Human Rights Violations in Argentina and Uruguay

A study with focus on the legal status of the amnesty laws.

Emilio Pereira Aldacor
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Abstract

This essay analyzes in a comparative manner, the cases of Argentina and Uruguay regarding the amnesty laws that both issued to members of the armed forces after the transition to democracy from the authoritarian regime, for violations of human rights committed during the military dictatorship. The research seeks to understand the causes that have made the amnesty law in Argentina from 1986 and 1987, together with the presidential pardoning of 1989 to be declared unconstitutional in 2005 and 2007 by the Argentinian Supreme Court, while the Uruguayan amnesty law issued in 1986 is at the time when this research was made still in force. The focus of this study relies on four main actors that have made an impact on this issue: the Executive; the Supreme Court; the Inter-American system of Human Rights; and the human rights movement.

Our research intakes a qualitative nature that is the most appropriate method for this kind of study.

A comparative methodology is developed studying the cases of Argentina and Uruguay in order to outline similarities and differences between them both, which let us see the different variables that both cases have in an effort to better understand the causes that led to different outcomes regarding the present legal status of the amnesty laws. This essay utilizes as its theoretical framework, theories of Transitional Justice and Human Rights from below, which are applied to the material presented in both cases.

In Argentina, the Supreme Court, the Executive, the human rights movement and the Inter-American system of Human Rights, have worked together in the last decade to abolish the amnesty laws and the pardoning in the country.

The Supreme Court in Uruguay acting against the Executive power in the last time is seen as a keen factor to why the amnesty law is still in force today. Here, the referendums in 1989 and 2009 supporting the further upholding of the law influenced the decision of the Supreme Court, and also made a negative impact in the human rights movement.

Nyckelord/Keywords

Argentina, Uruguay, human rights violations, military dictatorship, amnesty laws, Transitional Justice.
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1. Introduction

1.1 The Problem

Latin America suffered from a period of military authoritarianism that reigned over almost the entire region during the 1960’s and lasted until the late 1980’s; Argentina and Uruguay were no exceptions to this phenomenon. Violations of human rights (HR) were systematically committed in Argentina by state officials under the last military dictatorship period between 1976 to 1983, depending on different accounts leaving between 10.000 to 30.000 victims, or what popularly became known as the ”disappeared”\(^1\).

In comparison with Argentina, Uruguay ”only” accounted for 164 ”disappeared” during the authoritarian period, even though the military forces ruled over a longer period of time, between 1973 to 1985. Although, Uruguay had imprisoned over 10 percent of its population during this period, and many of them became victims of torture\(^2\). The strategies chosen by the military forces against their victims seem to have been different in these two countries, whereas in the case of Argentina the systematic murdering of its victims was the most used method, in the case of Uruguay the most recurring one used by the military was the massive imprisonment\(^3\).

When democracy returned in both countries, the legal prosecution of those who committed violations of HR during the authoritarian period resulted initially in trials against the head of the military in the case of Argentina. Although the initial success in prosecuting the junta leaders later on resulted in amnesty laws been issued in 1986 and 1987, and a presidential pardoning in 1989, due to the military acting threatening and leading to armed uprisings\(^4\).

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\(^2\) Skaar, Judicial Independence and Human Rights in Latin America, 5.


\(^4\) Skaar, Judicial Independence and Human Rights in Latin America, 49-53.
Later on the amnesty laws were to be declared unconstitutional by the Argentinian Congress in 2003\(^5\) and by the Supreme Court in 2005\(^6\).

In Uruguay, one year later after democracy returned to the country, an amnesty law was issued in 1986 by the Executive that is still in force today, ratified by two referendums in 1989 and 2009, which resulted in the upholding of the law by civil society at both occasions\(^7\). The Uruguayan phenomenon will be analyzed in a comparative manner to the Argentinian process, to be able to map the main reasons or causes that influenced the different outcomes regarding the legal status of the amnesty laws in both countries. Using a comparative methodology will let us analyze the variables that lead to such different outcomes\(^8\) in these two neighboring countries that share a similar historical and cultural heritage.

### 1.2 Research Objective and Questions

The main purpose of this essay is to understand the principal reasons to why the Uruguayan amnesty law *Ley De Caducidad* or Expiry Law is today still in force, as contrary to the Argentinian case where the amnesty law and the pardoning have been abolished for almost ten years by now\(^9\). We will present the similarities and differences in the Argentinian and the Uruguayan cases laying focus on the role of the following four actors: the human rights movement; the Executive; the Supreme Court; and the Inter-American system of Human Rights in each country. We will utilize a comparative methodology, and by doing this we seek to understand how the aforementioned actors operated and influenced the outcome regarding the present legal status of the amnesty laws in both countries. In the case of Argentina, the period we are covering is limited to the time when democracy returned to the country in 1983\(^10\) up to when the Supreme Court abolished the amnesty law in 2005\(^11\), together with the

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\(^6\) Ibid, 87.
\(^7\) Ibid, 137.
pardonning in 2007\textsuperscript{12}. The Uruguayan case will be limited to the time when in 1985 democracy came back to the country\textsuperscript{13}, until present time since the amnesty law is still in force. Even if our time span in this research is limited to the periods of democracy in both cases, we will give some background to relevant events and cases that took place during the military dictatorship such as the committed crimes against humanity. The main questions we want to seek answer for are:

-How have the four actors presented in this essay influenced the outcome regarding the present legal status of the amnesty laws in Argentina and Uruguay?

-Which are the similarities and differences between these two cases regarding the present legal status of the amnesty laws?

1.3 Methodology

1.3.1 Introduction

In this section we will make an introduction to the methodology that we will be using in this essay and its common features. The comparative method will be explained together with the Most Similar System Design, which will be the used method to compare our two cases in this essay, and how it is going to be implemented in our research.

1.3.2 Qualitative Methodology

The qualitative methodology that we are using in this essay is characterized to a greater extent to lay more focus on words rather than numbers, in contrast with the quantitative method that concentrates on the latter. The qualitative method seeks to comprehend the social world through the analysis on how the members of the context that is being studied understand it. It adopts a constructionist position, which suggests that social characteristics in the social world are the result of the interaction between human beings\textsuperscript{14}. In a qualitative research, the researcher has an important relation to the object of study since this one interprets the reality that is going to be studied and chooses in which way the material will be presented. Here the


\textsuperscript{13} Skaar, Judicial Independence and Human Rights in Latin America, 140-143.

researcher’s own background makes an impact on the study itself and how the information of the research is presented.\textsuperscript{15}

We will then be gathering texts and analyzing them from a qualitative perspective, which is the most common method used within this approach.\textsuperscript{16} This will be implemented in our research when analyzing our material deriving from primary and secondary sources. Another quality characteristic for this method is "a preference for treating theory as something that emerges out of the collection and analysis of data."\textsuperscript{17}

Some critiques have been made towards the qualitative approach for relying too much on the researcher’s own criteria on what is relevant or not regarding a certain subject. This approach has also been criticized because the near relationship the researcher forges with the subjects of the study in cases of e.g. anthropological studies. Another critique made by quantitative researchers toward this approach has been the difficulty to replicate a study of this character, due to the dependence on the researcher’s own criteria of relevancy.\textsuperscript{18}

At the same time the quantitative approach has being criticized for its positivist approach to the social world, meaning that it treats objects of the natural world such as e.g. molecules the same as the social world, neglecting the fact that people acts and thinks differently from each other. Another critique made towards the quantitative research, is that methods used within this approach relies on controlling situations to measure its results. But even if e.g. the same questions are made to several people, they may comprehend the question itself differently between them and thereby their answers will be affected by it, this fact is neglected by this approach.\textsuperscript{19}

\textbf{1.3.3 Comparative method}

Our research will adopt a comparative design consisting of two cases; this design consists in taking two or more cases that distinguish from each other in some variables and analyzing them both with similar methods in order to comprehend the phenomenon that is being studied. This will allow us to understand the social phenomena in a more developed way, in our case the legal status of the amnesty law, due to the comparison manner that the design adopts. Using a multiple case study enhances the theory building process, giving the researcher a higher possibility to test the theory and to conclude if it holds or not regarding the cases of

\textsuperscript{15} Fejes & Thornberg, \textit{Handbok i kvalitativ analys}, 17.
\textsuperscript{17} Ibid, 387.
\textsuperscript{18} Ibid, 405.
\textsuperscript{19} Ibid, 178-179.
interest\textsuperscript{20}. This approach or design helps us to understand in which way different societies react to social, economic and political changes\textsuperscript{21}.

The comparative method helps us to discover empirical relations between two or more variables \textsuperscript{22}, which in our research consists of the Executive, the Supreme Court, the Inter-American system of Human Rights and the human rights movement. In comparative research it is highly relevant to define concepts in order to classify the different variables that will be the focus of the research and that can be related to the theory that will be used\textsuperscript{23}, in our cases the aforementioned actors.

The analysis of two cases as we will be doing in this essay, will let us discover the causes that lead to the studied outcome by discovering the differences and similarities in these cases. The most appropriate approach for our essay is John Stuart Mill’s ”Most Similar System Design”, which consists in choosing a number of cases that share many similarities and highlighting the key features in them that lead to the outcome of interest\textsuperscript{24}. This type of design is appropriate when analyzing countries that are located in the same area and share common attributes such as, religion, language, political system or culture. Analyzing the common elements between the chosen countries let us discover those elements that differentiate from each other. Since we are comparing two cases and the cases itself are the object of study, the main concern will be to find differences and similarities between them in order to analyze the outcomes. The Most Similar System Design is suited for those studies where the main goal is to seek an explanation to a certain outcome\textsuperscript{25}, as the case of this study in where we try to understand the reasons for the present legal status of the amnesty laws in Argentina and Uruguay.

\textbf{1.3.4 Material}

In this essay we will be using primary and secondary sources. Primary sources are those in where the researcher has gathered the data first hand, and secondary sources are those in


\textsuperscript{25}Landman, \textit{Comparative Politics and Human Rights}, 904-905.
where the data has not directly been collected by the author of the research. Legal documents as primary sources from resolutions issued by the Uruguayan Supreme Court, the Uruguayan Parliament, the Uruguayan Senate and the Inter-American Court of Human rights in the case of Uruguay regarding the amnesty law are included in this essay. This to be as up to date as possible since not many recent researches have been found regarding the resolution of the Uruguayan Supreme Court in 2013 reaffirming the further upholding of the amnesty law. We will also include a recent newspaper article from the biggest newspaper in Uruguay El País, which have relevant information for a possible future study on the subject.

The Argentinian case will not include legal documents since the main issue discussed in this essay are the amnesty laws, and this one already been declared unconstitutional in 2005 by the Supreme Court, plenty of scientific literature and previous research have been found regarding this subject.

Secondary sources will be included in the form of relevant scientific literature regarding the issue in question in both cases, and will be used as a source of empirical data. Elin Skaar’s Judicial Independence and Human Rights in Latin America (2011) is one of our most recurred material, which will be developed in the “Previous Research” section in this essay.

For the analysis of legal documents we will be using text analysis, which is suitable when using documents as material. The texts are then analyzed to understand the broader context and how they reflect the social phenomena or the problem that is being investigated. The text needs to be studied to extract relevant information departing from a specific research question.

27 Sentence Nr. 152, issued by the Uruguayan Supreme Court in 2013/03/08: http://www.poderjudicial.gub.uy/historico-de-noticias/533-sci-declaro-inaplicables-los-arts-2-y-3-de-la-ley-18-831-en-la-causa-de-la-desaparicion-de-julio-castro.html
29 Law Nr. 17.347, issue by the Uruguayan Senate in 2001/06/05: http://www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=17347&Anchor=
30 Inter-American Court of Human Rights, Gelman vs. Uruguay Case, Official summary,2010/02/24: http://www.corteidh.or.cr/docs/casos/articulos/resumen_221_esp.pdf
31 Sentence Nr. 152, issued by the Uruguayan Supreme Court in 2013/03/08: http://www.poderjudicial.gub.uy/historico-de-noticias/533-sci-declaro-inaplicables-los-arts-2-y-3-de-la-ley-18-831-en-la-causa-de-la-desaparicion-de-julio-castro.html
32 Skaar, Judicial Independence and Human Rights in Latin America, 87.
In our research we will apply this analysis when presenting primary sources, in the form of relevant material extracted from legal documents of the Inter-American Court of Human Rights, the Supreme Court, the Parliament and the Senate in the case of Uruguay.

1.3.5 Previous Research on the Subject

We have chosen to develop Skaar’s research, since it is highly relevant for the purpose of our essay and have been of great use for our research.

Elin Skaar’s34 *Judicial Independence and Human Rights in Latin America* (2011), argues that the most significant action for trials against former authoritarian perpetrators to take place, is judicial reform. The author takes the case of Argentina, Chile and Uruguay departing from the hypothesis that trials have taken place against members of the armed forces who committed violations of HR, for the reason that in the case of Argentina and Chile judicial reform has taken place. And in the case of Uruguay the absence of judicial reform has influenced the slow development regarding trials against these types of perpetrators35. She also puts emphasis on the importance of punishment in the forging of the rule of law, in the establishing of a solid democratic foundation and for the process of reconciliation. And when these mechanisms of punishment are absent, they risk to create a sense of distrust towards the state and the legal institutions of the country36. The independence of the judiciary from the Executive power and from other more powerful judges placed higher up in a hierarchical structure, is said to be vital in order for judges to take on cases regarding past violations of HR37. She states that in all countries where members of the military have been prosecuted, also judiciary reforms creating more independence and autonomy from other power within the state, have taken place prior to trials. According to Skaar a set of preconditions are required also in order for trials to be initiated, consisting of a military that no longer presents a risk for democracy, cases regarding violations of HR needs to be presented in the courts, and it is necessary an amplitude of legal proves to be present in order to prosecute them38.

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34. Elin Skaar is a Political Scientist that investigates matters related to democratization, human rights, transitional justice, judicial reform, and development issues. Her main focus areas are South America (Argentina, Chile and Uruguay) and South Africa (Namibia, Angola, Mozambique). Source: [http://www.cmi.no/staff/?elin-skaar](http://www.cmi.no/staff/?elin-skaar)


36. Ibid, 6.


38. Ibid, 189-190.
The research also states that today the judiciary has stepped in as a major actor when dealing with the creation of justice for past violations of HR in Latin America. This actor has surpassed the influence of the political and the HR organizations’ power regarding these issues\textsuperscript{39}. The importance of judges predisposition to push forward for these type of cases, and to be willing to work around in innovative ways the present legal obstacles, are crucial for the developing of justice regarding violations of HR\textsuperscript{40}.

1.4 Concepts

Human Rights

When in this essay we refer to human rights (HR), we are having in mind the United Nations Universal Declaration of Human Rights (1948). This declaration includes a variety of articles were the general message is that all people have equal rights to e.g. be free, to not be persecuted or tortured, equality before law, to appeal and be redress before national tribunals when these rights have been violated, the right to life, integrity, freedom of expression, the right to vote, etc. One of the pillars of this declaration is that "human rights should be protected by the rule of law".\textsuperscript{41} Another important factor for HR that helps us to define the concept of HR is the International Covenant on Civil and Political Rights of 1966, in where it is recognized:

"the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights, considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms..."\textsuperscript{42}

Rule of Law

When a country goes by the rule of law, it means that its institutions respect the idea that each member of society enjoys equality before law and the individual rights are protected by the Constitution and the judicial system. When the rule of law is applied, the judiciary will show

\textsuperscript{39} Skaar, Judicial Independence and Human Rights in Latin America, 12.
\textsuperscript{40} Ibid, 199.
\textsuperscript{42} Ibid
impartiality when cases are presented before them. But this concept is not solely allocated within the Executive or the judiciary; this concept is expanded to the whole society. When a society lives by the rule of law, it means that its citizens have accepted the rules of the game and live after them. This does not mean that whatever law issued by the state is accepted regardless of its validity, but it means rather that a consensus reign over society in which laws that are commonly accepted and ratified by society are obeyed.\textsuperscript{43} According to O’Donnell, Latin American countries have a negative historical trend regarding the rule of law, manipulating the law in favor of those who are considered as the “privileged” ones in society, and using it against the marginal sector. In these cases some sort of informal law takes place instead of the formal law issued by the state.\textsuperscript{44} The period when military dictatorships reigned in Latin America meant that the rule of law was suspended, since direct violations of HR were committed and many rights were deprived to its citizens. Skaar does also state that the defense of the legal and HR of the members of society is another major objective in order to implement the rule of law.\textsuperscript{45}

\textbf{Democracy}

When we speak about democracy in this essay, we are using the concept that Guillermo O’Donnell calls for a Polyarchy or political democracy, based on the same concept created by Robert Dahl. Here a democracy is considered as such when a country “…holds regularly scheduled competitive elections, individuals can freely create or join organizations, including political parties, there is freedom of expression, including a reasonably free press, and the like.”\textsuperscript{46} Even if some authors argue that this definition of democracy neglects the socioeconomic aspect of it, and that a functional democracy needs to strive after equality in the same way\textsuperscript{47}, we are choosing to use the former definition. Since our essay’s main concern is the present legal status of the amnesty laws in Argentina and Uruguay and the transition to democracy is here discussed, we are choosing to include a general basic definition of democracy to clarify in which way we refer about this concept.


\textsuperscript{44} Méndez, et. al. \textit{The (Un)Rule of Law and the Underprivileged in Latin America}, 312-313.


\textsuperscript{46} Méndez, et. al. \textit{The (Un)Rule of Law and the Underprivileged in Latin America}, 304.

\textsuperscript{47} Ibid, 304.
1.5 Limitations

In this essay we will focus on the actors mentioned in the research objectives (the human rights movement; the Executive; the Supreme Court; and the Inter-American system of Human Rights in each country) giving a general overview over these. We will not make a deep analysis in the structure of each actor, only when it is relevant for the main questions certain issues regarding the structures will be brought up. We have chosen to exclude the lower courts as one of the actors in focus regarding the amnesty laws, because we see that the lower courts, even if they have played an important role regarding trials against former repressors, they are not as relevant when it comes to amnesty laws, since these are often the jurisdiction of the political power and the Supreme Court.

Since we are covering such a large period of time (from 1983 to 2005 in the case of Argentina and from 1985 up to the present in the case of Uruguay) in order to give a truthful answer to the presented questions, it is almost inevitable that only a general overview over relevant events through the history regarding these actors can realistically be made. We will neither focus on the reasons why the military dictatorships occurred or make a deeper analysis regarding the authoritarian periods in each country.

The military is not included as one of the actors to be analyzed here, although its role will be mentioned during the presentation of the material along the analyzed period of time. The reason to why it have not been included is that even if we find that they were relevant actors at the beginning of the transition to democracy in both countries and managed to influence the creation of amnesty laws, later on they became under civilian control as it will be shown on both cases in our research.

Some sort of personal interviews with HR lawyers and HR NGO’s would have made a great contribution to this essay. But due to time and financial limitations, a study made in place in both countries has not been possible to achieve.

1.6 Disposition

During the present chapter we have attempted to lay out an introduction to the problem, giving some empirical background related to the matter of this essay. Together with the objectives and the main questions, we have hopefully made clear our aim with this research. The qualitative and the comparative methodology that this essay will adopt, have been explained by giving some background and by introducing some basic concepts regarding the
aforementioned methods, since the methodology part is crucial for our research and will characterize the whole design of our essay. The principal concepts that will be utilized in this research have been developed in order to make more clearly what we do mean when the same concepts are being used in this essay. The limitations regarding our research have also been developed and motivated.

In chapter two the theoretical framework is developed, the theories of Transitional Justice and Human Rights from below that are used in this essay have helped us to gather the material and to focus in certain aspects of it.

In chapter three the cases of interest in this study, Argentina and Uruguay, are presented by focusing on the Executive, the Supreme Court, the Inter-American system of Human Rights and the HR movement, and how these actors have historically influenced the present legal status of the amnesty laws in both countries. This chapter will be divided by giving each of the aforementioned actors a specific sub-section within the cases of Argentina and Uruguay. The events under each sub-section are chronologically organized, and the chapter concludes with a summarizing section.

An analysis segment will be developed in chapter four, where the presented material is analyzed using the theories introduced in the theoretical framework and by the comparative analysis in where differences and similarities will be outlined. This will eventually lead to a conclusion section in where answers are given to the questions presented in the research objective.

2. Theoretical Framework

2.1 Introduction

The theory helps the researcher to have a framework from which to analyze the material from and to better understand the phenomena that is being studied. Our theoretical framework consists of definitions and theories regarding Transitional Justice and Human Rights from below. The ideas of the authors will be developed in this chapter in an effort to later on conceptualize the material that will be presented, in the analysis section.

48 Bryman, Social Research Methods, 20.
2.2 Transitional Justice

The concept of Transitional Justice can be summarized as "the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes".49

Ruti Teitel50 speaks about three different phases within the Transitional Justice’s history; the first one being the Nuremberg trials as a consequence of the atrocities that occurred during and before the World War II; the second phase being characterized by the "Cold War” and the ending of military rule in Latin America in the 80’s; and a third one that can be seen at the end of the twentieth century with a Transitional Justice more associated with globalization. During the first phase enhancing the rule of law was more associated to holding accountable a certain number of individuals or leaders, while at the second phase concepts of rule of law were more locally produced taking into account the politics and their own circumstances51.

When looking at the second phase of Transitional Justice, a shift in priorities in comparison with the first one can be seen, since the second one incorporates matters of how to heal a society after a violent period using peace and reconciliation strategies, here the main goal is to preserve peace. The first period did see these processes as something that was external to the transitional process; the principal objective during this phase was to enhance the rule of law and accountability52.

A highly relevant observation for our object of analysis during this research made by Teitel, is that during the period when Latin American countries shifted from authoritarian rule towards democracy, the issuing of amnesty laws were strategies commonly adopted by the newly democracies in order to maintain peace and enhance the reconciliation process53. Although Transitional Justice is highly productive and most relevant at the period of transition to democracy, the justice part can be seen as an ongoing process since legal actions may be taken years or even decades later54.

50 Ruti Teitel is a Professor of Comparative Law at the University of New York, she has an expertise on international human rights, transitional justice, and comparative constitutional law. Source: http://www.nyls.edu/faculty/faculty-profiles/faculty_profiles/ruti_g_teitel/
52 Ibid,77-80.
53 Ibid,82.
54 Ibid,86.
Nowadays Transitional Justice is considered to be promoted by several actors, not just the Executive that was before seen as the most prominent actor regarding these issues. One can say that a globalization of Transitional Justice has taken place, with international actors taking a bigger part in this process, actors such as international tribunals or courts.\textsuperscript{55} In the Latin American context one of these actors is the Inter-American Court of Human Rights.

One major difference between "ordinary" justice and Transitional Justice is that in the latter the political agenda is highly related to the legal process, due to the nature of this process. Transitional Justice works as a mechanism to enhance the validity of the new democratic regime and the advancement of the rule of law together with the democratization process.\textsuperscript{56} Another difference is that most of the crimes committed during authoritarian periods are seen as crimes against humanity, and thereby not affected by time limitation.\textsuperscript{57} For Teitel justice during this time does not only adopt the role of preventing chaos in society but also becomes a transformative force towards a new democratic era.\textsuperscript{58}

Punishments during transitional periods are seen as laying ground for the new democratic era and the reinforcement of the rule of law. It also serves as a symbolic action of breaking with the lawless past of the nation, enhancing the legitimacy of the new regime and the state. Punishment does also serve as a sort of confession of the state’s role during the authoritarian period, whether it was an active or passive role the state played as.\textsuperscript{59} The punishing of perpetrators also enhances the validity of the institutions of the new regime; it also helps to clear out individual and collective burden.\textsuperscript{60} Sometimes reparatory policies can work not only as a monetary compensation, but also as a ratification of the state’s role during the authoritarian process and thereby assuming responsibility, even if punishment is omitted.\textsuperscript{61}

The issuing of amnesties and pardons to the perpetrators in the former authoritarian regime are often the result of a "pacted" transition, in where the new democratic government has to accept some of the requests from the former regime in order to establish stability in the new

\textsuperscript{57} Teitel. Transitional Justice, 63
\textsuperscript{58} Ibid, 6
\textsuperscript{59} Ibid, 28-29
\textsuperscript{60} Teitel. Transitional Justice, 55. This can also be seen in: Skaar, Judicial Independence and Human Rights in Latin America, 6.
\textsuperscript{61} Teitel, Transitional Justice, 126-127.
democratic era. At the same time if punishment is denied to the perpetrators, this becomes a damaging factor for the consolidation of democracy and thereby worsening the consolidation of the rule of law. But there are also "democratic" amnesties, which are those that have been democratically issued with the support of the majority of its citizens, as the case of the referendums in Uruguay regarding the amnesty law. But even if they are democratic, they are argued to delay the reincorporation of the rule of law in society.

As difference to the "pacted" transitions there are those such as the Argentinian one, where the military was defeated making it possible, together with political willingness, to prosecute the military at least at the beginning of the transition.

Skaar sees that the judiciary nowadays takes a bigger role than the Executive when letting perpetrators regarding crimes committed during the authoritarian period face justice, whereas before these matters were considered to be an Executive matter. This actor has surpassed the influence of the political power and the one of the social movement regarding these issues. She calls this phenomenon the "judicialization of politics", referring to the increasing role that the judiciary has begun to take regarding matters of past crimes against humanity.

The role of international laws when dealing with crimes committed during authoritarian periods are crucial, since these are upholders of the rule of law and when international laws are incorporated into domestic law they make some type of crimes, such as torture, that before may not had been admitted in national law to become punishable.

Transitional Justice makes the law work as a transformative force during transitional periods, marking a fluctuation in power relations. As stated early, the political process affects the rule of law during the transitional process and how the law is implemented during this time.

We have to be aware of the local conditions where the transition process is taking place, taking into account the political conditions and the nature of the violations committed during

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62 Skaar, Judicial Independence and Human Rights in Latin America, 11.
63 Teitel, Transitional Justice, 53-54.
64 Ibid, 59.
65 Skaar, Judicial Independence and Human Rights in Latin America, 11. This can also be seen in: Hite & Ungar, Sustaining Human Rights in the Twenty-First Century: Strategies from Latin America, 107-8.
67 Ibid, 12.
68 Ibid, 200.
69 Teitel, Transitional Justice, 33-34.
70 Ibid, 215-216.
the authoritarian period. The legal tools and the consequences for the perpetrators that are chosen to be pursued during this period are all symbols of a renewal of democracy marking the beginning of a new period and a break with the past.\textsuperscript{71}

### 2.3 The Human Rights Movement and the Law from Below

Sousa Santos and Rodriguez-Garavito (2005) presents a contrasting perspective in the relation between SMs (Social Movements) and legal development in a globalized world that has a bottom-up perspective, in contrast with the vast literature departing from a top-down approach.\textsuperscript{72}

The approach developed here, what they call ”subaltern cosmopolitanism”, is based on the aforementioned bottom-up perspective that seeks to link the law and politics. HR and SMs today include into their repertoire a variety of legal and political tools, and they skillfully manage to work in a transnational arena with other powerful actors in order to achieve the main goals of their struggle.\textsuperscript{73} The implementation of subaltern cosmopolitanism in SMs can be seen ”as a political strategy that comprises legal components”\textsuperscript{74}, the skillful usage of legal strategies that makes an impact on the political arena.

SMs have today achieved to challenge the state as the most prominent actor in the "construction and enforcement of international human rights regimes"\textsuperscript{75}, movements that fight for HR around the globe are often interlinked with each other through international networks, making them powerful actors in this field.

Following the concept of subaltern cosmopolitanism, SMs work in a counter-hegemonic way in the political and the judiciary arena going against main conceptions in the economic, legal and political arena, especially against neoliberal approaches. Since it is within the aforementioned fields where unequal power relations are forged, it is here where they can accomplish changes to the present struggle.\textsuperscript{76}

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\textsuperscript{71} Teitel, \textit{Transitional Justice}, 223-224.


\textsuperscript{73} Rodriguez-Garavito & Sousa Santos, \textit{Law and Globalization from Below}, 15-16.

\textsuperscript{74} Ibid, 61.

\textsuperscript{75} Ibid, 20.

\textsuperscript{76} Ibid, 29-30.
Among the different priorities a SM can have, the most prominent of these one are those who attempts to change the power balance in society but not to take over it, and works within the institutions that the state offers in order to accomplish the movement’s main goals. SMs obtain attention and gain power by the usage of mass media and also by creating networks with other more influential actors.

The relation between SMs, law and HR is sensitive to the specific conditions that are present in the local context, making an impact in the outcome depending on national and local circumstances. Utilizing law as a main tool for the SMs is no guarantee that it will end in success for the movement. The power of law and the possibilities of resistance that it offers is being used by SMs around the world, since the legal arena offers a ground for SMs and different actors to challenge the present structures of society. Since it operates at the local, international and national level, it cannot be overseen how powerful legal actions can be for these movements in the pursuit of justice.

At the same time, the apolitical nature that the law adopts makes it difficult for SMs to confront the Executive or the state in courts. This apolitical nature is due to that the judiciary does not want to position itself against the Executive because of the division of power between them two, hence making it tough for SMs to use legal means to challenge policies that goes against the public interest, since policy matters are assumed to be a concern for the Executive power. Law often contends a traditional position in society, relying on constitutional and sovereignty values, making it clash with SMs since they may confront or disagree with the constitution in political and/or moral grounds. The judiciary and the SMs works in different fields and in different manners, since the SMs attain political influence by achieving mass attention from society and sometimes even acting on the border of what is legal or not, and the judiciary "obtain their significance through individual, almost private, performances that reinforce existing legalities." But this does not mean that the judiciary does not show sympathy for SMs, many "forward-looking” judges and lawyers have greatly influenced SMs and helped them to achieve its goals. Also the fact that the judiciary in most

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77 Rodríguez-Garavito & Sousa Santos, Law and Globalization from Below, 51-55.
78 Ibid, 222.
79 Ibid, 184.
80 Ibid, 183.
81 Ibid, 188-189.
82 Ibid, 221.
83 Ibid, 223.
places nowadays sees the constitution as part of the law, helps the SMs since, when contested, it takes the individual struggle and transforms it into a collective one.\textsuperscript{84}

\section*{2.4 Summary}
These two theories have focus on different contexts and actors. Transitional Justice concentrates in the different mechanisms of justice that a nation chooses to adopt during a transition to democracy from an authoritarian regime.\textsuperscript{85} While the theory of Sousa Santos and Rodríguez-Garavito focuses not on a certain context in the history of a nation, but rather on the role the HR and SMs have to make an impact on the policies made by governments.\textsuperscript{86} Both theories emphasize the role of the law as a tool to influence governmental policies, as a transformative force\textsuperscript{87} and as a device for HR and SMs to accomplish its main goals.\textsuperscript{88}

The transitional justice theory will be applied to the material by focusing on the strategies used in Argentina and Uruguay, to deal with the violations of HR that were committed during the last military dictatorship in both countries. Whether if they chose to let the perpetrators face trial or opted for amnesties, or both.

The theory of Sousa Santos and Rodriguez-Garavito, is going to be applied to both cases (Argentina and Uruguay) to see the role that the HR movement played in the development of justice to crimes against humanity committed during the last military dictatorship, and to help us see the causes that lead to different outcomes between our both cases.

\section*{3 The Case of Argentina and Uruguay}

\subsection*{3.1 Introduction}
The Latin American countries are cases that are suitable for a comparative research design using the Most Similar System Design (MSSD), due to the heritage that these countries have

\textsuperscript{84} Rodriguez-Garavito & Sousa Santos, \textit{Law and Globalization from Below}, 236.
\textsuperscript{85} Teitel, Ruti G., \textit{Transitional Justice Genealogy}, 69.
\textsuperscript{86} Rodriguez-Garavito & Sousa Santos, \textit{Law and Globalization from Below}, 61.
\textsuperscript{87} Teitel, \textit{Transitional Justice}, 215-216.
\textsuperscript{88} Rodriguez-Garavito & Sousa Santos, \textit{Law and Globalization from Below}, 183.
in common, it leaves us with many similar variables between them. The cases of Argentina and Uruguay, that will be presented in this chapter, share many similarities making it convenient to use the MSSD.

Argentina and Uruguay have a similar historical legacy regarding the Spanish colonial past, leaving them both with the same language and religion. They are also considered to be quite developed in comparison to other Latin American countries due to a relative diverse economy. The literacy rates are high in both countries; they do also have a quite small percentage of people deriving from the indigenous community in comparison to other Latin American countries. Other aspects that they have in common that are highly relevant for our research, are that they share similar civil law systems, they suffered from a similar tumultuous and violent period of military dictatorship during the 1970’s and the 1980’s, with a judiciary that was highly passive and ignored the multiple violations against HR that were committed during this period. Even cooperation between both military forces during the authoritarian period took place, in the Operación Condor or Condor Operation, which was a regional cooperation of repression89. Today military forces in these two countries are submitted to the civilian and democratic rule, presenting no probable risk for a military uprising against the democratic establishment90.

An influential actor that the cases of Argentina and Uruguay have regarding HR issues is the Inter-American system, which was created in 1948 and became a part of the Organization of American States (OAS). In 1959 the American Declaration was followed by the creation of the Inter-American Commission on Human Rights, having as its main objective to protect the HR in the region, work against impunity and enhance accountability regarding violations of HR. The role of this entity has been of great value in putting pressure on regimes on this region regarding amnesty laws that obstruct the pursuit of justice91.

The following part of this chapter is assigned to the Argentinian case in where we will be giving a short introduction to the violations of HR that were committed during the military dictatorship, followed by several sections assigned to the Executive, the Supreme Court, the Inter-American system of Human Rights, and the HR movement. An equal design is designated to the Uruguayan case, concluding the chapter with a summarizing part.

89 Skaar, Judicial Independence and Human Rights in Latin America, 15
90 Ibid, 190
3.2 Argentina

3.2.1 Introduction

Argentina has a long history of having its democratic path interrupted by military coups; between 1930 and 1983 twelve military coups took place making it an extraordinary case\textsuperscript{92}. Argentina has also another special feature regarding trials against former oppressors from a military dictatorship, since it was the first country in Latin America in 1985 that successfully initiated trials against nine of the main leaders of the authoritarian regime for committing violations against HR, just a couple of years after the return to democracy in 1983. According to different sources, this period left a number of disappearances ranging between 10,000 to 30,000 during the last military dictatorship between 1976 and 1983\textsuperscript{93}. One particularity in the Argentinian case was the illegal adoption of infants from imprisoned women who gave birth in captivity. The HR organization Grandmothers of Plaza de Mayo believes that more than 400 children were illegally adopted during the authoritarian period\textsuperscript{94}. The possibility of successfully, at least initially, to prosecute the former junta leaders is in part argued to be the result of the Malvinas War, where the Argentinian military was defeated by Great Britain in 1982 leaving the former weak when transition to democracy occurred\textsuperscript{95}.

3.2.2 The Executive

Already under the electoral campaign for the new democratic government at the time of the transition in 1982, the demands were vast from the Argentinian civil society for justice to be made and to investigate the crimes that were committed during the authoritarian period. These demands were not ignored by the president to be Raúl Alfonsin (1983-1989) and the Radical Party, who incorporated them as one of the main promises made under his presidential campaign\textsuperscript{96}. Alfonsín won the elections against all odds, since the Peronist Party was seen prior to the elections, as the favorite candidate for winning the presidential elections.

When Raúl Alfonsín seized the presidential post in 1983, he went through with several reforms in order to deal with the past crimes committed during the last military dictatorship. The Supreme Court’s members were replaced by new ones elected by the Senate and the

\textsuperscript{92} Popovski & Serrano, eds. After Oppression: Transitional Justice in Latin America and Eastern Europe, 65.

\textsuperscript{93} Skaar, Judicial Independence and Human Rights in Latin America, 2-5.

\textsuperscript{94} Ibid, 47.

\textsuperscript{95} Ibid, 26; 48.

\textsuperscript{96} Hite & Ungar, Sustaining Human Rights in the Twenty-First Century: Strategies from Latin America, 109.
military’s self-issued amnesty of September 1983 was invalidated later that same year by Alfonsín’s government. A Truth Commission was created the same year, in order to clarify the crimes committed during the military dictatorship and the role that the military had in it. Also a more innovative decision was taken, the junta leaders were ordered to be prosecuted for violations of HR through a presidential decree issued by Alfonsín that same year. The trials were based on some 700 cases in which they found five of the nine junta leaders guilty. He chose to prosecute only the junta leaders because he feared that the military would react violently if the trials were not of limited scope. Under this period Alfonsín and his government, prior to the trials, created the world’s first truth commission, which collected plenty of evidence that was presented on the published report called Nunca Más or Never Again (1984), which later on were used in the trials against the junta leaders as evidence.

Military rebellions took place and this led eventually to the issuing of the Ley de Punto Final or the ”Full Stop Law” in 1986, which dictated a 60 day limited period in where cases regarding crimes committed during the military dictatorship could be presented in the courts. In 1987 Ley de Obediencia Debida or ”Due Obedience Law” was issued, which was an amnesty law that was created which ” eliminated all pending indictments against junior officers, though it did not stop the prosecution of colonels and generals.” Alfonsín’s popularity rapidly decreased because of these actions taken by the Executive, together with a worsening of the economic situation in the country. This forced him to step down from his position earlier than what was dictated and he left over the presidential post to the Peronist Party’s leader Carlos Menem in 1989.

When Carlos Menem and his Peronist Party won the presidential elections in 1989, HR issues became an issue that was not going to be prioritized by the Executive, this period even led to the furthering deterioration on this subject. He issued three decrees the same year he came to office in where he pardoned near 400 people, which had been sentenced to prison for violations of HR committed during the military dictatorship, including the heads of the junta.

97 Those who were found guilty were Admiral Armando Lambruschini, Brigadier Orlando Agosti, Admiral Emilio Massera, General Roberto Viola, and General Jorge Rafael Videla.
98 Skaar, Judicial Independence and Human Rights in Latin America, 48-51.
100 Skaar, Judicial Independence and Human Rights in Latin America, 52.
Some 60 members of the guerrilla group Montoneros were also pardoned, they were sitting on sentences for "terrorism"\textsuperscript{101}.

In the constitutional reform of 1994, among other subjects within it, the American convention of Human Rights was integrated into the Argentinian Constitution\textsuperscript{102}. This was said to be not a concern from the Executive for HR, but rather a pact between the Peronist Party and the Radical Party in where Menem’s intention was to have the possibility to be reelected in the presidential elections of 1995. Since prior to the reform, it was not allowed for a candidate to be president two consecutive times and the Peronist Party needed the support of the Radical Party in order to be able to go through with this reform\textsuperscript{103}.

During the government of De La Rua in the Radical Party coalition with a left wing party at the end of the 90’s, the Executive pursued a policy for the continuity of investigations regarding the disappearances of people during the last military dictatorship. Since the public awareness had been growing during the past regime of Carlos Menem, due to at some extent the public statements of former military members confessing the involvement of the military forces in the disappearances of people during the last military dictatorship; together with the work of HR organizations in putting pressure on the government regarding these issues, by the usage of the Inter-American system of Human Rights. Although De La Rua wanted to keep investigations regarding the disappearances going on, he also wanted them to be transferred to the civilian court from the federal one since this would lead to no further detentions of military personnel\textsuperscript{104}.

When Nestor Kirchner became president in 2003 he adopted a policy towards making progress on the violations of HR committed during the last military dictatorship, and this resulted in several reforms. For instance, a massive reorganization of the military forces was made by among other measures, the removal of several members of the high command by the issuing of a presidential decree. He went on to reform the Supreme Court by issuing another decree that stated that judges should be committed to HR and democracy, and by replacing some of its members with personnel that had show to be advocates of HR. The Executive did also put pressure in Congress to declare the unconstitutionality of the amnesty laws of Ley de Punto Final and Ley de Obediencia Debida in 2003, this was followed by the issuing of a law

\textsuperscript{101} Ibid, 53-54.
\textsuperscript{102} Ibid, 76.
\textsuperscript{103} Ibid, 73.
\textsuperscript{104} Ibid, 56-62.
ratifying the unconstitutionality of the amnesty law by the President that same year. This idea was finally supported by the Supreme Court, giving the last word regarding the amnesty law by also declaring it unconstitutional in 2005.105

3.2.3 The Supreme Court

Under the last military dictatorship, the junta leaders replaced all the members of the Supreme Court with judges and lawyers that shared the same ideals as them in order to seize control over this one106. When democracy returned to the country in 1983, the government of Alfonsín replaced all of these members, and the Senate elected new ones107.

During the government of Menem and the Peronist Party which begun in 1989, he went on to increase the number of members of the Supreme Court from five to nine placing individuals that would support his policies, two of the five original members did also resign in protest to this reform108.

When the public debate raised again in the late 1990’s regarding the kidnapping and illegal adoption of children of imprisoned women during the last military dictatorship, many lawyers and judges argued that they could technically be prosecuted for the ”systematic planning” of crimes of this nature, instead of direct involvement since they already had been pardoned for it by Menem in 1989. The military wanted the cases transferred to the military courts, but one of the judges handling a case of a child that had been kidnapped during the military dictatorship, argued that since it was a criminal case it should remain in civilian court. The Supreme Court dictated in 2000 that the case would remain in civilian court, this led to a change in praxis since now cases of the same nature were not covered by neither the amnesty laws nor the pardoning109. It is interesting to point out that the even if the Executive directly appointed the Supreme Court members, they started to go against Menem’s policy of trying to keep matters of violations of HR quiet. This contradictory reaction from the Supreme Court can be argued to be an effort from their part to be sensitive to the raising public demands for justice during this period, and to keep good relations with a future government110.

105 Ibid, 85-86.
107 Skaar, Judicial Independence and Human Rights in Latin America, 49.
110 Ibid, 70-71.
During the Nestor Kirchner’s regime (2003-2007) the Supreme Court was reformed and new members sensitive to HR replaced the old unpopular ones. Raúl Zaffaroni who had a great expertise on criminal law and HR issues, and Carmen Argibay who had been a member of the International Criminal Tribunal for the former Yugoslavia, were some of the new members that integrated the Supreme Court\textsuperscript{111}.

In 2005 the Supreme Court proclaimed the amnesty laws from the 1980’s unconstitutional, leading to the prosecution of more than 300 perpetrators from the last military dictatorship\textsuperscript{112}. The Supreme Court declared in the case of Julio Simón, a policeman that was involved in the disappearance and torturing of victims during the last military dictatorship\textsuperscript{113}, that these were in fact violations against HR that were protected by international law, and stating that the amnesty laws went against the American Convention on Human Rights making them unconstitutional\textsuperscript{114}. In 2007 the Supreme Court did also declared unconstitutional the pardoning that Menem issued to perpetrators of crimes against humanity committed during the last military dictatorship\textsuperscript{115}.

\textbf{3.2.4 The Inter-American System of Human Rights and Argentina}

The Inter-American Court of Human Rights and the Inter-American Commission of Human Rights have been powerful tools used by HR movement and victims together with relatives, to make justice for past violations of HR in the presence of amnesty laws or the unwillingness of Executives to prosecute the perpetrators of these crimes\textsuperscript{116}.

The American Convention on Human Rights was integrated into the Argentine Constitution in 1994, stating among other things the right to the truth for relatives to victims of violations of HR committed by the state. The Inter-American Court and the Commission on Human Rights declared that the Argentine society and relatives of victims had the right to truth, even if the amnesty laws protected the perpetrators from prosecution in 1999 regarding a case of a disappeared\textsuperscript{117}. This made the Argentinian judiciary to be more active regarding this type of

\textsuperscript{111} Ibid, 86.
\textsuperscript{113} Skaar, \textit{Judicial Independence and Human Rights in Latin America}, 56.
\textsuperscript{114} Ibid, 87.
\textsuperscript{117} Skaar, \textit{Judicial Independence and Human Rights in Latin America}, 60-61.
crimes, since now conventions and treaties made by the Inter-American system of HR were included in the constitution, this influenced resolutions made in both lower courts and appealing courts\textsuperscript{118}. Prior to this statement in 1998, the Inter-American Commission on Human Rights stated in a case that was presented to them regarding a disappeared, the right of the relatives of the victim to know the truth about what happened to this person and its whereabouts, and thereby issuing a recommendation to the state to investigate this case\textsuperscript{119}.

In 2005 and 2007 when the Supreme Court declared unconstitutional the amnesty laws and the presidential pardoning of some perpetrators of violations of HR during the last military dictatorship, these declarations were based on the American Convention and resolutions on similar cases issued by the Inter-American Court of Human Rights\textsuperscript{120}.

### 3.2.5 The Human Rights Movement in Argentina

Argentina is said to have enhanced democracy and the rule of law when the new democratic regime, pushed by civil society, at the shift from authoritarian rule to democracy let the junta leaders face trial\textsuperscript{121}. The HR organization called Mothers of the Plaza de Mayo organized several protests during the military dictatorship against violations of HR committed during this period. They managed to put these issues on the political agenda for the new democratic government of Raul Alfonsín\textsuperscript{122}. The HR movement in Argentina is one of the most well organized in the region and is armed with a great legal expertise, they continued to put pressure during and afterwards the military dictatorship\textsuperscript{123}. During the dictatorship, since no domestic courts paid attention to them, they denounced instead internationally the atrocities that were being committed by the military forces\textsuperscript{124}.

When the \textit{Ley de Punto Final} or Full Stop Law was issued by the Executive, which stated a 60 days period to present new cases of violations of HR committed during the last military dictatorship, many HR organizations, victims and relatives managed to initiate thousands of

\textsuperscript{118} Ibid, 76-77.
\textsuperscript{119} Popovski & Serrano, eds. \textit{After Oppression: Transitional Justice in Latin America and Eastern Europe}, 75.
\textsuperscript{120} Ibid, 87.
\textsuperscript{121} Braun et.al. \textit{Transitional Justice Theories}, 113.
\textsuperscript{123} Skaar, \textit{Judicial Independence and Human Rights in Latin America}, 68.
\textsuperscript{124} Popovski & Serrano, eds. \textit{After Oppression: Transitional Justice in Latin America and Eastern Europe}, 66.
new cases thanks to a massive mobilization organized by them, together with the willingness of lower courts judges who sympathized with these issues.

The amnesty laws and the pardoning of violators of HR was a setback for the nation’s HR movement. But the organization Grandmothers of the Plaza de Mayo achieved to maintain pressure on the subject of the kidnapping and illegal adoption of children during the authoritarian period. Since neither of the laws explicitly covered crimes against humanity and the illegal adoption of children being recognized as such, they continued to present cases to the judiciary regarding this subject.  

The HR movement in Argentina was able to put international pressure on the Argentinian state by using the Inter-American Commission on Human Rights. Since the American Convention on Human Rights was integrated in 1994 into the Argentine Constitution, they presented cases proclaiming the right to truth to this instance due to the little interest showed by the domestic judiciary together with the amnesty laws and the pardoning. The public confessions of members of the military, such as Captain Adolfo Scilingo, in their involvement in violations of HR committed during the last military dictatorship, gave fuel to the HR movement who achieved to not only seek for justice but to actually initiate trials that led to convictions of military personnel at the last half of the 1990’s, regarding the kidnapping and illegal adoption of children during the authoritarian period. By pushing on the subject of the kidnapping and illegal adoption of children, they managed to get many lawyers and judges on their side and they were able to get sentences to some of the leaders of the junta. Even though they had been pardoned for the direct involvement in the kidnapping of children, they had not been charged before with the indirect involvement on these types of cases, now they were charged for the planning of it instead.

When the Supreme Court finally abolished the amnesty laws in 2005, this led to the reopening of many cases. The persistence HR movement have had during the years the amnesty law was

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125 Skaar, Judicial Independence and Human Rights in Latin America, 52. This can also be seen in Popovski & Serrano, eds. After Oppression: Transitional Justice in Latin America and Eastern Europe, 73.
126 Skaar, Judicial Independence and Human Rights in Latin America, 60-61.
127 Ibid, 56.
128 Ibid, 63-64.
129 Ibid, 64-65.
in force (1986-2005), led to the maintenance of the public debate regarding this issues, helping to make an impact on the Executive power and the judiciary.\textsuperscript{130}

### 3.3 Uruguay

#### 3.3.1 Introduction

Uruguay had no previous experience of a military ruled regime in its history until the military coup of 1973. The democratic political system since its creation in 1904 by the Colorado and Blanco parties was a historically stable one.\textsuperscript{131} The last military dictatorship left 164 documented victims of so called “disappearances”, but at the same time this small country accounted for having imprisoned nearly 10 percent of its population at the time, where many of them were tortured, other raise this number to as high as 20 percent.\textsuperscript{132} Uruguay at that time was the country that had the highest percentage of political prisoners per capita in the world, accounting for nearly 60,000 political prisoners, during the period of 1973 to 1977.\textsuperscript{133} The military tortured people to impose fear on its political opponents, but they were careful in keeping the victims alive. In 70 percent of the cases where victims were imprisoned, they were tortured and supervised by people with medical education in order to make sure they were kept alive. The great majority of the imprisoned were members of organizations considered as left wing.\textsuperscript{134}

#### 3.3.2 The Executive

Prior to the transition from the military dictatorship to democracy, it is said that three political parties, the Colorado Party, the Frente Amplio or Broad Front and the Civic Union Party, made a pact with the military in where they agreed that prosecution against them regarding committed violations of HR during the authoritarian period would be contained, this pact is commonly known as the Naval Club Pact (1984). Sanguinetti (1985-1990/1995-2000) and the

\textsuperscript{130} Popovski & Serrano, eds. \textit{After Oppression: Transitional Justice in Latin America and Eastern Europe}, 78-81. This can also be seen in: Hite & Ungar, \textit{Sustaining Human Rights in the Twenty-First Century: Strategies from Latin America}, 114.


\textsuperscript{132} Skaar, \textit{Judicial Independence and Human Rights in Latin America}, 5.


\textsuperscript{135} Brito, \textit{Human rights and democratization in Latin America: Uruguay and Chile}, 48.
Colorado Party seized the presidential post in 1985 and many cases regarding crimes against humanity committed during the last military dictatorship were presented in the courts. In 1985 the Executive supported the continuity of two members of the Supreme Court that had been appointed by the military and supported the claim of the military courts to take over cases regarding violations of human rights from the civilian courts.

The opposition consisting of the Frente Amplio and the National Party, commonly known as the Blancos, set up two investigatory commissions through the parliament to clarify the amount and nature of crimes committed during the military dictatorship (1973-1985). Two years later in 1987, the commissions declared that the military had committed crimes against humanity during the dictatorship. Although these commissions were limited to only investigate cases of disappeared and not cases of torture that were the most common crimes committed during this period.\(^{136}\)

The government of Sanguinetti, made it clear that it would not let the perpetrators of violations of HR committed during the military dictatorship, to face any legal consequences. In 1986 the Executive managed to pass through the Chamber of Deputies an amnesty law known as the Expiry Law or Ley de Caducidad de la Pretensión Punitiva del Estado\(^{137}\), this was an effort to once and for all stop the trials against members of the military forces\(^{138}\). The long name that was adopted for this amnesty law can be understand in the context where the military did not want any amnesty, since according to them, they did not commit any crime due to the "exceptional" times during this period, and that they only fulfilled its duty to protect the nation. The law’s name wants to point out that the state’s punitive pretension has expired relying in the pact that took place in 1984 between several political parties and the armed forces, where they came to an agreement that no legal consequences would take place. The law has a particularity since it is technically not an amnesty law because it is composed in such way that it allows the Executive to decide if the cases will or not be investigated. Since the Sanguinetti’s administration had no interest to investigate these cases, the issues of HR remained paralyzed during this period\(^{139}\). A referendum was organized by several HR

\(^{136}\) Skaar, Judicial Independence and Human Rights in Latin America, 140-143.


\(^{138}\) Skaar, Judicial Independence and Human Rights in Latin America, 144-145.

\(^{139}\) Palermo, Pablo Galain. La Justicia de Transición en Uruguay: Un Conflicto sin Resolución, 233-234.
organizations through the collection of signatures, since the constitution allows a referendum if 25 percent of the electorate proclaim it which was the case here, although the result ended up in a majority voting for the further upholding of the amnesty law in 1989. Both the Executive and the military gave speeches warning the civil society that violent consequences could take place if the result of the referendum was negative to the amnesty law\textsuperscript{140}.

In 1990 the government of Lacalle (1990-1995) and the National Party or Blancos took office, this government made no efforts to raise the issues of HR in the country. With the judiciary incapable of doing nothing to make progress in HR and the result of the referendum, it would lead to years of neglecting this issue\textsuperscript{141}.

Sanguinetti managed to win the presidential election again and return to office in 1995. The neighboring country Argentina was having a major public discussion regarding past violations of HR during the military dictatorship, this due to confessions of members of the military in their involvement in committing such crimes during this period of time. These discussions made an impact in Uruguay also, since most of the disappearances of Uruguayan victims occurred in Argentina. Jorge Néstor Tróccoli, a retired navy captain in Uruguay, went public and confessed that the military had been responsible to committing crimes against humanity during the country’s military dictatorship. These events led to a public debate regarding this issue and to a massive manifestation called ”The March of Silence” in May 1996. Attempts were made to establish a truth commission regarding the whereabouts of some cases of disappeared during the military dictatorship, but they were turned down by the government of Sanguinetti. In 1997 a judge presented several cases of about 150 disappeared to the Executive in accordance to the Expiry Law, to be evaluated by them if they were to be investigated or not in accordance to the amnesty law. The Sanguinetti government once again worked against making progress regarding HR issues and stated that the amnesty law covered it, and the judge Alberto Reyes that had pushed for this case, even lost his job. Many attempts were made by the opposition and by HR organizations to make some progress regarding this subject, but the government took a clear stand and turned down every proposition by referring the amnesty law, this attitude remain the same through the entire period he was president\textsuperscript{142}.

In 2000 Jorge Batlle (2000-2005) from the Colorado Party managed to win the presidential elections. He adopted a friendlier attitude towards HR. He ordered the creation of a Peace

\textsuperscript{140} Skaar, Judicial Independence and Human Rights in Latin America, 145-146.

\textsuperscript{141} Ibid, 149.

\textsuperscript{142} Ibid, 149-155.
Commission and even ordered to make DNA tests in two cases regarding the children of two people who had disappeared during the military dictatorship. One of these cases involved a famous Argentine poet Juan Gelman, whose daughter had been kidnapped in Argentina and transported to Montevideo, Uruguay, in where she allegedly gave birth to a child, which was proven to be true by the DNA tests. The Peace Commission established that this meant no legal consequences for the perpetrators, but was rather an attempt to uncover the whereabouts of the disappeared and the pursuit of the truth.\textsuperscript{143}

Batlle although more positive to HR issues than its predecessor, was not willing to let the militaries face legal consequences.\textsuperscript{144} In 2000 a judge ruled in a case against the government’s policy of no investigation regarding the disappeared during the military dictatorship, and stated that it went against the Constitution and several HR treaties that the Uruguayan State had ratified. Batlle was not so pleased with this resolution so he pressured her to have her drop the case. Although this case, the Elena Quintero case, years later resulted in prosecution of the former Foreign Minister Juan Carlos Blanco for the kidnapping and disappearance of Elena Quintero. They managed to work around the Ley de Caducidad since the judge claimed the amnesty law did only applied for members of the military and the police force and not civilians.\textsuperscript{145}

Although some progress was done during Batlle’s government regarding committed crimes against humanity, the amnesty law remained in force and the Executive made sure that no legal consequences were taken against members of the military for violations of HR.\textsuperscript{146}

The most important progress that has been made regarding past violations of HR during the military dictatorship, took place when the Frente Amplio and its candidate Tabaré Vázquez won the presidential elections in 2004. Although he proclaimed during his campaign that the amnesty law would not be abolished, he stated that he was going to reinforce the Article 4 in the law that allows the Executive to take the decision to initiate investigations regarding crimes against humanity committed during the military dictatorship.\textsuperscript{147} A totally different approach was adopted during his government, although the amnesty law was still in force, the

\textsuperscript{143} Ibid, 159-162.
\textsuperscript{144} Ibid, 163-166.
\textsuperscript{145} Burt, Challenging impunity in domestic courts: human rights prosecutions in Latin America, 300-301.
\textsuperscript{146} Skaar, Judicial Independence and Human Rights in Latin America, 168.
\textsuperscript{147} Burt, Challenging impunity in domestic courts: human rights prosecutions in Latin America, 301-302.
government managed to reinterpret the law by arguing that it did only offer immunity to crimes committed between 1973 and 1985, and not those committed prior to the military coup. This led to nearly 600 members of the armed forces to now face legal consequences for crimes against humanity committed prior to 1973.\footnote{Skaar, Judicial Independence and Human Rights in Latin America, 179-181.}

In 2006 Uruguay adopted the Rome Statute into Uruguayan domestic law, and became the first Latin American country in doing so, which “provided for both complementarity and cooperation with the International Criminal Court”\footnote{Ibid, 183.}. The Executive adopted a clear position in favor of trials during this regime, leading to many trials and legal consequences to members of the military, including the former president Juan Maria Bordaberry that was in office between 1972 and 1976. He was later on sentenced to three years in prison in the charge of coauthor in the assassination of ten people. Exhumations were made on military facilities in the search of the remains of the disappeared during the military dictatorship. Reparations to relatives and victims of violations of HR during the authoritarian period were made, and a special commission was established in 2009 to handle this matter. The Executive was also positive to the extradition of perpetrators of crimes against humanity to other countries such as Argentina, in cases regarding the military cooperation across borders called \textit{Operacion Cóndor} or Operation Condor, contrary to former governments that had turn down every request to do this\footnote{Ibid, 179-181.}.

In 2009 the Executive called for a new referendum, due to pressures from civil society, to decide if the amnesty law was going to be abolished or not. The results ended up in 53 percent voting in favor of keeping the amnesty law’s legal status. When in 2009 the \textit{Frente Amplio} won the presidential elections again, this time with José Mujica as a candidate, the amnesty law was openly criticized by his regime and he was critical to its legal status. While as in the regime of Vázquez the intentions were not as clear to be willing to abolish the amnesty law\footnote{Ibid, 185.}. In fact in 2011 his government even did follow the recommendations that the Inter-American Court of Human Rights made that same year to nullify the amnesty law\footnote{Inter-American Court of Human Rights, Gelman vs. Uruguay Case, 2010/02/24, Official summary: http://www.corteidh.or.cr/docs/casos/articulos/resumen_221_esp.pdf.}. The Parliament issued a law that declares the nullity of the \textit{Ley de Caducidad} and consider those crimes committed during the military dictatorship as crimes against humanity, thereby making them...
no susceptible to statutes of limitations\textsuperscript{153}. Although later on in 2013 this law that nullified the amnesty law, was itself declared unconstitutional by the Supreme Court\textsuperscript{154}.

In 2012 President Mujica (2010-2015) in a speech to the public, publicly recognized the involvement of state institutions on the disappearance of people during the military dictatorship\textsuperscript{155}. Even if the Executive has been more progressive towards resolving violations of HR during this period, some argue that the negative result of the referendum was due, in part because of the presidential and parliamentary elections were held the same year, and the little support the political parties openly gave in favor of the abolishment of the law\textsuperscript{156}.

3.3.3 The Supreme Court

During the military dictatorship the Supreme Court in Uruguay was composed of personnel that sympathized with the military dictatorship’s ideology. At the time of the transition to democracy from the authoritarian period, most of the members were replaced with judges who were elected democratically. These new members of the Supreme Court made efforts to raise the issue of violations of HR committed during the authoritarian period, but were met by an Executive that had no interest in taking on this issue and a military that still was powerful\textsuperscript{157}.

The members of the Supreme Court in Uruguay are elected by the parliament and retain the position for a ten-year period, the shortest term in comparison with the rest of Latin America. Since the two thirds were needed to appoint members of the Supreme Court, the Colorado Party and the National Party did alternate to select candidates, since none of these parties enjoyed majority in the Parliament\textsuperscript{158}.

The Supreme Court dictated in 1985 that the civilian courts would handle the cases of crimes against humanity committed under the military dictatorship, going against the Executive that

\begin{footnotesize}
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\item \textsuperscript{153} Hite & Ungar, \textit{Sustaining Human Rights in the Twenty-First Century: Strategies from Latin America}, 122-123.
\item \textsuperscript{154} Sentence Nr. 152, issued by the Uruguayan Supreme Court in 2013/03/08. Extracted at: \url{http://www.poderjudicial.gub.uy/images/resoluciones/sent_sci_08-03-13_inconstituc_ley18831_julio_castro.pdf}
\item \textsuperscript{156} Amilivia et.al., \textit{Civil Society and the Resurgent Struggle against Impunity in Uruguay}, 318.
\item \textsuperscript{157} Skaar, \textit{Judicial Independence and Human Rights in Latin America}, 139.
\item \textsuperscript{158} Ibid, 174-175.
\end{itemize}
\end{footnotesize}
supported the idea that the cases should be transferred to military courts\textsuperscript{159}. But in 1988, two years later after the amnesty law was issued, the Supreme Court declared that the same was constitutional and thereby in force\textsuperscript{160}.

In 2009 the Supreme Court unanimously declared the amnesty law \textit{Ley de Caducidad} as unconstitutional regarding a case of a political militant who died due to injuries caused by the torture committed by members of the military. The decision was based on that the law was not passed with a majority in the Parliament, as the Constitution states, and it does also go against international duties to protect the rights of the citizens. Although the resolution does only apply for this case and does not mean that the law has been abolished in a general aspect\textsuperscript{161}.

When in 2011 the Parliament declared the \textit{Ley de Caducidad} or Expiry Law as obsolete, because it was considered as an obstruction for the prosecution of crimes against humanity committed during the military dictatorship, many thought that this was the end of the law and that this would allow many cases to be opened regarding violations of HR\textsuperscript{162}. The Article 2 and 3 of this law states that the crimes committed during the military dictatorship are considered as crimes against humanity, and thereby making crimes of this nature to not be limited to time statutes\textsuperscript{163}. This was a major step for HR issues in Uruguay, since this would have meant that the cases of violations of HR committed during the military dictatorship would have now been imprescriptible, allowing the possibility to open up cases of this nature in the future.

But in February 2013 the Supreme Court regarding a case of a disappeared teacher during the military dictatorship, declared the Article 2 and Article 3 in the law issued in 2011 by the Parliament to be unconstitutional. The resolution argues that is unconstitutional to alter the prescription time of a crime that differs from the present regulations at the time when the crime was committed. In other words, the prescription time that is regulated at the time of the committed crime needs to be followed, meaning that these crimes now have exceeded the


\textsuperscript{160} Ibid, 234.


\textsuperscript{163} Law Nr. 18.831, issued by the Uruguayan Parliament in 2011/11/1. Extracted at: \url{http://www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=18831&Anchor=}

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time limitation. The resolution does also mention the argument made by the Parliament that states that these crimes are crimes against humanity and the Uruguayan State incorporated several international treaties, such as the "Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity"\(^\text{164}\). But the Supreme Court claims that since these treaties were incorporated in the judicial legislative after the crimes were committed, they cannot be applied to crimes committed prior to the incorporation of the same, otherwise this would mean going against the Constitution. Thereby, the Supreme Court does not consider the crimes committed during the military dictatorship as crimes against humanity. The resolution made by the Supreme Court does also dictate that it recognizes that the Inter-American Court of Human Rights is the definitive interpreter of the American Convention of Human Rights, referring to the law issued by the Parliament in 2011 which was based on the recommendation of the Inter-American Court of Human Rights, but at the same it is the Supreme Court that is the final legal interpreter of the Uruguayan Constitution. The Supreme Court does also consider that the result of the referendum cannot be modified by the legislative power\(^\text{165}\).

3.3.4 The Inter-American System of Human Rights and Uruguay

When it was clear in 1989 that the referendum concluded in the majority of the electorate supporting the amnesty law, the HR issues would now have no possibility of ratification in the national arena. The Institute for Legal and Social Studies of Uruguay\(^\text{166}\) began to present cases to the Inter-American Commission of Human Rights. Since Uruguay had recognized the American Convention of Human Rights in 1985, they argued that the amnesty law went against it. The Commission established in 1992 that the amnesty law went against two international HR treaties and recommended the Uruguayan state to compensate the victims, although it did not ask for the abolishment of the law\(^\text{167}\). The Uruguayan state ignored this recommendation and continued to adopt a negative position towards HR\(^\text{168}\).

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\(^{165}\) Sentence Nr. 152, issued by the Uruguayan Supreme Court in 2013/03/08. Extracted at: http://www.poderjudicial.gub.uy/images/resoluciones/sent_soji_08-03-13_inconstituc_ley18831_julio_castro.pdf

\(^{166}\) Instituto de Estudios Legales y Sociales del Uruguay.

\(^{167}\) Skaar, Judicial Independence and Human Rights in Latin America, 147-148.

\(^{168}\) Hite & Ungar, Sustaining Human Rights in the Twenty-First Century: Strategies from Latin America, 118-119.
In 1995 the Uruguayan government ratified the Inter-American Convention on Forced Disappearance of Persons, which forces the state to investigate and set legal consequences for the perpetrators of such crimes. It also defines the disappearance as an ongoing crime that does not stop until the whereabouts of the victim is known, these crimes are not limited to time statutes.\(^{169}\)

Back in 2010, the Inter-American Court of Human Rights stated that the Uruguayan state should abolish the amnesty law, since despite that progress had been made by initiating trials to some perpetrators of violations of HR, it was an obstacle for a full scale justice to be made regarding this issue and was considered as illegal.\(^{170}\) The Inter-American Court of Human Rights dictated that regarding two cases of detention and the kidnapping of children,\(^{171}\) that the Uruguayan State had not fulfilled its obligations to prosecute violators of HR and to investigate similar crimes committed during the military dictatorship. It also stated that by not fulfilling these duties it violated the American Convention of Human Rights and the Inter-American Convention on Forced Disappearance of Persons, ratified by the Uruguayan State. Regarding the Expiry Law or Ley De Caducidad, the court declared that this law goes against the duties that the State has to investigate and to sanction committed crimes against humanity. The amnesty granted to these perpetrators clearly presents an obstruction for future legal consequences to violations of HR, by setting time statutes to these crimes and excluding them from responsibility for the same, that explicitly goes against the International Law of HR. The resolution does also dictate that the referendums approving the further upholding of the amnesty law is irrelevant, since the law still violates International Rights such as the American Convention on Human Rights. It also recommends that the Uruguayan State compensate victims and relatives for material and non-material damages caused by the State during the military dictatorship.\(^{172}\)

\(^{169}\) Skaar, Judicial Independence and Human Rights in Latin America, 163.

\(^{170}\) Hite & Ungar, Sustaining Human Rights in the Twenty-First Century: Strategies from Latin America, 122-123.

\(^{171}\) The first case was regarding the kidnaping and illegal adoption of a child, whose Argentinian mother Maria Claudia García Iruretagoyena Casinelli had been kidnapped and tortured in Argentina, and later on transported to Uruguay and the Uruguayan military forces, in where the kidnaping and illegal adoption took place. The second case is regarding the famous Argentinian poet Juan Gelman, whose granddaughter had also been illegally adopted. Source: [http://www.corteidh.or.cr/docs/casos/articulos/resumen_221_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/resumen_221_esp.pdf)

\(^{172}\) Inter-American Court of Human Rights, Gelman vs. Uruguay Case, 2010/02/24, Official summary: [http://www.corteidh.or.cr/docs/casos/articulos/resumen_221_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/resumen_221_esp.pdf)
3.3.5 The Human Rights Movement in Uruguay

At the time of the transition to democracy in 1985 several HR organizations in the country organized protests and a hunger strike demanding truth and justice. But this seems to have made no impact on the political arena; the protests and HR issues were not attended by the media, thereby making it more difficult to raise a public debate regarding the crimes committed during the military dictatorship.\textsuperscript{173}

In 1986, a NGO called Service for Peace and Justice\textsuperscript{174}, created an investigatory commission called \textit{Nunca Más}\textsuperscript{175} due to the parliamentary commission only covered a minimum of the committed crimes. Although the \textit{Nunca Más} did not gain much attention from the public, this was an effort to clarify the events that took place during the military dictatorship.\textsuperscript{176}

The issuing of the amnesty law in 1986 provoked discontent among the supporters of trials regarding violations of HR, they managed to call for a referendum by the collection of more than 25 percent of the electorate, which was the minimum required by constitution in order to be able to call for a referendum regarding legal issues.\textsuperscript{177} The organization National Pro-Referendum Committee\textsuperscript{178} together with relatives and victims of violations of HR committed during the authoritarian period, managed to organize a massive campaign and they achieved to collect around 600,000 signatures, more than the 25 percent required, and the referendum was finally held in 1989. The result was a huge setback for the country’s HR movement since 56,7 percent of the votes were in favor of keeping the amnesty law; this resulted in many years of low activity from the part of the HR movement.\textsuperscript{179} The debate regarding these issues was almost null after the results of this referendum; it would take several years for the debate to once again reappear.\textsuperscript{180}

In 1996, the public debate regarding HR violations committed during the military dictatorship was raised again, at some extent due to the confessions made by military members in the

\textsuperscript{173} Brito, \textit{Human rights and democratization in Latin America: Uruguay and Chile}, 148.
\textsuperscript{174} Servicio Paz y Justicia.
\textsuperscript{175} Never More.
\textsuperscript{176} De Brito, \textit{Human rights and democratization in Latin America: Uruguay and Chile}, 141-142.
\textsuperscript{177} Hite & Ungar, \textit{Sustaining Human Rights in the Twenty-First Century: Strategies from Latin America}, 118.
\textsuperscript{178} Comisión Nacional Pro-Referéndum.
\textsuperscript{179} Amilivia et.al., \textit{Civil Society and the Resurgent Struggle against Impunity in Uruguay}, 313-314.
\textsuperscript{180} Hershberg & Agüero, eds. \textit{Memorias militares sobre la represión en el Cono Sur: Visiones en disputa en dictadura y democracia}, 43.
involvement of the armed forces in committing such crimes. This year several HR organizations in the country managed to organize a massive silence march, remembering the anniversary of the death of Zelma Michelini (the founder of Frente Amplio), Héctor Gutiérrez Ruiz (speaker of the Chamber of Deputies at the time), Rosario Barreto and William Whitelaw (two members of the rebellion group National Liberation Movement or Tupamaros). The attendance to the march was between 30,000 and 50,000 people, giving life once again to the HR issues and the march became a yearly-organized one\textsuperscript{181}. Some sectors of the political party Frente Amplio were also present during the march\textsuperscript{182}.

The HR movement managed to create an initiative during the government of Tabaré Vázquez, to call for a referendum regarding the amnesty law in 2009, the movement managed to collect 337,000 signatures of the 250,000 required, although the votes in favor for the abolishment of the amnesty law was 47,98 percent and were not sufficient to change its legal status\textsuperscript{183}. But they achieved to maintain pressure and kept the public debate alive regarding violations of HR committed during the military dictatorship. In 2010 and 2011 a massive mobilization and lobbying in the political arena were made regarding HR issues, leading to the issuing of a law through the Parliament dictating the practical nullity of the amnesty law and stating that the crimes committed during the military dictatorship were considered as crimes against humanity. This latter consideration was crucial since at the end of 2011 the crimes committed during the military dictatorship were going to prescribe, since prior to the issuing of this law these crimes were considered as not being crimes against humanity and thereby susceptible to regular time statutes\textsuperscript{184}. But the Supreme Court, as stated earlier, ruled against this law declaring it unconstitutional and supporting the further upholding of the amnesty law in 2013\textsuperscript{185}.

\textsuperscript{181} Skaar, Judicial Independence and Human Rights in Latin America, 150.
\textsuperscript{182} Burt, Challenging impunity in domestic courts: human rights prosecutions in Latin America, 299.
\textsuperscript{183} Amilivia et.al., Civil Society and the Resurgent Struggle against Impunity in Uruguay, 317
\textsuperscript{184} Hite & Ungar, Sustaining Human Rights in the Twenty-First Century: Strategies from Latin America, 132-133.
\textsuperscript{185} Sentence Nr. 152, issued by the Uruguayan Supreme Court in 2013/03/08. Extracted at: http://www.poderjudicial.gub.uy/images/resoluciones/sent_scj_08-03-13_inconstituc_ley18831_julio_castro.pdf
3.4 Summarize

During this chapter we have presented the material that is being analyzed in the next chapter from the different theoretical perspectives that have been developed before, in order to be able to achieve our research objective. The presented material has given us an overview over the discussions and events that have taken place regarding the amnesty laws in both countries. It has also shown us how that the case of Argentina has ended in the abolishment of the amnesty law, while in the case of Uruguay it has not.

4 Analysis

4.1 Introduction

In this chapter we begin with the analysis of the presented material during this research, by using the comparative method of Most Similar System Design, in where we will compare the cases of Argentina and Uruguay to see similarities and differences between them. In the succeeding sections in this chapter, we apply the theories of Transitional Justice and the Human Rights from below theory to the material presented throughout this research. Here we are presenting both cases and based on the material that we have developed during this research, we interrelate the theories and the relevant material to see how they concord or not with the theories also having in mind our research questions.

4.2 Most Similar System Design - Similarities and Differences between the cases of Argentina and Uruguay

The Argentinian and the Uruguayan society did both suffer from a violent military dictatorship, with different fear strategies used by the militaries in both countries. The Argentinian military systematically murdered and made between 10,000 and 30,000 people "disappear"\textsuperscript{186}, while the Uruguayan military used the torturing and mass imprisonment of

\textsuperscript{186} Skaar, \textit{Judicial Independence and Human Rights in Latin America}, 2-5.
people as its main strategy of fear, in comparison to the Argentinian case here the amount of disappeared was 164.

The Executive in Argentina at the beginning of the transition to democracy in 1982 was in favor of letting the military face trial for violations of HR committed during the last military dictatorship, leading to the trial of the junta leaders. The defeating of the Argentinian armed forces in the Malvinas War was also an important factor that contributed to the possibility of letting the junta leaders face trial. Although some years later, two amnesty laws were issued under Alfonsin’s government, in 1986 the Full Stop Law and in 1987 the Due Obedience Law, and later on the presidential pardoning issued by Menem to members of the military in 1989.

At the same time, the first democratic government in 1985 in Uruguay, was clearly against legal prosecution of members of the military for violations of HR committed during the authoritarian period, leading in 1986 to the issuing of the Ley de Caducidad putting stop to ongoing cases and future ones regarding crimes of this nature.

The Executive in both countries maintained a policy of no trials and supported the amnesty laws and pardoning during the 1990’s, until the new millennium when changes did finally take place. Although in Argentina the Executive pushed for a reform on the Constitution that among other ones, made the American Convention of Human Rights to be included in the Argentine Constitution in 1994 during the first government of Menem.

When Nestor Kirchner became president in Argentina in 2003, he adopted several reforms leading to great progress in the HR field and finally pushing in Congress for the declaration of the unconstitutionality of the amnesty laws that were legal at that moment.

In Uruguay the government of Batlle in 2000, made some progress in the HR field by creating a truth Commission to discover the whereabouts of the disappeared but did not involve any

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187 Amilivia et.al., Civil Society and the Resurgent Struggle against Impunity in Uruguay, 310.
188 Skaar, Judicial Independence and Human Rights in Latin America, 5.
190 Skaar, Judicial Independence and Human Rights in Latin America, 26; 84.
191 Ibid, 52.
192 Ibid, 53-54.
193 Ibid, 144-145.
194 Ibid, 76.
195 Ibid, 85.
legal consequences for the perpetrators.\(^{196}\) When in 2004, Tabaré Vázquez and his Frente Amplio won the presidential elections, a clear policy change was seen regarding violations of HR committed during the military dictatorship. Although the amnesty law was kept, many trials were initiated against perpetrators of crimes of this nature since the amnesty law gives the Executive a decisive power to initiate investigations. A new referendum took place in 2009, although the result was negative to the abolishment of the amnesty law\(^{197}\). The same year the Frente Amplio won the presidential elections again, this time with José Mujica as the presidential candidate. His government passed through Parliament a law that nullified the amnesty law in 2011\(^{198}\) and in 2012 he openly declared the involvement of the Uruguayan State in the commitment of crimes against humanity during the military dictatorship, signaling an attitude in favor of trials regarding crimes of this nature\(^{199}\).

The HR movement in Argentina was strong nationally and internationally during the military dictatorship, gaining power to influence the public debate regarding violations of HR, when transition to democracy took place in 1983\(^{200}\). Even after the issuing of the amnesty laws and the pardoning, the HR organizations such as Grandmothers of Plaza de Mayo, kept the public debate alive and managed to present cases of kidnapped and illegally adopted children during the military dictatorship, giving that the amnesty laws did not cover these types of crimes\(^{201}\).

In Uruguay, the HR movement did not manage to make a similar impact on the political arena, and the media was unwilling to talk about violations of HR committed during the military dictatorship, at the time of the transition to democracy\(^{202}\). When the amnesty law was issued in 1986, HR organizations managed to mobilize and collect enough signatures to call for a referendum regarding the amnesty law in 1989\(^{203}\), although the result was in favor of

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196 Skaar, Judicial Independence and Human Rights in Latin America, 159-162.
197 Ibid, 179-181.
198 Hite & Ungar, Sustaining Human Rights in the Twenty-First Century: Strategies from Latin America, 122-123.
201 Skaar, Judicial Independence and Human Rights in Latin America, 52. This can also be read on Popovski & Serrano, eds. After Oppression: Transitional Justice in Latin America and Eastern Europe, 73.
202 De Brito, Human rights and democratization in Latin America : Uruguay and Chile, 148.
203 Hite & Ungar, Sustaining Human Rights in the Twenty-First Century: Strategies from Latin America, 118.
keeping the amnesty law. The issue of violations of HR would have to wait until 1996, when the HR organizations managed to organize a mass silence march in the memory of some politicians that had been murdered during the military dictatorship, in where the attendance was between 30.000 and 50.000 people. This was in response to public confessions made by members of the military in their involvement in violations of HR committed during the military dictatorship.

In Argentina a similar case took place, when here also a military member, Captain Adolfo Scilingo, publicly declared the atrocities the military had committed during the last military dictatorship in the country, giving more strength to the public debate regarding violations of HR. HR organizations and relatives to victims, managed to initiate trials against personnel from the military for the kidnapping and illegal adoption of children during the authoritarian period, thanks to the incorporation of the American Convention of Human Rights in 1994 into the Argentine Constitution.

At the beginning of the new millennium, the HR movement in Argentina managed to create enough pressure in the political arena and together with a HR friendly Executive, finally declared the amnesty laws and the pardoning unconstitutional by the Congress in 2003, and by the Supreme Court in 2005 and 2007.

At the same time in Uruguay the HR movement managed to make some progress regarding violations of HR, during the Batlle government in 2000. But in 2004 when the new government of Tabaré Vázquez won the presidential elections led to great advancement in HR issues. The election of the Frente Amplio candidate lead to the initiation of many trials against

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204 Amilivia et.al., Civil Society and the Resurgent Struggle against Impunity in Uruguay, 313-314.
205 Hershberg & Agüero, eds. Memorias militares sobre la represión en el Cono Sur: Visiones en disputa en dictadura y democracia, 150.
206 Skaar, Judicial Independence and Human Rights in Latin America, 150.
207 Ibid, 53.
208 Ibid, 63-64.
209 Ibid, 60-61.
210 Ibid, 85.
211 Ibid, 56.
213 Skaar, Judicial Independence and Human Rights in Latin America., 159-162.
perpetrators of violations of HR, although the amnesty law would remain in force\textsuperscript{214}. The HR movement showed again its strength when in 2009 they managed to collect enough signatures to call for a new referendum regarding the amnesty law, although the result was the same once again\textsuperscript{215}. Even if the result of the referendum was negative, they kept the HR topic alive leading to the issuing of a law in 2011 in the Parliament pushed by the executive, that made the crimes committed during the military dictatorship be considered as crimes against humanity, and thereby not limited to time statutes\textsuperscript{216}.

The Supreme Court in Argentina was supportive to trials against members of the military at the beginning of the transition to democracy in 1983\textsuperscript{217}. When the government of Menem came to office in 1989 he replaced some members of the Supreme Court with people loyal to the Executive power, letting Menem to contain the HR issue\textsuperscript{218}. In 2000 these same Supreme Court members were now more progressive towards this subject, dictating that the cases of kidnapped children would remain in civilian court, while the military wanted them transferred to military court\textsuperscript{219}. The government of Néstor Kirchner replaced some of the Supreme Court members with others more supportive of HR matters\textsuperscript{220}, leading to the declaration of unconstitutionality of the amnesty laws in 2005\textsuperscript{221} and the pardoning in 2007\textsuperscript{222}.

In Uruguay the Supreme Court was more supportive of HR issues at the beginning of the transition to democracy in 1985, but three years later it dictated the constitutionality of the amnesty law\textsuperscript{223}. Although in 2009 the Supreme Court declared the amnesty law unconstitutional regarding a specific case.

\textsuperscript{214} Burt, Challenging impunity in domestic courts : human rights prosecutions in Latin America, 301-302.
\textsuperscript{215} Amilivia et al., Civil Society and the Resurgent Struggle against Impunity in Uruguay, 317.
\textsuperscript{216} Hite & Ungar, Sustaining Human Rights in the Twenty-First Century: Strategies from Latin America, 132-133.
\textsuperscript{217} Skaar, Judicial Independence and Human Rights in Latin America, 49.
\textsuperscript{218} Ibid, 53.
\textsuperscript{219} Ibid, 65-66.
\textsuperscript{220} Ibid, 86.
\textsuperscript{221} Hite & Ungar, Sustaining Human Rights in the Twenty-First Century: Strategies from Latin America, 109.
\textsuperscript{223} Palermo, Pablo Galain. La Justicia de Transición en Uruguay: Un Conflicto sin Resolución, 233-234.
But the final word would come in 2013 when the Supreme Court dictated that the law issued in 2011 by the Parliament, that declared that the crimes committed during the military dictatorship were crimes against humanity, was in fact unconstitutional and ratified the legal status of the amnesty law\textsuperscript{224}.

The Inter-American system of Human Rights has influenced both cases at different levels regarding HR issues. In Argentina the incorporation of the American Convention of Human Rights in 1994 into the Argentine Constitution\textsuperscript{225} was a key factor for the progress of these issues. Although the Uruguayan State recognized the American Convention in 1985 they did not incorporate it to the Constitution\textsuperscript{226}.

The Inter-American Commission of Human Rights managed to put pressure on the Uruguayan State several times, as in 1992 when the commission dictated that the amnesty laws went against several international treaties\textsuperscript{227}. Also in 2010 when it recommended the Uruguayan State to abolish the Full Expiry Law considering it illegal and because it was an obstacle for justice to be made regarding violations of HR committed during the military dictatorship, leading to the issuing of the 2011 law pushed by the Executive making the amnesty law obsolete\textsuperscript{228}.

Contrary to the decision of the Uruguayan Supreme Court in 2013 reinforcing the legality of the amnesty law\textsuperscript{229}, when in 2005 the Argentinian Supreme Court declared the amnesty laws unconstitutional, the resolution was based on the American Convention and previous resolutions regarding similar cases that the Inter-American Commission of Human Rights had dictated\textsuperscript{230}.

\textsuperscript{224} Sentence Nr. 152, issued by the Uruguayan Supreme Court in 2013/03/08. Extracted at: \url{http://www.poderjudicial.gub.uy/images/resoluciones/sent_scj_08-03-13_inconstituc_ley18831_julio_castro.pdf}
\textsuperscript{225} Skaar, Judicial Independence and Human Rights in Latin America, 60.
\textsuperscript{226} Hite & Ungar, Sustaining Human Rights in the Twenty-First Century: Strategies from Latin America, 118-119.
\textsuperscript{227} Skaar, Judicial Independence and Human Rights in Latin America, 147-148.
\textsuperscript{228} Hite & Ungar, Sustaining Human Rights in the Twenty-First Century: Strategies from Latin America, 122-123.
\textsuperscript{229} Sentence Nr. 152, issued by the Uruguayan Supreme Court in 2013/03/08. Extracted at: \url{http://www.poderjudicial.gub.uy/images/resoluciones/sent_scj_08-03-13_inconstituc_ley18831_julio_castro.pdf}
\textsuperscript{230} Popovski & Serrano, eds. After Oppression: Transitional Justice in Latin America and Eastern Europe, 87.
4.3 Transitional Justice in the cases of Argentina and Uruguay

When Argentina and Uruguay made its transition to democracy in the 1980’s, they used similar strategies of reconciliation in order to maintain peace, both issued amnesty laws and pardoning to members of the military for committed crimes against humanity\textsuperscript{231}, although Argentina initially did let the junta leaders face trial\textsuperscript{232}. This period is in accordance to the second phase that Teitel recognizes within the history of Transitional Justice, in where this period is characterized by the usage of reconciliation strategies such as the issuing of amnesties in order to avoid a new violent conflict\textsuperscript{233}.

The initial justice that was created when junta leaders in Argentina faced trial, was a clear break with the former authoritarian period and helped to reinforce the governmental institutions and its legitimacy, and at the same time contributed to reinforce the rule of law\textsuperscript{234}, this becomes a transformative force in the new democratic era according to Teitel\textsuperscript{235}. This phase concords with the first period that Teitel mentions, in where the main objectives were the enhancing of the rule of law and accountability\textsuperscript{236}. Although this initial justice showed to be short-lived and amnesty laws and pardoning were issued by the Executive later on.

In the case of Uruguay, that fits in the category of what Skaar calls for a "pacted" transition\textsuperscript{237}, the military was strong enough to impose its demands for impunity to the democratic government\textsuperscript{238}. The issuing of amnesties that have a certain "democratic" nature such as the Uruguayan amnesty law, that was supported by a referendum, are argued to damage the process of reincorporation of the rule of law by Teitel\textsuperscript{239}. Since equal protection of the citizens in society is one of the pillars of the rule of law. But at the time when the amnesty law was issued and supported by society, it must be taken into account that the

\textsuperscript{231} The Argentinian Full Stop Law was issued in 1986, the Due Obedience Law in 1987, and the pardoning to the militaries was issued in 1989: Skaar, Judicial Independence and Human Rights in Latin America, 52-54.


\textsuperscript{232} Skaar, Judicial Independence and Human Rights in Latin America, 48-51.

\textsuperscript{233} Teitel. Transitional Justice Genealogy, 82.

\textsuperscript{234} Teitel, Transitional Justice, 28-29.

\textsuperscript{235} Ibid, 6.

\textsuperscript{236} Ibid, 70-71.

\textsuperscript{237} Skaar, Judicial Independence and Human Rights in Latin America, 11.

\textsuperscript{238} Ibid, 140-143.

\textsuperscript{239} Teitel, Transitional Justice, 59.
military were strong and the risk of a new coup was latent in Uruguay\textsuperscript{240}, similar to the context when the Argentinian Executive issued the amnesty laws during Alfonsin’s government and pardoning by the ex-president Menem\textsuperscript{241}.

Today almost 28 years later, the armed forces seems to have accepted the democratic rules in Uruguay, making it no longer a menace for democracy, it seems that there is no clear argument that can support the further maintenance of the amnesty law in Uruguay. Most crimes committed during military dictatorship are violations of HR and thereby no limited by time statutes\textsuperscript{242}, but the Uruguayan Supreme Court considered the crimes committed during the military dictatorship to be in fact limited by time statute\textsuperscript{243}.

Teitel mentions the importance of International human right laws to HR issues, since when they are incorporated to national law they become a tool for domestic actors to create justice\textsuperscript{244}. This was the case in Argentina when in 1994 the American Convention of Human Rights was integrated to the Argentine Constitution\textsuperscript{245}, this gave the possibility to domestic actors to make progress regarding these issues and was even decisive when the Supreme Court in 2005 declared the amnesty laws unconstitutional\textsuperscript{246}. Buckley-Zistel et.al. does also state the importance of international courts and tribunals to HR issues in the present\textsuperscript{247}, a proof of this can be sees in the role of the Inter-American system of Human Rights in both cases in putting pressure to the governments. According to Skaar the judiciary today has surpassed the influence of the Executive and HR organizations regarding HR\textsuperscript{248}. This neglects the enormous impact that HR organizations had in both cases, whereas in the Argentinian case they have been decisive in keeping the HR issues on the political agenda; in the Uruguayan case they achieved to influence the government of Mujica and to organize and call for the referendums in 1989 and 2009, even if the results were negative to the abolishment of the amnesty law.

\textsuperscript{240}Skaar, Judicial Independence and Human Rights in Latin America, 145-146.
\textsuperscript{241}Ibid, 52.
\textsuperscript{242}Teitel. Transitional Justice, 63.
\textsuperscript{243}Sentence Nr. 152, issued by the Uruguayan Supreme Court in 2013/03/08. http://www.poderjudicial.gub.uy/historico-de-noticias/533-sci-declaro-inaplicables-los-arts-2-y-3-de-la-ley-18-831-en-la-causa-de-la-desaparicion-de-julio-castro.html.
\textsuperscript{244}Ibid, 33-34.
\textsuperscript{245}Skaar, Judicial Independence and Human Rights in Latin America, 60.
\textsuperscript{246}Popovski & Serrano, eds. After Oppression: Transitional Justice in Latin America and Eastern Europe, 87.
\textsuperscript{248}Skaar, Judicial Independence and Human Rights in Latin America, 56.
The more HR friendly government of Kirchner in Argentina used the Constitution as an argument that could hardly be defended by those who were against trials and in favor of the upholding of the amnesty law. The sufficient legal arguments helped the HR movement to keep putting pressure regarding violations of HR by presenting cases and influencing the political parties, and the public debate in Argentina.

4.4 Human Rights from below - The role of human rights movement in the case of Argentina and Uruguay

Progress within the HR field in Argentina could not have been done without the HR movement, which skillfully used the law to achieve this progress. HR organizations use legal means as a type of resistance to the hegemonic power of the political arena. This was clearly the case in Argentina during times when the Executive was unwilling to make progress in HR matters. Sousa Santos and Rodríguez-Garavito states that the HR movement has achieved to take on the role as the enforcer of HR from the state. They do also mention that the judiciary has an apolitical nature and does not want to go against the Executive power due to the division of power between them both, and due to many times the Executive has great control over the judiciary power, leaving political issues to be handled by the Executive.

In the case of Argentina, the Executive clearly took a stand regarding the amnesty laws when in 2003 the Congress declared them unconstitutional, leading to the resolution of the Supreme Court in 2005 dictating the unconstitutionality of the amnesty laws. Here the amnesty laws were considered to be a political issue to be handled by the political authorities reinforcing the argument of the division of power made by Sousa Santos and Rodríguez-Garavito.

But this argument does not apply to the case of Uruguay, in where the amnesty law was declared obsolete by the issuing of a law pushed by the Executive through the Parliament in

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249 Rodríguez-Garavito & Sousa Santos, Law and Globalization from Below, 183.
251 Ibid, 188-189.
252 Skaar, Judicial Independence and Human Rights in Latin America, 85.
2011\textsuperscript{254}, while the Supreme Court dictated in 2013 that the issuing of this law that made the amnesty law obsolete was itself unconstitutional and thereby supporting the legal status of the amnesty law\textsuperscript{255}. Here the judiciary clearly went against the Executive regarding the amnesty law, despite that this issue historically could be considered as a political matter. Even if the division of power is argued to be good for the rule of law, this meant that the amnesty law was still in force. The Uruguayan Supreme Court adopted a strictly constitutional view on the amnesty law and was not sensitive to the HR organizations’ arguments or the Executive’s for the abolishment of the amnesty law. This concords with the argument made by Sousa Santos and Rodriguez-Garavito that the law often adopts a traditional position in society and thereby going against HR organizations, that may not share the same values\textsuperscript{256}.

Santos and Rodriguez-Garavito does also state that social movements, such as the HR movement, creates networks with more powerful international actors to increase its influence in order to achieve its goals\textsuperscript{257}. In Argentina HR organizations used international actors, such as the Inter-American system of Human Rights to increase pressure on the national government. In Uruguay the role of the Inter-American system of Human Rights has also been crucial to influence the Executive in 2011, when the Parliament issued a law that made at the time the amnesty law obsolete\textsuperscript{258}.

5 Conclusions

We have presented the material and analyzed it with the developed theories during this research. In this chapter we are trying to answer the initial questions that were made in the first part of this essay. In order to accomplish this we will present the questions again and give answer to each of them. We have analyzed the Executive, the Supreme Court, the Inter-

\textsuperscript{254} Hite & Ungar, \textit{Sustaining Human Rights in the Twenty-First Century: Strategies from Latin America}, 122-123.
\textsuperscript{255} Sentence Nr. 152, issued by the Uruguayan Supreme Court in 2013/03/08. Extracted at: \url{http://www.poderjudicial.gub.uy/images/resoluciones/sent_scj_08-03-13_inconstituc_ley18831_julio_castro.pdf}
\textsuperscript{256} Rodríguez-Garavito & Sousa Santos, \textit{Law and Globalization from Below}, 188-189.
\textsuperscript{257} Ibid, 222.
\textsuperscript{258} Law Nr. 18.831, issued by the Uruguayan Parliament in 2011/11/1. \url{http://www.poderjudicial.gub.uy/images/resoluciones/sent_scj_08-03-13_inconstituc_ley18831_julio_castro.pdf}
American system of Human Rights and the HR movement in Argentina and Uruguay regarding the legal status of the amnesty laws, with our developed theories and utilizing a comparative methodology, we are going to answer our main questions.

-How have the four actors presented in this essay influenced the outcome regarding the present legal status of the amnesty laws in Argentina and Uruguay?

The HR movement in Argentina was able to skillfully use legal tools at the national and international level, together with the Inter-American Court of Human Rights to put pressure on the Executive power, for justice to be made regarding violations of HR committed during the last military dictatorship. When Nestor Kirchner seized the presidential post in 2003, the HR organizations were strong together with international organizations and were able to put pressure on Argentina concerning HR, and Nestor Kirchner could not afford to neglect these issues. Sousa Santos and Rodríguez-Garavito states that the HR movement has taken the role as the enforcer of HR issues from the Executive power. Although the Executive has in fact shown willingness and did have an important role in canalizing the requests made by the HR organizations in the cases of Argentina and Uruguay, at least in the last ten years and more clearly in the Argentinian case leading to the abolishment of the amnesty laws. Skaar sees instead that the judiciary has taken a more influential role regarding HR issues, but without the effort of the HR movement and political willingness this is almost impossible to achieve. During the last decade, progress has been made regarding violations of HR committed during the military junta’s era in Argentina; the Supreme Court abolished the amnesty laws back in 2005 and in 2007 the Supreme Court declared the pardoning issued by Menem unconstitutional. Prior to this in 2003, pushed by the Executive, the Congress declared that the pardoning and the amnesty laws issued before were unconstitutional, sending a clear signal from the Executive and the Legislative power that this was not going to

259 Popovski & Serrano, eds. After Oppression: Transitional Justice in Latin America and Eastern Europe, 78-81. This can also be seen in: Hite & Ungar, Sustaining Human Rights in the Twenty-First Century: Strategies from Latin America, 114.

260 Rodríguez-Garavito & Sousa Santos, Law and Globalization from Below, 20.

261 Skaar, Judicial Independence and Human Rights in Latin America, 12.


264 Skaar, Judicial Independence and Human Rights in Latin America, 85-86.
be tolerated anymore. Another important factor in the Argentinian case is the incorporation of the American Convention into the Argentine Constitution in 1994, pushed by the Executive during the government of Menem\textsuperscript{265}. Even if Menem’s intentions were not to give more power to the HR movement, indirectly this gave the HR organizations new tools to work with and enabled them to make progress in HR matters. The Inter-American Commission on Human Rights was able to put more pressure on the Argentinian State, given that the American Convention now was part of the country’s Constitution\textsuperscript{266}. The Inter-American Commission on Human Rights did also influence the resolution made in 2005 and 2007 by the Argentinian Supreme Court, stating that the pardoning and the amnesty laws were unconstitutional\textsuperscript{267}.

In Uruguay, the HR organizations were not able to create enough pressure as in the case of Argentina regarding the violations of HR committed during the last military dictatorship. The Executive of the last decade has certainly been more progressive regarding these issues in comparison to prior regimes. For instance, when the amnesty law Ley de Caducidad was initially created in 1986\textsuperscript{268}, it can be argued that since the transition was a "pacted" one between the former authoritarian and the new democratic one, the creation of this law was an action taken in order to create peace between the parts and to maintain democracy, as also stated by Skaar\textsuperscript{269} and Teitel\textsuperscript{270}. The results of the referendums in 1989 and 2009 which resulted in favor of the amnesty law, gave certain validity to the present legality of the Ley de Caducidad, the two last governments of the Frente Amplio has managed to prosecute many perpetrators for committing these crimes even if the amnesty law is still in force. However, Teitel states that these types of amnesties, that have a certain "democratic" nature, are argued to damage the reestablishment of the rule of law\textsuperscript{271}. The Supreme Court relies in part on the result of the last referendum, when in 2013 they stated the further upholding of the amnesty law\textsuperscript{272}. This can be understood as an act of unwillingness from the Supreme Court to make

\textsuperscript{265} Skaar, Judicial Independence and Human Rights in Latin America, 76.

\textsuperscript{266} Ibid, 60-61.

\textsuperscript{267} Popovski & Serrano, eds. After Oppression: Transitional Justice in Latin America and Eastern Europe, 87.

\textsuperscript{268} Skaar, Judicial Independence and Human Rights in Latin America, 144-145.

\textsuperscript{269} Ibid, 11.

\textsuperscript{270} Teitel, Transitional Justice Genealogy, 82.

\textsuperscript{271} Teitel, Transitional Justice, 59

\textsuperscript{272} Sentence Nr. 152, issued by the Uruguayan Supreme Court in 2013/03/08. Extracted at: \url{http://www.poderjudicial.gub.uy/images/resoluciones/sent_scj_08-03-13_inconstituc_ley18831_julio_castro.pdf}
progress in the HR field and can also be seen as an attempt to make a stand towards the Executive, signaling that the legality of the amnesty law is a matter solely for the Supreme Court to decide on. The resolution is a response to the law issued by the Parliament and pushed by the executive in 2011 that reinterpreted the amnesty law and made it obsolete. Since the amnesty law is constructed in such way that it is up to the Executive to decide if an investigation will be made or not regarding these type of cases, and since both Tabaré Vázquez and José Mujica from Frente Amplio have shown to be willing to prosecute perpetrators of crimes committed during the last military dictatorship, many trails have been initiated. But at the same time, since the amnesty is still in force and given the legal construction of it, giving the Executive a great power in deciding if investigation will be made or not on these type of crimes, there is no guarantee that in the future same policies will be adopted by a future government. The progress made today in the HR field, can easily be regressed if another party seizes the nation’s power that is unwilling to make progress regarding these type of crimes. Even if international pressure is achieved and the HR movement is well organized, a willing Executive to work in favor of HR is a necessity to make progress in this field.

-Which are the similarities and differences between these two cases regarding the present legal status of the amnesty laws?

Both countries suffered from a military dictatorship that systematically violated HR during the 1970’s and 1980’s. Although the Argentinian military used murdering as the main strategy to spread fear and to fight who they called ”terrorists”; the Uruguayan military used the mass imprisoning and torturing of people as its most used strategy. The nature of the violence used by both countries during the military dictatorship were different, giving the high amount

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of disappeared and illegally adopted children\textsuperscript{276} that the Argentinian military dictatorship ended with, can be seen as factors that brought more international pressure.

The HR movement in Argentina seems to have been more persuasive than the Uruguayan counterpart, and managed to capture attention from society during and after the military dictatorship at national and international level, and thereby the HR organizations were able to put pressure on the political parties and the Executive during the democratic period after the military dictatorship. In Uruguay the HR movement seem not to have managed to seize momentum to influence the legal status of the amnesty law. Although they did manage to organize and create enough pressure in order to call for two referendums regarding the amnesty law. Anyway, the results of the referendums in 1989 and 2009 seem to have made a negative impact on the movement, meaning a backlash to HR issues on the country. In both cases the HR movement even if reaching different degrees of success, managed to put the HR issues on the political agenda.

This concord with the idea of the bottom-up perspective that Sousa Santos and Rodríguez-Garavito proposes\textsuperscript{277}, the movements in both countries managed to use a variety of legal tools to accomplish its goals. The referendums in Uruguay, even if the result were not favorable for the movement’s goals, they are prove of its ability to organize and to collect the signatures required to call for a referendum. In Argentina the HR movement showed its influence and power several times, leading after many years of work to finally see results when the amnesty law was abolished in 2005.

The theories developed in our research have both focused on the importance of the law as a tool to make progress in HR issues, as a transformative force\textsuperscript{278}, and as a main tool for HR movement to achieve its goals\textsuperscript{279}. This has shown to be relevant in both our cases, since the HR movement in both cases used legal tools to make progress in HR issues.

The Supreme Court in Argentina seemed to be more dependent of the Executive, and has followed the same pro-HR line as the Executive during the last decade leading to the

\textsuperscript{276} Relying on different accounts leaving between 10,000 to 30-000 victims. Skaar, \textit{Judicial Independence and Human Rights in Latin America}, 66.
\textsuperscript{277} Rodríguez-Garavito & Sousa Santos, \textit{Law and Globalization from Below}, 15-16.
\textsuperscript{278} Teitel, \textit{Transitional Justice}, 215-216.
\textsuperscript{279} Rodríguez-Garavito & Sousa Santos, \textit{Law and Globalization from Below}, 183.
abolishment of the amnesty law in 2005\textsuperscript{280} and the pardoning in 2007\textsuperscript{281}. In Uruguay the Supreme Court seems to have acted in the opposite way, here the Supreme Court instead went against the Executive showing to be more independent from the Executive power. When in 2011 the Executive passed through the Parliament a law reinterpreting the amnesty law and thereby making it obsolete\textsuperscript{282}, the Supreme Court dictated in 2013 that this law was in fact in itself unconstitutional\textsuperscript{283}, thereby reinforcing the further upholding of the amnesty law.

The Inter-American Commission of Human Rights influenced the Argentinian Supreme Court in its decision to abolish the amnesty law and the pardoning in 2005 and 2007\textsuperscript{284}. The Uruguayan Executive was also influenced by the Inter-American Commission of Human Rights, when in 2011 it followed the recommendations made by the same, issuing a law that made the amnesty law obsolete\textsuperscript{285}.

Transitional Justice highlight the importance on the incorporation of international laws into domestic law, since this makes crimes such as torture punishable that may have not been punishable before\textsuperscript{286}. The incorporation of the American Convention on Human Rights into the Argentinian Constitution in 1994\textsuperscript{287}, seems to have been a decisive factor to give the tools necessary to the Supreme Court, the Executive, the Inter-American Commission of Human Rights and the HR movement, to abolish the amnesty laws and the pardoning. In the case of Uruguay this did not occurred, together with the results of the referendums in 1989 and 2009, and the unwillingness of the Supreme Court to abolish the amnesty law, seems to have been significant to the further upholding of the amnesty law, together with governments that were before unwilling to make progress in HR matters.

\textsuperscript{280} Hite & Ungar, Sustaining Human Rights in the Twenty-First Century: Strategies from Latin America, 109.
\textsuperscript{282} Hite & Ungar, Sustaining Human Rights in the Twenty-First Century: Strategies from Latin America, 132-133.
\textsuperscript{283} Sentence Nr. 152, issued by the Uruguayan Supreme Court in 2013/03/08. Extracted at: http://www.poderjudicial.gub.uy/images/resoluciones/sent_scj_08-03-13_inconstituc_ley18831_julio_castro.pdf
\textsuperscript{284} Popovski & Serrano, eds. After Oppression: Transitional Justice in Latin America and Eastern Europe, 87.
\textsuperscript{285} Hite & Ungar, Sustaining Human Rights in the Twenty-First Century: Strategies from Latin America, 122-123.
\textsuperscript{286} Teitel, Transitional Justice, 33-34.
\textsuperscript{287} Skaar, Judicial Independence and Human Rights in Latin America, 60.
6 Future study

An interesting future research could be made on the intentions from the newly elected government of Tabaré Vázquez in making a constitutional reform in the future, if they are accomplished, this could be analyzed regarding the discussed issue in this essay. The intentions are to incorporate international treaties into the national Constitution in Uruguay, in the same way that Argentina did. There are also plans to create a special Constitutional Court to handle the matters that are related to the Constitution, or to increase the number of members in the Supreme Court to divide the matters that they will handle, having one part of the Court only taking care of the Constitutional matters.\textsuperscript{288}

This could mean that if these reforms are accomplished, it could be a major progress for the HR movement and would mean that many cases could be reopen regarding violations of HR committed during the military dictatorship in Uruguay, if the amnesty law is once and for all finally abolished.

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