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# Human Rights Activism: The Catalyst of Transitional Justice?

By

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## ABSTRACT

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This thesis demonstrates the essential role human rights activists play in the process of transitional justice. Through an analysis of the conceptualizations of transitional justice, in which I argue we must understand the process in broader terms that include both judicial and non-judicial practices, I enter into a comparative analysis of the case studies of Argentina and Spain. I explore Argentina's Dirty War and the wound that was subsequently created. I question how this wound came to be and how the country chose to deal with it. I then turn my attention to the case of Spain, who unlike Argentina, did not undergo a formal process of transitional justice. Here, I analyze the informal process of transitional justice that occurred and the work of human rights activists in this process, looking to the possibility of a formal process similar to Argentina perhaps occurring in the future. I conclude my thesis by raising the question: what can we learn from the cases of Argentina and Spain and how can we apply this to the United States, who has not undergone a process of transitional justice but seems to be looking to engage with one.

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## Introduction

The Holocaust and Germany, Apartheid in South Africa, genocide in Rwanda: the list of countries who have suffered widespread atrocity is extensive. When considering the active role a government and its citizens have in perpetuating and executing abuse, the need to rebuild and heal a fractured society becomes essential. Thomas McCarthy writes that “redressing past wrongs is essential to establishing conditions of justice in a society scarred by the enduring and pervasive effects of those wrongs,” arguing that when not addressed, these historical injustices continue to impact modern society (McCarthy 2004). However, this thesis first grapples with the question: how does a country approach the process of healing? The most significant answer to this has been through transitional justice, a process which combines both judicial and non-judicial mechanisms in order to address human rights abuses. The rise of transitional justice has also led to a questioning of its application elsewhere, specifically to countries who have a history of abuse that has gone unaddressed. How should these countries, who have either never or not fully addressed their dark pasts but whose pasts still continue to haunt them in the present, engage in a process of transitional justice? The United States is among those countries that have been called upon to engage in a process of transitional justice. Discussion surrounding this argues that modern inequalities related to health care, education, and income, among others, in America have been caused by the failure to address the historical oppression of African-Americans that can be dated back to abuse starting as early as colonial era slavery (McCarthy 2004). While transitional justice is not always what is directly called for in the U.S., demands for reparations, the removal of Confederate era statues, and the formal condemnation of systematic and widespread inequality all indirectly and directly call for a process of transitional

justice. The following will provide analysis on the use of transitional justice in Argentina, a country that underwent a formal process of transitional justice following the Dirty War, and then compare it to Spain, a country that failed to address their dark past related to their Civil War and Franco's dictatorship.

Through an examination of these two cases, I will question: how should we conceptualize transitional justice? What role do activists play in advancing transitional justice? Should the work of human rights activists be considered to be part of an informal process of transitional justice? My thesis will ultimately describe that a key catalyst in the process of transitional justice is the work of human rights activists and organizations. These activists are able to push forward a formal process of transitional justice, as seen through their leveraging of the international community, the attempts to create a social movement, a public return to memory and re-examination of the past. Additionally, this thesis will describe how the work of human rights activists and organizations in it of itself engage in, what I call, an informal process of transitional justice. Through their work, activists are able to achieve accountability, bring about a certain type of justice, and engage in an important form of remembrance that forces the public to acknowledge and re-examine the past and the present. By examining both cases, and the role of human rights activists as actors who advocate for and advance formal processes of transitional justice and engage in an informal process of transitional justice, I will look to understand how a country can overcome widespread and systematic atrocity. Ultimately, after an examination of Argentina and Spain's approaches to dealing with their respective pasts, and their varying transitional justice processes, I will look to understand how these cases can potentially provide us with a framework for how countries can deal with and overcome atrocity, looking specifically at the United States.

The first chapter discusses how we should conceptualize transitional justice. I provide two different conceptualizations, one that is narrower, drawing on Ruti Teitel, and one that is broader, by the UN Secretary General's 2004 *Report on the Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*. In this section, I detail the history of transitional justice and how the rapid proliferation of material regarding this topic has led to the need to consider its current conceptualization. I then look at Teitel's conceptualization of transitional justice, which I argue is too narrow as it focuses solely on specific legal mechanisms, leaving no room for an equal emphasis on non-judicial mechanisms. I then turn to an analysis of why we should understand transitional justice in more broad terms, looking at the benefits of truth commissions and reparations as two main non-judicial mechanisms.

The second chapter delves into Argentina's Dirty War in which the military dictatorship brutally repressed and abused the country's citizens for eight years. I begin my paper with a historical account of the pre-dictatorship era. I then turn to an analysis of the dictatorship in which I look at the CONADEP *Nunca Más* report in order to elaborate on the specific abuses committed against Argentine citizens at the hands of the state. This section then highlights the emergence of human rights activism during the dictatorship, highlighting that, despite the severe repression, it was not so repressive so as to block all attempts for activism, extensively referencing the work of the Madres de la Plaza de Mayo. I next question what caused the end of the dictatorship, ultimately asserting that it was not just the Malvinas War, as some have suggested, but rather a series of factors, including that of the pressure placed on the dictatorship by the emergent human rights movement. I conclude my paper with an analysis of the transitional justice process that the country underwent, drawing specifically on the framework offered by Francesca Lessa, but highlighting the important work of human rights activists that

began not in the “time of memory,” but emerged and continued to grow starting during the dictatorship.

The third chapter then turns to the case of Spain, a country who unlike Argentina, did not immediately confront their past which included a deadly Civil War followed by a near 40-year long dictatorship that abused and repressed their citizens. I begin with a brief overview of the Spanish Civil War and its effects. I then shift my focus to the utilization of the framework offered by José González which breaks down Spain’s period following the Civil War into three sections, the “time of silence,” the “time of forgetfulness,” and the “time of memory” (González 2007). I analyze each of these three periods, highlighting the specific role of human rights activism, which was largely unable to occur within the state during the dictatorship for various reasons, which are discussed in the chapter. I then address how human rights activism did begin to occur during the “time of forgetfulness” suggesting that, in a similar sense to that of Argentina, activism did not suddenly occur during the “time of memory,” but rather had roots already set in place prior to this that were finally realized once the conditions permitted. Throughout the piece, I make comparisons between Spain and Argentina’s process helping to illustrate why Spain in particular did not engage in a process of transitional justice immediately following the end of the dictatorship. I conclude my chapter looking at the “time of memory” in which we now see the country begin to address this past, perhaps suggesting that they will eventually pursue a formal process of transitional justice similar to Argentina.

In my final chapter, I raise the question of how we can understand the transitional justice processes of Argentina and Spain in relation to the United State’s. The United States also did not address their slave past and it has thus been suggested that current inequalities stem from this lack of action and addressment. In highlighting the key components of human rights activism in



Spain and Argentina and applying this to the possible application in the U.S., I ultimately assert that transitional justice should be understood to include both formal and informal processes.

### **Chapter 1: Narrower and Broader Conceptions of Transitional Justice**

The phrase ‘transitional justice’ is thought to have first been used in 1991 as a way of describing recent changes following the fall of the Soviet Union and the collapse of junta regimes in Latin America (Hinton 2010, Teitel 2008). Transitional justice has been described as “a legal and philosophical theory and a global practice that aims to redress wrongdoing, past and present, in order to vindicate victims, hold perpetrators to account, and transform relationships—among citizens as well as between citizens and public officials” (Murphy 2021). The phrase transitional justice has a debated origin, some thinking there is likely more than one originator. Ruti Teitel is among the thinkers who have been thought to have coined this term. As an originator of the phrase, Teitel wrote that it aimed, “to account for the self-conscious construction of a distinctive conception of justice associated with periods of radical political change following past oppressive rule” (Teitel 2008, 1, Arthur 2009).

There has been a significant proliferation of literature regarding transitional justice. Over the past few decades, the practice has greatly evolved with the introduction and normalization of new mechanisms and the implementation of the practice (Murphy 2021). We see the successful use of non-judicial mechanisms, such as that of the utilization of truth commissions in Argentina in the 1980s, as well as expanded use of legal mechanisms, such as the use of universal jurisdiction in the case of Chile against General Pinochet, and the establishment of the International Criminal Tribunal in the former Yugoslavia (ICTY), both in the 1990s. As the

process has changed and expanded with modern historical applications, we are forced to consider how we are to now conceptualize transitional justice.

This evolution has revealed current discrepancies in regard to how transitional justice is understood. Some theorists conceptualize transitional justice in a narrow scope, focusing on the process in terms of its legal mechanisms (Teitel 2002, Roht-Arriaza 2006), while others suggest that it should be conceptualized more broadly to allow for the inclusion of both judicial and non-judicial mechanisms. In the following, I will intervene into this debate and discuss both approaches, ultimately asserting that we need to move away from a narrower conceptualization that focuses on only legal processes to a broader one. With this conceptualization, I argue that countries will be best able to address the wounds the atrocity created in society as they provide more space for alternative mechanisms and approaches. Ultimately, this conceptualization allows for the necessary recognition of both formal and informal processes in regard to transitional justice, as will later be seen through the comparative analysis of both Argentina and Spain's experiences.

In order to make these points, I am going to first provide an overview on the history of transitional justice both looking at the origin of the phrase and the practices associated with it. To then address conceptual differences, I will first turn to Ruti Teitel's conceptualization of transitional justice to discuss what I argue is a narrower conception of the practice. Her conceptualization, which focuses on legal mechanisms as the sole mechanism that can provide "ideal justice," leads me to thus argue that despite her efforts to broaden it, this conception remains incomplete. I will then turn to the UN Secretary General's 2004 *Report on the Rule of Law and Transitional Justice in Conflict and Post-conflict Societies* to discuss a broader conception of transitional justice that includes both judicial and non-judicial mechanisms. I will

conclude by explaining why the narrower conception is incomplete as it fails to recognize the potential successes, including that of accountability, remembrance, and truth, that can be realized through non-judicial mechanisms. Furthermore, I will note that when non-judicial mechanisms are blocked, the opportunity to turn to alternatives, including non-judicial mechanisms, should be explored.

### **Part I. History of Transitional Justice**

While the term itself may have an origin in recent history, some of the practices related to modern conceptions of transitional justice are thought to have been around longer. The exact origin of transitional justice as a practice has also been contested. Some have looked as far back as Ancient Greece citing an instance in which the newly established democracy attempted to address past tyranny through the implementation of various practices (Zunino 2019). However, two recent historical moments are more frequently credited with beginning the history of transitional justice. The dominant narrative tends to cite the Nuremberg Trials in Germany following World War II as being the first example of transitional justice due to the successful use and implementation of an International Military Tribunal that tried and held accountable Nazi leaders (Zunino 2019, Hinton 2010). This case remains of particular significance due to its related expansion of international human rights laws in which the Geneva and Hague conventions were simultaneously crafted (Hinton 2010). Kathryn Sikkink writes, “The Nuremberg and Tokyo trials after World War II were in many ways both the beginning of the trend and the exception that proves the rule: only in cases of complete defeat in war was it possible to hold state perpetrators criminally accountable for human rights violations” (Sikkink 2011, 13). The Nuremberg and subsequent Tokyo trials did not fully shape transitional justice

due to the limitations this case presented, asserting that it could only be applied after “complete defeat in war” (Sikkink 2011). However, these trials certainly influenced, if not began, the practice and formation of the ideological basis for transitional justice (Sikkink 2011). The rise of transitional justice practices in the 1980s, primarily in South America, have also been noted as a possible point of origin, traditionally beginning with that of the Argentine response following the fall of their military dictatorship in 1983. The case of Argentina expanded normalized conceptions of transitional justice practices having successfully established the use of a truth commission in addition to the trial of military leaders, a practice in which “there were few historical precedents...meaning the government was essentially inventing new tactics and institutional forms” (Sikkink 2011, 120). Furthermore, Argentina’s return to a process of transitional justice years after their truth commission and initial trials highlights, on a more global scale, an important aspect of the process of transitional justice- that is, that it is not necessarily a finite process.

The establishment of the International Criminal Court (ICC) has also been noted as building off of the foundation provided by the Nuremberg Trials in which “The ICC can be understood to symbolize the entrenchment of the exceptional Nuremberg Nazi War Crime Tribunals as a model for the creation of a standing international war crimes tribunal to prosecute war crimes under the international law of conflict” (Teitel 2002, 903). The Nuremberg Trials have been suggested to have been the most successful example of war crime tribunals, and thus have served as a key catalyst in shaping modern conceptions of transitional justice (Hinton 2010, Bass 2000). Transitional justice encompasses institutions, mechanisms, and legal practices and the literature on this process has rapidly emerged in the last few decades forcing us to question how we should conceptualize it today.

## II. A Narrower Conception

Narrower conceptions of transitional justice tend to focus largely on the legal and judicial processes. Ruti G. Teitel defines transitional justice as, “the view of justice associated with periods of political change, as reflected in the phenomenology of primarily legal responses that deal with the wrongdoing of repressive predecessor regimes” (Teitel 2002, 893). Teitel argues that modern applications and conceptions of transitional justice have greatly affected the process and ultimately narrowed it *by* expanding practices and conceptions, writing, “Whereas, in theory, transitional justice appeared to assume its potentially limitless universal extension into the law, in its late twentieth-century applications, the responses are concededly more contextual, limited, and provisional” (Teitel 2002, 896). Here, Teitel asserts that the increased involvement of the international community, and rise of subsequent bodies as a result of globalization, have limited the power of the state by prioritizing international justice mechanisms over national conceptions of justice (Teitel 2002, 898). According to Teitel, the shift to international justice mechanisms had an undesirable effect in terms of the goals espoused by transitional justice. She writes, “Whereas, at first, the aims of transitional justice were the ambitious goals of establishing the rule of law and democracy, in the last decade, its aims are concededly more modest, primarily focusing on maintaining peace and stability” (Teitel 2002, 898). Here, Teitel suggests that when transitional justice is conceptualized as attempting to achieve peace and stability, the aims of rule of law and democracy may be compromised or lost entirely. Thus, in Teitel’s opinion, this becomes problematic in terms of achieving justice since only having peace or stability, and letting the crimes go unaccounted for, is ultimately not justice.

## **Judicial Mechanisms**

It is here that we begin to understand exactly what mechanisms Teitel is favoring. While trials exist so as to legally convict abusers of their crimes, these trials can be hosted either by the country in which the crime occurred, a foreign country, or through an international body. Trials may be conducted by the state if the crime was committed within the state, and these trials may be done with support or guidance from an international body (Lessa 2013). Foreign trials rely on universal jurisdiction, which the UN report referred to as, “a previously little used element of international law that holds that some crimes are so grave that all countries have an interest in prosecuting them” (United Nations Secretary General 2004). This essentially allows foreign countries to criminally prosecute individuals regardless of their nationality or country of residence for “serious crimes against international law — such as crimes against humanity, war crimes, genocide, and torture — based on the principle that such crimes harm the international community or international order itself, which individual States may act to protect” (“Universal Jurisdiction.”). Finally, international bodies, such as the U.N. and the International Criminal Court (ICC), may be utilized to try countries or large groups for crimes committed at the global level (Lessa 2013).

Teitel’s perspective is that, rather than giving preference to all legal mechanisms that have been associated with the evolution of modern transitional justice practices, favoring specific legal responses is most effective. She writes, “The move towards local and even privatized justice associated with the State-building discussed above is in tension with the potential for a broader conception of justice associated with transnational politics” (Teitel 2002, 899). Teitel pinpoints the end of the Cold War as when this modernization of transitional justice occurs.

Thus, Teitel criticizes what have been typically considered historic feats in transitional justice, such as the use of universal jurisdiction and the creation of international tribunals, stating that, while the latter is able to provide a certain level of “regime accountability,” the expansion of transitional justice mechanisms that a country can draw upon presents multiple dilemmas to the aims of the practice as well as to the policymaking community (Teitel 2002). These dilemmas, which are a result of “expanding the continuum of choices in transitional justice,” become a “basis for intervention, and the problematizing of war and aggression, caus[ing] new and ever changing transitional justice dilemmas to come to the surface, and throw[ing] into balance the aims of justice and peace” (Teitel 2002, 903).

While Teitel is right in arguing for the use of judicial measures, she fails to acknowledge the relevance of non-judicial mechanisms that can be both significant alone or, most ideally, working in tandem with judicial mechanisms. Despite the potential accountability that these non-judicial mechanisms provide, Teitel maintains a stance that discourages the expansion of transitional justice mechanisms to include non-judicial practices, the involvement of foreign and international bodies and governments in judicial processes, as well as legal actions that are contextual and localized.

### **Teitel’s Argument**

Teitel ultimately argues that the expansion of transitional justice in contemporary politics has led to the harmful normalization of emergent discourse and action regarding the practice. Citing the expansion of humanitarian law coupled with the rise of international involvement in processes related to transitional justice, such as the establishment of international tribunals, Teitel writes that, “this development is problematic, because the jurisprudence associated with political

flux is, by its character, associated with a higher degree of politicization and irregularity than would ordinarily be acceptable in liberal democracies” (Teitel 2002, 902). It is both the lack of normative measures as a result of this expansion as well as the emphasis placed on international justice over that of national justice that Teitel argues allows for the continuous arising of new dilemmas facing the practice. Thus, Teitel asserts that this change in transitional justice is potentially harmful and how, as a practice, it now offers a more limited response. She does, however, recognize that resisting this normalization is difficult in our globalized political sphere.

Teitel goes on to assert that one might view this shift in conceptualization as a “preservative form of justice, which concededly sacrifices the aims of ideal justice for the more limited ones of assuring peace and stability” (Teitel 2002, 898). This is where I argue that Teitel’s argument falls short, as the notion that there is an “ideal justice,” which relies on specific judicial measures, fails to recognize the multidimensionality of justice. While she notes the potential interconnected nature of the goals, she ultimately asserts that peacemaking alone has not been shown to achieve the goals of democracy and the rule of law, and thus does not achieve the ideal form of justice (Teitel 2002). Additionally, while Teitel criticizes alternative approaches to judicial mechanisms, she fails to acknowledge the reality that not all legal responses, even the ones she deems best suited, are productive. On this, Rosemary Nagy writes that “There is a privilege of legal responses which are at times detrimentally abstracted from lived realities” (Nagy 2008). This becomes even more problematic when considering that the implementation of these legal practices often rely on the support of the state. Thus, when the state blocks formal transitional justice mechanisms, such as legal proceedings, how else are perpetrators meant to be held accountable for their crimes and the country to heal? Ultimately, Teitel’s conceptualization indicates that the only acceptable transitional justice mechanisms are legal ones which



problematically asserts that non-judicial mechanisms are not as effective. However, when faced with the obstruction of formal transitional justice mechanisms, such as legal ones, non-judicial mechanisms prove to be the only other option. Furthermore, when used in tandem, both judicial and non-judicial mechanisms can be used to best heal the nation.

### **III. Conceptualizing Transitional Justice as Two Pillars**

One of the most utilized conceptualizations of transitional justice comes from the U.N. Secretary General's 2004 *Report on the Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, which asserts that:

“The notion of transitional justice discussed in the present report comprises the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof” (United Nations Secretary General 2004).

The U.N.’s definition well articulates the importance of both non-judicial and judicial mechanisms, thus seeming to assert these as the two pillars of transitional justice, and nicely defines the goals of the process. It also articulates that the goals of transitional justice remain multifaceted. Their definition concretely states the goals of transitional justice as, “society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation” (United Nations Secretary General 2004). Here we see accountability, justice, and reconciliation highlighted as the main goals. The U.N.’s definition helps us to understand the variety of mechanisms that can be used to achieve justice, thus supporting the idea that the “ideal justice” Teitel refers to goes beyond that of

simply legal processes. As such, providing recognition for victims emerges as an extension of justice sought to be achieved. Pablo de Greiff writes that, “First, it can be said that all transitional justice measures seek to provide recognition to victims” (De Greiff 2012). Transitional justice is not just about punishing those who committed human rights violations but is also about ensuring that the victims are heard. When looking at transitional justice mechanisms, we see specific ones created to ensure this. Truth commissions, for example, do not aim to prosecute the abusers but rather provide an opportunity for the victims to be heard. This can be an important part of transitional justice especially if there has been a history of ignoring or hiding the suffering that was endured. As such, recognition of victims is a form of reconstructing the public narrative and memory through the search for truth. De Greiff goes on to say that, “What is indispensable, and what arguably transitional justice measures have sought to accomplish, is to recognize that the other is the bearer of rights—and therefore to engage in modes of redress that can not only assuage suffering but also restore the rights that were so brutally violated and affirm victims' standing as full citizens” (De Greiff 2012). Not only is recognition of the abuse that victims went through important to other goals such as achieving justice, reconciliation and establishing truth, but it is also a way of giving victims back their rights. In order to understand what other non-judicial mechanisms can possibly be utilized, we turn to two popular alternatives to legal mechanisms, truth commissions and reparations.

### **Truth Commissions**

Archbishop Desmond Tutu referred to truth commissions as the “third way”- an option that could be used as an alternative to prosecution and amnesty (Chapman and Ball 2001). First used in Uganda in 1974, but popularized for their use in Argentina in the 1983 CONADEP

Report, *Nunca Más*, truth commissions differ from trials both in their purpose and their execution (Lessa 2013). The purpose of truth commissions is, “to provide an authoritative account of a specific period or regime, determine the major causes of the violence, and make recommendations about measures to undertake so as to avoid a repetition in the future” (Chapman and Ball 2001). Truth commissions became popular as a method of transitional justice because of their ability to give voice to many, something that is often unachievable through trials which have historically been more limited and have not found success for all victims, as seen in the case of the Nazi crimes, for example, in which roughly 6,500 cases of the 90,000 cases brought forward resulted in convictions (Chapman and Ball 2001). The use of truth commissions thus questions the expansion of our definition of justice beyond legal realms. As de Grieff writes, “Truth-telling exercises...show that justice is not simply a call for insight but also a call to act on the truths disclosed” (De Grieff 2012). There is a certain type of justice that is argued to be gained through truth commissions- that is a form of personal justice. Hinton writes, “The recovery of language and the retelling of the experiences are forms of restoration and retribution that are emotionally and politically rewarding” (Hinton 2010). Truth commissions themselves can vary in terms of format and duration, for example, but ultimately:

“These bodies share four characteristics: they focus on the past; they investigate a pattern of abuses over a period of time—rather than a specific event—while attempting to sketch the overall picture; they are temporary bodies, existing for a limited, predefined, period of time, and cease to function upon submission of the final report; and they are officially sanctioned and established by states or international organizations in order to have greater access to information” (Hayner 2001).

Truth commissions not only shape a public narrative, but provide individual and personal justice for victims of abuse, thus expanding what one may typically associate with the acquisition of justice.

## Reparations

Another non-judicial mechanism that is a part of transitional justice, broadly understood, is reparations. Reparations can take many forms. The 2004 U.N. Report states that, “Indeed, in the face of widespread human rights violations, States have the obligation to act not only against perpetrators, but also on behalf of victims - including through the provision of reparations” (United Nations Secretary General 2004). Reparations fall into one of two categories. They can take material form, such as that of monetary payment, and, as Lessa writes, “constitute a form of *compensation*” (Lessa 2013). They can also be symbolic, such as creating days of remembrance, constructing memorials, or work to impact collective memory and social consciousness, such as working to rewrite history texts and reform education (Rhot-Arriaza and Mariezcurrena 2006). Naomi Rhot-Arriaza warns against the pitfalls of using reparations, “to stigmatize and marginalize those groups whose members perpetrated the abuse,” and thus argues that they, “... must be offered in ways that acknowledge the suffering of victims but do not victimize others who did not actively engage in the violence” (Rhot-Arriaza and Mariezcurrena 2006). Ultimately, reparations must work to give victims back what they may have lost, and, because of the varying abuse and experiences of victims and countries, forms of reparations may, and should, also vary case to case. Ellen Lutz writes that, “reparations processes, to the extent that they aim to remedy past harms, are also past-focused” (Rhot-Arriaza and Mariezcurrena 2006). While reparations do work to respond to past suffering, symbolic forms of reparations, such as the creation of memorials and the rewriting of history, I believe can work in tandem to also prevent future atrocity.

#### **IV. The Need to Conceptualize Broadly**

While I have previously explained the pitfall in Teitel's argument that asserts that there is an "ideal justice" that can be found through legal practices, the most significant error in her argument is the de-emphasis of non-judicial mechanisms through this language. While Teitel takes issue with their operation outside of the rule of law and their lack of legal accountability, this ignores the potential for non-judicial mechanisms to achieve justice, offer remembrance, and achieve accountability when formal processes may be blocked. Thus, we see the need to conceptualize transitional justice in broader terms.

#### **One-Size-Fits All**

At times, it appears as if transitional justice is offered as a "one-size-fits-all" solution. While this could also be argued as a pitfall of narrower conceptions too, this suggestion, of course, ignores the diversity and complexity of each individual case and country. It is important to evaluate each situation separately, knowing that there is of course a normative standard that can be followed, but that the approaches, and combination of approaches, may vary depending on the case. In regards to what measures to take, the 2004 U.N. report states that:

we must assess myriad factors, such as the nature of the underlying conflict, the will of the parties, any history of widespread abuse, the identification of vulnerable groups, such as minorities and displaced persons, the situation and role of women, the situation of children, rule of law implications of peace agreements and the condition and nature of the country's legal system, traditions and institutions" (United Nations Secretary General 2004).

Each of these factors will vary by country and weighing their importance is essential to understanding the conflict as well as needs for overcoming such conflict. Juan Méndez notes that, "If mechanisms and actions, including their sequencing and timing, depend heavily on

context and circumstance, it follows that what has worked in one country may fail in another” (Méndez 2009). A variety of factors, including when, where, and what mechanisms are implemented, impacts the overall effectiveness of transitional justice. Ultimately, acknowledging that practices should vary country to country, while operating with a standard set of goals, is the optimal framework to provide a process that best accommodates each country’s unique situation, culture, and people.

### **In Search of the Perfect Model**

All of this suggests that there is no perfect model of transitional justice. When approaching the study and practice of transitional justice, it is key that we remember it is not a perfected process. Pablo de Greiff writes:

...there is no country that has undergone a transition that has prosecuted each and every perpetrator of human rights violations (let alone punished them in proportion to the gravity of the harms they caused); that has implemented a truth-seeking strategy that disclosed the fate of each and every victim or thoroughly identified the structures that made the violations possible; that has established a reparations program providing each and every victim with benefits proportional to the harm he or she suffered; or that, particularly in the short run, has reformed each and every institution that was implicated in the violations in question (De Greiff 2012).

As will be discussed later in the paper, there is no one perfect example which can be used as a blueprint for future cases. This is not to say that there haven’t necessarily been countries that have successfully undergone a process of transitional justice, but rather that no country has achieved an ideal resolution. Ultimately, the lack of a perfect model also likely speaks to the idea of there not being a one-size-fits-all solution, knowing that every country will vary in terms of what they need based on their situation, as has been previously discussed.

Michael Humphrey wrote that “‘Transitional justice’ has been a strategy to manage ‘political transition’ which suggests duration, process and destination. As a consequence the study of transitional justice has usually been framed as a dramatic, temporary and transformative event” (Humphrey 2008). This can be problematic as this process to justice can be interpreted as linear and finite. But, as we have learned through the transitional justice processes of past cases, it can take years to complete the process of transitional justice, and some of these processes, and likely the best, may require continuous reflection. Additionally, by suggesting there is a set duration, I fear that this also may lead to the idea that transitional justice must occur at a certain point after atrocity, eliminating the possibility of beginning or returning to a state of transitional justice that may be necessary for truly achieving the goals of the process.

**Conclusion:**

The rise and normalization of the practice of transitional justice has simultaneously led to a vibrant debate regarding how we should conceptualize transitional justice. It is here that we see the discrepancy between narrower conceptions of transitional justice as a set of legal practices emerge, as seen through the particular lens of Ruti Teitel’s conceptualization of the practice. This conceptualization, however, dangerously asserts that there is an “ideal justice” that can only be achieved through law, ultimately undermining the multidimensionality of justice. We thus begin to see how essential non-judicial mechanisms of transitional justice are in that they provide justice for victims in ways that legal practices may not be able to achieve. Furthermore, when considering the reality that these specific transitional justice mechanisms may be blocked, we must consider other ways in which a country can attempt to both push for these formal processes as well as engage in transitional justice outside of institutional and legal mechanisms.

## CHAPTER 2: Argentina

On the afternoon of April 30, 1977, a group of mothers gathered in Buenos Aires' Plaza de Mayo searching for their children, a direct confrontation of the military Junta that had been terrorizing the country since 1975 (Goñi 2017). What began as a small group of middle-aged women marching around the Plaza, holding signs and pictures of their missing children, turned into one of the most famous human rights organizations: The Mothers of the Plaza de Mayo. Every Thursday since this day, the Mothers march around the Plaza, bringing visibility to their cause and creating a new method of political challenge: the defense of human rights (Dávila 2013). More than 40 years and over 2,000 marches later, the Mothers remain active and represent innovation in the area of human rights when faced with terror and impunity (Goñi 2017).

Argentina was overcome by a dictatorship that committed human rights abuses at the most serious and repressive of levels. The Junta, which called itself the National Reorganization Process, or "El Proceso," began a period of terror in the country referred to as the "Dirty War" (Dávila 2013). The reference to this period as the Dirty War has itself been a point of contention, with some arguing that this inaccurate naming shifts the focus again away from the truth- that the actions taken were state-sponsored terrorism. The actions of the Proceso created a wound in the country that demanded attention. While the official CONADEP report, *Nunca Más*, estimated the disappearance of 8,960 people, today's estimates believe this figure to be around 30,000 people (Sikkink 2011). Of those, thousands were subject to torture and placed in detention centres across the country. How does a nation heal after experiencing such atrocity? Argentina made a clear and conscious choice to directly confront this past immediately following their re-democratization by engaging in a formal process of transitional justice, including The Trial of



the Junta and the creation of the Comisión Nacional sobre la Desaparición de Personas (CONADEP 1984). While their formal approaches were innovative and drew world-wide praise and recognition, Argentina's process was not without its problems. After initial successes, the process of transitional justice came to an abrupt stop, ushering in a period of impunity. It was only after the work of human rights activists' efforts to confront this impunity that they engaged in an informal process of transitional justice that simultaneously pushed forward a return to formal transitional justice by the state. Given the crucial role that activists played in reinstating the transitional justice measures, a critical analysis of their active participation in the country's process of confronting this past becomes necessary to understanding Argentina's fragmented process of transitional justice.

Kathryn Sikkink wrote in her book *The Justice Cascade* that, "Some aspects of the political context within Argentina made it possible for Argentines to innovate in the area of human rights and transitional justice. The first of these is the level of repression. As Sikkink insightfully notes, "The Argentine case was unique in that the repression was extreme, but not so extreme as to eliminate all possibilities for activism" (Sikkink 2011, 137). Thus, this chapter aims to uncover the truth, illustrating what made the Argentine case of transitional justice particularly brutal but not so repressive as to block the opportunity for innovative practices by human right activists and organizations. I will proceed by exploring what made this dictatorship particularly inhumane through an analysis of the innovative actions of repression the military dictatorship employed during the Dirty War. Through an uncovering of the events leading up to the dictatorship, followed by an examination of the abuses that occurred during this period, I will theorize how this trauma came to exist and why it required significant response. I will then turn to an analysis of the formal transitional mechanisms the government took after the transition to

democracy. This section will conclude with an analysis of the role human rights activists played both inside and outside of these formal processes. I will ultimately argue that the Argentine case demonstrates that human rights activists both work to actively push forward formal mechanisms of transitional justice *and* play a crucial role in holding individuals accountable in informal, but effective, ways. In doing so, human rights activists themselves contribute informally to the process of transitional justice.

To elaborate these points, I will first provide a summary of Argentina's political make-up prior to the Dirty War, focusing on what specific factors may have accounted for the brutality of this regime. I will then provide details on what specifically happened during the dictatorship, focusing on the tactics the regime used against the people by drawing on the CONADEP *Nunca Más* report. The chapter will then shift its focus to look at the process of transitional justice that the country underwent upon re-democratization, specifically focusing on the role of human rights activist groups, such as the Madres de la Plaza de Mayo, The Center for Legal Studies (CELS), and the escrache movement.

## **Part I. Pre-Dictatorship**

After Argentina gained its independence from Spain in the 19th century, it created a constitution in 1860, resulting in the formation of, “stable institutions that fostered economic growth, urbanization, and high immigration for five decades” (Speck 1987). As a country, the independent Argentina, which was then called the Argentine Confederation, prospered (Speck 1987). Its renewed relationship with Great Britain resulted in significant economic wealth and social stability beginning in the end of the 19th century that carried Argentina into the 20th century (Romero 2002). During this time, Argentina attempted to solidify these newly emergent

democratic institutions which, “fostered economic growth, urbanization, and high immigration for five decades” (Speck 1987, 495). This period was also characterized by what has been considered the first democratic election of President Hipolito Yrigoyen in 1916 (Romero 2002). The rise of public schools, as well President Yrigoyen’s backing of the University reform in 1918, which expanded university access to those beyond the elite, helped to dampen dissatisfaction by attempting to increase equity and opportunity amongst social classes (Romero 2002). The harsh reality of the Great Depression resulted in unrest and revealed the weakness of the Republic (Speck 1987). As such, this period of transition resulted in another episode of strikes and civil unrest that were met with military repression beginning in 1930 (Romero 2002). In 1930, President Yrigoyen was overthrown by armed forces which, “constituted a turning point in politics, marking the start of increasing military involvement in political life, along with rising social, economic, and political instability” (Lessa 2013, 32). This was the first of five military dictatorships that plagued Argentina during the 20th century (Dávila 2013). The following years replicated a similar pattern in which moments of stability were met with unrest. As Francesca Lessa writes, “Thereafter, Argentine politics became an alternation between authoritarian rule and democratic administrations—the latter often mere transitional spells in between military regimes” (Lessa 2013, 32).

In 1943, the country, which was suffering as a result of the Great Depression, had its civilian regime overthrown by a group of military conspirators that included Juan Domingo Perón (Speck 1987). Perón proved to be one of the most influential politicians in Argentine history, eventually being elected as President when the regime transitioned back to civilian rule in 1946 (Dávila 2013). The Peronist government was unique in that it, “restructured and expanded the state, promoted social and economic modernisation, endorsed cultural renovation

and, through a strong nationalistic and anti-oligarchic discourse, [and] gained the overwhelming support of the working class” (Milanesio 2014, 84). Perón’s utilization of publicity, placing a strong emphasis on the values of masculinity and patriotism, led to the formation of an identity that greatly resonated with the lower classes and cemented his continued influence, ultimately giving birth to what came to be known as “Peronism” (Milanesio 2014). By promoting anti-elitism and supporting industry, Peronism gave political identity through his support of working-class Argentines. This can be best explained not only through his policies, many of which aimed to strengthen and protect the working-class, but also through his public image (Milanesio 2014). Opting for more informal, working class attire, Perón appealed to the working-class by dressing like them, directly rejecting the pretentiousness normally embraced by politicians (Milanesio 2014). On this, Natalia Milensio noted that, “While addressing his supporters on 17 October 1945, Peron solemnly declared, ‘I am putting away the sacred and honourable uniform I received from the fatherland to wear the civilian’s shirt and merge with the suffering and sweaty masses who work to produce the country’s wealth’” (Milanesio 2014, 92). While Perón was influential as a politician during his time, his ultimate founding of an entire political ideology significantly shaped the country’s political landscape. While Perón greatly impacted politics and, in many ways, cemented a sense of democracy amongst Argentine society, he, “simultaneously...created a police state; political opponents were persecuted, tortured, and killed; corruption was unchecked and the judicial system was dismantled” (Lessa 2013, 32).

Péron was ousted from power in 1955, and between 1955 and 1983, Argentina entered an 18-year period that was characterized by three separate military dictatorships, the last of which being the Proceso (Dávila 2013). The lead-up to this final dictatorship was filled with turbulence and instability. The first military dictatorship ended in 1958 and was followed by a period of

civilian rule (Dávila 2013). This, however, was halted by another dictatorship in 1966, called the Argentine Revolution, and, “was a political turn that both shaped and foreshadowed the *Proceso* a decade later” (Dávila 2013, 63). During this period of rapid turnover between civilian governments and junta regimes, the nation’s economy suffered. Up until the 1930s, the French described those with incredible wealth as “riche comme un Argentin,” (“rich like an Argentine”), but when faced with changing policies and models, the country soon found itself experiencing painful economic stagnation and limited annual growth by 1970 (Dávila 2013, Glaeser et. al. 2017, 2). On this point, Jerry Dávila writes, “The real problem of Argentine business in the 1960s was not, strictly speaking, a shortage of capital, but a lack of willingness to invest” (Dávila 2013, 63). Instability plagued the period of the so-called Argentine Revolution, and a return to civilian rule came in 1973. Péron ultimately returned to Argentina and was re-elected as President in 1974. At first, “Even many of Péron’s critics held out hope that the return of Péron might heal the growing social and political chasm in Argentina” (Dávila 2013, 73). However, once in power, Péron was unable to unite the left and the right and allowed violence to escalate in the country, including violence perpetrated by the government forces (Dávila 2013). Only nine months after assuming his Presidency, Péron died, leaving his wife Isabel to become President.

The economic and social insecurity that threatened the nation also led to the rise and the initial public acceptance of the dictatorship. As described by Sikkink, “the period just preceding the military coup in 1976 [was remembered] as a time of violence and chaos, when many members of the elite feared that they would be kidnapped by left-wing guerrillas for ransom, or that a bomb would explode in their children’s school” (Sikkink 2011, 104). On March 24, 1976,

the Argentine military junta successfully executed a coup d'état, ending Isabel Perón's presidency and beginning what would be eight years of a terror-driven dictatorship.

## **Part II. The Dictatorship and “Dirty War”**

On March 24th, 1976, the military coup offered this proclamation to the people of Argentina: “The Armed Forces have taken control of the Republic. The entire country must understand the deep and unequivocal meaning of this fact so that collective responsibility and effort support this endeavor that, in pursuit of the common good, will – with the help of God - bring the full recuperation of the nation” (Finchelstein 2014, 125). The Junta, which was composed of the heads of the three branches of the armed forces, forcefully detained President Isabel Perón and seized control of the country (Dávila 2013). While this was to be Argentina's third military government since 1955, this regime differed from the start (Dávila 2013). This day marked the end of democracy in the country for 8 years and the beginning of a brutal dictatorship.

On the first day of power, the Junta announced plans for the Process of National Reorganization, the Proceso (Dávila 2013). This process was warranted in the eyes of the Junta, General Viola stating that they needed to halt the attempts at a “total modification of the Nation's political, social and economic structures according to their materialist, atheist and totalitarian conception” (Finchelstein 2014, 126). The Junta's dismissal of all government officials and subsequent appointment of military officers to these positions was politically strategic (Dávila 2013). Not only did it help to protect the power of the Junta by ensuring their most fervent supporters were in positions of power, but this overhaul also represented a symbolic promise of change (Dávila 2013). The changes made by the new Junta Regime came fast; the same day of

the coup, they suspended the constitutional rights of the people, including the right to protest and assemble (Dávila 2013). Despite these warning signs of impending state abuse, many Argentines viewed the coup and subsequent regime as a needed change. The years of instability and hardship the country had faced, as previously discussed, resulted in many people welcoming the Proceso with relief. Of those particularly happy with this change were wealthy Argentines. Jonathan Kandell described a party hosted by wealthy Argentine's the weekend after the coup, writing, "This was the first weekend after the military coup, and the collapse of the three-year-old Peronist government gave a special glow to the sumptuous dinner parties that still made upper-class Argentines the social lions of Latin America" (Dávila 2013, 113).

The Junta's appeal to God made this characterization of the enemy particularly powerful. Their assertion that they were up against "an enemy without faith, without patria and without God," made their fight limitless and morally defensible (Finchelstein 2014, 127). This additionally aided in the ideological acceptance of the Junta's actions by the public. As Finchelstein writes, "The notion that the criminal acts of repression and murder were in fact a "holy war" was tightly bound to the idea of purifying sacrifice. Priests like the Archbishop of Paraná, Victoria Bonamín, justified the repression, calling it "a blood bath" and maintaining that the function of the Army was to "atone for our country's impurity" (Finchelstein 2014, 128). Viewing the efforts of the Junta as safeguarding the country from communism, the Church denied abuses even when victims were members of the clergy (Dávila 2013). The dissemination of a narrative based in an ideology that claimed to be protecting the state from enemies of God created a framework that made the use of repression and abuse limitless. Moreover, the use of this narrative paired with support of a moral institution, The Argentine Church, only allowed the Junta to maintain and expand their power even more easily.

## **Abuses Committed by the Junta Regime**

The abuses committed during the dictatorship were so extensive that public understanding and recognition of the full extent of the events were both difficult to grasp and to accept. This was in part due to how widespread the abuse was and the uniqueness of the terror methods utilized. As Kathryn Sikkink writes,

This massive and systematic use of disappearances was itself a repressive “innovation” on the part of the Argentine armed forces. Disappearances had been used elsewhere, including Nazi Germany; Guatemala during the counterinsurgency war of the late 1960s; and Chile under Pinochet. Nevertheless, the Argentine case marked the most widespread and systematic contemporary use of the practice (Sikkink 2011, 107).

The use of terror also allowed the Junta to maintain control over the public. While the government did not own up to many of the abuses committed, the clandestine nature of their abuses being a key characteristic of the regime, they did ensure that fear was incited among the public.

It is important to understand the significance of the information that is to follow. This information is only available to the public due to the creation of the CONADEP and the *Nunca Más* report that was produced in 1984. The report begins with the statement, “Many of the events described in this report will be hard to believe” (CONADEP 1984). The report combines statistical estimates with powerful victim testimony and it is nothing short of heartbreaking. However, acknowledging the abuse that occurred helps us to uncover the characteristics of this case as well as further understand why the dictatorship created such wounds that required addressment through transitional justice mechanisms. While abuses occurred in varying forms, I will focus on the most prevalent forms of abuse, that being abduction, torture, and the use of secret detention centers.



**Abductions:**

After the 1976 coup, the CONADEP *Nunca Más* Report estimated that, “eight thousand, nine hundred and sixty of them have not reappeared to this day” (CONADEP 1984). Today, this number is understood to be closer to 30,000 (Sikkink 2011). The use of abduction as a method of repression was first tested during Operation Independence (“Independencia”) before the regime came to power (CONADEP 1984). Unlike large-scale abductions, the *Nunca Más* report notes that, “It differs from the methods used in other countries because it was carried out in total secrecy, with regard to a person’s arrest, disappearance, and the persistent official refusal to admit responsibility. This repression took place over an extended period and affected the whole nation” (CONADEP 1984). While the public was well aware that people were disappearing, the lack of ownership over these disappearances by the government, as well as the dead-end investigations that would follow, only created a heightened sense of fear and frustration in the community. At the same time, a direct lack of ownership by the government only further allowed deniers of governmental wrongdoing to maintain this position.

The testimony of Lucio Ramon Perez, who provided details on the kidnapping of his brother on November 9, 1976, illustrates common characteristics associated with abductions during the dictatorship. The *Nunca Más* report includes his following account:

He was asleep with his wife and five-year-old son when they were wakened at about 2 a.m. by a loud explosion. My brother got out of bed, opened the front door, and saw four people jumping over the fence.

They were in civilian clothes; one of them had a moustache and a jersey wrapped round his head like a turban; they all carried rifles, Three of them burst into the flat and ordered my sister-in-law and the boy not to look. The neighbours say that two of them dragged out my brother and forced him into a Ford Falcon. That’s the last we heard of him. They also say there were several cars and a truck on the scene, and there were a lot of men with

rifles behind the trees. The traffic had been halted, and a helicopter was circling over the house (CONADEP 1984).

Perez's account provides important insight into norms associated with abductions during this time. Firstly, his brother's abduction occurred at night, falling into the majority statistic in which 62% of abductions were found to occur at night (CONADEP 1984). The explosion that was heard was also not out of the ordinary and was likely intended to intimidate and demonstrate the power of the Junta. The high number of people involved in the raid, who were both armed and disguised, was also not uncommon. Part of what aided in the anonymity of the government in terms of their involvement with abductions was their use of non-governmental workers in carrying out the physical acts of abducting. Instead, a task force of gang members, called a *patota*, was used for this limited purpose (Dávila 2013). The use of weaponry was also important to note, the report stating that, "The members of the gang always had with them a weaponry that was totally disproportionate to the supposed threat posed by the victims" (CONADEP 1984). Again, this quote helps us to understand that every attempt was made to intimidate victims and the surrounding community. In the case of Perez, this attempt to invoke fear becomes especially noticeable with the stopping of the traffic and the circling of the helicopter above, indicating that not only were they trying to invoke fear in the victim, but also in that of the community (CONADEP 1984). Perez's brother's abduction having taken place in Temperley, a province of Buenos Aires, illustrates the common use of disguise in areas in which abductors feared revealing their identity. As is true in the case of Perez's brother, abductors attempted to preserve their anonymity in fear of possible recognition through the use of a makeshift turban to cover their hair and what was likely a fake mustache. The forcing of Perez's brother into a Ford Falcon was also a common vehicle used to transport victims; these cars were usually unmarked, private, or cars thought to be unrecognizable (Carey 2012, CONADEP 1984). Ultimately, the abduction

of Perez's brother represents multiple common characteristics of abductions that occurred and helps to especially illustrate the reality that fear was not only intended to be imposed on the intended victim, but also on the neighbors and the community at large.

One may question why the police did not prevent these abductions. The "green light" was what allowed this: a phrase used to describe an agreement made between the police and those perpetrating the crime (CONADEP 1984). This "green light" ensured that the police would not get involved during a certain period of time, thus allowing the abductors to carry out their abuse (CONADEP 1984). Should an onlooker report the incident, the police would simply respond: "that the Police were aware of what was going on, but could do nothing" (CONADEP 1984). This helps us to understand how so many were also abducted during the day, as the area had been pre-cleared and the police were not going to arrive, or act, should they be called upon, only further invoking fear among the citizens.

Ultimately, the actual abduction of the victim was only the beginning of the abuse for both the victim and for the family. Impacts on the family as a result of the abductions were devastating. Beyond potentially losing a relative, other family members may have been taken as hostages, their possessions stolen, children left orphaned, and the pain often only just beginning as many were left without answers as to what happened to their loved ones (CONADEP 1984). Sometimes, torture and interrogation began in the home of the victim with the family sometimes in the house forced to listen or watch (CONADEP 1984). For those abducted, they were either disappeared or sent to a detention center, torture often associated with both of these possible fates.

## **Torture**

Torture was a horrible accompaniment to many of the abuses; the Nunca Más report cites that torture was an aspect of nearly all cases the Commission received. In looking at the techniques utilized in collective and individual cases, the report states that it appears like “an encyclopedia of horror” (CONADEP 1984). In looking at the Nunca Más report’s account of torture, they include an interesting statement describing, “Lastly, we are well aware of, and share, the feeling of dismay which the bald narration we set down here will arouse in torture victims and their families, who were made to suffer so much. We know only too well the anguish that a detailed knowledge of this barbarity causes” (CONADEP 1984). This statement encompasses a multitude of important points. Firstly, it references the shock of these cases. It is difficult for the public to learn about a truth that they previously turned a blind eye to, attempted to forget, and in some cases, helped to facilitate. However, this also highlights the difficulty on part of the victims in sharing these details. Ultimately, this helps us to see how the abuse did not simply end with the dictatorship, but rather that the effects of the abuse persist for incredible lengths of time and extend beyond the physical pain victims endured.

The torture that was performed was in part what made the case of Argentina so unique as, “widespread use of different forms of torture is particularly frightening because of the perverse imagination demonstrated, and the character of the people who carried it out, as well as of those who supported its use and employed it as a means to an end” (CONADEP 1984). Reading the accounts of torture is difficult to digest. The report contains first-hand accounts of torture endured, including that of Dr. Noberto Liwsky. Dr. Liwsky’s multi-paragraph account highlights numerous commonalities torture victims endured. One of these is the deprivation of senses, particularly that of sight. This normally begins immediately after kidnapping and continues throughout time after, such as during the time spent in a detention center.

The torture techniques used also varied. They included electrocution, beatings, non-fatal shooting, rape, and mutilation/pain through the use of torture weapons and tools (CONADEP 1984). Psychological torture was also common, and in many ways equally, if not more, painful.

Dr. Noberto Liwsky's testimony is included in the report, and recounts:

At one point when I was face-down on the torture table, they lifted my head then removed my blindfold to show me a bloodstained rag. They asked me if I recognized it and, without waiting for a reply - impossible anyway because it was unrecognizable, and my eyesight was very badly affected - they told me it was a pair of my wife's knickers. No other explanation was given, so that I would suffer all the more ... then they blindfolded me again and carried on with their beating (CONADEP 1984).

Captors would wear clothing and other items that belonged to the victims or their family members as a form of psychological torture, reminding them of their lack of power and on-going abuse (Dávila 2013). Torture, while sometimes occurring at the time of the abduction or immediately leading up to the disappearance, was most frequently perpetrated in the secret detention centers.

### **Detention Centers**

As Jerry Dávila writes, "The clandestine detention centers were sites where every form of degradation imaginable was carried out" (Dávila 2013, 119). Approximately 340 secret detention centers were scattered throughout the country in which an estimated 15,000 to 20,000 Argentines were detained over the course of the dictatorship (Dávila 2013, CONADEP 1984). These detention centers were truly just warehouses of torture and abuse. They utilized anything they could to inflict both physical and psychological abuse. As described by Dávila, "rape was systematic" and utilized to degrade and dehumanize victims (Dávila 2013, 119). Kathryn Sikkink

includes the account of Pablo Díaz, a student activist who was kidnapped and brought to a detention center. In her book *The Justice Cascade*, she writes:

In the courtroom during the first weeks of the trial, he explained that at his kidnapping he was taken from his home blindfolded, thrown to the floor of a car on top of another prisoner, and driven to a secret detention center. When they were questioning him, they said they were going to “put him on the machine.” Thinking they meant a lie detector, he said “good,” because it would convince them he was telling the truth. He discovered “the machine” meant torture with an electric prod; when they applied it to his lips and gums, and his genitals, he could smell the odor of burning flesh. They kept asking him for the names of his classmates in the group. Later, they tortured him again. He was close to fainting when he felt a terrible pain in his foot; it was his toenail being pulled out with pliers. The pain was so extreme that he asked them to kill him (Sikkink 2011, 125).

While torture was a main component of the detention centers, the general dehumanization that was associated with time in the detention centers, in which victims were treated and considered subhuman, was what made these centers particularly terrifying. Additionally, the *Nunca Más* report cites that one-third of those disappeared were women, some of whom were pregnant. The Junta had a plan for these women that gave birth in captivity. As Jerry Dávila writes, “Pregnant detainees were held until they gave birth, often at the Campo de Mayo military hospital, and then disappeared” (Dávila 2013, 119). Their children, however, were often given to high-ranking military families and their former identities erased (CONADEP 1984, Lessa 2013, Dávila 2013). Here, we see the emergence of another abuse, the kidnapping and systematic trafficking of generations of children taken from their family and unknowingly placed elsewhere.

### **The Appearance of a Human Rights Movement: The Madres de la Plaza de Mayo**

As described by Jerry Dávila, “On its face, the Mothers were not political at all, though in reality they mounted the most direct political challenge the regime could face” (Dávila 2013, 122). While the regime prohibited the right to protest, the Madres drew on the appeal to their

traditional role: being a caring parent in search of their child (Longoni 2010). Rather than directly accuse the Proceso of disappearing their children, by seeking out their loved ones they engaged in a form of protest that harnessed their traditional family identity (Dávila 2013). In their early days, the Madres drew on the use of family photos, wearing them as they stood in the plaza, bringing them to official visits, and displaying them on posters (Longoni 2010). As Ana Longoni wrote, “In this way, the Mothers inaugurated a prolific genealogy for the public use of photography in the struggle of the human rights movement against the official denial of the killings (Longoni 2010, 6). The use of photographs reaffirmed the existence of the disappeared, giving them a name, a face, and an identity that were powerfully juxtaposed with the living proof of the loved one they left behind (Longoni 2010). In this sense, the use of photograph in the human rights movement, as specifically utilized by that of the Madres, transformed the use of photograph from an heirloom to that of a catalyst for change. While the photographs represented the individual, depicting the face of the disappeared, by being worn in a collective space, Madres showed the sheer volume of the disappeared, thus representing a collective identity and not just an individual one (Langoni 2010). Furthermore, as is described by Langoni, “the photograph also condensed in an image the reason for the Madres’ being there, and (re)generated the bond between those who dared to demonstrate in the midst of terror” (Langoni 2010, 6). In this sense, the Madres’ use of their loved ones’ photographs further protected them and their efforts by reaffirming their purpose and role.

The establishment of the Madres de la Plaza de Mayo during the dictatorship represented both an innovative approach to seeking out justice despite their significant limitations as well as the inability for the regime to fully repress the will of the people. Through the proliferation of their image, as seen through the use of photographs as well as their collective body that occupied

the Plaza, the Madres “impos[ed] a different reality” by emphasizing the circumstance of the kidnapping and disappearances that was occurring in the country (Longoni 5, 2010). While the Madres did more than utilize photographs, including working with international organizations and attempting to utilize judicial systems, we can begin to see how their influence began during the dictatorship. During this period, they both introduced a new form of protest to the country and brought local, regional, and international attention to the state of Argentina.

The Siluetazo was an artistic tactic created by Rodolfo Aguerreberry, Julio Flores, and Guillermo Kexel that was also adopted by the Mothers and their “sister group,” The Grandmothers of the Plaza de Mayo, along with other human rights activists (Longoni 2010). Its rise to public use has been pinpointed to September 21, 1983- during the dictatorship (Longoni 2010). Longoni writes that, “The Siluetazo was an event in the fullest sense of the word: an exceptional moment in history in which artistic initiative coincided with demand coming out of social movements, and which gained momentum thanks to the support of a multitude” (Longoni 2010, 9). Gathering in Plaza de Mayo, people volunteered their bodies to be traced onto posters or the ground. They thus harnessed an artistic expression normally utilized by children to serve as a conduit for social change, visually representing those who have been purposefully disappeared by the government (Longoni 2010). While activists would then demonstrate by holding the silhouette, some of which were personalized to reflect the disappeared, they would also be placed around the city, extending the visibility of the disappeared by making them a part of the public space (Longoni 2010). As Buntinx says, the Siluetazo “gives participants a new, autonomous, and collective consciousness at the same time” (Longoni 2010). While the use of silhouettes, “are often understood as the visual manifestation of the slogan ‘Aparición con vida’ (‘Appearing alive’) that the Mothers chanted from 1980,” the practice was disseminated across



the country, without official ties to the original artists or groups at times, thus pointing to its more universal application as a human rights activist tool in visually providing a certain type of personal and collective justice (Longoni 2010, 11).

The Madres de la Plaza de Mayo were a part of a larger movement occurring both domestically and abroad regarding the state of human rights in Argentina. This human rights movement relied on pressure from international entities, perhaps the most influential being that of the Vatican. As The Argentine Church began to face scrutiny by the Vatican due to the rise in international recognition of human rights abuses in the country, actions that the Vatican took held significant weight (Dávila 2013). Most notably, Adolfo Pérez Esquivel, a human rights leader and activist who was detained and tortured by the regime, received a papal commendation after having received the Nobel Peace Prize in 1980, clearly indicating the Vatican's support for the human rights movement in the country (Dávila 2013). Additionally, both the support given by the Pope and Esquivel's receiving of the Nobel Peace Prize represented "an act that intensified international pressure on the Junta, which in turn prevented Argentine media from reporting on Esquivel's address when he accepted the prize" (Dávila 2013, 123). The rise of the human rights movement during the dictatorship brought considerable state and international attention to the issues at hand, ultimately pressuring the Junta and setting the stage for justice to come. We thus began to see how human rights activists and organizations, like the Madres de la Plaza de Mayo, deployed tactics that resulted in significant visibility, the mobilization of a movement, and began to inspire change, as will be seen later in the chapter.

### **III. The End of the Junta Regime**

The military dictatorship finally came to an end in December 1983 (Dávila 2013, 135). After suffering the loss of the Falklands War against the British, the former heads of the Proceso

were quick to resign. The regime began efforts to transition back to civilian rule; the success of the Junta was clearly no longer viable (Dávila 135). The state held their first free democratic election since the election of Juan Péron in 1973 and Raul Alfonsín was elected as President in 1983 (Dávila 2013).

As Lessa notes, “Conventional accounts of the Argentine transition use as their starting point the loss of the Falklands War in June 1982” (Lessa 2013, 43). While many have noted the relationship between that of the regime’s collapse and the loss of the Falklands War, also known as the Malvinas War, I follow the argument of Sikkink and argue that this relationship should be assessed with caution (Sikkink 2011). While Lessa claims that this war “signaled the beginning of the end,” a closer examination of the time period instead hints at the end truly beginning around 1980 in which, “consensus regarding critical ideas and strategies of governing disappeared,” as argued by Pion-berlin (Lessa 2013, Pion-Berlin 1985, 72). The assertion that the war over the Falkland Islands indicated the beginning dangerously misrepresents the reality that there were a variety of factors that led to the end of the dictatorships. Ultimately, when considering the economic and political turmoil in addition to ongoing pressure caused by the Junta’s most fervent opposition, the human rights movement, it becomes clear that the Malvinas War was only a singular catalyst that demanded change, not the only, nor arguably the most significant one.

### **Economic Instability**

The Proceso, which was formerly known as *The Act of National Reorganization*, quite literally proposed and executed an economic reorganization of the country. As described by Pion-Berlin, “Newly designated Minister of Economics, Jose A. Martinez de Hoz, announced

strict austerity measures...which launched the government on an unprecedented free market (or, as commonly referred to in the Latin American setting, liberal) crusade to eliminate inflation and unshackle the economy from ‘fettters’ of state control” (Pion-Berlin 1985, 57). Over the next two years, the country struggled to adapt to this new model of economic strategy. With the creation of policy that aimed to combat and lessen the fallout this new change was inevitably going to cause, the effects still painfully weighed on Argentines, and as such, “virtually every socio-economic sector of Argentine society, from laborers and small shop owners to large industrialists and agriculturalists, opposed the economic policies” (Pion-Berlin 1985, 59). However, state leaders were able to remain relatively unimpacted by this opposition due in large part to their united and steadfast commitment to seeing this plan through. It was this breakdown of unity that contributed to the larger downfall of the Junta. In March of 1980, four of the nation's largest financial institutions went bankrupt creating considerable economic hardship for both individuals and sectors alike (Pion-Berlin 1985). Of course, no individual minister or military branch wanted to be blamed for this state-induced failure and, for the first time, comments were made that publicly suggested “internalized displeasure” for the economic policies, thus suggesting a clear correlation between the recent economic hardships the state faced and the imposed policies (Pion-Berlin 1985, 61). The following months remained economically challenging, and when compounded with other factors, these ongoing economic difficulties indicate that the end was not abrupt and caused by one-factor. Rather, the end of the Dirty War had been developing for years before their official demise and the reasoning for their downfall remained multifaceted.

## **Rapid Political Change**

The Junta had decided that the term of the Presidency would not exceed five years (Dávila 2013). As such, President Videla was replaced by Roberto Viola in 1981. Viola, while considered a moderate and unsurprising pick, was a clear and conscious choice by the Junta to appoint someone to the position that would alter the economic state (Pion-Berlin 1985). While still in agreement with the overarching goals of the Proceso, Viola was not as committed to the liberal plan that had been put in place under Videla (Pion-Berlin 1985). During the transition of power, both Videla and Viola ultimately prioritized a smooth transition of power over the maintenance of the free market economic strategy; but, as Pion-Cerlin put it, “By discarding a key component of the plan, it left itself with its mission” (Pion-Berlin 1985, 64).

Now left without a mission, and a lack of unity already clearly having begun to unravel even before this transition, Viola’s government was doomed from the start. Internal disputes among military groups and leaders revealed what Pion-Berlin called the “first organized expression of solidarity among the major political parties since the coup,” with the formation of the Multipartidaria, which was comprised of political leaders and posed a considerable threat to the Junta due to their vocality and prominence (Pion-Berlin 1985, 65). A mere nine months after his appointment to the Presidency, Viola was soon overwhelmed by the failing economy and instability that had existed under Videla, and had only worsened in recent months, and was ousted and replaced by Leopoldo Galtieri (Dávila 2013).

Ultimately, having decided to engage in the Malvinas War against Great Britain, and experiencing an embarrassing loss. The aforementioned challenges proved too much thus rendering the Junta no longer viable. Furthermore, the emergent human rights movement, which

included the Madres of the Plaza de Mayo, and the drawing of the international community, made it so that Argentina's actions were closely watched. Thus, the pressures created by the human rights activists, the loss of the war, considerable economic hardships, and political change all led to the end of the dictatorship.

#### **IV. Argentina's Process of Transitional Justice and the Catalyst of Human Rights Activism**

Argentina's human rights trials in 1985 have been considered to be one of the most notable landmarks in the history of human rights; Kathryn Sikkink refers to Argentina's transition as going, "from pariah state to global protagonist" (Sikkink 2011, 102). Following the end of the dictatorship in 1983, the country's newly civilian-led government began to embark on a process of transitional justice. On this transition, former President Raul Alfonsín wrote:

In our society, the building of democracy could not be viewed simply as a process of restoration; it was essentially a process of creating new institutions and implementing new routines, new habits, and new ways for people to live together. It was a matter not of reconstructing a system that was functioning well until it was interrupted by authoritarianism, but of establishing new foundations for an authentic democratic system, something that we had never fully achieved (Alfonsín 1993, 15).

Argentina began a process of transitional justice that attempted to heal the wound that had been created while reaffirming and strengthening their commitment to democracy. Knowing that this was a daunting process, yet committed to the search for truth and justice, Alfonsín acknowledged that addressing this past was essential to achieving these goals, writing:

There was a tradition in Argentina that after each dictatorship, the crimes and abuses committed by the authoritarian government would go unpunished. My administration, moved by an urgent ethical imperative, for the first time opened the judicial channels so that the extreme violations of human rights perpetrated by both revolutionary terrorism and state terrorism could be investigated and judged by an independent judicial body. Thus the impunity of the powerful would come to an end (Alfonsín 1993, 15).

Alfonsín's statement directly addresses the historical lack of accountability and justice after atrocity and articulates the commitment to ending, what he calls, "the impunity of the powerful." This statement simultaneously highlights the importance of a judicial body in achieving this goal.

Sikkink writes that, "Argentine human rights activists were not passive recipients of a justice cascade, but the pioneers and propagators of multiple new tactics and transitional justice mechanisms" (Sikkink 2011, 147). Scholars have frequently credited human rights activists and organizations for their active roles during this period of transition. But, in addition to playing a crucial role within the transition, they themselves transformed the process through the innovation of new tactics and pushing the boundaries of current processes. In her book, *Memory and Transitional Justice in Argentina and Uruguay Against Impunity*, Francesca Lessa analyzes what she calls Argentina's fragmented process of transitional justice by breaking it down into three distinct phases (Lessa 2013). She cites initial actions taken during redemocratization between 1983 and 1985, which includes the Trial of the Juntas and the use of truth commissions through the formation of CONADEP, as being the first phase in Argentina's transitional justice process (Lessa 2013). She calls this first phase "truth and limited justice" (Lessa 2013, 50). Lessa then asserts that the second phase, which she calls "Impunity Laws and Pardons: Challenging Oblivion," occurred between 1986 and 2002 (Lessa 2013, 57). She argues that during this phase, the country took steps away from a process of transitional justice and towards impunity. She also notes the important role human rights activists and "civil society" played during this period, writing that they "worked relentlessly to prevent the past from fading into oblivion" (Lessa 2013, 50). She goes on to say that, "Their efforts together with revelations of past horrors and developments in national, regional, and international arenas generated the pressures for the occurrence of the third critical juncture...and produced yet again a new shift, away from impunity

and once more toward accountability” (Lessa 2013, 50). This shift, she argues, signals the start of the third phase, “The Present Challenge of TJ: the Return of Prosecutions and Memory” (Lessa 2013, 50). She cites this phase as having started in 2003 and continuing until 2012, but debatably to present day, and argues that it is here that Argentina returned to a process of accountability as seen through the annulment of impunity laws and the return toward criminal prosecutions through the judicial system (Lessa 2013).

This section expands upon both Sikkink’s description of the role of human rights activists and Lessa’s aforementioned account of the fragmented nature of the transitional justice process in Argentina. I will explain what new transitional mechanisms human rights activists created during this period. I will then utilize this analysis to argue that human rights activists not only helped to innovate new transitional justice mechanisms, but contributed themselves to the process of transitional justice by holding perpetrators accountable. Rather than human rights activists only making considerable impact in the second phase that resulted in the successes of the third phase, the work of human rights activists pushed forward formal processes of transitional justice as early as during the Dirty War.

### **Phase 1- Redemocratization and Alfonsín**

The democratic elections of 1983 featured a vote between Raúl Alfonsín of the UCR (Radical Civic Union) and Italo Lúder of The Argentine (Peronist) Justicialista Party (PJ) (Levitsky 2003). The election resulted in a win for Alfonsín, “whose human rights-oriented discourse appealed to many independent and middle-class voters, [and] easily defeated Luder, handing the PJ its first-ever electoral defeat (Levitsky 2003, 12). On December 10th, 1983, newly-elected President Raúl Alfonsín stated in his address to the nation that:

A happy circumstance has it that this day, as Argentines begin this stage of 100 years of liberty, peace and democracy, is the day of human rights. And, therefore, we want to pledge ourselves once again: We will categorically and decisively work for the dignity of man, to whom we know liberty and justice must be granted, because the defense of human rights does not end with just the preservation of life, but also includes the fight that we are absolutely determined to carry out against the misery and poverty of our nation (Alfonsín, 1983)

Three days after his inauguration, Alfonsín demonstrated his commitment to this promise and promulgated a decree that called upon Argentina's highest court, the Consejo Supremo Militar, "to try the members of the first three juntas for crimes against human rights such as illegal deprivation of liberty, torture, and homicide" (Speck 1987, 500). In addition to attempting to navigate judicial routes to achieve justice for Argentines, Alfonsín issued decree 187 which established the Comisión Nacional sobre la Desaparición de Personas (National Commission on the Disappearance of Persons (CONADEP) (Speck 1987). Both actions put Argentina's process of dealing with their recent past into the global spotlight, ultimately making it so that even today their approach has been considered exceptional and groundbreaking.

### **Truth Commission**

The creation of the CONADEP was multipurpose. The official task of the commission was to gather information regarding the disappearances that occurred in the country between 1976 and 1983 (Lessa 2013). The unofficial tasks of the commission, however, was to first help construct a public narrative that factually articulated the events of the past. Additionally, the use of a truth commission aimed to reaffirm the citizen's trust in the state's institutions. The corruption that occurred during the Dirty War had extended to that of the judicial system and resulted in a loss of faith in and respect for the judicial system's ability to address the past effectively on its own (Crenzel 2008). Faced with a daunting task, both due to how widespread



disappearances had been in the country and the unique characteristics of the dictatorship, the commission worked for nine months to collect information (Lessa 2013). Over the course of this time, the commission “interviewed 1,500 survivors, relatives, and former political prisoners throughout Argentina; it also identified and inspected sites where clandestine detention centers had operated, and visited mass burial sites, morgues, hospitals, and prisons” (Lessa 2013, 53). The commission ultimately compiled their findings into the famous report *Nunca Más*. The truth commission and subsequent production of the *Nunca Más* report proved impactful for two main reasons. Firstly, the findings were utilized during both the trials in the mid-1980s as well as in the early 2000’s when the ability to try additional people became available (Lessa 2013). This thus proved the actions of the CONADEP to be essential in providing a wealth of evidence that was able to be used by the judicial system. Secondly, the use of this information in judicial proceeds affirms the important relationship between judicial and non-judicial transitional justice mechanisms, Sikkink writing that it, “shows that truth commissions and prosecutions are not necessarily two separate mechanisms but can be complementary and mutually reinforcing” (Sikkink 2011, 123).

### **The Trial of the Junta**

Alfonsín’s speech called on the judicial system to hold the top military commanders responsible for their actions. In February of 1985, the Cámara Federal de Apelaciones en lo Criminal (the Cámara), took jurisdiction of a case that was against nine top commanders for crimes of human rights abuses during the Dirty War (Steck 1987). The trial was unprecedented for the country, but also globally. No trial had ever taken place in Latin America holding leaders of previous authoritarian regimes accountable for their abuses while in office (Sikkink 2011).

This was to be the next major human rights trial after that of trials held in Greece and Portugal during the 1970s (Sikkink 2011). Prosecutors forged a new path, Sikkink writing that, “Although the Greek trial had been held almost a decade earlier, that model was not present in the minds of the Argentines as they organized their own trial” (Sikkink 2011, 123).

Ultimately, five of the nine commanders were convicted, including arguably the two most important leaders: Videla, former President of the first Junta, and Massera, former head of the Navy (Sikkink). In addition to holding the perpetrators accountable for their actions through the courts, the trials greatly impacted the public and the narrative surrounding the actions that occurred during the dictatorship. On this, Sikkink writes that, “the trials were a national event, a public spectacle that had the purpose of punishing the guilty, reaffirming certain norms, and creating a national understanding of the past” (Sikkink 2011, 128).

### **Human Rights Activists and IACHR**

While various human rights organizations were formed during and after the dictatorship, a key component became utilizing international human rights organizations (Sikkink 2011). By leveraging the support of the international community, activists were able to strengthen their demands for truth and justice (Sikkink 2011). The relationship held between human rights activists in Argentina and the Inter-American Commission on Human Rights (IACHR) became one of significant importance (Sikkink 2011). The IACHR’s work started during the dictatorship. Representatives visited the country in 1979 to assess the situation and compile their findings in a report (Lessa 2013). The IACHR’s report was the first physical document to call for human rights prosecution and, while the government attempted to block its dispersal within Argentina, human rights groups such as The Center for Legal Studies (CELS) helped to do so in secret (Sikkink 2011). The recommendations made in the IACHR’s report proved essential in

helping to unify and mobilize human rights activists in the country. While human rights advocates had previously feared calling specifically for justice, favoring calls for truth, by 1983 they made direct calls for trials and punishment (Sikkink 2011). When the dictatorship finally came to an end that same year, human rights activists actively participated in supporting candidates for the new government in hopes of pushing forward their causes (Sikkink 2011). Additionally, they organized in groups and performed marches during this period of transition, Sikkink including this example:

On August 19, 1983, for instance, 40,000 people marched in the streets of Buenos Aires to repudiate the military's proposal for a self-amnesty law to protect itself from future prosecution...On September 23, the military government signed the complete self-amnesty law for everyone associated with the regime (Sikkink 2011, 119).

Once Alfonsín took office in December 1983, he took immediate steps towards justice, one of which included repealing the self-amnesty law that was put in place by the Proceso (Sikkink 2011). This is only one example of how human rights activists laid the groundwork for real, tangible change within the formal process of transitional justice that the country underwent. The work human rights activists performed, which included reaching out to international organizations, was influential from the beginning. Here, we begin to see how the successes that are discussed later on this chapter were not due to a sudden burst of human rights activism, but rather part of a larger movement that had taken form during the dictatorship and continued to grow from there on.

## **Phase 2- The Push towards Impunity**

Arguing that there was a turning point in which the human rights activism boomed, Lessa writes, "But on the twentieth anniversary of the military coup in 1996, over 150,000 people

participated in demonstrations in Plaza de Mayo when normally only a few thousand did; “something that had been latent finally exploded” on that symbolic date” (Lessa 2013, 63). She argues that it was not just the fact that this was a significant anniversary for the country, but also that this was a response to the country’s shift away from justice and towards impunity. The previous section has already illustrated how the ending of the dictatorship was not sudden and that human rights activists had made a significant impact prior to this event. The rise in activism and methods in the 1990s can be understood as a response to the judicial mechanisms that were blocked with the passing of impunity laws and presidential pardons. As we will see, not only did human rights activists help make possible the return to transitional justice beginning in the 1990s, during which impunity laws were annulled and judicial proceedings were again made possible, but their approaches also proved that they could hold individuals accountable in informal ways.

### **Impunity Laws**

After the Trial of the Junta ended, the courts became flooded with cases involving lower-level officers (Sikkink 2011). Former members of the military began to panic, as did President Alfonsín. While Alfonsín had sought out justice, he had only intended for this justice to go so far as to prosecute the nine high-level officers involved in the first trial (Sikkink 2011). With this panic breeding considerable unrest, Alfonsín found himself pressured to pick between prioritizing transitional justice or stable democracy (Sikkink 2011). The government decided to initially halt the ability to pursue prosecutions (Lessa 2013). This was then cemented with the full blockage of pursuing justice via the judicial system through the passing of the Ley de Punto Final (Full Stop Law) and Ley de Obediencia Debida (Due Obedience Law) (Lessa 2013). The

Full Stop Law was presented to the public by Alfonsín's government as a "compromise to deliver justice and allow society to put the past behind" (Lessa 2013, 57). With over 6,000 cases having been filed by December 1986, the government wanted to "secure what had been achieved so far or risk jeopardizing everything if we carried on," as legal advisor Malamud Goti put it (Lessa 2013, 57). In an attempt to stop the influx of cases, the law established a 60-day period for alleging cases of human rights abuses (Lessa 2013). By the February 22nd, 1987 deadline, nearly 500 new cases had been filed; the law had failed to halt the filing of prosecutions like the government had hoped (Lessa 2013). Since the government's move with the Full Stop Law had been largely unsuccessful, and more unrest had ensued, Alfonsín responded with the enactment of the Due Obedience Law (Lessa 2013). This law essentially established amnesty for those accused and blocked the ability for trials in the future (Sikkink 2011). A state of impunity returned.

### **Menem's Pardons**

While Alfonsín had tried to confront the past and hold perpetrators accountable for their actions through legal justice with his initial actions, President Carlos Menem aimed to address this past and move forward in a different manner (Lessa 2013). After his election in 1989, Menem offered to the public the way in which they would achieve this: through pardons (Sikkink 2011). While 68% of Argentine's opposed the first set of pardons, in which nearly 300 military personnel involved in human rights abuses benefitted, Menem went ahead and issued a second set of pardons of which 80% of the public disapproved (Lessa 2013). This second set of pardons included those already convicted, most notably being that of Videla, Massara, and Viola (Lessa 2013). Ultimately, the pardons issued by Menem only furthered the country in the direction of impunity and forced human rights activists to innovate.

**Truth Trials:**

While the Punto Final and Obediencia laws, coupled with an onslaught of presidential pardons by Menem, blocked criminal prosecutions, human rights activists attempted to innovate in the legal realm through the creation of “truth trials” (Lessa 2013). The Center for Legal Studies (CELS), a human rights organization founded in 1979, headed this process, arguing that while criminal prosecutions were not attainable, victims had the right to know what happened to their loved ones. As explained by the then-director of CELS Martín Abregú wrote:

The impossibility of pursuing the authors of these crimes in criminal proceedings did not mean simply the closure of any kind of judicial intervention. On the contrary, the social impact caused by the declarations of the former naval officer (Scilingo) highlighted another crucial issue about state terrorism: the right of the relatives to know the final destiny of their loved ones and the right of society to know in detail the methodology used by the military dictatorship to exterminate tens of thousands of Argentines. It was this need to know (in both its aspects, the personal right of the relatives and the collective right of the whole community) that was presented to the courts, pleading the “Right to the Truth” (HRW 2001).

CELS aimed to present compelling cases to the court that would cause them to legally uphold the right to truth. Drawing support from international human rights bodies, such as the IACHR and the Inter-American Court who both had worked to establish this right, the argument found some success (HRW 2001). The result of the two cases first brought forth were reflective of the success of truth trials in general. The Federal Chamber of Buenos Aires ruled that in the case of Mónica Candelaria Mignone, the daughter of Emilio Mignone, who founded CELS, “demanded that the relatives had a right to know the truth about the fate of their loved ones and the court had a duty to use its powers to assist them” due to domestic and international law (HRW 2001). Additionally, the success of Mignone’s case resulted in future successes for other families who

sought out information through truth trials. The case of Alejandra Lapaco, however, went through a lengthy legal process that ultimately ended up in the Supreme Court (HRW 2001). After the case was held up in the Supreme Court for three years, the result was a 5-4 ruling that found that, “it would be pointless to allow the inquiry to be reopened, since the legal basis for a prosecution no longer existed” (HRW 2001). The truth trials proved significant for two main reasons. Firstly, they provided valuable information that was later used when criminal prosecutions became possible in 2006 (Lessa 2013). Secondly, they represented a legal innovation in which human rights activists and victims remained able to demand justice despite the impunity laws in place. On this, Leonardo Filippini acknowledges that, “The “truth trials” contributed to revealing the facts and allotting accountability; in addition, they set the foundation for future developments and ultimately served as a compromise between the commitment to finding the truth and the context of impunity” (Filippini 2011, 14). Thus, the truth trials provided accountability even when commonly accepted means of transitional justice was seemingly blocked through the formation of a new transitional justice mechanism that remained within formalized, state-sponsored institutions. The utilization of this information during later criminal prosecutions helps us to see how the work of human rights activists within the state both innovated new mechanisms within the formal transitional justice framework and bolstered future steps towards justice.

### **Foreign Trials**

While faced with impunity within Argentina, human rights activists turned to international forces to attempt to hold perpetrators accountable. Italy was the first country to proceed with trials, some as early as 1983, but notable cases include the prosecution “of ex-generals Carlos Guillermo Suárez Mason and Santiago Riveros to life imprisonment, and five

navy codefendants to 24 years in prison, all in absentia, on charges of kidnapping, torture, and pre-meditated murder of seven Italian citizens and the kidnapping of a child” (CELS 2001). But, other European countries, such as Spain, also held trials and convicted human rights abusers from the Argentina military (Lessa 2013). The use of foreign trials highlighted a major discrepancy between state and international justice; trials in Europe showed that prosecuting individuals through formal judicial proceedings was achievable, thus fueling debate on accountability and the application of this method in Argentine courts (Lessa 2013).

### **Confronting Amnesty Laws**

In 2000, CELS again proved their ability to innovate in the face of obstruction, this time attempting to directly confront amnesty laws and prove their unconstitutionality (Lessa 2013). The Simón case, also known as the Poblete case, called upon courts to open an investigation into the torture and forced disappearance of José Poblete and Getrudis Hlaczik who had disappeared in November 1978 and whose daughter, Claudia, had been illegally appropriated (Sikkink 2011). The case named Julio Simón, a member of the Argentine Federal Police, as the perpetrator of these abuses (Sikkink 2011). This case pointed out a fundamental flaw: the laws in place would allow the courts to find Simón criminally responsible for the kidnapping and falsification of Claudia’s identity, but not for the original and serious crimes of the murder and disappearance of her parents, which ultimately led to Claudia’s kidnapping (Lessa 2013). Prosecutors also argued that maintaining the amnesty laws went against international and regional human rights treaties that Argentina was obligated to adhere to (Sikkink 2011). Ultimately, Federal Judge Gabriel Cavallo ruled for the first time the amnesty laws to be unconstitutional and breaching



international obligations that state was required to meet in March 2001 (Lessa 2013). This ruling later proved significant when in July of 2005 the Supreme Court confirmed the decision in the “Simón” case and repealed the amnesty laws (Filippini 15, ).

### **Escraches: An Example of Innovation by Human Rights Activists**

“Si no hay justicia hay escrache” (*Grupo De Arte Callejero: Thought, Practices, and Actions* 2019, 39). Translated to English, we can understand this famous slogan to mean “If there is not justice, there is escrache.” Escraches emerged in the 1990s as a form of collective, direct action taken by human rights activists in Argentina when faced with the rise of impunity in the country, specifically seen through the passage of the laws Obediencia Debida and Punto Final, as well as the issuing of presidential pardons (*Grupo De Arte Callejero: Thought, Practices, and Actions* 2019). The first escraches were constructed by H.I.J.O.S., an acronym for the organization Hijos por la Identidad y la Justicia contra el Olvido y el Silencio, in 1995 (*Grupo De Arte Callejero: Thought, Practices, and Actions* 2019). The group emerged “out of the need to denounce the impunity of institutional justice” (*Grupo De Arte Callejero: Thought, Practices, and Actions* 2019, 39). The technique was later adopted by various other human rights activists and organizations, including Grupo de Arte Callejeros (GAC), an organization in Argentina that emerged in the 1990s and utilizes art as a form of activism in response to mass atrocity (*Grupo De Arte Callejero: Thought, Practices, and Actions* 2019). As described by GAC, “The idea was for people to repudiate the genocidists still on the loose, to create “social condemnation,” to question the absence of a legal punishment” (*Grupo De Arte Callejero: Thought, Practices, and Actions* 2019, 2). Escraches can take various forms, including constructing roads signs, spray painting the ground, or hanging posters, all of which essentially mark a location of where a genocidaire, for example, may live.

Escrache is an Argentine lunfardo word that can be translated to mean “to bring into the light something hidden” or “to reveal what power hides” (*Grupo De Arte Callejero: Thought, Practices, and Actions* 2019). GAC insightfully notes that this word holds significant meaning when considering the human rights abusers who lived comfortably and anonymously prior to the use of escraches throughout the country (*Grupo De Arte Callejero: Thought, Practices, and Actions* 2019, 2). The rise of escraches initially worked as an intervention in public spaces that drew attention to the homes of genocidists and spaces of significance during El Proceso, such as detention centers (*Grupo De Arte Callejero: Thought, Practices, and Actions* 2019). Ultimately, as described by GAC, “The idea was for people to repudiate the genocidists still on the loose, to create “social condemnation,” to question the absence of a legal punishment” (*Grupo De Arte Callejero: Thought, Practices, and Actions* 2019, 2).

As a technique that broke with traditional politics, the escraches proved able to affect political and social change (*Grupo De Arte Callejero: Thought, Practices, and Actions* 2019). This was made clear when Jorge Luis Magnacco, a doctor who was head of Obstetrics at a hospital in Argentina, was fired due to his previous involvement in kidnappings during El Proceso. This firing occurred after an escrache was performed in Magnacco’s neighborhood, thus proving the impact of the escraches and subsequent social condemnation that ultimately brought about a certain type of justice and accountability (*Grupo De Arte Callejero: Thought, Practices, and Actions* 2019). In addition to escraching those who were directly involved in the dictatorship, 2003 marked a transition to expanding the use of escraches to those who were “complicit” during the dictatorship and remained unaffected after. GAC cites the example of Héctor Vidal who kidnapped babies born in detention centers and created false birth certificates for them. Vidal went unpunished due to the Punto Final and Obediencia Debida laws, and just as

the slogan goes, without justice came his escraching (*Grupo De Arte Callejero: Thought, Practices, and Actions* 2019).

Escraching helps us to reflect on the use of this mechanism as a form of justice. As described by GAC, “There was a strong sense that the escrache was a form of justice that broke with the representations of institutional justice: a justice constructed by people in the day to day via the repudiation of the genocidist in the neighborhood, the reappropriation of politics, and the reflection of the subject matter of the present” (*Grupo De Arte Callejero: Thought, Practices, and Actions* 2019, 40). In this sense, escraching was a way of reclaiming justice by moving away from institutional judicial practices and towards political actions that created, “a spectacle represented in the practice of justice” (*Grupo De Arte Callejero: Thought, Practices, and Actions* 2019, 41). Through this process, escraches resulted in social condemnation, thus realizing justice through subsequent punishment outside of existing institutional mechanisms and processes.

An investigation into the use of escraches also reveals another important development. While this period allowed for considerable innovation by human rights activists in their approach to demanding and creating justice, it also allowed for the construction of a social movement. GAC writes about their involvement in the Marcha de Resistencia, a march that occurs every December in the Plaza de Mayo and is organized by the Madres de la Plaza de Mayo (*Grupo De Arte Callejero: Thought, Practices, and Actions* 2019). The use of escrache in this march allowed for various human rights activists, including GAC, H.I.J.O.S., and the Madres de la Plaza de Mayo, to come together in solidarity and combine their efforts so as to effect change. The intervention that was designed by HIJOS and GAC for the march, and which was first utilized in 1999, was called Juicio y Castigo, or Justice and Punishment (*Grupo De Arte Callejero: Thought, Practices, and Actions* 2019). As described by GAC, the purpose of this

intervention had the “dual focus on demanding institutional justice without losing sight of the importance of constructing a social condemnation (*Grupo De Arte Callejero: Thought, Practices, and Actions* 2019, 82). Juicio y Castigo became the slogan of a new generation of activists and was reproduced on posters, pins, and signs, demonstrating how critical visual interventions can be in mobilizing a social movement and demanding action (*Grupo De Arte Callejero: Thought, Practices, and Actions* 2019). Through examples like the escraches, we begin to see the emergence of informal ways human rights activists sought out accountability, achieved it, created a social movement, and helped raise awareness of the issues in the present and their relation to the past.

### **Phase 3**

Lessa argues that the country entered the third phase, which she calls “The Present Challenge of TJ: The Return of Prosecutions and Memory” once the impunity laws were annulled (Lessa 2013). While she credits the fervor of the activists during the 90s paired with the election of Kirchner as having sparked this transition, of which I have demonstrated was not born out of this one decade, but rather began with human rights activists during the dictatorship, we see the country enter a “full-scale return” to justice beginning in 2003 and continuing to the present. In 2004, judges rejected Menem’s pardons (Lessa 2013). In June 2005, the Supreme Court upheld the decision of the Poblete case that CELS had initiated and declared the impunity laws to be unconstitutional (Lessa 2013). And, in 2006, the country reopened the possibility of prosecuting former human rights abusers (Lessa 2013). As Lessa writes, “As of December 2012, nearly 1,926 individuals were implicated in crimes against humanity, 799 have been prosecuted, 262 condemned, 20 have been acquitted, while 306 have passed away” (Lessa 2013, 73).

## **Human Rights Activism Continues**

Even after justice became possible again through formal mechanisms of transitional justice via the judicial system, human rights activists continued to have an active role in the community. Many of the aforementioned organizations continue to do work today. The Madres de la Plaza de Mayo continue to march every Thursday at 3:30, they also continue to search for the desaparecidos and verify their identities through exhumations and DNA matching (Goñi 2017). The escraches movement also continues to this day in which they continue to attempt to achieve justice and hold others accountable both inside and outside of formal institutions.

## **Conclusion**

The case of Argentina highlights a variety of important points. Firstly, we are faced with a particularly brutal account of abuse that was so widespread and so systematic that it impacted nearly every facet of Argentine society. Secondly, we come to the understanding that despite the brutal repression, there remained enough space for a human rights movement to begin to grow in the country, such as the Madres de la Plaza de Mayo, and which ultimately created substantial pressure for the Junta regime. With these begin to unpack their process of transitional justice in which human right activists can be seen pushing forward formal processes of transitional justice as well as engaging in their own forms of informal transitional justice. Ultimately, the case of Argentina helps us to see the power of a combination of techniques and that even after a period of impunity, transitional justice can be returned to, largely thanks to the role of human rights activists.

### Chapter 3

On April 26, 1937, the small Basque town of Guernica was attacked. While the citizens were defenseless, German warplanes unleashed aerial bombings on the people at the authorization of General Francisco Franco (Zelazko 2021). The town was almost completely destroyed by this attack. Only mere months after this attack, Pablo Picasso revealed his painting, *Guernica*, representing the horrors of this attack, in Paris. The production of the painting was a result of the Spanish government who commissioned Picasso to create the painting in hopes of raising international awareness and garnering support against the atrocity occurring in the country. The attack in Guernica, however, was not a singular event but rather representative of an ongoing struggle in the country. Amid a Civil War, Spain was only just entering a period of abuse and repression at the hands of Franco. Today, Picasso's painting stands as a symbol of protest against abuses of state power and horror inflicted upon innocent civilians (Kopper 2014). While this symbology has grown, and *Guernica* has been harnessed as a powerful activist and political tool, its meaning "refers less and less to atrocities of the Spanish Civil War" and instead serves as a universal symbol of the horrors of war (Kopper 2014, 444). The distancing relationship between Guernica and the events of the Civil War, as well as that of the atrocities that subsequently followed the war as the country entered a 36-year dictatorship, are synonymous with a deeper struggle- that is Spain's lack of a formal process of transitional justice in favor of silence and oblivion. While the Spanish people endured nearly 40 years' worth of abuses by Franco's regime, beginning with the Civil War and continuing up until Franco's death and the end of his dictatorship, the 40 years that have since followed seem to have made little attempt to deal with this past. Therefore, this chapter aims to understand what occurred during the dictatorship as well as analyze how the country attempted to deal with this past. Through this

examination, I will ultimately question what has prevented Spain from engaging with a formal process of transitional justice like we have seen in the example of Argentina.

In order to do this, I will turn to José Gonzalez's conception of the periods following the end of the Spanish Civil War. He argues that immediately following the end of the war, the country underwent three distinct periods. The first of these was what he called a "Time of Silence," drawing upon the title of Luis Martín Santo's book *Tiempo de Silencio* (Gonzalez 2009). I will analyze this period, which occurred during Franco's dictatorship, by looking at the specific human rights abuses that occurred and comparing them to those that were present in Argentina during the Dirty War. I will also look at this period in relation to the presence, or lack thereof, of human rights activists and their influence on the country. González then points to the end of Franco's regime as the "Time of Forgetfulness" in which the country chose to not examine the past events with the intent of ensuring a smooth transition to democracy. I will compare Spain's transition to that of Argentina's by looking at how they chose to transition from dictatorship to democracy. Following this, González argues that the country did not begin to examine this past until the 1990s in which the country finally entered a "Time of Memory." Unlike the previous two periods, this era began to engage in both informal and formal processes of dealing with the country's past. Building off of González's framework, I will illustrate why this period gave way to a rise in conversations and actions regarding Spain's past and how human rights activists have worked to push forward a process of transitional justice in a similar manner to that of Argentina in hopes of entering a fourth period, which I refer to as the Time of Action.

To accomplish this, I will begin first with an account of what specific human rights abuses occurred during the Civil War and dictatorship. I will argue that the Civil War annihilated

the opposition, thus eliminating the threat of resistance. Turning to the “Time of Silence” I will demonstrate that this was a forced silence, not a voluntary one, in which the dictatorship did not allow for any activism due to the mechanisms of repression they utilized as well as the use of the judicial system to legitimize their actions. Unlike the case of Argentina in which the repression was extreme but not so extreme as to eliminate the possibility of activism, Franco’s regime left no ability to mobilize and demand the protection of their human rights. I will then analyze the “Time of Forgetfulness” by looking at both formal and informal actions taken by the government and the Spanish people following the end of the dictatorship. In order to understand what may have led to the different approaches the two countries had with handling this past, I will proceed by analyzing the different modes of transition that two countries experienced. Spain’s transition has been characterized as being “pacted,” referring to the weakened regime’s ability to negotiate the process of transition with the incoming democratic state leaders. Argentina, on the other hand, experienced a transition that has been categorized as “collapsed,” meaning that the outgoing regime had no opportunity to maintain control nor negotiate the conditions of the transition. I will illustrate how Spain’s pacted mode of transition aided them in preserving certain aspects of the old regime and negotiation between both parties, ultimately resulting in the widespread use of amnesties in Spain that was absent in Argentina immediately following the dictatorship. This will then lead me to a discussion regarding the “Time of Memory” in which the country began to question the events of the past and started to create an informal process of transitional justice. This will lead me to a critical analysis of the actions taken by human rights activists and groups during this period, which I will argue, is ongoing. I will conclude my chapter by arguing that Spain is appearing to be headed towards the fourth period of



accountability, in a similar sense to Argentina, thanks to the ongoing efforts of the human rights activist.

### **Part I. The Civil War**

The case of Spain remains unique in that the period of violence began prior to Franco's official rise to power. Here, we see the first key difference between Argentina and Spain's cases emerge. Unlike Argentina, which endured 50 years of alternating between civilian and military rule, Spain's wound was first born out of war (Lavedra 2012). Spain erupted in war in the summer of 1936. The emergent rightists, "moved to act by fear of the future, the desire to compensate for past fears, and also by very deep religious sentiment," ultimately coalesced in an attempt to attack the existing government (Alba 1978, 120). This right, known as the Nationalists, Falangists, or later Francoists, fought against those defending the Republic, referred to as the Republicans. On July 17th, 1936, General Franco, who led the Nationalists, proclaimed to the Spanish people that the army, "had decided to reestablish order and appealed to the Republican sentiment of all Spaniards to be ready to participate in the task of restoring Spain" (Alba 1978, 117). What was supposed to be an easy and successful military coup quickly turned into a full-blown war. The war proved bloody from the start. While the Republican government tried to squash the rebellious efforts, it was ultimately the people that turned what was expected to be a swift victory for the Nationalists into a full-fledged war that lasted for the following three years. The war came to an end in 1939 with Nationalists winning control of the country (Alba 1978).

What makes this transition to dictatorship particularly noteworthy and significantly different from that of Argentina's transition to the Dirty War dictatorship, was the complete and

total destruction of the opposition. Those who opposed Franco ended up in one of three situations: death, exile, or imprisonment. Alba writes that following the end of the Civil War and during the very beginning of his dictatorship, Franco “found a country (or rather, that part of the country which has constituted the Republican zone) deprived of technicians, specialized workers, and intellectuals. Most of these had gone into exile. Had they not, they would have found themselves in jail within days after the end of the war, since they had formed the framework of the Republican army and the economy (Alba 1978, 172). Those who actively fought against Franco had no choice but to flee or be killed or imprisoned. Thus, those who may have remained loyal to the Republic had no choice but to hide these feelings or else face a similar fate. The complete destruction of the opposition paired with an ongoing repression of Republican ideology and action played a significant role in ensuring the longevity of Franco’s rule and allowed for an onslaught of abuse at the hands of the state. In understanding this complete destruction, we begin to see why a transition similar to that of Argentina once the dictatorship came to end proved considerably difficult to achieve.

## **Part II. Franco’s Dictatorship and the Time of Silence**

The decision to construct a transition that focused on forgetting the past left no room for formal investigations. This “Time of Silence” causes us to question how this silencing may have contributed to a transition that focused on forgetting and thus eliminating the possibility to engage in a formal process of transitional justice. In order to understand why Spain chose this approach as opposed to Argentina, who did go through a formal process of transitional justice, I assert that rather than the “silence” that occurred during the dictatorship being a choice, it was an action demanded by Franco and his regime. Ultimately, the repression of Franco’s dictatorship was so extreme as to eliminate any and all possibilities for activism and resistance, thus requiring

societal obedience towards “silence”. In order to illustrate this, I will examine Spain's dictatorship, paying particular attention to the similarities and differences between its dictatorship and Argentina's.

### **Franco's Human Rights Violations at a Glance**

Even today questions remain regarding the crimes committed during Franco's dictatorship (Escuerdo 2014). The lack of state-sponsored investigations into the abuses that occurred during the dictatorship have left gaps in our knowledge. However, independent research done by scholars and historians has provided us with a good understanding of the events. It has been estimated that during the dictatorship: “more than 130,000 people disappeared and died in extrajudicial executions; 700,000 people were held in concentration camps from 1936 to 1942; 400,000 people were imprisoned for political reasons, many of whom were subjected to torture or other cruel, inhuman, degrading treatment; 500,000 people were exiled for their political beliefs” (Escuerdo 2014). Franco's dictatorship, similar to that of the regime in power during Argentina's Dirty War, “tried to silence all sectors of society that were deemed to be subversive” (Corbalán 2019, 218). To ensure this, the Spanish state utilized institutional violence, including executing, torturing, kidnapping, and imprisoning those that went against the state and were associated with the Republic (Corbalán 2019). The use of illegal detention, in which the state created detention, labor, and prison camps for detainees, also remains an example of systematic abuse and a severe violation of human rights similar to what was seen in the case of Argentina (Gil 2014).

The mechanisms of violence and repression harnessed by the Spanish state are similar to those employed by Argentina's Junta during the Dirty War, but there is one clear difference

between the cases that emerges. The violence of Argentina's dictatorship was in no means milder. However, as referenced in the previous chapter, "The Argentine case was unique in that the repression was extreme, but not so extreme as to eliminate all possibilities for activism" (Sikkink 2011, 137). In Argentina, activists created and maintained space that allowed for the rise of the human rights movement during and following the dictatorship that was largely absent in Spain. Instead, the brutality and repression associated with Franco's dictatorship left no ability for human rights to be demanded. The repression was all-encompassing and the mobilization of activists was extremely limited. As such, calls for human rights were absent as any attempt to do so would have been met with violence and repression.

When looking at the sharp contrast in how the two countries handled their transitions to democracy, understanding the events that occurred during Spain's dictatorship is essential. The following will analyze some of the major human rights abuses that occurred during the Spanish Civil War and the subsequent dictatorship, all at the hands of Franco. In particular, I will focus on the execution and treatment of those killed during the Civil War, the corruption of the judicial system during the dictatorship, and the child trafficking that occurred. While we have access to this information thanks to the work of scholars, researchers, victims, and activists, Escuerdo makes the important acknowledgment that, "Ascertaining the real measure of this crime—gathering statistics and identifying persons and institutions involved—would require an official investigation that the Spanish government still rejects" (Escuerdo 2014, 128). Without this formal investigation, we remain solely in possession of information that does not fully capture the atrocity that occurred nor the full scope of these events.

## **Child Trafficking**

More recently, investigations have revealed that a child trafficking network operated under the Francoist regime (Escuerdo 2014). A government decree that was issued in 1940 made it so that incarcerated mothers lost legal privileges of their children once the child turned three (Escuerdo 2014). In some cases, children were taken prematurely if the mother gave birth while incarcerated, in which the mothers were told that their child was stillborn when in reality they were just taken from them (Escuerdo 2014). As a result of this decree, “about 30,000 children became wards of a public organization called Auxilio Social or of various Catholic institutions” (Escuerdo 2014, 128). Today, the number of children who were falsely declared stillborn remains an unknown number (Escuerdo 2014). These kidnapped children ultimately ended up in one of two different situations. They were either given to a family that was loyal to the regime or they were “sold” via adoption, the government realizing that “the sale of young children was highly profitable” (Escuerdo 2014, 128).

The abduction and trafficking of children in Spain is reminiscent of what occurred in Argentina during the Dirty War. As Ana Corbalán notes, “During both dictatorships, thousands of children were torn from their biological families, based on the rationale that their parents were considered morally dangerous and that the state needed to avoid the degeneration of the race” (Corbalán 2019). This systematic abduction of children during these dictatorships highlights both the ideological and tactical strategies of the regimes. Both regimes validated their actions by demoralizing and dehumanizing those they deemed “subversive.” This led to a legitimization of their actions in which they viewed them as ultimately being for the greater good. Furthermore, the coordination of the governments’ efforts to enact this system of child trafficking included

people in positions of authority, such as “government agents, doctors, and nurses, most of whom were nuns” (Escuerdo 2014, 128).

The events surrounding the child trafficking system reveal two important characteristics. Firstly, we see how wide-reaching the mechanisms of abuse were. It is easy to compare these events to that of Argentina who also faced a significant crisis regarding child abductions. But, different from that of Argentina, the second important conclusion emerges, that is that this information went unknown for a significant amount of time. In contrast, Argentina’s abductions of children were extremely well known, especially once organizations such as the Madres de la Plaza de Mayo and Abuelas de la Plaza de Mayo emerged and highlighted this issue. The Spanish public, on the other hand, was largely unaware of this abuse until decades after its occurrence. This speaks to the incredible coordination of authority figures who ensured the systematic and clandestine process of child trafficking. This was, of course, only further protected by the lack of investigations and general attempt to forget the past that immediately followed the end of the dictatorship. Ultimately, this systematic abduction of children during Franco’s regime, which was largely unknown until the 1990s and early 2000s, helps us to compare it to that of Argentina and begin to understand why Spain did not engage in a formal process of transitional justice immediately following the end of their dictatorship.

### **Corruption of Judicial System**

As Alicia Gil Gil wrote, “The Francoist dictatorship eliminated public rights and liberties and exerted harsh repression of all political and ideological dissent” (Gil 2012, 105). Franco’s regime ensured that the judiciary system was also under their control. As such, Franco weaponized the judicial system as a mechanism that legitimized the human rights abuses

committed resulting in multiple violations of due process and law (Escuerdo 2014). This can be seen through the creation of The Political Responsibilities Court which was responsible for hearing over 229,000 cases during the dictatorship (Escuerdo 2014). Many of these cases resulted in economic confiscation, but punishment could be as severe as jail or even death (Escuerdo 2014). Nonetheless, the dictatorship made the confiscation of personal property legal through court action; a process Escuerdo notes remains unaddressed today and unquantifiable due to a lack of record and how widespread this abuse was (Escuerdo 2014).

In addition to evoking terror in the people through violence, the Franco regime differed from that of Argentine dictatorship through the incredibly strict and repressive set of rules that were legally codified (Gil 2012). The regime banned all “political parties and labour unions as well as repressing all manifestations of political, religious and moral dissent” (Gil 2012).

It is important to note that the corruption of the judicial system began during the Civil War (Richards 1998). Michael Richards writes in his book *A Time of Silence: Civil War and the Culture of Repression in Franco's Spain, 1936-1945* that, “With no apparent sense of irony, the long series of dictatorial edicts issued by the Franco regime was initiated by a law against ‘military rebellion’, proclaimed just ten days after the illegal rebellion of July 1936 which, itself, was the first act of embryonic Francoist state” (Richards 1998, 78). Franco’s military maintained control of the judicial system by creating legislation that enabled further abuse. The law against ‘military rebellion’ made it so that the upholding of laws related to the previous Republic was illegal (Richards 1998, 78). Instead, this law “effectively became the hallmark of a regime which saw itself permanently at war with society and gave a semblance of legality to the thousands of summary executions carried out as the Francoist state was made” (Richards 1998, 78). Additionally, the arresting of citizens for political reasons was disguised in an attempt to

cover-up the fact that the state was taking political prisoners (Richards 1998). This resulted in even harsher treatment as they were instead labeled “common prisoners” (Richards 1998).

Richards includes the account of a woman who stated that:

What the directors of Franco’s prisons wanted to show was that there *were* no political prisoners, and we had to take a great deal of punishment for insisting this wasn’t so. When a visitor came along and declared “There are no political prisoners here” we would take a step forward and respond that “Yes, *we* are political prisoners (Richards 1998, 78).

This exclamation had consequences, with the result being a limitation of even the most basic rights: food and communication (Richards 1998).

Additionally, while many were tried unfairly, the lack of trial also speaks to the corruption of the system and the regime. Richards includes the account of José María Varela Rendueles who was the Republican Civil Governor of Seville in 1936 and noted that even found carrying “a membership card of the socialist union, the UGT (Unión General de Trabajadores)” could result in immediate execution (Richards 1998, 39). Varela Rendueles went on to estimate that “between July 1936 and February 1937 more than 6,000 were killed in the city of Seville without appearing before a court whatsoever” (Richards 1998, 39). This account illustrates that in addition to the judicial system being corrupt, this corruption extended to the lack of judicial processes and the legitimization of executions.

The corruption of the judicial system legitimized abuses that included death, imprisonment, the seizing of personal property, and more. But, perhaps most significant, the edicts by Franco ensured that any and all attempts to organize against the new dictatorship were impossible. The systematic killing and imprisonment of all opponents ensured that activists could not mobilize and that human rights could not be demanded. As such, we begin to see that unlike Argentina, in which the repression was not so extreme as to prevent the presence of



activism, Franco's Spain managed to repress any and all attempts for widespread activism within the state. Ultimately, the systematic repression that eliminated opponents and prevented the ability to mobilize activists resulted in a transition that could not organize in the same way Argentina was able to immediately following the end of their respective dictatorships.

### **Art Calls out Injustices**

In 1937, Picasso remarked, "I have always believed and still believe that artists who live and work with spiritual values cannot and should not remain indifferent to a conflict in which the highest values of humanity and civilisation are at stake" (Macdonald 2017). Horrified by the events that were occurring in his home country of Spain, Picasso painted *Guernica*. Through this painting, Picasso reflected on the horrors of pain and death associated with the rise of Facism in the country (Macdonald 2017). As discussed at the beginning of this chapter, today *Guernica* is associated with a more general fight against Facism and abuse at the hands of the government versus that of the specific brutality associated with the Spanish Civil War and subsequent dictatorship. Nonetheless, *Guernica* drew important attention to the events that were occurring in Spain when it was produced. In addition, Picasso's work was ultimately representative of a larger international artistic response to the ongoing events in the country, all of which can be described as a form of political activism.

The work of Juan Miró also demonstrates how artists engaged in a form of political activism during this period. Miró, also a native Spaniard, reflected on the horror of the events occurring in his home country and created his first work that took an active political stance (Macdonald 2017). The creation of his piece *Help Spain* (*Aidez L'Espagne*) in 1937 was originally "designed as a stamp to aid the Republican government" (Macdonald 2017). He then sold the print in poster form, utilizing the funds to directly support the Republicans (Glueck

1998). The print, which featured “a Catalán peasant raising a thick, defiant fist” demonstrated the direct anti-Franco propaganda that writers and artists alike disseminated during this time (Glueck 1998). Miró went on to engage with politics through his work all the way through the 1970s (Macdonald 2017).

As Jordi Mayoral stated, “The works created by these artists are still .. “part of the Spanish collective memory; they represented a major turning point in the Civil War and the country’s struggle between democracy and fascism” (Macdonald 2017). The work of artists like Picasso and Miró proved important drawing international attention to this issue, both artists displaying their work in Paris, but it is important to understand the limitations of activism during this period that both artists illustrate. Picasso and Miró were only able to directly call out the injustices through their art *because* they existed outside of the state. The severe brutality and repression associated with the “time of silence” left no option for activism for those living within Spain.

An analysis of the “Time of Silence” allows us to understand how a combination of violence, abuse, and judicial measures helped ensure a complete and total repression of Spaniards. This silence was not an option but rather a requirement for staying alive. As such, the brutality of the dictatorship left absolutely no ability for human rights to be demanded or for activists to mobilize. While activists, such as Picasso and Miró, were able to draw attention to this issue, they were only able to do so as activists seeking refuge abroad, and their work, while important, was ultimately unable to mobilize activism within the state and push forward a formal process immediately following the end of the dictatorship like what was done in Argentina.

### **Part III. Time of Forgetfulness**

In 1975, Franco's death offered the country the possibility of confronting their past. However, deciding to prioritize the stable construction of a democratic future, political forces sidelined this opportunity in favor of "consensus" (González 2009). Thus, the "pact of silence" was adopted by the political left and right to ensure a united commitment to the 1978 Constitution (González 2009). Argued to have been the way Spaniards could achieve "reconciliation," this unwritten pact essentially advocated for forgetting the past in favor of the construction of a new democracy and a new future (Escuerdo 2014, 132). Escuerdo notes that the pact was multipurpose. It served to ensure silence from supporters and opponents alike; it forced all to reject the past, which included Franco's dictatorship and the Spanish Republic, and it provided amnesty for the perpetrators of abuse (Escuerdo 2014). As Theresa Godwin Phelps writes, "To agree not to discuss the past was a mark of good citizenship in Spain as it allowed room for a fragile (and false) harmony that enabled Spain to act as if it were a unified country and to, it was believed, thrive" (Phelps 2014, 836). The submission to this pact was socially enforced and silently agreed upon. It forced Spain into a state of silence instead of justice, oblivion instead of truth (Phelps 2014).

The act of forgetting that was forced upon Spain was celebrated for decades. Gil notes that the Spanish transition was "always referred to as an example of peaceful transition par excellence" (Gil 2014). While this period can be generally considered to be a time when the country attempted to forget the past, not all citizens accepted this fact. As Andrea Davis writes, the "pact of silence' interpretation overestimates the consensual nature of the Transition," alluding to the reality that, contrary to the popular narrative, the pact was not universally

accepted (Davis 2015). When examining this period, we must question why Spain chose to forget this past instead of confronting it through investigations and prosecutions, as was seen in Argentina following the Dirty War. In addition to comparing Argentina and Spain's respective periods immediately following the end of their dictatorships, looking at the ways in which activism first becomes present helps us to analyze its role in the future. We thus can understand why activism was limited and how it later grew during the "time of memory." Ultimately, this period marked the invention of official discourse about the war, or rather the lack of discourse, and the bipartisan celebration of the pact of silence. Despite efforts to stifle attempts to achieve justice and accountability, this period also boasts the beginning of nascent human rights activists, that while unable to mobilize, or even call for human rights, managed to begin a process of informal transitional justice through independent exhumations.

### **Modes of Transition: Argentina vs. Spain**

Comparing the nature of Spain's transition to democracy to that of Argentina's again offers us some insight into what may have led to a lack of formal transitional justice measures in the Spanish state. Spain's dictatorship ultimately ended with Franco's death. The country, pressured by the international community as well as the growing calls for additional freedoms by the Spanish people, "could not but become a democracy" (Murado 2014). Yet, unlike that of Argentina, Franco's regime had a prolonged and natural death without economic, political, or social collapse, whereas Argentina's regime could instead be "characterized as a transition by collapse" (Fields 2006). This collapse, which was discussed in the previous chapter, was due to economic reasons, the war, and the continued work of the human rights activists. Collapsed regimes result in a transition in which the outgoing regime cannot impose or negotiate the terms

of transition, as such, in the case of Argentina, the Junta could not secure their amnesty in the new democracy (Fields 2004). As opposed to a collapsed transition, Spain experienced a pacted transition. This mode of transition allowed for negotiation between both opponents and supporters of Franco, resulting as typically does in pacted transitions, the preservation of some elements related to the old regime (“Democratization.”). Additionally, Argentina had a strong party organization immediately following the end of the dictatorship, whereas “strong party organizations (let alone disciplined organizations) did not exist in Spain prior to the transition (aside from the arguable exception of the PCE), but rather had to be created” (Fields 2006, 95). As noted by Fields, “The constraints of transition pact making without institutional guarantees, in contrast, were not present in Argentina” and thus may suggest “that transitions by collapse may produce an environment in which party organizational development is “freer”” (Field 2006, 96). Thus it is made apparent that the nature of Spain’s mode of transition in it of itself allowed for negotiation, which resulted in widespread amnesty and the creation of the pact of silence.

### **The Creation of an Official Narrative and the Pact of Silence**

Interestingly, Escuerdo notes that despite this clear obstruction of justice, “Official ideologists consider the Spanish transition successful and the hegemonic structures in place since the transition occurred have transmitted this characterization to the public” (Escuerdo 2014, 125). The assertion that the transition was successful, and to be modeled by other countries, fails to acknowledge the severe implications of their actions regarding the lack of transitional justice and accountability for their past, which Escuerdo, too, acknowledges. The narrative that the transition was successful only further silenced victims. However, the belief that this transition

was something to be praised reflects the significant effort of both the political left and right to maintain this narrative.

While the pact of silence may have been informal and silently agreed upon, the lack of transitional justice mechanisms was obvious. After the ratification of the democratic Constitution in 1978, the country actively opted out of pursuing a truth commission or investigating the past, a process that was seen by other countries of the same time (Phelps 2014). No transitional mechanisms were put in place, and no official apologies were given (Escuerdo 2014). The government blocked all possible demands for “truth, justice, and reparation for the victims of decades of human rights violations” (Escuerdo 2014, 131). While they created democracy, they avoided actions for accountability and justice.

This process of forgetting was only worsened by the passing of the 1977 Amnesty Law by the newly established democracy. This law gave legal official pardoning to actions committed by both sides during the Civil War (Phelps 2014). As such, the law simultaneously “included both those victimized by Franquist repression and the agents of that repression” (Boyd 2008). This legal codification of forgetting, similar to the pact, was argued as necessary to ensure stability as the country transitioned to the democracy, which Boyd argues was “a concession to the right that reflected the balance of political forces at the time” (Boyd 2008). This law, however, has proven to be the greatest obstacle to justice in which it remains in place to this day.

### **A Form of Reparations?**

Following the end of the dictatorship, there were some, albeit limited, attempts to provide reparations for victims of the dictatorship. “In the light of these measures, it may be argued that transitional politics moved away from a model of absolute oblivion to one that aspired to

rehabilitate victims whose fate until that point had been totally neglected” (Gil 2012, 109). These compensations were almost entirely economic. Amnesty laws included the rehabilitation of “assistant personnel in courts and tribunals, teaching staff as well as military personnel who had been separated from service during the dictatorship” (Gil). This also resulted in the extension of pensions to Republican army officers and those who were injured during the Civil War and dictatorship (Gil). While the decentralized government model in which the autonomous communities had their own local governments had allowed for cases of exhumations, which will be discussed in what follows, the general response from the government in addressing this past was incredibly limited and contextualized. There was no ownership for the past abuses, or recognition of the full-extent of the suffering, but rather attempts made to “neutralize” and “equalize” by-products of the war through equal financial compensations to those on both sides of the war.

### **Activists Fight Back**

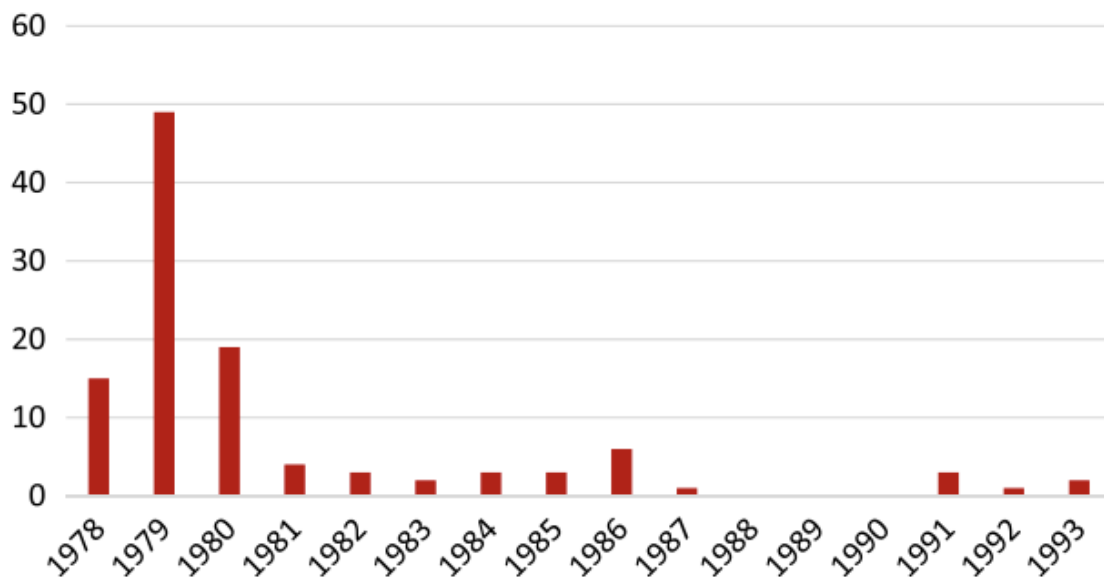
Despite this push to forget by the new government, activism took the form through scholarly research and the exhumations of Republicans killed. As previously discussed, knowledge surrounding the events of what occurred during the Spanish Civil War and dictatorship were only made public due to the work of scholars and historians. Boyd writes that, “For the generation of historians who came to professional maturity in the 1960s and early 1970s, scholarly research was a form of political activism whose target was the official Franquist memory of the war as a crusade against the godlessness, anarchy, and antipatriotism of the Second Republic” (Boyd ). The transition presented an opportunity for scholars and historians to gain access to archival information that had previously been sealed (Boyd). The information collected by researchers, who worked to gather victim testimony and engage in thoughtful and

thorough research, proved crucial in helping to disseminate information previously hidden to the general public. Boyd notes that, “Although the Socialist government of Felipe González abstained in 1986 from official commemoration of what the prime minister termed an “uncivil war,” scholars were less inhibited, organizing dozens of conferences and collective publications whose primary purpose was to disseminate the results of scholarly research on the war” (Boyd 136). By the 1990s, scholars felt able to “dispense with the myth of collective responsibility that had facilitated the transition” (Boyd 2008). Their findings proved monumental in that they broke down myths that had been constructed by the government. One clear example of this was the findings of new statistics that, “demonstrated conclusively that the victims of Nationalist repression vastly outnumbered those killed by the revolutionary left at the outbreak of the war, deal[ing] another blow to the myth of equal responsibility” (Boyd 2008). While the work of scholars and historians was incredibly important in shifting a corrective narrative into the present, this shift did not occur until the 90s and early 2000s. As such, the impact of the work of scholars and historians immediately following the dictatorship was limited in terms of effecting widespread change, at least initially.

### **A Return to Exhumations**

Paloma Aguilar’s article “Unwilling to Forget: Local Memory Initiatives in Post-Franco Spain” illustrates how citizens pushed back against this silence through the exhumation of Republicans killed during the Civil War. By harnessing the support of local politicians and priests, relatives of the deceased “decided to overcome fear and to fight against different kinds of obstacles to deal with the past,” one of these ways being through the exhumation of the bodies of their loved ones buried in mass graves (Aguilar 2017).





While Aguilar’s research focuses on four regions in Spain, her work speaks to a larger narrative in which we begin to see how local actors began to take tangible and significant action. This action ultimately allowed for the dissemination of these methods to other regions, and laid the groundwork for future activism.

Aguilar provides information on two cases to highlight the varying processes families faced during their efforts to exhume the bodies. She first explains the case of Navarra, a province that had extreme left-support (Aguilar 2017). She notes that in Navarra, priests were motivated to assist families due to their direct personal links to loved ones executed. Moreover, these priests were supported by the solidarity of a section of the Church of Navarra, who attempted to persuade the Spanish Church to apologize for their support of Francoist efforts during the Civil War (Aguilar 2017). These two characteristics greatly assisted families in their appeals for action, in which they relied on priests specifically to offer a proper service for their loved ones. Aguilar writes that:

And to have a large group of parish priests at their side at such a time was not without its

significance, not just because their moral authority helped overcome administrative obstacles, but also for their great management and organisational capacity. The communication networks between them facilitated the coordination of diverse actions required to find remains, move them and organise subsequent tributes (Aguilar 2017).

In this sense, we see how some priests and local governments acted as activists themselves. The support and coordination of these groups ultimately allowed for these families, who, too, were activists, to carry out these exhumations.

The case of Felisa Casatejada, who tried to exhume the bodies of her two brothers that were executed without trial after the war, describes the danger associated with trying to exhume these bodies. This case occurred in Casas de Don Pedro, a municipality in Extremadura. As opposed to the exhumations in Navara, the Casatejada family experienced significant challenges, both in terms of getting support for their actions by the local government and priests, as well as considerable threats from the public. Aguilar recounts this, writing:

When planning to move the remains, they suffered threats from right-wing groups which painted graffiti in the village, distributed flyers against Felisa, put pressure on the parish priest and mayor to prevent the remains from being transferred and tribute from being paid, and sent various kinds of intimidating messages. These included threats that the remains would be burned, leading the family to spend two days and nights keeping watch over the site, followed by several long nights in the cemetery to prevent the grave from being destroyed (Aguilar 419).

While this was a trying time in history to attempt these exhumations, with true threats and obstacles in place, some families continued to pursue the process of exhuming their relatives and thus engaged in acts of resistance and activism. Despite the lack of formal processes available to them to achieve accountability and justice, their actions resulted in an engagement that can be considered part of an informal process of transitional justice. Through these exhumations, families actualized their desires for justice, at least in part, without the official support of the

state and their institutions. For some families, they “remained paralysed by fears of stirring up the past and did not even consider the possibility until many years later” (Aguilar 2017, 410). Yet, these individual cases of activism speak to a larger push towards transitional justice, which we see become more apparent years later.

#### **Part IV: Time of Memory**

Jose Gonzalez notes that the “Time of Memory” seems to emerge in the 1990s in which the country began to examine their past (González 2009). This period saw the clear emergence of human rights activists who attempted to uncover this past and began to demand justice. While the previous sections have shown how activism first emerged during the “time of silence” through art, the rise of information produced by scholars and historians, as well as independent exhumations, during the “time of forgetfulness” we see how the general public became increasingly involved in the debate of revisiting the past. As stated by González, “Almost 70% of the Spanish population agree with the investigation of the Civil War and the rehabilitation of the victims” (González 2009, 179). The following will look at the various ways in which human rights activists and organizations attempted to push forward a formal process of transitional justice, as well as informally engage in a process of transitional justice. Additionally, I will analyze what caused this reexamination of the past and how it allowed for a new space to emerge in which activism could occur and demands for justice finally be made.

Part of the reasoning for what has been called the “memory boom” during this period, in which art, film, literature, and discussion all seemed to rapidly emerge, was the maturation of a new generation of Spaniards eager to learn about this past. Boyd writes that:

At the turn of the twenty-first century, 45 percent of the Spanish population was too young to recall either the war or the dictatorship. For this generation- the grandchildren

of those who had endured the war and the children of those who had agreed to "forget" the past to make possible the transition- recovery of the memories of those previously silenced was a way of satisfying their curiosity about the past (Boyd 2008, 142).

For many Spaniards, learning about the past was borne out of natural curiosity. The temporal separation likely offered distance from the pain that the previous generations had faced as a result of the Civil War and subsequent dictatorship. As Gonzalez states:

The current situation is that people want to know. They want to know where the bodies of their disappeared are, why they were shot, and in what common graves their mortal remains lie. They want to know the names of the 850 buried in Cantabria and the 7250 shot in the cemetery of Valencia. They want to honour the memory of their dead, recover their forgotten dignity, close their own wounds and carry on with their lives. Opposed to the strategy of forgetfulness and silence about the past that was at the basis of the reconciliation between Spaniards at the end of Franco's regime, today a new strategy is made possible, rooted in the knowledge of the pain of the Civil War victims and the repression of Franco's dictatorship (González 2009).

But, in addition to curiosity that was bred, this new generation was struck with the *need* to uncover what had been "forgotten"- a need for knowledge. The literature and scholarly work that had been previously produced, and became newly produced during this period by scholars and historians, found new relevance. This time allowed rise to newly founded organizations determined to uncover this past, such as the ARHM, as well as the production of film that dealt with this past, a resurgence of activism, and, finally, official action taken by the Spanish state that begins to address this past. As evidence of this, we see the Spanish Parliament declare the year 2006 as the Year of Historical Memory, followed by the institution of the Historical Memory Law.

## **Expansion of International Human Rights Laws**

In addition to an increase in knowledge, and a new generation of Spaniards eager to learn about and address this past, other factors can be determined to have influenced this return to memory that developed in Spain. Specifically, the evolution of human rights laws, and the influence of their applications in the international community, resulted in a new opportunity to revisit this past and demand justice. As Lavedra wrote, “The 1990s were marked by an extraordinary impulse of international human rights law. In this period, the principles for which the international community had fought since Nuremberg were affirmed” (Lavedra 2012, 70). Argentina was remarkable in that they carried out a series of investigations and prosecutions immediately following the end of their dictatorship despite the “absence of relevant rules of international human rights law” (Lavedra 2012, 57). However, by the 1990s, these rules had been established (Lavedra 2012). While these new norms were extensive, they included the success of the creation of the ad hoc International Criminal Tribunals for the Former Yugoslavia and Rwanda by the UN Security Council in 1993 and 1994 (Lavedra 2012). As Lavedra notes, “Through the establishment of these tribunals, the international community indicated its commitment to prosecute and punish in an effective manner the war crimes and crimes against humanity that had been committed in these countries” (Lavedra 2012, 71). Additionally, the creation of the International Criminal Court in 2002 and various declarations by the United Nations (such as the UN Declaration concerning the Protection of All Persons against Enforced Disappearances in 1992), helped to strengthen and normalize the international human rights laws (Lavedra 2012). Finally, the extradition and trial of Augusto Pinochet by Spanish Judge Garzón

served as a major catalyst in the Spanish movement to uncover their own past. Encarnación argues that:

The end of civil society's complicity with the Pact of Forgetting is best understood as a by-product of the collapse of the elite consensus on the past that materialized with the democratic transition. It was only then that civil society demands for some kind of recognition of the past began to get some traction in the public sphere. The obvious catalyst that shattered the elite consensus on the past was Spain's indictment in 1998 of Chilean general Augusto Pinochet for his role in the bloody military coup that crushed the democratically elected government of Salvador Allende in 1973. (Encarnación 2014, 132).

While Encarnación asserts that the Spanish involvement in the case of Pinochet, in which Chile engaged in a process of re-examining and criminally prosecuting Pinochet for his crimes via the laws of universal jurisdiction, I would argue that this was likely the metaphorical "straw that broke the camel's back" (Encarnación 2014). The case of Pinochet created ripple effects across the world, and in the case of Spain, this became especially relevant to the country's process of re-examining its past. Firstly, it explored legal innovations that Judge Garzón introduced, reopening the question of possible criminal prosecutions in Spain. Secondly, it reminded the Spanish people of their past, and created the desire for reconciliation of past atrocities and justice. Finally, the conditions were ripe to truly carry out the process of transitional justice, all because of the effect of Pinochet's trial, the precedents set by it, and the advancements in international law.

### **The Influence of Film on Memory**

Nuria Tesson, a reporter for the Spanish newspaper *El País*, stated that, "Spain is waking up after a long lethargy. In part, thanks to the massive amount of publications on the civil war on TV, films, and literature that tell "the other side of the story" (Espinoza 2007). While activism

was certainly present during the period of forgetfulness, as previously described, the general public was less involved in this conversation up until the 1990s and early 2000s. As Boyd writes, “ordinary Spaniards’ apparently insatiable curiosity about the war was satisfied by a deluge of popular publications, television programs, and films” (Boyd 2008, 136). Directly following the end of the dictatorship, Spain entered a cultural and artistic boom. It wasn’t until around the 90s, though, that the country saw the emergence of various artistic forms of expression that directly confronted and uncovered the past. While the forms in which media and art varied, film has been one major influence on the country’s understanding of the past.

Film has forced the country to visually confront this past and became a useful tool in which activists could shed light on the abuses of the past. The film “Franco’s Forgotten Children” was one of the first attempts to uncover the systematic kidnapping of minors during the dictatorship (Corbalán 2019). An abuse that was not well known by the public until 2002, the film’s directors, Ricard Bellis and Montse Armengou, embarked on an investigation into this dark part of the country’s past (Corbalán 2019). Through the utilization of archival footage and interviews, “the film pursued an ethical commitment to expose the illegal repatriation of minors, the forced separation of political prisoners and their children, and the restitution of their identities” under Franco (Corbalán 2019, 221). As Ruth Amir writes, “The testimonies are devastating and empowering at the same time” (Amir 2016, 125). Women recount the horrors that they experienced while in prisons and concentration camps, including “torture, violence, disease, and hunger” (Amir 2016, 124). Their reasonings for ending up in these inhumane conditions also highlight the injustice of the period, Amir writing that, “These are women who attempted to flee Spain by sea from Alicante and Valencia and were forcibly disembarked; women who were guilty by association as spouses, mothers or sisters, and children of Republican

parents or people targeted by the Francoists” (Amir 2016, 125). The new ability to understand what these abuses included, as well as the reasons for the imprisonment and detention of these women, helped to bring about public consciousness. Thus, these films can be understood as powerful tools of activism, Corbalán noting that, “The novels and films whose main theme is the forced separation of children from their parents during both dictatorships can be interpreted as mechanisms of resistance against the remnants of a turbulent past” (Corbalán 2019, 220).

Recent years have continued to push forward a new narrative that exposes other failures, including the country’s flawed transition to democracy and the multitude of abuses committed during the Civil War and dictatorship. Such works include the 2018 documentary *The Silence of Others* by Almudena Carracedo and Robert Bahar. This film primarily focuses on the lawsuit filed in 2010 by a group of victims in Argentina in hopes of achieving justice through legal accountability. With a direct focus on the victim experience, this film highlights how the 1977 Amnesty Law “has proved a formidable obstacle to justice” (Kenigsberg 2019). Personal accounts are startling and heartbreaking. Of those featured is José María Galante who “lives “just meters” from the man he says tortured him,” spotlighting just how absent accountability remains today (Kenigsberg 2019).

The effects of these films are important to consider. Their creation operated outside of formal institutional mechanisms, but actively allowed the public to participate in the acquisition of this knowledge and the subsequent arising of a differing narrative. As Kenigsberg writes, “Of course, the mere existence of legal proceedings abroad puts pressure on Spain to attend to its past” (Kenigsberg 2019). Their production visually forces the public to confront and understand this past and their factual evidence based on real events ultimately cannot be denied (Corbalán 2019, 220).



## Newspaper Obituaries

Human Rights activists took other creative measures to call attention to their cause as well as to provide a certain type of justice for the victims when mechanisms of formal accountability and justice were blocked. Dubbed “la de las esquelas” (obituary wars) by the Spanish media, relatives of those killed during the Spanish Civil War pushed the debate over the past into the public spotlight by submitting obituaries of their lost loved ones to the newspaper (Encarnación 2014). As Encarnación wrote, through these actions relatives “appeared to be fighting the war all over again” (Encarnación 2014, 154). The first obituary appeared in July of 2006 in which the family of Franco’s first victim, Commander Virgilio Leret Ruiz, published an obituary for him in the Spanish newspaper *El País* (Espinoza 2007). In this obituary, Carlota Leret, the commander’s daughter, writes: “Commander Virgilio Leret Ruiz was a victim of Francoist terrorism. He was shot at dawn on 18 July 1936 after surrendering. As a result of a pact of silence that is unacceptable in any democratic society, Spain still has a debt of justice, truth and the memory to the victims” (Espinoza 2007). The publication of this obituary, in which the family spent approximately \$12,000 on the half-page print, created a spark in the public that resulted in the publication of similar addresses from victims on both sides of the Civil War (Encarnación 2014).

Since the obituaries posted during this time were for both Republicans and Nationalists killed, the language used in these obituaries varied. Each side fought to publish and express their own narratives. Encarnación noted that, “Left-wing sympathizers usually include a political explanation such as “killed defending the legitimate government of the Republic and the Constitution,” while right-wing sympathizers generally offer a religious explanation such as

“vilely murdered because of his faith and devotion to God.” (Encarnación 2014, 155). The difference in language reflected an ongoing battle between both sides, the families of Republicans killing trying to push forward this new description of the past while Nationalist families attempted to maintain the old narrative. Espinoza noted this divide writing, “Francisco Ferrandiz, an anthropologist studying the language of the obituaries, said that they 'reflect the latent clash between the memory of the defeated and the memory of the winners'.” (Espinoza 2007). WRAP

### **Association for the Recuperation of the Historical Memory (ARMH)**

In 2000, journalist Emilio Silva formed the Association for the Recuperation of the Historical Memory (ARMH). Silva was part of this new generation of grandchildren who was determined to dig deeper into Spain’s own “forgotten” past, his own grandfather having been shot by Franco’s army in 1936 (Encarnación 2014). The work of the ARMH has been incredibly pertinent to the rise of public discussion surrounding the country’s past and has made them, arguably, the most influential activist organization in the country. The organization has been credited for helping to provide various forms of reparations for victims of Franco’s abuse, annul judicial proceedings that occurred during the War and under the dictatorship, exhume mass graves from the Civil War, remove relics, markings, and monuments associated with the old regime from public spaces, and create the nation archive of the Civil War so that these documents are now accessible to the public (Encarnación 2014).

The ARMH can be credited for advancing numerous efforts related to the protection and preservation of human rights associated with abuses related to the Civil War and dictatorship.

While the aforementioned has all been significant, the ARMH’s work in leveraging the

international community has been particularly useful in their fight for justice. In hopes of gaining international support and awareness towards their cause, human rights activists, including that of the ARMH, began searching outside of their borders. The ARMH played an active role in this endeavor, appearing before the UN Office of the High Commissioner for Human Rights in Geneva in 2002 (Encarnación 2014). They presented their organization's findings and ultimately advocated for the Spanish governments to pay for the exhumation of bodies and proper burials, as well as the creation of a commission "to investigate the facts surrounding the fate of those who disappeared during the Civil War" (Encarnación 2014). The ARMH's advocacy resulted in the UN's inclusion of Spain in the UN list of countries that had unresolved problems related to a history of state crimes and repression (Encarnación 2014). The UN later took additional measures to hold Spain accountable for their past by calling on them "to investigate the fate of Republicans killed following the Civil War and undertake the exhumation of known graves of the disappeared" (Encarnación 2014). By drawing on the international community, human rights activists and organizations like the ARMH were able to bring global attention to this issue and help put pressure on the Spanish government in their demands for action.

### **Exhumations and Burials**

As discussed at the beginning of this chapter, it was the exhumation of thirteen victims' bodies killed during the Civil War that seemed to spark a national conversation regarding Spain's past. After activists sought out and gained support from the international community in their efforts to pressure Spain to exhume the bodies, they chose to act instead of passively waiting for a response (Encarnación 2014). The ARMH, again, played an important role in these efforts. Through private financing and volunteering, the group executed these first thirteen exhumations

in October 2000 that gained national and international attention (Encarnación 2014). A mere six years later, the ARMH alone exhumed “some forty gravesites containing the remains of 520 bodies” (Encarnación 2014). While this is a significant and noteworthy milestone, it is thought that there are still approximately 30,000 bodies lying in mass graves scattered across the country yet to be exhumed (Adler 2004).

The exhumations and reburials have released a flood of storytelling about events such as the killing of the Poyales del Hoyo women. The bodies have a kind of eloquence that gives permission, even encourages, that the long silence be broken and that the repressed memories be spoken aloud and re-engaged. Clandestine killings cease to be secret with the "testimony" and materiality of corpses, often with marks identifying the means of death. Oddly perhaps, human remains are more enduring, and more persuasive, than a living person's memory and testimony. The story told by the bodies in light of competing truth claims offers irrefutable evidence of what occurred in the villages; it renders any denials impossible.

### **Historical Memory Law:**

In 2006, the government introduced a “Bill in order to recognize and extend the rights, and to establish measures in favour, of those that suffered persecution or violence during the Civil War and the dictatorship,” resulting in the creation of the ‘Historical Memory Law (González 2009, 181). In González’s words, “This law intends to remember the spirit of reconciliation and concord that made possible the political Transition from dictatorship to democracy and that allowed the Constitution of 1978 to be written, the best model of coexistence in the whole of Spanish history” (González 2009, 181). As stated by González, the bill details a variety of measures including:

- (1) Improving the economic rights of the families of the victims and granting the families of those that were killed in defence of democracy the right to economic indemnification.
- (2) Making possible the location and identification of the disappeared as a final demonstration of respect towards them.
- (3) Eliminating the symbols and monuments of the Civil War and the dictatorship because public symbols must be related to encounters, not confrontations.

(4) Special recognition towards the volunteers of the International Brigades and the citizen Associations that distinguished themselves in defending the dignity of the victims.

(5) Bettering an understanding of the past because the duty of memory is based on the knowledge of the tragic facts of the past. Therefore, ‘knowing in order to remember’ seems to be the best motto. For this goal, the following actions are undertaken:

- A Documentary Centre of Historical Memory is created.
- The role of the present General Archive of the Spanish Civil War with a seat in Salamanca is reinforced.
- The recollection of oral testimonies of the victims of the violence in the Civil War and the repression following upon it is facilitated.
- The State will acquire and protect documents on the Civil War and the dictatorship. (González 2009, 182).

These measures are reminiscent of the goals and actions taken by the ARMH, as well as those taken by individual activists beginning during the “time of forgetfulness.” As such, we begin to see how activists’ work can be realized through formal processes by the state with the building of public consciousness, the creation of a social movement, and the proliferation of work related to this subject.

### **Exhumation of Franco’s Body**

But, exhumations of victims killed by Franco are not the only exhumations that have been widely debated. In recent years, the exhumation of Franco himself is of particular significance and has drawn considerable controversy. On October 24, 2019, after months of legal battles, Franco’s body was exhumed from El Valle de los Caídos (the Valley of the Fallen), where the former dictator had been laid to rest for over 40 years (Booker 2019). The exhumation of Franco represents a growing national narrative surrounding the need for government action in regards to accountability for the past. And, this action represents a step in the direction towards acknowledgement for this past coupled with tangible action.

Additionally, the removal of Franco's body from Valle de los Caídos has given activists hope that it will result in further exhumations. The burial site is not only home to Franco, but to an additional estimated 33,000 other people, one third of whom remain unidentified (Minder 2019). While some of those buried fought for Franco, opponents of Franco are also buried there (Minder 2019). Specifically, it is known that Republican prisoners of war who constructed the monument, which took 18 years to complete, are among the buried (Minder 2019). As noted by Minder, "Exhuming Franco is very important, but it should also help our society care far more about the many who were dumped in the mausoleum built to the glory of Spain's dictator, without the consent or even the knowledge of their families" (Minder 2019).

### **Conclusion**

The case of Spain presents us with a process of transitional justice that contrasts significantly Argentina's. This being said, Spain's case helps us to understand the significance of informal processes of transitional justice when transitional justice is completely blocked. With more recent actions being taken by the state, it seems that Spain may be following Argentina's footsteps and, hopefully, opening the doors for a formal process of transitional justice that includes prosecutions, among other actions that have been demanded by human rights activists and organizations.

## Chapter 4

"We have created a narrative of denial. We think if we own up to our mistakes, something bad is going to happen to us. We're going to get punished. And I'm not doing these projects because I want to punish America. I want us to be liberated from the chains that this history has created" (Raphelson 2018). Bryan Stevenses, founder of the Equal Justice Initiative, made this statement regarding his hopes for the creation of The National Memorial for Peace and Justice. Opened in Montgomery, Alabama on April 26, 2018, Stevenses "wanted the memorial to capture just how brutal the targeted killing of black people was in Jim Crow South" (Raphelson 2018). Influenced by the Holocaust Memorial in Berlin and the Apartheid Museum in Johannesburg, the memorial tackles the historical oppression of black people in America. The museum speaks to a growing narrative in which the United States has begun to understand how the history of slavery has led to a cycle of oppression that continues to impact the country.

The creation of this museum is just one example of the new wave of projects and initiatives in the United States that address historical oppression of African-Americans in the country, both historically and today. As this conversation begins to draw increasingly more attention and traction, we see the country begin to question beginning a process of transitional justice. As the United States considers this, I then ask, is there anything we can learn from the experiences of Argentina and Spain? In this thesis I have argued that we must conceptualize transitional justice more broadly so as to include both non-judicial and judicial mechanisms. In addition to this, I now culminate my argument by asserting that we must come to understand transitional justice to also include both formal and informal processes so that even when met

with impunity, activists can achieve accountability, justice, and remembrance, among other goals. Argentina, which underwent a formal process of transitional justice, followed by a period of impunity, and then a return to transitional justice, demonstrated how both formal and informal processes of transitional justice are crucial to achieving justice, ensuring remembrance, and holding individuals accountable. Spain, whose process can perhaps be more easily compared to the U.S., has only just begun what seems to be a process of formal transitional justice, as seen through the passing of the historical memory law. Both countries have highlighted that informal mechanisms are equally important to that of formal mechanisms of transitional justice. Specifically, the two cases have highlighted how crucial human rights activists are to both pushing forward a formal process of transitional justice and engaging in an informal process of transitional justice which in itself is significant. I thus turn my attention to what we can learn from the experiences in Spain and Argentina and how they can be applied to the U.S..

### **Part I. The Need for a Social Movement**

Both Argentina and Spain illustrated the importance of memory in ensuring the success of human rights movements and bringing about public consciousness. While the production of the CONADEP *Nunca Más* report proved effective in bringing the public's attention to the full extent of the abuses that occurred at the hands of the state, the work of human rights activists also highlighted the influence of their efforts on the creation of a movement. As Simon and Gready wrote:

Social movements have driven democratisation in various parts of the world and can reasonably be credited as integral to the creation of the contemporary discourse of transitional justice, most notably through victims' movements such as the Madres de Plaza de Mayo in Argentina and the Khulumani Support Group in South Africa. Yet they remain on the margins of transitional justice scholarship and discourse. Social movements are 'collective challenges by people with common purposes and solidarity in



sustained interactions with elites, opponents and authorities' through which it is argued the marginalised or otherwise disenfranchised can challenge the dynamics of power in society (Gready and Simon 2017, 958).

While the United State's democracy has remained much more stable than was seen in Argentina, who experienced periods of civil rule punctuated by military dictatorships, the need to challenge authority so as to confront ongoing oppression remains of considerable importance. As Simon and Gready suggest, the work of social movements prove essential in helping to create solidarity amongst all communities so as to push against unjust dominant narratives and achieve justice for those marginalized, forgotten, and oppressed. As such, we begin to see the emergent need for a social movement in the U.S. that aims to achieve this- a turn towards transitional justice. Should the U.S. form a movement that unifies the collective need for change and pushes against a cycle of violence and oppression that black people in America face, they too may find success in achieving transitional justice.

Furthermore, both Argentina and Spain demonstrated the need to bring attention to these issues in order to form a social movement. Again, looking to Argentina and the work of The Madres de Plaza de Mayo, we see the influence of their work on mobilizing the public to act in resistance against the state. Simon and Gready made note of this significance writing:

The Madres de Plaza de Mayo famously used a public space in Buenos Aires to remember their children disappeared by the Argentinian junta. The mothers' weekly marches sought to advance formal justice and challenge cultures of silence, emphasising the importance of performativity to social movement collective action, using vocabularies of emotion rather than those of law. It was a mobilisation that drove a nascent transitional justice practice, including ultimately leading to one of the earliest truth commissions, centred on determining the truth about the disappeared" (Gready and Simon 2017, 963).

The work of the Madres proved that transitional justice can be achieved outside of formal mechanisms. By occupying public space and engaging in a process of remembrance, they were able to draw attention to the widespread disappearances of children under the dictatorship. Equally important, their work inspired a movement that pushed forward formal processes of transitional justice. While this was seen in the prosecutions of the major contributors to the dictatorship as well as the creation of truth commissions, the Madres work became influential again when later faced with a period of impunity for the past human rights abuses by the government. It was during this period in which transitional justice was blocked that the Madres continued to push against this impunity, as seen through their continued marches, public presence, and demands for justice. Simultaneously, this period resulted in the emergence of other human rights activists who innovated their practices and held perpetrators accountable through non-legal means, as seen through the *escrache* movement and the work of H.I.J.O.S. and Grupo de Arte Callejero (GAC). The U.S. has arguably existed in this realm of impunity in which no transitional justice process has begun or been allowed to grow in a formal manner. As such, through the use of a social movement, it is possible the U.S. could find similar success in mobilizing the public and demand action, as has been seen in the other two cases.

## **Part II. Building Consciousness through Initiatives**

While many Americans have been taught to understand America's birth as having begun when 102 English people traveled and settled in the "New World" in 1620, slaves had already occupied America (Shah and Adolphe 2019). A year earlier, the first 20 enslaved Africans had been forcibly brought to the new British colony. But, for centuries, American history has only focused on the former narrative. As Michael Guasco stated, "Historians, elected political figures

[and] community leaders would prefer to sort of imagine the United States as a kind of mythic, Anglo-Saxon Christian place” (Shah and Adolphe 2019). Additionally, the passing of the 13th Amendment following the end of the Civil War, has been championed as ending slavery and allowing for the creation of an “equal” America, but has not actualized the creation of a society in which equality exists for blacks and their white counterparts. Passed on January 31, 1865, the 13th Amendment states that, “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction” (“The 13th Amendment of the U.S. Constitution”). Of course, the institution of “Jim Crow laws; poll taxes; voting rights; segregation; and work camps like the Parchman Farm in Mississippi” ensured that black people in America remained oppressed second-class citizens. Similar to what we saw in Spain, the period of silence in the United States has lasted for centuries. America has struggled to both understand our slave past as well as the ongoing effects of what resulted in not dealing with this past. As Boris Bittker writes,

“To concentrate on slavery is to understate the case for compensation, so much so that one might almost suspect that the distant past is serving to suppress the ugly facts of the recent past and of contemporary life. In actuality, slavery was followed not by a century of equality but by a mere decade of faltering progress, repeatedly checked by violence” (Bittker 1973, 50).

With this lack of understanding, we have seen the urgent need for a reexamination of this past so as to raise consciousness surrounding this past and its effects on our present and future.

Looking to Spain, we see how the work of scholars and historians helped to ensure a wealth of information regarding the events of the past were documented despite the government's lack of investigations. This information paired with the support of organizations like the ARHM helped to disseminate information to the public and create a narrative that challenged the official

one that was espoused for decades. As such, we see how important the combination of knowledge and social movements becomes for human rights activists in attempting to force the public, and government, to reexamine the past and undergo a process of transitional justice.

The U.S. seems to have begun to try and rewrite this history. The 1619 Project, a long-form journalism project published by the New York Times is one clear example of this attempt to push forward a shift in narrative, education, and knowledge surrounding America's past. As stated by the editor of the *New York Times Magazine*, Jake Silverstein, "The goal of The 1619 Project is to reframe American history by considering what it would mean to regard 1619 as our nation's birth year. Doing so requires us to place the consequences of slavery and the contributions of black Americans at the very center of the story we tell ourselves about who we are as a country" (Riley 2020, 1). Through the creation of a series of podcasts, books, and articles, the 1619 Project aims to expose current and future generations to a new narrative regarding the history of slavery and its impacts on society today. However, a simple search of scholarly works on this project reveals a clear lack of embracement regarding the project. The article "The 1619 Project: Believe Your Lying Eyes" written by Seth Forman includes the following passage that take direct issue with the project stating:

The 1619 Project tells us to pay no attention to the historical legacy that gave birth to the nation's remarkable transformation. Instead, it depicts an America in which racism is so deeply rooted in every event and time period that these changes are simply not to be believed. It was not just that blacks were no more free after the Revolutionary War than before it. The Revolutionary War was fought specifically to keep blacks in chains, to rescue slavery from a certain British onslaught. The Founders didn't just fail to apply the Constitution's revolutionary principles to blacks, they enshrined slavery—without even saying the word—in that document for the next century...We eat too much sugar in our diets today because slavery made "white gold" plentiful. We have more people in jail than other developed countries because "[s]lavery gave America a fear of black people and a taste for violent punishment." And on it goes (Forman 2020, 7).

Forman's article is only one of many that attacks the work of the project, citing historical inaccuracies and false claims that slavery has impacted oppression that may or may not exist for black people in America. As such, we begin to see that while these initiatives have begun, they have yet to be accepted by the entire public. In order for the public to truly reexamine history, we would likely need an explosion of similar projects and initiatives combined with the aforementioned social movement, as was seen in Spain and Argentina.

### **Part III. The Use of Art and Film**

Both Spain and Argentina utilized art and film as a way to bring attention to issues of abuse as well as call for the need for accountability and justice. Looking to Spain, we saw the films *Franco's Forgotten Children* aired in 2002 contribute to the rise in awareness regarding the systematic trafficking of children during the Franco dictatorship. An abuse that went largely unknown until the early 2000s, the film both called out the need to address this issue as well as reexamine the past as a whole. A more recent Spanish film that confronts the country's dark past is the 2018 documentary *The Silence of Others* which helped to provide insight into the modern struggle for justice in the country. Through highlighting personal stories, this film looks at the active role human rights activists have taken in pursuing independent exhumations, which are in themselves significant, as well as seek out legal justice through international actors, specifically that of Argentine judges.

The success and influence of these works has led to the question of whether a similar form of activism through art and film can be taken by the U.S.. The film *13th* has been one example of an attempt to highlight injustices in the U.S. that have continued despite the passing of the 13th Amendment. As explained by Vanessa Lopez-Littleton and Arto Woodley,

From an egalitarian perspective, if all people are equal with equal rights and opportunities, then the plight of the African American over the course of several centuries is in contrast to this fundamental belief. In this regard, 13th supports the need for a public health agenda focused on the criminalization, marginalization, and systematic oppression of African Americans in the United States. Resultantly, there is an increasing need to collect data on police violence against African Americans as well as the development of an effective public health agenda that eliminates disparate health and social outcomes. These proposals are supported by the tragic deaths of Trayvon Martin; Eric Garner; Tamir Rice; Jason Harrison; Laquan MacDonald; Oscar Grant; Philando Castile; Freddie Gray; Sam Boise; and many others who have fallen prey to a system that fails to honor their bodies (Lopez-Littleton and Woodley 2018, 417).

#### **Part IV: A Push for Formal Action**

Argentina has demonstrated the most robust approach towards transitional justice which has combined both formal and informal processes of transitional justice to confront this past. As Spain seems to be heading towards a similar path, in which a process of informal transitional justice has begun to occur and a formal one is being called for, we thus look to what a formal action, if any, has been taken in the U.S.

While reparations have largely been called for in the U.S., and should certainly be considered when looking at what formal mechanisms may need to take place, these cases have resulted in very little success and actualization. Instead, we have seen the beginnings of pushes towards more symbolic actions. Of these includes the introduction of a joint resolution by members of the Virginia General Assembly in 2007 “atoning for Virginia’s part in the enslavement of African and calling for racial reconciliation” (Balfour 2011, 12). This introduction of this bill into the former capital of the Confederacy is certainly symbolically significant, yet initial language that directly addressed the linkage of this past to current oppression was ultimately cut from the final resolution (Balfour 2011). As such, we see how governments, in this case state governments, have begun to consider this past in relation to the

present. Yet, these actions remain primarily symbolic, and not as robust as even possible for that of symbolic actions. The removal of Confederate statues is another example that could be pointed to, whose removal has been successful in some locations and fervently protected in others. As such, we ultimately see the potential for institutional action, but the lack of real and meaningful action in the present.

## **Conclusion**

A 2019 survey conducted by the Pew Research Center found that 63% of Americans believe that the legacy of slavery still affects the position of black people in American society today either a great deal or a fair amount (Horowitz et.al. 2021). The survey also found that, “more than four-in-ten U.S. adults (45%) think the country hasn’t gone far enough in giving black people equal rights with whites” (Horowitz et.al. 2021). While the survey indicates disparities between racial groups, the results still represent a strongly held belief that there is something deeply wrong in the U.S. today in regard to racial injustices in America today and their linkages to the country’s slave past. As the U.S. seems to call for a process of transitional justice, our examination of Argentina and Spain helps us to understand what this may look like. Ultimately, I have argued that the work of human rights activists, who can form social movements, challenge official dominant narratives, achieve accountability and justice outside of institutions, and engage in a practice of remembrance prove essential in the process of transitional. Both as a formal and informal process, transitional justice mechanisms should be understood in broad terms that embrace emergent and alternative (ie. not sole judicial-mechanisms) that may have been preferred when the practice first emerged, and by some theorists today such as Teitel. Yet, it is through the combination of these practices, the

combination of non-judicial and judicial mechanisms, of formal and informal processes of transitional justice, that perhaps would create the best model for contemporary transitional justice practices and conceptualizations.



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