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Revisiting the origins of Argentina's military junta trial: political, moral, and legal dilemmas of a transitional justice strategy

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ABSTRACT

This article examines the conceptual construction and the dilemmas surrounding the strategy that led to the trial of the military juntas furthered by President Raúl Alfonsín to address the human rights abuses perpetrated during the last military dictatorship in Argentina (1976–1983). The article argues that Alfonsín's decision was the result of a process and as such was shaped gradually in dialogue with the political, moral, and legal dilemmas raised by the crimes and with the initiatives furthered by the armed forces and the human rights movement, two major actors in the transition to democracy. The article looks at the discussions over the space in which prosecution would take place, the scope of the trials in terms of criminal justice, and their relationship with the construction of the truth regarding the crimes. In that way it contributes to the study of a foundational strategy in the field of transitional justice, and, at the same time, reveals the teleonomic nature of projects aimed at dealing with legacies of systematic human rights violations.

RESUMEN

Este artículo analiza la elaboración conceptual y los dilemas que enfrentó la estrategia jurídica que desembocó en el juicio a las Juntas militares impulsado por el presidente Raúl Alfonsín para tramitar las violaciones a los derechos humanos cometidas en la Argentina por su última dictadura militar (1976-1983). En ese marco, examina las premisas jurídicas, morales y políticas de esta propuesta; sus vínculos con las concepciones dominantes a escala internacional para enfrentar masivas y sistemáticas violaciones a los derechos humanos y, por último, contextualiza los cambios operados en esta estrategia en función de las luchas políticas libradas en la transición a la democracia. El artículo buscará mostrar cómo la decisión de Alfonsín de tramitar jurídicamente el pasado reciente de violencia política se fue modelando de manera procesual a partir de los dilemas políticos, morales y legales que entrañaba y de las iniciativas de otros actores significativos de la transición. Estas contracciones y pujas tuvieron una traducción dual. El fracaso en términos tácticos de la política de juzgamiento y la victoria estratégica del modelo de procesar el pasado al lograr instaurar a los tribunales como el escenario para tramitar los abusos a la dignidad humana.

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Introduction

In July 1985, the renowned writer Jorge Luis Borges attended one of the sessions of the trial of the military juntas that had ruled Argentina during its last dictatorship and were accused of gross and systematic human rights violations. A few days later he wrote an account of that day, which was published in the newspaper *Clarín* under the title "Monday, 22 July 1985". In it he said:

> Of the many things I heard that afternoon, and which I hope to forget, I will recount the one that impacted me the most, so that I can free myself from it. It happened on a 24th of December. They took all the prisoners into a room where they had never been before. They were surprised to find a long table set for a meal. They saw tablecloths, china, silverware, and wine bottles. Then, came the banquet (I am quoting the guest's words). It was Christmas Eve dinner. They had been tortured and knew they would be tortured again the next day. The Lord who reigned over that Hell appeared before them to wish them a Merry Christmas. It was not mockery, it was not an expression of cynicism, it was not remorse. It was, as I said, a sort of innocence of evil. (*Clarín*, 31 July 1985)

The scene that moved Borges brings up a recurring question: How can we understand and judge an evil that, because of its inhumanity, challenges our very humanity, exposes the futility of existing legal categories, and reveals the inexistence of shared moral concepts?

The aim of these pages is to examine the strategy that led to the trial of the military juntas furthered by President Raúl Alfonsín to address the human rights abuses perpetrated during the last military dictatorship in Argentina (1976–1983).

Various intellectuals who participated in Argentina's transition have since looked back on that strategy and offered different analysis. Some have highlighted its exceptional nature as a response to processes of extreme violence, which in other cases had been dealt with predominantly through amnesties and laws that called for forgetting (Nino 1996). Others have reassessed it critically in the framework of the examination of the role of criminal justice as a tool for processing the legacies of political conflicts (Malamud Goti 1998). Still other authors have analyzed Argentina's prosecutorial approach in the context of the political battles that followed the return to democracy (Acuña and Smulovitz 1995), adopting a comparative perspective within the framework of transitional justice policies in the Southern Cone of Latin America (Barahona de Brito 2001; Lessa 2013), situating the trial along a path of social, political, and institutional accumulation toward achieving accountability for human rights abuses in Latin America (Collins 2010); as one of the rare cases in history in which heads of state have been prosecuted domestically for human rights crimes (Burt 2009); looking at their impact on Argentine political culture (González Bombal and Landi 1995); attempting to explain its uniqueness in the Southern Cone (Pion-Berlín 1994); and examining how it affected the construction of citizenship and the relationship with the law (Smulovitz 2002). Lastly, other 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 2011). Considering this background, I will examine the legal strategy deployed in the months leading up to the democratic transition and after the return to political democracy in December 1983, furthered by Raúl Alfonsín, first while he was still a presidential candidate nominated by the centrist Radical Civic

Union Party (*Unión Cívica Radical*), whose Left wing he headed. More specifically, I will explore the premises of this proposal, how it relates to a certain view of the country's violent past and to the political battles waged in the context in which it was developed, and its connections with the theoretical models that were most widely used in the early 1980s for reflecting on processes of extermination. In this way, I hope to show how the strategy that was ultimately chosen resulted from a deliberate decision to tackle the political, moral, and legal challenges posed by the massive and systematic human rights violations perpetrated in the country, but also how it was shaped in the heat of the correlation of forces, with other major actors of the transition. The article takes a historical sociology approach and seeks to contribute to the analysis of Alfonsín's prosecutorial policy by reconstructing its origins and development and demonstrating that it was the result of a complex teleonomic process. This perspective, in contrast to teleological and prescriptive views, contributes to the field of discussion on transitional justice by showing the dynamic and dialogical nature of initiatives aimed at confronting legacies left by violations of human dignity.

Argentina, between political violence and systematic legal and illegal repression

Argentina's political history throughout the twentieth century was fraught with institutional instability and military coups. Toward the late 1960s, following the impact of the Cuban Revolution and with the political ban on Peronism – a movement that governed Argentina under a populist agenda from 1946 to 1955 – the country was seized by social unrest and political radicalization, which included the emergence of Marxist and Peronist guerrilla groups. In that context, the armed forces adopted the counterinsurgency methods employed by the French army in the Algeria and Indochina wars and the National Security Doctrine that originated in the United States, both of which featured torture as a key component of military intelligence and the belief that a full-scale war had to be waged against a subversive enemy that could be lurking anywhere in society.

The amnesty granted by the Peronist government to political prisoners and perpetrators of state violence in 1973 and Perón's return to the presidency failed to put an end to political violence. Instead, under his administration, a death squad known as the Triple A (the Argentine Anticommunist Alliance) began operating with official backing from the government, murdering hundreds of political activists, while, at the same time, a number of repressive measures were legally implemented, targeting Left-wing opponents and even radicalized sectors within the Peronist movement itself. Following his death in 1974, Perón was succeeded by his widow, María Estela Martínez, who in February 1975 issued Decree 265, authorizing the armed forces to wipe out subversive activities in the province of Tucumán. In October 1975, the scope of this authorization was expanded to the rest of the country with Decree 2,772. Political violence became a part of everyday life. From 1973 to 1976, 1,543 political assassinations were committed, 5,148 people were imprisoned for political reasons, and another 900 were forcefully disappeared (CONADEP 1984).

It was in this climate of violence that the *coup d'état* was staged on 24 March 1976 and the practice of forcefully disappearing dissidents became systematic (Corradi

1982–1983, 65). The disappearances entailed a rupture with respect to the way in which death was traditionally conceived in Argentina, in line with the typical Western conception. As the disappeared persons occupied a space that was neither life nor death, but somewhere in between, the basic social frameworks of time, space, and language that their relatives, friends, and acquaintances would have normally used to evoke them were fractured (Robben 2000).

The disappearances consisted of the detention or abduction of individuals by military or police officers who took them to illegal holding sites or camps, where they were tortured and for the most part murdered. Their bodies were secretly buried in unmarked gravesites, incinerated, or dumped from planes into the ocean, and their properties were looted. According to the Grandmothers of Plaza de Mayo – an organization formed by relatives of disappeared persons to search for infants and children snatched as part of this practice – an estimated 500 children of disappeared militants were appropriated by members of the repressive forces and registered under false names.

In March 1982, a month before Argentine troops disembarked in the Malvinas/Falkland Islands, Jaime Malamud Goti and Carlos Nino – two Argentine lawyers and jurists who were in Germany for an academic stay – began discussing the possibility of holding some kind of trial in Argentina to bring the perpetrators of human rights violations to justice. The military dictatorship that had been in power since 1976 initially denied such violations – in particular the thousands of forcefully disappeared persons – and later justified them as mere "excesses" committed under the "war against subversion" that it claimed to be waging in the country.

While, in early 1982, democracy was still a distant possibility in Argentina's political horizon, the issue of the human rights abuses committed by the dictatorship had gained increasing visibility. Two years earlier, a report released in March 1980 by the Inter-American Commission on Human Rights following a fact-finding mission to Argentina found that the disappearances were perpetrated as a result of a decision adopted "at the highest level of the Armed Forces" and, among other measures, recommended investigating "the deaths attributed to public authorities and their agents" and prosecuting and punishing the perpetrators (Inter-American Commission on Human Rights 1980, 17, 18, 148–52, 289–91). In that context, certain human rights organizations – such as the Center for Legal and Social Studies (*Centro de Estudios Legales y Sociales*, CELS), which had been founded in 1979 by the lawyers Emilio Mignone and Augusto Conte as an offshoot of the Permanent Assembly for Human Rights (*Asamblea Permanente por los Derechos Humanos*, APDH), formed by representatives of political parties and religious denominations – had been encouraging the relatives of disappeared persons to file habeas corpus petitions to force the courts to issue a decision and, at the same time, set a precedent for future actions. That was, in fact, what had happened in December 1978, when the National Supreme Court of Justice handed down a decision in the case of the disappearance of labor leader Oscar Smith, whereby it recognized the existence of a situation of denial of justice and ordered the Executive Branch to repair it. The issue had been further highlighted in October 1980 when the Nobel Peace Prize was awarded to Adolfo Pérez Esquivel, a representative of the developing world movement within the Catholic Church and an advocate of non-violent activism who headed the Peace and Justice Service (*Servicio de Paz y Justicia*, SERPAJ), one of the human

rights organizations denouncing the dictatorship. Pérez Esquivel had been abducted and joined the ranks of the disappeared for a brief period, until he was officially charged and held openly as a political prisoner. It was also around this time that the first legal attempts were made to establish forced disappearance as a crime against humanity. In February 1981 at the "Les refus de l'oubli – La politique de desaparition forceé de persones" conference held in Paris, exiled Argentine lawyers and intellectuals, along with leaders of the human rights movement, such as Mignone and Conte of the CELS, began discussing the need to include forced disappearance in that category of crimes (Jouve 1982). Lastly, in May 1981, in a document entitled "The Church and the National Community", the Catholic Church, which, like most of the political establishment, had remained silent about the human rights violations and sanctioned the need for the "war against subversion", proposed, for the first time, that a distinction be made between "the justification of the fight against guerrilla groups and the methods employed", and called for "a reconciliation founded on truth and justice". Several political leaders, for their part, began condemning the "indiscriminate repression" that did not distinguish "between opponents and true guerrillas" (*Buenos Aires Herald*, 13 December 1981).

The discussions between Nino and Malamud Goti in 1982 thus occurred in a political context marked by an increase in the number and range of actors who were raising their voices against the dictatorship for its human rights violations, and by the incipient connection of such voices with demands for justice.

In that framework, they began exploring the various experiences of transitional justice since 1945, in particular the Nuremberg and Tokyo trials against Nazi and Japanese leaders and the more recent prosecution of Greek colonels, without yet outlining a proposal for Argentina (Galante 2014, 43). However, these earlier experiences had occurred under significantly different conditions. The Nuremberg and Tokyo trials had been the result of the allied victory in the Second World War and were based on the "law of peoples". The Greek trial, which followed the military defeat at the hands of Turkey in the Cyprian War, involved the colonels who staged the *coup d'état* and were charged not with crimes against humanity but with high treason, even though trials were later held against officials charged with torture and participating in the repression of the student movement at the Athens Polytechnic School (Diamandourus 1986; Sikkink 2011, 63). Despite these differences, both Argentine jurists were convinced that, for moral and political reasons, the democratic government would have to seek some kind of punishment for the perpetrators (Malamud Goti 1998, 52).

The military defeat in the Malvinas/Falklands War changed the country's political scenario. The dictatorship was not in a position to impose demands that would prevent an examination of the human rights violations, and the opposition did not wish to assume any commitments with the dictatorship. Therefore, there would not be a negotiated transition. In Buenos Aires, Malamud Goti and Nino discussed their ideas with a number of other colleagues, including Genaro Carrió, Eugenio Buliging, Eduardo Rabossi, Martín Farrell, and Ricardo Guibourg, with whom they met in the space provided by the Argentine Society for Philosophical Analysis (*Sociedad Argentina de Análisis Filosófico*, SADAF), an academic research center specializing in philosophy studies that they were all members of. They also brought up these issues with internationally renowned legal philosophers, such as Ronald Dworkin, Thomas Nagel, and

Owen Fiss (Nino 1996, 84). They then decided to meet with several presidential candidates and came to the conclusion that Raúl Alfonsín shared their interest in holding trials for perpetrators of human rights violations.

In late 1982, Nino and Malamud Goti began discussing the first proposals for achieving that goal, along with Antonio Tróccoli, Raúl Galván, and Horacio Jaunarena, who would be Alfonsín's interior minister, undersecretary of the interior, and defense secretary, respectively. These discussions unfolded under a political climate marked by the proliferation of reports of torture and disappearances and by the initiation of several court actions involving human rights abuses. On 23 October 1982, the CELS reported the discovery of mass graves containing the remains of hundreds of unidentified bodies buried between 1976 and 1979 in the Grand Bourg cemetery, in the province of Buenos Aires. A month later the same organization denounced that, between 1976 and 1983, illegal procedures involving the bodies of disappeared persons had been conducted at the judicial morgue (Sarrabayrouse Olivera 2011). From that moment on, even the most pro-military media outlet began reporting extensively on these findings. In two particular cases of disappearances involving embassy staff members, this sensationalist coverage was also connected with fierce battles between the army and the navy.

In this context, public sentiment leaned increasingly toward investigating the disappearances. According to a February 1983 opinion poll, 53% of Argentines "strongly disagreed" and another 14% "disagreed" with the statement "We must forget the disappeared in order to avoid new conflicts with the military" (González Bombal and Landi 1995, 153). In October 1982, the human rights organizations staged the "March for Life" demonstration, which gathered 100,000 people calling for "trial and punishment for all perpetrators", a new demand that became a key element of their struggle (Interview with Adolfo Pérez Esquivel, 13 December 2004, Buenos Aires). Various actors thus turned their expectations to the courts, viewing them as the arena for dealing with human rights abuses (Jelin 1995, 106, 107).

Faced with the demand for a bicameral legislative commission to investigate "all forms of state terrorism", raised by the human rights organizations in April 1983, and the reluctance of the political establishment to let the war against subversion go unexamined, on 28 April 1983 the armed forces issued the "Final Document of the Military Junta on the War against Subversion and Terrorism". In that document, they acknowledged their responsibility in the "war against subversion", stating that they had been called to act against subversion by a "constitutional government and pursuant to a legal mandate", in reference to the decrees signed by the Peronist government in 1975, which authorized them to wipe out subversive activities. The Final Document was met with widespread rejection, with the sole exception of support from business leaders and the Catholic Church. Alfonsín responded with a statement entitled "This Is Not the Last Word", in which he vowed to resort to the courts to prosecute the perpetrators of human rights abuses (Nino 1996, 105).

Amidst growing rumors that the armed forces would pass an amnesty law and with the memory of the amnesty granted in 1973 by the Peronist government, which had been followed both by an escalation of political violence and by unprecedented crimes committed by the state, Alfonsín's advisors stepped up their discussions. Their ideas were crystallized in a number of premises that had significant differences with the

demands put forward by the human rights movement while at the same time challenging the armed forces' refusal to examine their actions during the "war against subversion". Specifically, they proposed the law as the framework for addressing human rights abuses. An exemplary conviction would succeed in subordinating all actors to the law. Drawing on the ideas of Émile Durkheim, they maintained that this would serve to restore social cohesion and overcome anomie, which was seen as the source of both guerrilla activity and illegal repression, and it would prevent similar events from occurring in the future while simultaneously consolidating democracy (Osiel 1995, 478–89). It should be noted that in his PhD dissertation at Oxford, Nino had already posited a consensual theory of punishment that sought to transcend preventive and retributionist models (Becú 2004, 13–6).

These goals were extremely ambitious, as they involved major political risks, for various reasons. First, the world was still in the midst of the Cold War and any initiative was perceived through the binary perspective of this bipolar international order. Second, the rest of the region was ruled with an iron fist by military dictatorships notorious for their human rights violations. Third, the armed forces' long track record of intervention in political life, dating back to 1930, was ingrained in the country's collective memory, casting doubts as to the chances of consolidating the nascent democracy. Fourth, the military high commands were all formed by perpetrators of the crimes. Fifth, the goal of achieving some form of justice for these crimes faced a civil society that claimed to be only just discovering that such crimes had been committed and a political establishment that for the most part did not show any willingness to investigate the crimes and punish the perpetrators. Lastly, the tenacious human rights movement was calling for trial and punishment for all perpetrators of the crimes. The difficulty faced is illustrated by the political science literature of the time, which cautioned that bringing the perpetrators of human rights abuses to trial was a dangerous move that could jeopardize the stability of democracy (O'Donnell, Schmitter, and Whitehead 1986, 29–32). Alfonsín and his advisors were aware of this dilemma, but they believed that it was morally inadmissible to allow impunity to prevail and renounce the possibility of achieving justice.

Deciding who should be put on trial

Alfonsín's decision to prosecute the perpetrators of human rights violations was formalized as the dictatorship prepared to pass the self-amnesty law announced in its Final Document. On 12 August 1983, a week before a major anti-amnesty march was scheduled to take place in Buenos Aires, Alfonsín spoke at a public conference held by the Argentine Federation of Bar Associations (*Federación Argentina de Colegios de Abogados*), and for the first time laid out how his proposed accountability for human rights violations would be translated in terms of criminal justice. He warned that an amnesty law would, paradoxically, hold all members of the armed forces equally responsible for the crimes committed, as it would not distinguish the innocent from the guilty, thus indiscriminately rendering them all "morally guilty […] in the eyes of the nation". Far from seeing the prosecutorial path as the threat to democracy heralded by political scientists, Alfonsín believed that if these crimes were left unpunished, impunity would open the door for them to be repeated in the future, thus jeopardizing

democracy (Alfonsín 1983, 142). Adopting an equidistant stance, both with respect to the "spirit of revenge" (Nino would, in fact, argue that the slogan "Trial and Punishment for the Perpetrators" raised by the human rights organizations was the equivalent of "an eye for an eye") and to the "intent on forgetting", represented by the dictatorship's attempt to secure impunity for its agents, Alfonsín promised that, if he were elected president, he would distinguish three categories of direct perpetrators: "those who planned the repression and issued the corresponding orders; those who, prompted by cruelty, perversion, or greed, acted beyond their orders; and those who carried out orders strictly to the letter" (Alfonsín 1983, 148; Nino 1996, 106).

This distinction had been discussed at great length by the future president's team of advisors. While Nino and Malamud Goti supported it, Horacio Jaunarena, who would be appointed secretary of defense, was more in favor of a binary scheme that would distinguish those who had issued the orders and devised the criminal plan – the military juntas and possibly the heads of military divisions and areas – from those who had followed orders. In this scheme, only the former would be put on trial (Interview with Horacio Jaunarena, consulted in Archivo de Historia Oral de la Argentina Contemporánea, Instituto de Investigaciones Gino Germani, Universidad de Buenos Aires).

In contrast, in the three levels of responsibility ultimately proposed by Alfonsín, two groups of perpetrators would be prosecuted: those who devised and ordered the illegal methods of repression and those who "went too far" in carrying out their orders. Meanwhile, those who merely followed orders would not be prosecuted. That is, contrary to what is posited by retrospective readings, Alfonsín's strategy rested on the defense of obedience to superior orders even before he was elected president. Therefore, this defense was not a concession made by him as a result of the 1987 Easter Week military uprising against his government. The notion of due obedience was, in fact, an essential element of the two alternative strategies debated by his team of advisors.

The prosecution of those who had planned and ordered the illegal methods of repression drew on the theory of indirect perpetration, or of the "perpetrator behind the perpetrator", put forward by German legal expert Claus Roxin ([1963] 1998), based on his reflections on the trial of Nazi war criminal Adolf Eichmann in Jerusalem. Briefly put, pursuant to this theory, by virtue of having organized a power apparatus that operated outside the law and from which they derived their control over the act – that is, their capacity to perceive the consequences of their orders – the military juntas were the perpetrators of the crimes that were committed through that apparatus by others, the direct perpetrators, whom they used as interchangeable instruments.

The idea that allowed the vast majority of perpetrators to be exonerated rested on two premises. The first had to do with the nature of military organizations. The second had to do with the context. The armed forces are, by definition, institutions structured around hierarchical, not deliberative, principles. In that framework, it would have been impossible to disobey orders given by superior officers, unless, as established under the Military Justice Code itself, such orders were illegal. To get around the issue of illegality, Alfonsín argued that the ideological context that prevailed among members of the armed forces at the time was marked by the National Security Doctrine under which they had been trained and which operated to legitimize any order received, to the point that they were unable to determine that such orders were illegal (Nino 1995, 417–43).

This legal argument served Alfonsín's political goal of limiting the duration of the trials and the number of defendants. Prosecutions and criminal sanctions would be driven by utilitarian political aims and guided by a criterion of procedural economy. The trial had to be brief and the defendants few in number. But that goal compromised the very conception that the presidential candidate had regarding the moral duty of seeking justice for unprecedented crimes. In fact, it ruptured the confluence of political reasoning and moral conviction that had initially existed in the decision to hold criminal trials, increasingly separating the former from the latter. Alfonsín was troubled by the fact that he would not be able to prosecute certain emblematic figures of the repression who were widely despised by public opinion. One such infamous figure was Alfredo Astiz, a navy captain who had also been charged by French and Swedish courts and for whom the human rights organizations demanded trial and punishment. Bringing Astiz to trial would entail extending prosecution to other military officers of his rank who were not as notorious, as not doing so would create a situation of inequality before the law. Moreover, in the proposed scheme of distinction of responsibilities, defendants would not be charged with torture, because it was considered a practice sanctioned by the military high commands. This exclusion also posed a challenge to Alfonsín and his team of advisors. Here too political reasoning broke away from and prevailed over moral considerations. Both Malamud Goti and Nino acknowledged that due obedience was not an excuse in the case of torture, but for prudential reasons they recommended that the universe of defendants be limited. Punishment would not be retributive – that is, it would not extend to all perpetrators – rather it would be exemplary, befalling only the leading perpetrators, to guarantee the present and future social order (Nino 1996, 106, 107).

The preventive and deterrent conception of punishment was combined with the justification proposed by Max Weber from a political theory perspective. It embodied an "ethics of responsibility", equidistant from the "utopian ethics" – that corresponded to the retribution theory, the political translation of which was the demand for "Trial and Punishment for All Perpetrators" raised by the human rights organizations – and the "amnesty ethics", which expressed the will of the dictatorship. But it was also equally distant from the "ethics of convictions"; that is, from that which is morally dictated to a politician by his or her conscience. It had to be based instead on an examination of the universality of moral principles, which involved assessing the direct and indirect consequences of actions. In this case, if extending prosecution to all perpetrators of human rights abuses – as was dictated by the morally-grounded conception of punishment posited by the retributive theory – meant risking a new military coup and new human rights abuses, the principles regarding what is morally just would have to yield to political responsibility, which, guided by an assessment of the costs and benefits, would prevail to serve the superior goal of preserving democracy and human rights in the present.

It was believed that the proposed approach would meet the human rights movement's basic demands for justice without provoking the still-powerful armed forces (Alfonsín 1993, 16, 17). At the same time, Alfonsín called for a reform of the Military Justice Code. His reform would mean that human rights abuses would be tried in the first instance by the Supreme Council of the Armed Forces, with the possibility of appeal in civilian courts, and the principle of presumption of obedience would apply to

actions carried out by mid- and low-ranking officers acting under plans and orders of their superiors and the military junta. In this way, Alfonsín imagined a limited judicial process through which the armed forces would purge themselves, thus rejoining the democratic system. The armed forces would benefit from this process, as their honor would be restored, allowing them to be a part of the republic. Lastly, the trials would serve to channel the anti-military sentiment and would prevent citizens from seeking revenge by taking the law into their own hands, which they feared would reopen the cycle of violence.

The "due obedience" thesis, presented in the 1983 presidential campaign, limited the investigations of the abuses to the direct perpetrators and, among them, to those who had planned and ordered repression and those who had committed excesses. Thus, this view accepted the dictatorship's position that certain "excesses" had been committed, without specifying what such excesses had been; it created a procedural gray area by not identifying who had gone beyond their orders; it created a one-dimensional characterization of the perpetrators as unthinking individuals who mechanically carried out orders and lacked the ability to reflect on the nature of their actions due to indoctrination by their superiors; and it established a vertical image of military bureaucracy that excluded the possibility that middle- and low-ranking officers had done more than merely obey orders as part of their duty. In sum, it did not take into account the manifest illegality and cruelty of the crimes perpetrated, the relative operational autonomy with which their perpetrators had acted, and the existence of cases of disobedience which, while rare, refuted the argument that anyone who refused to follow orders was severely punished.

It is important to highlight that the idea that it was impossible for anyone who was involved in the illegal repression to disobey orders issued by their superiors did not stem merely from the relationship between Alfonsín's political goals and his legal strategy, as it also reflected several arguments that were among the most widely used around the world in debates that sought to understand extermination processes in the early 1980s. These ideas, such as Roxin's theory of indirect perpetration, were prompted by Eichmann's trial in Jerusalem.

The phenomenon of following inhuman orders issued by a legitimate authority had been studied by Stanley Milgram in an experiment on obedience conducted at Yale University in 1961, and published in 1974, which received much attention and caused a great impact. For this experiment, an advert was placed in a newspaper, inviting volunteers from various social classes, age groups, and ethnic backgrounds to participate in a study on memory. Once at the university, a professor instructed the volunteers to administer increasingly higher shocks of electricity to a stranger – an actor who pretended to feel pain when he received what were actually harmless shocks – whenever the subject gave a wrong answer in a word association exercise. Most volunteers (65%) followed the order given by the professor and continued to increase the voltage even as the subject exhibited signs of suffering (Milgram 1974).

Milgram, who came from a family of European Jewish immigrants, had been deeply affected by the Eichmann trial, which had begun some months before he launched his experiment, and with his study he sought to understand the reasons that drove certain men to obey orders that could hurt others who were strangers to them. Milgram highlighted that the moral weight of stopping the experiment, thereby disobeying the order from the

professor who demanded that the participant continue administering electric shocks, involves a difficulty that is greater than the participant's unwillingness to carry out the order. It entails rupturing a social order, a range of expectations and positions, encapsulated in the relationship between the volunteer, the professor, and the "victim" of the electric shocks. These connotations, he underlined, explain why acts of disobedience are so rare.

The Eichmann trial also prompted reflections by Hannah Arendt. After witnessing these criminal proceedings, Arendt concluded that the perpetrators had been bureaucratic cogs in a machinery of extermination. They were, she said, banal men who performed their duty from a value neutrality stance, as they were not especially anti-Semitic or fanaticized ideologists. Years earlier, in her study on totalitarianism, Arendt had argued that the prevailing ideological context in totalitarian regimes stripped actions of their moral sense, preventing the perpetrators from understanding the nature of their acts (Arendt 1967).

Similarly to the "agentic state", as Milgram called the lack of autonomy among the experiment volunteers when faced with orders issued by an authority figure, Eichmann's banality consisted of efficiently carrying out the orders he received in a state of moral indifference that rendered him incapable of perceiving the dimension of his actions or caring about the fate of his victims. Both Milgram's conclusions and Arendt's reflections for examining responsibilities in massive and systematic crimes support the idea of levels of responsibility that structured Alfonsín's prosecutorial strategy, under which direct perpetrators acting on superior orders lacked the capacity to deliberate and had no choice but to obey the orders they received, while at the same time multiple factors rendered them unable to perceive the criminal nature of their acts.[1]

Besides these conceptual similarities, the legal translation of Alfonsín's political strategy, structured by the three levels of responsibility and the thesis of obedience to superior orders, was based on a preventive view of punishment. Its effects were expected to extend beyond the courts, contributing to consolidate the peace and strengthen a new political culture that was being fostered. The trials' implications would extend in different temporal directions. They would look back to process the past of violence, providing an arena in which victims would be repaired as they were recognized as citizens whose rights had been violated; they would look to the present to secure the rule of law; and they would look forward by operating as vehicles for consolidating democracy.

Their importance, then, did not lie exclusively or primarily in their legal capacity. It lay, above all, in their symbolic and political value. This legal strategy was strained by the moral duty of achieving some form of justice and the restrictions it imposed on itself for political reasons, especially in view of the armed forces' rejection of any examination of the "war against subversion". The contradiction between political and moral duties presaged conflicts. The human rights organizations would consider the limited trials and the impunity of hundreds of perpetrators both immoral and a threat to democracy, while the armed forces would see in the trials a policy of revenge.

The two demons and criminal responsibilities

In political terms, the idea of three levels of responsibility, a key component in the prosecution of the perpetrators of illegal repression, was preceded a month earlier by the first articulation of what would later be known as "the theory of the two demons".

On 23 July 1983, Alfonsín observed:

> Argentina was seized by violence and our society was in the grips of terror. On the one hand, the desire to change society had turned into terrorism. On the other, the desire to preserve society had turned into state terrorism. Between one and the other, the rights to life, physical integrity, and freedom were destroyed. (Alfonsín 1983, 157)

In this way, he presented a sequence of political violence that inverted the view held in the revolutionary imaginary, which a decade earlier had justified popular violence as a response to "the system's violence". It also validated the dictatorship's claim that the state had resorted to violence in order to combat guerilla actions, but it differed from this claim in that it established that human rights had been abused under "state terrorism".

The theory proposed by Alfonsín could to a certain extent be traced back to views on political violence held before the coup. The bipolar critique of Left- and Right-wing violence, summarized in the rejection of "any form of terrorism", had been common in discourses across the political spectrum, including among members of Alfonsín's group in the Radical Civic Union Party, during the years 1973–1976, in response to the continuation of guerrilla actions and state repression. Following the March 1976 coup, several actions by national human rights groups, in particular the Permanent Assembly for Human Rights, in which Alfonsín was actively involved, and, later, transnational non-governmental organizations, such as Amnesty International, or international bodies, such as the Inter-American Commission on Human Rights of the Organization of American States, would distance themselves from both "Left-wing terrorism" and "state terrorism", as evidenced by the introductions of the reports they produced to condemn the dictatorship's crimes. These interpretations would spread to former militants, both in exile and at home, who revised their support of guerrilla actions. However, in the versions that circulated during the dictatorship, and even before it, the armed forces were acknowledged as having a legitimate repressive role and they were called on to reclaim the monopoly over the use of force, while the charge of "Right-wing terrorism" was directed only at bands that were thought to be operating outside state control. Moreover, during the transition to democracy, this theory incorporated the idea that society had been an innocent victim of the violence, and that innocence was extended to the disappeared, the emblematic symbol of repression.

But more than the genealogy of the idea, it was the political state of affairs of the transition that prompted the translation of this interpretative framework into a legal objective, as, until then, and while condemning both forms of violence, Alfonsín had merely said that perpetrators of human rights abuses would be prosecuted, without mentioning that this would also include guerrillas.

On 23 September 1983, a month before the elections, the military junta finally passed the "National Pacification Act" (Law No. 22,924). This law called on the country to "never again repeat" the violence of the past and "to forgive mutual aggressions and engage in national peace-building efforts in a gesture of reconciliation". The armed forces assumed their responsibility for their actions in the "war against subversion", but pointed to the decrees issued by the constitutionally elected Peronist presidents María Estela Martínez de Perón and Ítalo Luder in 1975, authorizing their participation in the fight against subversion as the source of their intervention (Official Bulletin,

27 September 1983). In a feeble attempt to suggest that the aim was national reconciliation, the law included a much more limited amnesty that benefited some of those who had taken up arms against the government (Méndez 1991, 15).

The self-amnesty law posed a new dilemma for the decision to pursue prosecution. By proposing to hold these trials, Alfonsín sought to challenge the lapsing of criminal actions stipulated under the amnesty law, but he sought to do so by adopting a position that would not be considered biased or be associated with the spirit of revenge (Acuña and Smulovitz 1995, 51, 52). Both "state terrorism" and "subversive terrorism" would be punished. The prosecution of the top guerrilla and military leaders would have a specific political aim: it would show that there were no actors above the law, while simultaneously condemning "elitist reason", which, in Nino's words, was upheld by both guerrillas and military officers, and ending a historical era in which conflicts were resolved with weapons. Now the weapons used would be the evidence presented in court and the battlefield would be the courtroom. Democratic reason, equidistant from both sides, would end that violent era through the law (Nino 1996, 111).

The scheme Alfonsín proposed, which would allow him to emerge as unbiased with respect to both sides, would call for guerrilla leaders to be tried for their actions during 1973–1983, and for the military juntas to be prosecuted for their actions after the March 1976 *coup d'état* for having conceived and implemented a plan of operations against subversive activities based on illegal methods. In this way, he would seek to convict those who had challenged the state's monopoly over the use of force, and those who had held it and used it illegally. That is, political violence was condemned from a perspective that distinguished between the legality and the legitimacy of those who exercised it.[2]

Guerrilla groups were presented as an antecedent to state violence and their leaders would in fact be the only ones accused of acts of violence committed prior to the coup, while they would also be prosecuted for their actions after the coup. The examination of the illegal methods used by the armed forces would, in contrast, be limited to the years of the military dictatorship, and would exclude their intervention under the government of María Estela Martínez de Perón. Thus, accountability for the country's political violence would be limited to two sets of actors, positing society as uninvolved with either and as a victim of both, and establishing the emergence of guerrilla violence as the cause of state violence, although not of its methods.

That timeline of violence had been laid out already by Alfonsín during his campaign. He portrayed the period of political violence as "hell" and its armed embodiments as "demons", giving new meaning to these metaphors that had been used during the dictatorship by relatives of the disappeared, survivors of the clandestine detention centers, and intellectuals solely to depict life in the clandestine centers, characterize the perpetrators of the disappearances, and denounce "state terrorism". These allegories, recast within the framework of criminal law, now served to describe "both terrorisms" and a whole era that was to be left behind (Crenzel 2011, 55).

In this scheme, the trials of those responsible for the system of forced disappearances would be limited to the high commands of the armed forces, absolving the business, political, and religious establishments of their political and moral, and in some cases legal, responsibilities. This structure of meaning proposed a vertical image of the exercise of violence that ignored the ties between state and political and civil society

that, even under dictatorships, are inherent to the exercise of political power. This was essentially motivated by instrumental reasons, as it was part of a forward-looking political approach, of the utilitarian view of punishment mentioned above, and of the prudential arguments wielded by Nino as factors that conditioned the design of the trial strategy adopted.

On the one hand, they could not act in any way that would cast the actions of the future constitutional government as motivated by revenge against or animosity toward the armed forces. On the other, there was no intention of punishing a wide universe of members of the armed forces or of holding lengthy trials. The idea was to focus on a specific group within the armed forces, isolating the commanding officers of the dictatorship from the rest of the military, thus weakening the sense of loyalty that lower ranking officers and troops felt toward their superior officers, and allowing the institution to purge itself of all those who had committed crimes. Similarly, there was concern that if the universe of the accused was expanded to include non-military actors, it would push more people to swell the ranks of those who opposed the revision of the past that the trials represented.

As Jaime Malamud Goti recalls, the government decided not to bring illegal repression charges against Peronist leaders or members of that party's Right-wing labor factions or other actors responsible for the state and parastate violence that had targeted Marxist and Peronist Left-wing groups before the coup, as a strategy to avoid triggering an alliance between Peronists, trade unions, and the armed forces that would put democracy at risk (Interview with Jaime Malamud Goti, human rights advisor to President Alfonsín, 2 February 2007, Buenos Aires). In his campaign, Alfonsín had denounced the existence of a military–labor pact, which he believed involved a commitment from the Peronists not to investigate the human rights violations and other criminal acts committed during the dictatorship if the Peronist party won the elections, in exchange for regaining union control in state healthcare providers (known as *Obras Sociales*). Moreover, he had repeatedly evoked the memory of the violence of the Triple A paramilitary group and the Left-wing Montonero guerrillas, connecting them with Peronism and recalling the party's failure to restrain them. However, he did not intend to hold Peronists – who were still led by María Estela Martínez de Perón and supported Ítalo Luder as their presidential candidate, both of whom were responsible for legal and illegal violence perpetrated before the coup – accountable in court. The distinction between democracy and dictatorship – which became the new dichotomy of political discourses – explains the decision to limit the profile of the accused. Once again, political reasons, translated into an "ethics of responsibility", broke away from and prevailed over the moral imperatives of the "ethics of convictions".

Between self-amnesty, truth, and justice

As noted above, on 23 September 1983 the dictatorship passed Law No. 22,924, known as the National Pacification Act, which stipulated that all criminal actions connected with the "war against subversion" had lapsed. While Peronist presidential candidate Ítalo Luder asserted that the legal effects of the law were irreversible, Alfonsín announced it was unconstitutional and that he was in favor of repealing it (*La Nación*, 2 August 1983, 4 June 1983).

Luder's position not only expressed his support of the idea of leaving the past behind, guaranteeing the impunity of those who committed human rights abuses, it also continued the local political tradition of privileging the legal principle of application of the most favorable law, even when such law has been passed by a de facto government. Specifically, Section 2 of the Criminal Code guarantees that accused parties will have the benefit of application of the most favorable law in force since the commission of the crime until the time of sentencing. This position was, in fact, shared by Antonio Tróccoli, Alfonsín's future interior minister. Also, according to General Bignone, the last de facto president, the country's political leaders had agreed that the law would be repealed but that it would be recognized as the most favorable law, thus preventing criminal proceedings against acts connected with the "war against subversion" (Verbitsky 2003, 32; Bignone 1992, 174–5). This posed a new challenge. As Nino recalls, Section 2 of the Criminal Code "could not be repealed without violating Article 28 of the Constitution, which prohibits retroactive criminal laws" (Nino 1996, 109).

This situation revealed a dilemma, noted by Kritz (1995), with respect to retroactive justice: namely the validity of laws passed by de facto governments. The original argument that Alfonsín's advisors gave for repealing the amnesty law was that the validity of the law had to be examined in light of moral principles. Only laws passed by democratic governments enjoyed the presumption of moral acceptability, because they were the product of democratic deliberation (Carro and Dahl 1987, 305). In this case, they said, the de facto executive branch had assumed extraordinary powers by encroaching on the powers of the judicial branch and blocking its capacity for investigating the truth. In Alfonsín's words, the law amounted to a veritable "self-amnesty", as its authors would be its beneficiaries given the organic responsibility of the military juntas in the so-called "war against subversion" since the *coup d'état* (Communication with former president Raúl Alfonsín, 19 July 2007). That would constitute a legal and moral incongruity. It also went against the political terms raised by the dictatorship itself and condensed in the "Final Document", in which it denied the existence of any crimes, which were now tacitly acknowledged through the exoneration of its perpetrators. Lastly, the law entailed accepting that those who had violated rights and principles protected by the Constitution could claim for themselves constitutional prerogatives to establish their impunity (Alfonsín 1983, 144).

While Alfonsín did not alter his position and repealed the law after he took office, he did change his views on which bodies would administer justice and establish the truth regarding the human rights violations. After the "Final Document" was issued, in April 1983, Alfonsín proposed that civilian judges were to act in the prosecution of acts that were not part of the legitimate functions of the armed forces, such as the violation of the right to life and personal integrity of individuals who did not put up armed resistance (Verbitsky 2003, 34). However, once he took office as president, he opted for a mixed alternative. He proposed reforming the Military Justice Code to prevent future ordinary crimes committed by members of the military from being prosecuted by a court of their peers, but for crimes committed before the reform, such as the human rights violations, the principle of natural judge would apply, and such crimes would be brought before the Supreme Council of the Armed Forces, with the possibility of appeal before the Federal Chamber. This last provision contemplated the principle of presumption of obedience by determining that military, police, and

security personnel had acted as a result of "an inevitable error with respect to the legitimacy of their orders"; that is, they were unaware of the illegal nature of such orders, thus exonerating them from any acts committed under plans and orders of their immediate superiors and the military junta.[3]

This decision was grounded on the reasons mentioned above: namely, preventing the armed forces from viewing civilian courts as expressing a desire for revenge by the political establishment, and, at the same time, the idea that the armed forces could be part of the process of democratization, purging themselves of the members who had committed human rights abuses. This last idea did not take into consideration the profound institutional commitment of the armed forces to the war against subversion, which had been the only shared goal that had kept the different branches of the armed forces together since the 24 March 1976 coup.

Lastly, while during his campaign Alfonsín set forth the basic premises of his justice policy, he said nothing about how he would investigate the past of violence. After he won the elections on 30 October 1983, the human rights organizations resumed their call for the establishment of a parliamentary investigation commission to politically condemn state terrorism. This idea had gained renewed force when Alfonsín announced his intention of referring actions for human rights violations to the military courts. Although Alfonsín had promised leaders of the Permanent Assembly for Human Rights that Radical Party legislators would not vote together as a block on the establishment of a bicameral commission, upon seeing that Peronist legislators and even some members of his own party supported the forming of such a commission, he came up with the alternative of creating a "commission of notables" to investigate the past (*La Prensa*, 31 October 1983; *Clarín*, 18 November 1984). Alfonsín considered that he needed to establish a body over which he could have political control, so as to regulate the effects of the investigation and preserve his relationship with the armed forces. This body had to be accepted by the human rights organizations and be formed by "personalities" who enjoyed wide public credibility so that the commission would constitute a space that was "above suspicion" and neutral with respect to partisan disputes. It was in this context that the National Commission on the Disappearance of Persons (*Comisión Nacional sobre la Desaparición de Personas*, CONADEP) was born. The proposal did not take into account the failed experiences of commissions created in Uganda and Bolivia to investigate disappearances in those countries.[4] The executive decree limited the scope of CONADEP's inquiry to receiving reports and evidence of disappearances and immediately referring them to the courts; investigating the fate or whereabouts of the disappeared and gathering any other data that could be useful in finding them; locating the children who had been abducted from their parents; and communicating to the courts any attempt to conceal or destroy evidence of these crimes. According to Nino (1996, 114), Alfonsín believed that, unlike his limited justice strategy, the investigation into the truth of the human rights violations would have no restrictions. Thus, while a judicial solution was seen as a central part of Alfonsín's strategy for addressing human rights violations, the construction of a truth about such violations was shaped by the demands of both human rights organizations and his political opponents. That is, the two key mechanisms of transitional justice in Alfonsín's administration had different origins, evidencing that the development of a prosecutorial policy was the result of a process, as CONADEP was created to provide a pre-judicial instance.

In effect, far from constituting a program of interconnected prescriptive measures from the start, the proposal to hold trials, as shown above, was shaped gradually, in step with a complex transitional context marked by various initiatives, including the passing of the self-amnesty law and the growing demands of the human rights movement for truth and retributive justice. As highlighted, with the exception of basing the prosecution strategy on the notion of obedience, all other transitional justice policy decisions – repealing the "self-amnesty law", entrusting the first instance of the trials to the armed forces, including the guerrilla leadership among the defendants, not holding Peronist leaders accountable, and forming CONADEP – were decisions adopted as the transition unfolded. While ethics and politics were harmoniously combined in the initial decision to hold trials, that harmony would be undermined as the proposal was implemented.

Conclusions

The inauguration of democracy in Argentina in 1983 coincided with the unprecedented decision to criminally prosecute the perpetrators of systematic human rights violations so heinous and widespread that they were like nothing the country had ever experienced before. While the most notorious symbol of these abuses were the thousands of disappearance victims, disappearance was not the only crime committed by the state.

The strategy based on the idea of holding criminal trials challenged analysts of the time, who believed that pursuing accountability for past crimes was risky because it would jeopardize democracy; it constituted a unique response in a country in which amnesties had previously prevailed; and it proved that even the highest-ranking state officials were not above the law.

Alfonsín's prosecutorial proposal was strained by the political and moral conviction of the need to pursue accountability for crimes that he believed could not go unpunished, on the one hand, and by the political reasons that called for privileging exemplary punishment and the symbolic impact of legal intervention, on the other.

The scope of judicial prosecution was determined by a preventive conception of punishment. Only state crimes perpetrated during the dictatorship would be tried in court. But while the three levels of responsibility, structured around the notion of obedience, were the original defining element of the justice strategy proposed by Alfonsín, the decision to prosecute top guerrilla leaders for their criminal responsibilities was prompted by the adoption of the "self-amnesty" law and the need to counter it. Also, the involvement of the military courts in the first instance of the trials for human rights violations and the establishment of CONADEP were decisions born of ideas debated under a tense transition and which led Alfonsín to alter his initial stance. He thus went back on his idea of prosecuting military officers in civilian courts and his promise not to stand in the way of a bicameral commission.

In this sense, the article has evidenced the teleonomic nature of the development of the prosecutorial policy. That policy was not the result of a prescriptive program coherently set out from the start, but of a process of decision-making that unfolded as the presidential candidate and his team of advisors responded to the initiatives of the dictatorship and the human rights movement in the turbulent political transition of the last months of 1983. Faced with the challenge of addressing unprecedented state crimes and a difficult correlation of forces, Alfonsín gradually built his strategy through

decisions that recognized as a premise the need to achieve some form of justice, but which was far from being a fully preconceived program from day one.

While the architects of Alfonsín's prosecutorial policy acknowledged the dilemmas raised by ethical postulates and political arguments, they did not imagine the clash that would be sparked between the public expectations sowed in the name of ethics and a strategy based primarily on arguments shaped by political calculations.

In fact, Alfonsín's political goal failed. His attempt to combine an unlimited search for the truth with a limited justice foundered, as did the strategy that sought to limit criminal responsibility based on the notion of obedience by reforming the Military Justice Code – which had been seriously undermined in February 1984 in the Senate by an amendment that denied the defense of due obedience to anyone who had committed "atrocious and abhorrent acts" (Senado de la Nación, *Diario de Sesiones*, 9 February 1984, 318) – and the idea that the armed forces could "purge themselves" by prosecuting the leading perpetrators of human violations. His proposals were questioned by both the armed forces and the human rights organizations, and he let down a portion of the social base that had supported his successful bid for the presidency in 1983. Even the truth uncovered by the CONADEP report *Nunca Más* fueled the position furthered by the human rights organizations, which held that crimes such as those described in the report could not go unpunished with the argument that the perpetrators were following orders from their superiors, dismissed the notions of "errors" and "excesses" by highlighting the systematic nature of repression, and called for a wider investigation into the "task groups", clearly challenging Alfonsín's judicial strategy. The military junta trial would have a similar result. As noted above, Item 30 of the ruling handed down in the trial extended the scope of criminal action to include the commanders of the country's military divisions and subdivisions and to anyone who had ordered actions or committed abhorrent acts (Ruling of the Buenos Aires Federal Court of Appeals, 9 December 1985, in case 13/84).

However, in strategic terms, his approach could be said to have succeeded. Even today, the military junta trials represent a horizon on which those seeking accountability for past human rights violations can set their expectations, and they gave Argentine society new meaning by restoring justice and the law to its political culture, which were elements it had been lacking for half a century.

As for dealing with human rights violations committed by the state, the courts have become a leading forum for producing the truth and exercising memory, and even those who have resisted the trials ultimately accept their rulings. Moreover, the military junta trial is an unavoidable reference in terms of both evidentiary and argumentative matters for prosecutors, defense counsels, and judges alike. Argentina's experience also had an international projection. The military junta trial trigged a "justice cascade" that restored criminal justice as a key instrument of transitional justice policies and in the processes of expansion and consolidation of democracy and human rights (Sikkink 2011). At the same time, while the state is questioned for the lack of, or the failures in, the administration of justice, it is still seen as the actor that must be appealed to for its administration. The trials in fact encouraged the population to "discover the law" as the means for furthering its demands (Smulovitz 2002, 270). This process was translated into the transformation of the courts into the scenario for processing conflicts the solution of which had until then rested on custom, trust, or deference, and, at the same

time, into the judicialization of social conflicts and demands as a form of engaging in politics (Smulovitz 2008; Nocetto 2014).

Thus, while the criminal justice strategy implemented in the early days of the democratic transition succumbed under the weight of its own contradictions and the correlation of forces, 30 years on the courts are firmly established as a key stage during which Argentine society deals with its past of violence, based on evidence that determines acquittals and convictions. The truth and the judicial forms (Foucault 2000) for the first time prevailed.

What lessons can we learn from the case analyzed? Anyone who focuses on the specific outcome of this experience solely from a normative perspective of transitional justice will retrospectively find alternatives that would have avoided the mistakes that led to its failed ending, or envision a different path from that chosen in Argentina in 1983. A more careful view, which takes into account the dynamics of the political processes, will also consider the fact that any efforts to deal with this type of legacy are part of a dialogic play of initiatives that determine the teleonomic nature of the processes in which such efforts are inserted. And, perhaps because of it, a more understanding approach must be taken when assessing the outcome, judging it in terms of the success of the strategic will that guided such efforts. In this sense, Alfonsín's strategy for judicially addressing the crimes was adopted when there was a union of political will and moral conviction, but later, as the transitional program was effectively implemented, the two gradually separated. That may explain which elements have survived the test of time and which have been not.

Notes

1. In the case of the Shoah these ideas would be discussed in the late 1980s. For a critique of Arendt's view on Eichmann's role in the Nazi genocide, see Lozowick (2002) and Cesarini (2006). For a critique of the model of bureaucratic obedience, see Breton and Wintrobe (1986, 905–26).
2. For an international perspective of the responses to amnesties law, see Lessa and Payne (2012).
3. See Cámara de Diputados de la Nación (National House of Representatives), *Diario de Sesiones* (Minutes), 5 January 1984, 422–4.
4. For information on these commissions, see Hayner (1994, 611–4).

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