Amnesty's Success in Transitional Justice and Human Rights; Spain, Chile, and South Africa as Case Studies

An Undergraduate Honors Thesis

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Abstract

This honors thesis examines the success of amnesty laws, relative to other mechanisms of transitional justice and redressing past human rights violations; it is my intention to understand if amnesty is a successful mechanism for countries transitioning to democracy after repressive periods. I demonstrate my research through a literature review of subjects and academic principles related to amnesty including concepts of justice, the human rights system, state-sanctioned violence, transitional justice, and amnesty laws.

In addition to a review of the relevant literature, I utilize a case study analysis of three countries: Spain, Chile, and South Africa all used amnesty laws during their transitions to democracy in ways that are distinct from one another. These case studies provide a greater understanding of what makes an amnesty law successful and effective.

The insight from the relevant literature along with the comparison and analysis from the case studies demonstrate that amnesty laws can be successful if implemented under a specific set of principles. I argue that the essential factors to an amnesty law's success include the circumstances and state of the nation when amnesty is implemented, how additional transitional justice mechanisms are used, and if there are specific criteria within the amnesty law.

Introduction

It is common for national governments to experience difficulties when navigating the transition to stable democracies after periods of repression or state-sanctioned violence. Many governments have experienced similar transitional periods, and their experiences have formed a historical track record by which to evaluate options available to governments in times of transition. One of these methods is amnesty, which has been popularized in post-repressive nations, well-known due to its use in many South American countries in the 1980s and 1990s after repressive dictatorships.

Three countries that experienced difficult transition periods in the latter half of the 20th century were Spain, Chile, and South Africa. While the countries' situations were unique, each experienced state-sanctioned violence including but not limited to enforced disappearances, torture, political repression, and extra-judicial executions. In their transitions to democracy, all nations opted to adopt amnesty in hopes of an improved state. The effects and outcomes vary between each amnesty law. Their differences and similarities are important to understand in the current discourse on amnesty and its effectiveness as a tool available to governments in transitioning nations. This thesis will discuss each nation's repressive period, additional transitional justice mechanisms used, how each amnesty was created, and how amnesty affected each nation.

Once reviewing the individual case studies, I will then discuss my findings in relation to what outcomes amnesty has created in each country, amnesty's collaboration with other transitional justice mechanisms, and how effectively amnesty allowed for the redressing of human rights violations. My findings bring me to the conclusion that amnesty can be justified and used effectively to redress human rights violations if the circumstances are worthy of

amnesty, as well as if additional transitional justice mechanisms are implemented in conjunction with amnesty.

Literature Review

The concept of justice has long been associated with the notion of fairness. A central theme in Rawls' *A Theory of Justice* is that in order to promote fairness, justice must promote two distinct principles: (1) liberty and the basic rights of a citizen, and (2) equality.[1] Raphael argues that since the time of ancient Greek society, two primary ideas of justice have prevailed over history. Similar to Rawls' principles, these ideas dictate that justice (1) must give citizens what they deserve (especially in relation to criminal law), and (2) justice must look to equality and need.[2]

Raphael states that the concept of justice contains two aspects: conservative and reformative. The conservative aspect of justice works primarily to preserve the existing order and to maintain the status quo of a nation which generally includes criminal and civil law.[3] Conservative justice seeks to prevent society from harm or unrest through these methods of especially criminal law (i.e. incarcerating a violent individual so that the society can no longer feel the harm of their violence). On the other hand, reformative justice deals with creating new

[1] Forrester, Katrina, "The Making of Justice," In the Shadow of Justice: Postwar Liberalism and the Remaking of Political Philosophy, 1–39. Princeton University Press, 2019. https://doi.org/10.2307/j.ctvfb6zcv, 4.

[2] Raphael, D. D., "Concepts of Justice," Oxford : New York: Clarendon Press ; Oxford University Press, 2001, 3.

[3] Ibid, 5

laws and procedures by governing bodies, judges, or court decisions that reflect new precedents and changes to a state.[4]

Skitka argues that the concepts of justice and morality are separate and cannot be considered synonymous.[5] The development and research of morality have historically disconnected from the development and research of justice; theories of justice have considered ideas of cost-benefit analyses, rewards, and fairness as opposed to moral or ethical ideas.[6]

There is however a connection between justice and morality. Tsanoff draws a closer association between these concepts, especially with regard to punishments and personal rights. Tsanoff states that justice carries a "moral demand" of personal factors and values.[7] Justice and morality can be interconnected, but they remain separate concepts.

Religion can also influence ideas of justice. Justice is referenced heavily in the Bible, with an emphasis on ethical judgment and impartiality.[8] The Quran also references principles including equality, moderation, trust, and solidarity in its definition and understanding of justice.[9] Historical conceptions of justice are commonly separated from notions of religion, but religiously-grounded understandings of justice can affect the practice of justice in non-secular

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[4] Ibid, 3.

[5] Skitka, L.J., Bauman, C.W., Mullen, E. "Morality and Justice," In: Sabbagh, C., Schmitt, M, (eds) *Handbook of Social Justice Theory and Research*, Springer, New York, NY, 2016. https://doi.org/10.1007/978-1-4939-3216-0_22, 407.

[6] Ibid, 410.

[7] Tsanoff, Radoslav A, "Social Morality and the Principle of Justice," *Ethics* 67, no. 1 (1956): 12–16. http://www.jstor.org/stable/2378996, 14.

[8] Raphael, "Concepts of Justice," 12.

[9] Qureshi, Tufail Ahmad, "Justice in Islam," *Islamic Studies* 21, no. 2 (1982): 35–51. http://www.jstor.org/stable/20847199, 37.

nation-states, such as theocracies. Different cultures and societies may have differing notions and ideas of justice, however, historical concepts including fairness, conservative, and reformative justice seem to remain prevalent in judicial systems, especially in the Western world.

a. Traditional/Non-Transitional Justice

A key distinction within the concept of justice is the difference between transitional justice and traditional[10] justice. In the 2004 UN report by the Secretary-General, the United Nations (UN) perceives "justice" as,

> ... an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Justice implies regard for the rights of the accused, for the interests of victims and for the well-being of society at large. It is a concept rooted in all national cultures and traditions and, while its administration usually implies formal judicial mechanisms, traditional dispute resolution mechanisms are equally relevant.[11]

Traditional justice may take different forms depending on the nation or culture, but most nation-states choose to treat unlawful or unjust actions through public judicial and penitentiary systems. These systems of justice often emphasize punitive and/or preventative measures in order to uphold justice by means of disciplinary actions. Punitive, or retributive, justice seeks to promote justice, revenge, punishment and deterrence, and compensation for the victim(s).[12] Active punitive justice is commonly meted out in courtrooms by a judge or jury and intends to seek punishment equivalent to the damage caused by unlawful or unjust action. Preventative

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[10] The word "traditional" is used as a way to refer to methods and systems of justice that have been used historically in widespread use across nation-states before the existence of transitional justice.

[11] Secretary-General, and Annan, Kofi, "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General," 2004, https://www.un.org/ruleoflaw/blog/document/the-rule-of-law-and-transitional-justice-in-conflict-and-post-conflict-societies-report-of-the-secretary-general/, 4.

[12] Schmit, Joan T., S. Travis Pritchett, and Paige Fields, "Punitive Damages: Punishment or Further Compensation?" The Journal of Risk and Insurance 55, no. 3 (1988): 453–66. https://doi.org/10.2307/253254, 454.

justice aims to prevent any unlawful or unjust actions from affecting society through larger-scale measures such as anti-terrorist organizations, or smaller-scale measures including unlawful possession of illegal substances or incarcerating a violent individual so they cannot cause any additional harm.[13]

Traditional justice may be seen at work in court hearings, trials, settlements, diplomatic meetings, and mediation. It is more common to smaller-scale cases concerning individuals, though it is at times used for large-scale applications during a similar transitional post-repressive period. Traditional justice may also be employed in national or international matters through the use of traditional dispute resolution mechanisms.

Another concept of justice becoming more prominent in the Western world is that of "restorative justice". The priority of restorative justice is to center the needs and narrative of the victims of the injustice and to openly discuss options that would provide them with a sense of justice.[14] Restorative justice procedures often include the victim, offender, and the surrounding community and tend to incorporate empowerment, apology, forgiveness, respectful listening, and healing as primary values.[15] These values seek to promote honest storytelling from all involved in the injustice, and victims are then empowered to ask for the form of justice/punishment they feel is deserved. Traditional justice mechanisms and concepts such as punitive justice, trials, and

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[13] Ferzan, Kimberly Kessler, "Preventive Justice and the Presumption of Innocence," Criminal Law and Philosophy 8, no. 2 (2013): 505-25, 506.

[14] Braithwaite, John, Anita Jowitt, and Tess Newton. "The Fundamentals of Restorative Justice," In A Kind of Mending: Restorative Justice in the Pacific Islands, edited by Sinclair Dinnen, 35–44. ANU Press, 2010. http://www.jstor.org/stable/j.ctt24hbc4.8, 35.

[15] Ibid.

restorative justice can be used as part of transitional justice, though transitional justice typically deals with circumstances and goals that are separate from those of traditional justice.

b. Human Rights System

The international human rights system that we know today began in the aftermath of World War II. Before the 1940s, no legal doctrine focused on the rights of the individual as a human; most doctrines centered on humanitarian intervention, rights of minorities, and state responsibility for injuries against foreigners.[16] Buergenthal argues that international human rights law in the present day encompasses these issues, but it mainly attempts to protect human beings on an individual scale, regardless of any type of status.[17]

The initial campaign to implement binding human rights obligations into the UN charter largely failed, leaving instead only vague provisions promoting the importance of human rights. This lack of definiteness led many member states of the UN to act in non-compliance with such provisions.[18] However, these UN provisions served to reinforce human rights on a global scale, as UN member states could no longer perceive human rights as purely domestic in nature.[19] These small advancements led to *The Universal Declaration of Human Rights*, adopted by the UN General Assembly in 1948, which was to a large extent a response to the gross crimes against humanity that occurred throughout World War II. This declaration built upon previous documents such as the American and French declarations of independence, the Magna Carta, and

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[16] Buergenthal, Thomas, "The Evolving International Human Rights System," The American Journal of International Law 100, no. 4 (2006): 783–807. http://www.jstor.org/stable/4126317, 784.

[17] Ibid.

[18] Buergenthal, "The Evolving International Human Rights System," 786.

[19] Ibid, 787

the English Bill of Rights. The Universal Declaration became a symbol of incredible development in the international development of human rights and laid a foundation for a human rights system.[20] Subedi argues that while the UN's work is impressive by promoting human rights globally, the UN's work in holding nations accountable for human rights violations is rather unimpressive.[21]

Understanding the human rights system is fundamental in order to discuss transitional justice (TJ). On a fundamental level, human rights are the rights each person holds simply because they are human. In Donnelly's *Universal Human Rights in Theory and Practice*, he discusses and develops the idea of human rights and their significance in society. Human rights are those that every person holds innately, and it is the duty of governments to recognize and ensure these rights to their citizens. Citizens are able to claim or press their right with respect to the duty bearer (governing body, judicial system, etc.) who then has the obligation to uphold the right.[22] Citizens often seek redress with the duty-bearer for the harm they have suffered, and it is the governing body's obligation to redress past violations committed by the state when pressed by the citizen, as defined within international humanitarian law.[23] Ideally, however, the duty-bearer actively respects its citizens' human rights without the need for the right-holders to claim them.[24]

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[20] Subedi, Surya P, "The Effectiveness of the UN Human Rights System : Reform and the Judicialisation of Human Rights," Human Rights and International Law. Effectiveness of the United Nations Human Rights System: Routledge, Taylor & Francis Group, 2017, 52.

[21] Ibid, 1.

[22]Donnelly, Jack, "Universal Human Rights in Theory and Practice," Ithaca: Cornell University Press, 2013, 9.

[23] Ramcharan, B. G, "The Fundamentals of International Human Rights Treaty Law," International Studies in Human Rights ; 106. Leiden ; Boston: Martinus Nijhoff Publishers, 2011, 141.

[24] Donnelly, "Universal Human Rights Theory and Practice," 9.

Objective enjoyment by all parties involved is the goal; right-holders are able to enjoy their rights without them being addressed or even acknowledged.[25]

Moreover, human rights play a large role in recognizing the duties of the state or any governing body. The ability to claim one's human rights notably gives right-holders the power to hold their states accountable to their legal duties and to make changes within the state they wish to see; the claiming of a human right is a demand for change.[26] Donnelly argues that states have four duties in relation to human rights: (1) respecting the human right, (2) protecting against deprivation of the right, (3) providing necessary ways to enjoy the right, and (4) helping those deprived of human rights.[27] States hold the duty to provide respect, protection, enjoyment, and aid with regard to human rights.

A key idea of Donnelly's argument separates the concept of something that is "right" versus having a (human) right. It may be considered right or morally correct to take a certain action, but that does not inherently make something a human right. Donnelly argues rights are a way in which a society can advance itself to realize social justice, but human rights and justice are distinct concepts.[28] Ackerly argues the existence of a closer connection between human rights and social change. She states that human rights hold equal validity as legal entitlements as they

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[25] Ibid.

[26] Ibid, 12.

[27] Ibid, 36.

[28] Ibid, 17.

do as social, political, and economical obligations in order to create opportunities and improved outcomes.[29]

In the context of TJ, there is no fundamental right to TJ afforded to those affected by state-sanctioned violence, repressive regimes, conflict, etc. Although governing bodies are under an obligation to redress human rights violations, there is no obligation to use as TJ the method to redress them. There is no international law that requires transitioning states to utilize TJ mechanisms such as truth commissions or memorialization.

One of the most prevalent critiques of the Universal Declaration is that it was not legally binding for the states that signed it, and there was no form of enforcement to ensure the protection of the human rights mentioned. The push for an international bill of rights with more encompassing tools for enforcement continued, and after years of deliberations following the Universal Declaration, the UN enacted both the Covenants on Civil and Political Rights and Economic, Social and Cultural Rights in 1966. In combination with the Universal Declaration, these three documents are known today as the International Bill of Rights.[30] The UN hosted numerous conventions in the years following these covenants in order to create treaties against specific violations of human rights; these treaties allowed greater opportunities for holding accountable those nations that ratified the treaties yet continued to violate them. Well-known among these conventions are the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention against Torture.

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[29] Ackerly, Brooke, "Human Rights Enjoyment in Theory and Activism," *Human Rights Review* (Piscataway, N.J.) 12, no. 2 (2010): 221-39, 222.

[30] Donnelly, “Universal Human Rights Theory and Practice,” 60.

These treaties did not inherently become international law once drafted and signed by the UN and its member States. Instead, once signed, States Parties must ratify the treaty by adopting the treaty as domestic law through the means of national governing bodies such as parliament, congress, etc. States Parties must uphold the treaty as law upon ratification and are susceptible to violations if the ratified State Party fails to prevent, punish, investigate, or redress negligence in upholding the treaty.[31] There are methods dictated by the UN that put treaties into force once the ratification process begins. Treaties can go into force on an international level once a specified number of States Parties have ratified or approved the treaty, after a certain time has passed since a certain number or percentage of States Parties have ratified or approved the treaty, or once a designated date has passed.[32] The purpose of this system is to hold ratifying States Parties accountable for ensuring the human rights of citizens protected by the treaty or covenant. Once a treaty goes into force, there are supervision and reporting systems in the UN that are designed to enforce the agreements of the treaty. States Parties are required to submit reports detailing the progress made toward the efforts of the treaty following ratification, individuals are able to submit complaints of failures to comply in their State, and inquiries into other States' compliance are available for certain treaties.[33] However, these avenues can be limited insofar as achieving accountability once a violation of treaty agreements is committed by a State Party, and oftentimes individuals explore other options to find accountability for human rights violations committed by the state.

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[31] Ramcharan,"The Fundamentals of International Human Rights Treaty Law," 17.

[32] Treaty Section of the Office of Legal Affairs, "Treaty Handbook," United Nations Treaty Collection, United Nations, 2012. https://treaties.un.org/doc/source/publications/thb/english.pdf, 22.

[33] Office of the High Commissioner for Human Rights, "What the Treaty Bodies Do," OHCHR, Accessed May 29, 2022 https://www.ohchr.org/en/treaty-bodies/what-treaty-bodies-do.

A crucial sector of the overall human rights system are the regional human rights systems in Europe, the Americas, and Africa. Established in the 1940s, the European Convention for the Protection of Human Rights and Freedom has become a model for other regions around the world and is argued by Buergenthal to be the most effective system in the protection of human rights in the world.[34] It became the first treaty to allow individuals to file claims of human rights violations. These cases move through the committees, chambers, and the Grand Chamber, all consisting of an array of judges; the European Court of Human Rights is now Europe's constitutional court when addressing civil or political rights.[35] With 46 member states, the convention is now part of domestic law in the majority of participating nations.[36]

The Inter-American Commission was established in 1959 without the use of a convention. The commission was concerned with human rights violations, and their work focused on systematic and blatant human rights abuses within the Western hemisphere.[37] In 1979, the Inter-American Court was created and receives hundreds of petitions each year, and some eventually lead to a trial.[38] Although there can be a lack of enforcement in regard to the commission's decisions, nations must and will comply with a court's decisions after going to trial.[39]

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[34] Buergenthal, "The Evolving International Human Rights System," 792.

[35] Ibid, 793.

[36] Ibid, 793-4.

[37] Cerna, Christina M. "The Inter-American System for the Protection of Human Rights." Proceedings of the Annual Meeting (American Society of International Law) 95 (2001): 75–79. http://www.jstor.org/stable/25659458, 75.

[38] Ibid.

[39] Ibid, 77.

The African Charter was created in 1981 and is ratified by almost all African nations. The charter aims to recognize individuals' human rights concerning civil, political, economic, cultural, and social rights specifically.[40] The commission works to promote human rights through its work by creating studies and reports, spreading information to the public, hosting conventions, and collaborating with non-governmental organizations.[41]

The systems of the UN and regional systems directly impact nations whose citizens have experienced human rights violations and state-sanctioned violence, but these human rights systems do not equate to transitional justice.

c. Overview of Transitional Justice

In her book *The Conceptual Foundations of Transitional Justice*, Murphy defines TJ as "... [t]aken to refer to formal attempts by postrepressive or postconflict societies to address past wrongdoing in their efforts to democratize".[42] Whereas traditional forms of justice are generally conducted on a case-by-case basis, TJ uses a wide range of mechanisms to ensure justice on a widespread, nationwide, and international level, in addition to applying traditional justice mechanisms through the local judicial system. First coined in the early 1990s after multiple post-Soviet nations attempted to address their violent pasts while transitioning from Soviet-style communism to market democracy, TJ is a legal discipline that has been used across numerous nations during post-repressive periods, including Rwanda, Chile, Argentina,

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[40] Ouguergouz, Fatsah, "The Reform of the African System of Human Rights Protection," Proceedings of the Annual Meeting (American Society of International Law) 101 (2007): 427–31. http://www.jstor.org/stable/25660236, 427.

[41] Buergenthal, "The Evolving International Human Rights System," 792.

[42] Murphy, Colleen, "The Conceptual Foundations of Transitional Justice," Cambridge University Press, 2017, 1.

South Africa, and many more.[43] The concept of TJ arguably had its genesis during the aftermath of World War II in what is known as the Nuremberg and Tokyo trials and in the criminal and humanitarian law that followed as a result. In 2004, the UN Secretary-General defined the UN's understanding of TJ as processes and mechanisms in regard to past large-scale abuses which can include: individual prosecutions, reparations, truth commissions, institutional reform, and the possibility for judicial and international involvement.[44] Teitel argues that TJ has become a "normalized response" by current-era nations to their post-conflict position.[45]

The end of the 1980s and 1990s saw increasing attempts by TJ theorists and practitioners to implement TJ mechanisms in their search for accountability and justice for those that suffered under repressive regimes.[46] Some argue that ideas surrounding TJ theories were developed due to these attempts, alongside the Nuremberg and Tokyo trials, international criminal tribunals including those from Yugoslavia and Rwanda, and South Africa's Truth and Reconciliation Commission after the end of apartheid.[47] Understanding of TJ today is widespread but limited, and there is still a need for more specific frameworks of understanding. The broad nature of TJ leads to an interdisciplinary approach to justice that considers numerous mechanisms in order to attempt to provide meaningful justice to those affected in post-conflict and/or post-repressive societies. Commonly practiced TJ mechanisms include criminal trials, truth commissions,

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[43] Buckley-Zistel, Koloma, Beck, and Friederike, "Transitional Justice Theories," 1.

[44] Secretary-General and Annan, "The Rule of Law and Transitional Justice," 4.

[45] Ruti Teitel, "Transitional Justice Genealogy," 16 Harvard Human Rights Journal, 2003, 69.

[46] McAuliffe Pádraig, "Transformative Transitional Justice and the Malleability of Post-Conflict States," Cheltenham, UK ; Northampton, MA, USA: Edward Elgar Publishing, 2017, 36.

[47] Buckley-Zistel, Koloma, Beck, and Friederike, "Transitional Justice Theories," 1.

memorial projects, reparations, and amnesty laws that aim to amend previous wrongdoing, support victims as well as to provide justice during periods of transition.[48]

Within the commonly-practiced TJ mechanisms there lies an issue of conflicting goals. Both criminal trials and truth commissions have been viewed as challenges to achieving reconciliation because of their tendency to create instability and obstacles to moving forward.[49] In times of political instability there is a preference to implement amnesty laws to allow a nation to peacefully move forward from a violent or repressive time. In recent years, there has been a push toward addressing violence by holding perpetrators accountable for past human rights violations in transitional periods in order to achieve peace.[50] Some thus consider amnesty laws at odds with TJ mechanisms such as truth commissions and criminal trials, as some amnesty laws block the use of these mechanisms in attempts to move forward from difficult times. The wide variety and actors within TJ mechanisms in recovering nations often presents itself with conflicting goals and obstacles.

Another issue of conflicting goals lies within the multiple actors involved in the process of TJ. In reality, TJ affects everyone within a participating nation. Judge Goldstone believes that in the case of South Africa, all sectors including businesses and universities were affected by TJ, and each individual was forced to confront their role in Apartheid.[51] The actors involved with the TJ process on a local level are community organizations, indigenous groups, and the citizens.

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[48] Ibid.

[49] Leebaw, Bronwyn Anne, "The Irreconcilable Goals of Transitional Justice," Human Rights Quarterly 30, no. 1 (2008): 95–118. http://www.jstor.org/stable/20486698, 97.

[50] Ibid, 96.

[51] Minow, Martha, "Between Vengeance and Forgiveness : Facing History after Genocide and Mass Violence," Boston: Beacon Press, 1998, 10.

The actors involved on a national level include: the ancien régime, the new government, the judicial system, the military and police systems, opposition groups, the array of political parties, human rights groups, victims' organizations, and the church.[52] There can also be global actors involved, such as other nations involved in the previous conflict or regime, intergovernmental organizations, the International Crime Court (ICC), technical experts, and international activist networks.[53] An abundance of local, national, and international actors can be difficult for transitioning nations to navigate the desires and requests of the actors, especially in a nation experiencing the effects of state-sanctioned violence.

i. State-Sanctioned Violence

Amnesty laws are often created due to previous acts of state-sanctioned violence. State-sanctioned violence can be defined as: "Acts of violence committed by an official state, military or sponsored by a sovereign government outside of the context of a declared war, which target civilians or show a disregard for civilian life in attacking targets—either people or facilities".[54] State-sanctioned violence is best known to manifest in forms including genocide, torture, enforced disappearances,[55] extra-judicial executions, labor camps, etc. It can also be recognized

[52] Skaar, Elin, and Wiebelhaus-Brahm, Eric, "The Drivers of Transitional Justice: - An Analytical Framework for Assessing the Role of Actors," Nordic Journal of Human Rights 31, no. 2 (2013): 127-48, 133.

[53] Ibid.

[54] Delgado, Melvin, "'Setting the Groundwork.' In State-Sanctioned Violence: Advancing a Social Work Social Justice Agenda," New York: Oxford University Press, 2020. Oxford Scholarship Online, 2020. doi: 10.1093/oso/9780190058463.003.0001.

[55] The UN defines enforced disappearances in the International Convention for the Protection of All Persons from Enforced Disappearances as "... the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State" and subsequent failure to acknowledge the act by the State.

through lesser-known forms such as the Jim Crow laws in the southeast United States, or police brutality.

State-sanctioned violence can occur in an array of different political systems including democracies, but the political system commonly affiliated with state-sanctioned violence is authoritarian/totalitarian dictatorships. Most scholars have come to the conclusion that democracies are less repressive and have less of an involvement in state-sanctioned violence than authoritarian regimes.[56] One reason for the association between dictatorships and state-sanctioned violence is the centralized and authoritarian nature of such regimes. According to Herreros, a dictator's entire objective and motive is to remove all possibilities of a change in power or an opposition movement, therefore, the dictator often reverts to violence and arrests in order to suppress any movement against the regime.[57] Mann argues that although institutionalized and stable democracies are less likely than authoritarian regimes and transitioning democracies to commit human rights violations such as ethnic cleansing, newly democratizing regimes are more prone to commit ethnic cleansing than authoritarian regimes.[58]

There have been developments over time within international law against state-sanctioned violence to protect human rights. One prominent example of such conventions that set standards for human rights was the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment hosted by the UN in 1984. This treaty bans the use of torture and similar devices but does not ensure complete accountability. In fact, dictatorships that

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[56] Herreros, Francisco, "'The Full Weight of the State': The Logic of Random State-Sanctioned Violence," Journal of Peace Research 43, no. 6 (2006): 671–89. http://www.jstor.org/stable/27640418, 671.

[57] Ibid, 673.

[58] Mann, Michael, "The Dark Side of Democracy: Explaining Ethnic Cleansing," Cambridge: Cambridge University Press, 2004, 4.

signed the treaty were found to practice higher levels of torture compared to dictatorships that did not practice torture.[59] There are other systems to hold nations accountable under international criminal and humanitarian law for violence committed by the states, such as international tribunals and the ICC, as well as the region-specific human rights systems and courts.

ii. Transitional Justice Mechanisms that are not Amnesty Laws

Mechanisms within TJ are one way in which transitioning nations can address the effects of state-sanctioned violence. The four most common non-amnesty TJ mechanisms are criminal trials, truth commissions, reparations, and memorialization projects. These all seek to address past wrongdoing and/or violence and use the uncovering of truth and rightful justice for victims as pathways toward peace and reconciliation. On the other hand, amnesty laws often specialize in purposefully not addressing the nation's past and instead choose to reconcile by moving forward. Criminal trials, truth commissions, and reparations, though critical aspects of TJ, can have goals that differ from amnesty laws.

1. Criminal Trials

Criminal trials are a key aspect of the mechanisms of TJ. In the past two decades there has been a push toward international trials hosted in the nation where crimes were committed following the founding of the ICC, and nations settling for solely national trials for monetary reasons.[60] Criminal trials are seen as a critical aspect of TJ; their purpose is to influence a post-conflict and/or post-repressive society towards establishing and sustaining democratic structures

[59] Vreeland, James Raymond, "Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention against Torture," International Organization 62, no. 1 (2008): 65–101. http://www.jstor.org/stable/40071875, 66.

[60] Cumes, Guy, "Conflict, International Intervention and Criminal Tribunals as Transitional Justice Mechanisms: The Legacy of Failed Justice in Timor-Leste," Internationales Asien Forum. International Quarterly for Asian Studies 41, no. 3 (11, 2010): 269-301,390,392-393, 286

and processes and ensuring the rule of law.[61] This is accomplished by punishing perpetrators of previous crimes to create a sense of guilt of wrongdoing.[62] There is also often a narrative that there is no justice without accountability that criminal trials aim to resolve. Additionally, criminal trials are hoped to lead a post-conflict nation to other TJ mechanisms, such as truth commissions.[63] Some critique criminal trials as unveiling negative emotions and reactions such as a strong desire for revenge that are unproductive in the path towards reconciliation.[64]

2. Truth Commissions

As defined by Hayner, truth commissions are commissions created with the mission to investigate a nation's human rights violations in its history; this history can include military abuses, violations by the state or government, and violence from armed opposition forces.[65] Truth commissions in post-conflict and/or post-repressive nations have become widely popular and commissions have been founded in roughly 30-40 countries in Latin America, Asia, Africa, and the Middle East.[66] Truth commissions can vary in their missions: some seek out truth with the sole focus of understanding and unearthing human rights abuses, whereas some attempt to use the commission to contribute to national reconciliation.[67] Some argue that because truth

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[61] Ibid, 287.

[62] Murphy, "The Conceptual Foundations of Transitional Justice," 7.

[63] Cumes, "Conflict, International Intervention and Criminal Tribunals," 287.

[64] Murphy, "The Conceptual Foundations of Transitional Justice," 8.

[65] Hayner, Priscilla B, "Fifteen Truth Commissions--1974 to 1994: A Comparative Study," Human Rights Quarterly 16, no. 4 (1994): 597–655. https://doi.org/10.2307/762562, 600.

[66] Buckley-Zistel, Susanne, "Narrative Truths: On the Construction of the Past in Truth Commissions," Essay. In Transitional Justice Theories, 145–62. London: Routledge, 2015, 149.

[67] Ibid, 150.

commissions are oftentimes sponsored by state governments, they may alter truth and memory to support the government's own political goals and motivations.[68] Moreover, ambitions for uncovering or remembering the truth regarding human rights abuses are not limited to truth commissions: museums, art, and writings can also serve this purpose.[69]

3. Reparations

Laplante outlines that reparations are civil remedies formed with the intention to compensate for a state's wrongdoing or unlawful behavior that breaches human rights.[70] Reparations aim to serve as benefits to victims and their families after wrongdoing, whether it be material or symbolic.[71] The UN claims that reparations are a right of every victim and their family and that reparations in post-conflict/post-repressive societies should be "adequate, effective, prompt, and should be proportional to the gravity of the violations and the harm suffered".[72] Reparations traditionally include restitution, compensation, rehabilitation, and satisfaction. Compensatory reparations, especially, draw criticism from those who claim that no monetary compensation can equate to the suffering caused due to the injustice experienced by a victim.[73] Alongside other TJ mechanisms such as tribunals and truth commissions, the concept of

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[68] Bakiner, Onur, "Truth Commissions : Memory, Power, and Legitimacy," Pennsylvania Studies in Human Rights, Philadelphia, Pennsylvania: University of Pennsylvania Press, 2016, 52.

[69] Buckley-Zistel, "Narrative Truths," 145.

[70] Laplante, Lisa J, "The Plural Justice Aims of Reparations," Essay. In Transitional Justice Theories, 67–84. London: Routledge, 2015, 66.

[71] Office of the High Commissioner for Human Rights, "Reparations," United Nations Human Rights Office of the High Commissioner. Accessed April 7, 2022. https://www.ohchr.org/en/transitional-justice/reparations.

[72] Ibid.

[73] Vermeule, Adrian, "Reparations as Rough Justice," Nomos 51 (2012): 151–65. http://www.jstor.org/stable/24220127, 153.

reparations have also gained popularity primarily due to many countries creating discourse and producing reparations programs in recent years.[74] The majority of reparations programs are implemented as a result of compromise and negotiation in legislative and political venues, and are rarely ordered by courts or the judicial system.[75]

4. Memorialization

Memorialization is a mechanism of TJ that focuses on building national memory through symbolic sites such as historical museums, monuments, memorials, and public holidays.[76] These memorial sites focus on the victims and citizens during the time of the nation's conflict or repressive period and serve to preserve national memory with regard to victims' experiences.[77] An additional goal of memorialization is to educate the public about the conflict or repressive period for generations to come; many memorialization projects remain permanent and prominent in public society. Memorialization projects are often used in nations with a violent history and a desire to build a "never again" mentality among the citizens and the future generations.[78] Critics of memorialization efforts argue that these efforts are a form of "constructed memory" molded

[74] Office of the High Commissioner for Human Rights, "Reparations."

[75] Vermeule, "Reparations as Rough Justice," 158.

[76] Tunamsifu, Shirambere Philippe, "Memorialisation as an Often Neglected Aspect in the Consolidation of Transitional Justice: Case Study of the Democratic Republic of the Congo," African Journal on Conflict Resolution 18, no. 2 (2018): 33-57, 37.

[77] Ibid.

[78]Tann, Boravin, and Khuochsopheaktra TIM, "Memorialization and Its Perceived Educational Effects," 'Duty Not to Forget' the Past?: Perceptions of Young Cambodians on the Memorialization of the Khmer Rouge Regime. Swisspeace, 2019. http://www.jstor.org/stable/resrep20127.10, 28.

by politicians currently in power, and that these can create a divisive "us versus them" narrative in a transitioning nation.[79]

d. Amnesty Laws

Amnesty laws are one aspect of TJ that has evolved over the years, along with its interpretations by scholars. Amnesty laws seek to eliminate possibilities of criminal prosecution and civil action for certain groups of people and nullify legal liability for previous crimes.[80] The purpose of amnesty laws has varied greatly in the past, as demonstrated in an array of outcomes across post-conflict/post-repressive nations that have enacted and institutionalized their amnesty laws. The variety of ways in which amnesty laws are drafted, implemented, and upheld leads to muddled understandings of amnesty laws and their original purposes. Freedman even suggests that due to the diversity from one amnesty law to another, it can be nonsensical to compare them amongst each other.[81] However, understanding the differences and similarities within amnesty laws is essential.

1. Defining Amnesty

One of the earliest known definitions of amnesty discovered by UN special rapporteur Joinet states that amnesty laws are "An outgrowth of the right of pardon, an act of individual clemency of theocratic origin".[82] Amnesty laws have become largely political in recent decades

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[79] Lundqvist, Martin, "Post-war Memorialisation as Everyday Peace? Exploring Everyday (dis-) Engagements with the Maoist Martyrs' Gate of Beni Bazaar in Nepal," Conflict, Security & Development 19, no. 5 (2019): 475-96.

[80] United Nations Office of the High Commissioner for Human Rights (OHCHR), "Rule-of-Law Tools for Post-Conflict States, Amnesties," United Nations, HR/PUB/o/1 (New York and Geneva: OHCHR, 2009), accessed September 8, 2011, http://www.ohchr.org/Documents/Publications/Amnesties_en.pdf.

[81] Freeman, Mark, "Necessary Evils : Amnesties and the Search for Justice," Cambridge University Press, 2009. ProQuest Ebook Central, 13.

[82] Lessa and Payne, "Amnesty in the Age of Human Rights Accountability," 3.

and the definition of amnesty as a TJ mechanism requires a more evolved modern definition. Amnesty laws vary greatly in their meanings and repercussions in post-conflict or post-repressive societies such as Uruguay, South Africa, Argentina, and Spain.[83] Freedman produces an all-encompassing definition in regard to amnesty's variability: "Amnesty is an extraordinary legal measure whose primary function is to remove the prospect and consequences of criminal liability for designated individuals or classes of persons in respect of designated types of offenses irrespective of whether the persons concerned have been tried for such offenses in a court of law".[84] This definition by Freedman allows for the application of amnesty towards those repressed, such as a political prisoner, or towards the repressors, such as a dictator.

2. Historical Relevance

Amnesty laws gained traction decades ago in areas such as Latin America throughout and during the downfall of dictatorships, during which regimes had committed human rights violations and many political prisoners were held. A rise in the movement for amnesty laws began in the 1960s and 1970s when human rights advocates and non-governmental organizations began to protest and advocate for amnesty laws in favor of political prisoners persecuted during repressive regimes.[85] Some amnesty laws did include freedom for political prisoners; however, many amnesty laws also included impunity for crimes committed on behalf of a repressive regime.

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[83] Lessa, Payne, and Méndez, "Foreword," xxi.

[84] Freeman, "Necessary Evils," 13.

[85] Minogue, Orlaith, "Peace Vs. Justice: The Utility of Amnesties," Criminal Justice Ethics 29, no. 3 (12, 2010): 306-314, 306.

The issue of impunity for repressors caused an international consciousness shift as many dictators began to use amnesty laws to their advantage. Dictators began to protect themselves from convictions for any crimes committed by their regime, even after the regime had fallen, by passing self-amnesty laws. This led to harmful environments for victims and their families who were unable to seek any justice for crimes committed against them. This realization created international outrage, and the narrative began to shift towards an anti-impunity movement that gained traction over the years, leading to the establishment of the ICC.[86]

Current international sentiments have swayed against the use of amnesty laws and they are now rarely supported. Méndez argues that the international community learned from experience that certain amnesty laws oftentimes fail to achieve harmony while encouraging further crimes by the beneficiaries of these amnesty laws.[87]

After the original push for amnesty laws and their implementation and the reactive pushback after the negative effects in the 1970s and 1980s, an international discourse began over TJ and amnesty laws. Focus turned to increased criteria and standards regulating the use of amnesty and other TJ mechanisms in order to ensure justice for the victims of conflict and repressive regimes. In 2009, the UN Office of the High Commissioner for Human Rights published the *Rule-of-Law Tools for Post-Conflict States: Amnesties* as part of a series of rule-of-law tools for aspects of TJ. In this report, the UN designates specific regulations within international law and the UN concerning amnesty laws along with information defining amnesty,

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[86] Ibid, 307.

[87] Lessa, Francesca, Payne, Leigh and Méndez, Juan E, "Foreword," In Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives, xvii-xxxii. New York: Cambridge University Press, 2012, xvii.

describing the legal effects of amnesty, issues in relation to amnesty, and the relationship between amnesty and other mechanisms of TJ.[88] The UN emphasizes its position against amnesty laws by stating that the UN holds a policy in opposition to amnesty laws for any form of human rights violations, crimes against humanity, and war crimes, even during peace negotiations; the UN recognizes this opposition represents an evolution in the understanding of amnesty laws after many years.[89] This recognition and regulation by international organizations such as the UN represent the evolution of scholarship in this field of amnesty laws and the current state of how amnesty laws are perceived in an international sphere.

3. Purpose

Amnesty is localized and situational, and its purpose can vary depending on the events and practices of each nation that implements it. There are many factors that differentiate amnesty laws from one another, and this fact reaffirms the necessity of understanding the principles and theories that amnesty is based on. As efficiently expressed by Lessa and Payne:

> ... Amnesties can serve to encourage demobilization of combatants, to extinguish liability for serious human rights offenses, or to release political prisoners… Despite this wide variety, all amnesties share the following characteristics: they are ad hoc, sanctioned to extinguish liability for specific crimes committed by particular individuals and/or groups; they are retroactive, applying to acts perpetrated before their enactment; finally, they are extraordinary measures, enacted beyond existing legislation.[90]

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[88] United Nations Office of the High Commissioner for Human Rights (OHCHR), "Rule-of-Law Tools for Post-Conflict States, Amnesties," United Nations, HR/PUB/o/1 (New York and Geneva: OHCHR, 2009), accessed September 8, 2011, http://www.ohchr.org/Documents/Publications/Amnesties_en.pdf.

[89] Ibid.

[90] Lessa, Francesca, and Payne, Leigh A., "Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives," New York: Cambridge University Press, 2012, 3.

Amnesty laws can arise from different contexts and time periods. Some are drafted during times of conflict, after conflict, during/after repressive regimes or dictatorships, and are at times decided on as part of deliberations after a repressive period.[91] Amnesty laws can also carry dual purposes and effects under the same law. For example, the amnesty law passed in Spain in 1977 during the transition to democracy after the repressive Francisco Franco regime granted freedom to many political prisoners persecuted while simultaneously granting impunity for any and all human rights violations committed under the Franco dictatorship. Amnesty laws such as self-amnesty laws (amnesty laws enacted by the committers of crimes in efforts to protect themselves from convictions) and conditional amnesty laws (amnesty laws approved after applications of individuals on a case-by-case basis based on certain conditions) are also relevant in understanding the scope of how amnesty laws vary, as well as their impact on nations.[92]

Lenta discusses the idea that amnesty may a good option for incoming political administrations; amnesty may be understood as a more cost-effective alternative TJ mechanism. Large-scale national or international criminal trials can be difficult due to a lack of evidence, or because those who committed crimes are still active in the transitional government.[93]

4. Controversy

Amnesty laws and their impacts are highly contested among scholars in correlation to the increase in the popularity of TJ and amnesty. Lessa and Payne introduce their book by stating that scholars and practitioners of TJ have argued that amnesty is not an appropriate response to

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[91] Ibid.

[92] Ibid.

[93] Lenta, Patrick, "Amnesty and Retribution," Public Affairs Quarterly 32, no. 2 (2018): 119–40. https://www.jstor.org/stable/26909987, 119-120.

past human rights atrocities.[94] On an international level, amnesty laws are regarded to be in opposition to truthful justice, and there is a consensus that any nation in transition should hold trials of all individuals who committed crimes or human rights violations during conflict or repressive regimes.[95]

The rise in recent years towards accountability for crimes and against amnesty has garnered much attention among scholars; some name the shift as a "justice cascade" or even a "revolution in accountability".[96] Many believe that amnesty laws breach international human rights law obligations and disagree with the presence of amnesty laws and the absence of accountability for human rights violations.[97]

Ntoubandi argues that amnesty for serious offenses and human rights violations can never be legally valid, however, he notes that international law has at times continued to allow amnesty laws for serious violations due to extenuating circumstances and urgency.[98] Upon further discussion, Ntoubandi posits that although it may be valid to implement special amnesty measures in times of serious public emergency, nevertheless emergency exceptions are limited and that circumstance may justify crimes against humanity.[99] Overall, he states that "In sum, international law appears unequivocal in rejecting amnesty for crimes against humanity

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[94]Lessa and Payne, "Amnesty in the Age of Human Rights Accountability," 1.

[95] Minogue, "Peace Vs. Justice," 307.

[96] Lessa and Payne, "Amnesty in the Age of Human Rights Accountability," 6.

[97] Ibid.

[98] Ntoubandi, Faustin, "Amnesty for Crimes Against Humanity under International Law," BRILL, 2007. ProQuest Ebook Central, 221.

[99] Ibid, 222-23.

irrespective of whether or not national legislatures adopt laws designed to indemnify the perpetrators thereof," while some amnesty laws may be worthy of exception to international law, the need for crimes against humanity to be held accountable is paramount.[100]

On the other hand, some scholars believe that amnesty laws can be a good mechanism for TJ as long as they are constructed with good purpose and oftentimes are used as a last resort in difficult transitional periods. Freedman subscribes to this theory, stating that "... An amnesty generally deserves to be respected or supported if it is crafted in good faith and in a manner that promises to fulfill a state's transitional justice obligations to the greatest extent possible in the particular context while impairing them as little as possible".[101] Freedman believes that amnesty laws, especially for human rights violations, should only ever be presented and enacted as a final recourse and designated specifically in written criteria in post-conflict/post-repressive societies.[102] Freedman believes that amnesty laws need to be heavily discussed and carefully created, especially due to the fact that many amnesty laws are designed with the intention to become permanent; justice for victims will continue to be important.[103]

It is impossible to draw one conclusion for or against all amnesty laws due to their variability. Amnesty laws can take many shapes depending on the national climate, the law's intentions and beneficiaries, and the severity of crimes that will not be held accountable. While the majority of scholarship in this time opposes the use of amnesty laws and favors strong use of

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[100] Ibid, 226.

[101] Freeman, "Necessary Evils," 71.

[102] Ibid, 184.

[103] Ibid.

accountability, there are scholars such as Freedman who contest that amnesty laws are an important aspect of TJ if used correctly and in good faith.

Case Studies

A. Spain

1. History of Dictatorship

Spain's repressive period began on July 18, 1936 following a coup de'état led by military General Francisco Franco. Franco would soon become the leader of the Nationalist army during the Spanish Civil War and later the dictator of Spain until his death in 1975.

The Spanish Civil War was incredibly bloody and thousands of lives were taken throughout the course of the three years. Both the Nationalist and Republican sides of the Spanish Civil War suffered great losses at fault for the violence of the war, however, throughout Francoist Spain Republicans continued to face forms of violence for decades to come. Once Franco took control over the Spanish government in 1936, all opposition/leftist political parties, groups, or movements were declared illegal.[104] Those who opposed the Nationalist party and Franco, especially political leaders, faced extreme political prosecution or death. Spain was no stranger to powerful leaders because of its extensive monarchical history, but no leader of Spain had ever held such power over the Spanish people.[105]

Franco's opposition faced an array of repression and consequences for their ideologies, including but not limited to: executions, enforced disappearances, incarceration in concentration

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[104] Ibid, 163.

[105] Payne, Stanley G,"The Franco Regime, 1936-1975," University of Wisconsin Press, 1987. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uoregon/detail.action?docID=3445222, 231.

camps, political prosecution, and exile.[106] More than 130,000 people were executed or forcibly disappeared, 400,000 became political prisoners, and nearly 500,000 went into exile during the regime, all based on their opposition ideologies.[107] Additionally, the 700,000 Spaniards who appear to have been imprisoned in concentration camps were often forced into labor, "reeducated," and killed.[108] In these reeducation sites, prisoners were taught the ideology of the Nationalist party, including religion, moral values, and political beliefs; the Franco regime believed that republicans who held opposing beliefs were sick with what was known as the "red gene" and that the gene must not be spread to future generations.[109] This idea also contributed to the repression of any form of diversity due to Franco's efforts to build a homogeneous nation. Tactics to increase homogeneity included the revoking of autonomous status for certain regions, the push towards a Catholic state, the banning of cultural practices outside of Spanish tradition, and the illegality of non-Castilian languages such as regionally-specific Basque, Catalan, or Galician.[110]

Towards the last decade of the Franco regime, it became clear that the dictatorship was not as strong as it once was. As Francoist repression continued, particularly against worker's strikes and the Basque separatist movement, opposition movements and sentiment only grew

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[106]Escudero, Rafael, "Road to Impunity: The Absence of Transitional Justice Programs in Spain," Human Rights Quarterly 36, no. 1 (2014): 123-146. doi:10.1353/hrq.2014.0010, 127.

[107] Ibid.

[108]Hernández de Miguel, Carlos, "Los Campos de Concentración de Franco: Sometimiento, Torturas y Muerte tras las Alambradas," B ed. Barcelona, Spain: Penguin Random House Grupo Editorial España, 2019. https://doi.org/10.4000/ccec.12360, 105-6.

[109] Ibid.

[110] Encarnacion, Omar G, "Democracy Without Justice in Spain : The Politics of Forgetting," University of Pennsylvania Press, 2014. *ProQuest Ebook Central*, 37.

stronger among Spaniards. The high amount of protests, labor strikes, and media attention, especially in relation to the tribunals for Basque separatists part of the extremist group Euskadi Ta Askatasuna (ETA), resulted in state-of-emergency declarations both in 1969 and 1970. These situations only fed the fire for a freer Spain; the state-of-emergencies implemented greater censorship laws, which then drove the nationwide consensus towards a demand for freedom.[111]

Francisco Franco addressed the nation for the final time on October 1, 1975, shortly before being admitted to the hospital where he later died. Franco's death occurred on November 20, 1975, a day that would mark the end of Franco's 36 year-long rule over Spain.[112]

2. History of Transitional Justice

Spain's only history of utilizing TJ theories and practices only lies in Spain's transition to democracy after Franco's death in 1975. After the Nationalists won the Spanish Civil War in 1939, there was no effort for a fair and equitable transition and subsequently no attempt at TJ was made. One could argue that some form of traditional justice was conducted; after the civil war, various trials and tribunals were held in order to punish Republican leaders for their crimes. However, these trials were often politically motivated in efforts to strengthen the dictatorship, rather than to promote and achieve true justice for victims. Those leading the transition to democracy in post-Francoist Spain were therefore faced with an even broader challenge: not only how to move forward from a decades-long repressive dictatorship but also how to move forward from the devastating civil war that ensued in the years leading to the dictatorship.

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[111] Di Febo, Giuliana., and Juliá, Santos, "El Franquismo : Una Introducción," 1a ed. Crítica Contrastes. Barcelona: Critica, 2012, 175.

[112] Ibid.

3. Non-Amnesty Transitional Justice Mechanisms Used

The Spanish government, in the hands of democratically-elected Prime Minister Adolfo Suárez and King Juan Carlos I, largely did not participate in most forms of TJ in attempts to address the wrongdoing of the Franco regime. Nearly all efforts towards reconciliation and forward movement were directed towards the passage of the Amnesty Law of 1977. The state did offer one act of reparations to repay victims of the civil war. One aspect of the amnesty law allowed those imprisoned for crimes in connection to the civil war to collect a pension after their release.[113] Furthermore, no criminal trials were held for violent crimes committed under the Franco regime, as the prosecution of these crimes was in opposition to clauses outlined in the amnesty law. Spain has never established a truth commission to understand the effects of either the Spanish Civil War or the Franco dictatorship.

In the transition to democracy after Franco's death, the government did not implement any legal or public policy changes or reforms and did not seek out truth or justice for the victims of Franco's regime or the civil war. Additionally, no official apology was ever given from the Spanish government.[114] The government did not prioritize TJ mechanisms aside from its heavy prioritization of amnesty.

4. Amnesty Law

The succeeding government after Franco's death in 1975 settled that in order to move on from Spain's harsh past, it was necessary to forget and forgive. During the transition to

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[113]Aguilar, Paloma, "Spanish Amnesty Law of 1977 in Comparative Perspective; From a Law for Democracy to a Law for Impunity," In Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives, edited by Leigh A. Payne and Francesca Lessa, 315-335. New York, New York: Cambridge University Press, 2012, 320.

[114] Escudero, "Road to Impunity," 131.

democracy, political leaders created what is known today as the "Pacto del Olvido" (Pact of Forgetting). This pact would soon give legal basis to the Amnesty Law of 1977, ensuring a transition favored by politicians.

The first clause of the Pacto del Olvido focuses on establishing a nationwide memory in relation to Francoist Spain: the absence of discussion of Franco-era repression and violations of human rights in settings such as schools, politics, and in general social spheres.[115] Those leading the transition to democracy in Spain believed that this clause was a crucial pillar to moving forward from the dictatorship. Many believed that it was not possible to achieve any progress of national reconciliation without the adoption of the all-encompassing amnesty, including the removal of Francoist discourse from most public sectors. Secondly, the pact required admission of wrongdoing on both sides of the civil war. Former Republicans renounced the Spanish Second Republic and its constitution in 1931 and former Nationalists renounced the Franco dictatorship.[116]

Before the primary amnesty law was established in 1977, King Juan Carlos I's government implemented the Amnesty Decree Law in July 1976, a far less encompassing amnesty that would eventually become the amnesty law known today. This amnesty allowed for the release of all those convicted of crimes of political intent. The law did not allow for the release of prisoners convicted of any violent crimes resulting in protests advocating for total amnesty for political prisoners under Franco, especially from the Basque separatist movement.[117]

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[115] Ibid, 132.

[116] Ibid.

[117] Aguilar, "Spanish Amnesty Law of 1977 in Comparative Perspective," 319.

Due to pressure from these protestors, Suárez passed two additional amnesty decrees the following March; neither had any intention of impunity for Francoist crimes.[118]

The amnesty law was born on October 15, 1977, becoming the first law passed by the newly democratically elected government. The original intention of the amnesty law was only to forgive crimes of largely the opposition of the Franco regime, such as prisoners persecuted based on ideology, or even more violent crimes committed under extremist opposition groups such as the ETA. This original draft of amnesty was created by opposition parties, and it was not until the center-right party, Unión de Centro Democrático (UCD), drafted their own version of amnesty that impunity for Francoist crimes and authorities were included in the amnesty.[119] This clause was thus embedded into the amnesty, and after parliamentary discussions, the amnesty was passed into law with 296 votes in favor, 18 abstentions, 2 oppositions, and 1 invalid vote.[120]

The provision from the UCD included amnesty for all Franco officials who had committed human rights violations under the regime, such as persecutions based on ideology. This provision was considered essential in order to receive votes from Franco supporters and transition to democracy, though it led to the eventual impunity for crimes committed by Franco officials, reaffirmed years later by the Spanish Supreme Court.[121]

The Pacto del Olvido and the amnesty law ultimately seemed to result in a relatively peaceful transition to peace, especially in the context of the financial crisis and surges in terrorist

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[118] Ibid, 320.

[119] Ibid.

[120] Ibid.

[121] Escudero, "Road to Impunity," 132-33.

attacks occurring in Spain in the 1970s. Spain's past of civil war and repression was extremely difficult, and many citizens preferred political stability to accountability for Franco officials in fear of experiencing violence or political turmoil yet again in the nation. The pact and amnesty prevailed in providing political stability for Spaniards, as proven by free democratic elections that continued, the Spanish Constitution of 1978, and the preservation of democracy despite the attempted military coup de'état in 1981.

Years later, many began to protest the amnesty provision that declares tribunals against Franco crimes impermissible and began to call for justice for victims of the Franco regime. The fight to address Spain's history and restore national memory began in the 1990s. By the early 2000s, some began to call for the invalidation of previous trials that took place during the dictatorship; many of these trials were based on the grounds of religious or ideological beliefs or philosophies, did not have due process of law, and at times resulted in the death of prisoners or protestors.[122] A 2007 law addressed this issue, although the law only went as far as clarifying that the politically-motivated trials and convictions were to be considered "illegitimate" instead of what victims hoped would be a condemnation of these trials as illegal.[123] The Supreme Court of Spain has only ever declared one Franco-era sentence as void.[124]

The 2007 law, commonly referred to as the "historical memory law," aimed at improving conditions for victims and their families by addressing the open wound among Spaniards. The historical memory law improved reparations available to victims, offered support to memory

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[122] Aguilar, "Spanish Amnesty Law of 1977 in Comparative Perspective," 327.

[123] Ibid.

[124] Aguilar, Paloma, "Judiciary Involvement in Authoritarian Repression and Transitional Justice: The Spanish Case in Comparative Perspective," The International Journal of Transitional Justice 7, no. 2 (2013): 245-66, 261.

organizations, improved public access to Francoist documents, and called for the removal of Francoist symbols from public spaces.[125] The law gave former international volunteer soldiers for the Republican army as well as children of those exiled during the war or dictatorship the option to apply for Spanish citizenship.[126] It also was the first official condemnation of the Franco regime since the transition to democracy. Even so, the law proved to be mostly symbolic and was only a small step on the path toward justice for victims. The law did not take any steps toward stripping past Franco officials of their impunity for crimes or human rights violations committed.

Decision 101 ruled by the Spanish Civil Court in 2012 would solidify legal precedent upholding the 1977 amnesty law. Evidence of 113,000 Spaniards who were forcibly disappeared during the Franco dictatorship was presented to the court, as was evidence of intentional acts committed in order to weaken and remove political opposition movements.[127] The trial however focused on the Spanish Judge Baltasar Garzón, who in turn had questionably begun investigating the disappearances himself. The Supreme Court began to evaluate Judge Garzón on the basis of the legality of his actions as the prosecution argued that Judge Garzón was in violation of the Spanish amnesty law. Judge Garzón was eventually found not guilty, though the Spanish Supreme Court stated that it was illegal to investigate Franco-era acts such as the disappearances, adding that "The right to know the historical truth is not part of a criminal process".[128] After the

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[125] Ibid.

[126] Escudero, "Road to Impunity," 142.

[127] Ibid, 124.

[128] Ibid, 142.

2012 decision, it became clear that not only is it impermissible to try and convict past Franco officials of their crimes, but that investigating such crimes against humanity in search of the truth will not be associated with the judicial sector of Spain.

This decision has extremely limited the avenues in which victims, or family of victims, are able to search for their own truth and justice. Many have resorted to the private sector or non-governmental organizations in order to fulfill justice for their family especially in the case of exhumations. The campaign for exhumations of former Republicans buried in mass graves throughout Spain began in 2000 spearheaded by the non-governmental organization Asociación para la Recuperación de la Memoria Historica (Association for the Recuperation of Historical Memory) (ARMH). The majority of the bodies that lay in the mass graves throughout Spain are those of mostly Republicans who died during the civil war or were killed after the dictatorship began due to their ideology. This organization began to facilitate the exhumation of those in mass graves when the government would not, and by October 2004 300 bodies had been exhumed from their previous gravesites.[129] The historical memory law in 2007 states that the government must help facilitate, not provide, exhumations of bodies. Once the process begins the government must collaborate with those commencing the exhumation, but in no manner does the law state that the government will begin the process of exhumations, leaving the responsibility to non-governmental organizations and families of victims.[130]

Regardless, there has been one exhumation sponsored by the Spanish government: the exhumation of Francisco Franco. In 2019, the Spanish government under socialist Prime

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[129] Davis, Madeleine, "Is Spain Recovering Its Memory? Breaking the 'Pacto Del Olvido,'" Human Rights Quarterly 27, no. 3 (2005): 858–80. http://www.jstor.org/stable/20069813, 859.

[130] Spanish Parliament, "Law 52/2007," 2007, Article 12.

Minister Pedro Sánchez, exhumed and moved Franco's remains from the controversial Valle de los Caídos (Valley of the Fallen) to a smaller cemetery with his wife. Many, including the center-right party, opposed this, stating, "I would like to speak about the Spain of my children rather than that of my grandparents".[131] Franco's remaining family brought the case to the Supreme Court, though the effort failed.

Despite the setbacks over the years and the 2012 Supreme Court decision, victims are still making efforts to search for justice. Some have taken to international law in order to attempt to convict past Franco officials of their crimes against humanity in hopes to undermine the Spanish amnesty law. Argentinian criminal courts have begun an investigation into the crimes of the Franco dictatorship on the basis of universal jurisdiction. The courts have called witnesses, testimonies, and defendants in the years since the investigation began. Approximately 250 Spaniards have become involved in the investigation, and although advancements have been small, in part due to the pushback from Spain, the investigation has given the first indictments of former Franco officials accused of crimes against humanity.[132] To this day, no former Franco crimes or officials have been held fully accountable for their human rights violations during the Franco regime.

B. Chile

1. History of Dictatorship

Similar to Spain's experience, the Chilean dictatorship also began as a result of a military coup de'état. Chile's coup occurred on September 11, 1973, led by General Augusto Pinochet

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[131]Minder, Raphael, "Spain Exhumes and Reburies Remains of Franco," The New York Times, 2019.

[132] Dowsett, Sonya, and Emma Pinedo, "Spaniards seek justice in Argentina for Franco-era crimes," Reuters, September 26, 2013. https://www.reuters.com/article/us-spain-franco/spaniards-seek-justice-in-argentina-for-franco-era-crimes-idUSBRE98P0SL20130926.

Ugarte. The coup successfully overturned the socialist government of President Salvador Allende, who was democratically elected in 1970. Pinochet and his military would go on to take control of Chile for the following sixteen years.

Chile was facing an array of challenges prior to the coup. The country was mired in an economic crisis; creating shortages and a growing black market that left many facing hardships. Tensions and conflicts between Chileans increased in both rural and urban settings due to political tensions as the government was losing support.[133] Many feared a Marxist revolution in Chile due to the first democratically-elected Socialist President; the coup was a result of this tension.[134] Regardless of the violence that occurred, some Chileans believe that the coup was for the best to save Chile from a Marxist takeover.[135]

Pinochet and the military junta outlawed opposition political parties and associations with such parties after taking control over Chile, including some of which supported the military coup. Repression of the Chilean people began immediately. The military implemented a nationwide dawn-to-dusk curfew, public gatherings were effectively banned, as well as any political activity not authorized by the Junta.[136] Those caught in active violation of the martial

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[133]Angell, Alan, "Democracy after Pinochet : Politics, Parties and Elections in Chile," London: Institute for the Study of the Americas, 2007, 3.

[134] Ibid.

[135] Ibid.

[136] Wyndham, Marivic, and Peter Read, "From State Terrorism to State Errorism: Post-Pinochet Chile's Long Search for Truth and Justice," The Public Historian 32, no. 1 (2010): 31–44. https://doi.org/10.1525/tph.2010.32.1.31, 32.

law in place were often shot in the streets or imprisoned. By the end of the initial weeks of the dictatorship, approximately 50,000 Chileans were already imprisoned for such violations.[137]

Pinochet's regime continued to use violence by the means of torture, execution, and enforced disappearances. By the end of the regime in 1990, 5,000 people were either forcibly disappeared[138] or executed, 28,000 suffered torture, and many went into exile.[139] The military created secret mass grave sites to cope with the sudden influx of bodies due to the large number of dead. The regime also implemented concentration camps, where many who were forcibly disappeared throughout Chile were sent. Detained individuals sent to these concentration camps were oftentimes shuffled between different concentration camps, in order for their location to remain unknown, even to their families. If the family members of the disappeared prisoners continued to press for information about their loved ones, the government would threaten to detain those family members as well in order to discourage their search.[140] This tactic also kept public knowledge of the disappeared low, making organization among the opposition difficult. Pinochet depicted the opposition and leftist protestors and politicians as enemies to Chile, vowing to do so by "extirpating the Marxist cancer" left by the previous government.[141]

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[137] Ibid, 33.

[138] Ibid.

[139] Sugarman, David, "Review of Courts, Human Rights, and Transitional Justice: Lessons from Chile," Lisa Hilbink. Journal of Law and Society 36, no. 2 (2009): 272–81. http://www.jstor.org/stable/40206890, 274.

[140] Wyndham, Marivic, and Peter Read, "From State Terrorism to State Errorism: Post-Pinochet Chile's Long Search for Truth and Justice," The Public Historian 32, no. 1 (2010): 31–44. https://doi.org/10.1525/tph.2010.32.1.31, 33.

[141] Rojo, Grínor., and Hassett, John J. "Chile : Dictatorship and the Struggle for Democracy." Gaithersburg, MD, U.S.A.: Ediciones Hispamérica, 1988, 19.

Years into the dictatorship, opposition protests and sentiment did not dwindle. Labor, student, and general protests and strikes continued and were met with continuous force by the military. Many of these protests called for a restoration of democratic free-market policies which had resulted in a recent boom in the Chilean economy.[142] The movement to return to democracy continued to grow, and although Pinochet originally responded with additional repression and violence, it became clear that the dictatorship was losing the control it once had over Chile.

In 1988, both the domestic and international pressure for a democratic process grew so strong to the point that Pinochet allowed for a plebiscite to decide whether to continue with the military dictatorship. The Chilean people decisively voted for the end of the military and Pinochet's rule, and in 1989 Chile returned to democracy and held its first elections in nearly two decades. Pinochet would continue to hold office as the Commander of the Armed Forces until early 1998 and then as senator-for-life until 2002 despite being out of the direct rule of Chile.

On October 16, 1998, Pinochet was arrested while in London on account of his human rights violations, based on an arrest warrant issued by Spanish Judge Baltasar Garzón.[143] Pinochet was ordered to be extradited to Spain following debates and decisions regarding Pinochet's sovereign immunity.[144] Before Pinochet could be extradited, however, his detention quickly came to an end. Due to Pinochet's declining health, it was decided on March 2, 2000,

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[142] Ibid, 47.

[143] Evans, Rebecca, "Pinochet in London: Pinochet in Chile: International and Domestic Politics in Human Rights Policy," Human Rights Quarterly 28, no. 1 (2006): 207–44. http://www.jstor.org/stable/20072729, 209.

[144] Ibid.

that Pinochet would be released to Chile for humanitarian reasons and would not need to continue with the appeals process of his extradition.[145]

2. History of Transitional Justice

Before Pinochet's rule, Chile stood out in comparison to neighboring countries because it was the longest-lasting South American democracy of its time. Therefore, there were no fitting opportunities for TJ until Chile's return to a democratic system after years of a repressive and violent regime. During the transition to democracy in 1988-90, the Chilean government took advantage and implemented TJ mechanisms now widely understood in post-dictatorship nations.

3. Non-Amnesty Transitional Justice Mechanisms Used

At the beginning of the transition to democracy, Chile's government implemented two different truth commissions: the National Commission on Truth and Reconciliation (NCTR) in 1991, and the National Commission on Political Imprisonment and Torture (NCPIT) in 2004.[146] The central goals surrounding the commissions were to understand the impact and truth behind violations against victims, including identifying individual victims. The commission was to use this information to recommend compensation options for victims and propose legal measures in order to prevent similar events from occurring.[147] The NCTR aimed for reparation focused on families of victims as the commission largely dealt with those deceased due to the dictatorship;

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[145] Ibid.

[146] Cárdenas, Manuel, Darío Páez, Bernard Rimé, and Maitane Arnoso, "How Transitional Justice Processes and Official Apologies Influence Reconciliation: The Case of the Chilean 'Truth and Reconciliation' and 'Political Imprisonment and Torture' Commissions," Journal of Community & Applied Social Psychology 25, no. 6 (2015): 515-30, 516-17.

[147] Ibid.

the NCPIT centered on reparation for survivors of imprisonment and torture, of which 29,500 survivors were reported in the NCPIT report.[148]

The results and reports of the commissions recommended the use of reparations for victims and their families. Immediate families of victims were able to collect monetary reparations in the form of monthly payments as well as access to the state's public healthcare system.[149] Reparations were initiated after the completion of both truth commissions, along with subsequent formal apologies by Chilean Presidents Patricio Aylwin and Ricardo Lagos.[150]

Another TJ mechanism used in Chile during the transition from Pinochet's regime was trials held against former members of Pinochet's government accused of committing human rights violations. The victims of Pinochet's regime and the incoming government led by newly elected Patricio Aylwin were eager to try former perpetrators of these crimes against humanity under Pinochet, though they were met with many obstacles during attempts to prosecute the perpetrators. Many judicial cases fell under military jurisdiction, still controlled by Pinochet and his men, who had no interest in shining light on the crimes of the regime.[151] Many attempts at holding military officials accountable were impeded by the Amnesty Law of 1978, which protected Pinochet and his closest officials from facing any form of trial or conviction. In order

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[148] Collins, Cath, "Truth-Justice-Reparations Interaction Effects in Transitional Justice Practice: The Case of the 'Valech Commission' in Chile," Journal of Latin American Studies 49, no. 1 (02, 2017): 55. doi:http://dx.doi.org/10.1017/S0022216X16001437. http://libproxy.uoregon.edu/login?url=https://www.proquest.com/scholarly-journals/truth-justice-reparations-interaction-effects/docview/2162685006/se-2?accountid=14698.

[149] Ibid.

[150] Cárdenas, "How Transitional Justice Processes and Official Apologies Influence Reconciliation," 517.

[151] Collins, Cath, "Human Rights Trials in Chile during and after the 'Pinochet Years'," The International Journal of Transitional Justice 4, no. 1 (2010): 67-86, 77.

to hold any criminals within the military dictatorship accountable, it was only permissible to target crimes that occurred after 1978 and were committed by lower-ranking government members. For example, in 1994 a court sentenced 15 former police officers to prison, convicted of politically motivated murders in the 1980s.[152] Until Pinochet's 1998 arrest in London, the Chilean judicial system made little progress toward convicting past crimes of the regime.

4. Amnesty Law

Chile's Amnesty law went into effect on April 18, 1978, during the active years of the dictatorship. The law was designed by the existing Pinochet regime to apply only to crimes committed before this date, including acts that occurred during the coup de'état. Furthermore, the amnesty does not protect all crimes committed during this time period, such as unlawful public gatherings, the only protected crimes are those committed by Augusto Pinochet and his inner circle including the Armed and Police Forces.[153] The design of the amnesty law aimed at protecting Pinochet and his inner circle from future prosecution for crimes committed during specifically the most violent period of the dictatorship.

Two years later, the regime enacted a new Chilean constitution, which institutionalized many of the practices of the military, including the amnesty law. Therefore, despite the dictatorship ending roughly a decade later, the amnesty law could not be challenged as unconstitutional in Chilean courts, because it conformed to the 1980 constitution.[154] Despite the

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[152] Ibid, 78.

[153] Paixão, Cristiano, "Past and Future of Authoritarian Regimes : Constitution, Transition to Democracy and Amnesty in Brazil and Chile," Giornale Di Storia Costituzionale, 2015, 89-105.

[154] Ibid.

fact that the Chilean amnesty law was not created during the transition with the goal of national reconciliation, the amnesty was accepted by the society as part of the transition to democracy. [155]

There were no major advancements in repealing or altering the amnesty law in any way until Pinochet was arrested internationally in 1998. This event caused Chileans and the judicial sector to rethink the process of convicting previous crimes, in what has been described as "imposed memory" on the nation.[156] Many trials for human rights violations began in 1995, and in the following years multiple factors began to change attitudes towards amnesty including reform in the Chilean Supreme Court, the appointment of new judges, and the momentum from Pinochet's eventual arrest in 1998.[157] A1998 complaint against Pinochet from the Chilean Communist Party assigned to Judge Juan Guzmán regarding the disappearances of party members created a new outlook on the amnesty law. Judge Guzmán noted after his investigation a provision in the law that states that enforced disappearances are still active crimes, opening up larger avenues for similar cases.[158] The courts soon turned to an emphasis on international law over domestic law such as the amnesty law in cases of crimes against humanity such as enforced disappearances. Thus began an influx of trials and convictions for human rights violations committed by military officials during the regime. As of 2011, over 700 military officers have been tried and sentenced for human rights violations in Chile.[159]

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[155]Aguilar, "Spanish Amnesty Law of 1977 in Comparative Perspective," 323.

[156] Ibid.

[157] Ibid.

[158] Huneeus, Alexandra, "Judging from a Guilty Conscience: The Chilean Judiciary's Human Rights Turn," Law & Social Inquiry 35, no. 1 (2010): 99–135. http://www.jstor.org/stable/40539408, 104.

[159]Aguilar, "Spanish Amnesty Law of 1977 in Comparative Perspective," 325.

Once Pinochet returned home after being arrested and held in England, he was met with another challenge from his home country. In August 2000, the Chilean Supreme Court lifted Pinochet's parliamentary immunity and began his persecution for his crimes in relation to what is known as the "Caravan of Death".[160] At this time, Pinochet escaped conviction as he was ruled unable to represent himself in court due to his dementia. Months later, Pinochet was indicted and put on house arrest for his involvement in the "Caravan of Death" crimes, though it was again lifted the following year for medical reasons. By this point, Pinochet and his reputation had been damaged in the eyes of the Chilean people, and his power and control over Chile dwindled.[161] Over the following few years, Pinochet would be indicted and put on house arrest for his involvement in various human rights abuses that occurred under his power, specifically before the amnesty law of 1978, until his death in 2006.[162] Despite being indicted several times, Pinochet was never convicted of any crimes committed from 1973 to 1988.

The 1978 Amnesty Decree Law no longer holds nearly the same power as it once did; however, the law still exists and is active in Chilean society. Multiple Presidents and governments have announced intent or have attempted to rid the nation of the law, including Patricio Aylwin, Michelle Bachelet, and Chile's current President Gabriel Boric. These Presidents have been unable to remove the amnesty law as those efforts continue to stall in parliament from administration to administration, leaving the law still active today.

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[160] Evans, "Pinochet in London," 210.

[161] Ibid.

[162] Ibid, 211.

C. South Africa

1. History of Repression

Unlike Spain and Chile, South Africa's repressive period was not born out of a violent uprising. South Africa's repressive period, commonly known as "Apartheid," occurred from 1948 to 1994. During this time, the minority white population forced segregation against the majority African population of South Africa. Apartheid began from South Africa's 1948 election when the Afrikaner nationalist party, *Herenigde Nasionale,* unexpectedly achieved victory.[163] The party was led by Daniel François Malan, who campaigned based on the idea of Apartheid and advocated the idea that Afrikaners were destined to establish and attain sovereign control of South Africa.[164] Apartheid quickly established and defined population groups within the nation to identify and separate racial groups, which the National Party quickly did.

In the early years of Apartheid, the government enacted an onslaught of legislation that paved the way for the entrenchment of Apartheid as law. By the mid-1950s, the government passed legislation that forced every South African to categorize themselves as belonging to one of four racial groups, legalized the designation of areas for certain races only, permitted the detention of individuals under the government's discretion during a state of emergency, removed specific racial groups from the voters' rolls, and prohibited certain public gatherings.[165] Certain legislation prohibited racial integration in both public and private life, including the Separate Amenities Act of 1953 and the Mixed Marriages Act of 1949, which legalized racial segregation

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[163]Dubow, Saul, "Apartheid, 1948-1994," Oxford University Press, Incorporated, 2014. ProQuest Ebook Central, 1.

[164] Louw, P. Eric, "The Rise, Fall, and Legacy of Apartheid," Westport, Conn.: Praeger, 2004, 56.

[165] South Africa, "Truth and Reconciliation Commission," Truth and Reconciliation Commission of South Africa Report. [International edition]ed. Cape Town: Commission, 1999. Volume 3, Chapter 1, 13.

in publicly-owned spaces, and prohibited interracial marriages, respectively.[166] Three hundred laws were set in place during Apartheid in order to separate and repress the African people.[167] Approximately 16.5 million South Africans, mostly Black, were criminalized due to the nature of the laws passed during Apartheid's rule.[168]

Aside from mandated segregation, the National Party also forcibly removed citizens from their residences and demolished slum neighborhoods in South Africa. Those living in these areas were afterward relocated to towns generally located outside the city centers based on their race in efforts to create assigned townships for each racial group.[169] Additionally, the National Party banned unemployed Africans from living inside South Africa's cities and deported those that were unemployed to their assigned townships resulting in disproportionate poverty within these areas.[170] Black South Africans were limited as to where they were allowed to live and what jobs were available to them. Within the available labor options, Africans were trained to serve the white economy.[171] By the end of Apartheid, over four million people were forcibly removed from their residences.[172]

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[166] Louw, "The Rise, Fall, and Legacy of Apartheid," 56.

[167]Christie, Kenneth, "The South African Truth Commission," New York: St. Martin's Press, 2000, 13.

[168] Ibid.

[169] Louw, "The Rise, Fall, and Legacy of Apartheid," 59.

[170] Ibid.

[171] Christie, "The South African Truth Commission," 12.

[172] Ibid, 13.

Political parties aligned against the ruling government found themselves repressed as well. Opposition organizations such as the African National Congress (ANC) and the Pan Africanist Congress (PAC) consistently resisted and protested Apartheid and the National Party. Most forms of protest, including peaceful ones, were met with considerable pushback from the government, escalating violence. Some associated with opposition movements resorted to more extreme forms of resistance as a result and formed armed groups that attacked government and policing officials.[173] Both the ANC and the PAC were banned in South Africa in 1960.[174] South Africa would later find evidence of widespread use of torture and extra-judicial executions committed by the South African Police in order to remove threats from opposition leaders and movements, including the use of secret death squads.[175] Political unrest had become a rising malignant force within the nation and thousands died as a result. The 1980s were especially rampant with political protests, unrest, and violence, which, finally, demonstrated the lack of sustainability of Apartheid and led to its eventual end.

In 1989, Frederik Willem de Klerk became President and subsequently lifted the ban against the ANC and PAC, initiating official negotiations between the organizations and the National Party.[176] After years of negotiations the ANC left largely victorious in 1994, with the communal agreement to transition to majoritarian democracy and an end to the Apartheid system. Initially, the ANC and National Party agreed to share the South African government for

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[173] Bubenzer, Ole, "Post-TRC Prosecutions in South Africa : Accountability for Political Crimes after the Truth and Reconciliation Commission's Amnesty Process," BRILL, 2009. ProQuest Ebook Central, 6.

[174]South Africa, "Truth and Reconciliation Commission," Truth and Reconciliation Commission of South Africa Report. [International edition]ed. Cape Town: Commission, 1999. Volume 3, Chapter 1, 14.

[175] Bubenzer, "Post-TRC Prosecutions in South Africa," 6.

[176] Louw, "The Rise, Fall, and Legacy of Apartheid," 172.

five years, however, the National Party walked out in 1996 once the ANC made plans to draft a new constitution.[177]

2. History of Transitional Justice

Until 1961, South Africa was formally recognized as a colony of the commonwealth of Great Britain. Previously, The Netherlands also held colonial control over South Africa during the 17th, 18th, and 19th centuries. As a consequence, the native African people did not have much control over governance and transition periods from certain governments or times of conflict until Apartheid ended. The use of TJ before the transition to democracy after Apartheid was unapparent in South African society. This is especially in part due to TJ not being widely understood during the time period in which Apartheid took place; the National Party took control only a few years after the Nuremberg trials in Germany began.

3. Non-Amnesty Transitional Justice Mechanisms Used

The most well-known aspect of TJ used in the South African transition to democracy was the creation and use of the Truth and Reconciliation Commission (TRC) in 1994. The TRC was established as part of the Promotion of National Unity and Reconciliation Act, which gave power to the TRC to advance reconciliation.[178] Under the authority of Desmond Tutu, the TRC held hearings and listened to victims' stories to understand the extent of human rights abuses committed under Apartheid from March 1, 1960, to May 10, 1994.[179] The TRC formed three

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[177] Ibid, 173.

[178] Graybill, Lyn S, "Truth and Reconciliation in South Africa : Miracle or Model?" Boulder, Colo.: Lynne Rienner Publishers, 2002, 2.

[179] Ibid, 6.

committees: the Committee on Human Rights Violations, the Committee on Amnesty, and the Committee on Reparation and Rehabilitation.

The TRC traveled across South Africa in the following years holding hearings in order to hear stories of human rights violations from the victims' perspectives. The TRC defined human rights violations as a "[v]iolation of human rights through the killing, abduction, torture, or severe ill treatment of any person," especially in regard to a political motive.[180] The commission held 140 hearings in 61 towns, and took 22,000 victim statements relating to 37,000 human rights violations in its six active years.[181]

Once the TRC concluded its research, it presented its findings in a public report and gave its recommendations for the next steps to the government. The ANC failed to implement all the recommendations from the TRC, despite having established it. Although the government did not meet the recommendations of the TRC, the commission is mostly regarded as a distinguished example of truth commissions.[182]

One of the committees that worked under the TRC was the Committee on Reparation and Rehabilitation. Reparations were always intended to be given to victims of human rights violations under Apartheid since the reconciliation act and the creation of the TRC.[183] Similar to the main branch of the TRC, the reparation and rehabilitation committee also held hearings across the country to listen to victims, but especially to understand what victims were in need of

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[180] Parliament of the Republic of South Africa, "Promotion of National Unity and Reconciliation Act 34," 1995.

[181] Graybill, "Truth and Reconciliation in South Africa," 8.

[182] Ibid.

[183] Bois-Pedain, Antje du. "Justice and Reconciliation in Post-Apartheid South Africa." edited by Bois, François du, and Bois-Pedain, Antje du, Cambridge University Press, 2008, 121.

with regard to reparations.[184] Once the commission's findings were concluded, the TRC recognized four different types of reparations which were then proposed to parliament: community rehabilitation programs, symbolic reparation, institutional reform, and individual reparations.[185] Parliament was uninterested in meeting the proposals of the TRC regarding monetary compensation, and settled for a far lower amount per victim than recommended. The 22,000 victims eligible for reparations received a one-time payment of 30,000 rand (roughly $3,000 USD adjusted for inflation).[186]

Furthermore, South Africa utilized restitution of land as a form of reparations for victims forcibly removed from their residences during Apartheid. In 1997, Parliament approved the *White Paper on South African Land Policy*. Its purpose was to restore the land of South Africans forcibly removed or displaced from their land motivated by racially discriminatory actions and laws, as well as to provide additional restitution services.[187] The government received 79,694 claims from victims displaced due to racial discrimination during the time period the state accepted claims; as of 2003, nearly half of the claims have been settled.[188]

South Africa also incorporated memorialization into its TJ process after Apartheid. Instances of symbolic memorialization were emphasized during the transition and newly-democratic government. Memory commissions were designated to establish monuments,

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[184] Graybill, "Truth and Reconciliation in South Africa," 7.

[185] Bois-Pedain, "Justice and Reconciliation in Post-Apartheid South Africa," 122.

[186] Ibid, 126.

[187] Warren, Freedman, "The Restitution of Land Rights in South Africa as Reparation for Past Injustices," Windsor Yearbook of Access to Justice 22 (2003): 157-178, 158.

[188] Ibid, 174.

memorials, and museums commemorating the struggle and fight of Apartheid.[189] In efforts to retain national memory, the South African parliament created the South African Heritage Resource Agency in 1999; an organization that promoted procedures in favor of nationwide remembrance of history, through the specific lens of symbolic restitution and reconciliation.[190] Regardless of efforts toward memorialization, many Apartheid-era monuments and historical sites remained intact after the transition to democracy and the focus on symbolic restitution.

4. Amnesty Law

The TRC created the Committee on Amnesty as part of the commission's work in post-Apartheid South Africa. Amnesty was embedded into the new constitution of 1993, which stated that amnesty could be granted to individuals who committed any acts or offenses in association with a political motive in the past.[191] The TRC was given the authority to grant amnesty directly. Amnesty granted by the committee was not all-encompassing or automatic; instead, amnesty was granted on a conditional basis. In order to meet baseline requirements for being considered for amnesty, applicants must have applied to the TRC during a designated timeline, and the act committed must have had a political motivation.[192] The TRC defined a political act as one that was committed as a member or supporter under the authority of any political party, state

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[189] Ross, Marc Howard, "Cultural Contestation in Ethnic Conflict," Cambridge University Press, 2007. ProQuest Ebook Central, 231.

[190] Ibid, 232

[191] Lessa, Francesca, Payne, Leigh, and Antje du Bois-Pedain, "Accountability through Conditional Amnesty; The Case of South Africa," Essay. In Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives, 238–62. New York: Cambridge University Press, 2012, 239.

[192] Ibid.

institution, or liberation movement.[193] This distinction concerning members and supporters of political agendas demonstrated a focus on amnesty for those acting as part of a larger cause, rather than leaders giving orders to supporters or members. The previous action must also not have been motivated by personal gain, malice, ill will, or spite within the parameters of a political act.[194]

Individuals who applied were required to disclose a full account of the act committed complete with relevant information and facts to be found eligible for amnesty.[195] In this sense, every application for amnesty based on any acts or offenses during Apartheid helped the TRC build a complete understanding of the truth behind Apartheid to move forward toward building a national memory and reconciliation.

The TRC decisively did not take any form of bias when receiving and reviewing amnesty applications. Crimes committed by individuals under the state's authority under Apartheid were to be treated no differently and given no prejudice compared to crimes committed by the ANC in their liberation movements. After this provision caused much controversy, Desmond Tutu urged upset ANC members that the Amnesty Committee had no intention of judging former acts on the basis of morality. Instead, applicants would be granted amnesty if they could be held liable either criminally or civilly for past actions.[196] Those who were deemed ineligible for amnesty after

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[193] Ibid, 240.

[194] Graybill, "Truth and Reconciliation in South Africa," 62.

[195] Lessa, Payne, and Bois-Pedain, "Accountability through Conditional Amnesty," 240.

[196]Graybill, "Truth and Reconciliation in South Africa," 62.

review would continue to be vulnerable to prosecution for any crimes or actions committed in their past.

The Amnesty Committee reviewed the first two cases of requested amnesty in 1996. Both cases dealt with murder, however, only one application was granted amnesty. This decision was given on the basis that only one action was considered acted out of a political objective. One murder was committed on behalf of the Bafokeng people in their fight, and the other was committed based on the suspicion that the victim was a thief.[197] The second applicant was unable to prove that they held any political motivation and therefore was not eligible for amnesty.

When the first deadline to apply for amnesty closed on May 10, 1997, the Amnesty Committee had received a total of 7,124 applications.[198] Of these applications, approximately 3,000 were from individuals already convicted or serving prison time for the relevant crime.[199] Only roughly one-fourth of applicants were granted amnesty after their case was heard. By the end of 1998, of the 5,111 settled cases, only 238 applicants were partly or fully granted amnesty.[200] The lack of political motive was the leading reason why the majority of applications were denied. By 1998, 2,686 cases were denied due to holding no political objective.[201] Apart from a lack of political motivation, applicants were also denied amnesty based on a refusal to admit guilt, refusal to offer full disclosure of the action, or because the action was deemed

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[197] Ibid, 63.

[198] Christie, "The South African Truth Commission," 130.

[199] Graybill, "Truth and Reconciliation in South Africa," 67.

[200] Christie, "The South African Truth Commission," 130.

[201] Ibid.

committed for the purpose of personal gain.[202] A minority of the applicants were representative of the National Party or other right-wing parties active during Apartheid.[203]

The Amnesty Committee officially dissolved on May 31, 2001. During its time, it held over 250 public amnesty hearings and made formal amnesty decisions in 1,100 cases while active.[204] The work of the Amnesty Committee was thereby published and available to the public as part of the volumes in the TRC reports. In the aftermath of the Amnesty Committee's dissolution, some criminal proceedings began for individuals who failed to either apply for amnesty or were denied. Efforts to pursue convictions were limited, and few crimes were ultimately convicted and sentenced.[205] Additional attempts to protect past crimes and individuals have arisen in recent years. In 2005, new prosecutorial guidelines attempted to close cases of past crimes that could meet the eligibility of amnesty stated in the reconciliation act but were later deemed unlawful.[206] In 2007, pardons began for past crimes committed under a political motivation for those who neglected to apply for amnesty.[207] In contrast to crimes granted amnesty by the committee, crimes pardoned in this scenario were not required to provide an admission of guilt and disclosure of the event. The legacy of the Amnesty Committee however remains strong today, with few attempts made to alter the committee's work.

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[202] Ibid.

[203] Graybill, "Truth and Reconciliation in South Africa," 67.

[204] Lessa, Payne, and Bois-Pedain, "Accountability through Conditional Amnesty," 241.

[205] Ibid, 255.

[206] Ibid.

[207] Ibid.

Discussion

After discussing and analyzing each amnesty law in Spain, Chile, and South Africa, it is clear that no case study demonstrates "correct" or "incorrect," uses of amnesty laws, or that amnesty regimes should or should not be used to redress human rights violations. Instead, I argue that these cases show what makes amnesty effective is the context under which it is created, and whether it is used as a pathway to allow for the redressing of human rights violations. For example, with promise unfulfilled, Spain used its amnesty ineffectively and unjustly; the government refuses to utilize the benefits of amnesty to redress human rights violations committed under Franco. The lack of additional TJ programs left victims without justice or even truth. In comparison, Chile and South Africa were able to take advantage of the peace their amnesty created and swiftly implemented nationwide TJ programs that focused on truth and redressing human rights violations, though both were imperfect.

From the case studies and research discussed herein, certain standards clearly emerge to serve as a set of guiding principles amnesty laws must meet. In order to be successful and effective, amnesty must meet the following criteria: (1) amnesty must be adopted only when deemed necessary to preserve or create peace in a politically unstable or violent nation, (2) additional TJ mechanisms such as truth commissions and reparations must be applied in an effort to redress human rights violations committed by the state, and lastly (3) there is a preference for conditional amnesty that includes an application process and specific criteria of its own.

Amnesty alone, though useful in times of political instability such as the case of Spain, is ineffective at reconciliation and the redressing of human rights violations by the state. However, amnesty paired with additional TJ mechanisms can become effective in allowing national

reconciliation and redressing human rights violations. I believe that this principle is why South Africa is a model in TJ; multiple additional TJ mechanisms were implemented alongside amnesty and the TRC took advantage of amnesty's creation of peace to advance political stability and redress past violations.

I have prepared three perspectives to analyze the case studies: circumstances and outcomes, collaboration with additional TJ mechanisms, and redressing human rights violations. Circumstances and outcomes analyzes the state of each case study at the time of its amnesty law, and how the context and design of the amnesty shaped its eventual outcomes. This relates to my first principle of amnesty laws, stating that amnesty laws must only be used in necessary circumstances in order to be effective. Then, I discuss the collaboration with additional TJ mechanisms, during which I analyze the relevance of my second principle of implementing additional TJ mechanisms in conjunction with amnesty in each case study. Lastly, I consider the effectiveness of amnesty in redressing human rights violations in each case study, which relates to all three principles for amnesty. The effectiveness of amnesty to redress human rights violations relies on the existing circumstances, how additional TJ mechanisms are used, and the terms of the amnesty law.

1. Circumstances and Outcomes

The amnesty programs in Spain, Chile, and South Africa were all created differently and had different effects on the three nations. Most notably, each amnesty serves different purposes and falls under different categories of amnesty laws. Spain's amnesty law is the most reminiscent of a "standard" amnesty law- its main purpose for amnesty was to provide unconditional forgiveness for all prisoners, crimes, and criminals who committed illegal acts under the Franco dictatorship. In a partially similar sense, South Africa took a more conditional approach: its

amnesty committee's purpose was to provide nonpartisan amnesty to those who committed crimes during Apartheid, on a conditional basis that included an application process and strict terms. In contrast, Chile's amnesty was a type of self-amnesty created during the midst of the dictatorship by Pinochet and the ruling military solely to protect themselves from prosecution in future years. The varying structure and purpose of each amnesty law lead directly to differences in the outcomes.

One area where structure and purpose can lead to different outcomes is in relation to the relevance of amnesty laws far after formal transitions from dictatorship to democracy. In Spain, the Amnesty Law of 1977 is still relevant in Spanish law, politics, and society to this day. Spain's amnesty law was designed by the incoming government to be all-encompassing and to serve as the sole method of reconciliation, ultimately leading to a dependency on amnesty decades later. Amnesty is still strictly enforced in the judicial system, where a preference for domestic law pervades over international law, as demonstrated in the previously discussed 2012 Supreme Court decision. Recent developments have kept tensions high, such as Franco's exhumation and the continuance of the Argentinian investigation, which persevered to indict and try former Franco officials and previous violators of human rights. The amnesty law is unlikely to be overturned or even become irrelevant in the near future, especially as it remains popular among Spain's major conservative political parties such as *Partido Popular* and *Vox*.

In contrast, Chile's amnesty law holds far less relevancy in recent years than it once did. Chile's amnesty law was never intended to be a method used for the transitional period; instead, it was accepted as part of the transition along with other TJ mechanisms like truth commissions and reparations. These mechanisms educated the Chilean people and helped to build a collective perspective in regard to the wrongdoing of Pinochet's regime. International law now has greater

power over past human rights violations than domestic amnesty law. Violations committed by former military officials including enforced disappearances are commonly investigated in the Chilean judicial system. Chile has not refrained from investigating and prosecuting military officials like Pinochet for crimes that were intended to be protected within the amnesty law. The last step in Chile's process with regard to amnesty will be finally removing amnesty from Chilean law. Multiple previous Presidential administrations have tried in the past, but it is possible that Chile's new President, Socialist Gabriel Boric, can accomplish this task.

Amnesty is not able to achieve a similar effect on South African society as it has in Spain due to the nature of South Africa's conditional amnesty. Once the application deadline had passed, amnesty was only granted and enjoyed by those who successfully emerged from the ensuing hearings. Those who committed crimes under Apartheid and did not apply or were denied amnesty could be tried for their crimes as soon as the amnesty process was over (though this too became controversial when it appeared that the majority of those who were denied amnesty were not brought to trial despite not having any legal protection for their crimes).[208] However, recent legal attempts to make exceptions for those who were denied or failed to apply for amnesty at the appropriate time have also begun to stir controversy within South African society. These outcomes in each country are a result of the state of the nation at the time amnesty was implemented, and the design of the amnesty laws.

2. Collaboration with Additional Transitional Justice Mechanisms

Aside from one small act of reparations for civil war victims, Spain did not utilize any other TJ mechanisms in their transition to democracy after Franco's death. This is significant;

[208] Lessa, Payne, and Bois-Pedain, "Accountability through Conditional Amnesty," 255.

instead of a multi-faceted approach to the transition, Spain put all focus on the amnesty law. Amnesty then became the central narrative regarding attitudes towards the war and dictatorship. Spain is the only country that solely relied on amnesty to guide the nation during the transition to democracy out of the three countries analyzed in this paper.

In Chile, the widespread use of TJ mechanisms such as reparations, truth commissions, and tribunals were implemented by the democratic government to accompany the pre-existing amnesty in its transition. All TJ mechanisms other than amnesty were used years after the amnesty law, as it was originally enacted a decade before the transition. The NCTR and NCPIT truth commissions were integral parts of the transition, especially since they eventually led the government to understand the need for and to identify recipients of reparations. As Chile's self-amnesty law impeded victims of military officers to seek justice and reconciliation through the judicial sector, the use of the truth commissions and reparations provided an avenue for victims to still be addressed and compensated by the government.

South Africa's relation between amnesty and additional TJ mechanisms is much more direct; amnesty fell under the authority and was embedded into the TRC process alongside reparations. Amnesty was crafted carefully in correlation with efforts to listen to victims, understand the complete truth of Apartheid, directly name victims in its publications, and provide compensation for victims in the forms of monetary reparations and land restitution. Every application provided additional information for the truth-seeking process because of the conditions of the amnesty set by the TRC. As a result, the unbiased nonpartisan quality of the amnesty allowed it to accomplish what is oftentimes the goal of amnesty: peace in a nation compiled of clashing parties, liberation movements, and identity groups. Mechanisms of TJ used in the transition of power in South Africa were all curated and implemented simultaneously

under the authority of the TRC, which in turn led to TJ mechanisms like amnesty to have an emphasis on truth and reconciliation. Of Spain, Chile, and South Africa, the countries that chose to implement additional TJ mechanisms such as truth commissions and reparations in conjunction with amnesty heavily impacted their respective transition to democracy for the better by giving victims a sense of justice.

3. Redressing Human Rights Violations

The issue of amnesty and whether it adequately redresses human rights violations is heavily debated. Each amnesty regime discussed in this paper experienced varying success in redressing human rights violations. An analysis of the experiences of Chile, Spain, and South Africa provides examples of the nuances and varying outcomes amnesty can have on the larger TJ goal of addressing past human rights violations.

Spain offers an example of one highly contested and debated use of amnesty in its transition to democracy. The main reason for this debate is that many victims of the state under Franco and even the civil war feel that they have not received any justice for their trauma. If victims specifically request for something to be done by the state, this amnesty law is often cited in the reasoning for the state's denial. The initial objective of the law was to release political prisoners and to prevent those that committed crimes under Franco's regime from being prosecuted, however, the law additionally halted any investigations into past human rights violations committed by the state, even where such investigations' goal is truth-seeking over the prosecution of the perpetrators. This is undoubtedly the amnesty law's greatest weakness in redressing human rights, as citizens who endured state-sanctioned violence and human rights abuses are unable to petition their own current government to redress those past violations. It is

also relevant to note that in refusing to investigate human rights violations committed at the hands of the state, Spain is also in defiance of its own obligations under international human rights law.[209]

On the other hand, understanding the circumstances in Spain during the time of the transition to democracy and the amnesty law provides a clearer perspective of amnesty's role in Spain. Since the founding of the state in the 15th century, Spain made only two attempts to build a formal democracy. These attempts are known as the First and Second Spanish Republics; neither of which lasted longer than five years. With such a history of political instability, Spanish Parliament in 1977 was understandably keen to look for any option possible to maintain political rest; especially during such a vulnerable time of transition and increased terrorist attacks.[210] In order to achieve peace and political stability, Parliament adopted the non-partisan amnesty law including amnesty for Franco officials who committed human rights violations as an agreement in the transition. Including amnesty was the only way former Franco officials would agree to the transition, making it an unfortunate but arguably necessary sacrifice in order to secure the perceived greater good of a stable democracy. Without the amnesty law as adopted, it is possible that political unrest could have driven out the new democracy through violence or another coup, which would only have encouraged further human rights violations. Still, had it been used correctly, the Amnesty Law of 1977 could have provided Spain with a golden opportunity to use amnesty and the country's newfound stability to open avenues allowing for the redressing of human rights violations in other methods. However, the government failed to take this

[209]Office of the High Commissioner for Human Rights, and General Assembly of the United Nations. "International Convention for the Protection of All Persons from Enforced Disappearance." 2007, Article 6.

[210] Aguilar, "Spanish Amnesty Law of 1977 in Comparative Perspective," 321.

opportunity and now victims are faced with only limitations towards achieving justice and redressing human rights violations.

Chile's amnesty law appears to be the most objectively ineffective amnesty law of the three studied, as it only prevents accountability for crimes and human rights violations committed by Pinochet and his military officials during the bloodiest years of the dictatorship. Chile is somewhat similar to Spain in that the amnesty law was accepted as part of the transition to democracy. The crucial distinction, though, is that the Chilean law was not created as a formal mechanism of the transition. However, during the transition to democracy, Pinochet and the military officials remained in power mostly in the military sector and still had a heavy influence on the government. Without the agreement of Pinochet and his officials, the possibility of a return to military control would have been much more prevalent in the country.

Without the stability in democracy made possible by accepting the amnesty law as part of the transition, Chile would not have been able to explore other methods of redressing human rights violations if the military sustained its control. Chile experienced a successful democracy previously for multiple decades, but the military's power over the nation caused the necessity to satisfy their demands to maintain peace. In the years after the onset of the amnesty law, Chile implemented methods such as reparations, formal apologies, and truth commissions to redress past human rights violations. The momentum caused by these methods also contributed to the eventual bypassing of the amnesty law by Chilean courts, leading to the prosecution of former military officials including Pinochet in attempts to redress human rights violations committed. This is not to say that the actions to redress these violations would not have happened without the amnesty law; instead, by accepting the amnesty to make peace within the country, the

democratic government may have prevented future abuses and allowed for the implementation of these systems to redress the human rights violations.

In contrast to both Spain and Chile, South Africa's amnesty was implemented during the same period as its truth commission and reparations programs. Similarly to Spain, South Africa's amnesty was created to be completely non-partisan and unbiased to those who apply. The Amnesty Committee's objective was to not only withhold judicial liability for politically-based crimes under Apartheid, but it was also to promote equality among the different ideological groups within South Africa, emphasized in the final chapter of the 1983 constitution.[211]

At the time of Apartheid's end, there were many active political parties, cultural groups, liberation movements, etc., that oftentimes clashed and fought against one another. The ANC and TRC believed that amnesty would provide reconciliation and reconstruction moving forward in order to "transcend the divisions" which caused the human rights violations that occurred under Apartheid.[212] Due to high tension among these parties and organizations, institutionalizing a partisan or biased Amnesty Committee could have easily led to an influx of political unrest during the transition to democracy. With regard to South Africa's history as a colonized state and decades of previous political violence between cultural and political groups, the use of amnesty was intended to create peace after a history of unrest.

Furthermore, South Africa's use of amnesty is the only example out of the three nations in which the amnesty process directly improved and related to other forms of TJ with the goal of

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[211] Republic of South Africa, "Constitution of the Republic of South Africa Act 200 of 1993," South African Government, 1993. https://www.gov.za/documents/constitution/constitution-republic-south-africa-act-200-1993#251%20Short%20title%20and%20commencement, Chapter 15.

[212] Ibid.

redressing human rights violations. The conditions of applying for amnesty, offering full disclosure of relevant facts and information, and an admission of guilt, were required for every applicant who wanted to be granted amnesty. Each applicant contributed to the development of the truth commission that later recommended national policies to redress human rights violations based on their findings through the requirement of these conditions for amnesty. Though the Amnesty Committee is relatively controversial because of human rights violators that were not held liable for their actions, it appears that the TRC used amnesty to the best of its ability to create peace and create accessibility to other TJ mechanisms.

Moving forward, there lies the importance to consider amnesty for what it is: amnesty will not single-handedly redress human rights violations, nor will it reconcile a nation after a repressive period. Amnesty also is not inherently detrimental to a transitioning nation. Amnesty is instead one of the many mechanisms within TJ useful for politically unstable countries in transitions from repressive periods, but other TJ mechanisms must be utilized in order to promote reconciliation and redress human rights abuses.

Concluding Thoughts

The question of amnesty is not simple, especially in the nuanced cases of Spain, Chile, and South Africa. Amnesty cannot be definitively labeled as “correct” or “incorrect,” but there are variables that affect whether it can be an effective transitional justice tool. In order to be successful and effective, amnesty needs to meet the criteria of applying it only in appropriate conditions and using amnesty to allow for other TJ mechanisms. Spain and South Africa appear to be on opposite ends of the spectrum in their amnesty use. Chile represents an interesting case

in which the amnesty law itself was ineffective, but the manner in which the Chilean government took advantage of the law was largely more effective.

It is rare to hear successful examples of amnesty commonly discussed, however, these examples can and do exist. As more countries gradually make transitions to democracy after wars or repressive periods over time, these countries must keep these criteria of amnesty in mind and be extremely cautious when considering the use of amnesty in a transitional period.

No study or analysis of amnesty is complete with only three countries as case studies. Amnesty laws have an extensive variability and history in many more countries around the world other than only Spain, Chile, and South Africa. Spain and Chile offer examples of transitional amnesty adopted or accepted in the context of two decades-long authoritarian dictatorships, while South Africa offers an example of amnesty utilized in a transitional period after a repressive and discriminatory political party held control of the nation for nearly half a century. Fully understanding the complexity of amnesty requires a more encompassing analysis of amnesty examples, which this thesis was unable to provide and is therefore a limitation of this study.

In recommendations for further research to have a more all-encompassing understanding of amnesty, the examples of the cases in Argentina and the Democratic Republic of the Congo provide relevant examples of the conditions and judicial roadblocks amnesty often faces. Additionally, the Iraqi government's recent adoption of an amnesty law in 2016 provides an interesting perspective of what amnesty looks like on a smaller scale; not in relation to authoritarian dictatorships or formal wars.

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