
GLOBAL CRISIS IN MEMORY

Four Cases under Examination: Human Rights and Justice in Argentina under the Macri Administration

Emilio Crenzel^{1,2}

¹ National Council of Scientific Research (CONICET), AR

² University of Buenos Aires, AR

emiliocrenzel@gmail.com

Since 1983, following the restoration of democracy, Argentina has stood out for its transnational justice policies: it put the military juntas on trial; its National Commission on the Disappearance of Persons investigated the crimes of the dictatorship and, together with its Never Again report, became a model for numerous subsequent truth commissions; it passed reparation laws for the victims, built memory sites, and its new constitution placed international human rights laws above national legislation. More recently, after taking office in 2015, liberal president Mauricio Macri modified the Supreme Court, which then handed down rulings that introduced key philosophical changes in the way abuses were treated. In that framework, this paper will examine four rulings: the “Muiña ruling,” which released an agent of the dictatorship by commuting his sentence based on a law that holds that each year served without a conviction counts as two and which had been repealed when he was arrested; the “Fonteviechia ruling,” which rejected the primacy of international human rights treaties over domestic legislation; the “Alespeiti ruling”, which granted house arrest for health reasons to an agent of the dictatorship; and the “Villamil ruling”, which found that the state’s obligation to repair victims was subject to a statute of limitations. The analysis of these rulings will reveal the instrumental use of human rights by the Court, its countering of the cosmopolitan philosophy behind the country’s transnational justice policies, and its alignment with the Macri administration’s rejection of the particular status of crimes against humanity. These cases reveal that the discussion of the international human rights paradigm goes beyond certain populist governments. It is a broader challenge: what is under discussion is the universal nature of human rights and the status of the international system that protects them.

Starting in 1983, following the restoration of democracy, Argentina has stood out for its transitional justice policies, which have transformed the country’s relationship with the transnational culture of human rights (Sikkink, “From Pariah State to Global Protagonist” 1–30). The government put the military juntas that had governed the country under the dictatorship on trial and established a National Commission on the Disappearance of Persons (CONADEP) to investigate the crimes of the dictatorship. This Commission, together with the result of

its investigation, the “Never Again” report, became a model for numerous truth commissions that were subsequently established around the world. In the years that followed, the national congress passed reparation laws for the victims, and memory sites were built in several provinces, on the initiative either of the government or of human rights organizations. The country’s recent history was incorporated into school textbooks and a 1994 constitutional reform placed international human rights laws above domestic legislation.¹ While from 1986 to 1990 this trend was halted by a series of presidential pardons and the adoption of the Full Stop and Due Obedience Acts, which limited and suspended the trials for human rights abuses, in 2005 a new generation of trials began when these impunity laws were repealed.²

Under the military dictatorship, the judiciary had been an active supporter of illegal repression. Following a restructuring after the coup, the Supreme Court had endorsed repressive legislation and, along with most lower-court judges, had dismissed any actions brought against human rights violations.³ Once democracy had been restored, however, the judicial system had to address conflicts over the interpretation of the country’s violent past, as well as accountability for the crimes committed. The judiciary’s approach when it came to handing down decisions in this regard was two-sided. Supreme Court justices were receptive to policies dictated by the governing executive. Thus, they declared the constitutionality of the impunity laws when they were passed, and later ruled them unconstitutional when they were repealed. The lower courts instead offered a range of responses that indicated a relative independence from the executive.⁴

After taking office in 2015, neoliberal president Mauricio Macri rejected the role of human rights organizations and their demands. At the same time, he terminated the mandates of the official teams that had been tasked with investigating corporate responsibilities for dictatorial crimes and that had provided evidence for trials or assistance to victims; and he further equated the victims of guerrilla violence with the victims of the crimes committed by the state, overlooking the fact that the latter constituted crimes against humanity (Ginzberg). Macri also issued unconstitutional decrees that modified the Supreme Court, which then handed down rulings that introduced major philosophical changes in the way human rights abuses were dealt with (“Argentinian president”). His measures and rhetoric brought back key elements of prior neoliberal governments, such as the Saúl Menem administration (1989–99), which had also introduced significant changes to the Supreme Court and sought to put an end to the judicial proceedings that had begun with the democratic transition. Moreover, such measures coincided with a prevailing transnational climate that was putting into question the liberal paradigm of human rights.⁵

Various intellectuals who participated in Argentina’s transition have since reflected on the transitional strategy and offered different analyses. Some have highlighted its exceptional nature as a response to processes of extreme violence, which in other countries had been dealt with predominantly through amnesties and laws that called for forgetting (Nino). Others have reassessed it critically in light of the role of criminal justice as a tool for processing

¹ On Argentina’s transitional justice programme, see Nino. On the international impact of the military junta trial, see Sikkink, *The Justice Cascade*. On CONADEP and its “Never Again” report, see Crenzel, *Memory of the Argentina Disappearances*, and on reparations, see Guembe.

² On the history of struggles around human rights abuses in Argentina, see Crenzel, “Toward a History of the Memory of Political Violence and the Disappeared in Argentina” 15–34.

³ On the judiciary under the dictatorship, see Groisman, “El «Proceso de Reorganización Nacional» y el sistema jurídico”; CONADEP and Sarraibayrouse Oliveira. On the Supreme Court under the dictatorship, see Groisman, *La Corte Suprema de Justicia durante la dictadura*; Gargarella & Bohoslavsky 77–92 and González Betomeu 93–110.

⁴ On the conflicts in the judiciary sphere, see Acuña & Smulovitz 21–99.

⁵ On the political restructuring of the Supreme Court by President Menem, see Verbitsky.

the legacies of political conflicts.⁶ Yet other authors have analysed Argentina's prosecutorial approach in the context of the political battles that followed the return to democracy (Acuña & Smulovitz). Some of these scholars have adopted a comparative perspective within the framework of transitional justice policies in the Southern Cone of Latin America.⁷ Others situate the trials along a path of social, political and institutional accumulation, as a step towards achieving accountability for human rights abuses in Latin America.⁸ In this sense, Argentina is highlighted as one of the rare cases in history where heads of state have been prosecuted domestically for human rights crimes.⁹ There are also works that focus on the impact of the trials on Argentina's political culture,¹⁰ with some seeking to explain its uniqueness in the Southern Cone (Pion-Berlín),¹¹ and others examining how it has affected the construction of citizenship and the relationship with the law (Smulovitz).¹² Finally, certain works have underscored the decisive importance of the military junta trial in the reinstatement of criminal justice as an instrument of transitional justice policies worldwide (Sikkink).

Considering this background, I posit that Argentina is an exceptional case in Latin America because of the extent to which human rights have been incorporated into its political culture and institutional life. The judicialization of human rights abuses played an early and decisive role in that process, starting with the military junta trial. Thus, I argue that the conflicts over the uses and resignifications of human rights jurisprudence constitute an especially important case for examining confrontations between the various actors vying to give an interpretation of the past of political violence, in view of their performative capacity at the cultural and political level since the return to democracy in 1983.¹³

From this perspective, in this paper I examine four rulings that have a bearing on how human rights are addressed in the judicial sphere. First, the 'Fontevicchia ruling', which denied the primacy of international human rights treaties over domestic legislation. Second, the 'Villamil ruling', which found that the state's obligation to offer reparations to victims was subject to a statute of limitations. Third, the 'Alespeiti ruling', whereby an imprisoned agent of the dictatorship was granted house arrest for health reasons. And lastly, the 'Muiña ruling', which resulted in the release of a convicted human rights abuser by reducing his sentence in application of a law – no longer in force at the time of his arrest – that stipulated that every year served without a conviction should be counted as two. These rulings show the gradual erosion, in the judicial sphere itself, of the transnational justice paradigm that had thus far prevailed in the country. The judgements pose fundamental challenges to that paradigm as they ignore the inter-American system for the protection and defence of human rights, its primacy over domestic laws, including the national constitution, and the special status of crimes against humanity.

The analysis of these rulings exposes the Supreme Court's alignment with the Macri administration's rejection of the special status of crimes against humanity, and it reveals an instrumental use of human rights. That use in turn provides proof of how the discussion of the international human rights paradigm transcends the scope of certain populist governments. But it also shows the recognition of the place and status that human rights have had in Argentina's political culture since 1983, as a privileged scenario where different actors participated in the handling of the past of political violence.

⁶ See Malamud Goti.

⁷ See Barahona de Brito 119–60 and Lessa, *Memory and Transitional Justice in Argentina and Uruguay*.

⁸ See Collins.

⁹ See Burt 384–405.

¹⁰ See González Bombal & Landi 147–92.

¹¹ See Pion-Berlín 105–30.

¹² See Smulovitz 249–75.

¹³ See Allier & Crenzel, and for a comparative perspective on the Southern Cone in this sense, see Winn et al.

First case: the Fontevecchia ruling

In November 1995, the magazine *Noticias* published two news articles, which included several photographs, reporting the existence of an alleged illegitimate son fathered by Carlos Menem, who was then president of Argentina. The president responded by bringing a lawsuit against the publishing house and its directors, Jorge Fontevecchia and Hector D'Amico, seeking moral damages for what he claimed was a violation of his right to privacy. In the first instance, the judge rejected the complaint filed by Menem, who in turn appealed that decision. In 1998, the National Court of Civil Appeals of the Federal Capital reversed the decision of the lower court and ordered the publishing house, Fontevecchia and D'Amico, to pay damages. In 2001, the Supreme Court confirmed this last ruling, but Fontevecchia appealed by filing a petition with the Inter-American Commission on Human Rights (IACHR). In 2010, the IACHR referred the case to the Inter-American Court of Human Rights, which shortly afterwards ruled that freedom of thought and expression took precedence over the right to privacy. Established in 1959 and with its headquarters in Washington, DC, the IACHR is, along with the Inter-American Court of Human Rights, the main component of the inter-American system for the protection of human rights. The IACHR was instrumental in the denunciation of human rights abuses in Argentina during the dictatorship, following a 1979 on-site inspection that resulted in a report exposing the state's responsibility for the forced disappearance of persons and for extrajudicial executions, and calling for the perpetrators to be brought to justice and prosecuted.¹⁴

On 14 February 2017, the Supreme Court of Justice voted four to one to dismiss the decision of the Inter-American Court of Human Rights, arguing that that body was not competent to overturn a final ruling by the Supreme Court. The majority opinion was based on the purported defence of Argentina's national sovereignty. It argued that what the Inter-American Court ordered was not admissible as it would entail turning that body into a superior instance that reviewed the judgements handed down by national courts and, at the same time, it would strip the Supreme Court of its role as the country's highest judicial authority, replacing it with an international tribunal. The dissident vote instead highlighted that pursuant to the 1994 constitution, if Argentina was a party in a case heard by the Inter-American Court of Human Rights, then the government had the obligation to enforce that court's decision, as the constitutional amendment had established the hierarchy of human rights treaties and conventions as the supreme law of the land, giving them the same status as the constitution and placing them above domestic laws (Centro de Información Judicial, "La Corte sostuvo").¹⁵

While the decision in question was not issued in a case involving crimes against humanity perpetrated during the military dictatorship, the Supreme Court's ruling dismissing that decision has direct implications for the way it handles such crimes. It denies the primacy of international human rights law – in this case specifically the inter-American system of human rights – a principle incorporated into Argentina's legal system through the 1994 constitutional reform.

Second case: the Villamil ruling

On 28 March 2017, the Supreme Court handed down its decision on the Amelia Ana Villamil case. Villamil had brought an action seeking financial reparation from the state for its responsibility in the 1977 disappearance of her son Jorge Ayastuy and her daughter-in-law Marta Elsa Bugnone. Since the country's return to democratic rule and over the course of several years, efforts had been made to grant reparation in the form of monetary compensation to

¹⁴ See Inter-American Commission on Human Rights of the Organization of American States (IACHR).

¹⁵ "Centro de Información Judicial" is the website where the court publishes its decisions and rulings.

various victims of repression. Under Alfonsín's government, spouses and children of disappeared persons were awarded reparation; during the Menem administration, political prisoners and relatives of persons who were disappeared or killed by security forces received some monetary compensation for their families; and the Kirchner administration paid reparations to children of disappeared persons and political prisoners, including children who had been abducted or appropriated and had subsequently regained their identity.¹⁶

In Villamil's case, the state rejected her demand, alleging that the period to grant compensation had expired, as Villamil's son and daughter-in-law had been officially presumed dead in 1993. Villamil had filed an appeal with the Second Chamber of the Federal Court of Appeals of La Plata, and in this second instance the court decided in her favour, finding that 'no statute of limitations applies to compensations sought in cases of crimes against humanity', given the permanent nature of the crime of forced disappearance as established by the Inter-American Convention on Forced Disappearance of Persons.

The case was then heard by the Supreme Court, which ruled by a three-to-two vote that such demands for reparation are statute barred and, therefore, in order for a court to find against the state for its responsibility in such crimes, the action must be brought within the relevant statute of limitations. According to the majority opinion, in cases of crimes against humanity the monetary interest of the claimants cannot be considered imprescriptible. The dissenting votes emphasized that both the claim for damages and the criminal action arise from the same international crime that is not subject to a statute of limitations and, thus, the term to file a demand for reparation cannot be considered expired (Centro de Información Judicial, "La Corte Suprema, por mayoría, ratificó...").

So, with this ruling the Supreme Court once again ignored international humanitarian law – and the domestic law that established the benefit of reparation (Law No. 24,411) and that did not set a term to request it – and it questioned, albeit partially, the imprescriptible nature of crimes against humanity by putting forward a distinction between criminal and civil actions. This distinction restricts the consequences of the offence to the criminal sphere and denies the reparatory effect that compensation has on the victims' dignity as a moral recognition of the injury and loss they suffered.

More recently, the Supreme Court handed down a ruling in a case brought by María Gimena Ingegnieros against the company Techint S.A. for its involvement in the forced disappearance of her father Enrique Roberto Ingegnieros on 5 May 1977, which occurred 'during working hours and at his place of work'. It found that labour actions arising from crimes against humanity were subject to a statute of limitations. The majority opinion (three votes against two) was again endorsed by the chief justice and this was based on the precedent of the Villamil case (Centro de Información Judicial, "Las acciones laborales por daños..."). This ruling is of the utmost importance as it affects the possibility of similar legal actions being brought by other victims of such violations or their relatives. In this sense, since the last decade a number of legal investigations and academic studies have dealt with the responsibilities of corporations for human rights abuses committed during the dictatorship. These trials and investigations, which involve business groups whose managers currently hold high-level posts in the Macri administration, have widened the scope of analysis to include civil society in the examination of responsibilities in crimes against humanity, which had previously been limited to the armed forces. The court's ruling therefore touches on a sensitive issue, and benefits both business and the government.¹⁷

¹⁶ See Guembe 21–54.

¹⁷ On the responsibilities of corporations for human rights violations, see Área de Economía y Tecnología de la Facultad Latinoamericana de Ciencias Sociales (FLACSO), Centro de Estudios Legales y Sociales, and Secretaría de Derechos de la Nación, and Verbitsky & Bohoslavsky.

Third case: The Alespeiti ruling

On 18 April 2017, the Supreme Court of Justice overturned by three votes to two a judgement that had lifted a house arrest measure granted to Felipe Alespeiti, a retired colonel convicted of crimes against humanity. Alespeiti was a former head of one of the military zones into which the country's capital was divided under military dictatorship. In 2012 he was prosecuted for the kidnapping of thirty-four individuals – including the writer Haroldo Conti and the son of the poet Juan Gelman – and sentenced to twenty-two years in prison for those crimes. He later received another twelve-year sentence for his involvement in Operation Condor, a coordinated campaign of repression waged by all the dictatorships of the region.¹⁸ When the case was heard in the first instance, Alespeiti was granted house arrest in consideration for his heart condition, senility, 70 per cent loss of vision, deafness and mobility problems. This decision was appealed by the prosecutor, and the Fourth Court of Cassation which heard the appeal found that the defendant's health condition did not merit the benefit of house arrest. It further deemed that Alespeiti posed a flight risk and stressed the state's responsibility in guaranteeing the enforcement of a sentence that was thirty-six years overdue. The court also argued that in such cases the decision could not be limited to considerations regarding the age or health of the prisoner, but should also take into account the potential effect on the power structures he had participated in and with which he had formed a continental network of repression.

The case reached the Supreme Court after the changes introduced by the Macri administration, and the justices that supported the majority opinion used arguments drawn from the field of humanitarian law. Horacio Rosatti, one of the judges appointed by Macri, condemned state terrorism but questioned the contention that an octogenarian with health problems could pose a flight risk; he stressed the need to uphold the principles of legality and due process as a responsibility towards the international community. The other judge appointed by Macri, Carlos Rosenkrantz, agreed with his colleague – without, however, highlighting the nature of the crimes Alespeiti was charged with (Centro de Información Judicial, “La Corte Suprema, por mayoría, revocó un fallo...”).

This ruling is not an isolated event that could be explained by the need to contemplate a specific humanitarian situation. Of the 989 defendants found guilty of crimes against humanity, the vast majority (641, or 65 per cent) were granted house arrest. That figure increased to a marked degree after Macri took office in 2015. Meanwhile, the number of such convicts held in ordinary prisons dropped significantly (from 603 in 2015 down to 262 in 2018) and the number of offenders in military facilities rose threefold (from 28 to 86) (“Menos sentencias y más domiciliarias”).

House arrest thus became the predominant form of imprisonment. The decision to extend a benefit enjoyed by ordinary prisoners is based on the argument that a long time has passed since these crimes were committed and most of the perpetrators convicted of crimes against humanity are very elderly. The trend grew under pressure from the increasingly vociferous demands made by relatives and supporters of human rights abusers, which found an echo in the Macri administration. It was also backed by the medical unit of the Federal Prison Bureau, an agency of the National Justice Ministry, which according to human rights organizations falsified the medical records of these prisoners, including the former chief of police Miguel Etchecolatz, to justify their house arrest.¹⁹

¹⁸ On Operation Condor, see Dinges, and McSherry. On the Operation Condor trial, see Lessa, “Justice Beyond Borders: The Operation Condor Trial and Accountability for Transnational Crimes in South America” 494–506.

¹⁹ See “Expediente 6797-D-2016, Sumario: Ejecución de la pena privativa de la libertad – Ley 24660. Incorporación del artículo 33 bis, sobre excepción de la prisión domiciliaria en casos de delitos de genocidio o lesa humanidad.” Available at <https://www.diputados.gov.ar/proyectos/proyecto.jsp?exp=6797-D-2016>.

In sum, these decisions may be a covert way of enabling a shortcut to impunity through an instrumental use of the humanitarian argument regarding health concerns, as evidenced by the cases of the former president of Peru Alberto Fujimori and the former Chilean dictator Augusto Pinochet, who in the year 2000 used this argument to avoid extradition to Spain after his arrest in London.

Fourth case: The Muiña ruling

The last of the four cases I discuss is commonly referred to as the ‘two-for-one ruling’. This was a decision handed down by the Supreme Court of Justice on 3 May 2017 in the Luis Muiña case, and it was based on Law No. 24,390, known as the Two-for-One Act. This law, which was in force from 1994 to 2001, was intended to address the problem of overcrowding in prisons, as inmate populations were greatly swelled by detainees awaiting sentencing. The law stipulated that if an accused had been jailed for more than two years without a final verdict, every day spent in prison in excess of two years while waiting for a conviction would count as two days served. Although this sentence reduction was meant for ordinary prisoners, three of the five Supreme Court judges held that the Two-for-One Act applied to Muiña (Centro de Información Judicial, “La Corte Suprema, por mayoría, declaró aplicable...”).

The Second Federal Oral Proceedings Court of the City of Buenos Aires had found Luis Muiña guilty of crimes against humanity committed in the Posadas hospital during the military dictatorship, and had sentenced him to thirteen years in prison. This health facility had been occupied by the army after the 1976 coup d’état. Doctors, nurses and administrative staff were arrested and taken to legal prisons or forcibly disappeared and removed to clandestine detention centres, including one set up on hospital grounds. At that centre, Muiña was part of a paramilitary group that tortured and murdered several detainees. Eleven workers of the Posadas hospital are still missing.²⁰

In considering that Muiña was entitled to a sentence reduction under the Two-for-One Act, the Supreme Court ignored the fact that the crimes he was convicted of were crimes against humanity. In addition, he had committed them before the Two-for-One Act had been passed, and while that law was in force Muiña was still free. In fact, the Full Stop and Due Obedience impunity laws had not yet been repealed, effectively preventing the criminal justice system from trying cases of human rights abuses – a situation that would only be reversed in 2005, when such trials were resumed. The Supreme Court’s decision opened up the possibility of extending the sentence-reduction benefit to other criminals imprisoned for crimes against humanity. Several of them did file motions in that sense, citing the decision of the Supreme Court as precedent. Thus, the Supreme Court once again used an argument drawn from the field of human rights – granting reparation to convicted persons for long periods of detention without a conviction – to create a situation of impunity.

A few days later, on 10 May 2017, some 400,000 people in Buenos Aires gathered at Plaza de Mayo, the emblematic epicentre of the country’s political demonstrations, to voice their strong opposition to the ruling, waving white handkerchiefs – the symbol of the Mothers of Plaza de Mayo – in the air. Similar protests were staged in major cities across Argentina.²¹ Hours before this, in response to the outcry on social networks and mass media, the Argentine Congress had passed a law stipulating that the Two-for-One Act did not apply in cases of crimes against humanity, genocide or war crimes. As Aruguete and Calvo have observed, the repudiation of the court’s decision was unprecedented, even crossing party lines on social

²⁰ On the repression in the Posadas hospital, see Crenzel, “Inside ‘State Terrorism’: Bureaucracies and social attitudes in response to enforced disappearance of persons in Argentina” 268–86.

²¹ See *Guardian*, “Fury in Argentina over ruling that could see human rights abusers walk free”, 4 May 2017. Available at <https://www.theguardian.com/world/2017/may/04/argentina-supreme-court-human-rights>.

media. Over the week of 3–10 May 2017, the #2 × 1 hashtag was used in 724,090 tweets from 86,951 accounts, most of which did not fall on either side of the main political or ideological divide. That is, in contrast to other issues that typically polarize public opinion, the 2 × 1 rejection campaign garnered widespread support across the political and ideological spectrum. In that context, traditional mass media outlets yielded to social pressure and echoed the protest.²² In the end, despite resistance from the chief justice – one of the two members appointed by President Macri – on 4 December 2018, the Supreme Court ratified the decision of the National Congress by four votes to one.

Concluding Remarks

In sum, these four rulings evidence two distinct strategies promoted by the National Supreme Court of Justice under the Macri administration, which reveal the court's alignment with the current government's political agenda in human rights matters, aimed at undermining the human rights principles that, albeit with advances and setbacks, have been consolidated in the years since 1983 through the efforts of various administrations with different ideological leanings.

On the one hand, these strategies involve rulings that ignore the incorporation of international human rights jurisprudence into Argentina's legal system with a status superior to domestic legislation (the *Fontevecchia* and *Villamil* rulings) or the special status of certain reparation rights granted to victims of crimes against humanity (the *Villamil* case). With the *Fontevecchia* ruling, the Supreme Court deployed a nationalist argument to reclaim its power as the highest authority in charge of administering justice in the country, rejecting the hierarchy of the Inter-American Court of Human Rights. In the *Villamil* case, the Supreme Court's decision distinguished criminal actions from civil actions in cases of human rights abuses, despite the fact that the violation of rights involved both spheres. It also disregarded the perspective of international humanitarian law incorporated in the constitution, which starts with the recognition of the specific nature of crimes against humanity and does not set time limits for exercising the right to reparation.

On the other hand, these strategies involve rulings that, while drawing on the human rights paradigm, are meant instead to consolidate impunity (*Alespeiti* and *Muiña*). In both cases, the laws cited were based on humanitarian arguments applied to ordinary prisoners. Using human rights arguments to justify rulings that engender a situation of impunity reflects the place that human rights have achieved in Argentina's political culture since 1983, and their prevalence not only in the country's political culture but in popular opinion as well.

The tactics involved in the rulings notwithstanding, the decisions of the Supreme Court are the result of political power relations within and outside that judicial body, and, as such, they are variable. Inside the judiciary, we can see that, in fact, not all judges voted in favour in the four rulings. The only one who did so consistently was Carlos Rosenkrantz, one of the two judges appointed to the Supreme Court under the Macri administration, and who was elected chief justice in 2018 upon the request of the president himself. Horacio Rosatti, the second judge, voted in favour in three of the four rulings.

Outside the judicial system, the rulings of the Supreme Court mirror the tactics deployed by associations of relatives of military officers convicted of crimes against humanity. These organizations – with names such as 'Memoria completa' (Complete Memory) – on the one hand rejected the trials and characterized them as 'subversive or terrorist revenge' (*Sanjurjo*).

²² See Aruguete & Calvo, "#2 × 1: Diálogos al costado de la grieta 2 La decisión de la Corte como caso testigo de análisis acerca del diálogo en redes sociales entre comunidades diferenciadas," *Política Argentina*, 9 March 2018. Available at <https://www.politicargentina.com/notas/201803/24909-2x1-dialogos-al-costado-de-la-grieta.html>.

On the other hand, they call the perpetrators 'political prisoners', argue that their citizens' rights have been violated in the criminal trials in which they were convicted, and claim the right of their relatives to enjoy legal benefits, ignoring the particular status of the crimes they committed. This position was even supported by the traditional and conservative newspaper *La Nación*, mouthpiece of the largest economic groups, and by the prominent historian Luis Alberto Romero, a Macri supporter, who described the trials as a political theatre in which the accused were convicted without proper judicial proceedings having been observed. Similar demands were made in roundtables organized by Universidad Católica Argentina and Universidad de San Andrés, two private universities.²³ These demands were discussed by the Centro de Estudios Legales y Sociales and other human rights organizations, which responded that the arguments used ignore the fact that during the trials the defendants had all the guarantees of criminal procedural law, and the rulings handed down in the trials included both convictions and acquittals.²⁴ Finally, the attack against the trials for crimes against humanity has accompanied efforts by the Macri administration to remove from the bench several judges whose rulings go against government initiatives.²⁵

As noted earlier, the rulings examined here reveal that the Supreme Court shares the view of the Macri administration with respect to crimes against humanity and does not consider that they have a special status. But my analysis also points to the Supreme Court's instrumental use of human rights and, therefore, evidences that human rights have gained a major place in Argentina's political culture since 1983. These rulings are in line with the political climate that currently prevails at the global level – most notably with the policies furthered by the Trump administration and certain European governments – in which the system of international human rights law is either ignored or questioned, in particular with regard to the rights of migrants, women, ethnic minorities and workers. At the regional level, the confrontation with the inter-American human rights system by the governments of Jair Bolsonaro in Brazil and Nicolás Maduro in Venezuela, albeit under a different rhetoric, are equally alarming indicators of this scenario. This paper shows that the discussion of the international human rights paradigm – or a perverse use thereof – transcends the scope of populist governments, including certain liberal political parties, and is part of a prevailing climate in which what is at issue is the universal nature of human rights and the status of the international system that protects them.

Argentina's historical memory, however, has been translated into political action. The crowds that gathered in squares across the country succeeded in overturning the 'two-for-one' ruling, as they refused to accept impunity as a way of coming to terms with the past and encouraging society to 'look ahead'. Human rights organizations, including the emblematic Mothers and Grandmothers of Plaza de Mayo, along with left-wing and civil society organizations have taken an organized stand in various scenarios – judicial, political, cultural – both

²³ Luis Alberto Romero, "El teatro de los juicios," *Los andes*, 29 September 2015. Available at www.losandes.com.ar/article/el-teatro-de-los-juicios; J. Fuego Simondet, "En la UCA, un pedido por la memoria y la reconciliación," *La Nación*, 6 August 2015. Available at <http://www.lanacion.com.ar/1816631-en-la-uca-un-pedido-por-la-memoria-y-la-reconciliacion>; and "Responden a la búsqueda de impunidad," *Página/12*, 23 August 2015. Available at <https://www.pagina12.com.ar/diario/elpais/1-279976-2015-08-23.html> [all accessed 10 March 2019]. For a critical view of these discussions, see Oberti & Pittaluga, "Apuntes para una discusión sobre la memoria y la política de los años 60/70 a partir de algunas intervenciones recientes," in *Sociohistórica*, e015. Available at http://www.memoria.fahce.unlp.edu.ar/art_revistas/pr.7650/pr.7650.pdf.

²⁴ Horacio Verbitsky, "Malditos sean los datos," *Página/12*, 7 March 2016. Available at <https://www.pagina12.com.ar/diario/elpais/1-293968-2016-03-07.html> [Accessed 10 March 2019].

²⁵ See *Perfil*, "Uno por uno, quiénes son las víctimas de la 'limpieza judicial' que encabeza el Gobierno," 15 June 2019. Available at <https://www.perfil.com/noticias/politica/uno-por-uno-los-hombres-de-la-justicia-que-desplazo-el-gobierno.phtml>.

against these initiatives and against others, such as the repression of indigenous peoples in order to clear the way for extractive industries, or the attempts to lower the age of criminal responsibility, and have managed to garner significant social support. In the case of the rejection of the 'two-for-one' ruling, popular mobilization was fuelled by an ethical decision involving a deliberative and participatory conception of democracy, which was turned into action, operating as a dialectical negation of the instrumental use of human rights law for consolidating impunity, and as a result was decisive in foiling that attempt.²⁶

Acknowledgements

I thank James Mark and Eva Spisiakova for reading a preliminary version of this article and offering their comments and suggestions. Any remaining errors are, of course, my own.

References

- Acuña, Carlos, and Catalina Smulovitz. "Militares en la transición argentina: del gobierno a la subordinación constitucional." *Juicio, castigos y memorias, Derechos Humanos y justicia en la política Argentina*, edited by Acuña, Carlos, Adriana Vacchieri, Catalina Smulovitz, Elizabeth Jelin, Inés González Bombal, Luis Alberto Quevedo and Oscar Landi. Nueva Visión, 1995, pp. 21–99.
- Allier, Eugenia, and Emilio Crenzel. *The Struggle for Memory in Latin America: The Recent History of Political Violence*. Palgrave Macmillan, 2015.
- Área de Economía y Tecnología de la Facultad Latinoamericana de Ciencias Sociales (FLACSO), Centro de Estudios Legales y Sociales and Secretaría de Derechos Humanos de la Nación, "Responsabilidad empresarial en delitos de lesa humanidad." Infojus, 2015.
- Barahona de Brito, Alexandra. "Truth, Justice, Memory and Democratization in the Southern Cone." *The Politics of Memory: Three Decades of Transitional Truth and Justice*, edited by Paloma Aguilar, Alexandra Barahona de Brito and Carmen Enríquez. Oxford University Press, 2001, pp. 119–60. DOI: <https://doi.org/10.1093/0199240906.003.0005>
- Burt, Jo Marie. "Guilty as Charged: The Trial of Former President Alberto Fujimori for Grave Violations of Human Rights." *International Journal of Transitional Justice*, vol. 3, no. 3, 2009, pp. 384–405. DOI: <https://doi.org/10.1093/ijtj/ijp017>
- Collins, Cath. *Post-Transitional Justice: Human rights in Chile and El Salvador*. Penn, 2011.
- Crenzel, Emilio. "Inside 'State Terrorism': Bureaucracies and Social Attitudes in Response to Enforced Disappearance of Persons in Argentina." *Journal of Human Rights Practice*, vol. 10, no. 2, 2018, pp. 268–86. DOI: <https://doi.org/10.1093/jhuman/huy017>
- Crenzel, Emilio. *Memory of the Argentina Disappearances: The Political History of Nunca Más*. Routledge, 2011. DOI: <https://doi.org/10.4324/9780203804186>
- Crenzel, Emilio. "Toward a History of the Memory of Political Violence and the Disappeared in Argentina." *The Struggle for Memory in Latin America: The Recent History of Political Violence*, edited by Eugenia Allier and Emilio Crenzel. Palgrave, 2015, pp. 15–34. DOI: https://doi.org/10.1057/9781137527349_2
- Dinges, John. *The Condor Years: How Pinochet and His Allies Brought Terrorism to Three Continents*. The New Press, 2004.
- Duff, Robin and Sandra Marshall. "Civic Punishment." *Democratic Theory and Mass Incarceration*, edited by W. Dzur, I. Loader and R. Sparks. Oxford University Press, 2016. DOI: <https://doi.org/10.1093/acprof:oso/9780190243098.003.0003>

²⁶ See Duff & Marshall, forthcoming.

- Gargarella, Roberto, and Juan Pablo Bohoslavsky. "El rol de la Corte Suprema. Aportes repetidos y novedosos." *¿Usted también Doctor? Complicidad de jueces, fiscales y abogados durante la dictadura*, edited by Juan Pablo Bohoslavsky. Siglo XXI editores, 2015, pp. 77–92.
- González Betomeu, Juan. "Los doce apóstoles. La Corte Suprema y sus jueces en la dictadura." *¿Usted también Doctor? Complicidad de jueces, fiscales y abogados durante la dictadura*, edited by Juan Pablo Bohoslavsky. Siglo XXI editores, 2015, pp. 93–110.
- González Bombal, Inés, and Oscar Landi. "Los derechos en la cultura política." *Juicio, castigos y memorias, Derechos Humanos y justicia en la política Argentina*, edited by Carlos Acuña, Adriana Vacchieri, Catalina Smulovitz, Elizabeth Jelin, Inés González Bombal, Luis Alberto Quevedo and Oscar Landi. Nueva Visión, 1995, pp. 147–92.
- Groisman, Enrique. "El 'Proceso de Reorganización Nacional' y el sistema jurídico," *Proceso, crisis y transición*, edited by Oscar Oszlak. Centro Editor de América Latina, 1984, pp. 61–8.
- Groisman, Enrique. *La Corte Suprema de Justicia durante la dictadura (1976–1983)*. CISEA, 1987.
- Guembe, María. "Economic Reparations for Grave Human Rights Violations: The Argentinean Experience." *The Handbook of Reparations*, edited by Pablo de Greiff. Oxford University Press, 2006, pp. 21–54. DOI: <https://doi.org/10.1093/0199291926.003.0002>
- Inter-American Commission on Human Rights of the Organization of American States (IACHR): *Report on the Situation of Human Rights in Argentina*. OAS, 1980.
- Lessa, Francesca. "Justice beyond Borders: The Operation Condor Trial and Accountability for Transnational Crimes in South America." *International Journal of Transitional Justice*, vol. 9, no. 3, 2015, pp. 494–506. DOI: <https://doi.org/10.1093/ijtj/ijv016>
- Lessa, Francesca. *Memory and Transitional Justice in Argentina and Uruguay*. Palgrave Macmillan, 2013. DOI: <https://doi.org/10.1057/9781137269393>
- Malamud Goti, Jaime. *Game Without End: State Terror and the Politics of Justice*. University of Oklahoma Press, 1998.
- McSherry, Patrice. *Predatory States: Operation Condor and Covert War in Latin America*. Rowman & Littlefield Publishers, 2005.
- National Commission on the Disappeared. *Never Again: The Report by Argentina's National CONADEP Commission on the Disappeared*. Farrar, Straus & Giroux, 1986.
- Nino, Carlos. *Radical Evil on Trial*. Yale University Press, 1996.
- Oberti, Alejandra and Roberto Pittaluga. "Apuntes para una discusión sobre la memoria y la política de los años 60/70 a partir de algunas intervenciones recientes." *Sociohistórica*, no. 38, p. e015, 2016, Available at: http://www.memoria.fahce.unlp.edu.ar/art_revistas/pr.7650/pr.7650.pdf Accessed: 10 March 2019.
- Pion-Berlín, David. "To Prosecute or to Pardon? Human Rights Decisions in the Latin American Southern Cone." *Human Rights Quarterly*, vol. 16, no. 1, 1994, pp. 105–30. DOI: <https://doi.org/10.2307/762413>
- Sanjurjo, Liliana. "Las luchas por las memorias en la escena judicial Una mirada etnográfica sobre los Juicios de Crímenes de Lesa Humanidad." *Cuadernos de Antropología Social*, 43, 2016, pp. 161–177.
- Sarrabayrouse Oliveira, María José. *Poder judicial y dictadura: el caso de la Morgue Judicial*. Ediciones Del Puerto, 2011.
- Sikkink, Kathryn. "From Pariah State to Global Protagonist: Argentina and the Struggle for International Human Rights." *Latin American Politics and Society*, vol. 1, 2008, pp. 1–30. DOI: <https://doi.org/10.1111/j.1548-2456.2008.00002.x>
- Sikkink, Kathryn. *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics*. W. W. Norton & Company, 2011.

- Smulovitz, Catalina. "The Discovery of Law: Political Consequences in the Argentine Case." *Global Prescriptions: The Production, Exportation and Importation of a New Legal Orthodoxy*, edited by Yves Dezalay and Bryan Garth. University of Michigan Press, 2002, pp. 249–75.
- Verbitsky, Horacio. *Hacer la Corte: La construcción de un poder absoluto sin justicia ni control*. Planeta, 1993.
- Verbitsky, Horacio and Juan Pablo Bohoslavsky. *Cuentas pendientes los cómplices económicos de la dictadura*. Siglo XXI Editores, 2014.
- Winn, Peter, et al. *No hay mañana sin ayer: Batallas por la memoria histórica en el Cono Sur*. LOM, 2014.

Judicial rulings

- Centro de Información Judicial. "La Corte sostuvo que la Corte Interamericana de Derechos Humanos no puede revocar sentencias del Máximo Tribunal argentino." 14 February 2017. Available at: <https://www.cij.gov.ar/nota-24822-La-Corte-sostuvo-que-la-Corte-Interamericana-de-Derechos-Humanos-no-puede-revocar-sentencias-del-M-ximo-Tribunal-argentino.html> Accessed 10 March 2019.
- Centro de Información Judicial. "La Corte Suprema, por mayoría, ratificó su precedente sobre la prescripción de acciones civiles contra el Estado en juicios de lesa humanidad." 28 March 2017. Available at: <https://www.cij.gov.ar/nota-25380-La-Corte-Suprema-por-mayor-a-ratific-su-precedente-sobre-la-prescripci-n-de-acciones-civiles-contra-el-Estado-en-juicios-de-lesa-humanidad.html> Accessed 10 March 2019.
- Centro de Información Judicial. "La Corte Suprema, por mayoría, declaró aplicable el cómputo del 2 x 1 para la prisión en un caso de delitos de lesa humanidad." 3 May 2017. Available at: <https://www.cij.gov.ar/nota-25746-La-Corte-Suprema-por-mayor-a-declar--aplicable-el-c-mputo-del-2x1-para-la-presi-n-en-un-caso-de-delitos-de-lesa-humanidad.html> Accessed 10 March 2019.
- Centro de Información Judicial, "La Corte Suprema, por mayoría, revocó un fallo que había dejado sin efecto el arresto domiciliario de un condenado por crímenes de lesa humanidad." 18 April 2018. Available at: <https://www.cij.gov.ar/nota-25608-La-Corte-Suprema-por-mayor-a-revoc-un-fallo-que-hab-a-dejado-sin-efecto-el-arresto-domiciliario-de-un-conde-nado-por-cr-menes-de-lesa-humanidad.html> Accessed 10 March 2019.
- Centro de Información Judicial. "Las acciones laborales por daños derivados de delitos de lesa humanidad son prescriptibles." 9 May 2019. Available at: <https://www.cij.gov.ar/nota-34417-Las-acciones-laborales-por-da-os-derivados-de-delitos-de-lesa-humanidad-son-prescriptibles.html> Accessed 10 March 2019.
- "Expediente 6797-D-2016, Sumario: Ejecución de la pena privativa de la libertad – Ley 24660. Incorporación del artículo 33 Bis, sobre excepción de la prisión domiciliaria en casos de delitos de genocidio o lesa humanidad." Available at: <https://www.diputados.gov.ar/proyectos/proyecto.jsp?exp=6797-D-2016> Accessed 10 March 2019.

Articles in newspapers


- "Argentinian president under fire for 'anti-democratic' decrees." *Guardian*, 10 January 2016, <https://www.theguardian.com/world/2016/jan/10/argentinian-president-mauricio-macri-anti-democratic-decrees>. Accessed: 10 March 2019.
- Aruguete, Natalia and Ernesto Calvo. "#2 x 1: Diálogos al costado de la grieta. La decisión de la Corte como caso testigo de análisis acerca del diálogo en redes sociales entre comunidades diferenciadas." *Política Argentina*, 9 March 2018, <https://www.politicargentina.com/notas/201803/24909-2x1-dialogos-al-costado-de-la-grieta.html> Accessed: 10 March 2019.

- "En la UCA, un pedido por la memoria y la reconciliación." *La Nación*, 6 August 2015, <http://www.lanacion.com.ar/1816631-en-la-uca-un-pedido-por-la-memoria-y-la-reconciliacion>. Accessed: 10 March 2019.
- "Fury in Argentina over ruling that could see human rights abusers walk free." *Guardian*, 4 May 2017, <https://www.theguardian.com/world/2017/may/04/argentina-supreme-court-human-rights> Accessed: 10 March 2019.
- Ginzberg, Victoria. "Del dicho al hecho." *Página/12*, 15 August 2016, <http://www.pagina12.com.ar/diario/elpais/1-306881-2016-08-15.html>. Accessed: 10 March 2019.
- "Menos sentencias y más domiciliarias." *Página/12*, 28 December 2018, <http://www.pagina12.com.ar/diario/elpais/1-306881-2016-08-15.html>. Accessed: 10 March 2019.
- "Responden a la búsqueda de impunidad." *Página/12*, 23 August 2015, <https://www.pagina12.com.ar/diario/elpais/1-279976-2015-08-23.html>. Accessed: 10 March 2019.
- Romero, Luis Alberto. "El teatro de los juicios." *Los andes*, 29 September 2015, www.losandes.com.ar/article/el-teatro-de-los-juicios. Accessed: 10 March 2019.
- "Uno por uno, quiénes son las víctimas de la 'limpieza judicial' que encabeza el Gobierno." *Perfil*, 15 June 2019, <https://www.perfil.com/noticias/politica/uno-por-uno-los-hombres-de-la-justicia-que-desplazo-el-gobierno.phtml>. Accessed: 10 March 2019.
- Verbitsky, Horacio. "Malditos sean los datos." *Página/12*, 7 March 2016, <https://www.pagina12.com.ar/diario/elpais/1-293968-2016-03-07.html>. Accessed: 10 March 2019.

How to cite this article: Crenzel, E 2020 Four Cases under Examination: Human Rights and Justice in Argentina under the Macri Administration. *Modern Languages Open*, 2020(1): 26 pp. 1–13. DOI: <https://doi.org/10.3828/mlo.v0i0.320>

Published: 04 August 2020

Copyright: © 2020 The Author(s). This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC-BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited. See <http://creativecommons.org/licenses/by/4.0/>.

 *Modern Languages Open* is a peer-reviewed open access journal published by Liverpool University Press.

OPEN ACCESS 