the military chief of staff, General José Dante Caridi.¹¹⁰ At the end of that year, Coronel Mohammed Alí Seineldín led the *carapintadas* to Villa Martelli.¹¹¹ While these rebellions ended promptly and with little bloodshed, the Alfonsín government faced another attack by a leftist group the *Movimiento Todos por la Patria (MTP)*—Movement of Everyone for the Country—on January 23, 1989. The MTP took control of a military garrison in La Tablada, Buenos Aires, which resulted in the death of 39 people, 28 of whom belonged to the group.¹¹² This attack tarnished the reputation of the human rights trials and, as the economy continued to spiral downward, created an unfavorable environment for the Radical Party in the next election.

On May 14, 1989, Argentina held elections where the Peronist candidate Carlos Menem won. The *carapintadas* strongly supported Menem and believed he would grant control of the armed forces to them. On October 8, 1989, within months of assuming the title, he issued his first presidential pardon of 277 military personnel condemned for the Falkland Islands War,

¹⁰⁹ Naomi Roht-Arriaza, 98.

¹¹⁰ Carlos Santiago Nino, 102.

¹¹¹ Carlos Santiago Nino, 102.

¹¹² Carlos Santiago Nino, 102-103; Carlos H Acuña and Catalina Smulovitz, 1995, 65.

human rights violations, and the military uprisings.¹¹³ This pardon did not include, however, the highest members of the Junta. Although the pardon appeared to favor the *carapintadas*, many of the leaders had lost their ranks and thus became disillusioned with Menem. The *carapintadas* had different ways of responding to their anger, which divided them into two groups, some aligning with Rico while others followed Seineldín. On December 3, 1990, the *carapintadas* pursued the most violent uprising—21 people dead, 50 injured, and more than 30 detained—that ultimately resulted in their defeat in the military arena.¹¹⁴ Weeks after the downfall of the *carapintadas* and following a decrease in public support for more human rights trials, Menem issued his second pardon this time for the former heads of the Junta including Massera, Videla, Viola, Lambrushini, Agosti, Camps, Richieri, and Firmenich.¹¹⁵ The pardon also acquitted those who had not yet been convicted of crimes and did not have any political necessity for such an action, while those freed did not face any moral condemnation.¹¹⁶ After the defeat of the *carapintadas* and Menem's pardons, transitional justice policies in the country diminished, especially as Menem inundated the judiciary with friends and members of his political party.¹¹⁷

The first international findings surfaced in 1992 when the Inter-American Commission on Human Rights (IACHR) issued Report 28/92 stating that the Due Obedience and Full Stop Laws violated Articles 1, 8, and 25 of the American Convention, and Argentina should “clarify the facts and identify those responsible for the human rights violations committed under the military dictatorship;” however, Argentina did not comply with this finding or recommendations.¹¹⁸ A few years later, the first international complaint filed against the

¹¹³ Carlos H Acuña and Catalina Smulovitz, 1996, 18.

¹¹⁴ Carlos H Acuña and Catalina Smulovitz, 1995, 79.

¹¹⁵ Carlos Santiago Nino, 104.

¹¹⁶ Carlos Santiago Nino, 104.

¹¹⁷ Naomi Roht-Arriaza, 99.

¹¹⁸ Santiago Canton, “Amnesty Laws,” in *Transitional Justice: Handbook for Latin America*, ed. Félix Reátegui (New York: International Center for Transitional Justice, 2011), 261.

Argentine Junta occurred on March 28, 1996 when Carlos Castresana named 38 Spanish victims in his case in front of Baltazar Garzón in Spain.¹¹⁹ This case immediately grew, amassing to 300 cases in October and uniting a team of political parties, lawyers, and activists, until Garzón issued the first international detention order against Galtieri.¹²⁰ Ultimately, Garzón consolidated the Argentine case with that of Chile shortly after Pinochet's arrest in 1998.

Moreover, in 1994, Argentina had a constitutional convention with the original goal to allow for presidential reelection; however, this allowed for a progressive delegation to promote Article 75, which grants international human rights treaties and documents—Universal and American Declarations on Human Rights, American Convention on Human Rights, and specific treaties relating to torture and genocide—constitutional rank.¹²¹ This effectively states that these treaties hold precedence over Argentine laws, even if the laws promulgated after the ratification of the treaties.¹²²

One year later, in 1995, Emilio Mignone and Carmen Lapacó, both parents of disappeared daughters, petitioned the Ministry of Defense for any information regarding the whereabouts of disappeared persons within Buenos Aires.¹²³ The Federal Court of Appeals initially denied their request; however Mignone and Lapacó emphasized that the path to criminalization had closed but that did not impede their right to information and to the remains of their loved ones.¹²⁴ The Buenos Aires Appeals Court agreed and ordered the Ministry to investigate; however, the Ministry did not adequately respond, resulting in Lapacó insisting on the involvement of other institutions.¹²⁵ The Court of Appeals then reversed their decision,

¹¹⁹ Naomi Roht-Arriaza, 2.

¹²⁰ Naomi Roht-Arriaza, 10, 20.

¹²¹ Naomi Roht-Arriaza, 99.

¹²² Naomi Roht-Arriaza, 99.

¹²³ Naomi Roht-Arriaza, 101.

¹²⁴ Naomi Roht-Arriaza, 101.

¹²⁵ Naomi Roht-Arriaza, 101.

causing Lapacó to appeal to the Supreme Court, where she ultimately lost. However, in October 1998, Lapacó and nine human rights organizations brought the case to the IACHR.¹²⁶ Before the Commission could issue a decision, the Argentine government settled with the Lapacó family in November 1999, committing to “accept and guarantee the right to truth,” pledging the exclusive jurisdiction of the courts to determine the truth regarding the disappeared persons, and promising to allocate a group of ad hoc prosecutors to assist in all such cases.¹²⁷ During this time, truth trials emerged, with the first in La Plata in April 1998.¹²⁸

Simultaneously, Judge Marquevich, ordered the arrest of Videla in July 1998, on the crime of child kidnapping, concealment, forgery of birth certificates, and suppression of the civil status of a minor.¹²⁹ Marquevich found the systematic baby-snatching plans as an effort to separate families and remove them from their homes; furthermore, he determined that baby-snatching and denial of identity constituted continuous crimes until the children returned to their homes and their identities restored, meaning the amnesty laws did not apply.¹³⁰ Another court case appeared in 2000 against two known torturers—Juan Antonio del Cerro and Julio Héctor Simón—and seven other officers for the illegal kidnapping of an eight-month-old girl, Claudia Victoria Poblete, and the disappearances of her parents.¹³¹ Judge Gabriel Cavallo issued arrest warrants for del Cerro and Simón on November 1, 2000, declaring it absurd to investigate what happened to the child and not to the parents.¹³² Cavallo found the amnesty laws invalid and inapplicable, declaring the Full Stop and Due Obedience laws null and void in March 2001.¹³³

¹²⁶ Santiago Canton, 262.

¹²⁷ Santiago Canton, 262.

¹²⁸ Naomi Roht-Arriaza, 104.

¹²⁹ Naomi Roht-Arriaza, 110.

¹³⁰ Naomi Roht-Arriaza, 111.

¹³¹ Naomi Roht-Arriaza, 114.

¹³² Naomi Roht-Arriaza, 114.

¹³³ Naomi Roht-Arriaza, 114; Jo-Marie Burt, 292.

Two years later, after the election of Nestor Kirchner, Congress declared the amnesty laws unconstitutional and, in 2005, the Supreme Court upheld the 2001 decision, effectively terminating the Full Stop and Due Obedience laws.¹³⁴ Further, the Supreme Court found the two pardons unconstitutional, which led to the re-arrest of many military officers.

Chile

Salvador Allende won the presidency as a Socialist candidate in 1970, with a plurality of the vote. This presidency divided the country as the heavy anti-communist sentiment radiated from the Cold War apprehensions. As the CIA, under the guidance of President Richard Nixon, interfered in the affairs of Chile in the hopes of removing Allende from power, tensions mounted among the public between Allende's supporters and the opposition.

Nearly three years into Allende's presidency, the military executed a coup d'état that resulted in Allende's death and the beginning of the military dictatorship. On that same day, September 11, 1973, the Junta dictated its first decree which granted complete executive power to General Augusto Pinochet and stated its mission to remove Marxism-Leninism from the country as well as declared a state of emergency, or "state of siege," that granted power to the military courts and allowed for severe actions in order to combat the subversives.¹³⁵ Genaro Arriagada emphasized the ability for the Junta to commandeer the country as "the society had become extremely polarized, and political and social hatred permeated the entire social

¹³⁴ Jo-Marie Burt, 293.

¹³⁵ Junta de Gobierno de la Republica de Chile, Ministerio de Defensa Nacional, and Subsecretaría de Guerra, "Acta de Constitución de La Junta de Gobierno," Pub. L. No. Decreto Ley 1 (1973). Ministerio de Defensa Nacional and Subsecretaría de Guerra, "Declara Estado de Sitio," Pub. L. No. Decreto Ley 3 (1973); Ministerio de Defensa Nacional, "Declara Que El Estado de Sitio Decretado Por Conmoción Interna Debe Entenderse 'Estado o Tiempo de Guerra,'" Pub. L. No. Decreto Ley 5 (1973).

fabric.”¹³⁶ Chilean society had such deep ruptures that many supported the dictatorship and believed it the solution to the problems the country faced.¹³⁷

Around 3,000 people died, more than 100,000 individuals fled to exile, and countless more filled up the prisons and concentration camps as political prisoners within the first days following the coup.¹³⁸ The once-democratic nation disintegrated into a dictatorship as “the government dissolved the legislature, trade unions, and political parties[;] burned the voter rolls and intervened in the universities, appointing active duty military officers as university presidents[;] shut down the newspapers...and established censorship of the press and of books...[and] enforced a curfew for more than a decade.”¹³⁹ The month following the coup represents some of the darkest moments during the dictatorship as the *Caravana de la Muerte*—Caravan of Death—loomed over the country. The personal delegate to Pinochet, General Sergio Arellano Stark led a mission that left at least 75 individuals dead around the country within the first 40 days.¹⁴⁰ Stark would fly the Puma helicopter and present himself to the commanding officer, demanding full control over the base. While Stark enjoyed gala lunches and meetings, his men would secretly remove prisoners—either awaiting military court or recently sentenced for minor infractions—from jail cells and execute them, some in the desert whose bodies have yet to appear.¹⁴¹ Further, Pinochet created the DINA by Decree 521, which implemented an

¹³⁶ Genaro Arriagada, “Chile’s Successful Transition: From Intense Polarization to Stable Democracy,” in *Democratic Transitions: Conversations with World Leaders*, ed. Sergio Bitar and Abraham F. Lowenthal (Baltimore, Maryland: Johns Hopkins University Press, 2015), 51.

¹³⁷ Genaro Arriagada, 51.

¹³⁸ Genaro Arriagada, 50-51.

¹³⁹ Genaro Arriagada, 51.

¹⁴⁰ Naomi Roht-Arriaza, 74.

¹⁴¹ Naomi Roht-Arriaza, 74-75.

organization solely beholden to him used to monitor “enemies of the state” and who often spearheaded disappearances.¹⁴²

The news of the grave human rights violations occurring in the country reached international levels, as the United Nations decided to send a team of observers to the country in July 1975. Pinochet originally supported this visit; however, the day before their arrival, Pinochet reneged on his decision to allow them into the country.¹⁴³ This dramatically damaged international relations, specifically with the United States, as countries began to recognize the use of institutionalized torture and crimes against humanity in the country, delegitimizing Pinochet’s government.¹⁴⁴ Relations with the United States worsened when the DINA assassinated Chilean ambassador Orlando Letelier in September 1976 in Washington D.C.¹⁴⁵

After such damaging events to Pinochet’s legitimacy, in January 1978, the country held a plebiscite that stated, “In the face of international aggression unleashed against the government of our country, I support President Pinochet in his defense of the dignity of Chile, and I reaffirm the legitimate right of the Republic to conduct the process of institutionalization in a manner befitting its sovereignty,” which unsurprisingly, Pinochet won with 80% of the vote.¹⁴⁶ The environment of this plebiscite did not allow for a fair voting system, as many people lived in fear of the powers of the regime. Shortly thereafter, Pinochet administered Decree 2,191—the amnesty law. Decree 2,191 grants amnesty “to all persons who committed criminal acts either as perpetrators, accomplices, or accessories during the period when the state of siege was in force

¹⁴² Ministerio del Interior, “Crea La Dirección de Inteligencia Nacional (DINA),” Pub. L. No. Decreto Ley 521 (1974); Edward C. Snyder, “Dirty Legal War: Human Rights and the Rule of Law in Chile 1973-1995,” *Tulsa Journal of Comparative and International Law* 2, no. 2 (March 1, 1995): 260-261.

¹⁴³ David Altman, Rafael Piñeiro, and Sergio Toro, “Chile: Coordinating a Successful Democratic Transition,” in *Transitions to Democracy: A Comparative Perspective*, ed. Kathryn Stoner and Michael McFaul (Baltimore, Maryland: Johns Hopkins University Press, 2013), 196.

¹⁴⁴ David Altman, Rafael Piñeiro, and Sergio Toro, 196-197.

¹⁴⁵ David Altman, Rafael Piñeiro, and Sergio Toro, 197.

¹⁴⁶ David Altman, Rafael Piñeiro, and Sergio Toro, 197.

between September 11, 1973 and March 10, 1978,” this includes those not prosecuted or convicted (Article 1) and those who have been (Article 2).¹⁴⁷

Under a false guise of success after the 1978 plebiscite and the amnesty as well as a booming economy led by the Chicago Boys, Pinochet proposed a new Constitution on September 11, 1980—exactly seven years after the coup. The proposed Constitution, which passed with 68% of the vote, maintained Pinochet as president and Commander-in-Chief of the Army for the following eight years as well as the opportunity for appointment as a senator for life after the end of his last term.¹⁴⁸ The 1980 Constitution required a plebiscite in 1988 to determine the future of the country. While the Constitution passed, the opposition to Pinochet, namely the Christian Democrats and the Communist and Socialist Parties, united to denounce the Constitution as illegitimate.¹⁴⁹ On August 15, 1983, the unlikely allies formed the *Alianza Democrática* (Democratic Alliance)—a pact among political parties—and the *Asamblea de la Civilidad* (Civic Assembly)—a social agreement for civil society groups and organizations.¹⁵⁰ The beginning of the unification caused trouble as each side had different approaches, highlighted in the protests of 1982.¹⁵¹

After the passage of the Constitution, the Latin American debt crisis hit Chile as unemployment rose and GDP fell, requiring a transition away from the Chicago Boys’ neoliberal economy.¹⁵² Sergio Onofre Jarpa, the newly appointed Minister of the Interior, implemented the

¹⁴⁷ Ministerio del Interior, “Concede Amnistía a Las Personas Que Indica Por Los Delitos Que Señala,” Pub. L. No. Decreto Ley 2191 (1978).

¹⁴⁸ David Altman, Rafael Piñeiro, and Sergio Toro, 198.

Claudio Fuentes, “The Unlikely Outcome: Transitional Justice in Chile, 1990-2008,” in *After Oppression: Transitional Justice in Latin America and Eastern Europe*, ed. Vesselin Popovski and Mónica Serrano (Tokyo, Japan: United Nations University Press, 2012), 118.

¹⁴⁹ Genaro Arriagada, 52.

¹⁵⁰ Genaro Arriagada, “Interview with President Ricardo Lagos,” 77.

¹⁵¹ Genaro Arriagada, 53.

¹⁵² David Altman, Rafael Piñeiro, and Sergio Toro, 200.

“politics of liberalization” which allowed important political leaders in exile to return, relaxed press censorship, and attempted to engage with the opposition.¹⁵³ With the support of Archbishop Santiago Juan Francisco Fresno, a dialogue emerged between Jarpa, important civil society members, and leaders of the Democratic Alliance. This created a foothold for the opposition of the Pinochet regime, which some contend effectively “initiated the process of transition toward democracy.”¹⁵⁴

As the opposition began to create a strong alliance together, a “catastrophic equilibrium” emerged with the Democratic Alliance on one side and Pinochet on the other: Pinochet maintained his power, however, did not have the ability to destroy the opposition while the opposition controlled the civil society but lacked the capacity to change government.¹⁵⁵ Aylwin contends that the mobilization of the civil society greatly affected widespread support of Pinochet and the military regime.¹⁵⁶ However, an assassination attempt by the *Frente Patriótico Manuel Rodríguez* (FPMR)—an armed sector of the Communist Party—on Pinochet in 1986 increased repression again and decreased social mobilization.¹⁵⁷ After the attack, the opposition reunited abiding by a nonviolent approach. With the 1988 plebiscite widely anticipated, the opposition decided to contest Pinochet. While the opposition would have preferred an open election, the Democratic Alliance worked within the confines of the 1980 Constitution and, instead, promoted the “no” vote, which would require elections as opposed to a “yes” which would prolong the dictatorship another eight years. President Patricio Aylwin emphasized “the one important decision was to attempt to defeat the military using its own rules of the game...We

¹⁵³ David Altman, Rafael Piñeiro, and Sergio Toro, 200.

¹⁵⁴ David Altman, Rafael Piñeiro, and Sergio Toro, 201.

¹⁵⁵ Genaro Arriagada, 54.

¹⁵⁶ Genaro Arriagada, “Interview with President Patricio Aylwin,” 63.

¹⁵⁷ Genaro Arriagada, 53.

finally defeated Pinochet within his own institutional framework, without altering too much or compromising what we could call peaceful coexistence among Chileans.”¹⁵⁸ President Ricardo Lagos underscores this sentiment: “Aylwin said that we had to accept Pinochet’s constitution in order to change it later...Pinochet’s constitution was a fact that exists, that is enforced; so if this is the de facto situation, then we can attempt to change that constitution without thereby according it legitimacy.”¹⁵⁹ As the only remaining country under military rule in the Southern Cone, the plebiscite garnered international attention, with the U.S.-based National Democratic Institute monitoring the voting process.¹⁶⁰ On October 5, 1988, the NO campaign won with 56% of the vote and allowed for an open election in the following year.



Figure 3: YES and NO Campaigns: symbol and slogan (Kurdyuk)

Despite the NO campaign winning the plebiscite, the country remained deeply divided. Pinochet maintained national support, as he received 44% of the vote, and the respect of the military. The concessions of the 1980 Constitution guaranteed Pinochet certain powers even after his removal from office, specifically remaining Commander-in-Chief of the Army for eight years—longer than the term of the first democratically elected president—and a position as

¹⁵⁸ Genaro Arriagada, “Interview with President Patricio Aylwin,” 60-61.

¹⁵⁹ Genaro Arriagada, “Interview with President Ricardo Lagos,” 80.

¹⁶⁰ David Altman, Rafael Piñeiro, and Sergio Toro, 201.

senator for life after those years. Further, Pinochet appointed 14 of 17 Supreme Court justices to more deeply entrench the amnesty as well as eight senators for life.¹⁶¹

On December 14, 1989, Chile held its first democratic elections. The *Concertación de Partidos por la Democracia (Concertación)*—Coalition of Parties for Democracy—founded in 1988 from the NO campaign coalition proposed its first presidential candidate: Patricio Aylwin. Aylwin, a Christian Democrat, received 55% of the vote, and became the first democratically elected president after the dictatorship on March 11, 1990.

Aylwin entered power in a unique situation, one he understood as a complex balancing act. In order to please all sides, Aylwin used the phrase, “justice to the extent possible.” Aylwin defends such a decree:

the phrase...reflected a degree of prudence, because if justice was going to be total, if it meant trying Pinochet and all his people, there was going to be a civil war. “To the extent possible” was a viable course because there were trials, but not a beheading, not aggressive actions against those who continued to have the power of arms.¹⁶²

This mindset demonstrates the balancing act between finding justice for the victims of the dictatorship as well as maintaining a path to democracy. This frame largely influenced the actions taken by the government. The first phase of Aylwin’s presidency reflected one of investigation into the human rights abuses.

One month after Aylwin assumed the presidency, on April 25, 1990, he issued Supreme Decree No. 355 which created the *Comisión Nacional de Verdad y Reconciliación*—National Commission for Truth and Reconciliation—or the Rettig Commission to document human rights abuses resulting in death or disappearances during the military dictatorship from September 11,

¹⁶¹ Genaro Arriagada, 56.

¹⁶² Genaro Arriagada, “Interview with President Patricio Aylwin,” 67.

1973 to March 11, 1990. The Decree names the eight members of the Commission, with former Senator Raúl Rettig Guissen as the President, as well as their task and mandate. After nine months of investigation, the Rettig Report, published February 8, 1991, documented 2,279 cases of disappearance, killing, torture and kidnapping (641 others where the Commission lacked consensus and 508 more outside of the mandate) largely occurring during the first three years of the regime and spearheaded by the DINA.¹⁶³ The Rettig Commission detailed the repressive apparatus of the regime, highlighted the widespread abuses, evaluated the judiciary, and issued recommendations such as reparations; however, the mandate did not result in judicial consequences, include crimes such as torture or exile, nor name the perpetrators.¹⁶⁴ The report enraged the military, inciting a response in which the army fervently denied such actions and contended an “unforgivable ignorance” on part of the Commission.¹⁶⁵ Pinochet, acting as Commander-in-Chief of the Army did not approve of the Rettig Report; however, Aylwin subdued Pinochet and the army by emphasizing the chain of command articulated in the 1980 Constitution. This emphasized Aylwin’s power and restrained the military.¹⁶⁶ Human rights activists around the world also felt discouraged by the report, as they felt the Commission could have done more.¹⁶⁷

In the following years, Aylwin issued pardons to those still incarcerated by the Military Courts. By January 1994 the administration had issued 135 pardons, with five more pending, and only 12 people remaining imprisoned from the military regime.¹⁶⁸ However, the administration

¹⁶³ Raúl Rettig Guissen et al., “National Commission for Truth and Reconciliation,” Truth Commission (Santiago, Chile, February 1991).

¹⁶⁴ David Pion-Berlin and Craig Arceneaux, 652; Claudio Fuentes, 123; Manuel Antonio Garretón, 44.

¹⁶⁵ Ejército de Chile, “Respuestas de Las Fuerzas Armadas y de Orden al Informe de La Comisión Nacional de Verdad y Reconciliación,” March 27, 1991.

¹⁶⁶ David Pion-Berlin and Craig Arceneaux, 653.

¹⁶⁷ Claudio Fuentes, 124.

¹⁶⁸ Manuel Antonio Garretón, 44.

faced difficulties continuing with its human rights agenda as the judicial and legislative systems maintained allegiance with Pinochet. Aylwin relied on the other two branches of government to investigate, reopen, or initiate cases as well as establish responsibility for the crimes.¹⁶⁹ The military remained strong after the transition to Aylwin and Pinochet's legacy remained clear throughout government. Aylwin attempted to reform the judicial system and the judicial branch began to rule on such issues; however, during his time as president, the judiciary remained infiltrated by Pinochet's legacy. For example, in 1993, the Supreme Court issued a historic ruling in which they found the DINA responsible for the disappearance of a Chilean citizen; however, they also found that the amnesty applied.¹⁷⁰

The second presidential elections occurred in 1993, with Eduardo Frei Ruiz-Tagle, the representative for the *Concertación*, assuming office in March of the following year.¹⁷¹ Frei continued on Aylwin's path of replacing Pinochet-era judges on the Supreme Court, appointing seven of seventeen judges who brought new approaches, which resulted in the 1995 sentencing of General Manuel Contreras, the former head of the DINA, and seven other members charged as the architects of Orlando Letelier's death.¹⁷² This seemingly progressive movement of the courts halted in 1996 as a summary of cases details, ““Although last year we reported that the courts were divided over how and whether to apply the amnesty law, we now have to conclude that the backsliding over the last year points to the consolidation of a sinister jurisprudence for the goals of truth and justice.””¹⁷³ Further efforts by Frei attempted to reverse this. The government issued a 1998 reform that expanded the number of seats from 17 to 21 and required

¹⁶⁹ David Pion-Berlin and Craig Arceneaux, 651.

¹⁷⁰ Edward C. Snyder, 283.

¹⁷¹ Claudio Fuentes, 120.

¹⁷² Claudio Fuentes, 128; Edward C. Snyder, 283.

¹⁷³ Naomi Roht-Arriaza, 72.

that five ministers must have a legal degree and have practiced for at least 15 years outside of the established judiciary.¹⁷⁴ Further, Frei created the Criminal Chamber of the Supreme Court, a five-person taskforce in charge of hearing appeals against case closure that eventually turned into an investigatory chamber, and altered the relationship between the criminal and military courts, which turned over some cases to the civilian courts.¹⁷⁵ This allowed for the important reopening of the *Poblete Córdova* case on September 8, 1998 where the Supreme Court decided that the international treaties (namely the Geneva Conventions) signed by Chile have supremacy in Chilean law over the amnesty, for “if the regime considered itself in a state of war, argued the proponents of this theory, they were obliged to act accordingly and respect the laws of war, and were estopped from now arguing those rules did not apply.”¹⁷⁶ Another important ruling, the Parral case, in January 1999, found that cases of illegal detention or kidnapping constituted continuous crimes and, therefore, extend past the dates of the amnesty law.¹⁷⁷

In the international sphere, in June 1996, Joan Garcés and Manuel Murillo issued a criminal complaint against General Pinochet and members of his command with charges of genocide, terrorism, and torture.¹⁷⁸ With the Argentine complaint filed months earlier, the Chilean case differed in three ways: 1) this case had fewer suspects as a result of the centralized repression, which allowed for a narrower agenda, 2) less public documents and a lower profile judge in García Castellón, and 3) a single, unified legal team.¹⁷⁹ The global community began to actively support the Spanish case while the Chilean government did not acknowledge it until the case progressed. The United States actively participated in the investigation after Judge García

¹⁷⁴ Claudio Fuentes, 128.

¹⁷⁵ Naomi Roht-Arriaza, 73.

¹⁷⁶ Naomi Roht-Arriaza, 74.

¹⁷⁷ Pamela Pereira, “The Path to Prosecutions: A Look at the Chilean Case,” in *Transitional Justice: Handbook for Latin America*, ed. Félix Reátegui (New York: International Center for Transitional Justice, 2011), 276.

¹⁷⁸ Naomi Roht-Arriaza, 1.

¹⁷⁹ Naomi Roht-Arriaza, 13-14.

Castellón asked for information regarding the murder of Letelier, which led to new information such as the severity of Operation Condor and the possibility for terrorist attacks by the DINA on foreign soil, including acts in Spain.¹⁸⁰ Weeks before Spain issued an international arrest warrant for Pinochet, General Juan Fernando Torres Silva, one of his most trusted advisors, volunteered to testify in front of Judge Castellón on October 3, 1998. Torres Silva claimed his intent as one to underscore the necessity and legality of the actions of Pinochet's regime; however, it validated and legitimized the investigation.¹⁸¹

Pinochet flew to London on September 23, 1998 to receive treatment for a herniated disk; however, this trip resulted in the culmination of international communication and partnership to prosecute the dictator. With the international human rights community aware of Pinochet's upcoming trip; they collaborated to arrest him in London. On October 13, 1998, Garcés and Enrique Santiago, a lawyer in the Argentine case, submitted briefs to Judges Castellón and Garzón, outlining and describing the link of Operation Condor.¹⁸² In the following days, the Judges requested, via Interpol, that the British authorities allow for the questioning of Pinochet after his recovery from surgery.¹⁸³ Due to a high level of uncertainty regarding diplomatic immunity, the British police could not guarantee Pinochet's presence without an arrest warrant; therefore, on October 16, Judge Garzón—not the specific judge of the Chilean case—rapidly issued the arrest warrant for crimes of genocide and terrorism, based on cases from Operation Condor.¹⁸⁴ The warrant immediately went to the office of Magistrate Nicholas Evans who swore

¹⁸⁰ Naomi Roht-Arriaza, 25-26.

¹⁸¹ Naomi Roht-Arriaza, 27.

¹⁸² Naomi Roht-Arriaza, 34.

¹⁸³ Naomi Roht-Arriaza, 34.

¹⁸⁴ Naomi Roht-Arriaza, 34-35.

out the warrant and, at 11 p.m., Scotland Yard arrested Pinochet at the London Clinic.¹⁸⁵ The two cases—Argentina and Chile—merged together under Judge Garzón in the following days.¹⁸⁶

The arrest of Pinochet in London sparked controversy around the world, as some approved and others condemned this measure. The European Parliament, the United Nations Committee on Torture, and other states approved of such actions and urged extradition or prosecution while others viewed this action as disregarding sovereignty.¹⁸⁷ The *Piquete de Londres*, the London protests, erupted after Pinochet's arrest with Chileans and other Latin Americans in exile communicating to discover where Pinochet remained and then holding vigils outside the clinic with Chilean flags, candles, and posters of the disappeared.¹⁸⁸ The exiles greatly helped the efforts by bringing attention to the issue, raising global support, and assisting the legal efforts through transcribing and translating the court hearings for journalists around the world.¹⁸⁹

However, issues arose as to the arrest warrant's legitimacy as the Spanish warrant charged Pinochet with crimes not available for extradition under British law. Garzón had to issue a second warrant in line with British law that charged Pinochet with "torture and conspiracy to torture from 1988 to 1992, with hostage-taking and conspiracy to take hostages from 1982 to 1992, and with conspiracy to murder from January 1976 to 1992."¹⁹⁰ Magistrate Ronald Bartle approved the provisional warrant on October 23, and five days later three judges approved the second warrant almost in its entirety, except for the count of conspiracy to murder.¹⁹¹ In Madrid, the Court had to accept jurisdiction, which it did on October 30 after only one day of testimony.

¹⁸⁵ Naomi Roht-Arriaza, 35.

¹⁸⁶ Naomi Roht-Arriaza, 35.

¹⁸⁷ Naomi Roht-Arriaza, 37.

¹⁸⁸ Naomi Roht-Arriaza, 38.

¹⁸⁹ Naomi Roht-Arriaza, 39.

¹⁹⁰ Naomi Roht-Arriaza, 42.

¹⁹¹ Naomi Roht-Arriaza, 43.

With Pinochet in London, the House of Lords had to rule on his extradition, which Garzón asked for on November 4. After hearing oral arguments, mostly focused on the question of immunity, the judges announced on November 25, Pinochet's 83rd birthday, a three to two decision to approve extradition.¹⁹² However, the judge who cast the deciding vote, Lord Hoffman, had ties to Amnesty International, and although everyone concluded this had no bearing on his decision, the House of Lords revoked the earlier decision and approved a new trial.¹⁹³ On March 25, 1999, after the second trial, the Lords announced a six to one decision that stated Pinochet's crimes as extraditable and his immunity did not extend to such crimes; however, this slate of charges drastically reduced in size from the first.¹⁹⁴ Home Secretary Jack Straw reissued the authority to proceed with the extradition on April 5, setting in motion the extradition hearings which allowed for cases prior to December 8, 1988 as “conspiracy is a continuing offence” and determined that disappearances resulted in “mental torture” for the families.¹⁹⁵ This hearing got the Chilean government more involved with the case, arguing for respect for their sovereignty. Months after the hearing, the Chilean government called for medical testing for Pinochet, asking for doctors to verify his mental deterioration and grant his release.¹⁹⁶ After the group of doctors evaluated Pinochet, they found him unfit for trial, which resulted in the January 11, 2000 declaration by Straw to close the proceedings and Pinochet's return to Chile on March 3 with no extradition.¹⁹⁷

Meanwhile, Chile had its third presidential elections on December 12, 1999, which resulted in a close race between the *Concertación* candidate, Ricardo Lagos, and Joaquín Lavín,

¹⁹² Naomi Roht-Arriaza, 51.

¹⁹³ Naomi Roht-Arriaza, 52-53.

¹⁹⁴ Naomi Roht-Arriaza, 56-57.

¹⁹⁵ Naomi Roht-Arriaza, 58, 61.

¹⁹⁶ Naomi Roht-Arriaza, 61.

¹⁹⁷ Naomi Roht-Arriaza, 62-63.

with the conservative *Unión Demócrata Independiente*—Independent Democratic Union. A runoff election occurred on January 16, 2000, where Ricardo Lagos won.¹⁹⁸ This election divided the right-wing parties and Pinochet, as Lavín pledged to distance himself from Pinochet throughout his campaign.¹⁹⁹ This weakened Pinochet’s standing in the country and undermined his political relationships.

Before the end of Frei’s administration, he implemented the *Mesa de Diálogo*—Table for Dialogue—that had “the generals, represented by the highest-level authority of the Army; across from them the human rights layers; then the Church and other moral institutions of the country; and finally a group of people who represented the political spectrum in Chile.”²⁰⁰ Each side of the table had its own goals: the military believed the roundtable “offered a chance to end the transition...[as] it would stop the parade of military officers before the courts and perhaps even do away with the theory of kidnapping as a continuing crime,” the human rights lawyers and their supporters wanted “new information on the location of the remaining detained/disappeared” as well as “institutional recognition of the responsibility of the armed forces for the human rights violations and a public commitment of the military to never engage in such acts again,” and the religious leaders hoped for “national reconciliation.”²⁰¹

The discussions had appeared to reach a culmination until Pinochet arrived back in Chile and the army gave him a “hero’s welcome,” which angered the human rights activists.²⁰² However, Lagos reunited the group and presented their agreement in a speech on June 13, 2000. The declaration included a six-month period of investigation whereby the armed forces and

¹⁹⁸ Claudio Fuentes, 120.

¹⁹⁹ Claudio Fuentes, 130.

²⁰⁰ Genaro Arriagada, “Interview with President Ricardo Lagos,” 89.

²⁰¹ Naomi Roht-Arriaza, 88; Claudio Fuentes, 124.

²⁰² Naomi Roht-Arriaza, 88.

police agreed to research and uncover information regarding the whereabouts of the detained-disappeared and give it to churches under an oath of secrecy who would then pass the information to President Lagos.²⁰³ On January 7, 2001, President Lagos announced the findings of the investigations: 200 cases of disappearances, 130 disposed in oceans, lakes, and rivers and 20 others in mass graves.²⁰⁴

After Pinochet's arrival back to Chile, domestic cases against him accumulated. Within a day of his departure from London, Gladys Marín filed the first complaint against Pinochet and by the time he landed in Santiago, individuals had filed over 60 complaints—this number would only rise.²⁰⁵ These cases included those from family members of victims of the Caravan of Death charging murder, illegal burial, violations of the Geneva Conventions, and later kidnapping and illegal association.²⁰⁶ All cases naming Pinochet as a defendant consolidated under Judge Juan Guzmán Tapia of the Santiago Appeals Court.²⁰⁷ Guzmán tirelessly investigated the cases, finding many cases of kidnapping—continuing crimes that sidestepped the amnesty law—and ultimately issuing arrest warrants for members of the Caravan of Death: ex-General Arellano Stark, ex-Colonel Sergio Arredondo, ex-Brigadier Pedro Espinoza, ex-Colonel Patrizio Díaz Araneda and ex-Major Marcelo Manuel Moren Brito.²⁰⁸ On March 7, 2000, Guzmán petitioned to revoke Pinochet's immunity to investigate his involvement with the Caravan of Death and charged him with kidnapping; on June 5, the Santiago Appeals Court stripped his parliamentary immunity by a vote of 13 to 9 which the Supreme Court ratified by 14 to 6.²⁰⁹ At the end of the

²⁰³ Naomi Roht-Arriaza, 89.
Claudio Fuentes, 124-125.

²⁰⁴ Mario I. Aguilar, "The Disappeared and the Mesa de Diálogo in Chile 1999-2001: Searching for Those Who Never Grew Old," *Bulletin of Latin American Research* 21, no. 3 (2002): 420.

²⁰⁵ Naomi Roht-Arriaza, 68.

²⁰⁶ Naomi Roht-Arriaza, 76.

²⁰⁷ Naomi Roht-Arriaza, 76.

²⁰⁸ Naomi Roht-Arriaza, 77-78.

²⁰⁹ Naomi Roht-Arriaza, 78, 81.

year, Guzmán indicted Pinochet with 18 counts of kidnapping and aggravated homicide in the Caravan of Death cases and ordered him to house arrest.²¹⁰ The country remained divided as relatives of victims celebrated and his allies complained. Questions arose as to Pinochet's medical stability, so Guzmán went to Pinochet's residence on January 22, 2001 to take his statement and found him lucid, reissuing his indictment on January 29.²¹¹ Over a year after Guzmán reissued his indictment, a panel of the Court of Appeals found Pinochet unfit to stand trial due to subcortical dementia, resulting in the Supreme Court closing his case on July 1, 2002.²¹²

After the ending of Pinochet's trial, many people believed they had yet to voice their experiences, so President Lagos created the Valech Commission, or the *Comisión Nacional Sobre Prisión Política y Tortura* (National Commission on Political Imprisonment and Torture) on September 26, 2003.²¹³ President Lagos said of his decision to create the Valech Commission, "those who had been in prison continued to argue that no one acknowledged what they had gone through, and that when they asked for their record and it appeared that they had been prisoners, they had to explain that they were prisoners because of their political ideas."²¹⁴

As opposed to the narrow scope of the Rettig Report, the Valech Commission documented abuses of civil rights or politically motivated torture, identified victims, and proposed recommendations. The Commission issued two reports (November 2004 and June 2005) as cases remained after the deadline for the first report. As a result of the first edition of the report, the Commander-in-Chief of the Army, General Juan Emilio Cheyre, officially took

²¹⁰ Naomi Roht-Arriaza, 83.

²¹¹ Naomi Roht-Arriaza, 84.

²¹² Naomi Roht-Arriaza, 92.

²¹³ Sergio Valech Aldunate et al., "Informe de La Comisión Nacional Sobre Prisión Política y Tortura," Truth Commission (Santiago, Chile: Comisión Nacional Sobre Prisión Política y Tortura, January 2005).

²¹⁴ Genaro Arriagada, "Interview with President Ricardo Lagos," 89.

responsibility for the actions of the Army in November 2004: “The Army has taken the hard but irreversible decision to assume responsibility as an institution in all punishable and morally unacceptable acts of the past.”²¹⁵ This demonstrated the wide-sweeping change happening in Chile regarding the acceptance of the past and the human rights violations that occurred throughout the dictatorship.

As a free man, Pinochet appeared on a Miami TV station, declaring he had done nothing wrong.²¹⁶ This interview incentivized Guzmán to indict Pinochet on 20 charges of disappearances in conjunction with Operation Condor, as he clearly demonstrated he could stand trial.²¹⁷ On August 26, 2004, the Supreme Court again stripped Pinochet of his immunity by a close nine to eight vote.²¹⁸ Around the same time, the United States found that Pinochet had “125 illicit bank accounts with over US\$20 million.”²¹⁹ By the time of his death on December 10, 2006, Pinochet had around 300 criminal charges still pending against him.²²⁰

Chile has continued its efforts for justice, which includes the continual search for those disappeared and trials for perpetrators that worked within the Pinochet regime. As of June 2019, the country found and identified 307 detained-disappeared individuals.²²¹

²¹⁵ Juan Emilio Cheyre Espinos, “Ejército de Chile: El Fin de una Visión,” *Anuario de Derechos Humanos*, no. 1 (November 5, 2004): 242, <https://doi.org/10.5354/adh.v0i1.13361>.

²¹⁶ Naomi Roht-Arriaza, 93.

²¹⁷ Naomi Roht-Arriaza, 93.

²¹⁸ Naomi Roht-Arriaza, 93.

²¹⁹ Claudio Fuentes, 130.

²²⁰ Naomi Roht-Arriaza, 94.

²²¹ “Informe Anual Sobre Derechos Humanos en Chile 2019” (Santiago, Chile: Centro de Derechos Humanos: Facultad de Derecho- Universidad Diego Portales, November 2019), 47.

FINDINGS AND ANALYSIS

“There may be times when we are powerless to prevent injustice, but there must never be a time when we fail to protest.”

Elie Wiesel (Holocaust survivor and activist)

This section will present and analyze the data to evaluate the hypotheses posed that attempt to answer the question: Why do civilian governments of newly democratic countries respond differently to the human rights violations that occurred during their dictatorships?

Before analyzing the hypotheses, this paper will discuss the classifications as democracy or dictatorship of the countries over time. Argentina’s dictatorial period from 1976 to 1983 presents as Not Free during the middle years (1977 to 1982) and Partly Free during the first and last year (1976 and 1983) according to Freedom House.²²² From 1984 to 2020, Freedom House has classified Argentina as Free, except for 2001 to 2003 at which time a crisis occurred in the country.²²³ Between 1976 and 1982, Argentina received a 0 for democracy, a 9 for autocracy (8 in 1982), and a Polity2 score of -9 (-8 for 1982) according to the Polity IV dataset.²²⁴ Since 1983, Argentina has received 7, 8, or 9 for democracy and Polity2 and 0 for autocracy, signifying a permanence of democracy in the country after the dictatorship.²²⁵ The Democracy and Dictatorship data set scored Argentina as a democracy from 1983 to 2007 (end of the dataset), scoring it as a military dictatorship from 1976 to 1982.²²⁶ TJRC has similar scoring to the Democracy and Dictatorship data set, finding Argentina Autocratic from 1976 to 1982.²²⁷ Table

²²² Freedom in the World.

²²³ Freedom in the World.

²²⁴ Monty Marshall, Ted Robert Gurr, and Keith Jagers.

²²⁵ Monty Marshall, Ted Robert Gurr, and Keith Jagers.

²²⁶ José Antonio Cheibub, Jennifer Gandhi, and James Raymond Vreeland.

²²⁷ Leigh A. Payne et al.

3 shows the data from the four sources for Argentina: Freedom House, Polity IV, Democracy and Dictatorship, and the TJRC.

Similarly, Chile received the classification of Not Free from 1974 to 1979, Partly Free from 1980 to 1989, and Free in 1973 and between 1990 and 2020.²²⁸ Interestingly, a period of dictatorship (1980-1989) scores as Partly Free for Freedom House. As for Chile, the scores varied from 1973 to 1990: between 1973 and 1982, the country received a 0 for democracy, 7 for autocracy and a Polity2 score of -7; between 1983 and 1987, Polity IV gave Chile a 0 for democracy, 6 for autocracy and -6 for Polity2; in 1988, Chile received a 2 for democracy, 3 for autocracy and -1 for Polity2; and in 1989 and 1990, an 8 for democracy, 0 for autocracy and 8 for Polity2.²²⁹ After the dictatorship, Chile received Polity2 scores of 8, 9, and 10, with its first 10 in 2005.²³⁰ The range in scores mirrors the disparity in Freedom House. As for Chile, the Democracy and Dictatorship data finds a military dictatorship from 1973 to 1989 and democracy from 1990 to the end of the data in 2007.²³¹ The change in scores for Chile such as from Not Free to Partly Free for Freedom House in 1980 likely corresponds with the 1980 Constitution that implemented plebiscites as well as the decline in human rights violations that occurred earlier in the dictatorship while the change in a Polity2 score of -1 in 1988 aligns with the victory of the No campaign. Table 4 mirrors that of Table 3 but for Chile.

²²⁸ Freedom in the World.

²²⁹ Monty Marshall, Ted Robert Gurr, and Keith Jagers.

²³⁰ Monty Marshall, Ted Robert Gurr, and Keith Jagers.

²³¹ José Antonio Cheibub, Jennifer Gandhi, and James Raymond Vreeland.

Table 3: Democracy Data for Argentina

Year	Freedom House	Polity IV (Polity2)	Democracy and Dictatorship	Transitional Justice Research Collaborative	Year	Freedom House	Polity IV (Polity2)	Democracy and Dictatorship	Transitional Justice Research Collaborative
1976	Partly Free	-9	0	Autocratic	1989	Free	7	1	Democratic
1977	Not Free	-9	0	Autocratic	1990	Free	7	1	Democratic
1978	Not Free	-9	0	Autocratic	1991	Free	7	1	Democratic
1979	Not Free	-9	0	Autocratic	1992	Free	7	1	Democratic
1980	Not Free	-9	0	Autocratic	1993	Free	7	1	Democratic
1981	Not Free	-8	0	Autocratic	1994	Free	7	1	Democratic
1982	Not Free	-8	0	Autocratic	1995	Free	7	1	Democratic
1983	Partly Free	8	1	Democratic	1996	Free	7	1	Democratic
1984	Free	8	1	Democratic	1997	Free	7	1	Democratic
1985	Free	8	1	Democratic	1998	Free	7	1	Democratic
1986	Free	8	1	Democratic	1999	Free	8	1	Democratic
1987	Free	8	1	Democratic	2000	Free	8	1	Democratic
1988	Free	8	1	Democratic	2001	Partly Free	8	1	Democratic

Year	Freedom House	Polity IV (Polity2)	Democracy and Dictatorship	Transitional Justice Research Collaborative	Year	Freedom House	Polity IV (Polity2)	Democracy and Dictatorship	Transitional Justice Research Collaborative
2002	Partly Free	8	1	Democratic	2012	Free	8	1	_____
2003	Partly Free	8	1	Democratic	2013	Free	8	1	_____
2004	Free	8	1	Democratic	2014	Free	8	1	_____
2005	Free	8	1	Democratic	2015	Free	9	1	_____
2006	Free	8	1	Democratic	2016	Free	9	1	_____
2007	Free	8	1	Democratic	2017	Free	9	1	_____
2008	Free	8	1	Democratic	2018	Free	9	1	_____
2009	Free	8	1	Democratic	2019	Free	_____	1	_____
2010	Free	8	1	Democratic	2020	Free	_____		_____
2011	Free	8	1	_____					

Table 4: Democracy Data for Chile

Year	Freedom House	Polity IV (Polity2)	Democracy and Dictatorship	Transitional Justice Research Collaborative	Year	Freedom House	Polity IV (Polity2)	Democracy and Dictatorship	Transitional Justice Research Collaborative
1973	Free	-7	0	_____	1986	Partly Free	-6	0	_____
1974	Not Free	-7	0	_____	1987	Partly Free	-6	0	_____
1975	Not Free	-7	0	_____	1988	Partly Free	-1	0	_____
1976	Not Free	-7	0	_____	1989	Partly Free	8	0	Democratic
1977	Not Free	-7	0	_____	1990	Free	8	1	Democratic
1978	Not Free	-7	0	_____	1991	Free	8	1	Democratic
1979	Not Free	-7	0	_____	1992	Free	8	1	Democratic
1980	Partly Free	-7	0	_____	1993	Free	8	1	Democratic
1981	Partly Free	-7	0	_____	1994	Free	8	1	Democratic
1982	Partly Free	-7	0	_____	1995	Free	8	1	Democratic
1983	Partly Free	-6	0	_____	1996	Free	8	1	Democratic
1984	Partly Free	-6	0	_____	1997	Free	8	1	Democratic
1985	Partly Free	-6	0	_____	1998	Free	8	1	Democratic

Year	Freedom House	Polity IV (Polity2)	Democracy and Dictatorship	Transitional Justice Research Collaborative	Year	Freedom House	Polity IV (Polity2)	Democracy and Dictatorship	Transitional Justice Research Collaborative
1999	Free	8	1	Democratic	2010	Free	10	—————	Democratic
2000	Free	9	1	Democratic	2011	Free	10	—————	—————
2001	Free	9	1	Democratic	2012	Free	10	—————	—————
2002	Free	9	1	Democratic	2013	Free	10	—————	—————
2003	Free	9	1	Democratic	2014	Free	10	—————	—————
2004	Free	9	1	Democratic	2015	Free	10	—————	—————
2005	Free	9	1	Democratic	2016	Free	10	—————	—————
2006	Free	10	1	Democratic	2017	Free	10	—————	—————
2007	Free	10	1	Democratic	2018	Free	10	—————	—————
2008	Free	10	1	Democratic	2019	Free	—————	—————	—————
2009	Free	10	—————	Democratic	2020	Free	—————	—————	—————

Overall, the data aligns with the social discourse and history defining the periods of dictatorship and democracy of the countries as 1976 to the beginning of 1983 for Argentina and 1973 to 1990 for Chile. The data also shows that Chile has had a more stable democracy than Argentina, constantly receiving Free from Freedom House and higher Polity2 scores from Polity IV after the end of the dictatorships—Argentina has not received a 10 Polity2 score. Figure 4 shows the comparison of the two countries' Polity2 scores.

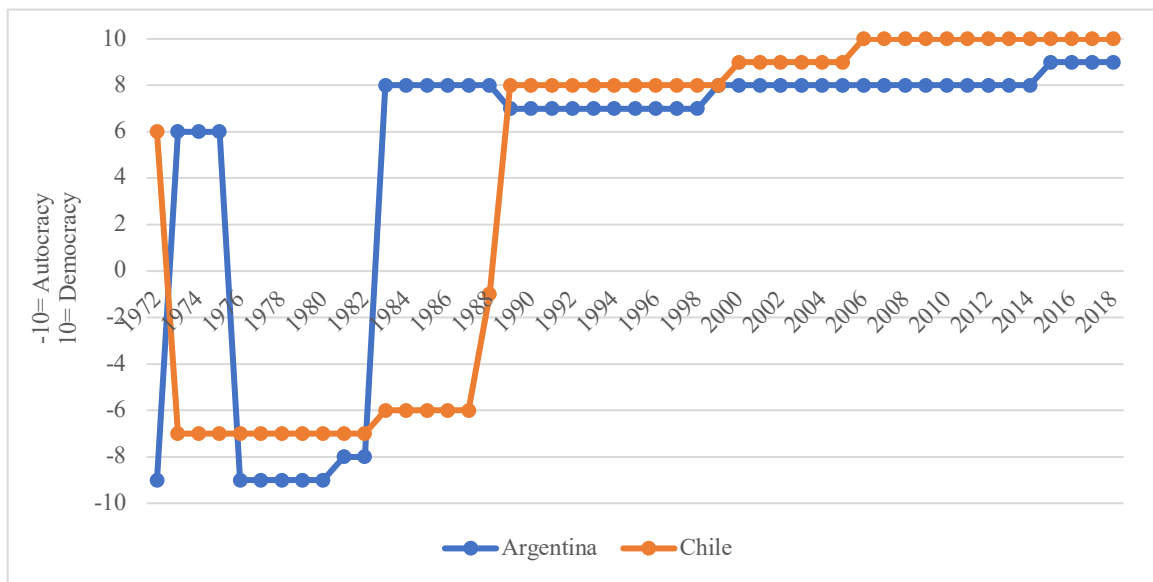


Figure 4: Polity2 Scores from 1972 to 2018 (Monty Marshall, Ted Robert Gurr, and Keith Jagers)

Before analyzing the hypotheses, the paper will quantify justice using in-state reports and TJRC data. As of 2018, 3,081 people have been under the judicial process in Argentina (Figure 5): 1,024 people have been sentenced—891 of whom have been convicted and 133 acquitted—while 537 have died during the process.²³² In Chile, between 1995 and June 30, 2019, 426 human rights lawsuits for 747 detained-disappeared and executed individuals and 221 survivors reached

²³² “Informe Estadístico Sobre El Estado de Las Causas Por Delitos de Lesa Humanidad En Argentina Diagnóstico 2018.,” Lesa Humanidad (Procuraduría de Crímenes contra la Humanidad, December 2018), https://www.fiscales.gob.ar/wp-content/uploads/2018/12/LESA_informe-estadistico-anual-2018.pdf.

a final sentence, 61 for civil compensation and 365 criminal cases.²³³ Over the past ten years, the Supreme Court witnessed more than half (295) of these cases. These sentences correspond to around 23.2% of the recognized disappeared and executed individuals while only responding to 1.1% of torture victims.²³⁴ Figure 6 demonstrates the types of cases and sentences involved; Figure 7 outlines the results of the cases from July 2010 to June 2019 regarding the human rights cases spanning the period of 1973 to 1990.

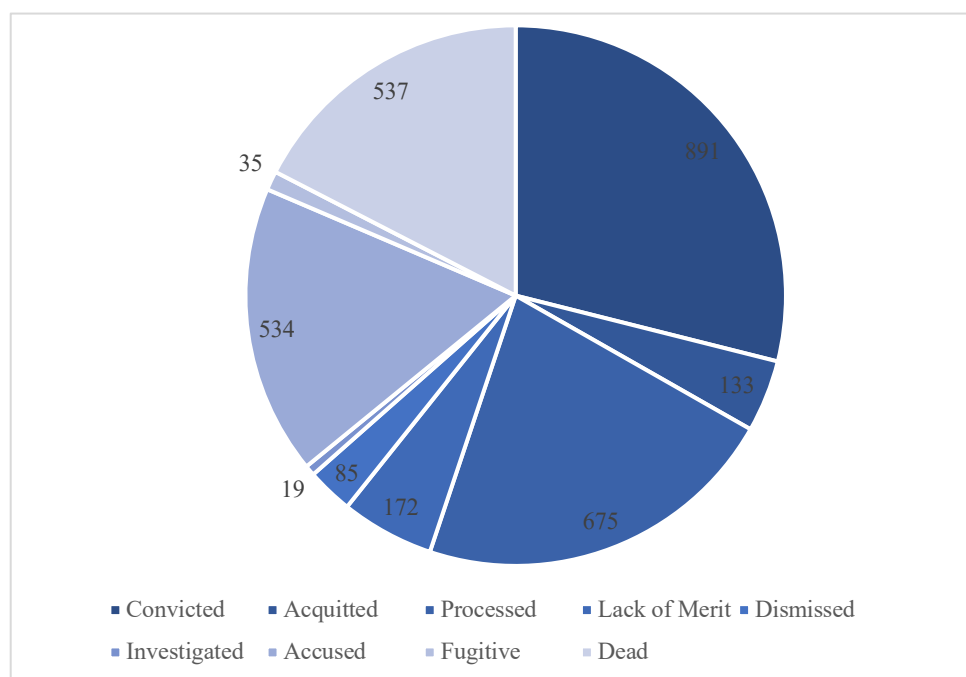


Figure 5: Persons investigated for crimes against humanity, according to the highest procedural situation achieved (*Informe Estadístico Sobre el Estado de Las Causas Por Delitos de Lesa Humanidad En Argentina Diagnóstico 2018*)

²³³ “Informe Anual Sobre Derechos Humanos en Chile 2019,” 71-72.

²³⁴ “Informe Anual Sobre Derechos Humanos en Chile 2019,” 73.

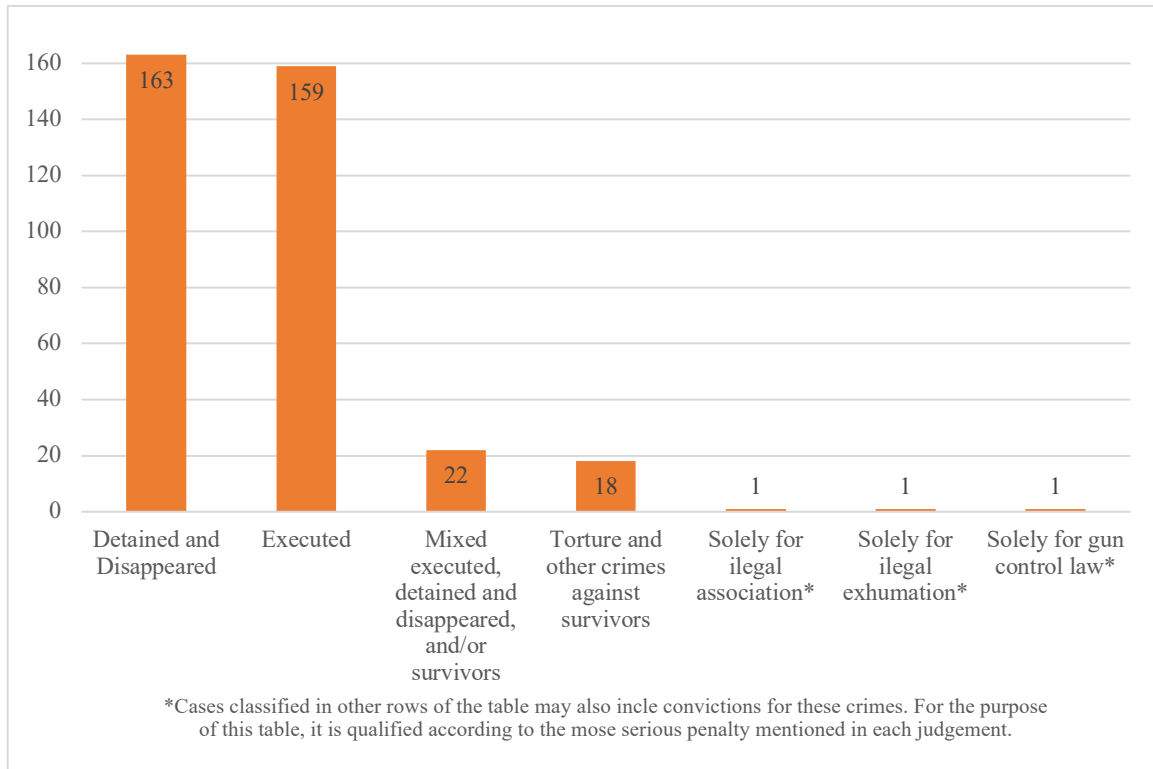


Figure 6: Victimization classes addressed by human rights criminal cases completed between 1995 and June 30, 2019 (“Informe Anual Sobre Derechos Humanos en Chile 2019”)

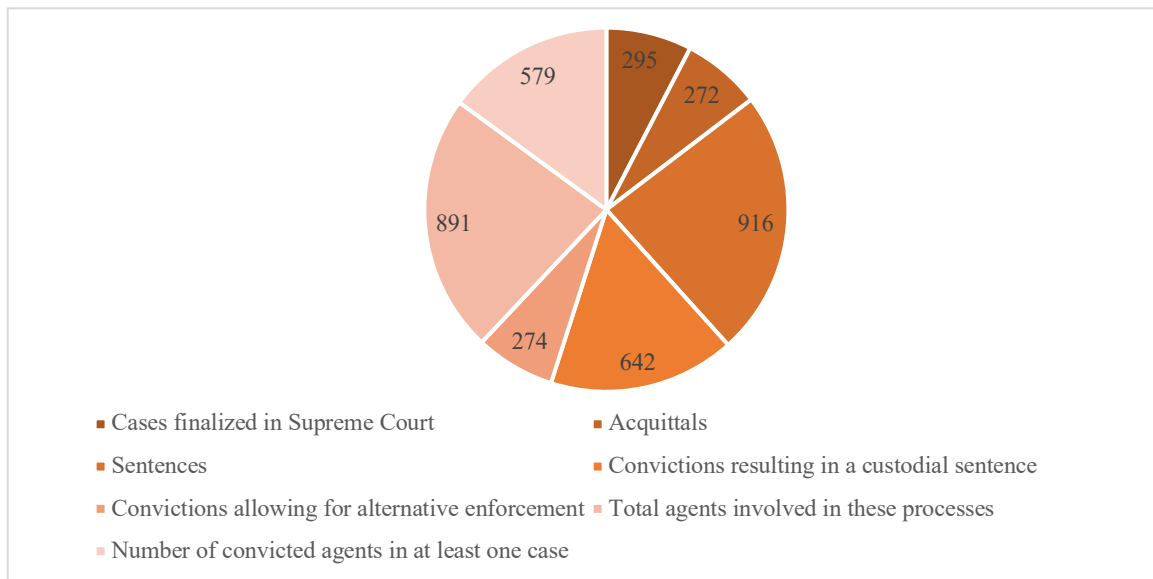


Figure 7: Convictions in final rulings by the Supreme Court from July 2010 to June 2019 in cases of human rights violations committed between 1973 and 1990 (“Informe Anual Sobre Derechos Humanos en Chile 2019”)

The Transitional Justice Research Collaborative analyzes the total number of prosecutions and guilty verdicts per country. Figure 8 demonstrates the total number of

prosecutions held in each country per year while Figure 9 sums these total numbers to arrive at the total number of prosecutions held in each country from all prior years. Figure 8 interestingly shows that when international pressure against Pinochet began in 1999, the trials surged in Chile. It also demonstrates that the largest surge in Argentina occurred between 2007 and 2009. The upward sloping curves in Figure 9 highlight that the total prosecutions continued to grow over time. During the analyzed time periods Argentina had 54 total trials and Chile had 33; this demonstrates the advantage Argentina had in transitioning before Chile.²³⁵ Creating an average number of prosecutions per year removes this time advantage, still revealing Argentina (1.92) had more prosecutions per year than Chile (1.5). Figure 10 shows that Argentine courts reached 24 guilty verdicts and Chilean courts 14 during the studied time periods, meaning 44% of Argentina and 42% of Chilean prosecutions resulted in a guilty verdict.²³⁶

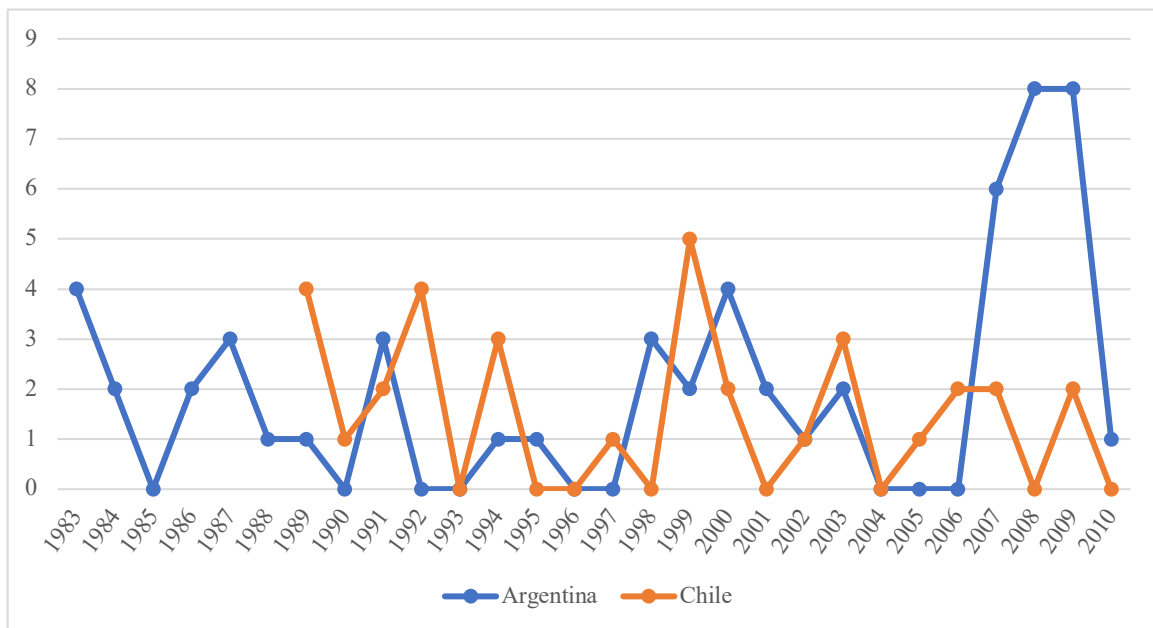


Figure 8: Number of Prosecutions (Transitional Justice Research Collaborative)

²³⁵ Leigh A. Payne et al.

²³⁶ Leigh A. Payne et al.

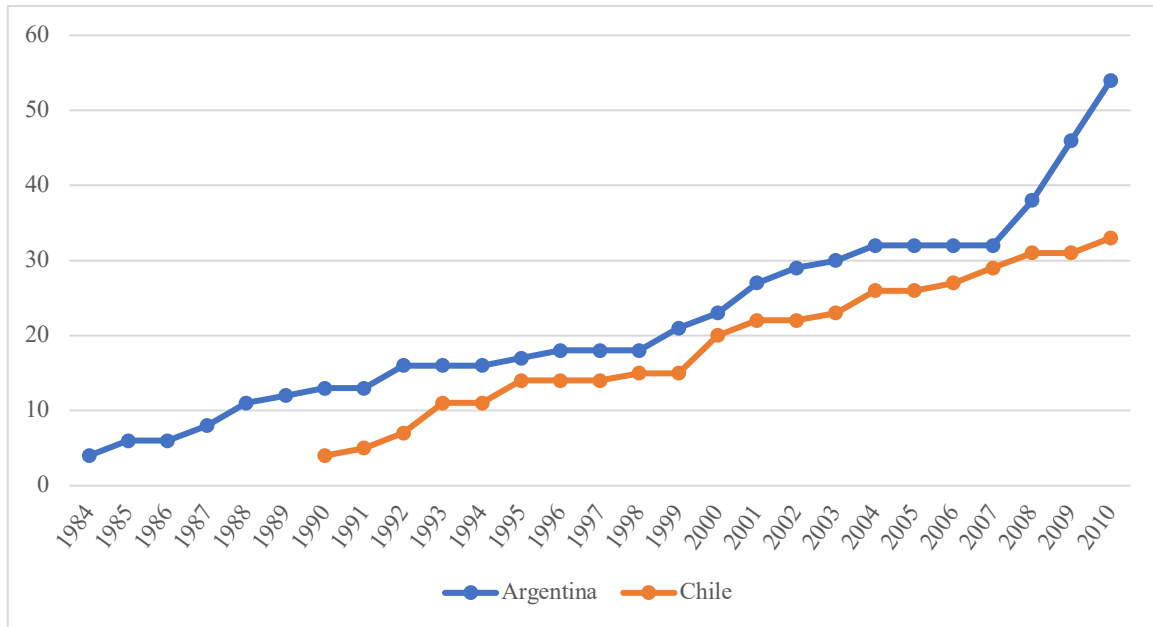


Figure 9: Lagged Prosecutions Sum (Transitional Justice Research Collaborative)

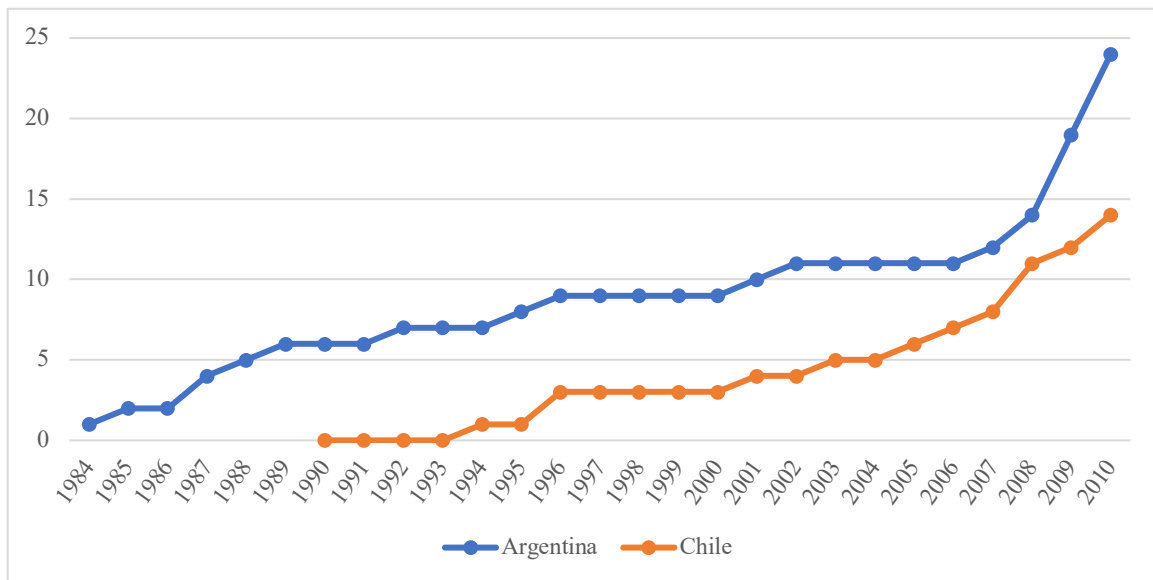


Figure 10: Lagged Guilty Verdicts Sum (Transitional Justice Research Collaborative)

The combined data from the country reports and TJRC shows that Argentina started its justice process immediately after the collapse of the dictatorship in 1983 and continued to have more prosecutions and convictions than Chile. However, this does not diminish the existence of justice in Chile.

TESTING HYPOTHESES

After confirming through data the periods of democracy and dictatorship and the levels of justice in each country, the paper will test and analyze the six hypotheses.

Hypothesis 1: Severity of Violence

As postulated earlier, the degree of human rights abuses during the dictatorship matter to the transitional justice policies implemented by a democratic government. The CIRI Data Project begins its analysis in 1981, meaning this set does not account for the beginning of each dictatorship. Argentina quickly jumped from a physical integrity rights index of 1 in 1981 to a 5 in 1982 and 6 in 1983 while Chile had scores of 3 and below for 1981 to 1990, except for a 4 in 1988.²³⁷ Figure 11 shows the fluctuation of respect for physical integrity rights in the countries after the dictatorships ended in 1983 and 1990 respectively, noting a steadier incline for Chile than Argentina.

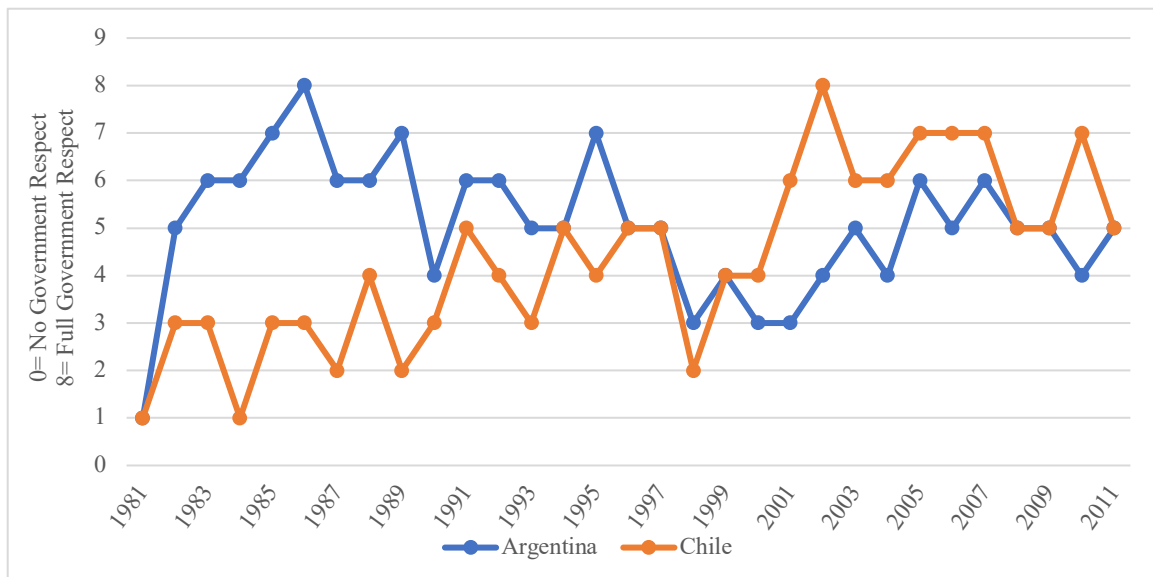


Figure 11: Physical Integrity Rights Index 1981-2011 (David Cingranelli, David L. Richards, and K. Chad Clay)

²³⁷ David Cingranelli, David L. Richards, and K. Chad Clay.

The Latent Human Rights Protection scores demonstrate that Argentina experienced worse human rights violations during its dictatorship than Chile: Figure 12. Argentina's worst year, 1977, received a lower score (-3.065) than Chile's worst year of 1974 (-3.032).²³⁸ Figure 12 also shows Chile's faster progression towards respecting human rights violations than Argentina's. However, the paper emphasizes the highest scoring of 5.4, meaning both countries with scores around 1 in the more recent years do not have the highest respect for human rights in the world setting.

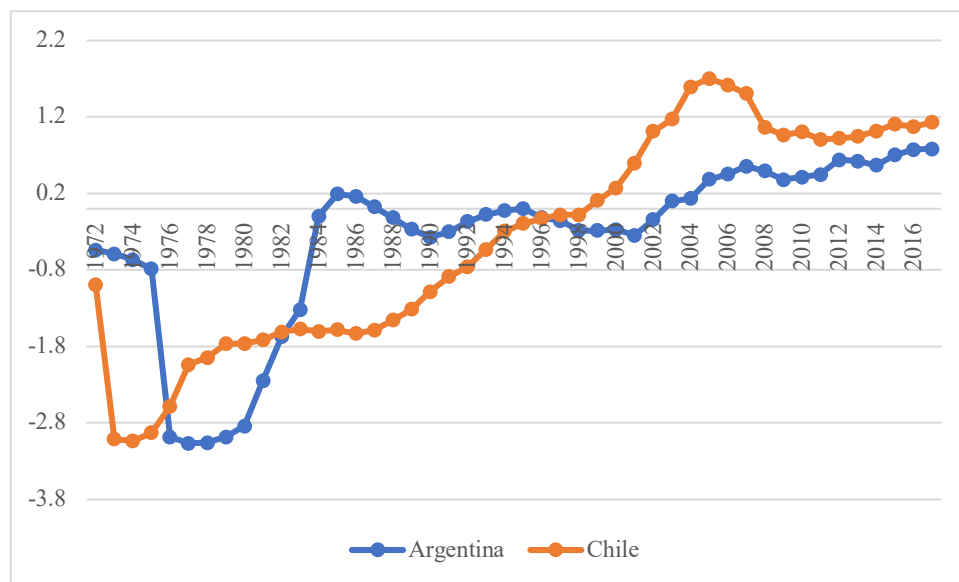
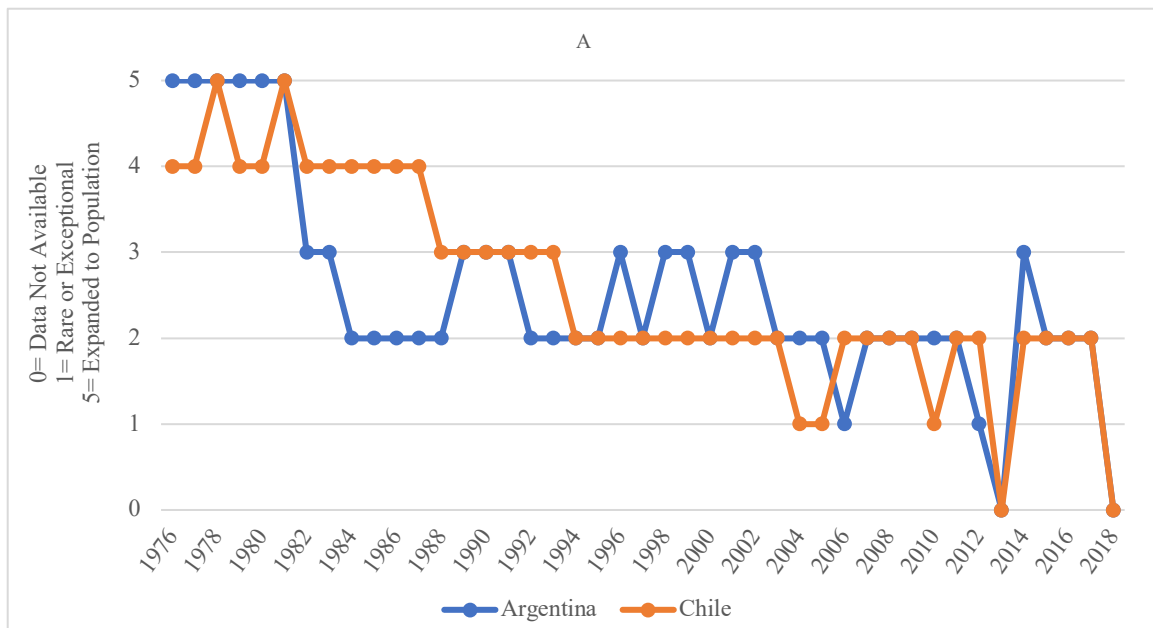


Figure 12: Latent Human Rights Protection Scores 1972-2017 (Schnakenberg and Fariss)

The last data source measuring physical integrity rights, PTS, takes information from three sources; however, only Amnesty International and the U.S. State Department issued reports on torture from 1976 to 2018 as Human Rights Watch began in 2013. Figure 13A plots the data received from Amnesty International reports. It shows that in the beginning years of the Argentine dictatorship, “terror expanded to the whole population” with widespread torture and

²³⁸ Keith E Schnakenberg and Christopher J. Fariss, “Latent Human Rights Protection Scores Version 3,” Latent Human Rights Scores, 2019.

other human rights violations.²³⁹ This remained the case for a majority of the dictatorship until the final years when the country reached a score of 3 in the final two years. The PTS does not have data for the beginning years of the Chilean dictatorship (1973-1975) when widespread violations occurred; however, Figure 13A shows that the country fluctuated between a 4 and 5 until 1988 when it scored a 3. U.S. State Reports (Figure 13B) resulted in slightly different data on the PTS scoring system, rating Argentina as a 4—"Civil and political rights violations have expanded to large numbers of the population. Murders, disappearances, and torture are a common part of life. In spite of its generality, on this level terror affects those who interest themselves in politics or ideas."—for the majority of the dictatorship until the last two years when the country received a 3. Interestingly, the U.S. State Reports score Chile 3 or 4 for the duration of the dictatorship except for in 1986 when the country received a 5. Both organizations demonstrated that the countries fluctuated from 1 to 3 in the years after their dictatorship, with higher scores coming from Argentina—seen in Figure 13.



²³⁹ Mark Gibney et al.

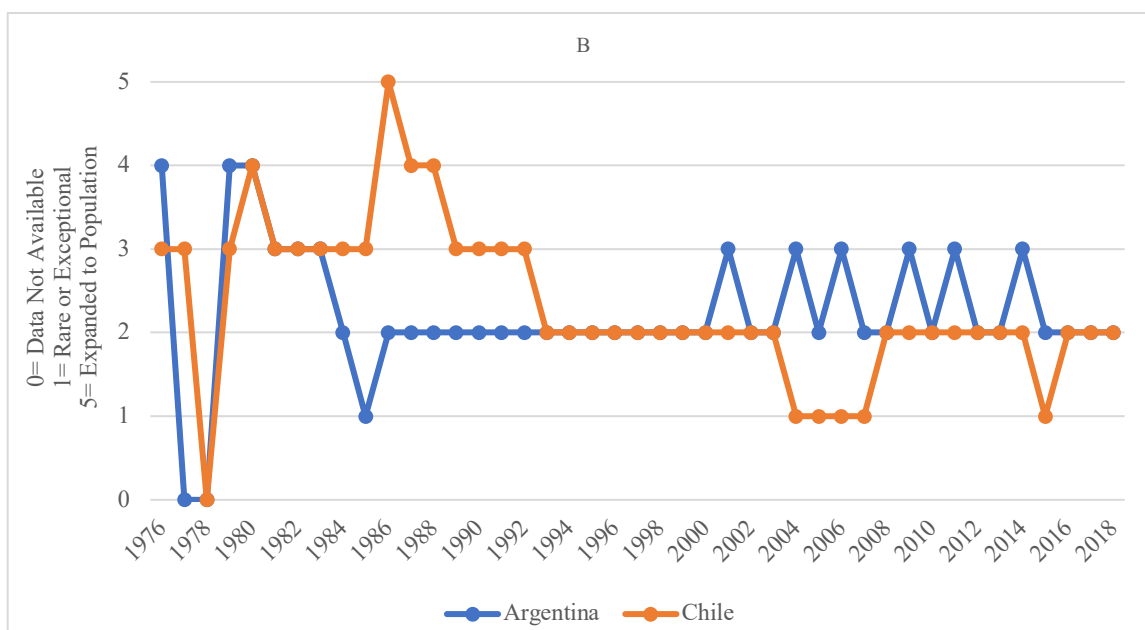


Figure 13: Political Terror Scale from Amnesty International (A) and U.S. State Reports (B) (Mark Gibney et al.)

The last sources of data regarding the heinousness of the human rights violations comes from reports executed within the countries as a result of presidential orders including *Nunca Más* (Argentina), the Rettig Report (Chile), and the Valech Report (Chile). *Nunca Más* provides narratives as well as data regarding the actions of the Argentine Junta, stating that the list “is a partial one” as many of the records disappeared with the individuals.²⁴⁰ The report finds 8,960 people disappeared—but estimates now believe 30,000 disappeared—in 340 secret detention centers.²⁴¹ The Rettig Report from Chile issued similar stories from those in *Nunca Más*, finding 3,428 cases of disappearances, killing, torture, and kidnapping.²⁴² The second truth finding report in Chile, the Valech Commission, found a total of 28,461 victims amounting to 34,690 detentions, as some had suffered multiple detentions.²⁴³ Additionally, 68.57% of detentions occurred in the year 1973 after the September 11 coup, 18.53% occurred between 1974 and

²⁴⁰ Ricardo Colombres et al., “Nunca Más” (Buenos Aires: Comisión Nacional sobre la Desaparición de Personas, 1984), <http://www.desaparecidos.org/nuncamas/web/index2.htm>.

²⁴¹ Ricardo Colombres et al.

²⁴² Raúl Rettig Guissen et al.

²⁴³ Sergio Valech et al.

August 1977, and 12.90% occurred after 1977 until the end of the dictatorship—shown in Figure 14.²⁴⁴

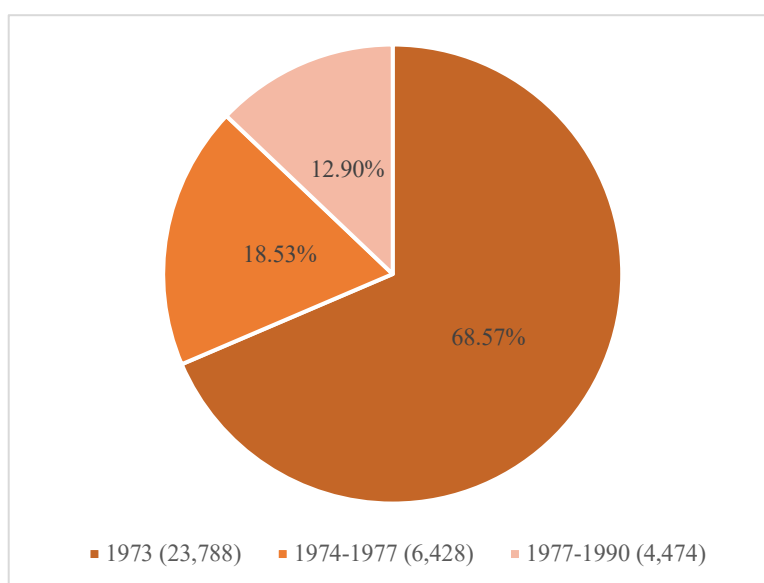


Figure 14: Total detentions by percentage: 34,698 detentions considered; 28,459 victims considered (Valech Report)

The data from the various sources aligns with the first hypothesis that higher levels of atrocities and violations will result in more justice. As both countries experienced massive human rights violations that spanned nearly the entire dictatorships, the existence of trials in both countries aligns with the hypothesis. Figure 12 demonstrates the slightly worse human rights situation in Argentina than in Chile and as Argentina had trials to prosecute the perpetrators within the first years after its dictatorship—faster than in Chile—and has had a larger quantity further strengthens the validity of the first hypothesis. In other words, the severity of human rights violations motivates justice, in timing of trials and quantity of convictions.

²⁴⁴ Sergio Valech et al.

Hypothesis 2: Type of Transition

The second hypothesis relies on scholarly analysis of history. As demonstrated during the timelines of each country, the Argentine Junta experienced a transition by collapse as a result of both internal—division between the branches of the military, increase in number and strength of human rights movements, an economic crisis—and external—the loss of the Falkland Islands War—factors. Whereas in Chile, on the other hand, Pinochet negotiated his transition from power through the 1980 Constitution and its subsequent 1988 plebiscite. The devastated Argentine dictators therefore remained without power and protection, making trials easier in the beginning of its transitional phase. With Pinochet retaining some power and influence over the military, judicial, and legislative bodies, the new government faced more tribulations to try the perpetrators in Chile immediately after the end of the dictatorship. This factor, however, does not explain the longevity of transitional justice as Chile had successful trials and prosecutions. Therefore, as the second hypothesis emphasizes, immediate actions for justice will occur in countries that suffered a transition by collapse and not negotiation; however, it cannot predict justice in the long term.

Hypothesis 3: Legal Status

Judicial independence can highlight the type of legal status in a country because it demonstrates the availability of the system and its connection to the departing dictatorship. CIRI codifies such a measure and demonstrates the legacy of the dictatorships in the judicial system. This measure directly applies to after the dictatorship. After the Argentine dictatorship, Argentina has largely had a partially independent system except for in 1985-1986 and 1988-1989

with a generally independent judiciary.²⁴⁵ Chile's judiciary, however, has become more independent over time. Immediately after the end of the dictatorship, the country had a partially independent system, except for 1994; this changed in 2000 when it became generally independent.²⁴⁶ Figure 15 displays this comparison.

Argentina faced a generally independent legal system in the beginning of its democracy, with a separation of undue military/dictatorial influence and the law, which could account for the existence of trials against perpetrators. However, this plateaued and even decreased as the dictatorship moved farther into history. Chile, on the other hand, did not have this separation for at least 10 years after the end of the dictatorship, which aligns with the timeline of the most important trials against the perpetrators of violations.

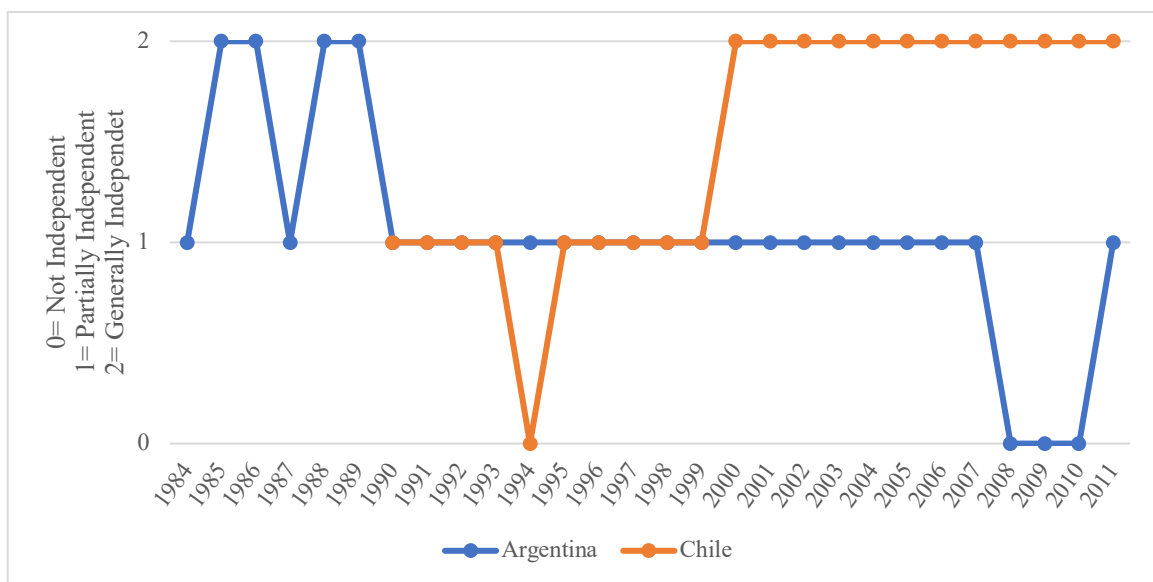


Figure 15: Judicial Independence Scores (David Cingranelli, David L. Richards, and K. Chad Clay)

Other groups have researched judicial independence, including TJRC. The judicial independence measure from TJRC follows Keith's dataset, which has an emphasis on *de facto* independence. Figure 16 shows similar data to that of Figure 15 with certain key information.

²⁴⁵ David Cingranelli, David L. Richards, and K. Chad Clay.

²⁴⁶ David Cingranelli, David L. Richards, and K. Chad Clay.

For Argentina, figure 16 shows a similar fluctuation between 1984 and 1990 to that of Figure 15; how the scores do not plateau as partially independent until 1994. The period between 1992 and 1996 shows Chile did not have an independent judiciary in Figure 16 while it had a partially independent system in Figure 15. This difference likely corresponds to the emphasis on *de facto* independence, as the Chilean judiciary still had many members of Pinochet's regime in power and the new judiciary policies emerged in 1997.

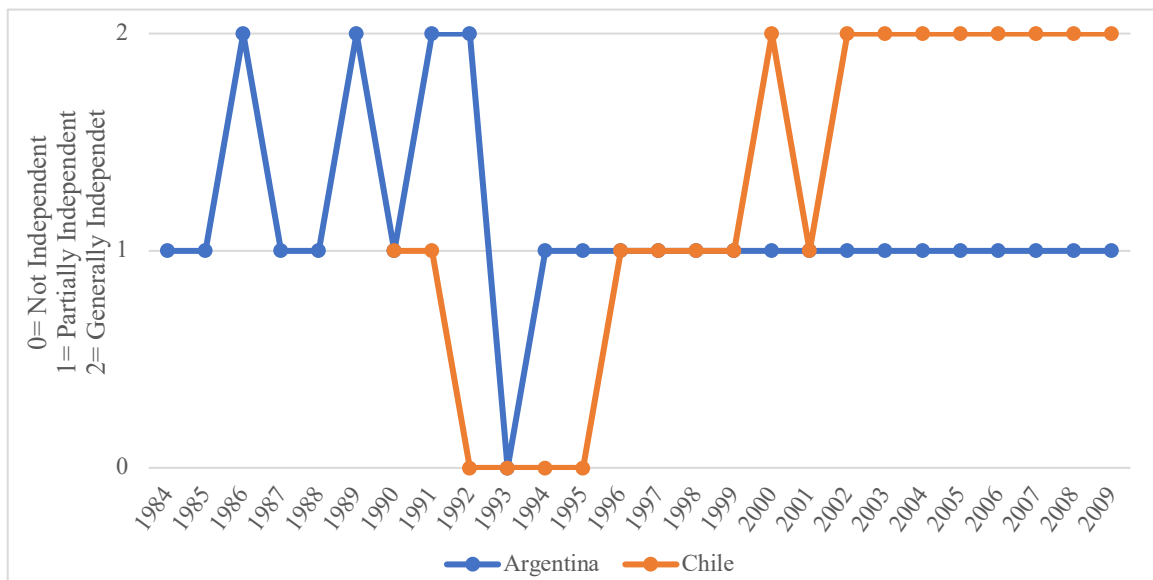


Figure 16: Keith Judicial Independence Scores (Transitional Justice Research Collaborative)

The last measure of judicial independence comes from Linzer and Staton, rating the countries from 0 to 1 (Figure 17). This paper emphasizes that scores around 0.8 represent generally independent judiciaries. Therefore, Figure 17 highlights the fluctuation of Argentine judiciary independence as seen in the previous two figures that levelled off at partially independent around 1990 as well as shows the increase in independence immediately after the end of the dictatorship (1983-1986). Chile, however, exits its dictatorial period partially independent and slowly becomes more independent over time, as the legacy of Pinochet

diminishes with each passing year of democracy and democratic policies until 2000 when it becomes generally independent—all of which mirrors the information in the prior two figures.

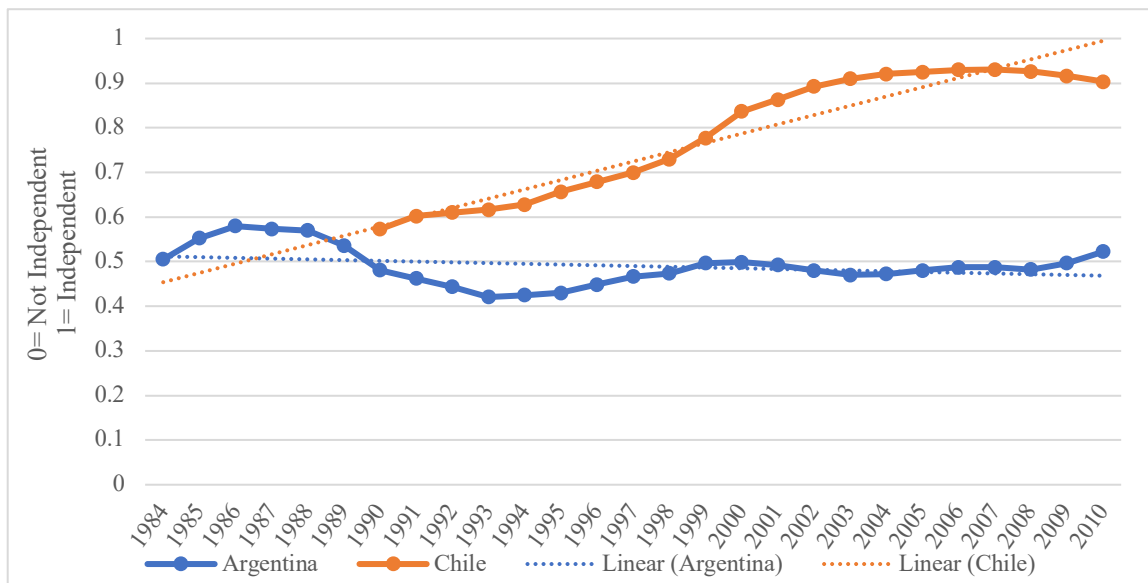


Figure 17: Judicial Independence Scores (Linzer-Staton)

The data appears to confirm the third hypothesis that a continuous legal structure where the former dictators maintain power and influence on the judiciary system have slower justice policies than a system without such influence. It took Chile nearly 10 years after the end of the dictatorship to have a generally independent judiciary that could hold fair and impartial trials against the Junta. Despite lower levels of independence seen in Figure 17, Argentina had a generally independent judiciary immediately following the collapse of the dictatorship. This paper emphasizes that other attributes besides dictatorial legacy impact the degree of judicial independence and notes that Argentina has a consistently partially independent system likely due to its history or political instability.²⁴⁷

²⁴⁷ Drew A. Linzer and Jeffrey K. Staton, 241.

Hypothesis 4: Role of Executive

As noted earlier, the independence of the judiciary impacts the autonomy and authority of the executive. This section will consider the data and information presented in the above section in addition to data from Polity IV that discusses executive constraint. Figure 18 demonstrates the degree of executive constraints in the final years of the dictatorships to 2018. A score of one represents the dictatorial period. Argentina faced many challenges. Immediately after the end of the dictatorship, Polity IV finds executive parity in the country, but this fluctuates to scores of 5 and 6, meaning substantial and intermediate equality, until 2016.²⁴⁸ After the 1988 plebiscite, Chile rises which connotes the beginning of change and then the country spikes into executive parity in 1989 when the first democratic elections occurred.

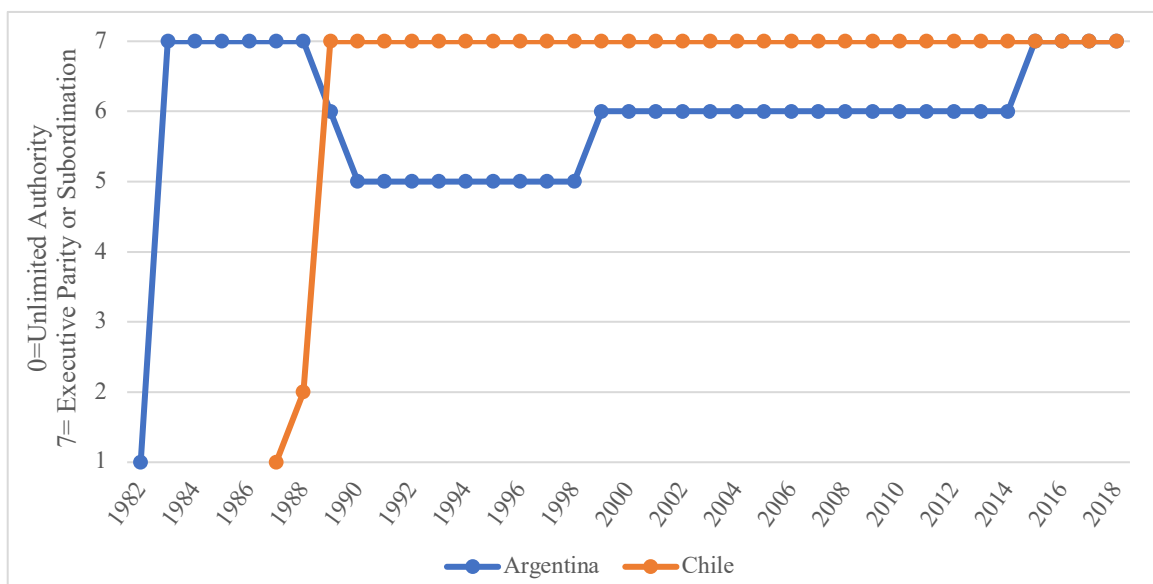


Figure 18: Executive Constraints (Monty Marshall, Ted Robert Gurr, and Keith Jagers)

This information supports the fourth hypothesis when combined with the level of judicial independence seen above. The level of constraints represents the concentration of authority of the president; therefore, a higher score equates to lower levels of authority. According to the

²⁴⁸ Monty Marshall, Ted Robert Gurr, and Keith Jagers.

fourth hypothesis, more authority and decision-making autonomy in the executive will allow for more transitional justice, as the military—or other accountability groups—can exert undue influence and alter justice policies. An independent judiciary acts as an accountability group and, therefore, can work in tandem with an equal executive branch to exert justice.

Immediately after the end of the dictatorship, Argentina had an independent judiciary and executive parity; however, both began to waver in the long term as the legal system had partial independence and the executive had more authority, a sign of its historical political instability. Argentina's executive constraint scores, therefore, would lead one to assume less success with transitional justice policies. However, unlike the Polity IV scores that do not name the accountability groups placing constraints on the executive, this paper assumes that the independent judiciary during this time period acts as the constraint as the military did not have the power to do so. This allows for a higher level of decision-making autonomy in the executive, as the legal system would not interfere as an independent body. Argentina therefore lands in the B square of Figure 1 from Pion-Berlin and Arceneaux with high levels of decision-making autonomy and low levels of authority. The pattern of justice follows as well; Argentina had a high influx of trials against perpetrators in the beginning years, but that tapered off as the judiciary became less independent—autonomy decreased—and the authority of the executive faltered.

This thesis contends that the stability of Chilean scores in Figure 18 suffers from the inability to decipher the accountability groups exercising constraints on the executive. The history of the country and its judicial independence scores, however, allow for the paper to deduce the military as the accountability group for the first decade after the dictatorship. This constraint greatly differs from an independent legal system constraint as those aligned with the

dictatorship face prosecution from transitional justice policies and would, consequentially, oppose such actions. Therefore, the low level of authority of the Chilean executive and low level of decision-making autonomy due to the influence of the post-dictatorial regime in positions of power, Chile did not have many successful justice policies in the beginning of its democracy, as in quadrant D of Figure 1. While the country did initiate the Truth and Reconciliation Commission during this time, its publication *Nunca Más* described its shortcomings as a result of destroyed or withheld information.

Overall, the combination of judicial independence and the level of authority and autonomy of the executives in both Argentina and Chile align with the fourth hypothesis: higher levels of autonomy and authority of the executive allow for greater success in justice policies.

Hypothesis 5: International Pressure

Along with information presented in the timelines of each country, specifically the role of Spain and the United Kingdom in a trial against Pinochet, international organizations' actions in a given country demonstrate international pressure. Human rights organizations like the United Nations, Amnesty International (AI), Human Rights Watch (HRW), and the Inter-American Commission on Human Rights (IACHR) act as pillars for the transnational advocacy networks that join the efforts of individuals, civil society groups, NGOs, and non-profit organizations to advocate for change.

The UN has issued reports on both countries from various sectors of the organization. Some examples about Argentina include “Question of the human rights of all persons subjected to any form of detention or imprisonment, in particular torture and other cruel, inhuman or degrading treatment or punishment” by the Special Rapporteur, Nigel S. Rodly, to the

Commission on Human Rights and Security Council Resolution 502 that urges Argentina to withdraw from the Falkland Islands. As for Chile, the UN, from the General Assembly to the Economic and Social Council, has issued around 60 resolutions and decisions regarding the dictatorship and the human rights system in the country beginning in 1974 and continuing into the 2000s.

The first action from AI in Argentina occurred when a delegation visited the country in November 1976 and issued a report discussed above. The organization continues with its reports and activism regarding the Argentine dictatorship, periodically issuing reports on the topic and the human rights abuses present. Similarly, AI issued its first report on Chile in 1974, which discusses Allende and the Junta, focusing on the human rights abuses occurring as a result of the dictatorship.²⁴⁹ AI continued to issue reports and campaigns that addressed the human rights abuses, specifically torture and disappearances, until 2008. The first HRW reports on both Argentina and Chile came out in 1991. HRW has issued few reports on either country relating to the dictatorships, with the last in 2001 for Argentina and 2005 for Chile. The PTS also helps articulate the amount and frequency of reports from AI and HRW as well as the U.S. State Reports. As the PTS began in 1976, it has scores for both countries from AI and U.S. State reports but not for HRW. Further, the IACHR issued its first country report on Argentina in 1980, with its first visit in 1976, and on Chile in 1975 after a 1974 visit. The IACHR issued other reports on the countries, discussing the human rights concerns in each.

The largest amount of international pressure exerted on either country occurred between 1996 and 2000 when Spain and the United Kingdom worked in tandem to prosecute Pinochet. This experience demonstrated to Chile, and the global community, the impact of a strong, united

²⁴⁹ Amnesty International, ed., *Chile: An Amnesty International Report* (London: Amnesty International Publications, 1974).

exiled community as well as the strength of universal jurisdiction. It greatly incentivized Chile to begin its own investigations and trials as the world learned about the heinousness of the dictatorship and pleaded for justice. The data regarding involvement of international organizations demonstrates that these reports existed since the beginning of the dictatorships, highlighting the human rights violations and calling for a change; therefore, their impact on justice remains unclear. The case of Chile provides an example of the impact of international pressure on domestic enforcement, meaning the fifth hypothesis has merit; however, the strength of transnational advocacy networks on exerting this positive force requires further investigation.

Hypothesis 6: Diffusion Theory

The geographical proximity and many cultural similarities, specifically a common language and religion, makes Argentina and Chile an excellent case study of the efficacy and validity of the diffusion theory. According to the timelines of each country and data presented above, Argentina had trials within the first years after the end of the dictatorship, while domestic Chilean trials did not occur until many years into the democracy. This would imply that trials existed in Argentina many years before Chile. One could then postulate that the success of the trials in condemning perpetrators and relieving the society of this weight influenced Chile.

Figure 19 shows the percentage of countries in the region that had prosecutions in each year. As mentioned earlier, all of the Southern Cone countries and many other South American countries suffered from dictatorships during a similar time period. All of these countries transitioned to democracy before Chile, so the diffusion theory accounts for not just the impact of Argentina on its neighbor but also the other geographically proximate and culturally similar countries in the region. Figure 19 data confirms diffusion theory because the percentage increases over time,

implying that more countries within the region used trials in their transitional justice policies. Figures 8, 9, and 10 demonstrate that successful prosecutions (meaning those that resulted in guilty verdicts) began in Argentina before Chile; therefore, following the diffusion theory, this paper argues that Argentina, and other countries with prosecutions throughout the region, influenced Chile to adopt similar policies.

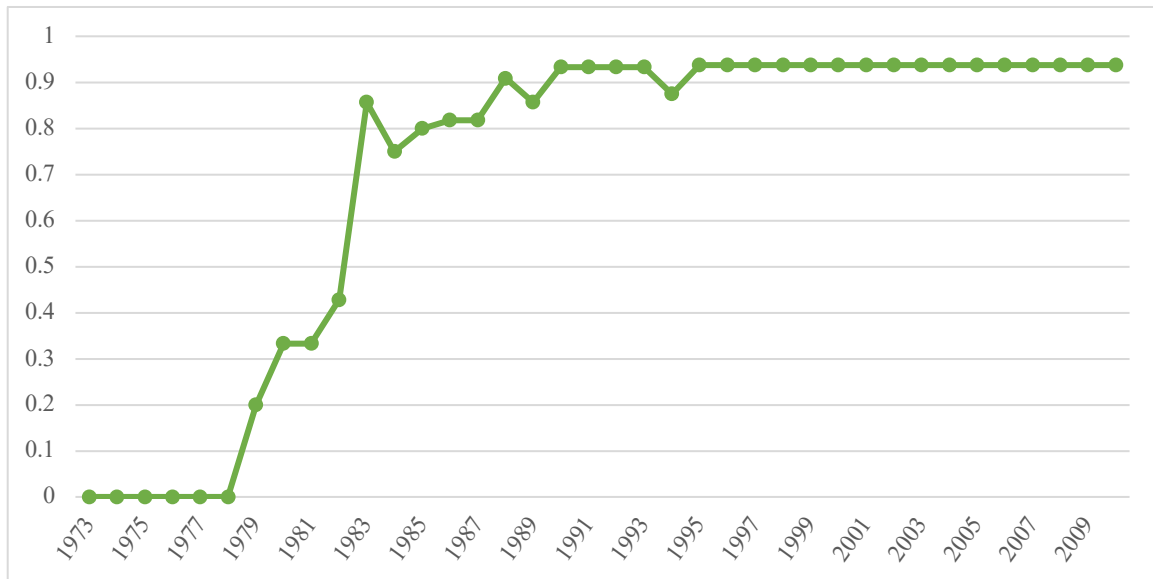


Figure 19: Regional Prosecutions (Transitional Justice Research Collaborative)

In conclusion, Table 5 articulates the validity of the hypotheses according to the data presented.

Table 5: Summary of Findings

Hypothesis 1: Severity of Violence	<i>Confirmed:</i> Severe human rights abuses result in justice policies with more heinous case (Argentina) having prosecutions sooner.
Hypothesis 2: Type of Transition	<i>Confirmed:</i> Transitions that result from collapse will take more immediate transitional justice policies than those with a pacted transition; however, this cannot predict long-term responses.
Hypothesis 3: Legal Status	<i>Confirmed:</i> A continuous legal structure where the former dictatorial regime maintains power and influence over the judiciary will have fewer and less successful justice policies in the short-term.
Hypothesis 4: Role of executive	<i>Confirmed:</i> High levels of executive autonomy and authority allow for greater success in justice policies.
Hypothesis 5: International Pressure	<i>Mixed results:</i> International pressure can advocate for and influence countries to execute justice policies; however, the specific impact of transnational advocacy networks on incentivization requires more research.
Hypothesis 6: Diffusion Theory	<i>Confirmed:</i> The diffusion theory can account for trials flowing from one geographically proximate and/or culturally similar country to another given success in the primary.

CONCLUSION

“We know that peace is only possible when it is the fruit of justice. True peace is a profound transformation by means of the force of nonviolence that is the power of love.”

(Adolfo Perez Esquivel, Survivor and 1980 Nobel Peace Prize Recipient)

This thesis has analyzed possible explanatory variables for varying responses to human rights abuses caused by dictatorships, using Argentina and Chile as case studies. It finds that 1) the severity of violence during the dictatorships, 2) the type of transition, 3) the legal structure, 4) the role of the executive, and 5) diffusion theory explain the justice policies in the short and long-term. International pressure has influenced these policies as well; however, more data must exist to determine the extent of its sway.

Argentina and Chile had interestingly different responses—both in policy and society—to the grave dictatorships in their respective countries; however, this paper begins the analysis to explain the structural differences, with a focus on the existence of trials against the perpetrators of the abuses. The first democratic government of Argentina could implement trials quickly because of the heinousness of the violations by the Junta, the collapse of the dictatorial regime, the restored legal structure with high levels of judicial independence in the first democratic years, and high levels of executive authority. Argentina’s transitional justice policies declined for many years because the political situation changed, and the country began to separate itself from its past. Chile had an opposite approach. The beginning years of its democracy remained in the shadow of Pinochet’s presence as he maintained power in the judiciary, legislature, and military. The country began most of its transitional justice policies after the first decade of democracy, when the judiciary gained independence, other countries in the region had begun to implement prosecutions, and the international community nearly prosecuted Pinochet in Europe. With both

dictatorships 30 years in the past, Chile appears to have recovered more stability in these political measures, specifically judicial independence and executive constraints; however, this paper contends that the tumultuous Argentine history continues to impact the political stability in the country and such a history does not exist in Chile.

This paper, however, does not end the study on the differences of Argentina and Chile with respect to their responses to the dictatorship. Many societal differences exist as well, especially in terms of public opinion and attitude towards the military regimes. Therefore, a future study could analyze the societal perceptions of the dictatorships and the transitional justice policies enacted as well as the process of memorialization. Furthermore, the dictatorship impacted different groups of people in drastically different ways, so this paper recommends an analysis of the dictatorial effect on minorities, specifically the multitude of indigenous populations in both countries.

Many countries have suffered from dictatorships and mass human rights abuses, making this thesis widely applicable to the global community. However, this thesis should provide as one example within a broader scholarly body to evaluate the variables that impact transitional justice policies. Further, scholars can utilize this thesis as a baseline to potentially predict the outcomes of countries currently undergoing dictatorships or transitions to democracy. Despite the focus on two countries, its findings expand past the Southern Cone and South America to the international arena.

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