

Reconciliation in Post-Transitional Uruguay? A Critical Look at Transitional Justice and Justice Cascade

by

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Abstract

A key controversial issue in Uruguay has been the nation's inability to achieve a lasting reconciliation regarding human rights violations after a twelve year dictatorship. While other scholars have identified factors that caused the resurgence of the demand for human rights prosecutions, I focus on the nation's eventual failure to do so. This, I argue, is a result of the executive, the civil society and the politicization of human rights violations. I offer a critical reading on transitional justice and the justice cascade as explanatory frameworks to understand how societies confront their authoritarian past. Although these concepts both seem relevant, they are inadequate in the Uruguayan context. The project was undertaken using a historical research methodology focusing on archival research. I conclude that Uruguay has not experienced a unique water-shed moment because the military has never been fully discredited. This has hindered the process to reach an enduring reconciliation.

Keywords: Uruguay; reconciliation; transitional justice; justice cascade; justice; human rights

In honour of Arthur J. LaMore
Thank you for inspiring me to learn.

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List of Acronyms

CONSENA	Consejo de Seguridad Nacional – National Security Council
FA	Frente Amplio – Broad Front
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
PC	Partido Colorado – Colorado (Red) Party
PIT-CNT	Plenario Intersindical de Trabajadores – Convención Nacional de Trabajadores – Intersyndical Plenary of Workers - National Convention of Workers
PN	Partido Nacional – National Party
SCJ	Suprema Corte de Justicia – Supreme Court of Justice
SERPAJ	Servicio Paz y Justicia – Service Peace and Justice
WOLA	Washington Office on Latin America

Glossary

Civil society	although contested, the civil society is comprised of voluntary public organizations with a common interest or goal
Crimes against humanity	“are particularly odious offenses in that they constitute a serious attack on human dignity or grave humiliation or a degradation of human beings” according to the Rome Statute of the International Criminal Court (1998)
Desaparecido/a	a person who disappeared presumably killed by the military or police.
Human rights	rights inherently to all human beings. Human rights are detailed in the 1948 UN Universal Declaration of Human Rights.
Human rights violations	occur when actions by state or non-state actors abuse, ignore or deny basic rights including those which are civil, political, cultural, social or economic.
Interpretative laws	bills that seek to reinterpret a previous article or law.
Plebiscite	a direct vote in which all members of the electoral may accept or reject a proposal. It is synonymous with a referendum.
Referendum	a direct vote by the electorate on a single political question. It is synonymous with a plebiscite.
Restorative justice	an approach that focuses on the needs of the victims, as well as the offenders usually in the context of a community. In transitional justice, it centers on measures like reparations, truth and reconciliation commissions and the creation of memorials.
Retributive justice	an approach that considers punishment the morally appropriate response to a criminal offense. In transitional justice this approach manifests itself in criminal accountability.
Southern Cone	In terms of political geography, the Southern Cone is comprised of Argentina, Chile and Uruguay. However geographically this region includes Southern Brazil and Paraguay.

Chapter 1.

Introduction

In October 2011, after twelve hours of intense debate in the Uruguayan Chamber of Deputies, the ruling leftist coalition voted 50-40 to abolish the 1986 amnesty for military-era crimes. The opposition had argued that this bill had flagrantly violated national sovereignty by conceding to international demands. The opposition also claimed it went against the will of the people who had voted twice to maintain the law. After the legislation had been approved, the deputies were met with enthusiastic applause by a crowd formed outside awaiting the result. Together with the Senate's parallel decision two days before, this eliminated the internationally-criticized amnesty which had granted the armed forces and police immunity for twenty-five years following a dozen years of state terror and repression. This meant that lawsuits regarding human rights could be brought to court without executive interference. The bill aligned the state's domestic code with international laws and treaties signed and implemented by Uruguay and also avoided statutes of limitations on certain crimes which were to expire shortly after. It also made way for the prosecution of individuals responsible for gross violations of human rights, the victims' right to effective remedy and a society's right to know the truth. These three pillars of international human rights law had all been denied under the amnesty.

Less than two years later, the Uruguayan Supreme Court of Justice¹ ruled in a 4-1 decision that the law was unconstitutional, therefore invalid. The court cited that criminal law could not be applied retroactively. This meant that atrocities committed between 1973 and 1985 were again subject to the statutes of limitations designated for common crimes. In contrast to the contents of the recently-passed law, the Court contended that the majority of the crimes committed were not crimes against humanity, and could not be categorized as such. The leftist politicians and many civil society

¹ Suprema Corte de Justicia (SCJ)

organizations were furious over the Court's ruling. They believed it went against international laws and treaties to which Uruguay was a signatory.² Politicians requested that members of the Court appear in the legislative palace to explain on their decision, yet all five magistrates remained silent over the issue.³ Even the president voiced his opinion, stating that the decision was an obstacle to achieving justice and truth.⁴ The more radical sectors of the coalition even demanded an impeachment [*juicio político*] of the SCJ.⁵ Transnational courts and international human rights organizations expressed concern about the path Uruguay had chosen and condemned the court ruling. Politicians from the two long-standing traditional parties and retired military officers were the only sectors that supported the Court's ruling. The SCJ's decision closed the majority of reopened cases and re-established a shield of impunity that had been created and perpetuated by the amnesty law. Nevertheless, the Uruguayan society is still extremely divided as to what should be done with the perpetrators. Some say that the perpetrators have been vilified enough, while others demand their incarceration. Despite the varied opinions, it is striking to note that after almost thirty years, the battle for human rights continues.

These two episodes symbolize the most recent endeavours undertaken to settle pending human rights cases in Uruguay. The first was a big step forward for the human rights community after many years of struggle as this episode created a way to convict and punish those who violated human rights during the dictatorship. This incident reopened outstanding cases and facilitated the opening of new cases to be investigated for the first time. On the other hand, the second incident closed progress for trials and curtailed efforts to make amends with the past. Despite apparent attempts to resolve the

² The Universal Charter of Human Rights, United Nations Convention against Torture, Inter-American Convention to Prevent and Punish Torture, International Convention for the Protection of All Persons from Enforced Disappearance

³ The Court eventually sent a written explanation.

⁴ "Duros ataques a la Corte desde el FA; MPP promueve juicio político a miembros," *El País*, February 22, 2013, <http://historico.elpais.com.uy/130222/ultmo-697692/ultimomomento/duros-ataques-a-la-corte-desde-el-fa-mpp-promueve-juicio-politico-a-miembros>.

⁵ "Se diluye el juicio político a la Corte," *El País*, February 26, 2013, <http://historico.elpais.com.uy/130226/pnacio-698606/nacional/se-diluye-el-juicio-politico-a-la-corte>.

pending issues, they still remain unsettled. With the passage of time, each subsequent event has become more contentious and divisive.

The main problem is Uruguay's inability to achieve a lasting reconciliation. Sweeping amnesties and half-hearted efforts have not led to any definite resolution, but rather have only exacerbated the issue. I contend that this is a result of the executive, an organized civil society and the politicization of human rights violations. Almost all administrations endeavored to resolve the human rights question, yet the problem did not disappear. Though the civil society eventually achieved its objective of removing the amnesty, the civil society's multiple efforts aggravated the problem, making it even more politicized. This dilemma put state actors in a difficult situation and made the elimination of the law even more challenging. The politicization of human rights cases converted the subject from one that should be dealt with in the courts to a topic of the political realm causing any reconciliation attempt to be highly contested and these efforts to be marred by accusations of revenge. Despite many implemented mechanisms, Uruguay still has not whole-heartedly confronted its past, thus delaying a lasting reconciliation. To examine the Uruguayan case, I offer a critical reading on transitional justice and the justice cascade as explanatory frameworks to understand how societies deal with their authoritarian past. Ultimately, what is interesting is that though these concepts both seem extremely relevant, they both break down in the context of Uruguay. Despite multiple attempts to bring closure to the past, a heated struggle still persists.

Transitional justice refers to mechanisms implemented by different countries that seek to address human rights violations committed during a former authoritarian-ruled government, civil war, or genocide.⁶ Alternatively, there are still the shunned options of show trials and government policies promoting forgetfulness. The show trials, in their most "legitimate" context, focused on elaborate court proceedings with the sole purpose of convicting former leaders with an indifference for due process, the presumption of innocence or a fair trial. Oftentimes, members of the previous regime were thrown in jail or quickly executed without ever receiving a hearing. The governmental approach of forgetfulness hinges on the new government's desire to control and redefine historical

⁶ "What is Transitional Justice," *International Center for Transitional Justice*, 2013, <http://ictj.org/about/transitional-justice>.

memory. The government may or may not acknowledge that violations occurred and oftentimes declare there is no use dwelling in the past and it is necessary to move forward.

Transitional justice⁷ focuses on establishing the rule of law and strives to achieve reconciliation after a democratic transition through the use of various retributive and restorative justice mechanisms. The three main axes of this framework are truth, justice and memory. Prime examples include criminal prosecutions, truth and reconciliation commissions, amnesties,⁸ reparations, lustration laws or vetting procedures, official state apologies and memory sites (memorialization). Essentially, transitional justice is a policy of compromise in what Barahona de Brito terms as the “stability vs. justice” dilemma. She defines this conundrum as “whether and how much new governments consider justice measures to be compatible with goals such as securing the irreversibility of democratic change, (re) constructing democratic institutions, or asserting civilian control over the military.”⁹ Possible responses ranged from doing nothing, to pursuing a “maximalist” policy of identifying individual perpetrators and applying criminal sanctions. Many third-wave democracies chose a middle ground and pursued a balance between truth, justice and reconciliation, since in the process of re-democratizing, there was a fine line between theory and practice concerning what should be done to perpetrators and victims of human rights violations. This approach tended to focus more on stability and less on justice, thus delaying the formation of the rule of law.

The justice cascade centers on a shift towards the international recognition of human rights norms. The term was originally coined by Lutz and Sikkink as a “rapid shift toward recognizing the legitimacy of human rights norms and an increase in international

⁷ Works by Kritz (1995), Roht-Arriaza (1995), McAdams (1997), Barahona de Brito (1997), Teitel (2000), Barahona de Brito, González Enríquez & Aguilar (2001) and Elster (2004) were the first major contributors on this topic.

⁸ It is debated whether an amnesty is a legitimate transitional justice mechanism. Previously it was not considered an ideal option. However, scholars today such as Mallinder contend that amnesties may even have positive impacts “provided that they are introduced in good faith and are accompanied by other transitional justice mechanisms and institutional reforms” (2008, 18).

⁹ Alexandra Barahona de Brito, “Bibliographic Survey,” in *The Politics of Memory: Transitional Justice in Democratizing Societies*, ed. Barahona de Brito, Carmen González Enríquez and Paloma Aguilar, 345 (New York: Oxford University Press, 2001).

and regional action to effect compliance with those norms.”¹⁰ Sikkink later defines it as holding previous state actors accountable for their gross human rights violations, which was uncommon in the 1980s. She contends that criminal accountability has become the new norm or appropriate behavior in the international community.¹¹ Her definition of justice as a legal accountability for crimes indicates that a justice cascade is simply a legal accountability norm. Criminal prosecutions become the ideal or logical response to holding violators of human rights accountable. Sikkink’s position assumes that retributive justice will become the normative technique to approach human rights abuses, yet does not take into account anomalies like Uruguay. Instead of describing the justice cascade as solely establishing a criminal accountability norm, I focus on her original definition of a rapid regional shift in recognizing human rights norms. I define it as a regional trend spearheaded by the arrest of Pinochet in 1998 that caused other nations to re-evaluate their past and implement measures to address human rights legacies. This cascade is neither linear nor quantifiable, since there are ebbs and flows with each new wave comprised of more countries committing to confronting their past.

While others identify factors that caused the resurgence of the demand for human rights prosecutions in Uruguay, I focus on the nation’s eventual failure to do so. In her book, *Judicial Independence and Human Rights in Latin America*, Elin Skaar contends that the onset of “post-transitional justice” was due to judges, rather than politicians. She adds that focusing on the role of courts and judges in the quest for retributive justice could expand our knowledge of what have become, essentially, judicial and not political processes.¹² Since the president’s role has been so intertwined in judicial matters, I contend that in the case of Uruguay, it is the executive who historically had made the initial decisions to investigate human rights violations and the judges followed his lead. Since the amnesty law gave so much power to the executive, it placed the courts in a secondary role. Jo-Marie Burt, Gabriela Fried and Francesca Lessa argue that the key explanatory variable behind recent human rights initiatives has been the

¹⁰ Kathryn Sikkink and Ellen Lutz, “Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America,” *Chicago Journal of International Law*, 2001, 4.

¹¹ Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions are Changing World Politics* (New York: W.W. Norton & Company, 2011), 5.

¹² Elin Skaar, *Judicial Independence and Human Rights in Latin America: Violations, Politics, and Prosecution* (New York: Palgrave Macmillan, 2011), 12.

persistent demands of civil society groups.¹³ These groups, mobilizing against impunity for more than twenty five years, were the driving force behind the derogation of the amnesty law.¹⁴ Although I initially agree that the civil sector played a major role in achieving retributive justice in Uruguay, they also however complicated the legislative process to repeal the law by organizing two failed public referendums.¹⁵ This had huge repercussions on what like-minded politicians in the General Assembly¹⁶ could do. As Alexandra Barahona de Brito states in her influential work on Uruguay and Chile, “the demand for truth and justice is simultaneously ‘a problem located in the sphere of the ideological and symbolic’ and ‘a battle situated in a political plane.’”¹⁷ She then adds that by separating politics from human rights instruments, “the demand for truth and justice is absolute and ethical and operate in the realm of black and white, political reality is colored in shades of gray; while the call for truth and justice focuses on principles, political struggle is about power.”¹⁸ Building on what she said, I add that by its insertion into the political sphere, the promotion of human rights could be construed as an unintentional settling of scores. This has created a dichotomy based on party lines in Uruguayan politics between legislators that seek justice (thus being accused of wanting revenge) versus those that believe enough has already been done (thus being accused of promoting impunity). This appropriation of human rights from the judicial has turned an ethical question into a bitterly-fought political issue. My research seeks to add to transitional justice research on Uruguay by asserting that the inability to achieve justice

¹³ Jo-Marie Burt, Gabriela Fried, and Francesca Lessa, “Civil Society and the Resurgent Struggle against Impunity in Uruguay (1986–2012),” *International Journal of Transitional Justice*, 2013, 1.

¹⁴ *Ibid.*, 19.

¹⁵ This seemingly admirable and beneficial role of launching a public referendum by civil society organizations ended up being a hindrance for the cause of achieving justice. Letting human rights abuses be voted on by the populace is absent in all other Latin American countries. It is interesting to imagine the outcomes of referendums if other countries in the region such as Argentina or Chile had enacted them.

¹⁶ The General Assembly [*Asamblea General*] or legislative bodies are made up of two houses: the Chamber of Deputies [*Cámara de Diputados/Representantes*] and the Senate [*Cámara de Senadores*]. The Chamber of Deputies is the lower house comprised of 99 representatives elected every five years through proportional representation with a minimum of two per department. The Senate is the superior body and consists of 30 members elected every five years also by proportional representation.

¹⁷ Alejandra Barahona de Brito, *Human Rights and Democratization in Latin America: Uruguay and Chile* (New York: Oxford University Press, 1997), 1.

¹⁸ *Ibid.*, 1.

and reconciliation was instigated by the president, complicated by civil society groups and has become extremely divisive following the politicization of human rights abuses.

Transitional justice appears to be a useful concept in explaining Uruguay's attempts to achieve both a stable democracy and national reconciliation in the 1980s. The era of transitional justice began after the inauguration of the first president in 1985 and lasted until 1989, when all further efforts were blocked by the amnesty. The concept of transitional justice failed after the amnesty was affirmed at the ballot box. This event signalled that neither justice nor a lasting reconciliation could, at the time, be achieved among diverse sectors of society. The second era (1990-1999) began in Uruguay with a series of local and regional events that played catalytic roles in shaping subsequent events. This era is noted for its diminishing fear of another coupe, political stability and a consolidated democracy that suffered from problems with justice. The successive years (2000-2013) have been exemplified by the emergence of the justice cascade that swept the region and focus on the actions taken by Uruguay to achieve reconciliation and uphold the rule of law. The framework of a justice cascade prevailed until 2013 when it abruptly collapsed. Although successful in neighboring countries of Argentina and Chile, the cascade broke down locally. While transitional justice and a justice cascade are highly relevant concepts, they eventually fail to achieve an absolute reconciliation and retributive justice in the Uruguayan context.

To address these issues, I have taken a historical, periodized approach. I believe it enables me to properly develop how the process in Uruguay, the larger regional process and the relevant theories have evolved over time. My research took place during the summer of 2012 in Montevideo, Uruguay. It was a qualitative research project undertaken using a historical research methodology. Historical research is the "systematic process of describing, analyzing, and interpreting the past based on information from selected sources as they relate to the topic under study."¹⁹ This allowed for the discussion of past and present events in the context of the present condition and permitted that I assess and provide conceivable answers to current trends and problems. It is also relevant because it has provided context for grasping why things are

¹⁹ "Chapter 11: Historical Research," *Research in EDAD, University of South Dakota*, <http://www.usd.edu/%7Embaron/edad810/Chapter09.doc>.

as they are. The methodology of this project consisted of archival research drawing on primary documents such as daily newspapers, weekly newspapers, verbatim transcripts of legislative sessions, political statements, blogs and books of first-person accounts. Secondary sources include academic journal articles, scholarly books, human rights organizations' statements and documentation, magazine articles, op-ed and analytical articles from weekly newspapers. I began in the Biblioteca Nacional yet did the majority of my research in the Biblioteca de Diarios del Palacio Legislativo. I also frequented human rights organizations, SERPAJ Uruguay (Servicio Paz y Justicia) and Amnistía Internacional as well as the Biblioteca del Palacio Legislativo. To document my findings, I photographed many articles and useful data that might possibly strengthen or add breadth to my arguments. In my search for political statements regarding human rights, I visited each of the major three political parties' headquarters. After my stay in Uruguay, my study continued with special attention on the subsequent human rights-related events via online Uruguayan newspapers.

Chapter 2.

Transitional Justice, 1984-1989

Transitional justice failed in Uruguay. During the 1984 negotiations at Club Naval which led to the return to democracy; military commanders and politicians agreed on many topics yet made no mention of past human rights abuses. In essence, the official plan was to do nothing and let the issues sort themselves out without government interference. Although it was the perfect time to implement transitional justice measures and make amends with the past, the first democratically-elected government was keen on forgetfulness and the avoidance of all judicial measures. When civil courts became flooded with lawsuits against military and police officers who defied court subpoenas, the government stepped in and passed a sweeping amnesty. This blocked all efforts towards justice and began an era of impunity in Uruguay. Furious over the passage of the law, the civil society²⁰ enacted a referendum to try to repeal it. Despite an enormous campaign, the initiative did not yield a majority vote. Institutional constraints such as executive indifference and a lingering military threat plagued any genuine reconciliatory attempt forcing Uruguay to establish a minimalist approach towards justice. Although the referendum quieted the populace for a short time, this approach did not lead to a lasting reconciliation. This chapter begins with describing the dictatorship yet later focuses mainly on the time period between the return to democracy in 1985 until the 1989 referendum.

Before the dictatorship, Uruguay had been known as the “Switzerland of South America” for its peace and prosperity. It was also a country recognized, alongside Costa

²⁰ Though not an exhaustive list, the domestic civil sector in favor of human rights is made up of Amnistía Internacional, CRYSQL (Asociación de ex presos/as políticos/as de Uruguay), Institute of Legal and Social Studies (IELSUR), Madres y Familiares de Uruguayos Desparecidos, PIT-CNT, SERPAJ, student and social organizations and also the organizations which worked towards eliminating the amnesty through referendums.

Rica, as upholding the longest democratic traditions of all of Latin America. Despite the accolades, Uruguay faced tumultuous times beginning in the 1950s, yet contrary to the regional trend, did not succumb to military takeovers. During the 1960s, the two traditional Uruguayan parties, the Partido Colorado²¹ and Partido Nacional²², became drastically weaker after they failed to confront a stagnant economy and labor unrest. This inability to overcome basic issues weakened the nation's governing institutions. Exacerbated by the lack of societal changes and the inability of the politicians to enact any feasible policies, the Tupamaros,²³ a communist urban guerilla group, (among others) filled in the void with ideas and actions advocating revolutionary political change. To combat the revolutionaries, extreme right-wing death squads were formed which led to frequent skirmishes. Due to a weak police force, President Jorge Pacheco Areco (1967-1972) asked the armed forces to step in and crush political dissidence instigated by the guerillas and pacify the PIT-CNT's²⁴ frequent strikes. This opened a way for the military's political involvement.

The Tupamaro movement was defeated after its leader Raúl Sendic was captured in 1972. Regardless of the diminished armed threat, a 1973 disagreement between President Bordaberry²⁵ and the armed forces caused the tension to reach its

²¹ Partido Colorado is the most popular party in Uruguayan history ruling the country continuously from 1868-1959. The party encompasses a wide array of political ideology from ranging from center to right on the political spectrum. Its main current ideologies are Batllism, liberalism, republicanism and social-liberalism. Batllism is derived from the policies of President José Batlle de Ordonez (1903-1907, 1911-1915) who emphasized that the state should control the basic aspects of the economy through state monopolies on key industries.

²² Partido Nacional is a traditional party in Uruguayan politics. It is a right-wing party with an ideology of conservatism and Uruguayan nationalism.

²³ MLN-T = Movimiento de Liberación Nacional-Tupamaros (National Liberation Movement-Tupamaros). The armed branch of movement was named after Túpac Amaru II, leader of the indigenous uprising in present-day Peru against the Spanish in 1780.

²⁴ PIT-CNT: Plenario Intersindical de Trabajadores – Convención Nacional de Trabajadores is a national trade union center.

²⁵ Bordaberry was a Colorado politician who was president from 1972-1973 and acted as a figurehead of "legitimacy" following military rule from 1973 to 1976 before being forced to resign when he wanted to completely suspend political parties and impose a new constitutional order inspired by Franco's fascism.

climax.²⁶ As a result, Bordaberry found himself without military support or public backing. In order to resolve the conflict, the president accepted the conditions of the armed forces and came to an agreement with the military commanders to continue his role as president.²⁷ After what was known as the Boiso Lanza Pact [*Acuerdo de Boiso Lanza*], Bordaberry became “dictator,” established a military council [*CONSENA: Consejo de Seguridad Nacional*] and abolished the General Assembly. This event symbolized the beginning of a dozen years of state repression. By this time almost every South American nation was ruled by a dictatorship.

The regime²⁸ was categorized as a civil-military dictatorship since there was always a presidential figurehead. Sondrol describes the Uruguayan authoritarian dictatorship as similar to the developmentalist, non-personalistic “bureaucratic-authoritarian” regimes of Brazil (1964-85) and Argentina (1966-1973) and yet perhaps even more akin to the extremely repressive, demobilizing “neoconservative”²⁹ systems modeled in Argentina (1976-1983) and Chile (1973-90).³⁰ Confronted by subsequent massive civil unrest, the Uruguayan military government’s objective was to demobilize

²⁶ With plans to control military commotion, the president named a new Defense Minister. After being appointed, the new minister discovered that he was only supported by the Navy. The Army and Air Force commanders declared they would not recognize any orders from the new minister and demanded that the president assign someone else. However, the president held firm to his decision. When the Navy took control over the Ciudad Vieja neighborhood in Montevideo, the Army, in response, released tanks and began overthrowing radio stations, demanding that the Navy join their cause. The rebelling forces released a communiqué of their demands and proposals. A couple ministers suggested to the commanders that the president should try to maintain his role as leader.

²⁷ “Uruguay Secreto: El golpe de 1973,” *Diario Uruguay*, November 4, 2011, <http://www.diariouruguay.com.uy/noticia.php?noticia=5009>

²⁸ Many excellent sources have been written on the dictatorship: Gillespie (1991), González (1991), Lessa Carvallido (1996), Universidad de la República’s “Investigación histórica sobre la dictadura y el terrorismo de Estado en el Uruguay, 1973-1985” (2009), Caetano & Rilla (2011) among others.

²⁹ In Schamis’ article on the three Southern Cone dictatorships of the 1970s, he argues that “these governments were authoritarian versions of the neoconservative politics that later emerged in some advanced industrial countries” (i.e., UK under Thatcher and the US under Reagan) (1991, 216). Compared to Argentina (1966-1973) and Brazil (1964-1985), the defining characteristics of the three were the lack of vertical integration, lack of increased bureaucratization, an extremely high economic and political exclusion of the popular sector, and a high amount of de-politicization (205).

³⁰ Paul C. Sondrol, “Paraguay & Uruguay: Modernity, Tradition and Transition,” *Third World Quarterly*, 1997, 112.

and depoliticize the political environment.³¹ Unlike the neighboring nations of Argentina and Chile, where forced disappearances were the norm, the Uruguayan regime specialized in mass incarcerations and torture to subdue and pacify the “subversive” sectors of society. At one point up to 60,000 people were incarcerated, which represented more than 1/50th (2 percent) of the total population. This was the largest proportion of political prisoners per capita in the world and earned the country its infamous nickname “the torture chamber of Latin America.”³² Amnesty International claims that almost all prisoners experienced some type of torture.³³ Contrary to its Southern Cone neighbors, there was a striking lack of disappearances in Uruguay. Only twenty-eight of the one hundred seventy-two disappearances occurred within its borders.³⁴ The majority were kidnapped and then disappeared in Argentina. The most notable instance was when prominent exiled politicians, Héctor Gutiérrez Ruiz³⁵ and Zelmar Michelini³⁶ were assassinated alongside an ex-Tupamaro couple in Buenos Aires in 1976.

In 1980, the military regime held a referendum which it hoped would perpetuate the regime in governmental positions. Instead of interfering with the ballot counting (in stark contrast to the regime’s Chilean counterparts), the results showed that a resounding 57.2 percent voted against the initiative with a stunning 85.2 percent

³¹ Sondrol, “Paraguay & Uruguay,” 112.

³² Emilio Crenzel, “Present Pasts: Memory(ies) of State Terrorism in the Southern Cone of Latin America” in *The Memory of State Terrorism in the Southern Cone: Argentina, Chile, and Uruguay*, ed. Francesca Lessa and Vicent Druliolle, 2 (New York: Palgrave Macmillan, 2011).

³³ Amnistía Internacional Uruguay, “Amnistía Internacional: la Suprema Corte se pone del lado de la impunidad y compromete la responsabilidad del Estado uruguayo,” *LaRed21*, February 26, 2013, <http://www.lr21.com.uy/politica/1090372-amnistia-internacional-la-suprema-corte-se-pone-del-lado-de-la-impunidad-y-compromete-la-responsabilidad-del-estado-uruguayo>.

³⁴ *Comisión para la Paz*, Informe final de la Comisión para la Paz (Montevideo, 2003), 24. & “172 desaparecidos informa la Udelar,” *LaRed21*, October 10, 2009, <http://www.lr21.com.uy/politica/383694-172-desaparecidos-informa-la-udelar>

³⁵ Gutiérrez Ruiz was a Partido Nacional deputy who in 1972 was elected as the Speaker of the House and continued until the closure of the legislative. Following the coup d’état in 1973, he fled to Buenos Aires.

³⁶ Originally a Colorado, Michelini started his political career in 1954 as a deputy. In 1966, he was elected senator. Very critical of Pacheco, he abandoned his party and co-founded Frente Amplio in 1971. He was one of the most outspoken critics of the Bordaberry administration and following the coup went into exile in the Argentine capital.

turnout.³⁷ Though the armed forces had political interests, the primaries of 1982 demonstrated that neither one of the two traditional parties had the intention of allowing military officers to continue in power. These two precursor events were fundamental in paving the way for an eventual transfer of power back to the people. Sondrol credits the nation's previous democratic culture for having slowly eroded the military's grip on the nation.³⁸

An agreement was reached that led to the return of democracy during the negotiations at Club Naval.³⁹ Until that point, previous talks such as a series of meetings at Parque Hotel had failed to reach an agreement and negotiations had collapsed. At Club Naval three political parties were represented: the Partido Colorado, the Frente Amplio,⁴⁰ and the Unión Cívica.⁴¹ Gillespie indicates that it was imperative that the Left (FA) be allowed to take part in the negotiations, since without them, the Colorados might have appeared to be "selling out."⁴² The Blancos (members of the Partido Nacional) declined to participate in any negotiation unless their leader, Wilson Ferreira Aldunate,

³⁷ Charles G. Gillespie, *Negotiating Democracy: Politicians and Generals in Uruguay* (New York: Cambridge University Press, 1991), 71.

³⁸ Sondrol, "Paraguay & Uruguay," 115.

³⁹ The literature on pacted transitions suggests that because the outgoing actors are in power, they are able to effectively negotiate favorable conditions for themselves. Elster states that "the leaders of an incoming regime may not be free to implement transitional justice as they please, if the transition was ushered in by negotiations that included provisions of amnesty or clemency. In fact, it is hard to see why outgoing leaders would ever relinquish power voluntarily unless they were assured that their persons, and preferably their property, were secure" (2004, 188). Elster's hypothesis is that upcoming democratic forces have two incompatible desires: a peaceful transition and transitional justice. To achieve the first objective, the second may have to be sacrificed (190).

⁴⁰ Frente Amplio (FA), the leftist coalition was founded in 1971 by historic leftist parties such as the Socialist, Communist and Christian Democratic parties, dissident Colorado and Blanco groups and other small leftist sectors. Today the coalition's ideology includes socialism, communism, democratic socialism, social democracy, progressivism, Christian socialism, Trotskyism and Leninist-Marxism.

⁴¹ Unión Cívica is a small party of the conservative Christian Democratic tendency.

⁴² Charles G. Gillespie, "Uruguay's Return to Democracy," *Bulletin of Latin American Research*, 1985, 104.

was released from prison. The main proposals⁴³ agreed upon at Club Naval were the date for the next presidential elections, the abolishment of previous military decrees, and the reinstatement of the General Assembly.⁴⁴ Political leaders participating in the negotiations signalled that the deal was achieved without having to sacrifice their ideals.⁴⁵ Even Lieutenant-General Medina⁴⁶ seemed hopeful that the agreement was to be for the good of the country.⁴⁷

No records of the conversations were kept. This has led to speculation as to what might have been discussed yet not recorded, especially regarding crimes committed by the military and the police during the authoritarian regime. Since this topic was excluded in the agreement, cases could still be brought to court by civilians. However, many scholars suggest that there was some sort of explicit or implicit agreement reached in the Club Naval pact to this effect.⁴⁸ Barahona de Brito believes that the military originally proposed a “blank check” on prior violations of human rights and it is said that the negotiating parties concluded that common crimes committed by the military would be submitted to the ordinary judicial system.⁴⁹ Skaar supposes that Medina and the first president reached an informal gentlemen’s agreement in which the president assured the general that his interests would be protected.⁵⁰ The close relationship between the

⁴³ Other concordant topics were on military justice: that it would only be established during war and not in peace; a state of emergency which would be implemented during the time of insurrection of violent acts that place the nation’s sovereignty at risk and the role of COSENA (Consejo de Seguridad Nacional). This military organism would be redesigned to advise the president without compromising the opinion of the elected leader. Military commanders would be elected by the president with authorization of the Senate as proposed by the armed forces. Additionally the appeal for legal protection to guarantee the liberties and human rights would be arranged. (El País 1984, 1).

⁴⁴ “Virtual acuerdo: mañana definen detalles finales,” *El País*, August 2, 1984, 1.

⁴⁵ “Los políticos señalaron que el Acuerdo ‘no ha sacrificado nuestros principios,’” *El País*, August 4, 1984, 5.

⁴⁶ Hugo Medina was the Commander in Chief of the Army at the time of the democratic transition. He would also play a key role in the institutional crisis defiantly resisting court citations which culminated in the ley de Caducidad.

⁴⁷ In the same interview, the general affirmed that the military would accept being judged in civilian courts. Despite his statement, he made sure it never happened. “Que el acuerdo sea para bien del país’: Tte. Gral. Medina fijó la posición de las FF.AA. en el futuro,” *El País*, August 4, 1984, 6-7.

⁴⁸ Gillespie, (1991), González (1991), Barahona de Brito (1997) and Skaar (2007).

⁴⁹ Barahona de Brito, *Human Rights and Democratization in Latin America*, 77.

⁵⁰ Skaar, *Judicial Independence*, 140.

Partido Colorado and the military strengthens this speculation. The unwritten contents from the pact at Club Naval would become the main point of contention between politicians for years to come. Although ambiguous in content, these talks negotiated the transition from a dictatorship to a democracy and made way for upcoming elections.

During the electoral campaign of 1984, all of the parties concurred that the violations of human rights committed during the dictatorship must be investigated and sanctioned.⁵¹ With the Frente Amplio leader Líber Seregni banned from running in the elections and the Partido Nacional leader still in prison, the Colorado candidate Dr. Julio María Sanguinetti Coirolo⁵² won the first presidential elections since 1971, surprisingly still by a small margin. This would have been the best time to address past human rights violations due to the fact that there was no formal amnesty established, and all military-era judges on the SCJ had been dismissed and replaced by professionally trained civilian magistrates.⁵³ Even during the election campaign, “opinion polls showed an overwhelming majority of Uruguayans opposed to immunity for the military.”⁵⁴ Despite the opportunities, human rights were not high on the president’s priority list. At various times Sanguinetti promised that he was going to enact measures to prosecute those who committed human rights violations, yet his promises ended up being empty rhetoric intended to appease the international community.

In a symbolic act in March 1985, all political prisoners were released following the ratification of the *Ley de Pacificación Nacional*.⁵⁵ Sixty-eight percent of Montevideans (citizens of Montevideo) polled believed that this liberation was a necessary measure.⁵⁶ The legislation quickly made its way through the legislating bodies and on March 8, 1985 the project was voted into law by Senate, and later ratified by the president. Deputy Jorge Machiñena of the Partido Nacional declared that the restoration of the democracy

⁵¹ “Referéndum pluralista y repercusiones en los partidos: panorama después de la ley,” *Brecha*, January 9, 1987, 4.

⁵² A conservative Colorado politician who was also a lawyer and journalist

⁵³ Skaar, *Judicial Independence*, 139-140.

⁵⁴ David Ransom, “Uruguay After the Dictatorship,” *New Left Review*, 1987, 117.

⁵⁵ Ley Nº 15.737 known as the National Pacification Law

⁵⁶ Equipos Consultores, “Serie Estudios de Opinión Pública,” *Informe Mensual*, May 5, 1985 in Barahona de Brito, *Human Rights and Democratization*, 127.

was alive and well and applauded his compatriots for the achievement within a democratic and human rights framework.⁵⁷ The result made way for the release of up to four hundred political prisoners. This event was important because it completely assimilated the Frente Amplio and Partido Nacional back into the political arena and since the legislation was unanimously voted for by all sides, it represented the first official act of reconciliation.

Starting in April 1985, victims and relatives of victims began presenting lawsuits [*denuncias*] in the tribunals concerning human rights violations committed by security forces during the period of state repression. By 1986, cases began clogging the courts. Sanguinetti and the military declared that these cases should be processed in the military tribunals. In June 1986, the SCJ ruled in favor of the civil justice system, which by then was examining over forty disputed cases involving one hundred eighty military and police officers.⁵⁸ The furious president accused the courts of a lack of impartiality and argued that they were not in the position to arbitrate on the issue of human rights violations.⁵⁹ The situation worsened when military officers refused to attend court despite being summoned under a subpoena. The armed forces personnel argued that what they did was legitimate and they were proud to have defended their nation against the threat of subversion.⁶⁰ The threats of the military intensified to the point that many feared the country would revert back into military rule. In order to pacify the angry officers, draft bills including amnesties were proposed by the political parties in hopes of soothing the impending menace. By December 1986, seven hundred thirty-four cases were being investigated by judges.⁶¹

⁵⁷ “La Cámara de Diputados aprobó anoche en una breve sesión la amnistía,” *El País*, May 9, 1985, 5.

⁵⁸ “Fallo en favor de la Justicia Civil. La Suprema Corte sostiene que la Justicia Militar no integra el Poder Judicial,” *Búsqueda*, June 26-July 2, 1986, 13-14.

⁵⁹ “¿Justicia independiente? Tajante rechazo a expresiones de Sanguinetti,” *Aquí*, June 24 1986 in Barahona de Brito, *Human Rights and Democratization*, 134.

⁶⁰ Medina originally even “rejected the idea of an amnesty on the grounds that the military had nothing to answer for” (Ransom 1987, 117).

⁶¹ Alexandra Barahona de Brito, “Truth, Justice, Memory, and Democratization in the Southern Cone” in *The Politics of Memory: Transitional Justice in Democratizing Societies*, ed. A. Barahona de Brito, Carmen González Enríquez and Paloma Aguilar, 128 (New York: Oxford University Press, 2001).

First, in August 1986 the Colorados proposed a bill that would grant amnesty to the military and police forces during the time of the dictatorship and included a clause that would stop all cases currently in the courts.⁶² This draft was subsequently voted down by Blanco and Frente Amplio politicians. Next, a flurry of bills by all three political entities and one by the president himself were submitted to the legislating bodies, including one by Frente Amplio that would penalize the military officers if they failed to appear in court. Regardless of the many drafts, none of these attempts ever succeeded. Roniger and Sznajder note that in October 1986, “nineteen generals cautioned that the lack of amnesty legislation involved ‘serious risks’ for the democratic system.”⁶³ At that time the Colorados demanded a complete amnesty, the Blancos sought a partial one, and the Frente Amplio desired prosecution of the military and rejected any compromise. Still, the military clarified that they would not obey any judicial subpoena.

With the two traditional parties (and military) roughly on the same page,⁶⁴ the Blancos developed a last-minute form of exoneration that excluded the military and police forces from any potential trials regarding crimes dating before the dictatorship up until 1985, thus offering a clean slate to all those who participated in violations of human rights. During the debates, the main topic was the subject of human rights discussed during the Club Naval negotiations. Despite being outnumbered, FA politicians tried their hardest to avoid any amnesty. Senator Germán Araújo⁶⁵ proclaimed, “There is not democracy if there is not justice.”⁶⁶ He audaciously pointed out that it was essential to uncover the truth and to enact justice. These actions, he declared, were necessary so

⁶² Barahona de Brito, “Truth, Justice, Memory, and Democratization in the Southern Cone”, 144.

⁶³ Luis Roniger and Mario Sznajder, *The Legacy of Human-Rights Violations in the Southern Cone: Argentina, Chile, and Uruguay* (New York: Oxford University Press, 1999), 82.

⁶⁴ Previously in June 1985, after a private meeting at the president’s ranch at San Juan de Anchorena with General Medina in attendance, the leader of Partido Nacional, Wilson Ferreira Aldunate’s outspoken political views changed concerning human rights (Barahona de Brito 1997, 131). Within this secret meeting it has been postulated that either Medina or Sanguinetti conveyed to Ferreira that to maintain his party’s prestige and its traditional place in Uruguay’s bi-partisan politics, the Partido Nacional should settle their differences with the Colorados and the military (Skaar 2011, 144). Afterwards, Ferreira and his party’s rhetoric became more reconciliatory and stated that they would painfully do what was required to maintain order.

⁶⁵ Araújo was an out-spoken Frente Amplio senator who was ousted shortly after for allegedly having provoked riots due to the passage of the expiry law.

⁶⁶ Germán Araújo cited in “Diario de Sesiones de la Cámara de Senadores,” *República Oriental del Uruguay* (Montevideo, December 20-21, 1986), 89.

that the youth were aware of the horrors of the past, and that without such knowledge, it would be impossible for them to construct a peaceful future.⁶⁷ Advocates in favor of an amnesty adopted the familiar “there is no alternative” strategy, referring to the perceived threat of a renewed military coup.⁶⁸ Senator Guillermo García Costa (PN) argued that the nation was facing an extremely grave institutional act.⁶⁹

After sessions in both the Chamber of Deputies and the Senate that lasted well into the early hours of the following day, the “amnesty”⁷⁰ was ratified by both the majority of the Colorados and Blancos. Only the Frente Amplio, the Unión Cívica, and a handful of Colorado and Blanco politicians cast their vote against the bill. This law was officially titled the *Ley de Caducidad de la Pretensión Punitiva del Estado*, yet is casually known as the expiry law, the amnesty law, or the impunity law.⁷¹ Article one identified that as a consequence of the events from the Club Naval Pact, the state would renounce all penal actions of crimes committed by the military and police officers.⁷² According to the second article, crimes committed for economic gain were exempt.⁷³ Article three stated that the intervening judges would be required to inform the president within thirty days if their

⁶⁷ Araújo, “Diario de Sesiones de la Cámara de Senadores,” 89.

⁶⁸ Ransom, “Uruguay after the Dictatorship,” 117.

⁶⁹ “El Parlamento aceptó la impunidad: Para una crónica de las jornadas en las que se perpetró la tristeza,” Brecha, December 26, 1986, 5.

⁷⁰ According to the literature on amnesties, the main favorable argument is to reduce political conflict and lessen the chances of recurring violence on the short term (Freeman 2009, 6). Orentlicher and other scholars contend that the state’s duty under international law requires that the very worst crimes be investigated, the guilty be prosecuted and punished (1991, 2598). This is something that Uruguay failed to address. She does not suggest all violators are to be prosecuted, but only the most notorious (2598). The United Nations Office of the High Commissioner for Human Rights establishes that amnesties are inconsistent with states’ obligations under various foundations of international law as well as with United Nations policy (2009, v). Laplante spells out that international law grants victims the fundamental right to justice (the “victims’ rights argument”) and likewise that criminal justice is good for democracy and the rule of law (2009, 917).

⁷¹ Ley N° 15.848 is known in English as the “Law of Expiry on Punitive Claims by the State.”

⁷² For complete translation of each clause and an analysis of the law in English, see Francesca Lessa, “Barriers to Justice: The Ley de Caducidad and Impunity in Uruguay” in *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives*, ed. Lessa and Leigh A. Payne, 128-129 (New York: Cambridge University Press, 2012).

⁷³ Ley N° 15.848, December 28, 1986,
<http://www0.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=15848&Anchor=>.

cases fell under article one.⁷⁴ The most striking of the clauses, article four, declared that all presented lawsuits regarding imprisonment and disappearances must be forwarded to the executive for the leader to decide the necessary measures.⁷⁵ The third and fourth clauses placed all future cases in the hands of the president. This meant that any advances regarding investigations would only be granted with the executive's approval. This is unusual considering that it was the Blancos who drafted a bill that gave a Colorado leader an extraordinary amount of executive leeway. It is almost as if Sanguinetti had lent a hand in its redaction. At the same time, the government maintained the right to investigate all disappearances as well as the fate of their children. These inquiries predictably never occurred.⁷⁶ The law would be affirmed by the SCJ in 1988.⁷⁷

In reaction to the passage of the amnesty, Deputy Felipe Michelini stated that the block in favor of impunity managed to construct a paradigm in which justice was contradictory and incompatible with peace and democracy.⁷⁸ Guillermo Chifflet added that it was a severe risk to leave the Uruguayan society in the dark regarding crimes against humanity and leaving those who committed them unpunished.⁷⁹ His prediction suggested that if the past was not properly addressed, it would be even more painful to reopen these old wounds in the future. This expiry law would prove to be the "thorn in the side" of Uruguayan politics for the next 25 years. Instead of circumscribing human rights to the courts, the amnesty law politicized them, making the amnesty even more difficult to abolish. Since human rights cases are meant to be decided in tribunals, the amnesty placed human rights on a political plane and greatly minimized the role of the courts.

⁷⁴ Ley N° 15.848.

⁷⁵ Ibid.

⁷⁶ Roniger and Sznajder, *The Legacy of Human-Rights Violations in the Southern Cone*, 82.

⁷⁷ In 1988, the SCJ declared the Ley de Caducidad constitutional, in a 3-2 court decision. The majority vote interpreted the law as an actual amnesty and ruled that it did not violate the autonomy of the judicial power since the members of the punitive claims of the state were public prosecutors not judges, and that these attorneys formed part of the executive's office (La República 2011).

⁷⁸ Representing Nuevo Espacio within Frente Amplio. Felipe Michelini, "Contra la cultura de la impunidad. Reflexión, compromiso y aprendizajes ante los nuevos desafíos" in *Luchas contra la impunidad: Uruguay 1985-2011*, ed. Lessa and Fried, 55 (Montevideo: Trilce, 2011).

⁷⁹ Guillermo Chifflet, "¿Quién se opone al pronunciamiento popular?" *Brecha*, January 9, 1987, 3.

Upon the passage of the expiry law, a large percentage of the public was outraged. A group organized by the wives of the two politicians assassinated in Buenos Aires formed the Comisión Nacional Pro-Referendum. This group sought to repeal the amnesty law through the use of a public vote.⁸⁰ Roniger & Sznajder note that “traditionally, Uruguayan social movements had been weak and did not exert a significant influence on their country’s ‘particracy,’ but at this moment a new scenario emerged around the legacy of human rights violations, in which the initiative was taken by civil society, through mass participation.”⁸¹ After collecting well over the 600,000 signatures needed for the referendum (634,703 total), the Electoral Court changed the rules of the game, disqualifying twenty thousand signatures and claiming that thirty thousand were non-existent on electoral lists.⁸² The signatures also ended up in the hands of the military, leading to the arrest of Captain Silbermann for having signed the petition.⁸³ This act produced great fear in the populace. In December, the court granted the commission two days to personally ratify the thirty-six thousand still-disputed signatures. Eduardo Galeano remarked that “only the huge efforts of the campaigners and popular support made this venture possible.”⁸⁴ Due to the indignation resonating from the civil society, the people organized themselves into a cohesive campaign inaugurating a tradition of taking public initiatives to the ballot box.

There were many perspectives on the green (in favor of the elimination of the amnesty) vs. yellow ballot (against elimination) argument before to the referendum. Politicians against the Green vote based their arguments on uncertainty. Senator Alberto Zumarán (PN) suggested that if the Green Vote won, it would steer the country down a long and difficult path. Though he was incarcerated at various times and his business obstructed during the repression, he stated that he would not waiver in his position on the expiry law, since he was one of its authors.⁸⁵ In an interview, vice president Enrique

⁸⁰ It is interesting to note that of the fifty notables on the Commission, twenty five were Frente Amplio members or supporters.

⁸¹ Luis Roniger and Mario Sznajder, “The Legacy of Human Rights Violations and the Collective Identity of Redemocratized Uruguay,” *Human Rights Quarterly*, 1997, 63-64.

⁸² Barahona de Brito, *Human Rights and Democratization*, 149.

⁸³ *Ibid.*, 149.

⁸⁴ Eduardo Galeano (1989) cited in Barahona de Brito, *Human Rights and Democratization*, 150.

⁸⁵ “Zumarán: acatar la decisión de las urnas,” *El País*, April 13, 1989, 7.

Tarigo stated that one way was to resolve this dilemma without any violence and the other was an uncertain path in which we do not know what might happen. To go back to square one [*volver a fojas cero*] would be a mistake and would mean putting the country back in an institutional crisis once again.⁸⁶ President Sanguinetti declared that the very model of transition towards a democracy was at stake.⁸⁷

On the other hand, journalist Héctor Rodríguez wrote that besides the fact that the referendum would reaffirm the same democratic principles that served to reject the referendum in 1980 under the “tutored democracy,” it would also better clarify the opinions of the masses.⁸⁸ Rodríguez believed that if the Green Vote prevailed, it would encourage the efforts of the tribunals, which had been impeded by what he believed to be an unconstitutional law. Moreover, the journalist believed that it would satisfy the demand of justice brought between those who suffered at the present time from the consequences of criminal acts committed by military and police personnel under the protection of state terrorism that imposed during the dictatorship.⁸⁹ Politician Héctor Pérez Piera⁹⁰ of the Unión Cívica declared that forgetting these crimes would be an egocentric dehumanizing act.⁹¹

Contrary to the politicization of the expiry law, in Montevideo, ten days before the referendum, only 17 percent of the population viewed the issue as simply political.⁹² According to the survey, a resounding 68 percent perceived it as a moral issue.⁹³ On April 14, 1989, despite the majority believing it to be a moral issue, the yellow balloters

⁸⁶ “Tarigo: ‘¿Por qué quienes estaban dispuestos a desobedecer en diciembre de 1986 van a obedecer en abril de 1989?’” *Búsqueda*, April 6-12, 1989, 40 & 10.

⁸⁷ “Presidente Sanguinetti: está en juego el modelo de transición hacia la democracia,” *Búsqueda*, April 13-19, 1989, 5.

⁸⁸ “La ley de las mayorías,” *Brecha*, January 9, 1987, 2.

⁸⁹ *Ibid.*

⁹⁰ Héctor Pérez Piera originally started his political career as a Unión Cívica politician. He then joined the Hugo Batalla sector of Partido Colorado, followed by the Nuevo Espacio and lastly the Partido Nacional (LaRed21 2004).

⁹¹ “El 75% de la dirigencia cívica respalda el voto verde,” *La República*, April 13, 1989, 5.

⁹² Consultores-Equipos, “Los montevideanos y el referéndum: la irreductibilidad de las posiciones,” *Búsqueda*, March 29-April 4, 1989, 5

⁹³ *Ibid.*

prevailed with the law being ratified by the population, 56.65 percent to 43.34.⁹⁴ Once the polls were closed and votes counted, President Sanguinetti expressed his approval. He stated that the decision in the polls confirmed one of the nation's finest civic traditions and as demonstrated in the referendum, the majority clearly voted for "peace."⁹⁵ Columnist Daniel Gianelli believed that the people voted wisely and time would tell if the majority decision contributed to the consolidation of democracy and pacification of the nation.⁹⁶ Academic Oscar Destouet contends that the Green Vote campaign helped clarify what had taken place; also the testimonies of victims and relatives helped contribute to make visible [*visibilizar*] the severity of the regime.⁹⁷ He adds that the triumph of the yellow vote consolidated the hegemonic narrative where the proposal of forgetfulness and silence were its dominant characteristics.⁹⁸ Federico Fasano Mertens, founder and director of *La República* remarked that "we are convinced our commitment with truth and justice does not end here. History is not a straight line, but rather a vast contradictory mesh [*tejido*]. Today has closed the road to justice, but no one can close the road to truth."⁹⁹

The main theory to explain why the expiry law was publicly ratified was fear. Scholars on the left including Eduardo Galeano speculate that the populace voted out of fear of a military retaliation and because of this, they voted against their will, skewing the vote.¹⁰⁰ This argument is plausible since a military captain was arrested for being favorable towards a referendum. Also Sanguinetti and Medina made strong statements implying what might happen if the people were to repeal the law. On the other hand, lawyer and academic Lilia Ferro Clérico, journalist Raúl Zibechi and scholar Gabriela

⁹⁴ Daniel Gianelli "El referéndum: el voto amarillo, el voto verde," *Búsqueda*, April 20-26, 1989, 6.

⁹⁵ "Hasta hace un rato éramos amarillos y verdes, verdes y amarillos; eso acaba de terminarse" Sanguinetti: 'La inmensa mayoría del país quiere la paz aun cuando podemos tener profundas discrepancias'" *La República*, April 17, 1989, 5.

⁹⁶ Daniel Gianelli, "Columna: El referéndum: el voto amarillo, el voto verde," *Búsqueda*, April 20-26, 1989, 6.

⁹⁷ Oscar Destouet, "La lucha contra la impunidad en Uruguay: del Voto Verde al Si Rosado" in *Luchas contra la impunidad: Uruguay 1985-2011*, ed. Lessa and Fried, 72 (Montevideo: Trilce, 2011).

⁹⁸ *Ibid.*, 72.

⁹⁹ Federico Fasano Mertens, "La historia no es una línea recta," *La República*, April 17, 1989, 1.

¹⁰⁰ Skaar, *Judicial Independence*, 146.

Fried dismiss the fear thesis because the votes were secret. They argue that the majority simply wished to put the past behind them and look to the future.¹⁰¹ According to Lessa and Fried, this result was accepted paradoxically as a definitive close, silencing the development of political or legal debates.¹⁰² The cause for truth and justice in relation to the crimes of the dictatorship disappeared from the political agenda and from the public opinion, relegating it as an exclusive subject of the relatives and victims.¹⁰³ After the defeat at the ballot box, the demand for truth and justice completely died at the domestic level.

Other noteworthy events that took place during the first presidency after the transition include two parliamentary commissions and a Uruguayan version of “Nunca Más.” In April 1985, Partido Nacional and Frente Amplio established two parliamentary commissions to examine the fate of the disappeared. The first titled *Comisión investigadora sobre la situación de las personas desaparecidas y hechos que lo motivaron* was set up to focus on the disappeared and the incentives behind their disappearances. Completed in November of the same year, the commission concluded that the military had been involved in the disappearances of one hundred sixty four people and then handed over its findings to the courts. The second commission focused specifically on the kidnapping and killing of the two politicians Gutiérrez Ruiz and Michelini. In 1987, two years afterwards, the *Comisión Investigadora sobre los secuestros y asesinatos de los ex-legisladores Zelmar Michelini y Héctor Gutiérrez Ruiz* concluded that “the military regime had been guilty of crimes against humanity, including genocide.”¹⁰⁴ Upon recommendation by the committee involved, the conclusions were to be sent to Supreme Court judges; however, the reports ended up in the hands of the head of state and stalled there. This clearly demonstrated the president’s lack of genuine interest in addressing a growing demand to resolve human rights violations. Skaar contends that these commissions were only half-hearted efforts at disclosing the truth

¹⁰¹ Skaar, *Judicial Independence*, 147 & 251.

¹⁰² Francesca Lessa and Gabriela Fried, “Las múltiples máscaras de la impunidad: la Ley de Caducidad desde el Sí Rosado hasta los desarrollos recientes,” in *Luchas contra la impunidad: Uruguay 1985-2011*, ed. Lessa and Fried, 36 (Montevideo: Trilce, 2011).

¹⁰³ *Ibid.*, 36.

¹⁰⁴ “Desparecidos: Durante la dictadura militar en Uruguay se cometió genocidio,” *Brecha*, October 25, 1987, 1.

since they lacked political support and their work was largely constrained.¹⁰⁵ Moreover the most detrimental blow to these commissions came from President Sanguinetti himself. The president declared that neither of these investigations produced credible conclusions nor could the guilty be identified. This was, according to Sanguinetti, because there were no conclusive testimonies which made responsibilities unattainable.¹⁰⁶

After the two parliamentary commissions, various attempts from the civil sector to publish a report proved to be futile. Nonetheless, SERPAJ, a human rights organization, created what would be known as the unofficial Uruguayan truth commission. Released in 1989, it was titled *Uruguay Nunca Más: Human Rights Violations, 1972-1985* and gave homage to the similar reports done in Argentina (1984) and Brazil (1985). With help from international donors, SERPAJ systematically gathered extensive information from a statistically significant random survey of three hundred eleven ex-political prisoners. This data was then corroborated by the organization's own documentation, information from several international and exile organizations and direct testimony.¹⁰⁷ The report analyzed the collapse of democracy, the nature of the military rule, the structure of the prolonged imprisonment and systematic torture, and the cases of disappearances. Despite three years of hard work, the report never became the focus of national attention because it was overshadowed by the referendum.¹⁰⁸ Nonetheless, the project did contribute to public debate on the legacies of human rights prior the referendum.

The transitional period was defined by the state's appropriation of the language of forgetfulness demonstrated through the passage of an amnesty law and its subsequent public ratification. Instead of remaining in the jurisdiction of the courts, this event converted the subject of legal prosecution into a political issue. All of this combined with rhetoric of repeated military takeover threats effectively sealed the perpetuation of the amnesty. This stands in stark contrast to Argentina where the country experienced four military rebellions, violent attacks, acts of disobedience, a coup

¹⁰⁵ Skaar, *Judicial Independence*, 141.

¹⁰⁶ "Qué otras pruebas pretende el gobierno," *El Popular*, September 5, 1985.

¹⁰⁷ SERPAJ, *Uruguay Nunca Más: Human Rights Violations, 1972-1985*, trans. Elizabeth Hampsten (Philadelphia: Temple University Press, 1992), 325.

¹⁰⁸ Skaar, *Judicial Independence*, 142.

plot, threatened and harassed witnesses, explosions and a bomb found at the residence of the president of the appeals court before finally passing amnesty laws.¹⁰⁹ In observing Argentina's rebellious military after the Trial of the Juntas, it is conceivable that Uruguayan politicians became convinced that military discontent would only escalate if an amnesty was not enacted. When the military officers began rejecting subpoena summons, a lack of political will was evident by the supposed institutional crisis.

The eventual failure of transitional justice was caused by a disinterested leader, civil society mobilization and the politicization of human rights. President Sanguinetti was keen on closure. He criticized the Supreme Court for not being "impartial," condemned the two investigatory commissions for their lack of "information," and refused to follow up on article four after the amnesty had been passed. He could also be credited for singlehandedly closing all cases. The expiry law greatly benefited the leader, since all cases had to pass through him before the SCJ could investigate. Foreseeing that the two traditional parties would not touch the topic, a plausible reasoning was that impunity would be enshrined for years to come. The civil society mobilization reached its pinnacle during the referendum only to be heavily deflated following their catastrophic defeat. Despite their defeat, the referendum was a momentous time for the Uruguayan civil society, and though quieted afterwards, this initiative started a long line of civil society efforts to bring about truth and justice. Nonetheless, it was too early to challenge the law and the civil society organizations did not realize that topics of ethics should never be taken to the ballot box. In the future, this defeat would serve as political ammunition for the Blanco and Colorado politicians as well as the armed forces. The politicization of human rights caused the subject to leak into the political sphere. This made efforts considerably harder to repeal the amnesty, since opposing sides to the issue were established across party lines. Even limited truth and justice was not achieved during Uruguay's "transitional justice" era. Reconciliation was established between mainstream political parties and the military, but not between victims and perpetrators. This

¹⁰⁹ Par Engstrom and Gabriel Pereira, "From Amnesty to Accountability: The Ebb and Flow in the Search for Justice in Argentina" in *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives*, ed. Lessa and Leigh A. Payne, 103 (New York: Cambridge University Press, 2012).

outstanding subject would return to national attention multiple times over the next two decades.

Chapter 3.

Justice Cascade, 2000-2013

The justice cascade ultimately fails to fully resolve pending human rights issues in Uruguay. Though confessions, international criticisms and truth-seeking ventures characterized the 1990s, the arrest of a formerly immune Chilean dictator in 1998 inaugurated the justice cascade. The awakening of a new era of justice brought about mechanisms to confront authoritarian past throughout the region. In Uruguay, the justice cascade arrived timidly in the form of a peace commission in 2000. Under the first leftist president, it built up steam reaching its peak during the ensuing administration of a former guerilla leader. Pressured by a transnational court's verdict, the majority coalition eventually eliminated the amnesty. This was met with the SCJ's eventual rejection of the bill as unconstitutional. This was a huge blow to momentum in favor of human rights norms, signifying the end of the justice cascade in Uruguay. This chapter will begin with events from the 1990s in the Southern Cone and then demonstrate regionally how the notion of a justice cascade was implemented by other nations. Its principal focus is on Uruguayan attempts to seek justice and definitive reconciliation.

Events in the 1990s were small but potent and acted as catalysts of change for the following decade. It was a quiet time across the Southern Cone. In Uruguay, the period was noted for the executive apathy of Lacalle (1990-1995) and Sanguinetti (1995-2000). After receiving Uruguayan lawsuits, both the Inter-American Commission on

Human Rights (IACHR)¹¹⁰ and the United Nations Human Rights Committee¹¹¹ condemned the country's amnesty and also its blatant obstruction to justice. In 1995, Adolfo Scilingo, an Argentine naval officer, confessed to participating in throwing prisoners out of airplanes over the Atlantic during the last Argentine dictatorship and his involvement¹¹² in other gross human rights violations. These confessions reignited the ire of the people throughout the Southern Cone, especially in Uruguay where the majority of their disappeared [*desaparecidos*] had been in Argentina. Uruguayan Senator Rafael Michelini with human rights organizations, victim's organizations and PIT-CNT inaugurated an annual "March of Silence"¹¹³ on May 20, 1996 in remembrance of the two politicians that had been murdered in Buenos Aires twenty years prior. This march

¹¹⁰ Between 1987 and 1989, the Inter-American Commission on Human Rights (IACHR) received eight petitions of violations of human rights occurring during the repression filed by the Uruguayan Institute of Legal and Social Studies with support from Americas Watch (Comisión Interamericana de Derechos Humanos 1993). Due to the amnesty law, the country was cited for infringing basic rights of life, liberty and personal security. The commission recommended that Uruguay start any investigation and punish those responsible. In 1992, the Inter-American human rights organization declared that the nation's amnesty law was incompatible with the American Convention on Human Rights and the Duties of Man and the American Convention (1993). This was the first international body to put into question the amnesty law concerning the state's obligations under human rights law (Lessa 2012, 133).

¹¹¹ Hugo Rodríguez filed a complaint denouncing the torture suffered at the hands of state forces to the United Nations Human Rights Committee in 1988. The committee determined in 1994 that the amnesty law was incompatible under the state's obligations under the International Covenant on Civil and Political Rights and "contributed to an atmosphere of impunity which may undermine the democratic order..." (United Nations Human Rights Committee 1988). Although state authorities chose to avoid both rulings, the transnational decisions helped place Uruguay in the international spotlight concerning questions of state accountability and later provided useful statements for domestic courts when the law was eventually challenged.

¹¹² Other Argentine military confessions followed by immune officers stating their role in their repressive regime and what they committed although not all were apologetic. Though less publicized, Jorge Néstor Tróccoli a former Naval Capitan, was the first Uruguayan officer to admit having been involved in gross human rights violations. Before Tróccoli's acknowledgement, no other military commander had ever admitted guilt or had even accepted responsibility for what had occurred during the Uruguayan dictatorship. This case combined by Scilingo's declaration resulted in a chain of confessions that sparked indignation in the people and a resurgence of the demand for truth, memory and justice.

¹¹³ Between thirty to fifty thousand individuals participated. The march proposed a wide and nonsectarian motto which was the demand for the truth about the disappeared and the pronouncement of "nunca más" (Michelini 2011, 53). Roniger and Sznajder indicate that "the use of silence in the march carried deep symbolic meanings, intended to convey deep pain, sorrow, and solemnity. No justice was demanded but rather the attainment of full truth" (1999, 121). This event has been carried out every single year since its inception, even in the most difficult of circumstances. The demands have slightly reformed over the years; however the objective and the silence remain unchanged.

represented another example of the nation's unending confrontation with its legacy of authoritarianism.¹¹⁴ In 1997, an inquiry¹¹⁵ to discover the whereabouts of the remains of the disappeared, led to the demotion of the judge. The last major catalyst of the decade occurred in 1998 with the arrest of former Chilean dictator Augusto Pinochet in London, wanted for extradition¹¹⁶ to Spain on charges of human rights violations during the Chilean dictatorship. Though Pinochet was eventually sent back to face charges in his homeland, this event demonstrated that former heads of state were no longer immune, could be indicted and could also be sentenced for violations of human rights occurring during their rule. It was Roht-Arriaza who coined the term "Pinochet Effect"¹¹⁷ defining the international trend of putting former leaders on trial subsequently following the arrest

¹¹⁴ Roniger and Sznajder, *The Legacy of Human Rights Violations in the Southern Cone*, 121.

¹¹⁵ Senator Rafael Michelini brought a case to court regarding over one hundred fifty people who had disappeared during the dictatorship. It was believed that they had died in custody due to interrogation and torture. The senator asserted that he had received undisclosed information from a retired general and various soldiers concerning the clandestine burial of the bodies of some of the disappeared (Skaar 2011, 151). A month later, Judge Reyes took up the case and ordered an investigation. The magistrate validated the inquiry stating that its objective was simply to "determine the existence of the clandestine cemetery, exhume the bodies, and return them to their families—not to instigate punitive action against the perpetrators" (151). The underlying issue was known as Operación Zanahoria (Operation Carrot), which consisted of unearthing cadavers of the disappeared buried in the barracks and, to avoid discovery, rebury them vertically with a tree planted above. This method of burial is what gave the operation its name (Equipo Nizkor 1997). As required in article four of the expiry law (which obligates the executive to order an investigation of the disappeared), the jurist then forwarded the case to President Sanguinetti. A couple days later, the government informed Reyes that the case was covered by article one of the law mentioning that immunity was granted for crimes committed by state officials for political reasons during the *de facto* period (Skaar 2011, 152). Not only was the case rejected but it was ordered to be closed and the facts archived. Evidently due to requesting a probe on the subject matter, Reyes lost his position as a judge and was transferred to an inferior court which was synonymous with being sanctioned.

¹¹⁶ The former dictator was wanted in Spain in a case led by Spanish judge Baltasar Garzón using universal jurisdiction. The principle of universal jurisdiction is founded on the notion that certain crimes such as genocide, crimes against humanity and torture are harmful to international interests and that states are entitled or even obliged to bring proceedings against the culprit regardless of the location or nationality of the individual (Macedo 2001, 16).

¹¹⁷ The notion came originally from Reed Brody of Human Rights Watch while recalling the debate in the judicial committee room in the UK House of Lords (Brett 2008, 8). Brody detailed how "human rights law came of age in that room... the arrest of Pinochet... inspired others to bring their tormentors to justice, particularly in Latin America, where victims challenged the transitional arrangements of the 1980s and 1990s that allowed perpetrators of atrocities to go unpunished and, often, to remain in power" (2006). He defined it as the "Pinochet precedent."

of Pinochet.¹¹⁸ The events of the nineties paved a way for the awakening of the justice cascade and facilitated the beginning of the search for the disappeared, trials against former leaders and massive efforts to indict military officers.

After Pinochet effect, the acceleration of accountability spread throughout Latin America. This pressured other countries to follow the newly established norm. Forced to take a stance on the case, Chilean judges tried convicting Pinochet on every possible charge and were eventually successful in the Riggs Bank scandal. This scandal found the former dictator guilty of tax evasion and fraud. Despite an amnesty in Chile, trials have continued unabated since 1999. The Argentine trials focusing on the truth and whereabouts of babies who had been robbed from their parents at birth led to the first conviction of military General Videla in 2001. Scilingo's confession would come back to haunt him when in 2005 Judge Garzón sentenced the former naval officer to six hundred forty years in a Spanish court for crimes against humanity. Under the leadership of Néstor Kirchner, the new decade saw the elimination of the amnesties and presidential pardons by the legislative and the Supreme Court approving the new laws. Huge trials have been undertaken since. Peru also dealt with its past, implementing a Truth and Reconciliation Commission to document human rights abuses during the 1980s and 1990s.¹¹⁹ The era of the justice cascade in Uruguay was defined by efforts beginning in 2000 and escalated under each of the subsequent presidents. It culminated with the elimination of the amnesty law in 2011 and subsided after an "interpretative" bill was deemed unconstitutional. The era was also characterized by an assertive civil society and presidents willing to confront past human rights legacies.

The tides turned when Jorge Batlle Ibáñez¹²⁰ became president in 2000. During his inaugural address, he promised to definitively seal [sellar] peace among Uruguayans.¹²¹ He expressed his ambition for a peace commission that would one day

¹¹⁸ Naomi Roht-Arriaza, *The Pinochet Effect: Transnational Justice in the Age of Human Rights* (Philadelphia: University of Pennsylvania Press, 2005).

¹¹⁹ Comisión de la Verdad y Reconciliación, 2003, <http://www.cverdad.org.pe/>.

¹²⁰ Batlle was a traditional Colorado politician who had run for president four times before achieving the presidency on his fifth attempt.

¹²¹ "Hoy importa: Comisión de esperanza," *El País*, August 9, 2000, 6.

facilitate a harmonious unification among all Uruguayans.¹²² A mention of peace and a vague reference to the dilemma of the disappeared was a surprise to everyone including his personal advisors and close friends.¹²³ This was the first time that a president had mentioned “reconciliation” since the referendum of 1989. It was also the first instance that a Colorado or Blanco politician had acknowledged any pending human rights issues. Roniger asserts that this shift may have occurred due to internal political struggles within the Colorado party.¹²⁴ An opportunistic Batlle took advantage of this competition among sectors and his reading of a rising public demand for truth and accountability led to his subsequent willingness to co-opt this cause.¹²⁵ Though keen on reconciliation, he avoided any legal solution to the dilemma of the disappeared, which, in essence preserved Sanguinetti’s policy of keeping the problem in the political sphere.¹²⁶

In August 2000, Batlle announced the creation of the *Comisión para la Paz*.¹²⁷ This commission, seen as an ethical and moral obligation of the nation, was comprised of two religious figures, three politicians (representing the three major parties) and a labor unionist.¹²⁸ Unlike the previous investigative commissions, this particular one was created to complete the requirements of the fourth article, which enables the president to order a report of the disappeared originally intended to have started before the end of December 1986.¹²⁹ Its two main objectives were to clarify the fate of those who had disappeared and to discover the whereabouts of the four disappeared children who had

¹²² “Resolución: El presidente aprobó el inicio de la investigación oficial sobre el destino de los desaparecidos durante el gobierno militar. Una Comisión “a la uruguaya,” *El País*, August 10, 2000, 7.

¹²³ Skaar, *Judicial Independence*, 159.

¹²⁴ Luis Roniger, “Transitional Justice and Protracted Accountability in Re-democratised Uruguay, 1985-2011,” *Journal of Latin American Studies*, 2011, 711.

¹²⁵ *Ibid.*, 712.

¹²⁶ Elin Skaar, “Legal Development and Human Rights in Uruguay: 1985-2002,” *Human Rights Review*, 2007, 51.

¹²⁷ “Commission for Peace” in English

¹²⁸ The group consisted of President monsignor Nicolás Cottugno (Archbishop of Montevideo), Dr. Carlos Ramela (Partido Colorado), Dr. José Claudio Williman (Partido Nacional), Dr. Gonzalo Fernández (Frente Amplio), Father Luis Pérez Aguirre S.J. (representing the NGOs Madres y Familiares de Uruguayos Desaparecidos y SERPAJ) y José D’Elia (Honorary President of the labor union, PIT-CNT). After the death of Aguirre, Father Jorge Osorio acted as the replacement (MERCOSUR 2005, 174).

¹²⁹ Paula López-Gamundi, “Uruguayan Amnesty Law: Amnesty on one’s Mind,” Washington Report on the Hemisphere, July 6, 2011, 3.

not yet been restored to their rightful families.¹³⁰ This project was to fulfill the ethical obligation of the state by undertaking the indispensable task of preserving national, historic memory.¹³¹

According to the final report, the Commission members were convinced that grave human rights violations had been committed during the regime. From torture and illegitimate detention in clandestine locations to the gravest of cases involving forced disappearance, the Commission confirmed that state actors had acted outside the law by employing illegal repressive methods.¹³² As Father Jorge Osorio explained, the project lacked the use of coercion, tools and perhaps political will to contribute more to the search for the truth. The priest adds that “it was a valid tool in its time yet under no circumstance can or could it be considered a cut-off point” [*punto final*].¹³³ The final report also affirmed that twenty-six Uruguayans had disappeared inside the country during the dictatorship as a result of excessive torture and one hundred eighty-two had been deemed missing in Argentina. This represented an increase in the amount of disappeared from the previous investigatory commissions. It also provided substantial evidence to the existence of Operation Condor, an intra-regional network of repressive governments that worked in concert to kidnap and systemically eliminate “subversives.”¹³⁴ Despite the findings of the committee, its recommendations were not immediately implemented by leaders. This lack of continuity is what Lessa suggests “demonstrates how President Batlle’s project of national reconciliation rested on a limited disclosure of truth and an even smaller dose of justice.”¹³⁵

¹³⁰ Comisión para la Paz, 5.

¹³¹ *Ibid.*, 5.

¹³² *Ibid.*, 17

¹³³ MERCOSUR, *Semanario Regional: Memoria, Verdad, y Justicia de nuestro pasado reciente* (Montevideo: Impresora Grafinel, 2005), 67.

¹³⁴ Elin Skaar, “Impunidade versus responsabilidade no Uruguai: o papel da Ley de Caducidad” in *A Anistia na Era da Responsabilização: O Brasil em Perspectiva Internacional e Comparada*, ed. Leigh Payne, Paulo Abrão and Marcelo Torelly, 445 (Brasília e Oxford, 2011).

¹³⁵ Francesca Lessa, “No hay que tener los ojos en la nuca: The Memory of Violence in Uruguay, 1973-2010” in *The Memory of State Terrorism in the Southern Cone: Argentina, Chile, and Uruguay*, ed. Lessa and Vicent Druliolle, 186 (New York: Palgrave Macmillan, 2011).

In contrast to previous official state accounts, the Commission highlighted the victims' innocence and drew attention to the illegality of state repression.¹³⁶ Nevertheless, despite the acknowledgement, the initiative still hinged on closing a past era, instead of fully addressing it. Raúl Olivera Alfaro critiqued the report accusing the president of claiming it as his own endeavor (while not crediting the committee) and also emphasized that there still existed a juridical, political and ethical obligation for the state to fully resolve the drama of the disappeared.¹³⁷ Military leaders heavily criticized the report for its alleged "revisionism."¹³⁸ Despite the evidence documented in the commission report, the armed forces refused to take responsibility for their role in the disappearances, infuriating the Uruguayan citizenry. They considered the report to be based on "obvious bias" since the military commanders were supposedly described as murderers that killed for pleasure while the dead were all saints.¹³⁹

Although the initiative did not achieve its main purpose of reconciliation, it was nonetheless a "resonant voice" that interrupted many years of silence and shook the spirit of Uruguayans.¹⁴⁰ The Batlle government was the first since the return of democracy to officially, although rather timidly, recognize "forced disappearance" and attempt to document it as such. Although the Commission was undeniably helpful in seeking the remains of the disappeared, the report was neither a truth nor reconciliation commission and focused solely on closing the books and appeasing the mounting demands from civil society. If Batlle had expected this commission to be a means to an end of the lingering human rights dilemma, future events would demonstrate the contrary.

¹³⁶ Lessa, "No hay que tener los ojos en la nuca," 186.

¹³⁷ Raúl Olivera Alfaro, "El informe final de la Comisión para la Paz," *Brecha*, April 25, 2003, 8.

¹³⁸ "Mandos del Ejército rechazan el informe sobre desaparecidos y piden frenar el revisionismo," *Búsqueda*, April 24-29, 2003, 1.

¹³⁹ "El gobierno busca cerrar el capítulo de los desaparecidos; la izquierda quiere investigar," *Búsqueda*, April 30-May 6, 2003, 1.

¹⁴⁰ Pablo Galain Palermo, "Uruguay" in *Justicia de transición: Informes de América Latina, Alemania, Italia y España*, ed. Kai Ambos, Ezequiel Malarino and Gisela Elsner, 400 (Montevideo: Fundación Konrad-Adenauer, 2009).

Taking advantage of the fourth clause of the amnesty law, Batlle sought to resolve two¹⁴¹ of the most notorious cases involving infants “who were given new identities after their political activist parents were assassinated and disappeared.”¹⁴² In Batlle’s first week of office the president ordered a DNA test¹⁴³ conducted on the 23-year-old woman who was supposedly the granddaughter of Juan Gelman. The results proved positive. The Simón Riquelo case involved a mother who had unsuccessfully searched all over the Southern Cone for her son. The president convinced a young man who was suspected of being the missing child to undergo a similar test. This time, the results were negative; however, her son was found two years later in Argentina.¹⁴⁴ The confirmations of the identification and recuperation of the identities of Macarena Gelman (the missing granddaughter) and eventually of Simón Riquelo followed in succession. This greatly impacted public opinion and demonstrated how easily cases were able to be resolved with presidential support.

Independently of the two kidnapped children cases, the PIT-CNT on June 2001 brought charges against the former foreign minister Juan Carlos Blanco Estradé¹⁴⁵ and three other high level officials for the disappearance and subsequent murder of Elena Quinteros.¹⁴⁶ The investigating judge ruled that disappearance was an ongoing crime and therefore could be investigated. Head Supreme Court Justice Cairoli confirmed the decision stating that detained-disappearance were permanent crimes.¹⁴⁷ These judge’s

¹⁴¹ SERPAJ estimates that only thirteen had been kidnapped in Uruguay and by 2000 nine of the thirteen had been reunited with their true families (2000, 97).

¹⁴² Roniger, “Transitional Justice and Protracted Accountability,” 712.

¹⁴³ The first case presented in 2000 involved famous Argentine poet Juan Gelman whose son and wife were kidnapped in Buenos Aires by security forces. He sought DNA tests (which he had previously been denied) on a young woman who he believed was his long-lost granddaughter in Uruguay.

¹⁴⁴ “it was not until March 2002 that a federal judge in Argentina ordered a DNA test and confirmed that another young man, now an Argentine citizen, was in fact Sara Méndez’s son” (Roniger 2011, 712).

¹⁴⁵ Blanco was also a former Colorado deputy.

¹⁴⁶ A teacher and radical political activist, she attempted to escape by jumping into the gardens of the Venezuelan embassy screaming for political exile; however state forces entered and extracted her from the consulate’s property. She has been disappeared ever since. According to accounts of political prisoners she was severely tortured before being assassinated. The argument was that Blanco was a civilian and therefore outside the reach of the expiry law.

¹⁴⁷ Hugo Cores, “Expresiones de un jurista que incomodan al Poder,” *LaRed21*, April 10 2001, <http://www.lr21.com.uy/editorial/35499-expresiones-de-un-jurista-que-incomodan-al-poder>.

definitions of forced disappearance led to the April 2002 indictment of Blanco who was accused of being co-responsible for the kidnapping and disappearance of Quinteros.¹⁴⁸ The former foreign minister was condemned to three years in prison, making him the first leader of the dictatorship to be sentenced.¹⁴⁹

In 2005 Dr. Tabaré Vázquez Rosas¹⁵⁰ became the first Uruguayan president elected from a non-traditional party,¹⁵¹ continuing the trend of left-leaning leaders throughout Latin America. Demonstrating the persistence of the issue, Vázquez clearly established his objectives concerning human rights in his inaugural speech: “We want to know what happened, what happened to those citizens [the disappeared], if they are buried somewhere or not; if they are, they will be found and identified, their remains handed over to their relatives and if they are not, we will have to know why they are not there, where they are and what happened to them.”¹⁵² That same evening he broadened his vision on the topic. He proclaimed that his government would comply with the established mandate of the fourth article by seeking to exhaust [*procurando agotar*] all investigations on the disappeared.¹⁵³ As a candidate, he contended that he would not seek to repeal the law (contrary to the historical position of his coalition), yet once elected, he indicated his decision to end generalized impunity.¹⁵⁴ Vázquez’s government was the first to show a genuine concern for the past and his initiatives verified this sincerity.

¹⁴⁸ Nonetheless, in 2003 the government tried to broaden the scope of the amnesty law to include civilians. Amnesty International responded expressing serious concerns that the government was interfering with the Judiciary (Amnesty International 2004). This venture failed subsequently prior to Blanco’s indictment.

¹⁴⁹ “Así fue condenado Juan Carlos Blanco, canciller de la dictadura,” *La República*, April 2, 2003, 1.

¹⁵⁰ Vázquez, the previous leader of the Frente Amplio coalition is an oncologist by training and had previously been the first FA politician to become Mayor of Montevideo (1995-2000). He unsuccessfully ran for president in the 1994 and 1999 elections and was narrowly defeated by Batlle in the latter.

¹⁵¹ FA support had grown incrementally since 1994 receiving 30 percent of the presidential vote in those elections. To increase votes, the FA formed alliances with smaller parties. The following elections of 1999 resulted in Vázquez winning the first round with 40 percent of the vote. He, however, lost the second round due to the two traditional parties both casting their votes for Batlle. In 2004, Vazquez won with just over 50 percent of the vote, narrowly avoiding a run-off.

¹⁵² Lessa, “No hay que tener los ojos en la nuca” 186.

¹⁵³ MERCOSUR, Memoria, Verdad, y Justicia, 176.

¹⁵⁴ Roniger, “Transitional Justice and Protracted Accountability,” 714.

During his presidency Vázquez made many advances in implementing restorative justice mechanisms and enacted laws to align the nation's domestic code with international law. He created a day of remembrance called the Never Again Day [*Día de Nunca Más*] on June 19.¹⁵⁵ In November 2007, the Museum of Memory of Uruguay¹⁵⁶ was inaugurated with an aim to recover the memory of the horrors of state terrorism and the sacrifices of the Uruguayan people against state repression.¹⁵⁷ The Vázquez administration also requested that a project be undertaken to prepare an official report on human rights violations during the dictatorship. The enormous investigation was released in four volumes in 2007 and detailed information on each of the disappeared and those responsible for their deaths.¹⁵⁸ Other accomplishments included creating a human rights cabinet within the Ministry of Education and Culture which sought to promote the broadest applicability [*la más amplia vigencia*] of human rights.¹⁵⁹ Though less reported than other human rights initiatives, the government passed a pair of reparation laws. Reparations¹⁶⁰ are an essential part of transitional justice mechanisms that seek to make amends with the victims, although they are mostly a symbolic gesture for the state to correct perceived wrongs. The reparation laws focused on alleviating suffering and undoing past wrongs. Ley N° 18.033¹⁶¹ of October

¹⁵⁵ This move baffled human rights organizations who believed that the government was “attempting to put an artificial end to the lingering past” (Roniger 2011, 715).

¹⁵⁶ The objective of the memory museum is to educate future generations about the atrocities so that they will never happen again.

¹⁵⁷ Roniger, “Transitional Justice and Protracted Accountability,” 717.

¹⁵⁸ Equipo de investigación de la Universidad de la República, *Investigación histórica sobre la dictadura y el terrorismo de Estado en el Uruguay, 1973-1985*, coordinated by Álvaro Rico (Montevideo: IMPO, 2007).

¹⁵⁹ “Derechos Humanos,” *Dirección Nacional de Derechos Humanos*, April 16, 2013, <http://www.mec.gub.uy/ddhh>

¹⁶⁰ Reparations in Uruguay have been granted ever since the return of democracy. The first reparations were offered to Uruguayans in exile to return to their homeland under the National Commission of Repatriation. Incentives included medical insurance, housing and labor-related ventures (Roniger and Sznajder 1999, 81). Other reparations “had been granted to affected public employees in 1985 and private employees in 2002” (Roniger 2011, 715). In a similar manner, the government decided to recognize “pensions and reparations to members of the armed forces affected by repression during the dictatorship and period 1968-1973” (715). This recognition demonstrated that both sides of the equation were greatly affected.

¹⁶¹ This law was established for those who had lost their jobs due to political or syndical affiliation and granted the recuperation of their retirement benefits and pensions. It was focused on those who had to leave the country during the dictatorship, those who had been detained or had hid clandestinely during that time (Ley N° 18.033 2006).

2006 and Ley N° 18.596 of October 2009 focus on the provision of reparations to relatives of victims of human rights violations. Human rights activists suggested that the latter supposes recognition of the responsibility of the state, but is ambiguous with respect to the compensation for damage, excluding the majority of victims.¹⁶² Reparations symbolically represent an apology from the state and at the end of Vázquez's term were finally acknowledged¹⁶³ and addressed. The Frente Amplio also passed a handful of laws recognizing certain offenses as crimes against humanity. A law¹⁶⁴ regarding the declaration of absence due to forced disappearance was ratified in 2005 and the following year another law¹⁶⁵ affirmed Uruguay's cooperation with the International Criminal Court in the fight against genocide, war crimes and crimes against humanity. The aforementioned crimes as well as torture were codified to the domestic legal system.¹⁶⁶

Recognizing the recommendations from the Peace Commission and the plausible burial sites detailed in the report, Vázquez, as the superior authority of the armed forces, ordered that the commanders' release reports of what had happened to the disappeared. Dr. Fernández stated that almost instantaneously results were obtained after more than twenty-five years.¹⁶⁷ In the reports, the armed forces recognized what had happened and what they had done. After reviewing the reports, the president then requested their support in seeking the bodies of the disappeared. This presidential mandate made way for excavations in several military barracks which had previously been prohibited. The first remains were found in November 2005. In 2007, another series of excavations commenced, seeking the remains of Quinteros. The

¹⁶² Samuel Blixen, "Ley reparatoria a las víctimas de la dictadura: El reconocimiento," *Brecha*, May 8, 2009, 9.

¹⁶³ The execution of the laws ratified in 2006 and 2009 were still being discussed in 2010. A commission on the topic was established in November 2009 and implemented toward the end of January 2010 (Skaar 2011, 181). According to Fried & Lessa there is still no standard to contemplate [una norma que contemple] the integral reparation for all victims of state terrorism (2011, 37).

¹⁶⁴ Ley N° 17.894 also gave relatives of the disappeared whose deaths were confirmed in the Peace Commission a certificate of absence (2005)

¹⁶⁵ Ley N° 18.026 (2006)

¹⁶⁶ F. Michelini, "Contra la cultura de impunidad," 54.

¹⁶⁷ Dr. Gonzalo Fernández in MERCOSUR, *Memoria, Verdad, y Justicia*, 11.

president made major advances that suggest that executive support is a crucial to success.

The Vázquez administration chose to interpret the fourth article in the broadest way possible. This encouraged judicial inquiries into any case not explicitly covered by the law.¹⁶⁸ The law did not exclude civilians, senior military officers, crimes committed before the dictatorship and disappearances beyond Uruguayan borders.¹⁶⁹ In 2005, a draft law by FA politicians was created, focusing on legally expanding which cases fell outside the amnesty law; however, the project had to be abandoned due to the intense pressure from the military and traditional parties.¹⁷⁰ Nonetheless, Vázquez's reinterpretation of the law left the possibility of legal action against more than six hundred active and retired members of the armed forces (including retired lower-ranking military officials and former police) for crimes committed before the coup d'état in 1973.¹⁷¹ Although torture was the most frequently committed, no cases were presented during the first Frente Amplio government. Under the leftist administration more than sixty cases of violations of human rights were "exempt" from the boundaries of the Ley de Caducidad due to the president's reinterpretation of the law.¹⁷²

The reinterpretation of the expiry law made way for two historic indictments against former leaders of the dictatorship as well as reopening the case against Blanco. After a lengthy trial beginning in 2006, Jorge Bordaberry, former president at the time of the coup and dictator during the authoritarian regime, was sentenced in 2010 to a total of

¹⁶⁸ Roniger, "Transitional Justice and Protracted Accountability," 715.

¹⁶⁹ *Ibid.*, 715.

¹⁷⁰ The draft law specified which instances would not be covered by the Expiry law including crimes committed by military or police commanders, crimes which occurred abroad, illegal appropriation of children, and crimes committed for economic profit (Espectador 2005). Although abandoned due to intense pressure from the opposition the government nevertheless began to adopt these very criteria in practice when the courts consulted with the executive before pursuing investigations into human rights cases (Burt, Fried and Lessa 2013, 11). Roniger insists that instead of deterring retributive justice, "it became clear to all judges that they could broaden the scope of judicial interpretation of immunity in court, confident that the executive would welcome such actions" (2011, 716).

¹⁷¹ Amnesty International, "Uruguay - Amnesty International Report 2006: Human Rights in the Eastern Republic of Uruguay," *Amnesty International*, 2006, <http://www.amnesty.org/en/region/uruguay/report-2006>.

¹⁷² Lessa and Fried, "Las múltiples máscaras de la impunidad," 37.

thirty years in prison for “suspending the Uruguayan Constitution,¹⁷³ abusing executive power and co-conspiring in the extrajudicial killing of twenty people during his four-year rule between 1972-1976.”¹⁷⁴ Journalist Walter Pernas declared that Bordaberry had fallen by his own “golpe.”¹⁷⁵ He also noted that the court decision was of historic relevance because it was the first verdict that condemned the coup.¹⁷⁶ In 2007, General Gregorio Álvarez, military commander and last military president, was arrested and charged as coauthor of the forced disappearances of more than thirty people. Two years later at the age of eighty-three, he was condemned to twenty-five years in prison for thirty-seven murders committed within the framework of Operation Condor.¹⁷⁷ He was convicted of aggravated manslaughter and sentenced to the maximum prison term by the prosecutor.¹⁷⁸ He was also charged with smuggling Uruguayan political activists into the country after they had been abducted in Argentina.¹⁷⁹ These crimes were typified as crimes against humanity according to the judge¹⁸⁰ and were therefore imprescriptible.¹⁸¹ Affirmed by the Court of Appellants in 2010, this judgment marked the second time in Latin American history that a former dictator had been convicted and sent to prison.¹⁸² In April 2010, Juan Carlos Blanco, who was previously condemned under Batlle was convicted for the murder of Elena Quinteros and sentenced to twenty years in jail. In June 2011, Bordaberry and Blanco were also condemned to thirty more years’

¹⁷³ “Moreover, the prosecutor accused the former head of state of ‘undermining the Constitution’ when he changed the form of government by signing the decree that truncated the workings of Uruguay’s democratic institutions” (Roniger 2011, 716).

¹⁷⁴ López-Gamundi, “Uruguayan Amnesty Law,” 3.

¹⁷⁵ In reference to the “golpe de estado” (putsch) that the former leader was involved in.

¹⁷⁶ Walter Pernas, “Bordaberry cae por su propio golpe: Hito contra la impunidad,” *Brecha*, August 14, 2009, 6.

¹⁷⁷ Gregorio Álvarez fue condenado a 25 años por 37 homicidios. Fallo. ‘Tenía conocimiento de las acciones,’ *El País*, October 23, 2009, A10.

¹⁷⁸ *Ibid.*, A10.

¹⁷⁹ Crenzel, “Present Pasts” in *The Memory of State Terrorism*, 6.

¹⁸⁰ In Judge Charles’ proclamation, he explains that “el asesinato, el secuestro, la tortura y los tratos crueles e inhumanos, perpetrados contra una población civil a gran escala y de acuerdo a un plan sistemático –llevados a cabo por funcionarios estatales o con aquiescencia estatal –constituyen crímenes contra la humanidad”, por lo menos desde la Segunda Guerra Mundial (2009, 7).

¹⁸¹ Mauricio Pérez, “Traslados clandestinos. 25 años para el dictador por 37 homicidios y 20 años para el marino por 29 homicidios,” *La República*, October 23, 2009, 6.

¹⁸² The first was Fujimori in Peru occurring months before the Álvarez verdict.

imprisonment for the ordering and top-level coordination of the homicides of opposition politicians and human rights advocates Michelini and Gutiérrez Ruiz and former guerrilla members Rosario Barredo and William Whitelaw.¹⁸³ After the justice cascade had swept across Latin America, criminal accountability became the norm. In Uruguay, it only took a willing, ethically-motivated president for the process to begin.

In September 2007, another high-profile campaign was launched to eliminate the expiry law and its effects via a constitutional reform. Human rights lawyer, Oscar López Goldaracena, stated the plebiscite hoped to dismiss [*desterrar*] the culture of impunity declaring it nonexistent.¹⁸⁴ The leadership of the committee and the main promoters were the PIT-CNT, human rights organizations, victims' groups and cultural and public figures.¹⁸⁵ In order to trigger the plebiscite, 250,000 signatures were needed (10 percent of the population). To boost the campaign, a number of Frente Amplio deputies offered their support to the initiative "declaring that the law was unconstitutional."¹⁸⁶ The traditional parties pointed to the 1989 referendum to demonstrate that the will of the people had been manifested once already.¹⁸⁷ By 2009, more than three hundred thirty-eight thousand signatures were collected in favor of the plebiscite.¹⁸⁸ A push for "Voto Rosado" (Pink ballot) was to coincide with the national elections.

Many perspectives were held regarding the initiative. Burt, Fried and Lessa note that "the committee argued that the expiry law continued to prevent justice in hundreds of cases. Furthermore, it maintained that the law was invalid since its inception because it violated fundamental principles of constitutional and international human rights law."¹⁸⁹ Others believed that the "right to justice for victims could not be circumscribed by a

¹⁸³ Burt, Fried and Lessa, "Civil Society and the Resurgent Struggle against Impunity", 12.

¹⁸⁴ Oscar López Goldaracena in "Coordinadora por la anulación de la Ley de Caducidad lanzó anoche la campaña," *LaRed21*, September 5, 2007, <http://www.lr21.com.uy/larepublica/2007/09/05/politica/273799/coordinadora-por-la-anulacion-de-la-ley-de-caducidad-lanzo-anoche-la-campana>.

¹⁸⁵ Burt, Fried and Lessa, "Civil Society and the Resurgent Struggle against Impunity," 12.

¹⁸⁶ Roniger, "Transitional Justice and Protracted Accountability," 719.

¹⁸⁷ Only Colorado politician, Diego Fau leader of the Agrupación Hugo Batalla sector offered his support for the cause (Pernas 2009).

¹⁸⁸ "Entregaron 13.676 firmas más anoche," *LaRed21*, April 25, 2009, <http://www.lr21.com.uy/politica/361559-entregaron-13676-firmas-mas-anoche>

¹⁸⁹ Burt, Fried and Lessa, "Civil Society and the Resurgent Struggle against Impunity," 12.

popular vote and, thus, a plebiscite on the matter made little sense.”¹⁹⁰ Nonetheless, these hesitant activists offered their support once the campaign was launched. Amnesty International Uruguay states that although some cases have fallen outside the reach of the law, its annulment would be the only way that Uruguay could ensure that nothing would obstruct the course of justice and safeguard itself from future abuses.¹⁹¹ However, not all were in favor of the undertaking. Gianelli reminded his readers that the law was already ratified by the referendum of 1989. He also clarified that more than a million citizens would be voting on an issue that had been ratified before they were even born.¹⁹² Neither former presidents Sanguinetti nor Lacalle favored the plebiscite. Sanguinetti stated that repealing the law would only bring pain, misery and chaos to the governing administration and continued to support what his administration had done to bring about peace.¹⁹³ Lacalle also acknowledged the result of the referendum and mentioned that Uruguay could not have achieved peace if everyone had made appeals for those who had deceased.¹⁹⁴

To the surprise of all, less than a week before the national elections and the plebiscite, the SCJ declared the Ley de Caducidad unconstitutional and incompatible with international treaties ratified by the state.¹⁹⁵ However, since the decisions of the SCJ are only realized on a case-by-case basis, this ruling was only valid for the Sabalsagaray Case.¹⁹⁶ This monumental decision to declare the expiry law unconstitutional and incongruent with international treaties occurred only days before the plebiscite.

¹⁹⁰ Ibid., 13.

¹⁹¹ Amnistía Internacional Uruguay, “Recibimos y Publicamos. Uruguay: Debe anularse la legislación que protege a los presuntos autores de tortura policial y militar,” *Brecha*, October 22, 2009, 14.

¹⁹² Daniel Gianelli, “Columna. Plebiscitos y ensobrado,” *Búsqueda*, August 27, 2009, 4.

¹⁹³ “Anulación de la ‘ley de caducidad’ desata reproches y acusaciones entre colorados y blancos; fórmula frentista mantiene bajo perfil” *Búsqueda*, August 20, 2009, 7.

¹⁹⁴ Ibid., 7.

¹⁹⁵ F. Michellini, “Contra la cultura de impunidad,” 54.

¹⁹⁶ Shortly after being kidnapped by Uruguayan armed forces, Nibia Sabalsagaray was found hung in her jail cell tortured to death by state actors (Vanderpool 2010).

On October 25, 2009, the plebiscite was endorsed by only 47.98 percent of the population, falling by a pair of percentage points.¹⁹⁷ Though this result revealed that the Uruguayan society was divided on this issue, more trials were just around the horizon. Many scholars and journalists gave plausible explanations as to why the plebiscite failed to garner enough votes. Senator Constanza Moreira¹⁹⁸ stated that it was not that the people voted *for* the Ley de Caducidad but rather each individual had to place the pink slip within their ballot. The plebiscite did not give the option of a yes or no, and nobody was forced to vote.¹⁹⁹ She speculated that the most probable political interpretation was that many had forgotten, were still undecided, or had simply desired not to participate in the decision.²⁰⁰ Pernas posited that although it was not annulled, the state was obligated to eliminate it. He also maintained that it left Uruguay in a fix with international human rights bodies that were demanding its eradication.²⁰¹ Jo-Marie Burt in an interview with *Brecha* indicates that it is difficult to vote on subjects of conscience, ethics or obligation.²⁰² Some of Lessa and Fried's initial reasons why it was unsuccessful include: exclusive attention on the national and legislative elections that competed with the plebiscite, the incapacity to present the annulment of the law as a subject, the inability to transcend sectarian interests related to parties or association and convert the topic into a momentous civic question of human rights.²⁰³ Due to the elections, the endeavor lacked support from the political parties.²⁰⁴ Contrary to the result of the 1989 referendum that

¹⁹⁷ "Ley de Caducidad ratificada. Los primeros resultados eran alentadores, después vendría el mazazo. No a la anulación: lágrimas y desconsuelo," *La República*, October 26, 2009, 12.

¹⁹⁸ Moreira is a political scientist and Frente Amplio senator representing the sector Movimiento de Participación Popular (MPP). The Movement of Popular Participation is a socialist/Marxist-Leninist faction is comprised of former Tupamaros that chose to participate in the legal political system after the return to democracy.

¹⁹⁹ Constanza Moreira, "El impulso y su freno: itinerarios de la lucha contra la impunidad" in *Luchas contra la impunidad: Uruguay 1985-2011*, ed. Lessa and Fried, 15 (Montevideo: Trilce, 2011).

²⁰⁰ Moreira, "El impulso y su freno," 15.

²⁰¹ Walter Pernas, "La ley no se anuló, pero Uruguay está obligado a eliminarla: Un Sí por venir," *Brecha*, October 26, 2009, 7.

²⁰² Agustín Ferrari, "Con Jo-Marie Burt. "Es difícil plebiscitar temas éticos y de conciencia," *Brecha*, October 26, 2009, 20.

²⁰³ Lessa and Fried, "Las múltiples máscaras de la impunidad," 38.

²⁰⁴ *Ibid.*, 38.

installed a decade of silence, the plebiscite of 2009 reinvigorated activities and initiatives by the civil society against impunity and the expiry law.²⁰⁵

Progress under Vázquez was extraordinary. He accomplished more than his previous four predecessors combined. Despite huge strides in accountability, an array of civil society actors believed that the measures adopted by the government were inadequate. They postulated that the Frente Amplio had the majority in the legislative and could have nullified the law, but the coalition lacked consensus.²⁰⁶ Analyzing Vázquez's discourse, Lessa points out how the president juxtaposed "traditional human rights demands, such as the search for the truth, with key concepts from opposing narratives like demons, war, and peace."²⁰⁷ This dialogue perplexed human rights activists and politicians alike. Lessa suggests that the president's discourse reflected his desire to embody a president of all Uruguayans, endeavoring to reach across the political spectrum and synthesize all the different existing perspectives on the recent past.²⁰⁸ Once he assumed power, he felt obligated to try to appease all sectors which lessened his impact on fully resolving the pending human rights question.

The first half of ex-Tupamaro José "Pepe" Mujica Cordano's²⁰⁹ presidency saw political debates seeking to abolish the expiry law, culminating with its elimination in October 2011. The beginning of Mujica's presidency was highlighted by the Gelman case. Since being united with his granddaughter, Gelman had demanded clarification from the Uruguayan state regarding the remains of his deceased daughter-in-law, María Claudia García Iruretagoyena de Gelman, who had been abducted in Argentina in 1976 and transferred to Uruguay, where she was murdered after giving birth.²¹⁰ Since

²⁰⁵ Burt, Fried and Lessa, "Civil Society and the Resurgent Struggle against Impunity," 14.

²⁰⁶ *Ibid.*, 12.

²⁰⁷ Lessa, "No hay que tener los ojos en la nuca" 187.

²⁰⁸ *Ibid.*, 187.

²⁰⁹ Mujica's professional background is in agriculture. He became a leader of the Tupamaros in the 1970s and was incarcerated for 15 years before and during the dictatorship. Upon the passage of the National Pacification Law in 1985, he was freed as a political prisoner. He was elected deputy in 1994 representing the MPP sector within Frente Amplio. In the 1999 elections, he was nominated to the Senate and due to his charisma rose in popularity. Shortly after being reelected as senator, he was designated as the Minister of Agriculture by Vázquez. In 2008, he resigned and returned to the Senate.

²¹⁰ Roniger, "Transitional Justice and Protracted Accountability," 720.

Uruguay was unwilling to investigate the case stating that it fell within the limits of the expiry law, Juan and his granddaughter Macarena Gelman filed a complaint to the Inter-American Commission on Human Rights (IACHR) in May 2006.²¹¹ Observing over the course of four years that the Uruguayan government had been unable to give suitable answers about the congruity of the expiry law with the legal provisions of the Inter-American system, the IACHR referred the Gelman case to the Inter-American Court of Human Rights (IACtHR) in 2010.²¹² This case would be the main force behind the eventual achievement of justice.

Foreshadowing international condemnation from the IACtHR,²¹³ Uruguay's foreign minister, Luis Almagro "convinced the government and ruling coalition to propose a bill to effectively repeal the Law of Expiry through an interpretative law that would annul its main articles."²¹⁴ In October 2010, after twelve hours of debate, the first bill was approved by fifty out of eighty deputies, with nineteen abstaining.²¹⁵ During the debates, the Frente Amplio coalition insisted that impunity should be ended and all the obstacles in the judicial sphere should be removed. The opposition emphasized the "unconstitutionality" of the interpretative project and requested that the popular votes of 1989 and 2009 be respected. However, due to the reluctance of three FA senators, the bill stalled in Senate. In November, the state was required to recognize before the Inter-American court that it had committed human rights violations in the Gelman case.²¹⁶ The delayed interpretative project was too late. The international court formally condemned

²¹¹ "Cronología," *La República*, March 22, 2012, 6.

²¹² Roniger, "Transitional Justice and Protracted Accountability," 720.

²¹³ The Inter-American Court condemned Brazil in November 2010 for its "lack of progress in the investigation and legal prosecution of the Brazilian soldiers responsible for the extra-judicial execution and disappearance of 62 members of an armed guerilla group" (Roniger 2011, 720). Olivera Alfaro advised that Uruguayans should be aware of the Brazilian case because their nation would be next to be internationally sentenced for their lack of advancements against impunity (2011). Foreseeing a similar denunciation, Uruguay's Frente Amplio-ruled government actively sought to repeal the law to avoid the Court's sentencing.

²¹⁴ Roniger, "Transitional Justice and Protracted Accountability," 720.

²¹⁵ Sebastián Cabrera, "Diputados se cobraron cuentas del pasado en debate por la Caducidad," *El País*, October 10, 2010, <http://historico.elpais.com.uy/101021/pnacio-523349/nacional/diputados-se-cobraron-cuentas-del-pasado-en-debate-por-la-caducidad/>

²¹⁶ Amnesty International, "Uruguay - Amnesty International Report 2011: Human Rights in the Eastern Republic of Uruguay," *Amnesty International*, 2011, <http://www.amnesty.org/en/region/uruguay/report-2011>.

Uruguay in February 2011 ordering the state to leave without effect [*dejar sin efecto*] the expiry law, develop a serious investigation about the crimes committed during the twelve years of military rule and carry out acts of symbolic reparation.²¹⁷ The court maintained that the “right to justice is protected under international law and cannot be denied under any circumstance.”²¹⁸ The court’s sentence was legally-binding meaning Uruguay had to comply.²¹⁹

After months of debates and modifications, in April 2011, a revised bill was voted in the Senate. The legislation was narrowly passed with sixteen in favor out of thirty-one. This bill was a delayed attempt by the ruling coalition to avoid condemnation by the Inter-American Court of Human Rights. López Goldaracena specified that the project was not about nullifying the expiry law but rather was an interpretative project of the Constitution by which through Article 72 the norms of impunity may come to be a “dead letter” [*pasan a ser letra muerta*]. The lawyer believed it was a “tool that our society will have that will no longer guarantee impunity to human rights violators.”²²⁰ Approved in Senate, the bill returned to the Chamber of Deputies for a final reading to become a law. During a lengthy heated debate, President Mujica unexpectedly interrupted and warned partisan politicians of the political consequences of approving such legislation. Frente Amplio deputy Víctor Semproni²²¹ abstained from voting which resulted in a 49-49 tie. Other FA deputies indicated that they were against the project but were only voting by party lines. The opposition called the ruling coalition sore losers [*mal perdedores*] for

²¹⁷ “Cronología,” *La República*, March 22, 2012, 6.

²¹⁸ “Uruguay Should Comply with Inter-American Court Ruling and Eliminate Expiry Law that Obstructs Justice,” *WOLA: Washington Office on Latin America*, May 18, 2011 http://www.wola.org/news/uruguay_should_comply_with_inter_american_court_ruling_and_eliminate_expiry_law_that_obstructs_.

²¹⁹ Despite being legally binding, the IACtHR has no means of enforcing its rulings and can only recommend that the state investigate and punish perpetrators of human rights and monetarily compensate the victims (Abrão and Torelly 2012, 178). In the previously mentioned Gomes Lund vs. Brazil case, the Brazilian Supreme Court affirmed their amnesty law only months before the IACtHR’s condemnation, violating the international court’s verdict.

²²⁰ Loreley Nicrosi and Marcelo Márquez, “Por 16 en 31 el Senado aprobó el proyecto de Ley Interpretativa,” *LaRed21*, April 13, 2011, <http://www.lr21.com.uy/politica/447689-por-16-en-31-el-senado-aprobo-el-proyecto-de-ley-interpretativa>.

²²¹ Although keen to eliminate the law, the FA politician and former Tupamaro maintained that the initiative was against popular will.

continuing to try to push the bill through the general assembly.²²² After failing to pass the interpretative law, the leftist coalition reached an all-time low in public opinion. The coalition had managed to get itself into a lose-lose situation that could only further damage its reputation. Even before the vote, the bill was harshly criticized by constitutional experts. Roniger suggests that “failing to approve the interpretive law after initiating the legislative move was a clear sign of political fracture and lack of binding leadership within the ruling coalition.”²²³ Several FA deputies, however, stressed that “nothing more could be done because ‘their hands were now tied.’”²²⁴ On top of their tarnished domestic record, the international condemnation had still not been dealt with. In an interview with *Brecha*, Liliana Tojo, representing the organization that had sponsored the Gelman case, reiterated that Uruguay is obligated to typify forced disappearance and take into account that the crimes of the dictatorship are crimes against humanity, therefore imprescriptible.²²⁵ She also contended that the state still needed to eliminate juridical obstacles that were protecting impunity and punish those who were responsible.²²⁶ Intra-sectional disagreements regarding the interpretative law caused the Senate stalemate and placed Frente Amplio in a delicate situation.

In May 2011 the SCJ determined that two former military officers could not be charged with “forced disappearance” because the crime was not incorporated into domestic law until 2006 and could not be applied retroactively. They were instead convicted of aggravated murder. Many were concerned that grave human rights violations would be subject to the statute of limitations since they “continued to be adjudicated as ‘ordinary crimes’ (i.e., homicide or kidnapping).”²²⁷ On May 31, the Supreme Court declared that kidnappings and murder committed during the dictatorship were “serious common crimes” (instead of crimes against humanity) and expanded the

²²² “Ley de Caducidad. Blancos y colorados centraron sus discursos en marcar las contradicciones del Frente Amplio al proponer una ley ratificada dos veces por consultas populares,” *El País*, May 20, 2011, A7.

²²³ Roniger, “Transitional Justice and Protracted Accountability,” 721-722.

²²⁴ Burt, Fried and Lessa, “Civil Society and the Resurgent Struggle against Impunity”, 14.

²²⁵ Walter Pernas, “Con Liliana Tojo*: ‘Los derechos humanos son un límite a la actuación de los estados,’” *Brecha*, May 20, 2011, 8.

²²⁶ *Ibid.*, 8.

²²⁷ Burt, Fried and Lessa, “Civil Society and the Resurgent Struggle against Impunity”, 16.

window of prosecution to twenty six years and eight months²²⁸ after the alleged crime was committed.²²⁹ The deadline was to fall five months later on November 1, 2011. In June 2011, on the 38th anniversary of the 1973 coup d'état, President Mujica, seemingly pressured by the SCJ, the IACtHR's verdict and Frente Amplio, issued a decree authorizing the investigation of eighty-eight crimes of human rights violations.²³⁰ These cases had previously been denied by former presidents who had claimed they were protected by the expiry law. Mujica declared these cases "incompatible with human rights treaties and international sentences."²³¹ This was the first time that Mujica had actively pursued a human rights-based policy beyond the continuation of his predecessor's. Though this was a monumental decree, the law was still intact and statutory limitations would soon take effect on the first of November.

The president's decision to open previously archived cases did not appease the anti-impunity movement. Fully aware of the November deadline, human rights organizations, victim's organizations, NGOs, the labor union and community and youth groups who collectively made up the anti-impunity movement launched "a public awareness campaign and sustained lobbying efforts with sympathetic allies in the executive, legislative and judicial branches to challenge the Expiry Law."²³² Politicians began collaborating with these groups to develop legislation to completely resolve the issue. In October 2011, Frente Amplio approved a law removing any statute of limitations for past human rights violations. The project was first sanctioned by all Frente Amplio members of the Senate, and the following evening the coalition's deputies ratified the law. Days before the expiration of the statute, the president promulgated Law N° 18.831 officially eliminating the expiry law, proclaiming that the SCJ will have the last word.²³³ Since the interpretative law had eliminated the articles of the amnesty law, it restored the state's ability to legally prosecute and punish crimes. Upon the passage of

²²⁸ In the Uruguayan Criminal Law, the period of prescription for homicide is twenty years (Clarín, 2011).

²²⁹ López-Gamundi, "Uruguayan Amnesty Law, 5.

²³⁰ "El gobierno permite que se reabran todas las causas por crímenes en dictadura, lo que según Mujica es para que "se termine el asunto," *Búsqueda*, June 30-July 6, 2011, p. 6-7

²³¹ Burt, Fried and Lessa, "Civil Society and the Resurgent Struggle against Impunity", 15.

²³² *Ibid.*, 16.

²³³ "Caducidad: Mujica dice que la Corte tendrá la última palabra," *El País*, October 27, 2011, A1.

the law, dictatorship-era crimes would be categorized as crimes against humanity. Burt, Lessa and Fried credit the civil society activists as being critical for helping the legislation get passed. This, in part, was because these activists were able to connect “with actors from the legislative and executive branches who themselves had long participated in civil society organizing against impunity.”²³⁴ Instead of relying solely on state actors, the anti-impunity groups stepped in and fulfilled their nation’s international obligation.

During the sessions regarding the interpretative law in October 2011 the Frente Amplio’s arguments centered on a handful of topics: human rights, derogation of the law, the statute of limitations, a political decision adhering to the SCJ and the Inter-American Court of Human Rights and the illegitimacy of the law.²³⁵ Despite the diversity in topics discussed, the coalition never once mentioned the issue of the victims. Partido Nacional concentrated on the pact at Club Naval, the plebiscites, the two demons theory,²³⁶ a state suffering from dementia and also evoked the Statute of Rome stating that the crimes the Tupamaros committed were “war crimes,” therefore crimes against humanity.²³⁷ The Colorados focused on how the project goes against the popular will that in 1989 the people decided to pacify the country before opening old wounds, the pact of Club Naval, and the events of 1986 when, according to the Colorados, the nation had to choose between peace and justice.²³⁸

Once the amnesty law was eliminated, legal complaints flooded the courts on behalf of more than one hundred fifty torture survivors.²³⁹ Numbers by *Brecha* indicate that lawsuits taken to court involving torture and sexual violence reached five hundred

²³⁴ Burt, Fried and Lessa, “Civil Society and the Resurgent Struggle against Impunity”, 17.

²³⁵ “Ley de Caducidad. Para el Frente Amplio se trató de una decisión política. La oposición centró sus argumentos en el desconocimiento de las dos consultas populares por parte del oficialismo,” *El País*, October 26, 2011, A7.

²³⁶ This theory suggests that acts of violence and terrorism by the Armed Forces were comparable to those of the Tupamaros and that the two forces were engaged in an armed conflict making a coup d’état inevitable. This theory has been discredited in Uruguay. See Carlos Demasi, “Ante la teoría de dos demonios: ¿Cuáles dos demonios?” *Página Digital*, July 11, 2003, <http://www.paginadigital.com.ar/articulos/2003/2003quint/noticias18/1204711-7.asp>.

²³⁷ “Ley de Caducidad,” *El País*, A7.

²³⁸ *Ibid.*, A7.

²³⁹ Amnesty International, “Uruguay - Amnesty International Report 2012: Human Rights in the Eastern Republic of Uruguay,” *Amnesty International*, 2012, <http://www.amnesty.org/en/region/uruguay/report-2012>.

complaints merely a week after the law was promulgated with many being filed for the first time.²⁴⁰ The grievances were lodged against former military officers, police, physicians, nurses, psychiatrists and others.²⁴¹ Although victims were able to bring their denouncements to the tribunals, polls indicated that a majority of the population did not approve of the interpretative law.²⁴² Law experts and retired judges thought that its retroactive character may lead the SCJ to declare it unconstitutional.²⁴³

Due to the Uruguay's unwillingness to comply with the Inter-American Court of Human Rights ruling, the state was obligated to publicly recognize what had happened and apologize as a nation for failing to comply with international agreements, as stipulated by the IACtHR. In March 2012 in a former clandestine detention center where María Claudia was detained, president Mujica acting as the state acknowledged responsibility for the acts of terrorism committed by the armed forces during the dictatorship. A plaque dedicated to political prisoners was placed in the former detention center, recognizing all those who were detained illegally.²⁴⁴ Journalist Ricardo Scagliola stated that this was the very first time since the return of democracy that the three powers of the state had recognized their institutional responsibility for the forced disappearance of María Claudia García, the suppression and substitution of the identity of Macarena Gelman and the violation of the rights of personal integrity and protection of the family.²⁴⁵ Though these acknowledgements took place many years after the authoritarian period, government officials finally recognized their role in state terrorism.

Two events in February 2013 changed the direction of human rights accountability, reverting it almost back to the democratic transition. On February 13,

²⁴⁰ "Acciones masivas llevan la tortura a los juzgados," *Brecha*, November 4, 2011, 1.

²⁴¹ Mariana Contrera and Rosario Touriño, "Tortura y violencia sexual en dictadura: la otra gran batalla política: Escrito en el cuerpo," *Brecha*, November 4, 2011, 2.

²⁴² Roniger, "Transitional Justice and Protracted Accountability," 722.

²⁴³ *Ibid.*, 722.

²⁴⁴ "Acto. Ex soldado llevó a Macarena Gelman al lugar exacto donde estuvo detenida su madre. Un símbolo de la represión abre sus puertas a DDHH," *La República*, March 22, 2012, 6.

²⁴⁵ Ricardo Scagliola, "El acto oficial por el caso Gelman: Elogio de la razón sensible," *Brecha*, March 13, 2012, 2.

Mariana Mota,²⁴⁶ a judge investigating more than fifty human rights cases linked to state terrorism, was demoted without explanation. Out of the blue, she was notified by her superiors that she had been transferred to civil court. Lessa and Pierre-Louis Le Goff point out that “throughout Uruguay, Mota is well respected, and considered to be well trained, competent, qualified, professional and responsible.”²⁴⁷ Burt posits that “transfers of this kind occur when requested by the judge or as a result of some sanction due to inappropriate behavior—neither pertains here.”²⁴⁸ The Washington Office on Latin America declared that the supposed legality of the Supreme Court’s order was “insufficient to explain the unexpected decision to transfer Judge Mota, whose jurisprudence represented hope for Uruguayan society.”²⁴⁹ In an interview granted to *Brecha*, the magistrate lamented a high-profile political campaign against her and a judicial system that does not defend its independence in the face of political pressure. She also stated that her transfer violates the ruling of the IACtHR due to obstructing human rights investigations.²⁵⁰ Felipe Michelini conveyed his “surprise and indignation for the lack of explanation behind the court’s decision as well as his preoccupation for the stance of the Supreme Court in terms of fighting impunity for the dictatorship’s

²⁴⁶ Prior she had been “disqualified” [*recusada*] by former military officials accused of human rights violations for her participation in the 2011 March of Silence. She also had serious discrepancies with Defense Minister and former Tupamaro Eleuterio Fernández Huidobro over the disappearance of a plane that mysteriously had crashed in Río de la Plata (LaRed21 2013). The magistrate also found resistance when searching for the remains of one of the disappeared when a lawyer was prevented from taking pictures of the victim’s presumed burial site on military grounds due to direct orders from the Defense Minister (2013). She was never sanctioned by the SCJ for any of these incidents.

²⁴⁷ Pierre-Louis Le Goff and Lessa, “Uruguay’s culture of impunity continues to rear its head,” *Al-Jazeera*, February 22, 2013, <http://www.aljazeera.com/indepth/opinion/2013/02/2013219105659440890.html>.

²⁴⁸ Jo-Marie Burt, “Judge’s Removal Causes Concerns over Human Rights Investigations in Uruguay,” *Washington Office of Latin America*, February 20, 2013, http://www.wola.org/commentary/judge_s_removal_causes_concerns_over_human_rights_investigations_in_uruguay.

²⁴⁹ “Uruguay Must Overcome Impunity,” *WOLA*, February 15, 2013, <http://www.wola.org/node/3623>.

²⁵⁰ Walter Pernas, “La obligación de investigar no se cumple,” *Brecha Digital*, February 17, 2013, <http://www.brecha.com.uy/index.php/politica-uruguaya/1385-la-obligacion-de-investigar-no-se-cumple>.

crimes.”²⁵¹ The removal of Mota shows that there are still impediments interrupting human rights trials.

Coincidentally a little more than a week later, the SCJ declared the interpretative law unconstitutional by a vote of 4-1. Articles two and three²⁵² were found in conflict with the Constitution.²⁵³ This ruling confirmed what constitutional experts and retired judges had suspected when the interpretative law was passed in 2011. The main argument of the court was that criminal law cannot be applied retroactively.²⁵⁴ Le Goff and Lessa comment on several features of the SCJ’s decision: “Due to the labeling as common crimes, the atrocities committed between 1973 and 1985 are again susceptible to the application of statutes of limitations.”²⁵⁵ The researchers point out that “the sentence also invoked the principle of non-retroactivity of criminal law, which guarantees that a person cannot be accused of a crime that was not considered as such when the event took place.”²⁵⁶ The Uruguayan branch of Amnesty International suggests that the ruling formally maintained open the possibility that judges may still investigate, and if they had sufficient evidence, may punish those responsible for human rights violations.²⁵⁷

²⁵¹ Le Goff & Lessa, “Uruguay’s culture of impunity.”

²⁵² “Artículo 2º.- No se computará plazo alguno, procesal, de prescripción o de caducidad, en el período comprendido entre el 22 de diciembre de 1986 y la vigencia de esta ley, para los delitos a que refiere el artículo 1º de esta ley. Artículo 3º.- Declárase que, los delitos a que refieren los artículos anteriores, son crímenes de lesa humanidad de conformidad con los tratados internacionales de los que la República es parte” (Ley Nº 18.831 2011).

²⁵³ Ana de Salvo, “La SCJ declara Inconstitucional la Ley interpretativa de la Caducidad,” *El Diario*, February 22, 2013, <http://eldiario.com.uy/2013/02/22/articulos-2-y-3-de-la-ley-interpretativa-de-la-caducidad-declarados-inconstitucionales-por-la-scj/>.

²⁵⁴ Natalia Roba and Nicolás Delgado, “La SCJ cierra definitivamente investigaciones por derechos humanos,” *El Observador*, February 22, 2013, <http://www.elobservador.com.uy/noticia/244268/la-scj-cierra-definitivamente-investigaciones-por-derechos-humanos/>.

²⁵⁵ Le Goff and Lessa, “Uruguay’s Supreme Court of Injustice,” *Argentina Independent*, March 21, 2013, <http://www.argentinaindependent.com/socialissues/humanrights/uruguays-supreme-court-of-injustice/>.

²⁵⁶ Ibid.

²⁵⁷ “Amnistía Internacional: la Suprema Corte se pone del lado de la impunidad y compromete la responsabilidad del Estado uruguayo,” *LaRed21*, February 26, 2013, <http://www.lr21.com.uy/politica/1090372-amnistia-internacional-la-suprema-corte-se-pone-del-lado-de-la-impunidad-y-compromete-la-responsabilidad-del-estado-uruguayo>.

Many agreed that the SCJ's decision is upsetting to the fulfillment of the state's commitment to human rights. Burt declares that "the Supreme Court ruling constitutes a new and worrying obstruction to the investigation and punishment of crimes against humanity—including disappearances, assassinations, torture, and illegal detentions—perpetrated during the dictatorship."²⁵⁸ Uruguayan IACtHR judge Alberto Pérez Pérez affirms that if the domestic court were to declare the law Nº 18.831 unconstitutional, then the state would be in violation of international law.²⁵⁹ UN High Commissioner for Human Rights Navi Pillay signals that the sentence could re-establish the shadow of impunity in a country that recently had begun to reconcile itself with truth and justice for the complete fulfillment of its obligations under international law.²⁶⁰ Le Goff and Lessa contend that the SCJ "unmistakably aligned itself with the closing down of all investigations into the atrocities of the dictatorship and, coupled with Mota's transfer to a civil tribunal, once again sends a strong signal in favor of impunity."²⁶¹ The military was content with the SCJ's decision, declaring that justice could still be trusted. Journalist Samuel Blixen summed up the circumstances citing the fulfillment of Uruguayan foreign minister's previous comment that there would be happy dinosaurs (referring to retired military officers).²⁶² In his op-ed article, Blixen compared the situation to a game of chess between dignity and impunity, and if the moves would have been better analyzed, the strategy could have been foreseen.²⁶³ The SCJ blatantly dishonored the decision of the IACtHR by obstructing justice and the right to investigate and punish those who violated human rights.

²⁵⁸ Jo-Marie Burt, "Recent Sentence by Uruguayan Supreme Court Obstructs Search for Truth and Justice," *Washington Office on Latin America*, February 28, 2013, http://www.wola.org/commentary/recent_sentence_by_uruguayan_supreme_court_obstructs_search_for_truth_and_justice.

²⁵⁹ Veronica Smink, "Cómo quedan los casos por abusos de DD.HH. en Uruguay," *BBC Mundo: Cono Sur*, February 23, 2013, http://www.bbc.co.uk/mundo/noticias/2013/02/130222_uruguay_csj_caducidad_vs.shtml.

²⁶⁰ "IMPUNIDAD: Naciones Unidas rechaza la decisión de la Suprema Corte de Justicia de Uruguay que "viola el derecho de las víctimas a la verdad, justicia y reparación," *LaRed21*, February 24, 2013, <http://www.lr21.com.uy/politica/1090096-naciones-unidas-rechaza-la-decision-de-la-suprema-corte-de-justicia-de-uruguay-que-viola-el-derecho-de-las-victimas-a-la-verdad-justicia-y-reparacion>.

²⁶¹ Le Goff and Lessa, "Uruguay's Supreme Court of Injustice."

²⁶² Samuel Blixen, "La fiesta de los dinosaurios," *Brecha Digital*, February 22, 2013, <http://www.brecha.com.uy/index.php/politica-uruguaya/1416-la-fiesta-de-los-dinosaurios>.

²⁶³ *Ibid.*

A handful of cases have continued since the verdict of the SCJ does not impede that judges carry on investigations. Still if the Court determines that the cases are considered common crimes, the Court would declare that common crime lawsuits have already exceeded the statute of limitations and no longer may be investigated.²⁶⁴ Concurring with that position, if a judge does prosecute military personnel, they will be able to appeal and if the case goes to the SCJ, it is foreseeable that the Court will order it's archival. In a case concerning sexual abuse of twenty-eight women, Criminal Judge Julia Staricco has continued investigating and states that none of those condemned have presented an appeal of unconstitutionality so far.²⁶⁵ If they do, she will have to send the investigation to the SCJ. Considering these misdemeanors as crimes against humanity is the only way Judge Staricco will be able to release a verdict. Besides Staricco, two other judges, Carlos García and Pedro Salazar, have decided to continue with human rights cases. Judge Garcia is investigating a group of detained individuals who were tortured by police intelligence officers, and Salazar has a dozen cases linked to the dictatorship mainly from courts outside of Montevideo.²⁶⁶ After the amnesty law was passed in 1986, trials entirely ceased. This time, almost thirty years later even the Supreme Court's ruling could not completely close all trials.

A historic investigation on Operation Condor²⁶⁷ was launched in March 2013 in Buenos Aires. The trial corresponds in part to the lawsuit raised between 2008 and 2012. This trial includes one hundred six victims (forty-eight Uruguayans) who were detained and disappeared, indicting twenty-five repressors, one of whom is of

²⁶⁴ Natalia Roba, "Jueza cita a militares por delitos de la dictadura y sigue adelante," *El Observador*, March 12, 2013, <http://www.elobservador.com.uy/noticia/245644/jueza-cita-a-militares-por-delitos-de-la-dictadura-y-sigue-adelante/>.

²⁶⁵ Ibid.

²⁶⁶ "Otros dos jueces continúan adelante las causas a imputados de la dictadura," *LaRed21*, March 13, 2013, <http://www.lr21.com.uy/comunidad/1092516-otros-dos-jueces-continuan-adelante-las-causas-a-imputados-de-la-dictadura>.

²⁶⁷ Operation Condor was a regional intelligence network coordinated by military governments which focused on detaining, exchanging and eventually eliminating opposition during the 1970s and 1980s (Amnesty International 2013). Argentina, Bolivia, Brazil, Chile, Paraguay, Peru and Uruguay contributed in this operation established by Pinochet in 1975.

Uruguayan nationality.²⁶⁸ Other sources place the number of victims at one hundred seventy-one with approximately eighty being Uruguayan.²⁶⁹ A noteworthy addition to the trials is the recent declassification of documents from the National Security Archive in the United States concerning South America. This is a monumental investigation because the majority of Uruguayans who were abducted and later disappeared in Argentina was due to this regional terror network.

After many years, justice was attained in a peculiar manner. Instead of following a sequence of events, justice and the overturning of the amnesty law in Uruguay were paradoxically accomplished by combined efforts between the pro-human rights civil sector and a singular international case. Both the Gelman case and the civil society heavily pressured politicians and forced them to create an interpretative bill to declare void the amnesty.

The justice cascade was successful yet not enduring. More and more was being done, and each president, starting with Batlle, attempted to create lasting reconciliation. Nonetheless, the inadequacy of the justice cascade was caused by the executive, another civic attempt to overturn the law and ultimately by the relegation of Mota and the Supreme Court's decision which closed (almost all) trials. Contrary to the previous era, the new millennium saw presidents playing a crucial role in the advancement of human rights. They all enacted initiatives to promote human rights mechanisms and actively played roles in determining which cases the tribunals could investigate. However, all three lacked political will and were hesitant to address the issues when they had the chance. This lack of political will resulted in half-hearted attempts and delayed or interrupted any plausible resolution. It is odd that the two left-leaning presidents' would have tried to skirt the issue since members of their coalition were the most repressed and tortured under the dictatorial role. The civil society proved to be a double-edged sword. The society could be credited for helping eliminate the amnesty law, yet two

²⁶⁸ "Argentina inicia proceso por Plan Cóndor: 48 víctimas son uruguayos," *LaRed21*, March 4, 2013, <http://www.lr21.com.uy/mundo/1091130-argentina-inicia-proceso-por-plan-condor-48-victimas-son-uruguayos>.

²⁶⁹ Carlos Osorio (editor), "Operation Condor on Trial: Legal Proceedings on Latin American Rendition and Assassination Program Open in Buenos Aires," *The National Security Archive*, March 8, 2013, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB416/>.

years prior it had tried taking the topic to the ballot vote a second time. Once again, the attempt to eliminate the law through a plebiscite failed, and opposition politicians were given more political fodder. The second public referendum greatly challenged the legitimacy of the Frente Amplio politicians who had to push through an interpretative law to avoid international condemnation. The upward trend of dealing with the past came to an abrupt end in 2013. The relegation of Judge Mota demonstrated that the Supreme Court was not interested in promoting the investigation and punishment of human rights violators, nor was the Supreme Court keen on observing to international law. This stance was reinforced by the court's unexplainable decision to declare Law N° 18.831 unconstitutional. The justice cascade was successful in other countries such as Argentina and Chile, yet due to the Uruguayan SCJ, an era characterized for its adherence to human rights norms had come to a sudden end. This decision signified an end of a period dedicated to the gradual yet timid attempts to fully resolve outstanding human rights cases.

Chapter 4.

Conclusion

The central conundrum in Uruguay has been the nation's inability to achieve a lasting reconciliation. There are still divisive sides with quite contrary views on what justice entails, and neither are willing to compromise. Is reconciliation ever possible and why has it been so difficult? Observing nearby countries and their attempts at reconciliation raises the question as to why it was possible there, and not in Uruguay.

Uruguay shares many historic commonalities with the other Southern Cone nations. Chile and Uruguay both experienced a pacted transition between the outgoing military and representatives of the main political parties. Similar with Argentina, the two nations faced resistance from the military compelling legislators to eventually decide to pass amnesties which, in turn, pacified the rebellious factions of the armed forces. The easterly neighbor also had a strong presidential figure that interfered in judicial matters. Both saw the struggle to attain justice for human rights violations cumulate in the elimination of the amnesty laws. Although all three experienced the politicization of human rights abuses, Uruguay took a different path on how it tried to resolve the abuses of the past. This was through the use of public referendums. Both absent in the Uruguayan context were the number of disappearances and international pressure. The most striking difference, though, is how justice on a national level was unachievable and also despite an upsurge in human rights endeavors, both justice and truth were never fully realized. If unimpeded, would Uruguay have followed in the footsteps of Argentina and Chile or would it have taken a different direction? This case provides one of the few instances where a complete reconciliation has been prolonged. It also is important because few countries manage to repeal an amnesty after almost thirty years and even fewer have had all attempts for justice closed shortly thereafter.

Due to its singularity, Uruguay does not fit the mold of transitional justice and the justice cascade. It is not that these terms need to be rethought, nor do they lack value, but rather the events in Uruguay have shown to be unique in how South American nations have confronted their authoritarian past; consequently the concepts both break down in the Uruguayan context. As transitional justice prescribes, truth and justice were not accomplished. Although there was an incremental increase in human rights procedures and efforts to reconcile as describes the justice cascade, retributive justice was obstructed. This act left the theory unable to account for what had occurred. Even though the justice cascade disintegrated domestically, it continues in the region. This international dimension exemplified by the trials of Operation Condor, has maintained Uruguay in the struggle for retributive justice.

Over the years, the process towards reconciliation has been greatly complicated by the overarching role of the executive, an objective-driven civil society, and politicization of human rights violations. The inflated role of the president greatly benefited his personal political interests, even at the expense of a Supreme Court who was originally willing to investigate human rights violations. When the presidency was finally attained by the leftist coalition, the presidents were stuck between enacting policies to bring closure to the victims, while at the same time feeling obliged to appease the armed forces. It is interesting to note that the first presidents after the transition to democracy in 1985, with the backing of the military, were able to make their decisions with unanimous approval from their constituency, whereas, the two FA presidents have successfully earned the support of the people and felt compelled to govern for the people. The civil society, although crucial for progress in regards to human rights, had complicated the task of the Frente Amplio politicians when they were confronted with the elimination of the amnesty law. Should they have not placed so much emphasis on the law, and found other ways to seek retributive justice?²⁷⁰ Should they have attempted to seek a more feasible approach instead of advocating and insisting on attaining a maximalist approach of justice? Their greatest adversary was not the law, but rather how human rights violations had become politicized and turned into an issue that appeared in the legislative palace and debated along party-lines. As elucidated in the 2011 debate,

²⁷⁰ This was the route to justice undertaken in Chile.

the topic of victims was not even discussed, indicating how distant from the people the interpretative law had become and at the same time how impunity had long become embedded in the culture. If human rights truly have become another political topic, it will be curious to observe how the Frente Amplio will try to maintain its majority in Uruguayan politics in the 2014 elections, despite possibly having placed their party in jeopardy after the passage of the contentious interpretative law.

Despite the closure in domestic courts, the Operation Condor trials have ensured that human rights cases carry on. With so many Uruguayans who were kidnapped and disappeared in Argentina, it makes sense that trials are now held in Buenos Aires. This begs the question, who are guilty of the crimes? The courts may declare that certain Argentine officers are culpable, yet what will become of the Uruguayan officers who participated in the kidnappings and eventual prisoner transfers to their easterly neighbor? Despite the numerous questions, I feel that these trials are important because they are boldly addressing cases that the Uruguayan courts had failed to investigate. With so many attempts at justice in Uruguay, I am doubtful as to whether many more initiatives will commence domestically or how many more are needed. Any further domestic effort will result in the opposition again accusing the participants of vengeance. A question that is yet to be answered is if the Supreme Court of Justice will obstruct any of the few investigations still pending. I think that because of the politicization of human rights and the historical president's role over the judicial, the Supreme Court appears to be reasserting itself in Uruguayan politics.

Is an absolute reconciliation ever possible? I believe that it is, however it is exceedingly difficult. This difficulty arises from the fact that both sides have to mutually reconcile and compromise on their firmly-held positions. For reconciliation to occur, each country must have a distinct turning point in which the "savior-like" leader or previous-ruling institution is discredited. This, in turn, loosens the armed forces' grip on the political institutions. Chile's was when Pinochet was found guilty of tax evasion. Previously, he was still known as the savior of the country and was still highly esteemed by almost 30% of the population. His conviction was a huge blow for his followers, many of whom had deemed the trials a settling of scores. Though Pinochet passed away before ever serving jail time, he died a disgraced dictator, not an esteemed leader, forever changing the "official" course of Chilean history. Argentina's moment was

initiated by the arrest of General Videla in 2001. Although the nation's amnesties and pardons were still in force, the general was found guilty of kidnapping children [*el robo de bebés*], a crime against humanity. This transforming moment turned the tides in Argentina and under Kirchner, led to the elimination of all impediments previously hindering human rights cases in the tribunals. Though these two nations have made great strides, one might point out that they are still wrestling with the horrors of their past. Though nothing may ever be completely resolved, their leaders, politicians and judiciary are committed to addressing past wrongs.

Uruguay, on the other hand, has not experienced a water-shed moment. The military has never been fully discredited, but rather officers involved during the dictatorship were promoted.²⁷¹ The genuine water-shed moment is what Uruguay is missing. Many instances have shown the military guilty of many human rights abuses, and former leaders have even been convicted in court, yet a segment of society²⁷² still believes that it was a legitimate war fought between two sides and that the Uruguayan armed forces had prevailed victorious. Until the official account changes and the nation makes amends with the past, Uruguay will continue to live within a paradigm established by perpetrators of human rights abuses and a government enshrined by impunity. Until the nation addresses the underlying issues of justice and grants access to the courts, Uruguay will not be able to achieve a full reconciliation.

²⁷¹ Nadia Fink e Ignacio Portela, "Entrevista con Eduardo Galeano," *Sudestada*, July 2011, 13.

²⁷² Former President Batlle, members of the Colorado and Nacional parties and the Uruguayan armed forces among others.

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