

The punishment of human rights violators and “victim-centered” transitional justice: Lessons from Latin America¹

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1. Introduction

Transitional justice (also referred to herein as TJ) refers to a set of judicial and non-judicial measures to deal with the legacies of massive human rights abuses committed during armed conflict or under state repression. World interest in transitional justice continues to grow, with a large number of cases amassed to date in which some mechanisms of TJ have been applied at local, national, or supranational levels.

Not only has the number of cases increased steadily over time, but the repertoire of measures used in the name of TJ has also expanded. Initially, when it was introduced in its modern form in Latin America in the 1980s, it almost exclusively related to criminal prosecutions, as well as truth commissions that were established for multiple purposes². To these basic measures were added others at later stages, including lustration, reparations, state apology, commemorative projects (memory sites, commemorative events, etc.), local efforts of commemoration and/or reconciliation, as well as reforms of the security forces and other institutions.

As expressed in reports of the UN Secretary General to the Security Council (United Nations 2004; United Nations 2011) and the resolution by the General Assembly of December 16, 2005 (UN 2005), TJ is recognized by the international community today as an indispensable mechanism for countries emerging from dictatorship or internal armed conflict. These UN documents support all of the above-mentioned components of the TJ package, a position shared by major international human rights organizations. In practice, too, international organizations and “Western” governments have both recommended and promoted these measures for emerging democracies, post-conflict countries, and even countries with on-going conflicts, although with considerable inconsistencies, especially in the cases of governments.

However, TJ has its critics, and has received strong criticism, especially with regard to the punishment of perpetrators of human rights violations³. Indeed, it appears that while proponents of criminal prosecution in TJ were dominant until

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² “Truth commissions” are typically established after massive human rights violations to investigate their causes and circumstances. Their objectives may include fact-finding, the presentation of lessons for society, national reconciliation, reconciliation between perpetrators and victims, catharsis for the victims who testify before them, and provision of a measure of accountability for the abusers.

³ In this article, the term “human rights violations” refers to violations of the rights to life, physical integrity, and freedom, especially extrajudicial executions, disappearance,

the 1990s, its opponents are increasingly on the offensive from around 2000 to the present. Opponents of the punishment of human rights abusers base their arguments on many grounds, among which is the idea that criminal justice does not represent a “victim-centered” approach. According to this argument, criminal prosecutions are an imposition of the “international community,” which ignores the fact that victims have more important needs than the punishment of perpetrators. The current article aims to refute this argument in part, by showing that in Latin America, the victims themselves sought the punishment of human rights violators, which was then effected through the struggles of those victims and their predominantly domestic supporters⁴.

The following section reviews the various critiques of the criminal justice component of TJ. The third section analyzes the circumstances that explain why such positions have gained strength in recent years. The fourth section presents a succinct overview of Latin America’s TJ, and the fifth singles out particular features of the Latin American experience relevant to the subject of this article. The concluding section briefly refers to the applicability of the “victim-centered” argument in areas beyond Latin America.

2. Criticism of the Punishment of Human Rights Violators

The following arguments have been adduced as critiques of the punishment of human rights violators⁵.

1) First, some argue that criminal prosecutions are an arbitrary and imperialist or colonialist imposition of the “Western” powers (the “imposition argument”)⁶. In fact, there are pressures from international organizations and “Western” governments to ensure accountability for human rights violations, and the recommended measures most often include criminal prosecution of perpetrators. The fact that the International Criminal Court (ICC) has to date only conducted formal investigations on situations on the African continent add to the charge that the entire effort related to the punishment of human rights violators is an arbitrary imposition, targeting the countries most vulnerable to international pressures⁷. Criminal prosecutions of human rights violators are almost always presented as a “top-down” formula, with little suggestion that it may be a bottom-up demand originating from the victims themselves (e.g., Lundy and McGovern 2008:266-267).

Coupled with the “imposition argument” is the assertion that preference and

torture, and arbitrary detention. Although human rights violations under international human rights law include only those acts perpetrated by state agents, here they will also refer to the acts of non-state actors in breach of international humanitarian law.

⁴ In this article, the term “victims” refers to those directly affected in their physical integrity and freedom, *as well as* their family members.

⁵ This subject was treated in an earlier article, portions of which are incorporated here (Ohgushi 1999:142-143). The author’s earlier analysis on opposition to the punishment of perpetrators was based on the following sources: Siegel 1998:438-446; Huntington 1991:213-214; Hampson 1995:9-10; Huyse 1995:54-64; Teitel 1995:146-153; Kritz 1995: xxi-xxvi; Henkin 1995:185-187; Malamud-Goti 1990:1-16; Malamud-Goti 1996:4-27; Kaye 1997:696; Popkin and Roht-Arriaza 1995:82; Nino 1996. For further philosophical objections, see Osiel 2000.

⁶ This argument is forcefully made by Mahmood Mamdani, who criticizes international humanitarianism initiatives, including the International Criminal Court, as colonialist imposition of Western countries (Mamdani 2009; Mamdani 2009a).

⁷ This, despite the fact that five of the nine situations under investigation (those in

culture of the countries where TJ is applied should be respected. Correspondingly, some argue that the countries of Africa have indigenous cultures of forgiveness, rather than retribution⁸.

Some critics advance a highly ideological thesis that not only deems TJ to be an unjust imposition, but goes further to assert that it is part of a neocolonialist agenda of the industrialized countries to impose modernization based on a neoliberal model (Lundy and McGovern 2008:276-277).

2) Second, closely related to the “imposition argument,” is the “victim-centered argument,” which maintains that victims have more important needs than the punishment of perpetrators, and that the pursuit of the latter objective actually hinders the fulfillment of those more important needs (Hirsch 2010:150)⁹. Along these lines, it is argued that victims want reconciliation and reparations, rather than criminal prosecution¹⁰. Moreover, as argued by Tosa (2006:123), judicial intervention for retributive justice may mask issues of distributive justice.

International human rights organizations, though strongly opposed to impunity, do not consider that criminal justice alone is sufficient for the victims’ needs. For example, the International Center for Transitional Justice (ICTJ), which is the most important NGO dedicated to TJ, is explicit in its advocacy of multiple mechanisms. However, these organizations also promote criminal justice based on the conviction that in reality, impunity reigns at pernicious and unacceptable levels. On the other hand, critics not only argue for other TJ mechanisms, but also argue *against* criminal justice, based on the perception that criminal justice is accorded too much importance in practice.

3) Third, the punishment of perpetrators, it is argued, has not attained its stated goals, and may not be able to do so in the future, for different reasons. Some criticize criminal justice endeavors by pointing to the fact that actual international justice is distorted by donors’ interests and domestic politics (Shaw and Waldorf 2010). In fairness, international human rights NGOs do not endorse such distortion. On the contrary, they strongly criticize it, in their efforts to make actual international justice resemble the ideal state of rule of law to the greatest extent possible. The critics, however, discard retributive justice endeavors

Uganda, the Democratic Republic of the Congo, and Mali, and two situations of the Central African Republic) were referred to the Court by the respective states themselves and, in addition, President Alassane Ouattara of Côte d’Ivoire requested the assistance of the Court in order to ensure that the perpetrators of the crimes in his country would not go unpunished. See the web site of the ICC (<http://www.icc-cpi.int>, accessed October 26, 2014) for the situations under its investigation. The letter of Ouattara requesting the help of the Court is mentioned in note 14 of the “Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d’Ivoire,” issued by Pre-Trial Chamber III on October 3, 2011 (<http://www.icc-cpi.int/iccdocs/doc/doc1240553.pdf>, accessed on January 2, 2014).

⁸ In South Africa, the African value of ubuntu/reconciliation was juxtaposed with “Western” vengeance/retributive justice (Wilson 2001:11).

⁹ The same authors tend to subscribe simultaneously to the first and the second arguments of this section.

¹⁰ South Africa’s Truth and Reconciliation Commission, which granted perpetrators exemption from criminal prosecution in exchange for a full disclosure of truth, was hailed as a “victim-centered” approach. For a study that emphasizes the importance of reparations as the form of TJ more attuned to the needs and preference of the victims, see Laplante and Theidon (2007).

themselves, citing the distortion, the existence of which is recognized by the promoters of criminal justice as well.

Others argue that the punishment of perpetrators does not eradicate the “root causes” of conflict, as these “root causes” are found in the existing deplorable socioeconomic conditions. Critics tend to place blame on industrialized Western countries for these socioeconomic ills, either because of their promotion of neoliberal economy or because of their past colonial rule (e.g., Tosa 2006:128, 140). Critics also point to the failure of criminal justice to attain other stated goals, such as conflict prevention and reconciliation.

4) Fourth, a rather different line of argument asserts that criminal prosecutions of human rights violators are morally unjust in some way or other. For example, some caution that judicial proceedings of past human rights violations often violate rule of law principles (such as due process of law, prohibition of retroactive effect, guilty verdict with a sufficient level of evidentiary basis, respect for statutes of limitation, independence of judges), thereby degenerating into political persecution of opponents. Others argue that, in most cases, it is impossible to prosecute all of the perpetrators because they are too numerous, whereas selectively prosecuting only some of them contradicts the principle of equality before the law.

Some doubt that human rights violators deserve punishment. They may have been merely obeying orders, or they may have been convinced of the rightfulness of their acts at the time due to systematic indoctrination. From another perspective, human rights violations may have been committed to attain superior ends, such as neutralization of armed rebellion or national survival. In cases of highly institutionalized dictatorships, such as those in Eastern Europe and South Africa, their supporters and beneficiaries (including private companies profiting from Apartheid in South Africa) should bear part of the blame, and prosecuting the direct perpetrators as if only they were to blame does not give them fair treatment. Finally, an argument that has been strongly raised in recent times is that whereas in criminal justice there should be a clear distinction between perpetrators and victims, in the internal armed conflicts in poor and heavily unequal countries, all are victims and perpetrators to some extent, and criminal justice is not fit to deal with this type of situation (Arriaza and Roht-Arriaza 2008:153). Those who take an extreme position argue against any distinction between perpetrators and victims, proposing instead that all be called survivors (Mani 2002:119-123; Shaw and Waldorf 2010; Mamdani 2001:272-273).

5) A fifth critique argues that retributive justice hinders important objectives for the society other than (or at least not identical with) the objectives of TJ. Most significant of these critiques are the “peace vs. justice” thesis and the tradeoff between democracy and justice. That is, if there are possibilities of punishment, warring parties will not lay down their arms, and even if they do, prosecution efforts might reignite conflict. Likewise, if there are possibilities of punishment, dictators and military regimes will not exit from power, and even if they do, prosecution efforts might provoke regression, in such forms as coups d'état. Especially controversial was the ICC's indictment of leaders of Uganda's Lord Resistance Army (LRA), which seemingly made it difficult to reach a peace agreement with them. Besides implications for peace and democracy, some argue

that criminal prosecution raises obstacles to national reconciliation.

6) Sixth, pragmatic critics complain that criminal prosecutions are too costly, especially if they involve international justice efforts. Partly for this reason, since the 2000s, less costly hybrid courts have been preferred over the purely international courts. National courts are even less expensive. However, countries with a TJ agenda are generally so poor that even national prosecutions may be cost prohibitive. Of course, international aid is typically available, but it can be argued that such funds should be put to more useful purposes.

Even if the cost of prosecution is not deemed to be too high under ordinary circumstances, in TJ settings there are usually thousands of perpetrators. As the range of prosecution targets expands, the cost increases accordingly. Practical considerations not only concern money; in poor countries, especially those devastated by armed conflict, there may not be a sufficient number of lawyers to be judges, prosecutors, or defense counsel^{11,12}.

3. Context of Growing Critiques

The reasons for the rise of critiques of criminal prosecution of human rights violators are related to TJ's historical development.

First, the geographical focus has shifted over time. TJ in its modern form originated in Latin America in the 1980s, but has “traveled” to other geographical areas, especially to Sub-Saharan African countries. In those countries, states are often fragile, and peace is precariously maintained. Unlike in Latin America, conflicts there most often bear ethnic overtones and, as in the Rwandan case, massacres sometimes involve not only armed groups but ordinary people as perpetrators. In these difficult contexts, the “peace vs. justice” rationale gains in plausibility, and the more acute level of poverty makes the cost considerations more convincing. In other settings, such as South Africa and Eastern Europe, highly institutionalized repressive regimes persisted for decades, where many ordinary people were involved directly or indirectly in human rights violations. This circumstance lends strength to the voices that doubt the usefulness of distinguishing between perpetrators and victims, question the moral appropriateness of prosecuting only direct perpetrators while ignoring other types of responsibilities, and warn that criminal prosecution might hinder national reconciliation.

Second, the context in which TJ is applied has expanded and become more heterogeneous. TJ can be roughly divided into post-dictatorship and post-conflict types. The fact that TJ began to cover post-conflict situations gave rise to critiques of the punishment of human rights violators on the ground of a “peace

¹¹ The extreme case in this regard is Cambodia, where urban educated elites, including lawyers, were harshly repressed and eliminated during the Khmer Rouge rule. In Rwanda, after the 1994 genocide, more than 100,000 suspects were confined under deplorable conditions, waiting for years to appear before criminal proceedings. The Rwandan government finally gave up ordinary criminal justice and turned to gacaca, a customary dispute resolution mechanism modified for the purpose of handling genocide cases (Human Rights Watch 2011:13-14).

¹² It may be worth noting that the critiques described from 1) through 3) above, as well as the argument to deny the distinction between perpetrators and victims included in critique 4), are usually advanced by those with left-leaning or politically progressive orientation.

vs. justice” tradeoff.

Let us consider different types of TJ in more detail. The characterization of a country can be fit into one of the four boxes in Table 1, depending on the existence of internal armed conflict and the nature of political regime. TJ has been practiced and proposed in various settings, listed in Table 2.

Table 1. Types of Country Situations

		Existence of Internal Armed Conflict	
		No	Yes
Political Regime	Democracy	①	②
	Non-democracy	③	④

Source: Original to the Author.

Table 2. Types of Transitional Justice

<p>Basic Types:</p> <p>③→① = Post-dictatorship (non-conflict type)</p> <p>④→① = Post-conflict (double transition type)</p> <p>④→③ = Post-conflict (non-democracy type)</p> <p>Rare Types:</p> <p>②→① = Post-conflict (democracy type)</p> <p>④→② = Post-dictatorship (ongoing conflict type)</p> <p>①→① = Non-transition (ongoing democracy type)</p> <p>②→② = Non-transition (ongoing conflict type)</p> <p>③→③ = Non-transition (ongoing non-democracy type)</p> <p>④→④ = Non-transition (ongoing non-democracy/conflict type)</p>
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Source: Original to the Author.

TJ in the transition from ③ to ① in Table 1 is the typical post-dictatorship TJ, exemplified by Latin America’s early classic TJ in Argentina, Uruguay, and Chile.

Logically speaking, the typical post-conflict TJ equivalent to the typical post-dictatorship TJ may be the ②→① type but, in practice, there are not many examples of this, since most of the internal armed conflicts have occurred in non-democracies. The Northern Ireland case may be deemed one such rare example¹³.

¹³ This is so, to the extent that one can conceive of democracy that violates basic human rights. If we distinguish democracy from non-democracy based on the existence of free and fair elections, the United Kingdom is undoubtedly a democracy. However, in post-conflict situations where TJ came up on the agenda, there was almost always unlawful violence (i.e., breach of international humanitarian law) either directly perpetrated by state agents, or indirectly with their support. If a strict criterion is used, classifying regimes with free and fair elections but with considerable unlawful violence in the internal conflict as non-democracies, then ②→① TJ may become a null category. Of course, in the current practice of political science, we are not so strict in judging democracies. Few would classify the United States as a non-democracy because of the fact that it engaged in torture in the “war on terror” sanctioned at the highest level with impunity. As pointed out elsewhere (Ohgushi 2002:7-9), most definitions of democracy

More common is the ④→① type, where both conflict termination and democratic transition occur almost simultaneously. This type is classified as a post-conflict TJ, because challenges and issues of TJ in such situations are more similar to those of post-conflict TJ than to those of post-dictatorship TJ. In modern days, if the United Nations and other multilateral forces are involved in conflict resolution schemes, they demand that new regimes be based on popular will. This will bring about the ④→① double transition. However, democratic consolidation is not an easy task and, as we see in Rwanda and Cambodia, many emerging democracies have slipped into non-democracies (more properly, “competitive authoritarian” or “electoral authoritarian” regimes) that conduct periodic elections, but persecute the rulers’ opponents¹⁴. This means that what was initially started as ④→① TJ at some point converts to ④→③ TJ¹⁵.

There are other rarer types, one of which is ④→② TJ, where democratic transition takes place in the midst of an ongoing internal armed conflict. However, examples of this type are few. The reasons for the relative rarity may be found in the fact that non-democracies rarely become democracies amidst armed conflict, and that even if they do, TJ measures are often postponed until the end of the conflict. It may be useful to mention the cases of El Salvador and Guatemala, in which the military extricated themselves from government in the 1980s under the prodding of the U.S. government, with the purpose of facilitating counterinsurgency efforts. Although elections were held to choose a civilian president, these two countries could not be considered democracies, because of continuing human rights violations on a gross scale and the lack of civilian control. As these examples show, apparent democratic transition does occur in the midst of armed conflict, but the resulting regimes tend not to be democracies, but non-democracies with democratic facades.

Other rare types of TJ occur when there is no shift in situation categories in Table 1. For example, in Colombia, where the political regime is usually deemed democratic and a protracted armed conflict is ongoing, certain measures of transitional justice were introduced. This is ②→② TJ, and its nature is that of post-conflict TJ¹⁶. In Morocco, under King Mohammed VI who ascended to the throne in 1999, a truth commission was established in 2004 and a reparation program implemented (Hayner 2011:42-44). Although its political regime was somewhat liberalized under King Mohammed VI, Morocco is still a non-democracy (formally a constitutional monarchy), so its case represents the ③→③ (ongoing non-democracy) TJ type, and its nature is similar to the

as a regime type include respect for basic human rights, but in the regime classification practice, much more importance is attached to free and fair elections, and freedom is sometimes valued only in the context of competition for access to power, as exemplified in Robert Dahl’s concept of polyarchy.

¹⁴ For the concepts of competitive authoritarian regimes and electoral authoritarian regimes, see Levitsky and Way (2010) and Schedler ed. (2006), respectively.

¹⁵ Of course, the distinction between ④→① and ④→③ depends on the strictness of judgment of human rights violations in democracy, as noted above in n.13.

¹⁶ Again, observers may not reach the same conclusion. Although Colombia is usually considered to be a democracy, there has been a high level of unlawful violence inflicted not only by security forces but also by right-wing militias (*paramilitares*) with tacit support from security forces and politicians from the ruling party. Among the victims are hundreds of labor activists, peasant and community leaders, and innocent civilians who happened to live in the wrong place. With these facts in mind, one may well consider Colombia to be a non-democracy. If we do so, then Colombia’s TJ will be a ④→④ type.

post-dictatorship TJ family. The ①→① (ongoing democracy) and the ④→④ (ongoing non-democracy/conflict) TJ types have characteristics of either the post-dictatorship or post-conflict TJ family, depending on the type of the violations dealt with, that is, whether they occurred during an armed conflict or there was more or less one-sided state repression¹⁷.

Turning back to the historical development of TJ, apart from the series of international and domestic trials related to the Second World War, the only TJ experience until the 1980s was in Greece, Portugal, and Latin America, and all cases were of post-dictatorship type. The first serious efforts of post-conflict TJ only began with the end of the civil war in El Salvador in January 1992. In the post-dictatorship cases at the time, there was considerable debate around the supposed tradeoff between democratic consolidation and justice. However, in contrast with today’s “peace vs. justice” debate, most academics and practitioners (mostly lawyers) with interest in human rights issues demanded the punishment of perpetrators. Those who tried to curtail retributive justice in the name of the defense of democracy were politicians and ordinary citizens.

Post-dictatorship TJ continued to proliferate in the early 1990s with the decommunization of Central and Eastern Europe, but since then, post-conflict TJ began to predominate. Nowadays, even for ongoing conflict situations, TJ measures are incorporated into the conflict resolution scheme and post-conflict agenda.

In this way, TJ studies began to mingle with studies of conflict resolution and peacebuilding¹⁸. On one hand, this means that the significance of TJ has now been recognized in broader situations. On the other hand, the content of TJ began to shift, as recommended measures in post-conflict situations tend to de-emphasize the punishment of human rights violators in order not to hinder conflict resolution and provoke conflict renewal. Furthermore, as TJ was put on the agenda for ongoing conflict situations, TJ themes began to be taken up by conflict specialists and practitioners. In this way, opposition to punitive justice has grown in order to give priority to conflict resolution. Some argue that the TJ model that was formed in the context of democratic transition was not suited to the needs of post-conflict societies (e.g., Weinstein et al. 2010)¹⁹.

The third reason for the rise in opposition to criminal prosecution of human

¹⁷ In the case of a ①→① TJ type, by definition there has been neither dictatorship nor armed conflict. Therefore, this type of TJ deals with human rights violations on a limited scale, or structural violence embedded in formal democracy. Examples include the Greensboro Truth and Reconciliation Commission, established in 2004 to look into the 1979 attack on a peaceful march by racists in Greensboro, in the United States, and the truth commissions, reparations, and apologies with regard to Canada’s Indian Residential School policy to forcibly assimilate Aboriginal children (Hayner 2011:62, 72-73). However, the cases of “historical injustice” as exemplified by Canada’s Indian Residential School policy can be considered either as a ①→① TJ or a delayed ③→① TJ, depending on the conceptualization of democracy.

¹⁸ Some of the recent literature on TJ simply ignores post-dictatorship TJ types, and study TJ as if it were exclusively a post-conflict issue.

¹⁹ There are indeed different needs for different circumstances and, therefore, the appropriate solutions are different for each situation. However, sometimes unwarranted conclusions are drawn from the distinction between the post-dictatorship and post-conflict contexts, as shown in another paper by the current author (Ohgushi in press).

rights violators relates to the fact that since the 1990s, international organizations and “Western” industrialized countries (i.e., West European and North American countries) began to promote transitional justice. With TJ experiences already accumulated, an established menu of TJ mechanisms, including criminal prosecution, has been proposed and promoted by the “international community” to newly emerging democracies and post-conflict societies. This trend has given rise to the perception that TJ is a unilateral imposition from the outside; consequently, there is growing demand among researchers and practitioners for “bottom-up” TJ that reflects the needs of the people on the ground, as opposed to “formal” TJ “from above” and “from outside,” such as criminal prosecutions (e.g., McEvoy and McGregor 2008).

Fourth, the pool of TJ experts has expanded. The first to delve into TJ issues were often international law experts and lawyers, who tended to emphasize the state obligation under international law to punish the perpetrators of crimes against humanity. In the years that followed, experts with different backgrounds swelled the ranks of TJ experts, including political scientists, sociologists, historians, anthropologists, conflict researchers, philosophers, and theologians. Generally, the latter four have tended to be skeptical and sometimes opposed to the criminal justice component of TJ.

Narrowing in scope, the remaining sections of this article concentrate on critiques 1) and 2) as presented in Section 2, to argue their irrelevance, at least with regard to Latin America²⁰.

4. Development of TJ in Latin America

Latin America is the origin of TJ in its modern form. Of course, one can trace the beginnings of TJ to the series of trials related to WWII, starting with Nuremberg Tribunal, but these trials were not followed by others for several decades. In the 1970s, Greece and Portugal prosecuted the members of their deposed regimes, but these were isolated events with little international impact. Spain, which went through a slow transition from the Francoist dictatorship in the same period, chose not to look at its past²¹. Hence, it is safe to say that the

²⁰ Although other critiques are not treated here, brief comments may be useful. In Latin America, critiques 3) and 6) are less common. Critique 4) is also rare, except when defense lawyers, supporters, and sympathizers of perpetrators justify their acts. The rareness of critique 4) may be attributable to the fact that dictatorships and conflicts are relatively short and recent in Latin America, so that evidence is relatively easy to get; prosecution targets are relatively clear and circumscribed to military personnel, police officers, and their collaborators; and sufficient numbers of competent lawyers are available. The problem in Latin America was not the possibility of unjust treatment of the perpetrators, but the reality of unjust impunity reflecting the de facto power that the armed forces retained. The absence of critique 6) may be due to the fact that in Latin America, prosecutions are conducted in domestic courts, which are less costly; that the level of economic development in Latin American countries is in general much higher than those of Sub-Saharan Africa; and that prosecution targets are relatively limited (and only a limited number of those potentially prosecutable are actually brought before the court). The absence of critique 3), especially the “root cause” argument, may be explained partly by the fact that the leftist forces, who may be those who are most likely to subscribe to this line of argument, were themselves victims under anticommunist dictatorships and, therefore, they are usually active advocates of retributive justice. Of course, socioeconomic transformation is a, if not *the*, *raison d'être* of the left, but it simply does not occur to its members that for socioeconomic transformation it is necessary to renounce their struggle to obtain justice for the acts of perpetrators who tortured them and murdered their friends and relatives.

²¹ However, since the turn of the century, there has been a surge of demand to deal with

Latin American experience, more specifically Argentina’s in 1983, initiated the *current* series of TJ experiences worldwide.

Principal facts relating to TJ in Latin America are summarized in Appendix 1. This section provides a brief overview of the Argentinian and Uruguayan cases to illustrate the main argument of this article²².

In contrast with other countries of the region, Argentina’s military dictatorship (1976-1983) collapsed amid economic crisis and the fiasco of the Falkland/Malvinas War, without the capacity of negotiation and compromise with democratizing forces. In this way, the initial correlation of forces was relatively favorable to the advocates of TJ.

In this historical context, the Alfonsín government (1983-1989) established a truth commission on disappearance²³, annulled an amnesty law promulgated by the military regime just before its departure, and prosecuted its few top leaders. This trial of former junta members was an unprecedented, epoch-making event in the Latin American context.

At the same time, the Alfonsín government did not intend to prosecute perpetrators other than those top officials. Contrary to its intention, however, the victims and their supporters filed more than 2,000 criminal complaints. Alfonsín, concerned about growing discontent in the barracks, enacted the Full Stop Law (*Ley de Punto Final*) in December 1986, which prohibited prosecution of those perpetrators not prosecuted within 60 days of the promulgation of the law. Judicial authorities were cooperative with the victims, and accelerated their work during the holiday season. In the end, hundreds of military personnel were indicted.

In April 1987, middle-level army officers and NCOs revolted, fulfilling Alfonsín’s fears. Two months later, Alfonsín enacted another amnesty law, the Due Obedience Law (*Ley de Obediencia Debida*), which exonerated from criminal accountability most of the military and police personnel on the assumption that they were obliged to obey their superiors’ orders.

In 1988, the Argentines saw two more army revolts, and Carlos Menem, who assumed the presidency in July 1989, pardoned perpetrators who were on trial in October 1989. In December 1990, after the fourth army revolt, Menem pardoned those generals and admirals who were condemned in 1985 and serving their jail sentences. Thus, the entire drama appeared to end with complete impunity²⁴.

past human rights violations in Spain. The Law of Historical Memory was passed in 2007, restitution of the honor of victims and reparation programs were started, and there were even attempts at prosecution of perpetrators (Tamarit Sumalla 2011).

²² This section incorporates portions of earlier articles by the present author: Ohgushi (1999) and Ohgushi (2010:7-14).

²³ The final report of this commission, entitled *Nunca más* (Never Again) made a huge impact, domestically and internationally. The phrase “*nunca más*” was widely used in other Latin American countries, as well.

²⁴ For the development up to 1998, see Brysk 1994:68-72, 75-84; Acuña and Smulovitz 1997:103-111; McSherry 1997:204-242; Nino 1996:67-104; Nino 1991; Garro 1993:9-23; Americas Watch 1991; Perelli 1992:430-451; Norden: chapter 4; Argentina 1986; Argentina 1987.

The victims did not give up hope, however. A new development was seen, beginning in 1998. During the era of military government, the military would take away infants accompanying their mothers into detention center and babies born from pregnant mothers in prison, to give them up for adoption to families related to the government, mostly military families. The birth mothers were then killed in detention, their bodies disposed of in secret. It is estimated that hundreds of infants and babies were thus appropriated. Grandmothers of the Plaza de Mayo, who were searching for their missing grandchildren, filed suit to demand accountability of those responsible for the theft of the children. In 1998, this action resulted in the detention of several military officers, including ex-President Jorge Rafael Videla and ex-Junta member Admiral Emilio Massera, who had been pardoned by Menem in 1990. This was possible because the theft of children was not covered by the two amnesty laws, and because disappearance was considered to be a permanent crime (meaning that the crime is ongoing until the body is discovered), and thus was not affected by the statute of limitations, which was a novel interpretation at the time.

Moreover, in 2003, with Néstor Kirchner as President, who was supportive of the human rights movement, Congress declared the two amnesty laws to be null (Law 25779). Lower level courts also began declaring the laws null, culminating in the 2005 Supreme Court decision that determined that these amnesty laws were unconstitutional and therefore null, that is, they lacked legal effect (Bakker 2005). These developments led to the reopening of cases protected to date by the amnesty laws. According to Center for Legal and Social Studies (CELS), an Argentine human rights NGO, as of August 2014, 2,541 persons, mostly military and police personnel, have been indicted by prosecutors for the crimes against humanity since the annulment of the amnesty laws. Of those, 503 received a guilty sentence, while 42 were acquitted²⁵.

With regard to those pardoned by Menem, estimated to be some 1,200 (*Clarín* 2006), various courts in Argentina began to declare the pardons unconstitutional on an individual basis from 2004, resulting in re-detention of the perpetrators and reopening of the cases (Human Rights Watch 2004; *Clarín* 2005; *Diario Judicial* 2005). The Supreme Court issued its first historic sentence in 2007, annulling one of Menem’s pardons, in which it declared that pardons for crimes against humanity violate the constitution and international law (*Clarín* 2007).

In neighboring Uruguay, transition from military rule took place in 1985 as a result of the negotiation between the military government and political parties. It is believed that the impunity of the human rights violators was conceded at least implicitly during the negotiation. However, victims and their supporters gave no regard to this agreement, and filed criminal complaints against military officers. Fearing an outburst of military discontent, the Sanguinetti government enacted the 1986 Law on the Expiry of the Punitive Claims of the State (*Ley de Caducidad de la Pretensión Punitiva del Estado*). Victims, social movement organizations, and political parties of the left immediately began to collect signatures for a referendum to annul the law. Despite the government’s efforts to put obstacles before the signature drive, the promoters of the referendum secured signatures of 25% of the registered voters, which was the minimum required to

²⁵ <http://www.cels.org.ar/blogs/estadisticas/>. Accessed on October 26, 2014.

realize the referendum. However, the referendum was narrowly defeated; consequently, the law remained in effect. The majority of the voters chose to accept impunity in exchange of the preservation of the newly recovered democratic regime²⁶.

In Uruguay, too, this defeat did not put a full stop to the issue of impunity. The Expiry Law gave certain discretionary power to the Executive. When Tabaré Vázquez of the Broad Front (Frente Amplio), a center-left coalition, assumed the presidency in March 2005, he began to change course, albeit very cautiously. Thus, he permitted prosecutions of certain cases, such as the assassination of Uruguayan citizens consummated on Argentine soil under the framework of the notorious Condor Operation, a network of mutual collaboration established by South American anticommunist dictatorships to repress their adversaries (Amnesty International 2006; Uchida 2007). As a result, important figures were detained, prosecuted, and ultimately condemned, including General Gregorio Alvarez, a former Commander-in-Chief of the army and a former President of the military government (*Últimas Noticias* 2007).

The Expiry Law itself has remained the object of a tug of war. Victims and social organizations once more attempted a referendum. It was held in October 2009, and again, narrowly defeated (*La República* 2009a; *El País* 2009a; *Últimas Noticias* 2009; *Clarín* 2009). In the same month, however, the Supreme Court ruled that the Expiry Law was unconstitutional (*El País* 2009; *La República* 2009). Then, in February 2011, the Inter-American Court of Human Rights declared that the Expiry Law contravenes the American Convention on Human Rights, and thus has no legal effect²⁷. In October 2011, the Congress passed Law 18831, which reestablished the punitive faculty to the state regarding the crimes committed as part of state terrorism, and denied the prescription of those crimes (*International Justice Tribune* 2011; Uruguay 2011). Then in February 2013, in another twist, the Supreme Court declared part of the Law 18831 to be unconstitutional, conceding prescription to the crimes (*LaRed21* 2013).

5. Features of TJ in Latin America

There are several features that deserve to be mentioned in connection with the subject of this article. First, with some exceptions, most notably in El Salvador, there was little involvement of the “international community” in TJ of Latin America. The TJ of this region was the result of domestic efforts and political dynamics.

To be sure, there was assistance from the outside. In the 1980s, international human rights NGOs, foreign foundations, and civil society organizations supplied assistance to Latin American victims and human rights NGOs that

²⁶ For the developments up to the 1990s, see Brito 1997: chapters 3 and 5; Stepan 1988: 70-71; Goldman and Brown 1989; Uchida 2002:52-56.

²⁷ The sentence in the case of *Gelman v. Uruguay* (Inter-American Court of Human Rights 2011), 232nd paragraph, states, “[g]iven its express incompatibility with the American Convention, the provisions of the Expiry Law that impede the investigation and punishment of serious violations of human rights have no legal effect and, therefore, can not continue to obstruct the investigation of the facts of this case and the identification and punishment of those responsible, nor can they have the same or similar impact on other cases of serious violations of human rights enshrined in the American Convention that may have occurred in Uruguay.” The sentence was communicated to Uruguay in March 2011 (CEJIL 2011).

provided crucial support to the victims. Later, in the 1990s, international organizations and foreign governments began to finance TJ measures and human rights NGOs’ projects. However, the important point here is that TJ was never an imposition from outside entities or influences; it was promoted vigorously by domestic forces.

Second, among the domestic actors, victims’ and their supporters’ pressures were the most important influences. Supporters of the victims, including human rights NGOs, lawyers, journalists, and religious workers, were relatively few in number, but committed to the human rights cause. The importance of domestic human rights NGOs should be emphasized in particular, since their importance is usually downplayed in the literature²⁸. International human rights NGOs are part of the supporter network, but domestic supporters have been substantially more important in moving Latin American TJ forward. Thus, in this region, TJ measures were achieved by “bottom-up,” “victim-centered,” and persevering domestic struggle that, so-to-speak, stood before a heavy door of impunity, pushing it, slowly and with difficulty, half-open²⁹.

Even today, only a small fraction of the perpetrators have been punished; in most countries, none or very few were successfully prosecuted. In comparative terms, however, Latin America’s record of criminal prosecutions is remarkable. At least in some countries, a considerable number of perpetrators, most of them military and police officers, have been prosecuted and found guilty. In addition to the Argentine and Uruguayan cases mentioned in the previous section, Chile is one of the leading countries in this regard. As of September 2013, Chilean courts have condemned 355 perpetrators, 262 of whom have received a final sentence (Human Rights Watch 2014:227). These achievements were unimaginable in the early 1980s, when Latin American countries started their democratization.

A third point to be emphasized here is that the punishment of perpetrators was not brought about solely by the struggle of the victims and their supporters; it was made possible by a shift in environmental factors. First, the passage of time itself weakened initial fears about the possible repercussions of such initiatives. When democracy was recently achieved, there was fear that it might collapse and turn back to dictatorship. After all, the armed forces were there, armed with the same weapons as before. Similarly, immediately after the civil war ended, there was fear that conflict might reignite. However, such fears were lessened with the passage of time. Second, in some countries, the change of government into the hands of those favorable to TJ was an important turning point, which moved forward the stagnating TJ experience. Such governments included those of Néstor Kirchner (2003-2007) and Cristina Fernández de Kirchner (2007-) in Argentina, Tabaré Vázquez (2005-2010) and José Mujica (2010-) in Uruguay, and Valentín Paniagua (2000-2001) and Alejandro Toledo (2001-2006) in Peru. Third,

²⁸ As an example of Latin American human rights NGOs and human rights movements, see the Peruvian case in Ohgushi (2005) and Ohgushi (2008). Latin American human rights NGOs are mostly funded by foreign donors, in particular, European NGOs and North American foundations, and more recently, European and North American governmental agencies and the EU. In this sense, international contribution was quite important.

²⁹ It would be ironic if the victims pushed through the door of impunity only to be told that they were carrying out an imperialist design imposed by the United States and other Western governments, since most of the human rights violations were committed by anticommunist dictatorships supported by the U.S. government.

partially reflecting the political change mentioned above, judicial courts of those countries started to apply interpretive standards favorable to the punishment of human rights violators^{30,31}.

With regard to the second and third features mentioned above, it is important to emphasize that the recent achievements of TJ in Latin America were the result of a long and tenacious struggle by the victims and their supporters. Samuel P. Huntington, in his famous book *The Third Wave* (1991), argued that “[i]n new democratic regimes, justice comes quickly or it does not come at all.” This is because, according to him, “[j]ustice was a function of political power.” With the passage of time, the “popular support and indignation necessary to make justice a political reality fade; the discredited groups associated with the authoritarian regime reestablish their legitimacy and influence” (Huntington 1991:228). His prediction failed completely, for justice came slowly and after a long time had passed³².

Huntington was right to point out that justice was a function of political power. The problem is that he misread the power dynamics of TJ. First, at least in Latin America, the driving force of TJ was not the general public, as Huntington apparently supposed, but rather, the victims and their supporters, who were minorities in number. In contrast to the indignation of the general public, the strength of the victims’ demand for justice did not slack off with the passage of time. Second, it is true that in some countries, “the discredited groups associated with the authoritarian regime reestablish[ed] their legitimacy and influence” as Huntington predicted³³, but in most countries, the possibility of slipping back into dictatorships and civil wars diminished (or was perceived to have diminished), which lessened the fears about perpetrators’ punishment and truth recovery among the general public and politicians. Third, among the general public, the importance of the perpetrators’ punishment as a political issue generally diminished, whether in favor or against such measures. For example, the voters attached increasingly less importance to this issue at the time of elections. In this sense, the influence of the general public on TJ became more or less neutral. As a result, the punishment of human rights violators became an issue that was addressed with passion and keen interest by only particular groups, such as victims and their supporters on the one hand, and perpetrators

³⁰ Conversely, under the presidencies of Alan García (2006-2011) and Humala (2011-), the Peruvian prosecutors’ investigation stagnated and courts started to acquit the majority of the indicted perpetrators, often alleging that there was no evidentiary official documents. Personal interview with various staff members of human rights NGOs in Peru in August 2013.

³¹ Another peculiarity of Latin America’s TJ is the role played by the Inter-American Court of Human Rights. This court produced important jurisprudence, including the historic sentence in Peru’s Barrios Altos case in 2001 that stated that “all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible” and found that Peru’s amnesty laws were “incompatible with the American Convention on Human Rights and, consequently, lack legal effect” (Inter-American Court of Human Rights 2001). Whether and to what extent this and other progressive sentences have altered domestic jurisprudence and policies have depended much on domestic correlation of forces.

³² In fact, recent trends indicate that TJ and similar measures are increasingly on the agenda with regard to the events of decades ago, as in Spain. One may even think that “delayed justice” is the hallmark of our times, since we are witnessing a parallel movement for redress for “historical injustices,” such as slavery and colonialism. This may also indicate the difficulty of simply forgetting the past.

³³ Peru is a pertinent example where the *fujimorista* forces and their military allies resurrected from the debacle of 2000-2001.

and their supporters on the other³⁴. This situation constituted the background of TJ (or “post-transitional justice” if one prefers) in Latin America. When favorable conditions (particularly the coming into office of a political force sympathetic to TJ) were added to the relative irrelevance of the general public and the persistent pressure of victims and their supporters, TJ made significant advances.

A fourth important feature of Latin America’s TJ is that victims generally demanded justice and truth, that is, the punishment of perpetrators and the discovery of what happened to their loved ones (and the recovery of their remains in the case of disappearance)³⁵. This characteristic is particularly salient in South American countries, most notably in Argentina and Chile. “Reconciliation” is not rejected outright, but victims and their supporters assert that justice is a precondition of reconciliation. This assertion should not be taken to mean that the punishment of the perpetrators brings about reconciliation. Rather, it is a statement that refuses any reconciliation that entails impunity. In Argentina, victims simply did not want reconciliation. In that country, reconciliation was considered to be “a code word for those who wanted nothing done” (Hayner 2011:187-188). In Latin America in general, victims did not ask for reconciliation. Those who most eagerly insisted on “reconciliation” were the governments that put stability before justice and the perpetrators who wanted to use it as a convenient shield for impunity³⁶.

Until a certain point in time, reparation was not an issue for the victims, either. For example, when the La Cantuta massacre occurred in Peru in 1992 and the

³⁴ Perpetrators’ supporters include military and police personnel in general, conservative politicians, and conservative mass media.

³⁵ There are cases to which this general statement does not apply. For example, in the case of poor Andean peasants in Peru who bore the brunt of the internal armed conflict in the 1980s, their demand for retributive justice is not so strong. However, it may be misleading to attribute this fact entirely to a supposed cultural difference from the “Western” norm. For one thing, those peasants usually lack minimum economic and cultural resources to seek retributive justice. They simply do not have money to go to the cities where a court exists. Moreover, sometimes the complexities of judicial proceedings are beyond their understanding. In these cases, the practical impossibility of access to justice, which in itself represents a lack of effective citizenship, makes retributive justice almost an impossibility. In other cases, the community decided to permit the reintegration of ex-terrorists into their communities and the victims accepted it, though not necessarily forgiving them. There may be room to speculate whether the acceptance by the victims was wholly voluntary or they had to accept the decision of the community if they continued to live within it. In either case, the fact is that generally the demand of victims for retributive justice has been weak. Peasants’ priorities are reparations and the recovery of the remains of the disappeared. The present author’s understanding of the attitude of Peruvian poor peasants was greatly enriched by EPAF (2012) and an interview with Gisela Ortiz Perea on August 5, 2013, in Lima, Peru. Gisela Ortiz had lost her brother in the La Cantuta massacre, one of the most emblematic cases of state terrorism during the Fujimori presidency, and she has subsequently been the most visible figure in Peru in the victims’ movement for justice and truth. She now works for EPAF, a Peruvian NGO which has a memory project with remote Andean communities, and travels a lot to those communities. She reported in this interview that she rarely heard demand for punishment from people of peasant communities, in contrast to urban victims, including those from provincial cities.

³⁶ One of the recent critiques of retributive justice points out that although it is claimed that retributive justice contributes to reconciliation, this was not achieved in practice. It is useful to keep in mind that reconciliation is one of the rationales for retributive justice in the documents of international organizations, but it was never the reason for victims’ demand for justice in Latin America, as mentioned above. In any event, in the South American context, it would be naive to claim that non-punishment would contribute more to reconciliation, as far as the victims are considered to be among the parties to be reconciled.

family members began their struggle for truth and justice, they did not know they were entitled to reparation. It was only in 1997, on the occasion of the sentence of a military tribunal, that they became aware of their right to reparation³⁷. Elsewhere, victims angrily rejected reparation, considering it an immoral attempt to buy justice for the dead in exchange for money³⁸, a tendency that is more common in relatively well-to-do nations, such as Argentina. In contrast, Peru’s rural peasants in extreme poverty are mostly interested in material improvement and the recovery of missing bodies (Laplante and Theidon 2007; EPAF 2012; Escobar 2012:18)³⁹. As a whole, today’s victims consider that they have the right to reparation and they do seek it as part of their demands, including monetary compensation. Generally speaking, however, in the case of the victims who pioneered the victims’ movements and have been their most active members, their principal demands have been truth and justice, not reparations⁴⁰.

6. Conclusion

This article showed that victims and their supporters in Latin America have, in the past, demanded the punishment of the perpetrators of human rights violations in most cases, and that such demand was spontaneous and local, rather than internationally induced. This means that, in Latin America, contrary to recent critiques of retributive justice, this was precisely the “bottom-up” and “victim-centered” demand.

The current article cannot address cases beyond Latin America in any detail, but broad-sweeping critiques of criminal prosecutions based on supposedly “victim-centered” grounds seem to be problematic on several grounds.

First, there are cases outside of Latin America in which victims seem to demand the punishment of the perpetrators. Of course, it is not an easy task to know their preferences with certainty. Recently, there have been efforts to survey the opinions of local people, including victims, about TJ. Unfortunately, victims are not always clearly differentiated from the non-victim local population in these surveys. This may result partly from the infeasibility of such a distinction, but it may also result from the research design of such efforts, which reflects the researchers’ lack of interest in separating victims from non-victims. Even when the victims are clearly identified, however, and notwithstanding the real value of

³⁷ Email communication with the author by Gisela Ortiz Perea on September 26, 2011.

³⁸ A parallel situation can be seen in the initial opposition in Israel to West Germany’s offer of monetary reparations after the Holocaust. See Hecker (2013:194-196).

³⁹ In Peru, the Truth and Reconciliation Commission was established in 2001. There was widespread expectation among peasant communities that testimony before the Commission would lead to reparation. Although the Commission recommended an integral reparation program in its final report, the program was only partially and very slowly implemented. This fact caused, on one hand, widespread disillusion about anything related to truth and memory projects and, on the other, the growth of victims’ organizations whose principal demand is for reparations. Although the leaders of these organizations also demand the punishment of human rights violators, they do not necessarily reflect demands in the isolated communities, for these leaders usually come from provincial cities, and their organizations do not always reach into remote communities. Email communication with the author by Gisela Ortiz on September 28, 2011, and the author’s interview with her on August 5, 2013 in Lima, Peru.

⁴⁰ It is true that these members are mostly, but not exclusively, urban residents. However, not all urban victims adopted the same attitude. In Peru, there were urban victims who rarely participated in victims’ mobilizations and just made an appearance to receive the reparation when this was offered.

these surveys, their results should be taken with caution, since there are several obstacles to gauging the preference of the victims. First, for example, victims generally lack sufficient and detailed knowledge about TJ practice and its probable consequences; they might respond differently with that knowledge. Second, it is extremely difficult to use adequate random sampling, especially amid on-going conflicts. Third, victims may not confess their true preference, out of fear and lack of trust. And fourth, the preference is not static, but can change over time, so that one cannot take the preference of the victims at any point in time to be *the* preference of that group of victims (Hirsch 2010:164-165; Weinstein et al. 2010:46).

With these caveats in mind, one still has the impression from many survey results, case studies, and other fragmentary pieces of evidence that not a few victims outside Latin America demand retributive justice⁴¹. In South Africa, the victims who did not accept the scenario of forgiveness and reconciliation promoted by the Truth and Reconciliation Commission were harshly condemned by Desmond Tutu, the chair of the Commission (Wilson 2001:172). In the supposedly “victim-centered” South African TJ scheme, victims were deprived of even their moral right to object to the amnesty for the perpetrators.

Another serious problem with many of the critiques is that, when a dichotomy is used to distinguish “local people” from “Westerners,” and the respect for the preference, culture, and ownership of the local people is advocated, the great diversity of preference and interests among “local people” is too often concealed and ignored. Instead, the preference of the victims is subsumed into that of the “local people,” and the victims’ aspirations and expectations are made invisible as a result. Some authors deliberately deny the distinction between victims and perpetrators, and subsume victims’ interests under those of entire “survivors” (Ohgushi in press). In fact, it is frequent that the interests and aspirations of the victims differ from those of the majority in a country. As seen earlier, the majority in Uruguay opted for impunity in clear contradiction to the desire of the victims, subordinating the desire of victims for justice to the “national interest” of political stability. It should be noted that preferences and interests at the community level are not uniform, either.

As a matter of fact, in Latin America and elsewhere, the voices of the victims are quite diverse, and each individual may have a different opinion on the punishment of perpetrators. Even in Latin America, not all victims seek punishment, and among those who do ask for punishment, the intensity of that desire varies considerably. Although it can be argued with psychologist Brandon Hamber that “[j]ustice is an important and sometimes essential component of a victim’s recovery and psychological healing,” not every victim has the same needs and priorities. The aim of this article was not to claim that victims generally demand punishment, but rather, it was to caution against the unqualified assertion that the punishment of the perpetrators is not “victim-centered,” it cannot be so by its nature, and consequently it should be abandoned. Truly

⁴¹ Interestingly, Weinstein et al. (2010), which critiques the punishment of perpetrators, also presents survey data that suggest the existence of such demand (pp.39-41).

“victim-centered” TJ should be constructed not on the basis of crude dichotomies, but on the basis of realistic understanding of the diverse preference of the victims⁴².

⁴² Though this author attaches much importance to the preference of victims, it is not argued that it should always take precedence over other considerations. In particular, the short-term “peace vs. justice” trade-off can be a severe one. Although the danger is often exaggerated, and it is important to be reminded that such trade-off does not exist in the long run, it is reasonable to curb the punishment of perpetrators in order to preserve peace or democracy when the risk is too high. Other practical considerations, including economic costs, may limit the range of realistic alternatives in a given country. Neither is the author’s intention to advocate criminal prosecutions wherever they are possible. When the victims themselves do not desire punishment, it may be advisable to discard punishment as an option, as long as such decision better serves the interests of the nation.

Appendix 1: Principal Facts about Transitional Justice in Latin America

Country	Facts
Argentina Post-dictatorship ③→①	Democratic transition from military rule in 1983. Established National Commission on Disappearance (1983-1984), the final report of which, entitled <i>Nunca más</i> [Never Again], became a best-seller. New democratic government also prosecuted a few top leaders of the military regime, resulting in guilty sentences for five generals and admirals, including life sentences (1985). Other officers were also indicted, despite the government’s desire to limit prosecution. These measures provoked coup attempts by middle level officers and NCOs, leading to two amnesty laws (Full Stop Law in 1986 and Due Obedience Law in 1987), exonerating most of the perpetrators. Further coup attempts led to presidential pardons for those already condemned and those under judicial proceedings in 1989 and 1990, resulting in complete impunity. Since 1998, however, the top military leaders pardoned earlier were detained again, this time with the charge of thefts of infants of political prisoners, not covered by the two amnesty laws. These laws were annulled by the Congress in 2003, and then annulled by the Supreme Court in 2005. 1989-1990 presidential pardons were also declared legally null on an individual basis by the Supreme Court, beginning in July 2007. The annulment of amnesty laws led to the reopening of human rights trials. As of August 2014, 2,541 military and civilian personnel were criminally prosecuted for crimes against humanity, of whom 503 received a guilty sentence and 42 were absolved. Regarding reparations, since 1986, reparation programs have been implemented in different stages. A considerable number of sites of memory have been established. The date of the 1976 military coup is now a national holiday, the Day of Remembrance for Truth and Justice.

Note: What follows the name of the country is the type of TJ found there (see Table 1 and Table 2). In the case of non-transition TJ, the designation of “post-dictatorship” or “post-conflict” is given, depending on the concrete situation of the case.

Source: Author’s elaboration based on a variety of sources, including the documents and websites of human rights NGOs, secondary literature, digital newspapers, and official documents.

Appendix 1 (continued)

Country	Facts
Bolivia Post-dictatorship ③→①	After the transition from military rule in 1982, ex-President Luis García Meza (1981-1982) and his collaborators were prosecuted, and all of their guilty verdicts confirmed in 1993. A truth commission in 1982-1984 investigated the facts of the 1967-1982 period, but did not write up a final report. In 2012, a limited compensation program was started for the victims of political violence between 1964 and 1982.
Brazil Post-dictatorship ③→①	Transition from military rule in 1985. No prosecutions occurred, due to the 1979 amnesty law. In 2010, the Inter-American Court of Human Rights ruled that the law was against the American Convention on Human Rights and thus legally null, but Brazil’s Supreme Court ignored this sentence. Reparation programs have been implemented since the late 1990s, benefiting more than 12,000 people. In May 2012, a truth commission was established to investigate human rights violations during the 1946-1988 period.
Chile Post-dictatorship ③→①	Transition from military rule in 1990. Civilian governments respected the 1978 amnesty law, which pardoned all human rights violations up to March 1978 except the assassination of Orlando Letelier, a former Minister of the Allende government, and his assistant, committed in Washington, D.C. in 1976. Perpetrators of human rights crimes not protected by the amnesty law were prosecuted. The Truth and Reconciliation Commission (Rettig Commission) was established to investigate deaths and disappearance, submitting its final report in 1991. A reparation program was instituted in 1992. In 2003, a truth commission on detention and torture (Valech Commission) was established, which submitted its reports in 2004 and 2005. In 2010, the Valech Commission was reestablished to deal with newly reported cases of detention, torture, disappearance, etc., and submitted its report in August 2011. Criminal prosecutions were accelerated since the late 1990s, and as of September 2013, courts have condemned 355 perpetrators, 262 of whom have received a final sentence. The 1978 amnesty law was declared null in 2006 by the Inter-American Court of Human Rights, but Chile has not yet adjusted to this judgment. A series of sites of memory were established, including the Museum of Memory and Human Rights.

Appendix 1 (continued)

Country	Facts
Colombia Post-conflict ②→②	There is a protracted, ongoing internal armed conflict, now under peace negotiation. Leftist guerrillas, private militias (<i>paramilitares</i>) clandestinely supported by security forces, as well as security forces themselves, have committed widespread human rights violations. Some of the perpetrators have been prosecuted. In 2005, the Justice and Peace Law (Law 975) was enacted, offering a reduced sentence to illegal armed organizations (mostly targeting <i>paramilitares</i>) in exchange for demobilization, relinquishment of assets and other conditions. In April 2008, a reparation program was established by Decree 1290 for the victims of “illegal armed groups.” In June 2011, the “Victim’s Law” (Law 14489) was passed, stipulating economic reparation to the victims and restituting lands to displaced people. In June 2012, the Legal Framework for Peace constitutional amendment was passed by the Congress, allowing the Congress to select crimes and cases to be investigated.
Costa Rica	No important measures
Cuba	No important measures
Dominican Republic	No important measures
Ecuador Post-dictatorship ③→①	There were no TJ measures after the transition from military rule in 1979. A truth commission was active during 1996-1997 to investigate human rights violations during 1979-1996, but did not submit its report. Another truth commission was established in 2007 to investigate the 1984-2002 period, which submitted its report in June 2010. This was followed by the establishment of a special prosecutorial unit to investigate the cases documented by the truth commission, leading to the indictment of former state agents.
El Salvador Post-conflict ④→①	Civil war ended in 1992 through UN mediation. The peace agreement included a truth commission established by the United Nations, which submitted its report in 1993. Only a few days later, Congress passed a sweeping amnesty law. According to the peace agreement, the recommendations of the truth commission were obligatory. In reality, however, they were only partially implemented, after much international pressure. In 2012, the Inter-American Court of Human Rights ruled that the 1993 amnesty law contravenes the American Convention on Human Rights and therefore lacks legal effect.

Appendix 1 (continued)

Country	Facts
Guatemala Post-conflict ④→①	Civil war ended in 1996. Peace agreement established a truth commission, which submitted its report in 1999. Only a small number of perpetrators were prosecuted. A reparation program exists on paper but is not adequately funded. Since Claudia Paz y Paz assumed the position of Attorney General in 2010, she has invigorated prosecution of organized crime and past human rights violations. In May 2013, ex-President of the military government General Efraín Ríos Montt was convicted of genocide and crimes against humanity, but the Constitutional Court overturned the conviction, voiding all proceedings back to April of that year.
Haiti Post-dictatorship ③→③	A truth commission was established in 1995 to investigate the 1991-1994 dictatorship and submitted its report in 1996, but the report is generally considered inadequate. Some human rights violators of the dictatorship were prosecuted and found guilty.
Honduras Post-dictatorship ③→①	Transition from military rule in 1982. In 1994, the Human Rights Ombudsman presented a report on human rights violations during 1980-1993. After the civil-military coup in June 2009, which unseated the then President Manuel Zelaya, and the subsequent repression of Zelaya's supporters, a truth commission was established in May 2010 to investigate the events leading up to and following the 2009 coup. It submitted its report in July 2011.
Mexico Post-dictatorship ③→①	Transition from civilian authoritarian rule of the Institutional Revolutionary Party (PRI) in 2000. President Vicente Fox of the National Action Party (PAN), who promised to address human rights violations under PRI rule, established the Special Prosecutor for Social and Political Movements of the Past (FEMOSPP) in November 2001. However, this unit was dissolved in March 2007 without any tangible results, either in revealing the truth or in the punishment of perpetrators. In 2013, the General Victims' Law was promulgated to provide compensation and other benefits to the victims of crime and human rights violations.
Nicaragua Post-dictatorship ③→③	After the 1979 Sandinista Revolution, human rights violators of the previous Somoza regime were put on trial, but these trials were not considered to be fair, according to international standards. There was no TJ after the 1979-1990 internal armed conflict.

Appendix 1 (continued)

Country	Facts
Panama Post-dictatorship ③→①	Transition in 1989 from authoritarian rule in which the military dominated the country either directly or indirectly. A truth commission was established in 2001 to investigate the period of 1968-1989 and submitted its report in 2002. Some of the human rights violators were prosecuted and dozens were found guilty.
Paraguay Post-dictatorship ③→①	Transition from 35 years of authoritarian rule in 1989. Some high-level officers of the armed forces and police were purged, and some were prosecuted. A truth commission was established in 2003 to investigate human rights violations during 1954 and 1989 and submitted its report in 2008. There are several memorial sites, including the Museum of Memories, which was formerly a principal torture facility, and the Museum of Justice, which houses the so-called “Archives of Terror,” the original documentation on the victims of Operation Condor, a network of South American security services to eliminate political dissidents.
Peru Post-conflict ④→①	After the collapse of Alberto Fujimori’s authoritarian regime in 2000, those responsible for human rights violations during the internal armed conflict since 1980 were prosecuted. Fujimori issued two amnesty laws in 1995, but these were annulled by the Inter-American Court of Human Rights in 2001. Hundreds of military and police members were put under prosecutors’ investigation, and dozens were put on trial and found guilty, including ex-President Fujimori. However, under the presidency of Alan García Pérez (2006-2011), prosecutors’ investigation began to stagnate, charges were dropped, and courts began to acquit the accused alleging the lack of evidence. This tendency continues under the presidency of Ollanta Humala (2011-). The Truth and Reconciliation Commission, established in 2001, made a large effort at testimony collection and public hearings, and published its report in 2003. Although highly regarded internationally, this Commission came under harsh attack from domestic conservative forces, which regarded any mention of human rights violations by state agents as a signal of pro-terrorist bias. Based on the Commission’s recommendation, an integral reparation program was instituted, consisting of monetary compensation, health care and educational benefits, and so on. This program was implemented only partially and very slowly. Collective reparation to devastated communities began in 2007. Individual monetary compensation started in 2011, the sum of which is criticized by victims’ groups to be too small, and initially, only elderly people were selected to receive compensation. The Site of Memory, Tolerance and Social Inclusion (<i>Lugar de la Memoria, la Tolerancia y la Inclusión Social</i>), a national memorial museum, is being established as of 2014.

Appendix 1 (continued)

Country	Facts
Uruguay Post-dictatorship ③→①	<p>Transition from military-dominated dictatorship in 1985. A weak truth commission on disappearance was implemented in 1985. The new Sanguinetti government was reluctant to punish perpetrators, and promulgated an amnesty law called the Expiry Law in 1986. Victims and others were successful in materializing a referendum to abolish the law, but it was narrowly defeated in 1989 and the law remained in effect. The center-left government of Broad Front, which attained power in 2005, cautiously authorized prosecution of certain cases, using the power conferred on the Executive by the Expiry Law. As a result, a few human rights violators were condemned, including Gregorio Alvarez, a former army head and President of the military-dominated dictatorship, and Juan María Bordaberry, a civilian former President of the same dictatorial regime. In October 2009, a new referendum was held to annul the Expiry Law, but was again defeated. However, in the same month, the Supreme Court declared the Expiry Law to be unconstitutional. In February 2011, the Inter-American Court of Human Rights ruled that the Expiry Law violates the American Convention on Human Rights, and thus has no legal effect. In June of the same year, the government annulled its past administrative acts that applied the Expiry Law, opening the way for future prosecution. In October 2011, the Congress passed Law 18831, which reestablished the punitive faculty to the state for crimes committed as part of state terrorism, and denied the prescription of those crimes. In February 2013, the Supreme Court declared part of Law 18831 to be unconstitutional, which allowed the application of the statute of limitations to acts during the dictatorship.</p>
Venezuela Post-dictatorship ①→①?	<p>In 2011, the National Assembly passed the Law against Forgetting, which mandates the investigation and remembrance of politically-motivated state repression during the period of the Fourth Republic (1958-1998).</p>

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